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WELL-FUNCTIONING MUNICIPALITIES - PART OF PRESIDENT RAMAPHOSA'S DREAM OR A NEVER-ENDING NIGHTMARE?

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There were two eye-catching issues in the media this past week.

South Africa's largest chicken producer, Astral, announced that its chicken plant in Standerton no longer receives sufficient water from the local Lekwa Municipality (Standerton). This plant is the largest on the continent and slaughters two million chickens weekly. In addition, Astral's feed mill in Standerton is also the largest on the continent - one that was recently built at significant cost, following written assurances by the Municipality that sufficient water and electricity would be available. The reason for the lack of water supply to the largest employer in town? Ongoing poor maintenance of water infrastructure - pumps and pipe ducts - needed to pump water from the Vaal River 8 km away.

The second issue is the Annual Report of the Auditor-General, Kimi Makwetu, regarding the financial wellbeing of South Africa's 257 municipalities - where only 18 received a "clean audit" - even less than the meagre 33 last year. This Annual Report is a recurring phenomenon, but it gets worse. The Auditor General (AG) writes that most municipalities ignore their findings, and even intimidate audit staff and try to exert pressure to change or exclude findings from their reports. Twelve of the 18 clean audits were in the Western Cape, while across Limpopo, North West and Free State there was not a single clean audit.

The Constitution is clear: there are three spheres of government that are "distinctive, interdependent and interrelated". It is also called "co-operative government" (section 40 (1)). Section 41(1)(c) provides that all spheres of government must "provide effective, transparent, accountable and coherent government for the Republic as a whole" - this includes local government. In addition, section 152(1) states that the objectives of local government include the provision of "democratic and accountable government" and sustainable services, the promotion of social and economic development, and a safe and healthy environment. A municipality must, according to section 153(a), "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". It can't be clearer. And yet it doesn't happen. According to the AG's report and Astral's experience, this is largely absent. The majority of municipalities in South Africa do not therefore fulfil their constitutional obligations.

In Astral's case, there was also a great deal of spite, territoriality and personal interests that played a role. Since water problems began in March, the Municipality (both officials and politicians) have been largely unavailable. Despite a crisis, telephones were not answered and there was no one in the office. Despite the fact that MISA (the Municipal Infrastructure



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Support Agency, which is supported by the State and comprised of former engineers) previously identified the problems with water infrastructure, nothing was done.

When Astral - at the beginning of the crisis - requested that the Deputy Minister of the Department of Trade and Industry come to facilitate a discussion with the Municipality, he was treated very badly by local officials and politicians - because they felt that he had no right to interfere in local matters! It is already widely known that following Sasol's R35 million donation to the Municipality, there was a physical tussle in a council meeting over who would control the money. In Astral's case, officials equally patronisingly stated that any financial contribution made by Astral would not necessarily be used for the water crisis, but would be used at the discretion of the Municipality. This was said knowing full well that the majority of the "municipal" pumps were bought and maintained by Astral. At one point there were even strong suspicions that, in an attempt to avoid recriminations from the community that were not receiving water, the Municipality led the community to believe that Astral were stealing "their" water. This led community members to take the law into their own hands and to turn off and damage the supply valves to Astral.

The AG attributes the desperate state of municipalities' finances to the lack of accountability and inadequate efforts to curb misconduct or fraud in financial or supply chain management. Non-compliance that could cause financial losses and damages is at the highest level in years. 92% of local authorities are not compliant with governance and procurement legislation. Another reason for the poor financial standing of local authorities, is their inability to collect debt. In addition, the audit report focuses on the many failures in infrastructure development and maintenance, including roads, sanitation and water. Many municipalities do not even have routine maintenance policies.

What is clear from all these issues is:

- Most municipalities in South Africa have become self-righteous islands of power, "a law unto themselves". They do not adhere to the most basic of constitutional guidelines. There is, based on the Astral example, also no respect for other spheres of government. The fact that rational and necessary savings guidelines for municipalities issued by the Minister of Finance, Tito Mboweni, could be stopped by the local government body SALGA, reinforces this view.
- The majority of municipalities have been ignoring the findings and recommendations of the AG for years and continue with unauthorised expenditures, the arbitrary re-allocation of budgets, and allow questionable practices to continue. However, as shown in the Lekwa Municipality, financial management is but one of the problems. The general will and capacity to govern and manage municipalities well in the best interests of the community, is largely absent.

What can be done? In terms of financial management, the *Public Audit Amendment Act* came into operation on 1 April 2019, according to which the AG can refer substantive irregularities for further investigation, which could lead to prosecutions. The AG can also



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issue a certificate of debt where a municipality fails to take remedial action in the case of a financial loss - which could mean that officials are held personally liable. The question which was raised then, is still valid now. Will the AG have the capacity to do these referrals and will the prosecuting authority have the capacity (and the will) to take these referrals seriously - especially while they are dealing with “grand” corruption and such prosecutions could embarrass the ANC government and ANC members? Only time will tell.

An alternative solution is that national and provincial governments take stronger action against municipalities. Section 154(1) of the Constitution provides that the national 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”. However, in practice, strong action has rarely been seen. Even the constitutional principle that municipalities that do not function well can be placed under administration (section 139), has in the past had little or no positive effects, probably because most provincial governments do not have the (extra) capacity to rescue a failed municipality.

The repercussions of the Standerton case did catch the attention of the national government, particularly as it will have a negative impact on international and local investments, as well as job creation. Senior officials from the Presidency visited Lekwa recently and the Minister of Human Settlements, Water and Sanitation, Lindiwe Sisulu, publicly undertook to intervene. The results of this still remain to be seen, but the problem is that such interventions cannot occur on a case-by-case basis, or when reported by the media. There are over 200 municipalities where circumstances are probably just as bad. This crisis needs to be addressed in an organised manner by the relevant ministries, with the Minister in charge of Local Government, Dr Nkosazana Dlamini-Zuma, at the forefront.

As an emergency measure, the ANC as a political party should consider doing their own investigation into the problems caused by their members and branches in municipalities. The appointment of most local politicians and officials is influenced by the ideology of cadre deployment, affirmative action, patronage and the 80-9-9-2 model. In many municipalities, internal ANC faction battles are also the order of the day. Only the ANC as a political party can repair things - even if that statement is itself a pitiful commentary on the state of our constitutional democracy and the amalgamation of party and State.

The AG sums up the situation well - and although he speaks of municipalities, it could just as easily be applied to the three spheres of government and the ANC as a political party. He says that the leadership in any organisation sets the example. If the leadership is unethical, if the leadership ignores good corporate governance, compliance and controls, and if the leadership itself is not committed to transparency and accountability, it will trickle down to the lower levels in the organisation.

This has already happened in South Africa. Local communities therefore reap the harvest of poor or no service delivery. Local businesses are burdened with poor local infrastructure and sometimes no services. And at some point, the ANC government is going to suffer, when voters turn away from the party. The EFF is an ominous example of this.



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Perhaps well-functioning municipalities should become part of President Ramaphosa's dream
- otherwise this will remain a recurring and ever worsening nightmare ...

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