



Report on the Emerging Themes from the Roundtable Conference held on  
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Theme: Reviewing the Local Government White Paper

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## **Introduction:**

The policy outcomes of the review process initiated by DPLG in July 2007 will have far-reaching consequences not only on state institutions but on the communities that these institutions serve. In an attempt to foster debate and information-sharing on the issues emanating from the review, the Community Law Centre hosted a Roundtable discussion on 5-7 March 2008. The Roundtable brought together a diverse group of stakeholders including civil society organisations, local government practitioners, politicians, consultants and international experts to create a platform for frank and open debate. Five research papers served to pre-empt the debate without, however, limiting the ambit thereof. This Roundtable report synthesizes the themes that emerged from the debate.

### *The context:*

The review process had a two-fold objective, namely to review the White Paper on Local Government in view of emerging practice from the first seven years of post-apartheid local government, and secondly, to produce a Green Paper on provinces. The political events at the ANC policy conference in Polokwane however, altered the projected course of this process. On 12 December 2007, DPLG released a preliminary report highlighting the following areas which require further research:

1. The roles of provincial government and two-tier local government;
2. Deepening local democracy, accountability and participation;
3. Strengthening capacity to meet basic needs and enable sustainable development;
4. Refining the intergovernmental roles, functions and fiscal frameworks of spheres;  
and
5. Making cooperative governance work more effectively and improving oversight, performance management, and the monitoring and evaluation system.

From these thematic areas it is clear that the future of provinces is no longer a primary focus of the review thus automatically shifting greater emphasis to the review of local government. The projected time-table for the review process was also altered. Whereas a

draft white paper was expected by December 2007, this deadline has been shifted to June 2008 with the final draft to be submitted to Cabinet by January 2009.

The refined focus of the review and the amended time-table for the submission of the revised White Paper on local government necessitates nuanced and well-considered input from the local government sector. It was the purpose of this roundtable to consolidate networks of learning and expertise to ensure that the issues emanating from the review are the subject of vigorous debate and knowledge-sharing processes with the ultimate aim of ensuring that the final policy outcomes of the review are legitimate.

## **1. Session 1: Slapstick asymmetry or rights-based approach to powers?**

### **1.1 Defining local government powers and functions**

Part B of Schedule 4 and 5 of the Constitution entrench the original powers of local government. In so-doing the Constitution proceeds from a position of symmetry. In other words, the original powers and functions represented in the Schedules are the minimum powers and functions which any given municipality must be able to perform. These represent the justification or reason for any municipality to exist. Framed negatively, if a municipality cannot perform these original functions, it should not exist as an autonomous institution. These powers were ostensibly allocated to local government in order for it to achieve its developmental objectives.

This allocation however is problematic because there is no consensus on what powers developmental local government requires to fulfill its objectives. For example, what is meant by the “built environment” and how does it impact the ability of local government to achieve its objectives? What are the parameters of the function of local economic development, does it extend to courting an international conglomerate? Original powers must exist according to what local government is expected to do.

The core or original functions of local government notwithstanding, the concept of developmental local government is that it should have the power to drive development and fulfill greater tasks as it develops. This is in part what the principle of subsidiarity in section 156 (4) of the Constitution was meant to capture. There are however, very few, if any, cases where municipalities have successfully “claimed” a function by means of the subsidiarity mechanism. Poorly defined powers make it difficult for local government to negotiate for greater and/or more powers. For example, the function of planning is referred to in different instances in the Schedules with the only adjective distinguishing the function being “municipal” or “provincial” planning, shedding very little light on what the nuances of these functions are. Unless powers are clearly defined, it becomes near impossible for local government to negotiate for powers in a neutral manner and process which is not influenced by political or financial agendas.

Section 156(4) properly applied, could be an extremely useful tool if, purely on the basis of functionality, powers are asymmetrically allocated to municipalities and the political impact of transferring powers between spheres is minimised.

A formula for determining appropriate powers for local government should incorporate the following steps:

1. Establishing a common denominator for original local government powers;
2. Finding the appropriate tool to enforce the subsidiarity principle ;
3. Determining who the final arbiter of subsidiarity should be- the courts or national government?

## **1.2 The “appropriateness” versus the “adequacy” of local government powers and functions:**

While the above formula creates a loose framework for determining local government powers, it does not address the question of how far the subsidiarity principle can be extended in practice. What are the exclusions and inclusions? There are huge differences

between regional and local government- and we need to question the extent to which subsidiarity can find application in this context.

Discussions around subsidiarity should not necessarily revolve around the appropriateness of powers, and whether it is more appropriate for a power to be located at specific sphere but rather the adequacy of powers. Any demand by local government for more or greater powers implies that the current powers are inadequate to fulfill their developmental mandate.

The current allocation of powers in the Schedules does not always follow logic, neither does the disaggregation of certain functions across spheres. For example, a core function of local government is water and sanitation. The misnomer that exists in practice is that municipalities do not have the power and concomitant resources to deal with old water pumps. The impractical result is that while municipalities are responsible for the delivery of potable water, they are dependant on the Department of Water Affairs and Forestry to supply and maintain the infrastructure essential to the delivery of the function.

Another example is the function of liquor licenses. Liquor licensing is a provincial function, yet local municipalities must deal with the consequences of these provincial decisions. A municipality may well have to deal with the situation of a liquor store being located next to a church- simply because the decision-making and implementation aspects of this function have been disaggregated.

### **1.3 The fluidity of local government powers and functions:**

The ease with which functions can be transferred from municipalities to other spheres of government is disconcerting. The function of libraries is a case in point. It was removed from local government and allocated to provinces. Out of necessity, municipalities have continued to perform this function as an unfunded mandate with little or no assistance from provinces. This tenuous arrangement can however be changed at a whim. Someone at provincial level can wake up one morning and decide to enforce the province's right to

perform the function, with no regard to the *de facto* administration of the function or the impact of such a change on the delivery of the service.

An urgent intervention is therefore needed to determine who is responsible for performing functions. If we do not embark on this exercise as a matter of urgency, the situation whereby everyone is responsible for everything and no one is accountable for anything will continue to exist.

#### **1.4 Are the Schedules relevant in the aftermath of demarcation? Have they kept pace with reality?**

A clear consequence of the reconfiguration of municipal space is that the powers listed in the 1996 Constitution have not “caught up” with the demarcation process which took place in 2000. The composition of the built environment at the local level is a case in point. Originally, the built environment encompassed the management of space, how space was configured and the movement across space at the local level. After the 1996 Constitution the built environment was primarily concerned with reconfiguring municipal space as a result of the exigencies inherited from apartheid demarcation. The demarcation process therefore saw the creation of contiguous municipal space in the form of large metropolitan areas. A logical consequence of this demarcation should have been the concomitant powers to drive development within this space. In certain instances, change had to occur to keep pace with this development. For example, the transport authorities which existed prior to 2000 before the demarcation process, were staffed by councillors. Following the demarcation process, mega-cities required much more sophisticated transport expertise.

The allocation of functions as it appears in the Schedules did however, not reflect this change. Instead of retaining the original definition of the built environment, this function became disaggregated. In the Schedules, the functions of planning, housing and transport no longer fall under the rubric of the “built environment” but are instead treated as distinct of each other. Housing is therefore not a local government function. The disaggregation not only applied to the way the function was defined, but the manner in

which it was allocated across spheres. The Schedules for example, list provincial transport and planning *versus* municipal transport and planning.

The function of the built environment should however, logically be comprised of the integrated functions which have an immediate impact on municipal space, such as:

1. Planning;
2. Urban areas;
3. Management of space and movement across space;
4. Transport;
5. Housing; and
6. Infrastructure that supports transport and housing;

In order to foster development in an integrated and coherent fashion, cities should be empowered to drive these key processes without depending on external agencies and institutions.

The disjuncture between developmental government and the powers to achieve it is not only reflected in the Schedules to the Constitution, but also in certain institutions and pre-2000 legislation that is still in force, like the intergovernmental fiscal relations framework which was enacted prior to 2000. There is in fact a body of pre-2000 legislation which has not caught up with the realities of practice and which needs to be reviewed.

### **1.5 Role of capacity in the subsidiarity debate:**

Arguments around capacity constraints are often raised in response to calls for powers and functions to be located at the local level. Capacity should however not be the sole arbiter of whether a function or power is assigned. Powers need to be assigned on the basis of where it is most appropriately placed for service delivery. Funding and capacity of necessity, will then follow the function.

In Uganda, for example, on the basis of the subsidiarity principle, every function that does not belong to central government is a local government function. A non-partisan approach is followed in the allocation of local government powers and functions. All local governments, irrespective of capacity are assigned functions. Efforts are then directed at capacitating these governments to perform. As a means of tracking development and creating accountability, a system of penalties and rewards is in place. If a particular local government does not perform, this failure is publicised- posing a potential threat to re-election. Local governments, in addition, bid for additional functions to be assigned to them on an individual basis. These practices re-enforce the principle behind decentralisation which is to take service delivery closest to the people so that delivery capacity is developed and strengthened and that furthermore, local governments are judged and called to account for their performance at the local level.

*Capacity assessments:*

Capacity assessments in the South African context are problematic. Provincial government has for example concluded that municipalities largely lack the capacity to deliver certain key functions such as housing. This assessment however fails to take into account that capacity is lacking simply because municipalities do not currently perform the function and, that capacity can really only develop once a function is assigned.

Another problematic feature of capacity assessments is the frequency with which it is undertaken. The Municipal Demarcation Board conducts capacity assessments on an annual basis. The provincial government of Gauteng has decided not to use these assessments as a barometer of capacity on the basis that the one year period between assessments does not allow sufficient time for capacity to develop in any meaningful manner. As a result, Gauteng has embarked on its own programme to ensure that capacity is developed in areas where it is lacking.

### *The Single Public Service:*

A key motivator for the creation of a single public service is the commonly-held perception by national government that no capacity exists at the local level. On the contrary, it is arguable that capacity is more concentrated at the local level. The creation of a single public service it is argued, will ostensibly solve many of the problems facing local government. The local government sector has however not even begun to engage in this national debate. A consequence of this tardiness may be that key policy decisions will be taken in the absence of rigorous debate and in-put from those who stand to be most affected by these decisions. Local government must therefore start to seriously engage with these issues as SALGA and DPLG with respect, are not best-placed to drive this consultative process on behalf of local government.

### *Dispersing capacity:*

It has been argued that dispersing capacity across the different spheres and multiple institutions of government proliferate capacity deficits. Streamlining structures and concentrating capacity within these structures, would arguably improve the ability of the state to deliver. As it stands, national government is responsible for national policy. Local government was considered to be the hands and feet of the RDP. Somewhere between these policy and implementation roles exists a role for provinces. Currently provinces compete with local government for service delivery functions- creating territorial battles. We therefore need to determine the type of landscape that we want for governance and structure our institutions and corresponding concentration of capacity accordingly.

## **1.6 Redefining local government in the context of shared growth:**

### **1.6.1 Shared growth:**

The question of shared growth is one of the biggest challenges facing South Africa. More than half of the population continues to live in abject poverty while the enormity of the

unemployment crisis has yet to be fully comprehended. There are no short-term solutions for securing jobs for school-leavers, or dealing with the existing saturation of the labour market. As a result, inequality is entrenched in our society. An important aspect of this review must therefore interrogate what changes have to be effected to the structure of the economy in order to change the status quo.

The current definition of developmental local government is impoverished. Often the developmental needs of society are misconceptualised. While government activity may be focused on building better roads or infrastructure it adds little developmental value if it only perpetuates existing patterns of inequality and poverty. A key question facing local governments is how to grow a better model for development and growth. Is it a question of time? Will greater expertise or insight into these problems evolve as time passes? Or, does the root of the problem lie with unrealistic conceptions of poverty and the time needed before returns are seen on the investments made in poverty alleviation? For example, the key strategy directed at alleviating the housing crisis seeks to eradicate informal settlements and replace them with housing projects comprised of free-standing brick dwellings. The reality of this approach is that it is simply not viable, with the result that the backlog is compounded. We therefore have to accept the fact that informal settlements will not be eradicated in the near-to medium-term future. It follows that a more viable approach to the housing backlog is to find workable solutions that include the paradigm of informal settlements.

Developmental local government must therefore of necessity, engage with the practical realities of our society. In as much as developmental government must deal with service delivery it must also deal with vital realities such as engaging with the two economies which co-exist within in our society as well as the state structures that should drive these economies.

### **1.6.2 Escaping the local-provincial-national divide- creating regional growth:**

Another aspect of the review not adequately explored, is the reality of regional-driven growth. While the metros are certainly important points in any given region, they are not

the drivers of regional growth. We need institutions below provinces but above local municipalities to drive regional growth. An initiative in Gauteng, represents a small-scale example of regional co-operation. Districts have been grouped together and linked to the metro to determine ways of expanding regional growth- with the broader aim of the Gauteng City Region in mind. This approach recognises the limits of localised efforts to generate regional growth. The differing needs of urban versus rural regions also come into play in determining strategies for regional growth.

### **1.6.3 Local economic development (LED)**

Questions around the parameters of the function of local economic development are also key. Is it limited to the development of economic participation by communities or does it extend to infrastructure-led and project-driven attempts at ensuring growth? Local economic development as a function has largely failed, both in conception and implementation. Most municipalities have implemented this function through small, piece-meal initiatives such as sewing projects and chicken farms, with the result that these projects have minimal impact on the economic development of the municipal area and the greater region.

### **1.7 A rights-based framework for powers and functions?**

Functions such as the built environment, the management of space and/or the development and growth of the economy, because of their nature, are often viewed as abstract functions to which no legal accountability can be attached. For example if the economy is not grown- who is accountable? Are there legal consequences that local governments must bear as a result of the failure to develop the local economy or to maintain or develop infrastructure?

A legal concept of infrastructure must therefore be developed. The functions of transport, energy and water must be linked to the concept of rights. A rights-based approach would therefore require that these areas must be addressed in some manner.

In Brazil, the absence of a right-based framework for certain functions has been problematic. There is no legal content for the right to food. As such, this right is asymmetrically defined in different regions.

In addition to having a legal content, functions need to be disaggregated. For example, the function of electricity must be disaggregated into consumption, or household-use versus production and development. Tariffs for the latter would therefore be market-related as opposed to rights-based in the case of the former.

*Balancing the service delivery and representative role of local government:*

As part of the review process we need to clearly identify and differentiate between the service delivery role and the representative and advocacy role of local government. Functions need to be allocated accordingly to ensure that these two key roles of local government are balanced. It would be a mistake to overburden municipalities either way, as it is tantamount to setting local democracy up for failure.

## **1.8 Asymmetry and local government: jurisdictional or policy failures?**

An asymmetrical approach to local government must be examined more critically. Many of the problems plaguing municipalities are not as a result of jurisdictional failures- most failures do not heed jurisdictional boundaries. A jurisdictional response to municipal problems may therefore be inadequate or even inappropriate. Practice has revealed that policy failures may at times be disguised as jurisdictional failures.

Revenue is also a key driver of the asymmetry debate. Where there is a large tax base, the functions a given municipality performs must extend to cover that tax base.

## **1.9 Who is the final arbiter over the assignment of powers?**

Many of the impediments to integration and development can be attributed to territorial battles over powers and functions which, are oft-times played out between provincial and local government. In these territorial battles, should provinces be making assertions over assets that are essentially nationally-owned?

In 2005, the National Divisions of Revenue Act [clause 25] directed that the housing function be assigned to the top 10 municipalities. This has not happened. There was a lapse of 10 years between the enactment of the Housing Act and the Accreditation Guidelines. Should national government not mediate this issue? Instead, it has been left to the courts to resolve- begging the question of whether the courts are best-placed to make these crucial decisions.

## **1.10 Critical questions to take forward**

1. How do we practically assess the functionality of the local government system?  
What is the entry point?
2. An assignment framework was put into place when amending the Systems Act because no rational and/or technical assessments were done prior to effecting assignments. One requirement is that financial projections for a service be undertaken. Is this relevant to establishing a system around subsidiarity?
3. What is the nature of the problem at local government level that has necessitated this assessment?
4. Is there a problem with the way that decentralisation is managed? Is the Constitution the appropriate vehicle for managing the process of decentralisation? Perhaps we would be better served by an Act on managing powers and functions which is promulgated every five years? This would ensure a more workable system that is alive to change.
5. The concept of asymmetry must be unpacked. Is it a description or a desirable end?

## **2. Session 2: Municipal Accountability**

An often-voiced criticism relates to the lack of responsiveness on the part of municipalities, as well as the lack of appropriate mechanisms by which communities can hold them to account.

Accountability in the municipal context has a number of applications, namely:

1. Accountability to the local community;
2. Internal accountability between the executive and the municipal council;  
and
3. Administrative accountability.

While the local government legislative framework has created mechanisms which serve to enforce accountability in these different applications, this framework is not immune to the impact of party politics and the complexities which accompany intergovernmental relations. Also of concern is the fact that some of the tools put into place to ensure accountability, are not utilised to their full effect, with the result that internal accountability and ultimately accountability to communities, is weakened. This session also interrogated the appropriateness of ward committees as the primary channel of communication between the community and municipality and its adequacy as a tool to hold the council to account.

### **2.1 Internal accountability: The conflation of the legislative and executive function at the local level**

Local government is the only sphere of government where the legislative and executive functions of governance are conflated into one institution. The initial vision for local government was that of small, intimate municipalities that would provide a limited number of services. In conflating these two functions the intention was to allow the council to have direct involvement in executive decision-making, which was exercised as close to the community as possible. In these intimate municipalities it therefore made no sense to have separation of powers particularly if a council was comprised of as few as

seven councillors. One of the significant outcomes of the demarcation process however, was the creation of large metropolitan municipalities (metros). Today, the smallest municipalities comprise of 30 councillors while the bigger municipalities house between 80 and 210 councillors. These bigger municipalities are a far cry from the intimate municipalities that were originally envisioned and better fit into the separation of powers model employed at national and provincial level.

A fundamental difficulty in trying to adopt a singular approach to local government in South Africa, lies within its diversity. While the metros stand out in the landscape of local government, municipalities comprising of seven member councils continue to exist and because of their size, cannot be divided into wards. These municipalities exist alongside big metros like the City of Cape Town with 210 councillors, making it difficult to impose one workable system on all municipalities. That being said, South Africa has some of the biggest municipalities in the world and the Constitution must therefore of necessity, reflect the realities of huge metropolitan municipalities.

*A view from practice:*

While the legislative and executive functions are both located in the municipal council, in reality a degree of separation of powers is created through statutory law. Councillors comprise the legislative branch of the municipality while the mayor and her executive or the executive committee as the case may be, are largely responsible for overseeing the executive functions.

Where in particular, a municipality makes exclusive use of section 80 committees this distinction is seen more clearly. The chairpersons of these committees are appointed by the mayor or executive committee, and report to them directly. The rest of the council, by way of operation of these committees, is excluded from executive decision-making, with the result that the system compromises the ability of non-executive councillors to exercise their oversight powers.

Without clear and direct lines of responsibility, it is difficult to discern who can be held accountable for municipal failures. The supervisory mechanism found in section 139 of the Constitution only makes reference to executive failures as a point of reference for provincial intervention. In a system premised on the conflation of executive and legislative powers, how does one distinguish between a legislative and executive failure? Perhaps there is need to revise Chapter 7 of the Constitution as the entire functionality of a municipality is limited to powers and functions in a duplication of the section 139 divide of powers.

These applications raise the question of whether making the distinction between the executive and legislature at the local level requires a formal amendment of the Constitution. The short answer is that it may not be necessary to go to such great lengths. In Gauteng, for example, municipalities have on principle replaced section 80 committees with section 79 committees to ensure greater participation of all members of council and to allow for external expertise to be co-opted where necessary. In all 14 of the local municipalities, local SCOPAS have been instituted, thus contributing to better oversight within the municipal council.

## **2.2 The role of councillors:**

Many of the arguments around accountability and the responsiveness of the municipality pivot on the role that councillors are meant to fulfill. Of particular importance is the relationship of accountability which must arise between councillors and the constituents who elect them. This however raises questions around the processes that are attendant on electing councillors and the extent to which it allows for true representivity. For example, who really elects the municipal council? Is it done on a constituent basis? Who are councillors primarily accountable to, their constituents or the political party? (See para 2.3 below). Importantly, what is the role played by the opposition party in local government?

*Proportional representative versus ward councillors:*

Proportional representative councillors have been dubbed “ATM” councillors. There is a perception that they merely draw money every month without having to work or account for it because they have no constituency to whom they are answerable. Ward councillors, by comparison are perceived to be harder workers because they are meant to be representative and directly accountable to the constituents who elect them. The legitimacy of ward councillors is however, also questionable as the political party often determines who is appointed as a ward councillor- a decision that frequently clashes with local preferences. (See para 2.6 below).

*The ability of councillors to influence council:*

In the City of Cape Town, for example, the sheer number of councillors, at 210, acts as an impediment to any individual councillor being able to impact on the governance of the City. Of particular concern is the position of ward councillors in relation to the council. Ward councillors have very little opportunity to place ward interests or concerns firmly on the municipal agenda. This notwithstanding, the ward councillor is often the public’s scapegoat for municipal, if not, national and provincial failures.

In big municipalities, councillors are reduced to nothing more than voting fodder with no immediate ability to influence municipal policy or to hold the municipal administration accountable. Comparatively, if we examine the size of councils in international cities, it is not uncommon to have a council comprising of five councillors. Smaller councils therefore translate into greater powers of influence for councillors.

*The complexity of oversight processes and instruments:*

When faced with a multiplicity of processes and documents, councillors simply do not engage with these processes at all. This is true particularly in relation to oversight mechanisms which require a certain level of skill and/or ability. A cursory evaluation of

the oversight function for finance and the procedures that are attendant on the budgetary process, such as the Service Delivery and Budget Implementation Plan, reveals that these are lengthy and specialised processes which are difficult to grasp.

As a result, when it comes to financial oversight, in particular, councillors lack the specialised knowledge required to actively engage in this process. Not only is an independent auditing function required for finances, but an independent audit of municipal service delivery should also be conducted. Councillors are too removed from the processes attendant on service delivery to be able to critically evaluate the administration's performance in this domain. A service delivery audit could therefore for example, take the form of a report which is submitted to the council every two years. This would ensure that council does not merely rubber stamp budgets and outcomes, but is able to benefit from external expertise and insight into the municipality's functioning.

#### *Qualifications of councillors:*

Qualifications play an important role in the ability of councillors to fulfil their duties. Councillors are expected to deal with complex situations and concrete issues that require a certain degree of skill. This notwithstanding, political parties often balance the need for qualified councillors with the need to appoint councillors who have a following within the community. As a result, the popular choice for councillor may not always produce the best-qualified person to fulfill that role.

A huge problem that is still prevalent in local government is the poor literacy rate amongst councillors. Basic qualifications such as reading and writing are absolute pre-requisites for performing the duties that councillors are expected to fulfill. Often, when national government deals with local government, they proceed on the assumption that local government has progressed in this respect and that councillors are better-qualified than in the past. This is not necessarily the case. There is therefore a need to capacitate councillors and transform the system from grassroots level. For example, political parties should, at the very least, publicize the qualifications for councillors as part and parcel of

campaigning and/or have induction programmes for those councillors who need it. The system can only be corrected and work more efficiently if awareness is created about the requirements for councillorship and councillors are appropriately capacitated to fulfill their duties.

*The phenomenon of “bad apple” councillors:*

What can a community do if it is served by a councillor who is corrupt? The safeguard of political ‘recall’ of councillors who do not fulfill their duties has been reduced to an empty shell- if anything, attempts to use this oversight tool has exacerbated existing problems. Councillors simply engage municipalities in protracted and costly legal battles to fight any attempt to recall them. While the recall function was canvassed by the ANC, in practice it has not been an efficient tool to enforce accountability.

### **2.3 Serving two masters- institutional versus political accountability**

Municipal councillors and officials are constrained by political hierarchies. A local politician for example, can only pursue a matter or line of interest up to the highest line which is set by the party. It raises the question of whether it is possible to divorce political and professional accountability. Councillors are forced to choose between party expectations versus community expectations. The knock-on effect of this relationship is that citizens will hold institutions accountable if they think that these institutions are capable of change. If not, they lose interest. For example, a municipal mayor will arguably never be interested in foreign affairs- because they do not have the capacity to influence it. It follows that if municipal functioning and culture is determined by party-politics- it is a far stretch to expect citizens to influence or change the system

The debates around the mono-rail in Johannesburg present an interesting case- study. The City of Johannesburg wanted a unified public transport system which was long in the making. Provincial government on the other hand, unilaterally decided that it wanted a mono-rail which would essentially fragment the City’s plans. The Province however,

would simply not budge. The ANC city leaders were forced to revert to Luthuli House to try resolve the matter with their provincial counterparts.

A further concern relates to the autonomy of local government. Of late, local autonomy has been whittled down in a number of ways. The removal of RSC levies, the proposal to establish RED's and the proposal for the Single Public Service which essentially weakens the capacity for local employment practices, all contribute to weakening local autonomy.

The extent to which local leadership is represented at national level where they are able to influence and impact on matters of national interest is crucial. The lack of local representation in South African political hierarchies is demonstrated by the fact that only three local government representatives were elected to the National Executive Committee of the ANC. If we look at international practice, local leadership is not excluded from the pool of leaders who are eligible to run for national leadership positions. President Chirac of France was the former mayor of Paris. The current mayor of Shanghai is earmarked as a favourite for the presidential election. The under-representation of local government leadership in South African political hierarchies makes it a sphere that is particularly vulnerable to the ravages of politics.

#### **2.4 The role of national and provincial government in overseeing municipalities:**

Ambiguity exists in decentralisation. While intervention by national government is not favoured, functions such as economic development have a dimension that does not conform to state structures or institutions, and for which all spheres of government should collectively be responsible.

Certain functions however are so fundamental to the well-being of citizens that arguments around decentralisation should not be a consideration, particularly in instances where it is clear that a particular sphere cannot deliver. For example, certain municipalities consistently perform well in delivering potable water, while others consistently perform badly. Drinking water however, as an essential service that affects

people's lives, should not be a negotiable function and cannot of necessity be dependent on a municipality developing capacity to deliver it. The national Department of Water Affairs and Forestry has tried to engage municipalities in a number of ways, ranging from giving advice, and trying to assist municipalities. Certain municipalities consistently refuse to seek the advice or assistance of the Water Boards. At what stage does advice become an instruction? What is the role of local government when it comes to the maintenance of assets? Some municipalities of their own initiative have ring-fenced resources for water, sanitation and the maintenance of assets. Other municipalities, however, consistently fail to plan or seek pre-emptive solutions to impending problems. When is it appropriate to force these municipalities to outsource to a service provider? When does the failure to act translate into administrative failures for which municipalities can be called to account?

There is therefore a need for real accountability in the framework of co-operative governance. Local government action must be characterised by the delivery of sustainable services on which communities can depend. Municipalities have protested about the financial implications which will accompany the distribution of electricity by Regional Electricity Distributors. However, the question remains, how accountable are municipalities to the national regulator at present? How close is the function of electricity to the primary objective of service delivery at the local level? Is the current system mature enough to handle the problems facing Eskom?

## **2.5 The Single Public Service:**

### *Poor administration at the local level*

In the highly specialised context of local government, it is not uncommon to hear reports of clerks and drivers being appointed as section 57 managers - employed to fulfill extremely exacting tasks and functions within the municipality. These appointments have directly impacted on the functioning of certain municipalities. In the absence of a class of

professional administrators, the likelihood of these practices continuing at the local level is high. It begs the question of how do we create a class of professional administrators at the local level? In the South African context any form of professionalisation would have to make concessions for the marriage between local choices for leadership and qualified leadership. It is therefore imperative to critically engage with the proposal for the single public service to determine if it is the most appropriate vehicle to achieve this change.

#### *Comparative experiences with a single public service*

The Indian experience of pursuing a single public service did not yield positive results. The weakest link in the system was that it was politically manipulated by the national state. An apt example of the disruptive consequences of this manipulation was seen in the case of one local municipality where, during a six month period, there was a turnover of four municipal commissioners. The result of such a high turnover of municipal staff is that long-term planning is compromised. Every municipal manager seeks to make their mark as quickly as possible and in projects that may better serve their personal interests and political reputation than that of the municipal community. The rapid turnover of staff also prevents the evolution of a skilled staff compliment at the local level.

While South Africa may be considering the single public service option with a view to fixing existing problems, these problems may not necessarily require solutions on such a grand scale.

Criticisms of the current proposal for a single public service stem from the fact that it does not seem to create the space for municipal in-put into appointment of staff who will essentially be working in a highly technical and specialised field of governance. National government will appoint staff while municipalities will be forced to deal with problems arising from under-qualified or inexperienced staff. The proposal for the single public service therefore weakens the capacity for local employment practices.

## **2.6 Holding councils accountable- evaluating tools of accountability available to communities:**

### **2.6.1 Holding administrators accountable:**

Municipalities are given space to attract suitably qualified professionals at market-related levels. In the past, these salary scales were published to allow communities to hold municipal managers accountable. This practice has since fallen away, removing an important tool in the hands of councillors and communities to hold municipal and section 57 managers accountable.

### **2.6.2 Integrated development plans:**

While integrated development plans are good instruments for participation, the objective behind these plans has not been realised. Communities have no opportunity to actively engage in this process in a manner that substantively shapes the end-product. Primary decisions on the integrated plan are made elsewhere in terms of arbitrary processes. There are no guidelines on who sets key non-negotiable elements of the IDP. There is a desperate need to create capacity-building to make this process community-friendly and to ensure that local input is not a tail-end, legitimising activity, but rather a driver of the process.

Conceptually we need to understand that IDPs are not about legislative compliance, but rather about policy. What is the policy framework within which a particular municipality wishes to operate? How can that framework be adapted to local needs? IDPs are often presented in a pre-determined format which communities cannot influence.

### **2.6.3 Are ward committees effective tools in the hands of the community?**

A key argument concerning the efficacy of ward committees as the primary channel of communication between municipalities and communities in South Africa, is that municipalities and subsequently wards, are simply too big. The Indian experience

advocates that smaller committees located at community level serve as far better and arguably more legitimate vehicles for community participation.

It begs the question of whether ward committees are working at all in the South African context. Under the apartheid government there was a strong civil society movement. This is no longer the case. While the voice of civil society may ring louder in certain sectors or in respect of certain issues, South Africa can no longer claim to have a unified and vigilant civil society that coherently addresses community needs.

In the past, participation was largely orchestrated by civil society working in conjunction with communities. This form of participation was dependent on the combined resources of NGOs and voluntary contributions by the community. It created an element of voluntariness and common sacrifice for the greater community. This in turn contributed to creating a sense of ownership by the community over participatory processes that were essentially internally-driven.

Ward committees in comparison, are perceived to be external constructs which municipalities have imposed on communities. In some of the most progressive municipalities such as those in Gauteng, ward committees are not functional. In the context of a fragmented civil society and inoperative ward committees, who then speaks on behalf of communities? Poor communication between municipalities and citizens has resulted in increasing disillusionment with local leadership. Local councillors however, are the ones who often have to bear the brunt of community outrage. Community protests in 2007 were so wrought with violence that even the homes of some councillors were burnt down. Local failures, notwithstanding, many of these protests were directed at service delivery failures for which local municipalities are not solely responsible.

While ward committees are meant to serve as measures of accountability and as monitoring and evaluation tools, in practice, they have become severely distorted. In a racially divided and politically divergent society like South Africa- the ward committee system was intended to mitigate the consequences of the first past the post system of

elections. It was feared that this system would not result in representivity. For example, a council won by a 51% majority means that 49% of the community is under-represented. Ward committees were therefore created as an additional mechanism of participation to allow a greater measure of community and political representivity and oversight at the local level. This, it was hoped, would create a sense of stability and ownership over local affairs while lending legitimacy to the workings of the elected council.

While it was the intention that ward committees would address the inadequacies of our electoral system, in practice these weaknesses have instead been transported into the ward committee system. The process for electing ward committees is highly politicised. The political party often determines who is appointed as a ward councillor. The consequence being that committee members, and even more so, the community, perceive the ward committee to be an extension of the council. The fault lies in part in the practice of voting for ward committee members. The representation of a “diversity of interests” in the ward committee is therefore not a certain outcome if it is left to the political process of voting. In this context, ward committee members are confused about their powers and functions. There is little distinction between the political allegiance which councillors and ward committee members feel to the party which secured their positions. Ward committee members therefore fail to see their role as distinct from that which ordinary councillors fulfill.

Accounts of the successful implementation of the ward committee system are too infrequent. We need to critically evaluate the root causes of its failure and the extent to which it can be remedied. In Gauteng, as a good starting point for this exercise, a pilot study of public participation was recently commissioned. It would also be instructive to look at successes which have been achieved in developing countries, like India (Kerala) and Brazil.

Further research notwithstanding, the following represent a list of fundamental problems in the current system:

1. Ward committees are essentially captured by party caucuses. There is no intention to connect with local constituencies. Rather, ward committees and local councillors are considered to be strategic entry-points for political patronage and employment;
2. No link has been created between ward committees and community development workers. There is confusion as to how these constructs should relate to each other. However, if this link is made, it could create the situation where local patronage is doubled, both through ward committees and CDWs.
3. The separate class development which takes place as a result of ineffective participatory mechanisms is a fundamental failure of this system. In areas where formerly white ratepayers associations are still in existence, influence and power is exerted in a number of ways which impact the processes and actions of the municipal council in a substantive manner. In poorer areas, where such structures do not exist, the community is dependent on political processes such as ward committees to articulate their needs. If there are ineffective ward committees, it means that community in-put is lost. The result is loss of faith in the system and the perception that if you are rich or come from certain areas, members of the community can “buy” influence and attention to their cause.

## **2.7 Trade-offs between participatory governance and result-oriented governance**

South Africa has much pride in maintaining its Constitution. However, as part of the review of the system of local government, the Constitution and its vision for local government will have to be re-examined. While notions of good governance are premised on principles of non-interference from the centre and public accountability, good governance in and of itself is not enough. Governance must be coupled with results and outcomes to which communities can call municipalities to account. In certain instances intervention may be the solution to obtaining these results.

Decentralisation is only likely to succeed in the context of a centre that is strong enough to set standards and to enforce them. Popular participation, as demonstrated by the inherent problems associated with the election of unqualified councillors, does not always work.

Also, we need to question whether communities are civilly competent to exercise the option of recall. In certain African contexts there is a tradition of not questioning leaders. In these instances, third party enforcers are required. In other words, where communities fail to enforce the option of recall, national government must step in.

Rwanda has adopted a very progressive governance practice. The national government annually hosts a “Developmental Dialogue” which is televised. This process includes detailed reports from cabinet ministers, departmental heads and local leaders on the delivery of services, such as the number of houses built or crops cultivated. These leaders then make public pledges to the President for service delivery targets to which they are held accountable. The anomaly of this system is that while local government in Rwanda produces results, it is not very democratic.

## **2.8 Re-defining routes of accountability:**

With decentralisation, greater mechanisms of accountability were created at the local level. Relationships of accountability which exist at municipal level include:

1. Council – community accountability;
2. Councillor- citizen accountability;
3. Council-employee accountability; and
4. Internal accountability.

While these relationships exist in theory, no substantive meaning of accountability has been developed in the past seven years of local government. The systems in place largely regulate managerial roles or administrative processes. While the advantages of such

systems are targets and standard-setting for municipal administrators, they serve little purpose for communities who, are not empowered to hold municipal functionaries accountable to these standards. More effective mechanisms for accountability are arguably citizen report cards as used in India, or other more direct forms of assessment, where citizens hold municipalities directly accountable for its successes and failures.

*Performance agreements:*

The performance management system is a vital part of the checks and balances instituted at the local level. However, an unintended consequence of placing emphasis on performance management agreements is that it focuses municipal action on a chase for compliance, on simply “getting the job done”. Instead of embarking on programmes and initiatives which will benefit the municipality in the long-run, officials face the temptation of using the shortest or most convenient method to get results in order to meet performance targets. The example of Eskom is a case in point. Performance agreements were concluded on the ability of management to produce certain levels of profit. The result was that while profit was generated in the short-term, almost 10% of the coal reserves were used prematurely, an action which has arguably contributed to the crisis which Eskom currently faces.

Another dimension of performance-oriented systems lies in the danger of setting unrealistic targets. The new regulations for appointing municipal and section 57 managers define in minute detail how the bonuses of top municipal officials are to be calculated, with the result that there is no room for innovation. The proposed regulations make it virtually impossible for municipal managers to obtain performance bonuses, encouraging lower target setting. It also raises questions about the legitimacy of the system- were the perspectives of municipal managers sought prior to promulgating these regulations?

*Holding institutions and service providers accountable:*

While ward committees are meant to be the primary channel of communication between communities and the council, the impetus of community concern is at times lost as the problem is relayed through formal channels. The use of politicians as a point of accountability is also over-used. In cases of service delivery failures, institutions and/or utilities should account to communities directly. So, for example, if Umgeni Water or Eskom does not deliver, these institutions must be directly answerable to communities.

In trying to give substance to the different relationships of accountability which exist, it is necessary to determine what type of accountability is envisioned. For example, is there a preponderance of accountability? There are a number of routes to accountability, namely:

1. The long route from citizens to politicians to service providers; and
2. Shorter, more direct routes to accountability. For example, as stated above, where citizens, as consumers of water need to be able to hold Umgeni Water directly responsible for the service they receive.

Another option could be to shift accountability from consumers to grant- makers, for example, in the form of a “rapid- growth grant” as a reward for good performance. This would inculcate greater accountability to national departments and a greater degree of vigilance and involvement by these departments in local service delivery. A hybrid of these routes of accountability should be used to ensure that there is no over-reliance on any one particular mechanism, with the result that where one fails, other mechanisms can still be relied on.

## **2.9 Critical questions to take forward:**

1. Municipalities are hamstrung by the multiplicity of tasks and functions that they are expected to undertake. There is a need to refocus and prioritise what is important to make a municipality function fully.
2. How does the structure of accountability assist officials to be accountable without fear of political recourse? Does the current system allow a municipal manager to stand up against council decisions?
3. What construction of professionalism is needed to create constructive tension at the local level that allows for accountability?
4. What are the shadows that exist between participation and practice? Where do the trade-offs take place? What examples are there of opportunities to participate in budgetary trade-offs? Does this happen at the local level?
5. Is there any study on the relationship between the choice for targets in the Millennium Development Goals and local autonomy?

## **3. Session 3: Intergovernmental Fiscal Relations and the Municipal Infrastructure Grant:**

### **3.1 Cost differentials due to local government diversity:**

An issue endemic to any discussion on local government finance is the difficulty experienced in achieving equity within local government constraints. Is it possible to equitably account for the divergent conditions which exist at the local level? For example, how do we account for cost differentials which arise as a result of;

1. Geographic difference;
2. Socio-economic disparity, where entrenched patterns of inequity continue to be perpetuated;
3. Factors such as unemployment, and/or the impact of HIV/AIDS;

4. Poor infrastructure; where for example in Mpumalanga there is greater expenditure on the maintenance of infrastructure, than for example, the City of Cape Town; and
5. The ability of a municipality to collect rates and service fees?

All of the above create serious cost-differentials and directly impact on the way services are delivered. This raises the fundamental question of how to equate rights and financing. For example, citizens have rights and are entitled to service delivery to fulfill those rights. In the absence of infrastructure to deliver these services, however, who should be held accountable for the non-fulfillment of these rights? This raises an important dimension to many of the arguments that relate to:

- Skills shortage at the municipal level;
- Unfunded mandates;
- Concurrency;
- Equitability- and the setting of national standards and how these standards are funded.

### **3.2 Own revenue:**

#### ***RSC levies:***

The replacement of RSC levies is a major bone of contention. It begs the question of whether the two-tier structure of local government has any value in the absence of RSC levies and the distributive role that it played in this context. Also of concern is the extent to which a replacement tax will compensate for the income derived from these levies. The 2008 Budget saw a proposal for the replacement of RSC levies to be implemented with effect from July 2009. The replacement takes the form of a fuel levy for both provincial and local government.

Much debate has been generated about the suitability of a fuel levy to replace the RSC levy. The debate however, has largely ignored the fact that the RSC levy was inequitable

in its application- this resulted in a divergence between its re-distributive objective of equity and its implementation in practice. The application of the RSC levy resulted in certain districts being over-funded, while other districts, based on their socio-economic location, derived absolutely no benefit from the levy with the result that there was a complete lack of funding from this source in such districts. The debate around the replacement tax for RSC levies raises the question of how we decide what constitutes an appropriate tax at local government level.

At local government level, cost drivers are economic activity, infrastructure etc. The fuel levy therefore provides a good incentive for both provincial and local government as it is buoyant and linked to economic activity. Its projected growth rate is estimated to net R26 billion rand more per annum than that which was produced by the RSC levy. It begs the question of what is more important? Having a dedicated local government fund that may not result in a sustainable source of income, if any at all, or, having a viable, consistent stream of revenue from national government?

While the fuel levy seems to be a viable option, it is important to maintain a clear link between paying local taxes and accountability. A case in point is the example of the City of Cape Town. RSC levies were collected from businesses in the central business district. A few years ago, when the City wanted to move the municipal offices out of the City to Century City, the Chamber of Commerce was approached. It was easy to motivate arguments against this move by saying “look at what the City intends using your RSC levies for...”. The City had to account to its taxpayers who in turn could influence the actions of the City.

*Local resource bases:*

President Mbeki, in the State of the Nation speech recently posed the question: “Where are the resources?” Councillors need to explain to communities why there are no free basic services. While it is true that municipalities at times display a lack of innovation in trying to develop local resource bases, municipalities also often face external

impediments which prevent them from capitalizing on potential sources of local income. If we look at Greater Tubatse Municipality for example, it is an area that is rich in natural resources. Some of the richest mines and mining companies are situated within the municipal jurisdiction. Yet, the municipality has not benefited from this. The Property Rates Act does not allow the municipality to rate anything that is found below ground. The anomaly which this situation creates is that while the municipality is on the verge of financial ruin, they receive no benefit from royalty licenses which only enrich national government. As a tax, these licenses should create some opportunity of shared growth for the municipality. It is a misnomer that a municipality so rich in local natural resources is not able to benefit from it. This example raises serious questions about why local resource bases cannot be utilised to generate local income.

### **3.3 The role of provinces:**

The significant service delivery role which provinces fulfill must be acknowledged. Provinces are the primary producers of social services such as health and social welfare. 90% of the cost drivers of these services are poor people. If taxes are completely decentralised, it would create a severe horizontal imbalance between ‘rich’ and ‘poor’ provinces. The purpose of compensatory grants would then be defeated. There is therefore a distinction between what can be accomplished at the local level *vis a vis* the provincial level. This notwithstanding, we need to, on a case-by-case basis, evaluate the extent to which provinces contribute to equity as well as the ability of provinces *vis a vis* metros to achieve national objectives. While provinces have some taxing powers they are reluctant to introduce taxes, rather preferring to benefit from the equitable share.

### **3.4 Asymmetrical funding for local government:**

While the Municipal Fiscal Powers Act regulates surcharges on municipal services it is only directed at errant municipalities. It does not address the consequences of symmetric funding allocations to local government.

Municipal revenue is often driven by the economic condition of a municipality. In certain small municipalities it is not uncommon to find a small valuation roll which translates into minimum rating opportunities for the municipality. This is often coupled with poor socio-economic conditions with the majority of constituents in need of free basic services, thus again severely reducing the ability of such municipalities to generate sustainable own revenue. The symmetrical approach to local government financing therefore has skewed outcomes. Weak municipalities situated in rural areas are treated the same as metro's. This may result in metro's having insufficient funding, while rural municipalities under-spend for various reasons including, the lack of capacity to spend. National treasury must therefore explore the option of asymmetrical funding for local government. Larger municipalities require different funding streams than small municipalities which have limited capacity to generate own income.

It is not only the distribution of resources that is problematic. National and provincial government is part of the supply cycle for local government. We need to evaluate whether national departments are spending enough on infrastructure and maintenance. Secondly, is the spending ratio as compared to the equitable share allocation, fair? Are current levels of municipal infrastructure spending adequate in terms of capital budgets? The answer is that not nearly enough is being spent on the replacement of assets and the maintenance of infrastructure. National departments therefore have a role to play in ensuring that this situation is remedied.

Municipalities also encounter barriers to accessing streams of funding from national and provincial government. In the case of the Municipal Infrastructure Grant, municipalities have to apply to be placed on the MIG register. It was not the original intention to have project-based approval for this grant. In many instances the barriers to accessing funding prevent municipalities who qualify to receive much-needed funding, from accessing it.

### 3.5

#### **Public investment versus private-led growth:**

In South Africa, restructuring grants have been directed at big cities. Some of the biggest programmes have been directed at urban reform. We need to evaluate the extent to which these programmes have been successful.

Brazil, comparatively, has adopted a system of poverty-driven investment. Public investment is largely as a result of state-led growth. It has a different model for coping with private-led growth. Municipalities, by agreement, set up autonomous agencies to provide services. This impacts on the quality of service and also raises issues around equity in local government. It raises the question of how to use federal surpluses to cope with local issues. Despite some of the positive gains from private investment, we should not lose the element of public investment and interest.

#### *The Indian experience:*

After decentralisation in India, 30% of municipal revenue was supplied by central government. In the 1990's this increased to 40%, a considerable percentage of local revenue. Many municipalities which tried to compete with the market no longer do so. The new municipalities are dependent on central government to provide grant money to fund local programmes. As a result, these municipalities are forced to take on central government reforms. A consequence of this system is seen in the crowding-out of private capital. Municipalities which can afford to go to the market do not do so because of the existence of these grants.

### 3.6

#### **Strategies for achieving shared growth**

South Africa has not created a developmental state. While reconstruction and development initiatives have been directed at municipalities, these have not been directed at "poor" provinces, limiting the impact of these initiatives to small gains at municipal

level. Strategic intervention for shared economic growth should be located at a regional scale in order to create optimal multiplier effects on the economy.

***What are key issues that must be addressed to create shared growth?***

a) Regulation of land

Municipalities continue to produce non-integrated human settlements. A White paper on land-use has been in the offing since 2000. Municipalities still use Township Planning regulations to build reconstruction and development housing. Zoning schemes that apply to townships are used to upgrade informal settlements into housing development projects.

There is no integrated approach to land use management. The Department of Land Affairs, in a Land-Use Management Bill attempted to introduce differences to the current system while not taking any steps to repeal old legislation and regulations. This creates two clumsy systems which have to be navigated by municipalities. At the local level, IDPs deal with land management- yet the Department of Land Affairs and the Department of Provincial and Local Government have not attempted to map a comprehensive approach to this issue.

b) Public Transport

Negotiating the function of public transport at the municipal level is a complex task. It is difficult to create the conditions which facilitate the benefits of economies of scale. Municipalities at times negotiate with parastatal transport-providers in a manner that fails to take the larger impact of their actions into consideration. As a result of skewed development, municipalities must consider the dual transport economy which exists at the local level. Mini-bus taxis, the railway and bus system together with the private taxi industry, co-exist and cater for the needs of different sectors of society. These needs have to be balanced accordingly to ensure an efficient transport system that connects

infrastructure, contributes to the growth of the city and allows citizens to access opportunities.

c) Housing

The national “Breaking New Ground” housing initiative simply does not go far enough. In adopting a regulatory framework that insists on building projects which produce brick houses, we set ourselves up for failure. Informal settlements are a phenomenon that is set to characterise the housing patterns of South Africa for at least the next 10 years. This is particularly true in view of the 40 % unemployment rate. In constructing housing strategies, we therefore cannot, of necessity, ignore this phenomenon, which continues to escalate. An in situ approach to informal settlements is required whereby we utilize strategies based on indigenous growth which will yield various outcomes over the next 10 years. The possibility of using rental stock has also never been fully explored.

d) Governance

While there appears to be agreement on the broader goals of government such as the built environment and shared economic growth, practice reveals that national departments have very different perceptions of how to achieve these goals.

The attitude of national departments to local government is a case in point. Institutionally, there are a number of line departments which depend on local government to be the end-deliverer of services. These departments have completely divergent perceptions of local government as demonstrated in the different approaches which they adopt to deal with municipalities. Without dialogue around common goals, all efforts to create substantial inroads into poverty at the local level will continue to be fragmented, with inconsequential results.

## **4. Session 4: Redefining the district structure**

### **4.1 Asymmetry in district roles:**

In view of the divergent experiences that have emerged from practice, there is consensus that the district structure of local government must be reviewed. However, the different options for restructuring the district framework as punted in the paper, all proceed from the assumption that there is a distinct role for districts to play. In reviewing the district structure we must interrogate the extent to which asymmetric conditions have shaped and influenced the performance of districts. Depending on the localised context, is there more than one role that a district municipality could fulfill? Would, for example, a district municipality in Potchefstroom, play a different role to that of Nkangala District Municipality?

### **4.2 The original vision for district governance:**

As a result of skewed development between urban and rural areas, districts were conceptualised primarily to play a redistributive role. The RSC levy was the re-distributive mechanism allocated to districts to achieve this purpose. Treasury has however since abolished this taxing power. In addition, districts also theoretically assisted in distributing capacity because rural municipalities have, and in certain instances continue to have, great difficulty in attracting professional skills to rural areas.

District municipalities were however conceptualised before the demarcation of local government in 2000 where the landscape of local government was changed from 830 municipalities to 283. Prior to demarcation there was a distinct urban/ rural divide. There was a perception that poverty was a rural problem and that the district was the governance structure that would primarily deal with these areas. After demarcation however, this strict distinction did not hold true- with the result that there are local municipalities which are forced to service so-called rural areas.

In order to fulfill their re-distributive role districts were meant to be strong, viable municipalities. This has not always been the case in practice, with certain local municipalities often being much stronger than the districts even to the extent that they are described as aspiring metros. A review of the district framework must therefore question whether the original objectives for district municipalities still exist and the extent to which these objectives can be achieved using other mechanisms.

While there is clearly still a need for regional planning to effect certain functions, like transport and other functions which require regional co-operation, the question remains whether the district structure is the most appropriate vehicle to achieve this.

#### **4.3 The governance role of districts *versus* its role as a distributor of capacity:**

When evaluating the performance of districts we need to ascertain whether the problem lies within the two-tier structure itself or, taking localised conditions into account, such as size, structure, socio-economic conditions etc, the problem is not endemic to a particular district or districts. The distinction between urban and rural districts in increasing variance must also be taken into account

This begs the question to what degree can the role of the district be framed as a governance role? What should districts be doing?

*The service delivery function:*

If we look at the water function, there are 47 district municipalities, 21 of these are Water Service Authorities. The rest of the districts do not perform the water function. Those which do perform the function, do not do so efficiently and effectively. Certain districts perform the function of roads and/or other co-ordinating functions. The sum of the service delivery functions of districts is therefore limited to these few instances. Furthermore, a

review of the Municipal Infrastructure Grant reveals that districts are the only category of municipalities that are under-spending on infrastructure.

*The role of districts as distributors of capacity:*

The location of a district is integral to its role as a re-distributive agent. Districts which are successful in this role are situated in B1 municipalities for example, Ugu, Cape Winelands, Nkangala. These districts are the most successful in attracting professional skills to service the district area. If, in a single-tier system of local government, we divorce these strong locals from the district, will they still be able to attract skills? Would this course of action only serve to remove the very reason for their success?

#### **4.4 Single-tier local government:**

The original construction of metropolitan municipalities envisioned a system of two-tier local government. However, practice revealed that the two-tier system did not work. Metro's then became single-tier municipalities. The anomaly of our system of local government lies in the fact that the deficiencies of the two-tier system of local government were then manifested in the district system. The six metros collectively contribute 65% to the GNP of South Africa. There are however, a number of type B municipalities which are aspiring metros, like Pietermaritzburg and Bloemfontein, which constitute hubs of economic growth and efficient service delivery. These municipalities are hamstrung by the district structure and would arguably, like the metros, benefit from single-tier local government.

Single-tier local government arguably presents many of the solutions to the problems that districts face. Districts are currently responsible for District Management Areas (DMA's). Surprisingly, the efficiency of the district in these large tracts of rural areas which comprise the DMA is infinitely better than in the urban area. Service delivery is considerably better,

as there is focused action with greater resources ploughed into service delivery as opposed to urban development.

There is therefore an argument for carving urban areas out of the district system and re-demarcating the district area into a single tier of governance. This would however, require a new funding formula to fund services in these areas as the re-configured district would not have a viable tax base.

#### **4.5 Maintaining political accountability in single-tier local government:**

##### **4.5.1 Sub-councils:**

While there are strong arguments in favour of single-tier local government, these arguments must take the imperatives of political accountability and local service delivery to communities into account. The metros and type B1 municipalities notwithstanding, there are certain municipalities which perform less than 20% of their functions. The likelihood of these municipalities ever being able to perform their full compliment of functions is extremely low. There is no reason for these municipalities to exist as separate corporate entities. For accountability purposes, however, these municipalities must exist. There are therefore strong arguments in favour of allowing these municipalities to exist as sub-councils of a strong, single-tier municipality.

The advantage of a system of sub-councils is that the local identity of the municipality is retained but the administrative duplication of two-tier local government is eliminated. The establishment costs of this system are minimal as existing municipal structures are utilised. The benefit of improved service delivery and quality control is the most advantageous result of this system. There are therefore strong arguments in favour of single-tier local government coupled with mechanisms like sub-councils to ensure political accountability.

#### **4.5.2 Critique of the sub-council system:**

##### *Geographic expanse of the district:*

A foreseeable problem with conflating local municipalities into one big municipal structure is the size of the new municipality. Sekhukhune District Municipality for example, has five local municipalities with approximately 116 wards. Some of these wards are extremely vast in expanse- making it difficult for councillors to co-ordinate activities. Inevitably, in wards of that size, the contributions of certain communities or sectors of the community are lost. The identity of places, and the ability of sub-councils to retain that identity is also an important consideration.

Another consideration relates to the viability of districts with such a huge service delivery area. Districts currently decide the water tariffs for water services and also have the taxing power for property rates in District Management Areas. It is difficult to make comparisons between the performance of district municipalities that have recently become water authorities and local municipalities which fulfilled this function in the past. It is therefore problematic to speak of simply locating these functions at sub-council level as the skills involved in delivering these functions are mostly centralised at either local or district level depending on the context

##### *Enforcing the delegation of powers and functions to sub-councils:*

One of the problematic aspects of the re-distributive function of the district municipality was the “big – brother” approach which emerged in practice. If the district mayor did not like a local mayor, inevitably it would affect allocations and the standing of that municipality within the district. There is no guarantee that these problems will not be replicated in the new system. Where local municipalities become sub-councils of one large district municipality, how certain can we be that delegation of powers to the sub-councils will take place? The delegation of powers remains within the discretion of the district council and is as a result, arguably still vulnerable to political manipulation. How do we

enforce delegation? A possible solution to this problem is ensuring that sub-councils have a minimum number of powers that cannot be manipulated.

#### *Advancing participatory democracy?*

We have to question the extent to which sub-councils enhance participatory democracy. Sub-councils do not have executive decision-making powers. In the process of re-configuring the district and transforming existing local municipalities into sub-councils, the executive decision-making power of these municipalities and the opportunity for the community to participate in this process is centralised. It may therefore be more feasible to maintain strong local municipalities in the current configuration and to centralise the service delivery function only.

Another question goes to where the legislative functions should be located in the re-configured system. The problem of proportional representation or “ATM councillors” must also be addressed.

#### **4.5.3 Districts wholly-owned by locals:**

An alternative model to single-tier local government is that of local municipalities taking complete ownership of the district. In this system locals would still be responsible for all key service provider authorities. The role of the district municipality would be limited to that of a strategic planning role coupled with shared service delivery to the extent determined by the locals. Owned by the locals, districts can then become as large and meaningful as they choose. Districts can pursue district-wide integrated plans and budgeting etc.

The district in such a structure would be a platform for shared delivery at a regional scale. The district would play the limited role of attracting scarce skills and back-office skills to be used on a shared basis. Customers and citizens would therefore still identify with their local municipalities.

*Governance structure:*

The governance structure of the district would be entirely comprised of the locals, much in the same as is depicted in Intergovernmental Forums. For example, where four local municipalities comprise the district, the four mayors could constitute the executive of the district.

*Finance:*

The financing of the district would be responsive. The district would be funded through the local municipalities. Locals purchase the shared services as they require it -the demand therefore determining in part, how large the district should be.

**4.6 Comparative experiences of two-tier local government:**

*Uganda:*

The Ugandan experience makes it difficult to conceive why contradictions exist in the two-tier district system of local government in South Africa. In Uganda, there are five tiers of government that all function well together.

In South Africa there appears to be political and administrative separation across the tiers. It is surprising that staff is recruited at the local level. In Uganda the District Health Manager appoints staff at both levels. Professionally, staff is appointed by and account to the District Health Manager. If they work at sub-council level, they are accountable to the community and sub-council for their performance. Professionally, however, they account to the District Manager. Where problems arise professionally- the District Manager is responsible for dealing with it. This arrangement ensures that there is a chain of professional accountability and that professional staff, in addition, are protected from the winds of political change that often blow when political heads change.

The local government structure is comprised of the District (headed by the District Chairperson); the Sub-County (headed by a directly elected mayor) and independent towns (also headed by mayors).

The different tiers collect taxes and put it into a collective pot. Taxes are then shared in percentages. Transfers from national government are also placed in the pot and distributed accordingly.

The population and income of the various sub-counties differ. While certain sub-counties are considered to be financially healthy others are unable to collect even 50% of their income. This shortfall is dealt with in terms of equalization grants which are allocated according to the needs and demands of the population.

#### *Pakistan:*

A complex situation exists in Pakistan. There is a basic separation of powers between the district and local municipalities. The District is responsible for education and health, while the locals are responsible for water and sanitation. These divisions of functions notwithstanding, as a result of constraints at the local level, the districts are forced to remain involved in the delivery of these services. The status quo is that neither sphere knows what they are responsible for. The biggest risk of the two-tier system arguably lies in unclear definitions of powers and functions.

#### **4.7 Taking the debate forward:**

##### *Addressing the root of capacity constraints:*

While the original objective of district municipalities was to act as a distributor of capacity, we need to question the wisdom of structuring the district system around the need to address capacity constraints and infrastructural backlogs. In other words, was an institutional response the solution to the problem of capacity constraints? In the former

homelands for example, there is a pointed coincidence between weak governance institutions and poor socio-economic conditions. Another question of critical importance to the functioning of the district system is the efficacy of restructuring grants in addressing capacity constraints. Is there a possibility that these grants were considered in the absence of making proper capacity assessments?

National government has the constitutional injunction to deliver services. What does the national government do to place the necessary skills in rural communities to achieve service delivery? Perhaps we need to pay for cultivating skills, and that should be the imperative of the Single Public Service.

*Guarding against a “one-size fits all” approach:*

A review of the district structure cannot follow a “one-size -fits all” approach. In Metsweding, a district municipality in Gauteng was created out of nothing, with no apparent resources for sustainability, setting the district up for failure. In Sedibeng on the West Rand, however the district has carved a role for itself, and continues to fulfill a meaningful role in that area. While a single-tier system of local government is recommended, it should not be achieved at the costs of any gains that have been made in the current system. To this end we need to ensure that a “one-size fits all approach” does not create more harm than it does good.

*Intergovernmental relations at the local level:*

All of the options advanced for restructuring the district either minimises local municipalities in favour of the district municipality or *vice versa*. However, we at times seem to forget that co-operative governance and intergovernmental relations do not only find application in the relationship between provincial and local government, but must also find application within local government structures – beyond the forums that have been created for this purpose.

This intra-local government relationship must move beyond the current paradigm of hierarchy to be defined according to the new roles created in the re-configured system. For any system to succeed it is imperative that these institutions learn to respect each other according to the new functional roles that they are called to fulfill.

If we examine the current relationship between districts and provinces, it is clear that provinces have failed to make in-roads into municipalities. It is therefore imperative to effectively use the structure that replaces the district system to initiate meaningful regional relations in order to achieve regional growth.

***Looking forward:***

Trying to capture the debate of districts in terms of rural and urban divides will undo what the demarcation process sought to achieve, which was to address patterns of poverty and inequality.

In embarking on the transformation of the district structure, we face two challenges. The first is that the upper tier of local government is not able to glean accountability. If the upper tier is removed in the re-configuration process we then need to determine how the lower tier will be transformed into viable entities. In taking this debate forward the following must be considered:

- a) A cost-analysis must be undertaken for each option as well as the projected advantages and disadvantages of each option.
- b) With the option of shared service centres, locals can decide when it is best to use these centres. The viability of creating bulk entities for water, sanitation and electricity should also be explored.
- c) What is most needed is a simple, efficient system of governance with real accountability. In order to achieve that, powers and functions must be

appropriately placed. Fundamentally, the system of local government must be flexible enough to accommodate the range of local conditions across South Africa. This system must, in addition, be able to evolve as local conditions evolve, and should be strong enough to withstand change.

## **5. Session 5: Overregulation of local government**

### **5.1 Stifling local innovation:**

A significant consequence of the over-regulation of local government is that it stifles local innovation. Over-regulation may be applied to such an extent that it diminishes the very objective of developmental local government. Innovation on the part of municipalities then only takes place outside of the regulatory framework as “irregular” or “unauthorised” action. A municipality contemplating such action has to undertake an opportunity-cost analysis to determine whether the result of the unauthorised, innovative practice outweighs the risk of falling foul of the regulatory framework. The experience of the Drakenstein Municipality is a case in point.

The Drakenstein Municipality had specific issues that needed to be addressed, namely:

1. Poor community participation in the Integrated Development Plan and Budgetary processes;
2. Poor revenue collection in the context of an ingrained culture of non-payment in the municipal area.

To address the issue of community participation the municipality advertised that they would be distributing 2-minute noodles at ward meetings. Attendance increased, and as a result, greater community participation was secured.

To address the problem of poor revenue collection, the municipality advertised that it would enter all residents who consistently paid their rates and service charges into a draw. At the end of every six months one of these residents would be the lucky recipient of a car. While this went against the MFMA, the results were so positive that the irregular expenditure on the cars was overlooked.

While the results of the unauthorised innovative action in the above example yielded sufficient dividends to justify the action, municipalities in general are too fearful of the consequences of stepping out of line. A criticism by municipalities is that they feel as if they are constantly under a microscope, both administratively and politically. Councillors have no authority to make decisions outside of a regulatory framework. The cumulative result of the foregoing, is that municipalities are inhibited from dealing with real issues.

## **5.2                    Legislation as an inappropriate tool of regulation**

A balance must be struck between over-regulation and regulation that is necessary. If there is a problem, it is automatically assumed that it must be legislated, whereas legislation and regulations are not the only mechanisms of regulation. It is therefore imperative that we guard against knee-jerk reactions. In instances where regulation is required, it may be more feasible and less disruptive to evaluate existing objectives, norms and targets, eliminate obvious impediments to achieving these, and find more creative ways to achieve these ends.

### *The intended and unintended consequences of prescriptive legislation:*

Legislation at times is too prescriptive and detailed. It gives credence to the adage that the “devil is in the detail”. Not only does over-prescriptive legislation have an obvious impact on the functioning of local municipalities but the unintended consequences of detailed legislation are often as damaging. An example is found in the national directive that uniform rates must be applied for rating residential properties. The unintended

consequence of this provision is that vacant land cannot be rated as such, but only as residential property without improvements.

*The origin of legislative initiatives:*

While legislative initiatives appear to be neutral, there is no certainty with respect to who decides when and how law is written. As these decisions are vulnerable to manipulation, there appears to be no trust in the system. There are very few opportunities to influence when and how legislation is initiated. In order to eliminate what appears to be a measure of arbitrariness in the system, we need to clearly set objectives before embarking on any legislative process.

By questioning the source of legislation, however, are we not questioning the democratic legislative process? Legislation originates in national departments. Furthermore, it is a myth that policy-makers cannot operate with restraint. The objective of policy-making is never to go to point zero. We need to question why many of the critiques of current legislation were not presented at the time of promulgation, for example, of the MFMA.

That being said, there appears to be less regulation in more recent legislation directed at local government. Often, however, when legislation is submitted to Portfolio Committees in Parliament, members question why the legislation is not as prescriptive as earlier Acts such the Systems Act for example. Perhaps there is need to alert members of parliament to the dangers of over-regulation and the option of finding different ways outside of legislation to regulate local government.

### **5.3 Navigating complex local systems:**

*Management tools- linking processes with outcomes:*

A key problem at local government level is that organisational goals are legislated while the processes for achieving those goals – or managing these processes are largely left to the discretion of staff. This begs the question of whether institutions put the appropriate management tools in place to ensure that staff are enabled to deliver. Beyond legislating outcomes, the greater need therefore lies in designing the processes that will achieve desired outcomes.

The complexity of the system of local government has resulted in a shortage of appropriately-skilled staff to staff municipalities. The system is also reaping the results of the practice of appointing politicians as administrators. A huge consequence of the restructuring of local government as well as the implementation of affirmative action appointments is that we have lost much of its institutional memory. New appointees have been thrown into the deep end- with very little experience and high performance expectations of navigating the exceptionally technical local government system. Intergovernmental relations add another dynamic to this problem, with even national departments being uncertain of their expectations of local government. An absurd example of this is demonstrated by the fact that national departments cannot even agree on reporting formats, the content of those reports notwithstanding. There is however, great need to exercise caution in the manner in which we approach these challenges as local government is still a relatively young, unsettled system that continues to be vulnerable to change.

## 5.4 The effects of over-regulation:

### Technical instruments and processes:

The technical instruments and processes which municipalities are forced to engage, often act as impediments to service delivery and positive developmental action. The reporting duties of municipalities are particularly onerous. It is recommended that a study be commissioned on the IDP process as well as the requirements of the MFMA, as two key processes that consume municipal energy. It is doubtful whether prior to implementing IDP's, capacity assessments were undertaken to ascertain the ability of municipalities to compile these instruments. In a chase for compliance, the drafting of IDP's particularly in the initial phase of implementation, was often out-sourced to consultants, defeating the collaborative planning ethos that they were intended to achieve.

An apt example of another cumbersome process that municipalities have to contend with is found in section 78 assessments which have to be conducted in terms of the Systems Act. Often the expense incurred in hiring consultants to review the cost implications for out-sourcing a service is more costly than the contract itself. There should be a simple procedure for a small municipality to be exempted from this provision. This cumbersome procedure essentially prevents a small municipality from outsourcing services, even where the context clearly indicates that it is more cost effective and efficient to do so.

### Duplication

The problem of duplication also comes to the fore. There are two systems of performance management in the Systems Act and the MFMA. Officials are consumed with ensuring that they meet the requirements of both performance management systems, which at times are at odds with each other. This places an unreasonable burden on officials.

### Personal liability:

While the MFMA is a good instrument of regulation and was certainly necessary to establish financial systems in the new local government dispensation, its regulatory framework now acts as a deterrent to municipal action. In practice, as a result of the very real personal liability risk which is carried by municipal officials, almost every discussion and/or decision related to municipal affairs necessitates the presence of lawyers. Not only does this create delays in municipal decision-making, but it weighs heavily on the budget. It is also an expense which is not well-received by the public as it is viewed as a waste of local funds, particularly in small municipalities with limited budgets. Increasingly, highly qualified and experienced municipal managers are the casualties of this system. An established, professional municipal manager recently resigned from his position in a metro because he was not prepared to endure working under the threat of personal liability.

Unattainable goals:

Another problem of over-regulation relates to the setting of unattainable goals. The bonus incentives for section 57 managers are a case in point. In order to achieve a bonus of between 10 and 14%, municipal managers must have a performance rating of 150% in respect of the performance objectives set. This is virtually impossible to attain. The result, is that it encourages illegality by setting lower, more attainable performance targets.

## **5.5 Creating the balance between regulation and overregulation:**

In South Africa, the system of governance is essentially hierarchic with elements of decentralisation. Essentially, what national government does impacts on local government. Elements of decentralisation can be seen for example in the Municipal Infrastructure Grant, the purpose of which is to decentralise decision-making on capital infrastructure projects. Public participation is meant to allow local in-put to shape decision-making.

There are however hazards which accompany uncontrolled autonomy. In certain instances it assists creativity and in other instances greater regulation is required. For example the duty of support by provinces must be regulated. Land-use management must also be regulated. Greater regulation is required when municipal interests are at stake. The example quoted earlier relating to mining companies that are situated in the municipal area aptly demonstrates this. The State, who leases the land to these companies, is the sole beneficiary of this arrangement. Municipalities in whose jurisdiction the mines are situated should receive some form of benefit from this arrangement, whether it is in the form of rates or some other benefit.

## **5.6 Intergovernmental relations:**

Provinces have not fully explored the ambit of their regulatory power. The status quo may however not always remain the same. The danger of open-ended regulatory discretion is that it is vulnerable to political and/or institutional manipulation. When provinces become fully alive to the possibility of their regulatory powers, it will be detrimental to local government autonomy.

Another dynamic to intergovernmental relations is the sphere of influence which local government has and the extent to which the voice of local government can shape national policy. Local government continues to play a very limited role in defining its own role as a sphere of government. Local government representation on the ANC national executive committee is currently limited to three representatives, which translates into very little influence over national policy.

Municipalities must bear responsibility for articulating their views on key issues – but as a result of being consumed with the myriads of tasks and processes involved in running a municipality, they do not always have the luxury of time to do so. Other public institutions such as SAGLA must be more vigilant in projecting the voice of local government. The Public Service Commission for example, should have done a survey of

municipal officials to determine what makes their job worth doing and are what the immediate impediments to achieving their objectives.

## **5.7 Critical issues to take forward:**

- a) In summary, while local government is an autonomous sphere, it operates within a hierarchical structure that must be more flexible to respond to local innovation;
- b) There is a need to look at the specifics of over-regulation, where the rules defeat the objective. We need to move away from generality and find examples on specifics to gain a clear perspective of the scope of the problem and gain understanding of how to address it. For example, it would be very useful to gather municipal managers and national departments around one table to determine how many problems are created by over-regulation.
- c) Regulation must however be diversified to take different forms- regulation need not always be negative. Failure to minimise the negative consequences of regulation can result in a loss of legitimacy and respect for the system. Comparatively, in Brazil, there is no one formula of checks and balances which applies to both the economy and the political system. There are no uniform systems in place. Laws, in certain contexts, that are built around coercive institutions. Others are built around fiduciary institutions like the market or economy. There may be a need for new institutions and forms of regulation, around which, consensus is gained and imagination or innovation can be used.