

GOVERNING GOOD AND GOVERNING WELL EXCELLENCE IN MUNICIPAL SERVICE DELIVERY

Edited by Dirk Brand



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Building blocks for good governance

by Dirk Brand

Introduction

There is no doubt that South Africa today after 20 years of democracy is facing a service delivery crisis that threatens to harm the country's political and social stability. This is quite visible at local government level where municipalities operate in a complex environment.

Municipalities render a wide range of services and have the responsibility to promote socio-economic development in their areas of jurisdiction. The communities that they serve span the whole socio-economic range. In addition, municipalities are subject to the economic difficulty of limited resources with which to address growing needs.

When considering the above, one might easily despair and think that municipalities are set up for failure and that they have no hope of being successful at fulfilling their constitutional and developmental mandates. This situation can, however, be turned around to create successful municipalities that ensure effective delivery of services to their communities.

In response to the need to strengthen good governance within local government in the Western Cape, an innovative project was designed by three institutions, namely the Western Cape Government (WCG), the Hanns Seidel Foundation (HSF) and the School of Public Leadership (SPL), Stellenbosch University. The Municipal Mentoring Project piloted in 2012 was funded by the HSF, managed by the SPL and supported by the WCG to assist municipalities in the Western Cape in critical matters of governance.

This is an innovative initiative that utilises experts in municipal governance matters in a mentoring support role. The objective of this project is the strengthening of municipal governance and service delivery through improved municipal systems, structures, processes, administrative functioning and mentoring.

Project design

In terms of its constitutional mandate, the Western Cape Department of Local Government provides dedicated support to municipalities to strengthen their systems, structures, service delivery models as well as enhancing oversight and reporting. These support initiatives are targeted and tailored to address the needs of each municipality, and is thus demand driven. The aim of the support provided by the Department is to ensure immediate impact, increased levels of service delivery and improved revenue and sustainability levels. The project was designed in order to close the gap between the comprehensive portfolio of support initiatives and projects that are offered by the Western Cape Department of Local Government to municipalities and their own capacity to identify and tackle critical governance issues that contribute to their success or failure.

Where it was possible to assist with solving some of the problems within municipalities during 2012 through advice or training, directly related to the compliance assessment, this was effected by the consultants. The project was designed in such a way that experts in the field of local government could be used to provide mentoring support to individual municipalities once the governance needs were analysed and clarified.

It is evident from the feedback received from participating municipalities, as well as from the consultants, during the pilot phase that there is a substantial range of generic and off-the-shelf training opportunities available to officials in local government at different levels. Despite this training offer it is clear that

various municipalities continue to lack sufficient or appropriate expertise in many fields. This hampers their ability to deliver services. It is also clear that specialised mentoring support relating to specific systems and processes could further enhance municipal good governance.

From the pilot project it was deduced that there was a need for a more systemic and systematic capacity-building initiative ranging wider and impacting deeper on the capacity of the municipalities and the individuals involved, to perform. Such initiative should be closer to an organisation development intervention rather than mere training sessions, and the emphasis should be on focussed mentoring support and advice. Concretely this means that the needs determination can and should be used as a diagnostic instrument and a compass for focused organisation development which may include training, but may not be limited to training.

In this regard, mentoring as sustained institutional capacity-building and personal empowerment tool can serve a positive purpose. The individual needs of the selected municipalities should be determined in order to develop a focussed support plan. Against this background it was agreed between the three partner institutions to continue with the project in 2013 and to make appropriate changes to the design in order to strengthen the idea of individual mentoring support to strengthen good governance.

Needs-based targeted mentoring and the availability of appropriate experts on tap to give advice on specific issues within individual municipalities could make a significant contribution to strengthening the capacity of municipalities and enhancing good governance and professional service delivery. This is the approach used in this project.

The four municipalities, which participated in the project in 2013, are: Berg River, Hessequa, Kannaland and Knysna. Under the guidance of the two independent experts the individual needs of the selected municipalities were identified in cooperation with the respective municipal managers and an action plan was developed for each municipality. This enabled them to follow a tailor-made mentoring support program in line with the approach indicated above. This project created the necessary building blocks which were put in place for the municipalities to succeed.

This project is based on action learning which enables municipalities to learn in real time situations and implement the learning into the system to continue to improve the quality of governance.

This publication is aimed to be a guide for mentoring support to individual municipalities to strengthen good governance and thus contribute to better service delivery. It therefore includes practical information about a selection of critical governance issues relevant to all municipalities. It is provided as a form of knowledge sharing that utilises the lessons learned as part of the action research in the participating municipalities.

2

Knowledge Based Governance: Governance as Learning

by Erwin Schwella

2.1 Orientation

Effective and ethical governance and government can and should benefit from many influences and inputs. These influences and inputs, in the form of evidence, information, knowledge and informed public participation contribute to the quality and legitimacy of government analysis and action.

Democratic good governance is specifically designed to gain from the added value provided by influences of public participation mediated through democratic values, conventions, architecture, processes and dynamics. Democratic good governance requires ethical and effective policy-making, policy implementation

and service delivery aimed at serving the public purpose and the benefit of the citizens and subjects of the democratic state which is governed by good public leaders.

Ethical and effective action from good public leaders calls for policies and service delivery based upon ideas and evidence, rather than on ideology and emotion. When there are tensions between partisan, parochial and populist politics, on the one hand and professional prudent policy-making, on the other hand, the latter should take precedence over the former, if the aims of the public good are to be served.

Ideas- and evidence-based governance benefit from knowledge, learning and innovation and, in its turn then benefits democratic good governance for effective and ethical policy-making and service delivery.

According to Sutcliffe & Court (2005) some of these points of departure were already put forward by Aristotle when he stated that different kinds of knowledge should inform rulemaking. This would ideally involve a combination of scientific knowledge, pragmatic knowledge and value-led knowledge.

Sutcliffe & Court (2005) also refer to other sources that add some further understanding and insights into the factors that impact on policy making, namely:

- ♦ information,
- ♦ interests,
- ♦ ideologies, and
- ♦ institutions.

Information includes the range of knowledge and ideas that help people make sense of the current state of affairs, why things happen as they do, and which new initiatives will help or hinder in the policy processes. It can be assumed that such information would be based upon evidence collected and validated through credible and reliable systematic methods.

Interests, as referred to by Sutcliffe & Court (2005), are too narrowly delimited as merely self-interest. Interests that inform policies may also include broader interests than merely self-interest. Interests may be more specific, as in the interests of particular smaller interest groups, or more universal as in the interests of the broader citizenry. There should, however not be an unconditional acceptance that interests that inform policy-making will always be negative. If policies are informed by taking into account relevant specific and/or general interests, or create a proper balance of interests, the incorporation of such interests can be positive and constructive in effective and ethical governance decisions and action.

Ideologies relate to the philosophies, principles, values and political orientations that impact on policies. These ideologies are carried into the policy process by the decision-makers who have the dominant influence and impact on the policy process.

Institutions impact on policies:

- ♦ when the institutional environment shapes the way in which participants interpret their own interests, ideologies, and information and
- ♦ where organisational arrangements affect the decision process itself, such as who is empowered to make decisions.

During the policy process information, interests, ideologies and institutions interact with each other in a dynamic manner. Although information – including research – does matter, it is also clear that there are other major factors that can and should impact on policy. Evidence-based information and knowledge is a necessary, but not sufficient, condition for any decision-making process (Sutcliffe & Court, 2005).

From the above, it can be deduced that effective and ethical governance can and will be served by utilising ideas, information and knowledge towards a constructive learning process. Such knowledge-based learning processes will, in turn, improve the effective and efficient making and implementing of policies for service delivery.

Effective and ethical governance requires processes to enhance organisation learning (OL), knowledge management (KM) for change, and innovation which build individual and institutional capacity to improve organisational performance. In this process of knowledge-based learning for good governance, action learning and research approaches are indicated to improve government performance. Through this action learning and research, governance practices are analysed in order to learn and to build capacity towards team and systems-based continuous quality improvement, which should be pursued consciously and continuously.

2.2 Governments as Learning Organisations and Organisational Learning (OL) and Knowledge Management (KM) in Government

It has been argued that, given the nature of government organisations, which are often characterised as being rigid, centralised, regulated, bureaucratic, rule-driven, politicised and generally resistant to change and innovation, the possibilities of applying learning organisation-based OL and KM for innovation, are constrained and limited. There are, however, many examples of success cases, which contradict this argument, where these ideas and applications were successfully used in government contexts and settings.

One powerful and illustrative example is the processes and innovative learning-based project related to the transformation of the New York Police Department (NYPD) during the leadership of Mayor Rudi Giuliani and Police Commissioner Bill Bratton. In this case, a fundamentally OL-based set of change and innovation strategies contributed to the improved performance in the NYPD and the reduction of crime in New York. It may therefore not be the issue of whether these approaches can work in government contexts, but rather about how to make them work through:

- ♦ properly contextualised and appropriate relevant OL and KM processes for governance; and
- ♦ leadership that facilitates learning, rather than leadership that provides easy answers (Heifetz, 1994; Senge, 1990).

Senge (1990) defines learning organisations as: “organizations where people continuously expand their capacity to create results they desire, where new and expansive patterns of thinking are nurtured, where collective aspiration is set free, and where people are continually learning how to learn together.”

According to Cropper, Dick, Donaldson and Patty (2002) action learning contributes to institutional capacity-building and improved performance by being:

- ♦ Change oriented, as it is embedded in action and is intended to bring about some improvement, or implement some worthwhile initiative. In action learning, the action and the learning are integrated and not separated as is the case in some other forms of education. Whilst participants introduce change, they learn.
- ♦ Mindful, signifying that action learners are thoughtful and observant. Action learning is critically reflective before, during and after the action on which the learning is based. Action learners act with intention, pay attention to what happens, and analyse their actions and the consequences later. Mindfulness and critical reflection are important features of action learning, improving both the action and the learning.
- ♦ Cyclic, involving a spiral of cycles of planning, action (implementing the plans, observing the results of the action, systematically reflecting on the result and then re-planning, further implementation, observing and then reflecting again). In cycles of planning those who are involved in the action learning process follows a cycle of acting, observing and reflecting which helps to define issues, ideas and assumptions more clearly so that those involved can define more powerful questions for themselves as their work progresses.

“Action learning describes an educational strategy used in a group setting that seeks to generate learning from human interaction arising from engagement in the solution of real-time (not simulated) work problems.”
[Raelin, 2000]

- ♦ Qualitative, where language is the natural medium of conversation. Action learning uses natural language for the action and learning, though with more than usual attention to rigour in the reflection and analysis. Within an action learning program, understanding develops through informed and evidence-based discussion. The form of language is supportive and at the same time questioning. It is a robust and reflective learning dialogue enhancing action and learning.
- ♦ Participative, where the deliberately intended result is real-time change and improvement. Action learning therefore relies on the participation and commitment of those affected by it. Organisational learners are actively involved in the process, although the extent of participation may vary. Greater participation can certainly yield richer and more comprehensive information, and more commitment to the action.

Related to these action learning descriptors Schwella (the current author), has designed and applied an action learning process for continuous action learning in organisations based upon what is called the four leadership-learning-for-performance questions. These questions, related to action and learning for continued performance improvement and which subsequently result in learning-based systemic individual, institutional learning and systems-based capacity building, are:

- ♦ What happened? – the answer to this question results in a systematic descriptive qualitative and quantitative assessment of performance and performance trends based on empirical evidence and resulting in the referred to assessment of relevance for the particular situation;
- ♦ Why did this happen? - the answer to this question results in a diagnostic analysis based upon provisional explanations of actions and what these actions cause in terms of results related to increasing or decreasing performance;
- ♦ What can I/we learn from this? – the lessons derived from answering this question relates to improved individual learning contributing to personal mastery, team learning and systems thinking challenging current mental models through deliberative empowerment and team learning; and
- ♦ How can the learning be used and built back into the system to improve the quality and performance of the system? - the answer to this question results in answers that enhance prognostic institutional capacity building for continuous performance improvement.

King (2009) provides an understanding of KM processes and goals in relation to OL. The processes of KM involve the acquisition, creation, refinement, storage, transfer, sharing, and utilisation of knowledge. The KM function in organisations operates these processes, develops methodologies and systems to support the KM processes and motivates people to participate in these KM processes. The goals of KM are the leveraging and improvement of the organisation's knowledge assets to effectuate better knowledge practices, improved organisational behaviours, better decisions and improved organisational performance. According to King (2009) OL can be seen as the goal of KM. By motivating the creation, dissemination and application of knowledge, KM initiatives pay off by helping the organisation embed knowledge into organisational processes so that it can continuously improve its practices and behaviours and pursue the achievement of its goals.

From this perspective a link between OL and KM can once again be made as an important interrelated set of dynamics creating important ways in which the organisation can sustainably improve its utilisation of knowledge. This improved utilisation of knowledge is associated with improved performance and contributions in respect of:

- ♦ Innovation;
- ♦ Individual Learning;
- ♦ Collective Learning;
- ♦ Collaborative Problem-Solving;
- ♦ Embedding Knowledge;
- ♦ Creating Dynamic Capabilities; and
- ♦ Knowledge Re-Use.

With these perspectives a link can now be made to governments as learning organisations and OL and KM in government.

2.3 Governments as Learning Organisations: The Leadership Implications

In order for governments to become learning organisations and benefit from OL and KM there are leadership approaches which will contribute to the facilitation of the required learning approaches.

In this regard Schwella (2013) provides some insight into leadership approaches which may be more or less appropriate for OL and KM in learning organisations: These leadership approaches are:

- ♦ The transformational or new charismatic approach to leadership which requires of leaders to concern themselves continuously with a process in which organisational destiny, products and work are dealt with by means of creating and sharing a powerful vision for, and of the organisation. The vision is realised through inspiring the total organisation to strive towards the said vision. Planning and implementation of these plans are also needed to realise the vision concretely. Teaming creates and maintains strong teams to pursue the organisational vision. Finally, recycling relates to incorporating information and knowledge after evaluation of organisational effort to ensure that continuous performance improvement takes place through processes of change, adaptation and re-envisioning.
- ♦ The social learning approach to leadership is linked to the recycling step in the transformational approach and requires that organisations continuously learn and experiment in order to improve capacity and performance. Leaders should therefore not be directive and authoritarian, but should rather be facilitators creating space for experimentation and learning. The assumption here is that some of the problems which organisations face are so complex that there are no easy or ready answers for them. Leaders should therefore facilitate systems-, group-, team- and individual learning to develop new competencies that the organisation and its members do not initially possess.

Senge (1990) deals with this approach by stating that leadership in learning organisations for OL should overcome a number of the seven learning disabilities and introduces five learning disciplines, which will enhance the organisational capacity for OL. The seven learning disabilities are:

- ♦ I am my position;
- ♦ The enemy is out there;
- ♦ The illusion of taking charge;
- ♦ The fixation on events;
- ♦ The parable of the boiled frog;
- ♦ The delusion of a learning experience; and
- ♦ The myth of the management team.

The five learning disciplines, according to Senge (1990) are:

- ♦ Shared vision;
- ♦ Team learning;
- ♦ Personal mastery;
- ♦ Mental models; and
- ♦ Systems thinking.

Heifetz and Laurie (1997) describe this type of leadership as leadership without authority in situations where there are no easy answers. The leadership prescription here requires that leaders create the space for, and encourage learning to take place in the organisation by being facilitative rather than directive.

Heifetz and Laurie (1997) distinguish between technical and adaptive problems where adaptive problems are complex and new and requires a particular leadership process where leaders must:

- ♦ Get on the balcony, reflect and analyse before acting;
- ♦ Identify the adaptive challenge which is not represented by only the symptoms of the problem but must be based on a proper identification of the underlying causes of the complex problem reality;
- ♦ Regulate distress by sequencing and pacing the work while still exposing the team to reasonable stress and conflict in order to enhance learning based upon the complex reality;
- ♦ Maintain disciplined attention by dealing with work-avoidance problems and tendencies and continuously framing and reframing questions and challenges to keep the team involved and interested in order to sustain the work and impact;
- ♦ Give the work back to the people in order to harness and harvest inputs into dealing with the adaptive problem from all involved, rather than accepting forms of upward delegation and back referrals to the leader. In this way the leader must facilitate the collective self-confidence of the team;
- ♦ Protect the voices of leadership from below where leaders must rely on others within the business to raise questions that may indicate an impending adaptive challenge. They have to provide cover to people who point to the internal contradictions of the enterprise. Leaders should resist the urge to restore social equilibrium which is quite powerful and occurs quickly. One has to get accustomed to getting on the balcony, delaying the impulse to silence contrarian and challenging voices while asking:
 - ♦ What is this person really talking about?; and
 - ♦ Is there something that we are missing?

With these perspectives on:

- ♦ knowledge-based governance and governance as learning,
- ♦ governments as learning organisations,
- ♦ OL and KM in government,
- ♦ as well as the leadership implications thereof,

it is now possible to relate these perspectives and insights to a learning case.

This will be provisionally introduced in the following section.

2.4 Strengthening Municipal Good Governance:

the “Mentoring and Empowering Municipalities Project”

The example in this case is a project to strengthen local government in selected municipalities in the Western Cape Province of South Africa, and which focuses on specific local governance issues.

The specific objective of the project is to strengthen municipal governance and service delivery of local government in the Western Cape through improved municipal mentoring and oversight using knowledge and learning-based methodologies and approaches.

During the case study the participative action research facilitated by SPL consultants is used to focus on two broad questions, namely:

- ♦ What are the critical governance issues in local government that contribute to the success or failure of a municipality?
- ♦ Why are municipalities experiencing so many governance and capacity problems?

An assessment of a series of related governance issues in the selected municipalities is utilised through participative action research to elicit data, information and analysed to find knowledge-based answers to these questions.

Finally recommendations are jointly explored and discovered to enhance individual, institutional and systemic performance improvement through analysis based upon evidence and learning deliberately facilitated in a conscious action learning process related to KM and OL. These recommendations then contribute to the improvement of the quality of governance and service delivery in municipalities.

All of the learning in the learning process facilitated by action research is finally shared in a final workshop where the participants from all the local governments share the learning from the learning experiences they were involved with. In this workshop the methodologies introduced in this section are combined in order to answer the four performance learning questions.

In this way individual and institutional as well as systemic learning and change that improve learning based understanding and performance improvement capacity building take place. The observations about the beneficial effects of the project and process are confirmed by all role players who evaluate the process and will be confirmed in this document. There is therefore initial evidence that knowledge based learning and learning for good governance approaches can and do contribute to improved municipal performance based upon this research.

Four performance learning questions:

- ◆ What happened?
- ◆ Why did this happen?
- ◆ What can I/we learn from this?
- ◆ How can the learning be used and built back into the system to improve the quality and performance of the system?

2.5 Summary and preliminary conclusion

Local government performance is universally a challenge and is also a serious issue in South Africa. Learning approaches to leading and learning are proposed as a possible remedy to deal with the performance improvement of individuals, institutions and systems through evidence- and knowledge-based strategies and methodologies. After having utilised such approaches in a South African local governance case there seems to be provisional evidence to support the proposition that the application of such approaches can contribute to local government performance if properly utilised.

3

Constitutional and Legal Framework

by Dirk Brand

The constitutional democracy in South Africa is still work in progress although it was formally established during the nineties. The Constitution of the Republic of South Africa, 1996, ('the Constitution') which laid the foundation of the constitutional democracy, is the result of a thorough process of constitutional negotiations. The political compromise that led to the development of the current constitutional order and which made the South African peaceful transition possible, is a finely balanced compromise and one which should not easily be tampered with. A significant development in the constitution-making process was the agreement on a set of Constitutional Principles, which the Constitutional Court described as "a solemn pact" between the negotiating parties and which laid the foundation for the further development of the current constitutional order (*In Re: Certification of the Constitution of the Republic of South Africa, 1996* 1996 4 SA 744 (CC); 1996 10 BCLR 1253 (CC) (*First Certification case*) para 15). This is important to remember in particular with reference to the nature and composition of the constitutional order and also with reference to the fundamental values underlying our constitutional system.

The characteristics of the constitutional democracy in South Africa as described in the Constitution are:

- ♦ A three-sphere system of government, namely national, provincial and local government (sec.40);
- ♦ Constitutionally entrenched division of powers and functions amongst the three spheres of government, where the majority of powers and functions are allocated concurrently to national and provincial governments (sec. 44, 104, 156 and Schedules 4 and 5);
- ♦ Division of fiscal resources where the bulk of the taxing powers vests with the national government (sec. 228);
- ♦ Co-operative government as overarching guiding principle (sec.41);
- ♦ Supremacy of the constitution (sec. 1,2); and
- ♦ A justiciable bill of rights (Chapter 2).

Local government is described in section 40 of the Constitution as one of the three distinctive, interdependent and interrelated spheres of government. A separate chapter, Chapter 7, is dedicated in the Constitution to local government. It functions within the constitutional system as the sphere of government closest to the citizens and which must provide a whole range of services to the local communities.

"All spheres of government and all organs of state within each sphere must –

- a. preserve the peace, the national unity and the indivisibility of the Republic;
- b. secure the well-being of the people of the Republic;
- c. provide effective, transparent, accountable and coherent government for the Republic as a whole;
- d. be loyal to the Constitution, the Republic and its people;
- e. respect the constitutional status, institutions, powers and functions of government in other spheres;
- f. not assume any power or function except those conferred on them in terms of the Constitution;
- g. exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
- h. co-operate with one another in mutual trust and good faith by –
 - (i) fostering friendly relations;
 - (ii) assisting and supporting one another;
 - (iii) informing one another of, and consulting one another on matters of common interest;
 - (iv) co-ordinating their actions and legislation with one another;
 - (v) adhering to agreed procedures; and
 - (vi) avoiding legal proceedings against one another."

[Section 41(1) of the Constitution]

An important characteristic of the constitutional order that describes the nature of the relationship between the three spheres of government is co-operative government. This stands in contrast to a competitive system such as that found in the United States of America. The Constitution is unique in the sense that it contains a separate chapter on co-operative government, Chapter 3. The concept has its origin in the German constitutional system where the notion of *Bundestreue* or federal loyalty and trust was developed over many years by the German constitutional court, the *Bundesverfassungsgericht*, and it defines the relations between the levels of government (*First Certification Case* para 289; Brand, 2006).

The principles of co-operative government and intergovernmental relations contained in the Constitution provide the oil that lubricates the machinery of intergovernmental relations in South Africa and they apply to all three spheres of government. The Intergovernmental Relations Framework Act, 13 of 2005, gives further effect to the requirements of Chapter 3 of the Constitution. Municipalities must naturally also function in accordance with the principles of co-operative government listed above.

The Constitution provides a framework for the establishment and functioning of local government and this framework is complemented by a variety of laws governing local government in South Africa. Section 151(1) of the Constitution stipulates that local government consists of municipalities which must be established throughout the country. The Local Government: Municipal Structures Act, 117 of 1998 (Municipal Structures Act), gave effect to this requirement by *inter alia* providing for different types of municipalities. The objectives of local government include the provision of democratic and accountable government for local communities and the provision of services in a sustainable manner (sec. 152, 153 of the Constitution; sec. 6 of Act 32 of 2000). The Local Government: Municipal Systems Act, 32 of 2000 (Municipal Systems Act), completed the basic legislative framework for the functioning of municipalities. The issue of sound financial management required separate legislation

which was only finalised a few years later with the adoption of the Local Government: Municipal Finance Management Act, 56 of 2003 (MFMA).

The municipal council of a municipality constitutes both the executive and legislative authority of a municipality (sec. 151(2) of the Constitution; sec. 2 of Act 32 of 2000; Rautenbach 2012). The executive authority of a municipality includes all local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution, and any other matter assigned to it by national or provincial legislation (sec. 156(1) and Schedules 4 and 5 of the Constitution; sec. 8-11 of Act 32 of 2000; Rautenbach 2012). These listed matters include typical local government functions such as building regulations, municipal planning, municipal health services and street lighting. In giving effect to its legislative role a municipal council may make by-laws on all those local government matters over which it has executive authority (sec. 156(2) of the Constitution). It exercises this constitutional function in order to promote effective administration and governance in the municipality.

The executive governance of a municipality is dealt with in detail in the Municipal Structures Act. All municipalities must have a mayor and a speaker. Section 32 of the Municipal Structures Act makes provision for the establishment of various committees of the council and delegation of authority to the respective committees. This is an important element of the executive governance of municipalities and should be one of the first issues on the agenda of a newly elected municipal council. Section 60 of the Municipal Structures Act also provides for the establishment of a mayoral committee, where a municipal council has more than nine members, to assist an executive mayor in the execution of his or her duties.

While the municipal council is an elected political structure of the municipality, the municipal manager and senior managers form the top administrative management structure of the municipality. All municipalities must have both these governance structures in place and must have a clear division of roles and responsibilities between them in order to promote effective governance (sec. 53 of Act 32 of 2000). The Constitution empowers municipalities to appoint staff "that are necessary for the effective performance of its functions" (sec. 160(1)(d) of the Constitution). This includes the appointment of a municipal manager, a duty which cannot be exercised by a mayor alone. The municipal manager, who is the accounting officer of a municipality, and the senior managers reporting to him or her should develop a good working relationship with the council in order to promote good governance. An exercise to clarify the roles and responsibilities of each executive structure or position is crucial in all municipalities. It is further important that a municipal council consider and adopt a system of delegation that will enhance the management efficiency within that municipality (sec. 59 of Act 32 of 2000).

Sound financial management is a key element of the governance of a municipality. It is constitutionally determined that budgets and budgetary processes must promote transparency, accountability and effective financial management (sec. 215 (1) of the Constitution). Financial management in municipalities is regulated by the MFMA, which complements the constitutional provisions. It covers a whole range of financial management issues such as budgets, financial reporting, supply chain management, public private partnerships and financial misconduct. Each municipal council must approve an annual budget for that municipality before the start of each financial year, and such a budget must comply with a prescribed format (sec. 16 and 24 of the MFMA).

The MFMA stipulates that the municipal manager is the accounting officer of a municipality, and he or she has in that capacity the most important role to ensure effective and accountable financial management in a municipality (sec. 60, 61 of the MFMA). The mayor also has a crucial role to play and is *inter alia* responsible to give general political guidance over the financial and fiscal affairs of a municipality, including the budget process and setting of budget priorities (sec. 52, 53 of the MFMA). The MFMA has a strong focus on compliance and accountability to promote transparent and effective financial management as a key element of good governance.

The sources of municipal funding are part of the equitable share of nationally raised revenue, specific grants, local rates, service fees and surcharges and municipal borrowing, as provided for in the Constitution

(sec. 214(1), 227, 229 and 230A of the Constitution; Brand 2006). The annual Division of Revenue Act determines the actual equitable division of nationally raised revenue among the three spheres of government and also provides for specific additional allocations to provinces and municipalities, for example an infrastructure development grant. Municipal borrowing is regulated by the MFMA and any short-term or long-term debt arrangement must be approved by the municipal council, and the municipal manager, being the accounting officer, must also sign the actual debt agreement (sec. 45 – 47 of the MFMA).

A potentially significant source of revenue in a municipality is property rates and this is regulated by the Local Government: Municipal Property Rates Act, 6 of 2004, which is based on the constitutional provision that municipalities “may impose rates on property and surcharges on fees for services provided by the municipality” (sec. 229(1) of the Constitution; Steytler, 2005). This Act created a new property rating system based on transparency and fairness, that provides for fair and equitable valuation methods of property, and which makes provision for municipalities to allow exemptions, reductions and rebates through their rating policies.

Managing the finances in a municipality is not a function that is limited to that particular municipality, but it forms part of a larger system of financial intergovernmental relations. A municipal manager, chief financial officer, the mayor and the municipal council each have an important role to play to ensure effective and accountable financial management in their municipality, but they also have to contribute to a smooth running system of financial intergovernmental relations that involves inter alia the provincial treasury and national treasury.

The basic legislative framework for local government thus consists of:

- ♦ the Constitution;
- ♦ Municipal Structures Act;
- ♦ Municipal Systems Act;
- ♦ Municipal Finance Management Act;
- ♦ Municipal Property Rates Act;
- ♦ Intergovernmental Relations Framework Act; and
- ♦ Intergovernmental Fiscal Relations Act (Act 97 of 1997).

There is, however, a whole range of other national and provincial laws that impact on the functioning of municipalities, including the governance of municipalities.

4

Critical governance issues

by Dirk Brand

The failure of local government to fulfil its constitutional mandate is a serious issue. Although it is the constitutional duty of provincial and national government to support local government, it is not done sufficiently. At the start of this project in 2012 a series of critical governance issues that play a key role in the life of any municipality was identified. Some of the most important governance issues identified then and which warrant attention are:

- ♦ Poor financial management;
- ♦ A clear division of roles and responsibilities at political and senior management level;
- ♦ Clear updated policies on a variety of municipal matters;

- ◆ Appropriately qualified staff, in particular, in senior and middle management; and
- ◆ Proper utilisation of modern information and communication technology to enhance service delivery.

The nature and scope of needs differ from one municipality to the other, but there are common issues which, if properly attended to, could enhance good governance within all those municipalities.

The selection of governance issues in 2013 was driven primarily by the existing needs of municipalities, but the experience from the pilot project also influenced the final determination of the scope of work in order to optimise the individual mentoring support. The governance issues common to all the participating municipalities were:

- ◆ Clarification of roles and responsibilities;
- ◆ Delegations;
- ◆ Review of policies; and
- ◆ Organisational or human resource related matters.

The individual support programs in the four municipalities covered these issues as well as a few other matters related to the needs of the individual municipalities and that were agreed to between the consultants and the respective municipal managers. This resulted in providing important building blocks to strengthen good governance and better service delivery.

“Bergrivier Municipality benefited greatly from having the expertise of Mr David Beretti to our disposal. The job of Municipal Manager can be a lonely one with difficult decisions and full of stress. It was good to have someone with whom to discuss governance issues.”

Hanlie Linde, Municipal Manager

5

Mentoring support in practice

by Werner Zybrands and David Beretti

5.1 *Setting the scene - attending to the governance needs of municipalities*

The Western Cape Department of Local Government invited municipalities in 2013 to apply to participate in this project and a selection of four municipalities was made. Before the first visit of the consultants to the respective municipalities the municipal managers were informed about the scope and aims of the project. The first consultative meeting at each municipality could thus start from a good basis since the municipalities received the basic information about the project and were all keen to participate. Critical governance issues were identified during the first meeting and in follow up discussions with the respective consultants. It is a demand driven process of support to individual municipalities, which means that the buy-in and will to succeed was present from the start.

Although the municipalities differ from one another in many respects, there were certain commonalities in their needs. Some needs required considerable attention whilst others could be resolved with a limited input. In this section the various governance issues and how it was dealt with by the consultants are discussed in a general way. These are issues common to all municipalities, although not every municipality has necessarily the same problem in practice.

5.2 *Roles and responsibilities - Section 53 of the Municipal Systems Act, 32 of 2000*

Section 53 of the Municipal Systems Act requires that the specific role and area of responsibility of each political structure and political office bearer and of the municipal manager should be defined in precise terms in writing.

The terms of reference may include the delegation of powers and duties to the relevant political structure or political office bearer or the municipal manager in terms of section 59.

Furthermore the relationships, interaction, lines of accountability and reporting must be determined. Dispute resolution mechanisms must also be put in place. This is a crucial exercise which should be done at least once within an electoral period. When a new municipal council has been elected it should be one of the priority issues of the new council. It is one of the critical governance building blocks in establishing a well-organised municipality.

Once this exercise has been completed it forms the basis for effective delegations of powers and functions.

Although most municipalities have gone through the compliance motions by defining the respective roles and responsibilities, the really contentious issues such as the working relationship between a mayor and a municipal manager are rarely addressed. This creates an area of potential conflict which requires a conflict resolution mechanism. It gets even more difficult in municipalities where there is a coalition government and where there is no clear coalition agreement or defined working relationship between the coalition partners.

Unfortunately the dispute resolution mechanisms also tend to be of an academic nature.

Workshops were conducted in most of the participating municipalities to thoroughly review the existing policies. Various roles and responsibilities had to be reviewed and clarified.

Experience has shown that once these prescripts have been robustly interrogated and the outcomes properly documented, it paves the way for improved relationships amongst the mentioned role players and delegations and policymaking mechanisms also tend to fall in place. The role of an independent expert in municipal governance issues in facilitating such an exercise was confirmed during this project. Clarifying the roles and responsibilities in a municipality is much more than merely complying with the legislative requirements. It lays the foundation for a sound working relationship between the council and the top management and it provides the rest of the staff and the community with clear information about the governance structures and relationships in the municipality.

5.3 Delegations - Section 59 of the Municipal Systems Act, 32 of 2000

Municipal councils have both a legislative and an executive function. Section 11 of the Municipal Systems Act stipulates how a municipal council must exercise its legislative and executive authority. It is important to note that the municipal council is permitted to delegate its executive powers but it may not delegate its legislative powers. Section 59 of the Municipal Systems Act provides a broad framework for the delegation of powers and functions. It clearly stipulates that 'a municipal council must develop a system of delegations that will maximise administrative and operational efficiency and provide for adequate checks and balances ...'. This can only be meaningfully done if there is effective compliance with section 53 of the Act (clarification of roles and responsibilities).

Changed circumstances and legislation require that delegations should regularly be reviewed and updated to ensure that the efficacy of the municipal administration is maintained and even enhanced. A need to engage in such an exercise was identified in the respective municipalities. Good governance cannot be achieved if delegations are not legally compliant or are flawed. Such a situation of non-compliance could increase the legal risk within a municipality since decisions would be taken without the necessary

Section 53(2):

"The respective roles and areas of responsibility of each political structure and political office bearer must-

(a) Be defined in precise terms by way of separate terms of reference, in writing, for each political structure or political office bearer and the municipal manager; and

(b) be acknowledged and given effect to in the rules, procedures, instructions, policy statements and other written instruments of the municipality."

"The Kannaland Municipality has benefitted greatly from the Hanns Seidel Foundation project which has enabled us to focus on strategic governance issues and other shortcomings within the municipality."

Morné Hoogbaard, Municipal Manager

authority and would thus be *ultra vires*. Delegations essentially spell out who does what and with what authority.

The specific needs of municipalities regarding proper and effective delegations differ from one municipality to another. This was also evident during this project. The inputs required differed in the sense that in the one case only a proper review was required, resulting in some fine-tuning of the delegations. In other cases a more fundamental exercise was required looking at legal compliance, and the appropriate division of powers between the council and the administration. This resulted in a revised written set of delegations.

Similar to the section 53-exercise, it is necessary to have a thorough workshop with the municipal manager, top management and the municipal council to clarify and finalise the set of delegations. It is another important building block in establishing a well-structured organisation.

5.4 Policies and by-laws

Clear policies and by-laws form the cornerstone for delegations and also reflect the governance character of a municipality. All municipalities need a set of policies on a variety of local government matters which forms the policy framework within which the municipality must function. Policies do not always require a by-law as well, but in many fields specific by-laws are necessary to regulate the specific subject matter, for example on municipal health services or local trading regulations. Policies should be reviewed from time to time in order to adapt to changing circumstances and changes in the national and provincial legislative environment. Policies should also be drafted in plain language and made accessible to the people it relate to, whether it be the staff and council or the community within the municipal area.

In the present instance the municipalities lacked certain policies, e.g. in terms of section 109A of the Municipal Systems Act (legal representation for employees or councillors), and many policies were outdated or the by-law had become non-responsive to changed circumstances, e.g. the Rules of Order. Section 109A is a classic example of a legal provision that cries out for a policy directive, but which policy is sadly missing in most municipalities. Draft policies were developed for some of the subject municipalities and thereafter subjected to a question, debate and answer session. A policy in terms of section 109A, once adopted, should enable municipalities to consider applications for legal assistance in a consistent and accountable manner and the implementation of the policy could be done without fear or prejudice. The adoption of other policies on internal as well as external matters and regular review of such policies is an important exercise that is one of those building blocks in ensuring a well-structured and well-functioning municipality.

5.5 Organisational matters

Recent amendments to the Municipal Systems Act and post-2011 elections requirements have made municipalities aware of the need to review their organisation structures. The opportunities presented by appointing senior managers on a permanent as opposed to a fixed-term basis have to be quantified and evaluated. Concomitant implications also have to be spelt out and addressed. A motivated input was provided to the municipalities as to how the existing structures could be amended. In the one municipality this input will be used as a benchmark for a pending comprehensive organisation review to be conducted by external consultants with the financial assistance of the Western Cape Government.

Section 66 of the Municipal Systems Act introduced a new requirement regarding the approval of the staff establishment of a municipality. In particular it necessitates a policy and the delegation of carefully worded powers. This matter has also been resolved as part of the support initiative.

Staff costs form a significant proportion of a municipality's total operating costs and unless good value for money is obtained it will slow down service delivery and create a sense of antagonism and even

resentment amongst the ratepayers against the municipality. This is an important issue that should be continually assessed.

Another problem that is sometimes experienced in municipalities, and was of particular relevance in one of the participating municipalities, is the absence of a performance culture which results in poor service delivery. The strategy to develop a performance culture must be integrated into the organisation structure – “structure follows strategy”. The people (capabilities and competencies) must be fully aligned and integrated with the organisation structure.

A competency-based recruitment and selection process must be utilized to ensure the right people, with the right skills and competencies in the right place at the right time. The people strategy must align with the business strategy.

Municipal services are labour intensive and, unless each employee has a job description, including job purpose, key performance areas, authority of position and required skills, qualifications and experience, poor service delivery and weak governance will prevail! A strategic framework is often useful in this regard to guide the municipal manager and council.

5.6 Performance management

Performance management has been on the municipal radar for a long time but the benefits thereof have not always been apparent, especially with permanent appointments becoming the vogue (see discussion in 5.5). One of the more sensitive issues is to find a workable mechanism to determine and successfully address underperformance by senior managers short of instituting disciplinary measures against them. One such mechanism could be a form of peer group and own assessment. This possibility was presented to one municipality and, with some reservations, favourably received. As this mechanism requires a full buy-in by all role-players and an atmosphere of mutual trust also has to be created, it will require further consideration.

Once a mechanism is in place it should result in improved performance, accountability and even assist in developing a succession plan.

5.7 Dealing with unauthorised, irregular or fruitless and wasteful expenditure

Section 32 of the MFMA deals with one of the most controversial and politically sensitive financial management problems, namely, unauthorised, irregular and fruitless and wasteful expenditure. In particular there is a need to determine the working protocol and procedures of the section 79 committee that has to recommend to council on the irrecoverability of such expenditure. There is also a fine, but often difficult to distinguish, line between an investigative approach vis-à-vis a disciplinary hearing.

There was a distinct need to navigate municipalities through these troubled waters and to ensure that *inter alia* the rules of natural justice are complied with. This was done through interactive workshops, during which various practical problems surfaced and were addressed, e.g. the proportional composition of the committee, its processes and procedures, the presentation of documents, the leading of evidence and the reporting of such expenditure to the mayor, the minister and the Auditor-General. The contents of Circular 68 from National Treasury were also examined and its context with the flow charts explained. The provisions of Regulation 74 of the Municipal Budget and Reporting Regulations regarding the criteria to be considered when recommending the writing off of irrecoverable amounts were dealt by way of practical examples.

The correct and stringent application of the provisions of section 32 will significantly contribute to accountable and transparent practices which in turn should assist municipalities in achieving clean audits. This is an important aspect of ensuring sound financial management in a municipality.

5.8 The Rules of Order

The Rules of Order for conducting council meetings require revision especially in the light of the Tlokwe saga. The speaker of Tlokwe Municipality purportedly cancelled a duly-convened council meeting by notifying councillors per SMS. Councillors who had ignored the SMS constituted a quorum and adopted a vote of no confidence in the mayor. The legality of the council resolution was thereafter challenged in the High Court and it was held that it was indeed a duly-constituted meeting. In cases where the Rules of Order are silent on the cancellation of a meeting, it should thus be amended to accommodate such an eventuality.

The disciplinary component of the Rules has become very sensitive and the criminalisation of certain activities has to be questioned. A balance has also to be maintained between an open democratic meeting and the abuse of the Rules so as to disrupt meetings whilst grand staging for an unruly public audience. In particular the opportunity to raise matters of so called exigency has become a bone of contention.

Intensive work sessions were held in some municipalities with the speakers, officials and Mayco (Mayoral committee) members and the Rules of Order were thoroughly revisited. All of the above plus various matters of a more semantic nature have been resolved in the redrafted Rules. Once adopted, these Rules would assist in smoother meetings whilst still upholding the underlying democratic principles. In particular, autocratic actions by a speaker will be nullified.

5.9 Information and communication technology

The use of modern information and communication technology and systems in all municipalities is a crucial part of the organisational structure and functioning of a municipality. It is an important resource that should be updated on a regular basis.

One municipality requested a full assessment on all of its electronic systems and software, as there was no coordinated approach, and the fragmentation was inefficient and therefore costly. The approach was to integrate the systems and centralise this function under a single authority of the IT (information technology) department, with full participation in the policy framework from all line departments. In this case the IT manager was provided with an intensive training and development program (five full days) with technical experts in the Information Services and Technology Directorate of the City of Cape Town. This approach was a dual program to increase the capacity and capability of the IT staff, while simultaneously exposing them to solutions in consultation with very experienced professionals in the relevant aspects that required integration.

Without a high-level IT department the municipality would not have the information and data at its disposal to provide leadership and management decision-making, and above all, good governance. The integrity of the payroll and other revenue systems is required for a foundation of sound governance principles and audit requirements. The effective management of data from citizens and households is essential in order to respond properly to service delivery needs. This is one of the areas in a municipality which require effective information and communication technology and systems.

Promoting good governance: the Saldanha Bay experience

Louis Scheepers, Municipal Manager

1. Aiming to be a leading municipality

The Saldanha Bay Municipality was fortunate to participate in this project aimed at strengthening good governance in local government. Participation in this project fits well with the municipality's stated intention, contained in its mission statement, to be a leading municipality. The project also assisted the municipality in achieving the following four of its nine strategic objectives, namely to:

- ♦ be an innovative municipality on the cutting edge in respect of the use of technology and best practice;
- ♦ be an effective, efficient and sustainable developmental oriented municipal administration;
- ♦ provide ethical and effective leadership that engenders trust in the municipality amongst its stakeholders; and
- ♦ ensure compliance with the tenets of good governance as prescribed by legislation and best practice.

2. The Learning Municipality

Against the current reality of so many failing municipalities operating in a complex context in South Africa, one might think that municipalities have no hope of being successful. I do not subscribe to this view.

One way for municipalities to ensure that they have the capacity to perform their constitutional and developmental mandates is to adopt the posture of a learning organisation. In the words of the father of the concept of a learning organisation, Peter Senge, this means that organisations, including municipalities, must possess the following five strategic competencies, namely (1) a shared vision; (2) personal mastery; (3) systems thinking; (4) team learning; and (5) the ability to identify and improve constrictive mental models.

The Saldanha Bay Municipality has decided to follow this approach and the good governance project presented by the project partners assisted the municipality to move forward in its continuing efforts at becoming and remaining a learning municipality.

The following table shows how the Saldanha Bay Municipality is trying to actively live out the strategic competencies of the learning organisation/municipality.

Learning organisation Strategic Competency	Saldanha Bay Municipality Action
<i>A shared vision</i>	<i>Adoption of strategic framework, including vision, mission, principles and strategic objectives.</i>
<i>Personal mastery</i>	<i>Well established training and bursary programme for councillors and staff, contained in an annual Workplace Skills Plan.</i>
<i>Systems thinking</i>	<i>Participation in intergovernmental fora and alignment of municipal strategies and activities with other spheres of government.</i>

Learning organisation Strategic Competency	Saldanha Bay Municipality Action
<i>Team learning</i>	<i>Regular joint, inter-disciplinary workshops and training.</i>
<i>Identify and improve constrictive mental models</i>	<i>Establishment of leadership forum to identify ways of implementing adaptive leadership approaches and innovation.</i>

3. The Good Governance Project

The project entailed the provision of mentoring and guidance services to the municipal manager and other senior managers of the municipality by an experienced local government practitioner. A key element of the project was that the person¹ allocated to the municipality together with the mayoral committee and senior staff of the municipality decided on the areas of focus where support would be provided.

The project was somewhat constrained in the municipality in that it took place at a time in which the municipality was in a state of flux. A new municipal manager had just been appointed and some senior managers in the municipality had left, or were in the process of leaving the municipality. Notwithstanding this context, the project delivered good value to the municipality.

The project delivered a report with specific and implementable recommendations on the following matters to the municipality:

- ♦ *Executive governance;*
- ♦ *Infrastructure development;*
- ♦ *Litigation;*
- ♦ *Financial management;*
- ♦ *Public participation and liaison with the public; and*
- ♦ *General matters.*

Most of the detailed recommendations have been implemented or are in the process of implementation and the municipality is reaping the rewards thereof.

4. Impact

The Saldanha Bay Municipality can say, without fear of contradiction, that the good governance project has delivered positive outcomes to the municipality. The support from an experienced local government practitioner who could share his knowledge with the municipality and use his networks, built up over a long career in local government, was clearly to the advantage of the municipality.

A focussed, systemic and systematic capacity building project of providing support in the form of mentoring to municipalities, such as the good governance project, will assist municipalities in mitigating the negative contexts within which they operate. The Saldanha Bay Municipality received value through this project and we are certain that other municipalities can also receive such value. It is however important that municipalities, those who will form part of the project going forward as well as municipalities in general, become and remain learning organisations.

Conclusion

It is evident when looking at the results of the various mentoring support activities in the participating municipalities that this type of support is appropriate to deal with different governance issues in a practical way. The feedback received from all the participating municipalities confirms the value of this project. As an action learning exercise it has benefited the individual municipalities, but it is also necessary to extract from this project the lessons learned that could be put back into the system to improve the overall performance of local government in South Africa.

6.1 Generic issues

Municipalities operate in a complex and much regulated environment which requires appropriately qualified top managers as well as dedicated local councillors to manage the individual municipalities. Most of the municipalities in South Africa experience various governance problems or issues which, if dealt with properly, could contribute to improve the quality of governance in the municipality. This, in turn, will have a beneficial effect on the delivery of services to the community.

Individual mentoring support to address the respective critical governance issues is a useful mechanism to enhance good governance in a municipality. It is further important that such individual mentoring is provided from an independent source by people experienced in governance matters.

Some of the critical governance issues that were highlighted through this project are:

- ♦ The importance of ensuring a clear clarification of roles and responsibilities of the council, its committees, the municipal manager and the top management of a municipality.
- ♦ Flowing from this section 53 exercise is the need to ensure that effective delegations are in place and to review these regularly.
- ♦ Each municipality should review all its policies from time to time and ensure that policies are up to date, legally compliant and drafted in clear unambiguous language.
- ♦ Organisational issues such as the appointment of appropriately qualified staff and developing a performance culture warrant continuous attention in order to create and maintain an organisation that is able to provide services to the community in an effective and efficient way.
- ♦ Information and communication technology is a crucial part of modern governance and both equipment and skills must be updated regularly to enhance good governance.

6.2 Systemic issues

Some of the issues dealt with during this project did not only address immediate questions in the municipality, but also suggested that there are systemic issues flowing from it that should be dealt with at another level.

- ♦ The rules of order of each municipality must be reviewed to ensure that it deals effectively with the problems regarding the functioning of a municipal council raised in the Tlokwe case. Rules of Order must enable elected councils to function properly irrespective which political party (or parties) form the government.

6.3 Advocacy points

Good governance in a municipality requires the contribution and commitment of both the top administrative management as well as the political management of a municipality. The political will to succeed as a

municipality unfortunately often takes a back seat in favour of short-term political goals. Such an attitude does not contribute to good governance and to improved service delivery. The individual mentoring support as provided in this project focuses on both administrative and political management components and could contribute to improving the synergy between the two components. This is a useful action learning approach that should be explored by many more municipalities in order to enhance good governance which in turn translates to better service delivery.

An important factor that contributes to the success of such a project is the existence of an independent source that could provide the individual mentoring support. A practical approach would be to establish a pool of experts in governance matters at the SPL who would then be available to any municipality that needs specific governance support. This should be complementary to the support programmes that the provincial government, in this case the Western Cape Government, provides to municipalities. It would require suitable funding to make such a service a reality.

The needs in practice combined with the success of the project suggest that there is sufficient motivation to continue with such a service in future. This project delivered an innovative knowledge product to the benefit of municipalities and thus contributing to better service delivery.

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(Endnotes)

- 1 Mr Dennis Smit, former town clerk of Durbanville and experienced local government practitioner.