

Civil Society and Public Accountability: The need for active monitoring

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Why should civil society care about the accountability of public officials?

South Africa's Eastern Cape Province suffers amongst the highest levels of poverty and unemployment in the country. There is a desperate need for infrastructure development in order to improve people's quality of life and to create jobs but there are limited public resources available for this purpose.

The state and public officials are responsible for administering what public resources are available on behalf of the entire society. Unlike the private sector, adult members of society have no choice but to pay taxes and rates in order to meet the salaries of the public officials who administer their resources.

When public resources are abused through corruption and maladministration it is ordinary members of society, and in particular the poor and unemployed, who suffer the consequences:

- services are not effectively delivered so they either have to do without or have to pay to obtain these services privately,
- ordinary citizens have effectively paid for the public resources that are being abused,
- ordinary citizens have also already paid the wages of those abusing public resources,
- ordinary citizens are subsequently forced to pay additional public servants to monitor and redress the activities of unaccountable public officials.

Consequently, it is in the best interests of the entire civil society to ensure that public officials manage these resources in an efficient, transparent and accountable fashion.

Accountability, however, is a two way relationship between public servants and the public at large. Whilst there is a constitutional obligation on public officials to provide an accountable public service, the onus is on the public to ensure that officials live up to this expectation. Standards of efficiency and public service delivery can only be as high as the expectations voiced by civil society interest groups.

To hold public officials accountable for service delivery requires that the public be adequately informed about the level of service that they are entitled to. Moreover, the public must be reliably informed about the actual level of service delivery and the performance of individual departments and

officials within the public service

Are officials within the South African public service committed to the values of transparency and accountability?

Chapter 10 of the South African Constitution binds all public officials to the following basic values and principles;

a) A high standard of professional ethics ..., b) efficient, economic and effective use of resources ..., c) a development-orientation, d) the impartial, fair, equitable and unbiased provision of services e) public participation in policy-making, f) accountability, g) transparency and the provision of accessible and accurate information to the public, h) good human-resource management and career-development practices.

In reality, however, public officials in South Africa are confronted with competing sets of values and beliefs. Some of these have been carried over from the apartheid era.

Some officials feel they have a vested interest in maintaining apartheid era beliefs in the entitlement of public servants and the secrecy of their working practices. Many long standing members of the apartheid or 'bantustan' administrations continue to think and act in these terms. It is also convenient for many newly appointed officials to reproduce, rather than challenge, these views. Consequently, despite the intake of new officials, an ethos of entitlement and secrecy continues to influence the working practices of the public service.

Other officials feel they have a vested interest in transforming this ethos and entrenching a culture of transparency and public accountability. In order to achieve this goal, however, they encounter considerable resistance from officials who have a vested interest in maintaining the status quo.

Can the public service be transformed internally? Can public protection agencies force public officials to become accountable?

The position of those public officials interested in the transformation of the public service is weak relative to those officials who are intent on maintaining the status quo.

A culture of accountability within the public service in South Africa will not emerge automatically as a result of the principles of accountability and transparency that have been enshrined within the Constitution. Nor will it emerge as a mechanical response to the new Public Service Regulations. The existence of this legislation instructing public officials to provide an efficient, accountable and transparent service, and making corruption illegal, provides no guarantee that it will be enforced.

Public protection agencies such as the Auditor-General's Office, the Heath Special **Investigating Unit** and the **Public Protector** provide a **limited deterrent** to corruption and maladministration. These agencies can secure only a partial enforcement of legislation governing the proper conduct of public officials. Some important reasons for this are as follows:

- The Auditor-General's office must generate its own income by charging the institutions that it audits. In many instances, however, because of a refusal or inability to pay for the audit, it is prevented from even gaining access to the financial statements of public institutions. Even when payment is secured, in many more instances, the non-submission of financial statements, deficiencies in accounting systems and the incomplete submission of records may make it impossible for the Auditor-General to 'express an opinion' on the state of the institution's financial management. In such cases there might not only be a lack of financial accountability, but wholesale corruption. (Currently the Auditor-General is unable to 'express an opinion' regarding the financial accountability of 42 local authorities - out of a total of approximately 80 - within the Eastern Cape). In addition, the information that is eventually released by the Auditor-General's office is very often of a highly general nature and makes it very difficult to track individual cases of misconduct within departments.
- The Public Protector has the power to investigate and report on a wide range of activities within the public service, from misconduct to maladministration and unlawful enrichment, and to take 'appropriate remedial action'. According to the Public Protector Act, 1994, however, such remedial action is restricted to mediation, conciliation and negotiation. The Public Protector may also offer advice on other appropriate remedies. Again this agency has no specific mandate to follow-up and enforce the recommendations that it makes. The onus is on departments to report back on their activities to the Public Protector's office. It is unlikely that departments who choose to ignore its recommendations will report this back.
- The Heath SIU has to liaise with four separate government departments in order to have a Presidential proclamation issued before it can investigate any case. This is a time consuming process. Once the investigation is completed, and if the Special Tribunal attached to the SIU finds the official guilty, the official is compelled to repay lost assets to the state. At this stage the SIU may recommend that the official be subjected to internal disciplinary proceedings or criminal prosecution. However, the Heath SIU has no mandate to monitor or enforce these recommendations.

It is clear, therefore, that existing public protection agencies do not have the capacity follow up and monitor what happens to officials who are judged to be responsible for acts of corruption or the gross mismanagement of public resources. Nor can they guarantee that offending public officials will be effectively disciplined, retrained or dismissed from the public service.

Is the civil society in a position to encourage public service accountability in south Africa?

Organised civil society presently faces a number of conflicting beliefs about the proper role of the state in the provision of social services. These beliefs are heavily influenced by the legacy of apartheid.

Under apartheid the NGO, CBO and trade union sector defined themselves and their organisational activities in terms of their opposition to the state. The state represented authoritarianism and the denial of human rights whilst civil society stood for democracy and equality. Today the state in South Africa is constitutionally committed to these democratic values.

As a result of these changed conditions organised civil society seems uncertain about what kind of relationship it should pursue with respect to the state. A considerable number of ex-civil society activists now occupy influential positions within the state.

Many remaining activists believe that it is only fair to give the new state, and some of its more inexperienced office-bearers, the opportunity to prove themselves. Consequently, many civil society leaders feel obliged to refrain from drawing public attention to instances of misconduct within the public service. They also feel obliged to refrain from publicly criticising the state and its officials for the slow pace of service delivery.

This uncritical attitude ultimately prevents civil society organisations from constructively engaging with the state in such a way as to support state efforts to transform the public service. It also undermines civil society effort to hold public officials responsible for the level of service delivery within their departments.

Civil society has to be vigilant in its efforts to ensure that public officials deliver their services in accordance with public expectations and in line with available public resources. It must strike a balance between the acknowledgement of the states successes and the constructive criticism of its failures in delivering public services.

In order to acknowledge successes or criticise failures in public service delivery, however, civil society needs to be accurately and reliably informed about the performance of individual public service departments at the provincial and local levels. This entails having ready access to information about such things as expenditure, incidences of misconduct and compliance with disciplinary procedures within departments.

How will the PSAM (Public Service Accountability Monitor) further the interests of civil society and attempt to ensure public accountability in the Eastern Cape Province?

The PSAM believes that if public officials who have been found guilty of acts of gross misconduct, corruption or maladministration continue to be employed, this sets the precedent that misconduct will be tolerated by public service management.

It is not possible to entrench a culture of efficient and accountable public service under these conditions. An organisational culture of efficiency, transparency and accountability will only emerge if such officials are either eliminated from the public service or effectively retrained.

To ensure that wayward officials are either fired or retrained requires that both civil society interest groups and public service management are accurately informed about their activities.

Consistent with this view, the PSAM has set itself the following objectives:

- to publish an online database which will provide a continuous update of reports of misconduct within Eastern Cape Provincial public service departments,
- to follow up each individual case in an objective fashion and obtain responses from the heads of departments to these incidents,
- to identify the regulations breached in respect of each case and to identify the level of compliance or non-compliance with disciplinary procedures in each case,

The PSAM will employ the following definitions in the pursuit of its objectives:

- **Misconduct** will be defined as ‘the contravention of any provision contained within an Act of Criminal and/or Administrative law’.
- **Corruption** will be defined as ‘the illegal use of public office for private gain’. The term ‘illegal’ refers to the fact that there are administrative rules and regulations which govern the conduct of public officials.
- **Maladministration** will be defined as ‘illegitimate actions on the part of public officials which lead to a loss of public resources’. This would include incompetent management, mismanagement and inefficient management. These activities are not ‘corrupt’ in the narrow sense because they do not result in private gain on the part of public officials.

As concerns its modus operandi, the PSAM will conduct two distinct forms of monitoring; case monitoring, and performance monitoring.

PSAM Case Monitoring

The PSAM will set up a database of cases involving public sector misconduct and corruption in the Eastern Cape dating back over a three year period to 1996.

The PSAM will draw on the following sources of information

- provincial newspaper archives;
- the Heath Special Investigating Unit archives;
- Auditor General's reports;
- transcripts of Public Accounts Committee hearings;
- cases of corruption investigated and reported to the PSAM by non governmental organisations (NGOs) and community based organisations (CBOs);
- a standing request to all departments for a list of current disciplinary actions involving misconduct.

Each case will then be monitored in terms of the legislative provisions set out in:

- the Provincial Financial Regulations and Provincial Treasury Instructions set out in the Provincial Exchequer Act, 1994, Eastern Cape,
- the Public Service Act, 1994.

Cases of misconduct involving the South African Police Services will be monitored in terms of the legislative provisions set out in:

- the South African Police Services Act, 1995,
- the South African Police Service Disciplinary Regulations, 1996 (effective as of January 1997).

The monitoring will be conducted by way of a recorded telephone interview with a representative of the department concerned. Such representatives will be designated in advance in consultation with the Director General's Office of the Eastern Cape and, in the case of the South African Police Service, with the Provincial Commissioner of the South African Police Service. The objective of this recorded follow-up interview will be to establish;

- how legislative provisions and codes of conduct were breached;
- what form of breakdown in departmental management structures enabled these breaches to take place;
- what disciplinary measures were taken;
- are implicated officials still employed by the department;

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- what efforts have been made to recoup losses, and
- what new management procedures and working practices have been introduced in order to prevent a recurrence?

This recorded information will then be transcribed and uploaded onto a PSAM web site.

PSAM Performance Monitoring

The PSAM will also offer an in-depth analysis of the overall performance and level of efficient service delivery of individual Provincial Public Service Departments. This will be contained in an annual PSAM bulletin. In order to conduct its performance monitoring the PSAM will request all Departments to provide it with public access documentation in respect of a number of requirements contained in the legislation.

In addition the PSAM will draw on the following public access documents:

- Performance audits of departments conducted by the Auditor-General's Office,
- Financial audits of departments conducted by the Auditor-General's Office,
- Transcripts of Public Accounts Committee Hearings,
- Annual Reports of Departments tabled in the Provincial Legislature

The PSAM bulletin will acknowledge the successes of departments as well as their shortcomings.

Coinciding with the publication of this bulletin the PSAM will workshop its findings with MECs and Public Service Departments. It will workshop these same results with NGOs and CBOs operating in the areas of public service delivery within the Eastern Cape province.

What practical services will the PSAM provide to the Eastern Cape provincial government, public service management and civil society?

- active, yet objective and politically impartial, monitoring of public sector misconduct including corruption and maladministration,
- scientific research findings including patterns of breached public service regulations and patterns of non-compliance with disciplinary procedures,
- capacity building workshops and educational seminars with public officials and public sector trade unionists,
- annual performance reports assessing the degree of efficient service delivery within individual provincial departments,
- workshops to report research and monitoring findings to provincial MECs and public sector management,

9th International Anti-Corruption Conference, 10-15 October 1999, Durban, South Africa

- workshops to report research and monitoring findings to civil society organisations and advocacy groupings.