



Inculcating a Culture of Oversight and Accountability in Local Government: The Role of the Legislative Sector

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This paper will focus on the role of the legislative sector in inculcating a culture of oversight and accountability in the local sphere of government and the role that should be played by provincial legislatures, if any.

Legislative Framework

The rules of each legislature in South Africa are drawn from Sections 55 and 114 of the Constitution. Section 55(2) outlines the oversight powers of the legislatures, requiring that they “provide for mechanisms to ensure that all executive organs of state in the national [and provincial] sphere of government are accountable to it; and to maintain oversight of the exercise by the national [and provincial] executive authority, including the implementation of legislation; and any organ of state”.

Sections 55, 92, 114 and 133 of the Constitution, referred to above, require that legislatures ensure that all executive organs of state in the national and provincial spheres of government are accountable to the relevant legislatures and maintain oversight of the exercise of executive power, including the implementation of national legislation. However, the Constitution does not provide for any mechanisms in this regard in the manner it sets out the processes for passing laws. This task is left for legislatures to regulate in terms of legislation and rules. The Oversight Model of the South African Legislative Sector (September 2011) defines oversight as:

The proactive interaction initiated by a legislature with the Executive and administrative organs that encourages compliance with the constitutional obligation on the Executive and administration to ensure delivery on agreed-to objectives for the achievement of government priorities.¹

¹ https://www.parliament.gov.za/storage/app/media/1_Stock/Events_Institutional/2021/28-04-2021_NCOP_Budget_and_Fiscal_Oversight_Workshop/general_resource_documents/Financial_Oversight_IndI_Induction_Handbook_for_Members_of_Parliament.pdf, The Oversight Model of the South African Legislative Sector (September 2011).

The functions of oversight include many political, administrative, financial, ethical, legal, and strategic elements. Broadly, the aim is to improve the transparency of government operations and enhance public trust in the government, which is itself a condition of effective policy delivery. The oversight function concerns the monitoring of the achievement of goals set by the Constitution, legislation, and government's own programmes. The South African Legislative Sector Oversight Model refers to accountability as “the hallmark of modern democratic governance.”² The Sector Oversight Model provides legislatures with a framework to ensure accountability by all players envisaged by the constitution. Accountability, in essence, is to hold the government to account in respect of how taxpayers' money is used and delivery on the constitutional mandate.³

Local Government

With the clearly pronounced mandate of legislatures it sometimes become difficult for the legislature to practically provide oversight over Local Government. This is principally caused by the fact that the constitution gives the direct oversight over the Local Government to the Member of the Executive Council(MEC) responsible for local government. The Legislature would thus exercise its oversight function indirectly during its scrutiny of the local government vote, oversight visits or through focussed intervention studies.

Thus, when Legislatures try to organise oversight initiatives to local government on areas of shared responsibility, like water provisioning, electricity connection and local economic development they get questioned relating to their authority. This is more pronounced during the interface between provincial legislatures and local government and not broadly to the entire legislative sector. Whilst there maybe many reasons but the more plausible one would be that of the constitution clearly spelling out the role of the National Council of Provinces whilst not being the case concerning the provincial legislatures.

This is now getting more prevalent with the current political dynamics as a result of coalition government in the leadership of the local government. In a province like KwaZulu-Natal that

² Ibid.

³ https://www.parliament.gov.za/storage/app/media/1_Stock/Events_Institutional/2021/28-04-2021_NCOP_Budget_and_Fiscal_Oversight_Workshop/general_resource_documents/Financial_Oversight_Induction_Handbook_for_Members_of_Parliament.pdf, page 11.

has a history with coalition government as far back as 1994 in provincial government and from 2011 in local government this is not necessarily new.

With widespread coalition arrangements at local level comes the unfortunate questioning of legitimacy and sometime outright resistance of oversight initiatives done by legislature Portfolio Committees responsible for local government (CoGTA Portfolio Committee, in the case of KZN).

Whilst understanding that some of the calls may be legitimate but the most glaring task for all of us is the need to cultivate a culture of oversight and accountability in the sector. This is now more urgent considering the instability in most of our municipalities due to the new phenomena of coalitions.

Our principal role is to ensure that, at all material times, the delivery of services to the communities is not compromised and that the tax payers money is used efficient and prudently. This can be done when we jointly focus on oversight across all spheres and coming up with innovations that will not undermine the constitutional mandates of all role players.

The provincial chapters of organised local government, South African Local Government Association (SALGA), working with all provincial legislatures bears that responsibility. This maybe achieved through strengthening the Intergovernmental Relation platforms that exists between the two spheres of oversight such that our oversight initiatives are not just for compliance sake but are yielding substantive improvement in the quality of life of the citizens.

The revitalisation of Provincial Speakers' Forums in all provinces as a tool for deepening and sharing of oversight solutions to existing challenges with the participation of SALGA is but one of the possible solutions within the current legislative framework. This may lessen the burden on legislature portfolio committees of having to fight with Municipal Councils in explaining their role in conducting oversight over certain aspects of local government. This cooperation, whilst not being a panacea for all ills, but if undertaken more transparently, it can yield better results and lead us to impactful oversight.

The Auditor General may have already started to force our hands in this with the auditing of the oversight impact that was piloted in the 2021/22 financial year. Amongst the committees

that were sampled was the CoGTA PC which is also responsible for local government, even though it did not have an impact on the final audits of the sector. In the upcoming FMPLA audits, the impact of oversight will be amongst areas that will be having an impact on the outcomes, and this may present questions on the oversight sector if there is no cooperation.

We need to eliminate together the ills that are afflicting our local government like congruence of politicians/administrators with certain unscrupulous businesspeople with the aim of abusing municipal finances to enrich themselves, influence of intra political dynamics in the running of local government as well as the fraught politico- administrative interface at local government. Bringing back the confidence of the electorate in the system through consistent and efficient service delivery to the communities. Assisting the Section 139 interventions to yield results and have struggling municipalities back on their feet.

All the above can be achieved when we come together to cooperatively strengthen oversight committees at local government and forge a culture of accountability and responsibility. All this cannot be achieved whilst we still weaponize oversight to further our political objectives.

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