

The political-administrative interface in local government

ASSESSING THE QUALITY OF LOCAL DEMOCRACIES

Municipalities have registered a tremendous democratic and service delivery record, yet the public perception of them is troubling. Municipalities are too often identified with corruption, inefficiency and inaccessibility. Councillors are sometimes perceived as inward-focused and too preoccupied with the political goings-on within the council and the technicalities of the municipal administration. As a consequence, there is a serious breakdown in the relationships between councillors and communities. This is evidenced by continuing community protests, directed at councillors and municipal officials.

This article examines whether aspects of the law contribute to these problems. President Zuma has remarked, for example, that there may be a need to separate the legislative and executive roles of the council. This theme has been taken up in the discussion towards a turnaround strategy.

Council as executive and legislator

Section 151(2) of the Constitution provides that the council possesses both legislative and executive powers. In other words, the council both makes laws (by-laws) and implements them. This is different from the national and provincial governments where the legislature makes laws and the executive implements them. The legislature oversees the executive.

The Municipal Structures Act creates a degree of separation in municipalities by providing for executive committee and

executive mayor systems. However, in both those systems, the executive is dependent on the council to delegate executive power. The council remains the original source of executive power and bears the responsibility for overseeing the executive. This merger of legislative and executive powers is often singled out as a cause for the governance problems in municipalities.

Political-administrative interface

Indeed, it does not make the relationship between councillors and administrators easier. For example, who directs the municipal administration? At national level, where there is a separation of powers, it is clear that the President, together with his Cabinet, directs the administration. Parliament has an oversight role over the administration but does not issue instructions to it. The municipal council is constitutionally designed as an executive body. It is essentially the employer of all municipal staff.

Legislation has separated the council from the administration to some extent. The Municipal Systems Act (MSA) mandates the municipal council to appoint senior managers, but further appointments are made by the administration itself. Furthermore, the Code of Conduct for Councillors includes a provision that prohibits them from inappropriate interference in the administration. The Municipal Finance Management Act (MFMA) takes a harder line on separation. It bars councillors from taking part in tender decisions and includes many provisions that seek to separate the council from the administration. Despite these laws, the definition of roles remains a challenge.

Party political interference

It would be wrong to suggest that the governance problems in municipalities are caused by the law. Inappropriate party political interference has complicated the political-administrative interface. Too often, regional party structures,

instead of giving strategic and ethical guidelines to the local caucus, try to manage municipalities by remote control. Research indicates that this kind of undue interference mostly takes place in staff appointments, tenders, credit control decisions and the implementation of the Code of Conduct.

Further confusion between the political party and the municipality is created when a senior party political office-bearer becomes a municipal staff member. The normal lines of accountability then no longer apply, particularly when the staff member outranks the mayor. The staff member then actually becomes the political head, undermining the political leadership of the mayor. The municipality is thus 'rewired' in a very damaging way. This often leads to perennial power struggles that spill over into service delivery problems.

Way forward: changing the law?

What is the way forward with regard to the quality of local democracies? A combination of political and institutional solutions are proposed here.

Firstly, the advantages and disadvantages of separating legislative and executive powers in local government need to be investigated.

Secondly, a rule should be inserted in the MSA prohibiting senior party officials from being municipal officials. Local government practitioners need to choose whether to pursue a political or an administrative career, rather than trying to combine both simultaneously. In addition, political parties should adopt this rule in their own internal systems of deployment.

Thirdly, the rules in the MSA about staff appointments and staff discipline need clarification. 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. However, there are many instances where councillors are involved in staff



appointments (other than senior management) by being members of appointment committees or by participating in interviews as 'observers'. The MSA should make it clear, just like the MFMA does with regard to tenders, that staff appointments are administered by the relevant managers, not by councillors. These managers, in turn, are overseen by the council. Another area of confusion is the position of the managers who report to the municipal manager. They are appointed by the council but are answerable to the municipal manager. The law is not clear on where the responsibility and authority lies to discipline senior managers when they violate staff codes. It is suggested that the law should make the municipal manager responsible for appointing, disciplining and dismissing the managers that report to him or her. The municipal manager must consult the council but must ultimately be responsible for the decision.

Achieving progress without changing the law

Legal solutions and new systems are not the final answer. Many of the problems can be addressed without changing the law.

Firstly, political parties need to recast their roles vis-à-vis local government, particularly at regional level. The local caucus needs to be repositioned as a political structure that is trusted to take decisions and that cannot be by-passed or undermined by party structures. Party structures need to focus their attention on providing strategic support to the local caucus, rather than micro-managing the administration.

Secondly, municipalities should use instruments such as the terms of reference, delegation and rules and orders to clarify the role of office-bearers, structures and the administration. The terms of reference, in particular, is important. In section 53, the Systems Act provides that municipalities must adopt this instrument which is specifically designed to deal with overlapping responsibilities, grey areas and disputes. It is a document that outlines the organisational values, dispute resolution rules, reporting rules etc. It requires an inclusive decision-making process in the municipality. It can be adopted by a majority but should actually be endorsed by every councillor in order to be truly effective. Unfortunately, too many municipalities have not adopted terms of reference yet or have adopted inadequate ones.

Thirdly, council oversight should be improved. Council oversight over the municipal executive is critically important. Many municipalities adopt committee systems that hamper oversight. Except in the smallest of councils, where portfolio committees are superfluous, these committees are critical to ensure robust engagement between councillors, municipal executives and the administration. The Municipal Structures Act provides for 'section 79' and 'section 80 committees'. A section 79 committee is chaired by a councillor who is not a member of the executive committee and it reports directly to the council. In contrast, a section 80 committee is designed to assist the executive committee and is chaired by a member of the executive or mayoral committee. It thus also reports to the executive committee, not to the council.

Municipalities may adopt combinations of the above two systems. However, in practice municipalities prefer section 80 committees (except perhaps for ethics committees and oversight committees). Thus reports, recommendations, draft resolutions etc. are prepared by the administration, discussed and refined by the section 80 committee under the chairpersonship of the member of the municipal executive, and submitted by the executive 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 system, despite its advantages in terms of efficiency, does not assist in enabling oversight by the council over the executive and the administration. The committees should be the engines of local democracy, where policies and decisions are interrogated, progress is measured and the hard questions are asked in an open and vigorous debate. The objective of a committee meeting should be to measure the progress made by the administration and not just preparation of an item that can go to the municipal executive.

Municipalities should establish section 79 committees, chaired by non-executive councillors. In many instances, this will require significant investment in the functioning and skills of councillors that are designated to chair section 79 committees. In fact, municipalities will be quick to argue that there are too few councillors that are sufficiently empowered to chair a section 79 committee. Even if that were true, political parties and municipalities that are serious about enhancing local democracy should empower them.

Conclusion

Despite the progress made, there are serious deficiencies in the manner in which municipalities are governed. The lack of separation of powers in the council is an important background to these challenges in municipalities. The separation of powers is worth investigating but there are some critical changes that can already be made without amending the Constitution. Most importantly, political party structures need to find a new balance between effective political oversight and micro-management. Municipalities need to devote much needed energy into adopting effective terms of reference for their office-bearers, structures and senior management. Finally, some legal changes may be required to clarify the relationship between municipalities' political and administrative arms.



Jaap de Visser
Associate Professor
Community Law Centre (UWC)