

“A PASSION TO GOVERN”:
THIRD-GENERATION ISSUES FACING LOCAL GOVERNMENT IN SOUTH AFRICA
Centre for Development and Enterprise, June 2002

**“A PASSION TO GOVERN”¹:
THIRD-GENERATION ISSUES FACING LOCAL
GOVERNMENT IN SOUTH AFRICA**

A Think-piece in the Interests of Public Debate on Local
Government

Compiled by:

Doreen Atkinson

**Democracy and Governance Programme,
(Human Sciences Research Council)
and other contributors**

June 2002

¹ The words of Mr Ryk, Head of Administration, Siyancuma Municipality, Northern Cape.

Contributors

Dr Doreen Atkinson (compiler)

With contributions and comments by:

Alastair McIntosh

Koos Smith

Jaap de Visser

In addition, comments on the draft paper were received from Prof. Roger Southall (HSRC), and from the CDE. The compiler wishes to thank them for their inputs.

Disclaimer: This Think-Piece is a collective outcome of several points of view. The Compiler gratefully acknowledges the contributions of the participants in this process. The Compiler remains responsible for the final outcome, and no single contributor can be held responsible for the views expressed in this document.

Contents

A. Introduction	4
B. Making comparisons and generalizations: Some caveats	7
C. “Third-generation” issues facing local government	9
D. Local government amalgamation: Birth pains of the new local government order	12
E. Councillors in the new municipal order: “The courage to lead and the passion to govern”	17
F. The first stage towards developmental municipalities – Writing IDPs	21
G. “The Dog That Caught The Bus”: Developmental challenges arising from the implementation of IDPs	25
1. Creating a development-oriented municipal organisational structure	26
2. Spatial structuring	30
3. Integrated planning – who should do it?	32
4. Integration of municipal departments: A challenge for Municipal Managers	32
5. Information management, monitoring and evaluation: The costs of ignorance	36
6. Credit control strategies: Towards developmental approaches	39
7. Front-line staff – municipalities’ best-kept secret	41
8. Public participation in development planning and implementation	44
H. District and local government: “The powers and functions debate”	46
I. Creating a supportive intergovernmental system for Local Government	53
1. Formal assignment of functions	54
2. Devolution by stealth: The hidden killer of local government	60
3. Reconceptualising intergovernmental fiscal flows	67
4. Training of councillors and officials: What training can and cannot do	70
5. Public-private partnerships	71
6. Support by national and provincial sectoral departments: The void in the system	73
7. Conclusion – taking the bull by the horns	76
J. Municipal government in marginalised areas: Capturing the “uncaptured citizenry”	77
Conclusion	83

A. Introduction

Local government stands at the threshold of a new phase in its development. South Africa has proceeded through at least phases of development:

- “First Generation Issues” (post-1995-8) concerned primarily the political questions regarding the amalgamation of racially-defined municipalities, in the light of the Local Government Transition Act². This phase was explicitly “transitional”, and consequently municipalities were referred to as “Transitional Local Councils” or “Transitional Rural Councils”. There was no overarching paradigm for steering municipal capacity-building, with the result that local governments in different parts of the country developed very different styles of functioning. At the time, analysts lacked a normative paradigm to evaluate or guide the process of amalgamation, and studies tended to focus on the minutiae of particular municipalities.³
- “Second Generation Issues” began to be raised as part of the 1998 Local Government White Paper process. The compiling of the preliminary discussion document, and subsequently the Green Paper and White Paper, were highly consultative processes. These debates attempted to flesh out the meaning of the constitutional provisions on local government. During this phase, over-arching normative questions were addressed, culminating in the key concept of “developmental local government”. This phase culminated in the drafting of the Municipal Structures Act and the Municipal Systems Act. It was taken forward in the re-demarcation of local government and the election of new municipalities in December 2000. Unlike the First Generation phase, the Second Generation phase emphasized the overall vision and rationale of local government.
- “Third Generation Issues” have prevailed since January 2001.⁴ These concern questions of practical development management, within the normative framework

² Act no. 209 of 1993.

³ The “Reality Check” study, undertaken in 1998 on behalf of the erstwhile Department of Provincial Affairs and Constitutional Development, exemplified this focus on empirical idiosyncrasies of specific municipalities. The same approach is found in the EISA volume, *From a Tier to a Sphere: Local Government in the new South African Constitutional Order*, Heinemann, 1998.

⁴ During the 1990s, various public administration specialists produced useful guides to municipal administration, and these should be revisited during the next few years. Examples are P.S. Reddy (ed), *Readings in Local Government, Management and Development: A Southern African Perspective*, Juta 1996; and Nazeem Ismail et al, *Local Government Management*, Thompson, 1997. An early examples of a third-generation orientation is DBSA’s *Development Report: Building Developmental Local Government* (December 2000). A recent example is the Ministerial

of the White Paper and key legislation. Third Generation Issues are concerned with a developmental style of functioning. They concern the desirable *outputs* of municipal activity (i.e. municipal developmental policies and programmes) as well as with *way in which activities should be conducted* (e.g. by means of integrated planning, public participation and “alternative service delivery”).

This Think-Piece is meant to provoke thought about “third-generation questions”. Typically, the issues concern practical issues of organisational design, financial flows, human resources, and service provision. Such questions lie somewhere between the extremes of general visions and specific local detail. The paper takes the current normative framework of local government (as espoused in the Local Government White Paper) as a given, and attempts to address the practical matters facing the municipal sphere of government. The purpose of the Think-Piece is to serve as a groundwork for policy debates on specific municipal management issues.

This is not to deny that many normative debates still need to be undertaken – for example, the desirable degree of involvement of the private sector in municipal service delivery; the trade-offs between the urban and rural developmental tasks of municipalities; the allocation of powers and functions between district and local municipalities; or the authority of municipalities vis-à-vis national and provincial departments in the design and implementation of Integrated Development Plans (IDPs).

However, these debates will take place within a generally-accepted institutional and normative framework. All stakeholders agree on the fundamentals: the importance of the local government sphere as the main delivery agent; the need to deepen local democracy by means of public participation; the need to consider alternative service delivery methods; the need to professionalise Councillors (and in particular, full-time Councillors); the need to create a sufficient fiscal base for municipal governments; the need to secure national and provincial departments’ commitment to municipal IDPs; and so on.

There will still be many debates in future, but they will largely be about the ways in which the elements of this framework should be promoted. There will inevitably also be normative disagreements, since practical developmental issues invariably have normative dimensions. But for the foreseeable future – the next five years - we are moving to debates about realistic scenarios and practical trade-offs.

The paper covers the following five main fields of inquiry:

- Municipalities’ experiences regarding the amalgamation process
- The challenges facing councillors in the new municipal system

- The IDP-drafting experience, and management implications of implementing IDPs;
- The intergovernmental fiscal system and relations between national and provincial departments and local government; and
- The issue of developmental role of municipalities in marginalised areas (informal settlements, commercial agricultural areas, and remote rural communities).

As part of these five themes, numerous specific topics will be addressed, including the functioning of Councils, the organizational restructuring of municipalities, the role of public participation, and the division of functions between District and Local Municipalities.

The issues raised here are wide-ranging, and necessarily at an insufficient level of depth. Constraints of time and space prevent adequate attention to be given to each of the issues raised, and as such, they should be regarded as spring-boards for discussion.

They are primarily raised to show the need for sustained and coherent policy debates about practical questions of municipal service delivery. Ultimately, they serve as a plea for key stakeholders to come together, compare their experiences, utilize available information, and put together the next generation of policies and programmes to support municipal government.

While many of the insights seem critical and judgmental, this is not the purpose of the paper. The paper is intended to be a positive contribution to the thinking of policy makers. It is based on several researchers' deep and long-lasting concern for the future of municipal government. There is no more time for political point-scoring. The “name of the game” is now Development and Delivery, and the overriding purpose of this paper is to make a useful contribution in this regard.

B. Making comparisons and generalizations: Some caveats

Each municipality has its own configuration of characteristics and problems. Consequently, when analysing municipal problems, there is a danger of sinking into a sea of minutiae and details. Furthermore, there is a danger of “premature generalization”, i.e. when examples and issues from one or two municipalities are held up as a general characteristic of all municipalities. In South Africa, there are very few analysts who have experience of a large number of municipalities, particularly cases drawn from different Provinces.

There are two additional methodological caveats:

- There is far too little research and writing being undertaken on the actual functioning of municipalities, with the result that secondary reports are scarce. This worsens the problem of the fragmented, sketchy and idiosyncratic picture which is presented in this report;
- Information contained in this report tends to be drawn from actual municipalities’ experiences, and pays insufficient attention to the efforts of government officials, particularly in provincial Departments of Local Government or the national Department of Provincial and Local Government (DPLG). There is often a large discrepancy between what government officials do or intend to do (often with limited budgets and in difficult circumstances), and what municipalities actually experience. Consequently, the picture presented in this report will tend to be more negative than what some government officials may believe is appropriate. Once again, additional research is called for, which will balance various perspectives.⁵

There is a real need for systemic comparisons of municipal functioning, along a number of key variables or indicators. What those indicators must be, however, is another matter. One problem is that different analysts focus on different aspects of municipal governance, with the result that an unbalanced emphasis is typically placed on financial, or spatial, or economic, or planning issues. Another problem is that there are very few municipal analysts who have come forward with useful organizational indicators. This is partially due to the varied nature of municipal organizational characteristics and indicators, and partially due the relatively few organizational specialists active in the municipal field.

⁵ This Think-Piece was not intended to be a Research Report, and cannot therefore claim to be a thorough analysis of the complex issues and perspectives facing local government.

There is therefore enormous scope for a sharing of analytical insights and empirical research amongst Municipalities and other role players. The Horizontal Learning Facility, recently launched by the Department of Provincial and Local Government (and funded by USAID), should make a ground-breaking contribution in this regard. Furthermore, DFID’s LOGOSUL⁶ programme is aimed at piloting innovations within specific municipalities, and subsequently disseminating the experiences and lessons. However, even these well-considered initiatives may encounter obstacles, primarily in the lack of a culture of “horizontal sharing” between municipalities, as well as a lack of effective knowledge-sharing mechanisms amongst national and provincial departments. Many Departments and Municipalities are so overwhelmed by their workload⁷, that it is difficult for them to find the “head-space” to engage with their peers and consider alternatives or innovations.

This think-piece will make many observations which are tentative and insufficiently grounded in empirical observation, and warrant additional research. In many cases, they are drawn from a relatively small number of municipalities. As such, the factual basis for the paper is necessarily incomplete. Studying the municipal system is a vast undertaking, even in the light of the greatly reduced number of municipalities. Each of the themes identified below warrants a great deal more empirical investigation, in order to capture the variety and complexity of municipal experiences.

However, the themes do have the benefit of emanating from several analysts’ experience⁸, and therefore are based on observations in several provinces and developmental contexts. An additional source is the ongoing research undertaken for a variety of clients⁹, and this tends to have a bias towards smaller and more rural municipalities. The experiences of larger and more sophisticated municipalities will require separate treatment, in order to do them justice.

⁶ Local Government Support and Learning Network.

⁷ Particularly in the light of the administrative amalgamation process, following the re-demarcation of local government.

⁸ Alastair McIntosh (MXA) has more than 10 years’ experience in municipal analysis, evaluation and support, primarily in KwaZulu-Natal, Northern Province and the Eastern Cape. Dr Koos Smith, who acts as policy adviser to the Free State Local Government Association, has more than twenty years’ practical and research experience in municipal government, primarily in the Free State. Jaap de Visser works for the UWC’s Local Government Law Bulletin.

⁹ Doreen Atkinson’s work has focused primarily on municipalities in the Free State, Northern Cape. Various studies were undertaken, including an assessment of municipalities in the southern Free State for DBSA, an assessment of rural local government for the World Bank, and a capacity assessment of Northern Cape municipalities for DWAF. Since January 2001, she has been intimately involved with municipalities, as part of the process of writing Water Services Development Plans. She also undertook an evaluation of municipalities in KwaZulu-Natal and the Eastern Cape, as part of the evaluation of DFID’s LOGOSUL programme. She is currently working on a study of 8 local municipalities in the Karoo region, with special reference to linking IDPs to municipal organisations and budgets.

C. “Third-generation” issues facing local government

The term “developmental local government” was coined in the Local Government White Paper in 1998: “Developmental local government is local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives” (1998: 17). Furthermore, the White Paper continues, “developmental local government” has four inter-related characteristics:

- (1) Maximising social development and economic growth
- (2) Integrating and co-ordinating development activities of a variety of actors
- (3) Democratising development by empowering communities to participate meaningfully in development, and
- (4) Providing leadership, promoting the building of “social capital”, and creating opportunities for learning and information-sharing.

The two key pieces of municipal legislation¹⁰ have given substance to these characteristics by innovations such as ward committees, cross-border municipalities, a code of conduct for councillors, integrated development planning, performance management, development partnerships, and alternative service delivery.

A new culture of municipal governance is envisaged by recent municipal legislation.¹¹ New service delivery models include strategies that should:

- Be customer oriented;
- Have a strong emphasis on performance;
- Measure performance within the organisation, as well as against other municipalities and private sector organisations;
- Work in partnerships in service delivery with the broad community, including the private sector;
- Allocate and use funds on the basis of measurable results;
- Tie all resource systems to rewarding results;
- Provide for continuous evaluation of results through performance audits, and
- Use results as a basis for continuous quality improvement.

These are formidable strategic guidelines for new municipalities in a developing country.

Furthermore, some national line departments – notably Department of Water Affairs and Forestry – have made various policy interventions¹² that have impacted on municipalities.

¹⁰ The Municipal Structures Act (1998), and Municipal Systems Act (1999).

¹¹ Erwin Schwella, “New models for service delivery in Local Government”, *IMFO*, March/April 2001.

Examples of such interventions are the requirement that municipalities write Water Services Development Plans, and that they introduce free basic water policies and block tariffs.

It is at this level of intervention – i.e. specific departmental policies and regulations – that the system of local government is now in urgent need of support. While there is broad agreement on the vision of developmental local government¹³, the practical steps and interventions required to give practical substance to that vision still need to be developed. In sum, there is a need for coherent, well-designed, and adequately resourced mechanisms to assist municipalities with “third generation” or developmental issues and delivery problems. DWAF’s initiatives have been problematic – not in principle, but because they have not been matched by a coherent system of support of local government within other parts of the governmental system.

Despite the empirical limitations of the paper (or because of them!), this paper will attempt to move beyond specific practical manifestations of problems, to more systemic issues. The paper will tend to focus on *problems* of local government. This is not because the compiler considers local governments or the local government system to be fundamentally flawed. On the contrary; the Municipal Structures Act and Municipal Systems Act, based on the Local Government White Paper, have laid the parameters for a very strong system of local government. Rather, it is because of the sheer urgency to address the developmental challenges facing local government. There are enormous developmental expectations placed on municipalities by their residents, and the political pressure to deliver is immense.¹⁴

We are now at the stage where Third-Generation Questions have to be posed. These are primarily of a developmental and management nature. The nub of the matter is: “How should municipal governments, and their administrations, be structured, resourced and supported, in order to fulfil their developmental mandate, as enshrined in the Constitution?”

Because conditions in each locality are so different, it is possible to become mired in local and specific details. As observed above, this paper will avoid this difficulty by presenting general and systemic observations regarding the management innovations and interventions required. Some of these observations may well sound highly critical; nevertheless, they are not meant to be critical in a destructive sense. They are presented forcefully, to urge for national, provincial and local role-players to focus on urgent questions of municipal developmental capacity.

¹² Usually in partnership with the Department of Provincial and Local Government (DPLG).

¹³ I.e. that municipalities should be the spear-head of development and service delivery. Nevertheless, there remains many divergences between specific Departments’ developmental goals, as well as their approaches towards building municipal capacity.

¹⁴ In mid-2002, there have been several cases of street-level conflicts between residents and municipalities, for example, in Postmasburg and the East Rand.

Why should such matters be treated with such urgency?

Since the municipal elections of December 2000, many municipalities have experienced serious difficulties in adjusting to the new demarcation and the new requirements posited in the Municipal Systems Act. These difficulties are not because the fundamental vision regarding municipal government is at fault. Rather, it is because various role players (particularly at national level) are directing diverse – and often contradictory – mandates and requirements at municipal governments, at a time when municipalities are still reeling from the consequences of the dramatic spatial restructuring caused by the re-demarcation process. Often, the motives of these national stakeholders are not at fault either – in fact, many politicians and government officials are keen to help local governments to become the spearheads of development envisaged in the Local Government White Paper. But there is a sense of a lack of overarching strategic direction and integration in the alignment of municipalities within their new developmental role.

Such a lack of strategic direction and integration is, in itself, probably not surprising. South Africa is undergoing change at a phenomenal rate, and the number of experienced change agents and management specialists in a developing country is always very small.¹⁵ Furthermore, many change agents within national departments had little or no governmental experience before 1994, and new officials are currently drawn into government from non-governmental sectors. This is a matter beyond the scope of this paper; but the low level of real experience regarding municipalities within the higher echelons of government is a cause for concern.

Again, this point is not intended to question the motives of the officials who function as change agents. It is, rather, to flag the need for inclusive debate and sharing of expertise regarding the various aspects of the change process, so that the number of expensive mistakes can be avoided, and so that clear and coherent guidance can be provided to municipalities – as a matter of urgency. It is hoped that this paper will contribute to debates on practical and strategic issues.

¹⁵ “Change experts” from other countries do not always have the contextual sense of the environment within which change must take place in South Africa.. There also appears to be a complete lack of appreciation for and willingness to involve serving and former public servants and municipal employees with vast knowledge and experience and who want to help in bringing about constructive changes in municipal government.

D. Local government amalgamation: Birth pains of the new local government order

After December 2000, municipalities faced two immediate tasks. The first was to amalgamate the erstwhile TLCs and TRCs into single municipal administrations. The second was the task imposed by DPLG on the newly constituted municipalities to write Integrated Development Plans (IDPs). (The due date was given as March 2002 for the completion of the IDPs). The issue of IDPs is discussed in the next section; here the magnitude of the consolidation and amalgamation process is examined.

The impression is gained that the sheer scale of the administrative integration process, caused by the new demarcation, has been radically underestimated by decision-makers. The integration of administrative, financial and information technology systems of several previously autonomous municipal administrations, has proven to be time-consuming, complex and difficult. Some of these problems are due to the sheer logistics of very different municipal administrative systems. For example, staff with very different task descriptions, and who received different levels of remuneration, have had to be integrated into a common organogram. The new municipalities have had to integrate different tariff structures for municipal services, as well as different levels of municipal rates. Different credit control policies and indigent policies have had to be aligned. Asset registers and insurance policies have had to be consolidated – often in municipalities with poor systems of data management.

Significantly, the Auditor-General reported in April 2002 that the full amount of funding which was made available for the integration and restructuring process, was much less than the anticipated costs of amalgamation: “The total fiscal implication was estimated at **R1,7 billion**, but due to the limitation of funding, it was determined that national government would not be in a position to fully finance all the transition costs. Partial funding was therefore adopted. A total of **R550 million** is to be made available to municipalities from the national fiscus through the Transition Fund and will be paid over three years. During the 2000-1 financial year, a total amount of R100 million was allocated to all municipalities to assist them in coping with the one-off establishment and administrative costs associated with the reorganisation of municipalities due to re-demarcation of boundaries.”¹⁶ The Auditor-General’s report notes “with concern that the bulk of this cost is being devolved to local government, which in some cases is already in a dire financial position”.

The Auditor-General’s Report also notes that one of the symptoms of the amalgamation difficulties experienced by municipalities is that many municipalities have not been able

¹⁶ General Report of the Auditor-General on Audit Outcomes for the Year Ended 31 March 2001, RP 58/2002, page 88-9.

to submit financial statements. The position had improved during the last two financial years, but the Report notes that “it is still a matter of concern that the majority of municipalities are not in a position to comply”:¹⁷

Table 1: Submission of financial statements by municipalities]

	% municipalities which submitted financial statements by the due date	% municipalities which submitted within a year of the due date	% which had not submitted a year after the due date
1998-9	21%	62%	17%
1999-2000	27%	68%	5%

Various government programmes have been launched to support municipalities during the transition period. These include¹⁸:

- *Local Government Support Grant (LGS)*, made available by DPLG: Aimed at assisting medium and small municipalities experiencing severe financial problems to restructure their financial positions and organizations over the medium term. This includes the provision of technical expertise to municipalities in the form of management support programmes (MSP).

For example, in the Free State, Moqhaka Municipality (Kroonstad, Viljoenskroon, Steynsrus) received just over R4 million for the 2001/2 financial year. The most fragile municipality (Kopanong, which consists of 9 erstwhile TLCs and a TRC) received R2,6 million. Thirteen other municipalities in the Free State received between R1-2 million, while 4 municipalities received less than R1 million.¹⁹

- *The Financial Management Grant (FMG)*, made available by National Treasury: To promote reforms to municipal financial management practices, including the modernisation of budgeting, financial management, accounting, monitoring systems, and implementation of the Municipal Finance Management Act. The outputs include the preparation and implementation of multi-year budgets meeting national standards, the adoption of GAMAP²⁰, and improvements in internal and external reporting on budgets and financial information. R60 million was made available for 2001/2, for allocation to pilot municipalities.²¹

¹⁷ General Report of the Auditor-General on Audit Outcomes for the Year Ended 31 March 2001, RP 58/2002, page 81.

¹⁸ This overview excludes the various infrastructure and developmental grants made to municipalities, for example, the Local Economic Development grants, community-based public works grants, the National Electrification Fund (NEP) grants, the Urban Transport Fund, the Consolidated Municipal Infrastructure Programme (CMIP), and the Integrated Sustainable Rural Development Programme (ISRDP) grants. The focus in this paper remains primarily on the management capacity of municipalities. The PIMS grant is discussed in the next section.

¹⁹ *Free State Provincial Gazette*, 28 January 2002.

²⁰ Generally Accepted Municipal Accounting Practices.

²¹ *Government Gazette*, no. 22920, 6 December 2001.

- *The Restructuring Grant*, made available by National Treasury²²: Aimed at modernising large municipalities, and provided on the basis of a budgetary restructuring plan. For example, for the 2001/2 financial year, Sol Plaatje Municipality (Kimberley) received R2 million; Buffalo City (East London) received R8 million; and Western District Municipality (Eastern Cape) received R 9 million.

These amounts may seem large, but in the context of the formidable challenges regarding amalgamation, it can be questioned whether they are sufficient. Not only do municipalities face direct expenses related to the relocation of staff, additional travel costs (due to municipal headquarters being located far from the outlying towns), and office equipment and overheads, but the sophisticated management expertise required to amalgamate several municipal establishments may well require larger allocations than those provided.

Some indications regarding achieved goals are provided by the National Treasury’s Draft 2002 Division of Revenue Bill.²³ For example, the Financial Management Grant (FMG) had the effect that “significant progress was made in eight pilot municipalities in the last financial year, towards implementing three-year budgets and reforming financial practices”. As regards the Local Government Support Grant (LGSG), over 170 municipalities have benefited from support in the form of financial expertise, usually by provincially-appointed consultants. Over 120 municipalities have received funding to implement structural adjustment programmes that will positively affect their cash flow. This has reduced administrative backlogs at municipalities, reduced the number of financial statements outstanding to the Auditor-General, and reduced the amounts which municipalities owe to bulk creditors.

There is a great need for research on what this money was actually spent on, and whether it was adequate to meet the municipalities’ needs. As the Auditor-General suggested in his press release, “It is not clear yet whether these initiatives [the various grants] are effective”.²⁴ Part of the difficulty is that the actual impact of the consultants on municipal processes may vary widely, in terms of the “uptake” of consultants’ advice by municipal officials and councillors. This would be influenced by the existing skills base, the attitudes, and the organisational dynamics of municipalities. Presumably, the response of municipalities could vary from passive observers, at one extreme, to enthusiastic co-participants at the other extreme. The effectiveness of the consultants would also depend on the consultants’ own attitudes, commitment and approach. A preliminary concern should be expressed – that municipalities’ financial difficulties may be due to underlying political and organisational problems, and that the *type of expertise*

²² An amount of R350 million for the 2001/2 financial year (Government Gazette no. 23272, 28 March 2002).

²³ *Government Gazette* no. 22920, 6 December 2001.

²⁴ *IMFO Magazine*, Vol. 2, no. 4, Winter 2002, p. 9.

and mentorship may need to be broadened from accounting specialists to management and development specialists.

Existing field research tends to suggest that the amalgamation process has received insufficient management support and guidance from Provincial Departments of Local Government.²⁵ Financial consultants have been appointed in several municipalities, under the Municipal Support Programme (MSP). In several interviews in the Northern Cape and Free State, many municipal officials do not speak highly of the support provided by MSP consultants. There are two possible reasons for this. Firstly, MSP consultants tend to be financial experts. It is not clear whether they have sufficient grounding in municipal administration and development management in order to make useful restructuring proposals. Some debate needs to be undertaken on the selection of MSP consultants, possibly with a view to teaming them up with development specialists.

Secondly, the problem may be not be that the MSP consultants are not doing their job; rather, the problem may be with the brief which the consultants have received. The terms of reference of the MSP leaves much to be desired: they are either written by provincial officials or it is left to the tenderers to define the exact work they would be doing. FRELOGA has been attempting without success for two years to engage the MEC responsible for local government regarding the terms of reference of these consultants as well as who gets appointed. Whilst MSP consultants do worthwhile work in most cases, there is a complete lack of capacity-building associated with the Programme. There are cases where the consultants will compile a municipality's bank reconciliation statement, month after month, but would not teach anybody in the administration to do it.

Basic organisational and developmental questions seem to have not been addressed at all – for example, the relationship between municipal head offices and outlying offices; the creation of co-operative mechanisms amongst municipal departments; and improving municipalities' public relations within their communities.

The fact that many of the old municipalities (TLCs) were bankrupt²⁶ did not help matters, since that creates a double whammy – institutional amalgamation and financial re-orientation which need to be undertaken simultaneously. In fact, in many municipalities, the TLCs with positive bank balances have found their financial reserves absorbed used to pay the outstanding debts of other TLCs within the new municipalities.²⁷

²⁵ Interviews undertaken with 8 local municipalities in the Northern Cape.

²⁶ Accumulated debt from non-payment for services has grown more than threefold in most provinces during the past two years. Nationwide, the total debt owed to municipalities now stands at R22 billion. Many municipalities are experiencing major cash-flow problems. See The Mercury, 6 May 2002.

²⁷ This was the case, for example, with Vanderkloof (in the new Rhenosterberg Municipality), and with Griquatown (in the new Siyancuma Municipality). Both are in the Northern Cape. Similarly, Reddersburg's positive bank balance has been swallowed up by the inherited debts of the other 8 towns in the new Kopanong Municipality in the Southern Free State.

In such an environment, many municipalities are scarcely able to consolidate their organograms and administer their basic functions, let alone write IDPs.²⁸

²⁸ Financial consultants have been appointed in several municipalities, under the Municipal Support Programme (MSP). Many municipalities do not speak highly of the support provided by MSP consultants. There is one possible reason for this: MSP consultants tend to be financial experts. It is not clear whether they have sufficient grounding in municipal administration and development management in order to make useful restructuring proposals. Some debate needs to be undertaken on the selection of MSP consultants, possibly with a view to teaming them up with development specialists.

E. Councillors in the new municipal order: “The courage to lead and the passion to govern”

Municipalities are “polities” in their own right. They are not simply bureaucratic edifices; they are also elected directly by the citizenry, and party-politics plays an important role in municipal governance. Councils are elected to represent the citizenry. As political scientists will testify, “representation” is a complex and often difficult activity.

Several consequences flow from this basic fact of municipalities as polities. The first is that the calibre of Councillors’ performance has to be improved in many municipalities. The second is that relationships between Councillors and officials have to be clarified and institutionalised. The third is that the role of other representatives – in particular, ward committees – have to be clarified and institutionalised. And finally, public participation needs to be enhanced and made more effective.

It should be noted that the December 2000 elections were not only a radically new experience as a result of the new demarcations, but also because they were based on a new political landscape – notably, the protected white, Indian and coloured franchise fell away, and strong majority-party tendencies have emerged.

Many councillors serve as councillors for the first time. The turnover rate of councillors has been high, with few bringing experience from pre-December 2000. Even where erstwhile councillors have been re-elected, the political dynamics have changed massively, and much of their experience has not been used.

In the wake of the December 2000 election, new staff appointments have been the order of the day.²⁹ These have exerted enormous, and often chaotic, influence on the appointment of municipal staff, with the result that the existing fragile skills base of municipalities has been even further eroded. Many of the new appointments have been justified in terms of affirmative action³⁰, although the impression is gained that many appointments are also based on political patronage by dominant political parties.

Research in the Northern Cape has shown the serious consequences of poor Council-staff relations. In the Karoo district, four of the eight local municipalities have experienced

²⁹ In the Free State, for example, the ANC Youth League undertook a process of vetting candidates for the posts of Municipal Manager in all the municipalities in that province.

³⁰ It should be noted that affirmative action should be done carefully. According to a recent Labour Court ruling, the appointment of black candidates in favour of better-skilled white candidates is only legal if a municipality has an affirmative action policy (J. D. Verster, “Unfair discrimination and the labour court”, in *IMFO*, April 2001).

significant periods of a virtual breakdown in municipal organization. In these cases, Councils have suspended Municipal Managers, which creates a situation of limbo until the cases are resolved. In two cases, Councils want senior staff to leave, but do not have the funds to pay them retrenchment packages, and therefore an uneasy and quite unproductive stalemate situations, with a significant decline in staff morale. In such conditions, it is almost impossible to continue with normal municipal activities, let alone initiate any development programmes.

Many councillors are also overwhelmed by the magnitude of their job descriptions, particularly in the light of the prescriptions of the Municipal Systems Act. Two provisions have had a dramatic impact on the role of councillors: (1) the relationship between executive councillors (often full-time) and ordinary councillors (typically part-time), and (2) the introduction of ward committees.

As regards the relationship between executive and ordinary councillors, several critical issues are noted by the MAC Interim Report³¹:

- ordinary councillors receive information almost only through caucus structures;
- ordinary councillors, in the absence of functional ward committees, or sub-councils find themselves serving on committee and structures without much purpose, real mandates, meaningful links to the rest of council or any real powers;
- the discrepancy in remuneration between executive councillors and ordinary councillors leads to feelings of exclusivity and complicates deployment to meaningful and demanding roles;
- committee meetings (in the form of portfolio or ad hoc committees) are seen as a waste of time, in view of the fact that all decision-making powers are effectively centralised at the executive level;
- the discipline, momentum and transparency that previously characterised the standing committee system in large local authorities has not been replaced by any meaningful mechanism, thus resulting in ordinary councillors and officials feeling disempowered and disconnected from meaningful debate and opportunity to influence decision-making;
- centralised decision-making at the executive mayoral committee or executive committee level, coupled with a reluctance or inability to agree on sound political and administrative delegations has resulted in decision bottlenecks at the executive mayoral committee or “exco” level. These decision bottlenecks may have dire consequences for operational and capital efficiency;
- council meetings have now become caucus-driven rubberstamps for a series of decisions taken by “mayco” or “exco” without any real accountability. In addition the “mayco” or “exco” decides on the frequency of council meetings;

³¹ MAC Interim Report, pp. 93-4.

- media coverage of council affairs has become restricted to the attendance of “open sections” of “exco” meetings, and the interaction between the media and communications officers acting on behalf of the executive.

Ward committees are another emerging political arena. Ward committees represent a fertile opportunity for communities’ interests to be represented. But the practical problems facing ward committees should not be underestimated. Most ward councillors are part-time (while many PR councillors are full-time) and do not have constituency offices or administrative staff. Some wards, particularly in the rural areas, spread over distances. Many municipalities do not have the funding to give administrative support to ward committees. The members of the committees will not be paid for their participation does not help, and so it is important to sustain their enthusiasm in other ways.

The legislation provides no more than a general framework for ward committees. Municipalities are meant to provide the specifics – but most have yet to do so. National and provincial regulations and guidelines were meant to help – but these have been slow in coming. Some councillors, understandably, may feel threatened by ward committees who attempt to pressure their councillors into becoming “delegates” (i.e. bound by narrow ward mandates) instead of “representatives” (allowed to engage with Council debates with an open mind, and allowed to use their discretion). Should councillors be “delegates” or “representatives”? The jury is still out on this question.

Ward committees can also become sites of narrow, sectarian political turf battles, not least within the same political organisation. It cannot be ruled out either that ward committees can become estranged from the residents, and become elitist and self-serving. Ward committees, clearly, have to be managed sensitively.

Impressionistic evidence indicates several problems in the system of ward committees:

- Ward committees become *de facto* front-line officials, assisting understaffed municipalities with indigent policies and credit control. This creates an uneasy blurring of representative and official boundaries.
- Some ward committees totally exclude key economic, spatial and racial communities.
- Some ward committees are used by councillors as a source of political patronage.
- In some municipalities, ward committees have resulted in the balkanisation of the municipality. The view has been expressed that a ward committee in one geographic area has not rights to voice opinions with regard to other geographic areas.

Ideally, ward committees should be used to mobilise the broadest range of progressive interests in a ward community and ensure their active representation in the municipality. Attempts should be made to ensure representation from civic, development, business, trade union, taxi, women, youth, religious, cultural, professional, sport and other

organisations in the committee. Organisations can be clustered and asked to forward representatives for election to the ward committee. Women and rural residents have to be appropriately represented in the committee. While committee members may not be paid salaries, municipalities can consider allocating them modest allowances, if they can afford to. Effective ward committees will certainly serve to strengthen community participation – and community participation will serve to strengthen ward committees. Managed appropriately, ward committees and political parties can also benefit from each other. Again, if they work properly, ward committees can lessen the burden on ward councillors. A key test certainly of the success of community participation will be the way the ward committees function.

Some serious thinking needs to be devoted to exactly what ward committees should be, and what should be expected of them. They are curious representative devices, with a great deal of potential for good and harm.

F. The first stage towards developmental municipalities – Writing IDPs

Curiously, much more support has been provided by DPLG with regards to the writing of IDPs than with the amalgamation of municipal administrations.³²

On the face of it, the drafting of IDPs seems a logical starting-point for municipalities, for several reasons. Firstly, municipalities’ new *raison d’être* (in terms of the Constitution, the White Paper and subsequent legislation) is to provide development, and IDPs help municipalities to spell out their developmental goals. Secondly, the pre-December 2000 municipalities already had some experience with writing IDPs, so it seemed reasonable to expect that those planning skills could be applied to writing IDPs for the new municipalities. Thirdly, it is possible that DPLG felt that “Form should follow function”, i.e. that the restructuring of municipalities should be based on their developmental goals, and that this was the underlying reason for the need to draft IDPs as a matter of urgency.

The argument that “Form should follow function” is, generally, a good one. Presumably, organisational design should depend on the organisational functions that are identified. However, in the case of municipalities during the period 2001-2, it is possible to argue that the re-demarcation of local government should have been dealt with first, and that the basic amalgamation of TLCs and TRCs into new municipalities should have preceded any discussion of either “form” or “function”. With the benefit of hindsight, it is possible to argue that, during the first 2-3 years after amalgamation, the new municipalities’ first and primary task was surely to continue with the provision of the services which the erstwhile TLCs and TRCs were responsible for. In effect, the IDPs have raised huge developmental challenges and goals which municipalities, possibly at a too early stage in the amalgamation process. Be that as it may, a great deal of work has been done in order to produce IDPs, and this effort is a useful investment in future planning and development activities.

The process of writing IDPs was one important issue where a national government department (notably DPLG) has put its money where its mouth is. An impressive system of support has been created, at district level, to assist local municipalities to write their IDPs. The Planning and Implementation Management System (PIMS) Centres have been rapidly funded and staffed by DPLG for this purpose. This has been a very important and positive intervention (although, it will be argued below, not always for the ostensible reasons of this enterprise).

³² A substantial amount of guidelines and manuals have been produced by the Decentralised Development Planning Unit (DDP) of the DPLG. These include *Integrated Development Planning for Local Authorities: A User-Friendly Guide*, and *Tool Kit for Municipal Planning*. In addition, a journal (*Plan Press*) has been issued since 1999.

Despite DPLG’s initiative, the writing of IDPs has been a difficult and protracted process. Many IDPs are less than impressive – however, given the historical context of virtually no integrated municipal planning at all, it can be argued that even poor IDPs are causing a change in mindset on the part of municipal officials. This, in itself, is an indicator of a breakthrough in municipal governance.

What is urgently needed is an assessment of the impact of the PIMS Centres, as these Centres are an important DPLG intervention regarding municipal capacity-building and support. Despite many reservations regarding the effectiveness of the current functioning of the PIMS Centres, they represent a most important precedent: A national government department has invested in *providing municipal human resources* at municipal level. The significance of this can hardly be underestimated, and it serves as a powerful support for the argument presented later in the report – that national government should sponsor salaries for development managers at local level.

At the moment (mid-2002), the PIMS Centres have not reached their full potential. The Ministerial Advisory Committee notes that the PIMS Centres are vastly understaffed. In some cases, PIMS Centres have not fulfilled their mandate (impressionistic evidence in the Northern Cape suggests that local municipalities did not use the PIMS Centres, while in other cases, PIMS Centre staff are actually developing local IDPs themselves, instead of supporting municipalities to do so.³³

In practice, many municipalities have already developed their own support systems – mainly the use of consultants - and have therefore not turned to the PIMS centres for assistance. Such consultants are typically town planners or engineers, and their professional training does not always make them suitable to assist with writing developmental plans. Depending on the professional orientation of the consultants, some IDPs are primarily spatial plans, while others are primarily infrastructure plans. Real development questions, such as poverty alleviation strategies, SMME promotion, or investment attraction strategies, are few and far between.

What have been the results of this brave IDP-writing process?

In many municipalities, IDPs have been completed – largely because consultants were roped in, and paid for, by provincial departments. These IDPs have varying levels of quality, meaningfulness, and strategic significance. In many other municipalities, IDPs have not yet been completed, often due to consultants not delivering the product on time.

Many IDPs have been described as wish lists. Numerous infrastructural and job creation projects are listed, because they emerged from some kind of public participation process. There is little strategic vision, at least partly due to the frantic rush to complete the IDPs

³³ Ministerial Advisory Committee (MAC) on Local Government Transformation, “Interim Report on the Challenges facing Local Government”, submitted to DPLG, 22 November 2001, p. 64.

by the due date (end of March 2002). However, the lack of strategic vision is not only due to time constraints. It is often equally due to a lack of leadership and strategic direction provided by municipal councils. This, in turn, is due to the factors suggested above. Many councillors are overwhelmed by the issues arising from municipal amalgamation, and Councils are complex environments, often with profound political cleavages. Soon after taking office, new councillors were required to manage the public participation component of the IDP-writing process, and in particular, to engage with newly established ward committees. The Ministerial Advisory Committee notes that “Many councillors lack the requisite development planning knowledge to interpret these guidelines [on ward committees] in a way that guarantees that the input from ward committees to council planning process will be valuable”.³⁴

Furthermore, few Councils have any planning skills to match those of the consultants, or to be able to comment effectively on the offerings of the consultants. The jury is still out on the role played by the PIMS centres, but impressionistic evidence indicates that some local municipalities did not make use of the skills of the PIMS staff, and preferred to outsource the whole matter to long-established consultancy firms.

The shallow nature of IDP “visions” and priorities is also due to very real methodological complexities. Nobody has tested the “needs” and “aspirations” expressed by participants in the process. Such “needs” range from thumb-sucks to untested empirical assertions. The municipal council, as government, has the unenviable task of making the hard choices: Whose needs/wants/aspirations get attended to first?³⁵

A fundamental problem is that many municipalities have not secured significant levels of interest of national or provincial line departments in the IDP-writing process.³⁶ Reports from many municipalities refer to the difficulties in getting representatives of sectoral departments to attend meetings, or if they attend, to get any meaningful contributions or contributions from them. Admittedly, this an ambitious challenge, as sectoral departments tend to be bound by their own policies, programme priorities and predetermined budgets. Furthermore, many departments lack the human resources to attend and participate in numerous municipalities’ IDP processes. The problem of inter-sectoral co-ordination remains a massive challenge – not only in South Africa, but throughout the world. What is a matter of serious concern, however, is how rare it is to find South African sectoral departments even beginning to be aware that their activities may be in any way related to the IDP processes going on at municipal level. There is clearly a massive re-orientation required for sectoral departments to recognize the far-reaching developmental role and authority of municipalities.

³⁴ MAC Interim Report, p. 67.

³⁵ One useful approach, in future, would be to adopt the “livelihoods” approach to development needs. This is based on the primary concept of “assets” (financial, natural, physical, social and personal), and it defines “development needs” as those needs which are required to make existing “assets” productive. This is an approach strongly supported by DFID, and can with value be considered as a general methodological approach in future IDP-writing.

³⁶ There are notable exceptions here, such as DWAF.

Finally the level of public participation in the IDP-writing process has been very limited. Several types of constituencies were under-represented, or not represented at all – a case in point is the farming community (farmers and farm workers).³⁷ This may well be due to organisational reasons, since Councils lack staff and structures in the outlying areas. However, in the extensive agricultural areas of the Northern Cape and Free State, the impression is gained that almost all Councillors are from urban localities (due to demographic reasons), with the result that rural constituencies are poorly represented in municipal Councils. In many cases, middle-class urban constituencies, such as businesspeople, were only nominally involved in the IDP process.

What, then, has been the significance of the IDP-writing process?

One important possibility is that, almost by default, it has shown the huge capacity deficits which characterize municipalities – especially if a developmental role is envisaged for them. No longer does “development” simply remain a piece of jargon. Municipalities – or some of them, at least – now have documents, which suggest clearly what the key developmental challenges, priorities, programmes and projects are likely to be within their localities. Even though the IDPs are often deeply flawed, they are a starting-point. They offer a lens through which one can start asking third-generation questions. Frankly, many IDPs, in their current form, stand only a limited chance that they will ever be implemented. But their value lies more in the implicit questions they pose about what needs to be done to create municipalities that have some hope of functioning as developmental agencies.

³⁷ Similarly, the Ministerial Advisory Committee noted that “There are concerns that IDPs focus mainly on towns and ignore the needs of people living in small settlements and on farms” (page 65).

G. “The Dog That Caught The Bus”: Developmental challenges arising from the implementation of IDPs

The completion of IDPs has catapulted municipalities into third-generation issues, and implementation of IDPs should begin in earnest. There is – or rather, there should be - a vast change from the style of development implementation which prevailed since 1995. The change should have several dimensions.

Firstly, development projects should no longer be identified and tackled on an *ad hoc* basis, but as part of integrated, cohesive and coherent development strategies.

The second implication of the new world of IDPs is that each Municipality should develop *policies* on a wide array of issues, ranging from “hard” services such as water, sanitation, housing, and roads, to “soft” or “human development” services such as libraries, environmental health, SMME promotion, poverty alleviation, and land reform. Such policies are intrinsically normative and political. They should bear the stamp of the Council’s development priorities, which often also involve normative choices and trade-offs. Specific development *projects* should be part of development *programmes*, and such *programmes* should be part of *policies* defined and designed within each Municipality.

Thirdly, the role of national and provincial line departments should change from being direct *implementers*, to becoming *supporters* of municipal efforts to implement.

Fourth, municipalities need to develop some capacity to actually implement development – or, at a minimum, to be able to outsource development in a coherent and effective manner, and monitor the results.

These requirements are a far cry from the current practices of development implementation. In the past, municipalities rarely had any of their own revenue for capital projects. Consequently, project funding depended largely on each national or provincial department’s disposable income and dispensing priorities, often with no regard to spatial planning or integration with other sectors. Currently, many sectoral departments seem to remain sublimely unaware of the agonizing IDP process at municipal level. They seem to have no intention of abdicating their powerful role as implementers for the much more modest and unobtrusive role of being development supporters.

The contemporary system of development funding, as experienced by municipalities, is a hit-and-miss affair, generally consisting of applying for as much funding from as many sources as a municipality happens to be aware of. When funding is made available to the

municipality, it tends to be for priorities determined by the funders (sectoral departments or donor organizations), with little regard to strengthening diverse projects by creating mutually supportive and sustainable administrative or developmental measures. Each project stands or falls by itself. The predominant image, in this setting, is that of municipalities staggering amongst powerful line departments, frantically trying to meet the preconditions set by those line departments – or more typically, pretending to meet them – and then, once they have secured the funding, to use outside consultants, often selected and paid by those very same line departments, to undertake rapid implementation.

Clearly, there is a vast gap between the current piecemeal, fragmented, top-down, and often chaotic style of development, and the orderly, integrated, and normatively grounded processes envisaged by the philosophy of IDPs.

The scale of the challenge to introduce such a style of implementation should not be underestimated. It touches virtually every aspect of current municipal structuring and performance. It requires a coherent understanding of the intrinsic machinery of integrated planning and how it relates to coherent implementation. This section offers a few examples of the challenge of implementing IDPs: (a) Creating a development-oriented municipal organisational structure; (b) Spatial structuring between municipal head offices and outlying branch offices; (c) The organisational location of the integrated planning function; (d) Integration and co-ordination of municipal departments; (e) Information management, monitoring and evaluation; (f) Creating a development-oriented payments culture; (g) Improving municipalities’ relationships with customers and clients, and (h) public participation.

These issues are by no means an exhaustive list of the organisational implications of IDPs; nor are they treated exhaustively. A great deal more discussion is needed on each of these issues – and it will be crucial that municipal “practitioners” (councillors and officials) participate in such debates.

1. Creating a development-oriented municipal organisational structure

The rationale for local government has undergone a major shift. Before 1994, and even before 2000, municipalities were primarily concerned with the operations and maintenance of basic functions within their localities. Since the publication of the Local Government White Paper, a new developmental role for municipalities has become paramount. This involves a much more strategic, innovative, and multi-sectoral involvement in infrastructural, economic, and social development.

Consequently, the inherited organisational structures of many municipalities may be inappropriate for this task. According to the Municipal Systems Act³⁸, a municipality must “establish and organise its administration in a manner that would enable the municipality to [b]e performance oriented and focussed on ... its developmental duties as required by section 153 of the Constitution”.

Traditionally, smaller municipalities³⁹ in South Africa consist of three Departments: Administration or Corporate Services, Finance, and Technical.⁴⁰ The Technical Department typically is the most important delivery department, since it carries responsibility for the ongoing operations and maintenance (O&M)⁴¹ of municipal infrastructure, roads, pavements and open space.

By default, technical departments usually become responsible for “development” – which is not surprising, due to the heavy bias towards infrastructural projects.⁴² These departments are given the nominal responsibility of overseeing (they would want to call it “project management”) the building of things that are usually undertaken by external service providers. The real oversight (project management) responsibility often lies with the consultants (engineers, architects or other professionals who designed the project). Thus the technical department is responsible for managing and ensuring compliance with massive (in terms of volume and complexity) contracts, but they do not have contract management skills.

This type of structure leaves little scope for development to take place on a significant scale, for several reasons. Firstly, municipalities currently give pride of place to “staff” or “support” functions, such as administration, human resources management, and financial management. The common thread in this diagnosis is that municipal organizations are, almost invariably, “input-based” – organized around convenient inputs, such as finance and staff – instead of being “output-based”. Until now, the main priority, when designing municipal organizations, has been to categorise the different types of “inputs” (administration, financial administration, and technical support), instead of being focused primarily on outputs, or development achievements (such as programmes or projects).

³⁸ Section 51. Section 153 refers to the obligation on municipalities to “structure and manage [their] administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community”.

³⁹ Observations in this section are drawn from smaller and more rural municipalities. This is for two reasons: (1) Their extreme capacity deficits, and (2) their vast developmental tasks. More resourced municipalities in large urban areas tend to have inherited a greater degree of development capacity. Nevertheless, the same line of argument regarding input- and output-based organisations may be applicable to larger municipalities as well.

⁴⁰ Some municipalities have embryonic Departments of Social Development. Rhenosterberg Municipality, for example, has a Department consisting of the librarian and the pleasure resort manager. This is a small step in the right direction.

⁴¹ “Operations” refers to ongoing use of infrastructure; “maintenance” refers to repairs.

⁴² For example, the CMIP programme and DWAF’s water services programmes.

Secondly, potential developmental functions, such as libraries or environmental health, have in many cases been miscategorised. Librarians⁴³ and environmental health services are often placed within municipal administration or finance departments, instead of recognizing them as potentially powerful development units. Libraries, for example, can become the nucleus of community information systems, whereas environmental health services can perform valuable community education as part of water, sanitation and environmental programmes.

Thirdly, the current system of municipal organization overloads the senior staff in the Finance, Administration and Technical Department. Instead of focusing on their core business – which is to oil the wheels of the organisation, to ensure maximum productivity – they take on all kinds of development projects. Department heads often become swamped in a variety of projects. This is usually in addition to their normal line staff functions. Many of these staff members lack project and contract management skills, and in particular, skills of interacting with developing communities. Due to the existing levels of overwork in municipalities – often due to staff cuts, in turn caused by rising wage bills, in turn caused by trade union pressure – many municipalities simply outsource development projects to consultants. This has been the case, in particular, with water and sanitation projects. Such consultants are typically selected and paid by the Department of Water Affairs, and not the municipalities themselves.

The drafting of IDPs has been a good example of this tendency. Responsibility for drafting IDPs is often handed to whichever senior officials have a little bit of time left in their busy schedules. Another example is infrastructure projects, which are simply added to the Technical Managers’ workload. A third example is LED or commonage projects, which are often dumped on the desk of the Administration Director. Not surprisingly, it becomes virtually impossible for the line department heads to concentrate on improving the efficiency of the support functions in the municipality.

This is one of the paradoxes of local government: Municipalities spend too much money on the wage bill (more than 40% of their budgeted operating expenditure) because they have bloated administrations, but at the same time a lot of work (most of it of a routine nature) does not get done. They have too many people with inappropriate skills. A second part of the problem is the lack of proper supervision. Most middle-order municipalities have top management and front-line workers with almost no middle-level management and supervisors. Also, managers do not manage, for numerous reasons: because they do not know how to manage, or because councillors manage their departments on their behalf, or because the trade unions have become the *de facto* manager, or because they do not care, or because they are spending all their time assisting underskilled subordinates. But the underlying reason is also because they do not face the consequences of poor or

⁴³ It should be noted that, constitutionally “libraries, excluding national libraries” are an exclusive provincial legislative and executive competence. FRELOGA, for example, is opposed to the notion that “libraries” should “devolved” to municipalities, at least without sufficient matching funding.

non-existent management - nothing bad will happen whether they do or they don't. This is because many senior officials, Municipal Managers and Councils do not know how to evaluate the performance of their staff.

In this context, senior officials find themselves dealing with all the aspects of project and contract management – liaising with consultants, dealing with beneficiaries, managing public participation, trouble-shooting community conflicts, interacting with donors, and writing project reports. To make matters worse, these senior officials seldom have any project management training, and have to learn their lessons the hard way – at the cost of managing their core Departments.

Let us consider, in contrast, how a “developmental municipality” should be structured. (Refer to the diagram on page 34).

An “output-based” municipality would look very different from the inherited input-oriented municipal structures. It would focus on developmental outputs such as infrastructural projects, poverty alleviation, community projects, or investment promotion. In smaller⁴⁴ municipalities, this involves the creation of a single, strong Developmental Department as the primary centre-piece of the municipal organization.⁴⁵

In such an output-oriented municipality, the administrative, financial and technical departments would be primarily aimed at supporting the Developmental Department. Their allocation of resources would be substantially project-oriented. The Development Department would be able to call on the supporting departments for resources, in different combinations, on different programmes or projects.

It should be noted that the Development Department should not be a modest side-line affair, begging the other line departments for resources to do its job. On the contrary: The Development Department should be the flagship department, probably with the

⁴⁴ In larger municipalities, there would be several developmental departments (e.g. social services, infrastructural development, environmental or planning functions).

⁴⁵ There is an important counter-argument to this view: The danger of a “department” responsible for “development” is that development gets to be seen as a function rather than a process. The bigger problem is that the development department becomes the sole and only institutional unit responsible for development in the municipality. Every one is quick to tell the development department that it is “its” IDP, “its project, its problem”. Development should be the responsibility of the municipality, and every institutional unit is responsible for its little piece of it.

It tends to be inherent in the “projects” approach to development that development is a function rather than a process. Projects are merely interim milestones on the road to achieving a state of development that is consistent with the aspirations of the community in a particular place. This is mainly due to the lack of comprehensive development policy in municipalities in favour of development strategies and the awkward separation of “economic” and “social” development aspects of development to the detriment of a holistic approach that also incorporates institutional, cultural, spatial and political development of communities.

largest number senior and middle-level staff.⁴⁶ Such staff should have some qualifications and experience in development management, programme management or project management. In a typical smaller or more rural municipality, it is possible to envisage a Head of Development Department, assisted by at least three Project Managers. In the context of amalgamated municipalities, such Project Managers should be spatially distributed, i.e. located within each town or rural settlement, so that they can offer hands-on project guidance and support.

There is a glaring lack of development management skills within most municipalities. Until now, municipalities have undertaken development projects simply by using their existing senior and middle-level staff.

There is clearly a great need for project management capacity within the municipalities themselves, both in terms of staff availability, and in terms of relevant skills.

2. Spatial structuring

The new municipalities are geographically much larger than before. District Municipalities are inordinately large: The Northern Free State District Municipality has the same diameter as Belgium; the Namakwa District Municipality stretches virtually the same length as Kansas; and Xhariep District Municipality in the Southern Free State is the size of Hungary.

Local municipalities are large too. In the Northern Cape, most municipalities consists of three to four towns, and have a diameter of up to 150 km. In the Free State, huge local municipalities were created – the most radical case is that of Kopanong, which combines nine erstwhile municipalities, and has a diameter of 150 km.

The challenge of administrative amalgamation in such contexts is huge. The challenge of effective development administration is even more daunting. All lessons in development management point to the fact that only a limited number of development functions can be performed from far away. Development, especially in very underdeveloped contexts, is highly labour-intensive. Mentors and guides and managers have to be available regularly, often at unscheduled times, to promote local leadership skills, build institutions, deal with practical problems, and give advice to beneficiaries.

The case of **commonage management** in the Northern Cape and Free State is a good example. Many municipalities own agricultural lands. In the past, the use of this land was easy and profitable – it was simply rented out to commercial farmers. In terms of the municipalities’ developmental mandate, and in response to popular pressure, municipalities now rent out these lands to township residents, either for the purposes of survivalist agriculture, or to assist residents to become “emergent” farmers.

⁴⁶ The Technical Department is likely to remain the largest department, since its workers are responsible for ongoing maintenance of infrastructure.

Municipalities are now buckling under the administrative strain of drafting new types of contracts with communal beneficiaries, often in contexts of community conflict and inchoate local politics. Communal use of land brings with it environmental hazards (overgrazing), insufficient maintenance of fences and windmills, non-payment of rental obligations, poor animal management techniques, and a myriad other practical problems.

Who should deal with commonage management?

It is absolutely impossible for officials placed at Head Office to keep travelling to each locality to inspect commonage, meet with commonage committees, do infrastructure assessments, and monitor repairs. The commonage question has different political, social economic and environmental configurations in each locality. There is an urgent need for a locally-based project officer who can supervise and mentor a commonage project, until it reaches maturity.

Such a development officer or project officer should not deal with commonage alone. It is quite likely that the commonage project can be combined with other related projects, such as poverty alleviation projects, emergent farmer projects, and SMMEs. The project officer would be well placed to look for local synergies, co-operation and mutually supportive activities.

The development officers or project officers in the outlying offices will be responsible for particular projects, but they will draw on the resources of the support departments at head office level (See diagram on page 34)

In this scenario, the municipal Head Office still has important roles to play. A Head of Development is required, to initiate, co-ordinate and monitor development projects. This official will be in charge of drafting municipal policies on numerous development issues, including land use, SMMEs, out-sourcing to emergent contractors, water and sanitation, and housing. This official will deal with national and provincial line departments, liaise with donors, provide technical support, and do monitoring and evaluation.

Despite such obvious developmental pressures for spatial devolution of functions within municipalities, this issue has rarely been put on the agenda. Most municipalities are still too engrossed in amalgamating the administrations of the erstwhile TLCs to think through the far-reaching implications – in particular, the developmental tasks and staff – required for the implementation of their IDPs. At a more fundamental level, however, there is a lack of political clarity about the merits of devolution of functions. Many Councillors are more concerned about consolidating unified municipalities than contemplating the spatial devolution of functions. In some municipalities, Councillors believe that spatial devolution will amount to some kind of fragmentation or balkanisation of communities within a single municipality. Clearly, some investigation and debate are required about the merits and problems associated with the spatial distribution of municipal capacity and functions.

3. Integrated planning – who should do it?

When Municipalities received the instruction to draft IDPs, many simply had to make do with the officials they currently have. In some cases, Heads of Administration were given this task; in other cases, Technical Managers and even Municipal Managers found themselves with an additional burden. Due to their current workload, as well as their lack of planning skills, most municipalities have simply contracted out the bulk of the IDP work to consultants.

The fundamental question should still be posed: Where should the IDP function be located?

There are two main possibilities. The first option is for the planning function can be located within the Municipal Manager’s office. This has the advantage of drawing on the Manager’s authority, so that the co-operation of municipal line departments can be secured. In terms of the Municipal Systems Act⁴⁷, the political driving force behind the drafting of the IDP must be the executive committee or the executive mayor. If the municipality has neither of the two, it must appoint a committee of councillors to drive the IDP process. The office-bearers or committees must assign the relevant responsibilities to the municipal manager and eventually submit the draft for adoption by the council. These provisions remove any doubt as to where the IDP ‘nerve-centre’ is located. It is evident that the drafting of the IDP must be initiated and managed at the highest political and administrative level of the municipality. This is to ensure that the IDP lives up to the promise of integration. Therefore, the creation of ‘IDP portfolio Committees’ might again reduce IDP to a specialist political function.

However, the disadvantage of this option is that it is separated from the actual implementation of development (which would be located within a “Development Department” or within various other line departments).

The second option is for the planning function may be located within the Development Department or within a key line department, where it will be strongly linked to implementation. In this way, planning can inform implementation, which can in turn inform planning, according to the classical developmental management cycle.

4. Integration of municipal departments: A challenge for Municipal Managers

Whether a Development Department is created or not, the need for municipal departments to co-operate in the implementation of development projects remains. In small municipal establishments, this need not be a severe problem, since most of the

⁴⁷ Section 30.

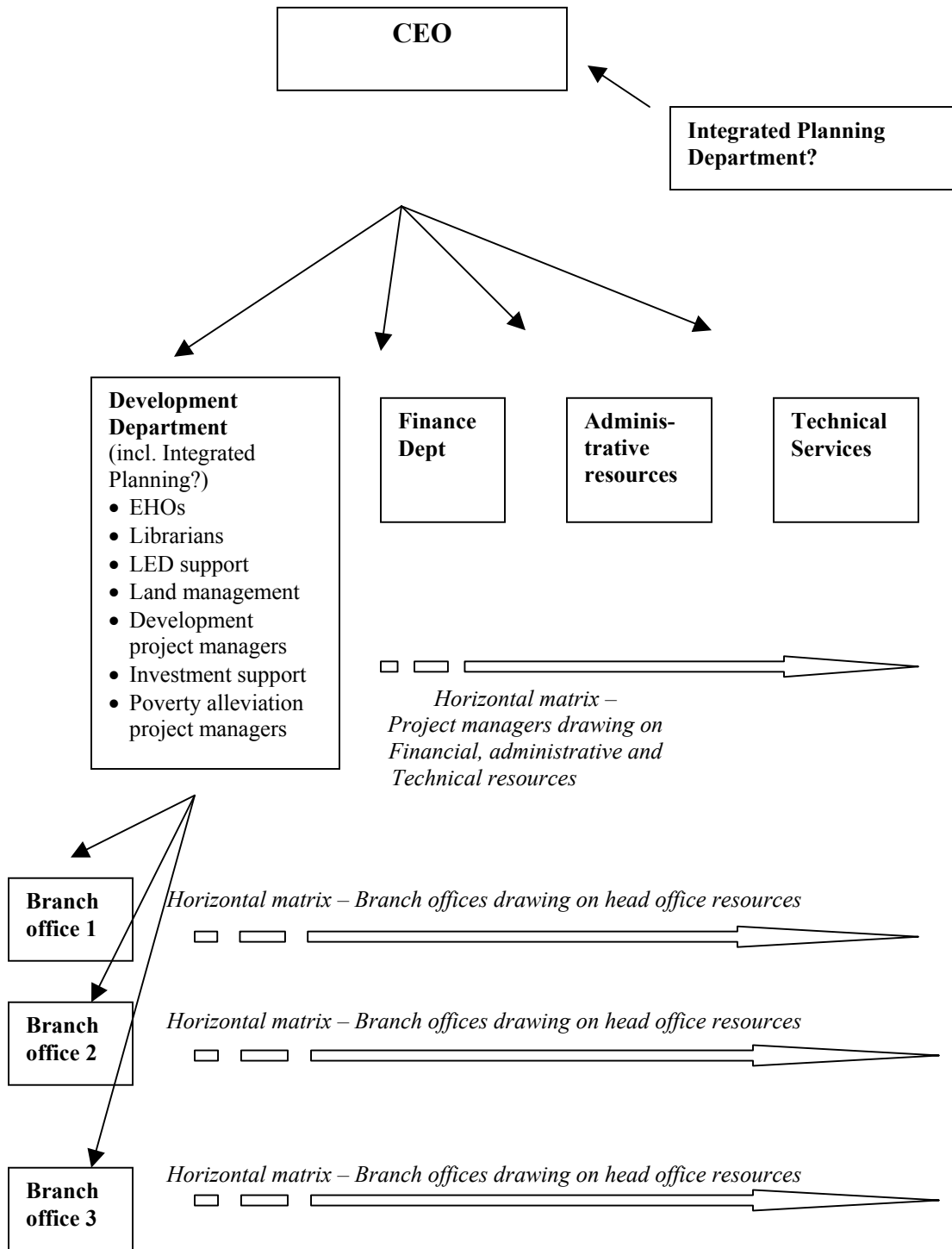
senior and middle-level officials will probably be able to co-ordinate their activities informally.

However, as soon as IDPs are implemented in earnest, and a development implementation begins to be performed at scale, it is likely that the Development Department will grow. This Department will need constant inputs from the support departments (Administration, Finance and Technical). This creates a classical problem of cross-departmental co-ordination and co-operation. For example, an LED or poverty alleviation or land reform project may require financial inputs (capital or operating expenditure), administrative inputs (e.g. staff, training, buildings or facilities), and technical inputs (e.g. equipment and vehicles).

Elements of “matrix organization” will be needed to resolve this situation. This means that specific Programme or Project Managers will be given the responsibility for liaising directly with senior and middle-level officials within the support departments. Clearly, there is scope for clashes and confusion, as support officials become subject to the demands of their line department heads and the Programme Managers simultaneously. However, given the multi-sectoral and multi-disciplinary nature of most development projects, there is simply no other way to do this. A way has to be found of giving Programme Managers sufficient authority to lever resources from the support departments.

The following diagram illustrates the main principles suggested here:

Diagram 1: Proposed municipal organisational structure



Each municipality will probably resolve this problem in its own way. The following are some elements of a possible solution:

- All programmes and projects need to become cost centres, with their own budgets
- The resources of municipal support departments need to be costed (e.g. rate per hour of staff time, and vehicles)
- Municipal support departments need to specify, in their annual budgets, the amount of resources they can provide to each development programme or project
- Programme or project managers will need to do their own cost accounting
- A uniform, easy to implement and understandable financial management system should be introduced, to assist Head Office staff and branch managers to manage revenue and expenditure.

Co-ordination and mutual adjustment of priorities will be the order of the day. This will require a high degree of leadership from the Municipal Manager, who will need to be sufficiently and constantly informed of project requirements and dynamics. Turf jealousies and rivalries about resources will need to be amicably sorted out.

Clearly, this approach will require a high degree of management skill on the part of the Municipal Manager (or his or her nominee). Municipal Managers must exert a strong integrative force in order to secure consensus and co-operation between the spatially-based Development Officers and the head office staff of the municipal line departments. Such Municipal Managers need to have sufficient developmental knowledge and experience, as well as personal qualities, to integrate the spatial and vertical lines of authority within a Municipality.

The Municipal Systems Act makes rigorous demands on Municipal Managers.⁴⁸ Managers are tasked with (and held accountable for) “the formation and development of an economical, effective, efficient and accountable administration”, which is equipped to carry out a municipality’s IDP, which is also operating according to the municipality’s performance management system, and which is responsive to the needs of the local community. Clearly, the Act envisages the appointment of persons as Managers who have a substantial abilities regarding strategic development management.

In this context, the low level of development skills and expertise of many Municipal Managers is a cause for concern. Much more rigorous requirements should be stipulated for the appointment of Municipal Managers. (Emphatically, this does not mean a return to the “old-style” municipal managers in evidence before 1994, since a much greater emphasis on development management is now required. Many of the long-established municipal staff have good technical or financial skills, but lack a suitable development orientation). The post of Municipal Manager should be open to individuals who have extensive development experience in a variety of fields, even from without the municipal sector.

⁴⁸ Section 55(1) and (2).

The appointment of Municipal Managers, in recent months, is not a cause for optimism. Patronage politics has led to the appointment of political parties’ “favourite sons”⁴⁹, often with very poor qualifications or experience. Since December 2000, political parties have focused primarily on political consolidation by extending their hold on municipal administrations. Competence to perform municipal functions has been a very secondary consideration, if at all.

In the light of the debate on third-generation issues in municipal government, an important issue will be an examination of the types of skills and experiences which should be obligatory for Municipal Managers. Appointing school teachers, clergymen or unemployed political stalwarts may be inappropriate when the huge developmental challenges facing municipalities are considered.

5. Information management, monitoring and evaluation: The costs of ignorance

Information management will become an increasingly important aspect of municipal functioning. This is for at least two reasons: (1) the requirements of effective planning in the IDPs, and (2) adhering to the requirements of performance management. For example, the Municipal Systems Act⁵⁰ requires that a municipality must prepare for each financial year, an annual report showing its performance in comparison with targets. Such reporting will inevitably require sufficient information regarding base-line conditions (i.e. socio-economic and infrastructural conditions before development projects were undertaken), as well as information regarding the actual implementation and impacts of development programmes.

Many municipalities encountered their first information-related difficulties when the IDPs were drawn up. IDPs must include an analysis of the current level of development in a municipal area. The purpose of this analysis is to quantify needs for proper planning and project design. One of the many benefits of the IDP process is that it has exposed how little information municipalities have.

For example, many Councillors – and even senior officials – have only the vaguest idea of how many residents live within their jurisdictions.⁵¹ Senior staff who are concerned about information gaps acknowledge that they simply do not have the information, and they lament the unreliability of the information that is available. One of the most serious complaints was that the results of the last general census are not yet known. The

⁴⁹ “Favourite daughters” have been very rarely appointed to Municipal Managers’ posts.

⁵⁰ Section 46.

⁵¹ For example, at an IDP workshop for Councillors, held at the Jagersfontein TLC in 1999 and conducted by FRELOGA, Councillors were asked to estimate their town’s population. Estimates varied from 1 000 to 20 000. (The actual population is around 9 000). It is possible that the IDP-writing process may have provided Councillors with a better knowledge of local statistics.

available information is out-dated, or was not really credible in the first place. Consequently, planning is mostly based on opinion and not fact.

Not only do municipalities need masses of correct or at least believable information to make proper plans, there must be a high level of agreement about the correctness of the information that it has. If nobody or only a few of the stakeholders believe the information at hand, the plan that is made based on the information would always be questioned. It is therefore necessary that the analysis phase of the planning process must incorporate procedures and opportunities for validating information.

The urban bias of many IDPs compounds this problem. Due to the accidental exclusion of rural communities from some IDP processes, the level of development or, in many cases the lack of development, in rural areas remains very poorly understood.

Creating and using a performance management system is virtually impossible without effective information systems. How else will the goals and performance of senior officials be determined and measured?

Like the IDPs, the Water Services Development Plans have shown up how poor the quality of existing information is in many municipalities. In some cases, it is simply impossible to determine how many customers there are, with how many water points, or what quantity of water is being used. In the light of DWAF’s insistence that municipalities undertake “water use reconciliations” (i.e. comparing the amount of water entering the system with the amount of water billed, to determine the extent of water leaks), this is a serious shortcoming.⁵²

In sum, each municipality will need a water services monitoring and data collection system, which covers all relevant aspects of O&M and water usage. An effective MIS (Management Information System) needs to be created, so that appropriate tariff levels, surpluses and possible systems of cross-subsidization can be researched

The current lack of an effective information system is a source of great concern, especially in the light of the requirement (in terms of the Municipal Systems Act) that local authorities adopt a Performance Management approach to administration. It is impossible for Councillors or Municipal Managers to assess their own performance, or that of their staff, without information systems.

In the case of water and sanitation infrastructure, for example, three key types of information are necessary:

⁵² In Dikgatlong Municipality (Barkly West – Delpoortshoop area), the verification of statistics took several months. The WSDP consultants (from KweziV3 Engineers) only achieved somewhat reliable statistics by undertaking their own house-to-house survey. Even then, it was impossible to reconcile the consultant’s information with that used by the municipality for the purposes of billing.

- **Demographics:** How many people live in the municipality? Where (rural or urban?) What is their level of income? This is needed to determine both Levels of Service as well as subsidies i.t.o. the Equitable Share, which has a dramatic effect on the financial viability of water services⁵³, and indirectly, to the financial viability of the whole municipality (since water tariffs are a key source of income and are usually used to cross-subsidise the whole municipal administration).
- **Financial management information:** Are water bills sent to all households? Are all indigent households listed? Are all erven listed, and does the municipality have an address for each household? (what about informal settlements, i.e. before township establishment?) Do all households actually receive their bills? Are all meters read? (Households which do not receive bills, and therefore do not pay for services, are a massive drain on the finances of the municipality). Is there proper budgeting (effective cash flow) for operation and maintenance of water services infrastructure?
- **Physical information:** Where are the pipes underground? Are there infrastructure maps?⁵⁴ Are there bulk and reticulation meters? How much water flows into the system and is used by households? How much sewerage water is transported to oxidation dams? How much water loss takes place in the reticulation network? How many spares and supplies are kept in the store?

Simply put, the creation of a data-base of current municipal assets and practices is a huge task, for which the help of DPLG is urgently needed.⁵⁵

The following are issues which need to be discussed when setting up an M&E (Monitoring and Evaluation) system:

- *Methodology:* What theoretical methodologies will be employed? Is data quantitative or qualitative?
- *Administration:* How will be information be processed, and how will the reporting system function? Will data be verified for quality?
- *Resources:* What staffing and financial resources will be made available?
- *Analysis:* What level and quality of data analysis will take place?
- *Dissemination:* How, and to whom, will information be distributed?

⁵³ “Water services” refers to water and sanitation.

⁵⁴ Tales abound of municipalities which have no infrastructure maps. They do not know where the pipes and valves are. Many engineering consultants keep these maps, or local authorities have lost them. The result is that municipalities have to shut down the whole water system when they do maintenance and repairs.

⁵⁵ DWAF and the Water Research Commission are funding a project to devise a local government M&E system in the water sector. A draft manual has been compiled, and will soon be obtainable from the WRC.

- *Utilisation:* How will information be actually utilised in Municipal decision-making? How will feedback be ensured?

These issues do not concern only the water sector. All other sectors will, in due course, require information systems to be instituted by municipalities. There is an urgent need for possible information systems to be designed and tested, possibly in a few pilot municipalities, and then transferred to all municipalities. Not only must this include computers and software, but funding for information management staff. Otherwise it will be yet another unfunded mandate.

6. Credit control strategies: Towards developmental approaches

Payments levels amongst non-indigent households and businesses is a serious problem, and need to be addressed. Payment for services rendered is the lifeblood of a municipality. This is a universal problem in local authorities in South Africa. Payments levels have always been low, at least partly because of high levels of poverty. The Equitable Share policy, related to subsidizing indigent people to afford monthly basic services, should address this issue to a large extent.

A proper credit control depends on the primary work of determining who the indigents are, so that credit control efforts can be targeted at non-indigents who are in arrears.

In the past, most municipalities have used a coercive approach to securing payment. This involves cutting off water or electricity supplies, or taking legal measures against defaulters. The importance of this approach is that, ultimately, coercion is the last resort and right of the state. Any regulation should be, at least potentially, backed up by the use of force of some kind.

However, there are many implementation problems with regard to coercive approaches:

- Cutting off water often does not always lead to payment of arrears. Defaulters may simply steal water, or install illegal connections, or buy water from neighbours.
- Cutting off water causes pressure loss in water-borne sewerage systems, which undermines the functioning of sewerage systems.
- Cutting off water requires a great deal of manpower, since the meter has to be opened up, and a filter or shut-off valve inserted.
- Cutting off electricity is undermined by Eskom systems of electricity delivery, which bypass municipalities, and provide electricity directly to households by means of a prepaid system. It is much more difficult cutting off water than electricity.
- Many Councillors believe (wrongly) that cutting off water is against the Bill of Rights, and are reluctant to take strong political measures.

- Legal proceedings are expensive and lengthy. It often costs more to pay the lawyer than the funds recovered.
- Legal proceedings can cause “messy” situations where municipalities have to seize households’ furniture or other assets. This is politically very difficult.

It is unfortunate that the payments culture approach has emphasized the most negative aspect of the municipal image, i.e. the “bad cop” approach. Although the political will to cut off services is commendable, this is not the most effective way to “win hearts and minds”, and project a developmental image of the municipal sphere. It is a suitable moment, in the history of municipalities, to consider two alternative approaches to improving the payments culture.

In fact, there is a serious case to be made that different residents respond (i.e. pay) on the basis of different incentives. Some people respond to coercion, or the threat thereof; other people respond to positive incentives; whereas other people respond morally to what they perceive as constructive and positive actions by the authorities. Each municipality needs a “menu” of approaches. This will have the benefit of limiting the coercive/punitive approach to those residents who are really intransigent and obstinate non-payers.

Two other possible systems are (1) incentive and (2) community responsiveness models. Given the strong emphasis on community participation in the Municipal Systems Act, it is possible to argue that incentive systems and community responsiveness systems of credit control are more suited to the spirit of developmental local government.

The incentive approach: Various municipalities have experimented with “lucky draw” systems, whereby households who pay their bills, qualify for a monthly prize draw. Prizes would depend on the sophistication of the community, and could vary from kettles and radios to ovens and TV sets. A refinement of the system is to offer an additional prize for people paying their arrears. In Garies TLC (in Namaqualand), for example, a payments rate of 105% was achieved (due to the repayment of arrears).

There are various advantages to this approach:

- South Africans have a particular fondness for lotteries, as shown by the success of the Lotto. The chances of winning a municipal draw are much greater than winning the lottery, and this should stimulate public interest.
- The lucky draw approach can be combined with a great deal of Public Relations, i.e. a monthly meeting, speeches by Councillors, opportunities to report back to the community about progress, media coverage, and so on.
- If separate draws are held for current accounts and accounts in arrears, then it may be possible to achieve a significant payment on accounts in arrears.

- The prizes could be very visible, e.g. painting the winner’s roof/house, or providing a rain tank. It would also stimulate housepride.
- The draw may encourage people who are officially classified as “indigents” to register as municipal payers.

The community responsiveness model: The essence of this approach is to link payments directly with municipal performance. The underlying philosophy is that residents get “value for money”, and they know how their money is being spent. This would satisfy the requirement in the Municipal Systems Act⁵⁶, which obliges councils to “consult the community about ... the level, quality, range and impact of municipal services provided by the municipality”.

The system can work by using meter readers (re-skilled and re-oriented!) as front-line agents. In addition to reading meters, these officials (perhaps renamed as “consumer service officials”) can undertake opinion surveys about residents’ most urgent problems. This will give the municipality information about the felt needs of residents (e.g. repairing streets, unblocking drains or maintaining commonage). Municipal activities can then be re-directed to these felt needs.

The strategy will require a communication strategy, (e.g. newsletters or monthly fliers) whereby residents are informed of what the municipality achieved. The “consumer service officials” can deliver these newsletters. The consumer service can also conduct assessments of people’s status as indigents.

One advantage of this approach is that residential areas can be encouraged to mobilize. Each suburb or township can be rated in terms of payments, and the activities or spending patterns can be adjusted to “reward” the better-paying areas. Again, this will require a communication strategy.

7. Front-line staff – municipalities’ best-kept secret

Much of the emphasis regarding municipal restructuring has been placed on the higher echelons of municipal establishments. The role of the front-line staff are seldom discussed. Nevertheless, this is where the municipality meets the citizen/resident/consumer, or put differently – “where the rubber hits the road”.

The question of a positive client interface is a critical and deeply neglected matter. If one compares the emphasis placed on this issue by private companies (e.g. Pick and Pay), municipal performance feels far short. Private companies take a great deal of effort so that the consumer not only feels “mistreated”, and in fact, the consumer should truly feel like “a king”.

⁵⁶ Section 4(2)(e).

Most consumers make contact with their municipalities in the following ways:

- By paying their accounts, either by post, or by visiting the municipal office – the front-line staff are therefore the payments clerks
- By receiving visits from water-meter readers
- By interacting with municipal staff on development projects – typically, middle-level technical staff or environmental health officers.

At present, hard-pressed municipalities are using a variety of devices to build the municipal-customer relationship. There are two tendencies:

- Employing “credit control officers”, who are paid on commission to recover payments from defaulters. While this initiative is better than nothing, it has the unfortunate consequence that the only residents who get special attention from the municipality are the defaulters and delinquents!
- Utilising ward committee members to persuade residents to pay their bills. In effect, this starts to blur the representative role of ward committee members with an implementation role. They become “officials, by default”, which will steadily cause increasing demands to become regularised as normal staff. Furthermore, their selection tends to be at the whim of the ward Councillors, without any assessment of their competence to implement municipal functions.

This section will suggest some of the alternative functions which can be provided by meter readers and environmental health officers. (However, the same approach towards the “client interface” function could be applied to all staff which deal with customers on a regular basis). It involves upgrading these posts to become “developmental” and multi-functional, and even to serve as front-line communication channels for national or provincial line departments. As examples of an improved client interface, alternative approaches are proposed here for (1) meter readers and (2) environmental health officers (EHOs).

Meter readers have the massive advantage that they undertake a visit to each household each month. This is a huge strategic bonus for a developmental institution such as a municipality. This function can be upgraded to provide a primary point of contact with the residents/clients.

Meter readers could undertake the following additional functions:

- Deliver information / newsletters
- Conduct surveys of opinions and user needs – this could be used as the basis for the Community Service model of payment culture, described earlier

- Discuss households’ payment problems, and identify individuals’ needs for additional financial advice (which could be provided by a credit control adviser, located at head office)
- Explain the indigency policy and register indigents
- Show evidence of municipality’s successes, by means on leaflets and newsletters
- Recruit appropriate people for development projects (e.g. owners of stock for commonage projects)
- Serve as communication agent for national or provincial line departments (municipalities to be paid for this service).

This approach “professionalises” meter-readers to become “Company Reps”. They will need a different skills profile and image, possibly with stylish uniforms. Some of the existing meter readers, who cannot be “upskilled”, should be transferred to technical maintenance sections.⁵⁷

For front-line staff of this calibre, the Municipality will need to provide back-up support:

- Materials to deliver (e.g. newsletters, survey forms)
- Appropriate training and orientation
- Analytical skills (e.g. to analyse survey results)
- Ability and willingness to re-direct municipal operations to identified needs
- Consider incentive/performance bonuses.

As regards Environmental Health Officers (EHOs), there are various options for transforming EHOs into one of the most strategic developmental posts in municipalities, particularly in more rural areas. Particularly in farming areas, there is a major challenge for municipalities to open channels of communication with farmers. Most municipalities provide no services at all, and co-exist with their farming neighbours in a context of mutual anxiety and suspicion.

Municipalities also face a challenge of reaching farm workers. They are dispersed, disorganised, disempowered, located far from NGOs, churches, schools and other sources of developmental support. Farm worker infrastructure (such as clean water, sanitation, solid waste disposal, appropriate housing) is often a moral and practical problem for farmers, who can benefit from municipal developmental policies. Infrastructure programmes offer municipalities an opportunity to do housing and sanitation assessments, and hence an information base for future infrastructure planning.

⁵⁷ Clearly, the meter readers (now upgraded into higher-level public relations officers) would be able to visit fewer households per day than previously. This would have knock-on effects on other functions. In some municipalities, for example, meter readers also perform technical maintenance tasks, while in others (e.g. Siyathemba Municipality in Prieska), they spend their extra time putting the accounts in envelopes.

Municipalities may be able to add possible incentives to farmers to invest in farm worker infrastructure. (municipal subsidies for taps, toilets etc)

EHOs are the ideal channel to build contact between the municipalities, farmers and farm workers. EHO visits provide opportunities for farm worker education, which can be linked to other initiatives (e.g. distributing educational material, information on pre-school children, future housing needs). The involvement of EHOs creates a win-win situation for the Municipality, farmers and farm workers, and a climate of trust.

Additional EHO posts can be financed from equitable share revenue, as well as Departmental grants (DWAF, Health, Welfare, Education), since municipal EHO's may also function as front-line officials or service delivery agents for these national and provincial departments.

8. Public participation in development planning and implementation

The issue of public participation and the involvement of civil society also need thorough analysis and policy discussion. In terms of The Municipal Systems Act, a municipality “must develop a culture of municipal governance that complements formal representative government with a system of participatory governance”.⁵⁸ The Act makes it clear that residents have the right to contribute to the municipality’s decision-making processes. They also have the right to submit recommendations and complaints to the council and are entitled to prompt responses to these.⁵⁹ They have the right to “regular disclosure of the state of affairs of the municipality, including its finances”.⁶⁰ In order to encourage residents to pay promptly for their services, municipalities are required to inform them about the costs of providing services, and the uses to which monies are put. Residents also have the right to give feedback to the municipality on the quality and level of services offered to them.

Residents are encouraged to participate in the following ways:

- preparation, implementation and review of IDPs;
- establishment, implementation and review of a municipality’s performance management system;
- monitoring and review of a municipality’s performance;
- preparation of a municipality’s budget;
- decisions about the provision of municipal services.

Municipalities have to use their resources and annually allocate funds in their budget, as appropriate, to develop a culture of community participation. Municipalities have to

⁵⁸ Section 16(1).

⁵⁹ Section 17(2).

⁶⁰ Section 5(1).

contribute to building the capacity of the local community to participate in municipal affairs and the councillors and staff to foster community participation. In establishing structures and processes for community participation, the special needs of women, the disabled, the illiterate and other disadvantaged groups have to be taken into account. In terms of the Municipal Structures Act, a municipality’s executive has to give an annual report on the extent to which the local community has been involved in municipal affairs. The executive must “ensure that regard is given to public views and report on the effect of consultation on the decisions of the council”.

Currently, there is often insufficient recognition of the value of community participation – not from councillors, officials or communities. And most people are not even aware of their rights to participate in municipalities. There are councillors and officials who would not want them to be aware of these rights – as they see community participation as holding back their work. There are councillors and officials who would want to do no more than nominally consult communities – simply to meet the minimum legal requirements in a formal sense. All this is understandable. But clearly there needs to be a massive awareness and education programme on community participation. Municipalities, national and provincial government, statutory bodies, educational institutions, NGOs, CBOs, trade unions, the private sector, media and other institutions must contribute to this programme.

Effective and productive community participation certainly does not come easy. Often the space for community participation can be exploited by privileged elites to hold back transformation or further their narrow, sectarian interests. Even a certain mode of progressive community participation can serve to paralyse councils. The divisions within disadvantaged communities makes it difficult to secure cohesion and consensus. There is the constant challenge of weighing the need for speedy delivery with the need for community participation.

The current problems with regard to community participation stem from a collective failure to find consensus on effective strategies and programmes of implementation. Not only must communities be informed on the possibilities of participation, but municipalities need **options** on how to structure such participation meaningfully, without it declining into factionalism, patronage or apathy. Community participation is often erratic and cannot, of course, be managed in a rigid and mechanistic way. There needs to be more creativity and imagination to ensure constant and consistent community participation.

The IDP process has shown how difficult it is to secure sustained and meaningful popular participation. Analysts need to devise a menu of possible practical options, ranging from participation in planning to participation in implementation.

H. District and local government: “The powers and functions debate”

The most glaring characteristic of the “powers and functions debate” is how little debate there has actually been about an issue of far-reaching importance to municipal government. Discussions on this issue has remained largely deeply concealed within the Department of Provincial and Local Government and the National Treasury, with occasional but important influences exerted by the Demarcation Board, the Department of Water Affairs and Forestry, and the Finance and Fiscal Commission.

South Africa has two “tiers” of local government: District Municipalities and Local Municipalities. Traditionally, District Municipalities⁶¹ have had very limited functions, viz. allocation of capital grants (derived from their levy revenue) to municipalities, and management of a few district-level “bulk” functions (e.g. large-scale water supply).

The “powers and functions” story is much more complex than it appears and is often made out to be. It really starts in the Constitution, where two “ideas” are fundamental to the debate. First, the constitutional premise is that a municipality is a municipality is a municipality. Stated differently, an institution that purports to be a municipality must do municipal things; it cannot define its role as a “development funder” like the former district councils used to do. Therefore, it must-

- (a) strive, within its administrative and financial capacities, to realise the objects of local government stated in s 152 of the Constitution; and
- (b) perform the functional competencies (as opposed to governmental competencies) allocated to it by the Constitution and national and provincial legislation.

S. 84(1) of the Municipal Structures Act, as amended, lists the functional competencies of district municipalities. In other words, the functional competencies are already the district municipalities’ and, in principle, local municipalities may not perform them. These “non-assignable” district functions are -

- Integrated development planning for the district municipality as a whole, including a framework for integrated development plans of all municipalities in the area of the district municipality.
- The receipt, allocation and, if applicable, the distribution of grants made to the district municipality.
- The imposition and collection of taxes, levies and duties as related to the above functions or as may be assigned to the district municipality in terms of national legislation.

S 84(2) of the Act vests all other municipal functional competencies in local municipalities, i.e. district municipalities may not perform them.

⁶¹ Before December 2000, they were known as District Councils.

S. 84(3) of the Act then empowers the Minister for Provincial and Local Government to authorise (and he did) local municipalities to perform four of the listed district municipality competencies, namely-

- Potable water supply systems.
- Bulk supply of electricity which includes for the purposes of such supply, the transmission, distribution and, where applicable, the generation of electricity.
- Domestic waste-water and sewage disposal systems.
- Municipal health services.

Interestingly the Minister’s authorisation is not subject to any timeframe, in other words it does not have a built-in expiry date. The Minister’s authorisation therefore exists at the Minister’s pleasure. The Minister, however, made his authorisation subject to an important qualification, to wit, that the local municipalities are authorized to perform these 4 functions only to the extent that their predecessors performed them. The Minister instructed local municipalities to assume full responsibility and accountability for these four functions or any aspect thereof and their effective and efficient performance. Basically district municipalities are already responsible for these four functions where they had not previously been performed by a former municipality (e.g. in rural areas).

☞ It should be noted that an MEC for local government may, in terms of s. 18 of the Municipal Structures Act, (Amendment Act 2000) authorise a local municipality to perform some of the other district municipal competencies listed in s 84(1) of the principal Act, if the district municipality cannot or does not perform the function or exercise the power in the relevant area. The MEC’s authorisation was made subject to similar conditions that the Minister’s authorisation. In terms of s. 13 of the Amendment Act, and this authorisation lapses on December 4, 2002.

The allocation of powers and functions is now under review. This matter is particularly pressing, in view of the fact of the re-demarcation of municipalities, and the consequent hodge-podge of district and local government functions which have to be streamlined. Especially in rural areas, where Rural Councils, assisted by District Councils, used to be responsible for municipal services, the position with regard to service delivery is very unclear and quite chaotic.

There are currently two opposing views in this curiously non-debated debate:

1. *District Municipalities as the primary developmental tier:* The first perspective is that most developmental functions should be concentrated at District Municipality level. This has three key advantages. Firstly, it is more cost-efficient to build up developmental capacity at the 47 District Municipalities, rather than at the 231 Local Municipalities. Secondly, it enables a degree of redistribution from the wealthier towns within a district municipality’s jurisdiction, to poorer areas. Thirdly, some development functions are best addressed at district-wide level. Some functions involve

several Local Municipalities (e.g. district-based tourism), whereas other functions can be done at scale if done within several Municipalities simultaneously (e.g. rapid roll-out of sanitation projects).

2. *Local Municipalities as the primary developmental tier:* A contrasting point of view is that most developmental functions are deeply labour-intensive, requiring a great deal of personal contact between programme managers and communities. This would require a primary role for local municipalities (and possibly, for branch offices of local municipalities).

An additional argument is that the main virtue of local municipalities is precisely that it is “local”, i.e. better attuned to the specific needs of localities. Local diversity may require different local developmental policies and programmes, and ultimately, local municipalities should be politically answerable to their communities for the developmental choices they make. This argument puts the developmental ball squarely within the local municipalities’ court.

The argument for the primacy of local municipalities is much more attuned to the policy position as spelt out in the Local Government White Paper, as well as subsequent government policy documents.⁶² A key argument was then made that delivery of municipal services should be located “as close as possible to the communities the services are meant to serve”. In the same vein, it should be noted that District Municipalities do not have wards or ward councillors, with the result that the interests of specific geographic areas cannot be carried forward easily to District Municipalities.

In terms of this perspective, the key rationale for District Municipalities is to address regional tasks, and to assist in the development of local municipalities – not to perform the functions of local municipalities themselves.

The two arguments both have their merits. Some National Departments have already stated their preferences. Department of Water Affairs and Forestry prefers to regard District Municipalities as “Water Services Authorities”; and Department of Provincial and Local Government is allocating special financial support to building district-level planning capacity.⁶³ In contrast, the system of intergovernmental fiscal allocations, and the distribution of Equitable Share revenue⁶⁴ is still being channelled to local

⁶² For example, the DPLG’s policy framework for the division of powers and functions (July 2000); and the Financial and Fiscal Commission’s *Division of Municipal Powers and Functions between District and Local Municipalities*, July 2001.

⁶³ This involves the creation of Planning and Implementation Support Centres, located at district level, and answerable to District Municipalities, even though they are not part of District Municipalities’ staff establishments. The main function of these Centres is to support Local Municipalities’ IDP planning processes.

⁶⁴ Municipalities’ portion of the grant funding dispensed by National Treasury to provincial and local governments.

municipalities. However, a recent court ruling maintained that there is no justification for excluding district municipalities from their part of the equitable share⁶⁵. It is therefore possible that this will strengthen their claim to become the primary developmental tier of local government.

In 2001, the Municipal Structures Amendment Act was passed, which amended Section 84(1) of the Municipal Structures Act. In terms of this Act, four key local functions (water, sanitation, electricity and municipal health) were re-allocated to district governments. These provisions are not cast in stone (some exceptions are allowed) and they did not come into operation immediately. A period of two years was provided for the provincial governments to authorize the final allocation of functions to district and local governments, according to the prevailing conditions in the respective provinces. In the meantime, the Department of Provincial and Local Government did a capacity assessment of district and local municipalities, to decide which local functions should be reallocated to district municipalities.⁶⁶

It was decided that, where District Municipalities are weak and Local Municipalities are strong, then the Section 84(1) district functions would be kept at local level; conversely, where local capacity is weak and district capacity is strong, then even local functions could be located at district level. This creates quite a flexible matrix of possibilities, since it raises the possibility of “asymmetry” in the division of functional competencies between district and local municipalities. For example, it is entirely possible that the Motheo District Municipality (based in Bloemfontein) may have almost no functional competencies in relation to Mangaung Local Municipal area (since Mangaung having the capacity to perform these functions by itself). In contrast, the Motheo DM may have more functional competencies in relation to the Mantsopa Local Municipal area (based in Ladybrand – a Municipality with slightly less capacity than Mangaung), and almost all the functional competencies in relation to Naledi Local Municipal area (based in Dewetsdorp, which has virtually no capacity).

However, three additional considerations need to be raised.

The first issue is that the current capacity of municipal government should not necessarily be the sole (or even the main) consideration, in the allocation of functions. Simply asking which District Municipalities or Local Municipalities are currently strong, relative to one another, is not the most useful way to proceed. In any case, there are strong Constitutional and legislative injunctions on national, provincial and district governments to build “municipal capacity”⁶⁷. (Clearly, a “lack of capacity” is not a good enough

⁶⁵ Uthukela, Zululand and Amajuba District Municipalities v the President of the Republic of South Africa. See Local Government Law Bulletin,

⁶⁶ Local Government Law Bulletin, April 2001.

⁶⁷ Section 154 of the Constitution commands provincial and national government, “... by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.” This duty is repeated in respect of provincial government, in section 155(6) of the Constitution. In terms of section 83(3) of the Structures Act a district municipality must “... seek to achieve the integrated, sustainable

reason for a local municipality to be stripped of its functions). A different approach would be to consider the nature of a function, and the type of developmental activities associated with it. For example, “hard” (infrastructural) services may be more effectively delivered at a district level (i.e. “at scale”), whereas “soft” (human) services may be more appropriately placed at local level. A different example is the case of LED: attracting investment capital may be more effectively done at district level (i.e. marketing the district as a whole as an investment destination), whereas poverty alleviation projects may be better placed at local level (i.e. promoting close interaction with indigent individuals or groups of poor people).

The main point here is that administrative effectiveness has to be decided on a *service-by-service basis*. If an examination of each service – as well as *all the subcomponents of each service* – are examined, it may become fairly evident which services should be provided at which level. Take environmental management as an example: Whereas littering and environmental awareness may be best dealt with at local level, a district-based air pollution strategy should be located at District Municipal level. Tourism can easily be shared between local and district level, depending on the area which is being marketed. In contrast, in the case of sanitation services, in which – as DWAF correctly reminds us – hygiene awareness training is as important as infrastructure provision, it is surely preferable to place the function at local level. The management of a sewerage system tends to demand a lot of locally-based technical maintenance, and hygiene awareness requires a great deal of face-to-face contact by Environmental Health Officers. Unlike sanitation, road maintenance is an ideal district-level function (although suburban street maintenance may need to be kept at local level).

There is an urgent need for a function-by-function assessment of appropriate allocation of responsibilities. It is quite possible that one function (say transport) should be largely located at district level, while another function (say poverty alleviation projects or SMME promotion) should be primarily located at local level. Some functions (such as environmental management) would cross the district-local divide in several ways, depending on specific issues and problems. Presumably DPLG would lead such debates and negotiations with various national and provincial line departments, so that appropriate outcomes can be ensured for each sector.

and equitable social and economic development of its area as a whole by ... (c) building the capacity of local municipalities in its area to perform their functions and exercise their powers where such capacity is lacking.

S 88 of the Municipal Structures Act contains the following interesting (if confusing) provisions:
“(1) A district municipality and the local municipalities within the area of that district municipality must co-operate with one another by assisting and supporting each other.
(2) (a) A district municipality on request by a local municipality within its area may provide financial, technical and administrative support services to that local municipality to the extent that that district municipality has the capacity to provide those support services ...
(3) The MEC for local government in a province must assist a district municipality to provide support services to a local municipality.

The second issue is that the administrative costs of reallocation of functions should not be underestimated. This involves the re-allocation of staff, often to institutions with different salary scales and benefits. It also involves the separating out of municipal revenue into separate ring-fenced functions – a process notoriously difficult in municipalities, where complex systems of cross-subsidisation amongst functions have evolved over the years. Many municipal officials have job descriptions that range across several functions. For example, to re-allocate water services from local to district municipalities would mean that the local municipalities lose a valuable source of operating revenue, which in turn would probably mean the loss of staff members who were responsible for maintaining water services as well as maintaining storm water drainage or water infrastructure on municipal commonage. It is extremely difficult to dismember various existing municipal functions, for the sake of re-allocating them to another tier of local government

This argument implies that, *ceteris paribus*, it is probably preferable to leave existing functions where they are (assuming that they are being performed adequately) and to build additional and complementary functions at the other tier of local government. For example, where a function is being performed tolerably well, but not optimally, by a local municipality, it may be possible to build up district-level support functions to complement and support the operations of the local municipality (e.g. training, planning, or monitoring and evaluation capacity). The Department of Provincial and Local Government has already recognized such an eventuality: “Some functions might need to be split with some aspects indicated for partial adjustments”⁶⁸.

The third issue is that municipalities are, *par excellence*, multi-functional organizations. Unlike national and provincial government departments, where the issue of national-provincial-local devolution takes place within one sector, municipalities are constantly juggling different functions. This juggling act involves the allocation of finances and human resources. Some functions are subsidised by others, in many complex ways, which have evolved differently in each locality. In some municipalities, meter readers are technical staff who also fix pipes and water meters; in other municipalities, meter readers are basically financial staff who also spend their time printing out municipal accounts and putting them into envelopes. In some municipalities, water and sanitation revenue subsidize a myriad other functions, ranging from cemetery maintenance to fixing sidewalks; in other municipalities, water and sanitation revenue is ring-fenced, and general maintenance tasks are funded from municipal rates. Staff very seldom perform only tasks located within one budget item. Especially at the higher levels of municipal administrations, the salaries of senior staff are carried by several budget items.

This means that a national-level decision on a general country-wide allocation of powers and functions is likely to cause havoc within municipalities, as budgets have to be dismantled and line items artificially allocated to one or other sectoral function.

⁶⁸ Department of Provincial and Local Government’s “Principle 3”. See Local Government Law Bulletin, April 2001.

There is an urgent need to provide certainty with regard to the whole functional competencies issue, because it has such a wide-ranging impact on almost all other municipal activities. There is also an urgent need for a coherent, inter-sectoral debate on powers and functions. Ideally, this debate should be hosted by the Department of Provincial and Local Government, and invitations should be extended to a variety of line departments: Water Affairs and Forestry, Housing, Environmental Affairs and Tourism, Transport, Health, Social Development, and Land Affairs. Departments which have not been involved in the municipal ambit should also be invited: Agriculture, Trade and Industry, and Minerals and Energy. Representatives of provincial equivalents of these departments should be invited too.⁶⁹ An analytical matrix should be drawn up:

- How are municipalities currently performing the functions that fall under these departments?
- Are municipalities performing functions (or components of functions) that would be more effectively performed at district level?
- Are district municipalities performing functions (or components of functions) that would be more effectively performed at local level?

In such an exercise, the new emphasis on developmental local government should be paramount. Virtually all sectors have new developmental orientations. Sanitation now includes an important emphasis on community hygiene awareness and training; land reform has emerged as an important developmental priority; the promotion of SMMEs and emergent contractors cuts across virtually all the infrastructural sectors; the promotion of emergent and small-scale mining is a new emphasis within the mining sector; the “people’s housing process” regards the empowerment of beneficiaries and emergent contractors as equivalent in importance to producing housing products; pro-poor tourism emphasizes the participation of communities in tourism initiatives; home-based health care is based on community involvement in the health system; community-based forestry prioritises the involvement of communities in forestry management; and so on and so on. In virtually every department, community-based orientations are the order of the day.

An intersectoral debate about the allocation of powers and functions is seriously overdue. At the same time, such a debate would lead to useful forms of co-operation amongst line departments, in the promotion of common aspects of development (e.g. promotion of emergent enterprises).

⁶⁹ Discussions have taken place between DPLG and other sectoral ministries and departments, and reports have been made to MINMEC. However, it is not clear how much opportunity for public debate and investigation has been made available.

I. Creating a supportive intergovernmental system for Local Government

An important prerequisite for successful decentralisation that facilitates development driven at local level is the clear allocation of responsibilities between national, provincial and local governments.⁷⁰ Uncertainty over who does what often leads to inadequate governance and will stifle the development mandate of local government. Clarity over assignments, the procedures, their content and impact is therefore of paramount importance.

This issue of decentralisation concerns issues of “devolution” and “deconcentration”. “Devolution” is the assignment of functions which include municipal discretion and policy-making choices; “deconcentration” refers to functions which municipalities perform on behalf of higher spheres of government, according to their policies and programme prescriptions. Studies of decentralisation typically refer to formal assignment of functions (whether by devolution or deconcentration). This section will discuss some of the problems of formal assignment in South Africa, but will also raise an additional problem – the informal assignment of functions, or “devolution by stealth”.

Section 156(4) of the Constitution adds a significant dimension to the issue around assignment of functions. It entrenches the *principle of subsidiarity*, which says that responsibilities should be allocated to the lowest level of government possible. Section 156(4) makes *assignment by agreement*⁷¹ of the administration of a Schedule 4A or 5A matter to a municipality by national and provincial government compulsory if –

- the matter would be most effectively administered locally;
- and the municipality has the capacity to administer it.

Municipalities’ lack of capacity has often been identified as a crucial blockage in delivery. Nevertheless, national and provincial departments are increasingly looking to municipalities to assist with the implementation of functions. This, in itself, is not a

⁷⁰ See also *Grootboom and others v Oostenberg Municipality and others* 2000 (3) BCLR 277 at para 40.

⁷¹ It is not immediately clear whether this type of assignment is an assignment of executive powers only or also of legislative powers. The agreement would assign ‘the administration of a matter’. Then again, section 156(2) affords the municipality legislative authority over matters ‘which it has the right to administer’. Does this mean that the municipality can make by-laws on matters that were assigned in terms of section 156(2)? The text and context of the section suggests otherwise. The assignment must be effected ‘by agreement and subject to any conditions’. A legislative power cannot be transferred from one sphere of government to another by the mere operation of an agreement. It is only in terms of section 44(1)(a)(iii) or 104(1)(c) of the Constitution that legislative power can be assigned to an individual municipality. A combination of section 156(4) and these sections is, however, possible.

problem, since the whole point of “developmental local government” is that local government takes the lead in development initiatives in their localities. The problem lies in the lack of a supportive intergovernmental relations structure.

Until now, very few national line departments have taken much effort to pinpoint the actual functions which should be devolved to local government – much less to apply their minds to taking concrete steps to building municipalities’ capacity. There are two major exceptions. The Department of Provincial and Local Government has initiated several programmes to evaluate municipalities’ performance, identify problems, and provide training and support.⁷² The Department of Water Affairs and Forestry (DWAF) has consistently advocated the building of municipal capacity in water and sanitation delivery. These Departments should serve as models and examples for other line departments to follow.

What, then, of other sectors?

Several sectoral line departments are responsible for functions (at national and provincial level) which also fall within the Constitution’s definition of municipal functions⁷³. Municipal health, environmental management, economic development, transport, and tourism are only some of these functions which straddle national, provincial and local boundaries. In many cases, Municipalities deal with such functions in an *ad hoc* and piecemeal way, without policy guidance, technical advice, or training provided by national or provincial departments.

With the expansion of municipal responsibilities – in terms of the new philosophy of “developmental local government”, as well as in terms of their new jurisdictions – municipalities are required to undertake an increasing number of functions. This requirement can take two forms: The one is a *formal* assignment of functions, as provided for in 156 (1)(b) of the Constitution. The second is a process of “*creeping assignment*”, or *informal assignment*, whereby Departments approach municipalities to undertake specific developmental tasks. Both of them implicitly bring the danger of “unfounded mandates”, although there is a greater level of protection with regard to the formal assignment of functions. The next two sections will consider these dynamics.

1. Formal assignment of functions

A critical principle underlying ‘developmental local government’ is a sufficient degree of local government autonomy. This autonomy is not enhanced with the mere devolution of responsibility. On the contrary, local government autonomy is compromised in a very

⁷² For example, Project Viability is aimed at identifying municipalities in financial crisis. Through the provincial Departments of Local Government, consultants are appointed to assist municipalities to set matters right.

⁷³ See Schedules 4 and 5 of the Constitution.

pervasive manner if responsibilities are loaded on municipalities without the concomitant resources. Internationally, one of the biggest problems that subnational units in decentralised states experience is the dreaded ‘unfunded mandate’.⁷⁴

Local government has two sources of power, the so-called ‘original’ powers and ‘assigned’ powers. As regards *original powers*, Section 156(1)(a) of the Constitution provides that a municipality has executive authority in respect of, and has the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution. This is the primary source of power for local government. Municipalities derive these powers from the Constitution itself. The obvious significance of this lies in the fact that they cannot be removed or amended by ordinary statutes or provincial acts. These functions cannot be changed except by an amendment to the Constitution itself. Moreover, national and provincial governments’ regulatory power over Schedule 4B and Schedule 5B matters is limited.⁷⁵ These two elements constitute the most fundamental features of local government’s institutional integrity.

The secondary source of power for local government is *assignment*. Section 156(1)(b) provides that a municipality has executive authority in respect of, and has the right to administer, any other matter assigned to it by national or provincial legislation. Assignment can take the form of general assignments or assignments to individual municipalities. It is this second source of power for local government that is the topic of this section. As will become clear, there is a formidable battery of requirements which are aimed at preventing unfunded mandates. This section will briefly review these requirements, and then pose the question of the practical effectiveness of these requirements.

A closer examination of the provisions in the Constitution on assignment to local government produces three categories of assignment. The distinction between the three categories is important, since it determines the applicable legal framework:

1. **General assignment of legislative and executive powers:** Section 156(1)(b), the general provision on assignment, is the basis for national or provincial legislatures to assign matters to local government by legislation. This means that a national Act of Parliament would assign a matter, that falls outside of Schedule 4B or Schedule 5B to the entire local government sphere. An example could be an Act that stipulates that ‘low cost housing’ (part of the 4A competency ‘Housing’) is assigned to local government. This would mean that municipalities are afforded the power to administer and regulate ‘low cost housing’ as a competency of their own. A provincial legislature can do the same and assign a matter to the local government sphere in the province. This would result in all municipalities in that province having the power to administer and regulate that particular issue. The

⁷⁴ Rondinelli D, Nellis J and Cheema G *Decentralization in developing countries: a review of recent experience* Worldbank research working paper 1983 at p 49.

⁷⁵ *Independent Electoral Commission v Langeberg Municipality* 2001 (9) BCLR 883 (CC) para 25.

assignment of legislative power does not mean that there is an *obligation* on each municipality to adopt by-laws on the topic. Municipalities are part of a ‘distinctive’ sphere of government and have their own legislative assembly.⁷⁶ However, the scope of the legislative power can be circumscribed in the provincial or national act. The assignment does not have to be a blanket transfer: national or provincial government can circumscribe the legislative power in the assignment act.

2. **Individual assignments of legislative power:** In terms of section 44(1)(a)(iii) and 104(1)(c) of the Constitution, national or provincial legislatures can assign legislative power to *specific* municipal councils.⁷⁷ This means that a national Act of Parliament would assign legislative power over a particular issue to an individual municipal council. For example the national government could assign the power to regulate ‘Animal control’ (a Schedule 4A matter) to Mogale City municipality, which would give that municipality the right to regulate those matters within its area of jurisdiction. Provincial legislatures could do the same. For example, the Western Cape Provincial legislature could assign the legislative power over ‘Libraries’ (a Schedule 5B matter) to the City of Cape Town, which would give that municipality the right to regulate libraries in its area of jurisdiction. Importantly, this refers to an assignment of a legislative *power*. A legislative power is discretionary. The municipality ‘on the receiving end’ of the assignment cannot be compelled to legislate. However, the scope of the legislative power can be circumscribed in the provincial or national act.
3. **Individual assignments of executive power:** Sections 99 and 126 allow national and provincial Ministers to assign executive powers to specific municipal councils. This mode of assignment differs from the previous assignments in a number of ways.
 - Firstly, it concerns *executive* powers only and no legislative powers.
 - Secondly, it entails a compulsion: the relevant sections speak of the assignment of a matter ‘that is to be exercised’. It presupposes an obligation in terms of legislation on the relevant provincial or national executive to fulfill a particular function. In other words, an Act of Parliament tasks the relevant Minister with an obligation, which is then assigned to a municipality. Therefore, whereas the assignment of legislative power allocates *discretionary* powers, the assignment of executive power allocates a *duty* to do something. This explains the rationale behind the fact that it must be concluded by means of an

⁷⁶ *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1998 (12) BCLR 1458 (CC) at para 26; see also N Steytler and J de Visser ‘Constitutional Court affirms status of local government’ in 1999 *Local Government Law Bulletin* 1 at p 6.

⁷⁷ For Parliament, this excludes the power to amend the Constitution.

agreement. The assignment must be consistent with the relevant Act of Parliament in terms of which the power exists. The act must provide for (or at least not prohibit) the assignment to municipalities.

In the light of these legal provisions, various protections have been introduced to prevent unfunded mandates. The legal regime for assignment of matters to local government is further regulated in Chapter 3 of the Municipal Systems Act, which render assignments subject to certain requirements. In section 9 and 10, the Act distinguishes between assignments to municipalities generally and assignments to specific municipalities.⁷⁸

1. Conditions attached to general assignment powers: In cases of *general assignment*, the Systems Act provides for a number of requirements. Prior to the introduction of the Bill in Parliament, the relevant member of Cabinet (or Deputy Minister) must –

- consult with the Minister, responsible for local government, the Minister of Finance and organised local government (national); and
- request an assessment from the Financial and Fiscal Commission of the financial implications of the legislation and consider that assessment.⁷⁹

The Bill must be published for public comment in a manner that allows organised local government, municipalities and other interested parties to make representations. Further, the (Deputy) Minister, initiating the assignment must assess:

- whether or not the assignment imposes a duty of the municipalities concerned. If the assignment concerns only a legislative power there will be no duty: a legislative power is discretionary: there is no compulsion to legislate;
- whether the duty falls outside Schedule 4B and 5B (and is not incidental to any of those areas); and
- whether the performance of the duty has financial implications for the municipalities concerned.⁸⁰

If the answer to these three question is positive, the (Deputy) Minister must ‘take appropriate steps to ensure sufficient funding, and capacity building initiatives as

⁷⁸ Curiously, the Systems Act assumes that only provincial or national *executives* can initiate assignments. It is unclear what the application is of section 9 and 10 when the assignment of legislative power is initiated by a member of a provincial legislature or by the National Assembly in accordance with section 55(1) or 119 of the Constitution.

⁷⁹ S 9(1).

⁸⁰ S 9(3); In answering the question about the financial implications, the assessment of the Fiscal and Financial Commission must be considered. The question as to whether or not the duty falls outside 4B and 5B (s 9(3)(b)) seems irrelevant. Section 154(1)(b) allows for any matter *other than those listed in 4B and 5B* to be assigned by legislation. Assignment would in any event be superfluous if the matter falls within 4B or 5B: in that event, local government has the original power.

may needed, for the performance of the assigned function or power by the municipalities concerned'.⁸¹ This also applies to the general assignment by a province to the municipalities in that province. The MEC who initiates the assignment must follow the same route, subject to the proviso that the consultation must take place with the provincial ministers for local government and finance and with organised local government in the province.⁸²

2. **Individual assignment of legislative powers:** A national Minister initiating the assignment by way of national legislation must consult the Minister responsible for local government before introducing the Bill in Parliament.⁸³ An MEC initiating the assignment by way of provincial legislation must consult the MEC for local government in the province, before introducing the Bill. The Minister or MEC, initiating the assignment must assess whether or not it imposes a duty, whether or not the duty falls outside Schedule 4B and 5B (and is not incidental to any of those areas) and whether there are financial implications for the municipalities concerned. The Minister or MEC must take appropriate steps to ensure sufficient funding and capacity building initiatives if the answer to those questions is positive.⁸⁴

The assignment of a legislative power cannot impose a duty, since it is discretionary. Therefore, the steps to ensure funding and capacity building would normally not come into play.

3. **Individual assignment of executive powers:** The Cabinet member initiating the assignment by way of an agreement must consult the Minister responsible for local government before concluding the agreement.⁸⁵ If the assignment imposes a duty, with financial implications, which falls outside of Schedule 4B and Schedule 5B, the national Cabinet member must take appropriate steps to ensure funding and capacity building.⁸⁶ One might ask the question what the relevance is of the obligation on the Minister (or MEC) to ensure funding and capacity building if the municipality must, in any event, agree to the assignment. It is expected that a municipality would not agree to the assignment of a duty, unless it

⁸¹ S 9(3).

⁸² S 9(2),(3) and (4).

⁸³ S 10(1).

⁸⁴ S 10(3).

⁸⁵ S 10(1)(b).

⁸⁶ S 10(3). The same conditions apply for provincial Cabinet members initiating the assignment: there must be an agreement and the assignment must be consistent with the relevant Act. The provincial Cabinet member initiating the assignment by way of an agreement must consult the national Minister, responsible for local government before concluding the agreement (Section 10(2)).

is convinced that these measures have been taken. However, against the backdrop of the commitment to a strong developmental local government that comprises of municipalities that are mature partners of provincial and local government, the obligation appears necessary. The specific statutory obligation is a necessary protection for a municipality’s autonomy and will strengthen municipalities in their negotiations with other spheres of government around the assignment of duties.

Clearly, the drafters of the Systems Act were concerned about the danger of unfunded mandates, and did their best to strengthen the hand of municipalities in their negotiations with national and provincial governments. The inclusion of these requirements is important, considering that the issue of unfunded mandates is one of the major gripes in the debates around decentralisation. The Systems Act has taken note of the worldwide complaint of subnational organs that they are tasked to perform functions without the necessary resources or capacity.

This is a novel and important feature of the new institutional scheme for municipalities. However, the requirements must be examined more closely to assess their capacity to protect against unfunded mandates. The requirements can be broken up in procedural and substantial requirements.

The *procedural requirements* relate to the mandatory consultation with provincial and national finance ministers, ministers responsible for local government, organised local government or with the Financial and Fiscal Commission. In the case of the general assignments there is also the requirement of publication in terms of section 154(2) of the Constitution. Procedural requirements are no absolute guarantee for adequate protection against unfunded mandates. The effectiveness of this protection will depend on, *inter alia*, -

- the degree to which the organ of state that initiates the assignment takes seriously the consultation and the arguments proffered by the agencies that are to be consulted. For example, how much time will be allowed for preparing input, at what stage of the preparation process are the various agencies involved, do they have real input or will they be faced with *faits accomplis*?
- the degree to which consulted agencies are able and willing to bring forward coherent and convincing arguments, protecting local government against unfunded mandates and the degree to which they in fact have that agenda. Organised local government will certainly have the protection against unfunded mandates high on its agenda. However its capacity to advocate local government's interest in assignment issues is still an uncertain variable.⁸⁷

As evidence of SALGA’s increasing alertness to the issue, it must be noted, however, that during the parliamentary process around the Immigration Bill, SALGA used its

⁸⁷ ‘Salga decides on critical look at itself’ *Business Day* (12 June 2001).

political clout and protested against the inclusion of the assignment of ‘civic affairs functions’ to municipalities. SALGA complained that the procedures of section 9 were flouted and, consequently, the impugned provisions were removed.⁸⁸

The *substantial requirements* relate to the ‘appropriate steps’ that the MEC or the Minister must take to ensure sufficient funding and capacity building initiatives at local level to perform the assigned function. This appears to be a stronger and more direct protection against unfunded mandates. The protection is phrased in a mandatory wording. National and provincial executives can be taken to task when these provisions are not adhered to. It is an implementation of the provisions in the Constitution that instruct provincial and local government to support the capacity of local government.⁸⁹ The substantial requirements relate to finances and capacity building initiatives. Could a local government challenge an assignment in court on the basis that these requirements are not met? Could a court, for example, hear arguments around the funds that are generally needed to perform the function compared to the actual funds allocated to local government to perform the function and the manner in which the allocation was calculated? Sections 9 and 10 instruct the MEC or Minister to ‘take appropriate steps’ to ensure sufficient funding and capacity building initiatives. The requirement does not relate to ‘outcome’ (namely the presence of sufficient funds or capacity) but to ‘input’ (“appropriate steps” to ensure sufficient funding and initiatives to build capacity). The executive would have discharged the duty by making sure that there is ‘input’, without necessarily having to prove that the input has yielded success. A court cannot ‘review’ the allocation, since it constitutes an appropriation of government funds, which is a task reserved for legislatures.⁹⁰ The principle of separation of powers prevents a court from reviewing budget allocations. A court’s assessment can only be very limited and can basically only test whether or not the executive could, in all reasonableness, have come to the relevant allocation.

It is early days to speculate on the effectiveness of this protection. The value of the provisions will, to a large extent, depend on the stakeholders’ commitment to effective local government. What is, of greater concern, is that this elaborate procedure may, in practice, simply be bypassed by line departments, who approach municipalities to do developmental tasks, without the intention of drafting explicit legal assignments. This is the issue of “creeping assignment of functions”, to which we now turn.

2. Devolution by stealth: The hidden killer of local government

One of the critical problems that make the intricate formal and legalistic process of assignment difficult to implement and monitor is the fact that assignments are currently not explicitly formulated as such. Whether or not powers or functions are in fact being

⁸⁸ See *Local Government Law Bulletin* June 2002 at p 10.

⁸⁹ Ss 154(1) and 155(6) of the Constitution.

⁹⁰ *Fedsure* at para 44.

assigned is thus a matter of legislative interpretation and deduction. This renders the division of responsibilities between spheres of government unpredictable and unclear. Assignment should be explicitly formulated in the legislation as such. If not, the protection afforded by sections 9 and 10 of the Systems Act will have a hollow ring to it, in that it would be unclear from the beginning whether the provisions apply or not. The application of these sections should not depend on a municipality challenging an assignment in court or elsewhere. Rather, it should be an integral element of the system of intergovernmental relations, which includes respect for institutional integrity and prior consultation over measures that stand to affect local government.

In numerous ways, additional functions are informally assigned to municipalities. This is not unconstitutional. The involvement of municipalities in development programmes is in accord with the Constitution⁹¹; Section 153(b) obligates municipalities to “participate in national and provincial development programmes”. However, Section 154(1) also obligates national government and provincial governments, “by legislative and other measures, ... to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions”. This is precisely the nub of the matter – Municipalities are increasingly expected to “participate in national and provincial development programmes”, without adequate funding or specialist support. Many departments seem to believe that project funding for such “participation” is sufficient; but this ignores the many hidden costs in terms of staff time, staff training and the use of vehicles and equipment.

For example, when the Law Commission formulated proposals to review the Child Care Act,⁹² it proposed, amongst other things, to oblige local government in terms of a new children’s statute to “keep a register of the total number of children and record their ages, in its area of jurisdiction.”⁹³

This section will consider the problem of “creeping devolution” and unfounded mandates, by examples from child care, the indigent policy, commonage management, LED, sanitation policy, the writing of IDPs, and the free basic water policy.

As regards **child care**, the obligation on local government to keep this kind of register falls outside of its original power to regulate and administer ‘child care facilities’.⁹⁴ An assignment would be necessary. The Law Commission’s proposal does not refer to or acknowledge the need for an assignment. Local government might be the most appropriate sphere of government to perform such a function. However, the imposition of such a duty on local government would have enormous administrative and financial implications. The mere formulation in national legislation of such a duty on local government is unconstitutional and not in keeping with the system of intergovernmental

⁹¹

⁹² Act 74 of 1983;

⁹³ Law Commission, *Review of the Child Care Act*, Discussion Paper 103 (Project 110) at paragraph 9.7.4 available at www.law.wits.ac.za.

⁹⁴ Schedule 4B of the Constitution.

relations. Since it would concern an assignment of a specific duty and not the assignment of legislative power, it would have to be done in terms of section 99 or 126 of the Constitution. This means that it would have to be preceded by acceptance of an obligation on the part of the relevant Minister. Subsequently, the Minister would have to assign in terms of sections 99 or 126 to *specific municipalities*, subject to agreement and the requirements of section 10 of the Systems Act.

Similarly, the **indigent policy** introduced by national government made radical changes to the use of the Equitable Share. In the past, municipalities used their “intergovernmental grants” (IGGs) for any municipal purposes they deemed fit. Municipalities are now obliged to use the Equitable Share to subsidise indigent people’s municipal accounts.⁹⁵

This requirement, which at face value seems so self-evident and reasonable, has brought a massive workload onto the shoulders of municipal governments. Indigents need to be registered – a process which entails indigents either reporting to the municipality, or being visited at home. The registration process has to be periodically (every month? every six months?) repeated, since people lose their jobs and become indigents, or indigents find jobs and are no longer indigent. It requires municipalities investigating and validating residents’ income – a formidable challenge, as SARS would testify! Many people in the “indigent” category have informal sources of income.

Most municipalities simply ignore such sources of income, since the administrative overheads of investigating them are simply too daunting. This means that municipalities only judge indigents on the basis of their lack of formal income – an approach which inflates the number of indigents, and increases the demands on the Equitable Share revenue, and thereby reduces the amount of revenue which can be obtained from service charges. The Equitable Share has become a nett liability: The indigent policy requires municipalities to create a Byzantine administrative apparatus – to use the same amount of government grant in ways which implicitly undermines the municipality’s revenue base. This is a cruel paradox indeed.

Incidentally, when put into historical perspective, it should be noted that inter-governmental grants (IGGs⁹⁶) used to be a discretionary grant, not meant to subsidise consumers. The indigent policy, which *requires* municipalities to allocate indigent grants, has cut severely into municipal revenues.⁹⁷ Ironically, many of the most faithful customers (in terms of payment for services) were residents within the “indigent bracket” – notably, elderly pensioners, who are prepared to pay for services, due to their own self-respect or respect for public institutions.

⁹⁵ In practice, this means that indigents have to register on an indigents’ list. Their municipal accounts are then covered on the income statement by the Equitable Share revenue.

⁹⁶ Until 1999.

⁹⁷ The Rhenosterberg Municipality estimates that it loses about R300 000 p.a.

It should also be noted that government guidelines on the definition of indigents has crept upwards, from around R800 to around R1100 per month. Every time such an increase is introduced, the municipality loses yet another slice of revenue. While there are good grounds for national government to wish to relieve the plight of indigents, such relief is substantially financed by cash-strapped municipalities.⁹⁸

A third example is that of **land management**. Many municipalities are responsible for commonage development (land owned by the municipalities themselves). Until recently, commonage land was typically rented out to nearby commercial farmers. This provided a reliable and indispensable flow of revenue to the municipalities, at minimal financial cost or administrative overheads. In terms of the developmental mandate of municipalities, they now have to end these lucrative rental contracts, and use the commonage land for indigent township residents, so to improve their food security, and possibly serve as a basis of individuals’ capital accumulation as emergent farmers. In its White Paper on Land Policy, the Department of Land Affairs states that it “will encourage local authorities to develop the conditions which will enable poor residents to access existing commonage, currently used for other purpose.”⁹⁹

Some Departments’ development orientations bring a double-whammy to local government. The Department of Land Affairs’ orientation towards community use of municipal commonage is not only an unfunded mandate (i.e. a new responsibility without matching funding), but it actually causes municipalities to lose a valuable and reliable source of rental income from commercial farmers. As outlined above, the developmental approach to commonage has massive administrative and management implications. Typically, it becomes the responsibility of those work-mules of the municipal order – the heads of technical departments.

This shift of focus has placed enormous administrative burdens on municipalities, in terms of project management, interactions with community committees, and infrastructure provision and maintenance. To make matters worse, the use of commonage by emergent farmers has usually meant the loss of land rentals – partly because the level of rent is set at a much lower rate than for commercial farmers, and partly because the level of payment by emergent farming groups is often unreliable.

⁹⁸ Simply arguing that municipalities should increase their service revenue by increasing tariffs on higher “blocks” or higher-level consumers, does not really solve this problem. The higher the tariffs levied on higher-level consumers, the more those consumers have an incentive to reduce their consumption of services, with consequent reductions in revenue.

⁹⁹ White Paper on South African Land Policy (1997), p. 51. This provision was accompanied by a low-key threat: “The Department of Land Affairs has been informed of a number of situations where commonages are not being used for the public purposes set out in the title deeds to the land, and where there is a demand for the land by poor people within the community. This has raised the question of whether this land should be requisitioned for its original purposes. The Department of Land Affairs is at present considering this (p. 51).

Where, then, should a municipality turn for support, when they develop their commonage? Three obvious candidates are the Provincial Departments of Agriculture (to provide technical agricultural advice and training), the Provincial Departments of Economic Affairs (to provide entrepreneurial training and support), and the National Department of Land Affairs (to assist municipalities to set up new systems of land management, in terms of its land reform policy). In its White Paper, the Department of Land Affairs promised that it “will offer assistance for the development of appropriate provincial policy, legislative frameworks and administrative systems for the maintenance and use of municipal commonages for land reform purposes, if so requested by provincial or local government”.¹⁰⁰ DLA has not done much in this regard, and it appears that provincial Departments of Local Government have not flagged this matter. In interviews, municipalities have expressed their concern about the huge management challenge they face, but it is not known if a formal approach has been made to DLA. Even were they to do so, it is unlikely that DLA would be forthcoming with real assistance, since DLA’s position is generally that “aftercare” support is the proper business of provincial Departments of Agriculture.¹⁰¹

In fact, very little support has been forthcoming from any of these Departments. The Department of Land Affairs has been willing to make capital funding available for the purchase of additional municipal commonage, but no department has as yet provided much management support. In this void, municipalities are left to flounder – with deleterious political consequences, as community organizations become aggravated by the apparent lack of municipal support for their developmental needs. The real brunt of political pressure is borne by municipal Councillors, who are at a loss to provide communities with the developmental support which they need.

The same void characterizes other developmental initiatives, as illustrated by the case of **local economic development (LED)**. The Department of Provincial and Local Government has made large grants available to municipalities, to promote LED. Various entrepreneurial projects have been launched. However, very few municipal staff – if any – have any experience in entrepreneurial support. Many of these projects have encountered severe difficulties, as community members battle on by themselves to keep their micro-businesses afloat, and municipalities have to stand by helplessly, lacking the staff, time and skills to intervene meaningfully. There is a clear responsibility on the shoulders of Provincial Departments of Economic Affairs to provide such support.

¹⁰⁰ Page 51.

¹⁰¹ One case has been found, in the Northern Cape, where the provincial Department of Agriculture is providing valuable support to a municipality (Siyathemba Municipality, based in Prieska) for the development of commonage. This is an unusual phenomenon; in most cases, municipalities are left to flounder. In the Free State, the Department of Agriculture has attempted a survey of municipal commonage holdings. It should be remembered that provincial Departments of Agriculture generally have very small budgets, with huge demands placed on them in the light of DLA’s land redistribution and land restitution programmes.

There are two major difficulties with DPLG’s LED programme, as it stands now. The first is that there is no clear rationale for the LED programme to be located within DPLG. Arguably, it would be much more effectively located within the Department of Trade and Industry, working through provincial Departments of Economic Affairs, who presumably have built up significant expertise regarding the promotion of economic development.

The second difficulty is that the LED programme is focused on *LED projects* and not *LED management capacity*. In many cases, municipalities have a much greater need for generic LED management training and mentorship, rather than chunks of project money, which municipalities do not have the capacity to use effectively in any case. This issue involves a misunderstanding of the LED role of municipalities – it is surely more important for municipalities to be able to offer established and emergent entrepreneurs some sustained support and guidance¹⁰², rather than for municipalities to become involved directly in managing bakeries, sewing co-operatives, vegetable projects or chicken farms.

In fact, municipalities are pressured by an increasing emphasis on entrepreneurship development, in all manner of projects. Water projects, sanitation projects, community-based public works projects, and housing schemes are all increasingly promoting the development of emergent entrepreneurs as a useful by-product of infrastructure provision. However, the “emergence of an entrepreneur” is not a simple or obvious process. Even where community members do have technical skills (e.g. building or plumbing) that is a far cry from being able to write tenders, manage cash flows, secure payment for services, interact with clients, make business decisions, or manage their labourers. Many emergent entrepreneurs lack basic office infrastructure. Entrepreneurship development is not for the faint-hearted. There is a glaring need for municipalities, in terms of their developmental mandate, to set up business support centres. However, they lack the funding for this – and even if grant money was made available for the construction of a business centre, there are still the problems of covering the ongoing operating costs, as well as finding suitable staff for such centres. How will municipalities cope with this, if they are not assisted directly by DTI and Provincial Departments of Economic Affairs?

All developmental programmes which include the promotion of emergent contractors or SMMEs are currently unfunded mandates. This includes community-based public works projects, water infrastructure projects and housing projects. Such programmes require inputs at various levels of the municipality: Senior staff have to engage with communities, draft contracts and help to select beneficiaries; and middle-level staff often have to do day-to-day supervision of construction activities. Not only does it require a

¹⁰² For example, advice on spatial location of businesses, investment strategies, co-operation amongst businesses (e.g. business hives or tourism forums), local and external marketing, future industrial or commercial planning initiatives, etc. Municipalities could also build up data-bases of private consultants or NGOs offering business support to local businesses.

great deal of time, often including time-consuming trouble-shooting activities, but it also requires very different skills from the traditional municipal activities.

In terms of DWAF’s new approach towards **sanitation** policy, the new orientation towards sanitation awareness training is a new demand placed on municipalities. Those municipalities which have Environmental Health Officers may have some spare skills and capacity to undertake community awareness training; those without EHOs end up involving senior technical staff for this function. Involving municipalities in land reform projects is an unfunded mandate.¹⁰³

Local government faces numerous partially-funded mandates. Most of these take the form of additional tasks laden onto already hard-pressed municipal officials, without the financial compensation needed to employ additional staff.

The **IDP-drafting process** is a partially-funded mandate. Even though municipalities have received grants from provincial Departments of Local Government – grants which have mostly been used to employ consultants – municipal staff have to put in many additional hours, sitting on Steering Committees, getting involved in public participation processes, generating and collating information, and drafting development proposals.

This problem of introducing integrated development planning into municipal operations would not be so severe, were it not for the serious problem of under-staffing faced by municipalities. As it is, however, municipalities are typically short-staffed at virtually every level – a consequence of constant upward pressure on salary levels (due to trade union assertiveness), while simultaneous constraints on municipal budgeting are imposed by the National Treasury. At senior level, which is the “entry point” of every development initiative, there is no slack at all in the system. Senior officials are desperately overworked. Councillors and managers alike are so busy attending meeting after workshop after conference after launch, that they are hardly able to keep up with the routine things that demand their attention. How are they going to keep track of, let alone manage, the strategic stuff?

The Department of Water Affairs’ policy¹⁰⁴ of **free basic water policy** is another a partially-funded mandate. It is partially funded, because the use of indigents’ municipal services are meant to be covered by the Equitable Share subsidy. Some municipalities have simply equated the free basic water policy with the indigent policy, a move which has limited the costs placed on the municipality. Other municipalities have actually defined the bottom block of the block tariff system as 6 kl of “free water”. This means

¹⁰³ On one hand, the recognition of the importance of municipalities in the land reform process is an important step; on the other hand, adequate finance needs to be made available to enable municipalities to play the role of “after-care”.

¹⁰⁴ It is not clear whether this policy is seen as the brainchild of the Department of Water Affairs, or the Department of Provincial and Local Government. DWAF officials have been heard strenuously denying that it is a DWAF policy, and that the role of DWAF is simply to “provide support”.

that indigents receive their allotment of “free water”, and *in addition*, receive indigent subsidies. This is truly a heavy burden for cash-strapped municipalities to bear.

The main issue, as outlined in this section, is that when national and provincial governments decide to assign powers and functions to local government, this must be done explicitly, using the appropriate basis in the Constitution and following the procedures in the Systems Act. This will enhance the clarity on the allocation of powers over the various spheres and will allow for the emergence of practical solutions to some of the abovementioned implementation difficulties. More importantly, it will afford municipalities the necessary protection against unfunded mandates.

Something much more than a piece-meal understanding of unfunded mandates is needed here. Not only the drafting of IDPs, but many of the development projects so ambitiously envisaged by municipalities, will be unfunded mandates. *Even if project funding is made available*, the real cost to the municipality is in terms of administrative and management effort. Staff members have to be drawn away from their other workloads to administer projects. Vehicles have to be used, and equipment has to be made available – often in contexts where municipalities have not had the operational budgets to service their vehicles in equipment for many years.

Furthermore, development projects are not implemented one by one – they often have to be implemented simultaneously to get their full benefit. The promotion of emergent contractors is a typical example. Contractors need work, and sufficient work requires sufficient and regular infrastructure projects. The implementation of projects needs to be co-ordinated, to avoid the destructive tendency of stop-start development. Another example is the environmental dimension of projects: environmental awareness related to commonage projects (e.g. issues of overgrazing) needs to be linked to environmental awareness related to getting livestock out of living areas; this in turn needs to be linked to awareness projects about street cleansing and removal of litter.

Integrated development should be just that – *integrated*. Crucially, this requires programme and project managers who have sufficient development skills, not to manage projects on a one-by-one basis, but to integrate projects into coherent programmes, and to link programmes with one another in a creative and cost-effective way. The entire gamut of IDP-talk will be pointless unless national government faces up to the fact that many municipalities, as currently structured and funded, simply cannot become the developmental agencies which the Local Government White Paper envisaged them to be.

3. Reconceptualising intergovernmental fiscal flows

These arguments require a far-reaching re-examination of national-local fiscal flows. As shown above, national government has been generous in providing finance for capital

projects (such as CMIP¹⁰⁵ and Water Services grants), for financial management support of ailing municipalities (such as Project Viability and the Municipal Support Programme), and has provided funding for writing IDPs. Substantial funding has been made available for LED projects and for the identification of projects in the rural development nodes and urban renewal nodes.¹⁰⁶ Grants have also been made available to assist old municipalities to amalgamate into new jurisdictions (although, as shown above, this is insufficient in the face of the huge task). According to the Minister of Provincial and Local Government, the largest increases in national government’s 2002 budget are in transfers to the local sphere, rising by 18.3% per year from 2001/2 to 2004/5. Total allocations will rise from R6.6 billion in 2001/2 to R10.9 billion in 2004/5.¹⁰⁷ Clearly, intergovernmental fiscal transfers to local government are moving in a positive direction.

The difficulty, however, is that the vast bulk of funding is directed at infrastructure and LED *projects*. Such projects assume that (1) management and (2) ongoing operations and maintenance (O&M) capacity at municipal level actually exists. The real shortcoming in the inter-governmental fiscal flows is the lack of funding simply to *manage development*.

The same point is made by the Ministerial Advisory Committee: “In many cases, the maintenance of development projects is not budgeted for, either by the local authority when it applies for funding, or by national departments who cannot afford to maintain them. Alternatively, the skills to maintain them are not available in the municipality, which effectively means that the local authority is saddled with projects that are unsustainable. *Without the continued support of the national and provincial governments, these projects will not be maintained*”.¹⁰⁸

Arguably, each municipality may need to appoint one Head of Development as well as three or four project managers (each of which would be responsible for several actual projects). In addition to general development management staff, municipalities will also need to re-orient various specialists (e.g. librarians, environmental health officers, and technical staff) in more developmental approaches to their tasks. There is also an urgent need for national and provincial line departments to provide support (staff, technical advice, policy guidance) to municipalities to launch coherent developmental programmes and projects.

Two additional types of intergovernmental financial flows therefore have to be created:

¹⁰⁵ Consolidated Municipal Infrastructure Programme.

¹⁰⁶ For the Rural Development Strategy, this amounts to 120 projects worth R3.7 billion have been identified for the 13 rural nodes; this includes 22 priority projects worth R584 million identified for 2002/3. As part of the Urban Renewal Programme, this includes 110 anchor projects in the eight nodes.

¹⁰⁷ Budget Speech, on the budget vote of DPLG, National Assembly, 13 June 2002.

¹⁰⁸ Ministerial Advisory Committee on Local Government Transformation: “Interim report on the challenges facing local government”, submitted to DPLG, 22 November 2001.

- General development capacity, to fund new posts at municipal level (for development officers, programme managers and project managers). This can be done on the same precedent as the funding for the PIMS centres.
- Sectoral support by line departments, for provincial support staff, local government staff, regular meetings between departments and municipalities, re-training, help-desks, etc.

The implications of implementing IDPs are only now becoming evident. If additional funding streams are not provided, municipalities will experience their new developmental role as a massive unfunded mandate.

Such salaries will have to be funded by national level. There is simply no possibility of most municipalities – especially the more rural ones – being able to afford such posts, given the current structure of municipal revenues. Whether those posts should be created at local or district level, is not at issue here; what is important is that development requires staff time and skills. One cannot squeeze blood out of a stone; and one cannot squeeze development out of institutions which are already tearing at the seams.

As an aside, it should be noted that the Ministerial Advisory Committee (MAC)’s Interim Report (2001) also argues for the direct funding of management capacity at local level.¹⁰⁹ However, the MAC proposes the establishment of “specialist maintenance and resource centres”. This think-piece would argue that, while the general idea of funding management capacity is correct, the creation of additional support centres is not most urgent intervention. While management support and mentorship are clearly needed, municipalities’ most urgent need is for staff. A further consequence of this argument is that the PIMS Centres should also, in future, be incorporated into District Municipalities as core staff members, instead of remaining as semi-autonomous bodies outside the District Municipalities.

The argument for direct funding for municipal development management staff has a further important implication. The traditional prescriptions regarding the salary quotient of municipal budgets, are simply out of date. National Treasury operates within guidelines of a maximum of 30-40% of municipal budgets to be allocated to salary items. This approach is quite inappropriate in a context where municipalities are supposed to be developmental institutions. As repeatedly noted above, development is profoundly labour-intensive. New types of developmental posts have to be created. Such posts need to be at senior and middle level, and this will bring a substantial price tag.

There are no shortcuts to progress, and there are no bargain-basements in development. Development is an expensive and risky business, which requires competent and experienced staff. As the MAC report notes, “The current local government transformation process dwarfs, in its magnitude and complexity, any other institutional

¹⁰⁹ MAC Interim report (2001), p. 75.

change that has ever happened in the history of South Africa”.¹¹⁰ In this context, and given the huge and multi-sectoral developmental demands made on municipalities, the idea that municipalities should remain largely self-financing is simply inappropriate and out of touch with reality.

A key issue, in this regard, is the definition of “financial viability”. Currently, there is an unexamined assumption that “financial viability” means “the ability of a municipality to raise sufficient revenue to cover its operational expenses”. This definition is totally inadequate, since a municipality may trim its operational budget to such a degree that it has virtually no developmental impact at all. A more important definition¹¹¹

International comparative figures of intergovernmental transfers indicate this too: As the MAC Report shows, such transfers amount to about 30% of national budget in Europe and 70% of national budget in the United Kingdom. This compares to approximately 10% in South Africa.¹¹²

National Treasury is attempting to improve the situation, and envisages an increase of 11% per year, in real terms, in local government’s share.¹¹³ However, the danger exists that the bulk of this funding will be in the form of additional project funding, without corresponding funding for development management support.¹¹⁴ At present, equitable share comprises 57% of transfers to local government; infrastructure transfers constitute 35%, and transfers to support capacity development constitute only 8%. This raises the issue of the current predominant approaches towards capacity-building – i.e. employing consultants to provide support, and providing training to municipal councillors and staff. In addition, a great deal of hope is often placed on possibility of achieving partnerships). The next two sections briefly deal with these issues, and raise a few caveats.

4. Training of councillors and officials: What training can and cannot do

A digression on municipal training is needed here. Much of the current emphasis in capacity development support is in the form of *training*. There is an urgent need to re-think what training (of Councillors and municipal staff) can and cannot achieve. While the need for training remains undisputed, and the efforts of the Local Government and Water SETA to re-organise the arena of municipal training are commendable, there is a danger of assuming that training can solve the fundamental problems of municipal capacity. According to the MAC Report, “There is a considerable danger that local

¹¹⁰ MAC Interim Report (2001), p. 77.

¹¹¹ MAC Interim Report (2001), p. 102, based on a submission by Hildegard Fast, “Are South African Municipalities Financially Viable?”

¹¹² MAC Interim Report (2001), p. 108.

¹¹³ *Medium Term Budget Policy Statement*, October 2001, quoted in MAC, p. 108.

¹¹⁴ MAC Interim Report, p. 108, based on the 2001 Division of Revenue Act. At present, equitable share comprises 57% of transfers to local government; infrastructure transfers constitute 35%, and transfers to support capacity development constitute only 8%.

authorities already lacking capacity have too many staff attending ‘upgrading’ or ‘capacity-building’ courses to the serious detriment of efficient management”.¹¹⁵ There is a real need for a qualitative review current training processes, and record their successes, achievements and failures.

There is actually a double problem here: Firstly, senior municipal management requires substantial *experience*, whether regarding financial management, project identification, project design, project management, liaison with stakeholders, and intra-municipal organization. While the basic principles of all these topics can be dealt with in training sessions, there is simply no substitute for practical experience. As the MAC report notes, “Sensitive political and labour negotiations may need to be undertaken to resolve issues relating to personnel who lack the capacity to fulfil their job descriptions, despite their attendance at capacity building programmes and involvement in mentoring programmes.”¹¹⁶ One possible solution for such inappropriately appointed staff would be to undertake proper skills assessments (possibly to be done by Provincial Departments of Local Government), and for such staff to be re-deployed to operational levels more suited to their skills levels.

The underlying problem is the steady process of attrition of experienced municipal staff. This is a cause for major concern, and some interventions are needed by DPLG and Provincial Departments of Local Government to counter this trend. Examples of such interventions could be some real guidance to municipalities in making appointments; regulations regarding appointments specifying a minimum of years in development management positions; providing salary funding to pay experienced mentors to assist inexperienced staff; and most significantly, providing salary funding to attract experienced development managers to rural areas.

The second problem regarding training is that many municipalities simply have too few staff to cope with all their functions. Training sessions take time, and for rural municipalities, often require long travel distances. It is not unusual for senior municipal officials to be away from their desks for a week at a time, which creates enormous pressure on their colleagues and detracts from municipal administration and project management.

5. Public-private partnerships

The orientation towards “partnerships” is understandable, in the new era of flexible and goal-oriented local government. A variety of options are available, including public-public partnerships, single-purpose utilities, CBOs and NGOs, and public private

¹¹⁵ MAC Interim Report (2001), p. 81.

¹¹⁶ MAC Report, p. 81.

partnerships (PPPs).¹¹⁷ Impressive efforts have been made by the MIIU (Municipal Infrastructure Investment Unit) to facilitate Municipal Services Partnerships (MSPs).¹¹⁸ As at December 2001, the score-sheet showed six O&M¹¹⁹ projects completed¹²⁰, six projects involving O&M functions and capital expenditure combined¹²¹, two divestiture projects¹²² and four corporatisation projects.¹²³

This is clearly a large topic, and proper justice cannot be done to it in the space of this Think-Piece. However, a few observations can be made:

- Ideologically, the idea of partnerships often meets with opposition from the larger municipal unions, as illustrated by the implementation of the Nelspruit water partnership. The whole idea of “alternative service delivery” (ASD) is likely to raise more political problems than many Councils are prepared to face at this stage.
- Many municipalities cannot address any partnership options, because their decision-making processes are not at a sufficiently strategic level. According to Gugu Moloi, “political leadership is a very important ingredient in the process”.¹²⁴ Many Councils are pedalling hard simply to stay upright, and do not have the skills, time or staff to investigate more strategic partnerships.
- One of the key elements in a successful partnership is an effective contractual arrangement.¹²⁵ Contracts should be structured so that everyone wins: The service provider secures a return on investment that is commensurate with the risks; the municipality maintains its monitoring and regulatory role, but has the opportunity to attract new investment to reduce critical backlogs; and consumers get better standards of service and value for money. However, in Councils with relatively inexperienced councillors, such win-win solutions may not be easily identified. Many councillors, especially those without previous business experience, are uncomfortable with a situation in which a private company makes a profit from a municipal function.¹²⁶

¹¹⁷ For a fuller discussion, see DBSA, *Development Report: Building Developmental Local Government*, December 2000, p. 97.

¹¹⁸ Gugu Moloi, “Productive cycle for Municipal Infrastructure Investment Unit”, *Government Digest*, December 2001.

¹¹⁹ Operations and Maintenance.

¹²⁰ In towns as diverse as Harrismith, Johannesburg (Transport), Thabazimbi, and Robertson.

¹²¹ This includes 2 water projects (Dolphin Coast and Nelspruit), 2 airports (Pretoria and Richards Bay), one waste project (Tzaneen) and one fleet management project (Johannesburg).

¹²² Johannesburg Rand Airport and Johannesburg Metro Gas.

¹²³ Johannesburg Market, Johannesburg Bus, Eastern Cape IT, and Johannesburg Water Utility.

¹²⁴ Gugu Moloi, “Productive cycle for Municipal Infrastructure Investment Unit”, *Government Digest*, December 2001.

¹²⁵ DBSA, *Development Report: Building Developmental Local Government*, December 2000, p. 98.

¹²⁶ For example, in the erstwhile Philippolis TLC, in 1998, a proposed tree-felling project floundered because the entrepreneur and the Council disagreed on the rate of return. In addition to the

- There is often an assumption that out-sourcing development – whether to established or emergent contractors – will reduce municipal effort. This is emphatically not the case. Drafting Terms of Reference, selecting contractors, sorting out equity issues, dealing with unexpected practical problems, monitoring progress, and crucially, assisting emergent and inexperienced contractors to deal with all kinds of business challenges, is a full-time task. It is likely that only the stronger municipalities (i.e. municipalities with sufficient and experienced management staff) will be able to experiment with partnership options for the foreseeable future.

6. Support by national and provincial sectoral departments: The void in the system

As we saw above, many demands on municipalities do not take the form of an overt assignment of functions. Many functions are “assigned” in an implicit, “creeping” way. An additional category of demands is when municipalities are required to conform to national policy requirements in the normal conduct of their duties.¹²⁷

One example is that of **performance management**. The Municipal Systems Act¹²⁸ has numerous prescriptions for municipalities which entrench the need for performance targets to be set by Councils, to determine Key Performance Indicators, to establish processes of information collection and reporting, and significantly, to report to Provincial MECs, the Auditor-General, and relevant line departments.

Not many sectoral departments have taken these provisions seriously yet. Nevertheless, it is waiting in the wings as a huge obligation on municipal government. This does not mean that there is anything wrong with the idea of introducing performance management systems at municipal level; on the contrary, many people would be only too grateful for a degree of performance management to be introduced!

The problem arises when sectoral departments will begin to place additional demands on municipalities in the performance of their tasks. The Department of Water Affairs is a case in point. In terms of the Water Services Act, municipalities have been required to

developmental benefits of the project (providing wood to the community, and training community members in tree-felling), the Council insisted on receiving 30% of project revenue – which made the project financially unviable for the entrepreneur.

¹²⁷ Discussions have been held between DPLG and other departments (Health, Water Affairs, Minerals and Energy, National Treasury, the FFC, and SALGA) on the decentralisation of functions to municipalities, and on appropriate support mechanisms. These meetings may well have addressed some of the concerns raised in this section. It is not clear whether an opportunity has been made yet for public inputs in these discussions.

¹²⁸ Chapter 6.

write **Water Services Development Plans (WSDPs)**.¹²⁹ Simply in the amount of data which the WSDP’s have required (ranging from household income, topography, demographic profiles, current levels of services, infrastructure requirements and gaps, underground water levels, water balance reports, operations and maintenance procedures, characteristics of water-related institutions, and so forth, in minute detail) has required a massive administrative effort. Predictably, many municipalities outsourced this activity to consultants – usually paid for by DWAF. But not all municipalities were allocated funding to appoint consultants. Consequently, there are many municipalities who are barely aware that they have to write WSDPs in order to qualify for capital grants from DWAF. Once they do become aware of this, the task of writing a WSDP is completely beyond their capacity; even where senior municipal officials do have the technical skills to engage with this issue, they are often so overworked that they simply cannot take on any more tasks.

Once again, DWAF’s involvement of, and concern for, municipalities, is a commendable thing. Numerous other line departments have not even begun to consider the impact of their functions on local government. However, DWAF’s efforts seem unsustainable. The provision of funds to appoint consultants is not necessarily the best way to build municipalities’ capacity to plan or implement. Once again, there is a dire need for full-time development planners and project managers to be appointed at municipal level. Where consultants are used, they can fulfill their real role – to provide specialist and expert inputs in a plan which is largely drafted (and “owned”) by the municipality itself.

Another case where sectoral administrative support will be required in the foreseeable future is **environmental management**. Increasingly, municipalities are required to take into account the environmental aspects of development decisions. International programmes such as Local Agenda 21 promote the idea that municipalities include environmental issues into virtually all aspects of their functioning, from the design and maintenance of infrastructure to the creation of livelihoods and poverty alleviation projects. The National Environmental Management Act¹³⁰ makes ominous-sounding demands on local government: All national and provincial departments are required to draft Environmental Plans, and municipalities are instructed to “adhere to the relevant environmental implementation and management plans”.¹³¹

Very few specific environmental obligations have been made on municipalities by the national or provincial Departments of Environmental Affairs. Nevertheless, this is a growing concern for municipalities, simply because of the pressure placed on them by other development issues. Various examples come to mind: DWAF is increasingly insisting that municipalities draft and implement Water Conservation and Demand Management Policies to prevent depletion of water resources; the pro-poor commonage projects are creating environmental disasters on the peri-urban fringes; the siting of VIP

¹²⁹ Water Services Act, No. 108 of 1997, Section 12.

¹³⁰ Act 107 of 1998.

¹³¹ Section 16 (4) of Act 107 of 1998.

toilets¹³² requires careful attention to underground water supplies; the promotion of small-scale mining as a part of LED is creating environmental problems in various municipalities¹³³, and so on.

Currently, very few municipal staff have a background in environmental management. The most suitable officials are environmental health officers (EHOs), who are usually trained to deal with a very narrow interpretation of environmental health (e.g. the inspection of public food facilities). The EHOs are well placed to become more multi-skilled developmental officers, and they would have a natural bent towards environmental questions. But a degree of retraining is required, to reconceptualise environmental issues and to show how such issues can be brought to bear on water, sanitation, solid waste removal, land management, agricultural and poverty alleviation projects.

Once again, the question should be asked: Where should Municipalities receive support with regards to their environmental responsibilities? The provincial Departments of Environmental Affairs are the ideal candidates. As yet, however, those departments have done very little to support municipalities in practice.

There are numerous types of support which national and provincial line departments can provide. The following list is a starting point:

- Departments should provide policy guidance to Councillors, in the drafting of municipal policies and developmental plans
- Departments should assist Councils to identify suitable projects
- Departments should tailor their own budgets to support Councils in the implementation of such projects
- Departments should assist Municipalities to secure donor funding for projects and programmes
- Departments should provide ongoing mentoring, guidance and training to municipal staff members
- Departments should make extension officers available to assist municipalities in the implementation of projects
- Departments should assist Municipalities with the monitoring and evaluation (M&E) of projects and programmes.

In sum, each sectoral line department (for example, Water Affairs, Land Affairs, Transport, Health, Housing, Environmental Affairs, Agriculture, Economic Affairs, Labour, and Minerals and Energy) should have a local government development branch, preferably containing a Help Desk, staffed with officials who have knowledge of municipal legislation and the practical problems of municipal functioning.

¹³² Ventilated Improved Pit toilets.

¹³³ Such as Dikgatlong Municipality (Barkly West), in the Northern Cape.

7. Conclusion – taking the bull by the horns

This argument for funding development management posts may sound ominous, but it need not be such. Finding cash for development is always one of the easier aspects of making development happen. A much more serious constraint is to find the human capital – the competent and experienced staff, referred to earlier. Incentives have to be created for people who have development experience to relocate to areas where such skills are desperately needed (often in small towns and rural areas). Such incentives also come with a price tag. But, once again, the financial requirements are the easy part; much more difficult will be the creation of amenable and stimulating organizational environments for such development specialists. In those municipalities where political factionalism and patronage have become part of the organisational culture, this is truly a massive challenge to overcome.

In addition to funding support for development management posts, a further requirement is for sectoral departments to create much more supportive practices. Creating a supportive environment for municipalities, as envisaged in the Constitution, will require a more targeted approach to funding for capacity-building, as well as a culture shift within line departments.

J. Municipal government in marginalised areas: Capturing the “uncaptured citizenry”

The new demarcation had the radical consequence of combining different spatial contexts - commercial agricultural areas, traditional communities and peri-urban shacklands – into conventional urban-based municipalities.

On the face of it, this makes a great deal of sense. Typically, towns are linked with their hinterlands by economic and social ties. The spatial differentiation into “rural” and “urban” and “peri-urban” areas is often a poor reflection of real linkages; and where those linkages have become tenuous, it is probably a good thing for them to be strengthened.

This problem of “uncaptured” marginal communities surfaces in three types of contexts: Extensive commercial farming areas, peri-urban informal areas, and traditional areas. There are several similarities between these contexts:

- In many cases, rural communities have addressed their own service needs by their own efforts
- Long distances and poor communications make service delivery a massive challenge to under-resourced municipalities
- Both have a weak tradition of local government, and virtually no tradition of payment for services
- In each case, there are “development gate-keepers” (farmers, “warlords”, “shacklords” and traditional leaders), and a fundamental normative policy choice has to be made with regard to whether municipalities should use these gate-keepers as delivery channels.

The real problem is that municipalities are traditionally located in urban areas, and have a modern approach to municipal governance. The Transitional Rural Councils¹³⁴ which existed between 1995 and 2000 did extend the municipal order to rural areas, albeit in very shallow ways. In most municipalities, rural and peri-urban informal areas largely remain “uncaptured”, in Goran Hyden’s term, referring to communities who experience few or no bonds of loyalty or pragmatic interest in the prevailing political order.¹³⁵ “Uncaptured” communities display little interest in official policy demands placed on them, either because the proposed measures make no sense in their own local context, or because they have found other ways of dealing with problems.

¹³⁴ Alternatively termed “Transitional Representational Councils”.

¹³⁵ Goran Hyden, *Beyond Ujamaa in Tanzania: Underdevelopment and an Uncaptured Peasantry*, University of California Press, Berkeley, 1980, p. 32.

There are often inflated assumptions about what government can deliver at a local level, what communities can pay for, and the extent to which the indigents can be subsidized. Common assumptions include the ability of local government to deliver conventional services across the board (reticulated water, water-borne sewerage systems, electricity, freehold title systems, housing etc.). Within this mind-set, eliminating poverty equates to eliminating back-logs in infrastructure and services. This is in spite of the fact that such a large proportion of our population, (whether in informal settlements, farms or traditional holdings) lack access to such formal delivery systems and rely on their own systems and resource bases to acquire basic services. These people cannot be expected to afford conventional services, nor can government subsidize such services at scale.

Many rural communities have attempted their own developmental solutions. This can be illustrated using the examples of housing, water and energy. In each of these cases, informal solutions have been found, due to the inability of formal institutions (such as municipalities or government departments) to deliver services in rural areas.

Households which acquire **houses** at no cost to themselves through the housing programme have difficulty paying rates and service charges, and the very poor usually find sanctuary in dense informal settlements on the outskirts of the city where cheap access to land and services can be secured. A tremendous demand for land for affordable settlement has emerged within both urban and rural contexts which is not being addressed by current policies. A housing policy which recognises the contribution of non-formal housing delivery systems to affordable housing would not only have to confront the issue of tenure where individual title is all that is acceptable at present, but also recognise and find ways of work with non-formal structures which effectively deliver much of the housing within the country at present.

As regards **water**, few people within rural areas or informal settlements can afford reticulated water systems. Most of the rural areas depend on protected springs and boreholes, which depend to a large extent on voluntary committees to ensure their maintenance and continued operation. The capacity and authority of such committees invariably depends not only on the technical support which might be obtained from government (whether Water Affairs, a water authority or the municipality), but critically on the mandate received from the land or community management structure (such as traditional leaders or commercial farmers) which exists in these areas.

There has been an anticipation that spreading **electrification** programmes to outlying rural areas and to informal settlements could be achieved through technological means, namely through prepaid meter systems which build some of the infrastructure costs into the payment system for the use of electricity. The major unanticipated shortcoming of the pre-paid metering system has been the limited amount of electricity used by each household. Whether in outlying rural areas or in dense informal settlements that have been electrified, the tendency has been to use electricity only for lighting. Even where electrification programmes can be successfully put in place, this does not obviate the need for other strategies that will enable sustainable use of traditional sources of energy.

The fact that other strategies (such as woodlots) typically require extensive self-management and the approval of existing land management structures highlights the point that technological innovations cannot, or can only partially substitute for the necessity to engage with these bodies in service delivery.

It is not only service delivery that the developmental local government framework does not address within non-formal areas. It is also regulatory issues, particularly those relating to land use and environmental management.

Government **land use and environmental management systems** are generally founded on the assumption that there are available institutional mechanisms in terms of which development can be co-ordinated and planned to promote economic growth, maximize the use of space, allocate land uses effectively, and manage the use of environment and natural resources. These instruments range from prescriptive legislation which require that development applications are assessed in terms of particular procedures and criteria, to development plans which guide public investment and provide criteria for the use and management of land at a local level.

Planning systems often fall short in assuming that such instruments can be applied within areas in which informal systems of land and services predominate. The difficulty is that intervention is only possible where formal rights are applied for, since in these cases, land use approval is required. It is only in these instances that it is, or it will be possible to control land use or environmental usage. What this means is that to a large extent, informal land allocation and management systems remain beyond the reach of formal planning systems and procedures.

Where intervention remains possible, it is through the location of public investment, over which the state retains control. Spatial patterns of informal settlements can be influenced, but not in the very direct ways anticipated by formal planning systems. Aside from these contexts, the capacity of government to play a role in land use and environmental management is extremely limited.

The nature of services that can be afforded within these areas requires much greater levels of participation and community management than conventional municipal services. Given that the mobilization of communities in support of service delivery typically involves developing the support and cooperation of existing community bodies involved in service delivery, a municipality wishing to provide affordable services must develop very close relationships with existing land management administrations and community management structures, and mechanisms by which community support for service delivery can be mobilized.

Secondly, effective land use and environmental management systems within these areas has to be secured through co-operative agreements reached with traditional authorities, commercial farmers, and/or informal land management administrations (e.g. shacklords). A priority is to develop mechanisms by which optimal arrangements for land use

planning can be facilitated and negotiated with land management structures. Only in this way is it possible to negotiate land use and environmental management systems which are consistent with the formal planning systems.

Both the above requirements mean making concessions to informal systems (such as farmers, traditional leaders or peri-urban shacklords). There are two reasons for this. First, the state is unable to substitute for the social security and welfare functions of land accessed through informal systems. Secondly, the state does not have the capacity to replace informal systems of land allocation and management with formal planning procedures and mechanisms for land use control. These requirements are rarely explicitly acknowledged by local government with the consequence that policies and programmes are generally not aligned with such systems, tend to compete with, rather than complement them and do not adequately contribute to enhancing their effectiveness in promoting livelihoods or providing affordable services. Formal service and delivery systems moreover, remain beyond the reach of the poor and are often not sustainable.

One of the difficulties is that engagement with such bodies is fundamentally political in nature. Local political authority of land management structures is founded on granting poor people access to land and other resources that the state cannot generally hope to provide. Securing support of these bodies by government agencies is essentially contingent on securing a *quid pro quo* which will not undermine the existing power holders, or will provide them with an alternative (and perhaps more legitimate basis) for securing consent and support of their constituencies.

Three examples of the second point may give grist to the argument. The first is the observation that one of the first successful **slum upgrading programmes** in the Durban Metro was in an area controlled by one of the most notorious warlords on the outskirts of the city. His control over the settlement enabled many of the obstacles in neighbouring communities, relating to community leadership, to be overcome once the *quid pro quo* with the warlord had been achieved.

A second example concerns the reluctance of many traditional leaders in KwazuluNatal to contemplate **development initiatives** in their areas, for fear of losing control over the process. This has been ascribed to the severe neglect of the institution of traditional leadership during the apartheid and post-apartheid periods and the undermining of functions outside of land allocation. Where they had been previously marginalised in developmental activities by government, parastatal and non-government organizations, they no longer felt able to allow such developments without losing ground to competing local interests. Widening their basis of legitimacy through training and keeping them informed on development opportunities would, no doubt enable an improvement of their status as enablers and facilitators of development rather than being reactionary conservatives.

The third example is from DWAF’s **farm worker sanitation programme** in the Northern Cape. It has been clearly shown that a successful programme requires the active support and commitment of farmers and landowners.

The political nature of the necessary engagement between government non-formal land management structures is of course one of the major stumbling blocks in realigning formal law and management systems with the predominant informal systems. At a national level in South Africa, this is reflected in continued lack of clarity about the role of local government and traditional leaders, as well as continued uncertainty regarding a policy on land tenure within the former homeland areas. At a local government level, it is reflected in a reluctance to engage with traditional leaders or other informal land management structures at a political or even an administrative level. The implicit and fallacious assumption remains in place, that government can meet its constitutional and social obligations without recourse to traditional authorities or other land management structures.

In commercial farming areas, some municipalities are experiencing difficulties in establishing workable relationships with farmers. This is at least partly because very few farmers have been elected to Municipal Councils (due to the demarcation of wards). It is also because the obvious representative organisations of farmers are the Farmers Associations or Agricultural Unions, which historically represented only white farmers. Relations between Councils and these Unions still have to be built. In the Northern Cape, Councils with a Democratic Alliance majority have a better relationship with farmers unions. One example is Kareeberg Municipality (Carnarvon), where farmers associations were used to conduct a municipal survey on farm workers’ housing and services. Predictably, ANC-dominated Councils cannot draw on the same political culture as farmers unions, and therefore it will take longer for such a relationship to be established.

It is by no means being suggested that the choices regarding the involvement of non-state “gate-keepers” are easy ones, particularly where there are competing contenders for government patronage. Where councillors or officials are not mandated to strike deals with such structures, (ideally within defined parameters set by such councils), it is unlikely that government will be able to contribute to the enhancement of informal systems of service delivery.

Conventional municipal models comprising a range of functional departments generally providing conventional municipal services are typically poorly equipped to deal with the problems and service needs of such settlements. Conventional municipal models usually rely on paid professionals to provide services for which service charges are levied. In enhancing informal systems of service delivery, a priority is ensuring that appropriate support is provided to the structures that are responsible for managing the facilities within the settlement (both training and facilitation) and that there is appropriate liaison between them and the technical service providers.

This is not to argue for a weak role for municipalities. The role of municipalities have to be strengthened, and this will require, as argued above, investment in the creation of development management posts and operational resources. But it does involve a recognition that municipalities can never do everything on their own in the marginalised areas. They will need every bit of social capital they can get, in the form of bringing traditional leaders and farmers into the municipal system, and securing their active support.

Conclusion

This paper outlined some of the most important issues facing the local government sphere during the next five years or so. The most urgent necessity is to resolve the powers and functions of local and district municipalities, because without that, there is no way of planning meaningful developmental capacity-building initiatives. As the paper argues, the current confusion (in the wake of the Municipal Structures Amendment Act) has to be resolved. It would be preferable, in general, to keep Local Municipalities as the main developmental agents, although this would vary from one provincial and regional context to another, and from one function to another. Provincial Departments of Local Government are the key institutions where decisions regarding the functions and powers of particular District and Local Municipalities, as such decisions would depend greatly on local circumstances.

Once this matter is resolved, there is an urgent need for funding from national level, to enable municipalities to create development management posts. There is also an increasing need for sectoral line departments to provide much more hands-on support (expertise and guidance) to municipalities.

Finally, a host of practical questions regarding the functioning of municipalities need to be examined more closely, researched, and addressed. These include the functioning of Councils; the role definition of Councillors vis-à-vis municipal officials; public participation; the spatial and institutional structure of municipal administrations; the institutional location of the development planning function; and the delivery of services to marginalised areas.

The massive scale of municipal transformation, and its widespread implications, is now becoming evident. “Transforming municipal government” is like turning the tanker. A vast number of political, administrative and financial matters have to be addressed, to enable the local government sphere to live up to its constitutional mandate. Within the new constitutional order, this arguably the most dramatic and urgent priority, requiring the co-operation of all national and provincial ministries. The key driver of this process must be DPLG, which will need maximum authority and capacity to secure the co-operation of all other players.

Until now, DPLG’s efforts have largely been shielded from public view. Opportunities should now be created for private and public research agencies, consultancies and specialists to become involved in a structured process of sharing information and insights, and working to support DPLG’s staff to design policy proposals and capacity-building programmes. The municipal sphere in South Africa has always been associated with widespread interest and concern from civil society organisations; this amounts to social capital which should now be utilised to the full.

“A PASSION TO GOVERN”:
THIRD-GENERATION ISSUES FACING LOCAL GOVERNMENT IN SOUTH AFRICA
Centre for Development and Enterprise, June 2002