

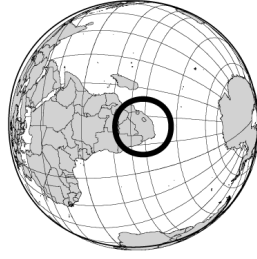
Republic of South Africa

Capital:

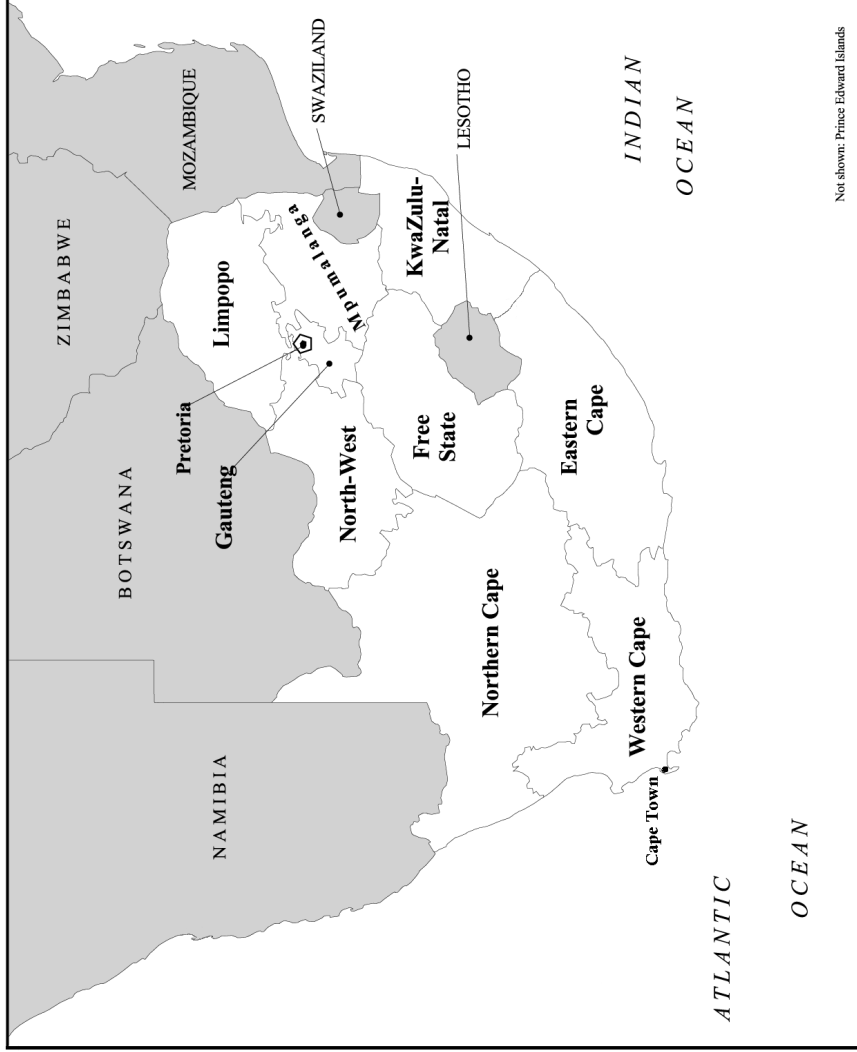
Seat of Executive: Pretoria
Seat of Parliament: Cape Town

Population: 48.7 Million
(2008 est.)

Boundaries and place names are
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imply official endorsement.



Sources: CIA, World Factbook; ESRI Ltd;
Times Atlas of the World; UK Cartographic Dept.



Not shown: Prince Edward Islands

Republic of South Africa

J A A P D E V I S S E R

Since 2000 local government has entered South Africa's system of intergovernmental relations clothed with a new institutional appearance and armed with constitutional protection. Intergovernmental relations among municipalities, provinces, and the national government have thus become more dynamic yet also more complex and demanding. This chapter seeks to analyze the constitutional and policy frameworks for those relations and to provide insight into current debates and dynamics related to them. The legal and constitutional recognition of local government is impressive and propels it to a status that at times equals or surpasses that of provincial government. Yet this constitutional status is no guarantee of strong local government. In reality, many municipalities are incapable of asserting their financial and political autonomy for reasons both within and beyond their control.

South Africa, located at the southern tip of Africa, shares borders with Namibia, Botswana, Zimbabwe, Swaziland, and Mozambique, while Lesotho is locked within its borders. Its land mass spans 1,220,813 square kilometres, and the country is inhabited by close to 48 million people.¹

South Africa's miraculous emergence from centuries of racial and colonial domination startled many who believed that the country was heading for disaster during the violence and despondence of the late 1980s and early 1990s. Now, some fifteen years after the advent of democracy in 1994, South Africa boasts a stable constitutional framework, an independent and functioning judiciary, as well as a human-rights-centred approach to basic service delivery.

South Africa's macroeconomic policy balances financial austerity, inflation control, and trade liberalization with expanding social investments and the pursuit of infrastructure-led economic growth. In 2006 South Africa's gross domestic product (GDP) grew by 4.9%. Growth for 2007 and 2008 is projected at 4.8% and 5.1%, respectively,² a figure that may need to be adjusted in the face of an impending economic recession. In 2007 inflation remained

contained in or around the target band of 3% to 6%.³ However, despite its macroeconomic successes, South Africa faces major socio-economic challenges of persistent high unemployment (29%), poverty (34% live off US\$2 per day), large wealth disparities (Gini coefficient of 0.59),⁴ and an HIV/AIDS pandemic.⁵ South Africa's racial divisions,⁶ created and exploited during apartheid, continue to have a significant influence on income, education levels, and life expectancy. South Africa's Human Development Index is ranked as "medium." It fell from 0.691 in 2000 to 0.653 in 2004.⁷

Central to South Africa's strategy to erase these bleak figures is its insistence that local government is the key to development and delivery of basic public services. This insistence is in part dictated by the inevitability of urbanization. In 2006, 42% of the national population lived in the twenty-one biggest cities and towns, which cover only 2% of South Africa's land surface. Together these cities and towns contribute 70% of the national geographic value added (GVA).⁸ In-migration to the six largest municipalities generally stands at a much higher percentage than in other municipal areas, which sometimes see a net out-migration.⁹ The pace of urbanization is the highest in the two provinces of Gauteng and Western Cape. Importantly, the twenty-one biggest cities and towns are also home to 25% of persons living below the poverty line. These cities are confronted with the challenges of urbanization, which require innovative and complex responses. For example, cities need to devise approaches to processes that appear "uncontrollable," such as unregulated and unlawful land use, settlement establishment, and housing. Similarly, a new approach is required to tap into the informal employment found in unregulated small businesses and microenterprises (which stands at 22.5% of total employment).¹⁰ Successful urban and local governments are thus recognized as immediately benefiting both economic growth and poverty alleviation.

South Africa's newly established constitutional democracy, overseen by a new Constitutional Court, managed to absorb myriad challenges and tensions that came with the transition to democracy. The Constitution itself is the final product of a series of events and processes that took place in a context of the apartheid government and liberation movements negotiating the country out of misery. They negotiated an Interim Constitution, which paved the way for the first democratic elections in 1994 and for the operation of Parliament as a constitutional assembly, leading to the adoption of the final Constitution of 1996.¹¹ As most of the constitutional features of South Africa have been traversed in earlier editions of this series,¹² the discussion of these features will be limited to the most essential features relevant to this chapter.

The Constitution vests national legislative authority in Parliament, which consists of the National Assembly and the National Council of Provinces (NCOP).¹³ The 400 National Assembly members are directly elected. The

NCOP is modelled on the German Bundesrat and comprises delegations from each province as well as a nonvoting local government delegation.¹⁴ National executive authority is vested in the president, elected by the National Assembly, who exercises this authority together with the other members of the Cabinet. Cabinet members, appointed by the president, are collectively and individually accountable to Parliament.¹⁵

The Constitution also establishes and demarcates nine provinces, each with a provincial legislature and a provincial executive. Provincial legislative authority is vested in the provincial legislature. Provincial legislatures range from thirty to eighty directly elected members. A province's executive authority is exercised by a premier, who is elected by the provincial legislature. The premier exercises this authority together with the other members of the Executive Council. They are collectively and individually accountable to their provincial legislature.

There is one judiciary, with the Constitutional Court at the apex.¹⁶ The Constitutional Court is the highest court on constitutional matters, whereas the Supreme Court of Appeal is the highest authority on all other matters. Disputes between spheres of government are decided by the Constitutional Court. The Constitutional Court also has the final say on the constitutionality of national, provincial, and local legislation and resolves conflicts between validly passed legislation of the three spheres.

The political landscape is dominated by the African National Congress (ANC), which rose to power in 1994 and has consolidated its supremacy since then. A strong alliance exists between the ANC, the Congress of South African Trade Unions, and the South African Communist Party. This alliance, together with the ANC's control of the lion's share of municipalities and its outright control of all provinces, ensures that the ANC maintains a tight grip on almost all aspects of the South African polity.

HISTORY, STRUCTURES, AND INSTITUTIONS OF LOCAL GOVERNMENT

A discussion of the history of local government serves to emphasize both the recent dramatic change in local government's role and status and the hideous social and economic legacies that were left for local government to deal with.

South Africa's experience with relations between local government and provincial government started in 1910 with the unification of South Africa, which transformed four British colonies into provinces. Local government was introduced as a responsibility of the provinces. Each province enacted legislation that provided for the structures, functions, and powers of local governments in that province. Therefore, no single uniform system of local government existed for the country. However, there were some important

general characteristics: local government as an institution of governance was subservient, racist, and consequently illegitimate. The subservience of local government was manifest in that local authorities existed in terms of provincial laws, and their powers and functions were dependent on, and curtailed by, these provincial laws.

After the landmark elections of 1948, which formalized and extended apartheid, the National Party (NP) government intensified institutional segregation by providing for the development of separate local authorities for each of the four major racial groups. The leading theme was the principle of "own management for own areas." However, in areas outside the black homelands, black local authorities operated under the authority of white municipalities until 1971.¹⁷ Given that black local authorities governed dormitory townships where no commercial activity was permitted, let alone promoted, there was no commercial base on which to raise property rates or other income. Even after the government devolved more powers to the black local authorities, they remained illegitimate. The fiscal inadequacy created by the fallacy of self-sufficiency rendered them empty shells that produced nothing but conflict. They became the target of rent boycotts and large-scale popular mobilization in the mid-1980s.¹⁸

Separate local government structures – management committees – were also created for the Coloured and Indian populations. It was envisaged that these structures would, over time, develop from advisory bodies into fully fledged municipalities, equivalent to the white local authorities. However, they essentially suffered the same fate as the black local authorities.

Without exception, the well-resourced commercial centres with their viable revenue bases were reserved as white areas. The outlying and poor areas without meaningful formal economies were reserved for black people.

Following the format of the colonial state, traditional authorities in the homeland areas were tasked with performing local government functions. Traditional leaders were used as agents to administer local government activities, such as land allocation, agricultural affairs, road infrastructure, and suppression of cattle diseases.¹⁹

Transformation of local government into a fully fledged and nonracial institution of governance was thus impelled by this legacy of an "urban economic logic that systematically favoured white urban areas at the cost of black urban and peri-urban areas," with, in the words of the Constitutional Court, "tragic and absurd" results.²⁰

Negotiations between the apartheid government and the liberation movements on local government commenced in earnest at the beginning of the 1990s. They produced a foundation for local government transformation. One of the critical features was the adoption of the principle of "one city, one tax base," which had become the slogan with which the grossly inequitable distribution of resources was opposed by the liberation

movements.²¹ Three dimensions to the negotiations produced a fertile ground for agreement on strong local governments equipped with protected powers and a developmental mandate. First, most liberation movements had an aversion to a federal state. The apartheid policies on territories set aside for black inhabitants, termed “Bantustans” and “homelands” (depending on their level of so-called independence), had a “federal” slant to them. Federalism thus became the concept to be resisted by those liberation movements during the negotiations.²² The dispute over a federal or unitary South Africa drove a deep wedge between the ANC and the Inkatha Freedom Party, which argued for the recognition of an autonomous Zulu Kingdom. Second, the liberation movements sought to consolidate and find a constitutional space for the grassroots civic movement that had been so instrumental in overturning the NP government. Third, from its side, the NP insisted on the inclusion of checks on the power of an almighty ANC government.

Local Government Transformation

The 1993 Interim Constitution²³ set the scene for the first democratic elections in 1994 and for the formulation of a final Constitution by the newly elected Parliament. It ushered in constitutional recognition for local government by acknowledging its autonomy and guaranteeing it revenue-generating powers as well as a right to a share of nationally generated revenue. The Interim Constitution set the scene for the amalgamation of over 1,000 racially defined and disparate local government structures into 842 transitional local authorities demarcated by provincial demarcation boards.²⁴

The final Constitution of 1996 contains a progressive chapter on local government in which it is envisaged as a mature sphere of government. It introduces metropolitan, district, and local municipalities. By doing so, it establishes two forms of local government, namely metropolitan local government and nonmetropolitan local government. There are six areas with metropolitan local government – single-tiered metropolitan municipalities that have exclusive municipal authority over their area of jurisdiction.²⁵ What made these areas “metropolitan” is defined in legislation with reference to indicators such as population density, movement of people, goods and services, diverse economic activity, and desirability of integrated development planning. The rest of the country is divided into forty-six district municipalities. Each district municipality, in turn, is divided into a number of local municipalities, varying from two to eight in number. The total number of local municipalities in the country is 231. The district and local municipalities share municipal authority over their respective jurisdictions and rely on a statutorily defined division of authority. This division is a point of contestation, partly because there is role confusion. There is little

disagreement that local municipalities are the interface with communities and should perform community services, but the role of district municipalities is less clear. They were initially conceptualized as responsible for regional planning, redistribution between rich and poor municipalities, and providing support to weaker local municipalities, but they have struggled to adapt to these roles.

Deciding on metropolitan or nonmetropolitan local governance for a specific municipal area is the prerogative of the independent Municipal Demarcation Board (discussed below).

Municipalities must be established "for the whole of the territory of the Republic."²⁶ This principle, which became known as the principle of "wall-to-wall" local government, does away with the phenomenon where certain rural areas were governed not by any form of democratically elected municipal government but by either a traditional authority or a government official. The developmental expectations of local government, combined with the explicit break with the institutionalized rural-urban divide, were instrumental in the decision to include all rural areas in the local government system.

Municipal boundaries are determined by an independent Municipal Demarcation Board that is obliged to consult with affected stakeholders and residents. In 1999 and 2000 a concerted drive toward demarcating the entire South African land mass into 284 municipalities paved the way for the first municipal elections on 5 December 2000.²⁷ On that day, the first generation of municipal councils took over the reins of these newly demarcated areas in terms of a new local government dispensation.

Considering South Africa's land mass and population size, it becomes apparent that it has some of the biggest municipalities in the world. Legislation instructed the Municipal Demarcation Board to create local authorities that were financially viable (i.e., able to extract sufficient resources from their tax base). In addition, they needed to be able to redistribute resources from rural to urban areas and from rich towns to outlying poor black areas. In the background, the quest for strong local governments that operate on the national, and even international, scene also added impetus to the creation of large municipalities.

The principle of "wall-to-wall" local government, combined with the democratization of local government, meant that the institution of traditional leadership underwent a dramatic change. Rural areas previously under traditional authorities' rule were absorbed into the constitutional system of local government. Traditional authorities were afforded nonvoting seats on the municipal council in their area, but their number was not to exceed 20% of the council members, an offer still rejected by most traditional leaders seven years after its introduction. This relegation to an advisory status continues to anger many traditional leaders, the House of

Traditional Leaders (the constitutional guardian of traditional authorities and customary law), as well as Mangosuthu Buthelezi's Inkatha Freedom Party, which finds its main support in the traditional rural areas of KwaZulu-Natal.

The concept of a single, unified metropolitan municipality was an entirely new feature in the local government design. It was born out of the experience with fragmented service delivery and lack of redistribution that resulted from the pre-1994 arrangements, where multiple small local authorities governed a metropolis that, for all intents and purposes, constituted one integrated metropolitan area. For example, the metropolitan area that became the City of Cape Town in 2000 consisted of sixty local authorities in 1994.²⁸ A new form of metropolitan government was needed to facilitate citywide development, integrated infrastructure planning, and redistribution of resources within these large cities.²⁹

The 1996 Constitution represents a conceptual shift away from local governments as mere retailers of service delivery because it outlines a broad development mandate for local government.

CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT

The rationale for the constitutional recognition of local government, regarded as a progressive and bold step, was that South Africa could have a strong agent for development in local government only if it was afforded a measure of autonomy. The strength of the constitutional protection of local government's status is largely unprecedented and a leading example worldwide.

This constitutional recognition is manifested in a number of ways. First, local government is referred to as one of the three "spheres" of government, which are "distinct," "interdependent," and "interrelated."³⁰ Second, local government is afforded "the right to govern, on its own initiative, the local government affairs of its community."³¹ To this end, it is given constitutionally recognized and protected powers, and the national and provincial governments are prohibited from exercising undue interference with municipalities. Third, municipalities enjoy constitutionally guaranteed taxing powers as well as a constitutionally guaranteed entitlement to an "equitable share" of nationally generated revenue.³² Fourth, the Constitution establishes a principle of subsidiarity by providing that national and provincial functions that are more effectively exercised by municipalities should be assigned to local government.³³ National and provincial functions can be transferred to local government in general or to individual municipalities, thereby creating the possibility for asymmetrical development of municipalities. Fifth, organized local government is afforded nonvoting seats in the National

Council of Provinces – which is the second chamber of Parliament, comprised of provincial delegations – and is represented on the national Financial and Fiscal Commission, government's prime advisor on intergovernmental fiscal relations.³⁴ Sixth, national and provincial parliaments are obliged by the Constitution to consult organized local government on legislation that affects the institutions or functions of local government.³⁵

The legal value of this constitutional recognition is significant. However, it is also argued that the practical value of the constitutional recognition is a function of both the capacity problems of local governments and the omnipotence of the ruling party. As a result, the metropolitan municipalities are the only local governments that are really reaping the benefits of constitutional protection.

Nevertheless, the Constitutional Court, in its description of local government's status, has not shied away from using the terminology of "autonomy,"³⁶ which is usually reserved for provinces or states in a federation. It has, on various occasions, stressed that the new local government order is fundamentally different from the old, in that local government now derives powers from the Constitution to, for example, levy property rates.³⁷ Inasmuch as the judiciary appears ready and willing to protect local government autonomy, the court cases involving questions related to local government's autonomy have been few and far between. The one-party dominance across the three spheres of government has enabled the ANC to iron out, within party structures, many tensions and disagreements between organs of state. However, in a number of cases, local government autonomy was upheld, and the constitutional protection proved to be of real value.³⁸ Furthermore, the constitutional protection of local government is a very pertinent factor in the development of policies that have an impact on local government. Local government's constitutional right to reticulate electricity, for example, continues to delay government's plans to rescale the electricity function to a regional level.

The other two spheres of government – national and provincial – are, in the face of tremendous development challenges and policy dilemmas, producing law and policy that too often do not take cognizance of local government's constitutional status. In the absence of municipal challenges to these developments, this law and policy erode local government autonomy.

The extent to which the above dimensions limit the practical value of municipal autonomy naturally varies with the "political colour" of the municipality. However, it is clear that the urban constituency is also asserting its autonomy. For example, the nine biggest municipalities (which include the six metropolitan municipalities) are increasingly making the voice of local government heard. They have joined forces in the South African Cities Network, which exists to be the voice of urban local government. Repeated calls have been made by this constituency to the national

government to distinguish between the unique challenges that exist in the various spaces governed by local governments. This diversity manifests itself in two arguments. The first argument is for a reduction of provincial government interference in the affairs of big cities. Whereas small towns may indeed need considerable support from provincial government, well-capacitated municipalities in the bigger cities might best be left to manage their own affairs, so it is argued.³⁹ The second argument is for more powers. The six metropolitan municipalities have undergone tremendous growth in resources, capacity, and institutional profile since 2000. They account for 57.4% of the total local government budget.⁴⁰ They have outgrown the straitjacket of their constitutional powers (see below), and they stand ready to exercise more powers, which often still reside with national or provincial government. A strong argument is being made to afford metropolitan municipalities authority over housing, transport, and aspects of primary healthcare.⁴¹

GOVERNANCE ROLE OF LOCAL GOVERNMENT

The Constitution equips local government with original powers by providing that a municipality has authority over the thirty-nine matters listed in Schedules 4 and 5 of the Constitution. These functional areas can be grouped into the following six themes:

- 1 built environment (e.g., electricity and water reticulation, sewage, refuse removal, building regulations, planning, storm-water management, noise pollution, cleansing, street lighting, and fencing)
- 2 social and emergency services (e.g., child-care facilities, firefighting, local recreation, sport facilities, and dog licences)
- 3 health (e.g., municipal healthcare and air pollution)
- 4 transport (e.g., public transport, traffic, parking, municipal roads, municipal airports, and ferries)
- 5 economy (e.g., trading regulations, markets, abattoirs, local tourism, billboards, and liquor and food outlets)
- 6 amenities (e.g., cemeteries, public spaces, and parks)

These functional areas are given content by policy statements, statutory law, and occasionally, court judgments. The reality, however, is that there is a great deal of confusion around the cut-off points between municipal competences and those of the national and provincial spheres.⁴²

By providing for original taxing powers for municipalities, the Constitution establishes a considerable degree of fiscal autonomy for local government. The Constitution grants local government the exclusive right to levy property rates and to impose surcharges on fees for services it provides.⁴³

These powers, however, are not exclusive to local government, in the sense that they can be regulated by the national and provincial governments through framework legislation.⁴⁴ Such legislation may set the parameters for local bylaws in the form of minimum-standards monitoring procedures but may not “compromise or impede” the ability of local government to perform its functions.⁴⁵ If such legislation extends to the detail of local policymaking, it violates municipal autonomy.

National and provincial governments may assign or delegate further powers to local government in general or to individual municipalities. The instrument of assignment is a form of devolution. It entails the transfer of discretion over the functions and the financial risk as well as entitlement to intergovernmental funding. Importantly, as noted above, the Constitution establishes a firm subsidiarity principle by making the assignment of matters listed as national and/or provincial competences compulsory if they would be most effectively administered locally and if the municipality has the capacity to administer them. Statutes provide for procedures and criteria aimed at preventing unfunded mandates and ensuring that the assigned function will be performed.

However, the instrument of assignment – in the form and procedure envisaged by the Constitution and legislation – is somewhat of an enigma. National and provincial sector departments have used a variety of other instruments to increase local government’s involvement in government. Some of these instruments would qualify as assignments, albeit not following the prescripts of the Constitution. As a result, municipalities are involved in a variety of essential public services without always having sufficient authority or resources. Examples of functions that have been transferred to local government through a variety of, sometimes legally suspect, constructions are primary healthcare, libraries, and economic development.

The reality of local government spending shows that the delivery of basic services, such as water, sanitation, electricity, and refuse removal, is the main activity of municipalities. Of total municipal expenditure, 42 % is dedicated to housing and trading services, which comprise housing, waste management, road transport, water, electricity and gas, and environmental protection.⁴⁶ Within this expenditure category, 85 % is made up of water, sanitation, electricity, and refuse removal. In sum, municipalities spend approximately 35 % of their budgets on these four services.⁴⁷ An important aspect of the mandate of municipalities is their responsibility to ensure the extension of free basic services. This policy entails the provision, free of charge, of a basic component of water (i.e., 25 litres per person per day, or 6 kilolitres per household per month) and a basic component of electricity (i.e., 5kWh/50kWh per household per month). This mandate was imposed by the national government through an evolving policy. Municipalities are responsible for funding

the initiative through cross-subsidization from high-end users and by utilizing existing intergovernmental transfers.

A major critique of the Constitution is that local government's original functions do not correspond with its developmental mandate. A number of competences are "missing" from the schedules, despite the fact that they have an overwhelmingly developmental character. For example, housing is listed as a concurrent provincial and national competency in Schedule 4A of the Constitution. However, housing is perhaps the most salient element of development. Many of local government's original competences are peripheral to housing. In fact, municipalities are the key implementing agents of the housing function but perform this function at the behest of provinces without having any significant policy or fiscal autonomy to make localized decisions. The real devolution of policy and fiscal autonomy over housing is strongly resisted by provinces, which fear the loss of yet another service-delivery function. This tension also raises the spectre of political manipulation of assignment, particularly where a municipality and its province are controlled by different political parties. The clearest example is the yet unresolved dispute between the ANC-controlled Western Cape provincial government and the opposition-led City of Cape Town around the city's application to be allocated the responsibility for housing. The city has declared an intergovernmental dispute over the province's failure to make a decision, whereas the provincial government maintains that the city does not meet the criteria for being allocated the housing function.

As is clear from the history of local government, one of the key elements of this vision is the reversal of the inequities of apartheid planning. The creation of integrated settlements is at the heart of local government's developmental mandate. However, there is confusion over local government's role in managing the built environment. Water and sanitation are firmly placed in municipal hands. The same applies to electricity reticulation, even though government plans to rescale the industry into regional distributors. Even more confusion persists over who is responsible for housing and urban planning. Provincial governments control the housing function. Furthermore, provinces continuously interfere in municipal planning on the basis of outdated legislation that predates the new local government system.⁴⁸ This compromises seamless urban planning by municipalities. In 2006, for example, the City of Johannesburg was at loggerheads with the Province of Gauteng over the latter's approval of development projects in the city without the city's approval. The matter came to a head in 2006 when the developers, after having obtained provincial permission, launched a court application against the city,⁴⁹ requesting that the court compel the city to recognize that decision. The city asserted its constitutional authority over urban planning. The matter was settled out of court when the developers agreed to obtain approval from the city.

As one of its strategic responses to the need to revisit the architecture of the state in order to ensure developmental local government, the national government initiated in July 2007 a review of the constitutional division of powers and functions across spheres of government, a process that was still underway in 2008.

Local government is responsible for a significant slice of the expenditure of the three spheres combined. For the 2005–06 financial year, local government was responsible for 23% of all government expenditure.⁵⁰ This task is executed by a large workforce. Local government employs approximately 12% of the entire public sector. The six metropolitan municipalities employ about half the staff in the local government sphere.⁵¹ The national government employs 21% of the public sector, whereas the nine provinces account for 47% and public entities and state-owned enterprises account for 20%.

Governance Institutions

Both legislative and executive authority is vested in the municipal council. The council may delegate executive authority either to an indirectly elected executive committee or to an indirectly elected executive mayor, depending on the institutional configuration imposed on it by its provincial government.⁵² An executive committee, headed by a mayor, broadly represents the composition of the council. An executive mayor exercises executive authority, assisted by a mayoral committee, which is a cabinet of councillors handpicked by the executive mayor.

Most councillors are part-time. Office bearers such as mayors, speakers, and members of executive structures are often full-time. Both part-time and full-time councillors are remunerated and may receive pension benefits. The remuneration of councillors and their full-time or part-time status are regulated in a national framework. The level of remuneration that a council may adopt for its councillors depends on an intricate grading system based on municipal income and population.⁵³ For example, a metropolitan municipality may award its mayor an annual package of not more than R770,000 (US\$108,741) and its ordinary, part-time members not more than R270,000 (US\$38,130).⁵⁴ For the smallest, rural municipality, these amounts would be R230,000 (US\$32,481) and R127,000 (US\$17,835), respectively. However, the reality for many part-time councillors, especially in poverty-stricken rural areas, is that their councillor remuneration is the key source of income. In addition to the community calling, the prospects of a political career and of receiving a regular income are also important drivers for someone to stand as a candidate.

Although the public service in provinces is regulated by a National Public Service Act,⁵⁵ municipalities have discretion over their municipal

administrations. Salaries are thus negotiated between organized local government and labour unions in a Local Government Bargaining Chamber. The discretion over their administration enables municipalities to determine salaries and performance bonuses of the two highest levels of municipal officialdom, as these salaries are not negotiated in the Local Government Bargaining Chamber. They can do this without having to adhere to national public-service scales. The result has been that some city managers earn more than the president. Legislation is in the offing to include local government within the national public service. This will bring local government employees in line with the national public-service scales.⁵⁶ The argument for a single public service centres on the need to improve the national government's ability to respond to capacity gaps in local government by moving skilled human resources across spheres. However, it would reduce this aspect of local government autonomy.

The transformation of municipalities from nonrepresentative, nonresponsive bureaucracies into representative and responsive administrations is a key challenge for all municipalities. This is compounded by an acute shortage of skills, particularly in engineering and financial management, as well as by a high turnover in managerial positions. For example, the Municipal Demarcation Board's assessment in 2004 of the capacity of local and district municipalities to perform their functions revealed that approximately 40% of municipal managers had no university qualification. Of all the municipal managers, 40% had five or fewer years experience in local government.⁵⁷ As of September 2006, 30% of all municipal-manager posts and 27% of all posts immediately below a municipal manager were vacant.⁵⁸

With limited resources and skills, the constitutional goal of developmental local government is not achieved easily. The White Paper on Local Government defined "developmental local government" as "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."⁵⁹ The current reality in many municipalities, however, stands in contrast to the ideals espoused in the white paper. A 2005 survey revealed that levels of trust in local government (48.1%) were substantially lower than those in provincial government (59.5%) and the national government (64.3%).⁶⁰ Indeed, the incomplete and imperfect nature of local government transformation is evidenced by social protests that emerged most intensively between 2005 and 2008 on a scale reminiscent of the civic action against the apartheid government. Protests revolve around poor records of service delivery and a lack of developmental impact by municipalities.⁶¹ Real and perceived instances of corruption in municipalities are also central to the community protests. The national Special Investigative Unit, tasked with investigating fraud and corruption, reports that a significant problem is the defrauding of municipalities through tender and contracting procedures by

councillors and municipal staff who receive kickbacks from the successful tendering organization.⁶² The perception among the public is that corruption is a major problem. A recent survey of a district revealed that almost three-quarters (73%) of the members of the public and civil society reported that nepotism is the most common form of corruption in their municipalities. The perception held by people within local government is not necessarily different: almost two-thirds (63%) of the councillors and officials surveyed in the district acknowledged having either heard or read about cases of corruption in their municipalities.⁶³

The focal point of the national government's response to capacity problems in municipal government is Project Consolidate, a national support program assisting municipalities with the basics of municipal governance and service delivery, such as municipal billing, project management, good governance, and infrastructure planning. At the end of 2004, 136 municipalities were identified as beneficiaries of the program. However, in 2006 it was decided that Project Consolidate should be mainstreamed into all 283 municipalities, which serves to indicate that capacity problems are endemic to the entire local government sphere.

FINANCING LOCAL GOVERNMENT

The aggregate size of the overall local government budget in South Africa nearly doubled from R64 billion (about US\$5.8 billion) in 2001–02 to R119 billion (about US\$18.8 billion) in 2005–06,⁶⁴ which is evidence of an upward trend in devolution of expenditure. An assessment of how these budgets are raised is at the heart of any appraisal of the status and function of local government in federal systems. With regard to this theme, local government in South Africa again enjoys an impressive constitutional status that does not represent the entire story. This constitutional status is not matched by financial buoyancy in many municipal areas and is under pressure from centralizing tendencies.

Local government revenue comprises own revenue, intergovernmental allocations, and borrowing. A municipality's right to impose rates on property and surcharges on fees for services rendered is constitutionally entrenched. Property rates and user charges on services, such as water, electricity, and refuse removal, provide local government with a firm base for generating revenue. These revenue-generating powers afford local government a significant discretion over taxing policies. National legislation can authorize local government to impose other taxes, levies, and duties.

In addition to their own revenue, municipalities are entitled to an equitable share of nationally collected revenue. Local government's equitable share is determined in a Division of Revenue Act of Parliament, which annually appropriates a split among national, provincial, and local governments.⁶⁵ The

individual allocations to municipalities are determined through a formula, described in the same Act. The formula is a composite of factors that looks at the cost of providing basic services to poor households, the cost of running a municipal administration, the municipality's tax capacity, and predictability in intergovernmental revenue streams.⁶⁶ The equitable share is an unconditional operating grant. The variations in allocations between municipalities are considerable, reflecting the equalizing nature of the formula.

Municipalities also receive a number of conditional grants tied to specific purposes and to be spent subject to national norms. An important example is the Municipal Infrastructure Grant (MIG), which municipalities must use to fund new municipal infrastructure and to upgrade existing infrastructure, primarily benefiting poor households. The grant is funded by the budgets of various national departments. Most grants flow directly from the national government to municipalities, which hardly receive any grants from provincial governments.

Intergovernmental allocations to municipalities are embedded in a national Medium Term Expenditure Framework, which is a three-year rolling budget containing the government's entire revenue and expenditure plans. This ensures predictability of grant income for municipalities.

A final source of revenue is borrowing. Because municipalities raise much of their own revenue, they have more scope to borrow than provinces. The Constitution permits municipalities to borrow funds within a national legislative framework. However, even though it is an attractive option to fund capital expenditure, borrowing remains largely untapped. As shown in table 9.1 (below), in the 2005–06 financial year, external loans made up a modest 17% of local government's capital budget. Furthermore, borrowing is not widespread; 70% of the borrowing in the 2002–03 financial year was done by only 39 of the 283 municipalities.⁶⁷ Johannesburg has taken the lead by entering the bond market; to date, it has issued four municipal institutional bonds totalling R3.9 billion (about US\$574 million).⁶⁸ The main reasons why the capital market is not yet warming up to local government are the uncertainties in the legal framework, particularly in relation to local government functions, and a lack of proper financial management in local governments.

Importantly, additional revenue raised by municipalities may not be deducted from their share of revenue raised nationally or from other allocations. Equally, there is no obligation on the national government to compensate municipalities that do not raise revenue commensurate with their fiscal capacity and tax base. Various provisions in the legal framework for local government make it clear that a municipality's financial good health is primarily the responsibility of the municipality itself. There is thus also no obligation on national or provincial government to bail out municipalities that run into financial difficulties. For example, when a municipal

workers' union sued the Province of Mpumalanga for not bailing out a municipality that had failed to pay over pension contributions, the court held that the provincial government does not have to pay the debts of a municipality in its area.⁶⁹

Financial management by municipalities must be conducted in terms of national legislation. This legislation has been put in place in the form of a Municipal Finance Management Act,⁷⁰ augmented by a series of regulations. This legislation tightly regulates municipal budgeting, revenue and expenditure management, borrowing, accounting, and reporting. It also establishes an elaborate scheme of provincial and national monitoring of local government finances and instates provincial and national powers to intervene in the financial affairs of municipalities.

With respect to the position of municipalities in intergovernmental relations, the revenue-raising capacity of municipalities, compared to that of provincial governments, is a critical factor.⁷¹ On average, local government raises about 86% of its total revenue for current expenditure through local taxes and user charges, whereas provinces raise a mere 3.5% of their income through own revenue.⁷² This adds an important dynamic to the relationship between, on the one hand, those municipalities, particularly the larger and metropolitan municipalities, that raise over 95% of their current expenditure budgets and, on the other hand, their provincial counterparts, entrusted with supervision over them. Smaller, rural municipalities with less robust tax bases are in a totally different position: their dependence on transfers from the national government renders them weak participants on the intergovernmental pitch.

Another important trend relates to the relocation of the administration of important infrastructure grants from provincial government to national government. This has significantly reduced provincial leverage over local governments, as provinces no longer have control over the disbursement of infrastructure grants.

Broken down into the operating and capital budgets, the revenue sources for local government are outlined in table 9.1.

On average, budgeted capital expenditure grew at 12% per year between 2001–02 and 2004–05.⁷³ This growth was fuelled by sharp increases in national grants rather than by increases in own revenue used for capital projects. That is why the National Treasury remarked that “[i]f municipalities are to reinforce their developmental role, the proportion of their capital budgets funded from their own revenue sources needs to increase in the period ahead.”⁷⁴ The national government's commitment to strengthening local government is evidenced by a steady increase in local government's share of revenue raised nationally and by the expected continuation of this at a growth rate of 7% per year over the medium term. However, the fact that a large portion of capital expenditure is funded by

Table 9.1

South Africa: Revenue sources for local government, 2005–06 budget

Operating	%	Capital	%
Electricity	26	National grants	38
Property rates	18	Internally generated income	23
National transfers	14	Borrowings	17
Water tariffs	12	Other sources	22
Sanitation, levies, etc.	30		

Source: National Treasury of South Africa, *Local Government Budgets and Expenditure Review, 2001/02–2007/08*, 8.

(mostly conditional) grants raises concerns about the effect of the grant system on local government infrastructure planning. It is argued that municipalities are increasingly planning around government grants, which tends to disturb the local setting of priorities.

SUPERVISION OF GOVERNMENT

The supervisory role of the national and provincial governments over local government is an essential component of the local government dispensation. The supervisory role manifests itself in various ways.

First, the national and provincial governments have a supervisory role to play in establishing local government institutions and in regulating their institutional framework. Chapter 7 of the Constitution confers a series of regulatory powers that deal with local government institutions on the national government. These provisions formed the basis for foundational legislation, such as the Municipal Demarcation Act 27 of 1998, the Municipal Structures Act 117 of 1998, and the Municipal Systems Act 32 of 2000, which deal with the most essential institutional features of local government.

Provincial governments play a very modest role in defining local government institutions. This has resulted in a uniform system of local government throughout the country, with few variations between provinces.⁷⁵

The second manifestation of supervision of local government is the regulatory supervision by the national and provincial governments. The national government has rapidly produced legislation regulating the exercise of local government functions. For example, a Water Services Act⁷⁶ regulates local government's exercise of its power regarding potable water supply, and the National Health Act⁷⁷ deals with local government's powers over municipal health services.

Due to the rapid production of national legislation and the slow production of provincial legislation on concurrent competences,⁷⁸ there is little

variation on this score, too. Greater variations between provinces, however, are starting to emerge slowly, with the Western Cape and KwaZulu-Natal provinces producing legislation that regulates some local government functions.⁷⁹

The fragmentation of approaches to local government among sector departments is a cause for concern. Sector departments dealing with transport, water, health, and other areas that intersect with local government's original powers have often sponsored legislation on those original powers that displays a variety of interpretations of the scope for regulatory supervision. Some of these interpretations are tenable and others are not.⁸⁰ In addition, some sectors still operate on the basis of regulatory schemes that predate the current local government dispensation and, therefore, are premised on the preconstitutional notion of a subservient municipality. The result is thus an inconsistent and contradictory approach to supervisory regulation. For example, municipalities in KwaZulu-Natal have to obtain prior approval for their bylaws on road traffic,⁸¹ whereas their bylaws on municipal health do not require such approval.⁸² Similarly, the national Department of Trade and Industry requires all municipalities to obtain prior approval for their bylaws on building regulations,⁸³ whereas the national Department of Forestry and Water Affairs imposes no such requirement with regard to bylaws on water reticulation.⁸⁴

The third manifestation of supervision over local government is monitoring. Both the provincial and national governments can monitor local government's performance. Generic legislation provides for specific national and provincial monitoring powers. The overall scheme is that provincial departments responsible for local government engage in hands-on monitoring, in that they establish a general monitoring system, may request information from municipalities, and may launch investigations into corruption.⁸⁵ The national government's monitoring powers are more at arms length, in that it relies on provincial reports and may not launch investigations. In practice, however, municipalities are also monitored by national departments in terms of sector legislation, which tends to disrupt the balance struck in the generic legislation.⁸⁶

A fourth, and increasingly dominant, manifestation of monitoring local government entered the fray with the adoption of the Municipal Finance Management Act.⁸⁷ The Constitution mandates national legislation to prescribe measures to ensure transparency and expenditure control in local government by prescribing accounting rules and general treasury norms and standards. The Act imposes a detailed system of financial management dealing with, among other things, the budget process, revenue management, expenditure control, accounting, and supply-chain management. Integral to the financial management system put forward by the Act is a system of regular reporting to provincial treasuries and (to a lesser extent) the National Treasury.

This reporting system enables the national and provincial treasuries to regularly check the pulse of every municipality. The need for this type of oversight is apparent, as the majority of municipalities are experiencing major financial difficulties and problems expending their revenue. The continuous interaction between municipalities and national and provincial treasuries on the basis of the various reports also stimulates intergovernmental cooperation, sharing of information, joint planning, and integration. However, it may result in municipalities developing an increasing sense of upward accountability at the cost of local accountability. Such a development would prevent South Africa from reaping the benefits of decentralized development, monitored and stimulated by the local communities.

A fifth, and essential, part of supervision over local government is the constitutional power of provincial governments to intervene in municipalities if the outcomes of the above monitoring activities reveal severe and persistent problems in a municipality.⁸⁸ In principle, intervention is a power reserved for provincial governments. Provincial governments may intervene when there are general failures on the part of a municipality to fulfil executive obligations. For example, the provincial government can intervene when a municipality fails to provide basic water supply or ensure adequate sanitation. The Constitution permits the province to issue a directive, take over certain functions of the municipality if the situation is dire, and in an extreme case, dissolve the council. Municipal failures in financial or budgetary matters can be responded to with more far-reaching intervention powers. Intervening in the finances of a municipality is compulsory for the province in the event of failure to adopt a budget or revenue-raising measures and in the event of an all-out financial crisis. If the province fails to discharge its duty to intervene, the national government must do so.

Checks and balances are built into the framework for interventions, in that the national minister responsible for local government must approve interventions. The National Council of Provinces also oversees the intervention through an approval power and a power to regularly review the implementation of the intervention. However, in the case of financial interventions, these intergovernmental checks and balances are reduced to a notification.

Provincial interventions in municipalities have become a regular occurrence.⁸⁹ In 1999 and 2000 a spate of interventions occurred, which were largely unsuccessful in remedying the crises because the municipal entities were not viable prior to the 2000 demarcation. The incidence of interventions declined dramatically after the amalgamations in 2000. When the national government launched Project Consolidate, the project was hailed as the "kind substitute" for interventions.⁹⁰ However, interventions never quite left the scene. They are usually initiated by provinces in the face of a

total collapse of service delivery in a municipality. The usual pattern reveals deep political problems, corruption, and maladministration, which lead to paralysis, financial chaos, inability to meet financial commitments, and ultimately, a total collapse. The general experience with interventions is that they proved not to be successful and clean incisions with immediate results. By the time a provincial government intervenes, it is often too little, too late; the deployment of a crisis manager hardly produces sustainable results in the face of persistent political problems that at times reverberate throughout the community. It would appear that, more often than not, all the provincial government can do is to solve the most pertinent and threatening financial problems, intensify its support, and hope for the best.

INTERGOVERNMENTAL RELATIONS

Intergovernmental relations are guided by a conceptual framework provided in the Constitution, entitled "co-operative government." These principles give expression to the attributes of "distinctiveness, interrelatedness and interdependence" granted by the Constitution to the three spheres. For example, the three spheres are enjoined to respect each other's institutional integrity, cooperate with each other, assist and support each other, consult each other on matters of common interest, and avoid legal proceedings against one another.⁹¹

A novel feature of the Constitution is the recognition of the importance of organized local government federations or associations. With the introduction of their constitutional recognition, the government envisaged them as negotiating partners for national and provincial governments and as support structures for municipalities. The Constitution requires national legislation to recognize national and provincial organizations representing municipalities. In addition, it requires legislation determining consultation procedures with organized local government and procedures for organized local government to designate representatives to participate in two significant institutions, the NCOP and the Financial and Fiscal Commission. In terms of this scheme, the South African Local Government Association (SALGA) has been recognized as the legitimate voice of municipalities and national and provincial governments' key negotiating partner on local government matters. SALGA may designate up to ten representatives to participate in the parliamentary proceedings of the NCOP, but they may not vote.⁹² However, SALGA's participation in the NCOP has not yet produced the type of intergovernmental engagement envisaged by the Constitution. Representatives are selected from a panel of available councillors and are thus in a "continuous flux,"⁹³ having to juggle their allegiance to their municipality with their duties as representatives in Parliament. Another challenge to the effectiveness of SALGA is that local

government comprises a great variety of municipalities, ranging from severely underresourced rural municipalities to first-class metropolitan giants.

South Africa's commitment to containing the centrifugal dynamics of decentralization has resulted in comprehensive legal and policy frameworks for intergovernmental planning and budgeting. The Integrated Development Plan (IDP) stands at the centre of this framework. Legislation instructs municipalities to adopt and annually review IDPs. Municipalities are instructed to base their budgeting on the IDP, rendering it the prime policy document for municipalities. The IDP has three features that are critical in an intergovernmental-relations context. First, it must be formulated after extensive public participation and therefore contains the local articulation of service delivery and development needs. These needs may fall within or outside a municipality's competency, which relates to the second and third features. The second feature is that IDPs must be aligned with the development plans and strategies of other affected municipalities and the national and provincial governments. Of particular relevance are the provincial strategic plans, termed Provincial Growth and Development Strategies, and the National Spatial Development Framework. Municipal IDPs are expected to be aligned with these. Third, this alignment is expected to be a two-way process. IDPs must complement and influence the development plans and strategies of other affected municipalities and the national and provincial governments. The rationale for this scheme is that all service delivery and development efforts by any sphere of government eventually take place within a municipal jurisdiction – hence the IDP as the focal point of coordination and alignment of service delivery.

The implementation of the grand approach to the IDP is hampered by a number of factors. First, participatory processes are too often flawed and artificial, compromising the quality of IDP documents. Second, too many municipalities fail to filter and prioritize needs in line with realistic budgetary and competency parameters, compromising the credibility of IDP documents. Third, and often arising from the first two issues, the engagement of national and provincial sector departments with the IDP, which is essential for the success of intergovernmental coordination through the IDP, is too often inadequate.

Provincial and national treasuries and departments for local government are hard at work to promote the adoption of credible IDPs by municipalities. More emphasis is put on the second feature of the IDP, which is the notion that it is the articulation of the entire government program for that municipal area. There are concerns in relation to this emphasis, namely that it prevails at the cost of achieving bottom-up developmental planning, the first selling point of the IDP.

The recently enacted Intergovernmental Relations Framework Act⁹⁴ is a key piece of legislation for intergovernmental relations. Chapter 3 of the Constitution sketches only principles for intergovernmental relations. This

lack of detail reflects an understanding that the development of an efficient framework for relations between governments is best left to the practice of intergovernmental relations. The Act is based on first results of the “organic growth” of intergovernmental relations.

A significant best practice that developed after 1994 was the emergence of executive intergovernmental relations and intergovernmental forums (IGR forums). The regular meetings of a national minister with his or her nine provincial counterparts – members of the executive councils (MECs) in so-called MinMECs – grew into strong policymaking structures. Except for the MinMECs on education and finance, these were nonstatutory. Even though the practice of executive intergovernmental relations developed most prominently in national-provincial relations against the background of them holding powers concurrently, the practice was noticed and replicated in the provincial-local arena. The Intergovernmental Relations Framework Act now provides an overall framework for IGR forums. In the national arena, the president convenes the President’s Co-ordinating Council, comprising key Cabinet members, the nine premiers, as well as a representative of organized local government. The above-mentioned MinMECs continue to convene in terms of the Act, with organized local government represented at MinMECs that relate to local government’s constitutional functions. Provincially, the premier convenes a Premier’s Intergovernmental Forum, comprising key provincial MECs and mayors of district and metropolitan municipalities. At the district level, the district mayor convenes a District Intergovernmental Forum, comprising all the local mayors in the district.

Apart from capturing best practice, the Act gave new impetus to intergovernmental relations by formalizing IGR forums for local government and by securing local government representation on key national IGR forums. The success of local government’s representation on the national IGR forums depends, however, on the quality of organized local government’s input in these structures, which is an uncertain variable at best. Too often, SALGA has insufficient resources, capacity, or time to provide adequate input at such IGR forums.

Early indications are that the newly established IGR forums are slowly gaining traction in terms of attendance and ownership.⁹⁵ In addition, if the IGR forums continue their progress from being largely symbolic engagements to becoming real programmatic exchanges on planning and service delivery, they will make a significant contribution to the quality of good governance across the three spheres.

POLITICAL CULTURE OF LOCAL GOVERNANCE

Local government is dominated by the same political parties that operate nationally and provincially. This pattern is informed by a strong party political

culture in local government, as well as by the electoral system, which is a mixture of constituency and party-list elections. Except for councils with fewer than seven members – where a proportional representation (PR) system is followed – 50% of councillors are elected in wards in terms of a first-past-the-post system, with the remaining 50% elected in terms of a closed party-list PR system, which ensures overall a high degree of proportionality between votes cast and seats obtained.

Voter participation in South Africa shows a clear discrepancy between national and provincial elections (held on the same day) and local elections, which fall in the middle of national and provincial terms. The past three local government elections (1995–96, 2000, and 2006) showed a consistent voter turnout of around 48%, compared to a turnout at national and provincial elections of 86% in 1994, 88% in 1999, and 76% in 2004.⁹⁶

The local government political arena is characterized by the omnipotence of the ruling party, the African National Congress. The ANC secured 67% of the vote in the 2006 nationwide municipal elections and obtained outright majorities in the majority of municipal councils. It controls five of the six metropolitan municipalities. Cape Town, led by a coalition government, excluding the ANC, is the exception.

The highly centralized party hierarchy that obtains in both the ANC and opposition parties stands in sharp contrast to the decentralized nature of the state. The fielding of candidates in local government elections is determined at regional levels and, in the case of mayoral positions in metropolitan municipalities, at the highest political level. Furthermore, it is common for all political parties, where they are able, to exercise considerable influence and oversight over the appointment of senior municipal administrative officers in councils.⁹⁷

It is a statutory goal that all political parties should seek 50/50 representation of men and women. Although this is not an enforceable obligation, the ANC has adopted this policy, and 48% of all its candidates were women in the 2006 local government election. Of the elected councillors, 46% of the ANC members were women, with the overall percentage for all councillors standing at 40%. Unlike India, where the one-third quota also applies to leadership positions, only 15% of the mayors in South Africa are women.

The career patterns of metropolitan mayors reveal the growing importance of the metropolitan politician. Since the first democratic election in 2000, most metropolitan mayors' positions have been held by former members of national and provincial parliaments, former provincial executives, and even a former national executive.⁹⁸

EMERGING ISSUES AND TRENDS

There are a number of significant trends that relate to the autonomy of local government. First, for many of South Africa's 283 municipalities, their

constitutional status is one of "paper autonomy." This reality is due to the absence of political and administrative capacity to assert and exploit this autonomy and also to the dominance of centrally directed party politics. A second trend is the intensification of financial oversight and financial intervention exercised by provincial governments. The imminent absorption of municipal administrations into a single public service will be another step away from administrative autonomy.

The national government's increasing concern for local government appears to centre more on financial oversight and increasing intergovernmental financing and less on improving the financial viability of municipalities. Municipalities are often largely dependent on intergovernmental grants for infrastructure development. This trend, if unreversed, may frustrate achievement of the ideals of localized priority setting.

A critical trend in the evolution of local government's role in South Africa's governance system relates to the role of district municipalities. As district municipalities are the governance level immediately below provinces, their future will affect the future of provinces and vice versa. If district municipalities indeed establish themselves as strong regional planning and support agencies for local government, much of the provincial role vis-à-vis local government may be eclipsed.

The provincial government of Gauteng has already entered the fray. Gauteng is the smallest province but is undoubtedly the nation's economic powerhouse. Three of the six metropolitan municipalities, namely Johannesburg, Tshwane, and Ekurhuleni, reside in this province, together with two district municipalities. The geographical and functional interlinkages between all these municipalities have prompted the province to suggest moves toward a Global City Region in Gauteng, comprising only metropolitan municipalities. This would mean subsuming the three districts into the three metropolitan municipalities. The rationale lies in the need for common strategies and in the need to avoid wasteful competition for resources and investment. The institutional reshuffle would be complemented by the further devolution of power to these metropolitan municipalities. These moves may mean the reduction of the Province of Gauteng's role to a nucleus of coordination, policy development, planning, industrial promotion, and transport.

These developments and discussions take place against the backdrop of a rethinking of the role of provincial governments.⁹⁹ The national government initiated a policy review process, which will culminate in a first white paper on provinces and a review of the white paper on local government. Provincial government is the sphere of government with which the African National Congress is the least comfortable.¹⁰⁰ It is often said to be a product of the negotiations for peaceful transition to democracy, carried over into the final Constitution on the back of the Constitutional Principles, rather than the genuine and considered wish of the ruling party, the ANC.

Any debate on the future role of provincial governments will be informed by the rise of a strong sphere of local government since 2000. The role and function of district municipalities and metropolitan municipalities will feature prominently in this discussion. The financial, political, and economic clout of metropolitan municipalities almost equals that of provinces. District municipalities are in dire need of a new sense of purpose and function, which some may find mistakenly placed in the provincial sphere of government. Furthermore, district municipalities are in dire need of capacity injections, a problem for which a single unified public service offers opportunities – albeit, perhaps, at the expense of provincial governments, whose capacity may be redeployed to the districts. At this stage, the direction of the debate is undetermined, and much depends on the outcome of the debate within the ruling party. What seems clear, however, is that provincial governments will continue to exist in one form or another. The precise form and function of provincial governments, however, may be subject to change.

Local government's relationship with provincial governments is rife with contradictions. On the one hand, provincial governments' leverage over local government has been hollowed out by the relocation to the national government of the disbursement of operating infrastructure grants to municipalities. On the other hand, provincial treasuries are emerging as important monitoring entities under the Municipal Finance Management Act. Indications are that provincial governments and municipalities are establishing workable relations and are sometimes at the forefront of innovation. For example, the debate on the Gauteng Global City Region is driven mainly by the provincial government, with the national government entering the field only reluctantly. A reasonable prediction may be that, in the debate about the future role of provincial governments, the national government will be faced with a *fait accompli* in that provincial governments are making themselves increasingly indispensable in the effort to integrate 283 municipalities into one national development agenda.

The intergovernmental context within which municipalities operate remains unsettled. At the same time, there is little doubt that local government's role in South Africa's decentralized system of government is increasing in importance, perhaps at the expense of the role of provincial governments.

NOTES

- 1 Statistics South Africa, *Stats in Brief, 2007* (Pretoria: Statistics South Africa, 2007), tables 1.1 and 2.1.
- 2 National Treasury, *2007 Budget Review* (Pretoria: National Treasury, 2007), 21.
- 3 Ibid.

- 4 United Nations Development Program (UNDP), *UNDP South Africa Report 2007*, http://www.undp.org.za/docs/an_rep_2007.doc (viewed 20 February 2008).
- 5 The Department of Health's 2005 survey of pregnant women attending a public sector antenatal clinic showed a national HIV prevalence of 30.2% in that study population. See Department of Health, *National HIV and Syphilis Antenatal Sero-prevalence Survey in South Africa 2005* (Pretoria: Department of Health, 2006), 10.
- 6 For a breakdown of the South Africa population in racial and religious terms, see Nico Steytler, "Republic of South Africa," in *Constitutional Origins, Structure, and Change in Federal Countries*, ed. John Kincaid and G. Alan Tarr, 312–46 (Montreal and Kingston: McGill-Queen's University Press, 2005), 313.
- 7 United Nations Development Program (UNDP), *2006 Human Development Report: Beyond Scarcity: Power, Poverty and the Global Water Crisis* (New York: UNDP, 2006), 290.
- 8 South African Cities Network, *State of the Cities Report 2006* (Pretoria: South African Cities Network, 2006), 2–12.
- 9 *Ibid.*, 2–18.
- 10 *Ibid.*, 2–26.
- 11 See, for example, Janis Van der Westhuizen, "South Africa (Republic of South Africa)," in *Handbook of Federal Countries*, ed. Ann L. Griffiths and Karl Nerenberg, 282–95 (Montreal and Kingston: McGill-Queen's University Press, 2002), 284–5.
- 12 See Steytler, "Republic of South Africa"; and Christina Murray, "Legislative and Executive Government in South Africa," in *Legislative, Executive and Judicial Governance in Federal Countries*, ed. Katy le Roy and Cheryl Saunders, 258–88 (Montreal and Kingston: McGill-Queen's University Press, 2006), 258.
- 13 Sections 42 to 46.
- 14 Sections 42(4), 60, and 67.
- 15 Sections 83 to 92.
- 16 Sections 167 and 168.
- 17 Nazeem Ismail and Chisepo J.J. Mphaisha, *The Final Constitution of South Africa: Local Government Provisions and Their Implications* (Johannesburg: Konrad Adenauer Stiftung, 1997), 7.
- 18 Department of Constitutional Development, *White Paper on Local Government* (Pretoria: Government Printers, 1998), 2.
- 19 Sam Rugege, "Traditional Leadership and Its Future Role in Local Governance," *Law Democracy and Development* 7, no. 2 (2003): 171–200, at 173.
- 20 *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (2) BCLR 1458 (CC) para. 122.
- 21 Gideon Pimstone, "Local Government," in *Constitutional Law of South Africa*, ed. Matthew Chaskalson et al., 5A1–5A42 (Cape Town: Juta, 1999), 5A3.
- 22 Nicolas Haysom, "The Origins of Co-operative Governance: The 'Federal' Debates in the Constitution-Making Process," in *Intergovernmental Relations in South Africa: The Challenges of Co-operative Government*, ed. Norman Levy and Christopher Tapscott, 43–65 (Cape Town: IDASA and School of Government, University of the Western Cape, 2001), 45. See also Nico Steytler and Johann Mettler, "Federal

Arrangements as a Peacemaking Device during South Africa's Transition to Democracy," *Publius: The Journal of Federalism* 31 (Fall 2001): 93–106.

- 23 Constitution of the Republic of South Africa 1993.
- 24 Nico Steytler, "Local Government in South Africa: Entrenching Decentralised Government," in *The Place and Role of Local Government in Federal Systems*, ed. Nico Steytler, 183–212 (Johannesburg: Konrad Adenauer Stiftung, 2006), 187.
- 25 The six areas are Johannesburg, Cape Town, eThekweni (Durban), Tshwane (Pretoria), Nelson Mandela Bay (Port Elizabeth), and Ekurhuleni (East Rand).
- 26 Constitution, Section 151(1).
- 27 This was later reduced to 283 municipalities.
- 28 See *City of Cape Town and Another v Robertson and Another* 2005 (3) BCLR 199 (CC) para. 9.
- 29 Department of Constitutional Development, *White Paper on Local Government*, 59.
- 30 Constitution, Section 40(1).
- 31 Ibid., Section 151(3).
- 32 Ibid., Section 229.
- 33 Ibid., Section 156(4).
- 34 Ibid., Sections 67 and 221(1).
- 35 Ibid., Section 154(2).
- 36 See, for example, *In re: Certification of the Constitution of the Republic of South Africa*, 1996 1996 (10) BCLR 1253 (CC) paras 364, 373, 374, 462, and 478.
- 37 *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BCLR 1458 (CC); and *City of Cape Town and Another v Robertson and Another* 2005 (3) BCLR 199 (CC) para. 9.
- 38 See, for example, *CDA Boerdery (Edms) Bpk and Others v The Nelson Mandela Metropolitan Municipality and Others* 2007 (4) SA 276 (SCA) para. 41. See also *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BCLR 1458 (CC); and *City of Cape Town and Another v Robertson and Another* 2005 (3) BCLR 199 (CC).
- 39 South African Cities Network, *State of the Cities Report 2006*, 5–22.
- 40 National Treasury, *Local Government Budgets and Expenditure Review 2001/02–2007/08* (Pretoria: National Treasury, 2006), 9.
- 41 South African Cities Network, *State of the Cities Report 2006*, 5–25.
- 42 For a discussion of the challenges of concurrent and overlapping powers, see Nico Steytler and Yonatan Fessha, "Defining Provincial and Local Government Powers and Functions," *South African Law Journal* 124 (2007): 320–38.
- 43 Constitution, Section 229.
- 44 Certain matters, namely those mentioned in Schedule 5B of the Constitution, can be regulated only by provincial governments. The national government can legislate on those matters only in specific circumstances, as per Section 44(2) of the Constitution.
- 45 Constitution, Section 151(4).
- 46 Statistics South Africa, *Financial Census of Municipalities for the Year ended 30 June 2006* (Pretoria: Statistics South Africa, 2007), 8.

- 47 Ibid., 12.
- 48 One such example is the Development Facilitation Act 67 of 1995.
- 49 High Court, Transvaal Provincial Division, Case number 11723/06.
- 50 National Treasury, *Local Government Budgets*, 8; Division of Revenue Act of 2005.
- 51 National Treasury, *Local Government Budgets*, 51.
- 52 In a number of small municipalities, the council as a whole exercises executive authority without electing a dedicated political structure.
- 53 See Determination of Upper Limits of Salaries, Allowance and Benefits of Different Members of Municipal Councils, 2007, GN R1227, *Government Gazette* 30600, 18 December 2007.
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- 55 Public Service Act 104 of 1994.
- 56 *State of the Nation Address*, 9 February 2007, 23 February 2007, <http://www.gov.za> (viewed 20 February 2008).
- 57 Municipal Demarcation Board, *National Report on Local Government Capacity, Period 2004/2005* (Pretoria: Municipal Demarcation Board, 2005), 13–14.
- 58 Department of Provincial and Local Government, *Consolidating the Local Sphere of Government, Towards a Mid Term Review and an Overview of Progress in Implementing the 5 Year Local Government Strategic Agenda and Project Consolidate* (Pretoria: Department of Provincial and Local Government, 2007), 32.
- 59 Department of Constitutional Development, *White Paper on Local Government*, 17.
- 60 Good Governance Learning Network (GGLN), *Local Democracy in Action: A Civil Society Perspective on Local Governance in South Africa* (Cape Town: GGLN, 2008), 15.
- 61 Doreen Atkinson, “Taking to the Streets: Has Developmental Local Government Failed in South Africa?” in *State of the Nation South Africa 2007*, ed. Sakhela Buhlungu, John Daniel, Roger Southall, and Jessica Lutchmann, 53–77 (Cape Town: HSRC Press), 58. For example, the Local Government Briefing’s Community Protest Monitor recorded thirteen service delivery protests in August, seven in October, five in November, and three in December; see “Community Protest Monitor,” *The SA Local Government Briefing*, nos 8, 10, 11, and 12 (2007).
- 62 Special Investigating Unit, *Annual Report 2004/2005* (Pretoria: Special Investigating Unit, 2005).
- 63 Good Governance Learning Network, *Local Democracy in Action*, 47.
- 64 National Treasury, *Local Government Budgets*, 8.
- 65 For the 2006–07 financial year, the vertical division of revenue (after deduction of debt servicing and contingency costs) was determined as follows: national departments receive 50.4% of available resources, with 42.4% allocated to the nine provinces and 7.2% to the 283 municipalities; see National Treasury, *2007 Budget Review*, 19.
- 66 For a detailed explanation of the equitable share formula for local government, see National Treasury, *2007 Budget Review*, Annexure E.
- 67 National Treasury, *2003 Intergovernmental Fiscal Review* (Pretoria: National Treasury, 2007), 42.

- 68 SA Local Government Research Centre, "Johannesburg Issues New Retail Bond," *SA Local Government Briefing*, July 2007, 55.
- 69 MEC for Local Government, *Mpumalanga v IMATU* 2002 (1) SA 76 (SCA).
- 70 Act 56 of 2003.
- 71 On intergovernmental fiscal relations, see Bongani Khumalo and Renosi Mokate, "Republic of South Africa," in *The Practice of Fiscal Federalism: Comparative Perspectives*, ed. Anwar Shah, 263–86 (Montreal and Kingston: McGill-Queen's University Press, 2007).
- 72 National Treasury, *2007 Budget Review*, 136.
- 73 National Treasury, *Local Government Budgets*, 8.
- 74 Ibid., 7.
- 75 One exception is perhaps that the Province of KwaZulu-Natal has opted to exclude the executive mayor system and to operate with executive committee systems only.
- 76 Act 108 of 1997.
- 77 Act 61 of 2003.
- 78 See Steytler, "Republic of South Africa," 327.
- 79 For example, the Western Cape provincial government intends to adopt regulations on noise pollution in terms of the Environment Conservation Act 73 of 1989. The KwaZulu-Natal government has adopted KwaZulu-Natal Road Traffic Act 7 of 1997, KwaZulu-Natal Health Act 4 of 2000, and KwaZulu-Natal Cemeteries and Crematoria Act 12 of 1996, all of which regulate local government functions.
- 80 For examples of the variety of approaches, see Jaap de Visser, *Developmental Local Government, a Case Study of South Africa* (Antwerp: Intersentia, 2005), 174.
- 81 See KwaZulu-Natal Road Traffic Act 7 of 1997, Section 26.
- 82 See KwaZulu-Natal Health Act 4 of 2000, Section 4.
- 83 See National Building Regulations and Building Standards Act 103 of 1977, Section 29(8)(a).
- 84 See Water Services Act 108 of 1997, Section 21.
- 85 Municipal Systems Act 32 of 2000, Sections 106 to 108.
- 86 For examples of various monitoring schemes that are at odds with the Municipal Systems Act and the Constitution, see de Visser, *Developmental Local Government*, 183.
- 87 Act 56 of 2003.
- 88 Constitution, Section 139.
- 89 The first intervention occurred in 1998, followed by six interventions in 1999, two in 2003, seven in 2004, two in 2005, three in 2006, and seven in 2007. For parliamentary reports on these interventions, see <http://www.ncop.parliament.gov> (viewed 20 February 2008).
- 90 For a discussion of the relation between interventions and the national government's support program, see Christina Murray, "The NCOP and Intervention," *Stellenbosch Law Review* 18, no. 1 (2007): 26–30.
- 91 Constitution, Section 41(1).
- 92 Constitution, Section 67.

- 93 Norman Levy, Chris Tapscott, Nico Steytler, et al., *The Intergovernmental Relations Audit—Towards a Culture of Co-operative Government* (Pretoria: Department of Provincial and Local Government, 1999), 134.
- 94 Act 13 of 2005.
- 95 Reuben Baatjies and Nico Steytler, *District Intergovernmental Forums: A Preliminary Assessment of Institutional Compliance with the Intergovernmental Relations Framework Act* (Cape Town: Community Law Centre, 2007), 26, <http://www.communitylawcentre.org.za> (viewed 20 February 2008); Yonatan Fessha and Nico Steytler, *Provincial Intergovernmental Forums: A Post-Intergovernmental Relations Framework Act Compliance Assessment* (Cape Town: Community Law Centre, 2007), 28, <http://www.communitylawcentre.org.za> (viewed 20 February 2008).
- 96 Human Sciences Research Council, *Survey on South African Voter Participation in Elections* (Pretoria: Independent Electoral Commission, 23 February 2007), 3, <http://www.elections.org.za> (viewed on 20 February 2008); Independent Electoral Commission, *Local Government Election 2006 Voter Turnout Summary* (Pretoria: Independent Electoral Commission, 23 February 2007), <http://www.elections.org.za> (viewed 20 February 2008).
- 97 Robert Cameron, "The Upliftment of South African Local Government," *Local Government Studies* 27 (2001): 97–118.
- 98 Jaap de Visser, "Career Patterns of National, Provincial and Local Parliamentarians in South Africa," in *Legislatures in Federal Systems and Multi-Level Governance – Schriftenreihe des Europäischen Zentrums für Föderalismus-Forschung Tübingen*, ed. Rudolf Hrbek (Baden-Baden: Nomos, forthcoming).
- 99 This rethinking was an item at the ANC's Policy Conference of June 2007; see African National Congress, *ANC 52nd National Conference 2007: Policy Discussion Documents* (Johannesburg: Amrabula, 2007), section 2, 6.
- 100 See Steytler, "Republic of South Africa," 316, 323.