

CLOSING THE GAP

Glenn Hollands proposes building capacity in communities to ensure that municipalities are held accountable for the use of public funds

Why do we insist on financial accountability to the public?

Some argue that focusing on corruption and mal-administration detracts from the important issues of poverty and underdevelopment. The notion that effective development and poverty alleviation can be delivered through a system that contains corruption and malpractice is a misnomer:

Corruption and mal-administration are inconsistent with the rule of law and the fundamental values of our Constitution. They undermine the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms. They are the antithesis of the open, accountable, democratic government required by the Constitution. If allowed to go unchecked and unpunished they will pose a serious threat to our democratic state.ⁱ

Despite extensive legal and policy provisions geared towards ensuring the practice of good local governance in South African municipalities, the reality of local governance practice often falls well short of the policy ideal. A growing gap between the rhetoric of policy intentions and citizen's day-to-day experiences of municipal governance runs the risk of alienating civil society. In the case of many semi-rural municipalities the danger is that municipal governance is increasingly regarded as a superfluous, wasteful institution whose operations depend on extensive support from other spheres of government. Furthermore, there is a growing (and largely valid) perception within civil society that financial reporting and accounting conventions are either ignored or manipulated to withhold key information from public scrutiny.

Despite vigorous efforts to improve planning, budgeting and financial reporting, highly dependent municipalities run the risk of becoming "dummy" institutions, which ultimately adds very little value to the lives of local citizens. Increasingly, there is a perception that local municipalities simply "skim-off" a significant portion of the financial transfers from national government for expenditure that has little bearing on development or the provision of basic services to indigent households. Predominantly rural

municipalities invariably have inadequate local revenue generation strategies in place and seem increasingly resigned to their fiscal dependence on national government.

Rates, for example, are not effectively levied or collected, despite the fact that Eastern Cape real estate has recently appreciated greatly in value. The danger is that citizens increasingly begin to perceive local government as lacking legitimacy and effectiveness. This will lead to a breakdown in civil cooperation with local government that might include widespread efforts to avoid paying service charges and property tax. The introduction of the Property Rates Act, and possible resistance to the expansion and consolidation of the municipal rates base, is also pertinent to this trend.

A critical step in stemming the growing alienation and local level conflict between citizens / civil society and local government is to bridge the gap between policy and practice that currently characterises the reporting of municipal financial matters to the public.

Citizens need to regain a sense of real control over the manner in which municipal finances are expended and reported. In theory, policy instruments for ensuring such accountability are well established in the Municipal Systems Act, the Municipal Finance Management Act, and Municipal Performance Management Regulations. It is the practicality and effectiveness of these instruments that needs to be demonstrated in order to strengthen civil compliance and cooperation with what many poor and middle-class residents regard as a weakening local state.

Examples of the kind of problems that the public may wish to monitor

The irregular awarding of contracts / procurement of services

Cape Town Metro: a R100m security contract that was awarded to Jama Security, a company until recently owned by the provincial MEC for Transport and Public Works, Mcebisi Skwatsha. Skwatsha resigned from the company six days before he had to declare his business interests

to the provincial parliament and passed ownership of the company on to his brother. The tender award was revoked following a court order in favour of the Western Cape Security Association.ⁱⁱ

Ill-advised performance bonuses

In Matjhabeng, the municipality's weakness in service delivery caused it to be targeted for Project Consolidate support, but in the same period (2005) the municipal manager received a performance bonus of R106 000 and the four other senior managers in the municipality were awarded bonuses of R90 000 each.ⁱⁱⁱ

Ill-advised spending priorities

Quakeni: In 2001/2002 more than 49% of the budget was to be spent on wages and salaries and only slightly less than 2% on maintenance and repairs.^{iv} Thus, the considerable capital projects that Qaukeni planned plus the existing infrastructure in the area would be unlikely to be properly maintained or repaired. In 2002/2003, the municipality had planned to spend more than R125m on capital projects but only slightly more than half a million on maintenance and repairs. This pattern would continue into 2004/2005 when salaries and wages would constitute about 45,7% of operating costs and repairs and maintenance just 1,8%.^v

Misuse of national transfers

Decreasing cost recovery from service provision and increased reliance on inter-governmental transfers seems to be a general pattern in the Eastern Cape. While the provision of the Equitable Share transfer was intended to ensure that the needs of indigent households were met, it was generally used to prop up the core running costs of the municipality, in particular salaries and allowances. This relinquishing of control over revenue may have increased the likelihood of corruption as the link between service provision and service payment became weaker. In other words, if local citizens were not paying for services they were less likely to ask how municipal revenue was used.

The example of Nyandeni where R343 000 was allegedly intended for housing subsidies but was used instead to pay salaries illustrates this point. It suggests a level of *institutional corruption* occasioned by the abuse of pro-poor policy rather than a simple act of fraud or graft.^{vi}

Greedy councillors

An amount of R732 398 was "overpaid" to six mayoral committee members on the Qaukeni council.^{vii} Similar problems occurred in Ndlambe and other municipalities between 2001 and 2004.

Sidelining audit committees

Are the internal safeguards within council not sufficient to prevent wrongdoing? An example from Nelson Mandela Metro suggests that provisions like audit committees cannot always be relied upon.

In September 2001, the local media in the NMM municipality began to report that executive mayor, Nceba Faku, had used the mayors discretionary fund to pay his own accounts. Payments made included parking fines, clothes and tuition fees for relatives.^{viii} The mayor also reimbursed his driver R27 000 for payments made on his behalf. In the 2000/2001 financial year, payments from the fund amounted to R87 000 and were R40 000 over budget.^{ix} The alleged "irregular expenditure" continued and further correspondence followed in January and again in July 2001. The audit committee questioned whether the principles of "good corporate governance" had been followed and asked to meet the mayor so that he could explain why private payments from the fund continued after the committee had expressed its concern. The chairperson of the audit committee, Paul Leese, accepted that the committee had no legal standing to enforce its request but pointed out that his committee had been trying for 12 months to clarify the use of the discretionary fund.^x Leese also referred to an opinion from the Auditor-General that the matter should be explained. In reply the municipal manager, Graham Richards, suggested that the audit committee had overstepped its authority:

In that the executive mayor is not accountable to your committee, he is not inclined to provide you with the explanations in the current context^{xi}

The reworked 2003 provisions of the MFMA appear to remedy this in a partial way only i.e. the audit committee functions at the pleasure of council and senior politicians.

In many cases, the public who were affected by these problems were the last to know and, in some cases, never received any explanation of why critical development funds had been misdirected or squandered. The interaction between these citizens and the municipality began when they took to the streets with burning tyres and a list of grievances directed against the municipality.

Informed and active citizen's groups, who are clearly informed of their rights, offer at least three potential benefits:

1. They would act as a deterrent to councillors and officials with a predilection towards corruption i.e. the potential wrong-doers would be dissuaded by fear of exposure.
2. If problems of irregular practice began to develop these would be detected early and pressure from civil society organisations might persuade council to "change tack" and so avoid the problem from developing into full-scale corruption / public protests.
3. Local community groups would be able to distinguish between outright corruption and administrative shortfalls resulting from weak capacity. They could then prioritise and design their responses accordingly.



The Legislative and Policy Tools for Monitoring

The following are examples of how legislation might be used to improve public accountability:

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| 1 | Problem | Possible solution |
| | Key issues in the AG report do not become public knowledge because of tardiness in presenting the report to council. Until such time as the report is presented to council it is not regarded as a public document. | The right of a municipality to withhold AG reports from public scrutiny by simply failing to table them in council is open to question. |
| Legislation | | |
| In terms of section 21 (3) of the Public Audit Act No. 25 of 2004: Audit reports must be tabled in the relevant legislature in accordance with any applicable legislation or otherwise within a reasonable time. If an audit report is not tabled in a legislature within one month after its first sitting after the report has been submitted by the Auditor-General, the Auditor-General must promptly publish the report. Furthermore, in terms of section 27 (2) of the Municipal Finance Management Act No. 56 of 2003: The mayor of a municipality must, within seven months after the end of a financial year, table in the municipal council the annual report of the municipality and of any municipal entity under the municipality's sole or shared control. And in terms of section 27 (4): The Auditor-General may submit the financial statements and audit report - (a) of a municipality directly to the municipal council, the National Treasury, the relevant provincial treasury, the MEC responsible for local government in the province and any prescribed organ of state, if the mayor fails to comply with subsection (2). | | |
| 2 | Problem | Possible solution |
| | The council meeting at which the AG's report is tabled gives insufficient time to the report and does not allow discussion or questions related to the details of the report. | Civil society organisations to liaise with council around this meeting and ensure that the AG is properly notified of meeting and prepared to answer questions. Where does this right arise in law? |
| Legislation | | |
| Section 130 (1) of the Municipal Finance Management Act No. 56 of 2003 can be invoked: The meetings of a municipal council at which an annual report is to be discussed or at which decisions concerning an annual report are to be taken, must be open to the public and any organs of state, and a reasonable time must be allowed - (a) for the discussion of any written submissions received from the local community or organs of state on the annual report; and (b) for members of the local community or any organs of state to address the council.(2) Representatives of the Auditor-General are entitled to attend, and to speak at, any council meeting referred to in subsection (1). | | |
| 3 | Problem | Possible solution |
| | The municipality is in an obviously poor financial position and does not appear to be collecting revenue due to it or appears to be unfairly targeting select service consumers / ratepayers. | Carefully scrutinise the annual report of the municipality and assess how it is doing in terms of raising revenue. What provision may be invoked? |
| Legislation | | |
| Check compliance with section 121 (3) (f) and (g) namely that the accounting officer provide: (f) an assessment by the municipality's accounting officer of the municipality's performance against the measurable performance objectives referred to in section 17 (3) (b) for revenue collection from each revenue source and for each vote in the municipality's approved budget for the relevant financial year; (g) particulars of any corrective action taken or to be taken in response to issues raised in the audit reports referred to in paragraphs (b) and (d). | | |
| 4 | Problem | Possible solution |
| | There are many rumours, but no hard facts around the remuneration payable to councilors. This fuels allegations of greed and nepotism i.e. that councillors are receiving irregularly high payment. | Ensure that there is compliance with the following section of the Municipal Finance Management Act. |
| Legislation | | |
| 124 (1) The notes to the annual financial statements of a municipality must include particulars of - a) the salaries, allowances and benefits of political office-bearers and councillors of the municipality, whether financial or in kind, including a statement by the accounting officer whether or not those salaries, allowances and benefits are within the upper limits of the framework envisaged in section 219 of the Constitution. | | |

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| 5 | Problem | Possible solution |
| | Councillors are alleged to have intervened in the tendering process to ensure that municipal contracts are awarded to friends or relatives. | Using the necessary legal channels, ensure that sections 117 and 118 have been complied with and take necessary legal steps where clear contravention is evident. |
| Legislation | | |
| Councillors are barred from serving on municipal tender committees 117. No councillor of any municipality may be a member of a municipal bidcommittee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer. Interference 118. No person may - (a) interfere with the supply chain management system of a municipality or municipal entity; or (b) amend or tamper with any tenders, quotations, contracts or bids after their submission. | | |

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| 6 | Problem | Possible solution |
| | There is little indication that council is getting informed and independent opinion on its risk management strategies, internal auditing, proper controls and performance assessment. | Using provisions of the MFMA section 166 (1) - (6) check that the council has a properly constituted audit committee, professionally competent and independent and capable of advising council on all the areas of concern. Consideration may be given to getting local professionals such as auditors to volunteer some time to audit committees. |
| Legislation | | |
| The audit committee must: (a) consist of at least three persons with appropriate experience, of whom the majority may not be in the employ of the municipality or municipal entity, as the case may be; and (b) meet as often as is required to perform its functions, but at least four times a year. (5) The members of an audit committee must be appointed by the council of the municipality or, in the case of a municipal entity, by the council of the parent municipality. One of the members who is not in the employ of the municipality or municipal entity, must be appointed as the chairperson of the committee. No councillor may be a member of an audit committee. | | |



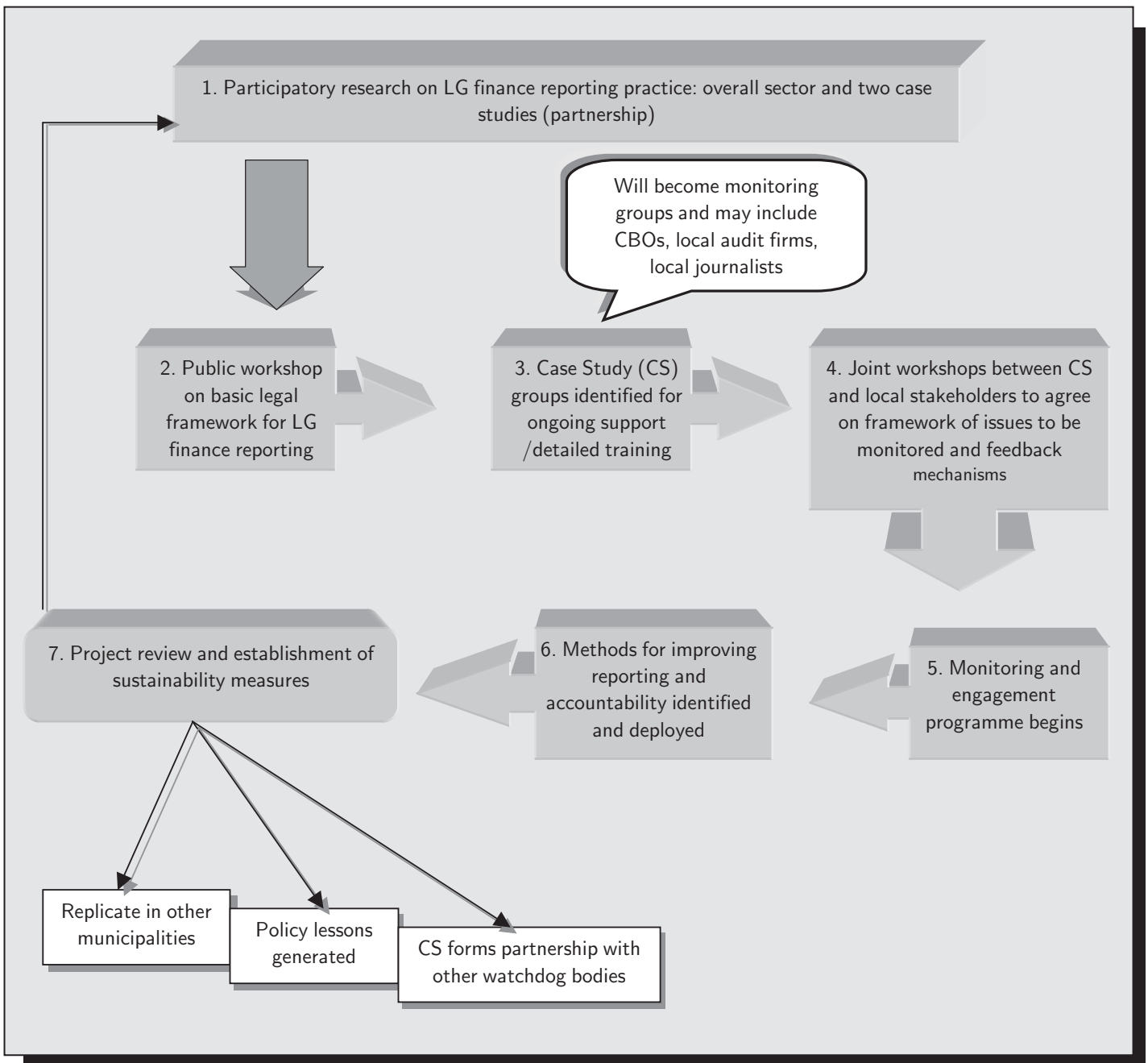
Community-based Monitoring of Local Government Financial Accountability

In 2005, amidst countrywide protests against poor municipal services and apparent abuse of public finance by municipalities, Afesis-corplan and the Project for Conflict Resolution and Development began to consider the challenge of improving municipal finance accountability at community level. The project described on page 8 emerged as a possible response. Preparatory research has begun on the project and both NGOs are in the process of building links with government and civil society stakeholders.

Overall Objectives

- Improve municipal financial reporting to the public as per policy framework by utilising and adapting proven monitoring and assessment tools developed by the project partners.
- Empower and equip civil society groups with the necessary monitoring and analytical tools to engage with municipal finance reporting conventions.
- Engender a sense of ownership and responsibility for municipal finances in local civil society.
- Establish a local **contract of governance** between civil society and local government where transparent municipal financial management is “rewarded” by increased compliance by citizens with the policies for recovering service costs and rates income.

Method for community-based financial accountability project



Municipalities and organisations from civil society who would like to participate in the community-based financial accountability project, can contact Glenn Hollands at Afesis-corplan on 043 743 3830.

References

- i Judge Arthur Chaskalson in his capacity as president of the SA Constitutional Court. Extract from judgement in the case (CCT 27/00) in the matter between the SA Association of Personal Injury Lawyers and WH Heath head of the SIU and others, September to November 2000
- ii The Cape Times, 7 June 2005
- iii www.da.org.za/da/Site/Eng/campaigns/2006.asp accessed 2 April 2006
- iv Ibid

- v National Treasury Local Government Database 2005: Table A1
- vi Report of the Standing Committee on Housing and Local Government, 16 October 2001
- vii Daily Dispatch, 11 November 2004
- viii The Herald, 21 November 2001
- ix Ibid
- x Ibid
- xi ibid