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Local Governance

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This chapter looks at local governance in the context of the national integrity system. Local councils provide local services and incur financial expenses within the statutory framework set by the central government. The chapter first looks at the legal and policy framework to ascertain whether it facilitates transparency, accountability and integrity in the local government system. Secondly, the accountability of local governance is examined. Thirdly, the relationship between local government finance and the local integrity system is explored. Lastly, anti-corruption agencies are examined to assess their effectiveness in fighting corruption at local government level. The chapter concludes that local government is not actively involved in anti-corruption activities and makes some key recommendations.

Legislative and policy framework

The powers and responsibilities of democratically elected government have been conferred upon it through various Acts of Parliament and statutory instruments. Local government structures are established by parliamentary legislation. Local government is subordinate to the three constitutional organs of the state, namely, the legislature (Parliament), the executive (the President), and the judiciary (common law courts).

Councils derive their existence and powers from these legislative and executive organs of state. They are a creation of executive legislation passed through the parliamentary processes. Local government legislation provides for the framework within which municipal councils operate. The principle of *ultra vires* is applicable in Botswana's local government system, as councils are required by law to carry out their functions within the provision of the law. If any council acts contrary to the stipulated law, it would be deemed to have acted illegally and its actions would be null and void. Local autonomy of local councils is circumscribed, however, due to their excessive dependence on power and resources from central government. The lack of financial autonomy and resources compromise the accountability, transparency and integrity of local authorities.

The judiciary system in Botswana only intervenes if a person is aggrieved by the actions or policies of a locality. Therefore, there must be a complaint by a person with legal standing before the courts will review the decisions or actions of a local authority.

The internal management of councils comprise the political (policy making) and administrative (operational) arms of local government. Major decisions in a council are taken in full council meetings. The bulk of the work of councils is carried out through council committees, which cover most of the vital statutory functions of local government. The political branch in councils is made up of the mayor or council chairperson and councillors who have the power to approve policies and programmes, budgets and bylaws. The mayor or council chairperson presides over council meetings and undertakes civic and ceremonial duties within the council's area of jurisdiction.

However, mayors and council chairpersons do not possess executive powers. Botswana Association of Local Authorities (BALA) president Mr Kentse Rammidi is of the view that '...councils merely operate as divisions within the Ministry of Local Government' and that concentration of power in the ministry 'makes it difficult for us to do certain jobs'.¹ The chairperson of North West District Council shares the same views, and has decried the lack of executive power by political executives of councils in Botswana.² These sentiments have

1 Mmegi. 2005. 21 November.

2 Ibid. 2006. 26 January.

also been expressed by the mayor of Lobatse Town Council, Mrs Bosilong.³ According to her, mayors and council chairpersons are subordinate even to the administrative functionaries of councils because the chief council secretary exercises executive powers.

A council secretary or town clerk heads the administrative arm of council. Most council employees are appointed by the central government through the department of Local Government Service Management (LGSM) in the Ministry of Local Government. Generally, council employees are responsible for proffering advice, implementing decisions and administering the day-to-day delivery of public services to the local population. Theoretically, council employees are accountable and responsible to the mayor or council chairperson and councillors for their performance. Practically, they are responsible and accountable to the council secretary and to the Ministry of Local Government who is their employer.

The core legislative framework for local government is contained in the following laws and statutory instruments: Local Government (District Councils) Act, 1965; Townships Act, 1965; Unified Local Government Act, 1977; and the Town and Country Planning Act, 1980. These laws provide local governments with a variety of functions and roles, of which the major functions are the provision of primary education and primary health care; water provision in rural areas; construction and maintenance of rural roads, and community development. Other optional functions, which are mostly undertaken by urban councils, are developing and maintaining leisure and recreational activities; the provision of street lighting; the administration of abattoirs, and the management of stray cattle (*matimela*). Local government legislation empowers central government to exercise legal and administrative oversight over local authorities. The national government has overriding powers over local government affairs. It controls decisions, personnel, finance, laws and operational matters of local government bodies.

Representation and accountability

Regular council meetings are open to local communities to attend and learn about projects and programmes earmarked for their localities. According to section 20 of the Local Government Act and Townships Act, members of the public and the media are free to attend the deliberations of councils. However, councillors are empowered by law to forbid the public and media access when discussing sensitive issues. This has to be done through a motion in the chamber supported by the majority of councillors. Most of the *in camera* meetings are those of committees and sub-committees of councils delegated to make decisions on specific matters which may be controversial or sensitive. Even their reportage at full council meetings

³ Interview with the author. 15 March 2006.

is out of bounds for the press and the public. Resolutions of councils emanating from these committee reports are made public. Local government legislation also provides for access to information related to local government bodies.

Section 10 of the Local Government (District Councils) and Township Act compels local officials to disclose any pecuniary interest in dealing with matters in local government. In practice, this has not been fully complied with. Councillors and local bureaucrats do engage in matters that involve conflict of interest. Interestingly, there are no penalties in the Act for transgression of this statutory provision. Local officials have gone unpunished for violating this legislation. Political leaders are helpless in effectively ensuring that council employees abide by the codes of conduct applicable to them. They do not possess the political power to make decisions and hold employees accountable to local community they are expected to serve.

There is no legislation compelling local politicians and local bureaucrats to involve local people in decision-making processes. It is assumed that local government structures have a statutory duty to develop participatory strategies to involve citizens in local governance. Local citizens are not eager to pay for local services provided by councils and fail to attend *kgotla* meetings. Local government bodies are not financed through taxes paid by local communities, but largely through government grants and aid. The local government tax was abolished in the 1970s in spite of its enormous contribution to local self-generating revenue at the time of its demise. At the same time, central government cancelled primary school fees and denied local authorities the right to tax their residents. If the needs, preferences and priorities of local residents are not met, they have no substantive leverage over councils and councillors. Councils are bound to account and be responsible for their operations to the central government as they are practically agents of the centre.

Accountability and transparency are basic tenets of local governance. Those imbued with authority and power to decide on local issues should be transparent, responsive and accountable for their actions. There are major deficits in accountability and transparency in the management of local government activities. Local communities allege corrupt practices by local government officials in the delivery of public services. There is a perception that corruption is more widespread in local councils than in central government.

Administrative accountability is about local officials being answerable for the delivery of public services. Political and personal loyalties in local government negatively affect the performance of local councils. Officials do not see councillors as their masters or employers, as they are recruited, promoted and fired by central government. The removal of council employees from the management of councils and councillors has alienated them from local authorities. This has further undermined any potential for a good relationship between councillors and administrative officials. The two sectors of local government are suspicious of each other and accuse one another of corruption.

Finance and integrity

Various local government Acts provide for sourcing of revenues, their management and accounting. The Local Government (District Councils) Act and the Townships Act require municipal councils to raise money from both internal and external sources of revenue. They outline the following sources of revenue for local councils: rates and taxes; rents; licenses and permits; interests on investments; royalties; and donations, contributions and endowments, as well as central government grants. While there may be numerous internal sources of funds, their contribution to the coffers of councils is insignificant. It is estimated that these sources contribute 10–20 percent of municipal revenues. The rest comes from central government in the form of deficit grants determined by central government administration.

Central government is empowered by local government legislation to issue instructions from time to time concerning the general administration, supervision and control of the general funds created by each local government institution. It is mandatory for each council to establish and maintain a general fund to record money acquired and expenses incurred. The Minister of Local Government on the advice of the Minister of Finance and Development has oversight responsibility over the administration of this fund. Power and responsibility have not been sufficiently devolved to local councils, and revenue-raising powers are concentrated at the national level. Principal sources of revenue for local government are central government grants and subsidies, which bring excessive controls over local government.⁴ This centralisation of power and resources undermines local democracy and citizen participation in decision making over the allocation of resources. The local government system has been constantly altered and demeaned by both national political leaders and senior civil servants in Gaborone and beyond.

Local councils are required to open and maintain a bank account and may obtain overdraft facilities within the legal and fiscal framework. It is also provided that if the overdraft exceeds one-third of the revenue of council, prior authorisation must be sought from the Minister of Finance and Development Planning, who acts as a custodian of public finances. Municipal councils have borrowing powers that are exercised in accordance with the advice of the Minister of Finance and Development Planning, who guarantees the loan acquisition by local government bodies. In addition, section 44 requires councils to maintain their accounts in accordance with financial instructions issued by the Minister of Local Government from time to time. Books of accounts of each council have to be audited by an independent auditor after every financial year, and presented to the minister for consideration.

4 Tordoff, W. 1988. 'Local Government in Botswana.' *Public Administration and Development*, 8. 183–202;
Sharma, K. C. 2003. 'Local Government Finance and Management: A Critical Function in the Development of Local Government in Botswana'. In P.S. Reddy, D. Sing and S. Moodley (Eds). *Local Government Financing and Development in Southern Africa*.

The majority of councils in Botswana have, however, failed to present audited accounts before the minister for consideration over the last ten years. Most local councils are in arrears in terms of failing to report their accounts, some by as much as five years. Section 44(5) of the Local Government (District Councils) Act states:

Every council shall, for a period of not less than one month prior to the audit of its accounts, and at such places as may be prescribed by the Minister, deposit for inspection the annual statement or abstract, and any person may without payment inspect such document.

This means that audited annual reports of local authorities should be subject to public scrutiny. Practically, councils all over the country have failed to provide citizens with such vital information that could enable them to exert influence over decisions and make municipalities accountable. The lack of reliable and readable information incapacitates local communities from exerting their oversight role in relation to councillors and local officials.

According to the Local Government (District Councils) Amendment Act, councils are required to submit their accounts for audit by the Auditor General within three months after the end of the financial year. Reports from the Auditor General on the status of local government financial management are damning. The report ending 31 March 2000 observed that most local authorities' accounts were not in order. Most rural councils were in arrears of between four and six years, with the Central District Council, the largest council in the country, has the worst record. Urban councils fared better but were still in arrears of at least one year. But the backlog of accounts for local authorities is worrisome for government and other stakeholders. In the 2002 Auditor General's report, he observed that:

... the standard of accounting prevailing in the local authorities leaves much to be desired.⁵

However, there are no penalties for failure to abide by the legal requirement to produce audited reports in a timely manner as stipulated by the Act. Most of the councils have violated these provisions with impunity, despite their reliance on central government for revenues to manage their services. Failure to present audited accounts and statements in a timely manner is an affront to the accountability of local government to the electorate and central government. Central government should demand that all councils bring their accounts up to date, and that the failure to do so will attract financial penalties.

Most councils face intractable challenges, which have rendered the timely submission of financial statements and accounts impossible. All councils, to different degrees, suffer from a lack of adequately qualified and experienced treasury personnel. This is exacerbated by

5 Annual Auditor General's Report, 2000. 86.

staff turnover as a result of, among others, frequent transfers and resignations due to low salaries and poor conditions of service. Additionally, councils display poor record keeping and administration, poor internal management systems, and lack of supervision.

Anti-corruption bodies and local governance

Corruption has been growing at the national level and has spread to local level over the years.⁶ In 1994, national government established a national anti-corruption agency to fight perceived and real corruption in the country. More than a decade later, government has still not created a local agency to deal with corruption at local government level, in spite of alleged corruption in councils. The Directorate of Corruption and Economic Crime (DCEC) is expected to deal with corruption at both national and local government levels, and this is proving difficult.

The national anti-corruption agency is responsible for fighting corruption at the local level as well. But due to the overwhelming cases of alleged corruption in both central and local government, the national agency has not been able to effectively fight corruption in local councils. There are still unresolved cases of alleged corruption in all local government authorities. Limited resources facing the DCEC inhibit its performance in combating corruption, particularly at the local level.

The Ministry of Local Government has the highest number of corruption cases, recording 14 percent of recorded cases in 2004. Fraud is perceivably rampant in councils in Botswana, even though limited actions have been taken against culprits. Between 2001 and 2005, most corruption cases involving local government operatives revolved around bribery, embezzlement, fraud, theft and official corruption. Gaborone City Council seems to lead in the number of cases in this period. Gaborone City Council had four recorded cases of stealing and official corruption.⁷ However, all alleged suspects were acquitted and discharged on the counts presented to court.

The Director of the DCEC reported in his annual overview of 2005 that there are '... serious weaknesses in the procurement systems within local authorities.' He went on to state that:

...tendering procedures and regulations governing the entire local authority procurement system have become ineffective and are easily exploited by some employees.⁸

6 Danevad, A. 1995. 'Responsiveness in Botswana: Do Elections Matter?' *The Journal of Modern African Studies*, 33(3), 381-402; Good, K. 1994. *Corruption and Mismanagement in Botswana: a Best Case Example*.

7 Directorate of Corruption and Economic Crime (DCEC). 2000. Annual Report.

8 Ibid. 2005. 3.

This situation is exacerbated by weak internal financial management control and inadequate capacity in most local councils in the country. The Gaborone City Council and Daisy Loo case is the tip of the iceberg. In this case, a number of council middle ranking officials and a managing director of a private company are accused of corruption in the awarding of tenders.⁹

Councillors and staff members are not prohibited by law from bidding or from being awarded tenders to provide goods and services to a council that they serve. This compromises financial governance, which demands transparency, accountability and integrity of local government bids. Section 10 of the Local Government (District Councils) Act only provides for a declaration of interest on matters before the council and for the concerned member to recuse himself or herself from deliberation and decision on the matter. It does not, in any way, prohibit such member's company from bidding or being awarded a contract to provide goods and services to council. Contractors supplying goods and services are not required by legislation to declare illegal rewards and gifts to employees of localities.

Conclusions and recommendations

- The control of councils at the central level leaves councils with very little control over their own affairs. Local government consists of political and administrative elements. The Ministry of Local Government directly controls the administrative element and has the hiring, promotional and firing powers. The political element is directly elected but has little power over the affairs of the councils. Even though councils are governed through full council meetings and committee meetings, they do so within laws made by Parliament and regulations made by the executive. Residents do not find these meetings attractive and hardly attend.
- The financial management of councils needs to be prioritised through increased capacity for financial accounting purposes, and deadlines for reporting should be enforced. At present, the financial management of councils and the integrity of the system is suspect. Auditing of council activities is not done regularly, and many councils are in arrears in terms of their financial reporting.
- A local anti-corruption unit should be created to deal with the numerous complaints at the local level and the wide perception that there is more corruption at local level than at national level. There have been numerous reported cases of corruption involving council staff. The absence of anti-corruption agencies at the local levels means that the DCEC is overwhelmed, and has not given priority to local-based corruption.

9 *The Botswana Gazette*. 2006. 'GCC / Daisy Loo Case'. Wednesday 2–8 August.