The journey towards local justice

South Africa’s first municipal court was launched in Cape Town in 2000, followed by others, but they remain an area that has yet to be clearly defined. There is no policy for rolling them out extensively, but several municipalities around the country have pushed to introduce the courts, with widely divergent styles of implementation and varying degrees of success.

Traffic cases outnumber by-law cases in South Africa’s municipal courts. This needs to change.

By-law enforcement is an issue that cuts across almost all departments in a municipality, with regular inspections and monitoring needed in every area. Because municipal courts come with dedicated prosecutors, they can also provide useful input into this. In Cape Town, prosecutors meet with enforcement officers and give lectures or guidance on how to approach cases.

‘Part of what we do is to function in a certain advisory capacity,’ says Basson. ‘For example, a health matter where they take samples of bulk milk, the health inspectors will come to us and say, “Listen, what are the procedures for this? How do we take these samples?” And we guide them through the process.’

Policing the small stuff

The general shortfall in municipal enforcement is a clear indication that for most municipalities it is not a priority. But while much of what the courts deal with is ‘cosmetic’, for example hawkers, noise pollution, signage, building regulations, inspections of food outlets and the like. Put together these are ultimately the things which signal that a society has reached an advanced state of development, where every corner of a town is beautifully maintained and all of its citizens live together in peace and harmony. ‘The fact is, something which constitutes a nuisance in Khayelitsha, or movement the magistrate has to make. It’s really not an exact science. We treat all complaints seriously wherever they come from, but you take the more affluent areas, whenever you have a dog complaint you would swear it was a federal offence. We’ve had nuisance cases where some of these extremely rich people would send attorneys just to observe what happened in court just in case the prosecutor did something silly.’

Nonhlanhla Dladla, manager of the Durban Municipal court, explains the challenges: ‘Our township people don’t complain about noise, they don’t complain about dogs barking. It’s just the people in the white suburbs who complain about everything, and our township people are more tolerant. They shouldn’t need to be, but it’s going to take a long time to eradicate that, it is in their upbringing.’

The goal of municipal courts should be to create a society in which every citizen, regardless of their background, feels entitled to demand that their environment conforms to the highest standards. In creating this, a journey is just beginning.

Why municipal courts are great

• They ease the burden on the regular courts
• Services are faster
• There’s better revenue collection
• Specialist knowledge allows for more successful prosecution
• They allow for better co-ordination between by-law prosecutors and enforcers
• They support by-law enforcement
• They’re user friendly
• They keep ordinary people separate from hardened criminals

Different municipalities have different priorities. In Durban and Johannesburg curbing street trading is the major concern, but in Cape Town it’s often noisy dogs.

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The Municipal Court in Durban, which began operating in February last year, is in many ways a model for how the state should interface with its citizens. Housed in a stylishly redone building in a convenient location on the periphery of the city centre near the Durban Magistrate’s Court and train station, it has been able to bring services closer to the people. The attractively-finished court complex, which includes a well-used, leafy courtyard, is part of why a visit to the Durban Municipal Court is such a user-friendly experience.

**A pragmatic approach to traffic offenders**

In the first municipal court in KwaZulu-Natal, justice is meted out in an efficient and practical way, relieving pressure on the regular court system and ensuring the municipality gets its money.

The court has two full-time magistrates and two prosecutors for a single courtroom, which is an unusual but very effective way of handling its huge volumes of traffic cases. A pair of officials sit in court, while the other two work behind the scenes, the prosecutor dealing with out-of-court fine-reduction settlements and the magistrate issuing summonses and attending to other administrative work. This means that court can be held throughout the day without needing to stop for the other activities, which may form the bulk of the work.

The building was originally intended to run two courtrooms, one for routine admissions and a smaller one for trials. However, trials actually form such a small part of the court proceedings that, instead, the second courtroom is used as a waiting room for one of the prosecutors. However, it can also provide additional capacity during busy periods, such as after large metro police ‘sitting’ operations where people with large fines are arrested, or during holiday time.

‘During those times we get visitors from other provinces, and so we want to fast-track their cases so they don’t have to keep coming back,’ explains court manager Nonhlanhla Dladla.

Helpful staff from the metro police and the municipality’s administration are always on hand to explain court procedure or how to fill in documents.

**During a morning of observation, most cases were in court for about a minute and a half, with very few taking longer than three minutes.**

She was about to pay her husband’s traffic fine when the cashier told her she was missing an opportunity to have it reduced.

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Ah humane face in a grim place

There may be many reasons for having a municipal court, but a morning in a Cape Town court shows one of the most important could be their role in limiting the impact of heavy fines on the most economically vulnerable drivers.

The leadership of Cape Town’s municipal court system do an inspection of a new Court this way’ above a large, red arrow. Inside, the posters are of large smily 3D cartoon faces asking you, very politely, to turn your cellphone off. And the man whose job it is to prosecute you greets you with a big, genuine smile.

More than anything else, this is a place where people go because they don’t have enough money to pay their traffic fines. If they arrive out of their own free will, it is because they think its worth spending a morning of their life either trying to persuade the prosecutor that their fine is unfairly large, or trying to persuade the magistrate that they shouldn’t be fined at all.

Fortunately for them, they stand an extremely good chance of being rewarded for their efforts. When they walk into the courtroom before court in session, they are given a representation form they need to fill out. Whether they ask for it or not, they are told to give a reason why their fine should be reduced or cleared out of court.

“Put something down, anything,” the cheerful prosecutor, Colin McGilwrie tells them. ‘Are you studying? Do you have a family? Was your wife pregnant at the time? Just put it all down!’

After that he gives every person a theatrical examination based on their submission, with extensive moralising about the value of paying fines and the importance of particular road laws. There are also lots of anecdotes about his previous life experiences and the state of the world in general.

“You know what they do in the Middle East, if you steal? And if you speed, do they chop off your foot? You’re lucky to be here in Cape Town.”

Reductions in speeding fines are almost inevitable, but a recent policy decision in Cape Town has increased the fine for driving on an exclusive bus and minibus taxi lane on the N2 in the morning peak hour and made it impossible to reduce these fines. This has forced the prosecutor to adopt a new line.

“Your city spent R40 million on bus lanes to get people to work on time. It’s for buses, not Toyotas! Everybody thinks they’re driving buses! So now you need to pay your fine to the beautiful City of Cape Town. And you can be happy because you are not throwing your money away. It’s going to help make your lovely city even better! And please remember everyone, you can’t drive on the bus lanes between 06:30 and 09:00. ‘This man should have been a priest,’ whispers a woman to her friend.

Although the Municipal Court really is more than just a traffic court, on most days this is barely true. One man is in court for travelling on the train without a ticket, but otherwise it’s cars all the way. ‘This is why the slightly misleading Traffic Court’ signs are worth keeping.

However the court does deal with building by-law cases on Mondays and Fridays, when a building inspector is present for whatever comes up.

McGilwrie estimates that the magistrate sees only about 10% of the cases on the court roll, with the rest being settled out of court. This means that the court is in session for only just over half an hour that morning, while the magistrate spends the rest of her time signing warrants for the 550 cases that are on the court roll and doing administration.

The number of cases appearing in court is quite erratic however, particularly if, for example, metro police conduct sting operations to arrest people with large outstanding fines. Although even then the cases are spread among all 10 of Cape Town’s municipal courts, so the burden is not too heavy.

Today the court proceedings are relatively informal. At one stage the magistrate realises that a defendant is in the metro police canine unit and switches to interrogating him about whether the dogs are being treated well, before giving the bemused courtroom a sermon on exactly how dogs should be treated.

It quickly becomes clear that previous experience is definitely a bonus when trying to negotiate the subject matter quickly and decisively. Elaborate, often translated, descriptions of lane changes across complicated intersections with hills and multiple actors doing strange things are completely impenetrable to the uninstructed.

It’s also clear that the court performs an important unofficial regulating function for the local minibus taxi industry, since most of the cases before the magistrate are related to the industry in some way. Maybe it’s because blaming your misdemeanours on taxi hooliganism proves to be a sure-fire way of getting off the hook.

But it’s easy to see why the magistrate has little patience for the industry. In one example, a woman comes in to represent her son, a taxi driver, who has multiple charges against him of driving without a licence. He, of course, can’t be there because he is at work, driving without a licence.

See the special municipal courts section at www.sadelivery.co.za for more about Cape Town’s latest innovations.

Wise words from a prosecutor

Colin McGilwrie from the Wynberg Magistrate Court lays claim to the honour of being the first municipal prosecutor in South Africa, and has practised in his role for decades. Here are some of his thoughts on the value of municipal courts (and municipal prosecutors):

‘The most important thing is that the courts must be open and user-friendly. It’s not nice to pay a fine, and people need access to the system. This is supposed to be a service to the community.’

‘I’ve learnt that it’s very important to establish a good relationship with people. Then you can also persuade people that paying their fine is a good thing.

‘A municipal court is a part of criminal justice, but if you’ve got a traffic fine, you don’t want to stand in the lift with murderers and robbers. We shouldn’t subject people to that.’

‘One nice thing is that we’re so comfortable with all the regulations that we know when one action is covered by three or four by-laws, so you can always hit the target. We’ve got the skills, we know council, we know the land-use planning ordinance’

The leadership of Cape Town’s municipal court system do an inspection of a new prosecutor in one of the city’s ten municipal courts.

Wyenberg Municipal Court deals with most of the city’s bus-lane fines, which can be removed but not reduced.

Cape Town prosecutor, Colin McGilwrie.
Sorting out the by-law problem
Smaller municipalities battle not just with enforcement, but also with an extremely messy legal framework.

The problem is simple, says municipal prosecutor Mr Ndutuzi Ngomane. "Our by-laws are in bad shape. Everything is difficult to enforce, as a community.'

Now there is a full-time prosecutor available with three rotating magistrates and the court has taken a load off the Justice Department, but it is able to make little impression on the ‘daily erosion of social values’. The court deals with almost no by-law cases, other than the occasional ‘building without a permit’ contravention.

The problem is simple, says municipal prosecutor Mr Ndutuzi Ngomane. "Our by-laws are in bad shape. Everything is difficult to enforce, because our jurisdiction is Mbombela, but we have different fines and different rules in all the different areas submitting cases. And some things like illegal connections can’t be prosecuted because of a lack of by-laws.'

Professor Jaap de Visser, from the University of the Western Cape’s Community Law Centre, describes by-law legislation in South Africa outside of big metros as ‘a mess’. ‘You have a lot of conflicting legislation, both vertically between local, provincial and national legislation, and horizontally between the different areas within a court’s jurisdiction. For municipal prosecutors, there are lots of options in terms of which legislation to draw on, but there is also a lot of confusion.’

‘There is a historic mess around who does what in terms of making laws, and it’s really just getting worse’

The downscaling has been easy, ‘The city’s five traffic courts each have three prosecutors, one in court

Enforcement of by-laws around issues like food handling is critical if residents are to be safeguarded.

‘There is a historic mess around who does what in terms of making laws, and it’s really just getting worse’, says De Visser. ‘The provinces don’t know how far they’re allowed to go, and it’s really just getting worse.’
Are you sure you’re ready for this?

While municipal courts might be an attractive way of encouraging compliance, very few municipalities have what it takes to set one up.

Establishing a municipal court

A municipal court is essentially a partnership between the Justice Department and a local municipality, where the municipality offers to assist to deal with a backlog of cases. The first thing a municipality must do is to have a proper arrangement with their local court authorities, the local senior prosecutor and local chief magistrate. They should examine all the cases on the court roll over a particular period to look at the progress of municipal matters. The local court then needs to agree that the problem is with their own capacity, and that the municipality’s offer of infrastructural and administrative assistance is worthwhile.

Either the local court authorities or the municipality can contact their provincial department of justice. Their submission needs to be based on conclusive documentary proof from the court roll and court statistics. Mohamed explains exactly what he’d like to see from municipalities.

Mohamed says: “They must write to the Justice Department and say: ‘We’ve met with our chief magistrate and we’ve done a study, and these are all our matters from January to June in this district. And here’s I 1000 matters where you can see the dates of postponement are more than three months, and there’s 200 of them on average.’ Show that and we’ll go into partnership and open a special court for you. If a municipality is doing their enforcement properly, it should not be hard to find a backlog in their local court. However in most cases this is not happening. If a municipality contacts me, usually when I call the local role-players to find out what the story is, I never see the municipality again. They all get hyped up when they first engage with the idea, but when you send them back to drawing board they never come back, says Mohamed.

A useful municipal court is about more than just the quantity of cases coming through, because for prosecutions to be successful enforcement needs to be of a particular quality. A municipality need to know that they are able to get a good return on their service; that people make it to court, that municipal officials attend court to give testimony and that matters are not being withdrawn by prosecutors for unnecessary reasons like the quality of case documents. In short, says Mohamed, municipal enforcers need to be doing their work properly.

Enforcement is key.

Municipalities around the country have been introducing municipal courts, and they are making slow but steady progress improving their enforcement, which will have a fundamental effect on the way the courts function.

Kenny Schoeman, Cape Town’s head of processing and municipal prosecutions, has been watching his city’s system unfold over the last 10 years, and says the number of by-law matters in court is growing all the time.

‘The more people become aware of the purpose of the municipal court, the more complaints you get through the court. About five years ago we didn’t have 10% of what we have now, and it’s getting more and more. I think that can also be attributed to things like councillors who are much more active in their areas. I think being a councillor these days is a full-time profession compared to ten years ago, and they make the communities aware of the services.’

In the short term, the courts will have to deal with changes like the new point system for traffic offences. It might make people contest traffic fines even more vigorously because of the ramifications of a demerit.

In the longer term, larger municipalities which have some experience in municipal courts can expect to be given more responsibility, for example drunken driving prosecutions. But if municipalities can do better enforcement, we can expect to see municipal courts dedicated to by-laws and completely separate from traffic matters. The Justice Department has indicated that it would be more than happy to allow this if the court roll justifies it, although it is clearly a long way off."