



FIVE SUGGESTIONS TO FIX LOCAL GOVERNMENT

Jaap de Visser - Dullah Omar Institute

The past few weeks have brought the troubled state of local government to the fore with renewed vigour. The Auditor-General's (AG) consolidated report over the 2016/2017 financial year presented a very bleak picture of the local government financial management. The Minister of Cooperative Governance and Traditional Affairs (CoGTA), Dr Zweli Mkhize, presented a list of municipalities considered dysfunctional and in need of immediate intervention. In the weeks that followed, many analysts eagerly joined the chorus and filled social media pages with opinion pieces lambasting the poor state of local government. The AG's assessment was so grim that a mere reproduction of the AG's conclusions was enough to produce blistering opinion pieces. Very few appreciated the nuances in the AG's assessment or analysed the longer term trends in audit outcomes (such as the decline of municipalities with the worst audit outcomes). Even fewer offered any suggestions on how to arrest the overall regression.



PHOTO: MILANGA FOR ISANDLA INSTITUTE

THE new Minister of CoGTA clearly brings to the sector fresh energy and a considered approach. It is too early to assess whether his approach will make a difference. To be honest, so far it does not sound very different from previous ministers. Ever since the late

Minister Shiceka's 2009 *State of Local Government Report*, CoGTA has excelled at presenting the sorry state of affairs of the sector it regulates. The presentation of a list of 'basket cases' was also done by the then Minister of CoGTA, Gordhan, in 2014

when he pronounced that a third of municipalities are dysfunctional. CoGTA's strategies to solve the problems are also not a radical break with the past. It is a mix of deploying technical expertise in weak municipalities, closer monitoring, laced with subtle hints of restructuring in the name of financial viability. These are the ingredients that local government watchers have been getting used to over the past two decades. To be clear, these strategies, if implemented adequately, may very well help. At the same time, they have been part of 'Project Consolidate', 'Siyenza Manje' the 'Turnaround Strategy', 'Back to Basics' and various other local government support programmes over last two decades. Perhaps it's a case of doing the same thing but expecting different results.

It is thus time to also discuss new ideas and, given the fact that communities are rapidly losing patience with municipal failures, there can be no holy cows. So let me present a few ideas that I think merit further discussion.

The first suggestion is to start an honest conversation about the incentive structure for councillors. Councillors must provide political leadership to municipalities and represent communities. There is no doubt that councillors are essential to the success of the local government system. I often hear the argument that local government would be better off without politicians, i.e. by removing councillors. This suggestion is deeply problematic and ill-considered. Basic service delivery and the distribution of local government resources is a fundamentally political exercise. It cannot be done without local political representation. So councillors will and should always remain at the helm of local government. However, there are too many councillors with intentions that appear to have little to do with developmental local government. The 'political-administrative interface', as it is euphemistically called, is the Achilles Heel of local government.

The 'political-administrative interface', as it is euphemistically called, is the Achilles Heel of local government. The consequences of this blurring of the lines of accountability are disastrous.

Simply put, it is about local politicians behaving as if they are administrators and about local administrators behaving like they are councillors. The consequences of this blurring of the lines of accountability are disastrous. Leaving the quality and calibre of local administrators aside for one moment, it leads me to this central question about councillors: how many were attracted to local government because of the prospect of using their influence to make positive change, and how many were attracted mainly by the prospect of a good salary? The fact is that councillors are remunerated well, most certainly in comparison with councillors in most other countries, where being a councillor is most often an unpaid position. Full-time councillors (i.e. mayors, members of mayoral committees, members of executive committees etc.) earn very good salaries. At face value, this makes sense as the incumbents have tough and demanding jobs. Part-time councillors are also remunerated reasonably well. For part-time councillors (who don't occupy any executive office) their remuneration ranges from R 230 000 for the smallest municipalities to R 480 000 in the largest municipalities. For some of you, these may not sound as very large sums of money. However, it must be seen in the context of the assumption that these are part-time salaries, i.e. remuneration over and above an existing income. The task of a public representative at local government level is hard. Councillors are often the target of community anger for anything government fails at. For many part-time councillors, their councillor allowance is in fact the only income. Let me be clear: one cannot but wish financial wellbeing for each and every councillor. However, that is not the

The collective leadership model offers other advantages that we need now more than ever.

point. The point is a different one, namely that the substantial remuneration of councillors has added a very sharp edge to the contestation over councillor nomination. This is borne out by the often violent contestation surrounding party nomination processes preceding local government elections. Evidence presented to the Moerane Commission on the killing of councillors in KwaZulu-Natal also bears testimony to this. The SABC reported that “[e]vidence before the Commission has been that some people see being a councillor as a means to gaining income and will want to stay in the position at all cost” (@SABCNewsOnline 26 February 2018). The substantial remuneration also fortifies party discipline: falling out with the party is about more than an ideological rift: it means to risk losing a very precious income. We must not ask whether councillors should be remunerated more or less. We should rather ask whether the current remuneration scheme indeed attracts the right calibre of community activists into local government. I am not convinced that it does.

The second suggestion is to revisit the way executive leadership is structured in municipalities. We must revisit the executive mayor model. The majority of municipalities are headed by executive mayors, who are elected by their councils. Once elected, the executive mayor handpicks a number of councillors to form a mayoral committee, which

Municipalities are certainly not the only ones to blame for the parlous state of local government. Municipalities are very often at the receiving end of incoherent laws, policies and funding streams. This is a result of national and provincial departments fighting for turf, or simply not coordinating with one another.

then assists the mayor. These councillors naturally all belong to the same party or coalition as the executive mayor. It is therefore a ‘winner-takes-it-all’ system: parties that don’t govern are not part of the executive team. This executive mayor model was introduced in 2000. Before then, municipalities were governed by inclusive executive committees, a collective leadership model in which ruling and opposition parties worked together. The executive mayor model may have delivered visible leadership, direct accountability and efficiency. However, it has also delivered many executive mayors who are at odds with their caucus, retreat into the municipal administration and remain disconnected with their base. The collective leadership model offers other advantages that we need now more than ever. Let me mention two. First, the collective leadership model fosters collaboration ‘across the aisle’. Political groups that find themselves in opposing camps because of ideological (often nationally oriented) reasons are brought together to work in the interest of service delivery. Secondly, the collective executive leadership means that there is more than one party and even more than a coalition of parties that has direct insight into the municipality’s executive affairs. The opposition is included in the executive and there are thus ‘more eyes on the till’. This is something that will assist in the fight against graft. In my view, there is a need to revisit the ‘winner-takes-it-all’ model of executive governance in municipalities.

The third, fourth and fifth suggestions are for national and provincial governments because municipalities are certainly not the only ones to blame for the parlous state of local government. One critical area is the lack of policy coherence in and between national and provincial governments. Municipalities are very often at the receiving end of incoherent laws, policies and funding streams. This is a result of national and provincial departments fighting for turf,

or simply not coordinating with one another. One such example is the contestation between the National Treasury and the CoGTA over the prerogative to regulate local government administration. This contestation is as old as the local government dispensation. While the two departments try hard to coordinate their supervision of local government, the tension is palpable throughout the local government system. What is more, the two departments sometimes end up sandwiching municipalities with competing laws and initiatives. In 2007, for example, the National Treasury issued minimum competences and qualifications for senior local government officials. Inspired (or irked) by National Treasury's initiative, CoGTA proclaimed its own minimum competences and qualifications in 2014, largely covering the same senior local government officials. At the receiving end of these two overlapping laws are municipalities. They have no choice but to comply with both and to try to make sense of this awkward overlap.

When it comes to laws on disciplining officials, things don't look any better. In 2000, CoGTA legislated a Code of Conduct for municipal officials. In 2011, this was complemented with detailed regulations covering procedures to investigate and discipline senior municipal officials. In 2014, the National Treasury, perhaps dissatisfied with CoGTA's regulations, doubled up with its own regulations on how to investigate and discipline senior municipal officials. The two sets of laws have a different emphasis but essentially deal with the same issue and target the same officials. It's not easy being a municipal manager and having to choose what to apply when.

At a broader policy level, there are contradictions too. The Integrated Urban Development Framework, arguably one of the most robust and consequential policy initiatives undertaken by CoGTA of late, speaks

A fourth suggestion is for national and provincial government to implement the constitutional provisions on intervention into failing municipalities more robustly.

boldly of the need to empower cities with greater authority over housing. In doing so, it echoes the National Development Plan. However, the Department of Human Settlements will have none of it. It issued a moratorium on the accreditation of cities for housing. Municipalities, cities in particular, are not sure where to turn to or where the centre of power on this issue is. The third suggestion, therefore is for Cabinet to adopt a mechanism for much more effective coordination of laws and policies on local government.

A fourth suggestion is for national and provincial government to implement the constitutional provisions on intervention into failing municipalities more robustly. The Constitution anticipates that municipalities may fail in delivering basic services, passing a budget, paying creditors or governing itself in line with basic standards. It provides for a comprehensive set of powers for provinces to intervene in a municipality when that happens. In fact, the Constitution makes it compulsory for provinces to intervene if a municipality fails to pass a budget in time or is in clear financial crisis. Provinces (except KwaZulu-Natal, which intervenes more readily) use interventions very sparingly. They certainly don't intervene every time they are compelled to by the Constitution. If they do intervene, they often do so too late, at a time when the municipality is already on its knees and the road to recovery is long, painful and uncertain. National government is not off the hook here either. If provinces do not intervene when they ought to, the Constitution instructs national government to intervene instead of the province. Again, it doesn't leave national government a choice.

The point is that government must consider the impact that raising institutional reform questions has on those very institutions that are the subject of the debate.

However, this provision has never been used. Yet, there have been many cases of municipalities collapsing spectacularly, leaving communities bearing the brunt of all-out service delivery failures. There is a further pernicious consequence of the inadequate oversight by national and provincial governments. Bulk service providers simply pull the plug on an errant municipality and thereby punish the entire municipality, including all its residents, business and industries. In the absence of provincial and national governments putting municipalities under the 'business rescue' envisaged by the Constitution, providers of bulk services to the municipality (such as ESKOM and the Department of Water Affairs) have started reducing or disconnecting services. Therefore, instead of the errant municipality's senior leadership losing authority, all residents (including those who paid for their services) suffer service cuts. This is not what the Constitution intended when it provided for a robust intervention regime to protect communities from municipal failures.

The fifth suggestion is for national government to be more careful in managing its local government reform agenda. The argument here is that perennial restructuring debates are not good for local government. Take, for example, the debate about provinces. For as long as we have had provinces, we have been discussing whether or not to abolish them. The same applies to district municipalities, who have been on the chopping block for the past

fifteen years. Another example is the electricity restructuring debate. For at least a decade, government's clearly stated intention was to remove the electricity function from municipalities. A bill was passed and institutions created to make this happen, until eventually the idea was abandoned. The point of these examples is not to debate their merits or demerits. For each of them, there are arguments in favour and against. The point is that government must consider the impact that raising institutional reform questions has on those very institutions that are the subject of the debate. For example, it is no secret that during the years that national government was mulling over the electricity question, many municipalities stopped investing in electricity infrastructure. Why invest in a function that will be taken away from you, right? Similarly, how good is it for the institutional resilience of a district municipality when its abolition is on the agenda for more than ten years? It is suggested that national government should be intentional, clear and decisive about structural reforms. The abolition, restructuring or disempowering of institutions may be a wise policy option in given circumstances. However, they should not be made to hang endlessly above institutions as the proverbial Sword of Damocles.

The above five suggestions are by no means a silver bullet that will miraculously solve local government's problems. However, it is hoped that they represent a fresh look at some of the problems besetting municipalities. Communities across South Africa are signalling that patience is running out. Governance in municipalities must improve. At the same time, the inter-governmental system on which municipalities depend, must improve.