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## **MAJORITY OF LOCAL AUTHORITIES IN BREACH OF THE CONSTITUTION**

*By Theuns Eloff: Executive Director, FW de Klerk Foundation*

Section 152 of the Constitution describes the objectives of local government as providing democratic and accountable government, ensuring the provision of services, promoting social and economic development, and promoting a safe and healthy environment. Section 195 offers a set of basic values and principles governing public administration, amongst these a high standard of professional ethics, the effective use of resources, and accountability.

The most recently-released Report by the Auditor-General (AG) on the local government sector paints a bleak, and in many instances, deteriorating picture of the state of financial management and oversight, one that is wholly inconsistent with the laudable and enforceable principles of the Constitution. This comes after 23 years of democratic government and repeated appeals by the AG to local politicians and officials to get their house in order. Local government is the lens through which ordinary South Africans experience constitutional guarantees - and failure of local government erodes public trust in the constitutional state.

The AG rated the financial health of 65% of municipalities as either concerning or requiring intervention. In total, 27% of municipalities were in a particularly poor financial position, with material uncertainty regarding their ability to continue operating in the foreseeable future.

### **What exactly is going wrong?**

The poor state of affairs in local government is caused and exacerbated by lack of capacity, especially in financial management positions. 27% of municipalities have no CFO's, and vacancies exist in many other positions, too. To enhance their capacity, municipalities then appoint consultants - but they don't have the capacity (or perhaps the will) to manage these consultants optimally. In 57% of municipalities, consultants did not correct or detect errors on the financial statements, and the AG's office had to do so. And yet, reliance on these consultants cost local authorities a mammoth R838 million. The Report notes that *"only 31% (rather than the reported 62%) of municipalities would have received an unqualified audit opinion had we [AG's office] not identified the material misstatements and allowed them to make corrections"*. This is extremely worrying and a further indictment on the capacity of local authorities.

Poor or lack of financial management invariably leads to irregular or wasteful expenditure. Irregular expenditure has increased by over 50% to R16.81 billion - the highest since the AG started tracking the values. The amount could be even higher, as a third of the municipalities disclosed that the full amount was not known and 24% were qualified as the amount they disclosed was incomplete.



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Irregular expenditure is not necessarily wasteful expenditure or fraud. Irregular expenditure means that somewhere in the process that led to the expenditure, the municipality did not comply with the applicable legislation (for example, no competitive bidding or did not obtain three quotations). Whether fraud has been committed or corruption occurred, has to be determined by follow-up processes. However, the Report laments *“the track record of local government in dealing with irregular expenditure and [that] ensuring that there is accountability is poor”*. 54% of the municipalities that incurred unauthorised, irregular and/or fruitless and wasteful expenditure in 2014-15 had not completed all investigations by the end of 2015-16. To put this situation into perspective, the year-end balance of irregular expenditure accumulated over many years and not been dealt with (through recovery, condonement or write-off) was R41.7 billion.

The above leads to the real worrying issue:

*“If a person has monopoly over goods or services and has the discretion to decide whether someone gets such goods or services or how much someone receives, and there is no accountability whereby others can see what that person is deciding, we will tend to find corruption.”*

It is significant that the AG decided to put this recipe for corruption into the Report. It shows that he at least suspects that all is not well. He also criticises municipalities for dragging their feet in implementing supply chain management (SCM) reforms introduced by the National Treasury. Furthermore, there was no improvement in addressing concerns raised year after year about contracts being awarded to employees, councillors, their families and other state officials, as well as documents going missing when a procurement process had to be audited.

This chilling paragraph should shake politicians of all parties out of their slumber:

*“Last year, we reported 1 648 instances of suppliers submitting false declarations of interest as part of the procurement processes, but 47% of the municipalities did not investigate any of the cases we reported to them - this year, we reported 2 015 instances. Instances of employees not declaring interests had an even lower investigation rate, with 64% of the municipalities not investigating any of the cases.”*

One could go on to point out the Report’s highlighting of the lack of policies and plans for the maintenance of water infrastructure (more than 50%). Further, a quarter of municipalities have not budgeted anything for maintenance and more than 50% having no policies or maintenance plans for road infrastructure.

### **Some good news**

The Report finds that national government grants for municipal infrastructure, urban settlement development and the public transport network were fully utilised and were used for their intended purpose at the vast majority of municipalities. There was also momentum in the right direction with a few municipalities.



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### **What can be done?**

Irregular or wasteful expenditure of R41.7 billion is a great cause for concern. Local government is the first point of contact with democratic governance and institutions. The lack of proper financial and general management has a direct, negative influence on the constitutional responsibility of local government to provide access to basic services. The AG's report emphasises that this should be done in an effective and accountable manner. It is when bread and butter issues are neglected, that communities take recourse - turning on another, and burning local structures such as libraries and halls. The core of the problem is that there are little, if any, consequences for poor performance at local government level.

In the first instance, local councillors and municipal managers should be held accountable for this state of affairs. Provincial government, as part of our cooperative system, should also be held accountable. If a provincial government official or politician reads this AG Report and fails to intervene in terms of section 139 of the Constitution, they themselves are co-responsible. Of course, the question arises whether provincial governments are any better off in terms of financial capacity, vacancies and cadre deployment. Finally, the Ministry of Cooperative Government cannot sit by idly and watch this slow catastrophe unfolding... having the majority of local authorities in breach of the Constitution.