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PROPOSALS TOWARDS THE ESTABLISHMENT OF WARD COMMITTEES¹

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The Local Government Working Paper Series disseminates policy and legal analyses to improve local governance in South Africa. The papers are short, preliminary studies intending to provide a brief look at relevant and timely topics. For additional information, please contact Dr Jaap de Visser at jdevisser@uwc.ac.za or visit the Local Government Project website at <http://www.communitylawcentre.org.za/Projects/Local-Government>

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¹ This article is based on a discussion document prepared for SALGA by the Local Government Project of the Community Law Centre. The article raises a number of issues regarding the principles that should underpin the establishment of ward committees. The guidelines issued by the Karoo District Municipality were most useful in preparing the draft document.

STATUTORY FRAMEWORK

Constitutional mandate

Section 152 of the Constitution establishes representative democracy and participatory democracy as two objects of local government. Through regular elections councillors are elected both in wards and on party lists to represent the residents of the municipality. Participatory democracy is enshrined in section 160(4) where it says that no bylaw may be passed unless it has been published for public comment.

National statutory framework

In both the Municipal Structures Act (Structures Act) and the Municipal Systems Act (Systems Act) a statutory framework is established that broadly outlines a system of participatory democracy. The Structures Act gives the bare bones of a ward committee system while the Systems Act devotes chapter 4 to community participation (see p 8).

Municipal by-laws

The national statutory framework allows municipalities to develop, in the words of the Systems Act, ‘a culture of municipal governance that complements formal representative government with a system of participatory government’ (s 16(1)). The framework for a system of ward committees is best captured in a by-law.

PRINCIPLES OF PARTICIPATORY DEMOCRACY

In section 16, the Systems Act sets out two important principles for community participation:

- Participatory governance should not permit interference with a municipal council’s right to govern and to exercise the executive and legislative authority of

the municipality. The municipal council, which is the product of representative democracy, not only has the sole legal mandate to govern but also, and more importantly, the political legitimacy to do so.

- Given the pre-eminence of the formal representative structures, participatory democracy is there to 'complement' the politically legitimate and legally responsible structures. This means that any community participatory structure may merely add to the formal structures of government, and not replace or substitute them. While every council must comply with the broad principles of participatory democracy, councils have the discretion to decide whether or not they want to establish ward committees. Where ward committees are established, the principles of participatory democracy also apply to this system.

FUNCTIONS OF WARD COMMITTEES

When devising a ward committee system it is important to proceed from the principle that structure must follow function. After a clear function is identified and clarified, a structure that may best fulfil that function can be established. Proceeding the other way around could defeat the true functions of the system. What, then, are the functions of a ward committee?

Communication channel

The primary function of a ward committee is to be a formal communication channel between the community and the council. In terms of the Structures Act, a ward committee may make recommendations on any matter affecting the ward to the ward councillor or through that councillor to the council (s 74(a)). Furthermore, a ward committee would be the proper channel through which communities can lodge their complaints. It would also be a forum for communication between the ward councillor and the ward community about municipal issues and development and service options.

A communication channel for the ward community

A ward committee should, in a broad sense, be a communication channel for the entire ward community. The ward committee cannot merely reflect and replicate the existing configuration of the elected council. That would amount to double representation. Nor should it function as a communication channel for the winning party only. The councillor and his or her supporting political structure already perform this function.

A ward committee should also not provide a forum for the losing candidates to fight the municipal election all over again. Minority parties have their own structures within the system of proportional representation (PR) to make recommendations to the council.

With regard to the composition of ward committees, the Structures Act merely states that the procedure for electing members must take into account the need for women to be equitably represented in a ward committee and for a 'diversity of interests' in the ward to be represented (s 73(3)). The philosophy behind this provision is that the interests that have not been accommodated through the formal political processes should be included in municipal governance. The reference to 'a diversity of interests' stresses this point; it should be an inclusive process.

Other functions

The Structures Act provides that a council may also delegate specific municipal duties and powers to a ward committee (s 74(b)). It is difficult to conceive what executive functions a ward committee should be entrusted with. Once a ward committee is given delegated powers, the issue of election procedures will become contested. Any election procedure, unless it is simply a replication of the councillor election process, will be inherently problematic and provide an insecure base from which to launch executive decisions. It is therefore suggested that no executive functions be delegated to ward committees. Apart from its primary communication function, a ward committee could also be an important mobilising agent for community action. The Masakhane Campaign

could, for example, be bolstered by the participation of such committees. They can also play an important part in mobilising partnerships for the development of local projects. The ward committee cannot prescribe to the ward councillor how to vote in council meetings. However, it may well call on the ward councillor to resign and pass motions of no confidence in him or her, but it may not impede any of the activities of the councillor in the ward.

IDENTIFICATION OF INTEREST GROUPS

Interest groups that should be accommodated are those that are directly relevant to the core business of the municipality. In other words, they must relate to the municipality's key performance areas in that ward.

Identification of key performance areas of a ward

Because of the wide range of municipal functions and powers, many interest groups could claim an interest in municipal matters. With a maximum of ten members in a ward committee, one should select from a broad range of interest groups those who would be the most relevant to the key performance areas of the municipality in a particular ward. Key performance areas in a ward are those identified through the integrated development planning (IDP) process (see p 6).

Basic services

In most wards, key performance areas relate to the major services that must be delivered: water, electricity, sanitation, roads and storm water. Other social services that are important include health and safety and security. There is no closed list of key performance areas. Additional areas can be identified through the IDP process.

Ward-specific key performance areas

Some key performance areas could be linked to a particular ward. For example, where a large truck stop along a national road is situated in a particular ward, leading to a high prevalence of HIV/Aids in that ward, the combating of Aids would be a key performance area for that ward. The same applies to economic development in wards where central business districts are located. The identified key performance areas of a particular ward should thus be used to identify interest groups.

Interest groups

The interest groups and formations in civil society are varied and can be categorised as follows:

Service or municipal-directed groups

Some civil society organisations are formed with the specific goal of ensuring performance by a municipality in key performance areas. Such organisations include community based organisations (CBOs) and ratepayers' associations. These structures would obviously be candidates for inclusion. However, where such structures have been political actors in the election campaign, they would already have representation in the council, and should not be included.

Specialist groups

The second set of interest groups comprises organisations that focus on a particular issue, which may or may not intersect with municipal activities. A council should thus identify those groups whose specific areas of interest relate directly to the ward's key performance areas. For example, where safety and security is a key performance area, community safety forums may be appropriate interest groups. Other interest groups may include business chambers, informal trader associations, environmental groups, etc.

Occasional interest groups

Groups that belong to this category are those whose interests only occasionally intersect with municipal business. Because of their peripheral and occasional engagement with municipal affairs, they should be excluded. Religious groupings may fall in this category.

Women's groups

The Structures Act requires that women should be equitably represented on ward committees. Does that mean that they must be equitably represented in the various interests groups, or should women be regarded as an interest group in their own right? The Structures Act does not refer to equitable representation of women under the heading of interest groups. This may suggest that a procedure prescribed in the Structures Act for political parties (that parties must ensure that at least 50% of the candidates on the list are female) should be followed. With usually only one member of each interest group represented on a ward committee, it may be difficult to achieve an equitable result. The alternative approach is to regard women as an interest group. The most equitable solution would be both to emphasise the need that interest groups' representation equitably represents women and to accept that women form a relevant interest group in their own right.

Rural areas

The model presented here is based on the assumption that there are well-developed, functioning civil society structures formed around specific interests. In some rural areas this may not be the case; interest groups may not have been sufficiently developed for them to represent the ward community adequately. In such a case, geographical spread of representation would be the preferred option.

Traditional leaders

The possible role of traditional leaders, as a particular interest group in a ward committee, will depend upon the outcome of the deliberations between government and the coalition of traditional leaders. It is suggested that traditional leaders should be considered as an interest group within a ward.

ELECTION PROCESS

The Structures Act requires that a council makes rules regulating the procedure to elect members of ward committees (s 73(3)).

Approach

It is important that the council identifies the relevant interest groups which should be represented on the ward committees. This must be done in accordance with objective criteria and in an open and transparent manner. It should occur independently of the ward councillor in question because there is a danger that he or she may attempt to influence the election process. The rules may differ depending on whether there are well-developed interest groups in a ward. This may or may not coincide with a rural/ urban divide.

Approach – urban setting

Identification of interest groups

- The council identifies the key performance areas of each ward, e.g. local economic development (LED), job creation, basic services, etc.
- The council invites interest groups to state their interest in and concern with any of the key performance areas.
- The council identifies the groups that have a demonstrable interest in any of the key performance areas and represent residents of the area.
- The council identifies the clusters of interest groups (no more than ten) that qualify for election.

Election procedure

Option 1: Within the ward

- The ward councillor calls a meeting in the ward for the election of a ward committee.
- Only residents who are registered voters may vote at the meeting.
- In each cluster, an identified group nominates a representative.
- The meeting votes by majority (50% plus one) for a representative of that cluster. If no one gets the majority, the top three candidates go through to the next round.

Option 2: Within the council

- The municipal council calls a meeting of councillors for the election of ward committees to which all residents have been invited to attend.
- All councillors are entitled to vote at the meeting.
- In each cluster, an identified group will have nominated a representative.
- The meeting votes by majority (50% plus one) for a representative of that cluster. If no one gets the majority, the top three candidates go through to the next round.

Approach – rural setting

Identification of interest groups

- The council identifies the villages and clusters of farms that will represent an equitable spread of the residents in the ward.
- Each village or cluster of farms is requested to nominate a representative.
- If five or less villages are identified, a male and female representative should be nominated by each village.

Election procedure

Option 1: Within the ward

- The ward councillor calls a meeting in the ward for the election of a ward committee.
- Only residents who are registered voters may vote at the meeting.
- Each village nominates a representative.
- The meeting votes by majority (50% plus one) for a representative of a village.

Option 2: Within the council

- The municipal council calls a meeting of all councillors for the election of ward committees to which all residents have been invited to attend.
- All councillors are entitled to vote at the meeting.
- Each village would have nominated a representative.
- The meeting votes by majority (50% plus one) for a representative of a village.

MEMBERSHIP, PROCEDURES AND RESOURCES

Qualifications for membership

To be elected as a member of the ward committee, a person must be a registered voter in the ward. A person is not eligible for election if he or she works for the local municipality or the district municipality within which the local municipality falls.

Term of membership

Committee members are elected for a term determined by the council (s 75). In order to involve as many people as possible in this structure, a municipality may restrict the tenure of a committee to one or two years. A person's membership could also be restricted to two terms.

Termination of membership

A person's membership is terminated through death or resignation. The council may also make rules regulating the circumstances under which persons lose their membership. One issue that must be addressed is whether an interest group can terminate the membership

of its elected representative. Since the community elects the representative of an interest group, that group cannot unilaterally withdraw the elected person from the committee. The council may, however, make a rule that if the elected person is no longer a member of the interest group that nominated him or her, the person's membership is terminated. Where a person no longer qualifies to be a member, for example, moving out of the ward, membership should also be terminated. Likewise, a person becomes disqualified as a member when he or she gets elected as a councillor. The vacancy is filled in accordance with a procedure determined by the council (s 76).

Dissolution of the ward committee

The council may dissolve a ward committee if it fails to fulfil its object (s 78). This will happen when a ward committee exceeds its role as communication channel. For example, when the ward committee seeks to prescribe to the councillor what to do or how to vote, it is exceeding its mandate. Other examples of circumstances under which a ward committee fails to fulfil its object are instances of corruption among its members or when the ward committee is inactive or fails to meet, etc. There should be due notice before a council acts against a ward committee in terms of section 78

Internal procedures of ward committees

By and large, the ward committee can determine its own internal procedures. The council must, however, make rules regulating the frequency of the meetings (s 73(3)(c)). The ward councillor is the chairperson of the committee (s 73(2)(a)). He or she calls the meetings and presides over them. The municipal council must determine rules for the manner in which a committee may make recommendations or decisions. Similarly, the council must determine the procedure that the chairperson would follow in transmitting a recommendation or decision from the committee to the council.

Participation of PR councillors

A PR councillor has no formal standing in the ward committee and, in terms of the Structures Act, may not be a member of such a committee. The ward councillor as the chairperson of the committee is in charge of the committee. A council may develop a

policy setting out how PR councillors may participate (as non-members) in ward committees. For example, should a council decide to allocate PR councillors to wards, it may determine that such councillors participate *ex officio* in the proceedings of the relevant ward committees. Such participation may not, however, disrupt the operation of the ward committee.

Resources of the ward committee

The Structures Act leaves it within the discretion of the council to make administrative arrangements to enable ward committees to function effectively (s 73(4)). While no remuneration is to be paid to ward committee members (s 77), this does not prevent the council from reimbursing committee members for travel costs and other out-of-pocket expenses. The council should also provide assistance such as secretarial assistance, venues for meetings, etc. The Systems Act provides specifically that councils must allocate funds annually in their budgets for the implementation of community participation. This should include funds for ward committees.