



## The Viability of South Africa's Municipalities

### 1. Introduction

With the 2016 local elections fast approaching, the attention of political parties will turn to the third sphere of government, namely local government. Experience teaches us that when this vital mechanism for the delivery of services – and the space for citizens to engage most directly with government – takes a back seat to the national and provincial spheres, problems start to occur. If municipalities are seen as the 'poor relations' of the other two tiers, they soon become unable to provide their constitutionally mandated services, and they lose viability<sup>1</sup>. If this occurs, as it has in many parts of the country, then an intervention is required to guide the municipality back onto the correct path.

The Catholic Parliamentary Liaison Office (CPLO) hosted a roundtable discussion on Municipal Viability and Interventions on 4<sup>th</sup> September 2015. The practical information brought across by the speakers lays the foundation for this paper, as we heard the views of government, through Mr Mandla Nkomfe, advisor to the Minister of Cooperative Governance & Traditional Affairs (CoGTA); of the official opposition, from Mr Kevin Mileham (DA shadow Minister of CoGTA); and a practical view from the manager of the Drakenstein Municipality, Mr Johann Mettler.

The purpose of this essay is to combine some of the legal aspects of the matter with the practical issues and points that were raised at the roundtable discussion. This should show us where we should be, where we actually are, and how we can intervene to improve the state of local government.

### 2. Financial Viability

A colloquium report on municipal viability states that a viable municipality is one that has a sound tax base, a viable economy, low dependence on

grants and other transfers, and sound financial governance.<sup>2</sup> Municipal viability thus points to the financial status of a municipality, whereas a functioning municipality is one that has a satisfied community, good governance, sound financial and institutional management, good service delivery and a stable political system.

This shows that a large part of overall viability relies on the financial state of a municipality. Johann Mettler describes financial viability as an ability to generate sufficient income to meet operating payments, debt commitments and, where applicable, to allow for growth while maintaining service levels.<sup>3</sup> When a municipality cannot carry out these tasks, an intervention needs to take effect to remedy the situation. However, an intervention can only proceed once certain constitutional requirements and safeguards have been met.

### 3. Constitutional Mandate

There needs to be a balance between the constitutional protection of the autonomous sphere of local government, and the need for good and effective government at local level.<sup>4</sup> In 2003, section 139 of the Constitution was significantly amended to enable provinces (and national government) to intervene in municipalities that experience problems in carrying out their duties: "When a municipality cannot or does not fulfil an executive obligation, the relevant provincial executive may intervene by taking appropriate steps to ensure fulfilment of the obligation."

Chapter 7 of the Constitution deals with local government, and section 152 sets out five objectives:

- To provide democratic and accountable government for local communities.

- To ensure the provision of services to communities in a sustainable manner. (Arguably, a service is only sustainable if it is affordable and addresses a real need of the public. There are circumstances where a council does not have a choice other than to cease performing its functions; an example is a labour conflict where a legitimate strike of municipal workers results in the suspension of the delivery of services.<sup>5</sup>)
- To promote social and economic development. (This is a problematic area for local government and municipalities due to overlaps with national and provincial jurisdictions and policy implementation. In addition, economic development can only happen if the municipality has adopted its own local economic development plan.)
- To promote a safe and healthy environment (which includes the provision of clean drinking water, the effective treatment of sewage, and an efficient solid waste disposal service).
- To encourage the involvement of communities and community organizations in matters of local government. (This enhances both accountability, as people demand answers to promises made to them, and active participation by citizens.)

The Constitution recognises that municipalities have limited capacity. Accordingly, section 152(2) requires them to 'strive' to achieve these objectives within their financial and administrative capacities. In addition, section 153 of the Constitution provides that a municipality must structure and manage its administrative, budgeting and planning processes "to give priority to the basic needs of the community, and to promote the social and economic development of that community."

#### 4. Finding the Money

Financial viability requires a sufficient supply of money to keep the service delivery machine spinning, but obtaining the money required is a constant challenge. It is evident that there is a continued culture of non-payment for services at municipal level; what began decades ago as a

peaceful measure to force political change in South Africa, has now become a disease that threatens to destroy the results of that measure.<sup>6</sup> The root of the problem is a political and administrative inability to provide basic services and to deal with challenges effectively. As a result, a backlash from the sector of the community that has been paying for services has resulted in the illegal withholding of payments; and if course, without revenue services cannot be provided to anybody, be they payers or non-payers.

Poor financial management, coupled with a lack of legal measures to enforce accountability, are two factors at the heart of the crippling financial non-viability in municipalities. This is partly due to the fact that, as long as councillors can take politically-motivated and irresponsible decisions without incurring any accountability, municipalities will be burdened with poor financial management.<sup>7</sup> Although the municipal manager as accounting officer can be held accountable in terms of section 61 of the Municipal Finance Management (MFMA) Act No.56 of 2003 and section 55(2) of the Municipal Systems Act No.32 of 2000, the problem is that the politicians (who are more often than not the root cause of financial mismanagement) cannot be held accountable, except if they are involved in clear irregularities.

#### 5. The State of Municipalities

At the CPLO round-table, Mr Nkomfe emphasized that we have cut down the number of municipalities from 800 in 1995 to 278 now, and it was possible to reduce this number even further. Dysfunctionality within local government was often linked to the dysfunctionality of the political process, he said. "As government we often fall into this trap where we put structures in place instead of following the strategy we have in place."<sup>8</sup> When a structure fails, another structure is created to fill that gap instead of following the predetermined strategy that government had already set as its guide. The issue of capacity building and skills levels also needed to be addressed.

According to Mr Mileham, one third of municipalities are dysfunctional and unable to fulfil their constitutional duties.<sup>9</sup> He went on to say that corruption and a lack of structured community engagement leads to poor financial management. The resources are available but due to poor management, such as the misappropriation of funds, grants from treasury

have been suspended, resulting in service delivery becoming practically non-existent.

Mr Mileham noted that Minister Gordhan had proposed the amalgamation of various underperforming municipalities as a way of improving their financial viability. However, it was the stance of the DA that amalgamation would just create larger dysfunctional municipalities. This problem was also addressed by Mr Mettler, who attributed governance failures to political infighting, mismanagement, political-administration conflict, and unbridled corruption. He noted that it was a bold decision to reconfigure low-scoring municipalities, but the scale and pace of the solution was worrying.<sup>10</sup> The demarcation process aimed to merge under-performing municipalities but there was a danger that such an approach would create similar problems, but on a much grander scale.

## 6. Interventions

Mr Mettler argued that a number of the interventions undertaken up to now actually threatened the institutional integrity of local government. There were three principles that should underlie any intervention: it has to be a measure of last resort; there needs to be respect for institutional integrity (intervention as opposed to interference); and the aim must be to restore, not to punish. Mr Mettler pointed out the example of Msunduzi local municipality, in KwaZulu-Natal (centred on Pietermaritzburg). This was a case where a successful intervention took place over a two year period, the intervention having been led by a provincial intervention team which followed the principles that underlie an intervention (Johann Mettler happened to be the administrator of that team).

Within the framework of interventions, there are substantive and procedural requirements.<sup>11</sup> Substantive requirements deal with the questions as to when a particular type of intervention is permitted. Procedural requirements refer to the intergovernmental checks and balances that the Constitution prescribes for the various types of interventions. Sections 100 and 139 prescribe preconditions for interventions, and permit the national or provincial executive to intervene in a manner and to the extent prescribed by the Constitution.<sup>12</sup> The substantive requirement relates to the reasons behind the intervention, which reasons must be given by the national or provincial executive that intends intervening.

The extent of the intervention should be determined on the basis of the need to restore the municipality's ability to meet its obligations, not on the basis of the province's higher position in the government hierarchy, or on a desire to punish the municipality for not performing. The requirements for intervention and the powers of the province need to be linked, and the duration of the intervention, as well as the extent of the powers of the province, must clearly serve the purpose of the intervention.

The provincial executive must intervene by imposing a recovery plan aimed at assisting the municipality to meet its obligations.<sup>13</sup> It may dissolve the municipal council if it fails to approve legislative measures, including the budget or any revenue-raising measures necessary to give effect to the recovery plan. The provincial executive is primarily responsible for managing the intervention and seeing to it that the intervention does not last any longer than necessary.<sup>14</sup> However, the National Council of Provinces is tasked with reviewing such interventions, and can decide that an intervention must end if it is of the opinion that a continuation would infringe the institutional integrity of the relevant local authority.

## 7. Looking Ahead

There needs to be a comprehensive debate over the size of local government, and indeed government in general. If we compare the size of South Africa's cabinet to that of the United States, for example, we begin to see where our 'hunger for more' comes from. Both include the President and vice-President, but in the USA there are 15 other cabinet positions, whereas in SA our cabinet comprises 35 ministers. In the United Kingdom, which has a government model closer to ours, there are 21 ministers, apart from the Prime Minister.

The question is whether or not this apparent 'more is better' approach is also embedded at local level. In some of the smaller municipalities, this may be the case. For example, the Mnquma local municipality in the Eastern Cape has 62 councillors to serve a population of 250 000 people – a ratio of just over 4 000 citizens per councillor. In the Baviaans local municipality, also in the Eastern Cape, the seven councillors represent only 17 000 people, or just under 2 500 each. On the other hand, each of the 221 councillors in the Cape Town metropolitan

municipality is responsible for nearly 17 000 people. The same ratio applies roughly to Johannesburg, but in a smaller metropolitan municipality like Nelson Mandela Bay, the ratio is 9 500 to 1.

Clearly, logistics and infrastructure make it easier for a councillor in a large city to serve the interests of ten or fifteen thousand people, while a colleague in a rural area may have to travel for hours to reach outlying villages with tiny populations. Therefore, it may be that what is needed is not so much a reduction in the number of councillors within municipalities, but a reduction in the number of municipalities themselves.

If we are to have a structural change within South Africa then it has to be at the level of the district municipality and create a shared services model where agencies provide those services, administered possibly by provincial government. There is a need for a pragmatic approach as to what is the best vehicle that will ensure that we deliver services and enhance democracy on the ground. That way forward seems to be performance audits and pro-active oversight by an independent board that will provide effective and efficient interventions so that municipalities can get back to the business of providing services to the people.

## 8. Conclusion

What is evident is that there is clearly room for improvement within the local government sphere, specifically within regards to the viability of municipalities. Municipalities are tasked with a great responsibility in providing the basic services that citizens need and are afforded to them according to the South African Constitution. However large spatial gaps makes these duties an already tough task even tougher given the budgets these municipalities are working with. Therefore, we see a need for government to be pro-active in their engagement with municipalities so that there is no need for interventions to take place at all. If an intervention is needed then it needs to be swift and done by the correct authority based on the strategy that is put forward by our Constitution specifically section 100 and 139

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<sup>1</sup> Municipal Viability Colloquium Report. (2015). SARChI.

<sup>2</sup> Municipal Viability Colloquium Report. (2015). SARChI.

<sup>3</sup> Johann Mettler at a round table discussion on Municipal Viability and Interventions 2015.

<sup>4</sup> Local Government Law of South Africa (with N Steytler) Durban: LexisNexis/Butterworths (2007)

<sup>5</sup> De Visser, J. 1999, "A legal analysis of Provincial intervention in a municipality" Cape Town: LLM Thesis.

<sup>6</sup> Venter, A. & Landsburg, C. (2011). South African Politics and Government. Pretoria: Van Schaik.

<sup>7</sup> South African Politics and Government

<sup>8</sup> Mandla Nkomfe at a round table on Municipal Viability and interventions on 4 September 2015

<sup>9</sup> Kevin Mileham at a round table on Municipal Viability and Interventions on 4 September 2015

<sup>10</sup> Johann Mettler at a round table on Municipal Viability and Interventions on 4 September 2015

<sup>11</sup> Dept of Provincial & Local Gov (2007). Intervening in Provinces & Municipalities.

<sup>12</sup> NCOP PowerPoint presentation on interventions into municipalities.

<sup>13</sup> NCOP PowerPoint

<sup>14</sup> Local Government Law of South Africa (with N Steytler) Durban: LexisNexis/Butterworths (2007)