

HOLDING THE

Municipal executive

TO ACCOUNT

The accountability of the executive to the council is a cardinal principle of good governance. Information flow is essential to holding it accountable for its decisions and performance in delivering services and meeting locally prioritised outcomes. A prerequisite for information flow is transparency in the manner in which the executive carries out its tasks, and this begs the question: are there fault lines in the design of the local government system that have given rise to a lack of accountability and responsiveness?

Accountability of the mayoral committee and executive committee?

Section 20(2) of the Municipal Systems Act requires a municipal council and its committees to conduct meetings in public. It specifically prohibits the council and its committees from conducting closed sessions on certain topics. The application of open meetings to the mayoral committee depends, however, on whether or not the municipal executive can be considered 'a committee of council'. The Constitutional Court, in *Democratic Alliance and Another v Maseko NO and Another*, ruled that the mayoral committee is not a committee of the council; it is rather considered a committee that assists the executive mayor in the execution of his or her functions.

The fact that the mayoral committee is not regarded as a committee of the council supports, albeit not conclusively, the notion that a mayoral committee need not behave in the same transparent manner as a council committee or the council itself. Yet the exclusion of the public and the media from mayoral committee meetings is not automatic. This is obvious from section 20(3) of the Systems Act, which makes provision for a mayoral committee to 'close ... its meetings', implying that it can conversely decide to hold its meetings in public. Neither is this applicable to the mayoral committee only. This is clear from the fact that the same provision allows not only the mayoral committee but also the executive committee to close "all of [their] meetings" [emphasis added], as long as it is reasonable

to do so having regard to the nature of business being transacted. That means the mayoral committee is not obliged to conduct open meetings even when they discuss items like by-laws, the budget or the IDP, on which the council and other committees are obliged to have open meetings.

An important consequence of the fact that a mayoral committee is not regarded as a committee of the council is the centralisation of decision-making in the hands of the mayor and mayoral committee. The lack of transparency in mayoral committee meetings means that the preparatory work for decisions by the executive mayor, and even the decisions themselves, can take place behind closed doors.

Councillors who are not members of the mayoral committee often claim that they cannot influence decisions because they are not involved in the decision-making process of the mayoral executive committee, not even with regard to their own communities. Inasmuch as the system might be efficient in providing a strong direction to municipal strategies and policies, the lack of transparency in the way that the committee functions makes it difficult for councillors to play their oversight role. The fact that the mayoral committee can meet behind closed doors on topics like by-laws, the budget and the IDP denies the council the information flow that is necessary for it to hold the committee accountable.

The argument for open meetings is even stronger in the case of the executive committee, in which the imperatives of

preserving a coalition are not applicable, as it is a mix of parties and interests held together by an electoral system, not a coalition formed by commitment or agreement. We suggest that the laws be changed to make it impossible for both the executive and mayoral committees to close all their meetings. Both committees should, as a matter of principle, be transparent and accessible.

Section 79 and 80 committees?

The capacity of the municipal council to hold its executive accountable is also affected by the particular configuration of the committee system that a municipality opts for. Section 33 of the Municipal Structures Act provides that a municipality, taking into account the extent of its functions and powers, the need for delegation and the resources available, may establish committees.

The committee system is made up of section 79 and section 80 committees, which are named after the provisions of the Structures Act that regulate their establishment. According to section 79 of the Structures Act, 'a municipal council may establish one or more committees necessary for the effective and efficient performance of its functions or the exercise of any of its powers'. Section 79 committees can be established by the council from among its members. The council determines the functions of these committees and may delegate powers and duties to them. Section 80 committees are established by the council from its members to assist the executive mayor or the executive committee in the prescribed manner. The executive mayor or the executive committee appoints a person from the executive committee or mayoral committee to chair each committee and may also delegate powers and duties. A section 79 committee reports to the council while a section 80 committee reports to the executive mayor in the manner prescribed by the executive committee or the executive mayor.

The legal framework affords a municipality substantial discretion on how to structure its committee system; for example, a municipality may choose to establish only, or primarily, section 80 committees. The manner in which a municipality uses that discretion can have consequences for the capacity of the council to hold the executive accountable. For example, operating with an executive mayor and section 80 portfolio committees, with few or no section 79 committees, substantially reduces the capacity of the council to exercise oversight over the executive. This may be compounded when the few section 79 committees that a municipality has established are not portfolio committees but committees reserved for generic issues, such as matters related to discipline or rules of order.

- A municipality's committee system may, depending on the configuration decided upon by the municipality, impede the oversight ability of committees.
- In a municipality that is dominated by section 80 committees, the room for an ordinary councillor to exercise oversight is therefore very limited.
- Councillors that are not 'in government' have little or no access to the executive.
- A solution may be to promote the establishment of oversight committees or to tighten up the legal framework for council committees.

Detailed debate about policy options, the implementation of policy, the performance of the municipal administration and so on take place solely in section 80 committees.

Of course, members of the council are represented in section 80 committees as well. The problem is that the crucial role played by the chairpersons of these committees, who are appointed by the executive mayor from the executive, in facilitating the information flow from the committees to the executive curtails the capacity of ordinary councillors to exercise an oversight role. The deliberations and recommendations of a section 80 committee meeting are conveyed to the executive through a member of the executive in a meeting that may very well be held behind closed doors. This also means that councillors who sit in a section 80 committee have no knowledge of how that committee's recommendation was delivered to the mayoral committee. In a municipality dominated by section 80 committees, the room for an ordinary councillor to exercise oversight is therefore very limited.

With the lack of transparency in mayoral committee meetings noted above, the domination of section 80 committees in a municipality's committee system would represent the 'final straw' in frustrating the capacity of councillors to hold the executive accountable. In that situation, councillors who are not 'in government' have little or no access to the executive.

The municipality itself may formulate a response to this problem by establishing an 'oversight committee' (a section 79 committee, therefore reporting to the council) which functions as a public accounts committee. Its focus is on oversight, and it plays a particularly important role in overseeing the performance of the executive and the municipal administration. Its terms of reference have to be carefully crafted to reflect this

It is suggested that the legislation be amended to make it *impossible* for both the executive and mayoral committees to close all their meetings. Both of them should, as a matter of principle, be open, transparent and accessible.

role and distinguish it clearly from that of the audit committee. For example, an oversight committee assists the municipality in considering the annual reports and Auditor-General's reports and formulating a response to them. (For more on this, see the Gauteng example on the next page.)

Audit committee?

Another important committee that contributes to the promotion of accountability is the audit committee, which provides the council with information on the financial management of the municipality. With the majority of the members of the committee coming from outside the municipality and none being councillors, the committee functions as an independent advisory body that advises the council on the proper financial management of the municipality. Appointed by the council and consisting of at least three persons, the committee undertakes an external, objective review of the municipality's finances. Its contribution to 'peer accountability' thus lies primarily in the information that is generated for councillors to use in their engagement with the executive.

The audit committee is an important instrument that establishes the financial accountability of the municipal executive to the municipal council. It is an institution that provides the council with the necessary information to hold the executive accountable with regard to financial management.

Annual report

Another tool of peer accountability is provided by the duty of the mayor to submit an annual report to the council for each financial year. The purpose of the report is to record the activities in the year under review and measure the municipality's performance against its budget. It also promotes the municipality's accountability to the local community for decisions made throughout the year.

The annual report serves as an instrument to render the municipal executive accountable to the municipal council. This is evident from the fact that the process does not end with the

mayor presenting the report to the council and the council simply accepting or rejecting it. Instead, the presentation of the annual report is followed by the council issuing its own oversight report. This is what turns the annual report from a mere record of activity into an instrument through which the executive accounts to the council.

The process of adoption of the council's report also reflects the importance of the annual report as an accountability instrument, not only for the council, but also for the local community. Council meetings that discuss the annual report, or at which decisions with regard to the report are to be taken, must be open to the public and any organ of the state. A reasonable time must also be allowed for the discussion of any written submissions received from the local community or organs of state on the annual report and for members of the local community or any organs of state to address the council.

It is also important to note that the mayor is obliged to submit, in addition to the annual report, a quarterly report to the council. The report must explain to the council the implementation of the budget and the financial state of affairs of the municipality.

Comment

The discussion above reveals that, if the role of the 'ordinary councillor' is the prism through which the effectiveness of the accountability institutions is assessed, the conclusion is that these institutions may require attention. The exclusionary effect of the mayoral committee system is a case in point. Furthermore, a municipality's committee system, which enjoys the benefits of local autonomy, may, depending on the configuration decided upon by the municipality, impede the oversight ability of committees. A solution may be found in the promotion of the establishment of oversight committees (as in the case of Gauteng, see overleaf) or perhaps in the tightening of the legal framework for council committees.

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