Local Government and King III
Public Sector Working Group Position Paper 2
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1. Introduction

The King Report on Governance for South Africa, 2009 (King III) published in 2009 and effective since 1 March 2010, opened up discussions on good governance in local government and the relevance of King III. The Constitution is clear on the responsibilities of local government. To provide democratic and accountable government for local communities, ensuring the provision of services to the communities in a sustainable manner.

The question for local government officials and political office-bearers remains: How does one balance effective service delivery, political affiliations, the need for a political party to remain in power and good governance? Lack of service delivery could lead to power swings in government, whilst good business practice and governance may not always facilitate political mandates, such as free basic services.

Common law principles allocate certain fiduciary responsibilities to members of a board but this does not apply to municipal councillors. However, one could argue that, by virtue of the fact that Council (through the decisions of councillors) has the power to spend taxes, which is money belonging to the community, there are implied fiduciary duties. The Minister of Cooperative Governance (CoG) recently launched “Operation Clean Audit” and declared that good governance will contribute to clean audits in municipalities.

Section 152 of the Constitution of the Republic of South Africa (1996) [Constitution], describes the objectives of local government as follows:

- to provide democratic and accountable government for local communities;
- to ensure the provision of services to the communities in a sustainable manner;
- to promote social and economic development; to promote a safe and healthy environment; and
- to encourage the involvement of communities and community organisations in the matters of local government.

Furthermore, Section 153 of the Constitution refers to “developmental duties” of local government.

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 essence of local government objectives is centered in service delivery to the communities, while enabling social and economic growth thereof.

The Local Government: Municipal Systems Act (Act 32 of 2000) [Systems Act] enables local government to establish a simple framework for core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of developmental local government and also provides for legal matters pertaining to local government. Other legislation such as the Local Government: Municipal Structures Act (Act 117 of 1998) [Structures Act] and the Municipal Finance Management Act (Act 56 of 2003) [MFMA] establish frameworks and legislation to regulate the internal systems and structures as well as to secure sound and sustainable management of the financial affairs of municipalities.

Section 154 of the Constitution obliges national and provincial government to partake in co-operative government and to:

- Support and strengthen the capacities of municipalities to manage their own affairs, to exercise their powers and to perform their functions.

This principle is further outlined in the Systems Act in Section 3(2), which states:

- National and provincial spheres of government must within the constituiçãoal system of co-operative government envisaged in section 41 of the Constitution, exercise their executive and legislative authority in a manner that does not compromise or impede a municipality’s ability or right to exercise its executive and legislative authority.

The above-mentioned legislation clearly places the onus of service delivery on municipalities, which, through their leadership, are responsible for the promotion of the social and economic development of the community. Support is given by other spheres of government but interference is strongly discouraged.

The role of local government leadership and the responsibility placed upon these leaders necessitates ethical values of responsibility, accountability, fairness and transparency as underpinning governance principles.

King III focuses on the importance of conducting business and reporting annually in an integrated manner by reporting on how the organisation impacted on the economic life of the community, and how the organisation intends to enhance positive aspects and ameliorate negative aspects. It also addresses the role of ethics, audit committees, risk management, stakeholder relations and corporate citizenship. Despite the fact that local government legislation addresses several governance principles, local government officials and office-bearers are in many instances not viewing it as a priority. It is strongly recommended that the King III principles be embedded in the day-to-day functioning of municipalities.
2. **Purpose of this Position Paper**

The purpose of this position paper is to:

- emphasise the role of effective leadership in responsible and accountable local government;
- highlight the advantages of, and create awareness of, the governance principles as they relate to local government;
- discuss a framework for the application of King III in local government.
3. Role players in Good Governance

Traditionally, the key role players in governance in the private sector are the board of directors, board committees, and the chief executive officer (CEO) of the company, who is also an executive director. In local government the leadership structures are not directly comparable to that of companies.

The legislative and executive authority of the municipality is seated in the Municipal Council, of which the members are elected representatives of political parties. Council members are therefore not independent in the manner in which directors in the private sector would be.
The following example illustrates this point: An item on the construction of a road in a township is tabled to Council. Councillors are obliged to vote according to the party caucus decision.

A Municipal Council operates under the leadership of the Executive Mayor, elected by Council, whilst Council meetings are chaired by the Speaker of Council.

Executive Mayors (as well as municipal councillors) are elected to represent a political party. The principle of independence does not apply and Executive Mayors are guided and politically assessed in terms of party manifestos; instead of being based on sound business principles. The ascribed functions and powers of Mayors are described in Section 56 of the Structures Act as:

- identifying, reviewing and evaluating the needs of the municipality;
- recommending strategies to address priority needs through the Integrated Development Plan (IDP);
- identifying criteria for evaluation of implementation of strategies and programmes;
- reviewing the performance of the municipality;
- monitoring the management of the municipality; and
- overseeing the provision of services.

The role of CEO is fulfilled by the municipal manager who is also the accounting officer of the municipality. In terms of local government legislation, the accounting officer has several responsibilities traditionally designated to the board of directors of a company. The municipal manager is not a member of the Municipal Council and may not speak at Council meetings.

The powers and functions ascribed to the Executive Mayor in terms of Section 56 of the Structures Act are assessed by the relevant political party, whilst the legal accountability still remains with the accounting officer. Executive Mayors and Councillors are not liable for their actions in the same way as a board of directors. The current roles and responsibilities of municipal managers and Executive Mayors often cause conflict and unnecessary confusion.
4. Addressing Governance Challenges in Municipalities

The structures described above bring forth certain governance challenges, the most important being the perceived lack of independence by councillors. Councillors should be held liable and accountable for their decisions (as are directors in the private sector) to ensure that decisions are made with the financial benefit of the municipality in mind.

To ensure good governance, the Municipal Council should act as the focal point for and custodian of good governance. The Council should play an active role in the strategy development process. It should ensure that the long-term strategy and IDP are aligned to the expectations and needs of the members of the community and other stakeholders. Proper induction and skills development programmes for councillors are essential to ensure effective execution of duties.

The performance of Municipal Councils and councillors should also be regularly assessed. While self-assessment plays a role, independent performance appraisals should be considered (preferably by representatives of the community) in the interest of eliciting candid responses. Annually performance appraisals of individual councillors, the council committees and the Executive Mayor will be useful in establishing training requirements.

Section 82 of the Structures Act obliges the municipal council to appoint the municipal manager and ensure that he/she has the relevant skills and experience. The necessary framework for delegation of authority should be put in place and although the Council delegates authority to the accounting officer and management, councillors should not be allowed to abdicate their duties and responsibilities to the community.

Although municipal managers are the accounting officers and are held responsible and accountable for the performance of the municipality by the MFMA, Executive Mayors are also held responsible for certain actions by law, and others by the political parties they represent. Municipal managers are the custodians of compliance, for example supply chain management.

In practice it happens that politicians, contrary to legislation, interfere in the supply chain management processes.
Section 166 of the MFMA states that each municipality should have an audit committee. It further describes the functions of the audit committee which is appointed by the Council. Legislation further requires that the majority of audit committee members may not be employees of the municipality. King III recommends that the audit committee comprise independent, non-executive members, with the chairperson not being a member of Council. Issues currently not addressed by municipal audit committees include integrated reporting, sustainability and external independent assurance.

The establishment of Municipal Public Accounts Committees (similar to SCOPA in Parliament) will compliment the functions of the municipal audit committee. Municipalities should further apply the principle of good governance, which dictates that the audit committee should satisfy itself of the expertise, resources and experience of the municipality’s finance function.

Municipal audit committee reports should also include comments on the quality of management, and the monthly or quarterly reports submitted under the MFMA and the Division of Revenue Act. It is not required by legislation that municipal audit committees make a statement on the municipality as a going concern. Several municipalities in South Africa are in fact not a going concern. Community members (as the primary stakeholders) and clients of municipalities should be informed if their municipality is no longer a going concern.

The municipal internal audit unit is primarily accountable to the accounting officer, the audit committee, the finance portfolio committee and the municipal public accounts committee. Internal audit units in municipalities (whether outsourced or not) are often under-resourced and may consequently fail to achieve set objectives. Both the internal audit unit and the audit committee are required to advise the municipal manager and Council in order to limit risk. The internal audit unit should have a risk-based approach to its plan.
6. **Risk Governance**

Maintaining effective, efficient and transparent systems of risk management is the responsibility of the accounting officer (MFMA Section 95). According to local government legislation, a risk management policy is not compulsory, but if it exists, Council should approve the policy. Both the internal audit unit and the audit committee are obliged to consider risk and to report thereon to the accounting officer and Council. Council itself, as well as individual councillors, cannot be held liable for inefficient or ineffective risk management, whereas the application of sound governance principles will assign responsibility for risk governance to Council and councillors - similar to the situation with directors and the board in companies.

Council should ensure that the municipality has and maintains a comprehensive and effective risk management plan and process and that key risks are quantified. Risk assessment should be done regularly and should adopt a top-down approach, but should not be limited to strategic and high-end risks only. Operational risks should be part of the risk management plan.

One of the **major areas of concern** in municipalities is the state and accuracy of IT systems, more specifically the billing systems. Members of the community and clients are frustrated by these systems and often find municipal billing incomprehensible. Municipalities have billions of rands of uncollected debt. Incorrect and unclear municipal accounts exacerbate the problem even further and add to the risks municipalities must face.

Council should be held responsible and the municipal manager accountable for IT and related governance, in order to ensure that IT systems are effective and are aligned with the performance objectives of the municipality. Although it may be problematic for smaller municipalities to do proper risk management and assessment, consideration should be given to a risk management unit established under the auspices of the Department of Cooperative Governance and the relevant Provincial Department to assist smaller municipalities and ensure skills transfer.
Local government legislation describes in detail how and when participation should be sought from communities as the main stakeholders in municipalities. Assessing the gap between community perceptions and the performance of the municipality should be managed and measured. This is necessary to enhance the reputation of municipalities, especially considering that successful basic service delivery is vitally important for political parties and councillors who strive to be re-elected.

As such, Council should be held responsible for proper stakeholder management even though it may delegate this function to management. Over and above the legislated community participation processes, management should, for approval by Council, develop a policy suitable for the management of stakeholder relations. Although political aspirations and expectations are important, the Council must at all times act in a responsible manner and within its financial means. The community should be made aware of instances where finances do not allow the fulfillment of political promises. Service delivery demonstrations and mass action will be reduced if community members are informed on these issues. Councillors should be held responsible for disseminating this information. Councillors should take care not to over-promise and under-deliver, thereby alienating the community.

7. Governing Stakeholder Relationships
8. Integrated Reporting and Disclosure

The content of the annual report of a municipality is prescribed in Sections 121 to 134 of the MFMA. However, the principles of integrated reporting have not been included in these prescriptions. Financial disclosure is done rather comprehensively but sustainability disclosure such as contextualising financial results by reporting on the positive and negative impact of the municipality’s operations on its stakeholders, is not enforced by current local government legislation.

It could be argued that sustainability disclosure and reporting may cause political damage in cases of mismanagement of municipalities but, on the other hand, it may force municipalities to better consider certain actions before implementing them. This will eventually lead to better financial results, an enhanced image and positive stakeholder perceptions. Municipalities need to embrace a long-term view in this regard.
11. **Financial Leadership and Corporate Citizenship**

King III points out that the board (in this instance the Council) should provide effective leadership on an ethical foundation. Since good governance is essentially about effective leadership characterised by ethical values of responsibility, accountability, fairness and transparency, the Council should ensure that management actively promotes a culture of ethical conduct.

Section 54 of the Systems Act refers to a code of conduct which applies to all councillors. In order to affirm the code of conduct, individual councillors should sign this code. Similarly, Section 69 of the Systems Act refers to a code of conduct for municipal staff members.

Ethical conduct, however, goes beyond declaration and disclosure of interests, gifts and favours. Council and management should ensure that the municipality is seen as an asset and that it has social and moral standing in the community. The municipality’s performance should be viewed within the triple context in which it operates - namely economic, social and environmental. Municipalities should further respect human rights, more specifically by providing free basic services effectively, finding expression in the principles of Batho Pele.

Managing the ethics of the municipality effectively places the onus on Council and individual councillors to build and sustain an ethical corporate culture as reflected in, amongst others, selection and reward systems.
10. **Conclusion**

Governance in municipalities has so far not been as effective as envisaged by legislation. The advent of King III is forcing the relevant parties to reconsider governance. Awareness and advantages of good governance in Municipal Councils should be promoted in line with the principles of King III. Attempts to instill governance principles are often met with resistance from municipal management and politicians. Consideration should be given to possible changes in legislation and composition of governance guidelines; specifically to accommodate the unique situation in local government. Both officials and political office-bearers should be held accountable for the way the community’s tax money is spent and utilised and ensure this is done expressly to deliver the services to which that community has a constitutional right.
References


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