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be achieved through the current model of
decentralised governance?

Andrew Siddle & Thomas A. Koelble

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ABSTRACT

Under the new constitutional dispensation, South African Local government was given a critical developmental role to play in rebuilding local communities and environments, as the basis for a democratic, integrated, prosperous and non-racial society. Local government was also to be structured along decentralised lines, with municipalities being given the right under the Constitution to govern, on their own initiative, the local government affairs of their communities.

Whilst the transformation of local government has been remarkable, many municipalities are unable to carry out their developmental duties. According to the Department of Cooperative Governance, only one third of South African municipalities are performing their functions "at least adequately;" one-third are "fairly functional;" and the remaining third are "frankly dysfunctional." Financial management is inadequate, service delivery is poor, and corruption is rife. There is a general perception that local government has, to a significant extent, not delivered on its constitutional developmental mandate.

This study examines the notions of decentralisation and developmentalism, and shows how they have become two of the most significant defining features of South African local government.

It shows how the two concepts have, by means of Constitutional, legislative, regulatory and policy prescripts, been comprehensively incorporated in the local government framework. By means, amongst other things, of canvassing the views and experiences of a wide range of local government actors, it demonstrates how the demands of an overly-ambitious decentralisation experiment have retarded the developmental agenda by placing too many demands on local government institutions which are ill-equipped to shoulder them. It shows how essential conditions for successful decentralisation posited by Manor, namely, the devolution of significant powers, the provision of sufficient financial resources, sufficient local capacity and the existence of accountability mechanisms exist, to a large extent, on paper only, and whilst the framework provides in detail for the fostering of these conditions, they are in reality elusive for a large segment of local government. Inability to perform functions, mismanagement of resources, lack of capacity and a weak accountability culture all contribute the state of affairs.

The study concludes that if South Africa's developmental ambitions are to be realised, the framework governing the role of local government will have to undergo drastic reform.

ACKNOWLEDGEMENTS AND THANKS

A project of this nature inevitably relies on the assistance of many individuals and institutions. In this case, in addition to the councillors, staff members and others who gave up their time to attend interviews and complete questionnaires, there were scores of people who assisted in other ways, such as with logistical arrangements, by arranging meetings, and by providing administrative support. As much as we would like to mention them all by name, to do so would be impractical; to single out just a few to mention would be unfair; and we should add, a substantial number of people who assisted us in any event requested that they not be mentioned by name. In the circumstances, we thought it best to record our sincere appreciation to all of them by means of a general expression of thanks without men-

tioning any names. Those who assisted us know who they are and they know that we are deeply indebted to them and are sincerely grateful for their help.

That said, we believe that there is no risk attached to making a special mention of the Swedish International Centre for Local Democracy (ICLD), which provided extremely generous assistance for this project, and without whose involvement this project would not have been possible. We therefore wish to extend our sincere thanks to the ICLD and its staff for their support. It is our profound hope that this study will, in return, contribute to the advancement of ICLD's objectives.

SPELLING, NUMERICAL AND CURRENCY CONVENTIONS

In this study, we follow the standard South African English spelling conventions (which are much the same as the United Kingdom conventions) for the most part (hence the spelling of “decentralisation,” “centre,” and so on). Where, however, we quote from works in which different conventions are followed, words are spelled according to the conventions used in those works (“decentralization,” “centre,” etc.). The South African convention (which has statutory authority) for expressing numbers uses a decimal comma, instead of a decimal point, and uses spaces to separate thousands. This convention is used in this

study (hence, for example, “24,4%, and “3 000” for three thousand, and “3 000 000” for three million). References to currency in this report are expressed in South African currency, namely, the Rand, and indicated by the letter “R” (hence three thousand Rand is expressed as “R 3 000;” millions and billions of Rand are generally expressed in this report by using numerals (with a decimal comma, where required), followed by the word “million” or “billion” or an abbreviation thereof. Hence, for example, R 5 353 000 000 is expressed as “R 5,353 bn.”

PREFACE

The mandate of the Swedish International Center for Local Democracy (ICLD) is to contribute to poverty reduction by promoting local democracy in low and middle income countries. In order to fulfill this mandate we offer, decentralized co-operation through our Municipal Partnership Programmes, capacity building programmes through our International Training Programmes and knowledge management through our Centre of Knowledge. The Centre documents and publishes key lessons learned from our ongoing activities, initiates and funds relevant research and engages in scholarly networks and organizes conferences and workshops. We also maintains a publication series. This report Local government in South Africa: Can the objectives of the developmental state be achieved through the current model of decentralised governance? By Andrew Siddle & Thomas A. Koelble is the seventh report to be published in ICLDs Research Report series.

The study examines the notions of decentralisation and developmentalism, and shows how they have become two of the most significant defining features of South African local government.

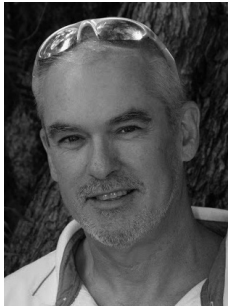
It shows how the two concepts have, by means of Constitutional, legislative, regulatory and policy prescripts, been comprehensively incorporated in the local government framework. By means of canvassing the views and experiences of a wide range of local government actors, it demonstrates how the demands of an overly-ambitious decentralisation experiment have retarded the developmental agenda by placing too many demands on local government institutions which are ill-equipped to shoulder them. Koelble and Siddle concludes that if South Africa's developmental ambitions are to be realised, the framework governing the role of local government will have to undergo drastic reform.

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Olov Berggren
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Koelble taught political economy at the University of California, Oberlin College in Ohio, and at the University of Miami before returning to South Africa in the late 1990's. He joined the GSB as Director of the MBA programme in 2000. He held that position until 2003 and has since then been a faculty member.

Koelble convenes the Business, Government and Society course which is designed to assist students in understanding the broader context within which businesses in emerging markets operate. He has published widely on issues pertaining to the global economy and local democracy, economic decision-making, social democracy, electoral and political systems and organizations, identity politics and democratic theory.

He is currently working on several international research projects - funded by the South African National Research Foundation - that deal with issues pertaining to the global financial markets and domestic economic policy, local governance and service delivery, traditional leadership and public administration, and finally the impact of trans-national eco-tourism on local communities in Southern Africa.



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Andrew Siddle practices as an independent consultant to national and local governments, advisory firms, NGO's, international organisations and the private sector. He has academic and professional interests in the fields of public and corporate governance, public and corporate finance, local government practice, intergovernmental relations, constitutional law, public management, compliance and natural resources (particularly in the legal aspects of marine and mineral resources). He has a special interest in democratic decentralisation and is an acknowledged expert in the field, and is a member of the United Nations Development Programme Roster of Experts on Democratic Governance. He has been admitted as an Attorney of the High Court of South Africa and practised as such for several years, after which he worked for a UK-based multinational with interests in various sectors, followed by extensive experience in the developmental sector while working for a leading developmental finance institution. He is a graduate of the Graduate School of Business, having obtained from the GSB both his MBA and his PhD. The topic of his thesis for the latter degree was "Decentralisation in South African Local Government: A Critical Evaluation"

LOCAL GOVERNMENT IN SOUTH AFRICA: CAN THE OBJECTIVES OF THE DEVELOPMENTAL STATE BE ACHIEVED THROUGH THE CURRENT MODEL OF DECENTRALISED GOVERNANCE?

ANDREW SIDDLE & THOMAS A. KOELBE

1. INTRODUCTION

Background

Once regarded as a rather sleepy level of government that existed to serve the interests of a particular group, local government in South Africa moved from relative obscurity into the limelight following the advent of the new political dispensation in the country. As it existed prior to 1994, local government has been described as “racist, subservient, exploitative and illegitimate in nature,” (de Visser 2005:58). The political system in which local government then operated “fundamentally damaged the spatial, social and economic environments in which people live, work, raise families and seek to fulfil their aspirations” (Ministry for Provincial Affairs and Constitutional Development 1998: ix). By the time of the 1994 democratic elections, South African cities were “characterised by dire housing and service backlogs, inequalities in municipal expenditure, the spatial anomalies associated with the ‘apartheid city’, profound struggles against apartheid local government structures, high unemployment and many poverty-stricken households” (Pillay *et al* 2006:2).

All of that was expected to change with the establishment of the new democratic order in South Africa. Local Government assumed a critical role in rebuilding local communities, as the basis for a democratic, integrated, prosperous and non-racial society. The new local government system was to be developmental in nature, and “committed to working with citizens, groups and communities to create sustainable human settlements which provide a decent quality of life and meet the social, economic and material needs of communities in a holistic way” (Ministry for Provincial Affairs and Constitutional Development 1998:ix). This was supposed to take place in a framework that provided for the devolution of significant powers and functions to the local

sphere of government. Not only was the new local government structure to be developmental, it was also to be decentralised. Indeed, it may be said that the two principal defining characteristics of South African local government are developmentalism and decentralisation. Both of these features are clearly reflected in the Constitution of the Republic of South Africa.

But local government was faced with a daunting range of challenges. These included the creation of larger areas of jurisdiction; massive service backlogs that municipalities were tasked with eliminating; a complete re-definition of local government roles as set out in the Constitution; the devolution of several new powers and functions to local government; new and often difficult relationships between councillors and officials; new concepts of service delivery; lack of capacity; other institutional weaknesses, such as corrupt and nepotistic practices; unrealistic expectations of senior governments and the citizenry; and a framework that was based on idealism rather than an appreciation of the harsh realities that attend decentralisation processes (Siddle and Koelbe 2012).

It is fair to say that the results of South Africa’s decentralisation experiment are, at best, mixed. Generally, basic services are now more widely available than ever before, and some individual municipalities have acquitted themselves reasonably or even very well; but many cannot adequately perform even basic functions, let alone cope with their new developmental role, and have lost credibility amongst their communities (Siddle & Koelbe 2012). For example, many municipalities still are unable to carry out acceptable levels of financial management, and pitifully few are able to achieve the highest standards of management, as is evidenced year after year by the reports of the Auditor-General; there is widespread failure on the part of municipalities to comply with the legislative requirements of the local government

framework; service delivery is often haphazard, and in some municipalities, virtually non-existent; and often-violent service delivery protests (or to use the currently fashionable term, “community protests”) occur continually. The much-vaunted benefits of decentralisation, and the attendant objectives of the developmental agenda, appear to be elusive.

Whilst South Africa’s decision to follow the decentralisation route, and to give local government such a critical developmental role, was no doubt predicated on the assumption that all municipalities would be run by competent staff with adequate resources and subject to oversight by dedicated politicians who were accountable to their communities, the reality is far different. It has been said that:

“there is a severe mismatch between policy imperatives and expectations on the one hand, and capacity (including leadership capacity) and resource base on the other. Municipalities tend to be ill-prepared and ill-equipped to take on the roles and responsibilities expected, including the responsibility to manage competing (and often conflicting) interests for limited resources and opportunities” (Isandla Institute 2011: 12-13).

Justification for this research

A great responsibility has been placed on South African Local Government, but in many respects it is failing to fulfil this responsibility. The consequences of failure are profound, and it is important that the causes of failure be understood. This is particularly important in view of the expectations which have been created by the National Development Plan, which was unveiled in 2011. As part of its “vision” for 2030, this plan promotes the notion of “Building a capable state” and declares that

“If we are to address the twin challenges of poverty and inequality, a state is needed that is capable of playing a transformative and developmental role. This requires well run and effectively coordinated state institutions staffed by skilled public servants who are committed to the public good and capable of delivering consistently high-quality services for all South

Africans, while prioritising the nation’s developmental objectives. This will enable people from all sections of society to have confidence in the state, which in turn will reinforce the state’s effectiveness” (National Planning Commission 2013:365).

Given the crucial developmental and service delivery role that has been assigned to the local government sphere in South Africa by the Constitution and given the decentralised model that applies to South Africa, the overarching aim of this research is to examine the factors that contribute to success or failure of that model. A great deal turns on the success of the decentralisation experiment. It is important, therefore, to undertake a close examination of the framework which guides local government, and how that framework is applied in practice, in order to promote an understanding of the difficulties facing local government and to facilitate the development of solutions. The year 2015 marked the fifteenth anniversary of the introduction of the new local government system in 2000. It is therefore in any event quite appropriate that this anniversary be marked by taking stock of the state of local government.

Theoretical and contextual framework

There are many potential goals of decentralisation. Most of them can be broadly categorised as improved efficiency, governance and equity. (Smoke 2003). In order for the process of decentralisation to be complete and for it to be successful, certain preconditions must exist – the most important being the devolving of significant powers and resources to local government, the existence of adequate capacity at local level, and the existence of accountability mechanisms (Manor 1999). Provision for the meeting of all of these conditions - on paper at least – is amply made in the South African local government framework, which enjoys constitutional authority and which is supported by a comprehensive range of legislative measures. It appears, however, that despite the existence of the formal parts which meet those conditions, the universal application and implementation of the mechanisms and systems that constitute those parts are proving difficult or impossible to achieve in South Africa. As Put-

nam points out, “painstaking design (does) not ensure good performance” (1993:10). The design of a local government framework must be appropriate to the context; and as Manor points out, the White Paper on Local Government of 1998, which sets out the policy basis for the South African local government framework, “like so many prescriptions devised for the new South Africa, fails to recognize that the country is inescapably a less developed country (2000: 11).”

In the light of the above, the underlying thesis of this research is that the burdens placed on South African local government as a sphere of government are far too great for many of its constituent municipalities to cope with, particularly given that South African is a country lacking in technocratic skills; in consequence, the country has experienced a failure of policy and the erosion of good governance at local government level. Accordingly, a revision of the local government model is required.

The principal question to be addressed by this research is therefore stated in the title, “Can the objectives of the developmental state be achieved through the current model of decentralised governance?” In the course of addressing that question, we will also consider whether the conditions for the successful implementation of a decentralised model exist in South Africa (this being a crucial inquiry); what the critical issues facing South African local government are; the extent to which the South African sphere of local government has achieved its constitutionally mandated objectives; and, to the extent that it has failed to achieve those objectives, how the decentralised model of government be should be adjusted to address the causes of failure.

Our approach to this study

Olowu and Wunsch (2004) state (quite correctly, we believe) that there are two ways of evaluating local governance. One is to focus on outputs and outcomes: whether local governance is bringing expected tangible benefits. The other is to focus on process. The latter approach aims to determine whether the transfer of authority, resources and accountability, and the development of an open local political process and local political and administrative institutions, are working in ways that suggest that local priorities and

needs are driving local decision-making. Whilst the former approach has its uses, we believe that a far better understanding of how local government works and how local authorities respond to and cope with the decentralised framework within which they are required to operate can be achieved by aligning the study with the second approach mentioned by Olowu and Wunsch, which is essentially qualitative in nature.

We relied to a large extent on interviews with local government actors. It must be made quite clear that our intention was not to conduct an opinion poll, in the sense of establishing whether or not a majority of interviewees supported or did not support a particular assertion or point of view, and then proclaiming the outcome as a matter of fact. Rather, we intended to obtain as wide a range as possible of views on the issues confronting local government. Where a particular point of view on any particular issue predominated, we point that out, but do not draw any conclusions from that *per se*; instead, we used these views as a basis for obtaining a sense of what the major issues facing local government were, which we then analysed and interrogated. The interviews were semi-structured in nature in that, whilst they focussed on specific questions, interviewees were encouraged to talk around the questions and volunteer information not specifically requested.¹ In addition, interviewees were asked to complete questionnaires. Not all them did, however, complete the questionnaires. There were also a number of persons who could not be interviewed for logistical or other reasons; they completed questionnaires in lieu of being interviewed.

Here it should be noted that we endeavoured to include as wide a range as possible of municipalities in the process. Accordingly, we included municipalities located in all nine provinces in

¹ Interviews were mostly conducted individually but occasionally also in groups. The core questions in the interviews focussed mainly on; institutional objectives; institutional capacity; adequacy of funding, and unfunded mandates; compliance with legislative requirements; audit performance; effectiveness of accountability mechanisms; the exercise of powers and functions; public participation; interaction between political and administration components of municipalities; institutional challenges; institutional successes; perceptions of service delivery; institutional responsiveness to citizen demands; inter-governmental relations; and prospects of achieving the constitutionally mandated objectives of local government.

South Africa, and municipalities falling within all categories of the Municipal Infrastructure Investment Framework spectrum.² Municipalities from all categories were involved in the interview process. Officials and councillors (including a number of mayors) from 51 municipalities were involved, as were officials and / or politicians from six provincial governments. Representatives of the following state institutions were also interviewed, namely, the Municipal Demarcation Board, the Development Bank of Southern Africa and the Financial and Fiscal Commission. Interviews were also conducted with several officials of the South African Local Government Association. A total of 112 persons were interviewed, or completed questionnaires, or both. In addition, Provincial Members' Assemblies of the South African Local Government Association in four provinces were attended during 2014 and in six provinces in 2015, as well as its National Members' Assembly in 2015. These assemblies provided excellent opportunities for observing the playing out of a wide range of issues with which local authorities were seized.

2. DECENTRALISATION - A GENERAL OVERVIEW

Understanding decentralisation

In order to understand local government in South Africa, it is essential to understand the concept of decentralisation. Limitations of space prevent us from giving this subject as detailed treatment as it deserves, but in this section, we aim to outline the principal features of the decentralisation paradigm, with a particular emphasis on those issues which are of special relevance to South Africa.

² This is based on the legal categorisations contained in the Constitution, i.e. "A" category (metropolitan municipality), "B" category (local municipality) and "C" category (district municipality), with the latter two categories being further refined as follows: B1: local municipalities with the largest budgets, also known as "secondary cities"; B2: local municipalities with large towns at their core; B3: local municipalities with small towns and relatively small populations; B4: local municipalities which are mainly rural with communal land tenure; C1: district municipalities which are not water service authorities; C2: district municipalities which are water service authorities.

Decentralisation defined

There are many notions of what constitutes decentralisation, but a practical, workmanlike definition is provided by the United Nations:

"Decentralization is commonly regarded as a process through which powers, functions, responsibilities and resources are transferred from central to local government and/or other decentralized entities. In practical terms, decentralisation is a process of striking a balance between the claims of the periphery and the demands of the centre." (United Nations 2009).

At the very heart of the debate about decentralisation is the relationship between the various levels of government (Devas and Delay 2006), and the balance of power between those levels (see also Falleti 2005). According to Oxhorn (2009), decentralisation consists fundamentally of the transfer of power by the central state to sub-national levels of government, or, as Brinkerhoff and Afzar (2010) put it, decentralisation deals with the allocation between centre and periphery of power, authority, and responsibility for political, fiscal and administrative systems.

Types and levels of decentralisation

Writers generally distinguish between three types of decentralisation:

- Administrative decentralisation, which is the process whereby the authority to administer and execute powers and functions (and by implication, the responsibility to deliver services) is transferred from national to sub-national government, thereby resulting in de-concentration of powers;
- Fiscal decentralisation, which is the process of transferring revenues of the central government, and also the power to raise revenues from local sources, from national to sub-national governments;
- Political decentralisation, which is the process whereby sub-national governments, elected by local participants, are established within a constitutional framework and granted political power and authority to govern over particular geographical areas. In short, it is the transfer (whether whole or partial) of

political power and authority from central to sub-national governments, and therefore involves the balancing of the exercise of power between various levels of government.³

Just as there are generally considered to be three *types* of decentralisation, so there are considered to be three *levels* of decentralisation. Decentralisation is essentially a process of vertical transfer that can be understood in terms of these three broad levels, namely: deconcentration, delegation and devolution. Deconcentration occurs when a central government disperses responsibility for a policy to its local offices. Under such an arrangement, the central government retains authority over the local office and exercises that authority through the hierarchical channels of the central bureaucracy (Schneider 2006). At the second level, delegation, policy responsibility is transferred to local governments or semi-autonomous organisations which are not controlled by the central government but remain accountable to it (Schneider 2006; Kauzya 2007). The central state in effect reserves control over key aspects of policy (Oxhorn: 2009). The distinguishing feature is that in delegation, the central government must exercise its control through the contractual relationship that enforces accountability on the part of local government (Siddle and Koelble 2012). The third level, devolution, is the process of transferring decision-making and implementation power functions, responsibilities and resources to legally constituted local governments (Kauzya 2007).

The decentralisation phenomenon

There has in recent years been an overwhelming move towards the decentralisation of government around the world by the granting of new powers, functions and resources to local and regional governments. It has brought sub-national government to the forefront of politics (Falleti 2005), and has become a cornerstone in “an astonishing range of countries” (Manor 1999:1) of a wide range of policies promoting state reform, more effective service delivery and greater levels of democratisation through increased opportunities

for citizen participation (Oxhorn 2009). Manor (1999) points out, however (and this, it is submitted, is of critical importance for understanding the decentralisation process in South Africa), that would-be decentralisers had little or no empirical evidence to guide them as to what decentralisation was and was not capable of achieving, or what results might flow from the application of specific types of decentralisation.

The importance of design

A matter of crucial importance for the success of any decentralisation experiment, and something that is crucial for understanding local government performance in South Africa, is the question of the design of the decentralised system. Whilst the experiences of decentralisation in various other countries provide useful lessons to a country wishing to pursue the decentralisation route, achieving good local governance involves more than just a quick technical fix (Siddle and Koelble 2012). “Importing” an institutional design which works elsewhere will not secure local democracy (Saito 2008). The political context in which reform attempts are put in place is crucial. There are enormous differences in both context and design across regions, countries and continents, and there is no single model of decentralisation that is appropriate to local and regional groupings, even within a single country. Some countries are more decentralised than others, and the degree of variation is enormous (Oxhorn 2001; Bardahn & Mookherjee 2006; Treisman 2006). It follows that it cannot be assumed that a particular design or form of decentralisation will improve public service delivery or better promote the interests of the poor.

A long-standing school of thought emphasises institutional design as a basis for explaining institutional performance. This tradition assumed that viable government depended largely on the arrangement of its formal parts. The experience of several democratic experiments during the inter-war years, however, showed that “painstaking design did not ensure good performance” (Putnam 2003:10). Whilst the existence of the rules comprising such design is essential for success, far more is required in order to ensure that a decentralised system will work. As Olowu and Wunsch (2004) point out, legal acts providing for decen-

³ For contrasting conceptions of administrative, fiscal and political decentralisation, See Falleti (2005), O'Dwyer and Ziblatt (2006), Schneider (2006), Treisman (2007), Manor (1999) and Kauzya (2007).

tralisation are among the prerequisites to local governance, but do not in themselves achieve it. The design, therefore, must not only be painstaking, but must also be suited to the circumstances; in addition, other key intervening factors are necessary to translate those reforms into effective local governance – such as effective local autonomy and authority, adequacy of resources, effective local institutions and accountable political processes (Manor 1999; Olowu & Wunsch 2004). An important consideration which appears to be often overlooked is that the legal and regulatory framework should be designed to recognise differences in management capacity at local level.

The disjuncture between formal rules and actual practice regularly observed in many countries should serve as a caution regarding the design and implementation of systems. Ambiguity and complexity create openings for conflicting interpretation and resulting confusion. Similarly, excessive complexity creates conditions for conflicting interpretation and resulting confusion. Manor (1999) warns that while excessively simple schemes are dangerous, excessive complexity and elaboration are causes for greater concern. Decentralisers may be tempted to adopt elaborate arrangements in the belief that they hope to achieve higher ideals, may turn out that the “best is the enemy of the good” (Manor 1999: 59). Where the skills and resources needed to implement and maintain complex arrangements are scarce, highly sophisticated systems – representing “best” practice – may prove impossible to implement, resulting in the undermining of both good governance and effective decentralisation. (Siddle & Koelble 2012).

Preconditions for success of decentralisation processes

Different writers have stipulated different sets of preconditions for successful decentralisation. For present purposes, we find it convenient to focus on a number of conditions discussed by Manor (1999) who distinguishes between four crucial conditions, on the one hand, and “merely

helpful”⁴ conditions on the other. In his view, it is crucial that decentralised systems have:

- sufficient powers to exercise substantial influence within the political system and over significant development activities;
- sufficient financial resources to accomplish important tasks;
- adequate administrative capacity to accomplish those tasks; and
- reliable accountability mechanisms – to ensure both the accountability of elected politicians to citizens, and the accountability of bureaucrats to elected politicians.

These conditions provide a convenient framework for analysing the effectiveness of the South African local government framework, as will be seen later in this study.

Goals of decentralisation

Brinkerhoff and Azar (2010) state that two broad categories of outcomes expected from decentralisation are usually identified. The first category relates to deepening democracy, whilst the second relates to outcomes concerning improved service delivery. Smoke (2003), on the other hand, states that most of the potential goals of decentralisation can be broadly categorised as improved efficiency, governance and equity. In any event, the list of specific objectives of decentralisation is potentially endless. Some of the more commonly encountered objectives are: promoting democracy; promoting legitimacy promoting public participation; promoting developmentalism; promoting demand efficiency; promoting supply efficiency; promoting competition; reducing corruption; improving communications; and defusing conflicts.

4 According to Manor, a useful but non-crucial conditions is the prior experience of democracy; two other helpful conditions are the existence of a lively civil society and the availability of social capital. Manor states that “when these two things are present, they almost always tend to assist decentralised authorities to work well...(but) it is not necessary to have either of these things on hand to enable decentralized institutions to function creatively”(1999:56). Additional factors which have been cited as preconditions by the left and right of the political spectrum, but which Manor suggests are not essential conditions, are land reform processes and market orientation and private sector development.

Decentralisation challenges

Despite decentralisation being generally viewed as a desirable process, significant difficulties are associated with it. These include uninterested, inertia-bound and overwhelmed government (World Bank 1997; Devas and Delay 2006); intergovernmental tensions (Campos and Hellman 2005); elite capture (Khan 2008); clientelism (-Campos and Hellman 2005); capacity constraints (World Bank 2000; Campos and Hellman 2005); and financial constraints.

The threat of recentralisation

A matter which has emerged as being of particular relevance in South Africa is the threat of recentralisation. In order for any decentralisation process to succeed, the central government must be willing to relinquish power, and must have the political will to engage in shared exercise of power and authority (Kauzya 2007). A serious difficulty, however, is the ever-present jealousy of a national government over its powers; it reluctantly gives them up in the process of decentralisation, and then expends much energy in trying to recapture them, which results in sub-national governments being undermined (Manor 1999; Wunsch 2001; Campos and Hellman 2005). Central government's endeavours are aided by the fact that national legislation may have built-in provisions which allow national ministries to decree how local government should operate by means of issuing detailed and all-encompassing regulations. In effect, this allows central governments to "claw back" the powers which were previously devolved to local authorities. In addition, local authorities may be so poorly resourced or so poorly designed that breakdown is inevitable. These, and a host of other similar factors, can lead to a *de facto* "recentralisation" process (Wunsch 2001; Olowu and Wunsch 2004).

General observations

Much of the development community continues to push with great enthusiasm for greater decentralisation (Hiskey 2010). But despite the prevalence of decentralisation in recent years, there is a degree of scepticism about whether the vaunted benefits of decentralisation have been, or will be realised, particularly because of the evident weaknesses of local level democratic processes

in so many countries (Siddle and Koelble 2102). The shifting of powers from the national to local governments has proven to be difficult. Often, this has been attempted without an appreciation of the dangers and consequences of inappropriate design and haphazard implementation and with a lack of clarity about what is entailed by decentralisation. It is also sometimes treated as an "all or nothing" phenomenon in which the role of the central government is by definition a very limited (Smoke 2003). The good intentions of decentralisation are acknowledged by most, but whether such intentions can actually be realised in the harsh realities of the day, especially in developing countries, is another question (Heller 2001). The World Bank probably sums up the situation quite accurately by asserting that decentralisation itself is neither good nor bad, and it should be viewed as a means to an end, often imposed by political reality. "The issue is whether it is successful or not. Successful decentralization improves the efficiency and responsiveness of the public sector while accommodating potentially explosive political forces. Unsuccessful decentralization threatens economic and political stability and disrupts the delivery of services" (World Bank 1997:107). And perhaps more bluntly, USAID declares that "Decentralization is about potential; it guarantees nothing" (US Agency for International Development 2000:8).

3. THE DEVELOPMENTAL STATE IN GLOBAL AND SOUTH AFRICAN CONTEXTS

The odyssey of a concept

Much has been said and written about the developmental state, but often it is forgotten that what was initially encompassed in the concept – which arose in relation to Japan and was then applied to other East Asian states – differs considerably from the idea of the developmental state as applied elsewhere, including South Africa, and in particular, South Africa's local government sphere. The concept of the "developmental state" has undergone, in the words of its originator, an odyssey (Johnson, 1999). When Johnson famously wrote about the Japanese Ministry of Interna-

tional Trade and Industry in his book, *MITI⁵ and the Japanese Miracle* (Johnson 1982), one of his main purposes was “to call attention to the differences, not the similarities, between the capitalist economies of the United States and Britain [being what Johnson refers to as regulatory or market-rational economies], on the one hand, and Japan and its emulators elsewhere in East Asia [being what he calls plan rational economies], on the other” (Johnson 1999:32). Since then, the concept has taken on a host of meanings.

The characteristics of the developmental state

Moss states that there is no agreement on what exactly development means, and that “the narrowest economic definition is to make poor people less poor, by raising their incomes” (2007:2). Maphunye (2009) points out that others look beyond, and link development to human progress. Esman (1991:5) states that “Although the concept of development has been and remains imprecise, it connotes steady progress toward improvement of the human condition; reduction and eventual elimination of poverty, ignorance and disease; an expansion of well-being and opportunity for all.” Various commentators have offered catalogues of the essential features of developmental states. In many respects, they differ, but they also show significant similarities. Leftwich (2000) provides as useful a list as any, and argues that the success of the developmental state is dependent on six primary factors:

- The developmental state is governed by political elite which demonstrates high levels of commitment to achieve economic growth, and is developmentally-oriented. The state must be able to influence, direct and set the terms of operation of private capital;
- local, professional, highly competent insulated career-based bureaucracy manages the developmental state;
- the presence and role of civil society is weak, negligible and subordinate;
- there are high levels of capacity for effective economic management of both domestic and foreign private economic interests;

- developmental states have a record of a mix of repression and human rights adherence;
- the legitimacy of the political elite to govern is tightly linked to the state’s ability to perform. Hence, despite having a poor human rights record, the ruling elites in developmental states often enjoy widespread support and considerable legitimacy.⁶

Several common themes emerge from the offerings of various commentators on the subject. Perhaps the most striking theme, however, is the need for a competent bureaucracy in order to best ensure the success of the developmental state.

The democratic developmental state

Concerns have been raised that the developmental state can “also be ugly – undemocratic and authoritarian, explicitly or implicitly” (Woo-Cummings 1999: 19-20). There is widespread doubt that developmental states can be replicated under democratic conditions (Gumede 2009). White asserts that the democratic developmental state is “a rare bird on the developmental scene” (1988:44). Whilst there are many states which are procedurally democratic, they lack a democratic political culture or democratic substance. “Most African states fit into this category – they are democracies in name only. Such limited democracies cannot of course state of elite capture, whether it is within the context of one-party domination or so-called ‘multiparty’ politics.” (Gumede 2009:7).

Notwithstanding such doubts, a significant corps of researchers argue that a democratic developmental state is indeed possible (Heller 1999, Sen 1999, Huang 2008), and indeed, that democracy may be crucial to growth and poverty reduction (Gumede 2009). Similarly, Edighedji (2005) asserts that a democratic developmental state is one that not only embodies the principles of electoral democracy, but also ensures citizens’ involvement in the development and governance process, and furthermore, that the democratic developmental can also foster economic growth and development.⁷

⁵ “MITI” refers to Japan’s Ministry of International Trade and Industry.

⁶ See also Laubscher 2007, Gumede 2009, Maphunye 2009 and Meyns and Masumba 2010.

⁷ See also Makandawire 2001.

Is South Africa a developmental state?

In its National General Council held in mid-2005, the African National Congress (ANC) committed itself to building a developmental state in an attempt to restructure the economy. The developmental state was one of the main themes of the ANC's Polokwane Conference in 2007 and also its 2009 election manifesto. In his 2012 State of the Nation Address, President Zuma reiterated the importance of the developmental state in the process of socio-economic transformation and declared that "working with the people and supported by our public servants we will build a developmental state, improve public services and strengthen democratic institutions."

Writing in 2009, Poon stated that the incoming administration of the then newly-elected President Zuma "marks a political transition period for South Africa as the country's past growth performance is examined and the underlying policy framework is re-visited in the face of global economic crisis and slowdown. Under this fertile policy scenario, the concept of the "developmental state" has become a buzzword for certain government officials and political figures, indicating their predilection to use greater degrees of state intervention and industrial policy as a means of achieving wide ranging priority economic/social policy objectives such as: creating economic growth, decent jobs and reducing poverty levels; sparing rural development, and land reform; as well as improving health/education sectors and public service delivery, and cutting the incidence of crime and disease." (Poon 2009:2). Whilst Poon argues that the policy fundamentals underlying the East Asian developmental states could not be farther from the developmental reality facing South Africa today. Burger (2014) asserts that South Africa, in tackling its dire social and economic problems, faces a conundrum, in that the East-Asian developmental state, with its singular focus on the growth objective and the accompanying suppression of labour earnings and rights, does not and will not fit South African conditions. Implementation would be politically unfeasible and probably unconstitutional.

If the conditions in South Africa are so different from those which gave rise to the East Asian model, what then is embraced in South Africa's, or rather, the ANC's conception of the develop-

mental state? According to the ANC's Economic Transformation Policy Discussion Document of 22 March 2007, the state must play a strategic role in shaping the contours of economic development (ANC 2007). The developmental state is one that is capable of leading in the definition of a common national agenda, mobilising all of society to take part in its implementation and directing society's resources towards this common programme. It is clear from the discussion document that South Africa's developmental state would have a South African flavour that would be informed by local realities, and would be underpinned by popular democracy with a social content. This conception was further articulated in the ANC's Polokwane Conference in 2007, when four key attributes of a developmental state were defined, namely, its strategic orientation should be premised on people-centred and people-driven change, and sustained development based on high growth rates, restructuring of the economy and socio-economic inclusion; it should have the capacity to lead in the definition of a common national agenda and in mobilising all of society to take part in its implementation; its organisational capacity should be such as to ensure that its structures and systems facilitate realisation of a set agenda; and it should have the technical capacity to translate broader objectives into programs and projects and to ensure their implementation (ANC 2010).

Whatever the South African conception of the developmental state is modelled on, and despite South Africa's ambitions in this regard, it does not have an elite, meritocratic bureaucracy that attracts the best talent in the country; the political dispensation leaves little room for the bureaucracy to play a pioneering role; the government's intervention in market processes occurs more through regulating than through direct participation; there is no leading organisation that gives direction in the way that the Japanese MITI did;⁸ furthermore, the difference in the historical circumstances in which South Africa finds itself compared with those in East Asia between 1950 and 1980 suggests quite clearly that the specific

8 On the contrary, responsibility for economic progress in South Africa is fragmented between at least three departments, namely, Department of Finance, the Department of Trade and Industry, and the Department of Economic Development.

course of development in Asia cannot be repeated locally (Laubscher 2007). According to Laubscher, “South Africa is a middle-income country whose primary economic issue is not economic development of the classic sense, but the challenge to effect greater inclusivity by giving all its citizens equal access to opportunities within the formal, modern economy and thereby reducing the large-scale inequalities in the distribution of income and wealth. ... To refer to South Africa as a ‘developmental state’ is therefore misleading and counter-productive in as much as it creates the illusion that South Africa is trying to emulate the Asian development strategy.” (Laubscher 2007:7)

On the other hand, it is argued that whilst initially the concept of the developmental state was modelled on an analysis of the role of the state in the successful industrialisation strategies of Japan and other Asian states, more recently there has been a shift in emphasis in the literature towards the importance of human development and the possibilities of establishing a “social democratic developmental state:”

“The wide range of state and governmental forms, and contrasting models of development, said to constitute ‘the developmental state’ does raise the question whether this is a coherent concept at all. The only shared features are an ideological commitment to ‘development’ – whatever that may be – and the idea that such a state is an active or interventionist one... with the capability to set appropriate developmental goals, develop the policies that have the greatest likelihood of achieving those goals, and then implement them effectively.” (von Holdt 2010:6).

Perhaps we should not concern ourselves too greatly with terminology, and accept that “the developmental state” means different things in different contexts. We must, however, accept that there are some themes common to the notion of the developmental state in all its manifestations – such as, for example, the need for an effective civil service, and the existence of developmental objectives (whatever, of course those might be). We should, however, acknowledge that what makes an Asian Tiger country a developmental

state does not necessarily make (nor is required for) an African developmental state, and that the application of the term “developmental state” to a particular country does not invalidate the description merely because it does not fit precisely with the original conception. In the next section, we examine, amongst other things, incorporation of the concept of developmentalism in the South African local government framework.

4. DECENTRALISATION AND DEVELOPMENTALISM IN SOUTH AFRICAN LOCAL GOVERNMENT

Decentralisation and the democratic constitution of 1996

The South African Constitution, which was adopted in 1996, is widely viewed as a model framework for good governance (Sunstein, 2000).⁹ One of its outstanding features is the emphasis that it places on decentralised government. Following the negotiations which gave rise to the new Constitution, nine provinces were established¹⁰ and provision was made for assuring the existence of those provinces and local government as spheres of government in their own right with full constitutional protection. Section 40 of the Constitution proclaims that

“In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, inter-dependent and interrelated.”

Section 151(3) of the Constitution provides that

“A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the constitution.”

9 For discussions of the process of the development of the Constitution, particularly insofar as it concerns local government, see Koelble and Li Puma 2008, Klug 2000, Oxhorn 2001, Friedman and Kihato 2004, de Visser 2005, Wittenberg 2006, Kauzya 2007 and Siddle and Koelble 2012.

10 The provinces are Western Cape, Eastern Cape, Northern Cape, KwaZulu-Natal, North-West, Mpumalanga, Limpopo and Gauteng.

A significant feature of the new local government dispensation was the idea of “wall-to-wall” local government. Section 151(1) of the Constitution states that “the local sphere of government consists of municipalities, which must be established for the whole territory of the Republic.” For the first time, every square metre of the country was to be subject to the jurisdiction of one or other municipality, regardless of viability or potential capacity to govern.

The adoption of the Constitution was followed by the adoption of the White Paper on Local Government in 1998. It formed a broad statement of policy which was to provide the framework for giving legislative “teeth” to the relevant provisions of the Constitution. A number of issues addressed in the White Paper are relevant to the decentralisation processes, more particularly, cooperative government, local government administration and local government finance.

Developmental local government in the constitution and white paper

As we have seen, the notion of developmentalism became a topic of much discussion in South Africa during the first decade of the 21st century. But developmentalism as a concept had already long been entrenched in the local government arena. Under the new political dispensation in South Africa, there was to be a new developmental local government system, “committed to working with citizens, groups and communities to create sustainable human settlements which provide a decent quality of life and meet the social, economic and material needs of communities in a holistic way” (Ministry for Provincial Affairs and Constitutional Development 1998:ix).

The objects of local government are stated in Section 152 of the 1996 Constitution of the Republic of South Africa, namely:

- a) to provide democratic and accountable government for local communities;
- b) to ensure the provision of services to communities in a sustainable manner;
- c) to promote social and economic development;
- d) to promote a safe and healthy environment; and
- e) to encourage the involvement of communities

and community organisations in the matters of local government.

Municipalities were now required to serve as the foremost development agencies within government as a whole (Atkinson 2002). This new developmental role is spelled out in section 153 of the Constitution, which provides that a municipality must

- “(a) structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and
- (b) participate in national and provincial development programmes.”

The White Paper translated the objects of local government as contained in Section 152 of the Constitution into the notion of Developmental Local Government which it defined as “...local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives.”¹¹ It ascribed various characteristics to the notion of developmental local government, namely, maximising social development and growth; integrating and co-ordinating; democratising development, empowering and redistributing; and leading and learning.

In the context of developmental actions, the White Paper saw local government as having four key outcomes: the provision of household infrastructure and services; the creation of liveable integrated cities, towns and rural areas; local economic development; and finally, community empowerment and redistribution. Municipalities were seen as requiring active participation by citizens at four levels: as voters; as citizens who express their views before, during and after the policy development process, in order to ensure that policies reflect community preferences as far as possible; as consumers and end-users, who expect value-for-money, affordable services and

¹¹ “Sustainable activities” are defined in the White Paper as those which “utilise (sic) resources and build capacity in a way which ensures that the activity can be maintained over time” (White Paper on Local Government 1998:157).

courteous and responsive service; and as organised partners involved in the mobilisation of resources for development via for-profit business, non-governmental organisations and community-based institutions.

Legislation

Following the final Constitution and the White Paper, a slew of legislation pertaining to local government was enacted. Literally dozens of statutes have a direct or indirect bearing on local government, but this section focuses on ten of them which have particular relevance to local government. What emerges from the legislation is a comprehensive statutory framework which largely reflects – on the face of it – a decentralised model of local governance, covering issues from demarcation of local government areas of jurisdiction, to funding (both from local sources and from central government), to local government structures, to mechanisms and systems for implementation.¹²

5. THE LOCAL GOVERNMENT FRAMEWORK IN SOUTH AFRICA

The design of the framework

The design of a typical decentralised framework usually incorporates certain common elements: (i) in the first place, local governments must have a solid constitutional basis for existing and functioning, accompanied by (ii) popular legitimacy; (iii) there must be mechanisms for regulating their relationships with other levels of government and government institutions; (iv) they must have rules, mechanisms and systems to guide their processes; (v) they must have defined func-

tions, and have the executive and legislative authority to perform those functions and to govern; (vi) they must have defined areas of territorial jurisdiction containing meaningful populations; (vii) they must have access to resources, derived either from their own areas of jurisdiction or from other sources; and (viii) they must be able to identify the demands of their populations, and be accessible, accountable and responsive to them. These elements are discussed in turn below.

Ample provision is made in the South African local government framework for all of these elements. The first four elements can be disposed of quickly. Regarding element (i), as we have already seen, sections 40(1) and 151 of the Constitution establish a constitutional basis for local government. These provisions are bolstered by other provisions of the Constitution which serve to secure the status of local government as a sphere of government in its own right. Regarding element (ii), provision is made both in terms of the Constitution and national legislation for the regular holding of free and fair local government elections.¹³ Regarding (iii), the Constitution and national legislation provide an array of mechanisms designed to advance intergovernmental relations. Regarding (iv), a host of legislative enactments provides a comprehensive – some would say far too comprehensive – set of rules to regulate local government.

The remaining elements require somewhat more detailed consideration. Element (v) is concerned with the powers and functions of local government. In South Africa, section 156 of the Constitution deals with the powers and functions of a municipality. Subsection (1) (a) provides that a municipality has executive authority in respect of, and the right to administer the local government matters listed in Part B of Schedule 4 to the

12 Included amongst the more important enactments are the Intergovernmental Fiscal Relations Act, no. 97 of 1997; the Financial and Fiscal Commission Act, no. 99 of 1997; the Local Government: Municipal Demarcation Act, no. 27 of 1998; the Local Government: Municipal Structures Act, no. 117 of 1998 (“Municipal Structures Act”); the Local Government: Municipal Electoral Act, no. 27 of 2000; the Local Government: Municipal Systems Act, no. 32 of 2000 (“Municipal Systems Act”); the Local Government: Municipal Finance Management Act, no. 56 of 2003 (“MFMA”); the Local Government: Municipal Property Rates Act, no. 6 of 2004 (“Rates Act”); the Intergovernmental Relations Framework Act, no. 13 of 2005; and the Municipal Fiscal Powers and Functions Act, no. 12 of 2007.

13 According to Section 1(d) of the Constitution, one of the values on which South Africa is founded is that of “universal suffrage, a national common voters’ role, regular elections, and a multi-party system of democratic government.” A combined proportional representation/ward representation model is applied for local government in South Africa.

Constitution¹⁴ and Part B of Schedule 5 to the Constitution.¹⁵ The enshrinement of powers and functions in the constitution now provides - in theory, at least - a guarantee of the right of local government to perform specified powers and functions, and is indicative of the importance which was attached to the notion that municipalities should have such rights.¹⁶

Element (vi) is concerned with the allocation of defined areas of territorial jurisdiction to municipalities. Detailed provision is made in national legislation for the demarcation of municipalities, whereby each municipality is allocated a defined area of territorial jurisdiction. The task of demarcating municipal boundaries was given to the Municipal Demarcation Board (MDB). When the initial demarcations were carried out in 1999 and 2000, the aim of the MDB was to draw the boundaries of local municipalities widely so as to cover core urban areas and their large rural hinterlands, the rationale being that such arrangements would direct residual capacity that existed in core areas towards providing services in rural areas (Savage 2008). Of course, this assumed that such capacity existed in the first place, whereas in fact capacity was in many cases seriously lacking. Following various rounds of demarcation, South Africa now has 278 municipalities which serve a population

of around 51 million people, and cover a land mass of 1,2 million square kilometres.¹⁷

It goes without saying that element (vii) - the provision of resources - represents a critical issue. In South Africa, or so the National Treasury asserts, "the local government fiscal framework is deliberately designed to raise municipalities' level of accountability to residents. The fact that most municipalities receive the majority of their revenue from services charges and property rates means that they need to ensure that residents receive the trading services...the general level of municipal services is adequate to maintain property values...(and) residents are generally satisfied with the municipalities' services¹⁸ (so that they are willing to continue paying their rates and service charges)" (National Treasury 2011:45). In truth, in South Africa, the capacity of individual municipalities to raise revenues varies enormously, with significant numbers of them being largely dependent on inter-governmental transfers.¹⁹

Local sources of revenue in South Africa are mainly derived from rates (as property taxes are referred to in South Africa) and user charges or tariffs.²⁰ Regarding intergovernmental transfers, the constitutional and statutory framework in South Africa provides for an elaborate set of revenue transfers from national to sub-national

14 Namely, air pollution; building regulations; child care facilities; electricity and gas reticulation; fire-fighting services; local tourism; municipal airports; municipal planning; municipal health services; municipal public transport; municipal public works; pontoons, ferries, jetties, piers, and harbours; storm water management systems in built-up areas; trading regulations; water and sanitation services.

15 Namely, beaches and amusement facilities; billboards and the display of advertisements in public places; cemeteries, funeral parlours and crematoria; cleansing; control of public nuisances; control of undertakings that sell liquor to the public; facilities for the accommodation, care and burial of animals; fencing and fences; licensing of dogs; licensing and control of undertakings that sell food to the public; local amenities; local sports facilities; markets; municipal abattoirs; municipal parks and recreation; municipal roads; noise pollution; pounds; public places; refuse removal, refuse dumps and solid waste disposal; street trading; street lighting; traffic and parking.

16 Powers and functions may also be allocated to municipalities by way of assignment of powers by legislation, by way of assignment by executive acts, by way of delegation of powers and functions and by way of contracting out matters on an agency basis. The extent to which these additional powers and functions are devolved varies considerably from province to province and municipality to municipality.

17 Although many of the newly demarcated municipalities had at their cores administrations which were "inherited" from previously existing institutions and which could potentially provide continuity during the transition from the old local government order to the new, a large number of municipalities had, at most, new and poorly established administrations, which had only vestigial capacity, or had been created "from scratch" where previously nothing had existed. Much of what comprises local government therefore started its existence at a serious disadvantage. See Cameron (2006) for an account of the municipal boundary demarcation process.

18 Many residents would disagree strongly - even violently - with this assertion.

19 For discussions on intergovernmental transfers and the associated dangers of "grant dependency" in the global context, see Rodden 2002, Shah and Thompson 2004, Watt 2004, and Alam 2006.

20 Section 229 of the Constitution permits municipalities to raise revenue from these sources, and national legislation in turn has been enacted to give effect to these constitutional provisions. Less significant sources of local funding are to be found in fines collected for by-law contraventions, permit and licence fees, agency payments (for example, when municipalities perform services on behalf of other spheres of government) and investment income.

governments (Yemek 2005). The broad principle relating to intergovernmental transfers to local government is contained in Section 227 of the Constitution, which provides that local government is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and to perform the functions allocated to it, and may receive other allocations from national government, either conditionally or unconditionally. Each year when the Annual Budget is introduced, the Minister of Finance introduces a Division of Revenue Bill which specifies the share of each sphere of government of the revenue raised nationally for the relevant financial year, each province's share of the provincial share of that revenue, and any other allocations to the provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations are or must be made. Provision is thus made for both the vertical division of revenue – that is to say, as between the three spheres of government, and the horizontal division of revenue – that is to say, as between the provinces which constitute the provincial sphere, and the municipalities which constitute the local sphere.

The principal type of unconditional transfer in South Africa is the local government equitable share which is a constitutional entitlement, being provided for in section 227(1) (a) of the Constitution and is intended as the principal “redistribution” tool for fostering government expenditure. The equitable share is intended to fund a range of municipal activities (including the general expenditures of municipalities) and municipalities are largely free to allocate the equitable share as they see fit, after taking account of national priorities that underpin the vertical division of revenue. The other main category of transfers – conditional transfers – are provided to support municipal infrastructure investment and to strengthen municipal capacity. In both cases, transfers are made directly, in the form of cash, and indirectly, in the form of assets or support services provided to a municipality.²¹

21 A further source of funding is borrowing. Although the legislative framework for borrowing is extremely liberal, the local government borrowing market is not particularly active, due largely to market concerns about the creditworthiness of municipalities.

Our discussion on fiscal and financial issues has thus far focussed on sources of local government revenue. We need to turn our attention now briefly to the issue of financial management. The Local Government: Municipal Finance Management Act (MFMA) imposes tight central control over the administration of municipal finances. The inability of many municipalities to carry out sound financial management practices, notwithstanding the detailed guidance provided by the MFMA, is a major cause of concern.

Element (viii) – the final element – is concerned with public participation. This is widely considered to be a critical feature of decentralisation. In South Africa, the Constitution itself is quite explicit about the question of public participation. Section 152(1)(c) states that one of the objects of local government is “to encourage the involvement of communities and community organisations in the matters of local government.” Both the Municipal Systems Act and the Municipal Structures Act provide amply for mechanisms, processes and rules designed to promote public participation and disseminate information.

Observations

South Africa has adopted an extremely complex and sophisticated framework, one that reflects all of the characteristics of a decentralised system, and one that appears to have been designed in what was perceived as an appropriate way to facilitate the decentralisation process and to deal with the challenges which inevitably attend such processes. In many respects, it may be said to reflect “best practice.” Nonetheless, local government in South Africa faces many challenges, and many of them appear to be without solution. When all is said and done, is South African local government achieving its developmental objectives? Is this Rolls-Royce of frameworks helping or hindering the attainment of those objectives? In adopting such a framework, has South Africa, to use Manor's expression, allowed the best become the enemy of the good? Has the framework exceeded by too far what Grindle (2004) calls “good enough governance”? In the next five sections, we will endeavour to address these questions.

6. THE STATE OF LOCAL GOVERNMENT

It was noted in earlier that local government in its new manifestation was met with a bewildering array of challenges, some long standing, some new. Local government – fairly or otherwise – was soon characterised in the view of the public as a sphere of government that was beset by administrative, governance, capacity and political problems that resulted in corruption, maladministration and poor service delivery. By the year 2009, these failures and their causes had in many instances been apparent for a considerable length of time. The then Deputy Minister for Cooperative Governance and Traditional Affairs acknowledged in a speech delivered on 20 August 2009 that local government “just ain’t working” and that the government had overestimated the political depth, governance experience and technical capacity available at municipal level.²² This awakening may have been prompted to some extent by the wave of “service delivery protests” or “community protests” which first became manifest in 2004, and escalated rapidly in 2007 and 2008 and have continued at various levels of intensity ever since.²³

The 2009 overview report on the national state of local government assessments

In 2009, the Department of Cooperative Governance and Traditional Affairs produced an Overview Report on the state of local government in South Africa.²⁴ The report concluded that the underlying “reasons for distress in municipal governance” were due to a number of factors. Tensions between the political and administrative interface were identified as being one such factor. Another was the poor ability of many councillors

to deal with the demands of local government. Furthermore, it was maintained that there was insufficient separation of powers between political parties and municipal councils. Yet another cause was inadequate accountability measures and support systems and resources for local democracy. Finally, poor compliance with the legislative and regulatory frameworks for municipalities was blamed (Department of Cooperative Governance and Traditional Affairs 2009(a)).

The report suggested that party political factionalism and polarisation of interests and the creation of political alliances and elites had contributed to the progressive deterioration of municipal functionality, and that factionalism has emerged on a scale that in some areas, “is akin to a battle over access to state resources rather than any ideological or policy differences,” and the situation had arisen where “there is now a lack of citizen trust and confidence in the system” (Department of Cooperative Governance and Traditional Affairs 2009(a):10-11). That was in 2009. Have matters improved since then?

Back to basics: “One third of municipalities are dysfunctional”

The “Back to Basics” campaign, launched in 2014, is the latest in a series of local government improvement programmes initiated by the national government. In a memorandum produced by the Department of Cooperative Governance (2014) for purposes of the “Back to Basics” programme, following a review conducted by the Department of South Africa’s 278 municipalities, it was stated that:

- The top third of municipalities “have got the basics right and are performing their functions at least adequately.”
- The middle third of municipalities “are fairly functional, and overall performance is average. While the basics are mostly in place and the municipalities can deliver on the main functions of local government, we also find some areas of poor performance or decline that are worrying signs.”
- The bottom third of municipalities “are frankly dysfunctional, and significant work is required to get them to function properly... we find endemic corruption, councils which

22 Reported in the Weekender, 22-23 August 2009.

23 See Atkinson 2007 for a discussion of the emergence and spread of community protests. Whilst the cause of these protests are many and varied, and whilst service delivery by local government is not necessarily the only cause of such protests, it is widely assumed that local government ineffectiveness is often the major flashpoint. See also Alexander (2010).

24 “State of Local Government in South Africa - Overview Report on the National State of Local Government Assessments”: Department of Cooperative Governance and Traditional Affairs (2009(a)).

don't function, no structured community engagement and poor financial management leading to continuous negative audit outcomes. There is a poor record of service delivery, and functions such as fixing potholes, collecting refuse, maintaining public places or fixing street lights are not performed. While most of the necessary resources to render the functions or maintain the systems are available, the basic mechanisms to perform these functions are often not in place." (Department of Cooperative Governance 2014:4)

The memorandum sums up some of the major symptoms of municipal dysfunctionality. It notes that institutional incapacity and widespread poverty have undermined the sustainability of the local government project, leading in some instances to a serious breakdown in services, and describes some of the problems faced by local government: a collapse in core municipal infrastructure services in some communities, resulting in inadequate provision of services; slow or inadequate responses to service delivery challenges are in turn linked to the breakdown of trust in the institutions and councillors by communities; inadequate public participation and poorly functioning ward councillors and committees; the viability of certain municipalities is a key concern, with the low rate of collection of revenue continuing to undermine the ability of municipalities to deliver services to communities; municipalities need to be driven by appropriately skilled personnel and their correct placement, but there are far too many instances both of inappropriate placements and skills not measuring up to requirements; and widespread instances of rent-seeking and corruption amongst public representatives and business." (Department of Cooperative Governance 2014)

When things go wrong: a case study

Few episodes better illustrate the instability and dysfunctionality which characterises a large segment of South African local government than one which played out early in 2015, and which, as at the time of writing, had not yet been fully resolved. This relates to the stopping of intergovernmental transfers to a number of municipalities following their failure to pay amounts owed by them to Eskom and various Water Boards.

The constitutionally mandated functions of South African local government include electricity reticulation and water services. Almost all electricity which is fed into the national power grid²⁵ is produced by the state-owned utility, Eskom. Eskom supplies a large proportion of such electricity to municipalities which in turn supply it to end consumers, for which they levy a charge. This charge represents a very significant proportion of their income. Similarly, many municipalities purchase bulk water from Water Boards (which are statutory bodies charged with water management) for onward supply to consumers. As at November 2014, Eskom was owed a total of R 9,49 bn by municipalities, of which R 4,88 bn was current debt, and R 4,61 bn was in arrears. As of February 2015, various Water Boards were owed a total of R 3,6 bn by municipalities, of which R 1,4 bn was current debt and R 2,2 bn was arrears debt (Financial and Fiscal Commission 2015 (b)).

Section 216 of the Constitution requires that national legislation prescribe measures to ensure transparency and expenditure control in each sphere of government, and also requires the National Treasury to enforce compliance with such measures. The Constitution empowers the National Treasury to stop fiscal transfers to an organ of state if that organ of state commits a serious or persistent material breach of those measures. These constitutional provisions are reflected in the Municipal Finance Management Act. One such measure is section 65 (1) (e) of the Act, which provides that "all money owing by the municipality (must) be paid within 30 days of receiving the relevant invoice or statement..."

Against this backdrop, on 6 March 2015, the National Treasury issued a circular stating its intention to stop the transfer of equitable shares of national revenue to municipalities that were habitually defaulting on payment of their debts to Eskom and Water Boards, and subsequently indicated its intention to pay the amounts directly to Eskom and Water Boards in settlement of those debts. 59 municipalities – or 21 % of all municipalities in South Africa – were affected by the circular. As it happened, the threatened stopping of funds did not occur, but it at least focussed the

²⁵ Apart from that which is produced by "independent power producers," which is mostly sold to Eskom and fed into the same grid.

attention of the errant municipalities sufficiently to compel them to seek an accommodation with the National Treasury. It is easy to imagine what chaos would have ensued had the funds in fact been stopped, and in particular, how communities would have been affected.

Whatever the politics that were involved, the threat and the subsequent fallout laid bare some very serious fault lines traversing local governance and the ability of municipalities to deliver on their developmental duties. In the first place, it reveals the inability of many municipalities to manage their finances. Second, it exposes a breathtaking indifference on the part of those municipalities to their obligations and the consequences of failure to fulfil those obligations. Third, it demonstrates how dangerous it is to devolve developmentally-oriented functions – for example, the provision of basic services such as electricity and water – to institutions that are less than adept at managing their affairs (whether due to lack of technocratic capacity or to weak political leadership). Fourth, it lays bare how inadequate our systems are to deal with the magnitude of local government dysfunction – whilst the provisions of Section 216 of the Constitution may be effectively applied occasionally against one or two errant municipalities, whoever designed that provision clearly never anticipated that it would be used against 21% of South African municipalities at one time. Finally, it reveals a worrying degree of tension between the national and local spheres, and suggested that there exists a lack of common purpose that does not augur well for good governance.

The insiders' views: the issues facing local government

What are the factors that contribute to the dismal state of affairs illustrated by this episode, and by the Overview Report and Back to Basics memorandum referred to above? A significant focus of the present research was to ascertain the views of local government actors on the issues which give rise to the difficulties in local government. This provided an opportunity to elicit from local government actors, by means of face-to-face interactions and other means, directly from them what they perceived to be the key issues.

For the sake of convenience, we have arranged

the issues which emerged in three categories: institutional, structural and environmental. We do not claim any particular significance for this classification other than it provides a convenient and reasonably descriptive means of categorising the subject matter. “Institutional” refers to those issues which are particular to individual (albeit multiple) municipalities and are products of how individual municipalities or stakeholders in such municipalities carry out their activities or functions or exercise their choices. “Structural” refers to those issues which emanate from the design of the constitutional, legislative, regulatory and policy framework which applies to local government and relates largely to the responsibilities and obligations imposed on, and resources made available to, municipalities in terms of that framework. “Environmental” refers to those issues (other than structural) which are external to individual institutions, and relates mainly to circumstances constituting the environment within which municipalities operate but which are not subject to significant control, modification or influence by them. These three categories are discussed in turn below.

Institutional issues

Institutional issues, as raised by participants in this research, are, for present purposes, in turn categorised into the following broad categories: capacity, financial issues, governance, service delivery, and community relations. These are discussed briefly in turn below.

Capacity: The first set of institutional issues is arranged under the broad category of capacity, or rather, the lack thereof. Here the concerns revolved around the appointment of unqualified staff (especially at senior level); the associated question of cadre deployment; staff retention; incompetent staff; undisciplined staff; unfilled vacancies and insufficient staff, and by contrast, in some municipalities, excessive staff; lack of innovative approaches to implementing operations; and inability to promote local economic development to and attract investors.

Financial issues: The second set of institutional issues relates to finances; here the concerns revolved around financial sustainability; poor

financial management; misspending of funds; grant dependency; debt collection and non-payment for services; inability to manage cash flow; non-credible budgeting; supply chain management issues; timely payments of creditors; and disregard amongst politicians for the affordability of projects.

Governance: Governance issues included compliance as an undue burden and as a symptom of non-accountability; inability to apply legislation, and failure to comply with legislation; adherence by municipalities to their own policies and by-laws; non-implementation of audit committee advice; maladministration; councillor performance and quality of councillors; corruption and fraud; nepotism; political interference; lack of internal accountability (including failure to take action against transgressors); and clientelism.

Service delivery: Here the issues revolved around the inability of many municipalities to deliver services; the effect of capacity and financial constraints on service delivery; and infrastructural issues, such as lack of infrastructure; pressure on infrastructure; unmaintained infrastructure; and the inability to spend on infrastructure.

Community relations: Concerns revolved principally around poor communications with communities, poor relations with communities, and the ineffectiveness of public participation mechanisms.

Structural issues

Structural issues revolved mainly around what was considered to be an inappropriate funding model; unfunded mandates (funding allegedly does not follow function); mandate creep; over-regulation; excessive legislative demands; policies and regulations that are not grounded in reality; ineffective intergovernmental coordination; poor intergovernmental relations; lack of provincial support; and too much power in hands of executive mayors.

Environmental issues

Here the concerns were principally about the weak economy; poverty and unemployment (and the consequent inability of citizens to pay for

services); geographical areas of jurisdiction that were too large for municipalities to service effectively; unrealistic expectations of communities; a sense of entitlement amongst communities; the urbanisation phenomenon, which is manifested by mobile populations placing pressure on resources, lack of land for housing; increasing indigent populations; and local disintegration and lack of social cohesion.

Making sense of the issues

It will readily be seen that many of the threats to decentralisation processes that were discussed previously are reflected in the issues raised by local government actors. Given the constraints attaching to a report such as this, it is not feasible to analyse all of the issues in detail. We have therefore made use of the four conditions stated by Manor (discussed previously) to be essential for the success of any decentralisation experiment as a framework to analyse the most prevalent issues and at the same time, to form a view as to whether or not those conditions exist in the South African context.

Those four conditions, it will be recalled, are that decentralised systems should have:

- sufficient powers to exercise substantial influence within the political system and over significant development activities;
- sufficient financial resources to accomplish important tasks;
- adequate administrative capacity to accomplish those tasks; and
- reliable accountability mechanisms – to ensure both the accountability of elected politicians to citizens, and the accountability of bureaucrats to elected politicians.

Each of these conditions, framed by the views of the participants in this research, is discussed respectively in the four succeeding sections.

7. POWERS AND FUNCTIONS

Manor's first condition for the successful implementation of a decentralisation process is that local institutions must have sufficient powers to exercise substantial influence within the political

system and over significant development activities. We observed previously that a wide range of powers and functions had been devolved to local government pursuant to the Constitution. In addition, a number of statutory enactments impose additional duties on municipalities. Here we consider the appropriateness of the allocation of such powers and functions. One of the crucial questions to which we sought an answer from respondents in the present research was whether the allocation of powers and functions to local governments was appropriate. Was not too much being expected of local government by imposing on it such a daunting range of demands? Whilst a significant number of interviewees were of the view that the allocation of such powers was indeed appropriate, most respondents were strongly of the view that local government in general had been overburdened with duties and that as a general proposition, it was not coping well with the attendant demands. A number of themes emerged during the course of interviews. Limitations of space compel us to deal with only three of the most important of those themes in this paper, namely: (i) the provision of basic services; (ii) the provision of non-basic services; and (iii) the causes of inability to perform functions.²⁶ These themes are discussed below.

The provision of basic services

It will be recalled that section 153 of the Constitution requires a municipality “to give priority to the basic needs of the community.” The National Treasury asserts that “it is widely accepted that basic needs and basic services refer to the same set of functions/services. This set of services is by general agreement regarded as being: water, electricity, sanitation, and refuse removal” (2011:33). They are discussed below.

Water and sanitation services: At the outset, it is should be noted that the provision of water is accorded special importance in the Constitution, which provides in Section 27 that everyone has the right to have access to sufficient water, and that the state must take reasonable legislative and other measures to achieve the progressive realisa-

tion of this right. The provision of water services is a municipal function in terms of the Constitution.²⁷

The 2014 General Household Survey conducted by Statistics South Africa paints a somewhat confusing picture of the provision of water. The following are extracts from the Survey:

”In 2014 90 % of households in South Africa had access to piped or tap water in their dwellings, either off site or on-site, up from 88,1% in 2005.

When this figure is disaggregated to its component sources, it shows that only an estimated 46,3% of households had access to piped water in their dwellings in 2014. A further 27% accessed water on site while 14% relied on communal taps and 2,7% relied on neighbours’ taps.

Although generally households’ access to water improved, 4,1% of households still had to fetch water from rivers, streams, stagnant water pools, dams, wells and springs in 2014. This is a decrease of more than five percentage points from 9,5% of households that had to access water from these sources in 2002.

Less than two-thirds (61,4%) of households rated the water services as ‘good’ in 2014. Although this is slightly higher than the 60,1% recorded in 2012, it is much lower than the 76,4% approval rating reported in 2005.” (Statistics SA 2014 General Household Survey 2014:41-43)

Whether or not access to services is improving, the quality and sustainability of the services are clearly in danger. In 2013, the most recent year for which a report is available, 1 009 drinking water systems were assessed for water quality in the “Blue Drop” water quality assessment programme conducted by the Department of Water Affairs. Of these, only 263 complied fully with blue-drop

²⁶ Other themes which emerged strongly are the role of district municipalities; the housing function; and the role of provinces.

²⁷ Not all municipalities are, however, authorised to provide this function under the Water Services Act. An asymmetric approach has been followed in relation to water and sanitation, in which all metropolitan municipalities are authorised to provide the service, local municipalities are authorised in certain instances, and district municipalities in others (National treasury 2011).

status standards. The quality issues may be attributed to lack of capacity on the part of municipalities (due in turn to a lack of properly skilled staff) and poor maintenance and upgrading of facilities, amongst other causes. Poor maintenance also results in technical water losses, which in turn result in substantial revenue losses for municipalities.²⁸ The failure by municipalities to adhere to basic good management practices, such as the keeping of asset registers - without which they have no idea of what their infrastructure assets are, where they are located or what their condition is - and proper budgeting for maintenance, inevitably leads to delivery failures (Siddle and Koelble 2012). A serious threat to the sustainable provision of water services by municipalities is the refusal or inability of a number of them to pay for the bulk supplies of water delivered to them for onward reticulation to end users.

Regarding sanitation, the following are extracts from the General Household Survey:

"Nationally, the percentage of households with access to 'RDP-standard' sanitation (i.e. flush toilets connected to a public sewerage system or a septic tank, and a pit toilet with a ventilation pipe) increased from 62,3% in 2002 to 79,5% in 2014. The majority of households in Western Cape (94,6%) and Gauteng (90,9%) had access to adequate sanitation, while about half those in Limpopo (54%) and just below two-thirds of those in Mpumalanga (64,3%) had adequate access. It is notable that access to adequate sanitation grew most rapidly in Eastern Cape (+44,6 percentage points) between 2002 and 2014.

Nationally, the percentage of households that continued to live without proper sanitation facilities had been declining consistently between 2002 and 2014, decreasing from 12,3% to 4,9% during this period. The most rapid decline over this period was observed in Eastern Cape (-28,3%), Limpopo (-15,1%), Free State

(9,3%) and Northern Cape (8,2%). Scores of households in Northern Cape (9,1%), Eastern Cape (8,5%), Free State (7,9%) and Mpumalanga (7,1%) remained without any sanitation facilities in 2014." (Statistics SA 2014 General Household Survey 2014:48)

The "Green Drop" certification programme for waste water systems (this being a parallel programme to the "Blue Drop" programme referred to above) has shown equally alarming results. In 2013, the last year for which the Green Drop report is available, the green-drop report indicated that only 60 out of 824 waste water systems met the highest standards.

The findings contained in the Report of the South African Human Rights Commission on the Right to Access Sufficient Water and Decent Sanitation in South Africa (South African Human Rights Commission 2014) are disturbing. Referring to a report prepared for the Commission by the Department of Monitoring and Evaluation, the Commission stated, amongst other things, that: approximately 11% (1,4 million) of households still have to be provided with sanitation services; at least 26% (3,8 million) of households within formal areas have sanitation services which do not meet the required standards; based on an assessment of the provision of water services, 23 municipalities (9% of the total) were in a crisis state, with an acute risk of disease outbreak; and a further 38% were at high risk, with the potential to deteriorate into a state of crisis.

One of the pressing concerns regarding water and sanitation relates to infrastructure. An important commentator on the question of infrastructure is the South African Institute of Civil Engineers (SAICE). In its 2011 Infrastructure Report Card (SAICE 2011), it points out that there are extreme variations in the condition and performance of the infrastructure in the water sector. Water supply quality, for example, is very good in the metropolitan areas, but water quality in many of the more rural areas is frequently unacceptable.²⁹

²⁸ According to a report in The Times of 2 November 2015, the Minister of Water and Sanitation stated that the country was losing R 7 bn worth of water a year through leaking pipes and taps, and collapsing infrastructure. Whilst not all of the infrastructure in question is necessarily the responsibility of municipalities, this report does serve to illustrate how dangerous the consequences of improper maintenance are.

²⁹ But metropolitan municipalities are not immune from problems. In September 2015, at least 40% of households in Johannesburg – South Africa's largest and reputedly wealthiest city – were left without water for several days, apparently due to a booster pump failure. (The Times 23 September 2015).

Regarding sanitation, SAICE states that although statistics reveal the rapidity of sanitation access, users are often not receiving the full benefit, because of high failure rates. Most sanitation facilities are not compliant with appropriate technical design standards; hence they are built in a manner susceptible to quick failure and extreme maintenance difficulties. Along with inadequate wastewater treatment, there is a lack of wastewater monitoring in many plants; as with water, this varies greatly between locations. In general, the infrastructure is in bad condition (for avoidable reasons) without much hope for improvement in the near future. There are serious problems with management of many wastewater (sewage) treatment works. Wastewater leakage and spillage, especially into major rivers, is a major concern. There are frequent problems with inappropriate and unsustainable design, and the sanitation backlog is increasing owing to unsustainable infrastructure. The situation is further compromised by inadequate operation and maintenance capacity, and shortage of skilled personnel (SAICE 2011).

Electricity: According to the General Household Survey, the percentage of South African households that were connected to the mains electricity supply increased from 77,1% in 2002 to 86% in 2014. The Survey does not distinguish between households supplied directly by Eskom and those supplied by municipalities. Nationally, 13,6 % of households indicated that they had experienced power interruptions in the six months before the survey. The percentage of households that rated electricity supply as “good” was 66,5% nationally.

The Constitution designates electricity reticulation as a municipal responsibility, but in practice the responsibility is shared between Eskom, the

state-owned power utility, and municipalities.³⁰ As in the case of water, the reticulation of electricity by municipalities is rendered vulnerable by the refusal or inability of many of them to pay Eskom for bulk supplies of electricity. This has led to frequent threats by Eskom to terminate supplies, and in 2015 precipitated the funding crisis in which the National Treasury threatened to stop the transfer of national government funding to a number of municipalities, which was discussed previously.

The National Treasury (2008), quoting the National Electricity Regulator of South Africa, notes a number of factors which threaten the sustainability of the provision of electricity in the municipal sphere. First amongst these is the fact that most equipment is overloaded and ageing, and its reliability is deteriorating; there is an accompanying increase in the cost of maintenance. Few municipalities have adequate planned or preventative maintenance programmes, infrastructure asset databases, and contingency arrangements, and many lack adequate stocks of spare parts. Insufficient provision has been made for refurbishment of networks. Of course, lack of skills is one of the key underlying weaknesses. SAICE notes that while Eskom faces a severe skills shortage at all levels, the lack of skills is most acute in the distribution sector – that is, in municipalities. Many municipalities lack capacity to fulfil their responsibilities. (SAICE 2011).

Refuse removal

The General Household Survey showed that while the percentage of households for which refuse was removed at least once per week increased from 56,7% in 2002 to 64% in 2014, large

30 187 local municipalities (and no district municipalities) are licensed for this purpose by the National Electricity Regulator of South Africa. 56 local municipalities – all but two of them rural – do not provide any electricity to their residents, who rely solely on Eskom to provide the distribution function in their areas (National Treasury 2011). In a number of cases, some parts of a municipality are supplied by Eskom directly while others are supplied by the municipality itself. Eskom has almost as many domestic customers as do municipalities, although Eskom sells only about a third as much electricity directly to domestic consumers as municipalities. This suggests that Eskom tends to supply electricity directly to poorer consumers (who use less electricity) while municipalities tend to provide electricity to wealthier households. (National Treasury 2011).

differences exist between the provinces. Households in the Western Cape (89,2%) and Gauteng (89,1%) were most likely to have had their refuse removed at least once per week, while households in Limpopo (20,7%), Eastern Cape (35,4%) and Mpumalanga (37,4%) were least likely to have had regular refuse removal. In 2001, government set the target of providing all households with access to refuse removal services by 2012 (National Treasury 2011). Clearly, this target has not been achieved.

According to SAICE, the primary obstacle to sustainable waste management services in municipalities is a lack of skills (for example, 87% of municipalities do not have human capacity to pursue the National Waste Management Strategy). This lack of skills is especially prevalent in rural areas, where insufficient management results in poorer service than in metropolitan areas. Fluctuating market demand, skills shortages and high transportation and logistics costs are also to blame for the failure of many recycling projects, launched by over 80% of municipalities with little success. (SAICE 2011).

The provision of non-basic services

Research previously conducted by the present authors suggested a startling asymmetry in the exercise of powers and performance of functions by municipalities (Siddle & Koelble 2012). It was found in the study that whilst the “basic services” were (at least notionally) provided by municipalities which were authorised to perform them, many of the other services were inconsistently performed by municipalities. These included functions that have a direct influence on the health, security and orderliness of communities, such as air pollution control, child care facilities and trading regulations, and control of public nuisances. These are all issues which require regulation and administration, yet many or most of the municipalities in the sample that formed the subject of that study did not perform the associated functions, and it appeared that there was little concern or interest, at any level, for exercising

those powers and functions.³¹ A disturbing phenomenon which emerged from that study was the extent to which the number of non-basic services performed by individual municipalities varied from year to year. A stable municipality would have been expected at least to maintain the number of services performed by it at a constant level, and perhaps even to increase the number from year to year. It was shown, however, that in many cases, the number of non-basic services performed fluctuated - increasing and decreasing from year to year, sometimes quite wildly.³² As a result, communities are left without the benefit of services which might have been expected to be provided as a matter of course in a purportedly developmental society.

Meaningful published data on the non-basic services performed by municipalities post-2011³³ are not available. Nonetheless, interviews with municipal councillors and staff for purposes of the present study indicate that the pattern of asymmetrical service delivery noted in the previous study continues. Whilst the metropolitan municipalities, most secondary cities and some of the smaller local municipalities involved in this process appeared to perform the full, or nearly the full, range of non-basic services that they were authorised to perform, interviewees, particularly in rural areas, frequently reported that a number of such services were not performed either adequately or at all by individual municipalities. This was confirmed by an informal follow-up survey

31 Whilst section 153(b) of the Constitution requires municipalities “to give priority to the basic needs of the community,” it is difficult to imagine that the drafters of the Constitution or other relevant legislation would have envisaged the wide-scale abandonment of the other powers and functions as being a necessary consequence of these provisions.

32 For example, it was found that more than half of the municipalities surveyed for purposes of the previous research decreased the number of services provided in the space of one year.

33 The Municipal Demarcation Board until 2009 annually published useful reports which, amongst other things, showed the extent to which municipalities exercised powers and performed functions. Sadly, in 2011, the Municipal Demarcation Board adopted a new format of report, which was far less revealing and useful, and then ceased publishing the reports altogether. It has accordingly proved impossible to update the research on this subject based on documented statistics.

of 25 local municipalities³⁴ focusing on non-basic but important services that influence the health, orderliness and general quality of life of communities.³⁵ The survey indicated that there was a widespread non-performance of many non-basic services, and since no other sphere of government apparently performed them, the result inevitably appears to be that large sections of the populace were deprived of these services.

The reasons for non-performance

The question which stands to be addressed is why there should be widespread non-performance of services. Several possible reasons emerged from our interviews. The concurrent jurisdictional scope of the local government sphere's powers and functions with other spheres of government was widely viewed as being problematic.³⁶ The perception among many respondents was that the concurrency of powers and functions gave rise to considerable confusion as to what precisely municipalities are supposed to do in the exercise of their powers and functions. Another perceived difficulty was the lack of clarity as to whether the exercise of powers is compulsory or merely optional, and if so, which powers are optional; and further to that, whether there is any priority to be attached to them. The issue here is that the Constitution does not expressly state that every municipality must exercise every power allocated to it. Also, it seems that a great deal of

confusion as to whether there is any legal prioritisation attached to the performance of functions. A further difficulty which found widespread recognition amongst interviewees was that the powers and functions are simply not defined at all in the Constitution, and only partly in other legislation. Poorly defined powers have been a cause of great concern ever since the adoption of the new local government dispensation and it is inevitable that inadequate definition will lead to confusion (Christmas and de Visser 2009).

Poor political leadership was often cited by participants in the interview process as a cause for the failure to exercise powers and perform functions properly. Infighting within councils was raised on a number of occasions as a phenomenon that led to paralysis, as were misguided political ambitions which led to unimplementable decisions. Procurement processes which slowed down the provision of infrastructure, and hence the delivery of services, were also frequently blamed. Procurement processes were also blamed for frequent delays in appointing contractors to perform contracted-out services. A number of reasons were offered, including cumbersome procurement rules, the appointment of inappropriate contractors, and poor contract management. Unsurprisingly, the lack of capacity within local government resonated widely amongst participants as a cause for non-performance of functions. The question of capacity is considered in greater detail below, but suffice it to say for present purposes that the lack of capacity translates into an inability to perform powers and functions which require both general managerial and specialised skills. Finally, we need hardly mention that an unsolicited, yet often-repeated explanation given by participants for non-performance was the lack of funding.

General observations

Why should this state of affairs have arisen? One reason revolves around technical ability. A comprehensive municipal skills survey was undertaken by SAICE in 2007. Of all 28337 municipalities surveyed, 83 had no civil engineers, technologists or technicians on staff. A further 48 employed

34 These municipalities fell in the B1, B2, B3 and B4 categories- in other words, local municipalities. The survey was conducted by means of telephonic inquiries, personal attendance at the municipalities concerned by the authors, or web site searches. Some, but not all, of the municipalities included in this survey also had participants interviewed for the main research project.

35 Services which were included in the survey were air pollution control, transport, trading regulations, street trading, control of public nuisances, billboards, facilities for the accommodation, care and burial of animals, fencing and fences, licensing of dogs, licensing and (particularly) control of undertakings that sell food to the public, local sports facilities, markets, municipal parks and recreation, noise pollution and municipal roads.

36 In terms of the Constitution, both the national government and provincial governments (in addition to the local authority) have the power to legislate on and administer (through their legislative and executive branches respectively) matters referred to Part B of Schedule 4 to the Constitution, whilst provincial governments have the power (in addition to the local authority) to legislate on and administer the matters referred to in Part B of Schedule 5 to the Constitution.

37 At that time, there were 283 municipalities; the number has since been reduced to 278.

only one civil technician, and municipalities with civil engineering staff reported vacancies of 35% (over 1000 professionals), often owing to budget constraints. Years after that survey was undertaken, SAICE states that the skills constraint has still not been addressed, a situation which is further exacerbated by the inefficient deployment of resources and the use of unqualified and inexperienced personnel in positions requiring technical ability. But the problem, we submit, is not limited to the lack of technical staff. Weaknesses in general human resource management, skills in planning, engineering, and service delivery, weak oversight structures and financial management processes and procedures all play significant roles. Perhaps the World Bank is quite accurate when it avers that institutional issues, rather than technical issues, are to blame for problems relating to service delivery, “reflecting a collapse of governance and accountability systems and a lack of sanctions for bad decisions. Many municipalities are ineffective or dysfunctional and characterized by political in-fighting, inappropriate appointments, corruption, and neglect.”³⁸ (World Bank 2011: 88)

South African local government has been richly endowed with powers and functions. By that measure, the condition stated by Manor for successful decentralisation that local institutions must have sufficient powers to exercise substantial influence within the political system and over significant development activities has surely been met. Yet despite having been given a massive responsibility to perform these functions, local government in South Africa often finds itself unable to meet the challenge. One has to question whether there is any point in devolving significant powers to local government if there is little prospect of those powers being properly exercised. This goes to the heart of the question as to whether it is necessarily wise to promote a developmental agenda on a decentralised framework when the reliability of decentralised units is open to question. It exposes the developmental programme to fragmentation and uneven application, and that in turn leads to disruption of services and dissatisfaction. To sum up, whilst the

devolution of significant powers has indeed occurred on paper, in many respects, those powers are not effectively exercised.

8. FINANCIAL RESOURCES, AND THEIR MANAGEMENT

The second condition for successful decentralisation stipulated by Manor is that there must be sufficient financial resources for local governments to accomplish important tasks. As can be imagined, the funding of local government is an issue which continuously exercises the minds of local politicians and local administrators alike. We here reflect on the views of respondents regarding fiscal and financial arrangements applicable to local government. We approach this from various perspectives, namely: (i) the suitability of the funding model, (ii) the related issue of unfunded mandates; (iii) general financial management in municipalities, including (iv) the Auditor-General's reports, (v) supply chain management, (vi) credit control, and (vii) expenditure, all of which are discussed below.

The funding model

Our first inquiry related to whether the funding model for local government described previously was adequate. Most of the municipal respondents were sharply critical of the model. Many complained that it was unrealistic and failed to take into account local conditions, including geographical conditions. Thus, for example, dissatisfaction was expressed that no provision was made for the fact that municipalities which covered vast areas would inevitably find it more expensive to administer those areas. Rural municipalities are in a particularly difficult position when it comes to revenue generation. The high levels of poverty and unemployment, and low levels of economic activity affect the ability of rural municipalities to fulfil their service delivery mandates. Urban municipalities are not without their own problems. Respondents from a range of municipalities (mainly the metropolitan municipalities and secondary cities, but also a number of smaller municipalities) complained that the urbanisation phenomenon was placing enormous strains on their resources and making it difficult to plan.

38 This comment was made with particular reference to the provision of water, but, we submit, it applies equally to the other basic services as well.

In addition, a complaint from the larger municipalities was that due to the method of calculation of the institutional and community services components of the equitable share formula, the larger municipalities received nothing for these components.³⁹ Overall, however, respondents complained that there simply wasn't enough money made available to municipalities to carry out their developmental mandates.⁴⁰ An underlying theme which ran through most of the comments from was that, given that local government was supposed to be at the forefront of the developmental agenda, the share of nationally raised revenue which was made available to local government was woefully inadequate. Intergovernmental transfers are a fact of decentralised life, and, particularly in a supposedly developmental context, it is expected that such transfers will play an important role in the distribution of resources. It is therefore not surprising that there should be a widespread view amongst municipal actors that national government should allocate a far greater proportion of nationally raised revenues to local government.

Unfunded mandates

The dissatisfaction with the funding arrangements emanates from, as much as anything else, the question of "unfunded mandates." As will be recalled, powers and functions in addition to those set out in Part A of Schedule 4 and Part A of Schedule 5 to the Constitution may be allocated to municipalities by way of assignment of powers

by legislation, by way of assignment by executive acts, by way of delegation of powers and functions and by way of contracting out matters on an agency basis. The extent to which these additional powers and functions are devolved varies considerably from province to province and municipality to municipality. The difficulty arises when the allocation of an additional power or function is not accompanied by adequate funding – hence the phenomenon of the unfunded mandate, which may be defined as a mandate imposed by a senior government on a government of a different level or sphere or on an agency for which no or inadequate funding is provided.

Councillors and officials who were interviewed were almost unanimous in their belief that unfunded mandates were a serious problem, both in their own municipalities and in local government in general. The phenomenon of the unfunded mandate can be ascribed to a number of reasons which emerged during the course of interviews.⁴¹ These include historical roles assumed in the past which have been carried over into the new constitutional era, despite municipalities not being required by the Constitution to perform those roles; choices by institutions to assume new functions, despite there being no obligation to do so; confusion as to which sphere of government is responsible for the performance of specific mandates, due, amongst other things, to lack of clarity in the relevant legislative or constitutional provisions; and the imposition by means of regulation or legislation of additional duties on municipalities (such as in the case of municipalities being called upon to enforce environmental legislation). It is important to note that this last-mentioned cause is the only one which can truly be described as a vehicle for imposing unfunded mandates, where municipalities are coerced into performing duties without adequate funding provision being made. In the case of the first three causes, the assumption of the mandate can only

39 An official from a metropolitan municipality told us that "Metros are regarded as self-sustaining and better able to raise their own revenue. That may be true, but it just keeps on pushing costs onto the consumers, where they have already reached their limit. Essentially, we are being punished for being big, we are being punished for being successful; the more you collect in the form of rates and service charges, the more national government thinks, 'Well, you need less of our help.'"

40 Allocations of the equitable share to local government made in terms of the Division of Revenue Act, 2015 amount to 4,1% of nationally raised revenue. For the 2015/2016 financial year. When conditional grants and indirect transfers are added to the equitable share for municipalities, then the proportion increases to 9,01%. According to a National Treasury official whom we interviewed, when revenues raised by municipalities from their own sources (property rates, user charges, etc.) are added, then for 2015/16, the proportion of all revenues raised by all three spheres of government which becomes available to local government is in the order of 20%.

41 See also Financial and Fiscal Commission, 2011(a), in which similar causes are reported.

be described as voluntary.⁴²

The question which arises then is why do municipalities assume these responsibilities? In some cases, it seems that municipalities found themselves in such situations either through being pressured by senior governments, or through naiveté, or through sheer inertia. In other cases, it became clear that municipalities assumed or continued with the function because it was politically expedient to do so. This approach becomes particularly apparent in the case of the library function. Many interviewees indicated that in the absence of provincial governments playing a more supportive role in the library function, the municipalities were left with little option other than to take on the role even if it came with a severe financial price. If they failed to do so, we were told on a number of occasions, it would lead to widespread discontent amongst communities which (or so it was occasionally darkly hinted) could in turn lead to protests.⁴³

Financial management

Whilst municipalities are fairly uniform in their dissatisfaction with aspects of the funding model, the attitude of other spheres of government is hardly sympathetic. Officials and legislators from these spheres who were interviewed for purposes of this research tended to subscribe to the view that although the funding model was by

no means perfect and could lead to inequitable treatment, in general terms it addressed the needs of local government. We were told that the complaint regarding unfunded mandates was in many respects greatly exaggerated. The problem, in the view of participants from senior governments, lies not so much in the adequacy of funding, but in the management of the funding.

At the annual conference of the Institute of Municipal Finance Officers held in October 2014, the Minister of Cooperative Governance and Traditional Affairs declared that of the 278 municipalities in South Africa, 170 had chief financial officers who were not qualified to do their jobs. If the assertion made by the minister is accurate, it may go some way to explaining why, of all the challenges facing local government in South Africa, the widespread inability to manage finances is one of the most notorious.⁴⁴

The auditor-general's reports

A useful starting point for gaining an understanding of the difficulties surrounding municipal financial management is the Auditor-General's Consolidated General Report on the Audited Outcomes of Local Government, which is produced annually. The Auditor-General is the supreme audit institution in South Africa and is responsible for auditing all government institutions and organs of state, including municipalities. The Auditor-General reports not only on the quality of the financial statements of municipalities, but also on their annual performance reports and on their compliance with key legislation. Audit outcomes for municipalities fall into several categories. The most prized category, the "holy grail" of municipal auditing, is the financially unqualified opinion with no findings, known colloquially as a "clean audit"; next is the financially unqualified

42 Library and museum services (even though they are not strictly "unfunded mandates" in terms of the above definition) were most frequently cited by interviewees as instances of unfunded mandates. Whilst these two functions are, in terms of the Constitution, provincial functions, municipalities often perform them on behalf of provinces on an agency basis; this would in principle involve the entering into of an agreement between the province and the municipality concerned in terms of which the municipality would be reimbursed for the costs involved in running the service. The Constitution expressly contemplates arrangements of this kind. It emerged from interviews with respondents, however, that in a number of instances, the provincial authorities often failed to pay municipalities what was due under the agreement; or that the relevant agreement did not provide for sufficient reimbursement; or that no agreement had been entered into at all. As a result, we were told, municipalities were unfairly compelled to shoulder an additional financial burden.

43 The need for municipalities to take the leading role in library services was apparently even more pressing in rural areas, where schools were severely under-resourced and the library was often the sole source of learning materials and other resources for children; similarly for adults, it was often the only means of engaging with the outside world.

44 Again, it must be emphasised that in a number of municipalities, high standards of financial management are achieved, and it was heartening to note that in those municipalities involved in this research which performed well, politicians were quick to acknowledge the work of the responsible officials, and officials were in turn quick to acknowledge the contribution of the political leadership. It is clear, however, that there is still a long way to go before an acceptable standard of financial management is universally achieved.

opinion with findings;⁴⁵ this is followed by financially qualified opinion with findings; next is the adverse opinion with findings; and finally, the worst possible outcome, which is the disclaimed opinion with findings.⁴⁶

The Auditor-General's reports typically painted a grim picture year after year. The 2014 report (which covered the 2012/2013 financial year) showed that most municipalities were unable to achieve an acceptable level of financial reporting (either an unqualified report with no findings, or an unqualified report with findings). The 2015 report (which covered the 2013/14 financial year) revealed, as in previous years, massive shortcomings. A total of 145 municipalities received unqualified opinions (with or without findings). The remaining 133 (or 48%) received qualified, adverse or disclaimed opinions, or failed to submit their financial statements in time. In other words, nearly 50% of municipalities were not able to meet minimum standards of good financial governance. Levels of non-compliance with key legislation remained high.⁴⁷

Equally worrying is the fact that as at 30 June 2014, 86 municipalities were deemed by the National Treasury to be in a state of "financial dis-

stress,"⁴⁸ (National Treasury 2014). Whilst this is an improvement on the 95 municipalities deemed to be in financial distress in the previous year, the National Treasury points out that a further 34 municipalities came close to being classified as financially distressed. Thus, nearly 40% of municipalities are in, or verging on, a state of financial distress. The consequences of poor financial health are many and include the following: staff do not get paid – and so refuse to work;⁴⁹ bulk services do not get paid for – so services could be cut; contractors and suppliers do not get paid;⁵⁰ repairs and maintenance is invariably among the first expenditures cut, placing service delivery at risk, as well as future revenues; poor financial management processes and systems exposes the municipality to corruption; and poor financial management increases the cost of borrowing to municipalities (National Treasury 2014).⁵¹

48 As determined according to a range of measure, namely: cash as a percentage of operating expenditure; persistence of negative cash balances; overspending of original operating budgets; underspending of original capital budgets; debtors as a percentage of own revenue; year-on-year growth in debtors; creditors as a percentage of cash and investments; reliance on national and provincial government transfers; and the extent of repairs and maintenance as a percentage of property, plant and equipment.

49 For example, Ngaka Modiri Molema District Municipality in North West Province was reported to be broke (City Press, 31 May 2015) and could not pay its staff. To avoid staff revolt, it reportedly was forced to liquidate an investment to pay salaries. It appears, in any event, that many of the 600 staff members were irregularly appointed.

50 Makana Local Municipality – a substantial municipality in the Eastern Cape Province which includes the university town of Grahamstown – also skirted bankruptcy (Sunday Times, 24 August 2014). Many of its creditors – who were reportedly owed a total of R 132 million – had not been paid for six months, and some contractors were abandoning projects that included the upgrading of dilapidated roads and sewerage infrastructure due to non-payment. A creditor secured a judicial attachment of the municipality's bank account. A week later, it was reported that angry municipal workers, who had not been paid on time, chased the acting municipal manager through the streets of Grahamstown (Sunday Times 31 August 2014).

51 The Financial and Fiscal Commission conducted its own study on fiscal distress within local government (Financial and Fiscal Commission 2013(c)). It found that in 2011/12, 34% of municipalities were fiscally neutral (or healthy), 58% were on "fiscal watch", and 8 % were fiscally distressed. For 2012/13, the respective categories had deteriorated to 24,4%, 67,3% and 8,3%.

45 The difference between this category and the first category is that in this case, the municipality is able to produce financial statements without material misstatements, but was not able to meet certain performance management reporting standards, or had not properly complied with certain key legislative requirements.

46 The value or otherwise of the Auditor-General's findings as a means of assessing the quality of financial governance in a municipality has long been a bone of contention. As became apparent in the course of the present research, a currently fashionable view within the local government sector is that the notion of a "clean audit" is an artificial one, is not recognised elsewhere in the world, and is therefore not to be taken seriously. Some actors in the local government environment dismiss the audit opinions as being largely irrelevant and based on unrealistic standards. Nonetheless, whether municipalities like it or not, the audit outcomes remain, in the eyes of the public and other spheres of government, an important measure of good governance in general and financial management in particular, and a crucial instrument of accountability.

47 The proportion of auditees (municipalities and municipal entities) with material compliance findings was 79% - a significant decrease from the previous year's 90% but still alarmingly high.

Supply chain management

A management issue which calls for particular attention is that of procurement (or supply chain management, as it is usually referred to in South Africa). A very large majority of municipalities attracted findings by the Auditor-General on supply chain management issues.⁵² It was found that there was an increase in the value and extent of the contracts and quotations awarded to suppliers in which employees and councillors had an interest and in which state officials had an interest.⁵³ Unfair or uncompetitive procurement processes (reported at 69% of auditees) and inadequate contract management (reported at 39% of auditees) were widespread. Irregular expenditure and fruitless and wasteful expenditure were found to have been reduced (From R12, 228 bn to a still extremely high R 11, 473 bn) but unauthorised expenditure increased (From R8, 502 bn to a massive R11, 402 bn). Non-compliance with legislation on consequence management was widespread.⁵⁴

Supply chain management in the public sector is such an important consideration that the drafters of the Constitution saw fit to include a provision dealing with the issue. Section 217 provides that contracting for goods and services must be done in accordance with a system that is fair, equitable, transparent, competitive and cost effective. Regulations made under the Municipal Finance Management Act provide the basis for a standardised supply chain management policy applicable to all municipalities which purportedly meets the demands of the Constitution. Despite the good intentions behind the regulations, they have created an enormously complex process which requires

considerable institutional capacity in order to apply properly. Many municipalities simply lack that capacity, with the result that the process is often largely ineffective. In the course of conducting interviews, we frequently heard complaints about the administrative burden that the supply chain management framework placed on municipalities, how impractical it was, and how it had the perverse effect of delaying service delivery.

In addition to the lack of capacity and its inevitable consequences for the procurement process, there is the ongoing threat of corruption. The local government environment has a reputation, deserved or not, for providing enormous scope for corruption;⁵⁵ perhaps the most obvious vehicle for corrupt activities is, however, the procurement process. It is a matter of speculation as to what proportion of irregular expenditure may be attributed to corrupt practices, but the potential for such practices in the context of procurement is clearly enormous, despite the provisions of the legislation and the supply chain management regulations which are intended to insulate the supply chain management process from political interference and provide checks against corrupt practices. Not only does the lack of capacity in municipalities result in ineffective application of the supply chain process, it also results in the process being (somewhat ironically, given their purpose) quite easily manipulated and subjected to venal influences⁵⁶ (Siddle and Koelble 2012).

The views of respondents on supply chain management issues varied considerably. Some suggested (sometimes in the face of overwhelming

52 90% of auditees attracted findings on Supply Chain Management Issues – a slight increase from the previous year's 87%.

53 Contracts to the value of R 60 million were awarded to suppliers in which municipal employees and councillors had an interest; contracts to the value of a startling R 3,731 bn were awarded to suppliers in which other state officials had an interest

54 The Municipal Finance Management Act requires that matters such as the incurring of unauthorised, irregular and fruitless and wasteful expenditure (which are all forms of improper expenditure prohibited in terms of the Act), abuses of the Supply Chain Management System and allegations of financial misconduct should be investigated. The Auditor-General found that there was non-compliance with this requirement at 42% of auditees.

55 According to Atkinson, "local government corruption sometimes appears to be so entrenched as to be endemic. The politics of patronage and nepotism continues to blight municipal politics" (2007:67). Atkinson suggests that corruption appears to take place on the basis of individual acquisition, or with the cooperation of small and informal friendship groups, and that local party branches are prone to capture by small informal networks, which in turn capture key positions in municipalities. Corruption at municipal level may take many forms, such as the misuse of mayoral funds, irregular performance bonuses, abuse of council property for private or party ends (Koelble and Li Puma 2008), and irregular staff appointments.

56 One councillor had a particularly world-weary view on the procurement process: "This is what local government is now all about – how to manipulate the way money passes hands in order to get some kind of benefit from it. You can out the most sophisticated system in place, but it won't stop corruption."

evidence to the contrary) that their municipalities effectively applied the supply chain management system, whilst others painted far grimmer pictures, relating a host of irregularities. Mirroring research previously undertaken by the present authors, tales emerged of improper practices such as cover quoting⁵⁷ and tender splitting,⁵⁸ and poor contract management (for example, contractors being paid without having done the work, or having performed sub-standard work). Political interference in the tender process was a common complaint.⁵⁹

Credit control and debt collection

One of the most pressing issues facing local government is the apparent inability of many municipalities to manage their debtors. According to the National Treasury, as at the end of the quarter to 31 March 2015, municipal consumer debts amounted to R104,9 billion (compared to R96,6 billion reported in the previous quarter).⁶⁰ The National Treasury estimated that the actual realistically collectable amount is an alarmingly low R20,8 billion. (National Treasury 2015).

How, one might ask, could a situation such

as that described above be allowed to arise? It must be attributed to a multiplicity of causes. It emerged from our interviews that municipalities often simply do not have the necessary systems in place to carry out effective credit control and debt collection; and even if they are in place, they are, to a large extent, not being applied. A number of reasons for failure to collect debts became apparent.⁶¹ The first was that there was simply not the political will to do so. Mayors and councillors in a number of municipalities clearly considered it politically risky to enforce credit control policies for fear of raising the ire of consumers amongst whom a culture of non-payment had become firmly entrenched. They were similarly fearful of terminating the services in question on grounds of non-payment, due to the disturbances which, they asserted, would inevitably result. It had been suggested to us in the course of conducting an earlier study that the unwillingness to enforce debt collection procedures becomes even more pronounced when local elections approach, with instructions being given not to enforce payment for fear of unfavourably affecting the election outcome; interviewees confirmed that this was a fairly common practice. A common cause, however, was the fact that municipalities simply lacked the means to enforce any effective kind of credit control. Even if they did summon the courage to cut off services to recalcitrant debtors, that fact alone would not secure payment, because of the extended and expensive legal process that would have to be followed. Finally, and most tragically, a reason for non-payment that was often volunteered was that, particularly in poverty-stricken rural areas, consumers could simply not afford to pay.

57 "Cover quoting" occurs when connected bidders submit tenders in concert whilst purporting to be in competition, in order to create the impression that one of their bids is competitive in relation to the others.

58 "Tender splitting" occurs when tenders are split into component parts so that individually they fall below cost levels at which competitive bid processes must be applied, thereby enabling favoured bidders to avoid being subject to bidding processes.

59 A councillor told us that in his municipality, "If you want to tender, and they think that you are from another party, you can forget about it. Officials will award contracts according to what the mayor tells them." A particular problem of this kind which was related to us more than just occasionally was that of the tender process being delayed or suspended because there were no bidders which met with the approval of politicians who, despite their theoretical exclusion by law from the bidding process, were clearly manipulating it. This usually resulted in delays in the commencement of vital infrastructure projects.

60 The largest component related to households which accounted for 63,7 per cent or R66,8 billion. One of the most frequently repeated complaints by municipalities is that other organs of state do not pay debts owed to them, and this is often cited as a reason by municipalities for their financial difficulties. The level of debt owed by other organs of state, at R 5,2 bn, is unacceptably high, but it pales into insignificance when compared to amounts owed by other debtors. In the circumstances, it hardly seems that non-payment by other organs of state is a realistic excuse.

61 Reasons for non-payment identified by the National Treasury include: failure on the part of mayors and municipal councils to provide political backing to revenue enhancement programmes; failure on the part of municipal managers to allocate sufficient staff/capacity to the revenue collection function; council unwillingness to sanction the use of electricity and other service cut-offs as debt-management tools; poorly designed revenue management, indigent and credit control and customer care policies; the affordability of municipal bills, especially to households where breadwinners lost their jobs in the recession; resistance among certain communities to paying for certain types of services (or to being billed in a particular way); ratepayer boycotts, sparked by deteriorating service delivery, and perceptions that the municipality is unresponsiveness to community concerns (National Treasury 2011).

Expenditure

If credit control is problematic, inappropriate municipal spending is just as alarming. This is another phenomenon which tends to undermine local government's claim that it is inadequately funded, and supports the view expressed by senior governments that the problem lies primarily with the way in which funding is managed. One of the most alarming indicators of inappropriate spending is the National Treasury's estimation that in 2009/10 financial year, municipalities could have saved up to R 27 bn by eliminating non-priority expenditure; this amount was more than the total equitable share transferred to municipalities for the year in question (National Treasury 2011).⁶²

Perhaps even more startling is the outcome of a study conducted by the Financial and Fiscal Commission on the efficiency of local government spending (Financial and Fiscal Commission 2011(d)). The study calculated the efficiencies of 129 municipalities which provide the full range of local government services. A major finding of the study was that on average, the municipalities could provide the same levels of services with 60% less resources; or, to put it differently, 60% of municipal resources were wasted. According to the study, just seven municipalities used their resources efficiently.

General observations

Whilst there may be differing views on the adequacy of financial resources available to local government, there can be little doubt that the management of those resources is often in a parlous state. Whilst local government complains about inadequate funding, its pleas for additional resources are likely to be met by a response from

national government to the effect that resources are limited, and that in any event, the prospect of additional funding is poor for so long as local governments mismanage such resources as they have.

9. LOCAL INSTITUTIONAL CAPACITY

The third condition for successful decentralisation identified by Manor is that there must be adequate administrative capacity at local level to accomplish the tasks which are devolved to it. Does local government in South Africa have the ability to do what it is supposed to do – in other words, does the requisite capacity exist at local level? Local capacity is a crucial issue: "...lack of capacity at local level and the need for a massive increase in skilled staff are the arguments most frequently invoked against decentralization." (World Bank 2000:122). According to the Financial and Fiscal Commission "...recent evidence shows that there is a growing perception among the stakeholders that local government in general is unable to manage their own affairs as well as perform their powers and functions particularly with respect to delivering good quality services. Central to these perceptions, is the general assumption about the profound lack of capacity to perform critical functions necessary to facilitate service delivery" (Financial and Fiscal Commission 2009:141).⁶³ According to the National Treasury, "personnel management in local government has been

62 Examples of non-priority expenditure observed by the National Treasury include the following: excessive sponsorships for music festivals, beauty pageants and sporting events; public relations projects and activities that are not centred on actual service delivery, such as celebrations, commemorations, voter education and advertising; excessive catering for meetings and other events, including the use of public funds to buy liquor; arranging workshops and events in expensive venues, especially ones outside the municipality; excessively luxurious office accommodation and office furnishings; foreign travel by mayors, councillors and officials (especially so-called study tours); excessive councillor and staff perks – mayors' cars and houses, cell-phone and telephone allowances, travel and subsistence allowances; and the use of consultants to perform routine management tasks.

63 The National Treasury (2011:111) asserts that "the prevailing assumption is that most municipal performance failings are due to a lack of capacity – whether it be individual, organisational or environmental capacity. This is despite there being evidence of laziness, mismanagement, incompetence and political interference." Similarly, the Financial and Fiscal Commission states that "Capacity constraints are often used to mask the real causes of municipal non-performance. The uneven local government performance is not only because of capacity constraints, but also (perhaps more importantly) due to the tensions in intergovernmental roles and responsibilities, the political-administrative interface, high vacancy rates and instabilities in administrative leadership, skills deficits, poor organisational design, inappropriate staffing and low staff morale." (Financial and Fiscal Commission 2012:98). Our response to these statements is that laziness, mismanagement, incompetence, high vacancy rates, inappropriate staffing, political interference and all of the other ills listed therein are either causes or symptoms of the lack of capacity and are appropriately considered in that context.

marred in many instances by poor recruitment practices, political interference in the appointment and dismissal of employees, the inability to attract and retain suitably qualified staff, high vacancy rates and the lack of performance management systems and other related symptoms.” (National Treasury 2011:106).

For purposes of the present research, local government actors were asked to indicate their causes of concern regarding the matter of capacity. The principal issues which arose in the course of discussions reflect very closely the concerns expressed by the National Treasury as indicated above. These issues are discussed below under the headings of (i) the development and implementing of staff establishments, (ii) vacancies, (iii) “cadre deployment,” and (iv) capacity development, including the role of senior governments in capacity development.⁶⁴

The development and implementing of staff establishments

Our starting point in this inquiry turns around the adoption of appropriate staff establishments. The Municipal Systems Act provides that within a policy framework determined by the council and subject to legislation, a municipal manager must develop a staff establishment for the municipality and submit it to the council for approval, provide a job description for each post on the staff establishment, attach to those posts the remuneration and other conditions of service as may be determined in accordance with applicable labour legislation, and establish a process or mechanism to regularly evaluate and, if necessary, review the staff establishment. The staff establishment is an important instrument because, amongst other reasons, in terms of the Act, no appointment to a position may be made if such position is not provided for in the staff establishment.

Respondents were asked to comment on the suitability or otherwise of the staff establishments applicable to their respective municipalities. The responses suggest that the development of staff establishments has become a highly politicised affair, with considerations other than administrative efficiency being given greater weight than

is appropriate. It was frequently averred by respondents that positions on staff establishments were created in order to enable mayors and other powerful politicians to appoint favoured “clients” to posts that are not strictly necessary.⁶⁵ Additional issues which emerged during the course of interviews were the following: the staff establishment was described as inadequate, in that it did not reflect the purported staffing needs of the municipality; the staff establishment was in any event not adhered to, in that appointments were made to the staff which were not provided for in the staff establishment,⁶⁶ or with appointments being made to positions for which the appointees were clearly not qualified;⁶⁷ adequate job descriptions had not been provided; job descriptions were tailored in order to accommodate applicants who were deemed to be politically acceptable but nonetheless completely unsuited for the position;⁶⁸ and few municipalities had a formal pro-

65 One example of such a situation which is on public record is to be found in the High Court case of *Lindiwe Gail Msengana-Ndlela v Nelson Mandela Bay Metropolitan Municipality* in which it was alleged that “In the context of a history of administrative instability and a vacuum in the management echelons of the NMBMM of nearly four years, the Respondents have placed undue political pressure on the Grievant to appoint a political advisor in the administration as an Acting Executive Director of Corporate Services and/or other senior managers, irrespective of their competencies, qualifications and experience.” This case is discussed further below.

66 This despite the provisions of section 66(3) of the Municipal Systems Act, which expressly prohibits this practice.

67 Another case which was previously reported on by the authors (see Siddle and Koelble 2012:113) illustrates the absurdities which often arise with inappropriate appointments. This tale involves the Chief Financial Officer of a small, rural municipality who complained about the inappropriate qualifications of staff in the finance department. One staff member apparently held a certificate in fire-fighting, and another, a degree in theology. The CFO was greatly concerned about the running of the department, particularly in view of the fact that the Auditor-General was due shortly to commence the annual audit of the municipality. One of the authors could not resist pointing out to the CFO that given the state of the municipality’s finances, and given that a visit by the Auditor-General was looming, these two individuals, one skilled in putting out fires and the other with the ability to invoke divine intervention, were probably admirably qualified, each in his own way, to deal with the crisis. The CFO did not appear to find much comfort in that.

68 This was a phenomenon that was frequently encountered in the earlier research previously referred to, and it again raised its head frequently in the present research.

64 The question of performance management was also canvassed in the course of interviews. Limitations of space prevent a full discussion of this aspect of the study.

cess or mechanism for evaluating and reviewing its staff establishment, as required by law.

Some even more alarming tales emerged: In one municipality, we were told that “no-one above a certain level gets appointed unless the mayor approves.” In another case, it was alleged separately by several interviewees that no-one would get a significant job in any of the municipalities in the region unless an influential local politician approved, and that financial contributions often did the trick in securing such approval.⁶⁹ We were told (again by several unconnected sources) that in one province no mayor or senior manager would be appointed in any municipality unless the premier of the province approved.⁷⁰

That said, we must point out that it emerged from discussions with both politicians and administrators that a number of municipalities were staffed with competent, effective managers. It was emphasised how crucial the ability of managers was to the success of municipalities.⁷¹ In particular, the importance of appointing a strong municipal manager (the official who heads the administrative component of a municipality) was emphasised. How this key position was filled had an enormous effect on the functionality of a municipality. A senior provincial official whom we interviewed recounted how fortunate the province was to have such a competent corps of municipal managers— “They are worth every cent of their salaries.” A common feature amongst these municipalities was, according to the politicians whom we interviewed, the emphasis which was placed on merit when senior staff were appointed, with no regard being had to their political affiliations.

A common complaint amongst respondents was the high rate of vacancies on the staff estab-

lishments. According to the National Treasury, “the number of vacant positions in an up-to-date organisational structure is often a first indicator of possible capacity problems” (National Treasury 2011:112). Whilst vacancy rates are improving,⁷² they remain a serious issue. Related to the vacancy problem is the phenomenon of high staff turnover. The reasons given by respondents for the high vacancy rates and high staff turnover in their respective municipalities were many and varied. Amongst them were the reluctance of qualified staff to live in distant, rural areas; the lack of qualified staff in general; unrealistic employment equity targets;⁷³ allegedly low salaries; applicants being politically unacceptable to councillors; poor career prospects; and insufficient cash resources to pay salaries, either due to posts not having been budgeted for in the first place, or because of shortfalls arising in salary budgets because of poor budgeting. A reason given by several respondents from the administrative components of municipalities was that working conditions were intolerable; this was due to a number of factors such as political factionalism and infighting which spilled over into the administrative component; harassment by politicians seeking to influence the conduct of officials;

72 It is difficult to pinpoint exactly what the overall vacancy rates in local government are. In the Auditor-General’s Consolidated Report on Local Government Audit Outcomes (Auditor-General 2015), it was reported that 12% of Municipal Manager posts, 13% of CFO posts and 24% of Supply Chain Management posts were vacant, and that the senior management vacancy level is 18% and the overall vacancy level is 20%.

73 In South Africa, municipalities, like most employers, are required by the Employment Equity Act to set targets to ensure demographic representivity in their workforces. A number of interviewees averred that an unanticipated consequence of the legislation was that employees who did not belong to designated groups or whose employment would skew demographic representivity, saw no long-term career prospects in municipalities; for similar reasons, we were told, potential employees who were fully qualified in other respects but did not fit demographic criteria were excluded from the selection process. In a survey conducted by the Financial and Fiscal Commission, it was found that “...municipalities’ rigid interpretation of the Employment Equity Act has meant that the balance between the need to fill vacancies with competent employees and the objectives of the Act has not been maintained. This leads to positions often not being filled when a suitable affirmative action candidate cannot be found, particularly in areas where there are distinct skills shortages. This has an impact on service delivery.” (Financial and Fiscal Commission 2012:98)

69 A similar tale was told by a councillor in another municipality, who averred that in his municipality, “jobs are for sale, even at general worker level.” The recipients of payments were alleged to be senior local politicians and municipal officials.

70 One might be tempted to dismiss these allegations as unsubstantiated political point-scoring; each one of them was, however, separately verified by at least one other source.

71 A councillor told us, “What makes a municipality function is good management. But good management in turn depends on the council. It is the council that appoints senior management. A council with the necessary expertise, integrity and qualifications, and one that can make good choices, will look for management that is going to perform.”

poor communications and unclear operational channels between the political and administrative components; incompetence and indiscipline of colleagues; uncertainty regarding re-appointment on completion of fixed-term employment contracts;⁷⁴ and dangerous working conditions.⁷⁵ Highly functional smaller municipalities had their own difficulties; it was often reported that in such municipalities, which had achieved good levels of service delivery and governance, competent applicants sought employment only to gain experience, after which they tended to move on to the larger metropolitan municipalities where they were eagerly snapped up. Metropolitan municipalities in turn had their problems; employees with high priority skills, such as engineers, were frequently lured away by the private sector with promises of more generous salaries.

Respondents in most cases indicated that inadequate staff complements were a major cause of the inability of municipalities to perform their functions. There was clearly a lack of priority skills which resulted in high vacancy rates,⁷⁶ a situation exacerbated by the filling of posts in an acting capacity⁷⁷ or by officials occupying dual positions. It is hardly surprising that many respondents reported that, due to the conditions

described above, municipalities had to struggle with lack of continuity, loss of institutional memory, low morale, uninterested staff, and a general inability to get the job done.

Cadre deployment

A phenomenon which has become perhaps one of the most divisive issues in local government is that of “cadre deployment,”⁷⁸ a practice whereby individuals loyal to the governing elite are “deployed” to government positions, not necessarily by reason of their suitability for those positions, but because of their political reliability.⁷⁹ This practice has become quite notorious in South Africa and is widespread in all levels of government. In this practice, normal recruitment practices are ignored and the individual concerned is installed in the position at the instance of a party structure, usually a “deployment committee,” with the cooperation of officials and councillors, who consider it in their best interests to comply with the deployment committee’s wishes. The African National Congress (at least publicly) insists that it is a legitimate practice, and one which is necessary to ensure that people who can be relied on to implement the transformation agenda are placed in positions of influence. Opposition parties, on the other hand, condemn the practice and blame it as

74 In a survey conducted by the Financial and Fiscal Commission, it was found that “All municipalities raised the problem of skills retention, highlighting the lack of a coordinated effort to retain skills. In some cases, officials seek alternative employment because they fear that their performance contracts will not be renewed or because of political interference in the administration. Smaller municipalities in particular are unable to compete with larger municipalities in retaining officials.” (Financial and Fiscal Commission 2012:98)

75 It was stated by a speaker at a Provincial Members’ Assembly of SALGA (the South African Local Government Association) which was attended by one of the authors that municipal managers frequently feared for their lives and felt that they needed protection. It is not entirely clear what the source of the danger was, or how severe the problem was, but there are a number of well-publicised reports of municipal managers and other officials having been assaulted or murdered.

76 According to the Parliamentary Ad Hoc Committee on Coordinated Oversight on Service Delivery (2010), the problem is more pronounced in rural areas, where there is a lack of training and education centres. A number of senior officials who were interviewed for purposes of this research confirmed that this was problematic.

77 A long-standing joke amongst municipal insiders is that “local government in South Africa should be called Hollywood – because everyone is acting.”

78 Whilst the practice is no doubt not unique to South Africa (see Naidoo 2013), the term “cadre deployment” probably is.

79 Booysen (2011:373) describes the “Cadre Deployment” phenomenon thus: “Strategic deployment of ANC cadres played an important role in the ANC taking control of the post-liberation state. Heading these operations, the ANC’s deployment committees on national and regional levels played a crucial role in state transformation, contributing to reasonable success in deracialising the public service. This helped ensure that bureaucratic sabotage by reactionary forces intent on undermining the democratic order would be minimised. Centrally controlled deployment also helped establish the ANC as a neo-patrimonial gatekeeper over access to positions of state employment and promotion, a process in which ANC top-structures would be widely recognised as the lawful and legitimate performers of these roles. It equally helped build ANC hegemony. When fully operational and effective, the deployment committees would determine deployment into civil society and intra-ANC positions, including electoral lists. The ANC’s range of national and regional deployment committees ebbed and flowed over time as the movement battled intra-organisation positioning, optimisation of state governance, factionalism, careerism, opportunism, desperation for employment, and the organisational dilemmas of having to act against corrupt comrades.” See also Naidoo (2013).

one of the leading causes of maladministration in local government in South Africa.

Interviewees who supported the practice generally did so on the basis that the ruling party should be entitled to appoint to administrative positions those whom they could trust to promote political objectives. On the other hand, objections to the practice included the following: it reduced the pool of potential candidates only to individuals who met criteria of political reliability; merit became a secondary criterion, if it was a criterion at all; it facilitated nepotistic and clientelist practices; similarly, it provided fertile ground for corrupt practices; it exposed councils to disrespect because their own recruitment policies were being overridden and ignored; it subverted the constitutional right of municipalities to govern their own affairs, as they followed the dictates of external political structures;⁸⁰ and accountability of staff members to councils, and of councils to communities, became meaningless concepts, as the lines of accountability had been severed and replaced by new lines of accountability, from staff and councils respectively only to party structures.⁸¹ It is surprising that the practice persists, given that the High Court has pronounced upon it an indicated strong disapproval of it, in the case of *Vuyo Mlokoti v Amathole District Municipality and Mlamli Zenzile*

(2009) 30ILJ 517 (E).⁸² Despite the clear terms of the judgment, cadre deployment, as evidenced by the interviews conducted for purposes of this research, remains a common practice in South African local government.

Capacity Building

One of government's principal responses to the difficulties facing local government was the introduction of a number of capacity building projects aimed at improving the capacity of local government to deliver services. Some fifteen of these projects have been established since 1996. Their effectiveness is difficult to measure, although recent events would suggest that in many cases, they did not achieve their intended results. For example, one of the more recent programmes, "Project Consolidate," which was established in 2004, appears not to have achieved great success. The findings of the Auditor-General's report for 2009/10 (Auditor-General 2011) suggest that this project did not have a great deal of positive impact on municipal financial management. By 2011, Project Consolidate was all but dead.⁸³

Not to be discouraged, national government

80 It certainly is something of a paradox that many local politicians object vehemently to interference by national government – something which national government has a constitutional right and obligation to do in certain circumstances – but have no apparent difficulty in accepting instructions from regional party structures which have absolutely no constitutional or legislative authority to interfere with local government affairs.

81 It has been pointed out – correctly, we believe – that "Regional party structures should focus on recruitment and deployment of suitable candidates for political office in municipalities, ensuring and overseeing ethical behaviour among their cadres, and providing overall strategic guidance in the form of party political programmes. Instead, they often seem to focus their attention on two aspects: staff appointments and tenders" (De Visser 2010:95).

82 The court found that under the instructions of the ANC Regional Executive, the majority of the members of the council approved the appointment of one of the two final contenders for the position of Municipal Manager; this was despite the fact that the other candidate had outperformed him in the assessment. It was held by the court that the involvement of the Regional Executive Council of the ANC

"...constituted an unauthorised and unwarranted intervention in the affairs (of the municipality). It is clear that the councillors of the ANC supinely abdicated to their political party their responsibility to fill the position of the Municipal Manager with the best qualified and best suited candidate on the basis of qualifications, suitability, and with due regard to the provisions of pertinent employment legislation...This was a responsibility owed to the electorate as a whole and not just to the sectarian interests of their political masters...."

"(The council of the municipality) has demonstrated a lamentable abdication of its responsibilities by succumbing to a political directive from an external body, regardless of the merits of the matter. It continues, with an equally lamentable lack of insight into its conduct, to contend that it was proper for it to have done so."

83 The then minister of Cooperative Governance and Traditional Affairs noted that fewer than half of the municipalities supported by Project Consolidate had achieved unqualified audit reports, and that many were deteriorating rather than improving. (Reported in the Cape Times, 14 July 2011).

in 2009 produced the “Local Government Turnaround Strategy” (or “LGTAS,” as it is commonly referred to).⁸⁴ The LGTAS aimed to restore the confidence of people in municipalities as the primary delivery machine of the developmental state at a local level and to re-build and improve the basic requirements for a functional, accountable, responsive effective efficient developmental local government. To achieve these ends, the LGTAS set out a long list of priorities that needed attention. To many observers at the time, it was readily apparent that most of these priorities were unlikely to be addressed adequately or at all during the time frames provided for, and indeed, time has proved the sceptics right. LGTAS seems to have met an undistinguished end.⁸⁵ The general view of interviewees was that LGTAS was ineffective. Concern was expressed that capacitation projects of this kind do not deal holistically with challenges facing local government, due to their weaknesses in assessing capacity, defining timelines, coordination, selecting municipalities for intervention, and of course, offering appropriate solutions. In addition, the success of these programmes depends largely on the skills of temporarily seconded experts or service delivery facilitators; in many cases, municipalities, having become dependent on their assistance, fail to sustain whatever successes may have been achieved

when these experts leave.⁸⁶ Further complicating the issue is the fact that the administration of these programmes is fragmented across various government departments and agencies (Financial and Fiscal Commission 2009). Apart from anything else, however, and most important, is the fact that interventions of this nature are unlikely to succeed when the root cause of the problem lies with the system itself, and that technocratic solutions seldom provide the necessary answers. At best, such interventions can address only the symptoms of the design weaknesses of the framework underlying local government and cannot hope to provide lasting solutions.

Local government interviewees were, with few exceptions, highly doubtful of support programmes such as those described above. They had “seen it all before” and did not believe that anything of lasting value had been achieved by them. One can imagine the sense of disbelief that must have descended over these local government actors when National government in 2014 embarked on yet another local government renewal drive, this one being called “Back to Basics” and conducted under the auspices of the Department of Cooperative Governance and Traditional Affairs.⁸⁷ Will this programme be any different, and achieve at least a level of success that leaves a lasting impression? If it serves to focus local government attention on doing the essentials and doing them properly, then it will have achieved something. It is perhaps too early to judge the

84 This was the product of an assessment process (discussed above) which was carried out in 2009 and described in the Overview Report on the state of local government in South Africa. The strategy was approved by the cabinet in December 2009. The strategy is contained in a document entitled “Local Government Turnaround Strategy” (Department of Cooperative Governance and Traditional Affairs 2009 (b)).

85 The last official reference to the programme that could be found by the present authors was contained in a “confidential report” addressed by the Department of Cooperative Governance and Traditional Affairs to the Parliamentary Select Committee on Appropriations for discussion on 28 January 2014 (Department of Cooperative Governance and Traditional Affairs 2014). Unsurprisingly, that report was self-congratulatory but reveals little of substance regarding the success or otherwise of the strategy.

86 See also National Treasury 2011 at p 111, in which it is asserted that support programmes can lead to “perverse” outcomes, for a number of reasons: higher salaries paid to external experts attract municipal employees away from their jobs to join these programmes; in practice they are gap-filling rather than capacity-building; individuals and organisations have developed vested interests in promoting these programmes; and they treat the immediate symptoms of failure rather than the underlying causes.

87 “Back to Basics” was initiated at a “Presidential Local Government Summit” which was convened, in the peremptory fashion to which world-weary local government actors have become accustomed, on short notice, and at which attendance by Mayors, Speakers, Chief Whips, Municipal Managers, and Chief Financial Officers from all 278 municipalities was expected (something which did not endear many of the respondents who participated in this research to the conveners of the summit). An oft-repeated complaint which we heard from interviewees was that the “Back to Basics” strategy was presented at the summit as a fait accompli, with no discussion or exchanges of ideas.

success of the programme, but local politicians and officials might be forgiven for viewing “Back to Basics” with some cynicism.⁸⁸

The constitutional obligations of national and provincial governments in supporting local government is quite clear: Section 154(1) of the Constitution provides that “The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions”. It has been said that national and provincial governments have had ample time to implement this provision, but these governments have been less than effective in assisting municipalities to develop viable systems of management, operation and maintenance of infrastructure, and have done little to assist municipalities to improve standards of service delivery (Atkinson 2007). What is the view of local government actors on the role of senior governments? At national level, as far as National Treasury is concerned, there appears to be something of a love-hate relationship, if the views of local government interviewees are anything to go by. On the one hand, they were almost unanimous in complaining about what they perceived to be the overly stringent technocratic approach taken by the National Treasury and the constant barrage of regulatory and other prescripts which spewed forth from it. On the other hand, however, they were likewise almost unanimous in their appreciation of the professional and meaningful support which National Treasury provided in getting to grips with the complexities of the financial management framework. The same cannot be said of the Department of Cooperative Governance, which, it will be recalled, is the national department responsible for local government oversight. With very few exceptions, participants were highly critical of the department, asserting that it was inept and had little or no positive influence on the development of capacity in municipalities, and to quote one interviewee, that it had “run out of ideas a long

time ago.”⁸⁹ More than one interviewee described the department in terms that are probably best not quoted here – suffice it to say that those descriptions were far from flattering. Whilst such assessments may be viewed by some as being somewhat harsh, they are not entirely surprising. The department has long had a reputation for unresponsiveness and ineffectiveness.⁹⁰ This reputation is no doubt due in no small part to the lack of continuity in political leadership. It has had, since 2009, no fewer than 7 ministers (including an acting minister).

Participants from most provinces were similarly unenthusiastic about the contributions made by provincial treasuries and provincial departments responsible for local government oversight. Sections 154(1) and 155 (6) of the Constitution respectively enjoin provincial governments to support and strengthen the capacity of municipalities, and to provide for the monitoring and support of local government and to promote the development of local government capacity. Few interviewees were able to pinpoint any particular success stories regarding these constitutional provisions which were attributable to their provincial governments. There were two exceptions. In the case of the Western Cape, local government actors were almost (but not entirely) unanimous in their enthusiasm for the role played by the provincial treasury and the provincial department responsible for local government, and acknowledged the role played by well-designed support programmes in assisting

89 We would have liked very much to have had the opportunity to obtain a response from the department, and in particular, from the responsible minister, but we were unable to do so. This was not due to want of trying on our part. Attempts to secure an interview with the minister stretched for over a year, and eventually took on a rather comical aspect, with ministerial officials constantly prevaricating and dissembling and seemingly being unable to come up with a definite answer, whether positive or negative, as to the granting of an interview. Due to time constraints in completing this project, we eventually had to acknowledge that the minister either would not or could not assist in any meaningful way, and we finally gave up performing what at one point was an almost weekly ritual of contacting officials in the hope of getting a response – any response!

90 A number of interviewees confirmed what we had observed regarding the respective roles of the National Treasury and the Department of Cooperative Governance, namely, that the former had, by default, de facto taken over the latter’s oversight role and was far more influential in matters which would have been expected to fall under the latter’s purview.

88 A councillor whom we interviewed dismissed “Back-to-Basics” as “yet another spreadsheet-based, box-ticking exercise.”

them in achieving objectives.⁹¹ The audit outcomes mentioned previously bear witness to the effectiveness of the support provided by this province: according to the latest report, all but one of the municipalities in this province achieved unqualified audits, and of these unqualified audits, 17 were “clean” audit outcomes - out of a total of 40 clean audits throughout the country.⁹² The other, less dramatic exception is to be found in KwaZulu-Natal, where the efforts of its department responsible for local government were often acknowledged by participants and were reflected in the fact that this province achieved the second-highest number of clean audits.⁹³ This suggests that provinces can, if they themselves are properly committed, have an influence on local government performance. This is, we submit, a subject worthy of further and intensive research.

General observations

The Municipal Systems Act requires that a municipality develop its human resource capacity to

a level that enables it to perform its functions and exercise its powers in “an economical, effective, efficient and accountable way.” Most local government actors whom we interviewed indicated that in the present circumstances, it was highly unlikely that local government as a whole was able to achieve that standard. Of course, representatives of the better-performing municipalities were optimistic and confident about their own municipalities; others indicated that, given the circumstances, their situations were “manageable;” most participants, however, complained of a shortage of skills, ranging from specific skills, to general management skills to literacy skills, which impaired their capacity to perform their powers and in “an economical, effective, efficient and accountable way.” The reasons given for this state of affairs include inability to attract and retain staff, a lack of skills in general, lack of funding, inappropriate recruitment processes (including as a result of political interference), poor training, poor matching of skills to the requirements of posts, a lack of interest and commitment on the part of employees, and unrealistic and poorly implemented capacitation programmes. Regarding support from senior governments, it is important to remember that in order for local government to work effectively, an enormous amount of institution-building and training must take place. This, in the first instance, is the responsibility of senior governments. It is one of the paradoxes of the decentralisation process that although central governments divest themselves of responsibility for certain functions by devolving them on to lower tiers of government, they in practice have to assume greater responsibility to ensure that the process works by supporting these lower tiers. It seems that, with a few notable exceptions, this has not happened in South Africa.⁹⁴

91 The Western Cape Legislature has enacted a provincial statute called the Western Cape Monitoring and Support of Municipalities Act, 2014, whose purpose is “to give effect to sections 154(1) and 155 (6) of the Constitution...by making further provision for measures to support municipalities and to improve their performance...” To the best of the authors’ knowledge, this legislation is unique to the Western Cape and no other provinces have enacted similar legislation.

92 The role of the Western Cape Provincial Government was acknowledged in the Auditor-General’s report: “...our assessment of the assurance provided by (the offices of provincial premiers) is based on their initiatives to support and monitor local government and the impact thereof. Most of these offices provided only some or limited assurance, with the exception of the Western Cape, where assurance was provided.” (Auditor-General 2015:103); and “The provincial treasury in the Western Cape improved to provide the level of assurance required to have a positive impact on the credibility of the province’s financial statements and performance reports and its compliance with legislation. Seven provincial treasuries were assessed as providing some assurance, while (one) provided limited assurance.” (Auditor-General 2015:104).

93 Interviews with provincial officials in KwaZulu-Natal revealed an impressive programme to promote sound financial management in municipalities in that province. We would have liked very much to interview officials and political office bearers from provinces other than the Western Cape and KwaZulu-Natal in order to obtain their views, but requests for interviews were either ignored or prevaricated over to the point where attempts to obtain interviews had to be abandoned. We had to conclude that these officials and office bearers had very little to offer in the form of meaningful contributions. Input from those provinces was therefore limited to contributions by provincial legislators, who were generally eager to assist.

94 In one metropolitan municipality, by way of contrast, the view was expressed that senior governments were in some respects less capable than some of the larger municipalities: “The level of expertise and detail that went into forming our Integrated Development Plan and our economic growth and social development strategies is such that one is not convinced that the people in provincial government checking to see if it is a quality document have the same level of resources at their disposal as has the city. I say that for provincial and national governments.”

10. ACCOUNTABILITY

The fourth and last essential condition stipulated by Manor is that reliable accountability mechanisms – to ensure both the accountability of elected politicians to citizens, and the accountability of bureaucrats to elected politicians – must be present. As we have already seen, one of the objects of local government as laid down in the Constitution is to provide democratic and accountable government for local communities. In the course of conducting interviews, four main themes emerged as being of principal interest in the context of local governance, namely, (i) the effectiveness of South African local government accountability mechanisms in general, (ii) accountability in the context of public participation, (iii) accountability and compliance, and (iv) the role of councillors in advancing accountability. These are discussed in turn below.

The effectiveness of accountability mechanisms

South Africa's local government accountability framework is complex. The general framework is provided by the Constitution with specific provisions being contained in the Municipal Structures Act, the Municipal Systems Act and the Municipal Finance Management Act and regulations made in terms of these acts. There is a clear constitutional and legislative imperative for accountability in local government,⁹⁵ and the framework provides a number of accountability mechanisms, such as budgets, performance evaluations, internal auditing, monitoring, incentives, and committees to assist councils in exercising oversight. The existence of sound accountability mechanisms has, as we have seen, been identified as a condition for successful decentralisation; but, we submit, not only must such mechanisms exist, they must also be effectively implemented and enforced. Implementation and enforcement of these mechanisms often lacking. For example,

a study conducted by the Financial and Fiscal Commission (Financial and Fiscal Commission 2015 (c)) indicates that all municipalities included in that study had committees (of the kind referred to above) responsible for holding executives to account, with clear mandates that were spelled out in various pieces of legislation and circulars. However, according to the study, most of these committees appeared to lack capacity and skilled personnel able to scrutinise, interpret and analyse information on fiscal and financial matters. The Financial and Fiscal Commission points out that in consequence, such committees cannot procure support for distilling essential information necessary to hold the executive to account; they are unable to hold widespread, effective public hearings, which results in limited societal accountability, and committee reports and resolutions are not widely disseminated, further limiting the municipality's societal accountability.

Interviews conducted for purposes of the present research confirm the existence of the challenges described by the Financial and Fiscal Commission. Respondents who were interviewed were generally of the view that legislation provided adequate accountability mechanisms – at least on paper. There was, however, a widespread perception amongst respondents that internal accountability mechanisms such as audit committees and public accounts committees were often ineffective,⁹⁶ particularly in the less well-resourced municipalities.⁹⁷ There was also a widespread view amongst participants that insignificant, if any, consequences attach to maladministration. This perception is supported by the findings of the Auditor-General, whose report on Local Government Audit Outcomes for 2013/14, revealed that at 35% of auditees, the municipal manager and council did not investigate irregular expenditure incurred in the previous year to determine if

95 Section 152(1)(a) of the Constitution (which states that one of the objects of local government is to provide democratic and accountable government to local communities) and Section 51(b) (which demands a culture of accountability from municipal staff) and 51 (i) (which holds the municipal manager accountable for the overall performance of a municipality's administration) of the Municipal Systems Act are explicit about the need for local government accountability and for establishing accountability structures.

96 In the Auditor-General's Consolidated Report on Audit Outcomes for Local Government, it was found that audit committees were in place at 96% of auditees. 33% of these committees did not, however, fully comply with all the requirements of legislation, and full assurance was provided by only 36% of audit committees.

97 One reason which was frequently given for ineffective audit committees in rural areas was the simple fact that there were often insufficient suitably qualified people in the area to serve on such committees.

any person was liable for the expenditure; at 29% of auditees, the municipal manager and council did not investigate fruitless and wasteful expenditure incurred in previous years to determine if any person was liable for the expenditure; and at 37% of municipalities, the municipal manager and council did not investigate unauthorised expenditure⁹⁸ incurred in previous years to determine if any person was liable. The failure to take corrective action prevails in respect of intergovernmental corrective measures as well as internal institutional measures. As regards the latter, an observation that was frequently made during the course of the present research was that individuals within municipalities who transgressed were seldom brought to account; in several instances, it was asserted that disciplinary measures against staff were used primarily as a means of settling political scores, and not to ensure good discipline and accountability of staff. The inevitable consequence of such a state of affairs, as can be easily seen, is a general collapse of governance.

According to the Financial and Fiscal Commission (2015(a)), the most significant risks to accountability, as identified by the municipalities surveyed by the Commission, are the turnover of senior staff and the lack of permanently appointed municipal managers and CFOs.⁹⁹ Whilst this statement may be true enough as far as it goes, we submit that it is rather simplistic and does not fully address the causes underlying the lack of accountability. Interviews conducted for purposes of the present research suggest that poor leadership, lack of consequences for transgressions and a general lack of appropriately skilled staff (in which high staff turnover certainly is a factor) are more pressing causes.

98 As was pointed out previously, irregular expenditure, fruitless and wasteful expenditure and unauthorised expenditure are all forms of improper expenditure which are prohibited in terms of the Municipal Finance Management Act.

99 The Commission states that "Instability at senior management level caused by such high turnover contributes to poor quality statutory documents, such as the integrated development plan (IDP), the budget, annual reports and financial statements, thereby diminishing the municipality's ability to account. Another concern is that the acting municipal manager or CFO may shift the blame for underperformance to previous incumbents. Acting managers are also more likely to avoid taking responsibility and to delay making decisions" (Financial and Fiscal Commission 2015(a):64).

Accountability and public participation

A comprehensive framework has been established for promoting a culture of participatory governance in local government as a means of complementing the traditional model of representative local government. Public participation in the South African local government context was clearly considered to be a crucial element of successfully decentralised local government, hence the inclusion of the encouragement of the involvement of communities and community organisations in the matters of local government as one of the constitutionally specified objectives of local government. Nonetheless, it has been suggested that there is a growing culture of non-accountability within municipalities, with regular complaints about unresponsiveness of officials and councillors, and that channels of communications with mayors and councillors are blocked (Atkinson 2007),¹⁰⁰ and that despite this comprehensive framework, there is a strong perception that public participation at local level in South Africa has not yet got off the ground. Implementation of the public participation framework is clearly a serious problem, and one that has serious consequences.

That said, it must be noted that in a number of municipalities which were involved in the present research, including some small rural municipalities, the public participation process was taken very seriously indeed, and was driven by skilled and committed facilitators. Politicians and officials alike expressed satisfaction with the way in which the processes were managed and with the positive response of citizens. But these municipalities were in the minority.

Participants in the interview process were asked to indicate whether they considered public participation processes to be necessary for effective local government. Almost all believed that it was indeed necessary, but, whilst some maintained that such processes were effectively applied in their municipalities, most were of the view that the objectives and expectations of public participation had not been achieved. Most indicated

100 The Parliamentary Ad Hoc Committee on Coordinated Oversight and Service Delivery (2010) recognised the lack of visibility and accountability of councillors, and emphasised the importance of regular contact between the council and the populace.

that they believed that public participation processes gave rise to unrealistic expectations on the part of their communities. Many communities appeared to have formed the view that public participation processes were guaranteed to ensure that their wishes were met, only to be disappointed later when it was realised that municipalities were under no obligation to give effect to their wishes. Several respondents indicated that they had observed a growing distrust amongst communities of the public participation process, and ascribed the ongoing phenomenon of “service delivery protest” at least in part to that distrust. Interviewees frequently reported that citizens were frustrated by the fact that proposals emanating from the ward committees seemed inevitably to become blocked at council level and progress no further; this resulted in citizens becoming disillusioned with the system. This disillusionment was evidenced by the fact that, according to many respondents, citizens seldom bothered to attend council meetings or other public fora, unless their interests were directly involved.

Complaints from citizens, officials and politicians alike regarding unresponsiveness, blocking of processes, lack of communication, going through the motions of public participation purely for the sake of compliance¹⁰¹, and processes being hijacked for political ends, were amongst other problems that were frequently cited.¹⁰² It was frequently stated that municipalities saw public participation as being nothing more than part of the budget and IDP development process. It became apparent that many municipalities were at a loss as to how to apply public participation processes, or to develop imaginative strategies to deal with diverse issues that were of particular concern to different communities. Some officials were outspokenly blunt about public participation, with one stating that “community structures are uneven and toothless...(and have) minimal influence on governance matters”. Additional issues were the lack of funding and facilities for

ward committees and for implementing processes, and, critically, public apathy. Part of the problem appears, in some cases, to be that there are high levels of distrust towards local government because of past promises that had been broken, and that people were no longer interested in becoming involved because they felt, in the words of one councillor, “that nothing will happen anyway, only the politically connected will benefit.” In other cases, it was stated that apparent apathy might stem from ignorance of the role that communities could play in local governance, and that better education of communities in their roles was essential.¹⁰³

That said, it was reported in a few municipalities that some sections of the community were more involved than others, and that more affluent segments of the communities in some municipalities were less interested in participating, due, it was said, to the fact that they were either satisfied with the status quo or were indifferent, whilst less privileged segments participated more actively, at least when the issues at stake directly involved them.¹⁰⁴ In other municipalities, on the other hand, it was reported that the more affluent segments did become actively involved, and being better resourced and better able to exploit the system, used public participation processes to secure their own interests. Whatever the levels of participation in other forums, in most municipalities that were visited for the purposes of this research, it appeared that ordinary citizens very rarely attended council meetings.

It emerged from the interviews that many municipal councils do not have functional ward committees, and the role of ward committees is still unclear to many actors. Lack of capacity of elected members of ward committees emerged as a persistent problem. It was reported by several

101 In several municipalities, officials stated that community members who would not otherwise have bothered to attend were bussed in to public meetings, in the apparent hope that the increased numbers would lend an air of respectability to the proceedings.

102 These were also identified in previous research conducted by the authors (see Siddle and Koelble 2012).

103 A senior municipal official told us that the reason for the lack of interest was that “the people are just not ready for participatory governance. It’s going to take years to deepen the level of interest.”

104 In several municipalities, it was indicated that public meetings relating to housing were the best attended, whilst those relating to the budget and integrated development plans were generally poorly attended. A somewhat cynical ploy used (or so we were told) by a ward councillor was that if he wanted full attendance at a meeting, he would instruct that it be advertised as a housing meeting, even if the subject matter in fact had nothing to do with housing.

respondents that there was insufficient communication between the councillor, the ward committee, and community. Sometimes the problems were as mundane as the fact that councillors often did not reside in their communities and were not available to constituents, or that ward committees found it difficult to communicate with their councillor because they had not been provided with budgets for telephones or travel.¹⁰⁵ Frequent complaints were that the ward systems were under-resourced, and that the areas served by individual ward committees were geographically too large for them to cope with. Dissatisfaction was also expressed with ward councillors, who serve as chairs of the ward committees, in that they did not provide proper leadership to the committees. Concerns were expressed that the ward committee systems were becoming politicised, and that committees were, quite contrary to their intended purpose, being used as platforms for political agendas. The effectiveness of these committees has been variable with many structures becoming ineffective or dysfunctional (Reddy and Maharaj 2006 – more recent studies conducted by the present authors confirm this), and actual participation by the public being poor in many cases.

In many of the municipalities visited by the present authors, both in the course of earlier research and the current study, ward committees barely functioned, if at all. But ward committees were not the only area of concern. Many municipalities had done little to give effect to any of the requirements of public participation processes and mechanisms. They had little in the way of policies and systems, and often, in cases where such systems had been established, they were not properly implemented. In any event, the overall impression was that, in the words of one commentator, “currently the approach to participation could be described as ‘compliance driven’ with Integrated Development Planning and other processes designed to meet the needs of legislation and no more. Even municipal officials acknowledge that public participation is implemented without being tied to budgets and that feedback to communities on the outcomes of

participation processes is rare.”¹⁰⁶ Indeed, the impression was gained by the present authors that in the view of many actors, public participation was nothing more than a component of the IDP process, and that they were blissfully unaware of the far wider scope that true public participation was intended to embrace. A number of respondents indicated that their municipalities were simply “going through the motions.” It also became clear that few officials, particularly in the smaller municipalities, were properly skilled in conducting public participation processes. Some municipalities, mostly in the metropolitan areas, have established reasonably effective participation systems in which civil society and citizens’ participation is encouraged and takes place. But it is clear that the objectives of the notion of public participation as contemplated in the constitution are, in general terms, a long way from being achieved.

Research suggests that “where there is an effectively functioning public participation system in place...residents appear to have more trust in the ability of local government to address their needs and appear to be less frustrated with service delivery shortfalls that exist” (Paradza *et al* 2010:89). Yet it is clear from the findings of the present study and other studies that many municipalities have failed to develop and give proper effect to mechanisms for participatory democracy. One inevitable result is that poor accountability

105 A study by the World Bank (2011) confirmed many of the observations gathered during the course of the present research.

106 M van Donk, in the Cape Argus, 2 January 2014.

prevails between the council and citizens.¹⁰⁷

Public participation, even when effectively applied, can, however, be too much of a good thing. Several interviewees complained that public participation processes could hamper effective administration and service delivery. An often-mentioned example was the requirement that municipalities wishing to dispose of capital assets had first to engage in a public participation process; another was the requirement that a public participation process be followed when a municipality decided on appropriate mechanisms to provide municipal services.¹⁰⁸

107 The reasons for the participation system not meeting the expectations that were placed on it are many and varied, and have been discussed by the authors in a previous study (Siddle and Koelble 2012). They include the following: many municipalities are simply not giving effect to the structures and systems which have been provided for by legislation to promote public participation; the lack of social capital; civil society has been weakened due to the changed political situation in which donors no longer view non-governmental organisations as crucial to the struggle against the government but support the new democratic dispensation directly and at the expense of the civil society sector (Swilling and Russel, 2002); whilst South Africa may have embarked initially with enthusiasm on the decentralisation route, it has since lost direction and become inertia-bound, with serious consequences for the decentralisation paradigm in general and for public participation in particular; many citizens (this is especially true of rural areas) simply have not developed the basic competencies required for effective public participation, especially those needed for interacting with bureaucracies; the pursuit of managerialist agendas has resulted in specialisation and the escalation of technical knowledge and control which in turn has frustrated participation from below; clientelism and elite capture subvert participatory processes and objectives (Heller 2001); the public participation framework confers absolutely no real power at all on the participants, with the result that municipalities – and in particular, the political elites who run them – need pay only lip service to the concept of public participation.” finally, the imperatives of the developmental agenda are sometimes in conflict with the ideals of public participation and that the perceived need for rapid service delivery does not sit very comfortably with those ideals, since the delivery mechanisms focused on outputs, rather than on more participatory approaches focused on outcomes. (World Bank 2011).

108 In this regard, a senior municipal official made an interesting comment to the effect that “participatory government makes for inefficient government. There is too much running around. It retards the processes. The extent to which we are required to consult is unreasonable. For example, if we want to pass a by-law, we have to have a public participation process. People have no interest in the by-law, yet we have to go through the process. Which is not to say that it is not necessary. But it needs to be seriously streamlined.”

Accountability and compliance

It became apparent that one of the biggest issues that occupied the minds of local government actors (perhaps second only to the issue of unfunded mandates) was the question of compliance with legislative and regulatory prescripts that direct the course of local government. With few exceptions, respondents complained that what they saw as an excessive regulatory burden was time consuming, was expensive to implement, diverted attention and resources away from local government’s primary role of service delivery, and was evidence of national government’s increasing tendency to interfere in local government’s territory.¹⁰⁹ It was often suggested that the “red tape” tangle which resulted from the regulatory framework was quite incompatible with the imperative of responsive and effective service delivery.

A frequently observed phenomenon was that accountability was often seen as a question of simply meeting legal obligations and financial compliance, in other words, as something that had to be done rather than something that promotes beneficial outcomes. The term “malicious compliance” – which refers to compliance with regulatory prescripts for the sake of compliance and for no other reason at all – emerged in a number of interviews. One senior councillor in a highly-regarded municipality stated that his municipality went to great pains to achieve compliance, and did so successfully, but only because it was obliged to. The attitude towards compliance, in his view, was “teach us your silly rules and we’ll play your silly games.” Many interviewees spoke with apparent resentment about being compelled to expend energies and resources on accountability structures. This attitude no doubt led at least in part to the fact that accountability structures in municipalities were frequently observed to be insufficiently resourced; there was clearly a lack of capacity and skills within many municipalities

109 The Local Government Turnaround Strategy which was discussed previously suggests that compliance requirements are in fact a cause of municipal dysfunctionality: “... municipalities have been overregulated or inappropriately regulated ...Due to the onerous compliance regime...many municipalities have tended to focus much of their energies on fulfilling compliance requirements rather than focusing on the critical issues of service delivery and enhancing performance” (Department of Cooperative Development and Traditional Affairs 2009(b):26).

to monitor and hold individuals accountable.¹¹⁰

How justified are these complaints? Often, local authorities are compelled to follow a range of regulatory prescripts defined by national government with little opportunity to influence them at all, and this leads to a questioning of the utility of these regulations. The real question is whether the existence of a particular rule or regulation promotes or hinders the achievement of a stated objective. Regulations can motivate and enable certain desirable courses of action. But they probably are more often viewed in a static way and as being a cause of costs and imposing constraints. Indeed, they often are authoritative, complex, intrusive and inflexible; they can be difficult to implement uniformly; they can be difficult to enforce. They can create an unnecessary compliance burden, and they can be an obstacle to success. Two drawbacks in particular are often cited: delays in providing urgently required services by reason of having to comply with unnecessarily burdensome prescripts, and the diversion of resources (human and financial) for the sake of compliance. A good regulatory framework should ensure that all of these disadvantages are minimised and that predictability, equity, accountability and effectiveness prevail. Two essential pillars of the modern democratic state are accountability and transparency. Accommodating these two pillars will of necessity involve at least a measure of complexity; it may also lead, in certain cases, to inefficiencies. Accountability by its nature demands, amongst other things, regular reporting; transparency demands, amongst other things, the application of any of a number of processes, such as public participation; accountability and transparency both demand the submission of institutions to scrutiny. All of these processes impose burdens on institutions. If those processes have worthwhile objectives, then the additional burden can be justified. It is a matter of balancing the benefits with the effort required to implement the regulations.

How does this relate to South Africa? A brief examination of the constitutional and legislative provisions relating to local government reveals a complex and sophisticated framework. Numer-

ous enactments apply specifically to local government, and they require a thorough working knowledge in order to be properly implemented. And of course, there are numerous other pieces of legislation – literally scores of them – which in one way or another, directly or indirectly, seek to regulate municipal administration and operations. The question which arises is whether a framework as complex as that adopted by South Africa is appropriate for a country in which institutional capacity is and has long been a pressing issue. In addition, increased regulation, in a sector with poor human, financial and technical capacity, can easily result in a vicious cycle: it can lead to more non-compliance which in turn can lead to poor service delivery. In a less-developed country such as South Africa, the danger of this happening is real. There has long been a tendency on the part of national government – which is particularly noticeable in the National Treasury – to respond to poor performance by imposing additional prescripts (in the form of regulations, circulars and practice notes) across the board, whether or not particular institutions were guilty of transgressions or non-performance and needed to be further regulated. Whilst there is no reason to doubt the sincerity of the National Treasury in imposing these regulatory requirements, one has to question whether a technocratic response of this nature is appropriate or effective for dealing with challenges which have their origin in political, structural and capacity issues. Such a response simply provides a “band-aid” solution by merely attempting to treat the symptom rather than the root cause of the malaise.¹¹¹

It is a common complaint amongst municipalities that their efforts to perform their constitutionally mandated and other functions are constantly undermined by the distracting and resource-draining demands associated with the regulatory framework. It is not unreasonable

¹¹⁰ This phenomenon was also observed by the Financial and Fiscal Commission (2015(a)).

¹¹¹ A senior official at a metropolitan municipality remarked to us that “We see all of these circulars and practice notes coming from National Treasury, and we have to wonder whether the experiential level of the individuals writing these things is such that they understand what is going on in local government. We in this municipality are fortunate in that we have the capacity to analyse them and to adjust our systems to accommodate these prescripts. But we have to question whether they are right for all municipalities, and what they do for service delivery.”

to infer that excessive regulation can potentially have a deleterious effect on good governance and service delivery. So, for example, it is logical to conclude that the impact of regulations is cumulative and municipalities may well struggle to prioritise their municipal mandates. This could result in municipalities failing to balance regulatory compliance with their delivery obligations. Similarly, it is not unreasonable to conclude that the consequences of imposing regulations tend to be inversely related to municipal size: the smaller the municipality, the greater the impact (measured by the proportional demand on available resources and proportion of budgets consumed) of attempting to comply with such regulations. In addition, it seems reasonable to assume that the uniform requirements of regulations, which generally do not differentiate between institutions of varying capacity, will prove far more difficult for lesser capacitated municipalities to meet than would stronger, more richly endowed municipalities.¹¹² The stronger, better-managed municipalities, on the other hand, may be perfectly able to run their own affairs without top-down prescripts emanating from senior governments. This tendency to regulate on a “one size fits all” basis often stifles more capable municipalities, we were told by a municipal official. Instead of being left to regulate themselves (within limits), by means that are appropriate to their circumstances, they become compelled to follow prescripts which were designed to bring errant municipalities into line. The result is that better-run municipalities become hamstrung in delivering services by reason of having to comply with uniform prescripts that are largely inappropriate.

Certainly, in some cases, the consequences of the prescripts are obstructiveness and inefficiency, and these prescripts are, it is submitted, long overdue for review. Certainly, many provisions of the framework are complex and demanding and certainly do require expert interpretation and application, something which many municipalities are patently ill-equipped to do. And it is no doubt highly frustrating and time-consuming for municipal administrations to be engaged so

constantly with reporting requirements.¹¹³ There must surely be more efficient means, particularly given the advances of information technology, of capturing, submitting, distributing and gaining access to information which constitutes these reports – such as an electronic central depository in which all data relating to a municipality can be loaded and made available for any senior government to extract from it whatever is required. But we cannot avoid the fact that, as was mentioned previously, two pillars of the modern democratic state are accountability and transparency, and these cannot be achieved in the absence of a regulatory framework. Perhaps with that in mind, the real issue, as was suggested by a senior official at a major municipality, is not the need for the regulatory framework (the official having expressed the view that most of the framework is indeed reasonable and necessary) but whether individual institutions are ready to apply them. “Central government should ensure that there is sufficient capacity to implement new rules before introducing them, and if there are capacity gaps, national government should take the responsibility for filling them. And then the rules should be implemented incrementally. A ‘Big Bang’ approach will not work.”

One should, however, approach this issue with some caution. It may be that municipalities are a little too quick to blame excessive regulation for poor performance. When pressed to describe how regulations and legislation should be modified to better serve the objectives of local government, few respondents who participated in this research were able to provide concrete suggestions. One may therefore perhaps be forgiven for concluding that whilst there may indeed be considerable merit in the complaints regarding excessive regulation, the condemnation of the regulatory framework seems to have become something of a fashionable mantra invoked by municipalities which seek to lay the blame for poor performance on any convenient factor,

¹¹² There is little research on the effects of attempting compliance on service delivery. The Financial and Fiscal Commission has, however, conducted some research on costing compliance.

¹¹³ A senior finance official at a metropolitan municipality told us that his department had every year to meet 454 reporting deadlines. “The attention to detail which is required nowadays is mind-boggling. It wears one down. It wouldn’t be so bad if someone in provincial or national government actually looked at the reports and did something useful with them.”

whether real or imagined, other than their own inability to perform their tasks. From discussions with interviewees, there can be little doubt that in many cases, this argument is used as an excuse to explain poor performance whilst in truth and in fact, such performance is due to more mundane factors such as poor political leadership and administrative and technical incompetence.

What should be of real concern to proponents of strong local government is not the question of the burden of compliance, but whether or not compliance demands represent an effort on the part of national government to reign in local government. Olowu and Wunsch (2004) describe the idealised process of decentralisation, and contrast it with the frequent actual experience, in which central governments, having embarked on the process and having devolved certain powers, claw back power from local governments. Here it should be noted that whilst the South African Constitution provides a classic example of decentralised governance, legislation which was enacted to give effect to the Constitution contains provisions which create space for actual or potential recentralisation processes. The legislative framework provides numerous mechanisms for national government to interfere in the business of local government by the issuing, by ministerial decree, of regulations which have the effect of removing discretion from municipalities and compelling them to abide by a uniform framework. The Local Government: Municipal Finance Management Act (MFMA) provides a good example of how legislation enables tighter central government control over the administration of municipal finances. Virtually every aspect of financial management – from the operation of bank accounts, to preparing of budgets, to incurring of debt, to general financial management, and to supply chain management, is closely regulated either by the MFMA itself or by regulations made thereunder. The MFMA relies to a large extent on regulations made by the Minister of Finance as instruments of implementing or enforcing policy; these regulations are often quite sweeping in

scope.¹¹⁴ This is not to suggest that, given the state of municipal finances, this close regulation of many municipalities is not necessary; on the contrary, many would argue that the MFMA needs to be more strictly applied, and that decision makers in a decentralised structure should be made responsible for the financial consequences of their decisions. Nonetheless, it is arguable that, however necessary it may be to regulate financial management in local government by means of national legislation, interference of this nature could well amount to a contradiction of the objectives of decentralisation, particularly if it is applied across the board both to municipalities which require supervision and those which are manifestly capable of managing their own affairs. It is not only the MFMA which has the potential to serve as a means for national government to claw back powers from local government. The Municipal Systems Act also allows the making of regulations at national level on a wide range of issues, including community participation, planning, performance management, human resources, services, and credit control and debt collection. The potential that these regulations have to erode the decentralised character of local government has been long recognised, at least in certain quarters.¹¹⁵

A particular cause for concern is the fact that in a supposedly decentralised system, such strict regulation, whether pursuant to the MFMA or

114 During the second Reading Debate on the Municipal Finance Management Bill in Parliament, a Member of Parliament remarked of the bill: "It became clear...that its paternalistic character emerged from a belief that municipal officials are generally incompetent, dishonest, lazy and devious, leading to a Bill designed to control and macro(sic)-manage these devious officials, rather than the opposing new-era approach, which is to stimulate human potential towards the attainment of results" (Proceedings of the House of Assembly, Thursday 11 September 2003, cols.6504-6505).

115 During the Second Reading Debate on the Municipal Systems Bill, a Member of Parliament said that "...the numerous ministerial guidelines and regulations institute a rigid, top-down centralised power framework. The proposals give the Minister wide, sweeping powers to interfere in the day-to-day affairs of municipalities. The Minister will be able to poke his nose into everything from the remuneration of municipal staff to the seizure of property...past experience has shown that when Ministers are given the power to override normal procedures, the temptation to use and abuse them is too great to resist." (Proceedings of the House of Assembly, Thursday 21 September 2000, col.5867).

the regulations which may be made under the Municipal Systems Act, is considered necessary in the first place. It suggests, perhaps, a belief within central government that the country is not ready for decentralisation and that sub-national governments require close control from central government. Perhaps this reflects the jealousy with which central governments tend to cling to their powers, or betrays distrust on the part of central government in the ability of local government to manage its own affairs. What we have happening here is precisely what is described in the “frequent actual experience” of decentralisation referred to by Olowu and Wunsch. We see national government displaying tendencies to exert ever firmer control over local authorities in response to the failure of local government to achieve expectations, and the clawing back of power.

Councillors and accountability

Only 36% of South Africans approve of their local councillors, according to the 2015 Afrobarometer survey.

A councillor whom we interviewed told us that the biggest issue in local government “is the capacity and performance of councillors. If the council works, the rest has a tendency to follow...” A municipal official, however, told us that “I think that local government will work very well without councillors.” These certainly are divergent views; whichever one is the more accurate, councillors notionally should serve as the interface between the citizens they represent and the municipal officials who design and implement development policies. The councillor’s job is not just to serve as the voice of the people, for the expression of their community needs, but also to act as a watchdog and ensure the municipality implements policies to address the needs of citizens (Paradza *et al.* 2010).

A local accountability framework has been established to ensure municipalities are accountable to their citizens. This framework has been codified in the Code of Conduct which forms a schedule to Municipal Systems Act. The preamble to the Code states that

“Councillors are elected to represent local communities on municipal councils, to ensure

that municipalities have structured mechanisms of accountability to local communities, and to meet the priority needs of communities by providing services equitably, effectively and sustainably within the means of the municipality. In fulfilling this role councillors must be accountable to local communities and report back at least quarterly to constituencies on council matters, including the performance of the municipality in terms of established indicators...”

The code deals with a range of issues, including general conduct, voting at meetings, attendance at meetings and sanctions for non-attendance, disclosure of interests, personal gain, declaration of interests, rewards, gifts and favours, intervention in administration, and the like.

It may fairly be said that there exists a comprehensive framework which is intended to ensure accountability of councillors. Yet, despite this framework, study after study has shown that councillors are often found wanting.¹¹⁶ It is not intended to repeat at length here the findings of those studies; suffice it to say that they reveal serious shortcomings in the performance of councillors in the execution of their duties, with councillors lacking the skills and resources required to perform their roles. Specific examples of this include their poor access to information on service delivery programmes, which renders them incapable of providing effective oversight (Paradza *et al.* 2010); the overburdening of ward councillors¹¹⁷ with duties (a frequent complaint which the present authors encountered was that wards were geographically simply too vast for ward councillors to attend effectively to residents’ needs; see in this regard Siddle and Koelble 2012); and ward councillors are seldom provided with adequate resources such as office space and administra-

116 See Chirambo and Steyn (2009); Booysen (2009); Afrobarometer Round 4 Survey; Bekker and Liede (2003); Richards *et al.* 2006; Paradza *et al.* 2010.

117 In South African local government, there are two categories of councillors: ward councillors and proportional representation councillors (colloquially referred to as “PR Councillors”). PR councillors are elected through the party lists, and as such are subject to party discipline and are primarily accountable to the party. Ward councillors represent wards and are elected from each ward on a “first past the post” basis.

tive support. Of equal concern is the quality of the councillors themselves. Paradza *et al* (2010) found in their study that many councillors lacked basic core skills to perform their functions effectively, including basic literacy and numeracy, leaving them unable to read council documents. It was also found that many councillors were unfamiliar with their roles and functions (this also became strikingly obvious to the present authors in the course of their research) and were often accused of not performing their duties honestly and in good faith; and councillors were often appointed to oversight committees without adequate knowledge of technical aspects.

Turning to the present research, in a few municipalities, perceptions of councillors (whether by officials or fellow councillors) were quite favourable. In manifestly well-performing municipalities, officials were quick to point to effective leadership by politicians as a vital factor in achieving good performance, and there were even occasionally instances of councillors from opposing parties praising the efforts of each other (although, it must be added, such praise was hardly excessively fulsome), with gratifying examples of inter-party cooperation and support when councillors set their minds to achieving common goals.¹¹⁸ In these municipalities, great emphasis was placed on pursuing common goals and fostering a culture of inclusivity which cut across party-political divides. Whilst the influence of politics on the course of events was an ever-present reality (“this always becomes more apparent as elections approach,” according to a mayor whom we interviewed), in the main, it appeared that individual councillors were able to suppress narrow, particularistic interests and cooperate with each other. This, according to a number of interviewees, had enormously positive consequences for council effectiveness and accountability.

Sadly, these municipalities were, however, in the minority. In most municipalities covered by this research, perceptions of councillors were not flattering at all. Participants from the administrative component were often critical of councillors; to some extent, given the often fraught relation-

ship between councillors and officials, this might have been expected. One of the most curious features to emerge from the present study, however, was the largely unflattering view which many councillors held of fellow councillors. Specific complaints were that councillors did not understand the issues and complexities surrounding local government, that they did not understand their roles properly, that they lacked skills in leading and managing, that they were not responsive to and did not understand the needs of citizens, and that they did not exercise effective oversight. Furthermore, the view was frequently expressed that the Code of Conduct was not observed and that breaches by councillors of the code went unpunished. Many examples of councillors not acting in the best interest of the municipality in contravention of the code were given.¹¹⁹ In one municipality, the antics of councillors (including the mayor and speaker) were so bizarre that the functioning of the council was effectively paralysed for months.¹²⁰

Amongst officials who were interviewed, the most common complaint was that councillors, and particularly political office bearers (such as mayors and speakers), persistently interfered with the administration of municipalities, despite this being expressly prohibited by the Code. Such

119 One of the most egregious instances of poor governance relates to the municipality of Moretele, a poor under-resourced municipality in North West Province. It was reported that the municipal council approved a policy in terms of which the municipality would pay R50 000 each towards the funerals of sitting and former councillors, traditional leaders and citizens who contributed “extraordinarily” to community development (The Times, 28 August 2014).

120 The municipality in question is Oudtshoorn Municipality in the Western Cape. Whilst the municipality had long been plagued by maladministration, things took a bizarre turn when the opposition party won a municipal by-election, thereby giving it a majority, but the hitherto ruling party simply refused to vacate office. The ruling party had previously attempted to expel opposition councillors on clearly spurious grounds in order to stave off a looming takeover, which expulsion was overturned when the councillors turned to the courts for relief. Not surprisingly, due to the infighting, a municipal council meeting descended into chaos over the adoption of the 2015/16 budget. The council was unable to pass its budget by the required date, in violation of the Municipal Finance Management Act. Eventually, the municipality was placed under administration in terms of Section 139 of the Constitution. It is difficult to imagine how many of the councillors of this municipality could have believed that they were acting in its best interests.

118 See Paradza *et al* (@2010) for a narration of effective advocacy and community work by diligent councillors.

interference took the form of influencing the selection of applicants for positions, influencing procurement processes, and favouring associates in the granting of permits, amongst others.¹²¹

How serious and widespread is the failure of councillors to enhance accountability? We were told that the difficulties in which municipalities find themselves can often justly be attributed to “councillors behaving badly.”¹²² Certainly, the perception amongst many of the participants in this research – councillors themselves included – was that councillors in local government often do not exercise effective oversight.¹²³ Here, the report of the Auditor-General can again be of assistance to us. It states that “mayors have a monitoring and

oversight role at both municipalities and municipal entities. They have specific oversight responsibilities in terms of the MFMA and the Municipal Systems Act, which include reviewing the IDP and budget management and ensuring that auditees address the issues raised in audit reports. Mayors can bring about improvement in the audit outcomes of their auditees by being actively involved in key governance matters and managing the performance of municipal managers. Mayors did not yet provide the required level of assurance at 76% of the auditees, as evidenced by the poor status of leadership controls...” (Auditor-General 2015: 101). Clearly, by this measure, the failure to provide effective accountability is widespread. Another measure is the audit outcomes themselves. These were discussed previously, and suffice it to say for present purposes that the fact that only 40 municipalities managed to achieve “clean” audits suggests that those who are ultimately responsible for the oversight of municipal performance and are ultimately accountable to the communities – namely, councillors – in many cases leave a great deal to be desired.

What are the causes of poor accountability on the part of councillors? The causes are no doubt many and varied, but the following are, judging by the responses of participants in the research, amongst the most persistent. Complaints levelled by their peers suggest that many councillors lack the basic skills to act as effective public representatives.¹²⁴ Coupled with this is that fact that the selection of candidates as councillors – being largely the responsibility of political parties – is often the product of an unsatisfactory process which is governed as much by dictates of factional loyalty as it is by the need to choose representatives who are best able to serve the needs of their communities.¹²⁵ In addition, the fact that councillors are elected not only from wards but also according to party lists places an enormous degree of influence in the hands of political par-

121 A widely publicised case of interference which was brought to court involved the municipal manager of Nelson Mandela Bay Metropolitan Municipality. The court ordered that the municipality pay its former municipal manager R3,1-million in damages, including interest and legal costs, after she was ousted from her job through political interference in 2013. The municipal manager blamed the then executive mayor and deputy mayor for making her job unbearable and putting her security at risk. Instances of political interference that she alleged, and which were not contested in the court proceedings, included that she had been pressured to appoint a political adviser in the administration as an acting executive director of corporate services, and/or other senior managers irrespective of their competencies, qualifications and experience; she had been pressured to appoint 16 bodyguards for the mayor and deputy mayor at an estimated cost of R4,3-million, even though there was no budget for the posts; and she had been reminded of “incidents of violence and death when people don’t comply with the ‘majority rule’ concept”, which the municipal manager said was being used to force her to perform administrative acts that were contrary to government policies and procedure. Judgment in this case was handed down in May 2015, and at the time of writing, the case had not yet been reported in the law reports and it is therefore not possible to provide the usual citation. The case was, however, brought under case number 3282/2013 in the Eastern Cape Local Division of the High Court of South Africa, citing Lindiwe Gail Msengana-Ndlela as Plaintiff and Nelson Mandela Bay Metropolitan Municipality as Defendant.

122 As expressed by a senior provincial official who was interviewed for purposes of this study.

123 Tales of bizarre councillor conduct emerged only too frequently during the course of carrying out interviews. A senior official in another province recounted an experience at a rural municipality which was in a state of near-total dysfunctionality: “A committee of the council met 74 times. You have to ask yourself, if you’ve met 74 times, why are you still in a mess? It’s simply because 90% of those 74 meetings were fights – literally fights, banging on tables, arguments, walk-outs. It’s a sign of an immature council. I have never experienced the level of disrespect anywhere that I saw in that council chamber. It’s a lack of political maturity, and personal maturity. Luckily, not all councils are like that.”

124 A councillor in a rural municipality said of his fellow councillors, “A lot of councillors never had a full-time job, and lack life skills. How can one realistically expect councillors with that kind of experience to govern?”

125 The same councillor told us that “It is left to political parties to select candidates to become councillors and they should exercise greater care in putting forward candidates. Too often, however, it depends on which party faction a would-be candidate belongs to.”

ties.¹²⁶ A frequent complaint was that councillors are simply ineffective: a councillor whom we interviewed told us that “Councillors often lack the political will to make things happen. For a lot of councillors, it comes down to money and status, nothing else. It’s a well-paid job, relatively speaking, particularly in the rural areas, where jobs are scarce, and positions as councillors are often hotly contested within party structures.” Perhaps one of the most important factors, and one that was repeatedly offered in the course of conducting interviews, was the lack of political competition between parties which prevails in much of the country. A senior official declared in an interview that “when a party remains in power in a municipality for too long, it becomes arrogant and complacent. It is not kept on its toes. When it knows that it can get away with anything and still get re-elected, it begins to show disdain for the voters. Accountability becomes nothing more than a bad joke.”

General observations

Local government in South Africa is amply provided with accountability systems. In that sense, Manor’s fourth condition for successful decentralisation is fulfilled. Yet clearly, those accountability systems are not implemented in a way which would ensure that their objectives are achieved.¹²⁷ This follows a pattern which became apparent during the course of this study: the formal parts which are needed to meet the conditions for successful decentralisation are present, but for a variety of reasons, they are not effective.

126 Parties can take on an even more ominous role. We were told by a councillor that “political parties will use threats, including threats of violence, to secure voter support. There has been a total perversion of the notion of accountability. Instead of councillors being accountable to the people, the people are being frightened into voting for the councillors.”

127 A recommended work for readers who are interested in pursuing the issue of accountability further is Mfene (2014) *Leadership and Accountability of Ward Councillors in South African Municipalities: A Case Study of Buffalo City Metropolitan Municipality* (D Phil Thesis, Nelson Mandela Bay Metropolitan Municipality)

11. CONCLUSION

Summing up

In this study, we have examined the concepts of decentralisation and developmentalism, and observed how they had been incorporated in the framework which regulates local government in South Africa. An idealised interpretation of this framework is that it establishes a decentralised system of governance which aims to devolve key functions and a significant measure of autonomy to local authorities, and at the same time, strongly reflects the notion of developmentalism. In this interpretation, South Africa has applied best practices which have been advocated by international agencies and donor governments in the West (Tapscott 2008), and has followed the example of many countries which have in recent decades implemented reforms designed to transfer greater power to sub-national levels of government and provide a more substantial policymaking and oversight role to citizens at the local level.

It may fairly be said, however, that the results of South African decentralisation process are at best mixed. South Africa’s experiment has not been without its success stories; a number of municipalities function well, sometimes very well, in circumstances that are often difficult. Nonetheless, local government in South Africa remains a fragile institution, with many municipalities being unable to carry the burden which has been placed on them. At the heart of the problem is the widespread phenomenon of poor governance which is manifested in poor audit outcomes, widespread dysfunctionality, mismanagement, wastage of resources and poor performance.

When we examine the extent to which the objects of local government as set out in section 152 of the Constitution have been achieved, it becomes apparent that the achievement and sustainability of these objectives is at best tenuous. Whilst democracy has been established, a culture of accountability is a long way from being firmly rooted. The provision of basic services has, according to available statistics, reached a greater proportion of the population of the country than ever before; but as we have also seen, the quality and sustainability of those services is under severe threat and it does not require the gift of prophecy to realise that many of the gains which have

been achieved by local government are at very real risk of being lost. The widespread promotion of social and economic development is not yet a reality. Municipalities often struggle to contribute anything to the promotion of a safe and healthy environment. The involvement of communities in the matters of local government is a concept that is a long way from being effectively applied. It was also shown in that that local government was beset by a range of issues, many of which reflect the threats that commonly confront decentralised systems around the world.

Do the conditions for the successful implementation of a decentralised model exist in South Africa?

It will be recalled that we focussed on four conditions which Manor suggests are necessary for successful decentralisation to take place.

Regarding the first condition, namely, that significant powers should be devolved to local government, it may be said that South African local government has been richly endowed with powers and functions. By that measure, the condition stated by Manor for successful decentralisation that local institutions must have sufficient powers to exercise substantial influence within the political system and over significant development activities has surely been met. It has, however, been demonstrated that it is one thing to devolve powers to local bodies; it is another thing entirely for those bodies to exercise those powers effectively. Local government in South Africa is still struggling to do just that.

Regarding the second condition, namely, that there must be sufficient financial resources, we saw how the local government framework in South Africa includes a comprehensive system for intergovernmental transfers to municipalities and also enables municipalities to derive revenue from local sources. The required framework for the fulfilment of this condition therefore clearly exists, but the question which inevitably arises is whether that funding is sufficient. As we have seen, a common complaint from municipal actors is that the funding provided in terms of the fiscal framework is inadequate for local government to perform its developmental functions. The lack of funding, in the view of most municipal actors, is exacerbated by municipalities taking on unfund-

ed mandates. The view of national government, by contrast, is that within the limits imposed by the scarcity of resources, the funding provided to local government is, on the whole, adequate. Whichever of these two views is the more accurate (and we are inclined to support the latter), there can be little doubt that such financial resources as are available to local government are often mismanaged, with examples of egregiously inappropriate spending, wasting of resources, poor accounting, and failure on the part of municipalities to recover what is owed to them. As long as this situation persists, we think it unlikely that the national government will provide greater fiscal support. Of course, as in the case of the inability to exercise powers, weak financial management and oversight are symptomatic of capacity strictures and inadequate accountability.

The third condition concerns capacity. Again, our framework makes provision for the adoption of systems designed to enhance capacity at local level, but it is clear that those systems are being improperly applied. Inappropriate recruitment practices, political interference, and inadequate support from senior governments amongst other things, all contribute to the capacity shortfall which is experienced in local government. The World Bank states that "Even a well-meaning political team cannot overcome incompetent administration. In fact, the lack of capacity at local level and the need for a massive increase in skilled staff are the arguments most frequently invoked against decentralization" (World Bank, 2000: 122). The situation in many of South Africa's municipalities speaks to a dire lack of suitable personnel needed to achieve service delivery. The lack of capacity – ranging from technical to administrative to financial skills – must be a core consideration in any evaluation of the ability of the country to achieve its developmental goals within the decentralised framework. Without these skills as a basis, municipalities will never be able to fulfil the functions they have been charged with and service delivery will inevitably fail. This becomes particularly problematic when the local government framework is, as in the case of South Africa, highly complex. The actual implementation of this framework – involving the establishment and implementation of endless policies, systems and mechanisms, not to mention the

leading, supervision and guidance of staff in what is often a volatile employment sector - requires rare management skills. On top of this complex scenario is the range of highly complex tasks which are imposed on local authorities.¹²⁸ The lack of local institutional capacity at local government level is a common problem in developing countries which have followed the decentralisation route. The question which arises is whether a framework as complex as that adopted by South Africa is appropriate for a country in which institutional capacity is and has long been a pressing issue. It is worth repeating the point that Manor makes regarding the White Paper: "... like so many prescriptions devised in the new South Africa, (it) fails to recognise that the country is inescapably a *less developed* country," one which "faces a severe shortage of high quality technocrats." (Manor 2000:8)

The fourth and final condition concerns accountability. An extensive literature demonstrates that the devolution of power to local government must be accompanied by effective mechanisms of accountability, anti-corruption, and transparency in order to lead to good governance (Cheema 2007). Transparent decision-making, financial and administrative accountability, local leadership and the engagement of communities is absent in many of South Africa's municipalities. Public participation mechanisms are, as we have seen, poorly applied, if at all. And, as is frequently demonstrated, many appointed or elected officials do not view themselves as accountable to the electorate or the local population. This is despite the existence in the Constitution and various acts of Parliament pertaining to local government of a comprehensive range of oversight mechanisms which are either not applied at all or are applied only infrequently. Once again, we have all the makings on paper of a comprehensive system of mechanisms, but the implementation thereof has proved to be of limited success.

It can be seen that the answer to the question of whether the necessary conditions for successful

decentralisation are in place is not necessarily cut and dried. In one sense, the answer is in the affirmative, in that all of the formal parts necessary to support those conditions have been carefully crafted and incorporated in our framework. But as is so often the case, the implementation of the framework is the difficult part. We can see that the exercise of the many powers given to local government is wanting. There are detailed rules for the provision of financial resources, and even though it may be arguable either way regarding the adequacy of those resources, it is clear that the proper management thereof is sadly lacking. Many mechanisms exist for advancing capacity, but clearly, proper capacitation has thus far proved to be an unachievable goal. The same may justly be said of accountability.

We have to conclude therefore, that as a general proposition, despite the existence of a range of mechanisms aimed at fostering the conditions for successful decentralisation of the kind contemplated in our local government framework, in practice those conditions do not exist in South Africa, at least not to the extent or so strongly that local government as a whole can be said to be (to use the expression favoured by Olowu and Wunsch 2004) "a going concern." Whilst those conditions do exist for a number of individual municipalities, the same cannot be said of local government as a sphere of government. Of the four conditions considered here, it is the last two - those relating to capacity and accountability - that expose the critical weaknesses in South African local government. It is the failure to meet these two conditions that in turn leads to the failure of the realisation of the first two, namely the exercise of powers and the utilisation of resources.

What are the critical weaknesses of our decentralised framework? Some lessons to be learned

A senior official at a large municipality told us, "I marvel at our local government framework. It represents best practice throughout. But we just don't implement it in the way that was intended."

This comment, we submit, accurately sums up the dilemma surrounding the achievement of good local governance in South Africa. It was frequently repeated by other interviewees, who ex-

¹²⁸ Manor, writing on the range of tasks which South African municipalities are required to perform, states that "this writer has analysed democratic decentralization in dozens of countries in Africa, Asia, Latin America and Eastern Europe, and he has never seen such a wildly unrealistic set of tasks imposed upon local authorities." (Manor 2000:6)

pressed their admiration for the framework, yet were frustrated by the apparent inability on the part of local government as a sphere of government to implement it effectively. The framework clearly is aimed at promoting efficiency, effectiveness, responsiveness, transparency and accountability. Yet, as a senior national government official remarked, “We are a long, long way from where we had hoped to be by now.” This is manifested by the apparent inability of many municipalities to implement effective mechanisms (which are amply provided for in the framework) to promote performance and accountability. We have to remember that successful decentralisation is not just about structures and systems and resources; it demands more than just a clever design. It depends enormously on the will to make it work, and the seriousness with which those who are entrusted with democratic processes and ensuring good local governance take their roles.

Apart from the fact that the conditions required for the successful implementation of our decentralised system are absent, what are features of the framework that make it so unsuitable for its stated objectives? We asked interviewees to identify, what, in their minds, were the specific weaknesses of the framework which lead to that unsuitability; in other words, if they had designed the framework, what would they have done differently? The following issues raised by interviewees are, we believe, all credible:

- A “Big Bang” approach was taken to implement the new local government system. At the time, it should have been clear that this risked disaster. Too much was expected from individual institutions, too soon. Less well-resourced municipalities, which were in many cases created where before there had been nothing, had little opportunity to establish themselves before they were overwhelmed by a host of challenges.
- Little care was taken by national government to ensure that municipalities (particularly new municipalities) had adequate capacity to take on the tasks that were imposed on them. This, of course, is closely related to the previous cause. It was frequently argued that it would have been far more sensible to ensure that new municipalities were adequately

staffed and capacitated - in other words, that only administrative decentralisation had taken place – before political decentralisation was extended to them.¹²⁹

- The concept of “subsidiarity” has been taken to extremes. Whilst in theory, the idea of devolving powers to the lowest possible level is attractive, this can only be done if that lowest level has the capacity to assume those powers. In South Africa, institutions which are patently incapable of assuming responsibility for complex roles have been compelled to take them on, with the inevitable unhappy results.
- “Wall-to-wall” local government may be a good ideal to strive for, but it is not realistic in South African circumstances. It will be recalled that the new system of local government required that municipalities be established for the whole territory of the Republic.¹³⁰ This principle has been blindly applied. To try to establish municipalities in areas patently lacking in economic opportunities and skills and faced with other environmental challenges is to invite disaster. The question must be asked as to whether it really is necessary to establish municipalities in areas where their viability is, at best, doubtful. Should the delivery of services in such areas not be left to another sphere or agency?
- The framework should have been better designed to suit the South African context. Best practice and design were copied from other constitutions and decentralised systems. However, these models were not appropriate for South African circumstances.
- Related to the preceding cause is the suggestion made by many interviewees that the system is far too complex for fledgling institutions to cope with. Excessive complexity has long been identified as a particular threat to decentralisation experiments; this feature of the local government framework has, we believe, been clearly demonstrated in this study.¹³¹

129 This suggests that a well-considered sequencing of the implementation of the three types of decentralisation should have been provided for. In this regard, see Falleti (2005).

130 Section 151 (1) of the Constitution.

131 See also Siddle and Koelble (2012). This work has as its principal theme the issue of complexity in the local government framework.

- Far too many duties were imposed on local government. This relates to both the enormous range of powers and functions granted to local government, which many municipalities perform haphazardly or hardly at all, and to the administrative and compliance demands (particularly as far as reporting requirements are concerned) imposed on municipalities. These demands often serve only to distract municipalities which are in any case barely able to perform basic functions.
- There was little appreciation on the part of the designers of the framework for the fact that municipalities differed vastly in terms of resources and skills. This meant that all municipalities were expected to conform to the same requirements, and achieve the same outcomes, regardless of size or ability. Here the oft-repeated problem of the “one size fits all” emerged.¹³² This refers to the tendency to apply the same sets of rules to institutions with asymmetrical capabilities.
- There are inherent contradictions in the framework. On the one hand, it provides for an avowedly developmental approach; on the other, it strongly incorporates elements of the managerialist approach that underpins the New Public Management doctrine, with its emphasis on efficiency, contracting out, private sector-style management approaches, and cost recovery. It can clearly be seen that there are conflicting objectives within the same framework, which leads to confusion as to ultimate objectives and to ambivalence in application of the framework.
- Support from senior governments is often misguided or lacking entirely. National government is far too concerned with issuing new prescripts rather than ensuring that municipalities are capable of implementing those that already exist. Capacitation programmes are unsuitable and consist mostly of “box-ticking” exercises that do little to provide meaningful learning. A large part of the problem lies with the weaknesses of senior government institutions themselves. The national department responsible for local government oversight is beset with instability caused by frequent changes of political heads; provincial governments were often barely more capable than struggling municipalities. Senior governments seem to believe that launching one strategy or programme after another, often without regard for their utility, is a substitute for achievement.
- Intergovernmental relations were, despite a host of structures and systems intended to foster them, never properly managed. National and local government often viewed each other with distrust. National government viewed local government as unreliable and wasteful, whilst local government viewed national government as trying to exert excessive control from above, whilst failing to appreciate that local government was a sphere of government in its own right. This was manifested in the excessive regulatory burden placed on local government. The tensions between the local and national spheres became very apparent during the near-crisis which developed over the stopping of funds which was discussed previously. As an official remarked to us, “Right now, a low intensity war is being waged between national and local government.”¹³³ It has been said, quite appropriately, we think, in the light of the circumstances described above, that “South Africa has struggled to achieve constructive relations between

In addition to the structural problems raised above, interviewees indicated a number of institutional and environmental factors that tended to undermine the framework, the following being the most frequently raised:

132 As a senior municipal official said, “...the problem is that we have such a broad range of local authorities, ranging from tiny local municipalities to huge metropolitan municipalities, with staffs of thousands, populations of millions, and budgets of billions, with vastly different resources in terms of finances and skills. It is unfortunately a characteristic of the South African approach to issues that a single solution should be applied to all problems.”

133 Another official remarked, “If people understood the space that we are in, they wouldn’t be doing what they are doing. Local government is playing a subservient role in relation to national government. There is a turf war going on, with organised local government being seen as playing in CoGTAs [the department of Cooperative Governance and Traditional Affairs] space.”

the three spheres of government. A lack of clarity about the division and coordination of powers and responsibilities together with the lack of coherent and predictable mechanisms for delegating or assigning functions has created tensions and instability across the three spheres. There is no consensus on how this is going to be resolved and there is a lack of leadership in finding appropriate solutions...” (National Planning Commission 2011:365).

- A culture of political accountability is lacking. The effectiveness of the local government framework turns on the assumption that clear lines of accountability would exist between municipal administrations and elected politicians, on the one hand, and between politicians and communities on the other. As we have seen, the framework provides amply for mechanisms to give effect to that assumption, but there is a widely held perception that that the culture of political accountability to give effect to those mechanisms is often weak, and in some instances, almost entirely absent. This, we submit, has been demonstrated amply in this study.
- Related to the previous issue is the fact that there was a lack of appreciation of the role that politics would play, for better or for worse, in the implementation of the local government framework. Given that the system is profoundly rules-based, and in some ways designed to insulate its operation from political influences, there appears to have been an assumption that if certain inputs were fed into the system at one end, then, machine-like, it would discharge at the other end a predictable outcome. This assumption failed to take account of the pervasiveness of political influences which, given the conditions which prevail in South Africa, can easily dictate the course of events in local government in ways that are inconsistent with the objectives of good governance and developmentalism. The opportunities for the practice of “retail politics” of the basest kind are enormous. Institutions and systems aimed at promoting good governance were as a result undermined.

The factors discussed above were frequently expressed by interviewees as matters of concern and

are all relevant to understanding the difficulties in implementing the local government framework. In a sense, they represent a list of useful lessons that other countries embarking on decentralisation processes may well take on board and perhaps thereby avoid some of the pitfalls that bedevil South African local government. To these factors, we wish to add some observations of our own regarding certain characteristics of local government which tend to undermine good governance and the achievement of local government’s goals. These observations arise from, amongst other things, intensive interaction with local government actors, and whilst we acknowledge that they may be considered by some to be over-generalised and subjective, we believe that they will be of some assistance in understanding the difficulties facing local government. Our observations are as follows:

- Local government frequently tends towards being inwardly focussed and self-absorbed. Issues which seemed to be the focus of inordinate attention in local government circles revolved around salaries and benefits for councillors and staff, factional issues, internal political contestation, battling with national government, avoiding critical issues, and securing the approval of external political structures. There was relatively little talk about improving service delivery.¹³⁴
- There is a tendency on the part of politicians and officials in many municipalities, and within organised local government, to blame local government challenges on everyone and

¹³⁴ Contrast this with the admittedly idealised but nonetheless worthy conception of local government as stated in one of the many United Kingdom White Papers on Local Government which emerged during recent years, *Modern Local Government: In Touch with the People* (produced in 1998): this suggests that as a community leader, local government would be: “outward looking rather than inward looking; concerned with promoting the well-being of the locality and its communities rather than with protecting its own interests; determined to work in partnership with others to achieve improved outcomes, rather than exercising sole control; focused on identifying and responding to local aspirations rather than ‘knowing best.’”

everything but themselves.¹³⁵ The apparent inability on the part of large segments of local government to accept responsibility for setbacks is, to the authors, one of the most worrying features of local government.

- Related to the preceding observation is the observation that local government is often in a state of denial about its shortcomings. An apparent fixation on the notion that local government had “a good story to tell” was widespread in local government circles. This was despite the very clear evidence that there is widespread dysfunctionality in local government. Whilst local government has every right to broadcast its successes, to do so without acknowledging its shortcomings is to deny reality and makes the devising of solutions impossible.
- There is a widespread ambivalence towards rules, whether in the form of legislative and regulatory prescripts emanating from senior levels of government, or in the form of policies and systems devised by municipalities themselves. We have discussed at length in this study the question of the undue compliance burden that the legislative framework purportedly places on local government, and in a way, the reluctance to ensure compliance with prescripts imposed by senior governments is understandable, even if not necessarily justifiable. What is baffling, however, is the disregard that municipalities have for rules of their own making, such as policies, systems and by-laws. Often, this disregard for rules of whatever origin is accompanied by lip-service to those rules. All in all, this ambivalence towards rules in what is a heavily rules-based system of local government can only lead to dysfunctionality.

135 For example, one of the authors attended a SALGA (South African Local Government Association) Provincial Members Assembly at which one of the speakers – a senior office bearer – blamed farmers, ratepayers associations, national government, business interests and service delivery protesters for all of the ills facing municipalities in the province. The speaker seemed oblivious to the fact that the difficulties which those municipalities faced could in fact be attributed almost entirely to poor governance in the municipalities themselves. This display was typical of the kind of views that were frequently expressed by participants in the interview process.

- Perhaps the most troubling characteristic of all is the ambivalence displayed in local government circles towards skills and merit.¹³⁶ Whilst commentators from around the world emphasise the need for skills in order to make decentralisation processes work, and whilst South African institutions (such as the National Treasury and the Financial and Fiscal Commission) also plead for skills and merit-based appointments to be the order of the day in local government, there is a widespread and palpable attitude in many segments of local government that skills and merit are secondary considerations. This is obvious from the appointment practices which have been previously discussed in this study and also from discussions with officials and politicians who indicated that politico-economic considerations in appointments should trump considerations of merit and skills. Whilst we recognise the practical difficulties involved in making appropriate appointments, given the environment in which many municipalities operate, we can say with some certainty that unless and until local government recognises the importance of merit and skills, and makes these the primary considerations (subject, of course, to whatever statutory considerations may be relevant) in staffing municipalities, local government will not become a countrywide “going concern.” Experiences from around the world should by now have made that obvious.

When municipalities get it right

We have repeatedly emphasised the fact that there are South African municipalities that perform well; sometimes they perform very well. In the course of conducting interviews, we took the opportunity to glean from administrators and politicians from a number of municipalities which were widely considered to be well-performing¹³⁷ what they considered to be their key success factors. The following is a synthesis of their various contributions:

136 This ambivalence was encountered by Von Holdt (2010) in the context of the health sector in South Africa.

137 Audit outcomes, the findings of other studies and assessments, reputation and the suggestions of peer municipalities were all factors relevant for determining which municipalities to focus on for this purpose.

- In the first place, strong local political leadership and a corps of competent, dedicated councillors are essential. In the absence of these elements, success is unlikely. The task of selecting candidates for election and for appointment to political office lies, in the main, with political parties. This is an enormous responsibility and the blame for failures of governance can as often as not be traced to political parties not having effectively carried out that responsibility.
- A spirit of cooperation between parties at council level should be fostered. Whilst it is inevitable and necessary that parties will compete and seek to develop political capital at the expense of each other, at local level there are probably far more issues over which parties can collaborate than they need to contest.
- Ensuring that, within the requirements of the law, the appointment of staff is based on merit and nothing else, is crucial for success. Political considerations should play no role in appointing staff, except in cases where the role is of a politico-advisory nature. In no circumstances should external political structures be involved in the appointment of staff.
- Above all, appropriately skilled senior management is essential. The role of the municipal manager is a crucial one and enormous care should be taken in making appointments to that role.
- Getting the basics of management right is crucial. Care should be taken to ensure that even routine procedures are properly carried out and properly supervised. Administrative and other policies are devised and adopted by councils for a purpose, namely, to provide guidance for management in the achievement of municipal objectives. They should be followed and not allowed simply to gather dust. It should be accepted that policies are not always appropriate, due to their having been poorly conceptualised in the first place or their having become outdated. They should be constantly reviewed and adjusted when required.
- Municipalities should strive for compliance with legislative and regulatory requirements, even if it is difficult to do so. Even if the demands of compliance seem unreasonable, it is

not for municipalities to “cherry pick” those requirements which they find it convenient to adhere to, and to ignore others.

- Ensure accountability at all levels. Codes of conduct for staff and councillors should be properly applied. Ensure that there are consequences for poor performance and misconduct, whether the transgressor is a staff member or a councillor.
- Foster good relations with senior governments, even if they are not run by the same political party.
- Ensure good relations with the community, and be responsive to their needs (and not only when elections are approaching), whilst at the same time remembering that municipalities have obligations which, although they might not always be popular to enforce, such as debt collection, are essential to adhere to. Do not make unrealistic promises.
- Stick to the municipality's mandate. Ideally, only those functions which a municipality is clearly mandated to perform in terms of the Constitution or legislation should be performed.

Does the decentralised local government framework support the achievement of the developmental agenda?

This is the central question that needs to be addressed. Decentralisation and developmentalism are the two key defining characteristics of the local government framework in South Africa, the former being intended as the vehicle for promoting the latter. The question which needs to be addressed is whether that intention has, or is likely to be, realised. In this regard, it is crucial that the linkage between decentralisation and developmentalism in the South African context be understood. The success of the developmental agenda in the context of the local government sphere depends on the efficacy of the decentralised system. And herein lies the great danger of using a decentralised framework to promote a developmental agenda: the hoped-for developmental outcome is subject to all of the conditions and threats that attend decentralisation processes. It follows that if conditions are not suitable for a decentralisation experiment to succeed, then they are not suitable for the promotion of the developmental agenda;

and if decentralisation processes are subject to threats, then the developmental agenda is at risk. As we have seen, the threats to any decentralisation process are many, and the conditions that are necessary for success are not easy to establish; and as we indicated previously, those conditions do not exist sufficiently strongly in South Africa to ensure success for local government as a whole.

Even when individual institutions perform well, as happens in South Africa, the fact that others do not perform well endangers the achievement of the developmental agenda as a whole. Interviewees were largely unanimous in the belief that success can be claimed for a developmental project of the kind envisaged by the White Paper only if all citizens could have a reasonable expectation that they would receive a certain level of services on a sustainable basis, wherever they might find themselves. As a municipal manager whom we interviewed put it, "...the issues that fall within the ambit of the developmental agenda are often beyond the ability of local government to control; they are national issues and it is not necessarily fair to expect local government to deal with them. Inevitably, developmental processes will become fragmented, and people will receive good or poor services depending on where they happen to live." That, we submit, is precisely what is happening in South Africa, and that, surely, is contrary to the developmental objective.

What needs to be done?

Debate and action on South Africa's local government problems revolve around capacitation programmes, re-demarcation of municipali-

ties,¹³⁸ making more funds available, further regulating local government, and the role of district municipalities. None of these goes to the heart of the issue. Far more important is the question of whether a fully decentralised system is really desirable. If the circumstances in a particular country are such that the prevailing framework cannot achieve the expected objectives of decentralisation, is there any merit in pursuing a highly decentralist agenda? As the World Bank points out, that "successful decentralization improves the efficiency and responsiveness of the public sector while accommodating potentially explosive political forces." On the other hand, "...un-

138 The objective of the re-demarcation process is to create a number of new metropolitan municipalities by amalgamating existing local municipalities, by amalgamating existing local municipalities with existing metropolitan municipalities, and by amalgamating existing local municipalities with each other. The result would be to reduce substantially the number of municipalities, the objective being to eliminate dysfunctional or non-viable municipalities. In short, the strategy appears to be to hitch non-viable or dysfunctional municipalities to more functional or viable municipalities, in the hope that the more viable components of the newly merged municipalities would "carry" the less viable components. In our view, amalgamating stressed municipalities with better performing municipalities is a recipe for disaster. Such a process is, with a few exceptions, likely to overburden otherwise reasonably functional municipalities. A number of local municipalities were recently disestablished and incorporated within metropolitan structures; this may work if the receiving municipality is sufficiently robust, but in other cases certainly provides no guarantee of success and will more likely serve only to tip the balance towards failure. In addition, there are considerable socio-economic consequences for amalgamations which appear not to have even been considered in the current plans. Writing on the tendency in Australia to amalgamate local authorities into large units, Dollery and Crase (2006) state that numerous problems arise from amalgamation, especially in rural and regional areas. Amongst these are a reduction in the vibrancy of local democracy, less political representation and lower public participation, and retardation of local economic development, including decreased economic activity, rising unemployment and the formation of "ghost" towns. The threat of this happening in South Africa would, we would have thought, been obvious. A senior municipal official told us that "There is no science in the demarcation process. In any case, you are unlikely to improve viability and sustainability by redemarcating. All that you will do is create problems for integration of systems. It places massive burdens on the municipality which is supposed to absorb the weaker municipality. And apart from anything else, it's just so draining to have to keep on doing this. When do you stop? Look at how many times we have changed boundaries. When are we going to get it right? Amalgamation all boils down to political expediency. In this municipality, for example, the mayor's political bosses want it, so you have to accept it."

successful decentralization threatens economic and political stability and disrupts the delivery of services” (World Bank 1999:107). The ultimate lesson to be learned is that decentralisation as a process for promoting good local governance can and does work if implemented properly; haphazard implementation, on the other hand, will almost inevitably result in disappointment (Siddle and Koelble 2012). That being the case, would a middle way not have better prospects of success?

In the course of conducting interviews with local government actors, there appeared to be an emerging realisation that the near-uniform imposition of powers, functions and responsibilities on municipalities, as demanded by our current system, is not sustainable. This is not to suggest, of course, that this view is universally held by all local government actors, or even held by most of them; but the need for serious reflection is strong and urgent enough for interested parties to start applying their minds to the possibility of adopting a different model.

What needs to be understood is that decentralisation need not be an “all or nothing” process. It can take one of any number of forms, and may occupy any point along a spectrum ranging from weakly decentralised systems to profoundly decentralised systems. An appropriate form for South Africa might perhaps differ only somewhat from the existing model, with simply a rearrangement of the allocation of powers and functions being necessary. Alternatively, a more extreme arrangement such as an agency model¹³⁹ might be applied. In such an arrangement, a municipality would retain its politically decentralised character, that is to say, it would have political autonomy as an elected body with jurisdiction over a given geographical area, but would surrender operational control of its services to central or provincial government agencies which use central or provincial government funds. An even more radical arrangement is possible, under which elected councils would serve only as advisory bodies to those agencies; in other words, councils would make only recommendations, and leave not only the operational control but also decision making power to those agencies. Yet another (and the

most extreme) possibility is that particular municipalities might be completely recentralised, with political, fiscal and administrative decentralisation being completely abandoned in favour of central control, with or without a measure of deconcentration.

A model which accommodates the entire spectrum is by no means impossible, and we suggest that such an arrangement is perhaps the most feasible for South Africa. At one end of the spectrum, there might be areas which are under central government control; as we progress along the spectrum, there might be areas with councils having only advisory functions; next, municipalities with councils having political functions but whose operational functions are ceded to central agencies; next, municipalities with political autonomy and operational control over a variable range of powers and functions (the crucial developmentally-oriented functions being left to those municipalities which are better able to perform them); and finally, a category of municipalities with the full range of powers and functions, which could conceivably be even wider than the range which is at present provided for.¹⁴⁰ In areas where municipalities do not perform particular functions, those functions would be performed by other spheres of government or agencies created to perform particular functions or ranges of functions.

Such an arrangement, we think, represents a far more realistic model for promoting developmentalism, and is one for which the conditions are far more likely to exist to the extent necessary to result in success. We suggest that policymakers should, as a matter of urgency, direct their attention considering the feasibility of such a model. Such a model would, however, necessitate our having to shed the notion of “wall-to-wall, one size fits all” local government; it would probably require constitutional changes; it would unavoidably require hard work to implement; and it would no doubt meet with considerable opposition, not least from those who find the *status quo* advantageous to their interests.

This raises the question of whether South Africa, already fatigued by issues of local govern-

139 Of the kind discussed by Dollery and Johnson (2005) and Dollery and Crase (2006).

140 See Siddle and Koelble (2012) for a fuller exposition of the suggested alternative model.

ment, could tolerate yet further transitions in this sphere. Our answer to that question is quite simple: the alternative is to leave things as they are, in the hope that capacitation programmes of dubious value will somehow bear fruit (as was pointed out before, our record with such programmes is not good) and that conceptions of good governance and accountability will somehow, miraculously, take hold. South Africa has already had the “new” local government framework for fifteen years, and the country has not nearly reached the point where it had hoped to be. Can we afford to endure another fifteen years, or however long it takes, for those two-thirds of our municipalities which do not currently pass muster to get up to speed? If the four conditions that have been repeatedly referred to in this study

were able to develop to the extent necessary to ensure the success of our decentralised model as presently constituted, then we would cheerfully wait patiently for that success to materialise. We doubt, however, that in the present circumstances, those conditions will exist strongly enough to support the current model.¹⁴¹ Some might say that fifteen years is not all that long a time to bed down a new system; that may be so. Indeed, it is repeatedly stated in decentralisation literature that time and patience are required in order for decentralisation to work; but the reality of South Africa is that enormous expectations of service delivery have been created; we are running out of time to meet those expectations, and patience in many quarters is rapidly evaporating.

141 For what it is worth, most interviewees were of the opinion that the conditions necessary for the successful implementation across the board of our local government framework in its current form were unlikely to evolve in the foreseeable future.

REFERENCES

Bibliography

Books, Articles, Papers and Reports

- African National Congress (2007) ANC Economic Transformation Policy Discussion Document, 22 March 2007.
- African National Congress (2010) Transformation of State and Governance National General Council Discussion Document.
- Alam, M (2006), "Can Decentralisation Improve Service Delivery in a Developing Country such as Pakistan?" in Alam, M and Nickson, A. (eds.) *Managing Change in Local Governance*, London: Commonwealth Secretariat, 115-122.
- Alexander, P (2010), "Rebellion of the Poor: South Africa's service delivery protests – a preliminary analysis", *Review of African Political Economy*, Vol. 37, No. 123, pp. 25-40.
- Atkinson, D (2002), *Local Government, Local Governance and Sustainable Development: Getting the Parameters Right*, Cape Town: HSRC Publishers.
- Atkinson, D (2007), "Taking to the Streets: Has Developmental Local Government Failed South Africa?" in Buhlungu, S, Daniel, J, Southall, R and Lutchman, J (eds.) *State of the Nation: South Africa 2007*, Cape Town: HSRC Press, 53-77.
- Auditor-General (2011), *Consolidated Report of the Auditor-General on the Local Government Audit Outcomes 2009-10*
- Auditor-General (2014), *Consolidated Report of the Auditor-General on the Local Government Audit Outcomes 2012-13*.
- Auditor-General (2015), *Consolidated Report of the Auditor-General on the Local Government Audit Outcomes 2003-14*.
- Bardhan, P and Mookherjee, D (2006), "The Rise of Local Governments: An Overview" in Bardhan, P and Mookherjee, D (eds.) *Decentralization and Local Government in Developing Countries: a Comparative Perspective*, Cambridge Ma: MIT Press, 1-52.
- Bekker, L and Lielde, A (2003), "Resident Perceptions of Developmental Governance: Exit, Voice and Loyalty in South African Towns" *Politeia* 22(1) 144-165.
- Booyesen, S (2011), *The African National Congress and the Regeneration of Political Power*, Johannesburg, Wits University Press.
- Brinkerhoff, DW, and Afzar, O (2010) "Decentralization and Community Empowerment" in Connerly, E, Eaton, K and Smoke, P, *Making Democracy Work: Democracy, Development and Security*, Boulder and London, Lynne Rienner Publishers.
- Burger, P (2014) How suitable is a 'developmental state' to tackle unemployment, inequality and poverty in South Africa? March 2014 Econ 3x3 (www.econ3x3.org)
- Cameron, R (2006), "Local Government Boundary Reorganisation" in Pillay, U., Tomlinson, R. and du Toit, J. (eds.), *Democracy and Delivery: urban policy in South Africa*. Cape Town: HSRC Press, 76-106.
- Campos, J and Hellman, J (2005), "Governance Gone Local: Does Decentralization Improve accountability?" in *East Asia Decentralizes: Making Local Government Work*, Washington: World Bank Publications, 237-252.
- Cheema, S (2007), "Devolution with Accountability: Learning from Good Practices" in Shabir, G, Cheema, S and Rondinelli, D *Decentralizing Governance: Emerging Concepts and Practices*, Washington DC: Brookings Institute, pp. 170-188.
- Chirambo, J and Steyn, J (2009), *Aids and Local Government in South Africa: Examining the Impact of an Epidemic on Ward Councillors, AIDS, Security and Conflict Initiative*, ASCI Research Report no. 25, February 2009.
- Christmas, A and de Visser, J (2009), "Bridging the Gap between Theory and Practice: Reviewing the Functions and Powers of Local Government in South Africa," *Commonwealth Journal of Local Governance* 1(2), available at <http://epress.lib.uts.edu.au/ojs/index.php/cjlg>
- De Visser, J. (2005), *Developmental Local Government: A case study of South Africa*, Antwerp and Oxford: Intersentia.
- Department of Cooperative Governance (2014), *The Presidential Local Government Summit: Back to Basics*.
- Department of Cooperative Governance and Traditional Affairs (2009(a)), *State of Local Government in South Africa - Overview Report, National State of Local Government Assessments*.
- Department of Cooperative Governance and Traditional Affairs (2009(b)), *Local Government Turna-*

round Strategy.

- Department of Cooperative Governance and Traditional Affairs (2014), *Confidential Report to Select Committee on Appropriations*.
- Devas, N and Delay, S (2006), "Local Democracy and the Challenges of Decentralising the State: an International Perspective," *Local Government Studies*, 32(5), 677-695.
- Dollery, B and Crase, L (2006), "Optimal Approaches to Structural Reform in Regional and Rural Local Governance: the Australian Experience," *Local Government Studies*, 32(4), 447-464.
- Dollery, B and Johnson, A (2005) "Enhancing Efficiency in Australian Local Government: An Evaluation of Alternative Models of Municipal Governance," *Urban Policy and Research* 23(1), 73-86.
- Edigheji, O (2005) *A Democratic Developmental State in Africa?* Research Report 105, Centre for Policy Studies, Johannesburg.
- Esman, M (1991) *Management dimensions of development: perspectives and strategies*. West Hartford, Kumarian Press.
- Falleti, T. (2005), "A Sequential Theory of Decentralization: Latin American Cases in Comparative Perspective," *American Political Science Review*, 99(3), 327-346.
- Financial and Fiscal Commission (2009), Technical Report: Annual Submission on the Division of Revenue 2011/2012.
- Financial and Fiscal Commission (2011 (a)), *The Impact of Unfunded Mandates in South African Intergovernmental Relations* – Policy Brief 3/2011.
- Financial and Fiscal Commission (2011(b)), *More People, Inferior Services: Understanding the Factors Influencing Municipal Spending* – Policy Brief 6/2011.
- Financial and Fiscal Commission (2011(c)), *Non-payment is crippling service delivery in South African Municipalities* - Policy Brief 5/2011.
- Financial and Fiscal Commission (2011(d)), *60% of Municipal Resources Wasted: Measuring the Efficiency of Local Government Spending* - Policy Brief 4/2011.
- Financial and Fiscal Commission (2011(e)), *Submission for the Division of Revenue, 2012/13*.
- Financial and Fiscal Commission (2012), *Submission for the 2013/14 Division of Revenue*.
- Financial and Fiscal Commission (2013(c)), *Detecting Fiscal Distress within Local Government* – Policy Brief 4/2013.
- Financial and Fiscal Commission (2015(a)), *Submission for the Division of Revenue 2016/17*.
- Financial and Fiscal Commission (2015(b)), *Submission on Stoppage of Local Government Equitable Share Allocations* 24 April 2015.
- Financial and Fiscal Commission (2015(c)), *Municipal Viability: Role, Content and Future* 20 July 2015.
- Friedman, S and Kihato, C (2004), "South Africa's Double Reform: Decentralization and the Transition from Apartheid" in Oxhorn, P, Tulchin, J. and Selee, A. (eds.) *Decentralization, Democratic Governance and Civil Society in Comparative Perspective*. Woodrow Wilson Centre Press, and Baltimore: The Johns Hopkins University Press.
- Grindle, M (2004), "Good Enough Governance: Poverty Reduction and Reform in Developing Countries", *Governance*, Vol. 17, No. 4, pp. 525-548.
- Gumede, W (2009) *Delivering the democratic developmental state in South Africa* Working Paper Series no. 9 Development Bank of Southern Africa, Midrand.
- Heller, P (1999) *The Labor of Development: Workers and the Transformation of Capitalism in Kerala, India*. Ithaca NY Cornell University Press.
- Hiskey, J (2010) "The promise of decentralized democratic governance" in Connerly, E, Eaton, K and Smoke, P, *Making Democracy Work: Democracy, Development and Security*, Boulder and London, Lynne Rienner Publishers.
- Huang, Y (2008) "The next Asian miracle" *Foreign Policy* July/August 2008.
- Isandla Institute (2011), *Local politics and factionalism: Local government as a site of contestation* Discussion Paper Roundtable Report prepared by Isandla Institute December 2011.
- Johnson, C (1982) *MITI and the Japanese Miracle: The Growth of Industrial Policy, 1925-1975*, Stanford, Stanford University Press.
- Johnson, C (1999), "The Developmental State: Odyssey of a Concept" in Woo-Cummings, M (ed) *The Developmental State*, CA Cornell University Press.
- Kauzya, J-M (2007), *Political Decentralization in Africa: Experiences of Uganda, Ruanda, and South Africa*, United Nations Discussion Paper.
- Khan, S (2008), "Local Governments and Local Elites," *Local Government Studies*, 34(4), 509-528.
- Klug, H (2000), *Constituting Democracy: Law, Globalisation and South Africa's Political Reconstruction*, Cambridge, Cambridge University Press.
- Koelble, T and LiPuma, E (2008), *Why Are We Still Waiting? - The Politics of Service Delivery in South Af-*

- rica, paper presented at the Annual Convention of the American Political Science Association. Boston, Massachusetts, August 2008.
- Laubscher, JAC (2007) *The South African developmental state: myth or reality?* Economic Insight: Economic Commentary.
- Leftwich, A (2000) *States of Development* : Cambridge, Polity Press.
- Manor, J (1999), *The Political Economy of Democratic Decentralization*. Washington DC: The World Bank.
- Manor, J (2000), *Local Government in South Africa: Potential Disaster Despite Genuine Promise* Paper prepared for the Department for International Development Studies, University of Sussex.
- Maphunye, K (2009) *Public Administration for a Democratic Developmental State in Africa: Prospects and Possibilities* Centre for Policy Studies, Johannesburg.
- Meyns, P and Musamba, C (2010) *The Developmental State in Africa: Problems and Prospects* INEF Report 101/210 Duisburg Institute for Development and Peace.
- Mfene, P (2014) *Leadership and Accountability of Ward Councillors in South African Municipalities: A Case Study of Buffalo City Metropolitan Municipality* (D Phil Thesis, Nelson Mandela Bay Metropolitan Municipality)
- Ministry of Provincial Affairs and Constitutional Development (1998), White Paper on Local Government Pretoria.
- Mkandawire, T (2001) "Thinking about developmental states in Africa" Cambridge Journal of Economics, 25, 289-313
- Moss, T (2007) *African Development: making sense of the issues and actors* Boulder, CO, Lynne Rienner Publishers.
- Naidoo, V (2013), "Cadre Deployment versus Merit? Reviewing Politics in the Public Service" in Daniel, J, Naidoo, P, Pillay, D and Southall, R (eds.) *New South African Review 3 – the second phase – tragedy or farce?* Johannesburg, Wits University Press.
- National Planning Commission (2011) *National Development Plan*.
- National Treasury (2008) *Local Government Budgets and Expenditure Review*, 2003/04 -2009/10.
- National Treasury (2011), *Local Government Budgets and Expenditure Review*, 2006/07 -2002/13.
- National Treasury (2014), *The State of Local Government Finances and Financial Management as at 30 June 2014*.
- National Treasury (2015) *Local Government Revenue and Expenditure: Third Quarter Local Government Section 71 Report for the Period 1 July 2014 to 31 March 2015*.
- O'Dwyer, C and Zibblatt, D (2006), "Does Decentralization Make Government More Efficient and Effective?" *Commonwealth and Comparative Politics*, 44(3), 326-343.
- Olowu, D and Wunsch, J (2004), *Local Governance in Africa: The Challenges of Democratic Decentralization*, Boulder and London: Lynne Rienner Publishers.
- Oxhorn, P (2001), "Decentralization, Civil Society and Democratic Governance," *Woodrow Wilson Centre: Update on the Americas* (1).
- Oxhorn, P (2009), *Clientelism and Empowerment: The Dilemma of State Decentralization for Securing Peace and Development*, paper presented at the Peace and Development Project Public Dissemination Conference. Washington DC, Dec 9-10, 2009.
- Paradza, G, Mokwena, L, Richards, R (2010) *Assessing the role of Councillors in Service Delivery at Local Government Level in South Africa*, Centre for Policy Studies, Johannesburg.
- Parliament of the Republic of South Africa (2010): *Report of the Ad Hoc Committee on Coordinated Oversight on Service Delivery, September 2010*.
- Pillay, U, Tomlinson, R and Du Toit, J (2006), in Pillay, U, Tomlinson, R and du Toit, J (eds), *Democracy and Delivery: urban policy in South Africa*, Cape Town: HSRC Press, 1-21.
- Poon, D (2009) *South Africa's Developmental State Makeover* Working Paper Series 2009-04 Trade & Industrial Policy Strategies.
- Putnam, R (1993), *Making Democracy Work: Civic Traditions in Modern Italy*. Princeton: Princeton University Press.
- Reddy, P and Maharaj, B (2008), "Democratic Decentralisation in Post-Apartheid South Africa" in Saito, F (ed) *Foundations for Local Governance: Decentralization in Comparative Perspective*, Heidelberg: Physica-Verlag, 185-211.
- Richards, R, Ismail, Z, Mutsonziswa, K, Kimnie, Z Wildschutt, A, and Moloi, T (2006) *A Quality of Life Survey in Low Income Areas in the City of Johannesburg* Commons Agency for Social Equality.
- Rodden, J (2002), "The Dilemma of Fiscal Federalism: Grants and Fiscal Performance around the World," *American Journal of Political Science* 46(3), 670-687.
- SAICE (2011) *SAICE Infrastructure Report Card for South Africa 2011* Midrand, South African Institute

of Civil Engineers.

- Saito, F (2008), "Decentralisation and Local Governance: Introduction and Overview" in Saito, F (ed) *Foundations for Local Governance: Decentralization in Comparative Perspective*, Heidelberg: Physica-Verlag, 1-24.
- Savage, D (2008) "Key Themes and Trends in Municipal Finance in South Africa" in van Donk, M, Swilling, M, Pieterse, E and Parnell S (eds.) *Consolidating Developmental Local Government: Lessons from the South African Experience*. Cape Town: UCT Press, 285-316.
- Schneider, A (2006), "Who Gets What from Whom? The Impact of Decentralisation on Tax Capacity and Social Spending," *Commonwealth and Comparative Politics*, 44(3), 344-369.
- Sen, A (1999) "The possibility of Social Choice" *American Economic Review* 89(3), 349-378
- Shah, A. and Thompson, T. (2004), *Implementing Decentralized Local Governance: A Treacherous Road with Potholes, Detours and Road Closures*. World Bank Policy Research Working Paper 3353. June, 2004, available at <http://econ.worldbank.org>.
- Siddle, A and Koelble, T (2012) *The Failure of Decentralisation in South African Local Government*, Cape Town, UCT Press.
- Smoke, P (2003) "Decentralisation in Africa: goals, dimensions, myths and challenges" *Public Administration and Development* (23)(1) 7-16.
- South African Human Rights Commission (2014), *Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa: 2014*.
- StatisticsSA (2014) *General Household Survey*.
- Sunstein, C (2000), *Designing Democracy: what do constitutions do?* Oxford, Oxford University Press.
- Swilling, M. and Russel, B. (2002), *The Size and Scope of the non-profit sector in South Africa*. Johannesburg: School of Public and Development Management; Durban: Centre for Civil Society.
- Tapscott, C (2008), "The Challenges of Deepening Democracy in Post-Apartheid South Africa" in Saito, F. (ed) *Foundations for Local Governance: Decentralization in Comparative Perspective*, Heidelberg: Physica-Verlag, 213-231.
- Treisman, D (2006), "Explaining Fiscal Decentralisation: Geography, Colonial History, Economic Development and Political Institutions," *Commonwealth and Comparative Politics*, 44(23), 289-325.
- US Agency for International Development (2000), *Decentralization and Democratic Local Governance Programming*.
- Von Holdt, K (2010) "Nationalism, Bureaucracy and the Developmental State: The South African Case" *African Review of Sociology* 41(1) 4-27.
- Watt, P (2004), "Financing Local Government," *Local Government Studies*, 30(4), 609-623.
- White, G (1988) *Developmental States in East Asia* New York, St Martin's Press.
- Wittenberg, M (2006), "Decentralization in South Africa" in Bardhan, P and Mookerjee, D(eds) *Decentralization and Local Government in Developing Countries: a Comparative Perspective*. Cambridge, Massachusetts: MIT Press, 329-356.
- Woo-Cummings, M (1999) *The Developmental State*, Ithaca, Cornell University.
- World Bank (1997), *World Development Report 1997: The State in a Changing World*, New York: Oxford University Press.
- World Bank (2000), *World Development Report 1999/2000: Entering the 21st Century*, New York: Oxford University Press.
- World Bank (2011), *Accountability in Public Services in South Africa*.
- Wunsch, J (2001), "Decentralization, Local Governance and 'Recentralization in Africa,'" *Public Administration and Development* (21) 277-288.
- Yemek, E (2005), *Understanding Fiscal Decentralisation in South Africa*, IDASA Occasional Paper.

Websites

- Afrobarometer (2015) Afrobarometer Survey 2015 <http://afrobarometer.org>
- Statistics SA. http://www.statssa.gov.za/community_new/content.asp
- United Nations 2009: <http://www.unpan.org:80/Directories/UNPublicAdministrationGlossary>

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