



School of Economics
University of Cape Town

CONFERENCE 2008

The Regulatory Environment
and its Impact on the Nature
and Level of Economic
Growth and Development in
South Africa

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Employment Promotion Programme



DPRU Conference 2008

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Level of Economic Growth and Development in South Africa**

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Sub-theme:

Local Government and Municipal Regulation in Post-Apartheid South Africa

Abstract

The Local Government system in South Africa is fraught with transformation related challenges and polarities between urban and rural municipalities in terms of capacity, resources and economic potential. The transitional phases are over but municipalities still confront the legacy of a disjointed, subservient system. The configuration of the current system entrenches local government as the integrative core which coordinates and synchronise national and provincial spatial and economic development programmes. Developmentalism is the cornerstone of the current system. The developmental challenges are vast and the national imperatives are becoming urgent.

This challenge needs a system, which encourages municipalities to create favourable conditions for external investment, and partnerships that accelerate economic growth and provision of basic services. However, upper spheres are duty bound in terms of the Constitution to support, supervise and monitor performance of municipalities. The primary intent of this paper is to explore the nature of municipal regulatory environment and its impact on sustainable economic development. There is a growing sense of grant dependency and overregulation of municipalities and the regulatory instruments provide latitude to municipalities to craft long-term plans guided by the principles of continuity, value for money and sustainability.

Introduction

In its sixth year, the democratic Local Government system in South Africa is still in its formative stages. Nonetheless, measurable progress has been made in addressing the intractable legacy of the apartheid system of Local Government. For the purposes of this paper, Local Government is defined as that sphere of government closest to its constituents and involved in rendering a wide range of services that materially affect the daily lives of the inhabitants residing within its area of jurisdiction.¹ During the apartheid era, Local Government was fragmented and badly organised into numerous race-based local authorities devoid of any developmental scope, but merely executing administrative functions with limited delegated powers from the central government. They were all neatly compartmentalised into over 1,000 race-based white, coloured, Indian and black authorities that took many forms and sizes.²

During the height of the struggle, particularly in the late 1970s and 80s civic mobilisation and resistance towards the distorted Local Government system and apartheid became more prominent, severely affecting illegitimate local authorities. This resistance translated into mass uprisings and consumer, service charges and rent boycotts¹ which, some argue resulted in the 'culture of non-payment' of municipal services in the post-apartheid era. The systematic internal resistance proved to be a cornerstone of the process of conceptualisation of the system of Local Government fit to address the disparities and place Local Government on a developmental path. The mass local struggles formed the basis of the democratic developmental local government crafted during the negotiations within the Local Government Negotiating Forum, which led to the adoption of the Local Government Transition Act of 1993. This Act mapped out three phases of establishing local government, namely, pre-interim, interim and final phases.

In the final Constitution of 1996, Local Government was given the necessary developmental space, which indicates a paradigm shift from the past. The Constitution also entrenched the existence of local government in its own right within the cooperative governance prescripts. The unique principle of cooperative governance based on the recognition of the status of all spheres as distinctive, inter-dependent and interrelated was entrenched. Paramount within this framework is coordination and support in pursuit of the developmental objectives to attain a non-racist, non-sexist and prosperous society.

This paper aims to enunciate the powers and functions as well as the evolution of Local Government in relation to other spheres of government. It is noteworthy that the fully fledged democratic system of Local Government came into effect when other spheres were consolidating policy and programme implementation. This meant that the local sphere had to

¹ Zybrands (2001).

² Ismael and Mphaisha (1997).

catch up speedily to keep pace with the two upper spheres. As the Government's implementation programme intensified, the role of Local Government became crucial as a catalyst of development and integration of programmes. In furtherance of the critical developmental path in the system of cooperative governance, the upper spheres of Government have a role in supervising Local Government. This supervision is done through various regulatory instruments. However, there are checks and balances to ensure respect for, and integrity of, Local Government by the supervising spheres.

Conceptualisation of Local Government in South Africa

The system of Local Government before 1994 mirrored the architecture of the cruel apartheid order by design and application. It was subservient, racist and illegitimate which resulted in major distortions of settlement patterns, racial disparities and skewed development. In an expansive book on Developmental Local Government in South Africa, the apartheid era local government was summed as inherently subservient to the racist policies of the central state. It was a weak, illegitimate and entirely non-developmental level of government.³ The apartheid edifice was based on the centrist, discriminatory and segregationist laws, policies, ordinances, development, settlement and employment patterns. The segregationist policies of the apartheid era divided local government into fragmented and racially based areas which had no sustainable development mechanism, but instead had a parasitic character. Apartheid regulations barred most retail and industrial developments in black areas. This limited the tax base and forced residents and retailers to spend most of their money in white areas.⁴

The apartheid system of local governance and administration was ineffective and unwittingly placed the entire system on the brink of collapse in the 1980s during the era of Black Authorities Act. In trying to salvage the collapse of the system, Black Authorities were replaced by Communal Councils and subsequently Regional Services Councils were established in 1985, but these measures were doomed to fail. The United Democratic Front (UDF) was at the forefront of the internal local struggles to render the reformist policies, within the segregationist illegitimate framework unworkable. In its launch in 1983, the UDF declared "one city, one tax base" which had a local redistributive intention for equitable development and delivery.

The unrest at local level against a dysfunctional Local Government system and the unjust apartheid system precipitated, among other factors, the beginning of the negotiations for a democratic South Africa. In 1991, the Interim Measures for Local Government Act was passed essentially creating space for participation of statutory and non-statutory bodies in the Local Government Negotiation Forum (LGNF) for an equitable and developmental local government system. This forum allowed local communities to engage on a range of

³ See Jaap de Visser (2005) for a comprehensive view of local government

⁴ White Paper 1998

institutional options, from total amalgamation of all forms of resource sharing to establishment of joint service bodies.⁵

Foundations of the Democratic Local Government System in South Africa

The negotiations within the LGNF process culminated in the adoption of the Local Government Transitional Act of 1993, which laid the foundation for general principles and evolution of the Local Government system. This process also ensured the insertion, in the Interim Constitution in 1993, of principle XXIV which states that “A framework for Local Government powers, functions and structures shall be set out in the Constitution. The comprehensive powers, functions and other features of Local Government shall be set out in parliamentary statutes or in provincial legislation or in both”. The Interim Constitution embodies a paradigm shift from a Local Government, which is subservient to central government, to an autonomous sphere with a service delivery mandate. Although Local Government’s mandate under the Interim Constitution was limited to service delivery, the final Constitution adopted in 1996 sees it as only one of the five objects. Sections 152 and 153 of the Constitution translate into four developmental principles: democracy, sustaining and improving an adequate standard of living, a safe and healthy environment and cooperative government. Of critical significance within these objects of local government is the realisation of the integrative role of Local Government in provincial and national programmes which gives effect to the spirit of cooperative governance. This ensures that all spheres of government have an important role in the redistributive developmental framework of the country.

Debates and theories of decentralisation and devolution of authority clearly had a major influence in the context of crafting objects of Local Government within the cooperative governance model. The White Paper is the expression of the belief that our decentralisation of a special type can work. South Africa has developed a unique form of decentralisation in the context of the creation of three spheres which are required to govern in a cooperative manner.² The creative process of decentralisation within the cooperative governance framework devoid of control or competition is indeed unique, but not without some challenges. The move to decentralize power and authority to Local Government was also informed by international trends away from centrist tendencies. Explaining the rationale, Gordhan proposed that the urgency of Local Government transformation followed from two world historical processes: globalization and the redefinition of the nation state; as well as a new “emphasis” on decentralization.⁶

⁵ See Buhlungu and Atkinson State of the Nation 2007

⁶ Chipkin and Mafunisa (2005) trace the genesis of developmental local government in the Ten Year Review of Local Government

Transitional Local Government Arrangements as Building Blocks

Throughout the negotiation process role-players had to unravel the disjointed system of local government which comprised of a myriad of racially segregated municipalities. Within the Local Government Negotiating Forum (LGNF) critical milestones were achieved, which served to chart a forward looking approach to rationalisation of local government. These significant measures include:⁷ an agreement on local government finances, Local Government Transition Act No 209 of 1993 and a chapter in the Interim Constitution which was a precursor to the 1996 Constitution.

The agreement on Local Government finances approved the write-off of arrears of Black Local Authorities while the Local Government Transition Act began to overhaul the Local Government configuration. Notably, the LTGA did not provide substantive changes to Local Government, but actually mapped out a process of significant change in the municipal system. The LGTA outlined three critical phases of Local Government transformation, comprising pre-interim, interim and final phase. The chart below details numerous developments within these critical evolutionary phases of municipal governance in South Africa.

Table 1. Legislative and policy developments of local government in South Africa

Phase	Megapolicy	Mesopolicy	Discrete policy
Pre-Interim (1993-1996)	Interim Constitution (1993)	Local Government Transition Act (1993)	
		Reconstruction & Development Programme (RDP)	
		Urban Development Strategy (1995)	
		Rural Development Strategy (1995)	
Interim (1996-2000)	Constitution (1996)	Development Facilitation Act (1995)	
		White Paper on Local Government (1998)	
		Municipal Demarcation Act (1998) Municipal Structures Act (1998)	
Final (2000)	Municipal System Act (2000)		
	Municipal Finance Management Act		
	Property Rates Act (2004)		

Source: Adapted from Motsi (2002:122)

The building blocks for a new system of Local Government and administration were set in the Local Government Transition Act of 1993. The Transition Act provided a forward looking

⁷ de Visser (2005)

outline of milestones to usher in the era of effective integrated municipal governance. The Local Government Transition Act mapped out three phases of transition:⁸

- The *pre-interim* phase, which prescribed the establishment of local forums to negotiate the appointment of temporary Councils, which would govern until municipal elections.
- The *interim phase*, beginning with municipal elections and lasting until a new local government system has been designed and legislated upon.
- The *final stage*, when a new local government system will be established.

A plethora of policies and laws were passed according to the three-phase approach as outlined in the Transition Act. The pre-interim phase began after the promulgation of the Transition Act which led to the transformation of Local Government. It is worth noting that the staggered transitional Local Government elections took place between 1995 and June 1996, which ostensibly established transitional municipal councils. The transition process resulted in a Local Government system consisting of 843 municipalities and over 11 000 democratically elected councillors.⁹ The pre-interim period saw promulgation of a number of significant legislation, including the Interim Constitution, LGTA, Urban Development and Rural Development Strategies. These pieces laid the foundation for many subsequent processes. The interim phase entrenched critical milestones such as the adoption of the final Constitution, which gave definitive powers and functions to the municipal sphere. In addition, the White Paper on Local Government, Municipal Structures and Systems acts, respectively, gave expression to the constitutional provisions and introduced the enduring concept of developmental Local Government. This placed Local Government at the centre of driving an ambitious programme designed to address developmental backlogs, eradicating poverty, the promotion of sustainable development and the provision of a safe and secure environment.¹⁰ With all the foundation, i.e., developmental approach, democratic structures, principles of transparency and accountability established, the final phase tightened the administrative and financial management. The final phase, from 2000 onwards, began a process of consolidation of the system of Local Government. The expectation of maturity of the system post-2000 was augmented by promulgation of Municipal Finance Management Act of 2003 and the Property Rates Act of 2004. The primary intent of these pieces of legislation is to ensure adequate financial management systems as well as ability to generate revenue to accelerate service delivery and discharge Local Government mandate.

Transformation of the Local Government System

The Constitution recognises all three spheres of Government as distinctive, interrelated and interdependent. To give effect to the coexistence of different, but interlinked spheres of state, Chapter Three of the Constitution provides for principles of cooperative governance, which

⁸ White Paper (1998) crisply sums up the three-phased approach of the transition

⁹ Ibid

¹⁰ Buhlungu and Atkinson 2007 State of the Nation Address

essentially involves support, building friendly relations and coordination. Embedded in these fundamental principles is the understanding that South Africa is one territorial space with a historical mandate to build unity transcending race, class and gender, while simultaneously entrenching developmental imperatives. Since the advent of democracy in 1994, the Government has been preoccupied with the daunting mandate of transforming the institution of Local Government into a dynamic, democratic, effective and developmental sphere for public service delivery. The Constitution, Act 108 of 1996 sets the tone and parameters for Local Government to create an enabling environment for democratic community participation, Local Economic Development (LED) and for coordinating multi-sectoral programmes at the local level. The objects of local government are:

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

The central tenets of the vision of local government, i.e., democratisation, development and sustainability are embodied within the objects of municipal government. The Constitution also issues an instruction that a municipality must strive, within its financial and administrative capacity, to achieve the objects of local government.¹¹

The role and place of Local Government in South Africa has evolved through various phases since the transition to democracy until now. The Provincial and Local Government spheres are currently the subject of a review process to ensure appropriate location, function, service delivery imperatives and to entrench developmental Local Government through support consistent with the provisions of co-operative governance. The review process is gaining momentum, propelling the recent conference of the African National Congress to resolve “That the incoming (National Executive Committee (NEC) must ensure that an ANC summit is held to formulate an input into the process to develop a White Paper on Provincial Government and to review the Local Government White Paper” (ANC 2007).

Local Government has a fundamental role to play in reconstruction and development as crisply put in the White Paper of 1998 that “Local Government has a critical role to play in rebuilding local communities and environments, as the basis for a democratic, integrated, prosperous and truly non-racial society” (Department of Constitutional Development, 1998). While Local Government is subjected to the review process, one thing is clear, Local Government is a cornerstone of the country’s development prospects. McCann (2003:191) rightly noted that “Emphasis is placed on Local Government for the coordinated

¹¹ RSA Constitution Act 108 of 1996

implementation of state programmes, and the Constitution mandates the national and provincial spheres of government to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions”.

The Local Government Development Framework as ‘Centre of Gravity’

Constitutionally a separate sphere, the South African Local Government in its latest reincarnation carries the weight of a national agenda for economic, political and social transformation. The local state’s responsibilities now lie in reconstruction, as the closest institutions to the vast disparities stratifying rural areas, small towns and metropolis. Local Government as a separate sphere also has another role as the representative of the specific consensus or negotiation of citizen interests in a particular area of jurisdiction (Oldfield, 2002:92).

Local Government is the closest sphere of government to the people and its role goes beyond that of an implementation agency of the central government. The close proximity to communities enjoyed by the local sphere comes with the responsibility of giving practical meaning to participatory democracy, harnessing the municipal–community interface, boosting the local economy for sustainable development and entrenching community integration. Local Government is closest to the citizens geographically, politically and institutionally.¹² By design Local Government becomes ‘the centre of gravity’ in its role of fundamentally integrating strategies for quality service delivery in a democratic system, upholding the principles of social justice and implementing programmes underscored by national imperatives. The critical role of Local Government in harmonising and consolidating government programmes requires a systemic transformatory developmentalism underpinned by democratic ethos. In this regard, rigorous implementation of the multi-faceted Integrated Development Plans (IDP), which integrate national priorities, provincial strategies and community interests is central. This is the essence of Developmental Local Government which seeks to: entrench community participatory democratic process of attaining and maximising social and economic gains as well as improvement of material conditions of citizens in a sustainable fashion. Communities are battling against the stranglehold of poverty, unemployment, underdevelopment, distorted settlement patterns and inequality. This immense pressure placed on Local Government by the demands to render services and unlock economic opportunities as per constitutional obligations has exposed the institutional and technical weaknesses in the municipal sphere.

The Local Government sphere is expected to play an integral part in the development process. However, this sphere of government has been lagging behind national and provincial spheres. For example, the first ever democratic elections in Local Government only took place in 2000, five years after the 1994 democratic breakthrough. In addition, critical legislation such as the Municipal Finance Management Act (MFMA) was only promulgated in

¹² Atkinson (2002).

2003 while the Public Finance Management Act (PFMA) was adopted as far back as 1999. When Local Government embarked vigorously on transformation in the post-2000 election period, the national and provincial government had passed the policy and law-making phase and was well into the implementation phase. This meant that there was a gap between national and provincial spheres on the one hand and Local Government in policy implementation on the other hand, as the local sphere was pre-occupied with the pains of transformation.

The holistic developmental vision envisaged for local government in the white paper on local government was dampened by the scale and complexity of the various cycles of institutional reform required to finally establish the permanent and fully non-racial local government system after 2000. And even after the establishment of the final phase of local government. It took most of the term of office of that generation of municipalities to understand and (partially) address the consequences of complex institutional mergers and rationalisation. This made it very difficult for most municipalities, except the well resourced ones, to come to terms with their developmental mandates.....¹³

The African National Congress (ANC) understood and characterised Local Government as an integral part of the country's socio-economic development since 1994. This was made abundantly clear when the then President Nelson Mandela described Local Government as 'the arms and legs of the Reconstruction and Development Programme'.¹⁴ This is encapsulated further in Chapter Seven of the South African Constitution, which explicitly defines the functions and place of Local Government. Accordingly, Local Government is expected to implement programmes with a high degree of administrative efficiency and zeal. When this is not immediately evident, citizens lose patience as has been shown by the service delivery protests which have manifested themselves across the country. Challenges hampering operationalisation of the developmental local government include shortage of critical technical and managerial skills. In addition to these challenges, the then President Thabo Mbeki, addressing a SALGA conference in 2004, made the following admission, "All of us here are acutely aware of the disparities and imbalances that exist among our municipalities, as, for instance, between our metropolitan and rural district municipalities. Similarly, we are perfectly sensitised about the disparities and imbalances within individual municipalities, as, for instance, between the historically black and the historically white sections within these areas". Thirteen years of experience, shortfalls and interventions in the new local government system has resulted in the much needed refinement of the developmental local government agenda. There have been many initiatives to assist struggling municipalities by way of grants and most notably Project Consolidate. In 2004, the National Government initiated Project Consolidate to respond to persistent capacity challenges in identified municipalities. Through this intervention 281 experts were deployed to 85 struggling municipalities to unblock bottlenecks and accelerate service delivery, augment financial, technical and managerial skills and support Local Economic Development initiatives, amongst others. In the second term of local government, the Department of Provincial and

¹³ Pieterse and van Donk (2008) trace the policy intent and impact of Developmental Local Government

¹⁴ ANC, 1994:29 cited in Lemon, A. 2002

Local Government's (DPLG) expressed intent, based on 13 years of experience, was to refine Local Government policy and practise to concretise ideals of a developmental local government. To this end the Department developed a 5-year Local Government Strategic Agenda 2006–2011. This strategy builds on experiences of Project Consolidate and thus incorporates the fundamental tenets of project Consolidate. The key pillars of the aforementioned Agenda include:

- Mainstreaming hands-on support to local government structures to improve municipal governance, performance and accountability.
- Addressing the structure and governance arrangements of the State in order to better strengthen, support and monitor Local Government structures.
- Refining and strengthening the policy, regulatory and fiscal environment for Local Government and giving greater attention to the enforcement measures.¹⁵

The centrality of municipalities in quality service provision, infrastructure as well as socio-economic development and environmental sustainability is inescapable, but the shortcomings stifle these progressive ideals. Systematic support to local government to strengthen structures and institutional capacity to improve the livelihoods of impoverished communities is imperative. The refinement of policy and regulatory tools to augment municipal performance must be welcomed. However some detailed analysis of the capacity of the department to actually assist municipalities in accordance with the central pillars of the 5-year LGSA is warranted. The ensuing section is an examination of the regulatory function of national and provincial governments in municipalities.

'Embedded Autonomy': Support, Interventions and Regulation in Local Government

The South African debate has kept abreast of international trends in the development discourse as evidenced by the extent of the powers and functions and relative autonomy of Local Government. This came about as a result of calls for the decentralisation and devolution of authority towards Local Government. It is important to note the significance of the application of provisions of cooperative government which have given Local Government respectability. The Government is determined to ensure that all spheres in practise adhere to the principles of cooperative governance, hence, the promulgation of the Intergovernmental Relations Framework Act of 2005 which seeks to promote and harness intergovernmental relations. However, the autonomy of the Local Government is not absolute; local government's independence is underpinned by national principles and priorities. Within this context, it is essential to highlight the significance of the principles of provision of basic services, continuity of services and affordability which bind municipalities. Failure to attain these fundamental governing principles as a result of capacity, maladministration or

¹⁵ Frazer-Moleketi, G (2008).

governance problems leads to interventions by the upper structures of government. For example, section 139 of the Constitution gives provincial government the power to, among other things, intervene when a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation. The relevant Provincial Executive Council may intervene by taking any appropriate steps to ensure fulfilment of that obligation. The envisaged intervention may take various forms: issuing directives, assuming responsibility for the specific function or placing the municipality under provincial administration. National and provincial spheres are duty-bound to monitor and supervise Local Government to ensure the vigorous pursuit of service delivery within the broad rubric of national development.

The provincial and national governments have intervened in numerous cases to restore proper operations in municipalities (see annexure A for a complete list). Some supported interventions include Project Consolidate, which now augments or contributes to the 5-year Strategic Agenda of Local Government. The National Treasury primarily applies other instruments to enhance supervision and monitoring of municipalities, including the provisions in Chapter Thirteen of the South African Constitution, MFMA (2003) and several Treasury regulations, such as the Supply Chain Management Regulations of 2005. Compliance with this mandatory regulatory framework is enforced and non-compliance is sanctioned through the withdrawal of funds from the national fiscus.

The supervisory function of the upper spheres of the government entails the establishment and structuring of municipalities, regulating the exercise of their competencies, monitoring the exercise of those competencies and in certain circumstances intervening in municipal affairs. Supporting and monitoring municipalities and a measure of regulation are necessary; anything less is tantamount to throwing the baby out with a bathtub.

The institutional design necessitates that only the Departments of Finance and Provincial and Local Government can effectively regulate municipalities. Close monitoring of municipal performance with respect to financial administration, service delivery and democratic practices is performed by the two departments, respectively. The DPLG is responsible for ensuring that municipalities discharge their duties of service delivery and socio-economic development. The DPLG also provides strategic direction for the local sphere to ensure accelerated development and participatory democracy. The DPLG monitors and regulates performance of municipalities based on the mandate and the broad rubric of national imperatives, such as halving poverty by 2014. The Constitution dictates that municipalities must be given their equitable share which is meant to augment municipal own revenue. The Local Government Equitable Share is budgeted to grow from R12, 4 billion in 2007/08 to R24, 9 billion in the 2010/11 financial year. This means that there has been an additional R6,5 billion over the 2007 baseline. Local Government Equitable Share continues to be an integral funding instrument for the provision of free basic services to poor households and to fund institutional capacity and municipal support in poor municipalities. To ensure adequate

implementation of municipal infrastructure development, the Department allocates an additional R3.8 billion over and above the R8.7 billion budget for the MIG.¹⁶ The Equitable Share is the only unconditional grant as it is a constitutional entitlement for municipalities, which is meant to address the gap between municipal revenues and expenditures. Municipalities are free to utilise the Equitable Share after taking into account national priorities that underpin vertical division of revenue.¹⁷

It is against this backdrop that the responsibility for regulating Local Government lies with the two upper spheres of government. Thus, Oldfield (2002:97) explains that the role of National Treasury through the provision of 'equitable share' from the national fiscus may be used as an incentive 'carrot' to be developmental, or as a coercive 'stick' to exert some degree of pressure. Oldfield further ponders "is the 'iron fist' of the national government disguised by the 'kid glove' embedded autonomy"? This is indeed a relevant question to this paper. Nevertheless, it is noteworthy that the provincial government neither has the 'stick' nor the 'carrot' to keep municipalities in line.¹⁸

Is the Regulatory Framework Developmental or Prohibitive?

A central question that must be asked is whether the upper spheres of government, in pursuit of their regulatory function, enhance municipal development and sustainability or is the regulatory environment retarding economic prosperity? In attempting to deal with this question perhaps it is necessary to ask further questions. What kind of mechanisms is currently being used to give expression to the regulatory framework? The National Treasury has expressed concern about the "growing grant dependency syndrome".¹⁹ Could this grant dependency syndrome be a result of overregulation and limited space for innovative economically sustainable solutions? Better yet, how do municipalities align their own revenue, private sector investment and national government grants and transfers?

The above sets of questions are extremely critical concerning the regulatory framework and models for municipal financing. These have far reaching implications for municipal systems and the ideal of fostering developmental local government through sustainable development mechanisms. In order to advance national priorities of a developmental state and as part of the constitutional imperatives the national government provides transfers and grants to municipalities within the Intergovernmental Fiscal Relations of 1997. National government provides capacity building support to municipalities in order to strengthen technical, financial and managerial skills for accelerated infrastructure development, service delivery and sustainable economic prosperity. National government must provide an overarching framework not only to ensure accountability for national resources, but also to monitor and

¹⁶ National Treasury (2008a) Estimates of National Expenditure

¹⁷ National Treasury (2008b) Local Government Budgets and Expenditure Review (2003/04 – 2009/10)

¹⁸ Steytler 2005.

¹⁹ Ibid

support community development initiatives towards the realisation of the developmental Local Government. The inaugural IGR report published by the DPLG in 2008 sums up the legislative context and convergence of government interests as follows: The IG system is predicated on the principle that provincial government and municipalities exercise their powers and functions within a regulatory framework that is supervised by one or more spheres. In a decentralised system with overlapping powers and functions, effective monitoring is essential to good governance, the achievement of policy objectives and integrated service delivery.²⁰

Municipalities must in accordance with the Municipal Systems Act submit audited financial statements annually to ensure accountability, ascertain financial viability and ability to provide uninterrupted services. However, the report on Municipal Performance for 2005/2006 highlights compliance, especially regarding “quality and timely reporting, the ability to collect revenue and inability to spend capital budgets”. In the same vein, the Auditor General raised concerns about financial and resource management in municipalities wherein debt management is a persistent problem, poor internal and asset controls, poor supply chain management and non-compliance with laws and regulations. For municipalities to improve their credit rating and thus create vibrant economic conditions, it is important to get adequate financial and governance controls properly implemented. The key reforms focussed on strengthening the regulatory environment for municipal financial management deal with:

- supply chain management
- oversight of municipal entities
- interventions in municipalities

These areas were identified to build vibrant local economic development and scope for equitable resource allocation. Since 2000/01 more than R700 million has been transferred through the Finance Management Grant for financial management capacity building.²¹ Within the 5-year Local Government Agenda strategic priorities, three concerns refining and strengthening the policy regulatory and fiscal environment for Local Government and giving greater attention to the enforcement measures.

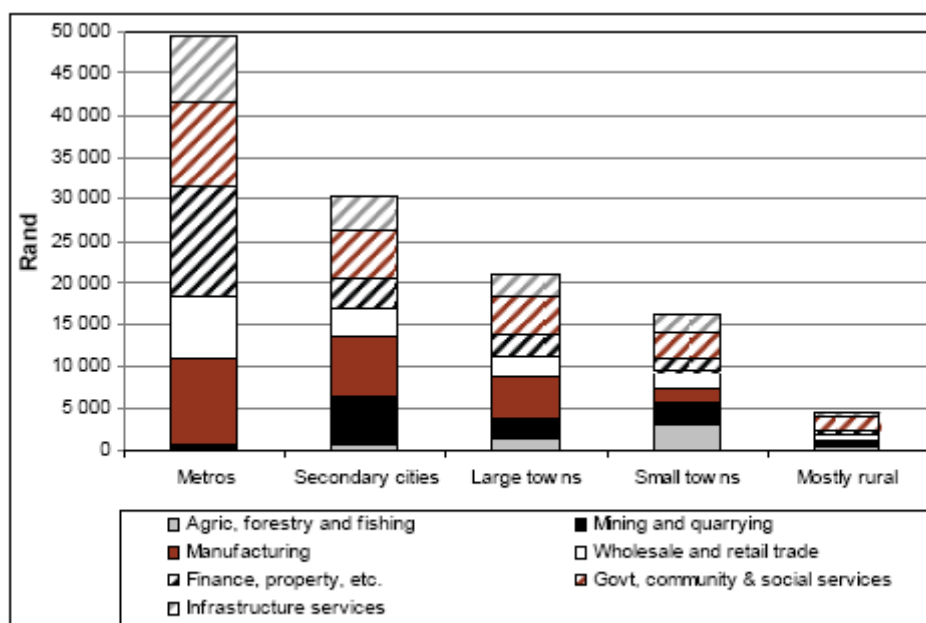
Several measures are in place to ensure that Local Government is able to realise its economic growth potential and simultaneously meet the needs of its citizens through provision of services. The regulatory instruments include: Regulatory framework for Municipal Borrowing (1999), Municipal Public-Private Partnership (2005), Municipal Investment Regulations (2005) and the Municipal Asset Transfer Regulations (2008). These regulations give expression to the legislative prescripts of the MSA and Municipal Property Rates Act which while seeking to create an enabling environment for development also seek to ensure

²⁰ Department of Provincial and Local Government (2008) Inaugural IGR Report

²¹ DPLG Report on Municipal Performance 2005/06

community development. All these measures provide guidelines with clear objectives, benefits and risks underpinned by governance and value for money on all municipal service partnerships and investments. Whilst, generally, municipalities are regulated through the instruments stated above and other reporting requirements they have some latitude to prioritise local interests through the IDP processes. There is the realisation that Local Government may be overregulated particularly regarding their mandate in provision of basic services which are managed and administered by different sector departments. Governance and municipal financial viability are critical for a credible Local Government system. To respond more directly to the question raised earlier whether regulations retard or advance municipal economic development, there are indeed disparities in municipal revenue base and economic activity between municipalities which correlate with the urban–rural divide. However, municipalities are the base for the country’s economic growth trend and thus have contributed immensely to South Africa’s economic trajectory even though this is urban biased. Figure 1 below demonstrates the strong bias in most economic sectors towards larger, more urban municipalities and the contrasting weak economic base of mostly rural municipalities. This results in the revenue base of rural municipalities being constrained and the need for high levels of grant support from national government.²²

Figure: 1 Gross Value Added (GVA) per capita by type of Municipality (2004)



Source: National spatial development strategy

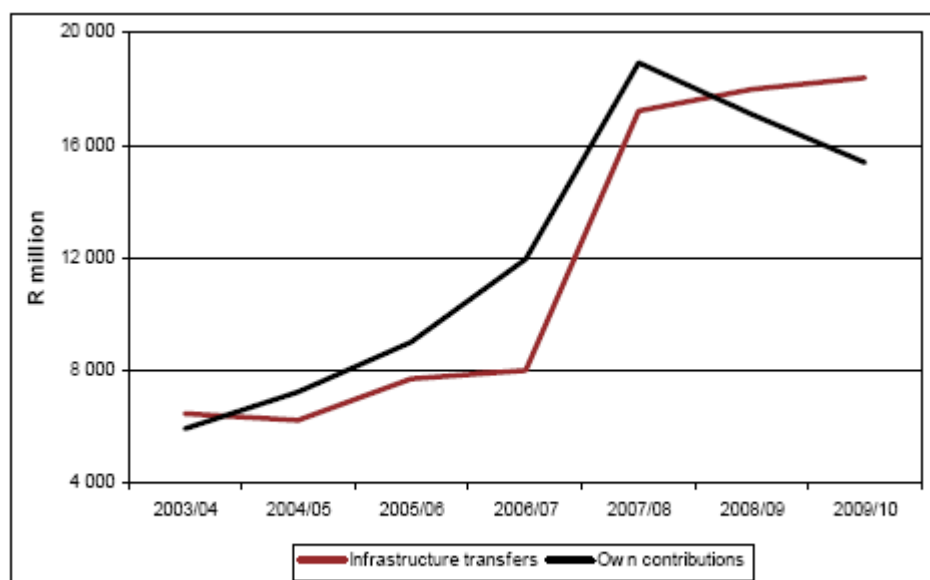
There are examples where municipalities have successfully implemented and are leveraging on external municipal service partnerships and investments. PPPs are a good way to generate more revenues from municipalities’ existing assets. The Johannesburg water

²² National Treasury (2008b) Local Government Budgets and Expenditure Review (2003/04 – 2009/10)

management contract, for example, turned around the operational and financial performance of the utility. Revenue increased by 46 percent in four years and power and chemical consumption decreased by 9 and 57 percent, respectively. Before it was turned into a PPP, Cape Town's Epping Fresh Produce Market generated R3.5 million per annum. Its revenue has since grown to R6 million per annum, in addition to the sale of the ongoing operations of R16 million and R22 million owed to the city by traders.²³ These are good examples of how municipalities can make use of the existing framework to generate more revenue. Unfortunately, municipal capacities and asset ownership differ between the rural and urban municipalities. There are other options of borrowing and investment in the bond market that municipalities can explore.

Figure 2 shows that transfers for infrastructure are projected to exceed municipalities' own contributions, including external loans as a financing source for municipal capital expenditure.

Figure: 2 Growth in capital transfers relative to own contributions, 2003/04 – 2009/10



Source: National Treasury local government database

Municipalities do not exercise long-term planning in capital projects and thus rely on government transfers and do not explore external sources. It is evident that the growth in the MIG provides an incentive for municipalities not to borrow.²⁴ There is a growing grant dependency and declining efforts to secure external sources by municipalities. Municipalities tend to report improved expenditure levels towards the end of their financial year, which relates to the fact that municipalities adopt short-term view of their capital projects. They would rather implement a series of small projects that will exhaust capital grants by the year end. A striking example is the Buffalo City Municipality which only spent R42.3 million of its total budget of R109.4 million, leaving R67 million (only one month before the end of the

²³ National Treasury (2008b) Local Government Budgets and Expenditure Review (2003/04 – 2009/10)

²⁴ Ibid

2008/09 financial year) unutilised.²⁵ This is an indication of the lack of planning for the execution of their capital spending programmes and hence they focus on short capital projects. Some financial institutions believe that the lack of borrowing may be due to a very complicated and highly regulated municipal environment.²⁶ If metros and larger municipalities were to borrow more from financial markets, this would release more funds from the national fiscus to benefit smaller municipalities.²⁷

It is noteworthy that onerous procedures slow down efficiency in service delivery, but in light of the persistent problems in many smaller mostly rural municipalities, it is important to entrench stringent mechanisms to ensure sound management of public funds. Clean and transparent management and utilization of public funds encourages investment. It is equally important that, consistent with the model of Local Government, there must be devolution of authority. For instance, all the regulations about investments and borrowing require the consent of the Minister of Finance, a function which can be competently dealt with in the lower sphere. Larger urban municipalities have the financial muscle, assets and institutional capacity that attract investment, however, they must diversify development opportunities as well as investment options.

Conclusion

The Local Government system in South Africa is contributing to development, albeit not perfectly. It is important to state that remarkable progress has been made thus far despite the difficulties that bedevil Local Government. Local Government lags behind other spheres due to the lack of alignment of transformation of this strategic sphere with other spheres. In fact, in certain cases, policy formulation and implementation at the national level advanced without the accelerated consolidation of Local Government for it to perform its constitutional imperatives. This has led to high expectations for service delivery and development by concerned constituencies, who often feel frustrated when the Local Government fails to live up to its expectations. Therefore, the consolidation of the Local Government agenda in the context of its constitutional mandate and in the spirit of cooperative governance, as directed by the Constitution, is imperative. The refinement of the notion of developmental Local Government through the 5-Year Local Government Strategic Agenda 2006–2011 is a positive step to entrench support for, enhance performance and instil financial viability of municipalities.

The pursuit of dynamic and developmental Local Government needs to be guided against the national imperatives, while respecting the autonomy of municipalities. Establishing uniform norms and standards, support and monitoring as well as accountability for national resources by Local Government are the prerogatives of the National Treasury in consultation with the

²⁵ Cheri–Ann James, GCIS communication Centre: EC; Daily Dispatch March 07, 2008

²⁶ National Treasury (2008b) Local Government Budgets and Expenditure Review (2003/04 – 2009/10)

²⁷ Ibid

Department of Provincial and Local Government. The guidelines and regulations on PPPs, investments and borrowings are critical to ensure continuity, value for money and good governance, which can facilitate service partnerships to eliminate the culture of grant dependency. The instruments for an adequate regulatory environment in Local Government encourage accountability and prudent utilisation of public funds. The urban–rural divide is evident in the ability of municipalities to exploit external private sector funding as evidenced by Cape Town Metro and the City of Johannesburg Metro. Municipalities are the backbone of the thriving economic growth patterns and government must create an enabling environment to encourage all municipalities to build and broaden their economic base.

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Endnotes

¹ The 1998 White Paper on local Government captures this historical analysis in some detail.

² Gordhan (formerly Chairperson of the White Paper Political Committee) uses a borrowed characterization of 'decentralization of a special type' derived from the South African Communist Party theory of Colonisation of a Special Type (CST) in the South African context.