

# **From Street Protest to the Courts: Active citizenry and lessons from the Makana case study**

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## 1. Background and Introduction

The apparent failure of government institutions to instill a deep and far-reaching culture of accountability has led to worldwide concerns over how to practically implant democratic ideals, leading to calls for the expansion or widening of representative institutions to address the lack of accountability (Adejuwon, 2014). In South Africa, one of the main pillars of the National Development Plan (NDP) is to build a capable and developmental state (NPC, 2012). This requires that the state play a transformative role when addressing poverty and inequality, which entails:

*“well-run and effectively coordinated state institutions with skilled public servants who are committed to the public good and capable of delivering consistently high-quality services, while prioritising the nation’s developmental objectives” (NPC, 2012: 409).*

Building capabilities appears as key to retooling the state for higher quality and levels of performance. As is clear from the Auditor General’s reports over the last few years, at the local government level capacity deficiencies are largely due to the absence of technical skills and execution failures (AGSA, 2013; AGSA, 2018). Skills shortages are in key areas such as project management, procurement and contract management, as well as financial management. Vacancies existing in key management positions, as well as a lack of skill at the required level for management were noted in particular (AGSA, 2013). The ability to execute mandates and deliver services to communities is also weak (Qobo, 2020). This case study explores the challenges of service delivery as well as allegations of corruption and maladministration, and how residents of Makana have used their voices to demand services from the municipality.

## 2. Justification of the choice of Makana Local Municipality

Makana municipality made history with a controversial court ruling that effectively declared that the municipal council must be disbanded as it had failed to fulfil its constitutional mandate of ensuring the provision of services to communities in a sustainable way, of promoting a safe and healthy environment, and of encouraging the involvement of communities and community organisations (Steyn Kotze, 2020). Effectively, the Makana municipality has failed to yield to a greater culture of democratic accountability, with media reports of leaders who engage in practices that make people doubt whether the institutions of democracy exist at all (Carlisle, 2018). Community frustration was evident in the in the 2018 planned rate boycott. In an interview with Carlisle (2018), Kota said the following:

*“We have tried meetings, constitutional interventions, protest. We have tried to improve things through the courts. Nothing works. Perhaps withholding rates will bring change,” (DispatchLIVE, 2018)*

Makana has had serious financial trouble since 2010 with a direct impact on service delivery (Auditor

General Report, 2009/10; NCOP appropriation, July 2010). The municipal government has failed to deliver basic services to its residents. Indeed, as Carlisle (2018) highlights:

The city's decrepit water and sewerage infrastructure has resulted in massive leaks of both fresh and treated water, and sewage flowing down suburban roads and past schools. Uncollected rubbish decomposes in piles on every street in Grahamstown east and informal rubbish dumps have multiplied across the city. The roads are potholed; cattle, donkeys and other stray animals wander unchecked in roads, including national and regional roads such as the N2, which circumnavigate the city.

This led to community and municipal workers' protests against the council and local elected leaders, of which the Unemployed People Movement was the loudest voice of dissent against non-delivery and mediocre services. Indeed, this community organisation approached the courts to seek relief on the following grounds:

1. Declaring the Makana Municipality in breach of Section 152 of the South African Constitution through its failure to ensure the provision of services to the community in a sustainable manner and to promote a safe and healthy environment
2. Declaring the Makana Municipality in breach of Section 153(a) of the South African Constitution through its failure to structure and manage its administration, budgeting and planning processes in order to give priority to basic needs and promote the social and economic development of the community
3. Declaring that all the jurisdictional facts for mandatory intervention in terms of Section 139(1)(c) of the South African Constitution and sections 139 and 140 of the Local Government Municipal Finance Management Act (2003) were present in the Makana Municipality; and directing the Executive Council for the Province of the Eastern Cape to intervene in terms of Section 139(1)(c) of the South African Constitution read with section 139 and 140 of the Local Government Municipal Finance Management Act (2003) and to appoint a competent and experienced administration for Makana (High Court of South Africa, 2020).

While the initial project research plan was to assess skills and capacity of officials in Amatole District Municipality, the HSRC decided to select the neighbouring Makana Local Municipality due to challenges encountered in gaining access to municipal officials in the Amatole District. The historic court ruling that brought governance defects to the fore based on the victory of civil society in the Makana Municipality also contributed to substituting Amatole District Municipality with Makana. Makana was placed under administration for violating its constitutional mandate by failing to provide basic services to the community. Therefore, Makana Municipality, as a case study, provides valuable insights into how communities can play a central role in demanding constitutionally mandated services from local government, as well as holding governments to account for delivery failures using institutional processes and the judicial system. In addition, access challenges due to the COVID-19 pandemic continue to have a negative impact on the HSRC's ability to conduct face-to-face fieldwork in the selected study municipalities, which included Amatole District Municipality. Consequently, we recommended an alternative research methodology to ensure that the HSRC delivers on our agreed project objectives. Makana Municipality has the same characteristics that led previously to the selection of Amatole District Municipality: the municipality is non-functional in terms of administrative functioning and service delivery. In her judgment on 14 January 2020, Judge Igna Stretch of the High

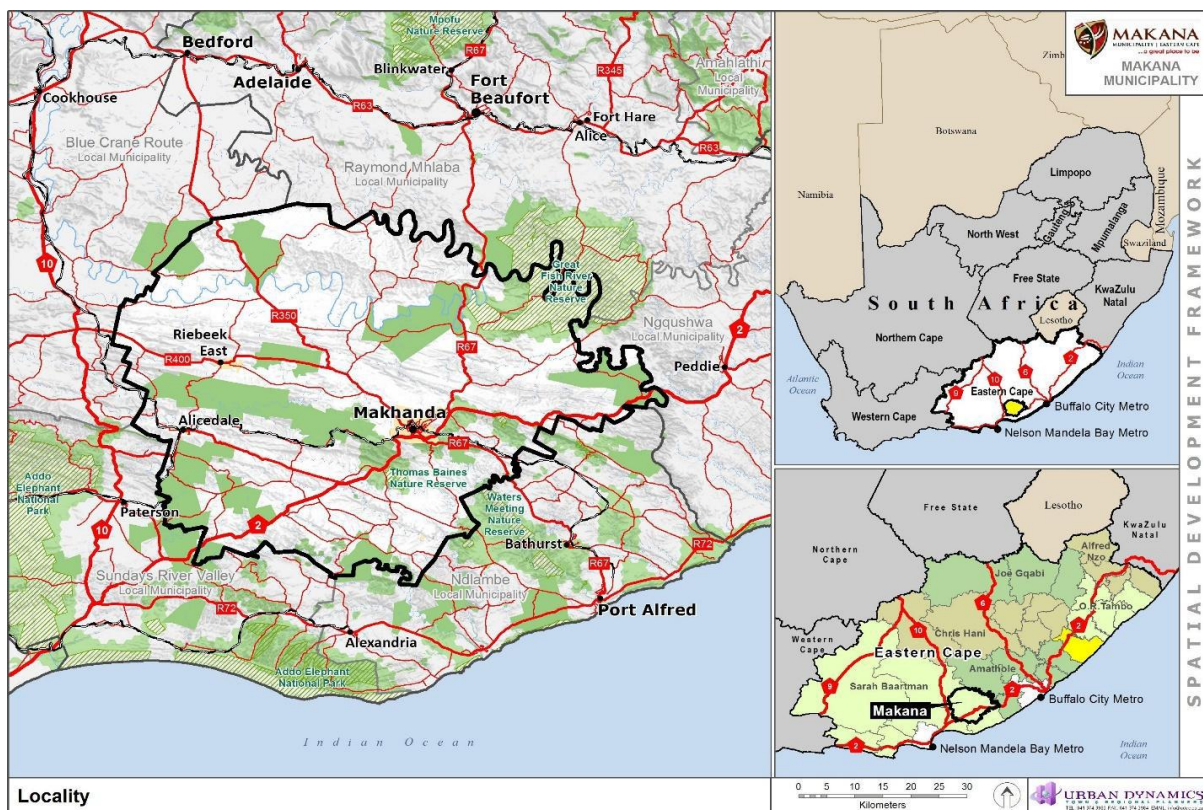
Court in Makhanda declared that:

Makana had failed to provide services to the community in a sustainable manner, promote a safe and healthy environment, structure and manage its administration, budgeting and planning processes, prioritise the community's needs and promote its social and economic development. Makana Municipality had breached sections 152(1) and 153(a) of the Constitution and was therefore declared [constitutionally] invalid (MacLennan, 2020).

As such, the weaknesses in capacity and performance in Makana local municipality make it an interesting and relevant case study.

### 3. Profile of Makana Local Municipality

Makana Local Municipality is a category B Municipality approximately halfway between East London and Port Elizabeth that forms part of the seven local municipalities of the Sarah Baartman (formerly Cacadu) District Municipality in the Eastern Cape. In 2011 it was delimited into fourteen wards. Amatole District Municipality borders Makana on the north-east, while Port Elizabeth is 120km to the west and East London 180 km to east. It is bordered in the north-west by Blue Crane Route Local Municipality, in the south by Ndlambe Local Municipality and in the south-west by the Sundays River Valley Local Municipality (IDP, 2019-20).



In reviewing the public officials' profile of the Makana Municipality, we find that 93.6% are African, 3.8% Coloured and 2.5% White. A large proportion of the staff are male (77.4%), while 22.6% are female. Approximately 90.1% are full-time employees while 9.9% are employed on a temporary basis. Less than 1% of the staff have a physical disability, less than 1% did not specify whether they have a disability and 90.1% do not have a disability.

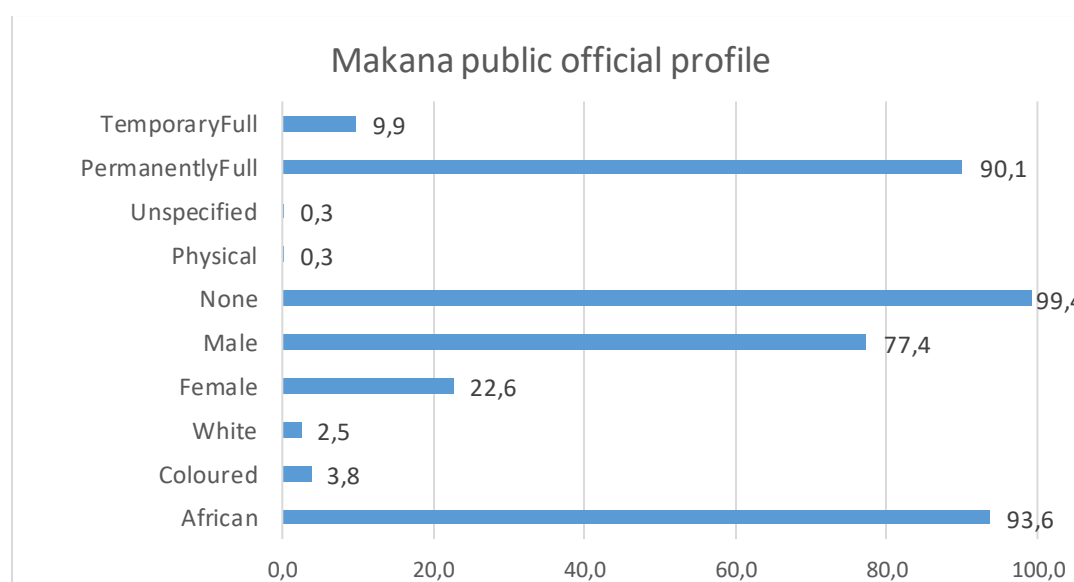


Figure 2: Demographic profile of the staff of Makana.

Source: Makana Municipality skills development report, 2020

Note: "Physical" in Figure 2 refer to those staff with a physical disability and "None" to those staff who do not have a disability.

Hamaamba (2004) noted that the municipality started experiencing a rapid increase in population from 2003 due to migration from nearby farms. While Stats SA presents the Makana Municipality population at 82060, the 2016 South African Community Survey indicates a population growth increase of 2.1%. In 2019 it was estimated that 90% of the population live in the town of Makhanda.<sup>1</sup> It is the main economic hub of the municipality.

By economic sector, the local government contributes 51.5% of Makana's economic activities, followed by 15.7 % from trade, 15.4% finance and business services, 7.1% manufacturing, 4.4% agriculture, 2.9% transport and communication and 2.2% construction (Integrated Development Plan, 2019-20).

The Integrated Development Plan 2019-20 of the Makana Municipality emphasises that it is crucial that the municipality is able to ensure a good road network, as well as important water, sewerage and electricity provision. The municipality's own assessment acknowledges the need to ensure sustainable service delivery.

<sup>1</sup> Previously known as Grahamstown.

## 4. Failure to meet constitutional obligations

Municipalities are expected to operate in a democratic, accountable and participatory manner, and to complement their formal structures of representative government with a system of 'participatory governance' involving all residents (Piper and Deacon, 2009: 417). This entails that municipalities should provide leadership and continual education to enhance local democracy, to build awareness of environmental issues, to invest in youth development, to empower the most marginalised groups in society, and to empower ward councillors to achieve these objectives (Pycroft, 2000:151).

There is greater emphasis on community leadership by the current government in South Africa, but the community leadership role of councillors in theory and its efficacy in practice remain unclear (Snape and Dobbs, 2003: 52). However, in terms of section 1.4 of the White Paper on Local Government (1998) local government has a key role to play in building political leadership that is able to bring together networks of local interests. These stakeholder groups need to cooperate and contribute to the realisation of a shared vision, and empowering leaders who should play a pivotal role in building a shared vision and mobilising community resources for development.

Improving local government accountability improves service delivery, particularly for the poor. Conversely, increasing the resources allocated for public services without fixing the accountability incentive structure will most likely not translate into greater development benefits for the poor (Yilmaz, Beris and Serrano-Berthet, 2008: 1). One of the six primary characteristics of ethical and effective leadership in local government identified in the King IV Report (2016: 81) is accountability, in terms of which communities' rights to receive information relating to the stewardship of the organisation's assets and performance are addressed (Fourie, 2009: 1116). It is important that municipal residents receive information about the services that a municipality should render so that they are in a better position to demand accountability from their councillors when there is a lack of services or poor service delivery. Therefore, ward councillors should be encouraged to provide leadership for their constituencies and be accountable for their actions.

The last few years Makana has faced escalating service delivery protest action (Grocott, 2010-2020). Speaking to Grocott's Mail after meeting with the acting municipal manager Ted Pillay on 21 April, 2014 the leader of UPM said that:

"Our councillors have a very narrow vision, they are so consumed by patronage and corruption that they can't see the bigger picture." (Grocotts, April 2018)

A resident in Papamani told De Waal (2014) that their complaints are not taken seriously by municipal officials. Her frustration is seen in the quotes below:

"We complain. We meet with the mayor. We protest. But all we get are broken promises. I live with my three children and three grandchildren, and struggle for employment and to try and get money to survive. Our household tries to survive on the government grant we get of R750 a month, and the couple of hundred rand my son gets from public works projects" (Makana resident, 2014)



“When the tap runs dry or doesn’t work you have to take your bucket and go out and look for water. You can travel for the whole day and only come home in the evening” (Makana resident, 2014)

The high rate of service delivery protests conveys the fact that communities are dissatisfied with the performance of their local representatives and the slow provision of services in Makana. Communities become angry when their situation does not improve and they observe the extravagant life styles of certain politicians. Municipal service delivery protest statistics since 1994 show an increase, despite various policies in favour of the poor, such as free basic water, free basic electricity and the provision of sanitation. In 2014, government’s sixth annual Development Indicators Report showed that in the first six months of 2012 there were 113 service delivery protests versus 81 for the whole of 2011 (Development Indicators, 2014). The 2016 Development Indicators reported that South Africa had seen an exponential increase in the number of major service delivery protests from 2005 to 2016, with 34 in 2005 to 137 per year in 2016. The report also indicated the significant decline in public trust and confidence in local government at 48% in relation to the delivery of basic services (Development Indicators, 2016).

A search of media reports from 2010 to 2019 shows that Makana had an increasing number of service delivery protest each year. The most prominent issues are water and sanitation. However, other issues such housing, refuse collection, poor road infrastructure, provision of sewerage and electricity, as well as corruption in the higher echelon of the municipality have been raised by protestors as major factors negatively influencing levels of satisfaction with service delivery (see Appendix 1 for a list of service delivery protest). This is not surprising given that approximately 40% of people living in Makana Municipality are poor and approximately 23% live below the poverty line (Freedom House, 2016).

Makana cash flow problems date as far back as 2011 and the municipality was in financial distress by 2013. In 2012/13 the Auditor General gave the municipality a disclaimer of opinion listing among others the following reasons:

*Incomplete / inaccurate billing of municipal accounts as there are properties not yet registered in the Deeds Office and therefore not levied property rates and services.*

*Meter readings varying between 0% and 35% on a monthly basis due to damaged meters; meters installed incorrectly; meter installation information not provided to update the financial billing system; lack of access to properties; and inadequate performance management of meter readers.*

*Accounts not correctly categorized as per general use of properties – some businesses billed as residential.*

The abovementioned factors led to severe cash flow challenges within the municipality, to the extent that it failed to raise enough cash to cover workers’ salaries and other monthly expenses, including payment of suppliers. The municipality has faced a number of legal actions as it failed to honour its commitments to suppliers (Makana Mayor, Mzukisi Mpahlwa, March 2019).

Citizens can hold political leaders accountable through legislation, empowering them to demand explanations and justifications from local government, specific bodies and processes for citizen oversight mechanisms (Yilmaz, Beris and Serrano-Berthet, 2008: 15). Indeed, a key lesson from the Makana Municipality is the tenacity of citizens to hold local government accountable when it failed in

its constitutional mandate to deliver services. As noted below in the extract from the Executive Mayor's desk letter dated 28 March 2019:

*Makana Municipality was identified as one of the distressed municipalities in the country due to its lack of financial viability, inadequate levels of service delivery and poor state of infrastructure. This situation dates as far back as 2011, and is difficult to understand given that this city boasts a number of quality schools; a world class university; a TVET college, large businesses, industries and a great legal fraternity among other gems of expertise. With this background, the city and municipality ought to be a thriving and viable place where people should be queuing to invest in our area and further grow our economy. (Mayor Mzukisi Mpahlwa, March 2019).*

Section 152(1)(a) of the Constitution of the Republic of South Africa, 1996, mandates local government to provide a democratic and accountable government for local communities. Developmental local government is required to provide a vision and leadership to achieve local prosperity (The White Paper on Local Government, 1998: 39). It appears that Makana Municipality is not upholding this constitutional mandate as maladministration has hindered the municipality's ability to provide services to its citizens. Table 1 below summarises the leadership failures and financial difficulties of Makana from 2011 to 2018.

The Unemployed People's Movement (UPM) and other civil society organisations launched court action against the Makana Municipality, and on 14 January 2020 the Makhanda High Court, ordered the municipality to be dissolved and placed under administration for violating its constitutional mandate by failing to provide basic services to the community. According to Judge Igna Stretch, the municipality's conduct has been "inconsistent with the 1996 Constitution of the Republic of South Africa", breaching section 152 (1) and section 153(a) by "failing to promote a healthy and sustainable environment for the community". The court order urged the Eastern Cape provincial executive to implement a recovery plan to guarantee the municipality meets its constitutional obligations.

Table 1: Timeline of financial performance in Makana

Dates	Issues
2010/11	Disclaimer Audit opinion
2011/12	Disclaimer Audit opinion
2012/13	Disclaimer Audit opinion
2012	Vacant posts: Finance Director, Technical services director and Water and Sanitation Manager
2013	Resignation of Chief Financial Officer, Delayed payment of municipal workers' salaries
2013/14	Disclaimer Audit Opinion
2014	Eastern Cape Provincial Treasury invokes Section 154(1) to provide financial management support
2014	Section 139(1)(b) of the Constitution is invoked for placing municipality under administration Kubuso Report - a forensic audit of Makana's finance and administration
2015	Launch of a full forensic investigation after a report implicating municipal staff members in suspicious activities. Allegations were that: * Two junior staff members in the Finance Department had committed fraud. * Finance officials were also receiving overtime almost monthly, without approval. * Some staff members were paid more than 65% of their salaries as overtime every month. * Some payments were being approved through the forging of signatures. * Ghost workers – people no longer employed by the municipality – were still on the payroll, with their salaries having been paid into existing employees' accounts for more than two years. * Casual workers were salaried as permanent staff, including receiving 13th cheques
2015	Appointment of an administrator Qualified Audit Report
2016	Appointment of infrastructure manager The Hawks launch 'ghost worker' investigation
2018	Department of Co-operative Governance and Traditional Affairs Intervention Team under Cogta Minister Dr Zweli Mkhize, Makana's outstanding debt of R67 539 876.39 to ESKOM

Source: Sue MacLennan, 2018, *Grocott's Mail*

## 5. Representative Democracy: where are public representatives in Makana?

Local government is an important sphere of government because it is the closest to communities. It is where most basic services such as water, electricity and housing are delivered in order to benefit communities. Therefore, both elected politicians and appointed officials are, or should be, constantly in contact with the community. It is for this reason that leadership and accountability must improve to strengthen local democracy and to promote improved efficiency and effectiveness in local governance and service delivery initiatives. Makana leadership has failed to meet its mandate. For instance, some communities have been without a reliable supply of water for years.

The Local Government Turnaround Strategy (LGTAS) (2009: 5) suggested that an ideal municipality should, among other things, provide democratic and accountable government for local communities as well as facilitate a culture of public service and accountability amongst its staff. LGTAS (2009: 24) further recognised the need to do things differently in areas that include municipal accountability. In this case study, we assume that the absence of effective leadership and lack of accountability by council have a significant detrimental impact on service delivery in the municipality.

It is noted in the 2015/16 Integrated Development Plan that the disclaimer audit outcomes are due to lack of legislative procedural compliance; lack of political oversight; non-effective performance management and allegations of corruptions and nepotism (IDP, 2015/16). The witting the IDP (2015/16) is rather unfortunate and ironic since the municipality had the finding of its commissioned forensic report and we yet to be implemented. In May, 2017 the Democratic Alliance lay charges against the municipality for the slow progress in the implementation of the Kabuso Report. The DA representative said the following talking to the media after laying charges:

Jackson said that the former Mayor decided to overlook the initial report and go with the two unofficial reports.

"The mayor failed to account to council for his implications of acts that were recorded; despite being requested to do so. The two newer versions of the report are not considered to be legally binding. And no attempt from the Municipality, in ensuring that those implicated in the initial report, has been pursued. My colleague and DA Caucus Leader in Makana Municipality, Mlindi Nhanha, warned in every council meeting that unless action was taken by the Municipality or the Department of Cooperative Governance and Traditional Affairs (CoGTA), the DA would then take action. We got the impression that certain ANC officials leaned towards the issue rather being shelved and forgotten about." (Jackson, May, 2017)

The issues raised in the Kabuso Report (2015) regarding recruitment relate to the recruitment and appointment of Dr Pravine Naidoo (former municipal manager) deviating from the municipal recruitment and appointment policy (Kabuso Report 2015). The Report noted in section 13.3 that on 30 May 2013, Dr Pravine Naidoo inter alia submitted an item to Council titled 'Restructuring of the

Macro-Structure of the Makana Organogram (Phase 1)'. The report further mentions that the item sought to obtain Council's approval of the macro-structure of the organogram, which includes the Office of the Executive Mayor, the Speaker and the Municipal Manager. However, according to the Kabuso Report (2015: 48), the municipality was unable to provide minutes of the said Council meeting where the item was tabled and the resolutions taken by Council in respect of the said item (Kabuso report, 2015). The absence of Council minutes may show collusion by some of the key role players involved in the approval process.

Recent events following the High Court ruling have been characterised by threats to those who are vocal in communities. These events are not only attack on certain individuals, but also represent the suppression of active citizenry. The events also indicate the violent and polarised nature of politics in Makana. It was reported in the *Daily Maverick* that a number of activists involved in the Makana case have fled the area in fear of their lives (Ellis, 2020). The former leader of UPM has left and moved his family from Makana. He is quoted as saying:

"There were messages from everywhere. They all said the same thing. Be careful. Be very careful. Be careful. Be careful." (Former UPM Leader, 2020)

He further elaborated that "you could actually feel how anxious those in power were." (Former UPM Leader, 2020)

The danger of this type of threat is that it silences the people in communities and officials do not feel the need to account. This is especially the situation in Makana where the court ruling came after a long history of protests over service delivery failures, poor governance, allegations of corruption and maladministration.

## 5.1 Ruling party response to Makana crisis

It seems that patronage within the governing African National Congress (ANC) has undermined good governance in this municipality. A number of senior ANC officials and councillors were named in the 2015 Kabuso forensic report investigating maladministration and poor governance in Makana (DispatchLIVE, 2014). This report shows top officials were involved in financial maladministration and corruption, but with few consequences. Those implicated had close ties with the former mayor. The following findings were listed in the Kabuso or DispatchLIVE report:

- Crouse (then acting CFO) authorised payment of R108 374 for legal costs incurred during a settlement between the then municipal manager Pravine Naidoo and the municipality without council approval. He was also found to have authorised eight letters of appointment days before the municipal manager approved recommendations of interviewing panels;
- Boma (former mayoral strategic adviser and chair of ANC Makana sub-region) accepted a fraudulent increase of more than R196 613 in salary benefits between September 2012 and January 2014. He was also found to have caused the municipality to incur the irregular

expenditure of R108 374 when he issued a memorandum to Crouse instructing him to pay the legal costs incurred over Naidoo;

- Madinda (Council Speaker) flouted municipal processes when she signed the settlement agreement with Naidoo on behalf of Council although she had no delegated powers to do so. She was also found to have processed an irregular payment of R40 909 as an acting allowance to Santi as her office manager. This was despite there being no such position (DispatchLIVE, 2014).

The Kabuso or DispatchLIVE? Report shows well-coordinated corruption activities from the top office in the municipality.

For the past year, Makana has relied for its income mostly on the National Treasury provincial equitable share to provide services. In chapter 6 of the 2001 National Treasury Medium Term Budget Policy Statement, it is clearly indicated that “social and municipal services are essential to the alleviation of poverty and improving the quality of life and for economic development” (Medium Term Budget Policy Statement, 2001). The grant from National Treasury is supplemented by municipal revenue collection. In rural municipalities, revenue collection is a challenge. Only a small portion of residents live in the rateable area.

Thus, the 2019/20 Makana Tabled Budget indicates that “the capital budget amounts to R39.069 million. Expenditure will mainly be funded from various government grants as follows: Municipal Infrastructure Grant (MIG) R20,156 million and Water Services Infrastructure Grant (WSIG) R17,391 million and lastly, Internally Generated Funds are R1,522 million (MTREF, 2019/20).” The MTREF (2019/20) indicates clearly that the municipality relies almost entirely on government grants in order to function. There is no mention of the precise percentage of income generated from ratepayers to supplement the government grants. The municipality has prioritised the implementation of different revenue collection mechanisms to optimise the recovery of debt owed by consumers. Nevertheless, it is clear from the 2019/20 MTRF that the Municipality faces serious financial challenges as its operating expenditure increased compared to the previous financial year, but it is not capable of covering the deficit by increasing the income generated by ratepayers. This has a negative impact on the provision of services. In 2019, Makana owed Eskom an estimated R84 million, including compounded debt dating back to 2013. The Municipality admitted in the 2019/20 MTRF that “Repayment of long outstanding debts continues to cripple [the] financial muscle of the institution[,] especially [the] Eskom account[.] [S]ervice delivery has been neglected due to payment plans that are in place.” The Municipality has had to resort to paying Eskom using the equitable share received from National Treasury to stop Eskom from cutting the electricity supply. The revenue collection optimisation will help the municipality to pay its current account for electricity sales, according to Mayor Mpahlwa, 2019.

Several campaigns by community activists have encouraged Makana residents to withhold rates and pay them to an NGO or a trust account instead of paying a dysfunctional municipality. Residents’ view is that the Municipality has let the town decline to “a ruin and wreck” (Yendall, 2018). It is noted in a letter from the Grahamstown Residents’ Association (2017) that the Municipality was owed R366 812

651.00 by ratepayers and the inadequate revenue collections has resulted in a monthly operating deficit of approximately R5 000 000.00 (Grahamstown Residents Association, July 2017).

In addition to maladministration, the crisis in Makana is exacerbated by poor revenue collection and non-payment by residents. Indeed, the 2015/16 financial report shows that 71.44% of municipal revenue came from rates and taxes and 28.585 came from equitable share (Makana Budget Report, 2016). This confirms the importance of the payment of rates and taxes by residents, as the municipal budget relies on this income to fulfil its mandate. Hence, it is imperative for residents to honour their payments timeously for the municipality to get a positive balance sheet.

## 5.2 The importance of participatory democracy in Makana: The Unemployed People's Movement

Representative democracy as a system of organising society has come under sharp criticism. Fung and Wright (2003: 03) state that the representative form of political organisation is ineffective in accomplishing the central ideals of democratic politics, namely, facilitating active political involvement of the citizenry, forging political consensus through dialogue, and devising and implementing public policies that are the foundation for a productive economy and healthy society.

In January 2020, the Makhanda High Court ruled on the UPM's case and ordered the dissolution of Municipal Council of Makana as it has failed in its constitutional duty to deliver basic services. It also ordered the appointment of an administrator until the new council is elected. The provincial government has taken the High Court's decision on appeal to the Supreme Court of Appeal (SCA). If the Province's appeal is unsuccessful, this High Court decision has potential to create a precedent in the country, as several community organisations could resort to the courts to challenge poor municipal service delivery, maladministration and corruption.

The poor state of services in Makana is caused by a culmination of events, which span over a decade. Numerous interventions by the Department of Cooperative Governance and Traditional Affairs and its predecessors have not resulted in any positive change and improved service provision to the community. Instead, over the years, communities have learnt to survive without basic service provision from the Municipality. Communities have raised their concerns about the ageing water and sewerage infrastructure, which has caused numerous fresh water supply leaks that aren't promptly repaired. Many Makana residents have come to rely on water provided by the Gift of the Givers since the municipal government is incapable of delivering fresh water. Some communities have been without running water for years. Indeed, as a resident in Makana highlights: *"it's hard without water. You can't use your toilet ... You can't buy it [drinking water] when you are poor,"* (Nowicki, 2020).



Figure 3: Makhanda residents collect water from a tanker brought by humanitarian aid organisation, Gift of the Givers. *Photo: Lucas Nowicki*

Due to water supply constraints, the municipality devised a water supply system on a community rotational basis. Each community is meant to have water interruptions for three days. However, implementation of this system has not gone as planned. There are reports of communities going with dry taps for weeks. The statements below are a reflection of the social and economic impact of the water crisis in Makana:

*“Eastern Cape Department of Education spokesperson Loyiso Pulumani said that the department had recommended schools close early if they do not have water on the premises. He said the schools in the area surrounding Makhanda, and some schools in the township, have been worse affected.” (GroundUp, 2020)*

*“Water cuts have seen businesses close temporarily. Earlier in the month, the Department of Home Affairs had to shut its doors.” (Makana resident, GroundUp, 2020).*

It is not only water provision that has been negatively affected by maladministration in Makana. Road infrastructure, sewerage, and rubbish collection are all affected (Steyn Kotze, 2020).

## 6. Linking socio-economic and political contexts to skills and capacity constraints

The decision of the Makhanda High Court in Grahamstown ordering that the Makana council be dissolved and an administrator appointed is just one episode of the judicial saga between the municipality and residents. In 2015, a group of locals took on the Municipality under the name Makana



Unity League in the High Court due to issues related to the health and safety hazards of the unmanaged Makhanda landfill site. The delivery of services such as water was also a critical issue at that time. As Philip Machanick, the chair of Grahamstown Residents' Association comments:

The water situation is another sorry story and points to government dysfunction in awarding tenders: the situation would have been avoided had a tender to upgrade the water treatment plant not failed to deliver. Although the situation today is better, government has reneged on the promise to fast-track major upgrades to the water treatment plant and I last heard that the tender had not even been awarded (Machanick, 2020).

Service delivery issues in the Municipality in general are the consequence of the difficulty faced by the Makana Municipality in attracting and retaining technical and managerial skills, especially in the water sector, due to a lack of effective local leadership and political interferences (Nicholas, 2018).

Municipal governance has been also problematic. There has been a high turnover of senior and strategic officials, resulting in difficulties in retaining the institutional memory of the municipality (i.e. the collective knowledge and learned experiences of a group). In mid-2017, the Concerned Citizens Committee to Save Makana lobbied government to appoint a turnaround specialist because previous interventions by government had yielded no results. The appointed administrator, who was paid an amount of nearly R3m over a period of nine months while working only three days a week, did not implement the solutions proposed by academic, business and civil society representatives (Viedge & Hancocks, 2019). The municipality was crippled by the regular appointment of new acting municipal managers. Since 2014, six CFOs and ten municipal managers have been appointed in permanent and acting positions (Viedge & Hancocks, 2019).

In 2018, despite the appointment of two well-qualified senior officials (a chief financial officer (CFO), and a water and sanitation manager), the situation did not improve. Service delivery is still an issue for residents and the new CFO Gerard Goliath had to deal with an:

overspend on operating expenses of R73.3m for 2018 (or 16.9% — above the National Treasury's deep-water line of 15%, indicating poor and impaired operating controls). [...]. He is also clamping down on overtime and incorrect budgeting around the capital budget, which resulted in unacceptably low spend on basic services and large infrastructure projects, such as roads and water infrastructure (Viedge & Hancocks, 2019).

The governance culture was damningly "characterised to be laissez-faire; free for all and non-performance orientated, which created a dysfunctional administration coupled with the lack of effective political oversight" (Nicholas, 2018).

Since 2014, when Makana was first put under administration, the municipality has been unable to address the decline in the quality of governance, financial mismanagement, as well as rampant corruption (Steyn Kotze, 2020). All interventions failed to fix the problems. Numerous attempts to call

government to account and to ask for better performance have failed. The result has been growing mistrust and dissatisfaction among residents concerning governance and service delivery. The Unemployed People's Movement decided in November 2018 to launch a court action demanding the dissolution of the council and the appointment of an administrator. Other civic groups rallied in support and succeeded in deposing the then-mayor, Nomhle Gaga in late 2018. He was replaced in early in 2019 with Mzukisi Mpahlwa. Mpahlwa said he was "committed to rooting out incompetent, corrupt and ghost municipal employees and officials who have doomed the town through years of patronage projects and financial mismanagement" (Viedge & Hancocks, 2019). This commitment was perceived as "a vast improvement but there is just so much a single person can do with a largely dysfunctional council" (Machanick, 2020).

In March 2019, Eskom announced its intention to cut Makhandla's electricity supply for up to 14 hours a day because the Municipality was behind on its backlog repayment plan. Civil society organisations from the business sector took urgent court action to force the municipality to reach an arrangement with Eskom. In June 2019 the municipality was ordered by the High Court to begin paying R44-million in arrears to Eskom. The municipality through the CFO (Gerard Goliath) came up with a settlement agreement that was more sustainable than previous agreements. However, the question is "why did civil society have to go to court before he [CFO] was able to do this?", asked Philip Machanick, the chair of Grahamstown Residents' Association. Mr Machanick concluded, the best explanation is that he [CFO] was being blocked from doing his job...", Residents suspected that there is internal resistance within the municipal council undermining efforts to turn the municipality around (McLenann, 2020).

This chronology of recent events in the Makana Municipality identifies a few key issues regarding the performance of the Municipality and related to skills and capacity.

## 6.1 Skills shortage

The frequent appointments of acting municipal managers and other senior officials shows the lack of a stable cohort of highly qualified officials, which has contributed to crippling effective governance in the municipality and has undermined efficient service delivery. The dysfunctional status of the Municipality, coupled with the external and/or internal political environment that prioritises narrow political interests over the Municipality's developmental mandate in the general public interest, have contributed to the loss of its top officials, weakening the Municipality's administrative capacity. Makana, like many municipalities in the country, is left without independent and effective professional capabilities and technical capacity, which consequently erodes the quality of service delivery.

Based on decisions on how appointments were made at the Makana Local Municipality that needed the approval by council, especially for senior staff, the evidence indicated that the municipality struggled to implement its recruitment policy objectively because suitably qualified candidates were not recruited, as there was no approved organisational organogram for job-evaluated posts. On top of that, there were major issues regarding human resources at the municipality with regard to staff retention, development and support as well as the attraction of qualified, experienced staff. Many experienced and skilled staff left the institution because

of the manner in which appointments were made, effectively creating a disincentive to attract top quality professionals (Nicholas, 2018: 117).

Available data suggest that despite lack of appropriate levels of skills 22.9% of the public officials completed grade 12, 10.5% have a diploma, 8% obtained a post-graduate degree, 14.6% have a certificate and 0.6% a MA degree (Figure 4). Looking at the training needs of the municipality, we found that 38% of females believe they need training, 24.3% of men need training, while 24.5% of Africans wanted training, and 50% of white and 83.3% of Coloureds needed training (Figure 5).

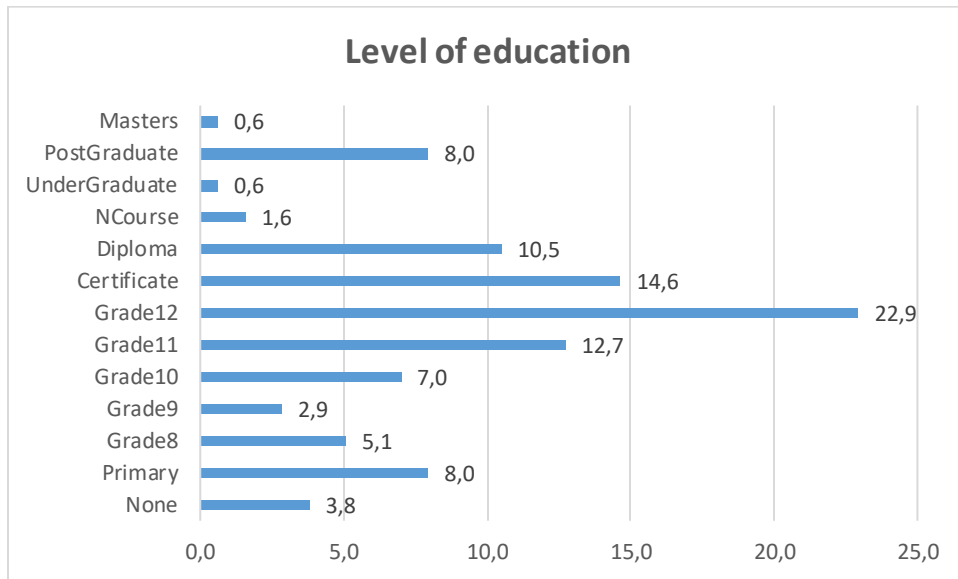


Figure 4: Level of Education of public officials  
Source: Makana Municipality Skills Development Report, 2020

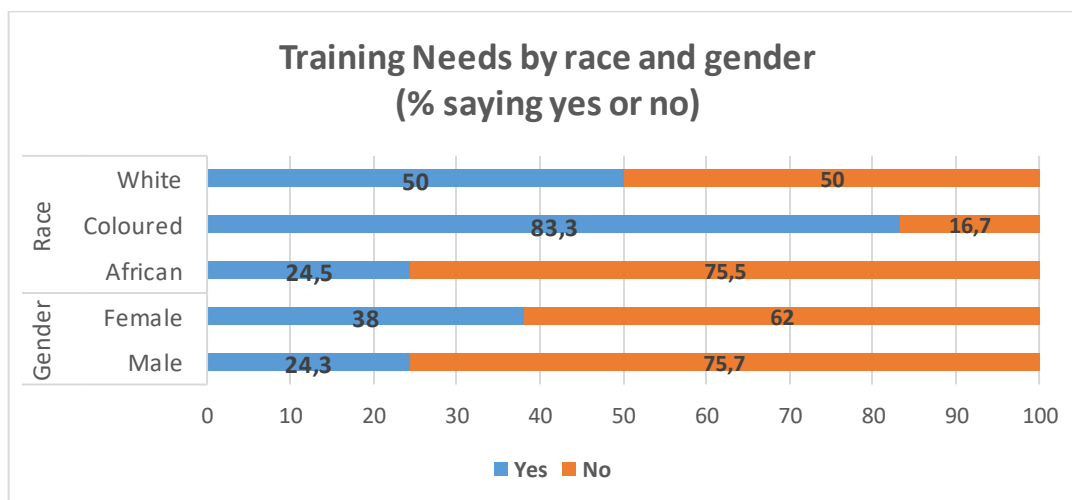


Figure 5: Training needs of the public officials  
Source: Makana Municipality Skills Development Report, 2020

## 6.2 Political interference

Makana provides a good example of how patronage in a one party-dominant political system undermines good governance. In some instances, the interface between senior politicians and senior administrators was quite indistinguishable:

What contributed to the problem experienced in terms of the political and administrative interface is that some municipal officials were also politicians, blurring the lines between the political and administrative arms of the municipality (Nicholas, 2018: 115)

Thus, “instead of rooting out a culture of patronage and lack of accountability in the municipalities it governs, the ANC would rather turn the issue into one of alleged judicial overreach” (Steyn Kotze, 2020). This hampers the ability of municipalities to fulfil their constitutional mandate of delivering services for all citizens’ benefit.

## 6.3 Unethical culture: corruption and lack of transparency and accountability

The process of awarding infrastructure tenders works only on paper, whereas its implementation reveals a different reality. Government requires that 30% of the value of a contract be awarded to local contractors to build the local skills base and to create jobs. However:

The problem is that this 30% becomes the patronage slice and removes the focus from awarding the contract to someone who will get the job done to a contractor who will be most willing to grease local patronage networks. Worse, if the project fails, the patronage networks get rewarded a second time — in other words, rewarding failure (Machanick, 2020).

The unethical culture of corruption, and lack of transparency and accountability, negatively affects the performance of the municipality.

## 7. Conclusion

Makana’s maladministration crisis stems from poor oversight and the politics of patronage with which the ruling party has been synonymous over the past decades. Despite repeated poor audit outcomes reported, and warnings from the Auditor-General, provincial and national government have failed to send a clear message to the leadership of the Municipality. The distribution of power and the lawful exercise of authority between party politics and administrators needs to be clearly defined and respected in practice. It is evident from numerous reports that Makana’s administration is crippled by

the ruling elite who are working to advance their personal or political interests. The forensic report lists a number of high-ranking members of the ruling party implicated in the corrupt activities, which has resulted in the collapse of service delivery and the deterioration of infrastructure in Makana. As it stands, Makana has failed to fulfil its constitutional mandate to its residents.

## References

- Adejuwon, DK. 2014. Enhancing Public Accountability and Performance in Nigeria: Periscoping the Impediments and Exploring Imperative Measures. Research Paper.
- Archibald, A & Munn-Venn, T. 2008. Building resilience: Leadership and accountability, *Report of the Conference Board of Canada, National Security and Public Safety*. March 2008. Canada: Aeris Inc.
- Auditor-General South Africa (AGSA). 2013. Consolidated general report on the local government audit outcomes MFMA 2012-13. Pretoria: Government Printer.
- Auditor-General South Africa (AGSA). 2018. Consolidated general report on the local government audit outcomes. MFMA 2017-18. Pretoria: Government Printer.
- Auditor-General. 2013. *General Report on the audit outcomes of local government MFMA 2012-2013*. Available online: [https://www.agsa.co.za/Portals/0/MFMA%202012-13/2012\\_13\\_MFMA\\_Eastern\\_Cape\\_general\\_report.pdf](https://www.agsa.co.za/Portals/0/MFMA%202012-13/2012_13_MFMA_Eastern_Cape_general_report.pdf) (Accessed 20 April 2020)
- Carlisle, A. 2018. *Residents mull diverting rate payments*. Available online: <https://www.dispatchlive.co.za/news/2018-09-21-residents-mull-diverting-rate-payments/>. (Accessed 1 June 2020)
- De Waa, A. 2014. South Africa's Water War. Available online: [https://www.groundup.org.za/article/south-africae28099s-water-wars\\_1482/](https://www.groundup.org.za/article/south-africae28099s-water-wars_1482/) (Accessed 2 June 2020)
- Development Indicators. 2016. Department of Planning, Monitoring and Evaluation. Republic of South Africa.
- Development Indicators. 2014. Department of Planning, Monitoring and Evaluation. Republic of South Africa.
- DispatchLIVE. 2014. Names behind Makana fiasco. Available online: <https://www.dispatchlive.co.za/news/2014-09-03-names-behind-makana-fiasco/> (Accessed 20 April 2020)
- Ellis, E. 2020. Activists in Makana municipality case fear for their lives. Available online: <https://www.dailymaverick.co.za/article/2020-06-03-activists-in-makana-municipality-case-fear-for-their-lives/> (Accessed 4 June 2020)
- Fourie, D. 2009. Institutional mechanisms and good governance: A perspective on the South African Public Sector, *Journal of Public Administration*, 44(4): 1114-1123.
- Freedom House. 2016. *Xenophobia and Outsider Exclusion: Addressing frail social cohesion in South Africa's diverse communities*. Available online: [https://freedomhouse.org/sites/default/files/Grahamstown\\_ZA\\_Community\\_Case\\_Study\\_FINAL.pdf](https://freedomhouse.org/sites/default/files/Grahamstown_ZA_Community_Case_Study_FINAL.pdf) (Accessed 1 June 2020)
- Gildenhuys JSH & Knipe A. 2000. *The Organisation of Government: An Introduction*. Van Schaik: South Africa

Grahamstown Residents' Association. 2017. Concerned citizens' committee to save Makana. Urgent request that Makana municipality be placed under Administration in terms of section 139(5) of the Constitution And funding from central government for drought relief And financial relief. Oatlands North, Grahamstown.

GroundUp. 2020. No end to water rationing in Makhanda. Available online: <https://www.groundup.org.za/article/no-end-water-rationing-makhanda/> (Accessed 20 May 2020)  
Hamaamba. 2004. Training needs for municipal employees: a case of Makana municipality. Unpublished M.Ed. thesis. Grahamstown: Rhodes University.

High Court of South Africa. 2020. Unemployed Peoples Movement v Premier, Province of the Eastern Cape and Others (553/2019) [2020] ZAECHGHC 1; 2020 (5) BCLR 573 (ECG). Available online: <http://www.saflii.org.za/za/cases/ZAECHGHC/2020/1.html> (Accessed 1 June 2020)

King Committee. 2016. *King IV Report on Corporate Governance for South Africa*, The Institute of Directors of Southern Africa (IoDSA). Available online: [https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA\\_King\\_IV\\_Report\\_-\\_WebVersion.pdf](https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA_King_IV_Report_-_WebVersion.pdf). (Accessed 8 June 2020)

Machanick P. 2020. Makana municipal mess up has lessons for local government. Mail & Guardian 21 January 2020. Available online: <https://mg.co.za/opinion/2020-01-21-makana-municipal-mess-up-has-lessons-for-local-government/> (Accessed 28 May 2020)

MacLennan S. 2018. Nightmare looms for new Finance boss. Grocott's Mail 23 October 2018. Available online: <https://www.grocotts.co.za/2018/10/23/nightmare-looms-for-new-finance-boss/>. (Accessed 12 May 2020)

MacLennan S. 2020. UPM, opposition slam Makana appeal bid. Grocott's Mail 30 January 2020. <https://www.grocotts.co.za/2020/01/30/makana-province-to-appeal-judgment/> (Accessed 28 May 2020)

Makana Local Municipality. 2019. Makana Municipality Integrated Development Plan, 2019/20. Grahamstown: Makana Local Municipality

Makana Local Municipality. 2016. Final Budget. 2015/16 and 2017/18 Medium Term Revenue and Expenditure forecast

Makana Local Municipality. (2015). *Kabuso Forensic Investigation Report*.

Medium Terms Budget Policy Statement, 2001. Available on line <http://www.treasury.gov.za/documents/mtbps/2001/6.pdf> (accessed 17.04.2020)

National Council of Provinces Appropriations. 2010. ATC100710: Report on Oversight Visit to Eastern Cape Municipalities from 27-29 July 2010. Available online: <https://pmg.org.za/taled-committee-report/125/> (Accessed 6 May 2020)

National Planning Commission (NPC). 2012. National Development Plan. Our future – make it work. Pretoria: National Planning Commission, Office of the Presidency

Nowicki L. 2020. Court orders dissolution of Makana municipality. Groundup 14 January 2020. Available online: <https://www.groundup.org.za/article/court-orders-dissolution-makana-municipality/> (Accessed 28 May 2020)

Piper, L & Deacon, R. 2009. Too dependent to participate: Ward committees and local democratisation in South Africa. *Local Government Studies*, 35(4):415-433.

Pycroft, C. 2000. Democracy and delivery: the rationalization of local government in South Africa. *International Review of Administrative Sciences*, 66: 143–159.

Qobo M. 2020. What it will take to build a capable state in South Africa? The Conversation 27 February 2020). Available online: <https://theconversation.com/what-it-will-take-to-build-a-capable-state-in-south-africa-132132> (Accessed 28 May 2020)

Republic of South Africa. 1998. White Paper on Local Government. Pretoria: Government Printers

Snape, S & Dobbs, L. 2003. The scrutineer: The impact of overview and scrutiny on councillor roles. *Public Policy and Administration*, 2003 18 (1): 46-62.

Steyn Kotze. 2020. Landmark court ruling highlights crisis in South Africa's cities and towns. BizNews 20 January 2020). Available online: <https://www.biznews.com/thought-leaders/2020/01/20/landmark-court-ruling-makana-service-delivery> (Accessed 28 May 2020).

*Unemployed Peoples Movement v Premier, Province of the Eastern Cape and Others* (553/2019) [2020] ZAECHGHC 1 (14 January 2020). Available online: <http://www.saflii.org/za/cases/ZAECHGHC/2020/1.html> (Accessed 20 January 2020)

Viedge J, & Hancocks R. 2019. Makana municipality is a city in deep crisis. DispatchLIVE 19 April 2019. Available online: <https://www.dispatchlive.co.za/news/2019-04-19-makana-municipality-is-a-city-in-deep-crisis/> (Accessed 2 June 2020)

Wright, E & Fung, A., 2003. Institutional Innovations in Empowered Participatory Governance. In Fung, A., Wright, E., eds. *Deepening Democracy*. London and New York: Verso

Yendall, L. 2018. Makana rates. Available online: [https://www.facebook.com/groups/7527152666/permalink/10156454802877667/?comment\\_id=10156456765607667&comment\\_tracking=%7B%22tn%22%3A%22R%22%7D](https://www.facebook.com/groups/7527152666/permalink/10156454802877667/?comment_id=10156456765607667&comment_tracking=%7B%22tn%22%3A%22R%22%7D) (Accessed 22 May 2020)

Yilmaz, S, Beris, Y & Serrano-Berthet, R. 2008. Local Government Discretion and Accountability: A diagnostic framework for local governance. *Local Governance & Accountability Series*, Paper No. 113, July 2008.



## Appendix 1

### Selected protest actions

Years	Issues	Article web link
February 2010	Emergency and Medical Services (EMS) working without radio communication for over two weeks.	<a href="https://www.grocotts.co.za/2010/02/18/ambulance-service-concerns-lead-workers-to-action/">https://www.grocotts.co.za/2010/02/18/ambulance-service-concerns-lead-workers-to-action/</a>
March 2010	The Unemployed People's Movement (UPM) in conjunction with disgruntled residents from Vukani and local squatter camps led more than 300 residents in a march to the City Hall to complain about unemployment and lack of delivery of basic services.	<a href="https://www.grocotts.co.za/2010/03/25/upm-demands-jobs-and-service-delivery/">https://www.grocotts.co.za/2010/03/25/upm-demands-jobs-and-service-delivery/</a>
March 2014	Protesters, led by the Unemployed People's Movement (UPM), brought the Grahamstown city centre to a standstill around midday on Wednesday 27 August.  Public Service Accountability Monitor (PSAM) and UPM call for Makana Municipality to be dissolved and for those who had mismanaged its finances to be held accountable.	<a href="https://www.grocotts.co.za/2014/08/28/protesters-flock-to-city-centre/">https://www.grocotts.co.za/2014/08/28/protesters-flock-to-city-centre/</a>
March 2015	Alicedale protesters call for the resignation/dismissal? of the Makana Mayor "They have many issues – no houses, bad roads – and the government is doing nothing."	<a href="https://www.grocotts.co.za/2015/03/20/alicedale-protesters-call-for-makana-mayor/">https://www.grocotts.co.za/2015/03/20/alicedale-protesters-call-for-makana-mayor/</a>
June, 2015	The protesters stood in the middle of Dr Jacob Zuma Drive, singing and burning tyres and furniture.  Residents demanded that mayor Zamaxulo Peter and ward 7 councillor step down  Residents from the area had been complaining about poor service delivery.	<a href="https://www.grocotts.co.za/2015/06/12/protestors-block-busy-grahamstown-roads/">https://www.grocotts.co.za/2015/06/12/protestors-block-busy-grahamstown-roads/</a>
August 2015	Protesters from Ekuphumleni blocked all approach roads into Kenton this morning (Monday 3 August) in an attempt to draw attention to their lack of housing, water, roads and electricity.	<a href="https://www.grocotts.co.za/2015/08/03/protests-block-kenton-roads/">https://www.grocotts.co.za/2015/08/03/protests-block-kenton-roads/</a>
April, 2018	Thursday 19 April, protesters halted Sanral's roadworks in the city, saying they should resume only after a meeting scheduled with Pillay for 2pm the next day. The protesters' main concern was the	<a href="https://www.grocotts.co.za/2018/04/24/road-project-protest-on-hold/">https://www.grocotts.co.za/2018/04/24/road-project-protest-on-hold/</a>

	manner in which local people working on the project had been selected.	
June 2018	A group of around 30 Phola Park residents set up a barricade of rocks and burning tyres at the north end of Trollope Street, outside Makana's electricity department around 8.30am on Tuesday 12 June and remained there until late in the afternoon, demanding that Mayor Nomhle Gaga and other senior councillors answer their demand that their area be electrified.	<a href="https://www.grocotts.co.za/2018/06/18/phola-park-power-struggle/">https://www.grocotts.co.za/2018/06/18/phola-park-power-struggle/</a>
November 2019	Makana Municipality experienced two protest actions. The first was a service-delivery protest by eNkanini residents who were demanding electrification. The second was by municipal workers whose petition contained a number of demands.	<a href="https://www.grocotts.co.za/2019/11/15/a-week-of-protests-in-makhanda/">https://www.grocotts.co.za/2019/11/15/a-week-of-protests-in-makhanda/</a>