15 YEARS
OF DEVELOPMENTAL AND
DEMOCRATIC
LOCAL GOVERNMENT
2000 - 2015
15 YEARS REVIEW OF LOCAL GOVERNMENT

CELEBRATING ACHIEVEMENTS WHILST ACKNOWLEDGING THE CHALLENGES

December 2015

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Produced for the South African Local Government Association (SALGA).
The Celebration of 15 years of democratic Local Government in South Africa encourages us to reflect on the journey Local Government has made since the first democratic elections held in the year 2000. Undoubtedly, the journey has been challenging but there have been significant moments and achievements worth celebrating. This report highlights the institutionalisation of Local Government and creates a number of reflection points that not only encourage us to look back with pride at our collective achievements but to develop a transformative agenda on the remaining and persisting institutional challenges.

It is hoped that many people read this report so they may understand Local Government’s unique yet exciting journey, a unique journey replicated nowhere else in the world. I invite all of those in South Africa and partners to join the sector in celebrating these significant milestones.

These milestones include:

- Creating a wall to wall system of democratic, non-racist and responsive local government;
- Deepening democracy by entrenching public participation in the affairs of local government; and
- Implementing institutional systems to deliver services where previously there were few services or no services at all.

We salute the men and women who have selflessly contributed to the work of Local Government and to ensuring that the people of South Africa enjoy equal access to basic services in realisation of their human rights. We undertake to support the Back to Basics strategy to improve the performance of the sector.

Cllr. Thabo Manyoni
South African local government is the newest sphere of government and is only now celebrating its fifteenth year of existence in its current form; a democratic and inclusive vehicle of service delivery. This report represents the route local government has taken on its journey to deliver on its constitutional mandates. This journey is in fact a world first as it entailed the total redesign of institutions and governance systems to create wall to wall local government with a mandate to create accessible services to all across the length and breadth of the country.

The report highlights the challenges local government has overcome as well as the persisting challenges confronting the sector. Many municipalities are struggling to get the basics right while others have embarked on innovative and transformative projects.

The achievements of the sector are reflected in the increased number of people who now have access to many services of whom previously had no access to services at all. The delivery of services in rural areas and the pace at which it has proceeded, despite the continued settling of the sector and the introduction of new legislation and regulations, has seldom been seen anywhere else in the world. Major differences exist between the capacities of municipalities and, despite the compliance burden created by overregulation of the sector, many of them still deliver a full basket of their mandated services. Much of local government still pursues excellence in compliance and service delivery while others have exceeded expectation in the fulfilment of their mandates and are capable of doing more.

The dedication of many people in the sector has enabled the growth of Local Government efficiencies while sustained collaborative partnerships have created improvements in reporting outcomes in financial management and in management practice.

As CEO, I would like to thank the many dedicated people in the sector who have made the telling of this socially transformative local government story possible. Documenting the progress of Local Government’s journey is a way of ensuring that the contribution of all these people is recognised and forms part of our national effort to create memory around socio-economic transformation.

Mr Xolile George
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## ACRONYMS

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<th>Description</th>
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<tr>
<td>COGTA</td>
<td>Department of Cooperative Governance and Traditional Affairs</td>
</tr>
<tr>
<td>CSIR</td>
<td>Council for Scientific and Industrial Research</td>
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<tr>
<td>DBSA</td>
<td>Development Bank of Southern Africa</td>
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<td>DME</td>
<td>Department of Minerals and Energy</td>
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<td>DoT</td>
<td>Department of Transport</td>
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<tr>
<td>DPLG</td>
<td>Department of Provincial and Local Government</td>
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<tr>
<td>DPME</td>
<td>Department of Performance Monitoring and Evaluation</td>
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<tr>
<td>DWAF</td>
<td>Department of Water Affairs</td>
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<tr>
<td>EC</td>
<td>Eastern Cape</td>
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<tr>
<td>ESKOM</td>
<td>Electricity Supply Commission</td>
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<tr>
<td>FFC</td>
<td>Financial and Fiscal Commission</td>
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<tr>
<td>FREELOGA</td>
<td>Free State Local Government Association</td>
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<td>GIZ</td>
<td>Deutsche Gesellschaft für Internationale Zusammenarbeit</td>
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<tr>
<td>IDASA</td>
<td>Institute for Democracy in Africa</td>
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<tr>
<td>IDP</td>
<td>Integrated Development Plan</td>
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<tr>
<td>IEC</td>
<td>Independent Electoral Commission</td>
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<td>ISRDS</td>
<td>Integrated Sustainable Rural Development Strategy</td>
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<td>JSB</td>
<td>Joint Services Boards</td>
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<td>Kwanaloga</td>
<td>KwaZulu-Natal Local Government Association</td>
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<td>KZN</td>
<td>KwaZulu-Natal</td>
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<tr>
<td>LGNF</td>
<td>Local Government Negotiating Forum</td>
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<td>LGSA</td>
<td>Local Government Strategic Agenda</td>
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<tr>
<td>MDB</td>
<td>Municipal Demarcation Board</td>
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<tr>
<td>MEC</td>
<td>Member of the Executive Council</td>
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<tr>
<td>MLGI</td>
<td>Multi-level Government Initiative</td>
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<tr>
<td>NCOP</td>
<td>National Council of Provinces</td>
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<tr>
<td>PFMA</td>
<td>Provincial Finance Management Act</td>
</tr>
<tr>
<td>PPC</td>
<td>Presidential Coordinating Council</td>
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<tr>
<td>RRCC</td>
<td>Revenue Raising Capacity Correction</td>
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<td>RSC</td>
<td>Regional Service Councils</td>
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<td>SALGA</td>
<td>South African Local Government Association</td>
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<tr>
<td>SRSA</td>
<td>Sport and Recreation South Africa</td>
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<td>VD</td>
<td>Voter district</td>
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<tr>
<td>WECLOGA</td>
<td>Western Cape Local Government Association</td>
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ACKNOWLEDGEMENTS

This report is a product of intensive and iterative research since 2013. This process involved a number of key choices around which information would be included and excluded from the final product. It has involved numerous people at different stages to whom the authors are indebted. The support from the SALGA governance and administrative structures, as well as SALGA external partners was instrumental in shaping the report.

The research project was commissioned by SALGA to Wendy Ovens and Associates. The final research product has had considerable revisions by Seana Nkhahle, Antonette Richardson, Nomusa Ngwenya, Justin Steyn and Rachel Manxeba.

The team responsible for taking this report to publication extend gratitude and thanks to Nico Steytler, Marx Mupariwa, Lungelwa Diulisa and Thabiso Thamaga for their various contributions as well as the designer Mthokozisi Zwane.

The report is developed to facilitate reflective dialogue. Some of the feedback from these dialogues and other sources may be incorporated into subsequent updates to the report.
EXECUTIVE SUMMARY

Local government in South Africa is assigned a crucial role of rebuilding local communities and environments, as the basis for a democratic, integrated, prosperous and truly non-racial society. The Constitution of the Republic of South Africa (1996) mandates local government to: provide democratic and accountable government for local communities, ensure the provision of services to communities in a sustainable manner, promote social and economic development, promote a safe and healthy environment and encourage the involvement of communities and community organisations in the matters of local government.

In addition, Local Government is mandated to promote the Bill of Rights, which reflects the nation’s values of human dignity, equality and freedom, and uphold the principles enshrined in the Constitution. Moreover, the White Paper on Local Government establishes the basis for a new developmental local government system, which is committed to working with citizens, groups and communities. The purpose of this networked relationship is to create sustainable human settlements that contribute to the provision of a decent quality of life for all citizens and to meet the social, economic and material needs of communities in a holistic way.

In the year 2000 the first democratic local government elections were held and Local Government was established as a third and independent sphere of government to deliver the said constitutional imperatives as well as to address the injustices of the past system of local governance. Consequently, in December 2015, the sector will be celebrating 15 years of existence. However, democratising Local Government has been a complex experience with the pre 1994 activities informing and shaping the transformation process. The provision of basic services such as potable water, sanitation, refuse removal and electricity needed to be extended, boundaries redrawn to deracialise and rationalise the local government, new structures established, the adoption of the Constitutional allocation of powers and functions and the extension of local government into areas which were yet to experience government at this level. It was on this shaky and difficult ground that the transformation of local government commenced and in which the South African Local Government Association (SALGA) was established and operated. It should be acknowledged that as much as municipalities were expected to deliver these obligations, they had little or no prior experience.

It is against this backdrop that SALGA commissioned a study dedicated to reflect and understand the Local Government journey for the past fifteen years.

This decision emerged from a growing observation that SALGA, as a sole representative voice of Local Government; requires insight as far as local government issues are concerned. This insight will enable SALGA to provide informed guidance, support, representation and advice to municipalities. In addition, SALGA will be enabled to lobby and advocate, based on empirical evidence, on matters concerning the sector. Moreover, the insight will further provide municipalities with an opportunity to reflect on their own journey and be in a better position to lead and influence discourses concerning their own affairs.

This study is an overview of the journey Local Government has made since 2000 when the first democratic Local Government elections were held. The aim is to provide the general reader with a reference guide that provides an informative reference point and insight concerning the Local Government’s journey thus far. The report focusses on the high level institutional journey of local government. The themes covered in this report focus primarily on how local government has assumed its current form (e.g. demarcation of ward and municipal boundaries and the setting up of municipalities and associated structures).

The institutional journey details the development and implementation of structures, systems and guiding legislations. Some high level examples of key service delivery achievements by SALGA and municipalities are identified to illustrate the journey. The research balances between high level narratives and specific practical examples; it is not intended to be more than a general overview of the sector. It is primarily a backward looking document that narrates the major events within the sector. Its aim is to provide insightful guidance that would assist shape dialogues and engagements between various actors on issues affecting Local Government. It is envisaged that this narrative would further assist influence the reconstruction of a developmental Local Government agenda. Finally, this study should be considered a baseline that has
sufficient applicability to guide the initiation of further knowledge work around observed issues within the sector.

The overall 15 Year Overview is based on the following three focus areas:

1. The local government journey post 1994
2. What have been the significant achievements within the local government sector?
3. Which aspects need improvement to promote the stability, efficiency and effectiveness of local government in South Africa?

The report broadly addresses the following aspects, details of which are discussed in subsequent sections and chapters:

- Sketching the establishment of local government
- Establishing Organised Local Government
- Bedding down the powers and functions
- Service delivery – mechanisms, trends, progress and challenges
- Fiscal Framework and Financial Management
- Institutionalising Democracy
- Local Government Support Programmes

**SKETCHING THE ESTABLISHMENT OF LOCAL GOVERNMENT**

This section of the report presents the process followed in the establishment of local government, the legal and policy framework and the demarcation of municipal boundaries. The establishment of democratic local government was a long and difficult process. Given the complexity, the transformation of the sector was undertaken in three phases namely, the pre interim, the interim and the final phase. However, the unfolding of the establishment was strongly influenced by the pre 1994 events. The emergence of the Local Government Negotiating Forums, The Pre-Interim Phase: 1993 – 1995, The Interim Phase: 1995 – 2000 and Final Phase: Democratic Local Government – 2000.

The establishment of democratic non-racial local government, in accordance with the Constitution, required drafting of extensive legislation. All aspects needed to be addressed including the demarcation and management of boundaries, establishment and management of the structures and systems and financial management. Local government was being established anew! During the interim period, Provincial Demarcation Boards were established to prepare the outer boundaries and ward boundaries for the transitional councils. The first Board was tasked with the responsibility of demarcating all municipal and ward boundaries towards the local government elections in December 2000 and with the establishment of structures for the final phase of local government transition.

The implementation of the cross boundary municipalities presented a number of operational challenges. Cooperation at both the local and provincial levels was difficult, leading to service delivery confusion, underperformance and in some instances, duplication of functions.
ESTABLISHING ORGANISED LOCAL GOVERNMENT

The importance and need for organised local government was acknowledged as necessary to support the transformation and the developmental responsibilities of the sector. The Organised Local Government Act (the Act) was enacted in 1997, prior to the finalisation of the Local Government White Paper and the introduction of the basket of local government legislation. The roles and responsibilities for organised local government is spread across a wide range of legislation such as the Constitution, Municipal Systems Act, Municipal Finance Management Act and the Intergovernmental Relations Act. The establishment of municipalities in 2000 saw a dramatic reduction in the number of municipalities from 843 to only 284 local, district and metropolitan structures.

Key legislation was introduced which required the establishment of a single bargaining chamber for negotiating salaries and wages for the local government sector. Many councillors and officials entered the sector for the first time with little or no experience of local government’s operations and the legal framework. Moreover, this occurred within an environment of massive spatial reconfiguration and the establishment of new structures and systems which resulted in a significant departure from the historical practices.

BEDDING DOWN THE POWERS AND FUNCTIONS

Post 1994, the local government transition saw a phased in approach to the establishment of municipal powers and functions. The Local Government Transition Act No 209 of 1993 clearly outlined the powers and functions for metropolitan councils and the metro sub-structures in schedule 2 and 2A respectively. For all other transitional structures, the Act was relatively silent. It suffices to say that the status quo remained i.e. the functions rendered were the same as those performed by the disestablished white local authorities. Greater clarity was introduced in the final Constitution.

Local government powers and functions are outlined in Schedule 4 Part B and Schedule 5 Part B of the Constitution with the metropolitan municipalities having all of these functions. However, the Constitution requires a division of powers and functions between category B and C municipalities. This occurs in Section 84 of the Municipal Structures Act. Implementing the division of powers and functions between local and district municipalities has been difficult. Instead of “taking the plunge” and allowing the system as anticipated in the legislation to come into effect, an amendment to the Structures Act was made to allow the newly established municipalities in 2000 to continue performing the “status quo” of the interim phase of local government transformation. The main reason for this was to ensure that municipalities were able to stabilise their structures and systems prior to any major reorganisation of powers and functions.

SERVICE DELIVERY – MECHANISMS, TRENDS, PROGRESS AND CHALLENGES

The Municipal System Act introduced the requirement for municipal planning to be developmentally oriented in order to achieve the objects as contained in the Constitution and together with other organs of state contribute to the progressive realisation of the fundamental rights linked to the environment, property, housing, health, water, social services and education. The Act required that municipal integrated planning must be aligned with that of other municipalities, provincial and national government through a system of cooperative governance. It also became a legislative requirement for municipalities to undertake extensive public consultation in the formulation, implementation and in relation to overall performance.

When examining the Census results for 2001 and 2011, it is apparent that significant progress has been made in relation to addressing the basic service backlogs. Interestingly, for those functions for which other agencies are part of the delivery process, such as Eskom and water boards, greater progress appears to have been made. Conversely, in the case of refuse removal which has largely remained a service
rendered by the municipality only, less progress has been reported. However, it should be noted that in some areas, especially in the so called B3 and B4 municipalities, such services were only introduced within the last ten years with the municipalities still needing to develop the necessary capacity.

FISCAL FRAMEWORK AND FINANCIAL MANAGEMENT

The Constitution outlines the fiscal powers and functions for local government which includes two key aspects. The Constitution includes a clause which states that there is no obligation on the national government to compensate provinces or municipalities that do not raise revenue commensurate with their fiscal capacity.

Notwithstanding the acknowledgement in the White Paper in relation to the lack of a revenue base in many parts of the country, it still made an underlying assumption that the average municipality was able to “finance 90% of their recurrent expenditure out of own revenue”. The RSC levies were replaced with a RSC Replacement Grant.

In order to address the lack of a revenue base in a number of municipalities, Local Government Equitable Share was introduced based on a formula. In 1998, a decision was taken by the then Department of Finance to determine the equitable share based on a formula to ensure that the allocations were objective, transparent scientific and beyond manipulation by policy makers or municipalities. A number of changes occurred during this early period with the formula reviewed in 2004 and implemented in the 2005/06 year. The formula was once again reviewed during 2012 and is once again currently under review.

INSTITUTIONALISING DEMOCRACY

The electoral system introduced in the 2000 local government elections ensured a system of non-racial democratic local government. Municipalities were established to include both proportional and locally elected representation in Council through a ward based system. Local municipalities and metropolitan councils comprise 50% proportional representation and 50% from the wards within the municipal area as a whole. From 2000, a district council has comprised of 60% of councillors who are representatives from the local municipalities within the district and 40% proportional representation from political parties. Prior to the 2011 elections, the 60% representation would have also included representatives from the District Management Area.

AN INTEGRATED EVALUATION OF LOCAL GOVERNMENT: 1994 – 2015

The conclusion relays the fact that the local government transformative processes have been lengthy and with unpredictable teething issues. Whilst undergoing significant change and upheaval, basic service provision needed to be continued with service backlogs urgently addressed. It is often easy to forget the history seeing only the challenges found within the sector today. However, it is important to acknowledge that there has been a number of notable victories over time.

While key achievements are acknowledged, the following issues need further consideration: the role of district municipalities, question of municipal viability, growing concerns with respect to corruption, need to rethinking powers and functions, need to review Local Government legislation, the role of the traditional authorities and considering municipal differentiation.
CHAPTER 1: INTRODUCTION AND FRAMING
Local government in South Africa is assigned a crucial role of rebuilding local communities and environments, as the basis for a democratic, integrated, prosperous and truly non-racial society. The Constitution of the Republic of South Africa (1996) mandates local government to: provide democratic and accountable government for local communities, ensure the provision of services to communities in a sustainable manner, promote social and economic development, promote a safe and healthy environment and encourage the involvement of communities and community organisations in the matters of local government.

In addition, Local Government is mandated to promote the Bill of Rights, which reflects the nation’s values of human dignity, equality and freedom, and uphold the principles enshrined in the Constitution. Moreover, the White Paper on Local Government establishes the basis for a new developmental local government system, which is committed to working with citizens, groups and communities. The purpose of this networked relationship is to create sustainable human settlements that contribute to the provision of a decent quality of life for all citizens and to meet the social, economic and material needs of communities in a holistic way.

In the year 2000, Local Government was established as a third sphere of government to deliver the said constitutional imperatives. Consequently, in December 2015, the sector will be celebrating 15 year of existence. It is thus against this backdrop that SALGA commissioned a study dedicated to reflect and understand the Local Government journey for the past fifteen years. This decision emerged from a growing observation that SALGA, as a sole representative and voice of Local Government; requires insight as far as local government issues are concerned. This insight will enable SALGA to provide informed guidance, support, representation and advice to municipalities. In addition, SALGA will be enabled to lobby and advocate effectively on matters concerning the sector based on empirical evidence. Moreover, the insight will further provide municipalities with an opportunity to reflect on their own journey and be in a better position to lead and influence discourses concerning their own affairs.

**RESEARCH METHODOLOGY**

The investigation reviewed in the main Local Government institutional framework with a specific focus on the following broad thematic areas:

i. The Local Government journey since 1994

ii. What are the significant achievements within the Local Government Sector?

iii. Which aspects need improvement to promote the stability, efficiency and effectiveness of Local Government in South Africa?

To that end the study mainly collected data using secondary sources including examination of policies, legislations related to local government, reports from key organisations (such as SALGA, COGTA, MDB, National Treasury, Auditor-General of South Africa (AGSA) Reports, Fiscal and Financial Commission (FFC), Statistics South Africa (Stats-SA) and reports from academic reviews of local government etc. The data was collated, analysed, and two sets of reports were written up between February 2013 and November 2014. The first report narrated the Local Government’s story whilst second report detailed the Organised Local Government’s journey. This report is a culmination of both reports.

This report is an overview of the journey that local government has made since 2000 when the first democratic local government elections were held. It is primarily a backward looking document that narrates the major events within the sector and should be considered a baseline study that has sufficient applicability to guide the initiation of further knowledge work around observed issues within the sector. The report focusses on the high level institutional journey of local government. The themes that have been covered in this report focus primarily on how local government has assumed its current form (e.g. demarcation of ward and municipal boundaries and the setting up of municipal structures). The institutional journey details the development and implementation of structures, systems and guiding legislations. Some high level examples of key service delivery achievements by SALGA and municipalities are identified to illustrate the journey.
SALGA will be embarking on a further process that will update this study. Subsequent publications will deepen the discussions around local government mandates and how local government has attained these by means of case studies.

Initial study findings were used to make inputs into The Presidency’s 20 Years Review of the South Africa’s Performance. Subsequently, the results were presented in the CoGTA Select Committee, 28 October 2013. Additional findings were presented and endorsed by the following SALGA governance and administrative structures: Executive Management Committee (EMT), 12 May and 13 July 2015, 2013, National Executive Committee (NEC), July/August 2013, Governance and Intergovernmental Relations Working Group (G&IGR), 14 June 2013, National Municipal Managers Forum, 8th of August, 2013, SALGA’s National Members’ Assembly, November 2014, SALGA Provincial Members Assemblies held in North West, Western Cape, Eastern Cape, Limpopo, Free State and Northern Cape of 2015.

TRANSFORMING LOCAL GOVERNMENT

The local government experience is a complex one with the pre 1994 activities informing and shaping the transformation process. Democratising local government has been an extremely challenging process. The provision of basic services such as potable water, sanitation, refuse removal and electricity had to be extended, boundaries were redrawn to deracialise and rationalise the local government, new structures established, the adoption of the Constitutional allocation of powers and functions and the extension of local government into areas which were yet to experience government at this level.

Where local government did exist prior to democratisation, it had been thoroughly discredited with rates and rent boycotts having been in place for a number of years. Significant service backlogs were found in the former township areas with extreme levels found in the deep rural areas where less than 5% of households had access to basic services. In such areas, there was either no or very limited local government capacity.

It was on this shaky and difficult ground that the transformation of local government commenced and in which the South African Local Government Association (SALGA) was established and operated. This report is based on secondary sources including an examination of the legislations, policies and strategies and other existing local government and related reviews. Data and analysis was drawn from SALGA’S own tools e.g. the Municipal Barometer as well as from organisations such as the Municipal Demarcation Board (MDB), StatsSA and National Treasury.

As far as the Local Government’s journey is concerned, the report, broadly addresses the following aspects:

- Sketching the establishment of local government
- Establishing the local government legal framework
- Preparing the municipal boundaries
- Establishing SALGA
- Bedding down the powers and functions
- The emerging fiscal framework and financial management
- Institutional democracy
- Building capacity in the sector

The conclusion of the report draws together identified trends emerging from the history of sector’s establishment, its core achievements over the past fifteen years and the challenges that need to be

1 Country performance since 1994. The Presidency drove the 20 Year Review regarding the country’s performance post 1994. A process in which SALGA was invited to provide perspective concerning the sector.
addressed to ensure continued growth and development of Local Government while deepening its ability to address the needs of local communities.

NOTES TO THE READER

This report is separated into 8 chapters, each with a concluding summary, and a conclusion. While there is a wealth of general information in this report, the general reader can read the executive summary and the chapter summaries to gain a rapid insight into the report. For the more committed reader, the chapters will provide a concise overview of the institutional development of South African local government for the 2000 to 2015 period.
CHAPTER 2:
SKETCHING THE ESTABLISHMENT OF LOCAL GOVERNMENT
The chapter covers the process of establishing a new form of local government that addressed the racist past of exclusion and promoted local democratic practices. This is interpreted through the process followed in the establishment of local government through the political boundary demarcation process and its associated development of a legal and policy framework.

PHASING THE ESTABLISHMENT OF DEMOCRATIC LOCAL GOVERNMENT

The establishment of democratic local government has been a long and difficult process, and still is an evolving process. The transformation of the sector was undertaken, given the complexity, in three phases namely, the pre-interim, the interim and the democratic phase. The unfolding of the establishment was strongly influenced by the pre-1994 events and, in both and large, promoted decentralization in order to advance the equal opportunity to a democratic experience to all citizens.

PRE 1994: THE EMERGENCE OF THE LOCAL GOVERNMENT NEGOTIATING FORUMS

The legal framework for the racialisation of local government was at its peak in the 1980s. In 1982, the Black Local Authorities Act led to the establishment of Black Local Authorities for servicing of South African townships. These areas not only had limited powers but also, no rates base and even the revenue received from the limited commercial or business sites was collected by the white local authorities. The province of Natal introduced Management Committees or “Local Advisory Committees” for the management of the Coloured and Indian areas. White areas on the other hand were managed by fully fledged municipalities with adequate powers and functions and rates income for services rendered. The Regional Service Councils (RSCs) and Joint Services Boards (JSBs) were established during this period in an attempt to support the then Black Local Administrations. The primary focus of the RSCs was to channel funds for development related projects within the politically turbulent black areas. However, the strategy did not meet with much success.

The lack of legitimacy of the Black Local Authorities, coupled with deteriorating conditions in township areas became the rallying points for mass mobilization during the 1980s with violent protests, extensive rent and consumer boycotts. The apartheid government attempted to introduce strategies such as the “wins the hearts and minds” programme to address the growing tension and unrest, which met with limited success. Civic organisations emerged, growing in strength in opposition to the apartheid government with concrete demands as illustrated in the slogan “one city one tax base”. By 1990, coinciding with the release of Nelson Mandela, the conditions in the townships had become untenable with an urgent need to resolve the crippling boycotts. The Soweto accord was signed in the same year, leading to a R500 million write off of rent arrears and the establishment of the first Local Government Negotiating Forum and the Johannesburg Metropolitan Chamber.

Similar forums were established around South Africa, with the white local authorities entering into negotiations with the local civic organizations for the improvement of services and conditions in the township areas. Many civic organisations were actively supported by organisations such as PlanAct and other members of the Urban Sector Network. These bodies served as an important training ground for those who later became councillors, members of the provincial and national legislatures and/or senior members of the

2 Van Donk and Pieterse, 2006
4 PlanAct was originally formed as a voluntary association of professionals in 1985. PlanAct’s work is directed towards promoting and supporting integrated human settlements and contributing to the local government transformation process and the development and strengthening of community-based organisations.
various administrations\(^5\).

The demand for a single tax base at the local level became a key point of resistance within the national negotiating process. “By 1993, the issue of local government had become a core issue at the multiparty Negotiating Forum, and together with disagreements over how the security forces would be controlled during the transition period, nearly brought the negotiations to a halt. Finally, to help break the deadlock, an agreement was reached on a phased local government transition process, a so called safe landing”\(^6\).

In support of this process, the Local Government Negotiating Forum (LGNF) was established which included representatives from national government, organized local government, the South African National Civics Association (SANCO), Trade Unions and political parties (van Donk and Pieterse, 2006). The negotiations lead to the enactment of the Local Government Transition Act 209 of 1993 which set out three phases for the establishment of democratic local government in South Africa.


During this phase, the negotiating forums became statutory structures in which “local white communities, notwithstanding their relatively small numbers, were guaranteed equal representation on the newly amalgamated local authorities” (Boraine, 2009). These structures, commonly referred to as “local governments of unity,” were tasked with a number of responsibilities including determining the budget and selecting the executive committee by two thirds majority.

Against, the backdrop of the late 1980s and early 1990s, these “holding” structures became an important mechanism for creating some stability at the local level before the first democratic national and provincial elections held in 1994 and the local government elections which took place in 1995 and 1996.

**THE INTERIM PHASE: 1995 – 1999**

During the interim phase, a total of 843 transitional councils were established throughout South Africa from the over one thousand disparate and racially defined local municipal units. Again, there was a skewed racial representation in councils with “…50% of the demarcated wards (which constituted 60% of the total number of seats, the other 40% being contested on a proportional basis) – a guaranteed 30% representation” for the disestablished white local authorities\(^7\).

There were a number of interesting features that emerged during the interim phase. Firstly, all areas outside of the metros were single tier, with the metros having a two tier system. Secondly, the system established was criticised as having an urban bias partially attributed to the individuals who were active in both the metro chamber and the LGNF. Another reason

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5 Van Donk and Pieterse, 2006  
6 Boraine, 2009  
7 Boraine, 2009
for this bias was a historical one. “During the apartheid years, systems of traditional leadership tended to provide services to the African majority living in homeland areas, whereas national departments or provincial administrations provided public services to areas largely under the control of white commercial farmers”. Importantly, prior to 2000, outside of the major urban areas and established white towns, there was very limited local government experience, capacity or infrastructure, with the exception of the district municipalities which emerged from the old RSCs and JSB structures. The interim Constitution and the Local Government Transition Acts failed to provide clear powers for the interim Councils, leaving the allocation of functions to be regulated by provinces. When examining the role played by the District Councils during the phase, the following is apparent:

- The District Council structures continued the role of the old RSCs and JSBs;
- This included the bulk services function and in some areas, the councils delivered services directly to communities;
- The District Councils were tasked with the responsibility of being development agents and in particular supporting the development of the new local government structures in the rural areas and small towns; and
- The District Council had a strong redistributive function.

During the interim phase, much of the foundation for the final phase in local government transformation was established. This included the adoption of the final Constitution which outlined the framework for democratic and developmental local government. This was further supported by the drafting of the Green and White Paper on Local Government, the passing of the Organised Local Government Act (52 of 1997), Municipal Demarcation Act (27 of 1998) and the Local Government Municipal Structures Act (117 of 1998). The Municipal Demarcation Board was established in February 1999, tasked with the responsibility of demarcating the outer boundaries and ward boundaries for the December 2000 local government elections.

**FINAL PHASE: DEMOCRATIC LOCAL GOVERNMENT – 2000 TO THE PRESENT**

The Constitution, adopted in 1996, required the establishment of three categories of wall to wall municipalities: namely, category A (single tier municipalities), category B (local municipalities) and category C (district municipalities which contain two or more local municipalities). This system of local government was finally established in December 2000 as the first term of fully democratic non-racial local government.

At this point, the two tier system, which had been in place within the metros during the interim phase, was abolished and the single tier metros were established. In addition, there was an introduction of the two tier system of local and district municipalities in areas where such a system was new and untested. The new system brought about some stability within the sector but also presented bigger establishment challenges such as the decentralised allocation of powers and functions, the need to develop a functional two tier system of district and local municipalities, managing redistribution, fair and transparent fiscal arrangements, the preparation of credible Integrated Development Plans (IDPs), the building of political and administrative capacity, addressing extensive service delivery backlogs, ensuring adequate systems of public participation and the management of intergovernmental relations. The real work of establishing effective and efficient local government had begun.

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8 Van Donk and Pieterse 2006
ESTABLISHING THE LOCAL GOVERNMENT LEGAL AND POLICY FRAMEWORK:
THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

The founding legislation for the establishment of Local Government in South Africa is contained in Chapter 7 of the Constitution. The first important shift from the legacy of the past was the establishment of local government as the third and independent sphere of government with the “right to govern, on its own initiative, the local government affairs of its community” (Act 6, 1996), with a strong emphasis on cooperative governance. The constitutional mandate assigned to local government to govern on its own initiative has been to promote development by means of 5 broad developmental mandates:

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

Secondly, the framework for developmental local government, which indicated that municipalities must structure and manage their administration, as well as their budgeting and planning processes to give priority to the basic needs of the community and to promote the social and economic development of the community on a decentralized model, was introduced. This included ensuring that all South Africans have access to housing, health care, education, food, water and social security.

In addition to setting out the categories of municipalities, the Constitution makes provision for the demarcation of boundaries by an independent authority (the MDB), the powers and functions to be performed by municipalities, and the establishment of councils and related matters. The fiscal powers for municipalities are outlined in Chapter 13, Section 229 makes provision for the imposing of rates on property, surcharges and other taxes and levies. Based on the imperatives of the Constitution, the Green and White Paper on Local Government intended to provide guidance as to the content requirements of this subordinate legislation.

THE WHITE PAPER ON LOCAL GOVERNMENT

The White Paper on Local Government addressed a number of key aspects for ensuring and supporting the transformation of Local Government. It remains a defining policy document in South Africa, offering an insight into the political intentions and thinking of the drafters of the local government legislation in the late 1990s.

It further provides an understanding of the reasons for the inclusion of some aspects in the legislation which have, over time, become anomalies in implementation. Importantly, this includes a description of the requirements of developmental local government as:

“Developmental local government is local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives.”

The White Paper further outlined the four interrelated characteristics of developmental local government

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10 The ability to local government to govern on its own initiative is subject to national and provincial legislation in accordance with the requirements of the Constitution.

11 The Green Paper on Local Government was the precursor to the White Paper on Local Government and as such only the latter will be addressed in this report.
to include maximising social development and economic growth; integration and co-ordination; democratising development; and leading and learning. It then identified the following as the four key developmental outcomes for local government:

- The provision of household infrastructure and services
- Creation of livable, integrated urban and rural areas
- Local economic development
- Community empowerment and redistribution

Toward the provision of household infrastructure and services, municipalities need to ensure:

- Good basic services;
- Extending basic services to all; and
- Providing affordable and sustainable levels of service.

In order to achieve these development outcomes, municipalities are required to engage in three interrelated approaches namely, integrated development planning, performance management, and community and stakeholder participation.

In addition to the policy provisions for framing cooperative governance, and local government political and administrative systems, the White Paper also addressed aspects relating to the institutional system. The most notable of these was the concept of metropolitan areas and district municipalities. Two types of metropolitan governments were proposed, one based on a ward committee system and the other with metropolitan substructures. With the exception of describing metros as being areas of densely concentrated centers of economic activity which generate the bulk of the country’s gross domestic product, little other guidance was given in relation to characteristics of metros for demarcation purposes. This was elucidated in the Municipal Structures Act.

However, the need for district wide management was clearly acknowledged in the White Paper. The document outlined the role for district municipalities beyond the year 2000 as being the following:

- District government should be reorganised around a set of standard planning and development regions and given key responsibilities for district-wide integrated development planning, including land-use planning, economic planning and development, and transport planning.
- The role of district governments as infrastructural development agents should be continued through the retention of Regional Services Council levies. District government should also provide bulk-services where required.
- The ability of district government to provide on-demand assistance, as well as systematic capacity building to municipalities will be promoted. The capacity-building role of district government should be focused on increasing the capacity of Category (B) municipalities to assume municipal functions.
- In areas where municipalities with inadequate administrative capacity are established, the capacity of district government to provide and maintain appropriate levels of municipal services will be legally permitted and actively fostered.

This intended role for the District Municipality was then captured in Sections 83 and 84 of the Municipal Structures Act. It is suggested that the need for differentiation and how to manage it was insufficiently explored. For example, inherent in the concept of developmental local government is the ability of municipalities to produce credible integrated development plans, have sufficient capacity and resources to address service delivery challenges, and to effectively monitor and be accountable for their performance. The spatial distortions resulting from the unjust historical apartheid legacy has left some areas plagued with poverty, limited local government capacity and infrastructure, coupled with extreme service delivery
backlogs. Without adequate national and provincial programmes for supporting and promoting local
government in such locations, achieving the developmental objectives remains a considerable challenge.

While the White Paper on Local Government described a number of challenges at the local level and how
these varied across space such as variations in local government experience and capacity, it could be
argued that the policy framed an approach which was to be consistently applied across the country – the
"ideal" or “prototype” system of local government. A mere four years into the democratic dispensation,
it was not easily possible to indicate that a different system of local government structures was necessary
and the form it should take. While this may have been appropriate for the time, it also contributed to the
structural and systemic flaws which have emerged over time. This has made implementation far more
challenging, creating the conditions for ad hoc decision making. Sharp shifts in policy direction from the
national level have had the unintended consequence of increasing vulnerability in the local government
system. As will be described later in this report, fundamental pillars necessary for supporting the district
system were removed, contributing to the difficulties in their establishment and the later questioning of their
relevance. Later debates over the future of district municipalities focused on their functions, where they
should exist, their funding models and how they should support municipalities.

THE BASKET OF LOCAL GOVERNMENT LEGISLATION

The establishment of democratic non-racial local government, in accordance with the Constitution,
required drafting of extensive legislation and the repeal or amendment of prior legislation. All aspects
needed to be addressed including the demarcation and management of boundaries, establishment and
management of the structures and systems and financial management. Local government was being
established anew.

Besides the Organised Local Government Act, local government legislation began emerging in 1998 in a
phased manner. It clearly followed the trend of identifying what needed to be in place first and by when
to ensure that structures could be established by the 2000 local government elections. Importantly, the
earlier legislation such as the Demarcation and Structures Acts were drafted in parallel with the finalization
of the White Paper on Local Government. The Municipal Systems Act was introduced in 2000; the Municipal
Finance Management Act was introduced in 2003 and the Municipal Property Rates Act in 2004. The
Municipal Fiscal Powers and Functions Act was introduced later in 2007.

Given the speed at which the drafting took place and the enormity of establishing a democratic nonracial
local government, it was inevitable that a number of amendments would be necessary to stabilize the
legal framework, structures and system at the local level. Broadly, these fall into the following categories:

- Ensuring Constitutional compliance
- Resolving aspects for which there was insufficient legal certainty and or addressing omissions
- Facilitating the implementation of the legislation and or the system of local government
- Resolving operational matters
- Addressing political imperatives
- Strengthening aspects relating to accountability and or ensuring effective management
- Creating greater efficiencies

A number of interesting trends emerge when examining the amendments over time. Between 1999 and
2002, the focus was mainly on ensuring Constitutional compliance and supporting the implementation of
local government post the elections in 2000. For example, the Structures Act was amended to allow for
an extension of transitional arrangements for a two year period from the end of 2000 to 2002. In 2002, an
amendment was introduced to allow for the settling of the political structures by allowing for a window
period for floor crossing. As the earlier years were about supporting and fixing, the later amendments
tend to be responses to emerging challenges within local government. For example, amendments to the Structures Act address aspects such as resolving matters relating to municipal manager contacts and ensuring effective systems are in place for interventions in the case of under- or non-performance of municipalities.

Figure 1: Broad description of the local government legal framework and associated amendments

<table>
<thead>
<tr>
<th>Year</th>
<th>Amendment Type</th>
<th>Act and Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>Municipal Demarcation Act</td>
<td>Municipal Structures Act</td>
</tr>
<tr>
<td>1999</td>
<td>Constitutional Compliance</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>Implementation</td>
<td>Cross Boundary x2</td>
</tr>
<tr>
<td>2002</td>
<td>Operational Implementation</td>
<td>Political Amendments x2 Implementation Repeal</td>
</tr>
<tr>
<td>2003</td>
<td>Political</td>
<td>Operational</td>
</tr>
<tr>
<td>2004</td>
<td>Municipal Property Rates Act</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>Cross Boundary</td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>Cross Boundary</td>
<td>Municipal Finance Powers and Functions Act</td>
</tr>
<tr>
<td>2008</td>
<td>Implementation</td>
<td>Operational Implementation Intervention &amp; maladministration</td>
</tr>
<tr>
<td>2009</td>
<td>Cross Boundary</td>
<td>Implementation</td>
</tr>
<tr>
<td>2011</td>
<td>Management and HR</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td>SPLUMA 2015</td>
<td></td>
</tr>
</tbody>
</table>

When examining the legislation, it is clear that it was drafted in accordance with the policy objectives as outlined in the White Paper of Local Government. However, at the point of implementation, amendments were made to key legislation contributing to possible weaknesses in the local government structures. For example, the Structures Act was amended to ensure that the provisions of Section 84 (the division of powers and functions between district and local municipalities) only took effect in 2003, some two years after the establishment of municipalities. Instead of allowing the system to be implemented as anticipated in the White Paper, the amendment allowed for a number of practices, in many instances inherited from the disestablished White Local Authorities to continue.
The Minister’s adjustment of functions, water and sanitation in particular, followed by the MEC’s authorization of the transfer of many remaining functions from the district to local municipalities significantly weakened the district system. In some areas, especially the Free State and Mpumalanga, the Districts were left with very few functions and as such have struggled to find identity and purpose.

It is suggested that the amendments mentioned above have significantly contributed to the underperformance of the District Municipalities contributing to the later questioning of the rationality of the two tier system of local government. Later debates on the function of the district system, particularly those emerging from the ruling party’s policy conference in 2012, described the future role of districts. Districts were to focus on coordinating, planning and support to local municipalities functions, remain in areas where there are weak local municipalities, benefit from a new funding model, and be strengthened through the government’s massive new infrastructure development programmes.\(^{12}\)

The district system still largely remains in the form it had prior to the ruling party’s Mangaung Conference. As a result there is continuity in their limited history, namely districts are predominantly reliant on transfers for about 90% of their revenue on average. The policy environment supporting districts is not sufficiently robust and places them at a risk of being both financially unviable and ineffective due to their accountability being primarily to their funding sources rather than the consumers of their services.

**DEMARCIATING BOUNDARIES**

**DEMARCATION OF BOUNDARIES –TRANSITIONAL COUNCILS**

During the interim period, Provincial Demarcation Boards were established to prepare the outer boundaries and ward boundaries for the transitional councils. As the structures were established prior to 1994, the appointments were made by the then Provincial Administrator and consisted of 50% statutory and 50% so-called non-statutory members comprising representation for NGOs, civic organisations and related bodies. In total, 843 local government structures were established. This included six nationally established metropolitan areas, namely Cape Town, Durban, Johannesburg, Pretoria, Vaal area and Kyalami/Midrand. The metros established for this period included a number of metropolitan transitional substructures. The 756 Transitional Local Councils were formed largely using the ‘nearest neighbour principal’ of the white town with the adjacent township areas. A complicated system of rural local government was established outside of the main cities and towns to include district councils, districts with remaining areas, transitional rural councils and transitional representative councils. The difficulties in the rural areas and the reason such a diverse system was introduced was partially due to the historical lack of local government in some areas, the existence of the RSC structures which dominated the landscape, and to some extent

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\(^{12}\) The ANC’s 53rd Conference Resolutions Mangaung 2012
the absence of negotiating forums in many such areas for the establishment of a more coherent approach to local governance.

The rapid demarcation of boundaries was aimed at facilitating the local government elections for the interim phase. The boundary preparation was taking place during the finalisation of the interim Constitution, the first democratic elections and the establishment of the provincial legislatures and administration.

Certainly, "...it was into this highly politicised environment, characterised by party political acrimony and serious disputes about inclusion/exclusion in local government boundaries, that demarcation boards, at least nominally independent, had to operate". The Provincial Demarcation Boards made recommendations to the MEC who was then empowered to amend the boundaries if deemed necessary. MECs in a number of provinces did not accept the recommendations from the Boards, leading to a different determination implemented especially in those areas of high contestation such as KwaZulu-Natal.

The Provincial Demarcation Boards made recommendations to the MEC who was then empowered to amend the boundaries if deemed necessary. MECs in a number of provinces did not accept the recommendations from the Boards, leading to a different determination implemented especially in those areas of high contestation such as KwaZulu-Natal, Gauteng and the Western Cape. It can be argued that given the nature and structure of the Boards as well as the process and the role of the MEC in finalising the boundaries, the interim local government structures that were finally established tended to address political rather than functional imperatives. As noted in a previous section, the interim structures did not support a fully democratic process at the local level with 50% representation being drawn from the former white local authorities. While the ANC had won the elections at the national level, it was essential to have effective representation at the local level to support the transformation that needed to take place in South Africa. This short term gain of politically determined outer boundaries was seemingly appropriate for the time.

DEMARCATION OF BOUNDARIES – 2000 LOCAL GOVERNMENT ELECTIONS

The independent Municipal Demarcation Board was established in terms of the Local Government: Municipal Demarcation Act 27 of 1998 in February 1999. The first Board was tasked with the responsibility of demarcating all municipal and ward boundaries towards the local government elections in December 2000 and with the establishment of structures for the final phase of local government transition.

Unlike the interim phase which had a separation of urban and rural structures, the Constitution required the establishment of three categories, namely category A Metropolitan, Category B Local, and Category C District municipalities. Outside of the metros, a uniform system of two or more local municipalities located within a district municipality applied. The application was regardless of the socio-economic conditions, previous local government history, capacity, infrastructure, and ability to generate revenue at a local level. For the first time in South Africa’s history, wall to wall municipalities were to be established. It was different from previous systems of local government with no pre-existing building blocks.

Consequently, the Board commenced it work by preparing a number of key policy documents for guiding the demarcation process which included: determining category A and C municipalities, determining Category B municipalities, determining cross boundary municipalities, approach to district management areas, and the requirements for the section 24 (objectives) and Section 25 (criteria) for the demarcation.

13 Cameron, 1999
Section 2 of the Municipal Structure Act, 117 of 1998

“An area must have a single category A municipality if that area can reasonably be regarded as-
(a) a conurbation featuring,
   (i) areas of high population density;
   (ii) an intense movement of people, goods, and services;
   (iii) extensive development; and
   (iv) multiple business districts and industrial areas;
(b) a centre of economic activity with a complex and diverse economy;
(c) a single area for which integrated development planning is desirable; and

The approach taken toward the determination of the metropolitan areas was based on the Section 2 criteria as contained in the Municipal Structures Act, 117 of 1998. The description has limitations and indicates that the area must satisfy all the requirements in order to satisfy all the requirements to be satisfied all the requirements in order to be considered a Category A municipality.

Based on this framework and the Board’s own policy, it only identified six possible areas nationally which complied, namely, Johannesburg, Cape Town, Durban, Pretoria, East Rand and Port Elizabeth in 1999. Section 3 then states that “an area that does not comply with the criteria set out in section 2 must have municipalities of both category C and category B”.

The Board’s identification and determination of district municipalities was then based on the following three guiding principles:

- **Principle 1**: Functional linkages showing a coherent social and economic base
- **Principle 2**: Manageability of size, population and spatial aspects
- **Principle 3**: Character of the area

These principles supported the envisaged role of the district municipality in the post 2000 period and more importantly the need to develop regional coherence and functionality. The approach adopted by the Board for the determination of the Category B municipalities included the need to rationalize the number of local government structures established in the interim phase. Based on its own policy, the Board attempted to ensure that each local municipality demonstrated geographic contiguity, potential for capacity development (a critical mass of municipal capacity) and the opportunity for resource sharing. Each municipality needed to be a manageable size, an average size of 3,500 sq. km and a population of approximately 80,000 but no less than 20,000. Functionality was also an important criterion with each category B being an aggregation of places with significant internal linkages.

In the finalisation of the provincial boundaries, it was decided that any possible functional linkages across provincial boundaries could be resolved through the establishment of cross boundary municipalities. The most apparent areas were between:

- North West and Gauteng Provinces
- North West and the Northern Cape Provinces

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14 Municipal Demarcation Board “The Determination of Metropolitan and District Council Boundaries” October 1999
15 MDB Annual Report, 1999/2001
Cross boundary municipalities were established across all of these provinces with the exception of the latter two provinces due to the political sensitivities and struggles in the area. In addition, district management areas were restricted to areas of low population and declared national conservation areas.

As an independent structure, the Board needed to establish its own functioning administration whilst redrawing all municipal boundaries in South Africa. The Board formulated its policy on metros, local and district municipalities from April to June 1999. In July the same year, the Board published maps indicating where it believed district and metropolitan areas should be established. In August, the first of the section 26 notices were published demonstrating the boundaries the Board intended determining, and requesting for comments. Similar notices were published for the local municipalities in October 1999. In November, public meetings were held and the first of the section 21 notices in the formal objection process were published.

By February and March 2000, the outer boundary delimitation process was largely complete with the ward delimitation process commencing in April 2000. There was some late refinement to the outer boundaries prior to all the boundaries, outer and ward, being submitted to the IEC by September 2000 in order to finalise its preparation for the election which took place on 5 December 2000. From the point of the establishment of the Board to the finalisation of the outer boundaries was a single year.

The enormity of the work required of the Board and the timeframes in which it needed to be achieved meant an intense work programme, an extensive use of both external and internal resources and rapid decision making. In all, 148 public meetings were held and attended by approximately 7,200 people. More than 2,300 submissions and objections were received by the Board toward determining the final boundaries.
Table 1: Total number of municipalities determined in December 2000

<table>
<thead>
<tr>
<th></th>
<th>Metro</th>
<th>Cross Boundary Metros</th>
<th>Local (B)</th>
<th>Cross Boundary (B)</th>
<th>District (C)</th>
<th>Cross Boundary (C)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Cape</td>
<td>1</td>
<td>38</td>
<td></td>
<td></td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Free State</td>
<td></td>
<td></td>
<td>20</td>
<td>2</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Gauteng</td>
<td>1</td>
<td>7</td>
<td></td>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>1</td>
<td>50</td>
<td>17</td>
<td>5</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North West</td>
<td>1</td>
<td>21</td>
<td></td>
<td>3</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Northern Cape</td>
<td></td>
<td></td>
<td>24</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Limpopo</td>
<td></td>
<td></td>
<td>22</td>
<td>4</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Western Cape</td>
<td>1</td>
<td>24</td>
<td></td>
<td></td>
<td>5</td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>4</td>
<td><strong>4</strong></td>
<td><strong>223</strong></td>
<td><strong>16</strong></td>
<td><strong>41</strong></td>
<td><strong>12</strong></td>
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<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td><strong>284</strong></td>
<td></td>
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</tr>
</tbody>
</table>

The final determination saw a significant reduction in municipalities from the interim phase, from 843 local structures to 284 municipalities, of which 231 were local municipalities and 6 metropolitan areas. Both Ekurhuleni and Tshwane were regarded as cross boundary metropolitan areas while 16 cross boundary local municipalities were established. The extensive rationalisation of municipalities meant that all areas to a greater or lesser extent have included both urban and rural areas. The deadline was reached, local government elections were held on 5 December 2000 and in terms of the MEC’s section 12 notices, the municipalities were established and with this democratic local government.

DEMACRICATION OF BOUNDARIES – 2006 LOCAL GOVERNMENT ELECTIONS

The implementation of the cross boundary municipalities presented a number of operational challenges. Cooperation at both the local and provincial level was difficult, leading to service delivery confusion, underperformance and in some instances, duplication. At a meeting of the Presidential Coordinating Council (PCC) held in December 2001, a mere year after establishment, the Council expressed its support for a process to speedily resolve the problems. A number of investigation reports were prepared to determine
the optimal re-determination of the provincial boundaries. Based on the Constitutional amendments, the MDB then re-determined the municipal boundaries to include the local municipalities within a district municipality in accordance with amended provincial boundaries. In 2006, the same number of local municipalities was retained with a decrease by one of the district municipalities.

Several contentious provincial boundary amendments were made. The first was the inclusion of Merafong City into the North West Province and the second major one was the change made to the KwaZulu-Natal Eastern Cape boundary with the inclusion of Matatiele into the latter province. Both resulted in protest action, with Merafong being the more extreme. After the introduction of a new Minister for Local Government, Minister Sicelo Shiceka, the North West Gauteng boundary was amended, resulting in the re-inclusion of Merafong into the Gauteng Province.

The disestablishment of cross boundary municipalities and resultant raised tensions demonstrated a number of emerging issues. The Municipal Demarcation Board took the brunt of local anger in relation to the boundary re-determination notwithstanding the fact that the responsibility for provincial boundaries is outside its mandate. It could be argued that this confusion somewhat contributed to the slow discrediting of the Board over time. In addition, it also demonstrated that communities now identified with the boundaries as established in 2000, wanting to be located within provinces which were perceived to have more resources and capacity for ensuring service delivery at the local level. While boundaries in 2000 were more about ensuring areas of rational administration, the events post 2006 suggested a growing politicisation of what boundaries meant and the consequences of insufficient consultation. In addition to the cross boundary challenges, other pressures were beginning to emerge in the 2000 – 2006 period specifically in relation to the role of the secondary cities and district municipalities. These matters were to be addressed.

### Table 2: Total number of municipalities determined in 2006

<table>
<thead>
<tr>
<th>Province</th>
<th>Metro</th>
<th>Local (B)</th>
<th>District (C)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Cape</td>
<td>1</td>
<td>38</td>
<td>6</td>
</tr>
<tr>
<td>Free State</td>
<td></td>
<td>20</td>
<td>5</td>
</tr>
<tr>
<td>Gauteng</td>
<td>3</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>1</td>
<td>50</td>
<td>10</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td></td>
<td>18</td>
<td>3</td>
</tr>
<tr>
<td>North West</td>
<td>21</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>27</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Limpopo</td>
<td>25</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Western Cape</td>
<td>1</td>
<td>24</td>
<td>5</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>6</strong></td>
<td><strong>231</strong></td>
<td><strong>46</strong></td>
</tr>
</tbody>
</table>

### DEMARCATION OF BOUNDARIES – 2011 LOCAL GOVERNMENT ELECTIONS

Three significant boundary decisions occurred before the 2011 local government elections which included the establishment of two additional metropolitan areas, the disestablishment of the district management areas, and the MDB policy to have districts with three or more local municipalities. Between 2006 and 2008, the boundary considerations ran in parallel with the second White Paper on Local Government.
The role of the districts and in many instances, their underperformance, was questioned, the need for additional single tier municipalities debated and the impact and functionality of the district management areas questioned.

It was within this framework that the MDB commissioned a broad study on metropolitan areas and later specific assessments of the Buffalo City, Mangaung and Msunduzi Local Municipalities against the section 2 criteria contained in the Municipal Structures Act. Studies were commissioned within the Gauteng Province to examine the possibility for the establishment of a “metro-wide” province which would include the disestablishment of all local and district municipalities. The Board’s final determination of Buffalo City, Mangaung and Msunduzi as metros certainly raised questions about the applicability of the section 2 criteria to other areas such as Emfuleni/Midvaal. Moreover, given the approach of the first Board and the confining requirements of the Municipal Structure Act, the later application of the criteria has in some senses thrown the debate wide open as to what actually constitutes a metropolitan area, what should the associated characteristics be and/or is there an urgent need to reconsider single tier category A municipalities for more effective management of our major urban areas. To some extent, this has been highlighted in the MEC’s request to not proceed with Msunduzi Local Municipality redetermination as a metro but rather to include the entire area district area of Umgungundlovu as the metro which as a district fails far short of the Municipal Structures section 2 criteria.

The MDB also took the policy decision to increase the number of local municipalities contained within a district municipality area to three or more rather than the Constitutional requirement of only two.

This was premised on the Board’s finding that districts with only two local municipalities did not demonstrate sufficient critical mass and as such, the Alfred Nzo District was increased from 2 to 4 local municipalities and the Metsweding District Municipality disestablished and the local municipalities incorporated into the Tshwane Metropolitan Municipality, making it the sixth biggest geographically in the world.

The concern with respect to the effectiveness of the district management areas emerged in about 2003/2004. The Board commissioned a study which recommended the disestablishment of these. However, it was decided to halt the decision in light of the proposals being developed as part of the White Paper process, which itself was shelved put aside. The matter re-emerged with the objective “...to clean up the local government categories, by withdrawing the declaration of the district management areas”17. By the 2011 local government elections, the 47 district municipalities established in 2000 had been reduced to 44, there were two additional metropolitan areas18 and 5 less local municipalities.

17 MDB Annual Report, 2007/08
18 In 2009, the MDB decided to withdraw the intention to establish Msunduzi as a metro.
Table 3: Total number of municipalities determined in 2011

<table>
<thead>
<tr>
<th>Province</th>
<th>Metro</th>
<th>Local (B)</th>
<th>District (C)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Cape</td>
<td>2</td>
<td>37</td>
<td>6</td>
</tr>
<tr>
<td>Free State</td>
<td>1</td>
<td>19</td>
<td>4</td>
</tr>
<tr>
<td>Gauteng</td>
<td>3</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>1</td>
<td>50</td>
<td>10</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td></td>
<td>18</td>
<td>3</td>
</tr>
<tr>
<td>North West</td>
<td></td>
<td>19</td>
<td>4</td>
</tr>
<tr>
<td>Northern Cape</td>
<td></td>
<td>27</td>
<td>5</td>
</tr>
<tr>
<td>Limpopo</td>
<td></td>
<td>25</td>
<td>5</td>
</tr>
<tr>
<td>Western Cape</td>
<td>1</td>
<td>24</td>
<td>5</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>8</strong></td>
<td><strong>226</strong></td>
<td><strong>44</strong></td>
</tr>
</tbody>
</table>

SKETCHING THE ESTABLISHMENT OF LOCAL GOVERNMENT: SUMMARY COMMENTS

As noted above, the demarcation of the outer boundaries took place within a 12 month period, some of which included the formulation of policy and the establishment of the Board itself. The timeframe did not allow for careful consideration of each and every boundary. Over the last 12 years, the process of refining municipal boundaries through a rationalisation process has been undertaken.

The 1999 boundary demarcation elicited four legal challenges, some of which were dropped with the other being comfortably won by the MDB. There were no protests linked to the boundaries once the municipalities were established and communities became aware of the new administrative area.

However, the uprising post the 2006 demarcations and the protests in relation to the proposed amalgamation of Metsimholo and Ngwathe Local Municipalities is an indication of the challenges that may be faced with future major re-demarcations. Local politics and community perceptions have become increasingly intertwined with a growing concern over the independence of the Demarcation Board and the seeming lack of community consultation in relation to boundary determination. Whereas it was possible to demarcate the entire country into wall to wall municipalities in 2000 without any significant challenges, boundaries are now increasingly becoming closely guarded by communities and political interests.

Anecdotally, it would appear that it takes approximately two years for a municipal area to settle after a major re-demarcation mainly due to the transfer of staff and assets, the establishment of new management structures and related issues. Such disruptions negatively impact service delivery creating local uncertainty and discontent. Notwithstanding, a number of significant demarcation questions remain which includes addressing the so called non-viable municipalities and establishing further single tier (category A) municipalities. Both these issues will be addressed later in this report.

- The transformation of local government was undertaken within a three phase process, namely:
  - Pre-interim: 1993 – 1994
  - Interim: 1995 – 2000
  - Final phase: 2000 onwards
• An important shift from the legacy of apartheid was the establishment of local government as the third and independent sphere of government with the “right to govern, on its own initiative, the local government affairs of its community”\(^\text{19}\) (Act 6, 1996), with a strong emphasis on cooperative governance.

• The second was the Constitutional establishment of a framework for developmental local government which was then further defined in the White Paper on Local Government as:

  “Developmental local government is local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives.”

• The White Paper also addressed aspects relating to the institutional system with the most notable of these being the concept of the metropolitan areas and district municipalities with the need for district wide management was clearly acknowledged.

• As demonstrated in the figure below, the establishment of democratic non-racial local government, in accordance with the Constitution, required the drafting of extensive legislation:

\[\textbf{Basket of local government legislation}\]

- Constitution 1996
- Organised LG Act 1997
- Demarcation and Structures Acts 1998
- Systems Act 2000
- MFMA 2003
- Property Rates Act 2004
- SPLUMA 2008
- Fiscal Powers and Functions Act 2015

- Complete redraft of Local Government legislation
- Comprehensive framework rapidly prepared
- Guided by Constitution and White Paper

\(^{19}\) The ability to local government to govern on its own initiative is subject to national and provincial legislation in accordance with the requirements of the Constitution.
• Given the pace at which legislation and the accompanying regulations were drafted, and given the enormity of establishing a democratic nonracial local government, amendments were inevitable.

• Varying types of amendments are found:
  » Ensuring Constitutional compliance;
  » Resolving aspects for which there was insufficient legal certainty and or addressing omissions;
  » Facilitating the implementation of the legislation and or the system of local government;
  » Resolving operational matters;
  » Addressing political imperatives;
  » Strengthening aspects relating to accountability and or ensuring effective management; and
  » Creating greater efficiencies.

• Certainly in the earlier periods, there was willingness to amend legislation as and when required.

• In accordance with the Constitution, an independent Municipal Demarcation Board established for the determination of all municipal boundaries and the delimitation of wards.

• Legislation required the establishment of wall to wall municipalities which included categories A (metropolitan), B (local) and C (district).

• The same system of local government was to be applied for the establishment of district and local municipalities regardless of the following:
  » Socio economic conditions;
  » Previous local government history;
  » Capacity;
  » Infrastructure; and
  » Ability to generate revenue.

• The demarcation of the outer boundaries took place within a 12 month period which did not allow for careful consideration of each and every boundary. Consequently, the process of the ongoing refining municipal boundaries has occurred which have resulted in both substantial and technical outer boundary amendments.

• Boundaries are now increasingly becoming closely guarded by communities and political interests. It would appear that local politics and community perceptions are intertwined with growing concern about the independence of the Demarcation Board.

• A number of significant demarcation questions remain which includes addressing the so called non-viable municipalities and establishing further single tier (category A) municipalities.
CHAPTER 3: ESTABLISHING ORGANISED LOCAL GOVERNMENT
The importance and need for organised local government was acknowledged as necessary to support the transformation and the developmental responsibilities of the sector. The Organised Local Government Act (the Act) was enacted in 1997, prior to the finalisation of the Local Government White Paper and the introduction of the basket of local government legislation. At that point, 843 transitional local structures were in place, the boundaries of which had been determined by a provincial demarcation board. Given the vast number of transitional structures, the decision was taken that it would be more effective that provinces be responsible for organising and supporting local government.

The Act contained no description of the roles and responsibilities for organised local government. Rather, this information on roles and responsibilities has been spread across a wide range of legislation including the Constitution, Municipal Systems Act, Municipal Finance Management Act and the Intergovernmental Relations Act. The establishment of municipalities in 2000 saw a dramatic reduction in the number of municipalities to only 284 local, district and metropolitan structures. Key legislation was introduced requiring the establishment of a single bargaining chamber for negotiating salaries and wages for the local government sector. Many councillors and officials entered the sector for the first time with little or no experience of local government’s operations and the legal framework. Moreover, this occurred within an environment of massive spatial reconfiguration and the establishment of new structures and systems which resulted in a significant departure from the historical practices.

Similarly, it was into this environment that SALGA needed to find its feet while providing urgent support to municipalities toward their stabilisation. Key policy decisions were being amended in relation to local government including the introduction and revision of legislation. This was at a time when SALGA was building its own capacity and institutional knowledge to address the organisation’s mandate and associated requirements. Along with other stakeholders, it needed to determine the scope and the nature of the transformation requirements within the local government sector.

Key decisions were made in the early 2000s such as the establishment of SALGA as a unitary structure for the effective management of the organisation’s mandate through the creation of a single voice for local government. Perhaps SALGA’s key strength is its strong legal and constitutional mandate, which gives it access to the highest decision making bodies in government (in terms of intergovernmental relations and established relationships) and allows it to influence local government through lobbying national and provincial authorities. Significant challenges posed by provincial associations such as KwaZulu-Natal Local Government Association (KWANALOGA), Free State Local Government Association (FREELOGA) and Western Cape Local Government Association WECLOGO were resolved through consistent and dedicated negotiation and intervention.

As is demonstrated in the diagram below, it took some 15 years from the point of SALGA’s establishment in 1996 before it emerged as a unified structure in which all provincial associations and municipalities participated. Similarly, the unfolding of SALGA’s mandate, by way of legislation, took approximately 11 years. This has required the organisation to be flexible, with the capacity to absorb and respond to change as it has occurred.
Figure 2: SALGA’S Establishment Timeline

<table>
<thead>
<tr>
<th>Year</th>
<th>Establishing the organisation</th>
<th>SALGA’s Expanding Mandate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>SALGA established</td>
<td>The Constitution</td>
</tr>
<tr>
<td>1997</td>
<td>The Organised Local Government is passed Minister recognised SALGA</td>
<td>Intergovernmental Fiscal Relations Act, Financial and Fiscal Commission Act, Water Services Act</td>
</tr>
<tr>
<td>1998</td>
<td></td>
<td>Municipal Demarcation and Municipal Structures Acts</td>
</tr>
<tr>
<td>1999</td>
<td></td>
<td>Road Traffic Management Act</td>
</tr>
<tr>
<td>2000</td>
<td>Establishment of a single Bargaining Chamber SALGA’s constitution amended</td>
<td>Municipal Systems Act</td>
</tr>
<tr>
<td>2001</td>
<td>SALGA becomes a Schedule 3A Entity</td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td>Decision to form a unitary structure</td>
<td>Disaster Management Act</td>
</tr>
<tr>
<td>2003</td>
<td></td>
<td>Municipal Finance Management Act, National Health Act</td>
</tr>
<tr>
<td>2004</td>
<td>SALGA’s constitution amended - to form a unity structure</td>
<td>Municipal Property Rates Act</td>
</tr>
<tr>
<td>2005</td>
<td>Provisonal structures transfer staff etc to national structure</td>
<td>IGR Act</td>
</tr>
<tr>
<td>2006</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>SALGA’s constitution amended, WECLOGO, and KWANALOGA oppose national unity</td>
<td>Municipal Fiscal and Powers Act</td>
</tr>
<tr>
<td>2008</td>
<td>WECLOGO matter is resolved, SALGA Free State</td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>Kwanaloga receives an adverse audit opinion, SALGA Free State re-enters SALGA</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>Kwanaloga re-enters national SALGA, SALGA finally unified - all 9 provinces participate</td>
<td></td>
</tr>
<tr>
<td>2012</td>
<td>SALGA plans as one body and develops the first strategic plan that all nine provinces approve</td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>SALGA approves an Annual Performance Plan that is aligned across all portfolios at national and provincial levels</td>
<td></td>
</tr>
</tbody>
</table>

SALGA’S KEY ACHIEVEMENTS

An examination of the activities of SALGA over time demonstrates a significant maturing of the organisation’s ability to engage with its mandate. In relation to fulfilling its employer body responsibility, the organisation has moved from the decision to introduce multi-year agreements, now into its fourth cycle, to introducing a sophisticated wage curve for different categories of municipalities and a range of other collective bargaining agreements. Significant progress has been made in relation to the reduction in the number of registered medical aids from in excess of 50 to a only 6. While still a work in progress, substantial gains have been made toward the establishment of a single pension fund for local government. Handbooks and training on the management of labour relations have been developed and introduced.

Increasingly, the organisation has gained prominence in representing local government on the implementation of policy affecting local government. Although SALGA initially had challenges in
participating in the NCOP due to the presence of fragmented organized local government representative bodies, a commission was established to examine the possibility of appointing councillors who would act on behalf of SALGA on a permanent basis in the NCOP. SALGA’s constitution was amended to reflect the final decision. This amendment expanded the number of councillors with leadership positions in the National Executive Committee. Nine additional members, one drawn from each province, would be nominated by the Provincial Executive Committees in accordance with the Organised Local Government Act to represent local government in the NCOP, although they would possess no voting powers. The hosting of the NCOP Local Government Week in 2012 catalysed this constitutional amendment and has enabled the organization to build repute as the voice of organized local government. The representation SALGA has made to the NCOP has had a significant influence over the proposed Bills affecting the business of the local government sector.

**SALGA’S MAIN CHALLENGES**

Capacity building initiatives have been extensive with the highest number of recorded training sessions, in excess of 17,000, officials benefitting from training in the 2011/12 period. It is widely acknowledged internationally that the support of local government is vitally important for managing migration, rapid urbanisation and the growth of towns and cities which is taking place, especially within the African Continent. SALGA remains the strongest and most well-resourced organised local government association in Africa and as such has, and continues to have, an important role to play.

However, SALGA is faced with a number of challenges which need to be addressed in order for the organisation to become more effective, efficient and stable over the long term. It is suggested that the fragmentation of the organisation’s role and responsibility has, to some extent, hampered SALGA in responding to its mandate and related operational requirements. The lack of a clear articulation of SALGA’s mandate has also contributed to municipalities having expectations of the organisation that go beyond its roles and responsibilities. This has led to members’ expectations of SALGA conflating with those of the National Department of Co-operative Governance.

The organisation has argued for some time that the rolling extension of its responsibilities has also not been coupled with a review of the funding model adopted for SALGA. As such, the responsibilities have increased without any concomitant increase for the resourcing of activities. There are a number of activities which occur within the sector that fundamentally affect local government and over which the organisation has limited responsibility. For example, SALGA is required to comment on the establishment of Category A municipalities and participate in the selection committee of the Municipal Demarcation Board. There is no legal requirement for the organisation to participate in the extended structures of the Board or to be directly notified of any boundary publication, public meeting or formal boundary investigation. There is a need for an urgent and systematic review of the organisation’s mandate addressing three core elements, namely the fragmentation and possible extensions of mandates and the funding thereof.
While SALGA has achieved the establishment of a single or unitary structure, municipal membership remains voluntary. The Organised Local Government Act is clear that the Minister must recognise either a national or provincial structure of organised local government if it represents the majority of municipalities and a diversity of municipal categories. Not only does this make SALGA vulnerable to possible factionalism and opposition, such as that previously experienced from some provinces, but it also impacts on the organisation’s ability to ensure a stable and predictable income. An investigation into the implications of a mandatory affiliation to a national organised local government structure needs to be undertaken with the view to establishing the viability of amending the legislation.

As a Schedule 3A public entity, SALGA is required to report to the Minister of Co-operative Governance and Traditional Affairs. Further, the organisation is required to comply with the provisions of the Public Finance Management Act which defines a national public entity as being:

- a national government business enterprise; or
- a board, commission, company, corporation, fund or other entity (other than a national government business enterprise) which is –
  - established in terms of national legislation;
  - fully or substantially funded either from the National Revenue Fund, or by way of a tax, levy or other money imposed in terms of national legislation; and
  - accountable to Parliament.

The definition does not include voluntary associations, the current nature and form of SALGA. Questions have been raised over time whether the establishment of the organisation as a Schedule 3A Entity was indeed appropriate given the complexities of SALGA having to comply with and report according to the provisions of the PFMA. SALGA is presently considering de-listing as a public entity and to report directly to Parliament.

As is evident in the chart below, SALGA is increasingly becoming dependent on membership levies as its core source of revenue with approximately 90% from this source in the 2011/12 financial year. Given the voluntary nature of the organisation and the financial challenges faced by many municipalities, this places SALGA at a significant financial risk. The year on year increase in the revenue generated from membership levies has been variable over the years from as little as 5.8% in 2010/11 to approximately 50% in the 2011/12 period to accommodate growth and development of the organisation. A joint examination undertaken by SALGA and National Treasury is required to evaluate the current financial model adopted for Organised Local Government in South Africa. It is important to build certainty into the financial model to ensure the long term financial sustainability of the organisation.

Figure 3: SALGA Membership Levies Over Time
The focus on capacity building has been an important part of SALGA’s work over the last 15 years. While, for example, the organisation recorded 17,000 training sessions in the 2011/12 period, questions remain as to whether the training programmes are delivering the desired outcomes. The context in which training is required varies considerably across municipalities depending on the local specificities, previous local government history and the availability of skilled and experienced staff. In addition, a fairly high turnover, coupled with the growth in the number of political office bearers has been witnessed with each local government election. Capacity building and training, needs to be differentiated in nature and some of which needs to be based on a cyclical “must know” principle. It is evident from the MDB capacity assessments and other data sources, that some officials are now becoming career local government practitioners and as such require more sophisticated and expanding training and skills development.

Given that capacity building is one of SALGA’s key functions, it is necessary for the organisation to re-evaluate current approaches to capacity building programmes in the sector and to drive a more coherent high impact programme whose outcomes are measurable over time.

**SALGA: SUMMARY COMMENTS**

SALGA continues to strengthen its corporate governance: leadership, responsibility and accountability\(^{21}\). Internally, SALGA has developed an Operation Clean Audit strategy, strengthened the work of the Audit Committee and established a Performance Management Panel to reinforce efforts to consolidate itself as a high performance organisation, ensure transparency and greater accountability. The SALGA Strategic Plan for 2012-2017 provides strategic direction for the next five years. The strategy and Annual Performance Plan 2012/13 have been developed in a highly consultative manner across all nine provinces thus consolidating unity of purpose in guiding, serving and supporting Local Government. However, for the organisation to continue growing in a sustainable manner and meeting the needs of its diverse membership, it is necessary for at least the following to be re-evaluated and addressed:

- the policy and legislative environment for organised local government;
- the finance and fiscal relations for SALGA; and
- improved capacity building strategies and means of addressing the needs of SALGAs membership.

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Membership levy</th>
<th>Percentage increase in budgeted membership levy – year on year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004/05</td>
<td>R73 110 841</td>
<td></td>
</tr>
<tr>
<td>2005/06</td>
<td>R80 652 988</td>
<td>10.3</td>
</tr>
<tr>
<td>2006/07</td>
<td>R94 133 000</td>
<td>16.7</td>
</tr>
<tr>
<td>2007/08</td>
<td>R101 194 756</td>
<td>7.5</td>
</tr>
<tr>
<td>2008/09</td>
<td>R110 166 114</td>
<td>8.9</td>
</tr>
<tr>
<td>2009/10</td>
<td>R137 507 673</td>
<td>24.8</td>
</tr>
<tr>
<td>2010/11</td>
<td>R145 488 126</td>
<td>5.8</td>
</tr>
<tr>
<td>2011/12</td>
<td>R217 872 595</td>
<td>49.8</td>
</tr>
</tbody>
</table>
CHAPTER 4:
BEDDING DOWN MUNICIPAL POWERS AND FUNCTIONS, ROLES AND RESPONSIBILITIES
This chapter covers the consolidation of municipal powers and functions as delineated by the constitution, particularly between category B and C municipalities. This journey towards a clear division of roles and responsibilities has been particularly challenging as it has depended on the institutionalization of major sections of legislation and associated regulations which would under ordinary institutional development conditions take many years. As a result of the legislative project, municipal structures have experienced a degree of instability, particularly due to the settling of powers and functions between all spheres of government. This process has taken on regionalized dynamics as each province has adjusted the highly fluid framework of local government powers and functions. This has been conditioned by two additional factors: the historical division of powers and functions between local authorities that serviced formerly all-white communities and a process of mandate assignments without supporting resources that has generally ignored subsidiarity and consultation.

BACKGROUND

Post 1994, the local government transition saw a phased in approach to the establishment of municipal powers and functions. The interim Constitution specified (Sec. 175(3)) that a “...local government shall, to the extent determined in any applicable law, make provision for access by all persons residing within its area of jurisdiction to water, sanitation, transportation facilities, electricity, primary health services, education, housing and security within a safe and healthy environment, provided that such services and amenities can be rendered in a sustainable manner and are financially and physically practicable”. The Local Government Transition Act No 209 of 1993 clearly outlined the powers and functions for metropolitan councils and the metro sub-structures in schedule 2 and 2A respectively. For all other transitional structures, the Act was relatively silent. It suffices to say that the status quo remained i.e. the functions rendered were the same as those performed by the disestablished white local authorities.

Greater clarity was introduced in the final Constitution for implementation, with the establishment of municipalities in 2000. In considering the broad responsibilities, the objects for local government are contained in section 152(1) of the Constitution by stating that municipalities are:

- to provide democratic and accountable government for local communities;
- to ensure the provision of services to communities in a sustainable manner;
- to promote social and economic development;
- to promote a safe and healthy environment; and
- to encourage the involvement of communities and community organisations in the matters of local government.

Section 152(2) then indicates that a municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).

Section 153 addresses the developmental duties of municipalities by stating that a municipality must—

- structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community.

In order to address both the objects for local government and their developmental duties, municipalities must perform with some capacity their assigned powers and functions. Section 156 of the Constitution states that a municipality has the administrative authority in respect of, and has “...the right to administer the functions outlined in Schedule 4 Part B and Schedule 5 Part B of the Constitution”. While metropolitan areas render all the functions listed, the division between local and district municipalities was then to be addressed in subordinate legislation, the Municipal Structures Act. Moreover, provincial and national government must assign to local government “Part A” functions if it would be better rendered at the local level and the municipality has the capacity to administer it. The unfolding of the allocation of powers and functions is explored in more detail below.
DIVISION OF POWERS AND FUNCTIONS

As already indicated in this report, the Municipal Structures Act was prepared in parallel with the White Paper on Local Government and as such, the Act then reflected the intended role and responsibility for district municipalities as being:

A district municipality must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole by-

a. ensuring integrated development planning for the district as a whole;
b. promoting bulk infrastructural development and services for the district as a whole;
c. building the capacity of local municipalities in its area to perform their functions and exercise their powers where such capacity is lacking; and
d. promoting the equitable distribution of resources between the local municipalities in its area to ensure appropriate levels of municipal services within the area.

The above provision reflects the Constitutional requirement to provide municipal services in a sustainable and equitable manner.

Section 84 provides for the division of functions and powers between district and local municipalities by stating that the district should perform all the functions as outlined in Section 84(1) while in terms of Section 84(2) the local municipality should perform all the remaining functions.

Table 4: White Paper Division of Functions and Powers between Districts and Local Municipalities

<table>
<thead>
<tr>
<th>Section 84(1) Municipal Structures Act</th>
<th>Section 84(2) of the Municipal Structures Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Integrated development planning for the district municipality as a whole, including a framework for integrated development plans of all municipalities in the area of the district municipality.</td>
<td>Section 84(2) states that a local municipality has the functions and powers referred to in section 83 (1)\textsuperscript{23}, excluding those functions and powers vested in terms of section 84(1) in the district municipality in whose area it falls</td>
</tr>
<tr>
<td>b. Potable water supply systems.</td>
<td></td>
</tr>
<tr>
<td>c. Bulk supply of electricity, which includes for the purposes of such supply, the transmission, distribution and, where applicable, the generation of electricity.</td>
<td></td>
</tr>
<tr>
<td>d. Domestic waste-water and sewage disposal systems.</td>
<td></td>
</tr>
<tr>
<td>e. Solid waste disposal sites, in so far as it relates to-</td>
<td></td>
</tr>
<tr>
<td>i. the determination of a waste disposal strategy;</td>
<td></td>
</tr>
<tr>
<td>ii. the regulation of waste disposal;</td>
<td></td>
</tr>
<tr>
<td>iii. the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality in the district.</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{22} Promote is define in the Oxford English Reference Dictionary (2002) as the following: “help forward, encourage, support actively (a cause, process, a desired result etc)”.

\textsuperscript{23} Section 83(1) states that “a municipality has the functions and powers assigned to it in terms of sections 156 and 229 of the Constitution”
Section 84(1) Municipal Structures Act

<table>
<thead>
<tr>
<th>Function</th>
<th>Section 84(2) of the Municipal Structures Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>f. Municipal roads which form an integral part of a road transport system for the area of the district municipality as a whole.</td>
<td></td>
</tr>
<tr>
<td>g. Regulation of passenger transport services.</td>
<td></td>
</tr>
<tr>
<td>h. Municipal airports serving the area of the district municipality as a whole.</td>
<td></td>
</tr>
<tr>
<td>i. Municipal health services.</td>
<td></td>
</tr>
<tr>
<td>j. Firefighting services serving the area of the district municipality as a whole, which includes:</td>
<td></td>
</tr>
<tr>
<td>i. planning, co-ordination and regulation of fire services;</td>
<td></td>
</tr>
<tr>
<td>ii. specialised firefighting services such as mountain, veld and chemical fire services;</td>
<td></td>
</tr>
<tr>
<td>iii. co-ordination of the standardisation of infrastructure, vehicles, equipment and procedures;</td>
<td></td>
</tr>
<tr>
<td>iv. training of fire officers.</td>
<td></td>
</tr>
<tr>
<td>k. The establishment, conduct and control of fresh produce markets and abattoirs serving the area of a major proportion of the municipalities in the district.</td>
<td></td>
</tr>
<tr>
<td>l. The establishment, conduct and control of cemeteries and crematoria serving the area of a major proportion of municipalities in the district.</td>
<td></td>
</tr>
<tr>
<td>m. Promotion of local tourism for the area of the district municipality.</td>
<td></td>
</tr>
<tr>
<td>n. Municipal public works relating to any of the above functions or any other functions assigned to the district municipality.</td>
<td></td>
</tr>
<tr>
<td>o. The receipt, allocation and, if applicable, the distribution of grants made to the district municipality.</td>
<td></td>
</tr>
<tr>
<td>p. The imposition and collection of taxes, levies and duties as related to the above functions or as may be assigned to the district municipality in terms of national legislation.</td>
<td></td>
</tr>
</tbody>
</table>

Furthermore, Section 84(3) indicates that the Minister for Local Government may, after consultation, authorise a local municipality to perform the water, sanitation, electricity and municipal health services functions. Section 85 makes the provision for the MEC to adjust the remaining functions and powers between district and local municipalities but within a national policy framework whereby the municipality from which the function is being removed does not have capacity and the MDB’s assessment of capacity has been considered.

IMPLEMENTING THE DIVISION OF POWERS AND FUNCTIONS

It was against the backdrop of little guidance with respect to the functions to be performed during the interim phase except for the provisions contained in the interim Constitution that the new division of powers and functions contained in Section 84 came into effect. Instead of “taking the plunge” and allowing the system to come into effect, an amendment to the Structures Act was made to allow the newly established municipalities in 2000 to continue performing the “status quo”. The main reason was to ensure that municipalities were able to stabilise their structures and systems prior to any major reorganisation of powers and functions.

In 2002/2003, the Municipal Demarcation Board undertook a comprehensive assessment of the capacity of local and district municipalities to perform their functions. In parallel, the Sector Departments were in discussion with the Minister to decide upon any possible authorisations of the water, sanitation, electricity and municipal health services. In 2002, the definition for the latter changed from being primary health
care (historically a local function) to the provision of environmental health only. A decision was taken to retain the status quo in relation to electricity and municipal health services would be retained by the district municipality, and local municipalities would be authorised for the rendering of the water and sanitation functions in local municipalities which contained large towns and/or small towns predominately surrounded by commercial farming areas. Consequently, the latter functions were only retained by 21, or 46%, of the district municipalities nationally.

In 2003, the MECs’ adjustments were largely based on the capacity findings of the MDB. In line with this the Free State andMpumalanga Provinces adjusted most, if not all, of the MECs’ functions to the local municipality. However, a number of provinces adopted their own approach to the adjustments. For example, the Western Cape made no adjustments while in Limpopo, the entire firefighting function was adjusted to the district regardless of whether it had capacity or not. While over time some of the adjustments were reversed, a significant number have remained for functions such as solid waste, roads, firefighting and cemeteries.

In understanding the adjustments, it is important to remember that there is a shared responsibility for a number of functions i.e., the district and the local municipalities are responsible for different aspects of the same function. These include, for example, functions such as fire fighting, solid waste management, cemeteries, local tourism, municipal airports and markets and abattoirs. The Municipal Demarcation Board prepared a report on definitions and the related norms and standards for assisting with the understanding of the division of responsibility. While the report was used by provinces and some municipalities, it had no legal status as it is the Minister of Local Government’s responsibility to provide the necessary clarity.

Table 5: Adjustment of District Functions to Local Municipalities as of February 2009

<table>
<thead>
<tr>
<th>Function</th>
<th>EC</th>
<th>FS</th>
<th>GP</th>
<th>KZN</th>
<th>LIM</th>
<th>MP</th>
<th>NC</th>
<th>NW</th>
<th>WC</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>84(1)(e) - Solid waste</td>
<td>20</td>
<td>19</td>
<td>5</td>
<td>5</td>
<td>18</td>
<td>18</td>
<td>16</td>
<td>10</td>
<td>0</td>
<td>111</td>
</tr>
<tr>
<td>84(1)(f) - Roads</td>
<td>7</td>
<td>4</td>
<td>0</td>
<td>6</td>
<td>5</td>
<td>8</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>37</td>
</tr>
<tr>
<td>84(1)(h) - Airports</td>
<td>4</td>
<td>11</td>
<td>2</td>
<td>6</td>
<td>0</td>
<td>14</td>
<td>4</td>
<td>5</td>
<td>0</td>
<td>46</td>
</tr>
<tr>
<td>84(1)(j) - Fire Fighting</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>84(1)(k) - Markets and Abattoirs</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>84(1)(k) - Abattoirs only</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>84(1)(k) - Markets only</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>84(1)(l) - Cemeteries</td>
<td>10</td>
<td>17</td>
<td>2</td>
<td>13</td>
<td>17</td>
<td>15</td>
<td>20</td>
<td>0</td>
<td>0</td>
<td>99</td>
</tr>
<tr>
<td>84(1)(m) - Local tourism</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>7</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>15</td>
</tr>
</tbody>
</table>

Later some adjustments were implemented
A number of local municipality functions were also adjusted to the district municipalities, again based on capacity. The more common functions were fire fighting, municipal public transport, local tourism, licensing and control of undertakings that sell food to the public, and building regulations.

Table 6: Local Municipalities and the adjustment of functions

<table>
<thead>
<tr>
<th>Function</th>
<th>Number of local municipalities from which the function was adjusted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire Fighting</td>
<td>55</td>
</tr>
<tr>
<td>Municipal public transport</td>
<td>25</td>
</tr>
<tr>
<td>Local tourism</td>
<td>22</td>
</tr>
<tr>
<td>Licensing and control of undertakings that sell food to the public</td>
<td>19</td>
</tr>
<tr>
<td>Building regulations</td>
<td>11</td>
</tr>
<tr>
<td>Municipal abattoirs</td>
<td>9</td>
</tr>
<tr>
<td>Air pollution</td>
<td>7</td>
</tr>
<tr>
<td>Refuse removal, refuse dumps and solid waste disposal</td>
<td>5</td>
</tr>
<tr>
<td>Cemeteries, funeral parlours and crematoria</td>
<td>4</td>
</tr>
<tr>
<td>Storm water</td>
<td>4</td>
</tr>
<tr>
<td>Local amenities</td>
<td>3</td>
</tr>
<tr>
<td>Municipal Planning</td>
<td>3</td>
</tr>
<tr>
<td>Beaches and Amusement facilities</td>
<td>3</td>
</tr>
<tr>
<td>Markets</td>
<td>3</td>
</tr>
<tr>
<td>Municipal airport</td>
<td>3</td>
</tr>
<tr>
<td>Municipal roads</td>
<td>3</td>
</tr>
<tr>
<td>Public places</td>
<td>2</td>
</tr>
<tr>
<td>Trading regulations</td>
<td>2</td>
</tr>
<tr>
<td>Billboards and the display of advertisements in public places</td>
<td>1</td>
</tr>
<tr>
<td>Child care facilities</td>
<td>1</td>
</tr>
<tr>
<td>Cleansing</td>
<td>1</td>
</tr>
<tr>
<td>Control of public nuisance</td>
<td>1</td>
</tr>
<tr>
<td>Control of undertakings that sell liquor to the public</td>
<td>1</td>
</tr>
<tr>
<td>Local sport facilities</td>
<td>1</td>
</tr>
<tr>
<td>Pontoons and ferries</td>
<td>1</td>
</tr>
</tbody>
</table>

From 2002/03 to 2008/09, the Municipal Demarcation Board undertook annual capacity assessments making related recommendations to the MECs on the possible adjustment or the reversal thereof of local and district functions. Over time, it became apparent that some adjustments should not have taken place but more importantly, there was an attempt on the part of the Board to make recommendations to MECs that would allow for an alignment closer to the original division of the powers and functions as outlined in Section 84 of the Municipal Structures Act.
REFLECTIONS ON THE IMPLEMENTATION OF THE DIVISION OF POWERS AND FUNCTIONS

The implementation of the division of powers and functions allowed for a number of distortions or problems to creep into the system. Instead of allowing the district and local municipalities to perform their functions as envisaged in the Municipal Structures Act immediately following the 2000 elections, the status quo was retained for a two year period. This meant that a number of municipalities which were not performing the function in 2000 failed to develop capacity in order to perform the responsibility, as anticipated in the Act. The MECs’ adjustments were then made on the capacity assessment which was based on the “status quo”. Hence, the proposed system for district municipalities was not truly tested in some areas.

In addition, it could be argued that the Minister’s authorization of the local municipalities to render the water and sanitation functions in more than 50% of the district municipalities nationally contributed to the weakening of the district system. There was no framework for guiding the frequency of adjustments.

Consequently, this was done on an annual basis until at least 2009, based on the MDB’s capacity assessment and recommendations. Some provinces had no strategy or policy for guiding the adjustments and as a result, those implemented were ad hoc and incoherent.

Moreover, some provinces lacked sufficient capacity for the management of the adjustments with a number of errors being made in the publications in the government gazette which indicated a lack of understanding in relation to the division of the powers and functions. As a result, there were examples of functions bouncing from one tier to another in a manner which undermined service delivery.

Adjustments were also made by MECs in order to implement a provincial policy but without the necessary capacity building strategies put in place. For example, in 2003 the then MEC for Local Government in the Limpopo Province adjusted the local fire-fighting function to all district municipalities within the province. Two years later, an MDB report revealed that not only did the local municipalities continue to perform the function but some districts were completely unaware that they had the responsibility.

Notwithstanding, the Municipal Demarcation Board’s Annual National Capacity Report for 2009 demonstrated that municipalities were generally performing more functions with some capacity than was the case in 2003.

For example, in 2009, 50% or more of the local municipalities in the Eastern Cape, Free State, Mpumalanga and the North West demonstrated a significant positive shift when the results for 2002/03 and 2008/09 were compared. However, some negative trends were also found for approximately 30% of the municipalities in the Western Cape, Limpopo, Northern Cape and KwaZulu-Natal (MDB, 2009).

MUNICIPALITIES PERFORMING PROVINCIAL AND NATIONAL GOVERNMENT FUNCTIONS

ABILITY TO ASSIGN OR DELEGATE FUNCTIONS TO LOCAL GOVERNMENT

There are legislative provisions for the assignment of provincial and national powers and functions to local government by legislation and by way of agreement. Legislation also differentiates between general and specific assignments. Based on the provisions in the Constitution, an assignment of a function may occur through:

- a general assignment which includes legislative and executive powers,
- legislative assignment which includes executive powers, or
Executive delegations and legislative assignments differ in that an executive delegation confers powers on the executive to assign a task or function so long as the instruction is consistent with legal precepts. Legislative assignments impart a duty to perform a function, and it may be rescinded with legislative amendment. Functions can also be delegated to local government and/or it can be performed on an agency basis. The differences between these three arrangements namely assignment, delegation, and agency, are outlined in the table below.

Table 7: Understanding Assignment Terminology

<table>
<thead>
<tr>
<th></th>
<th>DELEGATION</th>
<th>AGENCY</th>
<th>ASSIGNMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Powers and Functions</strong></td>
<td>Transfer of service provision responsibility only</td>
<td>Transfer of service provision responsibility only</td>
<td>Authority and service provision roles transferred</td>
</tr>
<tr>
<td><strong>Receiving Authority</strong></td>
<td>Receiving authority can outsource service provision function to another organ of state or to the private sector. However, this may be restricted by the service level agreement</td>
<td>Service delivery will be in accordance with the terms of the contract</td>
<td>Is able to make all decisions relating to both the authority and the service provision aspects</td>
</tr>
<tr>
<td><strong>Mechanism for Transfer</strong></td>
<td>Contractually. In terms of legislative process. Often can be a lengthy process</td>
<td>Contractually</td>
<td>By legislation or agreement in terms of legal process. Lengthy process</td>
</tr>
<tr>
<td><strong>Conditions</strong></td>
<td>Can be revoked</td>
<td>Can be revoked</td>
<td>Irrevocability, finance and personnel follow function</td>
</tr>
</tbody>
</table>

**LOCAL GOVERNMENT PERFORMING NATIONAL AND PROVINCIAL FUNCTIONS**

Several functions were historically performed by especially large white local authorities with the practices continuing into the interim phase. Moreover, the Local Government Transition Act listed functions for the metropolitan and related substructures which were not included in the schedule 4 Part B and Schedule 5 Part B functions. Examples would include ambulances, libraries, museums and environmental conservation. Health services included the provision of primary health care services which requires the management and operation of a clinic service. Post 1995 for example, the Johannesburg Transitional Metropolitan Council and substructures went on an aggressive clinic building programme especially in the former township areas where there was a significant shortfall of facilities.

Post 2000, many provinces have struggled to “provincialise” many of these functions. With the exception of the Gauteng province, this process has largely been completed by most provinces for the health function. However, other functions such as libraries remain a source of contention. In some areas, this function is performed on an agency basis or delegated responsibility while in others, the practice remains but without a coherent agreement in place.

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25 Legislative powers without executive powers are meaningless – so executive powers are a necessary consequence of legislative powers.

26 Ovens and Kitchin, 2006
There is also evidence that municipalities are required to cross subsidise the functions being performed at the local level. For example, the primary health care functions within the City of Johannesburg have an operational expense of approximately R200 million of which only R70 million is financed by the Gauteng Province. Local Government has also, by way of legislation, been required to absorb provincial and national functions.

Moreover, assignments by way of legislation have in a number of instances been ad hoc, without adequate consultation, placing a burden on local governments with the necessary supporting resources. An example is the Disaster Management Act 57 of 2002 which confers specific functions to local government but with no indication in relation to the functions arrangements for the rendering of the services.

From 2002 – 2008, the MDB assessed the municipal capacity for each of the part B functions with a separate set of questions for provincial and national functions. However, the 2011 MDB capacity assessment departed from this approach to the clustering of functions for assessing capacity in which part A functions were also included. Examples are included in the table below:

**Table 8: MDB 2011 clustering of functions**

<table>
<thead>
<tr>
<th>Description of the clustering of functions for capacity assessment purposes</th>
<th>Part A</th>
<th>Part B</th>
<th>Not listed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Function F: Community and Social Services</td>
<td>Libraries and museums</td>
<td>Beaches and amusement facilities, local amenities, local sports facilities, municipal parks and recreation, public places, cemeteries and crematoria, child care facilities</td>
<td></td>
</tr>
<tr>
<td>Functions H: Emergency services</td>
<td>Disaster management Ambulance services</td>
<td>Fire fighting</td>
<td>Rescue Services</td>
</tr>
<tr>
<td>Function J: Primary Health Care</td>
<td>Primary health care facilities (e.g.) day hospitals and clinics etc)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Function K: Environmental Management</td>
<td>Environmental planning, Biodiversity management</td>
<td>Air pollution</td>
<td>Climate change interventions, alternative energy planning</td>
</tr>
</tbody>
</table>

This approach is very revealing. Firstly, it does indicate the extent to which it is common place for municipalities to be performing functions for which they do not have Constitutional responsibility and how, in many instances, it has been difficult to undo the historical legacy of practice. Secondly, when clustering functions in this manner, it is not possible to tease out the actual capacity available for performing functions which are a municipality’s responsibility – information needed for guiding capacity initiatives especially in those areas with capacity deficits. However, it also begins to demonstrate the challenges with concurrent functions in some instances and/or the urgent need to review the allocation of powers and functions across the three spheres of government toward a more rational system.
SUMMARISING THE CHALLENGES WITH THE CURRENT POWERS AND FUNCTIONS FRAMEWORK

A number of functions span all three spheres of government. Examples include the roads function; health services; planning and land use management, and transport related functions. The overlaps tend to lead to duplication in service provision and a lack of clarity in relation to who is responsible for what aspect of the function and where. A coherent set of legislated function definitions is yet to be developed which outlines the cut off points for the responsibility for each sphere. Some provinces have attempted to provide this clarity for some functions. For example, Kwa Zulu-Natal has gazetted each of the local and district roads to avoid confusion at the local level. The draft Western Cape Planning and Development Bill dedicates sections to defining provincial and local roles and responsibilities in order to resolve the existing uncertainty.

There are a number of functions allocated to provincial and national government which would be better located at the local level, especially for large urban centres and metropolitan municipalities. Housing is one such function. While the provision for the housing accreditation process was included in legislation in 1997, many metros are still to receive this responsibility. The separation of the housing function from other built environment functions has not only hampered effective planning but also project and programme implementation. The National Development Plan recognises this issue and recommends that housing be decentralised to local government in order to promote the effective planning and delivery of services in a way that promotes local participation in the planning and delivery process.

As municipalities continue to perform provincial functions, provincial and national government have also assumed the responsibility for some of the local government functions, as well as each other’s functions, especially those deemed to carry a high political risk. The on-going adjustments have also resulted in considerable local uncertainty. The MDB capacity assessments have commonly found that the spheres of government which has the capacity for the function has merely continued rendering the service regardless of the adjustment. However, this is not sustainable as any new municipal manager, CFO or mayor could insist that the function is no longer performed due to the lack of authority.

BEDDING DOWN POWERS AND FUNCTIONS: A SUMMARY

- Local government powers and functions are outlined in Schedule 4 Part B and Schedule 5 Part B of the Constitution with the metropolitan municipalities having all of these functions. However, the Constitution requires a division of powers and functions between B and C municipalities. This occurs in Section 84 of the Municipal Structures Act.

- District municipalities functions in the Structures Act then reflect the intentions of the districts as outlined in the White Paper on Local Government

- Implementing the division of powers and functions between local and district municipalities has been difficult. Instead of “taking the plunge” and allowing the system as anticipated in the legislation to come into effect, an amendment to the Structures Act was made to allow the newly established municipalities in 2000 to continue performing the “status quo” of the interim phase of local government transformation. The main reason for this was to ensure that municipalities were able to stabilise their structures and systems prior to any major reorganisation of powers and functions.

- Between 2000 and 2003, a number of key policy shifts occurred which included inter-alia:
  - The adjustment of the water and sanitation from 25 district municipalities to their local municipalities;
  - A change in the definition of Municipal Health Services within the Health Act from primary health care services to environmental health only; and
The status quo was to be retained for the electricity function which is a district function in terms of section 84 of the Municipal Structures Act.

- The adjustment of the functions referred to as the “MECs” was largely based on the MDBs capacity assessment undertaken in 2002/03. However, some provinces such as the Western Cape and KwaZulu-Natal opted to make no or very few adjustments while others used the opportunity to implement their own policies such as the district municipalities to perform the entire fire-fighting function as was the case in the Limpopo Province.

- In line with the MDB annual capacity assessment done until 2008/09, recommendations were made to the MECs for further adjustments mainly in an attempt to move closer to powers and functions as outline in Section 84.

- The implementation division of powers and functions has allowed for a number of distortions or problems to creep into the system. Instead of allowing the district and local municipalities to perform their functions as envisaged in the Municipal Structures Act immediately post the 2000 elections, the status quo was retained which meant that a number of municipalities, which were not performing the function in 2000, failed to develop any capacity for the functions not performed.

- The MECs adjustments were then made on the capacity assessment which was based on the “status quo” with the proposed system for district municipalities not truly tested in some areas.

- Moreover, errors were made in the publication of adjustments due to a lack of capacity at Provincial level. The lack of understanding of the adjustment process resulted in the bouncing of functions from one tier to another in a manner which has undermined service delivery.

- There was no framework for guiding the frequency of adjustments which were then done on an annual basis by some provinces without considering the implications. In addition, adjustments were made by the Province but with no capacity in place at the municipal level with the firefighting function within the Limpopo province being an example. The on-going adjustments have also resulted in considerable local uncertainty.

- Based on the annual national assessment of municipal capacity, overtime municipalities demonstrated an improvement in the overall number of functions performed with some capacity in some provinces as decline was found.

- A number of national and provincial functions as outlined in the Constitution were historically performed by especially large white local authorities with the practices continuing into the interim phase such as ambulances, libraries, museums and environmental conservation. In addition, health services then included the provision of primary health care services. Post 2000, many provinces have struggled to “provincialise” many of these functions. Some provincial functions are then performed by municipalities on an agency basis or delegated responsibility but within some instances a coherent agreement in place. Municipalities are often required to cross subsidise the national and provincial functions being performed at the local level. However, a number of functions allocated to provincial and national government which would be better located at the local level especially metropolitan municipalities for example the housing function.

- Assignments by way of legislation have in a number of instances been ad hoc, without adequate consultation, placing a burden on local governments without the necessary supporting resources.

- There are a number of functions that span all three spheres of government such as roads, health services, planning and land use management and transport. The overlaps tend to lead to the duplication in service provision with a lack of clarity in relation to who is responsible for what aspect of the function and where. This is further compounded by a lack of a coherent set of legislated function definitions.

- As municipalities continue to perform provincial functions, provincial and national government have also assumed the responsibility for some of the local government functions.
• There is the need to urgently develop a rational division of powers and functions for supporting and promoting developmental local government. A framework needs to be adopted at national level for ensuring the appropriate alignment of functions in support of the overall mandates of provinces, districts, local and metropolitan municipalities.

• The principal of subsidiarity must be applied in the assignment of functions. Those functions which were historically performed at the local level, are yet to be provincialized should remain at the local level such as libraries, local museums and the licensing of vehicles.

• Attention must be given to the specific requirements for promoting urban and rural development. This requires a rational but differentiated approach to the allocation of functions.
CHAPTER 5: SERVICE DELIVERY: MECHANISMS, TRENDS, PROGRESS & CHALLENGES
In terms of the South African Constitution, all citizens have a right to a basic level of services. Municipalities are expected to deliver these services within the limits of their resources. This chapter follows on from the previous chapter which discusses the mandates of local government in the delivery of services. This section covers the planning and delivery of services and the attendant issues of governance that have accompanied the institutionalisation of local government.

Since a part of local government’s developmental mandate is to promote community participation in the affairs of local government, any failure to address citizen needs is directly related to issues of citizen participation in the planning and delivery of services. Some community protest actions are directly related to service delivery issues and communication between councils and communities. However, many protests are not directly targeting service delivery. They are masking other issues which are usually geographically localised.

**INTRODUCING SERVICE DELIVERY**

The Municipal System Act introduced the requirement for service delivery to be decentralized to bring about community participation in the affairs of local government. Decentralisation would service a developmental need to build capacity in state institutions in accordance with the principle of subsidiarity in which the services provided to local communities would be located in the sphere of government best able to deliver them. Together with other organs of state, municipalities were envisioned to contribute to the progressive realisation of the fundamental rights linked to the environment, property, housing, health, water, social services and education.

**SERVICE DELIVERY EXPECTATIONS AND MECHANISMS**

Flowing from the Constitutional objects for local government, the Municipal Systems Act, 32 of 2000 sets out the general duties for the provision of services by stating that:

1. A municipality must give effect to the provisions of the Constitution and
   a. Give priority to the basic needs of the local community;
   b. Promote the development of the local community; and
   c. Ensure all members of the local community have access to at least the minimum level of basic municipal services.

2. Municipal services must –
   a. Be equitable and accessible;
   b. Be provided in a manner that is conducive to –
      i. The prudent, economic, efficient and effective use of available resources, and
      ii. The improvement of standards of quality over time.
   c. be financially sustainable;
   d. be environmentally sustainable; and
   e. be regularly reviewed with a view to upgrading, extension and improvement.

The Act made provision for both internal and external service delivery mechanisms with a rigorous process to be followed when selecting and establishing the preferred option.
In 2000, post establishment, the major metropolitan areas were faced with a number of challenges which included the need to not only amalgamate all the service departments for the incorporated transitional municipalities but also to ensure that services were provided efficiently and effectively. While other metropolitan municipalities mostly elected to retain an internal service delivery model for the rendering of basic services, the City of Johannesburg on the other hand established 15 municipal entities. As reflected in the table below, three types of service delivery entities are now used by the City:

Table 9: Three types of service delivery entities are now used by the City of Johannesburg

<table>
<thead>
<tr>
<th>Utilities</th>
<th>Agencies</th>
<th>Corporatised entities</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Power</td>
<td>Johannesburg Roads Agency</td>
<td>Metrobus</td>
</tr>
<tr>
<td>Johannesburg Water</td>
<td>Johannesburg City Parks</td>
<td>Johannesburg Fresh Produce Market</td>
</tr>
<tr>
<td>Pikitup</td>
<td></td>
<td>Johannesburg Zoo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Johannesburg Theatre</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Roodepoort Theatre (Promusica)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Johannesburg Property Company</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Johannesburg Development Agency</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Metro Trading Company</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Johannesburg Tourism Company</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Johannesburg Social Housing Company</td>
</tr>
</tbody>
</table>

27 Names of entities have been changed to reflect those currently on the City’s website
28 Section 21 company, in 2007-8 Annual report
29 As above
30 As above
Ekurhuleni established a utility company to provide the waste water function while Tshwane continued to provide water services to certain areas within the city through a similar mechanism. Three metros, namely Johannesburg, Ekurhuleni and Tshwane also established housing companies for supporting social housing needs within their metros. While eThekwini established two utility companies, the City took a strong policy decision not to go this route for the provision of major functions arguing the case based on questions of accountability, the inability to use the revenue for cross subsidization, and the more efficient management of labour related matters.

Table 10: Metropolitan Municipalities and Associated Entities

<table>
<thead>
<tr>
<th>Metro</th>
<th>Entities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ekurhuleni</strong></td>
<td><strong>Existing</strong></td>
</tr>
<tr>
<td></td>
<td>• East Rand Water Care co (ERWAT)</td>
</tr>
<tr>
<td></td>
<td>• Brakpan Bus CO</td>
</tr>
<tr>
<td></td>
<td>• Ekurhuleni Development Company (previously Greater Germiston Inner City Housing Corporation)</td>
</tr>
<tr>
<td></td>
<td><strong>Liquidated or terminated</strong></td>
</tr>
<tr>
<td></td>
<td>• Temba Roodeplaat Water Services Trust</td>
</tr>
<tr>
<td></td>
<td>• Civirelo Water</td>
</tr>
<tr>
<td></td>
<td>• Tshwane centre for business information and support</td>
</tr>
<tr>
<td></td>
<td>• Trade Point Pretoria</td>
</tr>
<tr>
<td><strong>Tshwane</strong></td>
<td><strong>Existing</strong></td>
</tr>
<tr>
<td></td>
<td>• Sandspruit Works Association Waste Water</td>
</tr>
<tr>
<td></td>
<td>• Sandspruit Works Association ODI Water</td>
</tr>
<tr>
<td></td>
<td>• Housing Company Tshwane</td>
</tr>
<tr>
<td></td>
<td><strong>Disestablished</strong></td>
</tr>
<tr>
<td></td>
<td>• Durban Investment Promotion Agency</td>
</tr>
<tr>
<td></td>
<td>• Durban Africa</td>
</tr>
<tr>
<td></td>
<td>• Metro Housing</td>
</tr>
<tr>
<td><strong>eThekwini</strong></td>
<td><strong>Existing</strong></td>
</tr>
<tr>
<td></td>
<td>• uShaka Marine Theme Park</td>
</tr>
<tr>
<td></td>
<td>• International Convention Centre (ICC)</td>
</tr>
<tr>
<td></td>
<td><strong>Released control</strong></td>
</tr>
<tr>
<td></td>
<td>• Khayelitsha Community Trust (KCT) – 2011, the City released control of the entity</td>
</tr>
<tr>
<td><strong>City of Cape Town</strong></td>
<td><strong>Existing</strong></td>
</tr>
<tr>
<td></td>
<td>• Cape Town Convention Centre Company (Pty) Ltd (Convenco)</td>
</tr>
<tr>
<td><strong>Nelson Mandela</strong></td>
<td><strong>Existing</strong></td>
</tr>
<tr>
<td></td>
<td>• Mandela Bay Development Agency</td>
</tr>
<tr>
<td><strong>Buffalo City</strong></td>
<td><strong>Existing</strong></td>
</tr>
<tr>
<td></td>
<td>• Tourism Buffalo City</td>
</tr>
</tbody>
</table>

While the entities have taken some time to bed down especially those in Johannesburg, there remains an ongoing debate on whether this mechanism should be supported or not. There certainly appear to be a number of advantages to the model relating to the focusing of service interventions, expanding capacity to include private sector board members, remuneration flexibility and the ability to attract skilled and experienced staff, reduced levels of bureaucracy, the ring-fencing of revenue and ability to obtain independent credit ratings.

More recent proposals emerging from within the City of Johannesburg for the reincorporation of some of the entities back into the City due to discontent with how these entities operate. The main concerns relate to factors such as the perceived independence of the entities, the lack of direct accountability to
local communities, the difficulties in detecting and correcting challenges, limited control on the part of the Municipal Manager with the need to defer to the Entities Board and the avoidance of responsibility when challenges arise.

Entities appear to be leadership sensitive with poor leadership resulting in underperformance and service delivery breakdown. The capacity for contract management tends not to be at the level required for effective control. The management of the entities are often more senior and sophisticated than the internal staff undertaking the monitoring of performance within the municipality making accountability difficult.

INTEGRATED DEVELOPMENT PLANNING

The Municipal Systems Act requires that municipal integrated planning must be aligned with other municipalities, provincial and national government through a system of cooperative governance. It also became a legislative requirement for municipalities to undertake extensive public consultation in the formulation and implementation of local planning, as well as in relation to overall performance.

An integrated development plan is required to reflect:

“(a) the municipal council’s vision for the long term development of the municipality with special emphasis on the municipality’s most critical development and internal transformation needs;

(b) an assessment of the existing level of development in the municipality, which must include an identification of communities which do not have access to basic municipal services;

(c) the council’s development priorities and objectives for its elected term, including its local economic development aims and its internal transformation needs;

(d) the council’s development strategies which must be aligned with any national or provincial sectoral plans and planning requirements binding on the municipality in terms of legislation;

(e) a spatial development framework which must include the provision of basic guidelines for a land use management system for the municipality;

(f) the council’s operational strategies;

(g) applicable disaster management plans;

(h) a financial plan, which must include a budget projection for at least the next three years; and

(i) the key performance indicators and performance targets”

In preparation for the first IDPs to be developed in 2000, the then Department of Local Government and Traditional Affairs with the support of GIZ, developed comprehensive manuals to guide municipalities in the preparation of the plans. Capacity building and training programmes were put in place along with shared service centres supported by the CSIR for the provision of planning skills. IDPs have become an important tool for guiding and justifying infrastructure development at the local level. The plans remain an important means of assessing the municipality’s performance against a set determined goals and objectives.

We are now into the third term with respect to the preparation of IDPs and yet a number of challenges remain. Over the years, all municipalities now complied with IDP related legislative requirements. However, the quality of many of the plans remains a challenge. The IDPs still tend to be a product of mechanistic and process-driven planning approaches. Few plans reflect strategic consideration in relation to:

• national and provincial development goals, priorities and challenges;

• a shared perspective of the district or metropolitan space economy including a common
understanding of development potential and need in the wider district or metropolitan region;
• strategic alternatives for addressing district or metro based developmental challenges;
• the management of difficult choices and trade-offs regarding infrastructure investment and
development spending priorities; and
• agreements with national and provincial sectors and line departments with respect to infrastructure
investment and development spending within their shared area of impact.

The linking of spatial development frameworks and IDPS has remained an ongoing challenge with the
National Planning Commission noting the following in relation to the challenges presented by cooperative
integrated planning:
• the lack of clarity with respect to the scope of national planning legislation and its place within
spatial planning;
• the lack of clarity in relation to the specific roles and responsibilities for planning at each sphere of
government;
• the exclusionary tendencies of spatial planning and land use management;
• complex planning laws and sector department legislation results in duplicate or parallel planning
processes and procedures;
• Land use management instruments are not well linked to spatial development policies and need
more flexibility to accommodate new development realities and improved decision-making;
• Lengthy, onerous and confusing land development application procedures.

Despite the adoption of the Constitution in 1996, spatial planning and land use management continued
to be regulated through a plethora of apartheid legislation which continued to promote inefficient and
cumbersome development outcomes.

The first comprehensive legislative attempt to deal with the red-tape created by the disjointed apartheid
planning legislation saw the promulgation of the Development Facilitation Act (DFA) in 1995, which meant
to be an interim legislation aimed at accelerating development planning processes and addressing the
legacy of apartheid spatial planning.

Even though municipal planning is identified in schedule 4, Part B of the Constitution as being a local
government competence, it was not until June 2010, (in a matter between the City of Johannesburg and
the Gauteng Developmental Tribunal, commonly known as the DFA judgment), that the Constitutional
Court gave guidance on the meaning of municipal planning and the role of local government. The
constitutional court declared the provisions of Chapter V and VI of the DFA unconstitutional and invalid
as they contributed to the blurring of authority to plan land use between provinces and municipalities.
However, while municipal planning was confirmed by the constitutional court as a competence of
municipalities, provincial and national spheres of government have a role to play in “regional planning
and development”. Municipalities cooperatively work with other spheres of government when formulating
and executing the municipal planning function but are the land use planning authorities of first instance. It
is within the context of cooperative governance and the ruling by the Constitutional Court that the Spatial
Planning and Land Use Management Act (SPLUMA) was promulgated with clear distinction of the roles of
each of government in development planning.

As municipalities are now authority of first instance on municipal planning matters, SPLUMA addresses
institutional continuations in disjointed spatial planning. As economic realities change, SPLUMA is envisaged
to significantly reduce red tape and obstacles to economic development and mandatorily use Spatial
Development Frameworks to address land use in order to harmonise town planning and zoning schemes.
While the capacity at municipal level to implement SPLUMA is unevenly spread, legislated municipal
mandates provide the scope for municipalities to transform the built environment. SPLUMA is envisioned to
transform the sector by implementing the decentralization agenda envisioned in the National Development Plan. By placing local government at the centre of spatial transformation, transformative functions such as human settlements and transport planning are devolved to the local government sphere. This is envisioned to improve meaningful coordination and alignment of national, provincial and local planning strategies and restructuring tools, such as Spatial Development Frameworks and Land Use Management Systems.

**BROAD CAPACITY SHIFTS**

The MDB Capacity Assessments over time have demonstrated large variations in staffing levels for different types of municipalities. For example, the 2008/09 capacity assessment confirmed that at local municipal level the MDB classification 4 (largely B1 municipalities) had significantly higher staffing levels when compared with the Classification 1 (largely B4 municipalities) and Classification 2 (largely B3 municipalities). While the Classification 4 municipalities (B1) experienced a slight decrease in staffing levels from 2002/03 to 2008/09, the Classification 2 municipalities (B3) had the largest increase and have improved their staffing levels by approximately 38%.

Classification 1 municipalities (B4) experienced the highest improvement, (77%) in the staff to household ratio when compared to the other classifications of municipalities, from the 2002/03 to the 2008/9 assessment periods. Classification 2 municipalities (B3) demonstrated a 58% improvement, with the classification 3 (B2) showing a 33% improvement, and the classification 4 local municipalities (B1) a 38% improvement. The improvement in staff to household ratio indicates a strong positive trend especially in some of the poorest regions of South Africa. However, these results need to be examined with some caution.

The 2011 MDB capacity assessment results indicate that in the B4 municipalities (Old MDB classification 1), approximately 71% of the operating expenditure with 41% of the staff is allocated to governance and administration, leaving approximately 29% expenditure but with 59% of the staff being allocated to service delivery. This is a significant variation when compared with B2 and B3 municipalities which have between 36-38% operating expenditure allocated to governance and administration with the B1 municipalities and metros showing results of 17% and 18% operating expenditure respectively.

**BASIC SERVICE DELIVERY ACHIEVEMENTS**

When examining census results for the provision of basic services of water, sanitation, electricity and refuse removal, it is evident that significant strides have been made post 1994. While municipalities may not have been the only implementing agent for some functions, they nevertheless are likely to have been part of the planning process and/or provided the necessary support or community facilitation in the rollout thereof.

**BASIC SERVICE DELIVERY**

One of the key features of a developmental state is to ensure that all its citizens, especially the poor and other vulnerable groups have access to basic services. The South African Constitution in schedules 4 and 5 mandates local government to ensure the provision of services is progressively expanded to all, within the limits of available resources and in a sustainable manner.

The adoption of the Free Basic Services Policy in 2001 to provide a basket of free basic services to all, linked to an indigent policy which targets the poorest sections of communities, has become an integral part of the programme to alleviate poverty among poor households. The basket of services includes solid waste, water, sanitation and electricity. Since the introduction of the policy by government in 2001, the government has made progress in giving effect to the right to free basic services.
It is widely acknowledged that local government is critical to the developmental processes and delivery of services to communities in the country, however faced with the task of improving not only the quantity but also the quality of basic services being delivered. Although significant progress has been made in service delivery in the past fifteen years of local government, many challenges still remain. These challenges are exacerbated by the exponential growth in populations and households in some municipalities particularly in the metros. Rural and district municipalities in addition face significant infrastructure and services backlogs within the contexts of already limited resources and economic potential.

WATER

The water sector in South Africa is divided into two main sub-sectors, namely water resources management, guided by the National Water Act (1998), and water services provision, guided by the Water Services Act (1997). These sub-sectors include stakeholders across the national, regional and local level. The local government constitutionally is responsible for the provision of services and the Department of Water Affairs and Forestry (DWAF) is responsible for the regulation of the water sector including providing local support to the local government. However, local government is in the first instance accountable for the provision of water and sanitation services. The Municipal Systems Act, 32 of 2000 (Municipal Systems Act) demonstrates that there is an appropriate division of power in the provision of water. The municipality can either be the service provider of the first instance or contract a service provider to do so. The Municipal Systems Act sets out the conditions under which service providers may be contracted. The National Water Act, 36 of 1998 places additional monitoring responsibilities on the municipality as it must ensure that foreign objects, oil and storm water do not contaminate the water supply. Funding for the provision of bulk infrastructure and access follows the equitable share formula of ‘some for all’ instead of ‘all for some’. The Division of Revenue Act provides an equitable allocation for the provision of services to the poor. The Municipal Infrastructure Grants also contain a component of equitable share in order to ensure that the poor are also provided with water infrastructure and services. The equitable share covers some of the operational costs incurred in providing the poor with services. The Water Services Act, the Strategic Framework for Water Services and the Municipal Finance Management Act Circular 13 articulates how water is delivered and to where.

A number of programs are in place at both local and national level to ensure service delivery and progress is assessed against measurement indicators. Therefore, progress is measured in terms of the number of households who have access to a particular service. Households without access to improved/required service levels will then make up the “backlogs”.

Challenges in water management and the provision of water include the rollout of water infrastructure to underserved areas, the maintenance of existing infrastructure to prevent or minimise wastage, the scarcity of water itself, the demand for innovation this places on municipalities, scientific water purification standards (blue drop), technical staff shortages, management of high water demand from agriculture, forestry and mining, and minimising the degradation of water sources caused by these economic activities.

Although not specifically cited in water service delivery mandates, the use of the National Health Act, the National Environmental Water Management Act and many gazetted regulations have bearing on the management of the water supply. The improper disposal of waste has the potential to contaminate the water supply and can cause disease outbreaks if improperly managed. Local government has the joint-responsibility to ensure that those who use the water apply due diligence in managing contaminated water. Water is scarce and public demand is increasing due to natural factors of population growth, adding to the challenges of water provision.

SANITATION

While the right to have access to adequate sanitation is not expressly provided for in the Constitution, there are a number of clauses particularly in the Bill of Rights, which directly or indirectly imply the right to basic sanitation or are fundamentally related to the enjoyment of this right. For instance the 2001 White Paper on Basic Household Sanitation explicitly acknowledges that “government has a constitutional responsibility
to ensure that all South Africans have access to adequate sanitation. The Water Services Act, 108 of 1997 (Water Services Act) which is regarded as the primary legislation relating to water and sanitation in South Africa also refers to a “right to basic sanitation.”

On the other hand, the Regulations Relating to Compulsory National Standards and Measures to Conserve Water (2001) (Compulsory National Standards) published to give effect to section 9 of the Water Services Act. This Act provides minimum standards, albeit vague, for basic sanitation. The responsibilities of municipalities is outlined in the Municipal Systems Act and it is clear that basic sanitation forms part of the “right to basic municipal services” as outlined in section 73 of the Act. At a municipal level, there is a significant confusion regarding access to basic sanitation services as a human right. This is exacerbated by the current sanitation policy which does not provide guidance on the interpretation of access to basic sanitation as a human right. Households living in poor rural areas as well as those in dense informal settlements unfortunately end up not enjoying access to basic sanitation services as a human right. This is because the free basic sanitation services typically only benefits households who are already connected to the sewer networks.

**ELECTRICITY**

The supply of electricity involves three phases and these include; generation, transmission and distribution. The generation of electricity including bulk transmission is the main function of Eskom and largely managed through the Department of Energy. According to schedule 4 of the South African Constitution, the distribution of electricity to consumers within the relevant areas of jurisdiction remains the responsibility of municipalities. This is a major source of revenue for municipalities and it contributes to surplus generation that can be used to fund other municipal functions as well as manage outstanding debtors. However, the responsibility of distributing electricity to end-users is often shared between the municipalities and Eskom which often leads to a complicated service delivery situation in some of the municipalities.

Municipalities are responsible for the provision of free basic energy (FBE) within the parameters of the Electricity Basic Services Support Tariff (EBSST) policy as a result of the introduction of the government policy in 2000 for Free Basic Services (FSB) in water, sanitation and energy. FBE funding is provided through the equitable share allocation (National Energy Regulator of South Africa, 2012). In terms of this, every indigent or poor household is entitled to receive 50 kWh of free basic electricity per month. As this is a national policy that applies to municipal service and is funded through an unconditional allocation, national government does not prescribe how municipalities implement the free 50kWh. Some municipalities have therefore elected to provide more at their own cost. According to the 2012 Electricity Governance Initiative Report, Eskom had about 1.3 million customers approved to receive FBE, with agreements signed with 243 municipalities.

**REFUSE REMOVAL**

Solid waste management is primarily a local government function in South Africa according to the Constitution section 156 (1) (a) read with Schedule 5, assigns responsibility for refuse removal, refuse dumps, solid waste disposal and cleansing to local government. The Waste Act outlines the roles of both national and provincial government in waste management. National government’s competence to legislate is established in line with section 44 of the Constitution on the grounds of the need to maintain essential national standards, establish uniform norms and standards, and to promote and give effect to the right to an environment that is not harmful to health and well-being. Provincial governments are tasked with the implementation of the national waste management strategy and national norms and standards, and may set additional, complementary provincial norms and standards. Local governments are required to ensure the sustainable delivery of services, subject to national and provincial regulations and standards.

It is no accident that refuse removal is informed by the Constitution, the Municipal System Act and the Municipal Structures Act and regulated by the National Environmental Management Waste Act (59 of 2008) and waste collection standards regulations, the National Environmental Management Act (1998)
and regulations and the National Health Act (61 of 2003). Additional regulations include the Basic Refuse Removal Services to Indigent Households, and Government Gazetted notices (21 of 2011) and Gazette (No 36784) R634 waste classification regulations. An integrated waste management plan should guide the municipal removal and processing of waste. These standards are set out in the NEMWA (59 of 2008).

The table below illustrates and explains the basic level of service standards. The term “basic level” refers to the level considered adequate to ensure the health and safety of its household users. It therefore provides cost-effective economic benefits in terms of the improved health of workers and families. A lower level often rings unacceptable health risks and levels higher than the basic level represents increased convenience for service users.

**Table 11: Service standards and basic level of service**

<table>
<thead>
<tr>
<th>Service</th>
<th>Service Standard</th>
<th>Basic level of service</th>
<th>Service below minimum acceptable level</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Water Supply</strong></td>
<td>To supply 25 litres of potable water per person per day within 200 meters of a household and with a minimum flow rate of not less than 10 liters per minute.</td>
<td>Communal stand pipe within 200m from the household</td>
<td>Standpipes greater than 200 m from the household&lt;br&gt;Household using&lt;br&gt;• Boreholes&lt;br&gt;• Springs&lt;br&gt;• Rain water and water tanks&lt;br&gt;• Dam/pool/stagnant water&lt;br&gt;• Water vendors&lt;br&gt;• Other sources</td>
</tr>
<tr>
<td><strong>Sanitation</strong></td>
<td>The basic sanitation facility is infrastructure necessary in providing a sanitation service which includes:&lt;br&gt;• Safe, reliable, private, protected from the weather, ventilated, keeps smells to the minimum, easy to keep clean, minuses the risk of the spread of sanitation-related diseases by facilitating the appropriated control of diseases carrying flies and pests, and enables safe and appropriate treatment and/or removal of human waste and wastewater in an environmentally sound manner.</td>
<td>• Ventilated improved pit latrines in rural and lower density urban areas.&lt;br&gt;• Eco-San latrines</td>
<td>Households using&lt;br&gt;• Pit latrine without ventilation&lt;br&gt;• Bucket latrine&lt;br&gt;• No sanitation</td>
</tr>
<tr>
<td><strong>Refuse removal services</strong></td>
<td>Curb-side collection at least once a week in urban areas. Dumping site where refuse can be disposed of adequately and safely.</td>
<td>Curb-side collection at least once a week in urban areas. In rural areas the access to a nearby dumping sites to dispose of refuse safely and an environmentally friendly manner.</td>
<td>Households or businesses in an urban area not serviced at least once a week by the municipality or the non-availability of refuse removal services or that the service is irregular or intermittent. A backlog would constitute unavailability or lack of access to a dumping site to safely and adequately dispose of refuse removal. Unauthorized sites constitute a backlog or below the basic level of service.</td>
</tr>
</tbody>
</table>
ACCESS TO SERVICES DELIVERY

Provision of municipal basic services in the past fifteen years between 2001 and 2014 has shown broad improvement. At national level, piped water inside dwelling/yard and electricity connections to households demonstrate the largest average increases in service at 86.9% and 81.3% respectively.

Households with sanitation and weekly refuse removal services have significant access averaging 71.3% and 60.4% over the same period. Provinces with the highest average access to services include Western Cape and Gauteng with Eastern Cape and Limpopo lagging behind the rest of the provinces. These two provinces have the least delivery of refuse removal services as a result of their vastly rural nature.

Figure 4: Average Household Access to Service Delivery

Source: Stats SA General Household Survey, 2014

The country is estimated to have added a total 3.9 million household between 2001 and 2013. Gauteng is in the lead with added households of more than 1.5 million (39%) households and the Northern Cape with just 57,955 (1.5%) household between the two periods.
Table 12: Number of households in South Africa

<table>
<thead>
<tr>
<th>Province</th>
<th>2001</th>
<th>2013</th>
<th>2001-2013</th>
<th>% Households 2001-2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Cape</td>
<td>1 173 304</td>
<td>1 653 081</td>
<td>479 777</td>
<td>12.3%</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>1 481 640</td>
<td>1 655 617</td>
<td>173 977</td>
<td>4.5%</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>245 086</td>
<td>303 041</td>
<td>57 955</td>
<td>1.5%</td>
</tr>
<tr>
<td>Free State</td>
<td>733 302</td>
<td>861 418</td>
<td>128 116</td>
<td>3.3%</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>2 117 274</td>
<td>2 566 124</td>
<td>448 850</td>
<td>11.5%</td>
</tr>
<tr>
<td>North West</td>
<td>760 588</td>
<td>1 137 153</td>
<td>376 565</td>
<td>9.7%</td>
</tr>
<tr>
<td>Gauteng</td>
<td>2 791 270</td>
<td>4 312 130</td>
<td>1 520 860</td>
<td>39.0%</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>785 424</td>
<td>1 126 010</td>
<td>340 586</td>
<td>8.7%</td>
</tr>
<tr>
<td>Limpopo</td>
<td>1 117 818</td>
<td>1 430 987</td>
<td>313 169</td>
<td>8.0%</td>
</tr>
<tr>
<td>South Africa</td>
<td>11 205 706</td>
<td>15 106 552</td>
<td>3 900 846</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Source: Stats SA General Household Survey, 2014

ELECTRICITY

Some of the challenges faced by municipalities in the provision of electricity in a sustainable way relate to the phenomenon of illegal connections which have impacted on the sustainability of municipal planning as well as undermining the revenue base. The culture of non-payment sees even those who can afford to pay connecting illegally to the power grid.

Research around this issue suggests that public levels of trust, dependency cultures that expect free services from government, service affordability, poverty and the quality of the service all form part of the non-payment culture and play a role in determining the level of preparedness for citizens to pay for the services they consume.\(^{31}\)

The percentage of South African households that were connected to the mains electricity supply increased from 69.7% in 2001 to 86% in 2014. Provincial performance highlights Eastern Cape, Limpopo, as having the largest improvements in percentage points. These provinces grew by 33.5 and 29.2 percentage points respectively. Mpumalanga and Kwa-Zulu Natal had significant improvements of 21.4 and 20.9 percentage points respectively. Western Cape, on the other hand was the only province registering a decline from 88.0% in 2001 to 87.6% in 2014. This could be attributed to the high influx of migrants and creation of informal dwellings in the province.

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The table below provides the figures for consumer units receiving basic electricity services from both Eskom and municipalities and figures for consumers receiving free basic services from municipalities. Several municipalities over the last few years have changed their policies from providing free basic electricity to all households to only indigent or poor households. The table also provides the most likely explanation for the decline in the number of consumer units receiving free basic electricity services. In 2007, the number of consumer units receiving free basic electricity services was about 3 million and by 2013, the number of consumer units had decreased by 419,633 to reach about 2.5 million. Free State province had the largest decline of in the proportion of consumer units benefiting from the free basic electricity services. The decline was a significant 42.1 percentage points between the two periods from 67% in 2007 to 24.8% 2013.
Table 13: Access to free basic electricity services

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of consumer units receiving basic electricity services</td>
<td>Number of consumer units receiving free basic electricity services</td>
<td>Proportion benefiting</td>
<td>Number of consumer units receiving basic electricity services</td>
<td>Number of consumer units receiving free basic electricity services</td>
<td>Proportion benefiting</td>
</tr>
<tr>
<td>Western Cape</td>
<td>1 170 734</td>
<td>611 882</td>
<td>52.3%</td>
<td>1 266 161</td>
<td>560 877</td>
<td>44.3%</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>774 920</td>
<td>274 009</td>
<td>35.4%</td>
<td>1 146 447</td>
<td>325 429</td>
<td>28.4%</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>176 603</td>
<td>63 051</td>
<td>35.7%</td>
<td>270 283</td>
<td>68 292</td>
<td>25.3%</td>
</tr>
<tr>
<td>Free State</td>
<td>603 925</td>
<td>404 475</td>
<td>67.0%</td>
<td>691 914</td>
<td>171 847</td>
<td>24.8%</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>1 553 965</td>
<td>193 039</td>
<td>12.4%</td>
<td>1 566 638</td>
<td>182 156</td>
<td>11.6%</td>
</tr>
<tr>
<td>North West</td>
<td>604 448</td>
<td>163 850</td>
<td>27.1%</td>
<td>856 531</td>
<td>158 970</td>
<td>18.6%</td>
</tr>
<tr>
<td>Gauteng</td>
<td>1 695 159</td>
<td>876 730</td>
<td>51.7%</td>
<td>2 190 415</td>
<td>677 341</td>
<td>30.9%</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>558 659</td>
<td>255 649</td>
<td>45.8%</td>
<td>804 408</td>
<td>262 848</td>
<td>32.7%</td>
</tr>
<tr>
<td>Limpopo</td>
<td>671 167</td>
<td>126 621</td>
<td>18.9%</td>
<td>1 183 304</td>
<td>141 913</td>
<td>12.0%</td>
</tr>
<tr>
<td>South Africa</td>
<td>7 809 580</td>
<td>2 969 306</td>
<td>38.0%</td>
<td>9 976 101</td>
<td>2 549 673</td>
<td>25.6%</td>
</tr>
</tbody>
</table>

Source: Non-financial Census of municipalities for the year ended June 2013

**REFUSE REMOVAL**

The government in 2001 set itself a target of providing all households with access to refuse removal services by 2012. The figure above shows that 55.4% households in South Africa had access to refuse removal in 2001. By 2012 the proportion of households had improved by 7.1 percentage points to reach 62.5% and further increased to 64% in 2014. While significant progress has been made, a number of challenges still remain. At a provincial level, Eastern Cape has been the worst performing with access declining from 58.6% in 2001 to 35.9% by 2014. This could largely be attributed to the rural municipalities in the province where households either dispose of waste themselves or dump it in an unregulated manner. Limpopo has the least households with access to refuse removal services. In 2001 about 14.8% households had access to refuse removal services and by 2014 only 20.7% had access. The rate at which households have been provided with access has been significantly slow.
Figure 6: Percentage of Households with Access to Weekly Refuse Removal

Source: Stats SA General Household Survey, 2014, Municipal Barometer

Failure to provide services to underserviced areas leads to the unregulated dumping and burning of waste which is relatively common contributing to air and soil pollution. Most municipalities have seen significant increases in households dumping or leaving their rubbish anywhere. The figure provides an illustration of consumer units disposing waste anywhere. Limpopo province has the highest consumer units at 73% disposing their waste anywhere. This means that of the total 4.2 million households in South Africa disposing rubbish anywhere 1.2 million consumer units were found in the Limpopo province in 2014. This trend is also common in the Eastern Cape and Mpumalanga provinces with 843,558 and 572,419 consumer units respectively. Much more is required from municipalities to encourage and regulate organic waste that can be disposed safely on site.

An entity to which the service is (or would be) delivered, and which receives one bill if the service is billed, alternatively known as a delivery point. [This concept is often referred to as a household by municipalities, but this is not strictly correct, as households and consumer units do not coincide one to one, particularly in blocks of flats, on stands where there are multiple households in the same dwelling, or in additional dwellings, such as garden flats, backyard rooms, etc., and in the case of public taps.] Non-financial status of municipalities, Statistics South Africa
Figure 7: Household Dumping

Sanitation

Basic sanitation service is defined as the provision of a basic sanitation facility which is easily accessible to a household, the sustainable operation of the facility including the safe removal of human waste and wastewater from the premises where there is appropriate and necessary and the communication of good sanitation, hygiene and related practices. Therefore, the basic level of sanitation service includes flush toilet with septic tank and pit latrine with ventilation.

Much progress has been made in improving sanitation services to households across all nine provinces, however, many households are still to be reached. The figures show that in 2002, the national average for access was approximately 62.3%, which improved to almost 80% nationally by 2014.

Source: Stats SA General Household Survey, 2014
Figure 8: Percentage of Households with Access to Sanitation

![Percentage of households with access to sanitation graph]

Source: Stats SA General Household Survey, 2014, Municipal Barometer

PIPED WATER

Very high proportions of households with access to piped water are located in the Western Cape, Gauteng, Northern Cape and Free State. These households have access to water either in their yard, dwellings and less than 200 meter off-site than in other provinces. In the past fifteen years, the percentage of households in Eastern Cape with access to water grew from 37.8% in 2001 to 78.5% by 2014. By contrast, between 2013 and 2014, the percentage of households with easy access to water in Eastern Cape declined from 80.5% to 78.5%. When comparing with the rest of the provinces, the Eastern Cape is currently rated as the province in which households had the poorest access to water in 2014.
Of the total 10.8 million households in South Africa in 2002, slightly over a million households had access to water infrastructure that was below minimum standards with about 1.2 million households with no access to water infrastructure. The Eastern Cape and Kwa-Zulu Natal were the provinces with the highest proportion of households with no water infrastructure.

By 2013, South Africa had a total 15.1 million households which means that 4.3 million households were added. Significant progress was achieved with more households in the country having improved access to water infrastructure with Gauteng remaining in the lead. Eastern Cape saw improvements in the proportion of households with no access to water infrastructure where in 2002 the province had 49.6% households with no access to infrastructure and by 2013 had halved the proportion of households with no access to water infrastructure to reach 29.3%.
Table 14: Households with access or no access to water infrastructure

<table>
<thead>
<tr>
<th>Province</th>
<th>2002</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total number of Households (HH)</td>
<td>HH with access to water infrastructure &gt; or = to RDP standards</td>
</tr>
<tr>
<td>Western Cape</td>
<td>11.1%</td>
<td>13.6%</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>13.0%</td>
<td>8.1%</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>3.1%</td>
<td>2.5%</td>
</tr>
<tr>
<td>Free State</td>
<td>5.3%</td>
<td>7.4%</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>17.6%</td>
<td>14.3%</td>
</tr>
<tr>
<td>North West</td>
<td>7.1%</td>
<td>7.9%</td>
</tr>
<tr>
<td>Gauteng</td>
<td>25.3%</td>
<td>30.6%</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>7.2%</td>
<td>7.4%</td>
</tr>
<tr>
<td>Limpopo</td>
<td>9.8%</td>
<td>7.7%</td>
</tr>
<tr>
<td>South Africa</td>
<td>10 814 219</td>
<td>8 597 873</td>
</tr>
</tbody>
</table>

Source: DPME Development Indicators 2014

While there have been substantial improvements in the rollout of water services infrastructure and the rendering of free basic water, the local government sector does face a number of challenges as implementation capacity remains a constraint. In addition, the sustainability of existing infrastructure cannot be neglected and constantly requires additional funding as the infrastructure ages. Furthermore, the cost of extending the network infrastructure to outlying communities is not cost-effective or sustainable, which points to the need to explore alternative service delivery options.

Table 15 demonstrates that while there has been good progress in the extension of access to basic water and sanitation services, there has been a decline in the overall number of households receiving free basic water and free basic sanitation. In 2007, the proportion of households benefiting from receiving free basic services in South Africa declined from 73.1% to 44.7% in 2013 for water and from 38.4% in 2007 to 31.1% in 2013 for sanitation. This is due to many municipalities moving away from providing these services free to all households to targeting the provision of free services to indigent households only. This improvement strengthens the sustainability of the free basics services programmes of the different municipalities in the country.
### Table 15: Proportion of households benefiting from free basic water and sanitation services 2007-2013

<table>
<thead>
<tr>
<th>Province</th>
<th>2007</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of consumer units receiving basic water services</td>
<td>Number of consumer units receiving free basic water services</td>
</tr>
<tr>
<td>Western Cape</td>
<td>917,684</td>
<td>846,112</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>1,213,142</td>
<td>574,165</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>212,499</td>
<td>87,432</td>
</tr>
<tr>
<td>Free State</td>
<td>626,011</td>
<td>569,622</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>1,941,653</td>
<td>1,537,122</td>
</tr>
<tr>
<td>North West</td>
<td>678,501</td>
<td>497,481</td>
</tr>
<tr>
<td>Gauteng</td>
<td>2,566,240</td>
<td>2,060,021</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>798,967</td>
<td>517,861</td>
</tr>
<tr>
<td>Limpopo</td>
<td>935,766</td>
<td>535,471</td>
</tr>
<tr>
<td><strong>South Africa</strong></td>
<td>9,890,463</td>
<td>7,225,287</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Province</th>
<th>2007</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of consumer units receiving basic sanitation services</td>
<td>Number of consumer units receiving free basic sanitation services</td>
</tr>
<tr>
<td>Western Cape</td>
<td>934,675</td>
<td>737,059</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>855,035</td>
<td>402,467</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>187,688</td>
<td>66,096</td>
</tr>
<tr>
<td>Free State</td>
<td>616,898</td>
<td>250,566</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>1,678,489</td>
<td>348,514</td>
</tr>
<tr>
<td>North West</td>
<td>567,800</td>
<td>119,167</td>
</tr>
<tr>
<td>Gauteng</td>
<td>2,120,324</td>
<td>889,946</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>545,136</td>
<td>110,975</td>
</tr>
<tr>
<td>Limpopo</td>
<td>596,899</td>
<td>193,444</td>
</tr>
<tr>
<td><strong>South Africa</strong></td>
<td>8,102,944</td>
<td>3,118,234</td>
</tr>
</tbody>
</table>

**Source:** Stats SA Non-financial census of municipalities for the ended June 2013

### SUMMARY COMMENTS

It is apparent that significant progress has been made in relation to addressing the basic service backlogs. Interestingly, for those functions for which other agencies are part of the delivery process, such as Eskom and water boards, greater progress appears to have been made. Conversely, in the case of refuse removal which has largely remained a service rendered by the municipality only, less progress has been found. However, it should be noted that in some areas, especially in the so called B3 and B4 municipalities, such services were only introduced within the last ten years with the municipalities still needing to develop the necessary capacity.
COMMUNITY PROTESTS

This section of the report is largely framed by the work undertaken by the SALGA\textsuperscript{35} and Community Law Centre located at the University of the Western Cape\textsuperscript{34} which has been collecting and analysing data on protests from across the country since 2007.

In 2007, the average number of protests per month was 8.73 whereas in 2010 this figure had almost doubled to 16.33. A report on the Multi-level Government Initiative’s (MLGI) Protest Barometer notes that “the first eight months of 2012 have already seen the highest number of protests of any year (226). If current trends continue, the 2012 total will be around 300. This will put protests numbers for 2012 at more than double the number in 2011 (144) and also more than double the number of protests in 2010 and 2011 combined\textsuperscript{35}”. The eight months in 2012 recorded an average of 28.25 protests per month.

From 2007 until 2011, Gauteng demonstrated the largest number of protests per annum when compared with all other provinces nationally. In 2012, this trend changed with the Western Cape and the Eastern Cape recording results higher than those of Gauteng. These two provinces along with Gauteng accounted for more than half (56.98\%) of all protests nationally in that year.\textsuperscript{36} By the estimates of Municipal IQ, in 2004, 10 protests were recorded. By 2014 the reported numbers had increased to 184. The MLGI recorded protest in 2014 as 218.

The discrepancy between these estimates is attributable to different methods of defining protest actions, different data collection methods and other criteria but the trend is clearly upward since the 2009

\textsuperscript{33} SALGA Perception studies on Community Protest conducted in 2009 and updated in 2015
\textsuperscript{35} Ibid, Pg.5
\textsuperscript{36} Ibid, Pg 5
economic crisis. The MLGI have further categorised the protests as being either violent or non-violent with their definitions included in the table below:

**Table 16: Definitions of Protest Types**

<table>
<thead>
<tr>
<th>Non – violent Protests</th>
<th>Violent Protests</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protesters submitting a petition or memorandum, organising marches outside government buildings, or assembling peaceably in public areas</td>
<td>Some or all of the participants have engaged in actions that create a clear and imminent threat of, or actually result in, harm to persons or damage to property indications of a violent protest (the intentional injuring of police, foreigners, government officials, the burning down of houses or municipal buildings, looting shops), instances where police disperse protesters with tear gas, rubber bullets or water cannons, where rocks are thrown at passing motorists, or tires are burned to blockade roads</td>
</tr>
</tbody>
</table>

The MLGI barometer’s results suggest that the tendency towards violent protests is increasing. Whereas in 2007, 42% were violent, this figure had increased to 54% in 2010 to 80% by 2014. Violence in the 2014 data related to violence used both by public order policing actions and protestors themselves. However, the tendency for violence to escalate over time is directly attributable to how violence has been defined and interpreted. In the case of the definitions of peaceful and unrest incidences, the degree of subjectivity is implied by the actions the police take, not by what communities do. Peaceful incidences are those which require no police intervention. Unrest is an incident that requires police intervention to disperse the crowd and implies violence.

**Figure 10: Escalating Violence in protest action (1997 to 2013)**

*Source: Alexander, Runciman and Maruping (2015).*

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37 Ibid, Pg 5  
As violence intensifies, it presents local government with public engagement challenges. Dealing with violent protestors creates a narrative that only violence will be entertained by local government as a mode of prioritising which community groups are consulted.

Many protests are unrelated to local government functioning and often public gatherings are incorrectly recorded in the Police Service Data on Crowd Incidences. For example, an imbizo held to discuss service delivery was recorded in the database under “dissatisfied with service delivery.” Such issues are certainly not protests. According to this characterisation of violence, the “critical point is that whether an incident is defined as unrest or peaceful is determined by whether the police have intervened, not by whether there has been violence.” Despite the problems in the database, the profile of protest grievance demonstrates a wide divergence from local government mandates.
In ongoing SALGA work, the majority of protest actions related to service delivery issues are localised to urban areas, particularly in the metropolitan areas which are subject to high levels of migration and competition over land suitable for the building of family habitations. Rural municipalities have begun to experience an increase in the number of protest actions. Issues around which communities are perceived by local government to protest about have remained relatively constant. Though the sample sizes are unrepresentative and the comparison is unreliable, there are interesting trends that have remained consistent in the two survey years (2009 and 2015) in studies undertaken by SALGA. Service accessibility has remained an issue with a high number of perceptions identifying it as a serious cause for protest. In both studies, the same issues persist but there is no way of evaluating their relative growth or decline in strength. Persistent issues are indicative of a range of governance issues which in the 2015 Community Protest study identifies as inter-governmental coordination, public participation, other spheres of government failing to adequately consult with local government and the costing of policies and services. Of these issues, public participation remain persistent.
Figure 13: Municipal Perceptions of Service-related Protest Causes

<table>
<thead>
<tr>
<th>Municipal Perceptions of Service-related Protest Causes as % of respondents</th>
<th>2009 (N=52)</th>
<th>2015 (N=122)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Accessibility</td>
<td>57.5</td>
<td>49.6</td>
</tr>
<tr>
<td>Communication between councils and communities</td>
<td>21</td>
<td>33.9</td>
</tr>
<tr>
<td>Housing list maintenance</td>
<td>12.5</td>
<td>16.5</td>
</tr>
<tr>
<td>Access to housing</td>
<td>81</td>
<td>38</td>
</tr>
<tr>
<td>Sanitation</td>
<td>38</td>
<td>23.1</td>
</tr>
<tr>
<td>Refuse removal</td>
<td>15</td>
<td>9.1</td>
</tr>
<tr>
<td>Roads and maintenance</td>
<td>44</td>
<td>39.7</td>
</tr>
<tr>
<td>Employment opportunities</td>
<td>38</td>
<td>42.1</td>
</tr>
<tr>
<td>Political Leadership</td>
<td>73</td>
<td>17.4</td>
</tr>
<tr>
<td>Application of Free Basic Services</td>
<td>15</td>
<td>22.4</td>
</tr>
<tr>
<td>Perceived Tender Irregularities</td>
<td>35</td>
<td>25.9</td>
</tr>
</tbody>
</table>
Only recently have smaller municipalities in rural areas overtaken metropolitan municipalities as loci of protest actions. In Limpopo, protests have been over demarcation-related issues and the provision of water as boreholes dry up and pumping equipment breaks for extended periods as well as employment-related matters. In Gauteng, protests have emerged over a host of issues and appear to be concentrated in informal settlements. Housing, maintenance of housing lists, electricity disconnections and quality of services appear to be major protest issues within informal settlement areas.

By contrast, the MLGI Protest Barometer analysed the type of grievances raised from 2007 to 2012 and found the following:

“Land and housing issues are the most often-cited incidents (303 over the six-year period), with poor service delivery second most frequent (218 incidents). Grievances related to broken promises and government officials ignoring protesters’ grievances have risen exponentially since 2010, but still account for less than 10% of total complaints. Non-municipal services is the second highest macro grouping of grievances this year, representing 22.6% of the total issues cited. Grievances related to municipal services – lack of electricity, water, sanitation, or roads – is the most frequently cited category of grievance. Party political issues are the least cited overall, making up 6.19% of the total number of grievances”.

In the 2015 update study released by the MLGI, the pattern of grievance remains the same. While there is a fair amount of consistency in the motivations given for protest action from all reported sources, there has been a gradual shift from grievance over access to services towards issues of quality. Recent statistically based research has drawn a correlation between protest action and the economic conditions prevailing in the country at the time. The global financial crisis of 2009 generated massive job losses and increased social discontent as the state could not meet the needs of citizens whose own capabilities to supply their needs were eroded.

While some violent unrest has been sparked around issues of xenophobia, protest is a complex social issue and cannot be placed firmly within the responsibility of local government when other spheres of government deliver services concurrently or exclusively within the local government space and when protest is not exclusively related to government services. No matter the source or motivation for protest, local government is responsible for repairing the damage done to infrastructure after unrest incidents. In a recent survey, over 60% of a sample of 122 municipal mayors, speakers and senior managers indicated that public participation must be improved to reduce protest action. This is indicative of a communication breakdown between councils and communities, which if repaired, could mitigate the number of protest actions reported.

**SERVICE DELIVERY: MECHANISMS, TRENDS, PROGRESS AND CHALLENGES: SUMMARY COMMENTS**

- The Municipal System Act introduced the requirement for the development of Integrated Development Plans (IDPs). These 5 year plans are meant to be developmentally oriented in order to achieve the objects as contained in the Constitution and together with other organs of state contribute to the progressive realisation of the fundamental rights linked to the environment, property, housing, health, water, social services and education.
- The Act requires that municipal integrated planning must be aligned with other municipalities, provincial and national government through a system of cooperative governance.
- It also became a legislative requirement for municipalities to undertake extensive public consultation in the formulation, implementation and in relation to overall performance.
- The then DPLG prepared an IDP manual and established support centres for supporting the preparation of the first IDPs in 2000.
While all municipalities now comply with the legislative requirements for preparing IDPs, the quality still remains a challenge with the products being a mechanistic and process driven planning approach.

Few IDPs reflect strategic considerations such as:

» National and provincial development goals, priorities and challenges;
» A shared perspective of the district or metropolitan space economy;
» Strategic alternatives for addressing district or metro based developmental challenges;
» The management of difficult choices and trade-offs regarding infrastructure investment and development spending priorities;
» Agreements with national and provincial sectors and line departments with respect to infrastructure investment and development spending within their shared area of impact; and
» Coherent linkages between the IDPs and SDFs.

There are two broad service delivery mechanism available to municipalities that is, an internal or external mechanism.

With respect to the use of external service delivery mechanisms, the management of the section 78 investigations process has been varied with many municipalities adopting the approach without ensuring legal compliance. Moreover, there is no national or provincial database which tracks the implementation of the Section 78 requirements and the monitoring of any contractual obligations.

There are varying approaches across municipalities to the use of entities with the City is Johannesburg is the most active user of this entity approach. However there appear to be a number of challenges with the use of entities such as:

» The perceived independence of entities notwithstanding that many if not all entities are wholly owned by the municipality;
» The watering down of the municipal managers authority as problems are reported to the Board and not directly to the municipal manager;
» Passing of the so called buck between the municipality and the municipal entity; and
» Leadership sensitivity including poor or insufficiently skilled and experienced appointments.

Another service delivery model adopted has been the shared services approach. This has been a growing practice especially in the Western Cape and KwaZulu-Natal. It also been used extensively for supporting the Operation Clean Audit.

In relation to municipal capacity levels, the MDB Capacity Assessments overtime have demonstrated large variations in staffing levels for different types of municipalities. For example:

» The 2008/09 capacity confirmed that at local municipal level the B1 municipalities had significantly higher staffing levels when compared with B4 and B3 municipalities;
» B1 experienced a slight decrease in staffing levels from 2002/03 to 2008/09;
» B3 had the largest increase and have improved their staffing levels by approximately 38%;
» B4 experienced the highest improvement, (77%) in the staff to household ratio when compared to the other classifications of municipalities - the 2002/03 to the 2008/9 assessment periods;
» B3 demonstrated a 58% improvement with the classification; and
» The improvement in staff to household ratio indicates a strong positive trend especially in some of the poorest regions of South Africa.

Moreover, the 2011 MDB capacity assessment results indicate that in the B4 municipalities, approximately 71% of the operating expenditure and 41% of the staff are allocated to governance and administration but with approximately 29% expenditure but with 59% of the staff being allocated
to service delivery. This is a significant variation when compared with B2 and B3 municipalities which have between 36-38% operating expenditure allocated to governance and administration with B1 municipalities and metros showing results of 17% and 18% operating expenditure respectively.

- When examining the number of people accessing services, there has been significant progress made in addressing backlogs. However, for those functions for which other agencies are part of the delivery process, such as Eskom and water boards, greater progress appears to have been made.

- Refuse removal which has largely remained a service rendered by the municipality only, less progress has been found. It should be noted that in some areas especially in the so called B3 and B4 municipalities, such services were only introduced within the last 10 years with the municipalities still needing to develop the necessary capacity.

- Community protests appear to be becoming more violent and frequent, definitions of peaceful and unrest incidences also needing to be taken into account. Protest frequency is tied to deteriorating economic conditions as citizen aspirations and needs outstrip the states capacity to meet them.
CHAPTER 6:
FISCAL FRAMEWORK AND FINANCIAL MANAGEMENT
This chapter covers the development of the fiscal framework and the implementation of the legal prescriptions provided by the Constitution, the White Paper and the Municipal Finance Management Act (MFMA) and the Municipal Property Rates Act. While the institutional challenges persist in ensuring municipalities become financially viable, there is a tension between concerns around municipal financial viability driven by expectations of self-funding and the provision of free basic services on one hand and the ability of consumers to pay for what they consume and the funding models supportive of free basic service provision on the other. The settling of the financial systems is illustrated through the findings of the Auditor-General. Over time, unqualified audits without findings and with findings are becoming the largest reported findings categories, despite persistent systemic challenges in sourcing financial management skills in budgeting and forecasting, financial controls, accountability systems and cash flow management.

THE FISCAL FRAMEWORK

KEY CONSTITUTIONAL PROVISIONS

The Constitution outlines the fiscal powers and functions for local government. There are two key aspects. The first is outlined in section 229 which describes the Municipal Fiscal Powers and Functions giving a municipality the right to impose rates on property and service charges. The second, in section 227, indicates that local government in each province “is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it” and “to receive other allocations from national government revenue, either conditionally or unconditionally”. Importantly, the Constitution includes a clause which states that “there is no obligation on the national government to compensate provinces or municipalities that do not raise revenue commensurate with their fiscal capacity.”

THE FISCAL FRAMEWORK AND THE WHITE PAPER ON LOCAL GOVERNMENT

When addressing municipal finance, the 1998 White Paper of Local Government noted that when developing a new fiscal framework for local government, it must “recognize and accommodate the differences between municipalities. Urban and rural municipalities, and even those in different metropolitan areas, are in very different financial circumstances with very different prospects for providing adequate services at reasonable costs. Some municipalities, particularly those in rural areas, do not have adequate tax base to fund the delivery of even a minimum level of basic services.”

The White Paper noted that the country’s fiscal framework would need to be restructured in four critical areas:

• Revenue instruments and policies;
• National-local intergovernmental transfers;
• Gearing in the private investments; and
• Budgeting, accounting and financial reporting systems.

The Municipal Finance Management Act adopted in 2003, the Municipal Property Rates Act and the Municipal Fiscal Powers and Functions Act addressed many of the aspects raised in the White Paper. However, notwithstanding the acknowledgement in the policy document in relation to the lack of a revenue base in many parts of the country, it still made an underlying assumption that the average

41 The Constitution of the Republic of South Africa, Section 227(1)(a) and (b)
42 Ibid Section 227(2)
43White Paper on Local Government, Pg109
municipality was able to “finance 90% of their recurrent expenditure out of own revenue”\(^{44}\). Moreover, it argued that the RSC and JSB levies, whilst problematic, should be retained as an importance source of revenue until such time that an appropriate alternative was instituted. A number of important factors occurred post the adoption of the White Paper with both of these factors having a significant impact on municipalities post establishment in 2000.

**THE CURRENT EQUITABLE SHARE FORMULA**

\[
\text{LGES} = \text{BS} + (I + CS) \times \text{RA} \pm \text{C}
\]

Where:

- **BS** = Basic Service Component
- **I** = Institutional Component
- **CS** = Community Service Component
- **RA** = Revenue Adjustment Factor
- **C** = Correction and Stabilisation Factor

**IMPLEMENTING THE LOCAL GOVERNMENT EQUITABLE SHARE**

In 1998, a decision was taken by the then Department of Finance to determine the equitable share based on a formula in order to ensure that the allocations were “objective, transparent, scientific and beyond manipulation by policy makers or municipalities”. While four formulae were originally proposed, only two were operationalized, namely the basic services (S) grant and municipal institutional (I) grant. It was within this framework that the bulk of the transfers took place between 1998 and 2004 at which point the equitable share formula was reviewed. Extensive changes occurred during this period which included inter alia, aspects relating to R293 towns, the allocation of powers and functions and later the re-alignment thereof, and programmes introduced such as nodal priority programmes and Free Basic Service. By 2004, there were six funding windows which included the R293 allocations, S-Grant, I-Grant, Nodal allocations, Free Basic Services (BS) (water, sanitation and refuse removal) and Free Basic Electricity.

A new equitable share grant introduced in the 2005/06 financial year still remains in place. The formula adjustments addressed aspects such as the lack of transparency, the multiple funding windows and the lack of flexibility.

Post 2005, amendments have been made, for example to introduce funding for the provision of municipal health services, corrections to the Revenue Raising Capacity Correction (RRC) component, the BS component to include the increases in bulk electricity costs and the amendments to the institutional component to include a poverty factor and a reweighting of basic services subsidies\(^{45}\). Notwithstanding, a number of concerns remain resulting in the second major review of the formula in 2012.

Firstly, “design of the local government equitable share was

\(^{44}\) Ibid

\(^{45}\) National Treasury, 2012
predicated on the assumption that local government raised 90% of its own revenue and only 10 percent would be subsidized through the intergovernmental grant system\textsuperscript{46}. This resulted in the underfunding of municipal service delivery\textsuperscript{47}. Moreover, the local government equitable share formula is based on a package of basic needs which includes water, sanitation, electricity and solid waste management but excludes for example, roads and emergency services which are publicly accessed services. Instrumental in this approach has been the need for the formula to be based on measurable parameters. It was noted in the recent Local Government Equitable Share Formula Review that “several municipalities observed that there is a tension between different principles in the formula. For example there is a tension between the principle “only use high quality, credible, verifiable data” and the principle to “recognise diversity among municipalities” as it is not always possible to find credible data that measures some of the differences between municipalities (particularly differences affecting the costs of services). Finding high quality data that reflects the different circumstances and service costs in all municipalities is very difficult, as is finding credible data that can be updated for all municipalities”.

The institutional component of the formula has historically also been set too low, resulting in the funding intended for service delivery being used to offset governance and administration costs. Challenges have also arisen in relation to the funding of split functions in relation to the equitable share.

A 2010 IDASA report submitted to the Portfolio Committee on Co-operative Governance and Traditional Affairs noted that the “the current intergovernmental fiscal system and equitable distribution of the national revenue should significantly consider the differing challenges, among other things, the relation to rural and urban environments, availability of human resource capacity, degree of economic activity and overall institutional strength. These differing municipal realities show the anomaly of the distribution of resources uniformly to municipalities when in reality there are very different in their economic capabilities. The unintended consequences of such approach is that the economically distressed municipalities (local and district) are seriously challenged to fulfill their constitutional obligations”. (IDASA, 2010) In addition, metropolitan municipalities which tend to receive limited grants from the national fiscus are making strong arguments with respect to the growing rates of urbanization and ever increasing levels of urban poverty. This is placing increasing pressure on the municipality’s own reserves with no compensation from national government for trends which are occurring on a national and international scale.

The examination of own revenue to government and subsidies over time is interesting. The Financial and Fiscal Commission (FFC) analysis from 2003/04 to 2008/09 demonstrates that within the metropolitan municipalities approximately 81% of revenue is from own sources whereas at least 63% of rural municipality’s income was derived from grants. The results also demonstrate that district municipalities, regardless of the extent of their powers, depend extensively on grant income.

**MUNICIPAL FINANCIAL MANAGEMENT**

**MANAGING CONSUMER DEBT**

Since local government in South Africa is largely self-financing, generating the majority of its income from own revenue collection, credit control and the ability to minimise consumer debt is critical. The establishment of democratic local government was located within a history of rent and service boycotts. This was not only during the lead up to the pre interim phase but also occurred in the interim period with examples including the Sandton residents within the Eastern Transitional Metropolitan Local Council withholding rates during the 1997/8 period to prevent cross subsidisation within the Metro. Even post 2000, examples are found of particularly small towns such as within the Great Kei Local Municipality, residence engaging in protracted rates boycotts to force improved service delivery.

Developing and retaining a culture of payment has been a critical component toward stabilising and

\textsuperscript{46} Department of Finance, 1998:23

\textsuperscript{47} Powell, 2012: 15-16
supporting the establishment of local government in South Africa. Non-payment occurs from a number of sources including households, businesses, government and other more minor sources. The FFC analysis of municipal consumer debt from 2004/05 to the 2009/10 financial periods demonstrates that the consumer debt levels are slowly decreasing. However, as is demonstrated in the table below, two categories of municipalities, namely the secondary cities and the “districts with major powers” are showing rising levels of debt.

Table 17: Municipal Debt Levels (2004 to 2010)

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Source: FFC Submission for the Division of Revenue 201/13

The 2012/13 FFC report notes that “despite progress made, consumer debt remains a challenge. For example, metros are still faced with, on average, just under R4billion worth of consumer debt” (FFC 2012/13). The key challenges include the following:

- Inadequacy of the municipal billing system;
- Poor metering systems;
- Recipients being unable to afford to pay for services;
- Unhappiness with services; and
- High tariffs.
As was noted in the report, billing and metering are under the direct control of municipalities and are indeed aspects which can be addressed both by the municipality itself and through support programmes. Eskom and the National Treasury took steps in April 2015 to respectively cut off power and withhold equitable shares to 56 municipalities unless the arrears owing were paid. However, political directives have been issued not to disconnect people who do not pay for their services. As a result, municipalities are held accountable for policy instructions they cannot financially support while the poor are seeing their free basic services being compromised through the partial withholding of the equitable share allocations. The existing assumption of municipalities being largely self-funding as originally envisioned in the RDP no longer holds as realities have changed, both in policy direction and in economic conditions. The RDP assumption of self-funding service provision is contingent on relatively high rates of consumer payment levels. A culture of non-payment and generalized poverty levels in a free basic service policy environment are likely to generate even higher levels of municipal sector indebtedness.

**MUNICIPAL FINANCIAL AUDITING**

When examining the Auditor General Annual Reports from 2003/04 to 2012/13 some significant improvements were found in the number of audit reports reported on post the introduction of the Municipal Finance Management Act in 2003. In the 2003/04 financial year, audit reports were finalised for only 95 municipalities. By 2008/09, 280 of the total 283 municipalities had audit investigations completed. However, this figure has declined with 40 municipalities in 2010/11 not being audited.

The worst and most concerning audit reports are “disclaimer of opinion” and an “adverse opinion”. Of the total municipal financial statements audited, there was a steady growth in the number of disclaimer audit opinions which peaked in 2008/09 with 103 or approximately 38% of municipalities demonstrating this result. The figure was 47% when the adverse results were also included. However, a significant increase in the number of financially unqualified audits with no findings was found from 2010/11 to 2012/13 with the latter year showing a result of 9.4% of municipalities and entities. The same was true for only 0.7% of those organisations audited in 2005/06.

**Figure 15: Auditor General Audit Findings (2003 to 2014)**
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**Data extracted from Annual AG Reports**

In 2009, the key financial management challenges identified by the Auditor General include at least the following aspects:

- Inadequate skills on planning, budgeting: public financial management including expenditure management;
- Poor interface between financial and non-financial information;
- Inability to manage cash flow significantly;
- Inadequate skills on credit and debt management, including basic financial accounting and filling or record keeping in most instances;
- Duplication of payments in some instances and amounts not accounted for (lack of financial accountability);
- Lack of systems to manage audit queries and recommendations, both internal and external auditing; and
- Inadequate systems with regard to corporate governance especially, in relation to the conflict of interest and accountability frameworks, and effective integrated risk management systems within municipalities.

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48 COGTA, 2009
The poor audit results in 2008/09 prompted the establishment of the COGTA driven “Operation Clean Audit Programme (2009-2014). The overall vision for the programme was that “by 2014, all 283 (now 278) municipalities and 9 provinces’ departments in South Africa will have achieved clean audits on their Annual Financial Statements and maintaining systems for sustaining quality financial statements and management information”. It included quarterly monitoring of financial statements by provinces and the national department of Treasury, capacity building programmes, the establishment of shared services for the rendering of the internal audit functions and many other related activities.

While there has been improvement in the number of clean audits in the 2012/13 financial period, that is 9.4% of all organisations audited. However, the following key challenges remain with the percentage indicating the number of organisations having material findings within that category:

- Supply chain management – 68%
- Quality of performance reports – 66%
- Human resource management – 43%
- Quality of submitted financial statements – 82%
- Information technology controls – 48%
- Financial health – 38%

Operation Clean Audit was pronounced as an ineffective sector intervention by the Multi-Level Governance Initiative for three primary reasons: the clean audit strategy was not based on evidence which led to the setting of targets that had no connection to the condition of municipalities. The second reasons was that targets set were not adjustable on a scale of results which led to a gap forming between the reality and the declared targets. As time went on, the targets became increasingly abstract. Lastly, COGTA, whose brainchild Operation Clean Audit was, did not have the legislative mandate to enforce compliance. Changing targets to reflect municipal conditions and the conditions in which the clean audit concept was conceived would have allowed for smaller victories to be achieved if the compliance issues were clarified. Despite the limitations of Operation Clean Audit, in the 2013/14 period, the audit category ‘unqualified audits with no findings’ continued to show strong growth from 30 audit outcomes to 58 audit outcomes in a one year period, indicating material improvements in reporting compliance. Disclaimer opinions continued to decrease, indicating that financial systems, despite their material limitations, are settling and building on compliance successes amid increasing regulations.

**FISCAL FRAMEWORK AND FINANCIAL MANAGEMENT: SUMMARY COMMENTS**

- The Constitution outlines the fiscal powers and functions for local government which includes two key aspects:
  - Section 229 which describes the Municipal Fiscal Powers and Functions giving a municipality the right to impose rates on property and service charges; and
  - Section 227, indicates that local government in each province “is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it” and “to receive other allocations from national government revenue, either conditionally or unconditionally”.

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49 Ibid
51 The Constitution of the Republic of South Africa, Section 227(1)(a) and (b)
• The Constitution includes a clause which states that there is no obligation on the national government to compensate provinces or municipalities that do not raise revenue commensurate with their fiscal capacity.  

52

• The Municipal Finance Management Act adopted in 2003, the Municipal Property Rates Act and the Municipal Fiscal Powers and Functions Act addressed many of the financial aspects included in the White Paper on Local Government.

• Notwithstanding the acknowledgement in the White Paper in relation to the lack of a revenue base in many parts of the country, it still made an underlying assumption that the average municipality was able to “finance 90% of their recurrent expenditure out of own revenue”.  

53

• It argued that the RSC and JSB levies, whilst problematic, should be retained as an importance source of revenue until such time that an appropriate alternative was instituted. The levies have been removed with no replacement as yet significantly reducing the revenue of district municipalities.  

• In order to address the lack of a revenue base in a number of municipalities, Local Government Equitable Share was introduced based on a formula. In 1998, a decision was taken by the then Department of Finance to determine the equitable share based on a formula to ensure that the allocations were objective, transparent scientific and beyond manipulation by policy makers or municipalities. Two formulae operationalized which included the basic services or(S) grant and the municipal Institutional or (I) grant.

• Number of changes occurred during this early period with the formula reviewed in 2004 and implemented in the 2005/06 year. The formula is once again under review.  

• There are a number of challenges with the formula which include the following:
  » It was designed in a manner which assumed that municipalities would generate a substantial portion of their own revenue;  
  » The package of basic services included water, sanitation, electricity and refuse but excludes aspects such as roads and emergency services;  
  » There is tension between “high quality, credible, verifiable data” and “recognising the diversity among municipalities”;  
  » Institutional component has in many cases been set too low; and  
  » No mechanisms have been put in place for those areas experiencing high levels of in migration.

• Local government in South Africa is largely self-financing and as such the ability to minimise consumer debt is critical. Non-payment occurs from a number of sources including households, businesses, government and other more minor sources.

• The FFC analysis of municipal consumer debt from 2004/05 to the 2009/10 financial periods demonstrates that the consumer debt levels are slowly decreasing. However, two categories of municipalities namely the secondary cities and the “districts with major powers” are showing rising levels of debt with the metros have just under R4 Billion consumer debt.

• With respect to consumer debt, the remaining challenges include:
  » Inadequacy of the municipal billing systems;  
  » Poor metering;  
  » Lack of affordability; and  
  » High tariffs;

• In 2009, the key financial management challenges identified by the Auditor General included:

52 Ibid Section 227(2)
53 Ibid
» Inadequate skills on planning, budgeting; public financial management including expenditure management;
» Poor interface between financial and non-financial information;
» Inability to manage cash flow significantly;
» Inadequate skills on credit and debt management, including basic financial accounting and filling or record keeping in most instances;
» Duplication of payments in some instances and amounts not accounted for (lack of financial accountability);
» Lack of systems to manage audit queries and recommendations, both internal and external auditing; and
» Inadequate systems with regard to corporate governance.

• Operation Clean Audit was introduced in 2009 as part of the Local Government Turnaround Strategy. By 2010/11 audit, a marginal improvements in the number of clean audits was noted with minimal improvements for IT controls and HR capacity. However, no improvements were found for supply chain management. Moreover, increase in irregular expenditure from R3 Billion in 2008/09 to R7 Billion in 2010/11 was found. Back to Basics emphasises prudent fiscal management and extends on the intention of Operation Clean Audit to ensure municipal financial controls bring about improvements on compliance reporting.

• Irregular expenditure growth was found by the Auditor General, from R3.2 billion in 2008/9 to R14.5 billion in 2012/13.
CHAPTER 7:
INSTITUTIONALISING DEMOCRACY
This chapter covers the development of the local government electoral system and the establishment of the Constitutionally-mandated supportive infrastructure; the Municipal Demarcation Board. The development of the electoral system and the delimitation of wards has been an exercise in extending democracy to the masses. However, persisting challenges around perceptions of fairness in the demarcation of political boundaries persist, which has had significant implications for the credibility of the institutions set up to promote the democratic electoral system. The rationalisation of political boundaries at ward and municipal level have become increasingly politicised and subject to major community protest action. Ward committees and councillors, which are major components of local democracy, are still subject to challenge as ward committees are not established wall-to-wall and where established, functionality varies. Councillors are subject to a number of challenges ranging from their capacity to hold administrations accountable and political dynamics as well as a low levels of appropriate skills amid a drive to professionalise local political representation in environments unaccustomed to democratic institutionalised systems of representation. The sheer training burden created by this environment has been considerably shouldered by SALGA.

ELECTORAL SYSTEM

The electoral system introduced in the 2000 local government elections ensured a system of non-racial democratic local government. Municipalities were established to include both proportional and locally elected representation on Council through a ward based system. Local municipalities and metropolitan councils comprise 50% proportional representation and 50% from the wards within the municipal area as a whole. This was a significant shift from the 1996 elections which required a minimum of 50% of the wards to be located within the former white areas.

From 2000, a district council has comprised of 60% of councillors who are representatives from the local municipalities within the district and 40% proportional representation from political parties. Prior to the 2011 elections, the 60% representation would have also included representatives from the District Management Area.

The Constitution states that the Local Government electoral system must include wards and the delimitation must be undertaken by an independent body, namely the Municipal Demarcation Board. The Municipal Structures Act, 117 of 1998 outlines the procedures and criteria for ward delimitation. The key purpose of wards is to facilitate and support local democracy through the election of a candidate to represent the residents of that ward in the municipal council.

The notion that a local municipality “shares” municipal executive and legislative authority with a district municipality within whose area it falls under has been a difficult one for many councillors and local government practitioners to grasp. There is a tendency at a municipal level for the local and district municipalities to be viewed as separate and competing entities. Tensions tend to increase between local and district municipalities when discussing the use of, or gaining access to, resources.

DELIMITATION OF WARDS

Based on the requirements of the Municipal Structures Act, a ward may not have less or more registered voters than the minimum and maximum set for the municipality. The number of councillors is determined by the formula prescribed by the Minister and varied by the MEC. The formula itself is based on the number of registered voters as per the IEC’s voters roll at a particular date. For the last three local government elections, the building blocks for the wards have been the voter districts as determined by the IEC. Any ward comprises one or more voter districts. The general case is the inclusion of more than one voter district (VD). The VDs are provided to the MDB by the IEC and cannot be amended by the MDB. Any split to a VD must be done by the IEC and will only be done in exceptional circumstances.
Extract from a report on Wards drafted by Wendy Ovens for the Municipal Demarcation Board

The table below demonstrates the growth in the number of registered voters since 2000 and the resultant increase in the number of wards.

**Table 18: Growth in Registered Voters**

<table>
<thead>
<tr>
<th>Period</th>
<th>Growth in the number of registered voters</th>
<th>Actual number of additional wards nationally</th>
<th>Percentage in the increase in the wards nationally</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000 – 2006</td>
<td>14%</td>
<td>142</td>
<td>3.8%</td>
</tr>
<tr>
<td>2006 – 2011</td>
<td>12.8%</td>
<td>382</td>
<td>9.8%</td>
</tr>
<tr>
<td>2000 – 2011</td>
<td>28.6%</td>
<td>524</td>
<td>14%</td>
</tr>
</tbody>
</table>

A growing concern has been the constantly changing ward boundaries from one electoral period to the next. When examining the shifts over time, interesting trends emerge. Generally, ward boundaries have greater stability in low-density or commercial farming areas. Significant shifts were found in the Northern and Western Cape in the last election due to the disestablishment of the District Management Areas. However, high population density areas such as the metros and the traditional authority areas, which include the Eastern Cape, KwaZulu-Natal, Mpumalanga, Limpopo, and North West, demonstrate higher levels of ward “instability” or mobility. Given the constant shifting populations, there is a limited possibility, based on the current system, that the ward boundaries will remain static from one local government election to the next. While wards are important points for accountability and consultation, the use of wards as a unit for planning purposes will always remain challenged. It may be necessary to decide on a more stable but manageable boundary for supporting local area planning.

To date, the MDB has lost significant credibility as a result of the ward boundary process. There appears to be a limited understanding of the number of role-players in the ward delimitation process. The ward determination and finalisation is a shared responsibility that includes the IEC, Minister for Local Government, MECs for Local Government and the Municipal Demarcation Board. Ward size and numbers will always vary from election to election due to the changes in the number of registered voters. The ward process must be viewed as a “collective” responsibility with strong working relationships between the Minister of Local Government, MECs and the MDB to ensure a minimum impact from one election to the next. This starts with careful thought being given to the determination of the number of councillors/formula and the possible impact on a significant increase in the number of wards within any one municipality.
ESTABLISHING WARD COMMITTEES

The Municipal Structures Act 117 of 1998 Part 4 of Chapter 4 formally introduced the concept of ward committees with the object being to enhance participatory democracy in local government. The committees provide an opportunity for a formal communication channel between the community and the municipal council. The ward committees also act as advisory bodies for a range of matters affecting their wards but with Council making the rules and providing the terms of reference for guiding the functioning of the committees. It comprises of ten members with the ward councillor performing the role of the chairperson.

The role of the ward councillor is to then to make sure that the interests of all the people in the ward (no matter what their political affiliation may be) are represented in Council. Importantly, the Councillor is required to strengthen the relationship between the Council and the community. He or she is required to report on Council activities on a regular basis and provide an annual performance report.

A more recent assessment of ward boundaries undertaken for the Municipal Demarcation Board found that the establishment of ward committees post a local government election takes approximately 12 to 18 months. The period taken not only depends on the level of diversity within the ward but also on the extent to which the ward boundary may have changed (year).

When examining the extent to which ward boundaries have been established within metropolitan and local municipalities, it would appear that this has been largely successful. While it was not possible to track the establishment record per electoral period, in 2009 (the 2006/11 period) a COGTA presentation indicated 3,790 of the 3,895 possible ward committees had been established. The recent MDB investigation found that ward committees had been established by all municipalities in each of the provinces. However, the provincial officials interviewed indicated that in some provinces there were problems within some of the wards due to political instability. A frequent comment made was that while the committees may have been established, a key challenge was the effectiveness of the structures.

Research undertaken by the Community Law Centre on the role of the ward committees for enhancing participatory democracy had some interesting findings. Within the case study areas, it found that “many community members see ward committees as a structure that should take some responsibility for service delivery, as if they are an extension of the municipality”54. This is obviously a very problematic notion which in some part is also reflected in the community’s perception or understanding of the role of the ward councillor within Council as having far greater powers of influence than is actually the case.

Questions were also raised in the research about the quality of representatives within the ward committees. It noted that “while attempts have been made in the process of nominating and electing the committees to ensure that some level of representation of key sectors and geographical areas is achieved in the composition of the committees, the process of representation in most of the cases appears to be structurally inadequate. This is because the level of consultation between the members and their designated sectors/ geographical areas is in most cases flawed or insufficient”55. Moreover, ward committees have also been accused of being extensions of the political party of the ward councillor rather than representing or embracing the diversity that may exist within the ward. Another important finding of the research was “the limited influence ward committees appear to have on council decision making”56. It would appear that this was mainly attributed to the lack of structured mechanisms for the information emanating from the wards to be fed into the Council system. Moreover, the findings suggested that ward councillors often did not feel that they had sufficient authority or confidence to raise issues from their respective committees directly in council meetings.

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54 Smith, 2008
55 Ibid, Pg 53
56 Ibid Pg54
The resourcing of the ward committees was found to be a challenge in both the Community Law Centre research as well as the more recent ward investigation undertaken by the Municipal Demarcation Board. This concern was also extended to the Community Development Workers who often did not have note books and pens for recording community concerns etc.

While there certainly are a number of challenges with ward committees, they remain an important component of our democracy, an important bridge between communities and the Council. Increasing effort must be made to facilitate and strengthen the linkage especially in light of the growing number of community protests.

**COUNCILLOR TRAINING AND SUPPORT PROGRAMMES**

SALGA has actively supported and promoted wide range of capacity building initiatives largely targeting councillors. Over time, training programmes have focused on a range of topics such as those outlined below:

- An understanding of the legal framework especially related to the introduction of any new or impacting legislation;
- Councillor support and development;
- The support and promotion of ward committees;
- Improving service delivery especially in relation to the rendering of water, sanitation and solid waste;
- The promotion of equity including gender sensitivity, the promotion and support of people with disabilities;
- Financial management, systems, procedures and anti-corruption aimed at both officials and councillors;
- Good governance including performance management and monitoring;
- Planning and development including the preparation and implementation of IDPs;
- Local economic development;
- Disaster management and risk reduction;
- Labour relations;
- Wellness, including training on HIV and AIDS.

The number of councillors and officials trained per year has been consistently recorded since 2007/08 in the SALGA annual reports, with detailed descriptions in the 2010/11 and 2011/12 reports. There is no consistent pattern in the number of persons trained over time. For example, there was a significant decline in the 2009/10 and 2010/11 periods which may have been attributed to the challenge posed by KwaZulu-Natal and consequently no provincial or national recording of training figures. In the 2011/12 financial year, more than 17,000 officials and councillors were exposed to capacity building and training initiatives.

**INSTITUTIONALISING DEMOCRACY: SUMMARY COMMENTS**

- The electoral system introduced in the 2000 local government elections ensured a system of non-racial democratic local government. Municipalities were established to include both proportional and
locally elected representation on Council through a ward based system. Local municipalities and metropolitan councils comprise 50% proportional representation and 50% from the wards within the municipal area as a whole. From 2000, a district council has comprised of 60% of councillors who are representatives from the local municipalities within the district and 40% proportional representation from political parties. Prior to the 2011 elections, the 60% representation would have also included representatives from the District Management Area.

- The Constitution states that the Local Government electoral system must include wards and the delimitation must be undertaken by an independent body, namely the Municipal Demarcation Board. The Municipal Structures Act, 117 of 1998 outlines the procedures and criteria for ward delimitation.
- Based on the requirements of the Municipal Structures Act, a ward may not have less or more registered voters than the minimum and maximum set for the municipality. The number of councillors is determined by the formula prescribed by the Minister and varied by the MEC. The formula itself is based on the number of registered voters as per the IECs voters roll at a particular date.
- For the last three local government elections, the building blocks for the wards have been the voter districts as determined by the IEC. The VDs are provided to the MDB by the IEC and cannot be amended by the MDB. Any split to a VD must be done by the IEC and is only be done in exceptional circumstances.
- There has been a growing concern within municipalities, communities and between local government practitioners with respect to the constantly changing ward boundaries from one electoral period to the next. Generally ward boundaries have greater stability in low density or commercial farming areas. However, high population density areas such as the metros and the traditional authority areas, which include the Eastern Cape, KwaZulu-Natal, Mpumalanga, Limpopo and North West, demonstrate higher levels of ward “instability” or mobility.
- Given the constant shifting populations, there is a limited possibility, based on the current system, that the ward boundaries will remain static from one local government election to the next. While wards are important points for accountability and consultation, the use of wards as a unit for planning purposes will always remain challenged. It may be necessary to decide on a more stable but manageable boundary for supporting local area planning.

- Over the years, the MDB has lost significant credibility over the ward delimitation process. However, there is little recognition that there are a number of role-players influencing the ward outcomes such as the Minister for Cooperative Governance who determines the formula, the MEC who can vary the formula, the setting of the number of registered voters per ward set. Within this lengthy process, the MDB is only responsible for ward configuration. This is not to say that the latter process has not been without its challenges.
- The Municipal Structures Act 117 of 1998 Part 4 of Chapter 4 formally introduced the concept of ward committees with the object being to enhance participatory democracy in local government.
- The ward committees also act as advisory bodies for a range of matters affecting their wards but with Council making the rules and providing the terms of reference for guiding the functioning of the committees.

- Research undertaken by the Community Law Centre on the role of the ward committees for enhancing participatory democracy had some interesting findings:
  » Communities viewing ward committees as structures for taking responsibility for services delivery contributing to the perception that ward councillors have greater powers and influence than they actually do within council;
  » The quality of representation within the ward committee;
  » The ward committee as an extension of the political party of the ward councillor; and
  » The resourcing of ward committees.
- Notwithstanding the challenges, ward committees remaining an important component of our democracy.
- SALGA has actively supported and promoted a wide range of capacity building initiatives specifically aimed at councillors.
CHAPTER 8:
LOCAL GOVERNMENT SUPPORT PROGRAMMES
Over the last 15 years, the National Department of Co-operative Governance and other sector departments have developed a number of support programmes, some of which have been proactive such as the Integrated Sustainable Rural Development Strategy (ISRDS), while others have been reactive, such as Project Consolidate and the Local Government Turnaround Strategy. Each of these programmes is briefly described below, highlighting the specific issues they addressed.

**CONSOLIDATED MUNICIPAL INFRASTRUCTURE PROGRAMME**

The Consolidated Municipal Infrastructure Programme (CMIP) was introduced in 2001 to support RDP initiatives by providing bulk, connector and internal services and community services and facilities to low income households. The programme was also intended to support the integration of the previously racially divided areas.

There was also an important capacity building component to CMIP toward “the transfer of skills, the promotion of small, medium and micro-sized enterprises (SMMEs), the use of labour-intensive construction methods, and the maximising of job-creation opportunities”\(^7\). The programme provided a “top-up” fund R7,000 per site for households with an income of less than R3,500. The grant funding was provided to municipalities to assist with the provision of services such as water, roads, storm-water drainage, solid waste disposal, community lighting, clinics, cemeteries and multi-purpose community and sports facilities.

The guiding principles of CMIP were outlined as:

- At least a basic level of services for all South Africans;
- Long-term financial sustainability of municipalities;
- Strengthening the institutional capacity of municipalities;
- Rapid improvement in the delivery of services;
- Synchronised housing and infrastructure delivery;
- Integration of previously racially segregated areas;
- Urban and rural equity in service delivery;
- Utilising the benefits of economies of scale in delivering community facilities and services; and
- Community development.

**PROJECT CONSOLIDATE**

A number of challenges were evident within the local government sector prior to the national and provincial elections in 2004. Urgent initiatives were required to address the following:

- The impact of the local government system on all communities within the “newly” established municipalities..
- To better address all aspects of municipal transformation which included for example establishment, stabilization and sustainability.
- Improve the coordination of national, provincial and local government service delivery requirements.
- To determine the extent to which municipalities were able to implement their Constitutional mandate. The objectives of Project Consolidate were then outlined as being the following:
  - Rally the local government sphere in discharging its service delivery and development mandate.
• Realize the peoples’ contract and mobilize social partners around this programme.
• Entrench a people-centred orientation in the entire public sector and a new approach to local government’s mode of operation.
• Establish a new and practical benchmark for local government performance excellence
• Have successful local government elections in 2005/6.

The primary focus of the programme was on targeted, hands-on engagement programmes at the local government level for a period of two years from 2004-2006. Areas which were identified for immediate and direct action included:

• Local government policy, finance and institutional frameworks.
• Public participation, ward committees and community development workers.
• Human relations and election administration.
• Indigent policy, Free Basic Services, billing systems and municipal debt.
• Expanded Public Works Programme (EPWP), Municipal Infrastructure Grant and Local Economic Development.
• Anti-corruption.
• Special interventions.
• Performance management framework, indices and communication.

During the life of the programme, around R500 million was channel to underperforming municipalities. However, in May 2007, the programme was stopped. As was noted by a spokesperson for the then DPLG, “the programme could not resolve persistent internal challenges such as high staff turnover of the municipal management, corruption and noncompliance in practices.” Some practitioners suggested that the main problem with Project Consolidate was the lack of capacity and short duration of the programme, making it difficult for it to fulfill its mandate which could have been remedied if there had been the opportunity for long-term transfer of skills and expertise to municipal staff.

was noted that “in some cases, the experts and professionals seconded to municipalities found there were no full-time staff to mentor. As a result, they were forced to do many of the projects by themselves, instead of transferring skills. As a result, local skills and abilities are not being built at local municipal level”.

Notwithstanding the challenges experienced, a number of successes were found in the 139 targeted municipalities. For example, significant service delivery improvements were found in the following municipalities:

• The eradication of the bucket system at Indaka Local Municipality (KZN), Intsika Yethu Local Municipality (EC) and Gert Sibande District Municipality (Mpumalanga).
• The provision of electricity at Umngeni Local Municipality (KZN).
• The provision of water at Abaqulusi Local Municipality (KZN).
• The tarring of roads at King Sabatha Dalindyebo Local Municipality (EC).
• The revamping of the customer care centre at Buffalo City Local Municipality (EC).
• Effective public participation in Blouberg Local Municipality (Limpopo).

58 Department of Provincial and Local Government, 2004, Pg 5
59 City Press, 2011
60 Gasela, P “The Local Government Transformer” Vol. 13 No. 3 Jun/Jul 2007
61 Ibid
In addition, a large-scale toilet building project was implemented in following three phases:

<table>
<thead>
<tr>
<th>Phase</th>
<th>Municipalities</th>
<th>Total number of units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 1</td>
<td>Dipaliseng, Albert Luthuli, Lekwa, Msukaligwa, Pixley ka Seme, Nkanini</td>
<td>4 228 units</td>
</tr>
<tr>
<td>Phase 2</td>
<td>Govan Mbeki Municipality</td>
<td>5 140 units</td>
</tr>
<tr>
<td>Phase 3</td>
<td>Embalenhle – located within the Govan Mbeki Municipality</td>
<td>3 383 units</td>
</tr>
</tbody>
</table>

It was argued that while Project Consolidate did not deliver on its entire mandate, the project successes did make a significant and quantifiable difference to the quality of people’s lives at community level. These success stories should be used as the catalyst which ensures the challenges of good governance and improved service delivery are better understood at local level.

**MUNICIPAL INFRASTRUCTURE GRANT PROGRAMME**

The Municipal Infrastructure Grant Programme was introduced in 2005. It was regarded at the time as a new municipal infrastructure funding arrangement that combined all the then existing capital grants for municipal infrastructure outlined below into a single consolidated grant:

- Local Economic Development Fund (managed by the then Department of Provincial and Local Government (dplg)).
- Water and Sanitation Capital Grant (managed by the then Department of Water Affairs (DWAF)).
- Urban Transport Fund (managed by the Department of Transport (DoT)).
- National Electrification Programme (managed by the Department of Minerals and Energy (DME)).
- Building for Sport and Recreation Fund (managed by SRSA).
- Consolidated Municipal Infrastructure Programme (managed by dplg).

![Figure 16: DORA MIG Allocation](attachment:figure16.png)
The stated vision of MIG was to provide all South Africans with at least a basic level of service by the year 2013 through the provision of grant finance aimed at covering the capital cost of basic infrastructure for the poor. The grant was based on a demand driven approach where municipalities were responsible for their infrastructure planning. The funding allocations needed to be linked to the IDP with communities participating in the identification of projects. Through a planned approach, grant allocations were predictable, with service delivery decentralized to the local level. A MIG Unit was established to support the grant process. MIG remains in place today.

Based on the Division of Revenue Act annual allocation, MIG has shown a steady increase over time with additional allocations made in 2009/10 and 2010/11 ahead of the 2010 FIFA World Cup. During both of those financial years the amounts of R2.2 billion and R2.6 billion were allocated specifically to municipalities containing large cities. The challenge with respect to MIG has been the inability of the municipalities to spend the allocation on an annual basis.

Programmes such as Siyenza Manje were put in place to provide the much needed capacity at municipal level to assist implementation of capital programmes.

**SIYENZA MANJE PROGRAMME**

The Siyenza Manje Programme, an initiative management by the Development Bank of Southern Africa (DBSA), commenced in April 2006. The purpose of the programme was to provide operational and strategic capacity in distressed municipalities and to fast-track the development of new infrastructure toward reducing the backlogs in low capacity municipalities. The initial programme was for a period of four years, from April 2006 - March 2010. By August 2009, the DBSA had approximately 500 people deployed in some 174 municipalities. Based on its success, Treasury granted an extension to the Siyenza Manje programme until March 2012.

The deployments to municipalities took place in the form of a Task Force composed of civil engineers, spatial and development planners, financial expertise, young professionals who were part of the Young Professionals Programme and artisans.

The Young Professionals Programme was a training and experiential 3-year learning programme for graduates in civil engineering, town planning and municipal finance disciplines. Having registered with the relevant professional institutions, the 3-year training period would ensure professional qualification and registration once completed. By 2009, approximately 164 young professionals had been placed in municipalities nationally with the necessary monitoring and support programmes in place.

The deployment of Task Teams to municipalities was triggered by requests from municipalities,
provinces, COGTA and or National Treasury. A pre-deployment assessment was undertaken in the municipality before any deployment took place to ensure sustainability of the capacity initiatives at the municipal level. Once a municipality was identified as suitable for the programme, service level agreements were signed between the municipality and the DBSA.

Siyenza Manje has been largely recognised as a successful programme. In 2008/09, R4.8 billion of the R7.9 billion Municipal Infrastructure Grant expenditure in the municipalities supported by Siyenza Manje was unlocked by staff deployed to the municipalities. In 2006/07, 165 technical municipal officials were trained “on-the-job” by the task team. This figure had increased to 1,087 in 2008/09.

However, one of the cornerstones for success of the Siyenza Manje Programme was linked to the recipient municipality making use of the deployees. In some respects, like with Project Consolidate, the municipalities did not make adequate use of the deployees. In these instances, the opportunity was lost.

LOCAL GOVERNMENT STRATEGIC AGENDA (2007-2011)

The implementation of the Local Government Strategic Agenda (LGSA) was seen as an extension of Project Consolidate. In 2007, national government together with all provinces, SALGA, individual municipalities and key partners outside of government actively supported the implementation of this agenda, which focused on the five key performance areas for supporting local Government transformation.63

The LGSA had three objectives:

- mainstreaming hands-on support to local government to improve municipal governance, performance and accountability;
- addressing the structure and governance arrangements of the State to better strengthen, support and monitor local government; and
- refining and strengthening the policy, regulatory and fiscal environment for local government and giving greater attention to the enforcement measures64.

The implementation approach was based on a national programme of action which was adopted by National Executive which included the monitoring of progress on a biennial basis. The Provincial executive was then required to monitor local government progress on a quarterly basis with municipalities monitoring activities on a monthly basis.

Substantial progress was made towards achieving the national set of service delivery targets through the implementation of the LGSA. Moreover, it supported the improvement in municipal compliance with regulatory requirements. The initiative also created a government-wide platform for supporting local government while also confirming local government as the relevant agency for local development and service delivery.

The implementation of the LGSA exposed the lack of adequate involvement of all sector departments in achieving the service delivery goals. Moreover, the programme had no direct influence over external factors such political leadership, weak intergovernmental practices and poor integrated development planning and spatial planning.

63 National Department of Co-operative Governance and Traditional Affairs, 2009
64 Ibid
LOCAL GOVERNMENT TURNAROUND STRATEGY

In 2009, the Minister for Local Government and Traditional Affairs, Minister Sydney Mufamadi, was replaced by Minister Sicelo Shiceka, who, in addition to undertaking a major restructuring of the department which included the change of name to the Department of Cooperative Development and Traditional Affairs, undertook a major assessment of municipalities nationally.

The assessment resulted in the preparation of the Local Government Turnaround strategy. The supporting report found that while local government had contributed to democratization, the system as a whole was showing signs of distress. Indicators of this distress included “huge service delivery backlogs, a breakdown in council communication with and accountability to citizens, political interference in administration, corruption, fraud, bad management, increasing violent service delivery protests, factionalism in parties, and depleted municipal capacity”65. This report certainly highlighted the crisis in the local government sector.

All municipalities were required to submit a turnaround strategy as part of their IDP addressing three core aspects:

• Basic service provision;
• Deepening participatory democracy; and
• Improving financial management and administrative capacity.

The overall aim of the Local Government Turnaround Strategy was to “restore the confidence of the majority of South Africans in municipalities as the primary delivery organ of the developmental state at local level and rebuild and improve the basic requirements for a functional, responsive, accountable, effective, and efficient developmental local government”66.

The In-Year Management, Monitoring and Reporting System for Local Government, is being used by national and provincial government to monitor the performance of municipalities. 2010/11 reports indicate that all municipalities are now consistently producing quarterly in-year financial reports which is deemed a significant achievement attributed to the turnaround strategy. “This is a massive improvement from the 2007/08 financial year, when less than 50 municipalities produced quarterly financial reports regularly”67. A number of sub programmes have been introduced such as Operation Clean Audit and studies on governance options on viable and non-viable municipalities. Approximately 70 municipalities were included in the study.

BACK TO BASICS

Pravin Gordhan, appointed the Minister of CoGTA in 2014, launched the Back to Basics Strategy in the same year. This strategy document acknowledged the primary issues affecting local government capacity as being related to the governance, public participation, institutional capacity and financial management structures and mechanisms of local government.

Its primary objective has been to build local government’s capacity for resilience in these areas in order to maximise the effectiveness required of government to provide basic services by introducing rigorous systems to reduce corruption and other systemic defects.

65 COGTA quoted in Powell, 2012
67 Ibid
The primary intervention areas of the Back to Basics Campaign are implemented in some form or another across all spheres of government and are not exclusive to local government. These proposed intervention areas exemplify the intention of the National Development Plan to build a capable state capable of initiating, supporting and sustaining growth and development.

The primary concern in the Back to Basics Campaign at local level is to support the national goal of creating decent living conditions by ensuring that infrastructure is developed in a fundable and sustainable way. This requires the development of consolidated infrastructure plans, increasing spending on repairs to water, roads, electricity and transport infrastructure to lengthen their service periods, ensuring the indigent register is maintained and free basic services made available to those needing them. The financial management component demonstrates a degree of continuity with Operation Clean Audit. Both strategies placed a focus on improving the degree of compliance with the MFMA and National Treasury reporting standards.

LOCAL GOVERNMENT SUPPORT PROGRAMMES: SUMMARY COMMENTS

• A number of local support programmes have been implemented over time such as:
  » ISRDS;
  » CMIP;
  » Project Consolidate;
  » Urban Renewal Programme;
  » Local Government Turnaround strategy;
  » Operation Clean Audit; and
  » Back to Basics.

• In 2009, Minister for Co –Operative Governance and Traditional Affairs, Minister Sicelo Shiceka, introduced the Local Government Turnaround Strategy. The strategy was based on a supporting report which found the following:
  » Local government as a whole was showing signs of distress – indicators included:
    » huge service delivery backlogs;
    » a breakdown in council communication and accountability to citizens;
    » political interference in administration;
    » corruption and fraud;
    » bad management;
    » increasing violent service delivery protests;
    » factionalism in parties; and
    » depleted municipal capacity.

• The overall aim of the Local Government Turnaround Strategy was to restore the confidence of the majority of South Africans in municipalities and to rebuild and improve the basic requirements for a functional, responsive, accountable, effective, and efficient developmental local government.

• While the LGTAS appear to be having some impact, detailed research is still required to determine the extent thereof.

• Ongoing general challenges in the sector are primarily reflected in the targeted areas of the Back to Basics Strategy.
CHAPTER 9:
Over the last 20 years, the local government transformation process has been a long and difficult one. Whilst undergoing significant change and upheaval, basic service provision needed to be continued with service backlogs urgently addressed. It is often easy to forget the history seeing only the challenges found within the sector today. However, it is important to acknowledge that there have been a number of notable successes over time.

ACKNOWLEDGING THE ACHIEVEMENTS

DE-RACIALISATION AND CONSOLIDATION OF GOVERNMENT AT THE LOCAL LEVEL

Over the past 20 years, South Africa has been able to move from a highly fragmented, racially based system of local government, to one which has required the shift from tiers of government, to an independent sphere with its own legislative and executive authority, the rationalization of the number of structures and the introduction of a uniform system of wall to wall municipalities. Moreover, local government structures have also been established in areas with little history or capacity for this form of government. In such areas, the responsibility for the provision of services has shifted from the traditional authorities to the municipality.

FORMULATION OF POLICY AND LEGAL FRAMEWORKS

While the RDP set the basic standards for service provision, the key policy document informing the transformation was the White Paper on Local Government prepared in 1998. This still remains one of the definitive documents, commonly referenced as setting the framework for the system of local government established. It informed the legal framework and underpinned the rationale for the demarcation of boundaries.

The de-racialisation and establishment of a new system of local government required the drafting of a new basket of legislation. All facets needed to be addressed including the demarcation of boundaries, the structures to be established, the systems implemented, mechanisms for ensuring financial management and the fair and appropriate systems for the valuation of properties. The legislative environment has been vibrant and responsive with willingness on the part of government to make changes to the legislation if amendments were required.

DEMARCATING MUNICIPAL BOUNDARIES

The interim local government structures were established in 1996 and in order to comply with the Constitution, the next local government elections were to be held in 2000. New structures were to be established to facilitate the introduction of democratic local government. The Municipal Demarcation Board was finally established in February 1999 and, within a single year, had accomplished a massive undertaking by reducing the 843 structures to a mere 284 district, local and metropolitan municipalities.

ESTABLISHING THE STRUCTURES AND SYSTEMS

Over the last 20 year period, municipalities have been required to undertake at least two major structural changes. The first occurred with the introduction of the interim structures which remained in place for five years followed by the second in 2000 with the establishment of the 284 local district and metropolitan municipalities. Over time, structures such as the cross boundary municipalities have been disestablished with each of the local municipalities being incorporated into a single province. The district management areas have also been removed with these areas being incorporated into local municipalities. Two additional metropolitan municipalities have been declared with a number of minor and major boundary changes being made to both district and local municipalities. Municipalities affected by change have had to rethink their planning and organizational structures.

Council structures have been put in place with many councillors in all three local elections, that is, 2000, 2006 and 2011, being exposed to local elections for the first time. Notwithstanding the challenges experienced,
ward committees were established for ensuring participatory democracy. Municipalities have had to consider and put in place mechanisms for ensuring service delivery. Water services authorities and service providers have been established. Certain municipal functions were performed in some areas in South Africa for the first time. Within the last 14 years, an entirely new system of local government has been put in place within new local government structures. The extent and the complexity of this transformation along with the foresight and resources required for doing so should not be underestimated.

**IMPROVEMENTS IN CAPACITY LEVELS AND PROFESSIONALISM IN LOCAL GOVERNMENT**

National Government has taken significant action in relation to promoting professionalism and improving the skill and capability levels of senior management in local government. The Local Government Municipal Systems Amendment Act, 2011 addressed specific issues relating to the appointment of senior managers in an attempt to move away from so called “political appointments” or those without the necessary experience and expertise.

The regulations in support of the Municipal Systems Amendment Act published in 2014 then outlined clear competencies for senior managers to which there must be compliance. Transitional arrangements were introduced to all current contracts to remain in place until they expire. Thereafter, the contracts of the current incumbents may only be extended if there is compliance with the regulations. Once fully implemented, the introduction of the Act and associated regulations should go a long way to supporting the efforts of achieving professionalism within the local government sector.

**ADDRESSING BACKLOGS**

When examining service delivery results between 2001 and 2014, it is clear that significant strides have been made in service extension in most basic service delivery areas, perhaps with the exception of refuse removal. Access to water, sanitation and electricity has improved in rural areas and has extended to most communities.

In the 2001 to 2014 period, electricity services have have been extended from 69.7% of the population to 86% of the population. Sanitation access has grown from 62.3% to 79.5% and piped water access has expanded from 61.3% access to 90% access.

Significant strides have been made in the provision of a RDP standard of sanitation with less than 10% of municipalities now having less than 10% of their households having access these services. In 2001, this figure was approximately 25% of all local municipalities.

The roll out of electrification programmes has been extensive. By 2011, almost 70% of municipalities had 80% or more of their households having access to at least a basic level of electricity provision. While improvements have been made in relation to the provision of a refuse removal function, this has not been as significant as other services.

**DEVELOPING SUPPORT PROGRAMMES**

National Government has recognized the Constitutional obligations of local government and the challenges faced not only by the requirements of the transformation but also the variations in capacity and context in which municipalities have been established. Towards this end, CoGTA, with the support of other departments such as National Treasury and Water Affairs as well as the DBSA, have put in place a range of municipal support programmes.
ACKNOWLEDGING THE CHALLENGES

ROLE OF DISTRICT MUNICIPALITIES

In understanding the performance of the district municipalities over time, it is essential to locate the discussion within an historical context as this period informed the functions performed, capacity levels and the ability to support the local municipalities contained within their areas of jurisdiction. As outlined in the White Paper on Local Government, the Regional Service Councils (RSCs) and Joint Services Boards (JSBs) were established during the 1980s in an attempt to support the then Black Local Administrations. The primary focus of the RSCs was to channel funds for development related projects within the politically turbulent black areas. The strategy did not meet with much success. During the interim phase of local government transformation (1995-2000), district councils were established. Largely, the district municipalities emerged from the old RSCs and JSB structures. The interim Constitution and the Local Government Transition Acts failed to provide clear powers for the interim Councils, leaving the allocation of functions to be regulated by provinces.

When examining the role played by the District Councils during the interim phase, the following is apparent:

- The District Council structures continued the role of the old RSCs and JSBs;
- This included the bulk services function and in some areas, the councils delivered services directly to communities;
- The District Councils were tasked with the responsibility of being development agents and in particular supporting the development of the new local government structures in the rural areas and small towns; and
- The District Council had a strong redistributive function.

Notwithstanding the performance of the District Councils during the interim phase, the need for district wide management was clearly acknowledged in the White Paper. The document outlined the role for district municipalities for the post 2000 period as being the following:

- District government should be reorganised around a set of standard planning and development regions and given key responsibilities for district-wide integrated development planning, including land-use planning, economic planning and development, and transport planning.
- The role of district governments as infrastructural development agents should be continued through the retention of Regional Services Council levies. District government should also provide bulk-services where required.
- The ability of district government to provide on-demand assistance, as well as systematic capacity building to municipalities will be promoted. The capacity-building role of district government should be focused on increasing the capacity of Category (B) municipalities to assume municipal functions.

69 Ibid
In areas where municipalities with inadequate administrative capacity are established, the capacity of district government to provide and maintain appropriate levels of municipal services will be legally permitted and actively fostered.

The intended role for the District Municipality was then captured in Section 83 and 84 of the Municipal Structures Act. The MDB has developed an approach toward the identification and determination of district municipalities. A report prepared by the MDB identified three guiding principles for the identification of the outer boundaries for the district municipalities which included:

- **Principle 1**: Functional linkages showing a coherent social and economic base;
- **Principle 2**: Manageability of size, population and spatial aspects; and
- **Principle 3**: Character of the area.70

The interim phase district municipalities formed the capacity and guided the functioning of the municipalities in the establishment phase immediately post 2000. The new boundary determinations in 2000 resulted in some provinces having a reduction in the number of district municipalities whereas in others, “new” district municipalities were established.

Research undertaken by the Municipal Demarcation Board suggests that the closer the interim phase boundary reflected the boundary of the post 2000 municipalities, and/or the extent of the capacity absorbed into the newly established municipalities, the more this influenced the modus operandi of the post 2000 district municipalities. Moreover, in the immediate period post the 2000 establishment, the “new” districts which absorbed little or no capacity were more focused on establishment, the day to day running of the municipality, rather than building the necessary capacity to render the Section 84(1) functions and/or to perform their role as outlined in Section 83 of the Municipal Structures Act. This has continued to affect the transformation of the district municipalities and to some extent, their ability to develop sufficient capacity for the rendering of their functions.

Powell (2012) notes that “from the start, local government policy and institutions were imprinted by competing national objectives... The Constitution and RDP gave local government a broad mandate to meet basic needs and redistributive capital spending to poor communities, the central ideas behind integrated development planning and district led redistribution".7172 Indeed, Section 25 of the Demarcation Act, which outlines the criteria for boundary determination, requires the MDB to consider “the need to share and redistribute financial and administrative resources".73 Powell further comments that “by the time the white paper was adopted it was already accepted that redistribution would be a national, not a local, responsibility, and the abolition of the regional service council levy was on the cards (abolished in 2003). In effect, these policies knocked off one of the main rationales for district government and its only source of redistributable income".74

It could be argued that a further blow to the district system came with the decision in 2003 to remove the water and sanitation function from 21 district municipalities instead of allowing the proposed system to bed down. The removal of these functions along with the MECs’ adjustments based on the MDB assessment of capacity, resulted in some districts especially in the Free State and Mpumalanga, having few and/or very minor functions. Consequently, some districts became administrative shells. Moreover, the MDB’s research demonstrated that very few local municipalities were performing the functions which were adjusted by the MEC. While the process followed by the MDB in the assessment of capacity and the concomitant recommended adjustments in 2003 was technically correct, little discussion was had on the long term implications and the possible unintended consequences for district municipalities.

70 Municipal Demarcation Board, 1999
71 Own emphasis
72 Powell, 2012 Pg.15
73 Section 25(d) Local Government: Municipal Demarcation Act no 27 of 1998
74 Powell, 2012, Pg.15
The rationalization of municipalities in 2000 also resulted in local municipalities being large geographic spaces, making it difficult for the district to perform a “regional” function as anticipated in section 84(1).

**QUESTION OF MUNICIPAL VIABILITY**

The demarcation process toward the 2000 Local Government elections was aimed at creating a spatial framework within which municipalities could be established for the provision of democratic and accountable government for the local communities. Similarly, the capacity assessments and the division of powers and functions were and are but mechanisms to bring clarity as to what functions should be performed by which municipalities for improving the quality of life of the inhabitants of each municipal area. Neither demarcation nor powers and functions can ever be an end in themselves, but can merely create a framework for development to satisfy the needs of communities and to put measures in place to ensure viable jurisdictions.

Even if municipal services were rendered at a fairly acceptable level in a municipal area, it cannot be said that such an area is viable in all respects. Certainly, the question of municipal viability is a thorny one and consequently difficult to define. Municipal boundaries and capacity cannot and should not be equated with municipal viability. While a municipality that has sufficient capacity should be viable, this is not always the case. A number of internal and external factors can easily affect municipal viability as indicated in the sections above.

Some would argue that an economic base is the ultimate solution for creating viable municipalities. The validity of these arguments cannot be disputed. However, the economic spatial configuration in South Africa makes this a challenging task. Currently, the relatively efficient system of inter-governmental financing results in some municipalities demonstrating “internal” viability, without having any economic base. Recent proposals by CoGTA in mid-2015 suggest that since 73 local municipalities are unviable, it may be better if these municipalities were merged or amalgamated with stronger municipal units. This proposal has its merits but it must be recalled that expanding an existing municipality does not improve the service delivery situation for either municipalities’ inhabitants. Viability and functionality criteria for municipalities do not always translate into a gain in functionality or viability for merged and re-demarcated municipalities. There ought to be some preliminary forecasting or scenario planning around mergers rather than the reliance on ex ante evaluation criteria.

It is important that a system of sectoral integration to enhance the viability of municipalities be established. The strategy should not only include the contributions of government institutions but also those from the private sector, community based organizations and non-government organizations. Elected municipal councils should play a strategic role in facilitating this engagement, cooperation and integration with a view to enhance the viability of their areas of jurisdiction. This should go hand in hand with the priorities of each municipality, and its planning and implementation processes.

**GROWING CONCERNS WITH RESPECT TO CORRUPTION**

In 2008, SALGA reported that 94% or 266 municipalities had established and adopted internal systems, policies and procedures for addressing corruption. Approximately 80% (225) municipalities had established oversight committees with 89 municipalities having developed their own anti-corruption plan.

A further 124 municipalities had prepared their own anti-corruption strategies with 51 municipalities in the process of doing so. SALGA reported that while some municipalities, especially the district and metropolitan municipalities, had anti-corruption and fraud policies and structures, most had proved to be inadequate to effectively fight corruption.

The SALGA presentation also noted that municipalities servicing rural and economically under-developed areas did not have the required resources to establish anti-corruption structures and as a result responded to
corruption and fraud matters on an ad hoc basis. It was also acknowledged that while most municipalities had established and adopted internal systems, policies and procedures, functionality remained a challenge. The lack of knowledge and awareness of anti-corruption measures by external stakeholders also remains a challenge.

Irregular expenditure is defined in section 1 of the MFMA as expenditure incurred by a municipality or municipal entity:

a. in contravention of, or that is not in accordance with, a requirement of the Act, and which has not been condoned in terms of section 170;

b. that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;

c. a requirement of the Public Office-Bearers Act, 1998 (Act No. 20 of 1998); or

d. that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality’s by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law, but excludes expenditure by a municipality which falls within the definition of “unauthorised expenditure”.

In this context irregular expenditure then refers to any use of municipal funds that is in contravention of the following legislation:

- Municipal Finance Management Act, Act 56 of 2003, and its regulations;
- Municipal Systems Act, Act 32 of 2000, and its regulations;
- Public Office-Bearers Act, Act 20 of 1998, and its regulations; and
- The municipality’s supply chain management policy, and any by-laws giving effect to that policy.

Irregular expenditure is only identified when a payment is made, in other words, it is linked to a financial transaction. If the irregular expenditure is determined prior to a payment being made, the transgression is regarded as non-compliance. A concern within the local government sector must be the ever increasing growth in irregular expenditure found by the Auditor General which has grown from R3.2 billion in 08/2009 to R14.5 billion in 2012/13. Furthermore, an estimated 90% non-compliance with legislation by the audited was also found.

**Figure 17: Irregular Expenditure**
In 2010/11, the 8 metros demonstrated R2.8 billion in unauthorised, irregular, fruitless and wasteful expenditure with the result increasing to R3.83 billion in 2011/12. In the former financial period, approximately 46.3% of that occurred in a single municipality, the eThekwini Metro. Significant effort will be required across all three spheres of government and SALGA if this trend is to be reversed.

**NEED TO RETHINK POWERS AND FUNCTIONS**

There is the need to urgently develop a rational division of powers and functions for supporting and promoting developmental local government. A framework needs to be adopted at national level for ensuring the appropriate alignment of functions in support of the overall mandates of provinces, districts, local and metropolitan municipalities. The principal of subsidiarity must be applied in the assignment of functions.

The local government experience to date of the assignment of functions from national and provincial government has been a complicated and difficult one. The accreditation of the housing function aptly demonstrates the point. The Housing Act of 1997 contained one of the early provisions within sector legislation for the assignment of functions to local government by setting out the process and requirements for local government housing accreditation. It took the Department of Human Settlements (then known as Housing) some seven years to initiate the process. It is suggested that the delay was possibly appropriate given that in 1997 local government was still in the interim stage of transition.

The accreditation process commenced post the 2004 national and provincial elections with the adoption of the Department of Human Settlements’ “Breaking New Ground” policy. The initial focus was on the metropolitan municipalities and secondary cities. It was assumed that the approach would “enable municipalities to assume overall responsibility for housing programmes in their areas of jurisdiction, through a greater devolution of responsibility and resources to municipalities”.

While the process was initiated in 2004, metros only started receiving their level 1 accreditation in 2007 with some only obtaining the status in 2010/11. The awarding of the Level 2 accreditation to the metros then occurred from 2012 onwards. A decision was taken at the National level in 2013 that the metros should receive the full assignment of the housing function and as such provision was made in 2014/15 DORA to release funding directly from national government to the affected municipalities. Post the 2014 National and Provincial elections, the assignment and indeed any further accreditations have been placed on hold. This was not the first time that this happened.

A recent study undertaken by the South African Cities Network on housing accreditation found that the stop-start process has been detrimental, impacting negatively on municipal planning, project delivery and the overall momentum. The role of the national department was not viewed positively by municipalities with often a difficult relationship with the province. Many questions such as the transfer of staff and assets remain unresolved, with a reluctance to hand over all projects to the metros. In one case, while the metro had the level 2 accreditation, it was rendering less than 10% of the housing projects within their area of jurisdiction. Even those projects had been determined by the province and merely handed over for implementation.

Notwithstanding, some valuable lessons have been gained on the assignment process to local government. The capacity building initiative linked to the housing accreditation process often provided a wider benefit for the municipalities contributing to the improvement in the performance of municipal functions as well. However, a concerted programme does need to be put in place to determine what functions would be better rendered at the local level and the mechanisms and timeframes for achieving this.

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75 Accreditation is not a true assignment
76 DoH “Breaking New Ground” page 16
Lastly, attention must be given to the specific requirements for promoting urban and rural development. This requires a rational but differentiated approach to the allocation of functions. In this regard, it may be necessary to review the schedule 4 and 5 parts A and B functions to create increased certainty in the system. This is specifically important for those functions which were historically performed at the local level, and are yet to be provincialized but indeed should remain at the local level, such as libraries, local museums and the licensing of vehicles.

**NEED TO REVIEW LOCAL GOVERNMENT LEGISLATION**

As the local government system in South Africa has matured, it has become evident that a review of the legislation is necessary which would include the Constitution, the Structures Act, and the Systems Act.

Key issues to be considered would include:

- Variations in municipal categorization including a mechanisms for strengthening the two tier system of local government;
- Resolving the overlap, and lack of definitions, of the powers and functions of the three spheres of government, and, in particular, those of district and local municipalities – attention will need to be given to reviewing and amending the wording of the district functions in section 84(1);
- The usefulness of authorisations by the Minister, and adjustments of powers and functions by MECs which initially was seen as temporary transitional arrangements to ensure the provision of services;
- The need to review institutional and other arrangements to prevent conflicting and/or overlapping responsibilities, or to align them;
- A revisit of the determination of service delivery mechanisms in the Municipal Systems Act; and
- Improving municipal monitoring and accountability.

**THE ROLE OF THE TRADITIONAL AUTHORITIES**

The participation and the inclusion of Traditional Authorities in the activities of local government require urgent attention. Particular focus needs to be given to both the preparation of the IDP and the Spatial Development Framework (SDF) to ensure active participation and buy-in of the Traditional Leaders into both the planning process and the outcomes. The short and long term implications of their non-inclusion and participation in such processes for municipalities are serious, especially in relation to the need for delivery and to address basic services backlogs. As an example, the images below demonstrate the growth of unplanned settlements in close proximity to Lusikisiki located in the Ngquza Hills Local Municipality. This municipality demonstrates low capacity levels and is grant dependent with high backlog levels, notwithstanding the gains made for the provision of basic services between 2001 and 2011.
Traditional authority areas are yet to be valued for rating purposes. Not only are public facilities located within such areas exempt from paying rates but non-indigent households are equally exempt. Traditional authorities in close proximity to major urban areas are witnessing a rapid increase in self-built housing growth. Not only can the land be accessed cheaply, but people, including government officials, use this as a means of avoiding paying rates and services charges. Further investigation to understand the dynamics central to this issue is crucial.

The Municipal Demarcation Board is increasingly receiving applications from municipalities to be established comprising of a single traditional authority area. This indicates a possible conflation of traditional leadership with the need to provide local governance. Certainly, it would appear that urgent research is required to understand and develop appropriate policy toward the management of the relationships between traditional authorities and local government.

**CONSIDERING MUNICIPAL DIFFERENTIATION**

“Differentiation” is a term that has been commonly or loosely used in relation to local government which is then applied to both contexts and conditions interchangeably. When considering a differentiation model of local government, it is necessary to consider two core variants, that is:

i. Differentiation for analytical purposes and

ii. An expanded differentiation within the local government categories.

**DIFFERENTIATION FOR ANALYTICAL PURPOSES**

When considering local government differentiation for analytical purposes, a simple approach was adopted as early as 2002 to explain the variations in local and district municipalities. For the purposes of understanding local municipalities, a B1 – B4 typology was prepared based largely on dominant settlement type, socio economic conditions and historic spatial contexts. A similar approach was adopted by the Municipal Demarcation Board using a Type 1 (predominately rural with no or little urban infrastructure) to Type 4 (mainly secondary cities). While the latter was used as part of the MDB capacity assessment process, the B1 – B4 typology is commonly used across a range of government departments such as COGTA, Water Affairs, Human Settlements, Rural Development and Land Reform etc. in their attempt to better understand local municipalities. Both COGTA and the MDB based their typology of the district municipalities on their water services authority status – simply, those with and those without.

As challenges have emerged within the local government sector, along with a growing need for more targeted interventions, so too has the need emerged for a more nuanced understanding of municipal differentiation. Questions have emerged such as why differentiate, for what purpose, and is a single differentiation model sufficient.

A more recent study of the water and sanitation sectors within the two-tier system of local government demonstrated that multiple models may be necessary for understanding the dynamics and trends within municipalities. In this study, the standard B1 – B4 typology was applied alongside the water services status at the local level and the Treasury financial categorization of high, medium and low. While a fairly consistent pattern emerged across all three typologies, the application of the Treasury categorization to the actual sanitation backlogs addressed between 2001 and 2011 showed that in the so-called “high” category municipalities (more intensely urban local municipalities), the backlogs were growing at a faster pace than the municipality’s ability to address the shortfall. This result possibly demonstrates the impact of the rate of urbanization occurring within our towns and cities, a nuance missed in the application of the B1-B4 typology and the application of data based on water services authority status. Applying the different models assisted in shaping the story to be told and the response which may be required.
Certainly, a “one size fits all approach” to municipal differentiation would appear to be inappropriate. In considering municipal differentiation for analytical purposes, experience gained over time would suggest that multiple municipal typologies should be developed, the use of which should be based on the purpose of the assessment. In addition, when undertaking the analysis, at least two of the typologies should be applied to determine possible result variations.

EXPANDED MUNICIPAL CATEGORY DIFFERENTIATION

The Constitution Section 155(1) set out the categories of municipalities by stating that:

a. **Category A**: A municipality that has exclusive municipal executive and legislative authority in its area;

b. **Category B**: A municipality that shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls; and

c. **Category C**: A municipality that has municipal executive and legislative authority in an area that includes more than one municipality.

In addition, National legislation must establish the criteria for determining when an area should have a single Category A municipality or both category B and category C municipalities. The White Paper of Local Government 1998, introduces the notion of metropolitan municipalities by describing such areas as “large urban settlements with high population densities, complex and diversified economies, and a high degree of functional integration across a larger geographic area than the normal jurisdiction of a municipality. Economic and social activities transcend municipal boundaries, and metropolitan residents may live in one locality, work in another and utilize recreational facilities across the metropolitan area.” It should be that the drafting of the White Paper occurred during the interim phase, still influenced by the concepts and configurations of the local government negotiating forums from the early 1990s – the notion of “one city, one tax base”. A “normal jurisdiction of a municipality” would then have either been regarded as that of the disestablished white local authorities or the then interim structures which were largely based on the nearest neighbor principle rather than functionality.

The intentions of the White Paper were then carried forward into the Municipal Structures Act 117 of 1998 in which section 2 which states that an area must have a single category A municipality if that area can reasonably be regarded as:

a. “a conurbation featuring -
   i. areas of high population density;
   ii. an intense movement of people, goods, and services;
   iii. extensive development; and
   iv. multiple business districts and industrial areas.

b. a centre of economic activity with a complex and diverse economy.

c. a single area for which integrated development planning is desirable.

d. having strong interdependent social and economic linkages between its constituent units.”

Importantly, when determining a Category A municipality, an area must demonstrate all of the above characteristics which when applied in the South African context is restricting.

The advantages of being a Category A municipality are that it has exclusive municipal executive and
legislative authority in its area and as such does not share its responsibilities. Moreover, it has all the functions contained in Schedule 4 Part B and Schedule 5 Part B of the Constitution and is thus not subjected to the division of powers and functions as outlined in Section 84 in the Municipal Structures Act. The layer of municipal co-operation and co-ordination required with district municipalities is also removed.

Both the White Paper on Local Government and the Municipal Structures Acts were prepared prior to the municipal demarcations of 2000. The boundaries determined for local government, especially of category B, were a radical departure from both the fragmented and small local jurisdictional areas during apartheid and those prepared for the interim period in which some consolidation had occurred. Moreover, the MDB applied Section 2 of the Municipal Structures Act in accordance with the provisions of the Act, limiting the declaration of Category A as “metropolitan areas” to six geographical and functional regions in the country, namely, Johannesburg, the East Rand (Ekurhuleni), greater Pretoria (Tshwane), greater Durban (eThekwini), greater Cape Town and greater Port Elizabeth (Nelson Mandela Bay). It should be noted that the MDB debated at length the inclusion of the latter area as it was suggested that the proposed category A area barely met the section 2 criteria.

Since 2000, a number of issues became evident. The first was the disproportionate strength of some of the local municipalities within the district municipal system. These municipalities do not require support and capacity building envisages in Section 83 of the Municipal Structures Act. Indeed, some local municipalities demonstrated significantly more capacity and expertise than the districts in which they were located. Secondly, as the NDP notes, there is a perception that the two-tier system of local government has not functioned “as effectively as policy makers had intended partly because the districts lack the financial, human and physical resources they need to fulfill their planning and coordination role”.

The Municipal Demarcation Board has been faced with increasing pressure and requests to consider the establishment of additional “metropolitan” municipalities. Research has been undertaken by a range of organizations into the role and importance of so-called secondary or intermediary cities. Moreover, the determination of other category A municipalities post the original six by the MDB appears to be somewhat erratic with some areas deemed to comply with the criteria contained in section 2 while others which may comply, have been excluded.

When examining the metropolitan areas currently determined in South Africa, significant variations are found. For example, the City of Johannesburg has a population of 4 434 827 with a geographic extent of 1 645Km² and a population density of 2 696 persons per km² whereas Mangaung has a population of 747 431 persons, a geographic extent of 6 284km² and a density of 119 persons per km². The former has a population growth rate of 3.18% while the latter is 1.47% per annum. Similar trends are evident when examining a number of indices including those relating to socio economic conditions. Any analysis of the existing eight metropolitan areas suggests that there are currently three sub categories:

- Large – Johannesburg, Cape Town, eThekwini and Ekurhuleni;
- Mid-size – Tshwane and Nelson Mandela Bay; and
- Small – Buffalo City and Mangaung.

Reflecting on the bedding down of our system of local government, it may be useful to move away from the current conceptualization of category A municipalities as being metropolitan areas. Rather consideration should be given to those areas in South Africa which would benefit from the establishment of a single area that is one in which the municipality has exclusive municipal executive and legislative authority. Further sub categorization may be necessary such as A1 – A2 or 3 for the purposes of distinguishing possibly the allocation of powers and functions, implications for the assignment of functions from National and Provincial Government, financing, capacity and institutional requirements. At the very least, Section 2 of the Municipal Structures Act must be reconsidered to be more flexible and reflective of our municipal landscapes and needs.
REFERENCES
APPENDIX A: SUMMARY OF THE CORE LOCAL GOVERNMENT
APPENDIX A:
SUMMARY OF THE CORE LOCAL GOVERNMENT LEGISLATION AND RELATED AMENDMENTS
### LEGISLATION AND RELATED AMENDMENTS

<table>
<thead>
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<th>Act</th>
<th>Summary objects of the Act</th>
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| Organised Local Government Act, 52 of 1997               | • To provide for the recognition of national and provincial organisations representing the different categories of municipalities  
• to determine procedures by which local government may designate representatives to participate in the National Council of Provinces  
• to determine procedures by which local government may consult with national and provincial government  
• to determine procedures by which local government may nominate persons to the Financial and Fiscal Commission | Local Government Laws Amendment Act, 51 of 2002:  
• Repealed a transitional arrangement                                                                    |
| Local Government: Municipal Demarcation Act, 27 of 1998  | To provide for criteria and procedures for the determination of municipal boundaries by an independent authority | Local Government Laws Amendment Act, 51 of 2002  
• to further regulate the functions and the work programme of the Board  
• to reduce the size of the Demarcation Board  
• to expressly provide for the Minister’s role in the appointment of members of the Demarcation Board; and  
• to make provision for the publication of the Demarcation Board’s decision where an objection was considered.  
Local Government Laws Amendment Act, 19 of 2008  
• to insert a definition  
• to provide for determinations of municipal boundaries to take effect on the commencement of the following municipal financial year |
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| Local Government: Municipal Structures Act, 117 of 1998             | • The establishment of municipalities based on category and type  
• The criteria for determining the category of municipality to be established in an area  
• Defining the types of municipality that may be established within each category  
• to provide for the division of functions and powers between category B and C municipalities  
• to regulate the internal systems, structures and office-bearers of municipalities  
• to provide for appropriate electoral systems including the provisions for the establishment of wards and the criteria for delimitation of ward boundaries | Local Government: Municipal Structures Amendment Act, 58 of 1999  
• to vest the power to determine whether an area must have a single category A municipality or whether it must have municipalities of both category C and category B in the Municipal Demarcation Board  
• to vest the power to declare a part of the area of a category C municipality as a district management area in the Municipal Demarcation Board  
• to remove the power of the Minister to determine guidelines for types of municipalities and to determine the term of municipal councils |
• to further regulate the contents of notices establishing municipalities;  
• to further regulate transitional measures when existing municipalities are disestablished and new municipalities established;  
• to further regulate the determination of the number of councillors;  
• to redetermine the provisions from which a municipality may be exempted;  
• to determine the date on which the first term of municipalities end; and  
• to further regulate the transitional arrangements |
• to enable a member of a municipal council to become a member of another party whilst retaining membership of that council  
• to enable an existing party to merge with another party, or to subdivide into more than one party, or to subdivide and any one of the subdivisions to merge with another party, whilst retaining membership of that council  
• to provide for the convening of meetings after the composition of a municipal council has changed as a result of the provisions of Schedule 6A to the Constitution;  
• to provide for the reconstitution of metropolitan sub councils  
• to provide for special measures for the application of Schedule 6A to the Constitution  
• to further regulate the submission of lists of candidates |
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<td>Local Government Laws Amendment Act, 51 of 2002</td>
<td>to make provision for an acting mayor and an acting executive mayor; to provide for the payment of out of pocket expenses to traditional leaders who participate in the proceedings of municipal councils; to authorise the Minister to regulate the consequences of the revocation of an authorisation to a local municipality to perform a certain function or exercise a certain power; to provide for uncontested ward elections; and to provide for the election of office bearers of a municipality to be determined by lot if two candidates receive the same number of votes</td>
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<tr>
<td>Local Government: Municipal Structures Amendment Act 33 of 2000 AMENDED by Local Government Laws Amendment Act, 51 of 2002</td>
<td>to re-determine the transition period and to repeal outdated provisions to repeal certain laws mainly apartheid local government legislation</td>
<td></td>
</tr>
<tr>
<td>Local Government: Municipal Structures Amendment Act 1 of 2003</td>
<td>To regulate the effect of a change in the type of municipality on the terms of office of members of executive committees and executive mayors</td>
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</tr>
<tr>
<td>Local Government Laws Amendment Act, 19 of 2008</td>
<td>to insert a definition to provide for consequential amendments pertaining to interventions in municipalities to provide for amendments to provisions relating to ward committees to provide for authorisations and adjustments of powers and functions to take effect on the commencement of the following municipal financial year</td>
<td></td>
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<td>Act</td>
<td>Summary objects of the Act</td>
<td>Amendments</td>
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| Local Government: Municipal Systems Act, 32 of 2000                 | • To provide for the core principles, mechanisms and processes necessary for municipalities to move towards the social and economic upliftment of local communities by ensuring access to affordable essential services   | Local Government Laws Amendment Act, 51 of 2002  
To provide for a general power to levy and recover fees, charges and tariffs  
To further regulate the charging of interest on arrears  
To provide for legal representation of employees of a municipality  
To further regulate clearance certificates for the transfer of property |
|                                                                    | • to provide for the manner in which municipal powers and functions are exercised and performed  
• to provide for community participation  
• to establish a framework for integrated development planning and performance  
• to provide a framework for local public administration and human resource development  
• to provide a framework for the provision of services and service delivery mechanisms |                                                                                                                                                                                                          |
| Local Government Municipal Systems Amendment Act, 44 of 2003        | • To delete certain definitions and insert others  
• to make new provision regarding the assignment of functions or powers to municipalities  
• to provide for the submission of annual performance reports by municipalities  
• to provide for the establishment of municipal entities |                                                                                                                                                                                                          |
| Local Government Laws Amendment Act, 19 of 2008                    | • to substitute a definition  
• to provide that the term of employment of a municipal manager may not exceed a maximum of five years  
• to align certain delegations with the Local Government: Municipal Finance Management Act, 2003  
• to regulate the participation of municipal staff members in national, provincial and local elections; to amend the Minister’s regulatory powers  
• to provide for a municipality to provide an owner with copies of accounts sent to the occupier of such property  
• to refine the process to investigate maladministration and related matters  
• to provide for the exemption of municipalities from provisions of the said Act  
• to amend the Code of Conduct for Councillors and Municipal Staff in order to align it with the Municipal Finance Management Act |
| Local Government: Municipal Systems Act, 32 of 2000                 | • To provide for the core principles, mechanisms and processes necessary for municipalities to move towards the social and economic upliftment of local communities by ensuring access to affordable essential services   | Local Government Laws Amendment Act, 51 of 2002  
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<td>Local Government: Municipal Systems Amendment Act, 7 of 2011</td>
<td>Insert and amend certain definitions</td>
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<td></td>
<td>to make further provision for the appointment of municipal managers and managers directly accountable to municipal managers; to provide for procedures and competency criteria for such appointments, and for the consequences of appointments made otherwise than in accordance with such procedures and criteria</td>
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<td>to determine timeframes within which performance agreements of municipal managers and managers directly accountable to municipal managers must be concluded;</td>
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<td>to make further provision for the evaluation of the performance of municipal managers and managers directly accountable to municipal managers</td>
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<td>to require employment contracts and performance agreements of municipal managers and managers directly accountable to municipal managers to be consistent with the Act and any regulations made by the Minister</td>
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<td>to require all staff systems and procedures of a municipality to be consistent with uniform standards determined by the Minister by regulation</td>
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<td>to bar municipal managers and managers directly accountable to municipal managers from holding political office in political parties</td>
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<td>to regulate the employment of municipal employees who have been dismissed</td>
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<td>to provide for the Minister to make regulations relating to the duties, remuneration, benefits and other terms and conditions of employment of municipal managers and managers directly accountable to municipal managers</td>
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<td>to provide for the approval of staff establishments of municipalities by the respective municipal councils</td>
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<td></td>
<td>to prohibit the employment of a person in a municipality if the post to which he or she is appointed is not provided for in the staff establishment of that municipality</td>
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| Local Government: Municipal Finance Management Act, 56 of 2003 | • To secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government;  
• to establish treasury norms and standards for the local sphere of government; and  
• related matters | • to enable the Minister to prescribe frameworks to regulate human resource management systems for local government and mandates for organised local government  
• to extend the Minister’s powers to make regulations relating to municipal staff matters  
• to make a consequential amendment to the Local Government: Municipal Structures Act, 1998, by deleting the provision dealing with the appointment of municipal managers |
| Local Government: Property Rates Act, 6 of 2004 | • to regulate the power of a municipality to impose rates on property;  
• to exclude certain properties from rating in the national interest;  
• to make provision for municipalities to implement a transparent and fair system of exemptions, reductions and rebates through their rating policies  
• to make provision for fair and equitable valuation methods of properties;  
• to make provision for an objections and appeals process | |
| Municipal Fiscal Powers and Functions Act, 12 of 2007 | • To regulate the powers of municipalities to impose surcharges on fees for services provided under section 229(l)(a) of the Constitution;  
• to provide for the authorisation of taxes, levies and duties that municipalities may impose under section 229(l)(b) of the Constitution;  
• Related matters | |
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<td>Cross Boundary Municipalities Act including the redetermination of cross boundaries and numerous related revisions</td>
<td>The Cross Boundaries Municipalities, related redetermination and revisions addressed the establishment and disestablishment of the cross boundary municipalities.</td>
<td></td>
</tr>
</tbody>
</table>
| Local Government Laws Amendment Act, 19 of 2008 | In addition to those aspects mentioned above:  
• To rationalise local government laws that have become obsolete as a result of local government legislation that was enacted since 1994 | |
APPENDIX B: CONSTITUTIONAL ALLOCATION OF POWERS AND FUNCTIONS FOR LOCAL GOVERNMENT
APPENDIX B: CONSTITUTIONAL ALLOCATION OF POWERS AND FUNCTIONS FOR LOCAL GOVERNMENT

Schedule 4 Part B

- Air pollution
- Building regulations
- Child care facilities
- Electricity and gas reticulation
- Firefighting services
- Local tourism
- Municipal airports
- Municipal planning
- Municipal health services
- Municipal public transport
- Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law
- Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto
- Stormwater management systems in built-up areas
- Trading regulations
- Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems

Schedule 5 Part B

- Beaches and amusement facilities
- Billboards and the display of advertisements in public places
- Cemeteries, funeral parlours and crematoria
- Cleansing
- Control of public nuisances
- Control of undertakings that sell liquor to the public
- Facilities for the accommodation, care and burial of animals
- Fencing and fences
- Licensing of dogs
- Licensing and control of undertakings that sell food to the public
- Local amenities
- Local sport facilities
- Markets
- Municipal abattoirs
- Municipal parks and recreation
- Municipal roads
- Noise pollution
- Pounds
- Public places
- Refuse removal, refuse dumps and solid waste disposal
- Street trading
- Street lighting
- Traffic and parking
South African Local Government Association

SALGA

15 YEARS OF DEVELOPMENTAL AND DEMOCRATIC LOCAL GOVERNMENT

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