SALGA
National Members Assembly
DISCUSSION DOCUMENTS

Gallagher Convention Centre
Johannesburg
24-26 March 2015

“Celebrating 15 years of Democratic Local Government: Consolidating and Deepening a Vibrant, Developmental and People Centred Local Democracy”
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South Africa is celebrating 20 years of democracy in 2014 and Local Government will, on the 5th of December 2015, celebrate 15 years of democratic and developmental local government. This momentous occasion presents an opportunity for organised local government (OLG) to reflect on the progress made in deepening democracy and expanding coherent, equitable development outcomes.

It is particularly important to reflect on the role of local government in building a capable and developmentally orientated public sector towards Vision 2030. With the new national and provincial electoral mandate, local government is also faced with a more immediate need to assess the extent to which changes in the macro policy context necessitate changes at the local level to ensure that it remains alive to the pulse of the electorate and the new policy discourse at a national and provincial level.

The 2015 NMA represents an important moment in the democratic and developmental journey of local government and an opportunity to reflect on, *inter alia*:

- progress made over the last 15 years of local democracy and particularly since 2011;
- highlight key and emerging trends which require policy responses and innovation in governance;
- Sustainable development goals – the post 2015 development agenda and the role of local government.

1. Progress made over the last 15 years of local democracy and during the current term

Local government, in its democratic form, is approaching 15 years in practice. However, the amalgamation and consolidation of municipalities and the establishment of new ones have all taken place at different stages. The result is that the exact stage of development which any given municipality finds itself in may differ vastly from that of its neighbour. In the pursuit of developmental local government, the establishment, consolidation and sustainability phases that the sphere has undergone (and continues to undergo) have been well documented.

Some municipalities, despite the turbulence of economic crises and the inevitable challenges of servicing vast municipal areas (as a consequence of having the largest municipalities in the world), are already sustainable or in the sustainability phase. Yet others, where there was some historic form of local government and a record of service delivery, could either be in or marching towards the consolidation phase. These may be even on their way towards achieving sustainability. Then there are those municipalities who started from scratch and are still very much in the establishment phase. Finally, there are those municipalities who, due to their particular spatial and economic circumstances, are and will continue to grapple with their mandate.

Considering the vast divergence in capacity, skills and resources, across 278 municipalities, the task of assessing whether the existing arrangements and forms of governance remain and our progress against the resolutions of previous governance structures is now apposite, in order to inform our policy response and key areas of focus over the next five-year local government term.

Indeed, significant progress has been made by local government in deepening democracy and delivering basic services to communities in the post-apartheid era. Local government has come a long way since its democratic establishment in wall-to-wall form in 2000, and the preceding transitional phases which we all recall and no doubt participated in.
Let’s not forget what a massive transition this was, in which we moved from a highly fragmented racial based system of local government to an integrated democratic system, with uniform wall-to-wall municipalities.

Significant progress has been made in addressing backlogs as registered in the 2011 Census results, notably the expansion of social infrastructure and services to poor households in the form of a basket of social services like free basic water, electricity, solid waste collection and sanitation.

Some of our Cities have transformed into vibrant and competitive economies which, on their own, dwarf those of many nations. They have pioneered many ground breaking initiatives that have had a far reaching transformative impact on local economies and communities. Indeed, significant progress has been made in deepening democracy and delivering basic services to communities in the post-apartheid era.

To name but a few:

1. City of Joburg: The complete social, economic, transportation sporting infrastructure spatial turn-around of Soweto into a thriving suburb it is today. This also includes the bus rapid transport system (BRT) that provides world class public transport system to this historical township, thus providing a reliable modern public transport infrastructure. This is now extended to another historic settlement of Alexandra.

2. The City of Tshwane has rolled out an unprecedented ICT project to make broadband connectivity to all the wards of the city, thus making it easy for Tshwane residents to connect and do business in the city and elsewhere, particularly for the youth and students to search for job opportunities and access all what the city has to offer. The City also received an accolade as the city with the highest quality of water (blue drop water quality status). This attests to the City's credentials as having the world class quality management standards in water management. The City is also rolling out the BRT bus system to enhance public transport mobility between and amongst working class suburbs and commercial nodes in the city.

3: The City of eThekwini has received (in 2014), the highest international accolade as the city with the best water management standards in the world as ranked with other cities.

There are many other initiatives that our other metros have pioneered and are championing and that some of our other municipalities have implemented, including the Govan Mbeki Human Settlement Award that many municipalities notched up this year. Steve Tshwete Local Municipality in Mpumalanga and Kwadukuza Local
Municipality in KZN remain shining lights to other municipalities, showing what is possible with visionary leadership, technical prowess and dedicated partners.

This is in addition to the significant contribution that local government has made in the expansion of social infrastructure and services to poor households in the form of a basket of social services like free basic water, electricity, solid waste collection, sanitation and sewer connectivity – which sometimes are unappreciated as a demonstration of local government at work.

The Census 2013 results illustrate unequivocally the profound contribution of local government to the country’s development and key service delivery gains, contrary to the often disproportionate negative narrative sustained against municipalities.

On improving financial management and audit outcomes, substantial progress has been made on this front during this term of local government. Over 50% of municipalities now have unqualified audits, with the number of disclaimers and adverse opinions having halved since 2008/9.

2. Key and emerging trends which require policy responses and innovation in governance

Notwithstanding these immense achievements, many stubborn challenges continue to bedevil the sector and threaten to undermine and erode much of the good work done to date. These residual challenges have served to gradually erode the integrity and image of local government as well as the confidence that communities and other stakeholders have in the ability of municipalities to provide a better life for all.

In particular, the following key areas require sharp responses and attention:

- Consequences and accountability in the local government sector (including citizen accountability and participation)
  - Separation of Powers for real executive power and robust council oversight

- Policy changes to effect the implementation of the NDP: Spatial transformation and integrated development planning (the IUDF)
  - IDPs as the central planning tool of government, for greater IGR coherence and impact of the policy agenda
  - We note with concern the bleak global economic growth outlook and that our ambition of achieving a growth target of 5 per cent by 2019 is
at risk, because of the slow global growth as well as domestic constraints in energy, skills, transport and others.

- Sustainable Local Economies
  - Maximising existing state capital investment to create sustainable local economies
  - An integrated approach to enhance the economic viability of locations and ensure maximum regional and economic impact
    - Small Towns/Rural Towns/Townships are home to about 50% of our population, yet they are the least developed, rapidly de-populating, and are to a large extent overlooked. Small towns play a key role as points of socio-economic service provision, welfare distribution, production centers for raw material, primary hubs for manufacturing and industries and are key conduits in the rural-urban continuum.

- Addressing the massive constraints and challenges in the electricity reticulation industry
  - Renewable and sustainable energy
  - Tackling the copper and cable theft scourge

- The impact of the regulated demarcation cycle on local government every 5 years (boundary and ward)
  - Whether changes in this cycle, including the current proposed re-determinations, will enhance stability and long-term sustainability

- Financial management (audit outcomes) and the fiscal capacity of local government
  - SALGA Municipal Audit Support Programme

- Enhancing the role of women in local government
  - Other ways of advancing the 50/50 agenda that will achieve rapid and concrete results
  - What needs to be done differently to bridge the gap by 2016

- The role of the media in promoting accountability
The duty of citizens to exercise their rights responsibly and to hold their leaders accountable

We must also address the stubborn challenges that continue to bedevil the sector’s progress, being in the main:

- Strengthening oversight capacity to be robust and resilient to withstand the forces of corruption and maladministration, and increase the participation of communities in the governance processes;
- Ensure better audit outcomes and financial management through implementing our Municipal Audit Support Programme;
- Rationalisation of laws and regulations to ensure a sound policy and regulatory framework for us to be able to do what we need to do as local government, as well as implementing the good intent of the current laws and regulations assisting us to be responsive, accountable and efficient;
- Addressing the declining revenue base of municipalities and increasing challenges of urbanisation and poverty, by implementing the Integrated Urban Development Framework and complementing rural development strategies;
- Intensifying public participation and practising inclusiveness of communities in our institutional governance process, including working with our Traditional Leaders much more effectively to respond with urgency and care to our communities’ needs;

If we do these things, will we not strengthen the integrity and image of local government, as well as the confidence that communities and other stakeholders have in our ability to provide better outcomes and meet the development aspirations of communities?

3. Sustainable development goals – the post 2015 development agenda and the role of local government

The Sustainable Development Goals (SDGs) are a proposed set of targets relating to future international development. They are to replace the Millennium Development Goals once they expire at the end of 2015. The SDGs were first formally discussed at the United Nations Conference on Sustainable Development held in Rio de Janeiro in June 2012 (Rio+20).
One of the main outcomes of the Rio+20 Conference was the agreement by member States to launch a process to develop a set of Sustainable Development Goals (SDGs), which will build upon the Millennium Development Goals and converge with the post 2015 development agenda.

On 19 July 2014, the UN General Assembly's Open Working Group on Sustainable Development Goals forwarded a proposal for the SDGs to the Assembly. The proposal contained 17 goals with 169 targets covering a broad range of sustainable development issues. These included ending poverty and hunger, improving health and education, making cities more sustainable, combating climate change, and protecting oceans and forests.

The panel, led by CLGF, will highlight these SDG goals and targets (particularly the ones relevant to local government) with the aim of unpacking the role that local government should and must play in its implementation and inculcation into our programmes of action, as of 2016 when they take effect.
DISCUSSION PAPER FOR SESSION 6 (INNOVATION) OF THE 2015 NMA: 24 MARCH 2015

“CELEBRATING AND STIMULATING INNOVATION AND GOOD PRACTICES IN LOCAL GOVERNMENT”

1. Introduction

Innovation is defined in many ways and common to these definitions is the concept of “newness” – new ideas, services, products, processes and implementation leading to results and performance enhancements. Implementation is key, new ideas must be put into practice, show results and make an impact to be innovation.

Innovation draws new ideas and perspectives from a wide range of internal and external sources and from all levels of authority. Internal sources include employees, especially frontline employees that deliver the services to the citizens. External sources are the citizens, the consumers of the services, the business sector and the academic community that provides new perspectives and new approaches that can stimulates innovation. Partnerships and collaborations are not only a source of new ideas but can also assist with resource constraints and the management of risk.

In the context of local government, innovation can be defined as the development and implementation of new processes, products and services to enhance good governance and service delivery.

2. The necessity of Innovation for Local Government

The study and practice of innovation has traditionally been associated with the private sector, where the impetus to successfully innovate to maintain or increase
profits and thus to survive in a highly competitive global economy is significant. In contrast, innovation in the public sector has not featured as a critical determinant of survival. As a result, the incentive for public sector innovation has been low and risk associated with innovation very high. That said, there is a growing realisation among policy makers that the public sector should learn to innovate if it is to respond to a rapidly changing environment and expectations. For municipalities, the need to innovate is even greater.

Throughout the world, cities are growing at exponential rates. In 1910, 10% of the world’s population lived in cities. By 2014, 50% of the world’s population lived in cities, and it is projected that by 2050, 75% of the world’s population will live in cities.

As urban municipalities grow, they face the challenge of increased populations, greater service-delivery requirements and a more demanding educated consumer. On the other hand, many rural municipalities are shrinking together with their tax bases and access to capable talent.

South Africa faces the multiple issues of poverty and inequality from its apartheid history, combined with a burgeoning middle class and the need to keep the economic engines going. This means greater challenges ahead for municipalities.

The solutions are no longer simple. Today’s answers require a broader, strategic approach, with more sophisticated, nuanced methods of handling municipal needs. This means better skill sets, different approaches and more thought put into how things are managed, as much as how they are done. Managing knowledge, encouraging innovation, learning from the past; all become part of how municipalities need to evolve for the future. There is a need to stimulate and support ideas for innovation and their implementation in all sectors as a way of entrenching culture and practice of innovation. Of strategic importance is to have effective leadership that nurtures and encourages creativity and responsible risk taking.

3. **Stimulating Innovation in Local Government**

One of the biggest challenges facing innovation in the sector is the lack of adequate resources, both financial and human resources. Municipalities are faced with competing priorities of providing amongst others; electricity, roads, water and sanitation to citizens and do not see innovation as a priority. Yet it is the same innovative solutions that can contribute to the effective and efficient provision of these services.
This was seen in the case in **Ekurhuleni Metropolitan Municipality** (EMM). About 20 customer-care areas and service departments’ business processes and technologies were not standardised, integrated or automated. This caused duplication of work and cumbersome service-delivery processes and delays. In an effort to solve this problem, EMM engaged an IT service provider to develop new software for business process management and customer service.

The systems put in place have improved productivity, enabled more efficient communication and integration among departments, and improved the municipality’s ability to use data effectively. Through this partnership, service delivery was optimised in six different departments: energy; water and sanitation; corporate and legal; city development; infrastructure services; and health and social services.

The lack of sector-wide systems and platforms to generate, select and implement ideas is a hindrance to the institutionalisation of innovation in the sector. Rather than letting occasional good ideas from the outside drive the innovation process, the sector should take control of the process by developing tools and systems to consistently address the unique challenges of local government. The main sources of innovation, employees, partners and citizens — can be engaged to systematically generate and capture new ideas.

It is important to understand that ideas by themselves are not innovations. Innovation takes time, strong commitment and leadership. This was evident in the case of **Drakenstein Municipality’s** programme of water demand management programme that took over 12 years to bear fruits.

The municipality had water losses in excess of 33% per year and a steady growth in consumer demand for water. The water-services department started a Water Demand Management Programme where the existing infrastructure was upgraded and pressure-reducing valves were installed on the water network. Preventive maintenance and leak repairs on the municipal system at poor households are routinely carried out on a daily basis. This was one of the first pressure management programmes of this nature to be implemented by a municipality in South Africa. The savings in water consumption over the past 12 years are estimated at R700 million.

Truly novel innovations are rare. Rather than reinventing the wheel, it can often be more effective to replicate and adapt an existing innovation to a new context, taking advantage of good practice already in place and lessons learned.
This was the case with the City of Johannesburg’s Rea Vaya BRT public transportation system. The municipality was the first to pioneer a large-scale, municipal-run, mass-transit system in South Africa. The implementation of a brand new public transportation system helped create employment in the city, bringing impacted taxi drivers to formal employment and connecting outlying suburbs with the city’s main economic growth centres. The new system is waste-efficient and assists in reducing air pollution. Learning from the experiences of Johannesburg, cities such as Cape Town, Durban and Tshwane have implemented BRT systems.

It is important to celebrate and profile innovations and excellence in the sector. Good practice must be documented and shared to all municipalities to encourage replication and diffusion. In 2014, eThekwini Municipality’s Water and Sanitation unit was bestowed with the coveted 2014 Stockholm Industry Water Award for the “Most innovative and progressive water utility in Africa”. Established in 1992, the unit, manages the water and sanitation services for the 3.5 million people living in the Durban area, and has worked with some of the world’s major actors and knowledge hubs in water and sanitation as well as development, such as the Bill and Melinda Gates Foundation, and the World Bank.

Its methods have been replicated across the country and region, and eThekwini representatives are successfully sharing and disseminating their findings and working methods.

Some cities have embarked on smart city initiatives to drive local development. The City of Johannesburg has prioritised a wide-ranging broadband capacity to be the back-bone of their smart city initiatives, which will includes installing household with smart meters to manage energy consumption and reduce energy losses; smart transport technology and promotion of ICT literacy using public access to internet solutions.

The City of Tshwane, through Project Isizwe has rolled out some 400 Wi-Fi sites to date, offering coverage to over 2 million people. By the end of 2015 it is estimated that Tshwane will offer free Wi-Fi to more than 3 million people.

EThekwini municipality is the first public-sector entity to trial a smart city mobile application. The ‘Smart City’ app integrates a number of services offered by the municipality. It is available on smart phones and tablet devices and it allows municipalities to interact with their customers in real time. The City of Cape Town
continues to investigate ways in which to become a smarter, more liveable city, realising that public-private partnerships are essential to achieving those aims.

4. **Local Government Innovation Model**

Some municipalities, mainly the well-resourced municipalities have prioritised innovation to improve good governance and service delivery imperatives. The majority of the municipalities are overwhelmed by variety of problems to resource innovation adequately.

To address this, SALGA is building capacity to establish a well-rounded innovation model for local government that will includes diagnostic and benchmarking tools, platforms for generation, selection and implantation of ideas; platforms for knowledge sharing and learning; and awards programme to celebrate and profile innovations of the sector.

5. **Concluding Remarks**

Leadership plays a key role in ensuring success in almost any initiative within organisations, including municipalities. Strong leadership in support of innovation for local government is critical because this is a relatively new discipline for the sector. Nothing makes greater impact on an organization than when leaders model the behaviour they are trying to promote among employees. Everyone in local government sector leadership, management at all levels, and all employees should be enabled and supported to innovate in key areas.

This session on celebrating and stimulating innovation and good practices in local government at the National Members Assembly is an important milestone. While not a panacea for all challenges faced by the sector, innovation has an important role to play in improving the good governance and service deliver objectives of the sector.
DISCUSSION DOCUMENT FOR COMMISSION 1

Enhancing Good Governance and Accountability

24 – 26 March 2015
GALLAGHER ESTATE AND CONVENTION CENTRE | MIDRAND | GAUTENG
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1. INTRODUCTION

The Back to Basics approach for local government, launched by the Minister of COGTA on 18 September 2014, identifies Good Governance as one of the five pillars of the programme. The Local Government Summit held on the same day identified the following Governance aspects in municipalities as matters of critical importance:

- Functionality of oversight structures, s79 committees, audit committees etc
- Public participation
- Fraud and corruption
- Execution of LG mandate in terms of the Constitution
- Political-Administrative interface
- Accountability
- Application of Rules and order
- Feedback of Councillors to communities

This paper intends to canvass the 4 critical areas of governance that require more focus if good governance and accountability is to be enhanced in municipalities, including:

- Political and administrative consequences;
- Citizen accountability;
- Separation of Powers Model for real executive power and robust council oversight; and
- Finalisation of the Anti-Corruption Strategy.

2. PROBLEM STATEMENT

The 2009 State of Local Government Report identified a lack of accountability and internal oversight in municipalities as one of the aspects to be addressed in improving governance. The Auditor-General’s municipal reports for the 2010/11 and 2011/12 financial years highlighted low levels of compliance with legislation and that there are few consequences for lack of leadership and malfeasance in municipalities, both on a political and administrative level.

This has widely fuelled the perception that local government is generally corrupt and unaccountable, which contributed to the distrust that has enveloped local government in recent years. The confidence of communities in their municipal institutions has largely been eroded, as evidenced through violent ‘service delivery’ protests.
In a broad sense of governance and ethics, accountability is described as “Answerability, blameworthiness, liability, and the expectation of account-giving.” “In leadership roles, accountability is acknowledgement and assumption of responsibility for actions, products, decisions, and policies, including the administration, governance, and implementation as well as encompassing the obligation to report, explain and be answerable for resulting consequences.”

The purpose of the consequences and accountability framework is not only to highlight the consequences of the failure of political and administrative leadership in municipalities, it further proposes measures to strengthen governance and accountability in municipalities with clear consequences for non-performance.

There is a general misnomer in our compliance regime as many tend to reduce accountability to a limited technical scope of financial accounting, something that is specialized and can only be dealt with by financial officers and auditors. This dominant misperception has done a gross disservice to the concept of accountability and has led to an abdication from our various accounting roles.

3. KEY ISSUES

3.1 Consequences and Accountability

The Constitution vests the executive and legislative authority of a municipality in its Municipal Council and entitles the municipality (not Council alone) to govern, on its own initiative their local affairs of its community (subject to national and provincial legislation). The Auditor-General issued reports that consistently highlighted the lack of consequences and malfeasance as problem areas across many municipalities.

In the absence of other credible information, the Audit Outcomes (with predetermined objectives measured as well) present a useful reference point for illustration purposes. If, for example, a municipality obtains a disclaimer or adverse opinion, it means directly that the Council fell short in ensuring that the administration complies with laws and regulations in implementing the IDP. An adverse disclaimer could also often mean that the Council and officials have wrongdoing to hide and therefore fail to submit documentation required or deliberately submitted incorrect information.

The assumption of wrongdoing and consequences therefore should flow from those two categories of findings. If there is more than 1 consecutive adverse or disclaimed opinion in a municipality, section 139 1 (c) of the Constitution (dissolution of council) should immediately be invoked as a mandatory intervention and another election
held. Ultimately, Council is responsible for compliance with and implementation of laws and regulations and therefore consequences should start there.

Moreover, a municipality which has an adverse or disclaimed opinion may not be entitled to receive any additional funding from the national fiscus, until it shows, through audit outcomes, that it is able to handle public money responsibly and account for that money.

Equally, a municipality which obtains an unqualified audit should allocate salary increases and skills development for its councillors, not rewards. Rewards should be for achievement over and above the set predetermined objectives. An unqualified opinion should not be considered an achievement, but is (merely) an acceptable level of performance and accountability for public institutions such as a municipality including its entities, its credibility and use of public funds.

**Oversight and accountability**

Although there is currently no clear separation of powers in local government, the introduction of the Speaker in municipalities as chairperson in terms of the Municipal Structures Act, 1998, and the subsequent establishment of MPACs as internal oversight committees in municipalities, has clearly set the stage for the implementation of a model of separation of functions (at the least) in municipalities. Currently, approximately 274 municipalities in the country have established MPACs, the functionality of which differs across the country. However, it must be remembered that this was an innovation introduced in response to the lack of accountability perception, which is already a positive step, and now that nearly all municipalities have them established, the focus will be on improving their functionality through promoting good practices and more targeted support.

In this regard, municipalities must have a clear understanding of the difference between section 80 Committees (ultimately reporting to the Executive Mayor or Executive Committee) which support the political executive, and section 79 Committees (of the municipal council), which are accountable to the municipal council and are best placed to provide oversight over the political executive. The functionality of the latter committees is the responsibility of the Speaker.

However, it is important to note the role that political deployment and contestation has played in the oversight process to date and the extent to which that has undermined the capability of MPACs to play its intended role, and in some cases paralysed it. Political deployment on the basis of the required expertise and
minimising the causes of contestation are vital to the long term success of MPACs. Consequences for failing to ensure that these two components are implemented require strong political accountability and action, including the removal of councillors abdicating their responsibility or exercising malfeasance in this regard.

3.1.1 Political Leadership

Based on the differentiated roles and responsibilities of the different office bearers in the municipality, a consequence framework is required to focus on the political leadership, the institutional component of which can be classified as follows:

- The Executive:

  The Executive in this instance can be described as the Executive Mayor and the Mayoral Committee or the Executive Committee headed by the Mayor, with the relevant section 80 committees assisting the Executive Mayor / Executive Committee with the fulfilment of executive functions.

- The Legislative and Oversight arm:

  The Legislative and Oversight arm refers to the Speaker with the chairpersons of section 79 oversight committees and its members, with MPAC at the heart thereof. The legislative as well as the disciplinary role of the Speaker is of critical importance in this regard.

  The impartial exercise of this role and consequences for failure to do so, as well as impeding the functions of the Speaker, must be emphasised at political level. The Speaker must ensure that ward councillors provide feedback from their constituencies and that it finds dedicated space in the Council agenda. The Speaker must also ensure that strategic issues from organised local government finds dedicated space in the Council agenda through the designated SALGA representatives of that Council.

- The Whippery

  The Whippery can be described as the Whip of the Council, where such position exists within the municipality. The Whips of all the political parties are represented in the Council.
The role of the Whip of Council must be emphasised as critical to enforcing political discipline, and consequences for dysfunctionality in this regard should be removal of the Council Whip at a political level, by the political party concerned. Failure by political parties to enforce consequences for ill-discipline should result in an automatic 106 investigations and removal of the Council Whip, as a councillor, by the MEC. A detailed scorecard for the Whip of Council should be developed and clear consequences for non-performance outlined.

➢ Ward Councillors

Ward councillors, directly elected by a specific constituency, are directly accountable to such constituency and have a specific responsibility to such constituency.

This must include the responsibility to keep constituents informed of all Council plans and budgets in specific terms, meet regularly (not the minimum prescribed) with all stakeholders in the constituency and meeting them on their terms (street committees, development committees, governing boards etc). The ward councillor is the vital link between Council and communities in terms of information (feedback).

Technical support for the execution of ward councillors’ responsibilities should include a PR councillor assigned to support him / her, as well as a technical official designated to provide administrative support. A scorecard should be developed outlining the requirements of ward councillors and the minimum acceptable level of performance, with clear consequences (and a recall provision) available to communities for failure in this regard.

➢ Other Councillors

Any councillor not falling in any of the definitions set out above, including proportional representative councillors not serving in any of the structures defined above.

A clear role and scorecard must be developed for these councillors, in particular their support to ward councillors. Their role in participating in a number of dialogues or public engagements and disseminating information is another aspect that should be explored and included in their responsibility.
The remuneration framework for councillors should be based on performance of the municipality against pre-determined objectives (not only the AG report). The objectives anticipated can include the following:

- Measuring the council in its collective form in terms of:
  
  o Oversight (effectiveness of the council and its structures in terms of oversight)
  
  o Operational efficacy of the council in terms of –
    
    ▪ Implementation of Audit Committee Recommendations
    
    ▪ A specific report on implementation and adherence to delegated functions
    
    ▪ Number of community protests on municipal matters which in their nature could have been addressed (link this with that of Ward Councillors)
    
    ▪ Public participation and petitions management
    
    ▪ Political stability
    
    ▪ Accessibility of the council to the public and stakeholder relations
    
    ▪ Constitutional and legislative compliance
    
    ▪ Quality of candidates that the council resolves to employ

Failure to achieve (collectively) the required threshold of outcomes should result in, for example, non-payment of increases for the year in question. This will also ramp up the oversight and accountability of Council over the executive, since all councillors’ increases would be dependent on performance.

Performance of the municipality (Council) against the pre-determined objectives should be judged by a panel composed of government (national or provincial CoGTA representative), organised local government, organised labour, community
representatives and a councillor from another municipality in the province. [Political deployment must be carefully exercised in this regard. For example, an MEC of a different party evaluating an opposition council would obviously be problematic, and likewise the same party.]

The full Consequence and Accountability framework must clearly set out the responsibility of each group in terms of governance, financial management, service delivery and inter-governmental relations. The consequences of failure in each respect will be highlighted and proposals will be made on how the regulatory environment needs to be changed to give effect to the Consequences and Accountability framework, if any.

### 3.1.2 Administrative leadership in the municipality

Although the appointment, functioning and roles of the administrative leadership in the municipality are highly regulated, it does not necessarily contribute to good governance, strong financial management and effective and efficient service delivery in the municipality. The framework will thus highlight the consequences of failure by the administrative leadership in the municipality and the accountability of the administration. The administrative leadership will be classified as:

- **The Municipal Manager**

  As the accounting officer of the municipality, the municipal manager has a specific role to play with regard to good governance, strong financial management and effective and efficient service delivery.

  The consequences of failure in these respects should include performance related increases and bonuses, and that the MM’s performance be judged by a panel composed of organised local government, organised labour, a professional business representative, an esteemed community member, a MM from a selected municipality in the province and the (executive) mayor of that Council.

  The audit outcomes can be a useful barometer for purposes of illustration, although not the only measure. If a municipality obtains a disclaimer or adverse opinion for the preceding year in which that person has been the manager, the immediate consequence should be removal from office and blacklisting for future employment as a municipal manager. Non submission of required information and non-credibility of information submitted is totally unacceptable for an accounting officer responsible
for record keeping and should result in the removal of the municipal manager as accounting officer and the CFO. Save for instances where the CFO and or MM have taken over at the start of or during the year under review, in which case they should be judged in the following year, once systems and processes have been put in place. Spending in terms of the capital budget of the municipality as well as a number of conditional grants can also be included as measurements.

Equally, the MM (who scores his or her subordinates) would ensure that his / her rating is cascaded down to other employees who are responsible for the audit findings (if those are on predetermined objectives not being achieved) or actual service delivery.

- Senior Managers

Senior managers in this instance are classified as managers directly accountable to the municipal manager and include the Chief Financial Officer, other heads of Directorates in the municipality, including those as required in terms of the Regulations on the Appointment and Condition of Service of Senior Managers, the Heads of Internal Audit and Risk Management.

Their performance should be directly related to the performance of the Municipal Manager on their related component of responsibility, and likewise bonuses and increases dependent thereon. If a senior manager’s portfolio does not achieve 75% or higher, of its performance targets, for example, no bonuses and salary increases will be paid for that performance year.

In the audit example, a CFO should suffer the same fate as the MM for disclaimers and adverse audit opinions. In the case of a qualified audit opinion, depending on the circumstances as judged by an independent and expert panel, the CFO should not be entitled to performance rewards and salary increases for the year in question.

3.1.3. The Community

The Constitutional scheme and Municipal Systems Act of 2000 clearly sees the community as forming an integral part of the municipality and requires inclusive governance ("working with communities", not just consulting them). Part of the problem in this regard has been the narrow understanding and application of this fundamental principle in the legal and policy framework, and municipal practice.
The discourse of public participation and state created structures (including narrowly ward committees) as avenues therefore, for example, are at the heart of the problem. Inclusive governance and community involvement in the affairs of local government extends far beyond a mechanical model of ‘public participation’. Its application has resulted in ward councillors being the gatekeepers, rather than the link between Council and constituents. Ward councillors no longer go door-to-door and engage inhabitants or meet with them at their structures (governing bodies, business chambers, community forums etc.) and are in many instances not the conduit of information from the community to the municipality and vice versa, keeping inhabitants updated with the goings-on in the municipality. The ‘absence’ of the ward councillor is in many instances responsible for the lack of information which leads to violent protests and creates the opportunity for political contest (by rogue forces) which would otherwise not have been present had the ward councillor frequently engaged communities.

On the other hand, this has resulted in a loss of confidence and little incentive for community members to participate in state created structures, and the consequent widening gap between them and their ward councillor – due primarily to the expectation of councillors that citizens must come to them and the so called political capture of ward committees. What is clearly needed is a policy and action shift which reconnects communities with the institutions that are meant to serve them, and concomitantly, restoring and institutionalising a culture of public service among municipal councillors, particularly ward councillors. Of course, this must include support for, and to, them to play their role effectively.

The first measure is to instil citizen based monitoring (CBM – not the DPME initiative) for all selected / key council programmes and projects, which can be disaggregated to the ward level (not the ward committee), via:

- Community Monitoring Forums comprised of 3 – 5 community members on a voluntary basis (no political involvement and no remuneration for each key project / programme – could operate in similar fashion to neighbourhood watchers).

- This will also ensure in-year and in-project monitoring to ensure performance and accountability, as well as detect and inspect progress and problems early, not evaluation after the fact and once it’s too late.

Currently, citizen involvement only takes place at the planning stage, with little or no involvement in monitoring the quality of projects and services by its beneficiaries.
The best monitors of performance are the beneficiaries of the programmes and projects, which ensures accountability to those beneficiaries.

In addition, the notion of a citizens’ charter can also be considered. This will require communities to also take responsibility and ensure that active community participation in matter of the municipality is ensured. It can also be extended to include a drive to ensure payment for rate, taxes and service charges to ensure that the municipality is able to deliver basic services to communities in an effective, efficient and financially sustainable manner. The said charter will ensure that community participation are improved from the current formalistic ward committee model to an active citizen participation in municipal matters.

3.1.4. The Leadership of Organised Labour

The important role that the leadership of organised labour plays in ensuring good governance, strong financial management and effective and efficient service delivery in municipalities are often overlooked and the consequences of good and responsible leadership in organised labour must also be outlined.

3.1.5. Implementation of the Consequences and Accountability Framework and Next Steps

It is envisaged that the Consequences and Accountability Framework should not only highlight how the failure in performance by all or any of the components of a municipality affects the community served by the municipality, but what the consequences for non-performance should be, in order to improve accountability in all its forms.

At the heart of the framework will be the incentivisation (through remuneration and other means) of accountable and people-centred governance of municipal institutions and spaces. Importantly, the pre-determined objectives set out for categories or types of municipalities will primarily be set against the constitutional objects and key legislative imperatives. This should also inform a review of the legislative imperatives to be truly differentiated across the 278 municipalities.

The development and implementation of the Consequences and Accountability Framework for local government should lay the basis for the kind of developmental and people-centred behaviour the White Paper envisioned. This will contribute
significantly to a reorientation from compliance to developmental local government and a much needed “serving people” approach.

This Framework, if supported, will be fully developed by SALGA, in consultation with the CoGTA and other key stakeholders. Once developed for local government, the model should be extended across the national and provincial sphere of government, including its support and monitoring (dependency) role in local government.

### 3.2 Separation of Powers Model for real executive power and robust council oversight

Another mechanism for effective oversight and accountability in municipalities is the oversight done by the council itself and through its section 79 oversight committees, reporting to the Council. The said committees should not be limited to MPAC Committees but the latter should be seen as one from of oversight.

The Constitutional provision placing the legislative and executive authority in the municipal council should not be a deterrent to ensure robust council oversight. The legislative framework for municipalities allows ample space to the municipality to ensure robust oversight. The Differentiated model for oversight and accountability developed and adopted by the SALGA, can assist municipalities in this regard.

In providing dedicated hand-on governance support in municipalities, it has been clear that municipalities do not give ample attention to the development of a comprehensive system of delegations as well as terms of reference for political office bearers, council structures and the municipal manager. The Local Government: Municipal Systems Act, 2000, requires that the System of Delegations of the municipality needs to be reviewed within one year from a local government election.

Municipalities should thus ensure that a comprehensive set of terms of reference be developed for all political office bearers and municipal structures after the 2016 election and that the Systems of Delegations be reviewed, in order to give effect to the said terms of reference.

### 3.3 Finalisation of the Anti-Corruption Strategy

SALGA at its anti-corruption summit held in November 2013, adopted a number of resolutions which included the following:
1. Intensify the fight to collectively combat all forms of fraud, corruption and maladministration, including through a revised Anti-Corruption Strategy for Local Government;

2. Strengthen LG communication through profiling good practices and improving public education about our successes and measures in place to fight corruption and maladministration, so that we isolate the negative culture and convert it into a positive one about our local spaces;

3. Strengthen our institutional mechanisms and processes, including the use of information technology, to minimise the opportunities for corruption and maladministration;

4. Strengthening our oversight capability to be robust and resilient to withstand the forces of corruption and maladministration and increasing the participation of communities in the governance processes of municipalities; and

5. Intensify the support to municipalities in the appointment of qualified and skilled officials and continue to improve the skills and capacity of councillors and officials to do the right things.

Subsequent to the Anti-Corruption Summit, and informed by the outcomes thereof, SALGA developed proposals on the review of the LG Anti-corruption strategy. A full proposal in this regard was subsequently made to COGTA and a full review in this regard is currently underway. The commission will be provided with a highlight of progress made in this regard by the Department. On resolutions 2 and 3, the Summit made specific proposals and the documentation developed for the Summit provided guidance to municipalities in this regard.

It is critical, however, that leading up to the 2016 elections, local government communication needs to be strengthened to focus on success stories in local government.

4. KEY ISSUES FOR CONSIDERATION

The South African Local Government Association invites delegates to consider, and resolve on, the following issues:

1. The draft framework for consequences and accountability;

2. Separation of Powers model for real executive power and robust council oversight;
3. Finalisation of the Anti-Corruption Strategy; and

4. Citizen accountability, including the interface between elected public representatives and traditional leaders.
DISCUSSION DOCUMENT FOR COMMISSION 2

Urban Development and Spatial Integration

24 – 26 MARCH 2015
GALLAGHER ESTATE AND CONVENTION CENTRE | MIDRAND | GAUTENG
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1. INTRODUCTION

Our transformation, from a society rooted in discrimination and disparity to a constitutional democracy, poses particularly profound challenges at local government level. It is at local government level that acute imbalances in personal wealth, physical infrastructure and the provision of services are most apparent.

Municipalities also carry the key mandate (with the support of provincial and national government) to eliminate the disparities and disadvantages that are a consequence of the policies of the past and to ensure, as rapidly as possible, the development of sustainable and integrated human settlements and the provision of services to all communities. Thus, it is undeniable that local government is the key site of delivery and development and is central to the entire transformative project of the new South Africa.

While significant progress has been made by local government in this pursuit, it is worth noting that the local government sphere continues to transform itself whilst fulfilling its developmental mandate.

Whilst the Constitutional Court has clarified the meaning of “municipal planning” and confirmed the exclusive competency of local government on municipal planning, achieving coherent and integrated development outcomes requires a reflection on how the three spheres have performed, given the allocation of powers and functions as listed in schedule 4B and 5B of the Constitution.

Furthermore, it is important to reflect on the extent to which the powers and functions of different categories of municipalities enable or hinder local government to deal with the service delivery challenges faced by municipalities (as communities do not see the different roles of the different spheres). There is a need to revisit the current arrangements and reinforce the functional assignment provisions in the Constitution, especially regarding the location of the human settlement and public transport functions, given their importance in shaping spaces (in local government) and being the main drivers of spatial transformation. This should be seen as part of strengthening the ability of local government to transform theirs spaces.

An arrangement that will promote seamless planning and coordination of human settlements and public transport is therefore critical in the quest for coherent integrated development outcomes. However, this is not a suggestion for wholesale devolution of these key functions to local government, but a call for a differentiated approach that acknowledges the capacity of Metropolitan municipalities to execute these functions.
Due to the complex service delivery challenges faced by Metropolitan Municipalities, a governance dispensation coupled with fiscal powers that enable these complex institutions to meet their developmental mandate should accelerate service delivery.

2. PROBLEM STATEMENT

Despite the Constitution assigning powers on development planning to local government, the role of local government in development planning remained contested until the Constitutional Court made a landmark ruling in June 2010. This was in a matter between the City of Johannesburg Metropolitan Municipality (as applicant) and the Gauteng development Tribunal (as first respondent).

In its judgment, the Constitutional Court made the following remarked as follows:

“Section 40 of the Constitution defines the model of government contemplated in the Constitution. In terms of this section the government consists of three spheres: the national, provincial and local spheres of government. These spheres are distinct from one another and yet interdependent and interrelated…………… It is, however, true that the functional areas allocated to the various spheres of government are not contained in hermetically sealed compartments. But that notwithstanding, they remain distinct from one another”.1

It is important to note that whilst the Court thus reaffirmed the powers of local government (and in the process clarified the meaning of ‘municipal planning’ and exclusive municipal competence in this area), it also made reference to the interrelatedness of the three spheres of government. Despite the constitutional requirements for all three spheres of government to perform their functions in a cooperative manner in order to ensure efficient service delivery, a number of challenges have made this imperative very difficult to achieve.

The Intergovernmental Relations Framework Act was promulgated to provide a framework for the national government, provincial governments and local governments, and all organs of state within those governments, to facilitate co-ordination in the implementation of policy and legislation. 2 This has not fully succeeded in ensuring coherent development outcomes.

The ability of local government to meet its developmental mandate is continuously compromised by wrestling with the legacy of apartheid spatial planning (and its legislative framework which is still intact) and backlogs in service delivery, whilst asserting its constitutional powers.

1 City of Johannesburg Metropolitan Municipality vs Gauteng Development Tribunal and others (case cct 89/09 (2010) zacc11).

2 Intergovernmental Relations Framework Act, 2005.
Furthermore, the key drivers for spatial transformation (human settlements and public transport) are not within the control of local government. Being the sphere of government that is closest to the people, local government has to contend with dissatisfied communities who need services that are not necessarily the function of local government.

Capacity concerns at local government have been cited by other spheres as reasons for not devolving powers and functions to local government. This is despite some Metropolitan municipalities having demonstrated their ability in discharge these functions. It is however possible to meet the expectations of communities on the service delivery mandate of local government. This could be achieved by matching appropriate devolution of powers and functions to local government, without diminishing the oversight role of provincial and national sphere.

3. KEY ISSUES

This paper identifies the following areas as key for developmental local government to achieve coherent development outcomes:

- Integrated Urban Development Framework (IUDF)
- Integrated human settlements
- Elevated status of metropolitan government
- Implementation of the Spatial Planning and Land Use Management Act (SPLUMA)

3.1 Integrated Development Framework

The IUDF offers a “new deal” that is informed by the continuous urbanisation of the South African population. The urbanisation narrative resonates with the National Development Plan (NDP) which emphasises the transformative levers necessary to achieve the spatial transformation vision as articulated in Chapter 8 of the NDP (Transforming human settlements and the national space economy). The role of Cities and towns, their powers and functions, their governance framework as well as their relationship with other spheres of government will be key to this realisation.

The IUDF notes that “the urban centres dominate the country's economy as cities and large towns produce over 80% of the national gross value added (GVA). Metros are growing twice as fast as other cities and towns with much higher (by about 40%) average incomes compared to the country as a whole.”

Employment also grew twice as fast in metros than elsewhere and between 1996 and 2012 the metros accounted for three-quarters of all net jobs created in the country. Yet, despite this, the
‘urbanisation of poverty’ is increasing, especially in townships, informal settlements and inner cities, putting pressure on city resources.³ Towns and Cities supported by their rural hinterlands form the engines of growth necessary to deal with legacy of the apartheid system.

The IUDF further outlines the following seven policy levers that are necessary for the realisation of integrated coherent development outcomes given the importance of towns and cities in the spatial transformation of South Africa.

(a) Integrated transport and mobility  
(b) Integrated sustainable human settlements  
(c) Integrated infrastructure planning  
(d) Inclusive economic development  
(e) Efficient land governance and management  
(f) Empowered active communities and  
(g) Effective urban governance

Whilst the above levers identified in the IUDF should largely be actioned at local government level, the functional competencies of municipalities are key to realising Vision 2030. Whilst the attainment of Vision 2030 requires all three spheres of government to perform their constitutional mandates, a review of the current institutional framework with the intention of strengthening the capability of local government (Metros in particular) is necessary in order to match the constitutional mandate of local government with an enabling delivery framework.

According to the 2006 South African Cities Network State of the Cities Report, “the built environment, in particular, while primarily the responsibility of local government is often dependent on both the provincial and national sphere. This gives rise to fragmentation, potential duplication and confusion about responsibilities.”⁴ This observation is more so with regards to the human settlement function and the central role it plays in shaping the built environment.

The IUDF acknowledges the complexities and the challenges associated with managing the intergovernmental dynamics (both vertical-provincial/national and horizontal-neighbouring municipalities). In response to this challenge, the IUDF proposes that each lever has a department

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³ Integrated Urban Development Framework - Draft 5.1: September 2014

identified as the ‘key driver’ for coordinating and ensuring the implementation of the policy intentions.

Detailed implementation plans per policy lever need to be prepared as part of a joint planning process among key stakeholders\(^5\), in the absence of which we are unlikely to resolve the mismatch between the developmental mandate of local government and the functions assigned to it by the Constitution.

### 3.2 Integrated Human Settlements

Section 126 of the Constitution makes provision for an MEC to assign any power or function to be exercised that is to be exercised or performed in terms of an Act of Parliament or a provincial Act, to a Municipal Council, provided that:

- (a) there is agreement between the MEC and the Municipal Council in question;
- (b) such assignment is consistent with the Act in terms of which the power or function is exercised or performed; and
- (c) the assignment takes effect upon proclamation by the Premier.

Section 156 then goes on to establish the principle of subsidiarity, whereby national and provincial government must assign to a municipality the administration of a function which necessarily relates to local government if that matter would most effectively be administered locally and the municipality has the capacity to administer it.

Human settlements is one of the functions that significantly determines the relative location of other land uses and has significant impact on the allocation of municipal resources. There is therefore a compelling argument for this function to be devolved to local government in terms of the constitutional principle of subsidiarity. In cases where municipalities do not have the required capacity levels, the devolution of functions should take place on an incremental basis and support must be provided to municipalities to build their capacity to the required level.

According to the National Accreditation Framework for Housing, accreditation follows a progressive approach such that Levels 1 and 2 of accreditation will ultimately lead to assignment, which constitutes the formal transfer of the functions related to the administration of national housing programmes from the provincial MEC responsible for Human Settlements to the relevant municipality. Assignment carries major financial and fiscal implications for municipalities which includes capital grant allocations, operational funding; transfer of immovable and moveable assets; and transfer of project and contractual obligations.

\(^5\) Integrated Urban Development Framework - Draft 5.1: September 2014
The most critical feature of assignment is that the Human Settlements Development Grant (HSDG) is to be transferred directly to the assigned municipality by the national Department of Human Settlements. This replaces the current flow of transfers to the Provincial Department of Human Settlements and then being gazetted and transferred to the accredited municipality by the province. Thus, the assignment of the human settlements function is intended to unblock key obstacles in the delivery of integrated human settlements and improve the overall performance of the sector.

In accordance with Outcome 8 of the delivery agreement of the then Minister of Human Settlements, processes were undertaken with the intention to assign the housing function to six Metros by 2014. Each of these Metros are already accredited at Level 2, which means that the responsibility for programme management and administration for all national and provincial housing programmes (as well as Level 1 responsibilities of subsidy budget planning and allocation) have already shifted to the six Metros. However in July 2014, the Human Settlements MINMEC took a decision to put the process of accreditation and assignment “in abeyance” and to revise the overall strategy for assignment. It now appears that the timeframe for assignment has been pushed out 2-3 years.

Unfortunately, without the assignment of the human settlements function, integrated service delivery will continue to compromised (as concurrent functions are difficult to coordinate) and lead to slow incoherent outcomes in the built environment, largely due to the challenges of managing responsibilities across all spheres of government.

The national and provincial government, while co-responsible for human settlements, are not at the coalface of delivery and therefore not well-suited to interpreting community needs and priorities related to human settlements. Furthermore, inter-sectoral coordination is a challenge with regards to the delivery of other services such as water, electricity, waste management and sanitation that are inter-twined with human settlements delivery.

The devolution of the housing function is therefore not only critical to improving performance in the human settlements sector in high capacity municipalities; but it will contribute to better outcomes in relation to managing urbanisation, containing sprawl and creating sustainable built environments, given the in migration being experienced by these municipalities.

Housing accreditation and assignment is in line with constitutional vision of developmental local government and should be seen as the first step towards the overall drive to devolve responsibilities and funding for the built environment functions to local government. Besides entrenching the role of local government in taking full responsibility for development outcomes in their spaces, the devolution of the human settlement function will assist municipalities in integrating public transport planning and land use.
The concept of devolution is not isolated to the human settlements function only, but has since been recognised with regard to public transport provision, given its importance in shaping settlements. The National Land Transport Act (NLTA) of 2009 and the Spatial Planning and Land Use Management Act, of 2013 make provision for local government to take charge of public transport and development planning to municipalities respectively. Spatial planning and land use management are functions that have been confirmed by the Constitutional Court as being primarily the responsibility of local government.

Public Transport

Unlike human settlements, the public transport function devolution is far advanced with a total of R5 5bn having been paid directly to 13 municipalities, as part of the Public Transport Infrastructure Systems Grant (PTISG) and Public Transport Network Operations Grant (PTNOG) in the 2012/13 financial year. Significant progress has thus been made on the public transport front with funds being made available for accelerated planning, construction and improvement of public and non-motorised transport infrastructure, as well as operational funds to support the regulation and management of municipal public transport networks and services. However, there are still challenges with the overall devolution of the entire public transport function to municipalities as envisaged in the NLTA, 2009.

The establishment of municipalities as Municipal Regulatory Entities (MREs) in terms of the NLTA of 2009 and the taking over of the bus subsidy contracting function by municipalities is progressing at a slow pace. Nonetheless, municipalities participating in the PTISG and PTNOG are continuing to integrate their Integrated Public Transport Networks (IPTNs) with the existing Public Transport Operations Grant (PTOG) administered by Provinces.

Even though municipalities are still grappling with the devolution of the operating license and bus contract functions as provided for in legislation, there are talks about the devolution of the rail operating subsidy to metropolitan municipalities. The debate on the devolution of the rail operating subsidy is slowly gaining traction within the ambit of the National Rail Policy being developed by the Department of Transport.

The devolution and or assignment of functions that are critical to local government in performing their developmental mandate should however not only be confined to metropolitan municipalities but must include an assessment of the capability of district municipalities and secondary cities as possible executors of some if not all of the built environment functions.

In as much as the devolution of the built environment will give effect to the developmental local government as envisioned in the White Paper on Local Government, an in-depth analysis of the impact of the devolution of each function in each municipality must precede the takeover of such function. It is imperative that municipalities evaluate the financial and fiscal implications of prospective functions, including: capital grant allocations, operational funding, transfer of
immoveable and moveable assets, possible transfer of staff, and transfer of project and contractual obligations.

3.3 Elevated status of metropolitan government

With the possibility of the creation of more Metros, the current categorisation of municipalities will soon require reconsideration, with differentiation being factored in as a basis for allocating resources and incentivising better performance by local government. The debate on the “elevated status of Metros” is necessitated by the need to acknowledge the unique functioning of Metros within the national space economy.

As we move towards Vision 2030, a case for the differentiation of Metros should gain more traction and will consequently require a different institutional framework that will allow them the flexibility to give effect to the seven levers identified in the IUDF.

The creation of differentiated Metros is not unique to South Africa as there are similar institutional arrangements in the Germany system of local government, which has Metros with full control of the main drivers of the built environment. In their book Metropolitan Governance: Different Paths in Contrasting Contexts: Germany and Israel; Hhubert Heinelt et al make the following observations:

“The variety of metropolitan-governance arrangements is the answer to the increasing difficulties caused by urbanisation and urban sprawl and recently also by globalisation. The spatial organisational forms have lagged behind the dynamic changes triggered by urban sprawl causing mismatch between the formal and real structures……..its negative consequences underpin the crucial element of the so called “metropolitan problem”, that is, a number of jurisdictions operating in a metropolitan area (resulting in territorial fragmentation) create a need for coordination of the policies that are the responsibilities of the various jurisdictions”.

By devolving the various functions such as human settlements and public transport to Metros, the national and provincial spheres focus on direct service delivery will lessen, allowing them to concentrate on their oversight role and strengthening the capacity of local government as envisioned in Section 154 of the Constitution.

The elevation of the status of Metros, as is the case in the German system of local government, can go a long way in addressing the challenges of alignment and coordination when implementing policies in the municipal sphere. The national and the provincial spheres will continue to perform

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6 Metropolitan Governance: Different Paths in Contrasting Contexts: Germany and Israel) make the following observations, Hhubert Heinelt et al
their oversight role and provide differentiated support to municipalities, thereby fostering effective intergovernmental co-operation.

As already argued the functional competences of local government do not adequately allow local government to transform the built environment as envisioned in the Constitution and outlined in the White Paper on Local Government.

As part of reforming the system of local government, Metros and other high capacity municipalities should have full control and authority over the built environment that must include control of the fiscal and regulatory instruments related to that function.

3.4 Implementation of the SPLUMA

The Spatial Planning and Land Use Management Act (SPLUMA) that was assented to in August 2013, and is scheduled to come into operation during the second half of 2015, provides a single legislative framework for local government to achieve coherent land development outcomes.

With its primary goal being the provision of a framework that addresses the incoherent, inefficient and unsustainable development patterns that are the hallmark of the apartheid planning system, the SPLUMA is transformative in that:

- The role of the three spheres of government in development planning as reflected in the SPLUMA was largely informed by the 2010 Constitutional Court ruling on the erstwhile Development Framework Act that gave meaning to municipal planning and entrenched the role of local government;
- Municipalities are recognized as authorities of first instance on development planning, which is in line with the vision of a developmental local government;
- It recognises and codifies norms and standards with regard to the planning authority of local government;
- It provides a uniform and coherent framework for spatial planning and land use management which replaces the current fragmented system;
- It specifies the relationship between the spatial planning system and the land use management system, which until now is problematic;
- Provision is made for an inclusive, developmental, equitable and efficient spatial planning system at different spheres of government;
- Greater efficiency, consistency and uniformity is made possible for all three spheres of government, when making land development decisions; and
It deliberately seeks to address the legacy of past spatial planning and regulatory imbalances as well as promoting sustainable development outcomes by providing new criteria for assessing land development applications.

While the SPLUMA will not be a panacea when dealing with institutional and inter-governmental challenges associated with achieving sustainable and coherent developmental outcomes to improve the livelihoods of the people, it however places local government at the centre of decision making in the built environment.

In fact, the SPLUMA lays a solid platform for municipalities to be responsive to communities and for both national and provincial spheres to provide support and strengthen the ability of local government to be truly developmental as envisaged in both the Constitution and the White Paper on Local Government.

4. RECOMMENDATIONS

The South African Local Government Association invites delegates to consider, and resolve on, the following issues:

(a) The accreditation and assignment of the full housing and public transport functions to local government should be prioritised for effective coordination, alignment of inter-departmental and inter-governmental funding streams to fast track service delivery.

(b) When devolving functions to local government, devolution of “a basket of functions” (as opposed to a single sector) affecting the built environment is essential in order to achieve coherent development outcomes.

(c) The need to elevate the status of Metros and differentiation between Metros, and to consider new institutional relations between the “elevated Metros” and the other spheres of government.
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1. INTRODUCTION AND CONTEXT

Twenty years into the democratic dispensation, and fifteen years of developmental local government, poverty, unemployment and inequality remain key issues on the South African developmental agenda. An inheritance of a significant inequality gap, spatial disparities, and backlogs in access to basic services have contributed. During this period, massive investment has gone into the promotion of socio economic development through infrastructure investment, skills development, and redressing spatial disparities, however many of these national interventions have had little impact on local economies.

Through the constitutional mandate, and directives from other key legislations such as the Municipal Systems Act, local government is charged with the responsibility to operate in a way that socio and economic development is promoted. One of the tools provided for this purpose is the Integrated Development Planning (IDP) tool including its sector plans which is a five year strategic developmental plan to guide development and service delivery.

In 2012, a National Infrastructure Plan was adopted by government with the aim to transform the socio economic landscape while simultaneously creating significant numbers of new jobs, and strengthen the delivery of basic services. Over a three year period from 2013/14, government planned to invest R827 billion in building new and upgrading existing infrastructure. These investments are meant to improve access by South Africans to healthcare facilities, schools, water, sanitation, housing and electrification. On the other hand, investment in the construction of ports, roads, railway systems, electricity plants, hospitals, schools and dams should contribute to higher economic growth.

In terms of revitalizing historically marginalized towns and townships, government has initiated revitalization interventions such as the Urban Renewal Programme in the mid-nineties and the Neighbourhood Development Partnership Grant at the turn of the millennium. The urban renewal programme relied on intergovernmental cooperation with limited dedicated budgets to more or less success. The NDPG on the other hand has had a dedicated budget and focus also with mixed success in so far as impact on local economies.
Skills development and short term work opportunities have been linked to infrastructure investment with the added intention that individuals would be more competitive in the labour market. These public works programmes were linked to infrastructure investment, maintenance of infrastructure and the provision of housing, and the protection of our natural assets (water etc). While successes have been measured, the degree to which they have impacted on the local economy and the degree to which the market has absorbed the labour component is debatable.

Despite various interventions, many local economies have not markedly responded to the large scale market interventions or spatial and infrastructural investments. It is within this context that the following problem statements are framed.

1.1. Concepts

In order to facilitate discussion, a few concepts used throughout the document are expanded on and explained below; these following serve as working definitions of the concept.

**Sustainable Local Economies**

A local economy, refers to the economy of a defined geography; it includes the sum of all its sectors, industries or markets and that of its catchment area, or hinterland. It can manifest at different scales or spatial forms, these can include:

1) The economy of a town (or suburb),

2) A node (an agglomeration or concentration of the built form and economic activity; typically larger than a precinct)

3) A precinct (typically one or more city blocks) Nodal level,

4) Along the length of a street/s, or movement spine (typically linear, often connecting two or more nodes or precincts).

5) Economic activity occurring within a residential area or in areas not explicitly demarcated for economic activity, i.e. home-based activity or informal economic activity in residential areas and road reserves etc; such as, car repair, welding, food production, clothing manufacture etc.
6) Sustainability of the local economy refers to the economy’s ability to provide sufficient economic opportunity for the current economic agents participating in the economy and their dependents and the ability for the economy to do so for future economic agents within the limits of that economy.

**Integrated Planning**

Integrated planning refers to a process and outcomes. The process involves including the various planning disciplines, such as transport, infrastructure (water, sanitation, electricity), economic, and spatial planners) jointly and sequentially to yield integrated outcomes. The integrated outcomes refer to adequate infrastructure that facilitates optimal and integrated land uses, or a mix of socio-economic activity, such as transport of goods and people, economic uses such as retail, manufacture and services, and various social uses such as health and education, which together contribute to creating vibrant and sustainable economy.

**Markets**

A market is an institution which allows the exchange, or buying and selling, of goods and services. Individuals, firms, organisations and governments are the economic agents that operate within markets. A market consists of 1) buyers who determine demand and 2) sellers that determine supply, and 3) a means of exchange (e.g. currency). Markets vary by whether a product (goods and services) is sold, or a factor input is exchanged (such as labour, or financial capital). A markets geographical boundaries can be global, regional, or local.

Having explained a few of the basic concepts to aid discussion, the following section commences with the discussion of the problem and possible interventions to address them.

2. PROBLEM STATEMENT
Planning for local economies has faltered on various fronts. The problem statements below attempt to describe these shortcomings in economic planning.

**Coordination**: National infrastructure investment is planned and rolled out at the national or provincial sphere. Coordination and collaboration with the local sphere is limited in this regard. Local governments have not strategically responded to the investment stimulus; they often do not have the resources and capacity to plan and respond to the planned economic opportunity.

**Municipal planning**: Municipalities are not adequately planning for a distinct economic role and function for their local economies. Planning processes and planned outcomes do not reflect an integrated planning approach with an explicit focus on the local economy.

**Market Interventions**: Local markets are often poorly understood in local economies, how they operate, who the key economic actors are, or the backward and forward linkages across spatial boundaries. As a result, targeted market interventions are not sufficiently linked to the existing local markets and the local economy as a whole.

Based on the context and problems this discussion document seeks to explore the strategies and interventions which local government can undertake to improve the sustainability of local economies.

3. **DISCUSSION**

3.1 **Strategic interventions**

In view of the problems highlighted above, the objectives of the response to the problems is articulated as follows:

‘To promote sustainable inclusive economic development through well planned and coordinated strategic interventions’
This balance of this section discusses and explores the three possible actions that can be undertaken by local government to deal with the issues:

- Aligning municipal economic planning to strategic investment opportunities made by the national/provincial spheres of government

- Ensuring spatial and infrastructural planning is conducted in manner that explicitly supports the economy

- Linking market interventions more closely to existing markets; integrating the establishment of new markets to markets in other economies and with the local economy

### 3.2 Key Proposals

In order to stimulate thought and debate on planning for sustainable local economies, the following sections expand on possible ways of responding to the problem statement.

**Responding to Catalytic Infrastructure Investment**

Municipalities have the opportunity to respond strategically where catalytic infrastructure investment is planned by the public sector or investment by the private sector.

Many local governments, by way of the IDP documents, do not appear to have planned for the major infrastructure plans by national/provincial
government. Local governments do not appear to be including in the planning process, or including quite late in the planning. This limits the strategic response that the municipality can take to optimize the opportunity.

A strategic response is required from local governments to absorb the additional demand on their services. But more than that, an opportunity presents itself, which needs to be identified, quantified and planned for in order for the local economy to benefit to maximally. This can take years, to plan for and requires budgeting of financial resources and the appropriate human resources to help realize the opportunity.

Given that the opportunity is time bound, there is a limited window of opportunity for the municipality to respond. Therefore the municipality requires short to medium term additional human resources and access to investment capital in order to take hold of and respond meaningfully to the investment opportunity. Without the coordination and additional resources, these opportunities may be lost to the local government and its economy.

In sum, responding to catalytic opportunities that may emanate from other spheres of government requires coordination between the spheres but also resources to respond to the opportunity.

**Integrated Planning: Process and Outcomes**

Integrated planning refers to two related aspects: the planning process which integrates disciplines and planning for integrated outcomes.
Planning as a Process

Integrated planning as a process requires the deliberate inclusion of the different disciplines at key junctures in the planning process. Planning for an economic development outcome requires that all disciplines are aware of this objective and include it as an overarching principle in their respective briefs. It is often when one discipline is planning in isolation or only with the objectives of the particular discipline that the goal of explicitly supporting the local economy is overlooked.

Setting the economic vision and role of the local economy that is being planned for is crucial from the outset of the planning process with the planning team. Thereafter, at key milestones, the teams need to be updated jointly in terms of progress and disciplines should be paired in the different work-streams where required, e.g. transport planners with spatial and economic planners in order to ensure that the overarching economic objectives are reached.

Integrated Planning Outcomes

Planning for economic outcomes is iterative and starts with, as mentioned above, determining an economic vision, and role and function for the local economy. Thereafter determining an economic baseline and potential of the area is required. Identifying the assets and opportunities and the trends and forces impacting upon the economy is also vital. Providing for well-located and sufficient land for the different uses, but in particular economic uses is important. Ensuring

"MAXIMISING STATE INFRASTRUCTURE INVESTMENT TO STIMULATE SUSTAINABLE LOCAL ECONOMIES": THE CASE OF ILEMBE DM

Ilembe District Municipality through strategic coordination and targeted response leveraged the opportunity presented by national infrastructure investment to spatially and economically reconfigure the district landscape, transforming Ballito from what used to be a small holiday town, into a suburban paradise. A lot of the town’s economic growth can be accorded to the intentionality and visionary approach to leveraging developments such as the setting up of King Shaka International Airport and the Dube Tradeport. Over time, what was established as a private township in 1954 has now become an anchoring economic stronghold to its surrounding rural hinterlands, with a large commercial business park bordering the N2 highway. The District made the necessary investment input, particularly in preparing and profiling itself to access the market opportunities and funding support from other government spheres. This development further anchored opportunities for its rural hinterlands, particularly in the agriculture sector.
investment, development facilitation and urban management is key in attracting and retaining business investment. Including local stakeholders so that they can benefit from the economic opportunity is needed. Lastly ensuring that the planning for the local economy is cognisant of and integrated into the regional economy is crucial for its sustainability and competitiveness. Each of the steps impact upon the steps that precede and follow it (see the diagramme below).

Diagramme 1: Planning for integrated Outcomes

- Set vision, role and function of the local economy
- Determine baselines and economic potential
- Identify assets and opportunities
- Consolidate assets and budget land
- Ensure a conducive environment
- Include local stakeholders in process
- Mapping out regional competitiveness

Often economic planning in South African towns are conducted existing formal or informal settlements which limits the set of interventions that can be taken. However, there are opportunities for planning for growth in under these conditions. Land banking, land rationalisation and consolidation, densification, and incentives for existing private land owners can all be used to effect economic planning. Transport planning in existing areas also holds tremendous opportunity for economic planning.

In sum, planning for economic outcomes is paramount to achieving transformed economies and ensuring that the limited land resource and others are directed towards economic productivity and sustainability.

Intervening in Markets

<<PREVIOUS PAGE>>  NEXT PAGE >>>
Economies are made up of markets for various goods and services, they operate in discrete spatial areas and comprise a range of economic actors/agents such as, individuals, firms, organisations, governments. Economies are also usually driven by new technology and innovation; however, each element of a market offers opportunities for intervention.

Many market interventions are generic and are not suited to the specificities of the local economy, especially town/suburb, nodal, or precinct level. Interventions such as business premises and business or technical training are necessary but not sufficient. Opportunities in existing markets in the local economy require intimate knowledge of both the local and regional economy and of the particular market to ensure that interventions are suited to and can be taken up in that market. New economic opportunities often mean external investment, and/or introducing new technology and innovation into the economy. Innovation can be linked to products or goods but also business process which yield improved competitiveness.

Identifying and introducing interventions whether into new or existing markets into the local economies requires research and knowledge of the market or a deep network within the respective market/industries. Organizations such as the 'Technology Innovation Agency' as well as sector specific incubation organisations such as ‘Furntech’ have both the technical and industry knowledge and footprint.

Labour market interventions, often linked to infrastructure spend, such as the Expanded Public Works Programme (EPWP) is one of many programmes contributing towards supporting employment generation. It has provided short-term job opportunities and training for the unemployed participants. The impact has been vast in terms of scale but in many instances short term, with many who exit the programmes without an enhanced competiveness in the market.

While it takes more time and effort, ensuring direct links for training to the existing economy or ensuring that training meets employer needs, it yields more tangible and long term results. Examples, though on a small scale, exist across the country (see text box).

In sum, interventions in local economies should create sustainability whether through strengthening existing or introducing new markets.
4. CONCLUSION

South Africa has enjoyed twenty years of infrastructure investment directed at increasing the social wage, addressing redistribution as well as improving the competitiveness of the economy. Local governments, in control of local economies, however, have had various degrees of success in harnessing state-led infrastructure investment partly due to coordination weaknesses between spheres, planning deficiencies and possibly resource constraints.

The economic outcomes for local economies in some instances have been resistant to change over the past two decades. Economic planning as a focus area for local economies has been assumed in the planning process, to the detriment of the economic agents. Economic planning as an explicit focus for area based planning requires renewed focus.

Lastly, planning for market interventions have focused on generic interventions, especially skills and training, they have not been integrated into the requirements of the existing economy. Innovation and the introduction of new technology has been miniscule and implemented in patches in relation to the scale of the need to prop up the economy. Ways of developing market based interventions into the local economy that is cognizant of the peculiarities of local areas is required. Innovation and new technology is required to broaden the economy and increase its sustainability.

5. QUESTIONS FOR CONSIDERATION (RECOMMENDATIONS)

a) Coordination: How (what mechanisms) best can municipalities engage national and provincial government on catalytic infrastructure investment in order to leverage opportunities for local economies?

b) Coordination: How can municipalities be better prepared to respond to catalytic infrastructure investment?

c) Coordination: What resources are required to adequately respond to these opportunities and how can municipalities access the resources?

d) Planning: How can municipal planning be conducted in order to provide a distinct role and function for the local economy (town/nodes/precincts) and better support markets?
e) Markets: How best can municipalities’ support existing markets in local economies?

f) Markets: What can local governments do to introduce new markets into local economies (through for example, innovation and technology)?
DISCUSSION DOCUMENT FOR COMMISSION 4

Future of the Electricity Distribution Industry

24 – 26 MARCH 2015

GALLAGHER ESTATE AND CONVENTION CENTRE | MIDRAND | GAUTENG
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1. INTRODUCTION

A key focus in the electricity sector in South Africa over the last few years has been on large-scale investments in new generation capacity. Extensive load-shedding in 2007/08 as a result of inadequate capacity helped focus attention on this issue. The recent load-shedding has highlighted the effects of inadequate asset management particularly preventative maintenance. Fixing electricity generation through better maintenance and increasing generation capacity is important to support economic growth, job creation and poverty reduction. However, unless this power can be delivered reliably to the users, the benefits will not be realised.

Unfortunately, the state of the electricity distribution network is also poor and declining. Both the frequency and duration of distribution-related outages are increasing. This poses a significant risk to economic growth and poverty reduction. Thus, a successful initiative to address this situation is urgently needed.

Efforts to reform the electricity distribution industry have been in progress since 1994. While some consolidation of the industry has taken place through local government reform (redrawing municipal boundaries), the proposed establishment of six regional electricity distributors (REDs) has not been achieved. There is widespread recognition that reforms undertaken in the last 17 years have been limited and have not addressed the main challenges facing the industry. In 2010, Cabinet abandoned the REDs model, disbanded EDI Holdings, and asked the Department of Energy to develop a “holistic approach to revitalise electricity [distribution] infrastructure.” There has been little progress to date on this.

This paper sets out the issues and makes recommendation on how best to improve the performance of the electricity distribution industry (EDI). These recommendations are based on the lessons from previous reform processes and a stakeholder engagement process undertaken by SALGA.

The purpose of this paper is to make proposals and recommendations to take the electricity distribution reform process forward and to reverse the current negative impact of a poorly performing distribution industry on the economy.

In brief, the recommendation is for a two-track approach to improving performance. In the first track, those municipalities who wish to retain their electricity distribution business, and are in a position to operate them effectively and sustainably, will be supported to do so. In the second track, those municipalities who either do not wish, or are not able, to operate the electricity distribution network effectively will be encouraged to enter into service delivery agreements with a competent service provider, including Eskom. Municipalities remain the service authority as set out in the current legislation in both tracks.
2. PROBLEM STATEMENT – WHY REFORMS ARE NEEDED

2.1 Poor reliability of the electricity network harms the economy, job creation and affects the poor the most

There is increasing evidence that the electricity network (through which electricity is distributed to customers) is becoming less reliable, resulting in more frequent and more severe unplanned electricity outages in South Africa’s cities and towns.

Reliability is important because an unreliable distribution network negatively affects economic growth, job creation and the country’s ability to reduce poverty. Businesses and industries lose production, productivity suffers and they face higher costs. Creating jobs and reducing poverty is government’s top priority and thus a reliable electricity distribution network is essential to support government’s top priority.

The current situation is untenable and must be addressed.

Figure 1: South African distribution networks perform poorly

![South African networks perform poorly compared to the benchmark](image)

Source: EDI Benchmarking conference, 2010

2.2 The completion of the electrification program needs strong distributors

85% of households have access to electricity (2011 Census). This is a remarkable achievement. However, there are still about 2.2 million households without access to electricity (over 8 million people). The largest backlogs are in five metropolitan areas, with close to a third of the total backlog (see figure). Strong electricity distributors are needed to both complete the electrification program and to maintain financial sustainability through a diverse and strong customer base.

2.3 Weak institutions are unable to ensure a reliable network and extend it

Electricity distributors that do not have adequate capacity are unable to create and manage the systems necessary to ensure a reliable network and to extend it. Service providers can be weak
for a number of different reasons: they may be too small to attract and retain critical technical skills, their governance may be weak (with poor accountability for performance) or they may be unable to raise the necessary revenues to create the required infrastructure and provide a sustainable service.

2.4 Fragmented industry with too many small distributors

There are six large distributors (Eskom and five metropolitan governments), about 11 of medium size and more than 120 small distributors (See figure below). This situation is one of the key contributing factors to poor performance. The existing fragmentation with many small providers in the distribution sector and with two providers (the municipality and Eskom) distributing electricity in the same area in many cases, results in poor performance and low economies of scale.

It also results in duplication of infrastructure, resources and support arrangements adding unnecessarily to costs and to situations where households across the street from each other experience different tariffs and conditions of service. Uneven tariffs for the same level of service, or different levels of service for the same tariff is unfair and results in dissatisfied customers.

Figure 2: There are more than 120 small distributors in South Africa

(Size of bubble = electricity revenue)\(^1\)

Other factors being equal, larger distributors are better able to provide the service more reliably, effectively and at a lower cost compared to smaller distributors. Any reform process that retains a

\(^1\) Note on data source: This diagram was developed for SALGA in 2013 based on National Treasury municipal data for the number of households, municipal GVA and electricity revenues of municipalities. Although the specific data used to generate this figure is now out of date, the relative magnitudes depicted here have not changed in any material way.
large number of very small distributors is therefore not in the best interests of the economy, households and businesses.

2.5 Municipal executive authority for electricity reticulation is undermined

In terms of Section 156(1) of the Constitution, municipalities have the executive authority in respect of, and the right to administer, the electricity reticulation\(^2\) function within their area of jurisdiction, subject to national regulation. Executive authority encompasses authority to implement national, provincial and municipal laws, as well as the right to administer the daily running and management (through planning and decision-making) of an electricity service. Legislation, namely Section 76 (b) of the Local Government Municipal Systems Act 32 of 2000 (“the Systems Act”) also requires municipalities to sign service delivery agreements where the electricity reticulation function is undertaken by another service provider\(^3\) on their behalf. Service delivery agreements set out both rights and obligations and create clarity and certainty to both contracting parties as well as protecting customers. In the absence of such an agreement, the service provided by the external service provider unlawfully encroaches upon the original constitutional powers of the municipality.

Eskom distributes and sells electricity within municipal areas, \textit{without a service delivery agreement} (SDA) as required by the Municipal Systems Act. In such circumstances ESKOM usurps the constitutionally entrenched power of municipalities to reticulate electricity within their area of its jurisdiction, and to levy charges and surcharges on the service. Eskom reticulates electricity within these areas entirely on the strength of a licence issued to it by NERSA. However, NERSA does not have the authority to issue such a licence unless the provisions of the Systems Act have been complied with, namely that Eskom has entered into an appropriate service delivery agreement with the municipality.

The lack of service delivery agreements between municipalities and Eskom not only subsumes municipalities powers, but also creates a range of problems and challenges related to surcharges, tariff parity, provision of free basic electricity, data sharing and access to information, municipal reporting requirements, service levels, asset ownership, and credit control and debt management.

2.6 Skills are being lost to the sector

The electricity distribution sector is losing skills, contributing to the weakness of distributors. Most of the distributors, and particularly the smaller ones, are unable to attract and retain the necessary skilled staff.

\(^2\) Reticulation, as defined in Section 1 of the Electricity Regulation Act 4 of 2006 (ERA) means “trading or distribution of electricity and includes services associated there with.” Trading means “the buying or selling of electricity as a commercial activity”. Distribution means ”the conveyance of electricity through a distribution power system excluding trading”.

\(^3\) A service provider is defined by the Systems Act as ”a person or institution or any combination of persons and institutions which provide a municipal service”. 
2.7 Institutional uncertainty has harmed the sector

The prolonged institutional uncertainty in the sector has contributed to the loss of skills and under-investment in the network.

2.8 Underinvestment in the network results in a less reliable and ageing network

Low levels of maintenance and underinvestment in the rehabilitation of assets are key factors that have contributed to the deterioration of the network.

2.9 Regulation of the distribution industry has not been robust

The National Energy Regulator (NERSA) has a challenging job to regulate about 184 municipal providers. The regulator has adopted a “soft approach” where there is an absence of robust reporting, auditing of performance and strong enforcement in cases of non-compliance with minimum standards.

2.10 The electricity distribution function is not financially sustainable in many areas

Customer debt is increasing. As of September 2014, municipalities were owed R98 billion for municipal servicers of which approximately R23,6 billion is for electricity transactions. Credit control is not effectively and consistently applied.

Although it is required that electricity finances are ring-fenced, this is not widely applied and municipalities do not invest adequately in the maintenance and rehabilitation of the network. Knowledge of the status of assets is often poor and there is an absence of well-conceived asset management plans.

In many cases tariffs do not cover the full costs for distribution, and where they do, the resources are not always used for reinvestment in the electricity distribution network. Subsidies are applied in different ways across the sector. What is needed is a rational framework for the setting of tariffs and allocation and application of subsidies.

2.11 Unregulated small scale generation capacity

Due to the rise in electricity costs, the increase in load shedding occurrence and the decrease of the cost of solar panels, many residents and companies want to install their own small scale generation capacity. A number of municipalities are also noticing that installations are being connected to the grid without municipal approval, thus endangering the safety of their staff and operation. Additionally, such installations, without proper tariffs in place, result in loss of revenue for the municipalities.

2.12 Strong leadership is required to reform the sector to get better outcomes

Reforming the industry to achieve better outcomes requires tough choices and strong leadership. At the national level, a clear institutional reform path is now needed following the termination of the
REDs process. At the local level, municipalities need to ensure the reliability of the distribution network in the interests of their constituents and to support local economic development.

2.13 Summary

The current situation is unsustainable and is harming the economy and disadvantaging everyone, especially the poor who are most affected by adverse impacts on job creation. Proposals for reform are set out in the next sections.

3. ESSENTIAL REFORM PREMISE AND TWO PATHWAYS TO REFORM

3.1 Essential premise for reform recommendations

The current structure of the EDI does not support and enable good performance because there are too many small distributors. Better distribution performance in the longer term can only be achieved through professionally managed distributors who are effectively regulated.

3.2 Two pathways to reform

There are two broad pathways to reform – the first is to reform within the current constitutional dispensation with municipalities recognised as the electricity service authority, the second is to change the Constitution and allocate the electricity service authority function to national government. The EDI process did not resolve this issue.

3.3 Constitutional change is not required

The reform proposals set out in this document are based on the premise that reforms will proceed within the existing constitutional and legislative framework whereby municipalities have the executive authority for the electricity reticulation function within their area of jurisdiction. This premise is important because it is organised local government's position that the distribution function is correctly allocated to local government.

3.4 Use existing regulatory tools and financial incentives effectively

The existing legislation sets out a framework for the regulation of the electricity distribution industry. The key mechanisms are set out in Chapter IV of the Electricity Regulation Act (Act 4 of 2006) as amended in the Electricity Regulation Amendment Act (Act 28 of 2007) and the IG Fiscal Relations Act (Act 97 of 1997). In terms of the Electricity Regulation Amendment Act, the Minister of Energy may regulate: the criteria for assessment of the merits of an external provider versus own provision; matters to be provided for in service delivery agreements; and, compulsory or standards provisions that must be included in service delivery agreements.

Municipalities must comply with the Electricity Regulation Amendment Act, the Municipal Financial Management Act and the Municipal Systems Act when contracting an external service provider. The Systems Act regulates the rendering municipal services through an internal mechanism.
(section 76a), or an external mechanism (section 76b) which requires a service delivery agreement.

In addition, a number of mechanisms exist to create and manage financial incentives for electricity distributors and electricity consumers. The proposals set out in this paper are largely based on the use of these mechanisms to achieve the desired reform outcomes. That is, the key goal (improved performance) can be achieved through the judicious and effective use of financial incentives and regulations, implemented in terms of a national framework for the reform of the electricity distribution industry in terms of a set of well-defined benchmarks, norms and minimum standards. The standards and incentives will be applied across the whole sector but may differ depending on the size and capacity of the service provider.

This is important because amending or creating new legislation takes time. This is not necessary in the short to medium term in order to achieve much better outcomes.

4. WHAT WOULD AN EFFECTIVE EDI LOOK LIKE? (REFORM GOALS & OUTCOMES)

4.1 Reform goal

The following reform goal for the sector is proposed:

“Electricity is distributed reliably and efficiently by an optimal number of capable and financially viable and sustainable institutions in support of government’s economic and social goals.”

Embedded within this goal are three sub-goals: (1) Ensure the reliability and efficiency of electricity supply (to avoid high economic costs and negative impact on job creation and poverty reduction); (2) Create efficient and financially sustainable electricity distribution institutions to support the above outcome; and (3) Recognise the executive authority of municipalities in terms of electricity reticulation whereby they have the power to regulate the provision of a municipal service by a service provider.

4.2 Four reform outcomes

Four complementary and generic institutional outcomes are envisaged to achieve the reform goal:

1. Municipalities distribute electricity themselves – efficiently, cost-effectively, reliably and sustainably – meeting national minimum standards; and/or

2. Municipalities (as the Service Authority) contract out the distribution of electricity (or parts of the service) to a capable external service provider through a service delivery agreement where electricity is distributed cost-effectively, reliably and sustainably, meeting national minimum standards; and/or
3. NERSA publishes reliable performance data annually, regulates tariffs, and takes actions where licence conditions are not met. The right to provide the service is directly linked to the responsibility to perform the function effectively. If municipalities are unable to perform effectively, they will be encouraged and supported to undertake a section 78 assessment to identify the most appropriate service provider; and

4. Municipalities as service authorities ensure more efficient, effective and sustainable electricity services to their communities. Over time better economies of scale with improved effectiveness, higher efficiencies, and lower costs can be realised.

5. **HOW CAN THE REFORM GOALS AND OUTCOMES BE ACHIEVED?**

5.1 Adopt an incremental approach to reforms

Current arrangements should be retained where electricity distribution is well managed and electricity is distributed cost-effectively.

The REDs reforms attempted to implement a ‘grand design’ for the sector and this did not work. An incremental approach to reforms is therefore proposed, moving towards the reform outcomes set out in the previous section. This means paying attention to the most important problems first and not trying to do everything at once.

5.2 Prioritise the use of scarce resources to maximise benefits

Available resources should be focused on where the best gains can be achieved and prioritising these to achieve sustainable electricity services. This implies making choices about where to focus the reform efforts but keeping in mind that ultimately all municipalities will benefit from the reforms. The reforms should start with the most serious cases of non-performance which are having the greatest impact on service delivery and the economy.

5.3 Introduce a strong financial incentive for better performance

The historic maintenance and refurbishment backlog that has built up over the last two decades or more must be addressed during and through the reform process. If this is not done, network reliability will not be restored. At the same time, initiatives to address this historic backlog must avoid creating perverse incentives that compromise the future financial viability and sustainability

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4 The “Approach to Distribution Asset Management” (ADAM) study, conducted by EDI Holdings in 2008, revealed that the backlog was standing at R27.4 billion in 2008 and estimated to be growing at R2.5 billion per year. ADAM is now included in SIP 10 as part of the asset management turnaround strategy.
of the sector. Investment requirements need to be incorporated into the license conditions and aligned with the Approach to Distribution Assets Management (ADAM)\(^5\) process.

The maintenance backlog fund should be disbursed in terms of a clear and strong set of requirements and incentives to ensure good outcomes, including:

a. Proper and sustained financial and asset ring-fencing of the electricity distribution business.

b. A commitment to (and actual) funding of the on-going (as opposed to the historic) full asset maintenance and rehabilitation requirements of the distribution business. Disbursements from the asset maintenance backlog fund will only be made if the municipality does not allow the backlog to grow.

c. Effective use of maintenance backlog funds. Disbursements will be dependent on proof that previous disbursements have been properly spent.

d. Full reporting on a minimum set of financial and performance-related indicators including planned and unplanned outages (in terms of duration and extent of impact) – see sector transparency above.

e. Adherence to electricity distribution license conditions.

f. Use of appropriate technology to enhance business efficiency and to improve performance inclusive of customer services and communications.

5.4 Service delivery agreements (SDAs)

Where a service provider (such as Eskom) provides a reticulation service within the area of jurisdiction of a municipality, this must be done in terms of a service delivery agreement to provide the service on behalf of that municipality. The service delivery agreement must address the particular context of each municipality; however a standard set of regulator-approved service delivery agreements could support municipalities to develop their service delivery agreements. These contracts need to be linked to the license and failure to perform needs to result in appropriate consequences, including ultimately a revoking of the licence.

5.5 NERSA to make an SDA a condition of Eskom’s license

As the custodian and enforcer of the national electricity regulatory framework as contained in the Electricity Regulation Act (ERA), NERSA must attach a condition to Eskom’s right to reticulate electricity within municipal areas, that is may only do so in terms of a service delivery agreement with the municipalities concerned. In this way Eskom’s licence will address the provisions of Chapter IV of the ERA (particularly Section 28) which require that Chapter 8 of the Systems

\(^5\) In 2012 the Department of Energy (DOE) adopted a strategy called the Approach to Distribution Asset Management (ADAM) with the aim of supporting municipalities to address increasingly high levels of backlogs on maintenance and refurbishment of their electricity distribution assets.
Act be given effect to (in terms of a service delivery agreement between municipalities and external mechanisms).

5.6 Separate service authority from service provider

Where a municipality contracts another service provider to operate the distribution network, the municipality remains the service authority and the asset owner. The entity rendering the service is the service provider (asset operator). This approach is aligned with current legislation and needs to be fully applied across the sector. The required legislative compliance requirements must also be addressed and entrenched in the contractual arrangement.

5.7 Enforce financial and asset ring-fencing requirements

The existing legislation requires municipalities to ring-fence their distribution business. In addition, municipalities with electricity revenues over a certain threshold should be required to produce separate financial statements (income statement, balance sheet and cash flow) for their distribution business and report separately on electricity distribution assets (separate asset register). Furthermore it is essential that a reliable asset register and supporting asset management plan (inclusive of budget and funding allocation) must be in place for all licensed electricity distributing municipalities/entities. These requirements need be effectively enforced.

5.8 Greater sector transparency in measurement, verification and reporting

Regular public reporting by municipalities on electricity distribution compliance and performance in terms of clear reporting requirements established by the regulator needs to take place. These performance reports need to be aligned into a single set of reports that meet the requirements of National Treasury (MFMA), CoGTA (Municipal Structures Act), DPE (PFMA) and NERSA (Electricity Regulation Amendment Act). Reporting requirements should not be too onerous and must focus on what is most important.

The performance reports (also incorporating financial data) need to be audited. The existing “D-forms” (Distribution Forms) can be used as a basis for this, but these need to be revised and improved. Further work is required on definitions and to ensure a consistent interpretation of the data requirements. Existing initiatives to achieve greater alignment should be supported. It is essential that effective electricity industry benchmarking should inform performance assessments and incentives. Worldwide it is recognised that this sector cannot perform effectively without effective benchmarking.

5.9 Enforce caps on electricity levies

Full implementation of the National Treasury legislation on capping levies on the sale of electricity and transparent funding support to activities outside the electricity business is necessary and will support the reforms.
5.10 Take strong action where there is failure to meet licence conditions

Where operators fail to meet licence conditions they need to be penalised and if necessary the license should be revoked in clearly defined and serious cases. Revocation of license must be a credible threat and implemented where conditions are severely breached.

Where a municipality’s electricity distribution license is revoked, the municipality will be required to contract the service to a capable external service provider. In such cases, municipalities must have a ‘recovery path’ available to them if they wish to take up the function again. A municipality must meet minimum conditions to be licensed to distribute electricity including a specified minimum technical skills set. The requirement in terms of Section 78 of the Municipal Systems Act to follow the prescribed process in selecting an alternative service provision option must be observed.

5.11 Municipal Systems Act, Section 78 process to identify most appropriate service provider/s

In cases where it will be in the interests of a municipality and its electricity consumers for the electricity service to be contracted out to a capable external electricity distributor, a section 78 process in terms of the Municipal Systems Act has to be undertaken. Chapter 8 of the Municipal Systems Act, in particular section 78, outlines a process that municipalities must follow when deciding service delivery mechanisms.

The Act requires municipalities to assess and decide on appropriate delivery mechanisms in their area of jurisdiction. Municipalities may provide electricity reticulation services in their area of jurisdiction through an internal or through external mechanisms as set out in section 76 of the Systems Act. The primary purpose of the section 78 process is to determine the most appropriate service provider so that municipalities as service authorities can fulfil their general duty in terms of ensuring sustainable services, including benefits such as infrastructure investment, improved service delivery, increased revenue, improved asset management and maintenance. Where an external mechanism is the most appropriate service provider arrangement, the municipality must enter into a service delivery agreement with that provider.

5.12 The most competent distributors should continue

While recognising the constitutional right of municipalities as the service authority for the reticulation of electricity, this does not necessarily mean that municipalities will take over the service provision function from Eskom. Where Eskom is competently fulfilling the service provision role, it should continue to do so, but in terms of a service delivery agreement with the municipality.

However, where municipalities have demonstrated capability, and are operating at sufficient scale to be efficient, they will be supported to negotiate with Eskom to take over the distribution of electricity in their full area of supply. One of the goals of the reform process is to reduce the parallel distribution of electricity by two distributors in the same municipal area.
5.13 Prioritise effective operations rather than asset transfers in the reform process

It is critical that appropriate action be taken to improve the operations of the network. This does not necessarily require asset transfers, and improvements should not be held up pending decisions on asset transfers. It is acknowledged that there are legal and regulatory compliance requirements, but these can be effectively addressed through appropriate instruments such as the Service Delivery Agreements and agreements between asset owners and operators.

5.14 Establish the principle of contestability for key customers

Very large users play a strategically important role in the economy. These customers should be able to choose their distributor. Large customers typically need a reliable high quality supply at a competitive tariff. This introduces competition into an important part of the distribution sector and is widely considered as an important benefit of reforms.

5.15 Agree on a compensation framework for asset transfers

If assets are to be transferred, these are to be transferred in terms of an Asset Transfer Framework. The corresponding compensation framework must be agreed early on in the process. Consideration should be given to the use of the depreciated book value of assets. It is important to ensure that the customer does not end up paying twice for the asset. An approach to valuation must be pragmatic given the level of available information in the sector.

5.16 Staff transfers

Staff transfers, where applicable, must take place in terms of an agreed framework.

5.17 Establish a small scale embedded generation regulatory framework

The connection of roof-top solar panels at low voltage level is referred to as small scale embedded generation (i.e. capacity to generate electricity embedded within the electricity grid, as opposed to centralised in big power plants). Other technologies, such as wind, biogas or other renewable technologies, could also be considered. The benefits of roof-top panels / small scale embedded generation are manifold: decreased load will reduce pressure on the network and thus decrease load shedding probability; less dependency on Eskom’s electricity and tariff; reduction of technical losses (transmission and distribution losses); and job creation opportunities (plants producing solar panels and inverters have already opened in South Africa).

NERSA should establish Regulatory Rules for Small-Scale Embedded Generation which includes new tariff structures to ensure that embedded generators still pay for the use of the distribution network.

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6 National Treasury has already approved an Asset Transfer Framework. The contents need to be communicated to municipalities.

7 Much work on this has already been done in the REDs process and key protocols and processes agreed.
network. This will ensure that municipal electricity departments receive enough revenue to operate and maintain the network.

6. WHAT IS NEEDED TO IMPLEMENT THESE REFORMS?

6.1 Reform leadership and coherent, collaborative governance

There must be national leadership and accountability for the reform process, with a clear and effective governance structure. A more active role by the regulator (set out in the previous section) will require political agreement between CoGTA, National Treasury, DoE, DPE and SALGA, which should be explicitly set out in a national reform framework.

6.2 A national reform framework

A national framework for reform needs to be developed early on in the process. The framework must set out the key principles and approach to the reforms. The framework must reflect agreement between key stakeholders on any potential ‘deal breakers’ and this process must be concluded early on in the process. The framework needs ownership at a very high political level. The lessons from the previous reform process need to inform the framework.

6.3 Support to assessments of service delivery mechanisms and implementation thereof

Undertaking assessments and making decisions concerning the most appropriate service delivery mechanisms will require resources and support, especially where section 78 processes are required. Given that the ultimate goal is to ensure the long term sustainability of electricity distribution across the country, it is important that the assessment process is coordinated so that the section 78 processes do not result in a fragmented approach. SALGA could assist with this coordination role as well as leveraging technical support to ensure informed municipal decision making.

7. CONCLUSION AND QUESTIONS FOR THE COMMISSION

The reform proposals outlined in this paper are designed to address fragmentation within the sector as well ensure sustainability of electricity reticulation. Given that the electricity industry is changing dramatically as a result of emerging technologies and changes in the way consumers use electricity, we also need to build on these reforms to set out a clear vision for the electricity distribution industry, so that we are ready for the future.

The South African Local Government Association invites its members to consider, and resolve on, the following issues:
1. How can we ensure that the electricity distribution industry is optimally structured to support government’s economic and social goals?

2. What steps need to be taken to support municipalities as Electricity Service Authorities to enter into service delivery agreements with external providers (including ESKOM) to ensure that electricity is distributed cost-effectively, reliably and sustainably, meeting national minimum standards?

3. What are the critical next steps to take the reform proposals forward?

4. How do we promote small scale embedded generation within an enabling regulatory framework?
DISCUSSION DOCUMENT FOR COMMISSION 5

Boundary and Ward Demarcation

24 – 26 MARCH 2015
GALLAGHER ESTATE AND CONVENTION CENTRE | MIDRAND | GAUTENG
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1. INTRODUCTION

In June 2011, the Municipal Demarcation Board (MDB) initiated a process of boundary redeterminations which was to be concluded in October 2013. It was anticipated that the ward delimitation process would be done between November 2013 and June 2015. The IEC would then have been able to finalise its preparations for the 2016 Local Government Elections from July 2015 – April 2016.

As a result of a number of unforeseen challenges and communities that reacted violently to proposals, the process was eventually finalised early in 2014. The anticipated result is for a reduction in the current number of municipalities to 269 with an additional metro to be established in Gauteng. The major boundary redetermination process mostly affected municipalities in Gauteng and KwaZulu-Natal.

An amended formula for the determining the number of Councillors per municipality was published on 9 September 2014 and by 5 December 2014 the number of councillors for each municipality was determined.

On 9 December 2014, the MBD launched its draft maps and the schedule for public consultations for the ward delimitation process, followed by the scheduling of public meetings in all 224 municipalities, with wards, from January to March 2015.

During January 2015, the Minister of COGTA (hereafter referred to as the Minister) submitted a number of requests to the MDB in terms of section 22 of the Local Government: Municipal Demarcation Act of 1998 (the Act), to re-determine the boundaries of certain municipalities.

This effectively re-opened the boundary re-determination process and the requests may result in the further re-determination of municipal boundaries, leading to the categorisation of more metropolitan areas, the amalgamation of municipalities and the alignment of certain traditional and municipal boundaries.

2. PROBLEM STATEMENT

The proposals from the Minister is based on the “Back to Basics” approach and is motivated by the fact that the municipalities identified for disestablishment and amalgamation are not viable.
The proposed boundary re-determination process is put forward as a method to create more viable and better functioning municipalities.

The “Back to Basics” document stated that the viability of certain municipalities is a key concern. The low rate of collection of revenue continues to undermine the ability of municipalities to deliver services to communities.

The re-opening of the boundary determination process during the ward delimitation process and merely a year before the 2016 Local Government Elections, raises a number of concerns.

The conflation of the ward delimitation process and the boundary determination process may cause some confusion in affected municipalities. In addition, the limited time to prepare affected municipalities for the restructuring that may result from the boundary re-determination process may impair the “day one” readiness of the newly established municipalities and negatively impact on service delivery.

Other key aspects to be addressed also include the question regarding the frequency of boundary redeterminations. This aspect is directly linked to the size and efficiency of wards and municipalities in South Africa and how this impacts (or does not) on effective and efficient local governance.

Lastly, the relationship between traditional areas and municipal boundaries has been a consistent challenge and needs to be addressed.

The paper attempts to provoke some thought on the aspects mentioned above and then poses a few questions to be considered by the sector in terms of demarcation in general.

3. KEY ISSUES

3.1 Finalisation of ward delimitation process

As indicated, the relevant MECs responsible for local government in the various provinces, determined the number of councillors over the period 3 October 2014 to 5 December 2014. The MDB initiated technical work on ward boundaries in consultation with technical staff of provinces and municipalities between October and November 2014.

However, the ward delimitation process in some municipalities has been discontinued since January 2015, to attend to the Minister’s request for re-determination of boundaries for the proposed affected municipalities. This is so because wards can only be delimited once outer boundaries have been finalised.
Approximately 66 public meetings on wards were postponed, however some meetings were concluded before Minister's requests were received and need to be rescheduled. To ensure that the ward delimitation process is not negatively affected by the new proposals, the process has been split into two processes:

- wards in municipalities affected by Minister's request,
- wards not affected by the Minister's request.

In areas where municipalities are not affected by the proposals of the Minister, the ward delimitation processes will continue as planned.

After the re-determination of the outer boundaries of the affected municipalities, the 2014 process will have to be repeated for the “new” municipalities in that:

- the IEC will have to re-divide the national common voters’ roll into municipal segments;
- the MEC will have to re-determine the number of councillors for these municipalities;
- the MDB will have to determine the number of wards, prepare draft maps, consult the public and follow the prescribed legal process in finalising the wards.

It is thus important for municipalities to determine in which category it falls. Where the municipality is not affected by the proposals of the Minister as set out in MDB Circulars 2/2015 and 3/2015, the ward delimitation process will continue and municipalities must ensure that they communicate with residents to ensure that they are duly consulted in the process and are aware of the process that they are currently involved in.

3.2 Re-opening of the boundary re-determination process

In terms of the Act, the Minister requested the MDB to consider a number of proposed boundary redeterminations.

The proposals included the establishment of two new metropolitan municipalities in KwaZulu-Natal and the disestablishment and amalgamation of a number of municipalities in Limpopo, Mpumalanga, North West, Northern Cape, and Eastern Cape. It further proposed the alignment of municipal boundaries in KZN with those of traditional authorities. The Western Cape is not affected and the proposals with regard to the Free State will be submitted in the near future. In Gauteng, the outcome of a legal process regarding the establishment of a new metropolitan municipality is awaited.
The motivation for the disestablishment and amalgamation of municipalities was the non-viability of the affected municipalities.

It should however be noted that the MDB needs to consider a substantially wider range of matters when attending to boundary re-determinations, with viability being but one of the aspects that the MDB needs to take into account when determining municipal boundaries.

The MDB has set out its approach to the current proposals on the table:
- to comply with all legal requirements as explained;
- to align the ward delimitation process, and the process for the re-determination of municipal boundaries as far as possible. However, municipal boundaries must be finalised before wards can be delimited.
- to split delimitation of wards into two processes as mentioned: Firstly wards delimitation in municipalities not affected by the Minister’s request. Secondly ward delimitation in municipalities that may be affected by the Minister’s request.
- to speed up the process as far as possible so as to allow for reasonable time for the IEC to prepare for the elections.

The approach of the MBD to follow the full public participation process in considering the proposals from the Minister is welcomed. Municipalities must ensure that they communicate any proposals affecting their municipality to the community and that the community is properly consulted before any submission are made to the MDB. The MDB has given notice of the proposals in terms of the provision of section 26 of the Act and the time period for submission has closed. This process still constitutes only a part of the larger consultations to follow, and was mainly to gather input in order for the MDB to consider the proposals for further engagements.

Community engagements between municipalities and communities should start in order for municipalities to submit properly informed positions to the MDB.

The MDB itself has highlighted a number of concerns with regard to the process, the main concerns being:
- A number of requested not having been motivated in accordance with the criteria listed in the Demarcation Act, viability cannot be the only criteria used,
- The MDB needs to convince itself that the changes to boundaries will in fact result in optimising viability,
- A huge amount of work to be done by the MDB in a short time span – it is anticipated that the final decisions on municipal boundaries will be done by August 2015 and on ward boundaries by December 2016, leading to very little time for preparations by the IEC, as the elections should take place between 8 May 2016 and 16 August 2016,
Unforeseen challenges such as court applications and protests may further delay the process.

Any boundary re-determination and subsequent ward delimitation will also impact on the three year planning cycle of municipalities and affect longer term planning. Once the process has been concluded, the exact impact on municipalities will be determined, and SALGA will support municipalities affected by restructuring as a result of boundary redetermination.

Municipalities should be aware that the process can also have practical implications in terms of the physical preparations for the elections, and upon completion of the full demarcation process, close collaboration with the IEC would be required.

3.3 Frequency thereof, impact on stability and consolidation of the sector

Experience shows that the establishment of municipalities or the adjustment of the allocation of the powers and function of municipalities has fairly long term service delivery implications. For example, since the establishment of democratic municipalities in 2000, it is really only recently that some of the municipalities in the country have begun to settle into performing their functions. Many of our best performing cities are still grappling with the effects of transformation from 2000 and are only now fully integrating those changes into their systems and processes.

There are still quite a number of municipalities who can be considered objectively viable but are still struggling to effectively perform their functions. The key lesson from this is that the establishment of a municipality or its assumption of new functions often has a much longer lead time than anticipated during the excitement of transformation.

The urgency of change is understandable, but government should take a medium-to-long-term view in considering the establishment or disestablishment or adjustment of functions in municipalities.

While local government is seen as the implementing sphere in the cooperative governance scheme, the focus and analysis cannot be too heavily, even in some cases exclusively, based on the service-providing responsibilities of municipalities. What distinguishes elected local government from other institutions even more than their service providing function is their role as representative and accountable institutions of local self-government.

Amalgamation in itself, as we have seen, adds little value to the democratic process and more often than increases distance from residents, service users and electorates, thereby...
becoming less responsive to their needs and demands. In many cases, amalgamation merely merges the problems, which remains; it does not provide sustainable solutions.

Many of the affected municipalities have not yet reached such a state of maturity and it might not be right time to only focus on maturity. Municipalities should be allowed to mature and reach a point where they can deliver services in a truly developmental local government environment.

Given that the sector is only now approaching 15 years of transformation (which has continually been adjusted in between, including the abolition of DMAs in 2011), transformation in these instances may have an adverse effect and set back the developmental journey even further.

The response to poor performance of a municipality, in respect of delivery of services (especially infrastructure services) due to underlying structural constraints should not be limited to disestablishment of municipalities and mergers. An adjustment of its powers and functions so that it is allocated functions that are reflective of its underlying structural circumstances should also be considered. For example, the option may be to take way services that are infrastructure intensive (such as water supply, sewerage treatment plants and electricity distribution) and allocate it very basic services, including a consideration of delegating some provincial social services functions such as libraries and agricultural extension services in the case of rural municipalities.

Even though the challenges around local government capacity are tremendous, to permit short-termism to dictate the outcome of this review would be counterproductive and the sector would be well advised to participate meaningfully in this process to ensure its long term sustainability and democratic value add.

From the aforesaid, it is clear that the service delivery and other challenges currently experienced can be addressed without necessarily embarking on a boundary redetermination process every five years, thus once per municipal term. In order to ensure greater stability in local government and policies and legislation to have the desired effect, including recent enactments and amendments, it could well be advisable to limit the boundary redetermination process. A minimum period to allow newly established and merged municipalities the opportunity to mature and stabilise would also be advisable. It will also provide the newly elected leadership to implement its policies and approaches before being faced with a boundary re-determination.

The current 5 year cycle of demarcation is structured in a way that initiates a process shortly after the local government elections, thus not allowing the newly elected leadership the opportunity to implement new policies and plans before it is subject to the demarcation
process. In addition, government programmes and approaches such as the 2009 LGTAS and the 2014 Back to Basics approach are not allowed to fully develop and make an impact in municipalities before a new round of demarcations starts.

In addition, the MBD would be enabled to work with relevant statistics that are aligned to the 10 year Statistics SA cycle. In the current process, the same official statistics are used for consecutive processes, expecting different results. However, provision can be made for ad hoc requests within the said period, where circumstances in a municipality have changed substantially within the ten year cycle.

3.4 The size and efficiency of wards and municipalities in South Africa

As indicated earlier in the paper, the Minister on 9 September 2014 published the formula for the determining if the number of Councillors in each category of municipality. The formula is used by the relevant MECs to determine the number of councillors and thus the number of wards in each municipality, which is then used by the MDB to do the ward delimitations for each municipality.

The formula differs according to the category of municipality. The MBD is also bound with regards to the sizes of wards as there is a margin of about 15% that the number of registered voters can vary in terms of the number of voters per ward, but no more.

The principle of differentiation between the different municipalities is supported, but does the current formula and thus the sizes of wards ensure optimal local governance?

A number of municipalities have indicated that in metropolitan municipalities and larger, more urban local municipalities, it is possible to increase the sizes of wards without impairing the focus area of putting the people and their concerns first and ensuring constant contact with communities through effective public participation platforms (pillar 1 of the Back to Basics approach).

In general, Metropolitan municipalities have higher densities and the geographical areas covering each ward are much smaller than local municipalities. The result is that such communities are easily accessible and can be mobilised effectively and in a process that require less effort. It can thus be considered that wards in metropolitan areas can be substantially larger in terms of registered voters than those of local and district municipalities, alternatively a larger margin of deviation in the number of registered voters need to be allowed to the MDB.

The number of councillors in metropolitan municipalities as well as the wards needs to be reduced as it will not have a negative effect on local governance. It will however be
necessary to consider the more rural parts of metropolitan municipalities and a special
dispensation in this regard would need to be implemented, based on the population
densities.

The formula for the determination of the number of councillors for metropolitan
municipalities should therefore not be a single formula, but should be based on the
densities in the various portions of the metro, with the high density areas allowing for less
councillors (and resultant bigger wards) and in lower density areas more councillors (and
smaller wards in terms of numbers of registered voters). In order to affect this, a bigger
discretion being allowed to the MDB to provide for variances in ward sizes in metropolitan
municipalities. This will ensure that communities are not divided purely based on the
numbers of registered voters in a particular ward.

A similar approach can be applied in local municipalities. The densities will then cater for
larger geographical areas where smaller numbers of registered voters reside, in order to
ensure that wards do not become large geographical areas where accessibility of
councillors to their communities are affected. Similarly, the MDB should be allowed a larger
margin for deviation, provided it can duly justify same, in order to prevent communities from
being divided purely based on numbers.

A more differentiated approach in terms of ward sizes and more focussed on integrated
communities will improve contact with communities.

3.5 Traditional areas and boundaries and their contribution to local democracy

As indicated above, the MDB must take into account a number of factors when determining
municipal boundaries. The factors listed include a requirement to take into account areas of
traditional rural communities. It refers to communities and not the traditional leadership. The
proposals on alignment is, similar to the viability argument, based on a single element and
not a total consideration of the socio-economic and other factors impacting on communities.

In certain municipalities traditional authorities have boundaries that extend over more than
one local municipality. The challenges experienced in this regard are indicative of the
internal tensions between elected local councillors, municipalities and the traditional
authorities. Will boundary redetermination resolve the issue or should a more integrated
governance model be pursued, one which allow traditional authorities to make inputs when
municipal processes are developed. The role of the traditional authority and the democratic
elected local government should be reconciled and should not be seen as opposing
institutions.
Chapter 12 of the Constitution contains provisions regarding traditional leaders, provides for traditional leaders in rather vague terms, stating (in section 211(1)) that “the institution, status and role of traditional leadership, according to customary law, are recognised subject to the Constitution”.

During the certification of the 1996 Constitution by the Constitutional Court, CONTRALESA raised the aspect of the role and function of traditional authorities. In that judgment the Court made the following statement about the difficulties of marrying a system of traditional leadership with democracy:

*In a purely republican democracy, in which no differentiation of status on grounds of birth is recognised, no constitutional space exists for the official recognition of any traditional leaders, let alone a monarch. Similarly, absent an express authorisation for the recognition of indigenous law, the principle of equality before the law … could be read as presupposing a single and undifferentiated legal regime for all South Africans with no scope for the application of customary law – hence the need for expressly articulated CPs [Constitutional Principles] recognising a degree of cultural pluralism with legal and cultural, but not necessarily governmental, consequences.*

The inherent tensions between municipal councils and traditional authorities have not been resolved by section 81 of the Structures Act, 1998 and the Department of Traditional Affairs are preparing regulations to address the role and participation of traditional leaders in municipalities.

The more pertinent question to ask, is whether the boundaries of a municipality should be aligned to those of traditional authorities when the role of such authorities remain vague, or should the role of traditional authorities be clarified before the boundaries of democratic institutions are aligned to those institutions?

### 3.6 Viability

Given the variable patterns of socio-economic development in the country, municipalities in the predominantly rural areas (which are home to about a quarter of the country’s population) are generally considered not ‘viable’ in respect of the undertaking of delivery of socio-economic services. This is attributed to the poor economic base that limits their ability to raise financial resources. The option of increasing their size any further may however render them less viable as institutions of bringing governance closer to communities. A purely functional approach will lead to the so-called democratic deficit, and in some cases this may be appropriate but not in all instances.
The post-apartheid state accepted, by the model adopted, that redistribution will have to be a national priority and focus and thereby that many municipalities in the country would remain ‘unviable’ for a considerable period until the effects of redistribution kick-in.

The equitable share framework and formula have not adhered to this principle. The question that needs to be addressed in this regard is whether we have really in fact passed the reconstructive and developmental phase in local government and could thus only focus on viability and sustainability. It would seem that the areas now being the point of discussion, except for the proposed metropolitan municipalities, are exactly those where the reconstructive and developmental phase have not been passed, and it might indeed not be reconcilable with the requirement for viable and sustainable local municipalities.

Although reference is often made to non-viable municipalities, no definition of, or elements of a viable or non-viable have been formally adopted or agreed upon in the local government sector. The initial memorandum submitted to the MDB by COGTA, motivating its request for boundary redeterminations list the following as factors of viability / sustainability: measured according to financial, economic, tax base and grant dependency indicators.

The equitable share paid to municipalities were not taken into account as a factor in this regard, and it should be included as part of the income as such. If the equitable share is negated, the elements stated would result in all nine provinces being defined as non-viable / sustainable.

The LGTAS dating back to 2009, recognised that municipalities are subject to external factors over which it has no control, and that it in certain instances seriously impact on the socio-economic circumstance within the municipality. The Back to Basic document of September 2014 recognises that widespread poverty has undermined the sustainability of local government. Yet, no specific government policies have been adopted to address this aspect.

Experience, such as the Tshwane / Metsweding merger in Gauteng has also indicated that no formal cost determination has been made with regard to the cost of mergers and amalgamation. The costs can be divided into two parts, being the cost of the restructuring process, which included the development of service delivery models, strategies for the new municipality, alignment of policies by-laws, tariffs and systems. This addressed to so-called day 1 readiness process. However, the bigger cost implications are the post day 1 costs, which must ensure the equalisation of service levels and eradications of service backlogs in the newly established or amalgamated municipality. Tshwane has calculated the said costs at more than R1 billion.
Based on the recommendation of the Financial and Fiscal Commission (FFC), National Treasury allowed an amount of R139 million as a restructuring grant for the 2016 LG elections, based on the earlier demarcations, with such money only to be used for the first category of expenses.

Based on work done in KZN, it is clear that even based on the initial demarcations, this is inadequate. SALGA and the FFC is currently determining the costs of demarcation. The huge costs of restructuring necessitated by demarcation will increase the burden on municipalities and might even result in them being less viable or sustainable. Regardless of amalgamation, the rate bases of a specific area will not change purely based on the municipality that they form part of. More work is thus required to further define sustainability and viability of municipalities as well as on the cost of demarcation.

4. QUESTIONS FOR CONSIDERATION (RECOMMENDATIONS)

The South African Local Government Association invites delegates to consider, and resolve on, the following issues:

a) Does the current 5 year boundary redetermination process ensure stability and effective and efficient service delivery in municipalities or should other alternatives be considered?

b) Is viability / sustainability the appropriate aspect to be considered for boundary redetermination and if not, how should the viability aspect of municipalities be addressed?

c) What are the elements to be considered when judging the viability / sustainability of a municipality?

d) How can the impact of constant re-structuring of municipalities be mitigated?

e) Is it appropriate to consider the alignment of municipal boundaries to those of traditional authorities at a time when there is still uncertainty about the role of traditional leadership in local governance?
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1. INTRODUCTION

South Africa has a long and proud history of women’s participation in struggles against apartheid. South African Women are among the proud drafters of the Constitution of the Republic of South Africa which defined the post 1994 democracy.

For example, in 1993 South African women defined the kind of democracy they sought to see in the Women’s Charter for Effective Democracy. On 17 January 1954, the Founding Conference of the Federation of South African Women adopted the Women’s Charter which outlined the aspirations of women for the national liberation, emancipation, including political participation, and equality for women.

The former President of the Republic, Nelson Mandela stated at the opening of the first democratically elected Parliament in South Africa that “it is vitally important that all the structures of Government, including the President, should understand fully that freedom cannot be achieved unless women have been emancipated from all forms of oppression.”

In line with this perspective, South Africa confirmed in its Constitution a commitment to substantive equality for women. The Constitution provides an enabling framework for the South African Government to put into place policies and laws which enforce transformation of all human resource related practices and procedures in order to ensure women’s equal and full participation in decision-making positions.

To this end, the Constitution called for affirmative action measures to be taken and numerous pieces of legislation were enacted to push women’s equality forward in various areas such as labour and employment, healthcare and reproduction, and socio-economic rights.

Substantial progress has been made in the last twenty years of democracy in advancing women in political and decision-making positions in all spheres of Government. While the number of women in the Public Sector and at local government level has advanced significantly in the past ten years, many challenges still remain. Overcoming gender inequity requires councillors, staff and organisations as a whole to acknowledge difference and disadvantage and to challenge the stereotypes and attitudes that can lead to discrimination and marginalisation.
Increasing the representation of women in leadership positions will help challenge and shift workplace cultures and provide women with greater capacity to participate in the development and implementation of legislation, policies and services that affect their lives. Without processes that are specifically designed to increase women’s involvement in decision-making, women will continue to be excluded from leadership positions in the community, government and business sectors.

1.1 Definition of Concepts

What is gender?

‘Gender’ refers to the socially constructed roles, behaviours and attributes assigned to women, men, girls and boys. Unlike the biological characteristics and differences between women and men known as sex, gender roles are socially learnt, differ among cultures and change over time. While it would appear that women and men have all the same formal opportunities, gender inequity causes many women to experience significant disadvantage, impacting on their physical, mental and social health and wellbeing.¹ To ensure that community needs are considered and responded to in the most informed and appropriate way, it is essential to consider gender when developing local government policy, planning and service delivery.

What is gender equity?

Gender equity is the process of being fair to women and men by recognising diversity and disadvantage and directing resources and services towards those most in need to ensure equal outcomes for all. It is therefore an important social justice goal. The concept recognises that within all communities, women and men have different benefits, access to power, resources and responsibilities. A gender equity approach therefore acknowledges that different strategies are often necessary for women and men².

Empowerment

Empowerment is a process; the outcome of empowerment should manifest itself as a redistribution of power between individuals, genders, groups, classes, races, ethnic groups or nations. Empowerment means the transformation of structures of subordination, through radical changes in law, property rights, control over women’s

¹ E. Broderick, C. Goldie and E. Rosenman, Gender equality blueprint 2010, Australian Human Rights Commission, Sydney, 2010
² World Health Organisation, Mainstreaming gender equity in health: the need to move forward, WHO regional Office for Europe, Copenhagen, 2002.
labour and bodies, and the institutions that reinforce and perpetuate male domination (Batliwala, 1993:5)3.

Vanessa Griffin (1987:117-18)4 identifies, some components to illustrate what the term empowerment indicates:

a) having a say and being listened to;

b) being able to define and create from women’s perspective;

c) being able to influence social choices & decision affecting the whole society and

d) being recognized and respected as equal citizens.

Empowerment means to acquire the ability and opportunity to participate in decision-making process and its implementation.

**How can local government advance gender equity?**

There are a number of ways in which municipalities can advance gender equity. Strategies include integrating a gender equity strategy into the municipalities’ core business that enables mapping and analysis of the potential impact of council policies and programs on women and men (boys and girls).

A gender analysis examines the differences in women and men’s lives, including those that lead to social and economic inequity for women, and applies this understanding to decision-making, policy development and service delivery.

**2. PROBLEM STATEMENT**

Despite continued efforts towards furthering gender equity and representation, the structures of government, including parliament, provincial legislatures, and local governments do not yet adequately reflect the number of women in society.

Despite the fact that women make up over half the population of South Africa, they still account for under a third of elected representatives. In most instances, political parties in South Africa espouse gender equality in some form, but few have evolved explicit gender equality policies.

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The SADC Protocol on Gender and Development was signed in 2008 and it signalled the commitment of member states to harmonise their national legislation, policies, strategies and programmes with relevant regional and international instruments related to the empowerment of women and girls for the purpose of ensuring gender equality and equity.

Of relevance to the 50/50 quota, Article 5 of the Protocol refers to affirmative action and states that: “States Parties shall put in place affirmative action measures with particular reference to women in order to eliminate all barriers which prevent them from participating meaningfully in all spheres of life and create a conducive environment for such participation.”

In Part Three the SADC Protocol (Article 12) deals directly with the issue of representation, and states that: “States Parties shall endeavour that, by 2015, at least fifty percent of decision-making positions in the public and private sectors are held by women including the use of affirmative action measures as provide for in Article 5”; and “States Parties shall ensure that all legislative and other measures are accompanied by public awareness campaigns which demonstrate the vital link between the equal representation and participation of women and men in decision making positions, democracy, good governance and citizen participation.”

The broad thrust of Article 12 is applicable at the local government level where municipalities are expected to effectively implement the 50% quota, and to ensure that this process is widely advocated for through public awareness campaigns.

Following on from these statements on representation Article 13 of the Protocol addresses the issue of participation, and states that: “State Parties shall ensure the equal participation of women and men in decision making by putting in place policies, strategies and programmes for:

i. Building the capacity of women to participate effectively through leadership and gender sensitivity training and mentoring;

ii. Providing support structures for women in decision-making positions;

iii. The establishment and strengthening of structures to enhance gender mainstreaming; and

iv. Changing discriminatory attitudes and norms of decision making structures and procedures.”

Achieving 43% women in parliament in the 2009 elections elevated South Africa to the top of the chart in SADC. However, the drop from 40% in 2006 to 38 % in the
2011 LG election and to 40% in the national elections in May 2014, dealt a crippling blow to the 50/50 campaign (as depicted in the Table 1 & 2 below). The drop took place with less than one year prior the 2015 deadline for the SADC Gender and Development Protocol.

### Table1: Gender representation in Local Government in South Africa

<table>
<thead>
<tr>
<th>Year</th>
<th>% Women ward</th>
<th>% Women PR</th>
<th>% Women overall</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>11%</td>
<td>28%</td>
<td>19%</td>
</tr>
<tr>
<td>2000</td>
<td>17%</td>
<td>38%</td>
<td>29%</td>
</tr>
<tr>
<td>2006</td>
<td>37%</td>
<td>42%</td>
<td>40%</td>
</tr>
<tr>
<td>2011</td>
<td>33%</td>
<td>43%</td>
<td>38%</td>
</tr>
</tbody>
</table>

Source: Gender Links

### Table 2: Women in SA Politics

<table>
<thead>
<tr>
<th>2004</th>
<th>2009</th>
<th>2014</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women Voters</td>
<td>55%</td>
<td>55%</td>
<td>56%</td>
</tr>
<tr>
<td>Women Premiers</td>
<td>44%</td>
<td>55%</td>
<td>22%</td>
</tr>
<tr>
<td>Women MPs</td>
<td>33%</td>
<td>43%</td>
<td>40%</td>
</tr>
<tr>
<td>Women MPLs</td>
<td>30%</td>
<td>41%</td>
<td>37%</td>
</tr>
<tr>
<td>Women in Cabinet</td>
<td>42%</td>
<td>41%</td>
<td>41%</td>
</tr>
<tr>
<td>Women Deputy Ministers</td>
<td>60%</td>
<td>39%</td>
<td>44%</td>
</tr>
<tr>
<td>Women in the NCOP</td>
<td>41%</td>
<td>30%</td>
<td>28%</td>
</tr>
<tr>
<td>Women as News Sources</td>
<td>22%</td>
<td>24%</td>
<td>25%</td>
</tr>
<tr>
<td>2000</td>
<td>2006</td>
<td>2011</td>
<td></td>
</tr>
<tr>
<td>Women in Local Government</td>
<td>29%</td>
<td>40%</td>
<td>38%</td>
</tr>
</tbody>
</table>

Source: Gender Links

The regression in women representation in the 2011 local government and 2014 national government accentuates the need for a legislated quota to ensure women occupy key decision making positions. This is the conclusion reached by Gender Links (GL), the Johannesburg-based research and advocacy organisation following a gender analysis of the in their publication “Gender in the 2014 South African National Elections, August 2014).

Urgent action is needed if South Africa is to honour the commitment that it has made by signing the SADC Protocol on Gender and Development that calls for gender
parity at all levels and in all areas of decision making by 2015. This would be in keeping with the Women Empowerment and Gender Equality Bill that is being championed by the Department of Women in the Presidency.

3. KEY ISSUES

3.1 Mainstreaming Gender

Work to achieve gender equality and equity requires not only a clear demonstration of political commitment but also systematic and sustained action, backed by strong, dedicated and permanent institutional mechanisms. The move is necessary to ensure that at the delivery or implementation arm which is the administrative decision making women are represented.

Gender mainstreaming programme in local government is divided into two focus areas namely equity of representation and gender mainstreaming within local government functioning and practice.

A number of structures have been put in place for the achievement of gender mainstreaming in local government. These include establishment of committees that deal with gender issues; appointment of gender coordinators; establishment of gender forums; development of gender policy frameworks and action plans; facilitating gender training workshops for both councillors and officials; establishment of gender desk; and participation of gender focal points in IGR structures of different government departments.

SALGA is mindful of the fact that women in local government still face many challenges in addition to issues related to gender parity of representation. It is within this broad context that SALGA has endorsed the establishment of SALGA Women’s Commission to support the national developmental goal of women’s empowerment and gender equality at a local government level.

The SWC is a mechanism to institutionalise our advocacy processes as the voice of women in local government and will ensure progress at a local level and support the national and international development goals of women empowerment and gender equity.

3.2 The 50/50 Campaign
During 2000, the Women’s Environment and Development Organisation (WEDO) launched a campaign called 50/50 which was then changed to Get the Balance Right! in 2005. The campaign challenged governments to take action to increase women’s political participation. The 50/50 campaign, endorsed by more than 170 organisations in 52 countries, has been designed to confront the structural and cultural barriers that impede women’s access to decision-making and leadership positions. It sets targets for governments: 30 percent representation of women in cabinet ministries, legislatures and local government by 2003, and equal representation by 2005.

South Africa aligned itself with global and regional initiatives but the campaign unfolded in the very specific circumstances of South Africa’s constitutional mandate and its institutional and policy approach to advancing gender equality and women’s empowerment. South Africa became the 11th country to officially launch the 50/50 campaign: Women in Government – Getting the Balance Right! following Argentina, Trinidad and Tobago, Surinam, Guyana, Bulgaria, Philippines, Indonesia, Croatia, Namibia and Canada.

The aim of the campaign was to concretely address the issue of women’s under-representation in political decision-making and to confront the structural and cultural barriers that impede women’s access to decision-making and leadership positions.

Central to the campaign was to ensure equal gender representation and meaningful participation. The campaign was based on the following principles:

(a) The right to political participation as a human right as enshrined in the Convention on Women’s Political Rights and the International Covenant on Civil and Political Rights. Further, South Africa is party to a number of international instruments, in particular the Covenant on the Elimination of Discrimination against Women (CEDAW) an instrument upholding the importance of women’s involvement in the political process, the State has a duty to fulfil and implement the rights of women in politics on an equal level with men.

(b) South African women constitute more than half of the population and therefore should be represented proportionally. Legitimacy, justice and participatory democracy cannot be achieved if half of the population remains unheard and do not have full access to decision making and to activities that implement their full rights as citizens equal to men.
(c) Women and men have different approaches to problems and priorities. The call for equal representation seeks to ensure that women’s concerns and perspectives are taken into account in the formulation, implementation, and evaluation of policy decisions and outcomes.

The SALGA 50/50 Campaign was launched in August 2005 by the then Chairperson of SALGA, Executive Mayor (of Johannesburg) Amos Masondo. The National Executive Council of SALGA then approved taking the 50/50 campaign beyond the 2006 local government elections. In 2006, SALGA’s efforts in the 50/50 campaign contributed, significantly, to increasing women’s representation in local government (the number of women councillors increased from 29% to 42% during that campaign).

Currently, South Africa is preparing for the fourth round of local government elections in 2016. It is proposed that SALGA resuscitate its efforts with the 50/50 campaign to ensure equity of representation for the new term of office of local government. However, it is important to emphasise that gender parity needs to transcend numerical equality and to advocate for the creation of a more enabling environment that both improves access for women political representation as well as ensuring their effective participation in local government and governance.

If we are to succeed, we need a gender centred approach – an approach which is multi-sectoral, cross regional and does not have a one size fits all approach. We will need to work on how to sustain a common dialogue despite geographic and demographic differences. Therefore, coordination and partnership with other stakeholders (government departments, civil society organisations including the private sector) guided is key and should be guided by the following key objectives:

Advocacy for the finalisation of the Women Empowerment and Gender Equality Bill by 2015:

(a) The creation of an enabling environment that maximises women’s equal participation in local governance;

(b) Advocacy and lobbying strategies directed at political parties and

(c) Awareness programmes at grassroots level to increase the level of understanding, support and activism for gender justice.

The campaign activities should be directed at two levels. Firstly at political parties and secondly at communities or the electorate who often have perceptions around
who are considered as leaders. It is proposed that the campaign Action Plan will have the following key elements:

I. **Advocacy processes with the political parties to discuss the 50/50 Campaign:** Advocacy for the preparations of Party Lists: Advocacy and lobbying for the Zebra policy to be integrated into political manifestos. This listing refers to alternating between female and male candidates in a manner that every other candidate should be a woman. This would ensure that the first woman on the list would be no further down than second place. Targeting of women within political parties will also be useful, so as to sensitise women on gender issues - to both raise awareness in communities as well as encouraging women to lobby for the nomination of women (PR and Ward) as candidates and the zebra system to be applied on the party lists.

II. **Partnerships with NGOs and relevant institutions (50/50 Campaign partners) to mobilise resources and complement campaign implementation:** There are a variety of gender organisations that are committed to the 50/50 Campaign, and who are actively in support of advocating for a legislative changes. It is important to mobilize resources and coordinate processes to maximise the outcomes of the campaign, and to raise awareness of processes with communities at large.

III. **Development of Campaign Material:** The development of a catalogue of women in local government: on women councillors (mayors, deputy mayors, speakers and chief whips) and senior officials, namely, municipal managers and deputy municipal managers.

IV. **Collaboration with the Independent Electoral Commission, the Gender Commission, Department of Women on Enhancing Participation in and understanding of the Local Government Electoral Process:**

- to ensure that women (who make up 55+% of the election campaigning population) are informed of the processes that lead to the election day i.e. candidate nomination and candidate list submission to the IEC, the campaigning and voting process, the counting process and the legislation related to the elections.,
- to sensitise political parties (through its councillors) on the legal obligation and social imperative to equally include women on the party lists.
- to target the girl child and young women – to build an awareness and interest in local government, and issues of local governance and gender.
V. Continuation of Gender Capacity building Processes within municipalities: Institutional transformation continues to be a critical process that requires ongoing effort. It is important to lobby and advocate for the development of municipal spaces that are gender sensitive in the way they operate internally; in the manner in which they implement programmes and take into consideration sex and gender specific roles of both politicians and officials in their employ.

VI. Specific programs should be undertaken by the government and non-government organizations in order to create an awareness among the women in the grass roots levels that political participation would give them an access to the political decision making process relating to the allocation of resources.

VII. Mass media should be used to educate and mobilize public opinion in such a way that the realization about the benefits of women’s full participation in the national development efforts is created among people.

VIII. Priority must be given to monitoring the status/positions, conditions and rights of women. There must be a sustained campaign for women mobilization, regular reporting of monitoring, public information and advocacy in this realm.

IX. Women should be given various opportunities for leadership training, in order to encourage them to take up political and leadership position. Supportive services should be provided to allow women participate in these training courses.

X. Convene the 2015 National Women in Local Government Conference: It is proposed that this year a national conference instead of SALGA Women’s Commission Lekgotla be convened. The conference to focus on the 2016 LG Elections – reflecting on progress of the 50/50 Campaign and the proposed approach for 2016.

4. CONCLUSION

Women’s equal participation in local government plays a pivotal role in the general process of the advancement of women. It is not only a demand for simple justice or
democracy but can also be seen as a necessary condition for women’s interests to be taken into account. Without the active participation of women and the incorporation of women’s perspective at all levels of decision-making, the goals of equality, development, peace and social cohesion cannot be achieved.

Systematic integration of women augments the democratic basis, the efficiency and the quality of the activities of local government.

If local government is to meet the needs of both women and men, it must build on both experiences, through an equal representation at all levels and in all fields of decision-making, covering the wide range of responsibilities of local governments.

5. RECOMMENDATIONS AND QUESTIONS FOR CONSIDERATION

The following questions are vital and will inform processes to ensure women empowerment and gender equity in local government. The South African Local Government Association invites delegates to consider, and resolve on, the following issues:

(a) What needs to be done to bridge the gap (to ensure that the number of women councillors is increased) by 2016?
   • What are the things that we need to start doing as a collective (both in terms of reviving the old and devising new things)

(b) What should be put in place to overcome barriers and to strengthen women’s representation and participation in local government?
   • Strategies,
   • Resources,
   • Support mechanisms etc

(c) What good practice examples exist in local government that support an enabling environment for women’s full and equal participation and representation
   • What are we doing right that we should continue doing?
DISCUSSION DOCUMENT FOR COMMISSION 7

Improving Financial Management Audit Outcomes & Fiscal Policy

24 – 26 MARCH 2015

GALLAGHER ESTATE AND CONVENTION CENTRE | MIDRAND | GAUTENG
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1. INTRODUCTION

Intergovernmental fiscal relations generally and the management of municipal finances specifically is an item of great interest and concern to all key Local Government stakeholders. The increasing challenges for better performance by municipalities, the delivery of services and the meeting of the ever growing demands by municipal clients has been elevated in terms of prominence over the past period. In all its platforms, SALGA continues to engage around this topic with the quest to find viable and enduring solutions.

This document seeks to highlight some of the key issues in the area of municipal finances with the intention of enabling SALGA to:

1. Better assist municipalities in becoming financially sustainable so that they could deliver on their mandate.
2. Package a set of issues for consideration and for presentation at the 2015 Budget Forum.
3. Inform SALGA’s performance plan with regards to the municipal finances work area.
4. Enjoin various key stakeholders to a common program of research, consideration and collaboration on some of the key themes around municipal finances, challenges arising therefrom, solutions and innovations.

Through this contribution, SALGA hopes to emerge with greater clarity on how to practically tackle the challenges identified and with clear proposals on how the issues could be resolved.

2. BACKGROUND

The past twenty years have seen some tremendous strides in the transformation of South Africa. In the fifteen years of democratic and developmental local government, municipalities have played a critical role as implementing agents of this national development and transformation process.

The National Development Plan (NDP) makes it clear that meeting our transformation agenda for Local Government requires a much higher and more focused intergovernmental commitment towards the creation of more functional municipalities and capable machinery at a local level. With regard to local government fiscal and financial management issues, SALGA’s approach through its Apex Two priority resonates with the underlying ethos of the Back to Basics
approach which proposes that the internal and external financial environment and fiscal frameworks are promoting sustainable and informed service delivery processes.

Accordingly, local government finances have been flagged as having a critical impact on the role of municipalities in fulfilling their developmental and transformational mandate. Both at policy and management level, finances tend to substantially define the local government challenges as it permeates all the other facets of local government work.

Hereunder we present some of the strategic issues that we propose should occupy the top consideration in our efforts going forward.

3. PROBLEM STATEMENT

The execution of the developmental mandate of local government has not been without its difficulties. The transformation process has unearthed some complex, unique and unanticipated challenges, key among them including (on finance related matters:

- Relatively huge debts
- Cash flow problems
- Low revenue base
- Limited financial management skill
- Difficulty to implement credit control policies
- Uneven leadership competence and experience
- Use of equitable share for mainly operational expenses
- Non-payment of statutory deductions to relevant agencies
- Poor audit statements
- Problems of accessing and utilizing conditional grants
- Limited debt management instruments
- No intergovernmental pooling of resources and linkages to local IDP
- Non-cash funded budgets
- Inappropriate taxes and tariffs
- Limited resources, initiatives and instruments to address the existing high arrears
- Ineffective municipal income administration
- Charging of interest on arrears
Though this list is not exhaustive, it suffices to indicate that many municipalities are systematically and incrementally dealing with most of the above issues. This is not borne only by positive service delivery outcomes but also by the continuing to improve audit performance outcomes as presented by the Auditor-General from time to time. The fact that some municipalities are still battling with these challenges however brings an onus upon SALGA and other stakeholders to continue in their collective resolve and efforts to support municipalities to systematically and comprehensively deal with the issues.

4. KEY ISSUES

SALGA has identified and prioritised some of the key issues that need to be resolved in the area of local government finances and developed proposals and initiatives to deal with these.

4.1 Review of the Local Government Equitable Share (LGES)

Alongside the Financial and Fiscal Commission (FFC), Department of Cooperative Governance (DCoG) and National Treasury (NT), SALGA is seized with the responsibility of finding innovative and creative financing mechanisms for local government. Though not the only funding source, the local government equitable share is an important instrument for the vertical and horizontal distribution of the nationally raised revenue. How this is done, the formula utilized and the adequacy thereof has been a subject of discussion for some time. While aware that the current formula is being phased in over the Medium Term Expenditure Framework (MTEF), the ongoing dialogue about its suitability cannot be abandoned.

For the 2015/16 financial year Local Government receives 9% of the national allocation. This has been kept steady in the current budget proposals and has been adjusted with the inflation factor. It would appear that the increase in the LGES has not been much percentage wise (from 6% in 2006 to the current 9% in 2015/16) though in real terms the amounts appear significant (R6bn in 2006 to the current R50bn in 2015).

With regard to the provision for basic services, again the current allocations seem just about on par with inflation adjustments.
Table 1: Amounts per basic service allocated through the LGES – 2015/16

<table>
<thead>
<tr>
<th>Basic Service</th>
<th>2014</th>
<th>2015</th>
<th>% increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy</td>
<td>6 289,00</td>
<td>7 122,00</td>
<td>13%</td>
</tr>
<tr>
<td>Water</td>
<td>9 722,00</td>
<td>10 732,00</td>
<td>10%</td>
</tr>
<tr>
<td>Sanitation</td>
<td>7 937,00</td>
<td>8 651,00</td>
<td>9%</td>
</tr>
<tr>
<td>Refuse</td>
<td>6 654,00</td>
<td>7 252,00</td>
<td>9%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>30 603,00</td>
<td>33 757,00</td>
<td>10%</td>
</tr>
</tbody>
</table>

- The 2014 data is derived from Table W 1.22 DORB 2014 PG 92
- The 2015 data is derived from Table W 1.27 DORB 2015 PG 95

NERSA provided municipalities with a guideline tariff increase of 12.20 % - therefore the equitable share just about covers the increase.

Despite this picture, the call for the review of the LGES remains. This among others is borne by the fact that while the LGES has remained steady over the years, the demands for more services from municipalities are increasing. This is aptly demonstrated in the case of the metros which have to deal with inward migration, increasing demands, and an inability to pay for these services by new immigrants staying in squatter camps and in the urban sprawl.

Beyond the point that local government is underfunded from the national fiscus, the challenge is to quantify the desirable increase. A case for the increase in the LGES has to systemically respond to some of these questions:

- It is not only the LGES that funds municipalities. Other indirect grants must be taken into account.
- With the steady increases in the LGES, why does it appear as if there are no improvements in delivery outputs and value for money?
- Why should allocations to local government be increased when municipalities are not spending the limited resources they have/get?
- Why should the LGES be increased when the absorptive capacity of municipalities is questionable and limited?
- The previous increases in the LGES have mainly gone into staff salaries and operational costs instead of service delivery. What guarantees are there that future increases will go to service delivery?
The LGES is meant to fund service delivery gaps not inefficiencies as it currently seems to be the case. What measures could be put up to safeguard against this?

The issues of non-collection of debts owed to municipal is cited as the main cause of financial strain, not the inadequacy of the LGES, etc.

Without being defensive about some of the above assertions, it could be counter argued that they are simplistic over-generalisations. Service delivery statistics from StatsSA’, reports from the Auditor General and section 71 quarterly reports all seem to be pointing towards a mixed bag of performance by municipalities. Accordingly, a more nuanced analysis, on a case by case basis would be necessary to test some of the assertions.

Even so, a general case for increased funding to local government in line with the NDP proposals and responsibilities given to this sphere remains valid. Furthermore, the assertions do not address the reality of developmental and service delivery challenges that continue to be placed on municipalities.

SALGA has done its own analysis of the costs of a basket of services to municipalities. Some of the results, on three pertinent areas, viz. electricity, water and sanitation as depicted in figure 1

**Figure 1: Electricity Cost Comparison to Equitable Share**

![Example Municipalities - Electricity (1)](image)

Calculated Cost  ES Allocation

SALGA / FFC Costing of Municipal Services Report – January 2015
Figure 2 clearly indicates that the cost of delivering electricity services is not adequately funded by the Equitable Share and this also applies to the water services as per figure 2.

Figure 2: Electricity Cost Comparison to Equitable Share

The review of the LGES exercise must therefore take these into consideration. In executing the exercise, consideration should also be given to these questions:

a) What is the optimal funding threshold for local government from the fiscus?

b) Given the limited revenue sources, the rural nature and vastness of our municipalities, is it possible that they could ever be sustainable without continued national and provincial government financial and other support?

c) What support measures should be deployed to stabilize the financial situation in these municipalities?

4.2 Revenue Collection and Debt Recovery

A well-functioning revenue administration is essential to the financial health of any municipality and credit control is a critical component of revenue administration.
Municipalities are owed many billions of rands by residents, businesses, other institutions, and even other spheres of government. Debt owed to municipalities has the potential to cripple the financial position of local government which ultimately affects the delivery of basic services to communities.

Debt for municipal services increased from about R93,4bn in June 2014 to around R98b in September 2014. The amount for outstanding debtors for government represents 5.6 per cent or R5.4 billion of the total outstanding debtors. The largest component relates to households which accounts for 58.6 per cent or R57.6 billion.

It has to be acknowledged that not all the outstanding debt of R98 billion is realistically collectable as these amounts are inclusive of debt older than 90 days (historic debt that has accumulated over an extended period), interest on arrears and other recoveries.

Metropolitan municipalities are owed R54.7 billion in outstanding debt as at 30 September 2014. This represents an increase of R4.9 billion, or 4.0 per cent, from the first quarter of the 2013/14 financial year. Compared to the previous quarter, there is a slight increase of R1.8 million. The City of Johannesburg is still owed the largest amount at R17.5 billion. This is followed by Ekurhuleni Metro at R10.6 billion, Cape Town at R6.6 billion and City of Tshwane at R6.5 billion. The three Gauteng metros constitute 63 per cent of the total debt owed to all eight metros across the country.

Households are reported to account for R30.6 billion or 56.1 per cent of outstanding debt to metros, followed by businesses which account for R15.4 billion or 28.2 per cent. Debt owed by government agencies is approximately R1.5 billion or 2.8 per cent of the total outstanding debt owed to metros.

Secondary cities are owed R19.1 billion in outstanding consumer debt. The majority of debt is owed by households which amount to R11.1 billion or 58.2 per cent of the total outstanding debt. Out of the total debt of R19.1 billion, R15.1 billion or 79.2 per cent has been outstanding for more than 90 days. This represents an increase of 15.8 per cent from the R16.4 billion reported in the corresponding period in the 2013/14 financial year.

Municipalities owed R22.5 billion as at 30 September 2014, an overall decrease of R2.6 billion on the R25.1 billion reported in the fourth quarter of 2013/14. The year-on-year increase in outstanding creditors could be an indication that municipalities are experiencing liquidity and cash challenges.
The complexity of this picture has to be considered in light of the fact that from a macroeconomic point of view the current and future short term outlook for the South African economy is not likely to improve. This will in effect mean that the national revenue base (in terms of taxes) will not grow at previously anticipated rates and will have a direct impact on the portion of the national fiscus allocated to local government as the primary service delivery mechanism.

Also important to note is the fact that the rising debt levels affects the ability of our municipalities to pay their own bills, this problem therefore affects the entire working capital lifecycle of municipalities.

Municipalities are owed approximately R23,6 billion from electricity exchange transactions of which R15,7 billion is aged 90 days and older. Together with debts owed for water exchange transactions these 2 items account for almost 50% of the total amount of R98 billion owed to municipalities.

Of major concern is the debt owed by organs of state. Their share of outstanding debt has continuously grown over the years and represents 4.3 per cent or R4.1 billion of the total outstanding debt owed to municipalities. The aforementioned increase occurred despite the formation of:

a) Provincial Debt Management Steering Committees in a number of provinces to resolve disputed accounts; and

b) Other intergovernmental platforms established to deal with the intergovernmental debt issues such as MinMEC.

In terms of the MFMA, municipalities must report the outstanding debt from other organs of state to the National Treasury which also has a responsibility to settle disputes amongst the organs of state. Unfortunately, the municipalities are of the opinion that not much assistance has been provided by the National Treasury in this regard which is one of the reasons why the debt owing by other organs of state continues to grow.

Collecting the R98bn could go a long way in addressing some of municipalities’ financial and delivery challenges. In pursuing this matter, the following should be considered:

a) The invoking of legislative clauses to compel and oblige state entities to settle their municipal debts within predetermined timeframes;
b) Review of legislation to enable municipalities to leverage various instruments for the collection of household and business debts. This will go with a SALGA led public campaign for the payment of debts; and

c) Implement measures to clean up municipal debt management systems, revenue collection processes and sort out billing systems challenges.

4.3 Unfunded and Underfunded Mandates

Unfunded mandates occur when local government performs the functions of other spheres of government and bears significant costs out of their own revenue sources to fund that function. In providing a broader view on unfunded mandates, the FFC defines unfunded mandates as any obligation (mandate) imposed by a hierarchical superior body (the national or provincial government) on an inferior body (a provincial or local government) without matching funds. In other words, any obligation imposed on local government should be followed by corresponding funds and to a large extent capacity to deliver should be addressed adequately.

A key area of potential unfunded mandates arise through functions undertaken concurrently across the spheres which include the delivery of housing, public transport and roads. Some of the factors that lead to unfunded or underfunded mandates are the following:

- Lack of service level agreements guiding functional assignment;
- Vague agreements (on important aspects of the assignment such as minimum norms and standards to guide service delivery and sufficient funding and payment schedule);
- Underfunded mandates which are sometimes disguised as funded (in instances where organs of state do not provide sufficient funding); and
- Self-adopted unfunded mandates where municipalities take certain functions such as sport upon themselves (mostly with encouragement of other spheres of government).

In all these issues a process is currently underway for all provinces to compile and submit information to SALGA that addresses the following:

a) A concise definition of unfunded/underfunded mandate;

b) Identification of the areas/activities where this is mostly experienced e.g. libraries, museums, environmental regulation and enforcement, regional town planning, passenger transport management, traffic enforcement on national
and provincial roads, vehicle licensing, drivers/learners licensing, housing and others. Municipalities must indicate where each of these items is currently legislated and where it is best placed and performed;

c) A business case must be built around each of these; and
d) A process arrangement for resolutions should be proposed.

The following issues must be considered in addressing this matter:

a) A clear intergovernmental process and timeframes for resolving this item supported by tangible information and a dispute resolution mechanism;
b) An instrument for the management of future assignments and mandates; and
c) The ring-fencing of funds so generated for the intended purpose and subsequent factoring of these in the equitable share allocation of each municipality.

4.4 Regulatory Reforms

The local government environment has continuous financial and fiscal reforms and one the biggest financial reforms currently in progress is the Standard Chart of Accounts (SCOA). The National Treasury has selected 14 pilot municipalities as well as 5 software service providers to test the readiness of municipalities to conform to systems, processes, people and structural requirements as it pertains to the new (SCOA) regulations.

SALGA has developed a “SCOA impact assessment tool” in consultation with selected pilot municipalities. This is meant to serve as the basis for information gathering to inform the SALGA position paper lobbying for grant funding on behalf of member municipalities. A number of concerns have been consistently raised by municipalities on the SCOA reform, which include:

- Inability of some of the current system vendors to accommodate the technical specifications of the SCOA classification framework;
- Capacity and skill constraints on the part of the municipalities to absorb the reform shock associated with change management;
- Funding constraints as municipalities are expected to fund this reform from their own budgets;
- Technical complexity of the SCOA classification framework, etc; and
- Possible audit qualifications arising from the execution of the reforms.
SALGA has welcomed the introduction of the SCOA regulations but has also highlighted a number of concerns. One of these concerns arises from the fact that National Treasury did an independent evaluation of the progress made and “readiness of system vendors” to commence with pilot projects but neglected to conduct the much needed readiness assessment for municipalities. An assessment of that nature on a sample of municipalities could have addressed a number of concerns raised such as:

- More realistic implementation requirements capable of accommodating and operating the standard chart of accounts as prescribed;
- The state of Minimum Business Process and System Requirements;
- The unique nature of local government which would have probably resulted in applying a differentiation approach or phased in implementation; and
- An understanding of the significant expenditure on IT hardware/software/upgrades, business change processes and change management.

As this is not likely to be the last reform in local government, it is important that we consider the following:

a) What protocol arrangements, risk mitigation measures and resourcing arrangements are necessary between reform sponsors and local government when new reforms are proposed for implementation?

b) What differentiation models could be proposed to mitigate the complexity of SCOA on small municipalities?

4.5 Municipal Audit Support Programme (MASP)

In ensuring that our lobbying efforts for better resourcing of local government is balanced, SALGA equally pays attention to how the resources received are managed. As such, the audit outcomes are an important indicator of how municipalities deploy and account for the funds received from the national fiscus and those that they generate themselves.

In presenting the last set of audit outcomes, the Auditor-General indicated that municipalities face various challenges in a number of areas resulting in negative audit results. Three overall root causes of these negative results were identified to be:
a) The slow response by the political leadership in addressing the root causes or risk areas identified by the AG of poor audit outcomes;

b) Lack of consequences for poor performance and transgressions; and

c) Key positions vacant or key officials lacking appropriate competencies.

The Auditor-General further gave a snapshot of progress with audit improvements which indicated a steady and incremental progress as per figure 4.

**Figure 4: Overall audit outcomes over the past 5 years**

In attending to some of the challenges highlighted by the audit outcomes report, in July 2014 SALGA lunched a multi-disciplinary program of support to deal with audit results of municipalities. This program has been branded the ‘MASP’ (Municipal Audit Support Programme), and comprises four strategic areas/pillars for focus namely:

a) Institutional Capacity

b) Financial Management

c) Leadership

d) Governance
Far from being an initiative focusing just on finances and positive audit results, MASP is an all pervasive program seeking to ensure viable municipalities. Most importantly, the issue of a clean audit is diametrically linked to service delivery, institutional viability and public accountability.

Unlike previous initiatives, MASP is under no illusion about short turnaround times and the attainment of clean audits by all municipalities at the same time. Rather, it envisages an incremental approach, dealing in a hands-on targeted manner with the specifics of each municipality.

This requires not only the buy-in and cooperation of the municipality, but also a real time analysis and diagnosis of the situation in each municipality. This is particularly the case given the fact that the Auditor-General report is presented almost a year after the closure of the financial year that was audited. As such, without a real time analysis of the challenges, the situation could be misdiagnosed and the solutions rendered superfluous.

**Proposed incremental changes over a four year period**

Figure 5: Picture SALGA wants to on audit outcomes

The work is already beginning to yield positive spinoffs. Working in partnership with the 79 Red Zone municipalities initially identified, a number of direct and indirect initiatives have already been executed.

Further research on some of the key elements of the turnaround plan is currently being pursued. The results of this analysis will inform and guide SALGA’s support plan in the coming financial year. Suffice to say, the results are beginning to show once again a positive trend as evidenced by the following provisional picture from the Auditor General:
Table 2: Audit Outcomes by category

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>2012/13</th>
<th>2013/14</th>
<th>IMPROVEMENT %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unqualified with NO findings</td>
<td>22</td>
<td>40</td>
<td>18 (82%)</td>
</tr>
<tr>
<td>Unqualified with findings</td>
<td>100</td>
<td>109</td>
<td>9 (9%)</td>
</tr>
<tr>
<td>Qualified</td>
<td>77</td>
<td>68</td>
<td>9 (12%)</td>
</tr>
<tr>
<td>Red Zone</td>
<td>79</td>
<td>61</td>
<td>18 (23%)</td>
</tr>
</tbody>
</table>

The 2013/14 audit outcomes indeed reflect a trend that is positive and a marked improvement over those of 2012/13. A lot more effort is required though in order to reduce Red Zone municipalities significantly. A key element in MASP’s achievements will be to maintain and gradually improve the good results while significantly reducing the red zone municipalities.

As we execute and learn from MASP, the following has to be considered:

a) What audit risks and impact will arise out of the boundary redeterminations and how do we ensure that the affected municipalities do not regress in terms of their audit outcomes?

b) What audit risks, similar to those we encountered with GRAP, will emanate from SCOA implementation and what measures do we put to mitigate these?

c) How do we better work and coordinate MASP execution with Provincial Treasuries and Provincial Departments of local government?

5. CONCLUSION

The document has sketched a number of challenges pertinent to local government finances. It is by no means comprehensive and only serves to facilitate discussion on these and other matters.

The intention is not to theorise the key issues but rather to develop a program of action based on a set of recommendations.

6. RECOMMENDATIONS

The South African Local Government Association invites delegates to consider, and resolve on, the following issues:
a) What is the optimal funding threshold for local government from the fiscus?

b) Which legislative clauses can be invoked to compel and oblige state entities to settle their municipal debts within predetermined timeframes?

c) What protocol arrangements, risk mitigation measures and resourcing arrangements are necessary between reform sponsors and local government when new reforms are proposed for implementation?

d) What audit risks and impact will arise out of the boundary redeterminations and how do we ensure that the affected municipalities do not regress in terms of their audit outcomes?

e) How do we better work and coordinate MASP execution with Provincial Treasuries and Provincial Departments of local government?
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1. INTRODUCTION
Section 163 of the Constitution, recognises organised local government (OLG) as the legitimate voice for local government and affords it representation in key national institutions.

The role of OLG is critical in the developmental state, guided by a constitutional framework in which government’s programme of action and policies are largely driven through the developmental local government sphere. As a full partner in government, OLG is expected to be an active participant in various IGR forums, to provide policy positions on numerous issues and to represent local government interests generally in the intergovernmental system, while providing hands-on support and leadership to its members.

In consideration of the institutional arrangements of the IGR landscape; the SALGA National Conference of 2011 and 2012 as well as the ruling party’s 53rd National Conference in Mangaung in December 2012 took key resolutions in respect of the Review of OLG. In particular, the ruling party resolved (18.1 in the actual resolutions) that:

- SALGA needs to be properly resourced and strengthened.
- Consideration also needs to be given to:
  - SALGA having permanent representatives in the NCOP with the right to vote.
  - SALGA having full-time office-bearers.
  - The national budget meeting the costs of the above.

2. BACKGROUND AND RATIONALE FOR REVIEW

As the key site of service delivery and development, the point of delivery where all spheres of government activities converge, local government must, as a matter of course, occupy its rightful place at the heart of our cooperative governance system.

SALGA performs two distinct roles within the intergovernmental system. First, on a vertical level, SALGA interacts as representative of local government with provincial and national government. Second, SALGA performs on a horizontal level an integrating function in relation to its members, the municipalities. In performing this role, SALGA has a unique and unenviable responsibility wherein it has to secure cohesion and general consensus across most of the 278 municipalities of different categories, types, sizes, political complexion and financial strength. Many of these municipalities, moreover, are still grappling with the challenges brought about by
major transformation and establishment in 2000, as well as ongoing transformation processes at various times and in varying degrees over the last 15 years.

SALGA thus has a clear strategic role to play in, one hand, representing the interests of local government within the system of government as a whole and supporting its members to fulfil their developmental obligations, on the other.

The review of the OLG is timely to ensure that OLG remains relevant, that the constraints hampering its performance are lifted and that it is strengthened and enabled to fulfil its constitutional and legislative mandate to the fullest extent.

The aim of the review, after 15 years of democratic local government in practice and 19 years of OLG, is to identify areas that are constraining OLG from performing its role and fulfilling its own and nationally imposed mandate, and accordingly propose amendments around the functioning and effectiveness of OLG so as to ensure that it remains relevant, responds to the needs of its members and represents local government effectively in fulfilling its policy and legislative mandate.

The ruling party’s resolutions in this regard are a timely indication of the necessity of this review. In particular, it is necessary to review the legislation affecting the ability of OLG to fulfill its constitutional and legislative mandate. If all the dynamics, developments and challenges facing local government are to be negotiated it is critical for SALGA (recognised as that OLG representative) to have a sound and appropriate regulatory architecture in place; one that is geared towards ensuring that it is able to represent, promote and protect the interests of local government, and to find solutions to the problems of local government generally.

3. EVOLUTION OF OLG’S ROLE AND MANDATE

The key policy and legislative prescripts which created and shaped the initial role and mandate of OLG is the:

- Constitution of the Republic of South Africa (1996);
- White Paper on Local Government (1998);
- Organised Local Government Act (1997); and
- The Municipal Systems Act.
Subsequently, SALGA’s role and mandate has been expanded, together with its members’ expectations, through various pieces of legislation imposing obligations on the organisation. In particular, the:

- IGR Fiscal Relations Act (1997);
- Municipal Structures Act (1998);
- Municipal Finance Management Act (MFMA) (2003);
- IGR Framework Act (2005); and
- others specified below.

### 3.1 Key Policy and Legislative Prescripts

SALGA’s key role is the effective representation of local government in the legislative processes of all spheres of government, and in intergovernmental executive processes. OLG is also an employers' organisation, and constitutes the employer component of the South African Local Government Bargaining Council (SALGBC) – the importance of labour matters and their impact on the daily operations of local government is sometimes not fully recognised.

The White Paper indicated that “successful transformation of local government requires that the relations between employer bodies and municipal trade unions are reconstructed around a common commitment to a developmental role for local government.” The negotiation of this partnership, the White Paper went on to say, will require vision and leadership, as well as considerable expertise in labour relations, bargaining, conflict resolution and human resource management and development. The policy makers urged the Department of Labour to support SALGA to develop its capacity as an employer organisation.

To fulfil these roles effectively, SALGA must develop its own policy formulation and advocacy capacity, and develop strong mandating and consultative processes. The White Paper argued that SALGA also has potential to make a strong contribution to the development of municipalities in the country, through, for eg:

- The provision of specialised services to supplement and strengthen the capacity of municipalities;
- Research and information dissemination;
- Facilitating shared learning between municipalities;
- Human resource development; and
3.2 Expansion of SALGA’s mandate through legislation:

Since the Constitution and White Paper (and apart from the OLG Act which is discussed in more detail below), various pieces of legislation have sought to give flesh to the policy objectives of the White Paper and Constitution.

  - OLG must seek to develop common approaches for local government as a distinct sphere of government, enhance co-operation, mutual assistance and sharing of resources among municipalities, find solutions for problems relating to local government generally and facilitate co-operative governance and intergovernmental relations in local government.
  - Several other consultative requirements imposed throughout the Act.

- IGR Framework Act (2005)
  - Makes specific provision for representation of OLG on all national and provincial IGR structures.
  - In 2005, Cabinet Makgotla was extended to include SALGA representatives.
  - Sets out consultation requirements (effectively usurping the OLG Act).

- Intergovernmental Fiscal Relations Act (1997)
  - One of the critical tools in intergovernmental planning and co-ordination is the public sector budget cycle.
  - Local government’s inputs are received through the participation of SALGA in the Local Government Budget Forum.

  - OLG nominates two members to serve on the Commission.

- Municipal Structures Act (1998)
  - Requirements for demarcation processes (sections 4, 12 and 16).
– Makes specific provision that OLG must be consulted.

• Municipal Demarcation Act (1998)
  – Appointment procedure, OLG must designate one member to the selection panel for the appointment of Board members.

• Municipal Property Rates Act (2004)
  – General consultation requirements imposed throughout the Act.

• Municipal Fiscal Powers and Functions Act (2007)
  – Consultation with OLG is required in the authorisation of municipal taxes.

• Water Services Act (1997)
  – Water Service Authority (WSA) submission of its development plan to OLG.
  – Representation of WSAs on a water board must be determined by the Minister after consultation with OLG in the province concerned.
  – Consultation regarding promulgation of regulations.

• Municipal Finance Management Act (2003)
  – Bulk price increases – comment required from OLG.
  – Notifications to OLG for financial problems in municipalities.

• Several other pieces of legislation refer to OLG and expects SALGA to play a role in a number of executive processes and structures:
  – National Health Act (National Health Council);
  – Water Services Act;
  – Disaster Management Act;
  – Road Traffic Management Corporation Act;
  – Commission for Promotion and Protection of the rights of Cultural, Religious and Linguistic communities; and
  – Provincial Legislation.
Indeed, SALGA’s support role can be amplified and fulfilled effectively if the following is also provided for:

- **Section 139 Interventions**
  - IGR support and consultative role of OLG during interventions must be clearly spelt out.

- **Demarcation Act and Structures Act**
  - Should OLG not play a (facilitative) role in demarcation processes? Are the current provisions adequate regarding consultation with local government?

### 4. KEY ISSUES FOR REVIEW (RECOMMENDATIONS)

As indicated in section 2 above, three key issues require attention:

- review of the OLG Act and the extent to which its provisions are enabling or constraining the fulfillment of its mandate, with particular reference to the legislative process;
- funding model of, and increased financial support to, SALGA; and
- appropriateness of the Public Finance Management Act listing of SALGA as a public entity, and alternative accountability options.

Since this paper is an overview of the rationale for the review of OLG, it will not go into detail on the three aspects requiring review, but merely present a summary of the key challenges and proposals. Each aspect is covered comprehensively in previous governance structure reports.

#### 4.1 Review of OLG Act (52 of 1997)

Section 163 of the Constitution, recognises organised local government as the legitimate voice for local government and affords it representation in key national institutions. The section further provides that an Act of Parliament must cater for the recognition of national and provincial organisations representing municipalities, and determine procedures by which local government may consult the national and provincial government, designate representatives to participate in the National Council of Province (NCOP) and nominate persons to the Financial and Fiscal Commission (FFC).
The OLG Act provides, in very brief terms, for four key things:

- the recognition of national and provincial organisations representing the different categories of municipalities;
- procedures by which local government may designate representatives to participate in the National Council of Provinces;
- procedures by which local government may consult with national and provincial govt;
- procedures by which local government may nominate persons to the FFC.

While the Act gave effect to section 163 of the Constitution (informed by the conditions of the day), various anomalies arise and have been overtaken by the governance and IGR framework of the Republic and is out of sync therewith.

As mentioned above, legislative amendments to effect these changes are necessary and require the attention of the Ministry of COGTA who is responsible for the administration of the OLG Act and is also the organisation’s executive/ regulatory authority as a Chapter 3A Public Entity (PFMA).

4.1.1 Recognition of OLG

Section 2(1) provides that “subject to section 6, the Minister must (a) recognise one national organisation representing the majority of the provincial organisations”. SALGA’s submission in this regard is that the membership structure of the national body representing OLG should be changed.

- Thus Section 2(1) (a) of the OLG Act should be amended to read that the national body is to be the representative body of the majority of municipalities.

This proposal only affects the recognition requirement of the national association; it does not affect the status of provincial associations. They would continue to exist and represent the majority of municipalities in their respective provinces.

4.1.2 Complete participation in the NCOP – SALGA participation in Provincial Legislatures

While local government and SALGA’s participation in the NCOP and provincial IGR structures is entrenched in legislation, no similar provision is made for OLG’s participation in provincial legislatures – this is a particular anomaly given the make-up of the NCOP where mandates are derived from provinces. The need to ensure
effective oversight and vertical and horizontal accountability is now paramount, with the role and status of SALGA in provincial legislatures clarified.

In our view, it could not have been the intention of the Constitution that organised local government should not, despite the absence of express Constitutional or legislative provisions, participate in the building blocks of the second House of Parliament when its participation in the NCOP is so well entrenched and guaranteed by the Constitution of the Republic.

The legislative process in the NCOP requires consultation and seeking mandates from Provincial Legislatures. Participation of SALGA at a provincial level is therefore critical in order to influence processes at that level and thereby ensuring that SALGA’s view also carries the provincial mandates and is uniform across the nine provinces.

Not only will this complement SALGA’s engagement at national level, but is necessary to ensure that indeed local government (through its organised voice) speaks as one collective, rather than nine different voices at provincial level and a national view. It is critically important that SALGA be involved from the outset when dealing with legislation referred by the NCOP, so that the voice of local government can be carried within provincial mandates - beginning at the stage of provincial briefings by NCOP permanent delegates.

The participation of organised local government in provincial legislatures is critical to ensure engagement with legislative processes from the ground level so that sufficient dialogue takes place between members of provincial legislatures and mandated councillors about the dynamic between the (sometimes competing) interests of provincial and local government even before the matter comes before the NCOP.

The Constitution gives local government a fair window of opportunity to engage at national level but the participation of organised local government in provincial legislatures can be significantly strengthened to foster effective oversight and intergovernmental relations in the provinces.

It is our view that an amendment to the Organised Local Government Act is necessary to entrench the participation of organised local government in provincial legislatures as well as accommodation of that participation in the Rules of Provincial Legislatures. This will result in much more dynamic interaction with local government at provincial level and bring us yet another step closer to the integrated
governance model so desired in our developmental state. Only then will the role of Parliament and Provincial Legislatures, as the key vehicles for participatory democracy and cooperative governance, be strengthened through more effective collaboration and improved oversight.

We base this on our firm belief that it is highly desirable in a developmental state, where government’s programme of action and policies are largely driven through the developmental local government sphere, that the voice of local government must be heard at all stages in the law-making and oversight process so as to ensure that laws and the implementation of policy is practical and implementable at local level. Indeed, the Constitutional design lends itself unambiguously to that construction and should be followed through.

Accordingly, it is proposed that:

- The OLG Act should be amended to entrench the designation of councillors to participate in provincial legislatures, similar to the NCOP.

**4.1.3 Full time political leadership at helm of SALGA**

Effective political leadership is of paramount importance if the organisation is to deliver on its mandate. SALGA represents local government in various intergovernmental forums such as the National Council of Provinces and the Budget Forum. Substantial political leadership is therefore required if SALGA is to assert its right to participate in these strategic intergovernmental structures.

The current political leadership of SALGA have been drawn from leading politicians in metros and districts countrywide. This leadership works for SALGA on a voluntary basis and spend most of their time doing their full time jobs. Consequently, because of their commitments elsewhere, there is usually no time to attend to SALGA business thereby compromising on its effectiveness in the intergovernmental structures. At most, leaders are only able to do about 30% of what they are otherwise required to do for SALGA.

It is widely accepted both from within and outside SALGA that it has not, as an organisation, been able to adequately represent local government in all strategic intergovernmental forums. As far back as 2002, the Steytler Commission made the following findings on local government and organised local government:

- That the effective participation in the intergovernmental relations system requires political leadership. This participation entails making political choices
and co-coordinating policies and programmes. The effective and full participation in the system therefore requires political leadership from organized local government.

b) That SALGA has not been able to participate fully and effectively because its political leadership has pressing commitments elsewhere, limited resources, and lack continuity in representation, among others.

c) That SALGA’s participation in the system of intergovernmental relations can be improved significantly by the election of full-time political leadership that will represent SALGA in intergovernmental relations structures as well as give guidance on policy issues.

In this regard, full-time councillors to act decisively or intervene decisively on behalf of local government in intergovernmental structures and binding consultation powers in respect of policy and legislation is a critical lever if SALGA is to be effective as a representative body of local government. Failing this, SALGA will continuously struggle to represent local government at the least, adequately, or at best, effectively.

Since then, the call for full-time political leadership for SALGA has been made. The reasons for this call have been the following:

a) Full-time leaders would be able to devote all their time and energy to SALGA issues. This will deal with the problem of divided loyalties and time prioritization. The full-time office bearers would be available for deployment to the intergovernmental structures where they will advance the SALGA position.

b) Immediate and decisive action would be possible because full-time office bearers will be able to take immediate and decisive action when the situation demands it.

c) Local government integrity would be preserved. The availability of full time office bearers will mean that SALGA will be better placed to deal with problems in municipalities and help in reigning in its own members thereby preserving the integrity of local government as a sphere of government capable of policing itself.

d) There is a clear need for political leadership on particular issues and guidance on the national perspective.
It is proposed that the Municipal Structures Act be amended to make provision for a number of full time councillors to serve at the helm of SALGA and determine procedures by which members may designate elected councillors to serve at SALGA. Legislation should also make provision for the remuneration of such councillors, which would require amendment of, among others, the Systems Act and possibly MFMA.

An amendment of the Municipal Structures Act and accompanying Schedule be effected to make provision for a number of councillors (possibly 10) to be elected to serve as full-time for Organised Local Government. This could be done in the same manner as local councillors are nominated to serve on the District Council, but the nomination and election to OLG should take place at its National Conference. Only proportional representation councillors are eligible for election to OLG, since ward councillors are there to serve their particular constituencies. A proportional councillor is not directly elected.

It is proposed that where a vacancy occurs in a municipality due to one of its councillors being elected to serve OLG, provision be made in legislation for such municipality to fill the vacancy from the party list system. In other words, the vacancy shall be filled by the next councillor on the list from that political party whose councillor was elected to serve OLG.

Once full-time councillors are made available to SALGA, special dispensation for those councillors serving at the helm of SALGA must be provided for in the annual Upper Limits Notice, paid from the national fiscus. It is suggested that those councillors be paid in accordance with that of a Speaker in a grade 6 Metropolitan Municipality. This will ensure that senior and experienced local government politicians are representing local government at national level.

The Municipal Electoral Act of 2000 makes way for a combination of ward and proportional elections, the process of which could be employed to nominate members to serve as full time representatives in OLG.

4.2 Funding Model and Increased Financial Support

OLG is primarily funded by and dependent on membership fees payable by municipalities. Correctly, this keeps the Association accountable to the municipalities that constitute it.

However, given the expansion of the mandate of OLG in terms of the legislative framework and its mandatory participation in the NCOP, the White Paper on local government rightfully argues that “for OLG to be effective, additional sources of
funding will need to be accessed… the functions performed by OLG require wide-ranging, high-level and specialised human resources.”

The White Paper stated that “national and provincial government are committed to assisting OLG, and have made provision for funding OLG on a rand-for-rand basis out of the equitable share (local government portion) of national revenue.” This did not happen then and is certainly not the case now.

SALGA’s major risk (financial and in terms of meetings if legislative and support obligations) is that it is mainly reliant on the levies from member municipalities. SALGA’s operating budget for the 2012/13 financial year comprised of only 7% (or R26 mil) from the national grant, despite the White Paper’s promise of co-funding from national and provincial government. From 2016-17, SALGA will not receive any funding from the national fiscus.

SALGA’s attempts, however, to source additional funding have been difficult, particularly as a direct result of the limitations of its listing as a public entity under Schedule 3 of the PFMA.

The complete reduction (to 0) of the equitable share allocation to OLG raises the question as to the continued relevance of its listing as a public entity.

4.3 Appropriateness of SALGA’s listing as Public Entity

Presently SALGA is registered as a Schedule 3A Public Entity in terms of the PFMA of 1999, and as such reports to the Minister of COGTA. Chapter 1 of the PFMA defines a national public entity as:

(a) a national government business enterprise; or

(b) a board, commission, company, corporation, fund or other entity (other than a national government business enterprise) which is –

(i) established in terms of national legislation;

(ii) 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

(iii) accountable to Parliament.
It is clear that there are indeed contradictions between the unique nature of OLG and the institutional form of a public entity. The listing of SALGA is clearly not in line with the requirements of the PFMA in terms of the nature of organisations that must be listed.

Given these contradictions, in practice it is difficult for the Executive Authority to exercise the oversight required in terms of the PFMA, on one hand, and on other for SALGA to comply with the requirements of the PFMA. SALGA, as a public entity, conflicts with the notion of it being an independent and voluntary association representing local government interests and therefore answerable to its constituent members, rather than the Minister or national government.

However, more importantly, the current limitations prevents the association from fulfilling the mandate of the White Paper and Systems Act, to provide specialised services to build the capability of municipalities and to find solutions to the problems of local government generally. To do so requires adequate resources which the White Paper envisioned, but was not followed through.

Since SALGA will no longer receive any revenue from the fiscus, it would seem an appropriate and opportune time to free SALGA of the public entity listing, so as to raise its own additional revenue and provide cutting edge solutions to the challenges of local government, through specialised services, smart systems and product solutions. This will enable SALGA to provide the leadership, excellence and innovation envisaged in the policy and legislative framework, and expected by its members.

It is not here argued that OLG should not be accountable, on the contrary; but as a public entity receiving no revenue from the fiscus it is not clear for what it would account to national government, since it is using its own derived revenues to fulfil its mandate. An alternative listing appropriate for the nature of its mandate and expected role should be explored, including a comprehensive OLG Act covering its status and functions, governance arrangements, and accountability and funding model.

It is accordingly recommended that a substantive process be embarked upon before the 2016 local government elections to reconsider SALGA’s listing as a public entity and ensure an appropriate accountability model so that the organisation is able, within an appropriate framework, to play the role envisaged by the Constitution, White Paper and legislative framework.
5. CONCLUSION

In order to fulfil its policy and legislative mandate, changes to the governance framework of SALGA is critical at this juncture of Organised Local Government’s lifespan. As a full partner in government, OLG is expected to be an active participant in the various IGR forums, to provide policy positions on numerous issues, and to represent local government interests generally in the intergovernmental system.

A strong and effective SALGA is vital to the optimisation of our developmental objectives and cooperative governance system. In our proposition, the Review of OLG should be approached from the viewpoint of SALGA’s nature as a member’s organisation and its accountability as such, and how to strengthen SALGA by devising the most appropriate regulatory framework for its optimal functioning, having due regard to its role as outlined in the Constitution, White Paper and its place in the cooperative governance system. SALGA certainly has no desire whatsoever to be divorced from that framework.

SALGA must have a conducive and sound governance architecture, with a suitable accountability framework in place that will facilitate better representation, support and fulfillment of its constitutional and legislative obligations, as well as responsiveness to members’ expectations and demands.

Key to this approach, with the approval of members, is to formally engage the Minister of COGTA to discuss the key aspects of the Review of OLG, but further work and engagement must focus on giving content to, and actioning, the resolutions such that OLG is able to play the role demanded of it by its members and the intergovernmental system.

6. KEY QUESTIONS FOR CONSIDERATION

The South African Local Government Association invites delegates to consider, and resolve on, the following issues:

- The comprehensive review of the OLG Act and the extent to which its provisions are enabling or constraining the fulfillment of its mandate, with particular reference to the legislative process;
- The funding model of, and increased financial support to, SALGA; and
• The appropriate accountability model for OLG that would enable it to play the role envisaged by the Constitution, its own Constitution, the White Paper and the legislative framework?