

An overview of the legal framework pertaining to the delivery of social services with reference to the local sphere of government.

By

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Declaration

I declare that the dissertation submitted by me to the University of Limpopo for the degree Master of Laws in Labour Law has not previously been submitted for degree purposes at this or any other university. This is my own work in design and execution and all materials contained herein have been duly acknowledged.

Signed

Date

Dedicated to my Son

Acknowledgements

I wish to dedicate this work to my Son **Jaden Musa Lesedi Mabaso**, my parents, my siblings **Elvis, Maria and Noah**, and friends for support during difficult times. I wish to thank my wife, **Clerence Ngoakoana Mabaso** for being one of a kind.

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CHAPTER 1

1.1 Introduction

At the heart of the struggle for liberation from the apartheid regime was the need to address the aspirations of the poor, who were politically oppressed, socially marginalized, and economically exploited. As the first democratic election in 1994 was coming up, the African National Congress (ANC) used a radical program of reconstruction and development as an election manifesto, and later proclaimed this program an instrument of fundamental change in the new South Africa. However, in less than 24 months after the new government assumed power, a neo-liberal economic policy was introduced, which in essence replaced the initial reconstruction and development program.

The nature of the new policy caused heated debates, with the floor movement and some civil society organizations accusing the government of selling out the people's mandate to the powerful private sector and the International Monetary Fund. However, ANC- led government published several statistical figures after 1995, arguing that its social delivery program, especially service delivery, was successful. In addition, South Africa spent close to half its budget on social services¹. This program being essential in the fight against poverty.

1.2 Statement of the research problem

The advent of democracy in 1994 brought with it not only the necessary political transformation but also the institutional reforms that were vital for dealing with the socio economic and developmental challenges in South Africa. All these changes were part of an overall process of democratic transformation that provided the necessary political inclination at the highest levels of government to priorities delivery of basic services to previously under-serviced communities in South Africa.

It is widely acknowledged that the local government sphere in South Africa is critical to the country's developmental processes and delivery of services to communities. South Africa's Constitution mandates local authorities to ensure the provision of services to local communalities in a sustainable manner. These momentous political and institutional reforms were carried out

¹Bond, P, 2000: Infrastructure Delivery: Class Apartheid, Indicator SA, 17 (3): 18-21

not only at national and provincial levels, but also at local level. Politically between 1995 and 2000 municipalities underwent a democratic transformation process which saw previously racially divided local authorities transformed into single and united municipalities.

This included the introduction of policies and legislative reforms such as the Municipal Systems Act² that encouraged municipalities to promote democratic participation by citizens in the way they are governed. The political reforms were also aimed at making local authorities democratically accountable to their citizens for the efficient and effective in delivering basic services.³

Accompanying the political reforms were also institutional reforms that saw the number of local authorities throughout the country drastically reduced. This resulted in the creation of large metropolitan local authorities (in Gauteng, Western Cape, Eastern Cape and Kwazulu-Natal), district councils and local councils throughout the country. All these political and institutional reforms culminated in the first democratically elected municipalities in 1999 and 2000.

These institutional reforms were aimed at rationalizing the local government sphere and turning municipalities into effective and efficient service – oriented entities. However, these changes also resulted in increased constitutional responsibilities for the new geographically integrated municipal authorities. They came to serve much larger populations and communities with overwhelming services backlogs. Municipalities are therefore faced with the task of improving not only the quantity but also the quality of basic services being delivered to citizens in South Africa in rural and urban areas.

However, in the wake of the political and institutional reforms it has become clear that many local authorities throughout the country are still facing severe capacity constraints and institutional weakness in delivering basic services effectively and efficiently. The severe lack of capacity at municipal level tends to come in the form of inadequate managerial skills and technical expertise, which has proved debilitating for service delivery⁴. This is particularly evident outside of the metropolitan areas. Also, the perceived lack of service-orientation at

² Act 117 of 1998.

³ Naidoo M. 'Breaking Barriers to Community Participation in Municipal service delivery.' Maru A Pula (Mvula Trust's News Letter) September 2000, 18.

⁴ Turn around strategy of 2000/2001.

municipal level, including ineffective and efficient administrative structure, are often seen as obstacles to dealing with the huge services backlogs in many poor communities.

Also many municipalities face problems of a severe lack of funds to carry out their constitutional mandates to improve the quantity and quality of basic services to citizens. This also has debilitating effect on local governance. The lack of institutional and administrative capacity mean that many municipalities are unable to deliver basic services such as electricity, water and sanitation, and refuse collection effectively, which in turn prompts many citizens to refuse to pay for these services.⁵

The process of municipal service delivery in South Africa takes place not only within the context of political and institutional reforms, but also within administrative and financial constraints as well. It also takes place within the context of severe and in some cases increasing poverty and inequality among households in South Africa.⁶

The government's policy of improving the living conditions of poor households by urgently increasing access to basic services is taking place alongside the slow process of transformation and capacity building at municipal level.⁷ This tension caused by the urgent need to extend services to the poor and the slow process of change has prompted policy makers to think innovatively around alternative service delivery models at local government level⁸.

There has therefore been a significant shift in political and ideological thinking on the role of the state in the provision of basic services. Traditionally, the provision of basic services was seen as predominantly the preserve of the state and public institutions. Stacey⁹ argues that the perceived necessity and strategic importance of public provision of services and infrastructure to the economy, and the view that large-scale investments with long gestation periods excluding other

⁵ See Plummer J. Favourable Policy and Forgotten Contracts: private sector participation in water and sanitation services in Stutterheim, South Africa. University of Birmingham, November 2000, working paper 442 01: 6; SACP. Public- Private Partnerships: The challenges for local government, <http://sacp.org.za/docs/stratconf/ppps.html>; Mariane Brown, Private-Public Partnerships. Accountancy South Africa, September 2000. <http://accountancy sa.org.za/archives/2000sep/features/comment.htm>.

⁶ Plummer 6.

⁷ RSA. White Paper on Municipal Service Partnerships 1999.

⁸ Turn around strategy 2001.

⁹ See Stacey S. New Capacities for Old? Prospects for public-private partnerships in service delivery in South Africa, Angola and Mozambique. Centre for Policy Studies, December 1997, Research report 61.

actors except the state, has underpinned the conventional thinking that the state was the primary provider of basic services.¹⁰

However, the problems of administrative and institutional capacity constraints, ineffectiveness, inefficiency, lack of adequate funds within public institutions and failure to respond adequately to the needs of citizens have forced policy makers and political leaders to rethink the role of public institutions. Political leaders are also exploring other modes of public service provision perceived as effective¹¹.

The new thinking that has come to permeate policy debates and characterize the contents of many official policy documents in South Africa emphasizes the role of state institutions as ensuring that services are provided rather than directly providing those services.¹² The new thinking is that the state institutions or local authorities need to introduce a framework of laws, policies, regulations and incentives to encourage other non governmental or non- state actors with the necessary institutional capacity, technical expertise and financial resources to get involved in the direct provision of services.

Government in general and municipalities in particular have therefore been encouraged to explore a range of alternative service delivery options ranging from direct provision under competitive conditions to the complete passing over of responsibility to the private sector within a mild regulatory framework.¹³ Within this range, many types of partnerships have been introduced by local authorities throughout the country to try to improve the quantity and quality of services being delivered in their jurisdictions.

The department of finance defines a public-private partnership as “ a contractual agreement whereby a private party performs a departmental function on behalf of a national or provincial department for a specified time”.¹⁴ The types of public-private partnerships identified range from short term ones lasting for between one and eight years, such as service contracts and

¹⁰ See Stacey S. New Capacities for Old? Prospects for public-private partnerships in service delivery in South Africa, Angola and Mozambique. Centre for Policy Studies, December 1997, Research report 61.

¹¹ RSA, white paper on municipal service partnerships 1999.

¹² Hemson D. 'Privatisation, public-private partnerships and outsourcing: the challenge to local governance'. Transformation 1998; 37: 1; See also other documents such as the Department of Finance's Guidelines for Public-Private Partnerships. April 2000; The Framework for the Restructuring of Municipal Service Provision. December 1998.

¹³ Ibid.

¹⁴ RSA (Dept. Finance). Guidelines for public-private partnerships. April 2000: 5.

management contracts, to medium long term partnerships lasting from 10 to 30 years such as lease and concessions.¹⁵ Literature identify a range of benefits associated with these alternative service delivery arrangements: reduction in costs of service delivery for municipalities, improved quality of service delivery, increased effectiveness and efficiency, better managerial practices, better use of assets, and increased responsiveness of the needs of beneficiaries.¹⁶ The national and provincial treasury adds that strategically, private-public partnerships can enhance internal accountability by clarifying roles and responsibilities as well as focusing on key service delivery targets.¹⁷

It needs to be stated though that this ideological and political shift towards increased utilization of non state actors to provide basic services on behalf of government in general and municipalities in particular has not gone uncontested. Many academics, activists, some political parties and labour unions are disputing many of the perceived benefits of public private partnerships.¹⁸ The critical point raised against some of the negative spin- offs of such alternative service delivery arrangements, is that if these are not properly regulated by the state, can defeat the government objectives of equal opportunities.

The idea of municipalities ceding service delivery responsibilities to independent providers is usually also criticized on the grounds that the socio economic rights and entitlements of the poor will be compromised by commercially oriented service providers concerned only with profit making.¹⁹ Hemson raises problems associated with such alternative service delivery arrangements: corruption in the tendering and contract drafting processes, higher user fees, inflated directors' fees, wide scale retrenchments and anti-union policies and practices.²⁰

Some critics add that the current administrative capacity constraints and the lack of necessary expertise that characterize many local authorities serve to render them incapable of managing such service delivery agreements with private sector partners. They also point lack of capacity to enforce compliance with regulatory frameworks to ensure that service delivery targets are met.

¹⁵ RSA (Dept. Finance). 6.

¹⁶ Hemson 2; Stacey; See also RSA (Dept. Finance) 7; National Business Initiative, ppp Annual Review, May 1999.

¹⁷ RSA (Dept. Finance). 7.

¹⁸ See Hemson D; SACP. See also a collected edited by MacDonald D& Pape J. Cost Recovery and The Crisis of Service Delivery in South Africa Pretoria: HSRC, 2002.

¹⁹ Khunou G. Massive Cut-offs: cost-recovery and electricity service in Diepkloof, Soweto, in Macdonald D & Pape J (eds.): 61-80.

²⁰ Hemson 1.

However, some critical role players such as the South African communist party argue that given the current resource constraints and institutional capacity limitations of municipalities, alternative service delivery arrangements are potentially beneficial. In a discussion document titled 'Public-Private Partnerships: The challenges for Local Government', the party argues

*Drawing the private sector into delivery of municipal services does not necessarily mean a weakening of local government or the abdication of its responsibilities to the people. In fact, appropriately done, it can serve to strengthen local government and enhance its credibility.*²¹

1.3 Overview of the current debate

Service delivery is a much talked about process. Service delivery is as old as the scriptures. Every individual, grouping, community and society requires certain services, which are basic to their well being. The nature of services required is influenced by various factors. People always want all different kinds of services to meet their social needs.²²

The debate on service delivery in South Africa is not unique. The legacy of under-development and poverty remains real in many communities. Despite all kinds of efforts to redress the backlogs, many remain with inadequate infrastructure. The deprivation of basic services from communities prior the 1994 democratic elections put strain and exerted pressure on communities

The victorious first democratic elections held in the Republic of South Africa in 1994 heralded a new dispensation in the lives of the majority of country's citizens. The development of all spheres of government as encapsulated in the constitution of the Republic of South Africa, gave hope to the majority of citizens for a better life for all. The Reconstruction and Development Programme document is the end product of an extensive consultaion process by the ANC with a diversity of stake holders, role players, community organs, organs of civil society and many more. It is against this background that service delivery is critical in the quest to achieve the objectives and wishes of the people.

²¹ SACP.

²² Benton, J.E (2002). Country service delivery: Does government service structure matter? Volume 62, No 4. University of Florida: Florida.

The administration and delivery of services by both social assistance and social insurance schemes in South Africa have been beleaguered by a number of problems:

The provincial departments have, in recent times, lost a substantial amount of money owing to the recurring failure of their administrative personnel to observe the fundamental rules of administrative law.²³ The departments' failure to apply basic principles of administrative law, which law forms an essential component of the Constitution as well as of the common law, has seen many decisions, involving the withdrawal of social assistance grants, being given against the departments.²⁴ Pursuant to this series of unnecessary cases, the conclusion drawn is that the departments' personnel require further training. There is a dire need for capacity building and information – sharing on matters relating to, *inter alia*, the basic rights entrenched in the Constitution and the basic values and principles governing public administration (including Batho Pele).

The level of service rendered by the administrative staff of the relevant provincial departments of social development has often been described as appalling. This state of affairs can be blamed, *inter alia*, on poor customer service skills and little or no dedication on the part of personnel. It has been reported, for example, that the social security officials are rude and abusive to old-age grant recipients, and that pension applications takes too long to be processed.²⁵ It can therefore

²³ See, e.g., Rickard C “Attorney makes a million from welfare department’s blunders” Sunday Times, 27 August 2000 accessed at: [http:// www.sundaytimes.co.za/ 2000 / 08 / 27 / politics / poll2.htm](http://www.sundaytimes.co.za/2000/08/27/politics/poll2.htm).

²⁴ 54 See *Bacela v MEC for Welfare (Eastern Cape Provincial Government)* 1998 1 All SA 525 (E); *Maluleke v MEC, Health and Welfare, Northern Province* 1999 4 SA 367 (T); *Rangani v Superintendent General, Department of Health and Welfare, Northern Province* 1999 4 SA 385 (T); *Mpofu v Member of the Executive Committee for the Department of Welfare and Development in Gauteng Provincial Government* (WLD 18 February 2000, case no 2848 / 99), *Boshula v Permanent Secretary, Department of Welfare, Eastern Cape* 2000 2 SA 849 (E), and *Ngxuzza and others v Secretary, Department of Welfare, Eastern Cape Provincial Government and Another* 2000 12 BCLR 1322 (E).

²⁵ See *Mothers and fathers of the nation: The forgotten people Report of the ministerial Committee on abuse, neglect and ill- treatment of older person* (2001) Vol. 2 – accessed at

[http:// www.polity.org.za / govdocs / reports / welfare / 2001 / elderprov.htm](http://www.polity.org.za/govdocs/reports/welfare/2001/elderprov.htm), “Statement of the President at the conclusion of the debate on the state of the nation address” 14 February 2002 – accessed at [http:// www.polity.org.za / govdocs / speeches / 2002sp0214.html](http://www.polity.org.za/govdocs/speeches/2002sp0214.html), “Welfare collapsed in the E Cape” 9 June 2000 –

be opined that poor service, which is exacerbated by a lack of competent staff and resources, is one of the factors that keep a sizeable number of prospective social assistance beneficiaries from drawing benefits.

Corruption and fraud are two of the foremost sources of concern in the various provincial government departments. These two concerns clearly highlight the existence of managerial and administrative flaws in the current social economic service delivery system.

Means testing in the South African social security system has, to date, proved to be a tedious and complex exercise. The entire means-testing process is time consuming, bureaucratic, open to abuse and creates poverty traps. As a consequence, means-tested for social security benefits frequently fail to reach the needy.

Poor financial management by provincial services departments impede social services and service delivery. When provincial departments fail to disburse their monthly grants, welfare organizations (which include old- age homes and child welfare groups) and individuals suffer as a result of the poor management of funds and poor administration.

Fragmentation of service – a problem already highlighted in 1997²⁶ – is still discernible in the South African social security system. The social security system is faced with the challenge of devising ways and means to overcome the fragmentation of services. Such fragmentation has an adverse impact on service delivery in the sense that it creates a fertile environment for inefficiency and a lack of accountability. Several social insurance funds in South Africa are reported to be on the brink of insolvency.²⁷ This unfortunate situation is a direct consequence of,

accessed at <http://www.sn.apc.org/wmail/-issues/000609/NEWS33.html>, pillay R “Pensioners left penniless” 16 March 2001 – accessed at <http://www.sn.apc.org/wmail/issues/010316/OTHER56.html>, Edmunds E “Standing all day for slap in the face” 30 August 1996 – accessed at <http://www.sn.apc.org/wmail/-issues/960830/NEWS50.html>, “New South Africa fails its pensioners” 30 August 1996 – accessed at <http://www.sn.apc.org/wmail/issues/960830/NEWS49.html> and “Welfare month: Who needs a circus?” 02 October 1998 – accessed at <http://www.sn.apc.org/wmail/-issues/981002/NEWS44.html>.

²⁶ See the White Paper for Social Welfare of 1997.

²⁷ See, eg, “Technically insolvent” Mail and Guardian (19 May – 25 May 200) 2 and “Road Accident Fund driven to the brink” – accessed at <http://www.mg.co.za/mg/za/archive/-2001jan/10janam-news.html#fund>.

among other things, poor administration, corruption and fraud,²⁸ a lack of databases and links between schemes, double – dipping, and high administrative costs.

1.4 aims and objectives of the study

The aim of this study is to contribute positively to the solution of the community's services provision problem in Capricorn district municipality. It is also to emphasize critical issues that are belinquering service delivery in the area of jurisdiction of the Capricorn district municipality.

The objectives of the study are:

- To briefly reflect on the strategic importance of the Capricorn district municipality in service delivery and diagnose the problems and challenges facing communities regarding service delivery
- To contribute to the existing body of knowledge on the matter of the transformation and service delivery
- To analyze how well the local government complies with s 152 (1) of the Constitution and the local government mandate
- To investigate whether municipalities adheres to the provisions of the municipal Systems Act.

1.5 Methodology

The study will be conducted by way of library research, internet research and where necessary interviews will be conducted with the relevant organs of state entrusted with a service delivery mandate.

²⁸ See, for example, Kirk P “Lawyer flees with millions” 24 November 2000 – accessed at <http://www.sn.apc.org/wmail/issues/001124/OTHER98.htm>; Carlisle A and Deane N “Lawyer arrested for milking RAF” 29 June 2001 – accessed at <http://www.sn.apc.org/wmail/issues/010629/OTHER67.htm>; Streek B “Report finds ‘systematic fraud’ at RAF” 28 September 2001 – accessed at <http://www.sn.apc.org/wmail/issues/010928/OTHER94.html>; Barrel H “Heath team to probe accident fund scam” 19 March 1999 – accessed at <http://www.sn.apc.org/wmail/issues/990319/NEWS44.html>; Powell I “RAF ‘brought in hired guns’” 22 October 1999 – accessed at <http://www.sn.apc.org/wmail/issues/991022/NEWS44.html>; Deane N “Accident fund act against fraud” 31 January 2002 – accessed at <http://www.mg.co.za/mg/za/archive/2002jan/features/31jan-fund.html> and “Road Accident Fund driven to the brink” accessed at <http://www.mg.co.za/mg/za/archive/2001janam-news.html#fund>.

1.6 The hypothesis

The hypothesis is that the municipality to put in place legal compliance mechanisms and resources to address service delivery problems experienced by the communities. The municipality will be able to provide quality control and adequate supervision to their service delivery projects undertaken through contractors in communities as envisaged by law. Outcomes of the study will also provide information and concerns of the communities on matters of development and service delivery. The hypothesis is that if the municipality governs according to the applicable law, service delivery problems could have been avoided, e.g. in the area of labour law and social security law.

1.7 Organization of Dissertation

Besides this opening chapter, the rest of the dissertation is organized into the following chapters:

Chapter 2 deals with infrastructure and service delivery mandate, governance and service delivery, access to services and quality and type of service delivery

Chapter 3 deals with constitutional and legislative framework.

Chapter 4 finally discusses general trends observed in the study, including the concluding remarks, critical appraisal, as well as recommendations.

CHAPTER 2

2.1 Introduction

This chapter will describe the state of delivery of service and services as described by different scholars and researchers. This chapter gives one a picture of the challenges faced at community level and the legitimate expectations of the people at grass roots level.

2.2 Service Delivery Mandate

In this opening of Parliament in February 1999, former President Nelson Mandela reported an impressive list of achievements of the ANC- led government since April 1994. Mandela correctly observed that South Africa was undergoing a momentous change, blazing a trail towards what he called “a secure prosperous future”. The tenets of Mandela’s speech were also captured in the ANC manifestos for the 1999 national election and the 2000 municipal elections these manifestos claimed that, since 1994, the ANC- led government

- Delivered running water to more than 3 million people²⁹
- Connected 2 million households to electricity³⁰
- Improved health care for the poor, with over 500 new clinics being built or upgraded, and free medical care being provided for children under six years and pregnant women³¹ and
- Provided housing to nearly 3 million people, with 750 000 houses being built or under construction³².

At face value, the achievements were remarkable given the structural legacy of the apartheid system. Echoing the same self-congratulatory message, the Minister of Finance, Trevor Manuel, reportedly declared the following in 1998: “we have made substantial investments in social development over the past four years, in social welfare, education, health, housing, water sanitation, electrification and other social infrastructure”. Indeed, few other countries in the world spent as much on social services as South Africa. Roughly R100 billion per year went to

²⁹ Department of Water Affairs and Forestry, 1998: Annual Report of the Department of Water Affairs and Forestry.

³⁰ Department of Communication, 1998: Annual Report of the Department of Communication, Pretoria.

³¹ Department of Health, 1998: National Department of the Department of Health, Pretoria.

³² Department of Housing, 1998: Annual Report of the Department of Housing, Pretoria.

social services. This translated into R2 500 per person, compared to the total GDP per capital of about R17 000.³³

It must however, be noted that municipalities carry a constitutional mandate to delivery services through section 152 (1)³⁴ of the constitution which stipulates that the objectives of local government is primarily to provide democratic accountable government to municipal residents and to render services in a sustainable manner.

2.3 Governance and Service Delivery

The democratic government led by the ANC committed itself to confronting inequality through, amongst others, providing basic infrastructure and social services to those who need them most. One of the goals of welfare and infrastructure delivery is to ensure access to basic services. In terms of the South African Constitution, local government is clearly mandated to promote local economic development and to ensure that services are delivered efficiently and effectively at a local level.

In many respects, throughout the world transforming local government is far more challenging than transforming provincial or national government. Local government transition in South Africa has been painstakingly under way for some ten years, and has included a re-demarcation of municipal boundaries, which has resulted in a reduction in the number of municipalities from 843 to 284. However, the transformation has only just begun.

According to the Local Government White Paper, the re-demarcation of municipal boundaries was essential to:

- Co-ordinate municipal, provincial and national functions, services and programs;
- Integrate social and economic planning and development;
- Create an inclusive tax base.

In addition, the re-demarcation was aimed at transforming local government by bridging the gap between the rich and the poor, and between rural and urban areas, in relation to access to basic

³³ Hemson, D, 2000: Policy and Practice in Water and Sanitaion, Indicator SA, 17 (4): 48-53.

³⁴ Act 108 of 1996.

services such as water, sanitation, electricity and other infrastructure. In deciding on the new boundaries for municipalities, the Demarcation Board considered the following sectors:

- The interdependence of people, communities and economic aspects such as employment, public transport, human settlement, migration patterns and access to services and infrastructure; and
- The relationship of districts, voting areas, health, policing, population, existing and expected land use, type of land in the area and environmental implications.

In some countries, part of the revenue collected in wealthy areas is used for the upliftment of poor communities. In other countries³⁵, the main role of government is to collect revenue from all (according to their ability to pay) and to allocate those funds to poor areas. In South Africa, the majority of local councils have relied on grants from the provincial or national budget to develop infrastructure and address backlogs. In 1995/1996, integrated development plans (IDPs) were proposed as a way forward for local council areas. Some municipalities only drafted their IDPs, others began implementing them and yet others produced no plan at all³⁶.

The amalgamation of the old municipalities thus implied that different IDPs would have to be combined, which could prove to be difficult as service delivery was generally slow and uncoordinated in former townships and rural areas, in contrast to that in well-developed urban and metropolitan areas. Hence the different sectors in the new amalgamated municipalities may have had different priorities for fund allocation.

The re-demarcated municipalities had to introduce administrative and structural reforms based on new and rapidly changing policies and newly mandated responsibilities. For example, ongoing integrated development planning inhibited the local economic development and administrative profile of local authorities that had been successful in developing their own plans. The demarcation Act therefore had the difficult task of dealing with a moving target as local

³⁵ Human Sciences Research Council, 1999: Results of November 1999 National Survey, Pretoria.

³⁶ Ibid.

authorities responded to varying degrees to the prevailing legislative environment and other legislation³⁷.

Local government affects the lives of ordinary citizens in important ways. For example, it gives people in local communities a voice through elected representatives, and encourages citizen participation in the definition of issues and policy making. Local politics also impacts directly on the lives of women, as it is responsible for the delivery of goods and services. In deed, municipal health services, water provision, electrification, child-care facilities, sanitation and transport affect all people at the local level, but women and children suffer the most when these services are not provided. Public perceptions of local government performance in South Africa have been negative, largely because fundamental transformation takes time and the public has not seen major changes. In addition, lack of funds, resources, capacity and skills largely resulted in slow delivery and improvement of services by municipalities³⁸.

A survey conducted by the HSRC in November 2000 indicated that 52 percent of the respondents not satisfied with the performance of their municipalities, 18 percent were satisfied, 22 percent felt that they were neither satisfied nor dissatisfied, and 8 percent were uncertain. Of the 52 percent who were dissatisfied with local government performance 37 percent were rural residents, 35 percent were metropolitan residents and 28 percent were urban residents³⁹.

There was a strong relationship between dissatisfaction with local government performance and dissatisfaction with service delivery, with rural household being the most dissatisfied with the quality and quantity of services. The HSRC's November 2000 survey questionnaire also had an idea on the importance of the municipal elections of 5 December 2000. nearly half (49%) of the respondents indicated that these elections would ensure efficient delivery of basic local services, 14 percent felt that it would promote local democracy, 9 percent indicated that it would promote local accountability, 6 percent felt it would restrict the role of national and provincial government, and 22 percent were uncertain. Rural respondents (38%) constituted the largest proportion of those who indicate that municipal elections would ensure service delivery, followed by metropolitan (33%) urban residents (29%).

³⁷ Ibid.

³⁸ Human Sciences Research Council, 2000: Results of September 2000 National Survey, Pretoria.

³⁹ Ibid.

The higher proportion of rural residents believing that municipal elections would ensure service delivery corresponded with the higher levels of dissatisfaction among them. Furthermore, the proportion believing that local elections would ensure service delivery corresponded with the total turnout at the 2000 municipal elections (49%), which were conducted within the re-demarcated municipal elections areas. The majority of those who were uncertain about the role of local government did not vote on 5 December 2000⁴⁰.

One-tenth of the non-voters felt that their vote would not make any difference. The result of the HSRC's November 2000 survey suggested that the credibility of local government, which was also charged with providing local services, was in question. However, of significance was the low 2 percent of respondents who selected disillusionment with politics as the main reason for not voting. This suggested that active participation in politics and civic engagement by communities in service delivery were not in jeopardy.

2.4 Access to Services

Section 27 (1) (c) of the Constitution⁴¹ provides that, everyone has the right to have access to social security, including if they are unable to support themselves and their dependants, appropriate social assistance. The state is obliged to take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.

Bond identifies two dominant perspectives since the mid-1990s that try to explain why service and infrastructure backlogs have increased in South Africa.⁴² The “mainstream” perspective, which generally approves of the ANC- led government, suggests that existing policies are basically fine, and that resources allocated for service and infrastructure delivery were sufficient. This perspective suggests that implementation is nonetheless flawed, because of inefficiencies in municipal delivery. Hence there is a need for more rapid private-sector provision of services⁴³.

In some respects, the mainstream perspective sees communities and workers as part of the problem (as they engage in non-payment and vandalism). Mainstream analysis and public policy

⁴⁰ Ibid.

⁴¹ Act 108 of 1996.

⁴² Bond P, 2000: Infrastructure Delivery: Class Apartheid, Indicator SA, 17(3): 18-21

⁴³ Ibid.

are based on implicit and explicit class bias, and this is largely promoted by a market-oriented ideology.⁴⁴ The “critical” perspective comes from the ramp of the old Mass Democratic Movement, and includes key community activists, networks of social movements and trade union advocates⁴⁵.

The critical perspective argues that virtually all current states policies are excessively neo-liberal: “...too market-oriented, stingy, insensitive to poverty, incapable of integrating gender and environmental concerns, unsympathetic to problems associated with public health and worsening geographical segregation and even inefficient in terms of untapped economic multipliers”⁴⁶.

The critical perspective points out that:

- Several tens of thousand of communal taps that were installed by the ANC led government quickly broke;
- Municipal water cut-offs increased (tens of thousands of households per quarter since 1997), with only a small proportion of disconnected households being able to afford reconnection;
- Municipal capital budgets shrunk and urban shack-settlement populations grew rapidly;
- Fewer than 100 000 new rural sanitation connections were made since 1994.⁴⁷

This research confirms the critical perspective that access to services has been largely class-based, with the majority of the poor and low-income households having to travel long distances to access services⁴⁸. Issues raised by the critical perspective are systematically explored in this article by means of new evidence arising from earlier mentioned three HSRC national surveys.

After assessing service delivery in South Africa, several analysts concluded that access to services varied by class in South Africa, with the poor and rural households paying indirectly more than middle- and high- income households⁴⁹. A classic case was the delivery of water.

⁴⁴ Bond, P and Khosa, M.M, 1999: An RDP Policy Audit. Pretoria: HSRC Publishers.

⁴⁵ Ibid.

⁴⁶ Bond (2000: 19)

⁴⁷ Bond, 2000; Hemson, 2000.

⁴⁸ Hemson, 2000.

⁴⁹ Bond, Dor and Ruiters, 2000: Transformation in infrastructure policy from apartheid to democracy: Mandates for change, continuities in ideology, friction in delivery.

According to the HSRC'S November 1999 survey, water was apparently more accessible to middle- and high- income households than to those at the lower echelons of society⁵⁰.

For example, the majority of those who had a tap in the house or in the yard fell above the fifth living standard measure (LSM). On the other hand, those who walked up to 200 meters to fetch water from dams, rivers or boreholes fell below LSM4 (Table 2). The higher the LSM, the less accessible the water source. Thus, although government consistently argued that the delivery of water improved for the poor, there was still a long way to go before the access gap between the wealthy and the poor sections of society was closed⁵¹.

In deed, the indirect cost of being poor was high, and even higher if you lived in rural areas. Although the government's development programs were largely based in rural areas, the benefits were not spectacular, and more was required to meet the growing and urgent needs of the rural poor, especially African women. The 1996 Constitution gave the South Africa state the responsibility to provide adequate access to water, housing and primary education. Hence the democratic government launched a program to deliver water, especially to rural areas without access to water.

The HSRC survey of September 2000 provided valuable insight into the delivery of water and other basic services. The majority of those who received water got it from water schemes, the water being provided largely by a local authority or in some cases national government (for example, the working for Water Program). Some 8 percent of the respondents received water from boreholes and 14 percent from river streams or dams. However, a closer analysis of the data suggested that the main water source corresponded with the recipient's class, race and locality. For example, the majority of those who received water from water schemes fell above LSM5, whereas those who mainly received water from river streams or boreholes mainly fell below LSM4⁵².

The implication of these findings is that poor and low-income households in South Africa generally received services of poor quality, whereas the better off in society received services of

⁵⁰ Human Sciences Research Council, 1999: Results of November 1999 National Survey, Pretoria.

⁵¹ Hemson, 2000.

⁵² Ibid.

better quality, which were also more accessible than those of their counterparts. The differential access to services raises the issue of justice in terms of a clause enshrined in the Constitution.

The HSRC's September 2000⁵³ survey further demonstrated that access to water also varied by type of area. Rural areas, where poor largely unemployed African women lived, mainly relied on communal boreholes, river streams and dams. However, communal boreholes did not always have sufficient water, causing rural communities to use other sources of water. Urban and metropolitan residents accessed water schemes easily than their rural counterparts. The key conclusion emerging from this analysis was that the majority of poor and low-income African rural residents did not have access to water sources of good quality. This had major negative impacts on their welfare.

2.5 Quality of Service Delivery

Annual reports of various government departments often provide impressive figures on services and infrastructure provided, but the quality of such services is overlooked. Aggregated national data suggest that there has been some improvement in the quality and type of services delivered since 1994⁵⁴ in deed, access to basic services such as water and electricity appears to have improved between 1994 and 2000. However, the interpreters of aggregated data do not address the extent to which access to various types of services is differentiated, largely due to the mediation of class, gender, race and locality.

As with other services, level of water service differed by class in the HSRC'S September 2000 survey. For example, respondents above LSM4 had piped tap water in the yard or piped tap water in the dwelling. On the other hand, the majority of those who did not have piped tap water were those falling below LSM3. This differentiation has major implications for the social development of the poor. The continued existence of at least two broad classes in South Africa, which are also mainly divided along racial lines, raises questions about the extent to which the new state is able to fulfill its service delivery mandate. Class- and race-blind programs are unlikely to impact substantially on the delivery of services and infrastructure. This calls for effective targeting to ensure that the intended beneficiaries, namely the poor, actually benefit.

⁵³ Ibid.

⁵⁴ Khosa, 2000 a: Empowerment through service delivery. Pretoria: HSRC Publishers.

Unfortunately, neo-liberal development programs with their emphasis on cost recovery tend to exclude the poor from service and infrastructure delivery.

The HSRC's September 2000 survey revealed that water services also varied by area type, with metropolitan and urban dwellings more likely than rural dwellings to have piped tap water inside. Virtually all people without piped tap water were ruralists and African. The concurrence of race, class and locality in terms of service levels in South Africa was largely informed by past economic and political systems. However, the legacy of the economic system has not crumbled and fundamental social change could take several decades before it yields results.

Responses to the quality of services provided varied from satisfaction to dissatisfaction and from approval to rejection. The majority of those who were dissatisfied with service delivery were poor and African; the majority of those who were satisfied were middle- and high-income households. Recent protests against services of poor quality largely emanated from poor communities, and at times were supported by the powerful trade union movement that largely operated under the auspices of the Congress of South African Trade Unions.

The poor, the majority of whom were African, were mostly dissatisfied with bread- and- butter issues such as water provision and escalating transport fares and food prices. The quality of education for the poor was in a state of disarray. Nothing short of a major revamp of the education system and a fundamental rethink in the provision of services and infrastructure will be able to make a visible difference in the life of the poor.

The improvements largely benefited middle- and high –income households. A critical factor in perceptions of service delivery was the number of times a particular service was disrupted in a particular area and the speed at which local authorities remedied service disruptions. According to the HSRC's November 1999 survey, at least a third of respondents experienced service disruptions, with 16 percent indicating disruption twice a month. Only 39 percent of respondents did not experienced service disruption.

The Department of Water Affairs and Forestry (DWAF) often denied responsibility for service disruption, blaming recipient communities, pirate connections and rampant vandalism⁵⁵.

⁵⁵ Hemson, 2000.

Officials blamed the poor for the culture of non-payment, the destruction of water meters and other forms of non-compliance. One senior government official commented:

Where schemes are not delivering water because communities have decided not to pay for diesel for pumps, this is their decision. We believe that, on reflection, they will reconsider. Supply interruptions may [actually] be an essential part of establishing working arrangements and do not necessarily mean that a project of significance was the finding that the poor were more likely to experience service disruption than middle- and high-income households. At the same time, low-income households waited longer to have their services maintained or reconnected than middle- and high-income households.

As raise coincided with class, it was not surprising that the majority of those experiencing service disruptions were African, who also constituted the largest component of those who fell below LSM4- the poorest of the poor.⁵⁶ Quality and type of toilet facilities were also important indicators of service delivery in South Africa. Nearly four in ten respondents used ventilated pit latrines. However, 28 percent used non-ventilated pit latrines.

A closer assessment suggested that the majority of those who used ventilated pit latrines were from middle- and high-income households- those who fell above LSM5-while the majority of those who used non-ventilated pit latrines were largely those who fell below LSM3- the poorest of the poor.⁵⁷ The majority of those who used non-ventilated pit latrines in the HSRC's September 2000 survey were African; so were the majority of those who used bucket toilets. In terms of type of area, the majority of non-ventilated pit latrines were located un rural areas, whereas the majority of flush toilets were located in urban and metropolitan areas. Differentials in terms of type of toilet probably also contributed to differential health conditions.⁵⁸

⁵⁶ The differentials in service disruption and disconnection confirm the critical; perspective as expounded by Bond and Hemson 2000.

⁵⁷ The health hazards associated with unhealthy sanitation are likely to impose further indirect costs on the poor in terms of lower life expectancy, long periods of hospitalization and additional costs associated with medical treatment. It is also the poor who have limited acces to health insurance. Besides, the health facilities that the poor have access to are located at some distance from their dwellings. When they need emergency treatment, they pay additional transport costs to reach health and welfare facilities. Evidence suggests that it is cheaper to provide clean water and sanitation without cost than to hospitalize patients(Bond, 2000; Hemson, 2000.

⁵⁸ This assumption was based on findings of academic studies and a few monitoring/evaluation exercises of Mvula on water delivery in rural areas, namely that communal taps raise the likelihood of contracting water- borne diseases, particularly in KwaZulu- Natal. (See Bond, 2000, p. 18).

Spending on sanitation was also only about one-tenth of what was spent on water delivery. In fact, some analyses indicated that, due to the low prioritization of sanitation by the Department of Water Affairs and Forestry, there were fewer than 100 000 new rural sanitation connections.⁵⁹ There were also an estimated 18 million people in South Africa without proper sanitation.

In addition, the initial R17 million budgeted for sanitation in the 2000/2001 financial year was reduced to R13 million during the course of the year, and only R6 million was used in the first nine months of the year, furthermore, the R150 down payment for a toilet (the department subsidized the rest) was unaffordable for extremely poor rural households. Moreover, in the words of the White Paper on Water and Sanitation,

sanitation is not a popular topic at any level in society. It is not an attractive career, nor is it a political campaign issue. This topic is uncomfortable and taboo. It consequently lacks the priority that it should enjoy in relation to the burden it places on society. (Republic of South Africa, 1994:37)

The director general of the Department of Water Affairs and Forestry, Mike Muller, indicated that the department was “waiting for people to apply for the toilets”. In contrast, the Minister of Health said “we should not wait for people to ask. We should just go and do it. If we put up toilets, people will use them. We should move in and not wait for them to come to us” (*Pretoria news*, 6 January 2001).

However, the national sanitation task team, which was launched as a critical response to the sanitation crisis in South Africa, was crippled by internal strife over which of the major departments involved- Water Affairs and Forestry, Health and Provincial and Local Government- should be responsible for the team.⁶⁰

In significant ways, power and class relations played an important role in terms of who received what, where, how, under what conditions and how long. Regarding location, 56 percent of toilets were in the yard, 34 percent were in the house, 4 percent were shared with others, 5 percent were

⁵⁹ Bond, 2000.

⁶⁰ The official response to the inadequacy of sanitation delivery was criticized strongly during cholera outbreak in 2000. Affecting more than 15 000 people in South Africa, the epidemic highlighted the need for proper sanitation infrastructure and potable water in the affected rural areas.

located elsewhere, and one percent was in the field. However, analysis of the data by LSM category brought another perspective.

Although the majority of respondents indicated that they had a toilet in their yard, this majority comprised mainly middle- and high-income households. Low-income, mainly African, respondents to share toilet facilities with others. The toilet of township and informal settlement households were more likely to be in the yard or field than inside the dwelling, and less hygienic than those used by urban and metropolitan households. The toilets of rural households were also more likely to be located in the yard, in the field or elsewhere than in the dwelling. The sanitation services in rural areas, too, were more likely to be of poor quality. The findings suggest that the poor continued to be excluded from the social benefits of the post-1994 period.

CHAPTER 3

3.1 Introduction

The principal object of this chapter is to describe how legislations empowers the local sphere of government in their endeavour to deliver social services to their communities. This chapter reflects the possibly grave consequences and insoluble problems that communities are faced with as a result of failure by local government officials to comply with the legislations governing them.

3.2 Policy promulgation and service delivery

Given the significant role played by the government in the provision of social security in South Africa, it is not surprising that policy making in the field of social security lies mainly in the hands of cabinet and the relevant minister.⁶¹ This is abundantly clear when one examines the social assistance schemes and can be attributed, to a large extent, to the government's involvement in regulating social security through legislation, rules and regulations. The government is, in addition to public forms of social security, playing an active role in passing laws, rules, regulations, norms and standards with which private service providers should comply.⁶²

The responsibility for the delivery of social security services is spread between various provincial departments which operate under the umbrella of their various national departments and several funds. The provincial departments of social development deliver social assistance services to eligible beneficiaries. The national department has in its quest to rid the social security and social assistance programmes of what the minister of social development has referred to as “a number of weaknesses”,⁶³ initiated the welfare payment and information service

⁶¹ The National Department of Social Development (through its Minister) is in charge of the development of national policies and legislation with reference to social assistance as well as a framework for social welfare financing, norms and standards for service delivery and human resource capacity. The Provincial departments are answerable for provincial policy, planning and legislation, social welfare services, social security, welfare funding and human resource development.

⁶² Eg, the Registrar of Medical Schemes and the Ombudsman for Insurance.

⁶³ Opening address by Dr Zola Skweyiya, Minister for Social Development, at the SAIMAS 10th International Conference 17 August 2000-Loskop (Mpumalanga) accessed at <http://www.welfare.gov.za/Speeches%20Statements/old/2000/august/saimas.htm>. according to the Minister's remarks at the conference, “ our current programmes of social security and social assistance are bedeviled by a number of weaknesses. These include backlogs in the processing of applications, inaccurate information about the

project. The welfare payment and information service project is a project whereby “ a public private partnership approach is being used to re-design, implement, administer, and maintain a new grant payment and information service.”⁶⁴

Notwithstanding the importance and the value of public-private partnership for service in social security, the current partnership has been plagued by criticism. The private companies contracted by the department for the payment of grants, for example, have been relentlessly condemned for *inter alia*, late arrival by paymasters at the pay points and habitual machine breakdowns. This type of criticism against the privatization of the payment of grants led the ministerial committee on Abuse, Neglect and Ill-treatment of older persons to reach the conclusion that “privatization appears to have brought no improvements to the pensioner.”⁶⁵

3.3 Constitutional framework

All institutions whether public or private entrusted with the administration of social security schemes, are under an obligation to abide by the Constitution of the republic of South Africa (the constitution).⁶⁶ This duty originates from;

- The supremacy of the Constitution;⁶⁷
- The obligation of the state to respect, protect, promote and fulfill the rights enshrined in the Bill of Rights;⁶⁸
- The binding effect of the bill of rights on all organs of state;⁶⁹ and
- The binding effect of the provisions contained in the bill of rights on natural and juristic persons.⁷⁰

identity of beneficiaries, cumbersome, time – consuming and resource-draining processes, systems that are vulnerable to abuse and corruption, and inadequate management of information systems.”

⁶⁴ Ibid.

⁶⁵ Mothers and Fathers of the Nation: The forgotten people? Report of the ministerial committee on abuse, neglect and ill-treatment of older persons (2001) (vol 1) – accessed at <http://www.polity.gov.za/govdocs/reports/welfare/2001/elder/.htm#contents>.

⁶⁶ 108 of 1996.

⁶⁷ Ss (1) (c) and 2 of the Constitution. See, for further reading about the concept of the supremacy of the constitution, Limbach J “ The concept of the supremacy of the constitution” 2001 Modern Law Review 1.

⁶⁸ S 7 (2).

⁶⁹ S 8 (1). See s 239 of the Constitution for the definition of “ organ of state”. See also Freedman W et al “Constitutional issues” in Olivier MP et al (eds) Social Security Law: General Principles (Butterworths 1999) 499 at 499-500 and Directory cost cutters CC v Minister of Post and Telecommunications 1996 3 SA 800 (T).

⁷⁰ S 8 (2).

Government institutions have an obligation to abide by section 33 of the constitution. Section 33, which makes provision for the right to just administrative action,⁷¹ provides every person:

- With the right to administrative action that is lawful, reasonable and procedurally fair; and
- With the right to written reasons,⁷² where that person's right have been adversely affected by the administrative action in question.

Section 33 obliges the state to enact national legislation, in order to give effect to the foregoing rights and to:

- Provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
- Impose a duty on the state to give effect to the rights in subsection (1) and (2); and
- Promote an effective administration.

As a result of section 33, the legislature enacted the Promotion of Administrative Justice Act (PAJA).⁷³ The PAJA (together with the Promotion of Access to Information Act (PAIA)⁷⁴ is also aimed at the promotion of efficient administration and good governance, as well as the creation of accountability, openness and transparency in the public administration or in the exercise of public power or the performance of a public function, by giving effect to the right to just administrative action.⁷⁵ Given the objectives of PAJA and PAIA (and the position of public

⁷¹ According s 1 (i) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) "administrative action" means any decision taken, or any failure to take a decision, by –(a) an organ of the state, when – (i) exercising a power in terms of the constitution or a provincial constitution; or (ii) exercising a public power or performing a public function in terms of any legislation; or (b) a natural or juristic person and which has a direct, external legal effect. See, for further reading on the meaning of "administrative action", Henderson AJH "The meaning of 'administrative action'" 1998 SALJ 634.

⁷² See, generally, Barrie GN "The giving of reasons for administrative decisions in English and United States Law" 2000 TSAR 595. See, also for an illuminating discussion on the right to administrative justice in South Africa, Dlamini CRM "The right to administrative justice in South Africa: Creating an open and accountable democracy (part 1)" 2000 TSAR 697 and Dlamini CRM "The right to administrative justice in South Africa: Creating an open and accountable democracy (part 2)" 2001 TSAR 53.

⁷³ Act 3 of 2000.

⁷⁴ Act 2 of 2000. See, for further reading about PAIA, Currie I and Klaaren J The Promotion of Access to Information Act Commentary (SiberInk 2002).

⁷⁵ Preamble to the Promotion of Administrative Justice Act. See, for further reading about PAJA, Currie I and Klaaren J The Promotion of Administrative Justice Act Benchbook (SiberInk 2001), Pfaff R and Schneider H "The Promotion of Administrative Justice Act from a German Perspective" 2001 SAJHR 59 and Plasket C "Administrative Action: The Constitution and the Promotion of Administrative Justice Act 3 of 2000" A paper

administration under the constitution),⁷⁶ it can be opined that the PAJA and PAIA are in conformity with the basic values and principles governing public administration, as stipulated in the constitution,⁷⁷ as well as with the eight principles of Batho Pele.⁷⁸

The Constitution of the Republic of South Africa⁷⁹ paved the way for a truly democratic dispensation. The primary objective of a democratic country would be to ensure the social and/or the material welfare of all of members of its communities. Section 40 (1) of the Constitution clearly indicates that the local government sphere consists of municipalities. Each sphere is however, distinct, yet the spheres are interrelated and interdependent.

It is against this background that the local government is many at times regarded as a mirror reflection of the success and failures of national government. Local government is closer to the people and exists primarily to bring government to the grass roots level. The role that

presented to a Legal Resource Centre seminar on the promotion of Administrative Justice Act 3 of 2000 in Johannesburg on 23 October 2001- accessed at <http://www.Irc.org.za/4pub/papers/PAJA.doc>.

⁷⁶ The position of public administration under the constitution has been highlighted by the Constitutional Court, In President of the Republic of South Africa v South African Rugby Football Union 1999 10 BCLR 1059 (CC) 111 5B-D (par 133), in the following terms: public administration, which is part of the executive arm of government, is subject to a variety of constitutional controls. The constitution is committed to establishing and maintaining an efficient, equitable and ethical public administration which respected fundamental rights and is accountable to the broader public. The importance of ensuring that the administration observes fundamental rights and acts both ethically and accountable should not be understated. In the past, the lives of the majority of South Africans were almost entirely governed by labyrinthine administrative regulations which, amongst other things, prohibited freedom of movement, controlled access to housing, education and jobs and which were implemented by bureaucracy hostile to fundamental rights or accountability. The new Constitution envisages the role and obligations of government quite differently.”

⁷⁷ S 195 of the Constitution. See also ch 3.

⁷⁸ The eight principles of Batho Pele are as follows: Consultation- Citizens should be consulted about the level and quality of the public services they receive and, wherever possible, should be given a choice about the services that are offered. Service standards- Citizens should be told what level and quality of public services they will receive, so that they are aware of what to expect. Access- All Citizens should have equal access to the services to which they are entitled. Courtesy – Citizens should be treated with courtesy and consideration. Information- Citizens should be given full and accurate information about the public services they are entitled to receive. Openness and transparency – Citizens should be told how national and provincial departments are run, how much they cost, and who is in charge. Redress – if the promised standard of service is not delivered, citizens should be offered an apology, a full explanation and a speedy and effective remedy; and when complaints are made, Citizens should receive a sympathetic, positive response. Value for money – Public services should be provided economically and efficiently in order to give citizens the best possible value for money. The Batho Pele principles are analogous to the principles contained in the United Kingdom’s Citizens Charter: New Directions for Social Rights (Institute for Public Policy Research 1996) include that: “ standards should be set and published, with performance measured against them; full and accurate information on public services should be readily available; value for money in services should be pursued, together with independent validation of performance against standards; mistakes and failures should be put right with an apology, a full explanation, and a swift and effective remedy.”

⁷⁹ Act 108 of 1996.

municipalities play in South Africa is largely focused on the quality of the delivery of various services.

Section 152 (1) of the South African Constitution provides that the objectives of local government is primarily to provide democratic and accountable government to municipal residents and to render services in a sustainable manner. This statement is supported by Reddy et al (in Marais and Kroukamp: 2005:122-123), by saying accountability is considered to be “ the cornerstone of the constitution and therefore the maintenance of accountability, as well as the effective and efficient use of public resources..” and it is “...therefore imperative for the successful transformation of political and managerial systems in the local sphere of government”.

The Municipal Systems Act⁸⁰ provides that whenever the municipalities carry out their responsibilities, they must ensure that there is community participation in the determination and prioritization of the needs of the people. It also promote the involvement of rural people in particular, who know their needs very well. The principle of consultation advocated by this Act is also enshrined in the Constitution as well as in the Batho-Pele document, is therefore the prime factor to be complied with by all spheres of government in South Africa. The primary purpose of the Municipal Systems Act is to provide for social and economic upliftment or advancement, in particular of members of local communities.

The Municipal Structures Act⁸¹ stipulates that the Constitution established local government as a distinctive sphere of government, interdependent and interrelated with national and provincial spheres of government. It is the responsibility of municipalities to fulfill their respective constitutional obligations by ensuring that there are sustainable, effective and efficient services in place, promoting social and economic development, and encouraging a safe and healthy environment by working with communities to create environments and human settlements in which all people continue to live dignified lives.

⁸⁰ Act 117 of 1998.

⁸¹ Act 32 of 2000.

The case of *Grootboom v Government of the Republic of South Africa*⁸² saw the Constitutional Court confirm that it would evaluate the reasonableness of state action in the delivery of housing. This opens the door for testing the policies in a variety of areas and for holding the state accountable to constitutional standards of delivery.⁸³

In *Treatment Action Campaign v Minister of Health*, the applicant, a non-governmental organisation which advocates equal access to retroviral drugs, sought to compel the state to provide antiretroviral drugs to pregnant women.⁸⁴ In doing so, it relied not only on constitutional standards of rational action but also on a range of rights, including the rights of access to healthcare service, including reproductive healthcare services,⁸⁵ the right to equality,⁸⁶ the right of the life of the children,⁸⁷ the right of women to reproductive decision making⁸⁸ and the right to dignity.⁸⁹

This case therefore suggests that it may be possible to rely on civil rights to improve access to social and economic rights. However, legal strategies are not limited to litigation in terms of constitutionally entrenched social or economic rights. There are many examples of innovative and creative use of the law to hold governments accountable for these rights. For example, the Equality Act⁹⁰ can be used or extended to address discrimination in access to these rights,

It is worth mentioning that the Local Government Transition Act of 1993 made provision for the apartheid structures to be abolished in totality. This was followed by the establishment of transitional structures. The provinces were therefore empowered to determine the powers and functions of the municipalities and prepare for the first democratic local government elections held in 1999.

⁸² 2001 (1) SA 46 (CC)

⁸³ For the discussion of the implications of the Grootboom Judgement see Clark 2001 and Liebenberg 2001.

⁸⁴ 2001 (1) SA 46 (CC).

⁸⁵ Section 27.

⁸⁶ Section 9.

⁸⁷ Section 11.

⁸⁸ Section 12(2).

⁸⁹ Section 10.

⁹⁰ Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

3.4 Constitutional prerequisites

The common law framework of administrative law is supported by the constitutional right to just administrative action.⁹¹ In *President of the Republic of South Africa v South African Rugby Football Union*,⁹² the Constitutional Court said:

“the principal function of section 33 is to regulate conduct of the public administration and , in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades.”⁹³

Furthermore, decisions taken by officials in relation to, for example, social security benefits must be rational and may not be arbitrary. The Constitutional Court propounded the principle as follows in *Pharmaceutical Manufacturers Association of South Africa: in Re: Expart Application of the President of South Africa*:⁹⁴

“It is a requirement of the rule of law that the exercise of public power by the executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with this requirement. It follows that in order to pass constitutional scrutiny the exercise of public power by the executive and other functionaries must, at least, comply with this requirement. If it does not, it falls short of the standards demanded by our constitution for such action”.

Several constitutional provisions relating to cooperative government and the public service conduct have a bearing on social security service delivery. For example, chapter 3 of the constitution, on “Co-operative Government”, requires all spheres of government and all organs of state to secure the wellbeing of the people of the Republic.⁹⁵ In *Ngxuzza & others v Secretary*,

⁹¹ S 33 of the Constitution of 1996; s 24 of the interim Constitution 2000 of 1993.

⁹² 1999 10 BCLR 1059 (CC).

⁹³ 111 7E-F

⁹⁴ 2000 3 BCLR 241 (CC).

⁹⁵ S 41 (1) (b).

*Department of Welfare, Eastern Cape Provincial Government*⁹⁶, it was emphasized that there could be no compliance with the constitutional duty to provide effective, transparent, accountable and coherent government for the Republic, as a whole,⁹⁷ where a social grant has been withdrawn unilaterally.

Chapter 10 of the constitution sets out the basic values and principles governing public administration and public service. Most of these principles are highly relevant to social security service delivery.⁹⁸ In terms of the constitution, the democratic values and principles enshrined in the constitution govern public administration.⁹⁹ The values and principles also apply to public service, since the public service forms part of public administration¹⁰⁰ and since these principles apply to administration in every sphere of government¹⁰¹ and to organs of state,¹⁰² which include among others- any department of state or administration in the national and provincial sphere of government.¹⁰³ The democratic values and principles in question include the following:¹⁰⁴

- A high standard of professional ethics must be promoted and maintained.
- Efficient, economic and effective use of resources must be promoted.
- Public administration must be development orientated.
- Services must be provided impartially, fairly, equitably and without bias.
- People's needs must be responded to and the public should be encouraged to participate in policy making.
- Public administration must be accountable.
- Transparency must be fostered, by providing the public with timely, accessible and accurate information.
- Good human resource management and career development practices, to maximize human potential, must be cultivated.

⁹⁶ 2000 12 BCLR 1322 (E)

⁹⁷ S 41 (1) (C). S 41 (1) (d), which commands all organs of state to remain loyal to the constitution, was relied upon by the supreme court of Appeal in the Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government v Nqquza 2001 4 SA 1184 (SCA).

⁹⁸ S 195 (1). In Nqquza, the Supreme Court of Appeal referred to section 195 (1) (e), which requires public administration to be conducted on the basis that people's needs must be responded to.

⁹⁹ S 195 (1).

¹⁰⁰ S 1917 (1).

¹⁰¹ S 195 (2) (a).

¹⁰² S 195 (2) (b).

¹⁰³ S 239 definition of "organ of state" par (a).

¹⁰⁴ S 195 (1).

- Public administration must be broadly representative, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past, in order to achieve broad representation.

In the case of *Tseleng v The Chairman, Unemployment Insurance Board & another*,¹⁰⁵ the court was asked to review the policy of the Unemployment Insurance Board in terms of which the granting of additional benefits¹⁰⁶ was made subject to the condition that the applicant satisfies the board that he or she actively sought work while receiving initial unemployment benefits. Amongst other things, the court found the policy to be unconstitutional, owing to the fact that the policy had not been disclosed to the applicant. Such failure to disclose the policy amounted to a breach of the applicant's fundamental right to procedurally fair administrative action, conferred by section 24 of the constitution.¹⁰⁷

Section 197 of the constitution contains several rights, duties and principles applicable to employers and employees in the public service. These are:

- The public service must loyally execute the lawful policies of the government of the day.¹⁰⁸
- The terms and conditions of employment in the public service must be regulated by national legislation.¹⁰⁹
- Employees are entitled to a fair pension, as regulated by the national legislation.¹¹⁰
- No employee of the public service may be favored or prejudiced only because that person supports a particular political party or cause.¹¹¹
- Provincial governments are responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public service in their administration.¹¹²

¹⁰⁵ 1995 4 LCD 139 (T); 1995 16 ILJ 830 (T).

¹⁰⁶ As provided for by the s 35 of the then Unemployment Insurance Act 30 of 1996.

¹⁰⁷ 84 5E-G

¹⁰⁸ S 197 (1).

¹⁰⁹ S 197 (2), as done in terms of the Labour Relations Act 66 of 1995, the Public Services Act of 1994, and the Basic Conditions of Employment Act 75 of 1997.

¹¹⁰ S 197 (2).

¹¹¹ S 197 (3).

¹¹² Within a framework of uniform norms and standards applying to the public service- s 197 (4).

This chapter has seriously addressed the legislative framework pertaining to the delivery of social services by municipalities. The concept of delivery of social services in the South African context will obviously not bring about miraculous results in the struggle to engage courts to advance the rights of the people in South Africa.

CHAPTER 4

4.1 Introduction

This chapter summarizes the key points that the researcher has raised in the terrain of the entire research. It further deals with the concluding remarks and allude to the future developments and also make proper and legitimate recommendations which, if adhered to can correct the situation.

4.2 Future developments

Several key problem areas that are closely connected to institutional and administrative deficiencies of the current South African social security system are identified in the Report of the Committee of Enquiry into Comprehensive System of Social Security in South Africa.¹¹³ These include the following:

The opinions of the people who are served by the social security system are currently not given enough consideration. It is thus proposed that the views of vulnerable and marginal groups should be sought whenever programmes are being evaluated. They can also be encouraged to participate in decision making, although it is recognized that their representatives will be open to co-optation as a results of their vulnerability. Formal performance evaluation (from within departments and by external auditors) should be made publicly available, and periodic reviews should be held that seek to incorporate the widest possible range of local and international views. Regarding the substance of institutional transformation, there are three important considerations that are submitted by the Committee:

First, due to the many domestic structural and capacity imbalances, one cannot reasonably expect markets to lead this transformation process. Indeed, with poverty being as persistent and pervasive as it is, building the capacity of the state and its public sector institutions is an essential starting point for institutional transformation.

Second, the desired institutional structure must follow the chosen strategic functions and priorities set by the South African developmental state.

¹¹³ See Transforming the Present- Protecting the future (Draft Consolidated Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa) (March 2002) ch 13.

Third, socially and economically sustainable social security arrangements need to seek to increase the integrity of households and communities to cope with socio-economic challenges, reduce dependency on grants, and effectively rationalize existing grants.

The Report states that a central challenge affecting service delivery within the public sector is operational inflexibility. Its impact can be felt on everything from human resource management to procurement. Poorly structured hierarchies, over centralized decision making, in particular, with respect to basic operational matters and the lack of appropriate performance evaluation and remuneration leads to poor morale and ultimately poor service delivery. In addition, it is proposed that and disciplined management processes¹¹⁴.

In an important acknowledgement the Committee recognizes that large complex functions within Government require careful attention to policy determination and financing. It is stated that “[t]he processes required to formulate policy may not do so in a manner that links effectively to the budget determination and allocation process. There is therefore a need to better link strategic prioritization, planning and budgeting processes¹¹⁵.

The public sector operates with a large array of institutions directly responsible for service delivery. It is a well-known fact that many of them suffer from chronic underperformance, amongst other things, according to the Committee, due to the lack of a clear model for decentralizing the management of these facilities or institutions. It is submitted that one solution may lie in moving away from the standard hierarchical civil service model of reporting and management toward more decentralized approaches.¹¹⁶

The creation of optimum opportunities and processes for interaction with, and feedback from, beneficiaries and potential beneficiaries will promote better accountability and hence greater operational efficiency. It is also recognized that where these powers have been delegated to

¹¹⁴ By Smit N Recommendations with regard to the social security institutional framework in South Africa unpublished paper (CICLASS 2002).

¹¹⁵ See Transforming the present- protecting the future (Draft consolidated report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa) (March 2002).

¹¹⁶ Involving the introduction of revised governance models, emphasizing the role of boards with comprehensive responsibilities and chief executive officers with appropriate accountability requirements. It is stated that: “Decentralised responsibility for procurement, human resource management, and financial management is important. Such approaches do not involve the decentralization of policy, merely the carrying out of policy.”

independent and representative, and that members have the necessary expertise and time to fulfill their responsibilities.¹¹⁷

Services that are targeted at selected vulnerable groups suffer from the standard problem of having to find and make allocations to those eligible for the support. Bad management thus leads to many eligible people being excluded from access to social security.

Social insurance is typically offered via a statutory institution lying outside of the conventional civil service structure. In many countries this results in a significant improvement in operational efficiency so essential for direct service delivery to the public. In South Africa, however, certain of the social insurance institutions (RAF, COIDA, and UIF) are operated as if they were part of the civil service structure, despite the fact that these institutions are engaged in specialized functions with a need for a high degree of operational flexibility¹¹⁸.

In the Report¹¹⁹, a considerable degree of attention is bestowed on the position of regulated private markets. It is recognized that social security provision in South Africa has, in many instances, placed significant responsibility for financing arrangement include the requirement for strong regulatory authorities,¹²⁰ streamlined enforcement mechanisms,¹²¹ regulated governance requirements, regulation protecting consumers from abuse,¹²² protections against unfair discrimination,¹²³ and requirements for protecting social solidarity principles when these are important, for example health care and retirement. Without ensuring that these issues are adequately addressed it is likely that policy objectives will be undermined.

¹¹⁷ These boards must themselves be subject to stringent auditing standards particularly, and be monitored by the central department.

¹¹⁸ Ibid.

¹¹⁹ Policy development and determination will remain with the National Department of Social Development. A Draft Social Security Agency Bill has recently seen the light in 2003.

¹²⁰ They need to be fully independent statutory authorities with high quality staff.

¹²¹ It is submitted that to have to revert to the High Court for litigation is an impediment to the speedy and efficient resolution of disputes. Other options, e.g., the establishment of dedicated social security adjudication structures, needs to be considered.

¹²² In particular, the protection from defective products and corrupt agents and intermediaries are noted. Consumer watchdogs are considered as insufficient to adequately protect consumers.

¹²³ The report submits that where an aspect of the social security system relies on the private market for delivery, legislation typically has to be introduced enforcing minimum solidarity and cross-subsidisation requirements. Without these protections, reliance on the private market will be undermined through unilateral decisions made by the market to exclude certain groups from cover.

Although the government, since 1994, has made significant strides in policy co-ordination (through institutions such as the culture of cabinet ministers), there are, however, still a number of policy areas in which policy co-ordination is lacking.¹²⁴ The specific areas of social security identified by the Committee as having no clear overriding policy responsibility or lead ministry are: old age and retirement; disability; and maternity benefits and support.

4.3 Conclusion

The coming to power of the ANC regime in 1994, 84 years of white minority rule in South Africa, ushered in a new political and socio-economic program to empower those who were politically oppressed, economically exploited and socially disempowered. Under the democratic regime, gloss annual reports of several government departments presented an impressive array of information about government successes in infrastructure and service delivery after 1994.

However, official facts and official statistics about service delivery were often mere fabrications, as they bore little resemblance to reality. Hence an alternative methodology had to be applied to disclose the extent to which services and infrastructure were really distributed and shared. The analysis of a series of HSRC surveys conducted between 1999 and 2000 illustrated that there were winners and losers in the service delivery game crafted by the new democratic state.

Three conclusions can be drawn from this article. The first is that, contrary to official government information, it is middle- and high-income households (and not poor and low-income households) who are the major beneficiaries of service and infrastructure delivery in the post- 1994 period. Second, the quality of services for the poor and low-income households is poor, while middle- and high-income groups appear to obtain services of good quality. Moreover, services to the poor are often disrupted and they usually wait days and sometimes weeks before services are reconnected. Third, LSM analyses of the HSRC survey data suggest that although township and rural residents apparently pay less for services in direct terms (in Rand value), they pay more in indirect terms. The re-demarcated non-racial municipalities should therefore have to address this disparity.

¹²⁴ For instance, with regard to retirement and old age, the Department of social Development Develops policy for old-age grants, whereas the National Treasury develops the policy for private old age provision. These two environments are not viewed holistically.

If not, the parading of impressive facts will be seen for what it is- the fabrication of official service delivery figures as part of a fiction created by the democratic state to legitimize itself, happily ignoring the harsh reality of life in townships and rural areas.

Evidence in this study concurs with conclusions reached by critical scholars such as Bond and Hemson. The critical perspective argues post-apartheid laws, planning frameworks and regulations are essentially technicist and dis-empowering and will not bring about thorough transformation in the balance of economic and political forces. In the words of Patrick Bond, the potential for “progressive advocacy” is “muffled” because “government and big business representatives” are exceptionally powerful in their capacity to limit the terms of discussion. Service delivery is too important an issue in the creation of a just society to be left to the state or private local or international capital. As the ANC led government begins to shift responsibility for the provision and management of services to the private sector, pertinent questions arise.

One such quotation is that if the state could not provide adequate services to the poor in townships and rural areas to date, how could the private sector be expected to do this, given its profit-driven ethos? Does the 1994 election promise of the ANC to create jobs, provide clean water for all and take care of the poor have to remain an empty promise. Civil society still has the opportunity to engage in the delivery process.

Furthermore, the HSRC survey discussed earlier bears evidence of a vibrant civil society, and there is a small core of radical community activists who are committed to fighting the hegemony of neo- liberalism and have the capacity to do so through mass protest by community-based organization and the trade union movement. In challenging the current delivery machinery, the radical movement should, however, also introduce a development and reconstruction program that will place the marginalized people of South African society at centre stage.

If they do not introduce an alternative program, mass action may merely delay the implementation of the neo-liberal program. This in turn will caused the current regime, which took office in 1999, to face a hostile constituency in 2004 and the next cool year election in 2010. The marginalized will begrudge exclusion from the material benefits of the post-apartheid society.

Poor social security administration and disappointing levels of service have proved to be the major criticisms against the South African social security administration. The brunt of this unfortunate situation is always felt by the poorest and the most vulnerable component of South African society, resulting in an unacceptable situation in the light of our constitutional and legal framework. A great task awaits the country to correct this state of affairs, and it is submitted that it will take more than outsourcing some or all of the South African social security services, Batho Pele and the replacement of inefficient personnel, for the South African social security administration to finally attain an acceptable level of service. Compliance with law and policy will have to be made the basis of service delivery.

Decentralization and outsourcing have become more and more common in the administration and delivery of social security. However, several points of criticism have been leveled against the privatization of payments of grants. Private companies pay grants in the absence of welfare officials, indicating that grants are paid without onsite supervision of a departmental representative. The absence of welfare officials at the pay points also means that there is no one to attend to the queries and complaints of the social grant recipients. The privatization of grants payments has proven to be a problem instead of a solution, as NADEL has correctly pointed out:

“Privatization of grants payments is not an answer or solution to the existing administrative, managerial and financial bottlenecks experienced by the department. Money used by the department to pay these companies can be used to establish more pay points, equip them, hire additional personnel and also train welfare officials to give better services. In any event... private companies have not improved the delivery of grants to the pensioners in a manner which would be more efficient than the department can be able to do”.

It is thus submitted that these issues of accountability and constitutional obligations require further consideration. Notwithstanding the foregoing points of criticism however, it must be acknowledged that outsourcing of the payment of grants can be cost-effective, and can allow personnel who previously paid grants to dedicate their time and efforts to other important functions that relate to the provision of social assistance. While the outsourcing of the payment of grants may be regarded as relieving the provincial department of its duty to physically pay grants, it should be noted that the ultimate responsibility still resides with the department.

The eight principles of Batho Pele, although at times ignored by some public servants, are necessary for an efficient and effective administration. Continuous disregard of Batho Pele principles have recently enraged the President of South Africa to the extent that he has asked all public servants who are not prepared to serve the people rather leave the public service. Whilst the President's firm stance on "cheque collectors" in the public service is pleasing, more is required than simple pleas for deadwood to resign from the public service. Tougher measures, which could ultimately include dismissals, need to be considered. In conclusion, however, it should be recognized that officials and public servants ultimately act within a formal system and infrastructure. It is submitted that deeper rooted problems are still present in the administration of social security in South Africa.

4.4 Critical Appraisal

The focus on service delivery provides insight to power relations in society; how societies are organized; and how they change over time. It also becomes clear that service delivery is not a linear unproblematic process. Rather, it is a contradictory process, influenced by power relations in society. States dispense resources largely for purposes of legitimization; visibility in service delivery and 'counting the beans' provide modern states with popular legitimacy. If the South African government seeks greater popular legitimacy, it should ensure that poor and low-income rural households benefit more from infrastructure and service delivery. This may require a rethink of government's neo-liberal framework.

Several constraints can be identified in service and infrastructure delivery by government departments. A budget is a department's basic constraint, which constraint in South Africa, arises from the fiscal discipline required by the government's GEAR policy. Another constraint is lack of government skills capacity, which has delayed service delivery in several departments. Although projects prioritize the alleviation of rural poverty, funds have often been allocated towards urban development and hence to households that are better off than rural households.

Civil society also poses a constraint. Its most powerful and organized sectors are residents in urban and metropolitan areas and mostly defend their own interests although rural areas suffer the most under poor service delivery. Nevertheless, the 54 percent of respondents in the HSRC's November 2000 survey who felt that ordinary people had the ability to change the country is an

encouraging sign. It is also encouraging that equal proportions of men and women felt that ordinary people had the ability to change the country.

For the communities in rural areas the provision of basic services is a lifeline. Moreover, for them service delivery signals that the state could be an ally in their struggle to make ends meet. Justice Malala, a celebrated columnist, described improvements in his village as follows:

When the ANC was elected to power in 1994, New Eersterus was one of the first villages in North West to get access to electricity. Over the past five years, roads were improved and water taps installed at the corners of most streets. In a place where women had to carry huge water containers on their heads for kilometers, the then Minister of Water Affairs and Forestry, Kadar Asmal, had suddenly made it all flow right next to their houses. New schools were built, and pit latrines were installed in most households that wanted them. (*Sunday Times*, 17 December 2000)

However, Justice Malala later painted a bleak of his village after the recent floods, and concluded that five years of improvement had been completely useless. To him, the change was a mere chimera. Improvements to the main roads and streets in the village were so superficial and shoddy that large parts of Eersterus are now inaccessible by car because recent floods have washed away the roads. Ugly, mostly useless electricity pylons stand over the houses, giving the air of a besieged place. Dangerously low-hanging cables crisscross the sky, creating a pattern of snakes over the houses. The government-installed pit latrines are frightfully small and they stink to high heaven. (*Sunday Times*, 17 December 2000)

Community-based organization, civic organizations and service recipients respond differently to service quality. Whereas some communities withhold payment; others organize campaigns to extract better deals. According to the Human Sciences Research Council's survey conducted in September 2000, up to 14 percent of South Africans are sympathizers of women's organizations, and up to 10 percent South Africans are sympathizers of civic organizations. Women's organizations and civic organizations have 4 percent and 2 percent active members respectively. Although these figures are not high, they suggest that there is potential for challenging service delivery at a local level. Power relations are vital in shaping the nature, direction and quality of service delivery.

The role of elites, undemocratic community leaders and non-elected traditional leaders in resource allocations needs to be unpacked, as these groups often prevent the poor and rural areas from receiving services. In large measure, poor African rural households fare worst as recipients of social and welfare services. With government's apparent acquiescence to give non-elected traditional leaders (800 chiefs and 10 000 headmen) more power at a local level, the future of women and about 40 percent of rural people is bleak.

For the private sector (local and international, big and small capital), service delivery provides additional opportunities for capital accumulation. In fact, service and infrastructure providers have become a significant class within the private sector, having grown to size due to several management and consultancy and construction contracts.

Its presence is also felt strongly within the National Economic, Development and Labor Council. Organized capital, under the banner of Business South Africa, is often vital in demanding more channels to advocate for better economic opportunities within the sphere of service delivery. Although the small, medium and micro enterprises have a share in some service delivery, this sector of the private sector remains fragmented, with the African small business sector (under the auspices of the National African Federated Chamber of Commerce- NAFCCOC) located at the lowest echelons of capital.

The bulk of services and infrastructure used to be provided by the public sector, but more recently the private sector has stepped into service and infrastructure delivery through public sector outsourcing the privatization of public sector services. Bond Dor and Ruiters (2000) suggest that the services provided in post apartheid South Africa are largely of poor quality. The poor quality can be ascribed to the fact that most development projects tend to be short term, and use is made of casual labor (Event, Shezi and Gwagwa, 2000). For example, in a government-sponsored program in a remote rural area of the Northern Province, a woman involved in brick making said:

Although the money is too little, it is better because I am able to support my children. My wish is that this project would be permanent so that I can have a permanent job. Owing to the fact that this is temporary, I cannot even celebrate this relief. (*The Star*, 14 December 2000)

For labor, especially the organized African working class, casualization of labor and the privatization of service are significant concerns in their engagement with both the state and capital. In deed, job insecurity, low wages and abysmal working conditions appear to have continued unabated un the post-1994 period. However, by its very nature, organized labor projects the interests of employed and unionized laborers; the interests of the rest of the labor force, who are in the majority and increasing in number, are not represented. South African trade unions, especially COSATU, have always been critical of the government's neo-liberal macro-economic strategy (GEAR), which replaced the Reconstruction and Development Programme.

However, because trade unions have greater influence in urban than in rural areas and are supported by the majority of African workers, the negative impact of GEAR has largely been felt in rural social and welfare service delivery. COSTU also believes that the state machinery is still passive and non-responsive to grassroots priorities. This is attributed to the gap that has developed between the senior politicians and the people. In the words of Nevv Makgetla, senior economist at COSATU,

When somebody becomes a minister, they move into a nice house in Pretoria and get a

Bodyguard and a driver, their circle of friends consists of ministers, diplomats and businessmen, and they never go to where the people are. Their civil servants are also too afraid to tell them the truth and tell them only what they want to hear. Their whole sense of reality changes. (Cited in *Sunday Times*, 14 January 2001)

Although acknowledged as a major problem by many ANC members, party activists find it disturbing that this scenario replicates itself at provincial and local government levels, the very levels that are supposed to be closer to the people. Realizing that the writing is on the wall, the ANC has now admitted that something is seriously wrong with its service delivery program and the machinery set in place since 1994. In the words of Smuts Gonyama, head of the presidency of the ANC,

At the moment, you find that thinking in the ANC does not carry through to the government

Structures run by the party and often there is thinking and expectations in the ANC which are totally impractical. We need to find a way of co-coordinating the thinking and activities of the

ruling party and the government. (Cited in *Sunday Times*, 14 January 2001)

4.5 Recommendations:

An integrated institutional and organizational framework: The Committee recommends that consideration be given to significant revision of the organizational framework and institutions governing social security. This revision should focus on a clarification of the roles and responsibilities within the following areas: policy determination; organizational framework for social security and protection; governance structures for social insurance funds; private sector regulation; and enforcement.

It is accordingly recommended that a revised operational framework is required to ensure effective service delivery in both social assistance and social insurance: the key recommendation involving the implementation of a social security board (reporting to the Minister of Social Development) and agency (reporting to the social security board) to operationalise various social security functions outside of the civil service may require a new regulatory framework.⁶⁸

The researcher in alignment with the recommendations Committee proposes that consideration be given to the following functions of the social security agency:

- Social assistance: The agency will have the function of managing the non-contributory social assistance fund, based on integrated organizational legal framework including budget determination and grant administration.
- Social insurance: The agency will become the oversight authority for all social insurance funds operating in South Africa. This will not extend to policy control, as this function will rest with the lead ministers responsible for particular policy areas but may require review of current laws.
- Intermediary services: The important interface between the general public and all areas of the social security system, whether contributory or non-contributory, would become the responsibility of the social security agency. The agency may be developed eventually into an intermediary between the general public and relevant government departments (e.g. UIF, COIDA) again the law should provide a satisfactory function.

It is recommended that the existing social insurance funds require a reconsideration of their governance structure to ensure their operational efficiency. It is recommended that new decentralized governance structures be introduced for existing and future social insurance

structures, ultimately reporting to the social security board (although policy responsibility for particular funds will remain with designated ministers, e.g. the policy environment for the UIF will be determined by the Minister of Labour). Internal procedure and new regulations must be considered and put in place.

It is further recommended that a standing Social Protection Commission (SPC), representing key stakeholders, be established. The SPC should relate to NEDLAC. The SPC would have a mandate to review all issues relevant to social protections. Recommendations are also made with regard to the proposed structure of a social security board and agency. This reporting structure is required to preserve its independence in any research, monitoring and investigation carried out. In addition to its broad mandate, it is recommended; that the SPC be given specific terms of reference to monitor and review public and private sector social security institutions and regulatory structures. The specific requirement would be to monitor the extent to which social security objectives are either achieved or undermined. Another key area is to develop and monitor employment policy. Acknowledgment of laws will have to regulate compliance with suitable laws and regulations.

It is found that, apart from the regulation of medical schemes, there is very little recognition within government of the need to achieve key social objectives through the regulation of private markets as exists in other nations. There is also the constant risk of regulatory capture, which requires that government introduce measures to guarantee the ongoing independence of regulatory authorities. It is therefore recommended that the SPC develop specialized capability and have funding to monitor and evaluate the performance of regulatory authorities. It is proposed that, to preserve the independence of the regulatory authorities, it is important that this monitoring and evaluation process focus especially on the achievement of social protection policy and consumer protection within the current or an improved legal framework.

The present system providing for complaints and appeals against decisions taken by social security providers has many shortcomings, which include the following:

- There is little consistency as different bodies or officials are called upon to hear complaints and appeals in respect of different parts of the social security system.

- Undue delays are the order of the day.
- The powers of the courts to deal with these matters are unsatisfactory.
- The normal courts of the country are apparently not specialized enough to deal effectively with social security matters.
- Access to the courts is limited, in particular as far as the indigent are concerned.
- Cases are often dealt with on a purely technical and legalistic basis, with little regard to broader fairness considerations.
- Court proceedings tend to be prohibitively expensive.

It is unequivocally stated that one of the guiding principles in devising an appropriate social security adjudication system is the need to ensure that an institutional separation exists between administrative accountability, review and revision, and a wholly independent, substantive system of adjudication system is the need to ensure that an institutional separation exists between administrative accountability, review and revision, and a wholly independent, substantive system of adjudication.

The researcher accordingly aligns himself with the Committee and thus recommends that a uniform adjudication system be established to deal conclusively with all social security claims. It should, in the first instance, involve an independent internal review or appeal institution. It should, in the second place, involve a court (which could be a specialized court) which has the power to finally adjudicate all social security matters, and that this court has the power to determine cases on the basis of law and fairness. The jurisdiction of this court should cover all social security claims, whether under the new UIA, the RAFA, the COIDA and all the other benefits (including the Social Assistance Act) emanating from the social security system.

It is submitted that these recommendations could considerably aid the current quite dysfunctional social security system, should they be given effect to in the near future.

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