



PRESIDENT'S ADDRESS ON THE OCCASION OF THE SALGA NATIONAL MUNICIPAL LEGAL PRACTITIONERS' FORUM

DATE: 14 – 15 MARCH 2024

VENUE: Chief Albert Luthuli ICC
eThekweni



Programme Director,

Our Host, the Mayor of the City of eThekweni Metropolitan Municipality, Cllr Mxolisi Kaunda

The Chairperson of SALGA KZN, Cllr Arthur Ntuli

All local government legal practitioners

Invited Guests

Ladies and Gentlemen

We meet at a time when we are witnessing the realities of declining public interest in public affairs, declining public trust in the sector, service delivery protests characterised by increased violence, dissatisfaction with local government's failure to provide uninterrupted basic services, limited financial resources amidst unprecedented court cases against municipalities, a time when we all acknowledge that legal services have a great role to play in the continued sustainability of municipalities, and a time when we all have to think creatively about solutions to confront these challenge head on. With this in mind, allow me to welcome you to the

4th edition of the SALGA National Municipal Legal Practitioners Forum.

I bring to you comradely greetings from the collective leadership of the South African Local Government Association.

Programme Director,

The 1998 White Paper on Local Government remains a defining policy document, that offers insights into the political intentions and thinking around the concept of a “*Capable and Developmental State*”. On local government’s contribution towards a developmental state, the White Paper on Local Government acknowledges that “*local government has a critical role to play in rebuilding local communities and environments, as the basis for a democratic, integrated, prosperous and truly non-racial society*”. It further establishes the basis for a new developmental local government system, which should be “*committed to working with citizens, groups and communities to create sustainable human settlements which provide for a decent quality of life and meet the social, economic and material needs of communities in a holistic way*”.

Programme Director,

Fast forward some 26 years later, the reality in our

municipalities is far from this ideal of a developmental local government. It therefore becomes necessary that the following pertinent question is asked to all of us gathered here: "***Does the local government legislative framework enable us in Building a Sustainable, Responsive & People Centred Local Government System as envisioned by the White Paper on Local Government?***"

Programme Director,

In venturing into answering this vexing question, the following realities of our local government legislative framework are notably visible:

1. There is a plethora and overabundance of laws intended to structure the internal functioning and processes of local government with local government specific legislation **totalling 15**; regulations **totalling 14** of which the MFMA alone has a **staggering 10 regulations** and **36 Notices**;
2. There is a limited attempt to differentiate between municipalities - These laws and regulations treat all municipalities as the same irrespective of size or competence; often resulting in larger municipalities coping and smaller ones not;

3. The legislative **compliance** obligations placed on local government are excessive – for example; a medium to small municipality pays in excess of R5 million to meet Generally Recognised Accounting Practices (GRAP) requirements;
4. The Legislative **reporting** requirements are likewise excessive with approximately 75 legislative reporting requirements with monthly, quarterly and annual deadlines; and
5. Local Government is bombarded with **requests for information** from different spheres of government and organs of state - many of which are worsened by duplicate requests, asking for the same information.

A direct consequence if these unrealistic and, at times, impractical legislative obligations, placed on local government, is that it imposes huge financial, legal and administrative burdens on municipalities such that instead of using funds and human resources to deliver services they are directed towards meeting compliance and reporting requirements. A further consequence is that the legal framework requires highly skilled personnel for the implementation of particular processes, with municipalities opting to outsource such processes, leading to exorbitant consulting costs.

Programme Director,

In a very interesting 2008 paper by Professor Nico Steytler from the University of the Western Cape, he then already posed the following questions, which are very relevant to our conversations over the next two days:-

1. *“Is the sheer volume, style, nature and scope of the legislative framework facilitating or impeding the achievement of local government’s developmental mandate?” and*
2. *“Is the legal regime impeding two key values of decentralization, namely that municipalities are best placed to gauge community needs and secondly, that they should be sites of innovation and creativity in formulating localised responses to meeting those needs?”.*

Prof. Steytler argues, and as SALGA we concur, that the current plethora of laws may be guilty of strangulating local government, preventing it from executing its developmental mandate. This is so because the barrage of legislation and regulations, which are very prescriptive leaving very little room for discretion, especially in areas where it would’ve been necessary, are suffocating local government and in so doing stifles **innovation, experimentation and local responsiveness**, the very purpose of local self-government.

And so, Compliance with the legal rules have become more important than achieving the object of the rules.

The context of our contribution is that South Africa's decentralized system of government, local government, as one of the three spheres of government, plays an important part in the government of the country. It is the key site of delivery and development and is central to the entire transformative project of our constitutional dispensation. We therefore submit that fundamental in making municipalities developmental is an urgent need to sort out some of the lingering challenges arising from not only the current legislative framework but also the service offering that our internal legal services provide to our respective municipalities.

Programme Director

Municipal Legal Services is undoubtedly more challenging and complex than it has ever been. We do, however, believe that local government legal practitioners must start thinking creatively and coming up with new approaches to navigate this difficult terrain. We sincerely hope that this Forum will provide a spring board for triggering discussions and innovation in this space.

On behalf of the National Executive Committee, once more welcome to this National Municipal Legal Practitioners Forum.

I THANK YOU