

# **STRENGTHENING ACCOUNTABILITY AND RESPONSIVENESS IN MUNICIPALITIES – THE ROLE OF IGR**

**A MATTER OF SOUND FINANCIAL  
MANAGEMENT, TRANSPARENCY  
AND SUSTAINABILITY**

KEY CHALLENGES, GAPS AND OPPORTUNITIES  
FROM THE ABS PROJECT

Policy Brief  
June 2018



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# ABOUT THE ABS PROJECT

In order to improve accountability and to ensure that communities' democratic rights go beyond a simple vote towards active political participation and engagement, efforts need to be made to capacitate and enable citizens to do so. In 2016-2018, Afesis-Corplan, the Built Environment Support Group (BESG), the Heinrich Böll Foundation (HBF) Southern Africa Office, Isandla Institute and PlanAct have jointly implemented a project entitled "Accounting for basic services: Tackling the inadequate use of resources by municipalities and building a rights-based approach to service delivery" – referred to as the ABS Project. The ABS Project contributes to these efforts by assisting in improving the understanding of the complex framework that finances local government in the country. The project has been supported by the EU Delegation to South Africa.

The ABS Project aims to strengthen community engagement with local government to ensure equitable, just and effective use of municipal funds. While doing so, it hopes to expand the use of budget analysis and social accountability tools as key approaches to engaging communities, fostering responsive governance and strengthening accountability. By engaging in their local municipal affairs, communities and their organisations can develop an understanding of where and on what money is being spent, and to evaluate if government's priorities adequately address their needs. By doing so communities are better able to voice their concerns and needs, in order to keep government accountable.

Planned outcomes of the project include: the support of 6 rural and urban communities in strengthening political voice; holding their municipalities to account for effective and equitable spending of their finances; and, crystallising lessons for policy and practice. The communities are: KwaZenzele (Lesedi LM), Masakhane (Emalahleni LM), Chris Hani (Buffalo City Metropolitan Municipality), Glenmore (Ngqushwa LM), Mpolweni (Umgungudlovu DM) and Kwa-Nxamalala (Msunduzi LM).

In furtherance of these outcomes, the ABS Project has developed a number of policy briefs, focusing on key issues that have been identified during the course of the project. The purpose of these briefs is to highlight the issue identified (e.g. inadequate access to basic services), outline the policy and institutional context (including the legal framework, municipal policies, intergovernmental relations, roles and responsibilities), identify challenges, gaps and opportunities, and make recommendations for policy and practice/uptake of policy. Ultimately, through the policy briefs, the ABS Project seeks to raise the profile of issues identified in the project communities and connect these into broader policy debates, with the intention to develop clear recommendations towards improving local democratic policies and practices.

## ABOUT THIS POLICY BRIEF

While the issues identified and the experiences of the communities with the municipalities differ significantly across the ABS Project, some common themes can be identified. One of these themes is that poor communities are not very well informed about their rights, nor how the Council is ensuring that basic rights to water and sanitation are addressed. Furthermore, the fact that the equitable share is an unconditional allocation has complicated communities' efforts to determine whether their Council is using the funds efficiently and in the interest of poor households. This policy brief focuses on the realities of free basic services and indigency, and draws on examples from three municipalities (Lesedi LM, Emalahleni LM and uMshwathi LM) where the ABS Project has been implemented.



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# ACRONYMS

<b>ABS</b>	Accounting for Basic Services Project
<b>CoGTA</b>	Cooperative Governance and Traditional Affairs (the ministry which includes the Department of Cooperative Governance)
<b>DM</b>	district municipality
<b>DPME</b>	Department of Performance Monitoring and Evaluation
<b>ES</b>	equitable share (national)
<b>FBS</b>	free basic services
<b>FFC</b>	Fiscal and Financial Commission
<b>GGLN</b>	Good Governance Learning Network
<b>IGR</b>	intergovernmental relations
<b>IDP</b>	Integrated Development Plan
<b>LM</b>	local municipality
<b>LGES</b>	Local Government Equitable Share
<b>LGFF</b>	Local Government Fiscal Framework
<b>MTREF</b>	Medium Term Revenue and Expenditure Framework
<b>MTSF</b>	Medium Term Strategic Framework
<b>NDoHS</b>	National Department of Human Settlements
<b>SPLUMA</b>	Spatial Planning and Land Use Management Act
<b>SACN</b>	South African Cities Network
<b>SALGA</b>	South African Local Government Association
<b>SERI</b>	Socio-Economic Rights Institute
<b>SAHRC</b>	South African Human Rights Commission



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# 1. INTRODUCTION

The Constitution sets out the objects of local government in section 152, and first among them is to provide democratic and accountable government for local communities; it must also ensure the provision of services to communities in a sustainable manner and encourage the involvement of communities and community organisations in the matters of local government. Moreover, a municipality must structure and manage its administration, budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community.

Accountability is the cornerstone of development and good governance. Citizens are also increasingly demanding more responsiveness, as well as direct and meaningful engagement in accountability systems. Effective local government accountability, responsiveness and transparency is not an end itself, but rather represents the means to support better decision-making and more effective budgeting, which in turns leads to better development outcomes.

The **supply side of accountability**, also known as public accountability, is the hallmark of and a *sine qua non* for good governance.<sup>1</sup> Supply side measures to improve downward financial accountability include strong public financial management; standards for control on intergovernmental transfers (i.e. good audit reports, submission of financial statements); publication of budgets and good internal audit systems – with publicly available audit findings, clear rules for responsible local borrowing (including rules regarding defaults), public access to borrowing information; and clearly defined rules regarding hard budget constraints for local governments.

**Demand side accountability**, also known as social accountability, refers to a broad range of actions and mechanisms beyond voting that citizens can use to hold the state and providers of public services accountable. Demand side measures for financial accountability include publicly accessible local government financial information (including budgets, end-of-year financial statements and periodic implementation progress reports during fiscal year); public involvement in budgetary process through participatory budgeting practices; gender-sensitive planning, budgeting, and resource allocation, independent budget analysis and participatory public expenditure tracking programs that monitor budget execution and leakage of funds.

In a well-functioning local government budget and managerial structure, a municipality is subject to accountability to its citizens, accountability to public agencies and accountability to higher-level governments. These kinds of accountability are referred to as:

- **Bottom up accountability** by the local government to local citizens: bottom-up accountability may include citizens acting through the electoral process or indirectly through civic organisations (i.e. NGOs, civil society) or the news media; it may also include open and transparent policy and budget formulation requirements imposed on municipalities through legislation, which communities may use to demand information.
- **Horizontal accountability** by the municipality to various public institutions of accountability: horizontal accountability covers the range of public entities in order to check municipal abuses and inefficiencies. These agencies may include but are not limited to: electoral commissions, local councils, the courts, ombudsman or public complaints agencies, or the Auditor-General.



<sup>1</sup> Bovens, 2006

- **Vertical accountability** by the municipality to provincial and national government: national and provincial governments set the rules under which local governments operate, within the framework of the Constitution. Additionally, national government provides financial resources to municipalities through fiscal transfers. Thus, there is a significant level of financial (budgetary) reporting and accountability by municipalities to national government.<sup>2</sup> The linkage between national and local government should not be overlooked since it can have significant positive (or adverse) effects on the accountability of municipalities to their citizens.

To make this system work there must be mechanisms (formal systems, institutions, laws, regulations, as well as the informal day-to-day practice of government) in place such that two things occur: political leaders and bureaucrats become answerable to the citizenry for their actions and the citizenry takes on and accepts responsibility for the collective actions that government makes on their behalf.

As the sphere of local government that enables people's most direct interaction with government, municipalities play a critical role in upholding the integrity of the state and accountability, sustainability, and the promotion of social and economic development. However, despite its increasing anti-corruption efforts, government is perceived as being riddled with corruption at every sphere, and local government is perceived as the most corrupt of all. The lack of public trust and confidence (so called 'trust deficit') in local government is a major challenge and is undermined by a lack of accountability, real or perceived, to communities.

This ABS Project Policy Brief highlights the key issues shaping municipal accountability and responsiveness and review the role that intergovernmental relations (IGR) play, or should play, in strengthening accountability. This brief draws on the lessons learnt from the case studies outlined in the first two policy briefs<sup>3</sup>, in particular the lessons that relate to the poor accessing of (free) basic services and the fiscal challenges confronting local government in playing a truly developmental role.

This brief will thereby highlight key challenges and gaps between the intended policies and laws requiring municipal accountability and responsiveness, and how they play out in practice. Finally, some recommendations are put forward for consideration by policy makers and practitioners on how to strengthen municipal accountability and responsiveness to communities.

#### The key questions are:

- What is expected in terms of municipalities being accountable for their programmes, budgets and activities to their communities and how has that played out in practice?
- What is the role of national and provincial government in strengthening local government and ensuring greater accountability to communities?
- What measures or mechanisms are available to aggrieved communities to enforce accountability and responsiveness from their elected representatives?
- What can be done at an IGR level (regulatory, supervisory, monitoring or intervention) to strengthen municipal accountability and responsiveness to its constituencies?



<sup>2</sup> Michael Schaeffer and Serdar Yilmaz, Strengthening Local Government Budgeting and Accountability Policy Research working paper 4767, World Bank 2008, page 12.

<sup>3</sup> The two ABS Project Policy Briefs are The Realities of Free Basic Services and The Indigent: A Matter of Human Rights, Dignity and Financial Sustainability, May 2018, and Access To Basic Services In Insecure Environments (Informal Settlements): A Matter Of Human Rights, Dignity And Financial Sustainability, June 2018.

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## 2. POLICY AND INSTITUTIONAL FRAMEWORK INFORMING MUNICIPAL ACCOUNTABILITY AND RESPONSIVENESS

South Africa has a complex intergovernmental system that comprises of nine provinces and 257 municipalities, with functions often shared concurrently and resources divided according to agreed fiscal principles and formulas. While the Constitution highlights the right of all citizens to have access to basic levels of services, with the majority of that burden falling on local government, the reality is that all spheres of government have a role to play in ensuring that the rights to shelter, water and other basic services are realised within the available resources. South Africa essentially has a model of governance that decentralises responsibility for implementation, while maintaining national oversight and the use of centralised funding mechanisms to achieve (re)distribution.

This system means that the lines of accountability (responsibility being shared in many instances) are often blurred, as one component of government is dependent on another. While cooperative governance provides many strengths in a developing context, one of the challenges with the above system of accountability is around the ability and capacity of communities and civil society organisations to hold their local governments accountable.

Accountability arrangements are both internal and external. Internal formal accountability mechanisms include rules and regulations, budgets, performance evaluations, internal auditing, monitoring and incentives. External formal mechanisms include enabling legislation and laws, budget/auditing committees, political and legal oversight bodies, the Office of the Auditor-General, and citizens. There are also informal mechanisms, such as professional associations, interest groups and media.

Key mechanisms for strengthening accountability are mainly found in the set of legislation governing local government. The following is the policy and legislative context informing municipal accountability and responsiveness.

### 2.1 THE WHITE PAPER ON LOCAL GOVERNMENT (1998)

The White Paper put forward a vision of developmental local government, one which is committed to working with citizens, groups and communities in meeting the social, economic and material needs of communities in a holistic way. The White Paper states that local government “must focus its efforts and resources on improving the quality of life of communities, especially those members and groups within communities that are most often marginalised or excluded, such as women and very poor people. Municipalities should develop strategies and mechanisms (including, but not limited to, participative planning) to continuously engage with citizens, business and community groups”. Section 16 of the Municipal Systems Act gives expression to these policy ideals by providing specific provisions for, among others, the monitoring and review of the Integrated Development Plan (IDP), performance plans and actual performance, as well as preparation of the budget.



<sup>8</sup> Beja et al v Premier of the Western Cape, 2010: 2.  
<sup>9</sup> No 107 of 1997.

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For many local citizens, their main contact with local government is through the consumption of municipal services, and it is here that municipalities need to focus on relationships with citizens and communities. The White Paper sets out that “Municipalities need to be responsive to the needs of both citizens and business as consumers and end-users of municipal services. Improved customer management and service provision are critical to building an environment conducive to economic and social development”. Importantly, the White Paper notes that the development of a service-oriented culture requires the active participation of the wider community. Municipalities need constant feedback from service-users if they are to improve their operations. Local partners can be mobilised to assist in building a service culture.

An inclusive form of governance requires that all the inhabitants of the community claim their rightful place in local government. In fact, local government legislation<sup>4</sup> defines a municipality as comprising of its political structures, its administration and the community of the municipality. Thus communities are an integral part of municipal governance of local government affairs.

## 2.1 CONSTITUTIONAL FRAMEWORK

Section 40(1) of the Constitution stipulates that government is constituted as the national, provincial and local spheres of government, which are distinctive, interdependent and interrelated. The three spheres of government and organs of state in each sphere are constitutionally bound by the principles of cooperative governance.

The three spheres of government have concurrent overlapping authority for most service delivery functions, a right to an equitable share of revenue, and an obligation to cooperate with each as a single system of government for the country. Within this framework, national government has extensive powers to regulate the other two spheres, and provinces and municipalities must exercise their powers within the limits of the Constitution and national government’s regulatory authority.

Section 151(3) of the Constitution provides that a municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution. Section 151(4) states that the national or a provincial government may not compromise or impede a municipality’s ability or right to exercise its powers or perform its functions.

Section 153 outlines the developmental duties of municipalities and states that a municipality must structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; furthermore, the municipality must participate in national and provincial development programmes.

Section 154 provides that the national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.

Importantly, the Constitution obliges a municipal council to conduct its business in an open manner, and may close its sittings, or those of its committees, only when it is reasonable to do so, with the nature of the business being transacted; it further obliges municipalities to publish by-laws and must ensure that information is accessible to the public.



<sup>4</sup> Local Government: Municipal Structures Act 117 of 1998.

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Section 156 (1), (2) and (5) of the Constitution equip municipalities with the necessary executive and legislative powers, however, it recognises that while decentralised governance is key in ensuring that the needs of people are met at a local governance level, this is only possible if adequate support and oversight is provided at provincial and national spheres of government. An integral element of intergovernmental relations is thus the monitoring and support of local government by both national and provincial spheres of government. Provincial supervision, monitoring and support of local government is a constitutional obligation in terms of section 154(1) and section 155(6) and (7) of the Constitution. To give effect to these obligations, the provincial departments for local government were established with the specific mandate to oversee and support municipalities.

Municipalities fulfil their duties within a regulatory and supervisory framework, and in cases of failure to fulfil its constitutional or legislative obligations, the Constitution obliges provincial (and national) government to step in. The intervention powers of provincial government are outlined in section 139 of the Constitution, the key elements of which are the following:

- “(1) When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including—
- (a) issuing a directive to the Municipal Council;
  - (b) assuming responsibility for the relevant obligation in that municipality; or
  - (c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.
- (4) If a municipality cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the relevant provincial executive must intervene by taking any appropriate steps to ensure that the budget or those revenue raising measures are approved, including dissolving the Municipal Council and (a) appointing an administrator until a newly elected Municipal Council has been declared elected; and (b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.
- (5) If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the relevant provincial executive must—
- (a) impose a recovery plan aimed at securing the municipality’s ability to meet its obligations to provide basic services or its financial commitments, and
  - (b) dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan, and—
    - (i) appoint an administrator until a newly elected Municipal Council has been declared elected; and
    - (ii) approve a temporary budget or revenue-raising measures or any other measures giving effect to.”

The power of intervention is vested in the Provincial Executive, which implies that an intervention ought to be triggered by its reporting and monitoring system of municipalities in the province, which also informs its support programmes to local government.



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## 2.3 MUNICIPAL LEGISLATIVE ACCOUNTABILITY

The Constitution (1996) vests both legislative and executive powers of a municipality in the council. A council appoints an executive mayor (or an executive committee) who exercises executive authority. The executive mayor accounts on behalf of the administration to the council.

The **Municipal Structures Act**<sup>5</sup> provides for municipalities to establish two types of committees: Section 79 and Section 80 committees. Section 79 committees assist council in exercising oversight over the executive. These committees comprise of councillors and, if required can include (i.e. for Audit Committees only), outside advisory experts. Examples of Section 79 committees include the Finance Oversight committee; Municipal Public Accounts Committee (MPAC), and the Audit Committee.

The MPAC, as a section 79 committee appointed by the council, is a local version of provincial and national public accounts committees. Its mandate is to hold the municipal executive to account and ensure that municipal resources are used effectively and efficiently. The MPAC examines Auditor-General reports and determines whether municipal funds are appropriately spent. In the case of wasteful, irregular, unauthorised and fruitless expenditures, the MPAC can, if necessary, call the executives to account. This implies that the MPACs play a significant role in financial accountability.

Every municipality must have an Audit Committee that serves as an independent advisory body. It is independent because the majority of its members must come from outside the municipality. The Audit Committee must consist of at least three persons, the majority of whom may not be municipal employees and no councillor may serve on the committee; its main function is to advise the council on the proper financial management of the municipality.

The **Municipal Systems Act**<sup>6</sup> also responds to the directive in the Constitution by giving local government the mandate to structure its operational systems in a way that joins forces with local communities. Section 5 allows the community an opportunity to participate in the activities of the local municipality, which includes participating in decision-making processes, ensuring that council meetings are open to the public, accessing council information and using and enjoying public facilities etc.

Chapter 4 requires municipalities to include local communities in participation processes. Community participation at this level is of the utmost importance as this is the level where municipalities draft plans that assist national and provincial governments to align their planning and budgeting to meet community needs and demands. However, instead of bottom-up planning as intended by law, more often than not, municipalities align their planning with that of national and provincial government and consult communities after the fact of determining plans as merely a compliance exercise.

Sound financial management practices are essential to the long-term sustainability of municipalities and underpin the process of democratic accountability. Weak or opaque financial management results in the misdirection of resources and increases the risk of corruption. The reforms introduced by the **Municipal Financial Management Act (MFMA)**<sup>7</sup> are the cornerstone of the broader reform package for local government outlined in the 1998 White Paper on Local Government. The MFMA, together with the Municipal Structures Act (1998), the Municipal Systems Act (2000), the Municipal Property Rates Act (2004) and the Municipal Fiscal Powers and Functions Act (2007), sets out frameworks and key requirements for municipal operations, planning, budgeting, governance and accountability.<sup>8</sup>



<sup>5</sup> No. 117 of 1998

<sup>6</sup> 32 of 2000.

<sup>7</sup> 53 of 2003.

<sup>8</sup> 2011 Local Government Budgets and Expenditure Review

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The **first mechanism** of the framework involves separating and clarifying roles and responsibilities of mayors, executive councillors, non-executive councillors and officials. This separation of political and management roles is critical for good governance. The municipal manager holds the primary legal accountability for financial management in terms of the MFMA and, together with other senior managers, is responsible for implementation and outputs. Non-executive councillors, as elected representatives of the community, debate and approve the proposed policies and budgets and also oversee the performance of the municipality; they hold both the executive mayor or committee and the officials accountable for performance on the basis of quarterly and annual reports.

The **second mechanism** involves developing a performance orientation. The legal framework introduces requirements and processes for establishing service delivery priorities and plans. The aim is to ensure alignment between the plans, budgets, implementation actions and reporting to ensure proper management accountability for the achievement of service delivery targets.

The **third mechanism** involves strengthening reporting and disclosure requirements. High quality and timely management information allows management to be proactive in identifying and solving problems as they arise; it also strengthens the separation of roles and supports a performance orientation in local government. Alignment of planning, budgeting and reporting gives effect to section 153 of the Constitution which requires that “a municipality must structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community”.

The MFMA, together with the Municipal Systems Act (2000), aims to facilitate compliance with this constitutional duty by ensuring that municipalities’ priorities, plans, budgets, implementation actions and reports are properly aligned. The main components of the financial management and accountability cycle and how they ought to be aligned are the:

- Integrated development plan (IDP): this sets out the municipality’s goals and development plans, which need to be aligned with the municipality’s available resources. The council adopts the IDP and undertakes an annual review and assessment of performance based on the annual report.
- Budget: the three-year budget sets out the revenue raising and expenditure plan of the municipality for approval by council. The allocation of funds needs to be aligned with the priorities in the IDP.
- Service delivery and budget implementation plan (SDBIP): the SDBIP sets out monthly or quarterly service delivery and financial targets aligned with the annual targets set in the IDP and budget. As the municipality’s ‘implementation plan’, it lays the basis for the performance agreements of the municipal manager and senior management.
- In-year reports: the administration reports to council on the implementation of the budget and SDBIP through monthly, quarterly and mid-year reports. Council uses these reports to monitor both the financial and service delivery performance of the municipality’s implementation actions.
- Annual financial statements: these report on the implementation of the budget, and reflect the financial position of the municipality. The statements are submitted to the Auditor-General, who issues an audit report indicating the reliance council can place on the statements in exercising oversight.
- Annual report: it is the primary instrument of accountability, in which the mayor and municipal manager report on implementation performance in relation to the budget and the SDBIP, and the progress being made in realising the IDP priorities.



- Oversight report: council produces an oversight report based on outcomes highlighted in the annual report and actual performance.
- Audit opinions issued by the Auditor-General: the Auditor-General’s opinion is the most important part of the auditor’s report provided to the municipality. The audit findings are based on an independent and often extensive verification process of the annual financial statements and the performance information in the annual report.

## 2.4 LOCAL GOVERNMENT AND IGR FISCAL FRAMEWORK

To aid municipalities with fulfilling their obligations, in particular with regard to service provision, they receive annual allocations from the equitable share (ES). Local government equitable share allocations are unconditional and it is the choice of municipalities how they allocate the funds in their budgets in order to meet their constitutional and legislative mandates and responsibilities. There is thus very little accountability required or enforced for this component of the equitable share (ES).

South Africa’s local government fiscal framework is complex and characterised by multiple fiscal accountability connections. For infrastructure delivery, accountabilities range from service recipients to the central government, and in between these two extremes are local and provincial governments, service providers, middlemen, politicians, civil society, independent institutions, etc. For basic service provision, revenue is mainly derived from the unconditional grant (LGES) basic services component, which again promotes upward or non- accountability since it can be used as municipalities see fit and they are not accountable to national government for how it is used and nor are they accountable to communities since there is no direct fiscal-services link.

As indirect grants are not municipalities’ own revenue, municipalities may not always pay attention to performance, which may explain why the spending of municipal own revenue is better than that of conditional grants.<sup>9</sup> The implication is that own revenues are spent more efficiently and transparently because taxpayers demand more accountability from the municipality.

Local government also has a direct accountability relationship with the public and its constituent communities. For the metros and largely urban municipalities (generally the top 21 secondary or intermediary cities), municipalities provide public goods and services using own revenues raised through various instruments (e.g. rates and service charges). These revenue sources make the sphere accountable to households and business.<sup>10</sup>

While there is a strong redistributive element built into the way local government is structured and financed, questions have often been raised as to whether municipalities are sufficiently resourced to discharge their responsibilities effectively; to be developmentally orientated; and to provide communities with opportunities to effectively participate in the governance of their municipalities.

The financial viability of many municipalities are progressively at risk and constantly called into question due to the growing pressures associated with expanding populations, increasing unemployment and the rising costs of services that are impacting negatively on household disposable income and affordability. A declining revenue base and increasing cost of services has put municipalities in deep financial distress (with the AG reporting that almost half of municipalities may not be able to continue as a going concern this financial year), meaning less resources to execute the developmental mandate and having to make painful choices between competing priorities, often at the expense of the poor. This situation only diminishes accountability to communities.



<sup>9</sup> Submission for the 2016/17 Division of Revenue, Accountability in Infrastructure Delivery – The Case of the Local Government Sphere, pages 61.

<sup>10</sup> Submission for the 2016/17 Division of Revenue, Accountability in Infrastructure Delivery – The Case of the Local Government Sphere, pages 54 and 55

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# 3. THE REALITIES OF MUNICIPAL ACCOUNTABILITY, RESPONSIVENESS AND INTERGOVERNMENTAL WEAKNESSES – KEY CHALLENGES, GAPS AND OPPORTUNITIES

Representing the face of service delivery, an efficient local government is the most crucial component of realising the goals and objectives of the Constitution, particularly in relation to the realisation of socio-economic rights. There is clearly a demanding policy agenda, complex reporting demands and a weakening of institutional abilities in many municipalities (and across the state generally).

## 3.1 WHAT IS EXPECTED IN TERMS OF MUNICIPALITIES BEING ACCOUNTABLE FOR PROGRAMMES, BUDGETS AND ACTIVITIES TO THEIR COMMUNITIES AND HOW HAS THAT PLAYED OUT IN PRACTICE?

A few general observations can be made based on the practice experienced during this project, some of which is outlined in the previous two briefs, supported by a wealth of evidence over the last two decades:

**First, while the principle of direct downward accountability is embedded in the local government policy and regulatory framework, in practice this has been narrowed down to consultation and more formulaic engagements with communities. There is an expressed intent in local government policy and legislation for communities to have a direct say in planning, budgets, and to review performance, but the practice is very different.**

- Once these policies or programmes and budgets are adopted, there is actually limited or no accountability to communities through regular reporting and in-year monitoring of the implementation of projects and programmes. Reporting is done in-house and to council committees, as well as other spheres of government, but it is not obligatory to share the results with communities on its website and newspapers, for example. Apart from elections every five years, accountability to communities, if anything, is under-regulated.
- Local communities may be consulted, as legislation necessitates, but they are not routinely equipped with relevant information and insights to participate in a deliberative process of determining priorities and trade-offs. There is also usually a lack of feedback to communities, once consultative processes have run their course.
- Perhaps due to the urgency of delivering services and ensuring that budgets are passed in a timely manner, consultative activity during the budget cycle almost exclusively focuses on budget preparation only and enactment. Mechanisms to monitor the use of funds or evaluate the impact of programs are generally weak or non-existent.

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- Our system does not have community-based monitoring and built-in accountability mechanisms, and neither do Municipal Public Accounts Committees have any members of the public on it, nor are its reports shared with communities.
- Ours is nearly a purely representative system and even so, it has no right of recall, for example for the community to recall the ward councillor if he or she is not doing the job expected by communities. The political party can recall its councillor, but not the community. This situation ensures that ward councillors are in fact accountable to their parties, and not communities, as the system design intended. The same approach goes for removing a mayor or any other councillor – it is the political party who does so but not the constituents of that municipality. This situation does not promote accountability to communities who elected them.
- The most relied upon report in the country for the state of local government and, in particular, municipalities is the Auditor-General’s report, and by the time it is published, it is significantly dated by almost a year. Even in the face of a catastrophic report, it does not lead to mandatory interventions for dysfunctional municipalities in terms of section 139 of the Constitution, either for failing its executive obligations or for financial failures, nor does it present an opportunity to communities to call their elected representatives to account.
- For the vast majority of citizens and even policy analysts, public finance is difficult to decipher, and this is further complicated by intricate intergovernmental power-sharing arrangements between national, provincial and local government, which does not promote nor enhance accountability.

**Second, there is a blatant disregard by many municipalities for the legal provisions around openness and transparency with regard to access to information, which is meant to enhance accountability and transparency. This situation makes it very difficult for anyone, not least citizens and community organisations, to hold their municipality to account.**

- Access to information poses a significant challenge to effective service delivery, and the lack thereof prevents poor people from participating meaningfully in developmental processes; not only does this reduce the substance of local democracy but it also impacts on the effectiveness of local government. Many cases that ended up in court were of complainants having to use the Promotion of Access to Information Act to access information that should be in the public domain.
- Although laws and policies are mostly accessible, actual development plans and projects are not. Even in instances where information such as budgets is available publicly, it is in a manner that is not easily relatable to communities, and information on resource allocation, in particular, is rarely presented in a way that affords ordinary people the opportunity to make informed decisions on policy positions. As such, communities are not able to establish how resources are allocated and whether they are in fact being allocated in a manner that contributes to the progressive realisation of rights.
- The lack of transparency in relation to municipal plans and policies further exacerbates hostility between communities and the municipalities concerned, while mobilised communities with access to the correct information are able to resolve many disputes that affect them.



- The previous policy briefs<sup>11</sup> lamented the difficulty in obtaining what should be publically available documents, while a scan of many municipalities' websites suggest those websites may as well not exist; this suggests councils are unaccountable and wish to remain so, knowing there are no consequences for failure to comply with legal requirements.
- When it comes to scrutinising public spending, the difficulty in obtaining certified (audited) government accounts implies that most citizen efforts can go no further than (participatory) budget formulation at the local level, or else budget analysis at high levels of aggregation, identifying the likely impact of proposed public spending on categories such as the poor, as done in the first two policy briefs of this project.
- Possibly punitive financial measures should be introduced for failure to comply with the essential requirements of disclosure, for example, if a municipal indigent policy and accompanying budget allocation is not shared on the municipality's website and published in community newspapers – the same should apply for other documents considered essential, such as the IDP, Budget and SDBIP.

**Thirdly, there is a need for an honest conversation about whether the current governance model conducive to inclusive governance and accountability. The 257 municipalities comprising South African local government are governed by a comprehensive and standardised legislative framework, which places significant emphasis on community and people-centred approaches and processes. In fact, the definition of a municipality expressly includes the community, council and administration.**

- The Constitutional and White Paper scheme and Municipal Systems Act clearly sees the community as forming an integral part of the municipality and requires inclusive governance (working with communities, not just consulting them).
- For the citizens and people most often affected by local government failures such as service delivery breakdowns, the lived experience of abject poverty and social exclusion is often accompanied by low education levels; this means that in addition to inadequate access to services, or none at all, those most in need of an accountable local government, and best placed to directly hold municipal officials accountable, are curtailed by an inability to engage in technical governance processes, such as development planning and budgeting.
- Social accountability (when citizens hold public officials to account) is almost entirely lacking (apart from media and some civic organisations) in monitoring municipal spending patterns, exposing wrong doing, and activating investigations into abuse and misuse of resources. Citizens are consulted about infrastructure through being involved in the development of the IDP. However, accountability is minimal, as community consultation happens only before the IDP is developed, not when it is in place.
- The discourse of public participation and state created structures (including narrowly the way ward committees have been viewed as 'the' avenue) are arguably at the heart of the increasing divide or chasm now seen between many municipalities (as institutions) and their inhabitants. Inclusive governance and community involvement in the affairs of local government extends far beyond a mechanical model of 'public participation'.



<sup>11</sup> The Realities of Free Basic Services and The Indigent: A Matter of Human Rights, Dignity and Financial Sustainability, May 2018, and Access To Basic Services In Insecure Environments (Informal Settlements): A Matter Of Human Rights, Dignity And Financial Sustainability, June 2018.

- The application of a more mechanical model of public participation has resulted in ward councillors and the ward committee system being the gatekeepers, rather than the link between council and constituents. Ward councillors in many instances no longer go door-to-door and engage inhabitants or meet with them at their structures (governing bodies, business chambers, community forums etc.) and are in many instances not the conduit of information from the community to the municipality and vice versa, keeping inhabitants updated with the goings-on in the municipality.
- The approach adopted by local government tends to focus on meeting quantity targets, rather than taking into account the context of communities who often have a much better understanding of their own needs and how service delivery ought to be handled within their spaces.<sup>12</sup> Government engagement tends to be bureaucratic.
- In adding to the frustrations experienced with the political process of engagement, difficulties relate primarily to the manner in which communities interact with local government.
  - Councillors, tend to serve the interests of the political parties they represent, rather than performing their official duties.
  - The state largely ignores grassroots organisations about matters that affect their daily lives and with which they have lived experience. When dialogue does take place, it is often to meet requirements as stipulated in state procedures.
  - Beneficiaries are viewed as passive recipients of basic services, rather than active participants in the developmental process. This form of engagement has led to the stifling of communities' plans and aspirations to actively improve their situation. If communities were afforded the opportunity to partner with or "co-produce" outcomes, it would lead to communities acquiring mutual ownership of properties and foster critical engagement with authorities.
  - Communities are often consulted with after development plans have already been completed and these plans have largely been designed by experts and practitioners that lack understanding of communities concerned.

The report of the High Level Panel on the assessment of key legislation and the acceleration of fundamental change.<sup>13</sup> also acknowledged significant problems in the conceptualisation of the existing frameworks for public participation as well as in the implementation of these legislative provisions, where they exist. The report states that "There is a need to rethink the role of active citizens as co-drivers of change. The existing framework for public participation often only enables the public to participate as invited guests in processes as opposed to partners and co-creators. Parliament should consider identifying and reviewing all legislation that includes a public participation component, such that where provision is made for the public to be consulted this consultation is meaningful and effective".

**CONSEQUENTLY, SOME FUNDAMENTAL QUESTIONS NEED TO BE POSED ABOUT THE GOVERNANCE MODEL AND ITS INFLUENCE ON ACCOUNTABILITY AND RESPONSIVENESS:**

- While wall-to-wall municipalities is a novel idea, in that, in theory, every community has a democratically elected representative, its effectiveness in deepening democracy and strengthening accountability and responsiveness to the needs of communities is highly questionable.



<sup>12</sup> SAHRC report, Pages 70 – 73.

<sup>13</sup> Report of the High Level Panel on: The Assessment of Key Legislation and the Acceleration of Fundamental Change, page 66.

- These questions are particularly pertinent in context where a mayoral executive system prevails across most of the 257 municipalities, with only a handful having an executive committee system. Ward councillors have very little, if any, say in prioritisation and budget allocations or indeed in holding the executive accountable for what happens in his or her ward. With the politicisation of ward councillors who tow party lines, can it function any differently even if they did have a say?
- The two-tier system with many local municipalities in a strong district, needs to be reconsidered, as ever escalating governance and administrative costs are now having a significant impact on many municipalities' ability to operate as a going concern. This situation is the case particularly in those district municipalities that provide bulk services in the district, such as uMgungundlovu. Should a municipality such as uMshwathi even exist, or can it be a sub-council of the district with one councillor at its head and a budget for the very few services it currently provides?
- Reviewing the governance model may be a necessity if local government is going to become a truly developmental and people-centred, as articulated in the White Paper. The appetite for radical change may not be there, but delaying taking the hard decisions will only deepen the accountability and financial crisis local government finds itself in.
- The current model is cost-intensive and unsustainable, with the number of municipalities effectively bankrupt (outlined in the following section) only likely to increase year on year. More laws and regulations, with little support, monitoring and intervention from provinces, will not make any meaningful impact on the current state of local democracy and cooperative governance in general.

Suffice it to say, there is a significant disconnect between the intent of the policy and legal framework and the accountability and responsiveness of local government to its communities. While accountability mechanisms are in place in all South Africa's municipalities, it is often seen as simply meeting legal obligations and financial compliance, rather than providing quality and value for money. These structures are not equipped to ensure that public officials answer for their behaviour, justify and report their decisions, and are eventually sanctioned or rewarded for those decisions.

### **NEED FOR ACTIVE CITIZENRY AND COMMITMENT TO GENUINE COMMUNITY PARTICIPATION AND CO-PRODUCTION**

An important check on local government is communities' demanding transparent and accountable management of municipal affairs, which in turn requires an active and informed citizenry. Communities have a vital role to play in the promotion of transparency and accountability at local level, but to date the lack of genuine commitment to community participation and 'co-production' has resulted in a significant lack of trust in elected representatives.

On the one hand, it is the responsibility of citizens to engage with government on its policies and programmes in an informed manner, and to use the legal provisions (in the Municipal Systems Act, for example) to demand greater accountability. On the other hand, for active citizenry to become a reality, municipalities must engage citizens (as well as their civic formations and business) in their own spaces and platforms of choice on a regular basis, whilst creating space in its structures (such as section 79 committees) for community oversight and engagement.

Working with communities in monitoring the implementation of projects and programmes will go a long way in addressing the trust deficit. By gearing state resources to local developmental needs, municipalities demonstrate their commitment to genuine public participation, rather than merely paying lip service to good and inclusive governance.



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### 3.2 SUSTAINABILITY OF THE CURRENT FUNDING MODEL FOR LOCAL GOVERNMENT – FUNDING DEPENDENCIES AND BLATANT MISMANAGEMENT UNDERMINES ACCOUNTABILITY

Since 1994, government has instituted a number of public sector reforms to enhance the performance of municipalities. The list includes policy and legislative reforms (e.g. Municipal Finance Management Act (MFMA) of 2003), benchmarking exercises, monitoring and evaluation (M&E) systems, capacity-building initiatives, annual municipal audits, performance-based budgeting, performance appraisal schemes and performance-based contracts. Many measures have also been taken to counter corrupt practices and put stronger accountability mechanisms in place.

However, despite all these initiatives, performance gaps in the local government sphere remain a cause for concern. Performance gaps manifest in the high incidence of poor audit reports, under-spending/overspending, poorly maintained infrastructure, large and growing consumer debt problems, and increasingly disgruntled communities. Aside from the capacity and resources challenges limiting effective and sound financial management, much of the challenges appear to stem from a blatant disregard for prudent financial management of public funds.

#### FINANCIAL STATE OF LOCAL GOVERNMENT PUNISHING THE POOR AND UNDERMINING DEMOCRATIC ACCOUNTABILITY

The Auditor-General's 2018 local government audit outcomes confirms recent reports by SALGA indicating that some 112 municipalities (out of 257) don't have the money to carry out service delivery plans for the current financial year due to unfunded municipal budgets.<sup>14</sup> The AG's report<sup>15</sup> painted a dismal picture of the state of municipalities, most of which are barely a going concern. Municipalities' level of non-compliance with proper financial controls is at its highest in five years. Municipalities are not paying their debts because they don't have the money to do so, owing Eskom and water boards billions. The AG indicated that 31% of municipalities conceded that they might not be able to continue operating.

The AG was of the view that many municipalities are in fact just showing a blatant disregard for financial controls and advice. Accountability continues to fail in local government, with glaring governance, leadership and oversight lapses at municipal level, contributing immensely to undesirable audit results.

The AG stated that 45 municipalities regressed, while only 16 improved and that only 33 municipalities, or 13%, managed to produce quality financial statements and performance reports, as well as complied with all key legislation, thereby receiving a clean audit. The report says "When we released the 2011/12 municipal audit outcomes in August 2013, we highlighted, among other things, a lack of decisive leadership to address the lack of accountability by ensuring consequences against those who flouted basic processes that hampered effective municipal governance. We reported weaknesses in internal control and the risks that needed attention in local government by providing root causes for audit findings and recommendations to remedy these underlying causes. It is now five years later, and we are still faced with the same accountability and governance challenges we had flagged throughout these years. There has been no significant positive change towards credible results; *instead, we are witnessing a reversal in audit outcomes*".<sup>16</sup>



<sup>14</sup> SALGA, Rio Nolutshungu interview in response to wage negotiations, SALGA Facebook page, 17 May 2018.

<sup>15</sup> Published on 23 May 2018.

<sup>16</sup> <https://citizen.co.za/news/south-africa/1935915/auditor-general-municipalities-are-mostly-going-backwards/>

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This regression manifests in multiple ways: inadequate service provision; service delivery protests becoming entrenched in the socio-political landscape; irresponsible financial reporting (Auditor-General of South Africa 2018); declining fiscal health (Financial and Fiscal Commission 2014); and government's own admission of the plummeting of public trust in local government, as a direct result of poor governance and accountability.

Strengthening the whip on local government is therefore necessary, but care should be taken to also look at the underlying causes of systemic and institutional failure. It is less a case of not enough money being available, and far more a case of how it is currently being disbursed and utilised. Equally, sound financial management and a partnership-orientated business model (partnering with business to raise the funds necessary for development projects) must be strengthened.

### **THE FUNDING MODEL PROMOTES UPWARD ACCOUNTABILITY**

Local government accountability for infrastructure delivery and spending is complicated by the fact that most infrastructure is funded through direct and indirect conditional grants, rather than own revenues. Accountability for the performance of conditional grants, flows from municipalities to national or provincial departments, with very limited accountability to communities largely due to the apparent absence of a commitment to genuine community participation and collaboration. Thus, accountability only flows in an upward direction, to other spheres of government. The proliferation of indirect grants distorts effective accountability within the transfer system, since 'poorer' municipalities tend to focus more on upward accountability, being (as they are) almost entirely reliant on national government for funding. The lack of public trust and confidence in local government is a key contributing factor, with municipalities seemingly reluctant to create any expectations among their communities. Of course, this only increases the trust deficit.

The reality is that 'poorer' municipalities tend to focus more on upward accountability since they are almost entirely reliant on national government for funding. As conditional grants are the main source of infrastructure funding, the accountability relationship is primarily between local and national/provincial departments. There is very little accountability between municipalities and their communities, which could be explained in part by local government's heavy reliance on conditional grants, resulting in municipalities using little (if any) own revenues for infrastructure funding. Accountability to ratepayers and more affluent areas is much better (because they make up the own revenues portion) than to poor communities who are seen as passive recipients of services.

### **IS THE CURRENT LOCAL GOVERNMENT FUNDING MODEL SUSTAINABLE?**

On the one hand, local government has to be developmental and ensure coverage of basic services to the poor, and on the other, the reality of growing unemployment, indigency and concomitant ability to pay for services on municipal budgets, as well as shrinking capital allocations, means that it will inevitably re-route funds intended for the poor to fund operational requirements.

Moreover, poorer municipalities are doubly-affected – not only were they systematically excluded and marginalised during the apartheid era, they continue to be excluded through ineffective capacity development and provision of requisite resources required to attend to the needs of South Africa's poorest segment of its population. It is often these municipalities that are not able to meet legislative obligations or comply with court judgments because they do not have access to the necessary resources to do so. The cycle of poverty and inequality is thus reinforced.



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One suggestion is to build greater accountability through an improved fiscal-services link. Municipalities that rely heavily on government transfers and those that have large indigent populations receiving free basic services need to strengthen the fiscal services relationship. Suggestions have been made<sup>17</sup> that communities must pay something towards the services they receive to build greater accountability towards them by the municipality. The argument is that when residents pay for services, it empowers them, because if the municipality does not provide the service, it will not generate revenue. Residents who do not pay for services can only hold the municipality accountable in indirect ways such as through service delivery protests or by electing new politicians every five years.<sup>18</sup> As experienced in uMgungundlovu, asking residents to pay for services is not an easy transition, nonetheless, it must be encouraged as much as possible.

Expecting local government to raise substantial own revenue may be unrealistic in the majority of the country's municipalities, and should not be a key assumption informing the division of revenue formula. For metros and the top 30-odd secondary cities, they should be raising own revenue, and if own revenues are poor, it is due to not realising the revenue raising potential that is there. A much more differentiated model should be explored, with a completely different funding logic and model applied to metros and 'secondary cities', and a different funding model altogether needs to be applied for the remaining 200 or so municipalities, but this needs to go together with a rethink about the governance model, in particular 'wall-to-wall' representation and the two-tier system outside of metros.

### **3.2 THE ROLE OF NATIONAL AND PROVINCIAL GOVERNMENT IN STRENGTHENING LOCAL GOVERNMENT AND ENSURING GREATER ACCOUNTABILITY TO COMMUNITIES**

National and provincial government's role in strengthening local government can be summed up as supervision, monitoring and support. National government primarily plays a regulatory and oversight role, while provinces are tasked with monitoring and supporting municipalities in their jurisdiction. In practice, municipalities also play a facilitative role in assisting provinces to fulfil their mandate.

It must be appreciated that failure by any given municipality to deliver on its obligations not only reflects a failure on that part of that municipality alone, but a failure of effective governance and delivery as a whole. Both provincial and national spheres of government should be demonstrating that all necessary steps are being undertaken to ensure a full devolution of responsibilities to municipalities in order for them to be held accountable to the people they represent. The devolution of responsibilities in terms of the Constitution has not been done with the intention of allowing provincial and national spheres of government to shirk responsibilities at the expense of municipalities, but rather to ensure that government is accessible to the majority of the South African population as a means of addressing the country's apartheid legacy.<sup>19</sup>



<sup>17</sup> National Treasury, 2011a: 48

<sup>18</sup> National Treasury, 2011a: 45

<sup>19</sup> Report of the South African Human Rights Commission Investigative Hearing Access to Housing, Local Governance and Service Deliver, pages 59 and 60.

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## REGULATION HAS GONE FAR ENOUGH, IT'S MONITORING AND INTERVENTION, AND GREATER ROLE CLARITY, THAT REQUIRES STRENGTHENING

South Africa has a comprehensive and impressive legal framework for local government, which has been added to significantly over the last decade. Many commentators repeatedly argue that the sector is in fact over-regulated, and that writing laws to address problems only creates more problems – more law is rarely the answer. Law should be used to regulate and limit the exercise of power, not be thrown at all and any implementation problems. Rather, monitoring the law's enforcement and ensuring consequences for non-compliance ought to be the focus.

This section therefore won't focus on the policy and regulatory side, although a few issues require attention, but will zoom into the monitoring and support (as well as intervention role) provinces ought to be playing, and how they have played it to date.

Local government has been given a very broad and challenging set of responsibilities. Effective performance against its Constitutional mandate requires a coherent and co-ordinated set of support initiatives from the other two spheres of government. Thus, the Constitution requires provincial governments to play an important role in monitoring and supporting local government (s155). The Municipal Systems Act contains detailed provisions of monitoring and reporting to provinces, yet very few, if any, provinces have implemented the provisions of section 105 of that Act.

**As evidenced in the KwaZenzele informal settlement in Lesedi, as well as the SAHRC report <sup>20</sup>, the unduly complex IGR arrangements in place and fragmentation of responsibilities in the human settlements terrain makes it very difficult for municipalities to account to communities on what to expect, as they are entirely reliant on provincial government to deliver on their end.**

- The successful implementation of a development programme is largely dependent on whether or not an adequate institutional support system is in place. Lesedi municipal officials indicated that informal settlement upgrading plans were negatively affected by experiences with provincial funding. For instance, in previous housing development projects in the municipality, the Gauteng department of housing promised funds to build low-cost housing and the municipality used bridging finance to start the process while waiting for the promised funds, which were not forthcoming, which created additional financial problems for the municipality. The poor IGR between local and provincial departments has affected local communities as the municipality vowed not to repeat the mistake, waiting instead for funds to be transferred in advance of project implementation.
- Municipal officials also emphasised that in some cases, information was withheld from communities as a result of financial uncertainty. In the City of Johannesburg, municipal officials indicated that they were set to roll out an ISU programme in some communities, but then later cautioned Planact to avoid raising community expectations by revealing the upgrading plans in community meetings. The motive behind the withholding of information and excluding communities from early planning was because of poor IGR between the provincial and local government. Although the provincial government promised to finance the ISU upgrading programme in the municipality, it was later discovered that the provincial government no longer had the required funding for the implementation, and hence some of the planned projects could no longer proceed or had to be postponed.



<sup>20</sup> SAHRC report, page 65.

- Communities' expectations are failing to be addressed as a result of limited co-operation and poor communication by provincial governments, to the extent that some community projects were abandoned. Other projects were never started due to the failure of provincial governments to honour agreements made with local governments. Some actions by provincial governments have confused local municipalities and communities.<sup>21</sup> Provinces make repeated and unrealistic promises to communities and then leave it to municipalities to deal with the fallout when that doesn't happen.
- Provincial governments' failure (in some cases, such as in the case of Lesedi) to effectively allocate and transfer resources required for municipalities to implement projects ultimately means municipalities fail communities. Provinces are often blamed for promising to fund municipal projects, which leads to municipalities making promises to communities, even implementing projects using other funds, in the expectation that provinces will fulfil their commitments and refund them. Hence it is difficult for municipalities to plan with communities, or indeed to report or respond to their concerns, when funding to implement projects is not a certainty.<sup>22</sup>
- Policy priorities often cut across ministerial mandates and traditional policy fields. There is a multiplicity of departments and funding agencies responsible for various aspects of development which results in fragmentation of authority and overlap of functions, with little prospect for improvement, despite cries for more alignment, integration, or frameworks. What is required is more precision in exactly who does what (not dispersing responsibility between too many role players) and enforcement of consequences, incentives and accountability for performance in those areas.
- It is clear after more than 20 years of practice, that the cumbersome and fragmented housing delivery machinery significantly hampers the state's progress in realising the rights to shelter and services to informal settlements, and ultimately integrating human settlements, and that provinces are a weak and unaccountable cog in the wheel. Over-complexity and too many layers of decision making, administration and bureaucracy has hampered effective service delivery.

In reality, provincial governments see themselves as competitors, and not overseers and supporters of, local government. There is no starker evidence of this than in the integrated human settlements terrain. While municipalities are in large part responsible for providing access to basic services, and are substantially funded to do so, housing provision is primarily a provincial function. Municipalities can earmark and allocate land for housing provision and provide basic services to those households, but it is the provincial department which must plan and allocate resources for the building of houses. Housing delivery often falls short as the true meaning of well-intended policy statements are diluted as development applications meander through the inter-governmental structures and administrative processes. Local government then takes the blame for any shortcomings.

In some instances, provincial departments develop and deliver housing projects directly within the jurisdiction of municipalities without following due process (including public participation, consultation and agreement with and from the municipality in terms of planning, etc). As a result, there is a disjuncture between expectations relating to access to adequate housing, which places considerable legal and financial obligations on municipalities with respect to housing provision, while programme planning and funding remains controlled at a provincial level.



<sup>21</sup> SAHRC report, page 68.

<sup>22</sup> See page 50 of State of Local Government Report 2011, GGLN, Intergovernmental Relations and the Voices of the Marginalised, Malachia Mathoho, Planact.

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'Formalising' informal settlements requires a great deal of collaboration between the municipality and the provincial department responsible for human settlements, as well as national government. This institutional fragmentation renders coordination and implementation of the urban agenda difficult and also allows for contradicting messages, particularly with the NDoHS promoting mega projects or large-scale housing developments, whereas the other departments or institutions prioritise compact, transit-oriented development as close as possible to existing amenities, along with in-situ upgrading of informal settlements wherever possible.<sup>23</sup>

The fact that municipalities do not have control of the most important facet of the built environment, in itself, is a major policy shortcoming and one that rears its head repeatedly and most especially in the case of housing provision. It is clear that greater policy control and more adequate financing and tools need to be provided to local government in order to assist it in meeting its obligations.

The argument that local government doesn't have capacity is flawed and must be corrected. Local government will never have the capacity if it doesn't have the function. Provinces themselves have serious capacity deficits and limitations, as indicated by the KZN provincial government during its submission to the SAHRC hearings<sup>24</sup> cited above. The KZN provincial government admitted that due to technical capacity deficits, it lost allocated funds to the fiscus as unspent. The province finds itself had to reduce output and delay the commencement of new projects in order to ensure that it effectively spends its budget in a manner that is not only concentrated in one area of delivery. It is difficult to argue that overall housing allocations need to be increased above inflation while spending performance on current allocations are so poor across provinces.<sup>25</sup>

In any event, if the function is transferred to local government then the capacity (presumably human) which exists within provinces should likewise be transferred to municipalities on the same terms and conditions (this is precisely the mobility which the Public Administration Management Act<sup>26</sup> intended and was written for), which moves accountability closer to the people.

The under-spending of budgets by provincial departments is also a major concern. Although annual budgets are increased and plans could be developed accordingly, under-spending of the budget results in National Treasury reducing it in the following year. Under-spending has resulted in household surveys and assessments on the amount of informal settlements, which are required in order to effectively plan, not being conducted. Addressing under-spending requires accountability lines to be clarified, those responsible for inefficient spending to be answerable, and sanctions to be imposed.

<sup>23</sup> SAHRC report, page 54.

<sup>24</sup> SAHRC report, page 54.

<sup>25</sup> SAHRC report, page 53

<sup>26</sup> 11 of 2014..

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## 4. THE NEED FOR CONSEQUENCES AND INCENTIVES MANAGEMENT

One of the key responsibilities of municipalities is to ensure that their developmental outputs reflect the needs and diversity of the people residing within their jurisdiction. However, noting the various challenges currently being experienced, this can only be done if more stringent measures are put in place to hold local government leaders and officials to account.

A number of measures will need to be considered as to how best to enforce compliance with the legal framework for financial management. A combination of measures, such as withholding transfers and reducing unconditional allocations, firmer implementation of the code of conduct for municipal councillors and officials and withholding performance-related salary increases and bonuses (when service delivery fails) will need to be enforced and reinforced.

The following proposals should be considered to enforce consequences and incentivise performance-based outcomes. It is now essential that a 'Consequence and Incentives Management Directive' be developed and inculcated in the culture of municipal governance. Nothing will enhance accountability and responsiveness more than enforcing (particularly financial) consequences for non-performance and removing councils, councillors and officials who show blatant disregard for the law.

It is envisaged that such a Consequence and Incentives Management Directive should highlight consequences for non-performance and appropriate rewards for out-performance above certain thresholds, in order to improve accountability in all its forms. These consequences should not disincentivise innovation and initiative, but are concerned with defining and measuring minimum levels of acceptable performance, against which we can judge municipal performance and address the pervasive challenge of impunity for non-compliance to laws and regulations and poor performance being rewarded.

At the heart of it will be the incentivisation (through remuneration and other means) of accountable and people-centred governance of municipal institutions and spaces. Importantly, the pre-determined objectives set out for categories or types of municipalities should primarily be set against the constitutional objects and key legislative imperatives. The implementation of the Consequence and Incentives Management Directive should lay the basis for the kind of developmental and people-centred behaviour the White Paper envisioned. This shift will contribute significantly to a reorientation from compliance to developmental local government and a much needed 'serving people' approach.

Performance-based transfers may have tangible and positive impacts on accountability, spending and ultimately service delivery. Through incentives, municipalities are influenced to improve performance (especially the cost, efficiency, quality and effectiveness of service provision), comply with policy imperatives and improve service delivery.

This directive could be driven by CoGTA as part of its monitoring and oversight role of the sector, in partnership with National Treasury since it is responsible for sound financial management. Once developed for local government, the model should be extended across the national and provincial sphere of government, including its support and monitoring (dependency) role in local government.



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A few pointers for what the Framework should entail:

### **USE AG REPORTS AS A BASE, BUT NOT EXCLUSIVELY – MANDATORY INTERVENTIONS AND FINANCIAL CONSEQUENCES**

The Auditor-General issues annual reports that has consistently highlighted the lack of consequences and malfeasance as key problem areas across many municipalities. In the absence of other credible information, the Audit Outcomes (with predetermined objectives measured as well) present a useful reference point for illustration purposes. If, for example, a municipality obtains a *disclaimer or adverse opinion*, it means that the Auditor-General has attempted to audit the books of a municipality, and the available information is not credible enough to the extent that a formal opinion can be formalised and published, or that the municipality is in utter disarray and is nearly impossible to audit.

This example points directly to the fact that the council *did not do its job* of ensuring (oversight) that the administration complies with laws and regulations in implementing the IDP of the municipality. An adverse disclaimer could also often mean that the council and officials have wrongdoing to hide and therefore fail to submit documentation required or submit incorrect information. There can be no other conclusion drawn from adverse and disclaimed opinions. Keeping records is one of the chief duties of the accounting officer. Failure to do so should automatically incur punitive consequences, and none can be more meaningful than personal financial consequences and removal.

Equally, a municipality which obtains an unqualified audit qualifies to have salary increases and skills development for its councillors. In addition, the municipalities' unconditional allocation could be increased with greater autonomy over spending, with poorly performing municipalities given almost exclusively conditional funding. Salary increases to the maximum upper limit and performance bonuses also should come into play.

In general, rewards should be for achievement over and above the set predetermined objectives. An unqualified opinion should not be considered an achievement, but is (merely) an acceptable level of performance and accountability for public institutions, its credibility and use of public funds.

### **STRENGTHEN MPACS**

The first innovation to improve accountability and oversight in local government was the establishment of Municipal Public Accounts Committees, as section 79 committees in 2010/11. However, it must be remembered that this was an innovation introduced in response to the lack of accountability perception, which is already a positive step, and now that nearly all municipalities have them established, the focus must be on improving their functionality and impact.

A few critical measures should be introduced to enhance not only the minimalist assessment of functionality of MPACs but enhance the substantive focus on its effectiveness, the willingness or commitment of the council to act on its recommendations. These measures may include the following:

- a) It must be made mandatory for each MPAC to include members of the community and such members should include a predetermined set of expertise that will enhance the capacity of the MPAC.
- b) Audit Committees need to be assessed in terms of the qualitative assessment of their effectiveness and the extent to which a municipal council acts on its recommendations. Where a municipality has not acted on recommendations, consequences set out above should similarly follow.



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## ENFORCE CONSEQUENCES AT LEADERSHIP LEVEL

The full Consequence and Incentives Management Directive must clearly set out the responsibility of each political office and role player in terms of governance, financial management, service delivery and inter-governmental relations. The consequences of failure in each respect will have to be highlighted and proposals made on how the regulatory environment needs to be changed to give effect to this directive.

Undoubtedly, there needs to be stronger accountability and consequence management for leadership at local government level, and a great deal of focus by national and provincial government placed on enforcement thereof.



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## 5. RECOMMENDATIONS

The following are the key set of recommendations for policy makers and practitioners to ensure that municipal accountability and responsiveness is strengthened, and that IGR and responsibilities are much more clearly delineated so as to promote accountability. Ultimately, these will contribute to addressing the 'trust deficit' and lack of public confidence in local government.

**A Consequence and Incentives Management Directive should be developed and implemented by National Treasury and CoGTA, which should entail, inter alia:**

- A combination of measures, such as withholding transfers, firmer implementation of the code of conduct for municipal councillors and officials and withholding performance bonuses when service delivery fails, will need to be reinforced, as well as mandatory interventions for certain kinds of failure (such as disclaimers and adverse audit opinions).
- Greater enforcement of punitive measures for non-compliance to basic legislative requirements aimed at enhancing accountability, such as publication of information on a website.
- Consequence management should focus on and start with the leadership level in municipalities, especially among the mayoral or executive committee and municipal manager.
- A few critical measures should be introduced to enhance not only the minimalist assessment of functionality of MPACs but enhance the substantive focus on its effectiveness, and the willingness or commitment of the council to act on its recommendations.

**Strengthen social accountability, which can be achieved through:**

- Community monitoring groups, which track expenditures, report on municipal under-spending and check that public funds are disbursed for intended purposes. While, for example, Municipal Public Accounts Committees in theory are open to public engagement and scrutiny, and municipalities have a legal responsibility<sup>28</sup> to ensure that communities are adequately informed and capacitated to participate, practice indicates that this is not the case.
- Community monitoring groups made up of individuals elected by communities and chosen based on their expertise in different areas of service delivery to ensure in-year and in-project monitoring to ensure performance and accountability, as well as detect and inspect progress and problems early, not through evaluation after the fact and once it's too late.
- Greater community involvement in project implementation, monitoring and oversight – for example, representatives of community groups sit directly on section 79 committees to strengthen accountability and oversight.



<sup>28</sup> Section 16, (b) and (c) of the Municipal Systems Act, 32 of 2000

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### Review the assumptions informing the local government funding model and the governance model

- Expecting local government to raise substantial own revenue may be unrealistic in the majority of the country's municipalities, and should not be a key assumption informing the division of revenue formula. For metros and the top 30-odd secondary cities, that assumption is valid and if own revenues are poor, it is due to not realising the revenue raising potential that is there.
- A much more differentiated model should be explored, with a completely different funding logic and model applied to metros and 'secondary cities', and a different funding model altogether needs to be applied for the remaining 200 or so municipalities. The current model is cost-intensive and unsustainable, with the number of municipalities effectively bankrupt only likely to increase year-on-year.
- This needs to go together with a rethink about the governance model, in particular 'wall-to-wall' representation and the two-tier system outside of metros, as well as the number of councillors necessary in a council.
- The two-tier system with many local municipalities in a strong district, needs to be urgently reconsidered, as ever escalating governance and administrative costs are now having a significant impact on many municipalities' ability to operate as a going concern – this is the case particularly in those district municipalities that provide bulk services in the district, such as uMgungundlovu.

### At IGR level, review the role of provinces in housing delivery and ensure direct accountability for integrating human settlements

- Housing must be fully assigned as a local government competency, as the sphere closest to the people and, according to SPLUMA and the courts, as the sphere who is responsible for spatial development, to ensure municipalities have full control and funding for human settlements which would enable them to be much more responsive to community needs and fully accountable to communities, as they would control all levers of the delivery chain.
- Resuscitate the accreditation process and reinstate the assignments to the metros and other 'ready' municipalities which was due to take place in 2014. Provinces should not have a fundamental say in the process, as they will always use capacity arguments to abdicate their responsibility to support and strengthen local government, and local government will never develop the capacity if it doesn't have the function. Any capacity at provincial level should be transferred to the assigned municipality as envisaged by the Public Administration Management Act of 2014.



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