



THE KOU-KAMMA S139 INTERVENTION

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DBSA

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Generic Nature of Lessons

- ❑ A learning opportunity in efforts to assist local government to become efficient, effective and sustainable;
- ❑ Kou-Kamma Municipality is the subject of the case study. It is however possible to discern lessons from it that has generic application across the local sphere of government in South Africa.

Background

- ❑ Mr. LA Scheepers has been deployed to the Kou-Kamma Municipality as institutional expert since March 2009;
- ❑ Joined an existing team of deployees in the municipality, including financial and technical experts and three technical YP's;
- ❑ Team has subsequently been strengthened by two finance YP's;
- ❑ The technical expert that was there initially has been replaced by another technical expert;

Background cntd

- ❑ In first two months performed a diagnostic review, identifying challenges facing municipality and making recommendations about how these should be addressed;
- ❑ Started to coordinate the work of the deployees in the municipality;

Kou-Kamma Municipality

- ❑ Situated in the south-west corner of the Eastern Cape Province, bordering on the Western Cape Province.
- ❑ The geographical area of the Municipality is 3,574 km².
- ❑ Characterised by two distinctive areas, i.e. the coastal belt (Tsitsikamma), and the inland area of the Langkloof.

Kou-Kamma Municipality

- ❑ The two areas are separated by the Tsitsikamma mountain range.
- ❑ Both Tsitsikamma and Langkloof are characterised by fertile soils that are extensively farmed or used for forestry purposes.
- ❑ Also characterised by the scattered nature of human settlements.
- ❑ Predominantly rural with some urban characteristics;
- ❑ High unemployment and low levels of literacy;

Tsitsikamma

- ❑ A diverse and fast growing economy driven by tourism and agriculture;
- ❑ A fast growing population linked to the economic opportunities;
- ❑ Indigenous forests;
- ❑ Holiday destinations; and
- ❑ Adequate water supply.

Langkloof

- ❑ An economy dependent on agriculture;
- ❑ Labour requirements that are often seasonal in nature;
- ❑ The impact of global economic factors and exchange rate fluctuations;
- ❑ Lack of sufficient water supply, with additional pressure due to a high population growth related to migrant labour; and
- ❑ Being prone to extreme climatic variations resulting in severe droughts and flooding.

Reasons for intervention

- ❑ The institutional, financial, service delivery and governance capacity of the Municipality has been eroded over many years;
- ❑ This process of erosion has accelerated since mid 2008;
- ❑ The Municipality is unable to fulfil a number of its executive obligations;
- ❑ The crisis of financial viability and management resulted in serious and persistent material breach of its obligations to provide basic services and to meet its financial commitments.

Legal framework for interventions

- ❑ Based on constitutionally enshrined and inviolate sphere of municipal government;
- ❑ Legislative and executive authority vests in Council;

Provincial powers iro local government

- ❑ Provide for the monitoring and support of local government (s155(6)(a) of the Constitution, read with s154(1) to “support and strengthen” local government);
- ❑ Promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs (s155(6)(b) of the Constitution); and
- ❑ See to the effective performance by municipalities of their functions, by regulating the exercise by municipalities of their executive authority (section 155(7) of the Constitution).

ConCourt certification judgment

“Ambit of provincial powers and functions in respect of [local government] is largely confined to the supervision, monitoring and support of municipalities.”

Section 139(1) of the Constitution

- ❑ When a municipality cannot or does not fulfill an executive obligation, provincial executives may intervene by taking **any appropriate steps** to ensure fulfillment of that obligation, including-
 - Issuing a directive to the **Municipal Council**, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations;
 - Assuming responsibility for the relevant **obligation** in the municipality; or
 - Dissolving the **Municipal Council** and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.

Section 139(1) of the Constitution

- ❑ Intervention by a provincial executive in the affairs of a municipality is always a political matter;
- ❑ The municipal council, a body constituted of elected politicians, is where the legislative and executive authority of a municipality is vested (refer s151 (2) of the Constitution and s4 (1) of the Municipal Systems Act);

Section 139(1) of the Constitution

- ❑ It therefore follows that the intervention, whichever form it takes, must be aimed at the political level in order to have any effect at all.
- ❑ Obviously this intervention at the political level can also be accompanied by managerial and administrative support;
- ❑ Purpose of an intervention must be to assist the municipality to remove the deficiencies that gave rise to the intervention in the first place;

Characteristics of a successful municipality

- ❑ Able to perform the functions assigned to it by the constitution and other legislation efficiently, effectively and sustainably;
- ❑ Involves people in their own governance;
- ❑ Has the ability to raise the revenue due to it and manage it properly;
- ❑ Provides a safety net of free basic services to ensure that the poorest of the poor have access to the minimum level of service;
- ❑ Ensures that all its actions have human wellbeing, economic success and ecological responsibility as their aim; and
- ❑ Ensures that its short-term actions are aligned with medium- to long-term planning.

Structure of Kou-Kamma intervention

- ❑ Provincial Executive through MEC for LG&TA assumed responsibility for the following areas:
 - Financial management;
 - Corporate services incorporating general administration and human resources;
 - Infrastructure development and disaster management; and
 - Public participation.
- ❑ The intervention would be for an initial period of three months, that will be reconsidered;
- ❑ The MEC appointed an administrator to represent the MEC and assist the MEC in implementing the decision for the MEC to assume responsibility for the areas identified above.
- ❑ MEC also appointed the administrator as acting municipal manager.

Successes to date

- ❑ Situation in the municipality stabilised to a large degree;
- ❑ A recovery programme has been developed;
- ❑ A discernable improvement in matters such as time-keeping and leave management;
- ❑ A stop was put to the illegal practice of using conditional grants to fund operational expenditure;
- ❑ There is a more honest assessment of the financial position of the Municipality;
- ❑ A programme of stringent austerity measures is put in place;

Successes to date cntd

- ❑ Major improvements have been effected in the reporting of spending on the MIG funds allocated to the Municipality;
- ❑ Implementation of the MIG Flood Disaster Programme (R177 million) and the DBSA Short Term Drought Relief Project (R10 million) has brought and is continuing to bring improved service delivery to the communities of the Municipality;
- ❑ A strategy was developed to leverage the interest and VAT claimable on the above amounts as additional revenue for the Municipality;

Challenges to date

- ❑ Dual role of administrator/municipal manager disturbs the power relations in the intervention;
- ❑ Absence of direct interaction between MEC and administrator;
- ❑ The financial position of the Municipality is precarious and it is not able to meet its monthly expenditure commitments, resulting in the administrator spending most of his time placating internal and external creditors;
- ❑ The relationship between various stakeholder groups in the Municipality is characterised by deep suspicion about each other's intentions;

Challenges to date cntd

- ❑ A total lack of understanding amongst the majority of Councillors of the financial and administrative constraints that the Municipality is facing;
- ❑ The very limited management capacity in the municipality:
 - Long term absence of 4 out of six top management positions; and
 - Limited local government and management experience of remaining managers;
- ❑ Some councillors, managers, trade union members and community members are actively working against the intervention;

LESSONS LEARNT TO DATE

Depiction of current approach to municipal incapacity



Palliative approach vs. creating sustainability

The capacity of the Kou-Kamma Municipality to fulfil its constitutional, legislative and developmental responsibilities has reached the levels of decay that is described in this review and numerous other investigations done in the past due, *inter alia*, to a failure to act decisively to address the fundamental reasons for the perennial underperformance of the municipality. The time to change this mode of operation is now and decisive action should be taken to put the municipality on a path to being developmental, efficient, effective and sustainable.

(Diagnostic Review, March 2009)

Lessons to Date

- ❑ Interventions are expensive, both in financial terms as well as the impact on institutions and individuals. All efforts must therefore be made to prevent municipalities degenerating to the extent that an intervention is necessary;
- ❑ When a municipality reaches the point where an intervention is required it means that both the municipality and the provincial government failed to fulfil its constitutional mandate. It cannot be expected of the spheres of government whose failure has led to the intervention to turn the situation around;

Lessons to Date cntd

- ❑ The palliative approach to municipal turnaround must be replaced with measures that will develop sustainability;
- ❑ The day to day running of municipalities must be separated from the turnaround efforts;

Lessons to Date cntd

- ❑ Interventions that are not accompanied by financial resources are destined for failure; and
- ❑ People appointed as administrators in terms of a section 139(1) intervention must be provided with the powers needed to turn the situation around as well as the political backing of the MEC for Local Government as well as the Provincial Executive.

Recommendations



NO	RECOMMENDATION	OBJECTIVE	RESPONSIBLE
1	<p>Develop national manual to govern s139(1) interventions by provincial governments, including:</p> <ul style="list-style-type: none"> • Focus on creating sustainability as opposed to palliative approach; • Clearly spell out powers of role-players in interventions; • Funding models for interventions; and • Benchmarks for success or failure of interventions and turnaround initiatives. 	Create uniformity across provinces when intervening in local government.	CGTA
2	Consider creating national capacity for interventions and amend constitution and legislation to make interventions in local government a national as opposed to provincial competence.	Improve potential for interventions to be successful.	CGTA

Recommendations cntd

NO	RECOMMENDATION	OBJECTIVE	RESPONSIBLE
3	Review existing policy framework for municipal demarcation.	Create geographic and institutional entities with more chance of success.	CGTA MDB
4	Create qualification criteria of councillors that balance the need for technical expertise with representative democracy.	Improve the capacity of Municipal Councils.	CGTA Salga
5	Professionalise local government management.	Regulate the appointment of managers in local government.	CGTA
6	Review fiscal arrangements in respect of local government.	Create a more equitable fiscal environment for local government.	CGTA NT FFC

Recommendations cntd

NO	RECOMMENDATION	OBJECTIVE	RESPONSIBLE
7	Review two tier system of local government and division of powers and functions.	Create a more efficient and effective system of local government and institutionalise shared services.	CGTA
8	Create real economy of scale through standardisation of IT systems, budget formats, etc.	Improve efficiency and effectiveness of municipalities.	CGTA Provincial departments of local government
9	Improve capacity of provincial departments of local government to monitor and support local government.	Arrest the erosion of municipal capacity before interventions are necessary.	CGTA Provincial departments of local government
10	Appoint skilled, knowledgeable and experienced persons in municipalities.	Improve management capacity of municipalities.	Municipal Councils Municipal Managers



THANK YOU