

# South African governance in review Anti-corruption, local government, traditional leadership

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# Executive summary

The context of this research monograph, documenting recent research carried out by the Democracy and Governance (D&G) Programme of the Human Sciences Research Council (HSRC), is 'Fifteen years of governance'. This reflects the study's retrospective analysis of prominent governance issues that have emerged in the wake of post-1994 state transformation in South Africa. The three papers included in this study are the product of research undertaken by D&G staff for a project commissioned by the Policy Unit in the Office of the Presidency, intended to examine critically the government's performance on a variety of governance issues since 1994. The effective end-date of this evaluation was chosen to coincide with the period leading up to South Africa's fourth democratic elections, scheduled for 2009.

The papers in this monograph examine the following three issues: public sector anti-corruption; local government restructuring; and traditional leadership and governance. All three research papers, together with a further eight research studies<sup>1</sup> commissioned by the Presidency on the theme of Governance and Administration, examine the effectiveness of measures introduced by the South African government to restructure the public service, improve its accountability, and improve delivery of services to the citizenry. The papers are a response to what has become a regular exercise on the part of the South African government to monitor the unfolding process and policy outputs of state transformation since the country's watershed non-racial democratic elections in 1994.

Examples of this monitoring can be traced to 1998 and the final year of South Africa's first non-racial Government of National Unity, with the tabling of a report by a Presidential Review Commission (PRC) appointed to evaluate public sector transformation. The PRC report, which focused primarily on the restructuring of the civil service, was augmented by more intensive auditing of departmental restructuring by the Department of Public Service and Administration (DPSA) (see Dr Ncholo Reports, 1999),<sup>2</sup> particularly at the provincial level. Retrospective evaluations of state transformation continued after South Africa's second non-racial democratic elections in 1999, with the publication in 2003 of a ten-year review of government performance. The ten-year review differed from earlier reviews in the late 1990s by broadening the scope of analysis from public sector restructuring towards reviewing the effectiveness of broader policy implementation. The ten-year review therefore augmented its analysis of 'governance', which captured the erstwhile issue of public sector restructuring, by evaluating other policy topics, such as social and economic services; justice, crime prevention and security services; and international relations, peace and security matters. The breakdown of these thematic areas was designed to mirror the South African government's introduction of a thematic 'cluster' system, which saw all government departments grouped according to related policy mandates. The most recent fifteen-year review, conducted in 2007/08, was based on the same design as the ten-year review, with individual research studies commissioned to coincide with cluster themes, including governance.

The three papers prepared by D&G staff on the topics of anti-corruption, local government capacity, and the role of traditional leadership in a restructured governance framework, reflect ongoing work being carried out by Programme members. The complexity of these issues has also proven to be among the most challenging elements faced by successive post-apartheid governments to ensure government accountability and expedite service delivery to the urban and rural poor.

- 1 These comprise papers on participatory democracy; state transformation and capacity; macro-organisation of the state; intergovernmental relations; citizen access to government services; public finance management; planning; and a government-authored paper on anti-corruption.
- 2 These reports are accessible from the DPSA website, under 'Integrated Provincial Support Programme' (IPSP), <http://www.dpsa.gov.za>

In their paper, Naidoo and Jackson describe the context that ushered public sector anti-corruption onto the agenda of post-apartheid administrations; review key measures introduced by the government to combat corruption within its ranks; and argue that there remain several administrative and legal weaknesses that continue to confront the effective application of anti-corruption measures. In their contribution, Ndletyana and Muzondidya assess the intractable problem of municipal capacity to deliver critical services in a restructured local government framework. They introduce the topic by looking at the difficult service delivery conditions that a restructured post-apartheid local government inherited; discuss how local government was reformed after 1994 in relation to the ambitious policy mandate handed to it; and critically assess the measures introduced to support the severe capacity challenges that municipalities continue to bear. Finally, in her contribution, Sithole examines the interface between traditional leaders and leadership structures, and elected representatives and government bureaucracy. Sithole begins by positing an ideological distinction between 'democratic pragmatists', who generally challenge the compatibility of traditional leadership with the values underpinning modern democratic systems, and the 'organic democrats', who view traditional leadership as an alternative form of democracy. She then outlines how traditional leadership structures have been legally accommodated in post-apartheid constitutional and governance structures, and concludes by arguing that although post-apartheid legislation has prescribed roles for traditional leaders in the governing structures of South Africa, the question of their relative powers and status remains unresolved.

# Acronyms and abbreviations

AG	Auditor-General
AsgiSA	Accelerated and Shared Growth Initiative for South Africa
BLA	Black Local Authority
CDW	Community Development Worker
CDWP	The Community Development Workers' Programme
CONTRALESA	The Congress of Traditional Leaders of South Africa
D&G	Democracy and Governance
DBSA	The Development Bank of South Africa
DPLG	Department of Provincial and Local Government
DPSC	Department of Public Service and Administration
DSO	Directorate of Special Operations
GCIS	Government Communication and Information System
IDP	Integrated Development Planning
JIPSA	Joint Initiative on Priority Skills Acquisition
LGSETA	Local Government Sector Education and Training Authority
MEC	Member of the Executive Council
NPA	National Prosecuting Authority
PDA	Protected Disclosures Act
PFMA	Public Finance Management Act
PRC	Presidential Review Commission
PSACS	Public Service Anti-corruption Strategy
PSC	Public Service Commission
SALRC	South African Law Reform Commission
SAPS	South African Police Service
SDF	Service Delivery Facilitator
SETA	Sector Education and Training Authority
SMS	Senior Management Service
TLGFA	Traditional Leadership and Governance Framework Act



# 1

## **REVIEWING SOUTH AFRICA'S EFFORTS TO COMBAT CORRUPTION IN ITS BUREAUCRACY: 1994–2009**

*Vinothan Naidoo and Paula Jackson*



## Introduction

This paper reviews efforts by the South African government to reduce corruption in its bureaucracy. It is based on a research study that covered the period 1994–2009, corresponding with the country's transition to a non-racial democracy. The objective of the research was to identify and evaluate anti-corruption measures targeting South Africa's public service. While this paper draws on the findings of this study, its main aim is to consider the import of these observations on the wider institutional challenge of combating corruption in the government.

It should firstly be noted that when this paper talks about 'corruption', it defines and analyses this according to how the issue has been both legally defined and functionally described in the context of public bureaucracy in South Africa. From a more scholarly perspective, this paper examines the issue of corruption from the point of view of 'public duty' or 'public office' centred definitions, which focus on the deviation by bureaucrats from formal and legally defined duties and obligations (see Caiden & Caiden 1977: 302; Werner 1983: 147). In this regard, the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004), much like its predecessor – the Corruption Act (No. 94 of 1992) – concentrates on persons who accept or offer to accept/give or agree to give any gratification,<sup>3</sup> which results in them being influenced/or attempting to influence persons to act in a particular manner. Such a manner must moreover be deemed illegal, dishonest, unauthorised, incomplete or biased in exercising or carrying out the performance of any powers, duties or functions that arise from a constitutional, statutory, contractual or any other legal obligation, or otherwise constitute the abuse of a position of authority, breach of trust, violation of a legal duty or set of rules. Section 4 of the Act also applies this general definition to corrupt activities relating to 'public officers', and describes specific activities relating to the performance of public officials in particular.<sup>4</sup>

Setting aside how corruption has been legally defined in South Africa, it became evident during the course of this study that the legal definition of corruption insufficiently captures the scope of administrative malfeasance when analysed in the wider functional context of the public bureaucracy, and as discussed in the South African government's 2002 Public Service Anti-corruption Strategy (PSACS). Although the PSACS (2002: 11) defines corruption in terms similar to legislation, as 'any conduct or behaviour in relation to persons with responsibilities in public office which violates their duties as public officials and which is aimed at obtaining undue gratification of any kind for themselves or for others', it elsewhere refers to 'dimensions of corruption', or the '...various forms in which corruption manifests itself in the public service and elsewhere...', where the examples it gives of these 'dimensions' go beyond the statutory definition of corruption. This includes 'embezzlement'<sup>5</sup> (theft of resources by persons entrusted with authority and control of resources', and 'fraud' (DPSA 2002: 7–8). Recognising that public service corruption has been legally defined in South African statutory law to regulate the conduct of public officials, it is necessary also to incorporate conduct that, while falling outside the narrower legal definition, namely fraud and theft, has been recognised by the Government as constituting *de facto* corruption in a wider functional context.

3 Gratification includes money, donations, gifts, loans, discounts, status, honour, employment (Section 1. ix).

4 Includes voting at any meeting of a public body, performing or not adequately performing any official functions, expediting, delaying, hindering or preventing the performance of an official act, showing any favour or disfavour to any person in performing a function as a public officer, exerting any improper influence over the decision making of any person performing functions in a public body (Section 2, Paragraph 4).

5 The United Nations Convention Against Corruption, to which South Africa is a party, also requires, in Article 17, that party states should adopt legislative and other measures to criminalise offences that include embezzlement or misappropriation by public officials, for their benefits, any property entrusted to the public official by virtue of their position.

## A historical overview of government anti-corruption efforts in a democratic South Africa

Although the main aim of South Africa's transition to a non-racial democracy was comprehensive political reform based on the principles of equality and non-discrimination, the nascent democratic state was immediately confronted with the potentially destabilising effect of corruption in government institutions inherited from the apartheid period. The justification of the corruption threat flowed from the massive project of rationalising and restructuring a splintered apartheid-period public bureaucracy to meet new policy demands introduced after 1994. The heritage of apartheid-period government corruption has been usefully documented by Lodge (2002: 407–408). He notes that while the perceived strength of the regulatory environment, the outcomes of public audits and the propensity to implement policy to further the goals of 'Afrikaner nationalism', on which apartheid largely functioned, together did not expose a serious problem with corruption between the 1950s and 1960s, by the 1980s there was '...plenty of evidence...to suggest that...political corruption<sup>6</sup>...was quite common in certain government departments as well as in homeland administrations.'<sup>7</sup> (So-called 'homeland administrations' referred to the geo-administrative units set up during apartheid to govern the African population of South Africa.) Drawing an even more explicit link between the characteristics of apartheid rule and corruption, Van Vuuren (2006: 85) recently observed that conditions of secrecy, oppression and authoritarian rule '...created a climate in which corrupt activity was stimulated.'

Despite the political watershed brought about by the end of National Party apartheid rule in 1994, the problem of corruption persisted into the democratic period. Lodge (2002: 412–414) cites many examples of actual and alleged corruption in the ensuing years of African National Congress-led government, including among officials of South Africa's new provincial government administrations, which were created by amalgamating apartheid-period provincial governments with neighbouring homeland administrations. Camerer (2000) also comments on high-profile allegations of corruption surfacing after 1994, including the alleged misuse of donor funds channelled to the national Department of Health to sponsor a play dealing with HIV/AIDS (Sarafina Two). Camerer writes that although there was no evidence or implication of abuse of official position for personal gain (the legal definition of corruption), there appeared to be a '...clear case of diversion of aid in a manner bordering on mismanagement and a lack of...transparency and public parliamentary accountability.'

Faced with a situation where acts of corruption had accompanied the transformation of public institutions after 1994, the Mandela Presidency was quick to introduce measures intended to counter the problem. A government White Paper on Reconstruction and Development, which essentially represented the post-apartheid blueprint for policy and administrative transformation, explicitly noted in Section 3.12.4 that the government would act '...decisively against corruption in the welfare system through a system of audit trails' (RSA 1994).<sup>8</sup> The Reconstruction and Development White Paper also mentioned in Section 3.15 that legislation was being prepared to introduce a Public Protector, '...to give the public recourse to deal with corruption and maladministration.' South Africa's post-

6 Where this was defined generally as the use of public resources for private ends.

7 Lodge (2002: 416) remarks, for instance, that prior to 1994 departments that were primarily concerned with political/strategic goals of government, i.e. information, defence and homeland development, '...seem to have been particularly affected by high level corruption.' He subsequently remarks that after 1994, 'The real citadels of official self-enrichment during the Mandela administration...were to be found in three central government ministries: Social Welfare, Safety and Security, and Justice.'

8 Problems with fraud and theft in the social grants system have persisted throughout the post-apartheid period. In 2007 the Minister of Social Development reported that in 2005 he had asked the Special Investigating Unit to investigate fraud, corruption and maladministration in the social grant system. See: Statement by the Minister of Social Development, Zola Skweyiya to the media briefing session on progress in investigations into irregular payment of social grants, 15 October 2007. Available from: <http://www.gov.za>

apartheid Constitution (Act No. 108 of 1996) would eventually define the office of the Public Protector as an independent constitutional body. Finally, a Special Investigating Units and Special Tribunals Act (No. 74 of 1996) was passed in 1996. It mandated the President to establish structures that would investigate and adjudicate civil court cases involving serious malpractice or maladministration in the functioning of state institutions. The Act further authorised the President to call for the establishment of these entities on the grounds of a range of alleged corruption (legal definition) and corruption-related activities, including (Section 2, Paragraph 2):

- Serious maladministration in the affairs of any state institution;
- Improper or unlawful conduct by state employees;
- Unlawful appropriation or expenditure of public money or property;
- Unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing on state property;
- Intentional or negligent loss of public money or damage to public property;
- Corruption in connection with the affairs of any state institution;
- Unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of the public or any category thereof.

The Act, which enabled the ad hoc creation of ‘special investigating units’, later spawned a single and permanent Special Investigating Unit, known as the ‘Heath Special Investigating Unit’ after the Unit’s first Head, Judge Willem Heath.

High-level government interventions directed at corruption began to accelerate in the period between 1997 and 1999, where the latter year saw Thabo Mbeki succeed Nelson Mandela as President of South Africa. A useful account of the activities that occurred during this period is given in the *Country Assessment Report* (2003), published by the Department of Public Service and Administration (DPSA), United Nations Office on Drugs and Crime (UNODC). These are listed in Table 1.1.

Table 1.1 indicates that in the space of just over two years, South Africa had allocated ministerial responsibility to look into a government-wide strategy to address corruption, hosted two high profile domestic conferences/summits on the issue as well as an international conference. The 1999 National Anti-corruption Summit represented perhaps the most comprehensive yardstick for evaluating the implementation of future anti-corruption measures. The momentum that had been created during 1997 and 1999 continued in the ensuing three years. This saw the national DPSA drafting a public, service-specific, anti-corruption strategy (October/November 2000); the launch of a National Anti-Corruption Forum (NACF) in June 2001; and the adoption of a Public Service Anti-corruption Strategy (PSACS) in January 2002 (UNODC, DPSA 2003: 16–21). The PSACS contains nine proposals, the majority

**TABLE 1.1** Key anti-corruption activities in South Africa, 1997–1999

Activity	Date
Cabinet committee established to work on corruption including Ministers responsible for South Africa’s National Crime Prevention Strategy	March 1997
Code of Conduct for public servants becomes part of public service regulations	June 1997
Inter-ministerial committee on corruption appointed by Cabinet	October 1997
National Campaign against Corruption	September 1998
Public Sector Anti-corruption Conference	November 1998
National Anti-corruption Summit	April 1999
South Africa hosts 9th International Anti-corruption Conference	October 1999

Source: DPSA 2003, Country Assessment Report

of which dovetail with those taken at the Summit three years earlier. The inaugural National Anti-corruption Summit was followed by a second Summit in 2005, which also concluded with a set of resolutions. The resolutions taken at both summits, together with those proposed in the PSACS, are illustrated in Table 1.2.

The next section will discuss to what extent these resolutions on anti-corruption have been addressed.

**TABLE 1.2** Key anti-corruption resolutions in South Africa: 1999–2005

National Anti-corruption Summit (1999)	Public Service Anti-corruption Strategy (2002)	Second National Anti-corruption Summit (2005)
Review and revise existing legislation	Review and consolidate legislative framework	
Develop, encourage and implement whistle-blowing mechanisms	Improve access to report wrongdoing; protection of whistle-blowers	Encourage whistle-blowing and reporting Address shortcomings of the Protected Disclosures Act (No. 26 of 2000)
Support enactment of Open Democracy Bill		
Special courts for prosecuting acts of corruption		
Sector co-ordinating structures		Better co-ordination between and strengthening capacity of anti-corruption agencies
Blacklisting businesses, organisations and individuals	Prohibition of corrupt individuals and businesses	
Establishing National Anti-corruption hotline		
Taking disciplinary action against persons		
Monitoring and reporting		
Promoting and implementing sound ethical, financial and related management practices	Improved management policies and practices; Managing professional ethics Awareness, education and training	Ethics training and audit on the state of ethics Developing and enforcing codes of conduct Reviewing and extending financial disclosure framework for public representatives
	Increased institutional capacity	Strengthen capacity to implement anti-corruption legislation
	Partnership with stakeholders Social analysis, research, policy advocacy	Establish joint research initiative to evaluate implementation by the Executive of resolutions made by Parliament pertaining to corruption
		Encourage regulation of post public sector employment, i.e. cooling-off period

Source: DPSA 2002: 3–5; Sangweni & Balia (n.d.)125–126; NACF 2005: 135–137.

## A preliminary assessment of resolutions taken to combat corruption in the South African public service

The resolutions listed in Table 1.2 can be examined from more than one perspective. They can either be looked at individually or from a temporal perspective, highlighting those resolutions repeated in ensuing years. Distinguishing these perspectives assists in focusing the discussion on what South Africa has generally achieved in its overall, as well as public service-specific, anti-corruption efforts.

The first resolution refers to the review and revision of the legislation directed at corruption. By the time of the second National Anti-corruption Summit in 2005, significant progress had been made on this issue. The passage of the 2004 Prevention and Combating of Corrupt Activities Act, which replaced the 1992 Corruption Act, capped off earlier statutory efforts at creating a more conducive environment for reporting on corruption. This took the form of a Protected Disclosures Act (PDA) (No. 26 of 2000), intended to facilitate the reporting of corrupt activities. As the second resolution in Table 1.2 points out, however, delegates at the 2005 Summit argued that improvements in the text of the PDA were necessary, while additional practical challenges continued to hamper effective whistle-blowing. (See the next section of this paper for a fuller explanation.)

The next two resolutions, supporting the enactment of an Open Democracy Bill and the creation of special courts for prosecuting acts of corruption, comprised resolutions in only the first Summit, where progress was quickly made in tabling the Open Democracy Bill (1998) which, after further deliberations, spawned two separate pieces of legislation: the Promotion of Access to Information Act (No. 2 of 2000), designed to improve government transparency, and the aforementioned Protected Disclosures Act (2000).<sup>9</sup> Specialised courts to prosecute acts of corruption were also created at this time. These appear to have yielded some successes. For instance, it has been observed that in 2005/06 around 935 commercial crime trials were finalised with a conviction rate of over 94% (GCIS 2006: 218).

Further efforts have also been made in the combating of corruption through the creation of sector co-ordinating structures, the blacklisting of individuals and businesses that engage in corruption and the establishment of a mechanism for reporting corruption. The 2004 Combating of Corrupt Activities Act, for example, called for the establishment of a Register for Tender Defaulters, which is currently being managed by South Africa's National Treasury (Department of Finance). In addition, at least nine separate agencies with an anti-corruption mandate are currently in existence in South Africa, although debates continue about their individual capacity and collective impact (see the next section for more on this). Finally, a National Anti-corruption Hotline (NACH), run by a Constitutionally backed Public Service Commission (PSC), began operations in 2004.

The remaining resolutions in Table 1.2 largely speak to continuing efforts at controlling and minimising the risk of corruption in government agencies. For scholarly purposes, it is suggested that these reveal a gap between two concerns: *the ability to enforce anti-corruption norms in the public service, including through legal, regulatory and functional codes, and the propensity of the bureaucracy to comply with these.* This relationship will be sketched in more detail in the next section.

9 See also: Open Democracy Advice Centre (ODAC). 2005. Presentation to Commission 2, Second National Anti-corruption Summit. Available from: [http://www.opendemocracy.org.za/documents/section\\_file\\_detail/12](http://www.opendemocracy.org.za/documents/section_file_detail/12)

# Problems confronting the effectiveness of anti-corruption measures in the South African public service

Problems that continue to hinder the effectiveness of anti-corruption measures in the South African public service emerged from an analysis of various secondary documents sourced as part of the study that informed this paper. Research reports published on an ongoing basis by the PSC, which highlighted certain issues, were especially useful. These issue areas themselves could be organised according to four themes: *reporting/disclosure*, *functional capacity*, *code of conduct/employment-related regulatory* issues, and matters relating to *anti-corruption monitoring and enforcement*. These will be discussed individually.

## Anti-corruption and reporting/disclosure

The passage of the Protected Disclosures Act (2000) was a significant legal step towards creating a more conducive environment for reporting on corruption. Despite the passage of the Act, and notwithstanding the legal protection it was meant to give whistle-blowers from 'occupational detriment', the impetus to report on corruption continues to be a challenge for government departments due to the unwillingness or reluctance of employees to make disclosures. A number of studies have made reference to this, including a PSC (2006: 2) report on measuring the effectiveness of the public service Code of Conduct. The report in question drew its findings from a sample survey with government employees that included 537 responses, coupled with the distribution of an 'integrity thermometer tool' questionnaire to 27 provincial departments (three from each of South Africa's nine provinces), of which 18 were analysed. The tool was designed to measure perceived unethical conduct and the ethical climate in government departments.

Although working off a small sample size, the report's overall findings provoke some concern around whether the opinions of a limited number of public servants might be indicative of a larger cohort sample. For instance, for the question: 'Most public servants will report fraud, corruption, nepotism or any other offence to the appropriate authorities', data revealed only a marginal difference between those who 'agreed' (25%) and those who 'disagreed' (26%) which, in any event, counted slightly more respondents who disagreed (PSC 2006: 23). A more revealing finding was contained in a PSC (2003b: 4–5) report that dealt with the creation of a whistle-blowing infrastructure in the public service. The Commission noted that a series of countrywide workshops that informed the findings of their report had resulted in the following outcomes:

When workshop participants were asked to give practical examples of white-collar crime in the public service they readily gave examples of fraud and corruption occurring in the workplace. When asked however, whether they would 'blow the whistle' on such criminal acts, barring one or two employees who had done so in the past to their detriment, nobody was prepared to.

The report added that employees cited reasons for their inaction such as fear of victimisation as a result of blowing the whistle. This included fears of harassment, dismissal and other forms of what would legally constitute an unfair labour practice. Of particular interest in this example was not just the minority of respondents who were prepared to report on corrupt activities, but that the few who had previously done so had apparently suffered some form of detrimental consequence. The apparent consequences of reporting, as well as a reluctance to report, came together elsewhere in the PSC's analysis where in response to the creation of a whistle-blowing mechanism, the Commission observed that the '...main concern [of employees] with such a mechanism was: firstly, its confidentiality, and secondly, their protection' (PSC 2003b: 1). The potentially adverse consequences encountered in the

process of disclosing information concerning unlawful or irregular activities, including corruption, regardless of the legal protections in place, seems to be an influential factor in predicting the reporting behaviour of public servants.

It is suggested that the aforementioned findings are indicative of a number of factors. Firstly, given the sensitivity around disclosure, it could be argued that the PDA has simply not been effectively communicated to public servants in a manner that is consistent with its aim to foster a more conducive reporting environment. This speaks directly to anti-corruption goals already outlined in resolutions listed in Table 1.2, including promoting awareness about and encouraging compliance with corruption disclosure.

A more substantive argument, however, is that the legal protections stipulated in the PDA might not be effectively contributing to the creation of a more conducive functional environment for disclosure, despite the significance of its creation in law, where public servants have otherwise been compelled by Code of Conduct Regulations (C.4.10, B.3) to report corruption.<sup>10</sup> The sensitivity of public servants to the repercussions of reporting as well as confidentiality were also emphasised in other documents analysed. For example, in its 2001 State of the Public Service Report, the PSC expressed concerns about the internal set-up of departmental anti-corruption structures, observing that 'These units are often managed by Directors who may in certain instances be required to investigate their seniors.' (PSC 2001a: 24). A related, and potentially more serious, concern was expressed by the Chairperson of the Public Service Commission in a 2005 speech:

The ongoing involvement of senior government officials in incidents of mismanagement and unethical behaviour remains cause for concern. These senior officials continue to ignore, or fail to adhere to rules and regulations. They also abuse the authority vested in them by intimidating and threatening junior officials when the latter wish to report irregularities. (Sangweni 2005)

A second issue that appears to be inhibiting progress in encouraging reporting concerns the 'confidentiality' of disclosures which the PDA does not appear to have directly catered for. In a Discussion Paper on the PDA, the South African Law Reform Commission (SALRC) (2004: 45, 8) observed the following:

Another point raised by several respondents was the desirability of keeping the identity of whistle-blowers confidential where possible. It was indicated by ODAC [Open Democracy Advice Centre, a South African NGO] that many whistle-blowers want their disclosures and/or their identities to be treated as confidential by the person to whom they disclose. The PDA does not currently provide for this.

In summarising its provisional recommendations, the Commission suggested that 'Where the identity of a whistle-blower is known, it should as far as possible be kept confidential and protected' (SALRC 2004: xi).

10 See Public Service Regulations, 2001. Government notice number R.1268 of 15 December 2006, with effect from 15 December 2006. Regulation C.4.10: 'in the course of her or his official duties, [a public servant] shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest.' This read with regulation B.3, which stipulates: 'The primary purpose of the Code is a positive one, viz. to promote exemplary conduct. Notwithstanding this, an employee shall be guilty of misconduct, and may be dealt with in accordance with the relevant collective agreement if she or he contravenes any provision of the Code of Conduct or fails to comply with any provision thereof.' See also Protected Disclosures Act, 2000 (Act 26 of 2000), Practical Guidelines for Employees. Available from: <http://www.pmg.org.za/docs/2006/comreports/060605pcjusticereport.htm>.

The SALRC also invited comment on whether a specific duty should be levied on employers to inform employees of their rights and obligations under the PDA, as part of creating a '...conducive workplace environment' (SALRC 2004: 67). Approval of 'practical guidelines' for implementing the PDA by South Africa's parliamentary Portfolio Committee on Justice and Constitutional Development, dated 31 May 2005, did not address the 'confidentiality' issue explicitly, which is not likely to happen until the Act itself is amended. The guidelines did, however, refer obliquely to the issue by calling on employers to 'lay down certain procedures in terms of which disclosures must be made...', and elsewhere called for the setting up of anti-corruption hotlines. It is suggested that this illustrates a gap between the ability to enforce anti-corruption compliance, through the legal instrument of protected disclosure and in correspondence with code of conduct regulations, and the inclination of bureaucrats to comply with these codes, which, in this instance, reveals that legal protection has been unable to effect the kind of 'conducive' functional reporting environment in government departments.

## Anti-corruption and functional capacity

Another issue adversely affecting anti-corruption efforts in the South African public service concerns insufficient functional capacity being deployed for this purpose in government departments. Commenting on the lack of feedback from departments received on a significant number of cases lodged with the National Anti-corruption Hotline, the PSC (2007a: 36) noted that the situation raised concerns about a lack of 'investigative capacity' within departments, where

[o]n numerous occasions cases are referred back to departments for further investigation as critical issues related to such cases have not been adequately addressed. This points to inadequate skills within departments to conduct thorough investigations.

A more direct assessment of departmental anti-corruption capacity was presented by the PSC in 2003, in which an 'audit' of the anti-corruption capabilities of departments was carried out. The PSC (2003a: 16) distributed a questionnaire covering just under two-thirds of all national and provincial departments (29 national and 56 provincial), in which the following findings were made:

- 57.6% of all sampled departments had a dedicated anti-corruption unit.
  - 75.9% of national departments taking part had dedicated anti-corruption units.
  - 48.2% of provincial departments taking part had dedicated anti-corruption units (PSC 2003a: 18).

The findings showed that just over half of all departments sampled had put in place anti-corruption structures, with these being much more prevalent among national departments. The data quoted by the PSC in 2003 cannot be directly compared to more recent data, although the writer did lead a survey on fraud prevention planning in 2007 for the PSC and German Technical Cooperation Agency (GTZ), which consisted of 69 national and provincial departments (15 national, 54 provincial). This survey, working off a smaller sample size, posed a question about which fraud prevention/management structures departments had put in place. The findings of the study were subsequently published by the PSC. Although the data cannot be directly comparable to the PSC's earlier study (2003), due to varying sample sizes and the different wording of questions relating to anti-corruption capabilities, a general observation can be offered. The 2007 survey found that the performance of an 'ethics and anti-corruption function' was evident in only 43.5% of departments sampled (PSC 2008: 30). A related and more general observation was that departments were consequently relying more on the work of Internal Audit units, Audit Committees and Risk Management functions to deal with corruption, where anti-corruption was not the primary function of such structures, whose mandate was broader in scope,

covering the integrity of departmental financial management and internal controls.<sup>11</sup> Compounding the over-reliance on departmental internal audit and control functions to police corruption was the more dramatic finding (2006 data) by the Office of the Accountant General (Department of Finance), made available to the writer, which indicated that at the level of national departments, only 55% of internal audit posts were filled, leaving a vacancy rate of 45%.

Concerns about the ability of departmental internal financial management resources to combat corruption are not new, when considering the following excerpt from the 1998 Public Sector Anti-corruption Conference:

The challenge facing us is to look at the role of financial management, broadening it to include the monitoring of operations, not simply appropriation control, important as that is. Meaningful expenditure control also requires the management of assets, liabilities and revenues, as well as programme outputs and outcomes.<sup>12</sup>

This very early extract explaining the government's anti-corruption offensive effectively calls for a redefinition of departmental financial management functions to more actively prosecute acts of corruption. The argument is that these functions need to move beyond the scope of budget control, which mainly defines the mandate of audit and risk structures, to a more active monitoring of how departmental resources are utilised. Progress on this score continues to be a challenge some years later however, where, in addition, weaknesses in the ability of government departments to carry out core financial management functions appears to be effectively undermining a broader and more direct capacity to police corruption. This is evident in recent reports of the Office of the Auditor-General (AG) in South Africa, commenting on government department audit outcomes. In a recent outcomes report, covering the period 2005–2006 the AG noted that 68% of the qualified audit opinions were attributable to the presence of no or inadequate internal control systems (AG 2006a: 10, 14). A similar finding was made in respect of less severe 'matters emphasised' audit opinions, at 71%. These findings were followed by a sobering conclusion:

This situation represents a need for systems, policies and procedures to be put in place and adequate capacity and skills to be made available. Notwithstanding the challenges, this represents a disappointing state of affairs and suggests that the accounting officers [heads of departments] are simply not proactive and entrepreneurial enough in executing their functions in terms of providing the leadership needed for an effective system of internal control, as prescribed by the PFMA. (AG 2006a: 13)

Concern about departmental functional capacity to respond to corruption illustrates a different dimension to the gap between an ability to enforce anti-corruption norms, and the propensity to comply with these. In this instance, data suggests that the aim of redefining the functional mandate of departmental financial management to more actively prosecute the issue of corruption is being undermined by more fundamental failures to ensure that sufficient capacity is deployed to carry this out.

11 According to Treasury (Department of Finance) Regulations to the Public Finance Management Act (No. 1 of 1999), the scope of Internal Audit units includes assessing the operational procedures and monitoring mechanisms governing transfers made and received. The scope of Audit Committees entails reporting broadly on the effectiveness of internal controls, the quality of financial management reporting, and the evaluation of financial statements. The scope of Risk Management includes identifying and controlling for emerging risks (including fraud) to a government agency, and to direct internal audit to effectively manage these risks.

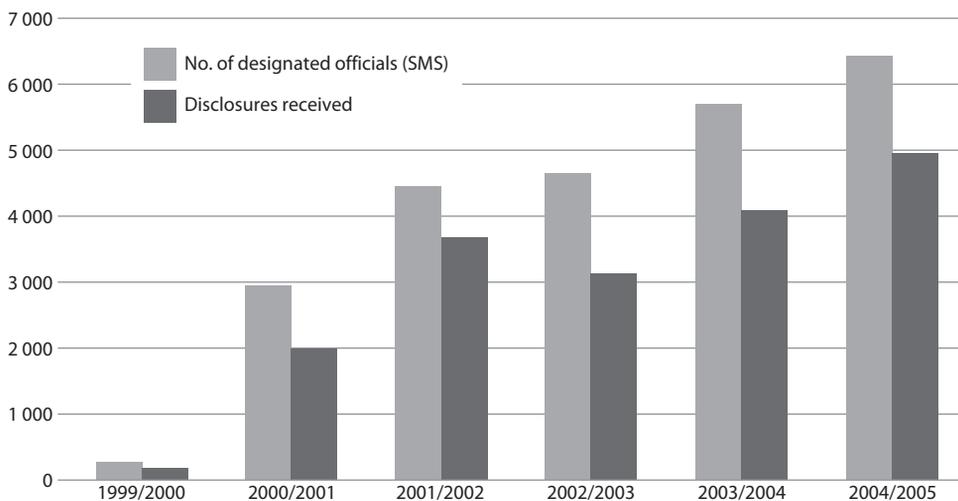
12 Public Sector Anti-corruption Conference, Cape Town, 10–11 November 1998. Documents supplied by GCIS, Cape Town.

## Anti-corruption and public service regulations

A third issue area found to be adversely influencing the effectiveness of South African government anti-corruption efforts concerns compliance with and the content of public service regulations, specifically those governing financial disclosures. The disclosure by public servants of their financial interests and remunerable activities outside government employ assists in tracking potential conflicts of interest that might arise during the carrying out of official functions. In South Africa, however, financial disclosure regulations specified in Chapter 3 of the Public Service Regulations apply to only a small portion of public servants, i.e. Heads of Departments and members of a Senior Management Service (SMS), where the SMS constituted less than 1% of total public service employees in 2006.<sup>13</sup> This becomes significant because it has elsewhere been pointed out by the Public Service Commission (PSC 2007b: 24), referring to findings from its financial misconduct reports, that the largest number of corruption cases are being seen at the level of so-called production employees (below middle-management). It has added that the highest number of financial misconduct cases has involved employees entrusted with duties that entail the handling of monies and the 'procurement of goods'. This would tend therefore to re-direct attention back to the strength of departmental internal control systems and procedures, as well as underscore a resolution made at the second National Anti-corruption Summit (2005), which called for the extension of the financial disclosure framework to cover a larger proportion of public servants.

With this said, the Public Service Commission recently presented findings from a study on the management of conflicts of interest through financial disclosures, which provided the most up-to-date situation on compliance with disclosure regulations (PSC 2007c). Figure 1.1 illustrates data covering a six-year period until 2004/05, which generally showed that the receipt of disclosures remained more or less at the same level of under-compliance between 2002/03–2004/05.

**FIGURE 1.1** *Number of disclosures received against number of SMS members\**



\*Combined provincial and national department officials. PSC (2007c: 16) noted that 1999/2000 was the first year in which members of the SMS had to disclose financial interests, where this was limited to Heads of Departments and persons occupying salary grades 15 and higher. Thereafter persons employed at all SMS grades (13–16) were required to disclose their financial interests.

Source: PSC (2007c: 16).

13 This is based on data from a public service personnel information system (PERSAL), obtained from the DPSA.

A broader picture of under-compliance of disclosure regulations was given by the AG in 2006, which covered the period 2003/04, and which expanded disclosure to include political office bearers. The AG's report noted that a majority of the 1 678 Ministers, Deputy Ministers, provincial ministers (MECs) and 'designated employees' (SMS members) identified as directors or members in companies and closed corporations did not disclose all of their directorships and memberships (AG 2006b: 7).<sup>14</sup> These figures indicate that full compliance with disclosure and submissions of financial disclosures remains a challenge for the government, which, in turn, sustains varying margins of risk that potential conflicts of interest, including from corrupt activities, may occur.

In its research on the matter, the PSC also uncovered a potential flaw in the disclosure-reporting template, which could have contributed to insufficient information being provided on public servant financial interests. The Commission took a sample of financial disclosure forms focusing on shares and directorships held by officials, which constituted the largest portions of disclosure categories.<sup>15</sup> The PSC then noted that in seeking to identify a 'potential' conflict of interest, the type of work that the official performed was compared with the type of business activity of the company in which the official held an interest: 'Where it was found that the two are related the assumption was made that a potential conflict of interest exists' (PSC 2007c: 21). In proceeding with its investigation, however, the PSC noted that currently the financial disclosure form does not make provision for the job description/content of the official, which made comparison difficult and had a commensurate affect on its ability to identify potential conflicts of interest. Bearing this in mind, the PSC went ahead with an analysis of forms with the proviso that because critical information on job content was not provided in financial disclosures, it had to make 'certain assumptions' where this could have resulted in more potential conflicts of interest being identified in the absence of more information on job descriptions<sup>16</sup> (PSC 2007c: 20). The number of 'potential' conflicts of interests estimated is perhaps of secondary importance in this example to the limitations evident in trying to estimate the risk of and susceptibilities to conflicts of interest in the public service.

Another concern emanating from the content of Public Service Regulations centres on the compatibility of regulations dealing with Code of Conduct (Chapter 2) and those concerning Financial Disclosure (Chapter 3). Specific problems relating to regulatory compatibility have been pointed out by both the PSC and the national DPSA. This appears to have created confusion for both public servants and anti-corruption monitoring and enforcement agencies in trying to regulate financial misconduct. For instance, the PSC noted the following in respect of this confusion:

...if chapter 2 forbids public servants to accept gifts and chapter 3 requires them to disclose gifts that they received they may not disclose. Secondly, if the meaning of gifts is not adequately defined in chapter 2 some public servants will find it difficult to know what to disclose and what not to disclose in chapter 3. By so doing the very purpose of chapter 3 (financial disclosure regulations) will be defeated. (PSC 2004: 41)

14 Representatives of national departments accounted for 55% of the total of 1 678 individuals.

15 According to Chapter 3 of the Public Service Regulations, section D, the following kinds of financial interests are considered registrable: shares and other financial interests in private or public companies, directorships and partnerships, remunerated work outside the public service, consultancies and retainerships, sponsorships, gifts and hospitality from a source other than a family member, and ownership and other interests in land and property.

16 The PSC's observation corresponds with the financial disclosure form contained in the SMS Handbook (2003). The form asks for 'position held' and 'department', which might only elicit a minimal amount of information given the phrasing, i.e. respondents could simply include their designation/title. See Annexure A, Financial Disclosure Form, SMS, Public Service Handbook. DPSA. 2003. Available from: <http://www.dpsa.gov.za/documents/sms/publications/sms2003.pdf>

A senior official in the PSC and current Director-General in the DPSA made the same observation, stating that there are certain areas where the Regulations may be 'ambiguously interpreted' (Levin 2003: 80). He specifically pointed to the acceptance of gifts (Section C.5.3), which stipulates that an employee must not solicit or accept gifts or benefits as these may be construed as bribes, where this conflicts with regulations in Chapter 3 stipulating that members of the SMS are required to disclose gifts valued at over R350.<sup>17</sup> He added that '...there are also problems of definition and interpretation, as the Code does not clearly define what a gift is.' As in the case of financial disclosure form wording, inconsistencies such as these promote, at best confusion, and, at worst, handicap regulatory instruments intended to prevent financial misconduct.

In summary, these examples demonstrate that the ability to enforce regulatory compliance with anti-corruption norms is weakened by deficiencies in the scope, specification and compatibility of regulations governing financial misconduct. Such deficiencies could moreover potentially undermine efforts at enhancing the propensity of public servants to comply, where the instruments employed to enforce compliance are viewed as weak and/or with confusion.

## Anti-corruption monitoring and enforcement

Anti-corruption monitoring and enforcement was the fourth theme that emerged from an analysis of documentation on the subject. This theme also corresponded closely with the issue of functional capacity, although it focused on the activities of extra-departmental agencies tasked with investigating, prosecuting, regulating, monitoring and evaluating corruption in the public and private sectors. A noticeable feature of debate concerning the functioning of these anti-corruption agencies in South Africa has been their number, and to what extent their collective efforts have improved the ability of the state to police corruption within its ranks. This debate was evident as early as 1999, shortly after the government held its first major public sector anti-corruption gathering.

Camerer (1999) produced a useful essay that early on considered to what extent a single public service anti-corruption agency was preferable to the existence of various bodies assigned different responsibilities vis-à-vis anti-corruption. She firstly observed that there were at least ten agencies in existence, which shared responsibility for anti-corruption. Two years later, in its evaluation of anti-corruption agencies, the PSC (2001b: 79–80) also recognised the existence of at least ten agencies with a role in anti-corruption.<sup>18</sup> These are noted in Table 1.3.

Debate concerning the existence of various agencies sharing responsibility for anti-corruption, be it investigative, prosecutorial, regulatory, or monitoring/research has, since at least 1999, continued to occupy the minds of researchers and policy makers alike. Furthermore, there appears to be a general acceptance that each entity has a role to play in a collaborative effort to reduce incidences of corruption in the public and private sectors. Camerer (1999), for example, offered a very early view that the idea of '...rationalising existing anti-corruption agencies to supposedly improve their effectiveness and speed up prosecutions, has to be challenged.' She instead called for improved 'co-ordination' between agencies, where elsewhere in her assessment she cited the following description drawn by the Heath Special Investigating Unit, one of post-apartheid South Africa's first anti-corruption agencies:

17 Confirmed in Chapter 2, Paragraph C.5.3, and Chapter 3, Section D, Section E (f), in Public Service Regulations, 2001, amended 15 December 2006.

18 Camerer's list, which was said to have been based on an organogram distributed to delegates at the 1998 Public Sector Anti-corruption Conference, included most entities on the PSC list (2001) but added the Heath Special Investigating Unit, now called the Special Investigating Unit, and the National Intelligence Agency, which conducts intelligence gathering and, in relative terms, has a more limited role in anti-corruption.

**TABLE 1.3** *Anti-corruption monitoring and enforcement agencies in South Africa*

Agency	Mandate that covers anti-corruption
Auditor-General	Referred to as 'pro-active intervention', auditing of departmental financial management practices
Public Protector	Investigation of non-criminal cases involving ethical/code of conduct transgressions in the public service
Public Service Commission	Oversight, monitoring, and research on financial misconduct including some investigative work on relevant cases
Independent Complaints Directorate	Investigate cases of police misconduct, including corruption, where cases are 'fairly simple, non-complex and non-resource demanding...'
South African Police Service Commercial Branch	Investigate criminal offences including corruption
SAPS Anti-corruption Unit (no longer exists in its original form)	Investigate cases of alleged corruption by members of the Police services
National Prosecuting Authority (NPA)	Prosecute criminal cases involving corruption
Directorate of Special Operations (operates under the NPA)	Investigate high profile and complex corruption cases of an organised nature
Asset Forfeiture Unit (operates under the NPA)	Investigate cases and seize or freeze assets
Department of Public Service and Administration	Policy and strategic planning role, viz. anti-corruption

Source: PSC (2001b: 79-80).

We are dealing with a multi-headed dragon and various different kinds of swords are required to attack the different types of heads of the dragon. The Unit is therefore of the view that the various organisations all have a role to play in the fight against corruption and maladministration.

Although the 'multi-headed dragon' metaphor was not elaborated on in the article, it may be reasonable to submit that describing corruption in this way, and within a broader context marked by 'maladministration', might also say something about trying to prevent corruption in the context of the public service's evolving post-1994 institutional, organisational and functional architecture. Taking the Heath Unit's metaphor to its logical conclusion would mean that corruption might be able to exploit such a dynamic environment by taking various forms or shapes. This then spawns the not unreasonable argument that a mixture of entities may be needed, which have the ability to criminally investigate and prosecute corrupt activities, as well as the ability to regulate, evaluate and monitor the activities of government departments in transition, where so doing could improve the likelihood of uncovering potential vulnerabilities to acts of corruption taking place. The PSC (2001b: 83), in a very early evaluation of South Africa's anti-corruption agencies, appeared to adopt a similar view, submitting that: 'This report has shown that the institutions which have an anti-corruption mandate have been born out of specific needs.' Setting aside for a moment the logic of this argument, the reality even before South Africa held its first major public sector anti-corruption gathering in 1998, was that a number of oversight bodies other than those with considerable prosecutorial and investigative powers were already on the scene. Some of these have continued their existence under the post-1994 political dispensation (i.e. AG, PSC), while others were created after 1994 (i.e. Public Protector, DPSA, Special Investigation Unit).

If accepting the argument that a mixture of agencies, which possesses an anti-corruption brief as part of its broader mandate, is preferable to tackle a problem that exhibits multiple heads more effectively, it has elsewhere been argued that support for the continuation of a multi-agency strategy will rest on the ability of these agencies to work together effectively, in concert, which speaks to co-ordination, and the assumption that each agency possesses adequate capacity to carry out, in the first instance, its core mandate. Again, this was evident in the early debate around anti-corruption, with Camerer (1999) noting that there was '...general consensus among the public and the media that all the institutions involved in fighting corruption are handicapped in various ways, such as inadequate financial and human resources'. She also submitted that 'Currently, there are at least ten bodies that deal with corruption. They act in isolation and do not share information, research, intelligence, prevention or other resources.'

Others have also pointed to operational difficulties in the work of South Africa's various anti-corruption agencies. The PSC (2001b: 80) observed that 'There is an overlap between the functions (particularly with regard to investigations) of certain existing anti-corruption agencies...'. It concluded, however, that there was '...no clear indication that existing agencies are performing so poorly as to necessitate the creation of a single new agency.' A UNODC/DPSA Country Corruption Assessment Report (2003: 60–61) also hinted at the same conclusion, noting that the '...issue of a single anti-corruption agency needs to be put in perspective', where 'Fragmentation, insufficient coordination, poor delineation of responsibility and assimilation of corruption work impacts on the resourcing and optimal functioning of these agencies...'. Having said this, in a recent and useful study reviewing models of specialised anti-corruption institutions for the Organisation for Economic Co-operation and Development (OECD), the authors suggested that 'A specialised anti-corruption institution may be needed [single body] when structural or operational deficiencies among existing institutional framework do not allow for effective preventive and repressive actions against corruption.' (Klemenčič, Stusek 2007: 24) The authors added however that the question of which model of anti-corruption institution a country should have is very difficult to answer, for even in the case of a single specialised anti-corruption agency, certain 'dangers' need to be considered, such as '...invoke[ing] jurisdictional conflicts and turf battles with other institutions; and...it can be abused as a tool against political opponents.' (Klemenčič, Stusek 2007: 25)

Interestingly, a current controversy involving the dismantling of the Directorate of Special Operations (DSO), also known as the Scorpions, speaks to the dangers outlined by Klemenčič and Stusek. In this example, critics – including members of opposition political parties, the media and members of the public – have charged that South Africa's governing ANC party's proposed dismantling of the highly visible and perceived as highly effective DSO, in the fight against political corruption, has been primarily motivated by the desire to protect senior ruling party politicians (specifically ANC President Jacob Zuma) from being investigated and prosecuted for alleged corruption. For its part, the ANC, which took a decision at its 52<sup>nd</sup> National Conference in December 2007 to dismantle the DSO, has offered a functional argument to support its decision, arguing that the proposal calls for the incorporation of the DSO's policing and investigative functions into the South African Police Service (SAPS), which will '...strengthen the fight against crime by ensuring the integration of all policing functions under a single command structure' (ANC Today 2008). When it was set up, the DSO, which legally reports to the Ministry of Justice and Constitutional Development, essentially comprised what Klemenčič and Stusek (2007: 22) have described as a 'law enforcement type' model, common in Europe, where it combined law enforcement/investigations and prosecutorial functions, which at the time were viewed by some as increasing the agency's capacity to pursue convictions (ANC Today 2008). The ANC's argument essentially calls for the splitting up of the DSO's prosecutorial and law enforcement/investigations functions, with the latter moving to the SAPS, which legally reports to the Ministry of Safety and Security. The result would conform to what Klemenčič and Stusek (2007: 22) have described as a 'multi-

purpose agency with law enforcement powers' model, where prosecutorial functions are separated to 'preserve the checks and balances within the system...'.<sup>19</sup>

It might be analytically hazardous to try to interpret motivations and circumstances behind the proposed dismantling of the DSO, particularly when differing motivations are being presented. Having said this, while it is clear that this case directly speaks to potential 'dangers' remarked on by Klemenčič and Stusek in setting up specialist anti-corruption agencies, what is not clear is whether it is possible to reconcile a drive, on the one hand, presumably to reduce 'jurisdictional conflicts and turf battles' and introduce checks in the system by separating the DSO's prosecutorial and investigative functions, with, on the other hand, a decision that was not intended to abuse the DSO as a tool against political opponents. A recent court judgment (12 September 2008) in favour of Mr Zuma, which admonished the National Prosecuting Authority (NPA) (under which the DSO operates) for its handling of his prosecution, and which further intimated political interference in its processes, would tend to lend further weight to this seemingly irreconcilable set of circumstances. Moreover, in terms that are more relevant to this study, it could also be said that the DSO example contributes to the potential gap between the South African state's functional ability to enforce anti-corruption compliance, taking into account the merits of a jurisdictional conflict argument,<sup>19</sup> and the likelihood that compliance will improve. This, given what critics have argued, is a move that could weaken the state's anti-corruption capacity, which already displays widespread human resource deficiencies in various agencies tasked with performing anti-corruption work.<sup>20</sup>

## Conclusion

This study, by examining corruption from the perspective of public duty or public office-centred definitions, has tried to offer some insights into how an evolving (that is, in the context of a democratic political system) public institutional landscape has dealt with the 'anti-corruption project', a term employed by Anechiarico and Jacobs (1994) to describe perspectives on the control of corruption in American public administration. This paper has shown that concerted efforts to erect a framework of legislative, regulatory and organisational measures to respond to corruption in government began to take shape shortly after South Africa's transition to democracy in 1994, with tangible outcomes being seen between 1999 and 2005 in particular. These efforts approximate what Anechiarico and Jacobs (1994) describe as the 'panoptic' law enforcement approach to corruption control, and what Gilman (1996) refers to as the 'worldwide movement' or trend towards ethical standards and systems of government functioning. Having observed this, the bulk of this paper has shown that, notwithstanding the creation of instruments designed to reduce vulnerability to corruption, the South African case illustrates a gap between the state's ability to *enforce* anti-corruption norms, including through legal, regulatory and functional codes, and the propensity of the bureaucracy to *comply* with these. This disjuncture can be seen through deficiencies in reporting/disclosure instruments, functional capacity, code of conduct/employment-related regulatory instruments, and anti-corruption monitoring and enforcement.

19 The strength of the following argument is in question: splitting the investigative and prosecutorial functions of the DSO between the NPA, operating under the Ministry of Justice, and the SAPS operating under the Ministry of Safety and Security, will reduce 'jurisdictional conflicts' and 'turf battles' by improving 'co-ordination' and reducing 'competing mandates' in the investigation of crimes (ANC 2008). Surely it could equally be argued that splitting these functions between two ministries and their concomitant administrative structures could also generate jurisdictional conflicts (co-ordination and co-operation) where there is a continuing need to bring investigative and prosecutorial functions to bear on the investigation of criminal activities involving corruption?

20 This was a finding from the research study, which examined official documentation from five agencies whose mandate includes anti-corruption.

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# 2

**REVIEWING MUNICIPAL CAPACITY IN THE  
CONTEXT OF LOCAL GOVERNMENT REFORM:  
1994–2009**

*Mcebisi Ndletyana and James Muzondidya*



## Introduction

Recurring episodes of local protests in the period preceding municipal elections in 2006 have focused the public's attention on the state of local government in South Africa. The main cause of these incidents reportedly was inadequate or/and the absence of service delivery (Ndletyana 2007). This inevitably raised questions about the capacity of local government to execute its mandate, which had already been noted in September 2005, when the Department of Provincial and Local Government (DPLG) reported that a significant number of municipalities were failing to provide social services (Atkinson 2007). An existing backlog in social infrastructure renders the resolution of this problem even more urgent. Exacerbating the issue is the fact that municipalities are increasingly expected to lead economic development in their respective communities ([www.thedplg.gov.za](http://www.thedplg.gov.za)).

Municipal capacity, therefore, is the catalyst in this entire scenario. This begs the question: Do municipalities have the requisite capacity to fulfil their constitutional mandate? This paper tries to answer this question by reviewing the changing circumstances of local government over the last fifteen years. It does so firstly, by defining capacity in the context of municipalities; secondly by ascertaining the existing level of skills relative to municipal needs; thirdly by evaluating existing programmes introduced to offset a lack of municipal capacity; and then, fourthly, where possible, by making observations about where these programmes might most urgently need to be strengthened.

## Understanding capacity

Capacity as it relates to municipalities is multi-faceted. It denotes financial resources, human capital and social capital. A functioning local government includes more than just financial and technical capacity. The impetus also stems from social capital, especially civic engagement in the political processes and institutions of local government (Putnam 1993). Civic participation is crucial to nudge an otherwise unresponsive political leadership in the right direction. And where there is a lack of capacity, it is unlikely to go unnoticed for long as an engaged and vocal citizenry will attract the attention of relevant authorities to their aid. In short, therefore, an effective municipality is a function of a combination of technical skills, material resources and civic engagement. However, the full extent of the challenges that confronted a post-apartheid municipal system also requires some historical perspective, for the service backlog that many municipalities face was inherited from the system of government that prevailed during apartheid.

## Apartheid inheritance: official neglect, backlogs and incapacity

During apartheid black communities evolved outside of the purview of municipal authority.<sup>21</sup> While the 1962 amendment to the Group Areas Act (No. 41 of 1950) made provisions for the establishment of 'Management Committees' and 'Local Affairs Committees' (Cameron 1999: 78) for the Indian and coloured communities, African communities were left out. This was in line with the apartheid logic, which denied Africans residence within the 'Republic'. Africans were supposedly citizens of the bantustans and thus 'temporary sojourners' in the urban areas. The African neighbourhoods that did emerge were thus neglected. It was only in 1977 that the government, following its acceptance of the irreversible reality of urban African residence, introduced some municipal authority over these

21 'Black' in this usage covers African, coloured and Indian people as categorised under apartheid.

communities, such as community councils and, in 1982, the Black Local Authorities (BLAs) Act (No. 102 of 1982). (Todes & Watson 1984: 23)

Such official neglect meant that African communities suffered serious backlogs in social services delivery, which the imposition of municipal authority did little to address. These municipalities were constrained by a lack of a revenue base. 'Lack of finance' as Cameron concluded, 'proved to be the Achilles heel of BLAs' (1991: 319). Admittedly, some institutional arrangements were designed to remedy this problem, but they lacked sincerity. One such attempt was the establishment of Regional Services Councils (RSCs), which were designed as multiracial bodies whose membership comprised participating local authorities from all racial groups. RSCs promised to redirect infrastructural resources to areas in need, but the manner of its decision-making process made a lie of this promise. Local authorities that had a high consumption of services, which happened to be white, had more voting powers, and used them to maintain their privileged status (Atkinson & Heymans 1988: 4).

Political volatility in the 1980s plunged both the BLAs and the African communities further into the abyss. Functioning as part of the apartheid governing structure, BLAs suffered a credibility problem. They were considered as a cynical ploy by the apartheid government to reform apartheid, instead of abolishing it. Thus residents rejected them, especially following the call by the then banned African National Congress (ANC) to make the 'apartheid state' ungovernable. Rent was not paid, municipal buildings were burnt and African councillors resigned their posts (Mayekiso 1996). Hence, for the most part of the late 1980s, African communities were largely left without any municipal authority overseeing them. The result was further accumulation of backlogs.

## Post-apartheid reforms, de-racialisation, democratisation and empowerment

The immediate post-1994 period saw the promulgation of a raft of legislation and policy. These were intended to integrate and de-racialise municipal government, enrich its resource base and capacity, and promote popular participation within municipal government to render it accountable to local citizenry.

Integration, which yielded de-racialised and financially better-resourced municipal structures, took precedence over all other aspects and unfolded primarily from the early 1990s to 2000. This led to a drastic reduction of municipalities from more than 1 000 prior to 1990, down to 830 just after 1993 and further down to 284 by December 2000 (see Table 2.1). Communities with a poorly developed revenue base were combined with well-resourced communities under the same municipal jurisdiction. The idea was to attain cross-subsidisation of poor communities by more well off areas. Left alone, as noted earlier, municipalities based in poor communities lacked a revenue base to generate income that would enable them efficiently to provide services to their residents.

The new municipal system was structured into three types: Category A: metropolitan areas, Category B: local municipality and Category C: district municipality that also includes local municipalities.

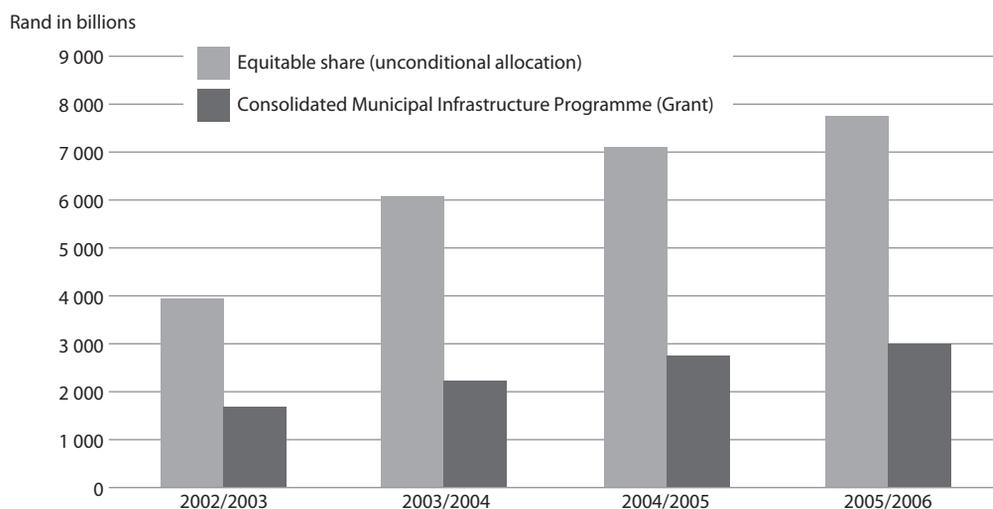
Moreover, municipalities were given the additional role to lead economic and social development in their areas of jurisdiction. Chapter 7 of the 1996 Constitution dedicated a distinct section to the developmental 'duties' of municipalities, where local government was required to structure its administration and budgeting to give 'priority' to the basic needs of its communities, and to 'promote' their social and economic development. The seriousness of local government's newfound 'developmental mandate' was further specified in a White Paper on Local Government, tabled in 1998 (Reddy 1999: 209).

**TABLE 2.1** *Local government bodies during political transition*

Type of local government body	Prior to 2000	Post 2000
Transitional metro council	6	
Transitional metro substructure	24	
Transitional local council	494	
District	52	
Local councils	58	
Representative councils	196	
Category A		6
Category B		232
Category C		46
<b>Total</b>	<b>830</b>	<b>284</b>

Source: Kotzé 1998: 3; Cameron 2006: 81

Municipalities effectively assumed the developmental function after local government elections in 2000, in which the integration process reached a climax. To this end, municipalities received funding, in addition to their own self-generated revenue, from the national treasury: equitable share and infrastructural grants. As Figure 2.1 illustrates, infrastructural grants rose significantly in the 2003/04 financial year.<sup>22</sup>

**FIGURE 2.1** *Rise in national revenue transfer to local government*

Source: National Treasury 2003: 38

22 These two allocations represent the largest portions of total national transfers to local government: 64% of total in 2002/3, 71% of total in 2003/4, 73% in 2004/5 and 73% in 2005/6. Other transfers included a series of grants to support municipal restructuring, financial management and systems improvement, and assistance in specific service delivery areas such as water and electrification.

Financial grants were accompanied by the introduction of Integrated Development Planning (IDP). This tool was intended to enable local government to identify and budget strategically for infrastructure and development needs over a five-year period. In terms of the IDP process, municipalities were obliged to prepare disaster management plans, spatial development plans, transport plans and waste management plans. In addition, those municipalities designated as water service authorities were required to submit water service plans. The IDP process was meant to arrive at decisions on issues such as municipal budgets, land management, promotion of local economic development and institutional transformation in a consultative, systematic and strategic manner. IDPs are a statutory requirement of the Municipal Systems Act (No. 32 of 2000) for municipalities at district and local level. The first five-year IDPs were completed in 2002, and are required to be reviewed each year. They serve as the main tool for local government to consult with their residents, and to identify developmental priorities (Ovens & Kitchin 2005).

The collective formulation of IDPs underscores the participatory nature of the new post-2000 local government structures. Public participation happens within ward committees, made up of (elected) residents and the ward councillor. The content of the IDPs is thus partly informed by deliberations that take place within the ward committees. Furthermore, ward committees play a leading role in managing local projects. There are close to 4 000 ward committees established countrywide, with approximately 40 000 ward committee members (Municipal Structures Act, 1998, No.117; LGSETA, 2007: 22; du Plessis 2004).

### **Unfulfilled expectations: poor service delivery**

The newly reformed municipal system yielded mixed results. Service delivery continued steadily, but not in proportion to the increasing financial injection, and betrayed the new emphasis on local development. A significant portion of municipalities battled to rise to this task. In September 2005, the Department of Provincial and Local Government (DPLG) reported that of the 284 municipalities '203 could not provide sanitation to 60% of their residents; 182 were unable to provide refuse removals to 60% of their residents; 155 could not provide water for 60% of properties' (Atkinson 2007). Current statistics suggest that 61% of municipalities are performing 50% or less of their municipal functions (2005/06 Capacity Assessment). The small urban centres and the Integrated Rural Development Strategy (ISRDS) denominated municipalities were the weakest performers (LGSETA 2007: 14).

The severity of this failure manifested itself in community unrest. The Minister of Safety and Security, Sydney Mufamadi, put the number of protests at 881 within the year leading up to October 2005 (*New York Times* 25 December 2005). They were spread out, frequent and some were even violent. A seemingly shocked Cabinet ascribed the protests to the work of 'a third force' (*The Star* 10 June 2005). Rather than showing an inclination to conspiracy theories, government reaction reflected genuine astonishment, for it had been pouring enormous resources into local development. Thus government had not expected communities to rise up, at least not on account of poor service delivery.

In reality, though, municipalities were stifled by a range of constraints. Specifically, the constraints related to a general scarcity of technical skills in the country; the inability, especially, of small and rural-based municipalities to recruit and retain requisite staff; and the insufficiency of financial resources relative to the scale of need in communities. For instance, many municipalities experienced a large number of staff vacancies, both on budgeted posts and on their organograms. Vacancy rates (on approved organograms) averaged 36–38% (LGSETA: 3–5). A notable number of these vacancies, as shown in Table 2.2, related to technical, professional, senior management and leadership positions.

**TABLE 2.2** *Distribution of total employees – all municipalities, 2005/06*

Occupation	%	% Race				% Gender	
		A	C	I	W	M	F
Leadership & gov.	5	4	0	0	1	3	1
Senior off. & man.	5	2	0	0	2	3	1
Professionals	4	2	0	0	1	2	2
Tech./ass. prof.	8	3	2	0	2	5	3
Skilled agric. & fishery	1	1	0	0	0	1	0
Clerks	17	10	2	1	4	6	11
Service workers	12	8	2	0	2	9	2
Craft & related	5	3	1	0	1	5	0
Plant & machine ops	6	5	1	0	0	6	0
Elementary occs	38	32	5	0	0	32	6
<b>Total</b>	<b>100</b>	<b>69</b>	<b>14</b>	<b>2</b>	<b>15</b>	<b>73</b>	<b>27</b>

Source: LGSETA 2007: 15.

In May 2005, for instance, the South African Institution of Civil Engineering reported that 78 municipalities had no engineers, technologists or technicians and a further 49 municipalities only had one civil technician on their staff among them. Even where projects were outsourced due to a lack of resident skills, municipalities lacked proper expertise to supervise them to ensure that they met their objectives. As a result, outsourced projects frequently yielded poor results (LGSETA 2007: 27). Essentially, the current reality is that the pool of technical expertise does not match the demand. There are far more households to be serviced than there is personnel available. For instance, the high rates of urbanisation and population growth in South Africa's secondary cities have generated a demand for urban planners. But, there are just not enough urban planners in municipal employment.

Though offering some relief, the existing capacity is inadequate not only in terms of insufficient numbers, but also in relation to competency in crucial areas. For example, most people working on municipal financial budgets are not well-qualified and experienced in municipal finance and budgeting. According to the Demarcation Board review of 2004, 37.4% of all municipal managers had less than five years experience in local government. Of the 82% of municipal finance managers who had a finance qualification, 59% of those were at NQF Level 4,<sup>23</sup> an under-qualification for the post. In North West province, only 62% of finance managers had an associated qualification. The Demarcation Board reported the level of qualifications among municipal finance managers as follows:

**TABLE 2.3** *Qualifications among municipal finance managers in South Africa*

Qualification	No data	Matric	Matric + certificate	Degree	Degree + diploma	Post-grad. degree	Post-grad. degree + diploma
%	1.8	11.5	25.9	34.2	10.8	12.6	3.2

Source: LGSETA 2007

Low competency levels engendered administrative problems. Some departments could neither monitor nor audit their finances properly. In the Eastern Cape, only 7 of the 45 municipalities submitted their annual financial statements in time for auditing in the 2003/04 financial year. In the previous year, 2002/03, only two of the 26 audited municipalities received a clean bill of health from the Auditor-General, while only seven got a qualified report. The rest received disclaimers (*Daily Dispatch* 6 July 2005).

Smaller and rural municipalities are particularly hit by the shortages of managers and professionals. These locations are unappealing to outside professional persons because of their remoteness from major cities or underdeveloped nature. Nor do they have sufficient educational institutions to generate local expertise, which forces locals to relocate elsewhere for tertiary education. And, in some cases, the newly qualified professionals do not return to their hometowns, but simply settle in the same community where they received their professional qualification. This explains the uneven spread of expertise in the country (Lodge 1999).

The only option open to rural and small-town municipalities, therefore, is to 'import' staff. But, this has been an extremely difficult option to pursue, for outside staff is highly priced, while municipalities are notably limited in what they can pay, especially since their salary bill is restricted to 35% of their operational budget. And, the poorer the community within which the local authority is located, the more constrained the operational budget, as local government is expected to meet at least 90% of its revenue needs (although it is entitled to an equitable share of national revenue which can contribute up to 40% of its revenue). Although this has worked well in municipalities covering rich neighbourhoods or those with big industries, municipalities incorporating the rural areas of former bantustans have struggled to raise revenue from citizens who are poor.

Failure to offer competitive salaries has, in turn, led to a considerable outflow of skills from the municipal sector. The preliminary 2007/08 Water Sector Plan (WSP) analysis indicates that municipalities are increasingly unable to match the salaries paid by the private sector to finance specialists, engineers and artisans. The greatest problems in acquiring and retaining skills has been in the occupational categories of professionals, senior management, technicians and associated professionals – a problem exacerbated by the widespread skills shortages in these high-end occupations across the economy. The Western Cape and Gauteng, in particular, appear to be experiencing a similar shortage for similar reasons, among primary healthcare staff.

Furthermore, local municipalities' ability to generate their own revenue has also been adversely influenced by a culture of non-payment that developed in African townships during the rate boycotts of the 1980s. Some municipalities suffer from enormous financial debt, undermining their capacity to function optimally. The South African Local Government Association put the total amount, owed to municipalities countrywide, at R40 billion for 2006 alone<sup>24</sup>. For some municipalities, this has meant diverting a significant portion of their funds towards servicing debt. As a result, as the Free State's MEC for Local Government put it: 'Other important issues such as essential repairs and maintenance, the upgrading of service delivery and the filling of critical key vacancies are not attended to.' For other municipalities, insufficient funds meant they could not even 'pay for audit fees to get audited by the auditor-general' (*Business Day* 7 September 2005, *Cape Times* 19 September 2005). Thus, financial problems, which could have been uncovered by an audit and possibly remedied, went on undiagnosed.

24 [www.businessday.co.za](http://www.businessday.co.za) – 22 November 2006

Problems extended beyond human incapacity to sluggish civic engagement. In this respect, some of the key challenges that have been noted with regard to the proper functioning of the system of ward committees and councillors are:

- Inadequate interaction between ward councillors, ward committees and officials.
- Inexperience in municipal affairs among councillors and members of ward committees. More than 60% of councillors in all provinces are first-term local government political office bearers, with little political experience and experience in local government systems and processes.
- Poor functionality of ward committees, which are often deemed peripheral and marginalised in consultative processes. The DPLG notes that while 96% of ward committees are established they are characterised by a relatively low level of functionality pointing to a great need for training and skills development in this area.

Dysfunctionality in ward committees means that, on the one hand, councillors are likely to neglect their duties because there is no immediate and public pressure to perform and, on the other hand, residents lack an accessible official channel to report their concerns. In such instances, local issues persist unattended.

In short, after 2000 it became increasingly clear that municipalities were faced with formidable shortcomings to execute their developmental functions. Problems could not be remedied by further financial injection from national treasury. Municipalities lacked skilled personnel; had inexperienced staff, suffered high turnover rates and poor recruitment due to relatively low salaries; and the existing pool of skills was unevenly spread out between rural/poor and urban/rich neighbourhoods. The resultant poor performance was exacerbated by the near absence of civic engagement through ward committees, which could have ensured some official accountability and provided residents with direct access to their municipal representatives to report complaints.

## Interventions to remedy capacity problems in municipalities

A series of measures has been initiated by both the public and the private sectors, especially since 2000, as it increasingly became evident that municipalities were battling to lead socio-economic development in their respective communities. The major challenge they had to confront, however, was that some of the problems, especially the shortage of skills, were not peculiar to the municipal sector. Rather, there was a general lack of technical and professional skills throughout the country, affecting other sectors of South African society.

Inevitably, interventions to remedy the shortage of skills had to be designed in a manner that yielded immediate relief, while ensuring a wider and sustainable supply of skills in future to cater for other sectors of the economy. Thus, the interventions adopted were both specific to local government, as well as to other institutions responsible for producing requisite expertise. For the purposes of this paper, we look exclusively at initiatives targeting local government.

The interventions aimed at addressing the skills shortage at local government level were varied. They involved capacitating existing officials and elected leaders; drawing expertise immediately into the employ of the municipal sector; cultivating expertise that would be available in the short term; strengthening interaction between elected leaders and the electorate, and public access to public services; and developing a tracking system for municipal performance.

## Immediate recruitment of expertise

A number of initiatives have been put in place since 2004 to bring immediate expertise to the municipal sector. Project Consolidate and the Joint Initiative on Priority Skills Acquisition (JIPSA) are two such initiatives.

### Project Consolidate

Project Consolidate, launched in October 2004, was the first prominent public initiative to recruit expertise. It was intended to provide hands-on assistance to targeted municipalities that could not provide essential services. As noted earlier, this programme followed government's own audit in 2004, which revealed that of the total 284 municipalities, 203 suffered serious weaknesses that impaired their ability to perform their service delivery functions. A total of 139 municipalities were subsequently targeted for special hands-on intervention by experts, dubbed Service Delivery Facilitators (SDFs), with a range of skills, including managerial, technical and financial. SDFs were to perform many and varying tasks, including:

- Doing a needs analysis study and assisting with recruitment of staff.
- Drawing up local economic development strategies.
- Helping to compile annual financial reports.
- Developing various internal policies.
- Improving billing systems.
- Initiating feasibility studies for projects.

### Joint Initiative on Priority Skills Acquisition

The Joint Initiative on Priority Skills Acquisition was launched on 27 March 2006. JIPSA is intended 'to create short-term, but sustainable interventions to the skills problems'. It is an offshoot of another government-initiated programme, the Accelerated and Shared Growth Initiative for South Africa (AsgiSA). The latter contains a series of measures intended to fast-track South Africa's economic growth from the current average level of 4.5% to 6% by 2010, while also halving unemployment and poverty by 2014. The achievement of these objectives has, however, hinged on the availability of a much wider pool 'of sufficiently skilled professionals, managers and artisans', than is the case presently (AsgiSA 2006).

JIPSA, therefore, is meant to increase the supply of this much-required set of skills. Signalling the importance with which the government has viewed this initiative, JIPSA was located in the Office of the Presidency and was led by the former Deputy President, Phumzile Mlambo-Ngcuka. The programme is administered by a Joint Task Team that includes, in addition to the deputy president, other 'senior leaders in government, business, labour, academic and research institutions and civil society' (AsgiSA 2006: 8). The inclusiveness of the task team has demonstrated that achieving this task would need to be a collective effort. Government could provide some of the resources and regulatory support, but it did not itself possess the resident expertise and space to cultivate the requisite skills. For this it needed the private sector.

Various sectors of the economy and institutions of governance were prioritised to benefit from the envisaged expansion of skilled personnel. Municipalities were among the intended chief beneficiaries, as they suffered from a dire need of engineering, planning, artisan, technical and project management skills. These were among the range of skills whose acquisition and cultivation was prioritised by JIPSA. Several initiatives were thus set in place to meet the immediate needs within the municipal sector. Such initiatives included the following:

### ***Siyenza Manje: Re-employment of retired personnel***

A programme dubbed *Siyenza Manje* (We do it now) was launched jointly by several state departments<sup>25</sup> and the Development Bank of South Africa (DBSA). This involved hiring retired individuals, with specific skills in engineering, project and financial management, and town planning, who could be assigned to targeted municipalities. The first group, 67 in total, was recruited between May and November 2006. They provided both hands-on intervention and mentoring to young graduates. It was envisaged that this number would grow to 90 by March the following year, 'with a further 30 young interns taken on board' (AsgiSA 2006: 8).

Mentoring offset the problem of students, especially in the engineering sciences, who could not graduate because they could not find the necessary placements in industry. Municipalities proved to be a useful alternative to providing placement opportunities for technical students, who otherwise could not find placements in the industry, 'which had not kept pace with the growing demand' (AsgiSA 2006:8).

### **Skills importation**

Skilled individuals were to be recruited from abroad. The Departments of Labour and Home Affairs were requested to facilitate the acquisition of work permits and entry into the country for this category of individuals. This would involve encouraging South African citizens with the relevant skills, who are either working or resident abroad, to return home for employment in the municipal sector. As they arrived back into the country, their names would be kept in a database, developed by DBSA, for easy reference.

### **Unemployed/inexperienced graduates: placements**

An Unemployed Graduate Initiative was launched by the deputy president in December 2005. This initiative sought to draft unemployed graduates, among others, into the municipal sector, especially in the Departments of Arts and Culture, Environmental Affairs and Tourism, and Public Works. This initiative provided much-needed, albeit inexperienced, expertise to the municipal sector. This measure went a long way towards reducing the rate of unemployment among graduates, especially within the black community. In 2006 alone, the overall number of unemployed graduates was estimated at 200 000, the overwhelming majority of whom were black. This phenomenon is due to several factors including 'lack of access to employers and networks' and 'lack of work experience' (AsgiSA 2006: 20).

### **Public-private sector initiatives: training programmes**

Private and public institutions undertook joint initiatives to provide training to municipal employees. One example of such an initiative involved the Old Mutual Business School, assisted by the South African Management Development Institute and the DPLG, where 97 municipal employees from the Western Cape, Gauteng and the Eastern Cape were provided with hands-on training in foundational project management. Old Mutual has also created a non-profit entity, Ilima Trust, through which it secures the services of semi-retired experts with expertise in project management, financial management, human resource management and operational efficiencies to train municipal employees. The first recruits trained by nine of these experts were placed at municipalities in Cape Town and the Nelson Mandela Bay Municipality. This is at no cost to government, at least initially.

25 The National Treasury, Provincial and Local Government, Water and Forestry and the South African Local Government Association.

## Councillor-voter interaction and public access to municipal services

The outbreak of community protests in the period leading up to the 2006 municipal elections underscored not only a persistent absence of municipal services in some communities, but also a possible breakdown in the relationship between councillors and the citizenry. Problems included residents not being attended to by their councillors and the inability of citizens to access government services. In addition, ward committees did not provide residents with any recourse, as these had become dysfunctional due, largely, to the non-attendance of elected councillors. The Community Development Workers' Programme (CDWP) was initiated to address this disjuncture between officialdom and the citizenry at the local level.

### The Community Development Workers' Programme

The Community Development Workers' Programme (CDWP) was initiated in 2003 as a response to a weak relationship between ward committees/elected councillors and the citizenry. The policy document on the CDWP, for instance, noted:

The harsh reality is that in many cases, officials who are employed at this sphere of government often do not know how to forge strategic links and engage communities on the wide spectrum of government-sponsored programmes and projects... (DPSA 2007: 9)

Indeed, ward committees had simply collapsed in most communities and councillors were hardly seen in their own wards. After they had been elected as councillors, some simply relocated their residence to posh neighbourhoods and hardly visited their constituencies. This was borne out by the findings of a survey in Gauteng, which showed that only 10% of the residents felt that their councillors were in touch with their constituencies (*Business Day* 20 September 2005). Other councillors, as then President Mbeki was to hear at an imbizo in the Eastern Cape in July 2005, complained that their wards were simply too vast to consult efficiently, and doing so would require resources they did not have (*Daily Dispatch* 25 July 2005).

This weakness manifested itself in government failure to communicate messages to communities about government programmes, especially on matters that affected their quality of life. And when it did, the language used 'is too difficult for ordinary people to understand' (DPSA 2007: 10). In the absence of information on existing government programmes or how to access them, citizens were prone to bemoaning the lack of service delivery. Senior government officials often retorted that popular discontent either stemmed from deceptive information or sheer ignorance about government programmes.

Community Development Workers (CDWs) were envisaged as the answer to this breakdown in communication. To this end, the CDWP is anchored on the following principles:

- Popular participation and self-initiative to tackling community concerns.
- Collective action, and joint decision-making.
- Initiatives based on the actual needs of the community.
- Community awareness of their own problems and what government does.
- Promoting community leadership, and not expecting government to do everything.

The overall objective was to foster a collective approach, involving both the community and government, to solving community problems. The idea seemed to underscore that municipal success

did not depend entirely on government officials, but also required residents to be actively involved in identifying problems, helping to implement solutions and protecting public assets.

Since the inception of the programme, CDWs have worked closely with delivery-oriented state departments that initiate programmes and projects in communities.<sup>26</sup> Specific activities entail:

- Disseminating information to residents in a timely fashion.
- Providing feedback from the community to appropriate state departments.
- Helping community members to understand, develop and submit their own Integrated Development Plans to municipalities and other organs of the state and donors.
- Overseeing work done by teams of volunteers and community members involved in a community project.
- Evaluating the impact of government projects and programmes on communities and submitting reports to that effect to relevant state departments.
- Lobbying relevant state departments on behalf of communities in respect of their developmental needs.

Essentially, CDWs are the intermediaries between municipalities and the local electorate. They serve as the first port of call for residents with concerns, and, in turn, inform residents about the range of government resources and dispense information on how to access such resources – a function for which they were given training. To this end, CDWs are selected from and live within the communities in which they work. They are also expected to work with other community structures, such as ward committees and recognised local leaders. In the four years since the launch of the CDWP, 3 614 cadets have completed the one-year learnership, with 123 having dropped out. CDWs are active in more than 2 000 wards throughout all nine provinces (DPSA 2007: 2).

## Some observations on capacity support interventions

The interventions initiated to tackle capacity challenges have taken different forms. They have ranged from training programmes and the recruitment of skilled personnel to a programme aimed at enhancing the interaction between officialdom and the electorate, as well as public access to services. Some have been evaluated and others not. Thus, data as to their successes is somewhat sketchy, making it difficult to reach any definitive assessments. What is clear, however, is that these initiatives have yielded mixed results: some have worked and others need to be strengthened. What follows is an analysis of available data on initiatives including the CDW programme, training programmes, IDPs and Project Consolidate.

### Public access to municipal services: Community Development Workers' Programme

The CDWP was introduced in 2003 to enhance the work of councillors with respect to providing the public with information on municipal services and to assist residents in accessing these. However, the programme has not been independently evaluated nor properly tracked or monitored by government itself. Indeed, it was only in late 2007 that CDWs and government officials met to review the experiences of the previous four years. Attendees at the conference in fact admitted that the 'impact

26 These include: Public Works – Expanded Public Works Programme; Transport – Road Infrastructure Programmes; Social Development – Poverty Alleviation Programmes; Provincial and Local Government – Local Economic Development, Municipal Infrastructure Grant, etc. Housing – provision of houses and subsidies; and Health – primary health care facilities, Community Health Workers and HIV.

of the CDWP on the communities is not known' (DPSA 2007: 54). A suggestion was consequently made that an independent review was required 'to gain knowledge about the effects of CDW activities in the communities...The question of "added value" of the CDWs to government needs to be properly addressed through an empirical research of some sort' (DPSA 2007).

Apart from signalling the need for a proper assessment, the conference also drew attention to challenges faced by the CDWs. The following were noted:

- The rural landscape has proved to be a hindrance. Households are dispersed and cover a wide territory. In some cases, these households fall within a radius of 100 km. This requires transport (car or bicycle) to move from one household to another, with some deemed unreachable on a regular basis.
- The number of CDWs is insufficient to meet the number of ward committees. In one municipality in KwaZulu-Natal (KZN), for instance, there are 20 wards but only five CDWs to cover these.
- Departments are unresponsive to reports submitted by CDWs and thus these are not taken seriously or acted upon. CDWs experience poor feedback from departments. This is illustrated by one incident in KZN involving the health department and a CDW seeking a grant for a disabled child. The CDW wanted the department to ascertain the child's case in order to facilitate her application. A year went by without the department issuing a report and, when it did, the CDW found the report entirely unhelpful to the child. Mr Kulumane even resorted to the Public Protector, who, in turn, referred him back to the department. It later emerged that the department had misplaced the child's documents and 'to the present day the case remains unresolved...The department...has been very unresponsive' (DPSA 2007: 25).
- Problems in building relationships between CDWs and councillors. This seems to have been hampered by political differences and suspicion. CDWs were hindered from doing their work and their initiatives were blocked by councillors who felt threatened by them.
- Lack of co-ordination and sharing of lessons among the various provinces. For example, North West province had recently joined the programme, but suffers from weaknesses (especially poor overall management of the programme and a weak relationship between itself and the national departments) that could have been avoided if it had learned lessons from other provinces.
- Although CDWs are based in wards, where they can work with councillors, they are not integrated into the work activities and schedule of ward committees. In fact, they are frequently not even invited to meetings and, when they are, they are not properly introduced.

Although this study has insufficient data available to make definitive recommendations, the following could be proposed to remedy observable weaknesses that afflict the CDWP and the work of CDWs:

- A policy that spells out the role of CDWs and how departments should relate to them. There is clearly a need for such a policy, as government departments do not seem responsive to the CDWs. In fact, the level of unresponsiveness is such that the CDWs do not think that a policy would convince government officials to take them seriously; instead, they believe an Act of Parliament is required.
- There needs to be closer integration of CDWs into provincial departments, especially in their annual planning. This synergy would enable CDWs to feed their local experiences directly into departmental work. However, state officials seem not to understand the role of CDWs. As a result, the latter 'experience blockages in the different levels of government' as they seek to secure services for the helpless ordinary citizens. Consequently, 'there is a need for a programme to be developed to orientate municipal officials and ward committee[s]' (DPSA 2007: 40).
- Councillors need to be thoroughly appraised of the role of CDWs. In particular, councillors have to be reassured that CDWs are complementing their work, not competing with them. CDWs, for their part, have to be cognisant that they operate in a political environment and have to be alert so that they do not do anything that is likely to be construed as biased in favour of one party against another.

- CDWs still suffer from inadequate training, especially regarding the range of government's economic programmes and opportunities. This speaks to the aforementioned challenge of a lack of integration between officialdom and CDWs.

## Training programmes

Many of the capacity-building programmes conducted by different donors operating in municipalities across the provinces have had the following problems:

- Lack of co-ordination: While some of these programmes dwell on different aspects of capacity-building training, many of them duplicate one another in both content and focus. As a result, much money is wasted by, for example, producing the same material. Better co-ordination of programmes among donors and municipalities could avoid this scenario.
- Limited time: Many of the capacity-building training workshops are conducted over a limited number of days. During these few days, councillors are bombarded with too much information to digest. It is therefore necessary to devote more time to capacity-building workshops and to organise refresher or follow-up courses to update councillors on important developments in the field. These recommendations are borne out by feedback from the capacity-building workshop for councillors from Tshwane, which show that councillors seem to find value in having ongoing training and longer capacity-building workshops.
- Lack of attendance: Numerous capacity-building workshops are poorly attended, mainly because some councillors do not attach much significance to the training or the training programmes are conducted at inconvenient times. When councillors miss out on this important training for their job, it is not just they who miss out, but their wards and ward committees as well. Consequently, since councillors are such important agents in the functioning of local government, and because capacity-building programmes have the potential to improve their role in the delivery of services, there is need to develop mechanisms that ensure maximum attendance at capacity-building workshops. Recommendations in this respect include more inclusive planning as to when to hold these workshops and the development of a better registration strategy so that attendance can improve.
- Inappropriate language and curriculum: One limitation cited by councillors was that too much material has to be covered in the capacity-building workshops. As a possible solution to this, ward committee members should always attend the workshops so that they can explain the contents of the materials to attendees. In addition, facilitators who are able to speak the local languages should also always be present so that they too can explain the materials. Implementation experience has shown that facilitators are key to successful training. As far as curriculum is concerned, course feedback has indicated that ice-breaking sessions are useful for starting sessions, and that participants prefer the use of case studies. Capacity-training workshops in Tshwane have also shown that most councillors have difficulty with budgeting. As a result, there is need for more curriculum content (or more workshops) to deal with this issue.

## Project Consolidate

Overall, the presence of Service Delivery Facilitators (SDFs) has reportedly made a huge difference where they have been stationed. However, by July 2007 only 85 of the 139 designated municipalities had been assisted through this programme. This suggests that there are fewer SDFs than required (Moyo 2007), even though by September 2006 a total of 281 individuals, including technical experts, graduates and students, had been involved in the programme.

A report on progress of the programme notes that SDFs initially ran into serious challenges at the municipalities to which they had been assigned. They had to contend with resistance based on

suspicion that they had been sent to expose inefficiency and corruption. Municipalities also had false expectations of SDFs, thinking that they would bring funds (DPLG Project Consolidate, September 2006). There has also been a high turnover of SDFs, which retards efforts to build the capacity among interns and trainees. This has meant that, in some instances, while middle and senior management positions are being filled, these are being filled by less-qualified people (LGSETA 2007: 15–16).

Evidently, therefore, a strategy needs to be worked out to retain SDFs within the municipal sector. Although this study was not able to determine the cause(s) of the high turnover rate among the SDFs, this needs to be established in order to inform a retention strategy. This is critical in that the failure to retain SDFs not only undercuts the purpose of turning around municipalities; it also weakens the effectiveness of the placement programme involving young graduates as interns and trainees within municipalities.

## Importation of skills and training programmes

The impact in this area proved challenging to quantify. The study could not locate any data from which to draw definitive conclusions, especially in relation to the importation of skills. This is understandable in the light of the fact that the programme was introduced less than two years ago, which means that it is not yet fully operational. The training programmes, targeted at both councillors and municipal officials, have had some impact, but this seems limited. Not many municipalities have benefited and the programmes have suffered some pitfalls, as noted earlier. The major weakness here seems to be the disjointed nature of the programmes/initiatives themselves, as they are initiated by different institutions and offer varying content or stress different issues. In other words, the programmes are unco-ordinated, which also makes it difficult to find information that provides a comprehensive picture of their impact. Some measure of co-ordination and overall assessment is needed.

## Conclusion

By reviewing fifteen years of local government reform in South Africa, this paper foregrounds the issue of municipal capacity as a continuing obstacle to the effective delivery of services to an increasingly impatient citizenry. Indeed, unlike its national and provincial government counterparts, the local government sphere has gone through the most complex and protracted restructuring process which, effectively, reached its climax only nine years ago following local government elections. The nascent process of restructuring has been coupled with an increase in the policy scope for local government, with the delivery of basic services being augmented by the planning and delivery of developmental, that is, social and economic services. This paper has tried to show that, within this dynamic context, the critical question for local government after fifteen years of democratic government is: do municipalities have the requisite capacity to fulfil their constitutional mandate?

The bulk of this paper shows that despite various efforts by the government to assist local government to narrow its capacity deficit, the broad resourcing circumstances under which restructured municipalities were expected to operate has severely challenged this task. This has included competing for scarce skills, particularly personnel with technical skills; and managing high rates of staff turnover, coupled with difficulties of attracting skilled personnel. These difficulties have been most acute in less well-resourced rural municipalities. In evaluating some of the specific programmes conceived by the government to assist local governments to increase and enhance its personnel capacity, as well as communicate more effectively with local citizenry, it is evident, based on available data, that these externally generated initiatives have experienced their own difficulties in embedding their support among local government structures. Such difficulties, coupled with the longer-term benefits of

growing the supply of technically skilled personnel available to local government (i.e. through JIPSA), demonstrates that is absolutely crucial that greater co-operation is forged between municipalities and the national and provincial schemes created to support municipal capacity.

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# 3

**STATE DEMOCRACY WARMING UP TO  
CULTURE: AN AMBIVALENT INTEGRATION  
OF TRADITIONAL LEADERSHIP INTO THE  
SOUTH AFRICAN GOVERNANCE SYSTEM,  
1994–2009**

*Mpilo Pearl Sithole*



## Introduction

The recent history of traditional leadership in South Africa is interesting partly because of polarised views on the nature of what traditional leadership is and partly because of a clear affirmation of its existence in the last fifteen years. Both among academics and civil society advocates, traditional leadership has passionate proponents and sceptics. Generally, it is seen as a form of governance that has pre-colonial roots but which has been seriously tampered with by colonialism. Some see this tampering as exaggerated in order to nullify the relevance of traditional leadership in the current era. Whether it has legitimate pre-colonial roots or has been refashioned for colonial social manipulation, the major debate that has preoccupied recent history is whether it is democratic or not and whether or not it should be accommodated as part of the current system of governance in South Africa.

These questions have contributed to the ambivalence with which traditional leadership has been treated in South Africa. It seems that the grand motive of governance systems in modern times is the equitable and impersonal management of resources for the social welfare of 'citizens', whereas it has not been clear how the localised system of traditional leadership relates to its 'subjects'. Thus, even the political status of people under this system is under contestation in respect of whether they are treated as 'subjects' or 'citizens' (see Mamdani 1996) – the former being presumably more docile or robbed of their emancipated decision-making status, which the latter presumably enjoy. Given this existential uncertainty about traditional leadership as a governance system in the twenty-first century, it is no surprise that South Africa, as a new democracy embracing the tenets of freedom and enjoyment of equal rights, has been slow to resolve whether to embrace or to alienate traditional leadership.

This paper is based on a review of traditional leadership in South Africa's system of governance, which the Human Sciences Research Council (HSRC) conducted in response to a broader fifteen-year review study of government performance commissioned by the Presidency. The focus of this paper is primarily the broad policy shifts that have taken place on the role of traditional leaders since the advent of democratic rule in 1994. These shifts indicate that while government was initially ambivalent about traditional leadership, it has grown to embrace the idea of integration of traditional leadership into the constitutional system, despite serious scepticism from some civil society quarters. The paper begins by looking at the conceptual debates around traditional leadership and democracy which, more than in any other field, have managed to transcend the academic sphere into the sphere of civil society. The quest to define democracy for its practice seems to be at the core of this transcendence of what is conceptual into a successful influence of civil society.

A review of the literature on traditional leadership indicates that there are two schools of thought on its relevance in the period under review. The first is labelled here as a school of democratic pragmatism; the second, a school of organic democracy. This separation is borne out of the basic differences in the manner in which scholars approach the question of traditional leadership as one of the institutions of governance within modern political systems. These schools of thought will be described before policy changes in the last fifteen years are clearly outlined.

## The democratic pragmatism argument

In South Africa, traditional leadership has been extensively debated by academics. At the core of the debate is the compatibility of traditional leadership with democracy and human rights. Among the democratic pragmatists, democracy and human rights are essentially defined from a liberal tradition that prioritises the rights of the individual to choice and freedom. Reference to the South African Constitution, as underpinned by the same definition of democracy and human rights, is often made by

academic scholars who scrutinise traditional leadership's compatibility with democratic governance. In the light of this, an assessment of national legislation that deals directly with traditional leadership has also been made by academics of the school of democratic pragmatism. The two main pieces of legislation in this regard are: the Traditional Leadership Governance Framework Act (TLGFA) (No. 41 of 2003) and the Communal Land Rights Act (No. 11 of 2004). More details on policy and legislation will be afforded later in this paper.

In 2005 Thomas Koelble produced a working paper entitled *Democracy, traditional leadership and the international economy in South Africa* that summarises a dominant approach in the analysis of traditional leadership in South Africa. In this paper, Koelble purports to be articulating what he sees as two different approaches in explaining what he invariably describes as 'the resurgence of traditional leadership' in South Africa. However, on closer analysis, it is evident that these approaches are a variation of the same paradigm of analysis on traditional leadership. At the core of the arguments in this paradigm are the following:

- Traditional leadership as a system that allows for inheritance of leadership is incompatible with democracy.
- Traditional leadership should be becoming extinct, but it continues to thrive both because the institutional local governance changes in rural areas are lagging behind and because government is mistakenly supporting this system although it contradicts democracy.
- An infiltration of democratic values and economic models propounded in global discourse will help the local establishment of democracy that will eventually displace undemocratic forms of governance such as traditional leadership.
- Despite the cultural relativism of those who support traditional leadership, the objective and rational principles of democracy demand that the state ensures access to democracy as a commodity to which all humans are entitled.

Although Koelble differentiates between a 'scientific approach' to analysis of traditional leadership (that illustrates conditions in which traditional leadership resurges despite democracy being universal and objective) and a 'conceptual approach' (that emphasises words and meaning), the premises outlined above are taken for granted as informing the analysis of difficulties in realising the elimination of traditional leadership as an option in political governance systems. Like other prominent writers in this school (Ntsebeza 2006, Cousins 2007), Koelble's writing is informed by the basic assumption that traditional leadership is crucially about apartheid's manipulative measures that sought to legitimise separate development. Traditional leadership should therefore not be sustained in a political democracy, as it contradicts the core values of freedom and choice.

There is also an assumption that can be attributed mainly to Mahmood Mamdani (1996) that rural citizens under traditional authorities are not true citizens. They are subjects of undemocratic authority, which does not uphold systems of accountability to the people. Issues informing this assumption are that traditional leadership does not give everyone a chance to be elected and it does not appear to have systems for recourse against the unfair exercise of power. With regards to the former, women are specifically disadvantaged by a system that favours men via patriarchy in the system of inheritance – the primogeniture that is practised in succession. Traditional leadership is therefore detrimental to women's rights to equality in rural areas. This is articulated in detail by Bentley (2005), as well as by other democratic pragmatists. Despite their not articulating the gap between the situation of women in urban areas and that of women in rural areas in terms of rights, vis-à-vis property or other social entitlements, the overriding implicit argument is that women in rural areas under traditional leadership (presumably all poor and docile) are abused in terms of their constitutional rights being constrained.

In recent writing there is also a common assumption that 'traditional leaders have re-inserted themselves into the political discourse in South Africa in fundamental ways. To ignore the issues that arise from this re-insertion into the body politic is to imperil any comprehensive analysis of South African democracy...' (Koeble 2005: 12). Even some of those not falling entirely in the school of democratic pragmatism, such as De Jong (2006) and Oomen (2005), also propound this self 're-insertion' of traditional leadership. While De Jong cites the overthrow of the anti-traditional leadership thinking within the South African government as a result of 'traditionalist constituencies reasserting themselves' (2006: 11), Oomen describes her book as being about 'the surprising resurgence of traditional authority and customary law in post-apartheid South Africa' (2005: 2).

This last assumption is perhaps the most illustrative of how formal discourse can be self-centred. It is noteworthy that when government processes make an issue of something that government wants to formally rationalise in terms of policy, those affected will react, respond, and lobby for their interests. Besides, it has always been a conventional government and the elites' attitude to trivialize local politics until it matters directly to the elites. Does 're-insertion' mean that traditional leaders have consciously plotted re-entry into a domain that they had exited? Or does it mean that they have been allowed to re-enter the discourse of political debate as soon as the elite saw it fit to deal with them? Sithole (2006) demonstrates elitism of discourse with an emphasis on why historical material, especially archives, is prone to elitist interpretation and must be used with critical caution.) How one measures the claim of 'resurgence' of traditional leadership when they have always been there during colonial (and even pre-colonial) times needs to be elucidated more sharply than is currently the case. What, however, is indeed evident is that traditional leadership is of late receiving increasingly close attention from the government, the media, and from academics. Whether this attention means that previously traditional leadership had been dormant or was fading away within the so-called 'traditional communities', is a question that should be open to scrutiny.

Some writers in this democratic pragmatism tradition attribute this perceived 'resurgence' to the political trade-offs that were made between government and traditional leadership for purposes of facilitating national and local elections. Lungisile Ntsebeza in his book with quite a telling title, *Democracy compromised*, vividly tracks these trade-offs, including how traditional leaders were able to strategically influence policy and legislative processes to their end. His articulation of these events shows strategic lobbying during the policy formulation processes, use of government resources, as well as political coercion by traditional authorities in order to reassert themselves. He argues that:

[Traditional leaders] have waged concerted campaigns and lobbied government, including...bypassing official channels, to ensure a place in the emerging South African democracy. Ironically, traditional authorities have used resources the government has made available to them to achieve their objectives. For example the government has established Houses of Traditional Leaders in all six provinces that have traditional authorities, as well as the national Council of Traditional Leaders. Traditional authorities have used these resources to consolidate their position. Those who are in Parliament, for example, chiefs Holomisa and Nonkanyana, have also ensured that they use their positions as Members of Parliament of the ANC to advance the interests of their constituency.

In addition, the collaboration between traditional authorities, the Congress of Traditional Leaders of South Africa (CONTRALESA) and Inkatha has further strengthened their positions. The ANC finds itself in a position where it has to nurse the relationship with CONTRALESA in order not to lose the support of traditional authorities in this organization, and presumably their followers. At the same

time, the ANC seems reluctant to strain relations with Inkatha especially given the history of political violence in KwaZulu-Natal in the 1980s and early 1990s... (Ntsebeza, 2006: 289–290)

Other writers from this school of analysis have been probing the relationship between traditional leadership and tenure systems. After articulating all the practical issues that constrain land administration in rural areas, which government has had to identify and make necessary resources to resolve, Cousins and Claassens (2004: 151) offer the following conclusion:

In relations to land rights, one view is that only land titling (that is, private ownership) provides adequate tenure security – but forms of group title must be made available, as well as individual title, given strong rural demand for a community based form of tenure. Interest groups in favour of titling include emergent commercial farmers, businessmen, chiefs (on condition that titles are issued to themselves or traditional councils), and occasionally women (some of whom feel that freehold can best provide land rights free from the constraints of patriarchal conditions). The strongest demand from the ground, however is for security of rights of families and individuals, within a system that secures access to common property... This need not take the form of titling.

Of course, given the fact that most *amakhosi*<sup>27</sup> admit to being facilitators of land-use rights in a context where families already perform land transactions between themselves, they would be puzzled by the novelty that this argument brings. Even when pushed for suggestions, the democratic pragmatists bring little that is far from current realities; there is an illusion of complex conceptual squabbles in their arguments. Proponents of this school have created an image of traditional leaders as people who were given power by an illegitimate regime, who have orchestrated political strategies to keep that power, and who have been successful in coercing the docile rural masses and government in doing this, despite the conceptual anomaly that they are within modern forms of governance. For this reason, those who advance this school of thought and who engage in any thinking on the integration of traditional leadership with state institutions do so with an ambivalent feeling and a sense of compromise.

## The organic democracy argument

While the pragmatists are working on the puzzle of how to fit traditional leadership and elected governance systems together, with some quickly declaring traditional leadership ‘unfitting’, another body of thought exists that sees traditional leadership as a different, unique system of democracy. The proponents of this school of thought do not see traditional leadership as an ‘anomaly’, a ‘compromise of democracy’ or a ‘contradiction’ that exists within a more legitimate setting of modern, more generically applicable governance. They see traditional leadership as a system of governance that fulfils different needs for people who understand more than one type of democracy. A compromised understanding of this thinking sees traditional leadership as an institution that fulfils a governance gap where conventional democracy has not fully extended itself. Of course, this version of the thinking attempts to minimise the endorsement for what is seen as a less democratic system by posing traditional leadership merely as a ‘manifestation of destitution for proper governance’.

27 In KwaZulu-Natal reference to the positions of chiefship, kingship, and royalty is preferred in indigenous languages following an equating of terms such as ‘chiefs’ and ‘headmen’ with colonial manipulation and subjugation. Thus *inkosi* (‘chief’), *amakhosi* (‘chiefs’), *induna* (‘headman’), *izinduna* (‘headmen’) *izibonda* (‘tribal messengers/public relations officers’) are preferred indigenous terms for positions within traditional councils.

It is tempting to brand academics of this school of thought as conservative, or, at best, as cultural relativists. However, there are basic premises in their thinking that distinguish them from the simple cultural relativism that is often portrayed as locking people up in cultures without recourse to critical assessment of their circumstances and rights. The assumptions of this school of thought are as follows:

- Despite the abuse of power and the manipulation of traditional leaders by apartheid, traditional leadership as a form of governance predates and has co-existed with the state-based system of governance in Africa. There has never been a time since European colonialism when traditional leadership disappeared and, therefore, as a system of governance, it was not 'invented' by apartheid. It has been abused and manipulated, and the extent to which it was abused needs careful analysis.
- While the human universalism that democratic pragmatists propound via reification of individual human rights is undisputed, organic democracy proponents believe that traditional leadership offers unique attributes of leadership that fulfil specific social and governance needs of people as communities. Communities operate in different ways; the generic institutional packages of the Western form of democracy to which those who need must help themselves, are not the only form of democracy that people may wish to have. Some studies (see Hughes, 1969, discussed briefly below) show that people value different qualities in leadership and governance (if those terms could be conflated to mean the same thing, in the first instance), and co-existence of these options is relevant in the current historical epoch. More studies need to be done in this regard.
- The location of traditional leadership within communities both physically and culturally serves a unique purpose to which people must be entitled. This is over and above the often paternalistically expressed view on the inadequacies of local government efficiency in many rural communities – a gap that traditional leaders are seen to supplement.
- Western democracy is often caught up in how it is elected and what institutions extend it. It is informed by principles that must play themselves out in order for justice to all to be accessible and visible. Traditional leadership should perhaps be seen as an alternative form of democracy that places less emphasis on how governance comes into being and more emphasis on the rationalisation of justice, based on cultural-moral principles and expressed human feeling, all of which is vigorously negotiated on a case-by-case social issue basis. Traditional leadership, in this sense, is therefore a facilitatory democracy more focused on issues than rigidified processes.
- Cultural relativism is not mutually exclusive of individual human rights, and relativism must not be interpreted to mean disabling of people's ability to rationalise and change culture continuously and with reference to specific circumstances. This has always been the case with traditional leadership and customs.
- Culture and custom, which is what traditional leadership roles are often aligned with, must not be assumed without reservation to be hindrances to universal democratisation, without differentiation. The interconnectedness of culture and custom must not be trivialised as something that can be changed by mere proclamation of legislation. For example, while the argument against gender imbalances to succession is legitimate, it is not possible to legislate against the whole patrilineal kinship and marriage system that is practised widely in rural and urban areas, and which, through identity-tracking, allows for men to be legitimate heirs to traditional leadership. Such punitive tendencies will relegate government towards not being taken seriously by people. A cumulative or progressive and negotiated approach is therefore seen as preferable.

The proponents of organic democracy do not argue against the need to democratise traditional leadership, but they contest the basic assumption that traditional leadership is fundamentally undemocratic in the first instance. In an article ironically titled *The secular basis of traditional leadership in KwaZulu-Natal*, Sithole (2005) traces what is 'traditional' about traditional leadership as something that ties their pragmatic social responsibilities towards their citizens with the notions of identity and moral responsibilities to their people – 'their people' essentially meaning the interconnectedness of

people and the shared responsibility for one another in ways that would be vulgarised as nepotism in Western contexts. The African setting seeks to be tied by identity rather than shying away from it, to a point where joining a new traditional authority jurisdiction (*ukukhonza*) is regarded as expressing a wish to be honorarily *related* to its people. After examining the operational circumstances of traditional leadership, Sithole (2005: 120) concludes that ‘an appropriate approach’ to traditional leadership would be to:

- support traditional leaders with relevant tailor-made education and procedure/protocol formation,
- establish forums of dialogue and good relations between them and elected counsellors,
- prioritise issues of land management with respect to forming core focal areas for traditional authorities,
- establish a good working relationship between these leaders and the various other departments whose work overlaps with roles of traditional leaders – even while the unresolved legislative matters around inheritance of position and democratic election are pending, and
- attempt to establish a provincial system of accountability in the traditional leadership system and procedural means of accountability with various departments.

The importance of training and empowerment with education and information on policy, legislation and various models of democracy have been identified by development practitioners (see Wimble 2006), some academics and traditional leaders themselves. However, care should be taken not to confuse training and education as implying a need for a ‘civilising process’ on the part of traditional leaders. People follow traditional leaders as traditional leaders not as upgrades towards bureaucratically oriented politicians. In 1969 Daniel Hughes analysed people’s differentiation of qualities in various forms of leaders in Mexico. His research shows that while intelligent and experienced leaders are important both in traditional and newer forms of government, people have different expectations of the attributes of people holding these positions. Those holding positions in traditional leadership are expected to be ‘father to the people’, ‘to have patience’, and ‘to have an ability to foster co-operation’. Those in elected political positions are expected to have distinct capability in legislation and to display education-informed merit. In as much as intelligent, exposed and experienced traditional leaders are highly desirable, traditional leadership is something different from elected political leadership, and there is a need to intensively analyse what purpose it serves for the communities under it. Of course, there is also a need (as Bentley [2005] argues) to understand to what degree individuals can opt out of this system of governance, but the same may be asked of the state, particularly when it is seen as not fulfilling the needs of some of its citizens.

One of the important issues that is lacking in the discourse about traditional leadership, especially among the advocates of democratic pragmatism, is a recognition of the continuum of life between rural and urban areas. For example, the issue of land rights, which are not legally secure in rural areas under traditional leadership, is often portrayed as if it is a unique phenomenon. There is no attempt to define the security of rural land tenure together with security of livelihoods – the totality of security based on assets that could be spread between the rural and the urban spaces. This sectionalism with regards to a rather historically complicated colonial reality that affects the African population in South Africa, makes the idea of democracy and human rights a matter of expensive principles that can be pondered upon only by those who can afford to do so. Many people, who were affected by forced labour and whose poor socio-economic status continues to be shaped by the socio-economic exigencies that they cannot control, would find the promise that their tenure status would improve if ownership rights were strengthened in rural areas, somewhat idealistic.

There is a sum total of converging elements in the life of the black South African living in rural areas:

- The meagre wages that can only be accessed via entry into the squalor of informal and low cost housing.
- Lack of social investment towards social mobility via impact-driven education.
- Reliance on extended family and social capital in rural and urban areas.
- A base of human disposal in the form of retirement or burial space (or perhaps a social safety net) back in the rural areas.

These various life elements combine to give rise to an unavoidable reality for most black, and particularly African, people who cannot afford the luxury of matching the theory of democracy and rights directly with their lived reality. It is difficult for a democratic pragmatist to accept this reality as a norm to contend with and then to depart from addressing this from its current reality. What they rather depart from are the principles of how 'things democratic' should function. However, in South Africa, anthropologists have long realised that the social relations in most rural areas are underpinned by a socio-economic reality that has a specific colonial history in which there are multiple-site-households that members try to hold together via a sum total of economic and social capital support for one another. These households have sites in both urban and rural settings. The extent to which townships, informal settlements and the low-cost housing sites merely serve the purpose of holding together a social unit, partly based in the rural areas, in search of socio-economic survival must be established and recognised.

Research conducted by the Provincial Planning and Development Commission in KwaZulu-Natal (2005) illustrates the level of these linkages. The report argues that the link between the rural and the urban is such that the rural provides a social safety setting for people who are open to a range of vulnerabilities in the urban context. The linkages between the rural and the urban are thus strong, and involve the flow of people, goods and money. In this context, human mobility is variable, and includes long-term linkages that sometimes end in the retirement or burial of people in rural areas who have spent most of their life in an urban setting. This reality of fluid linkages between the rural and the urban demands that the definition of security, not only of tenure, but also of livelihoods, needs to be looked at in a holistic manner. This is in stark contrast to the approach of pragmatists who look at the theoretical, legal security of ownership of land as the ultimate security that all people desire, and misses the complexity of the lives of the black rural masses whose economic means are unstable, especially in the urban context.

## Changes in the policy context concerning traditional leaders

There are many African countries that have dealt with the question of integrating traditional leaders into post-liberation governance systems. These include Botswana, Zimbabwe, Ghana, Namibia and Uganda among others. The South African White Paper on Traditional Leadership takes a favourable view of the Ghanaian model, which 'recognises the institution of traditional leadership' and provides for the 'establishment of national and regional houses of traditional leadership', but states that while 'traditional leaders have a role to play in issues of development...they are forbidden from active participation in party politics' (DPLG 2002: 16).

Although the institution of traditional leadership continued to exist under apartheid, the impetus for formally recognising the role and legitimacy of traditional leaders in a democratic system of government is the acknowledgement that the institution was significantly undermined and manipulated by previous colonial and apartheid administrations. To this end, the 1996 Constitution of the Republic of South Africa set the tone for recognising traditional leaders in a democratic dispensation. The Constitution,

particularly Section 211 (1), provides for the recognition of the 'status and role of traditional leadership, according to customary law, subject to the Constitution', while Section 212 (2) also outlines the role of traditional leaders as dealing with 'matters relating to traditional leadership, the role of traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law'.

Subsequent pieces of legislation have been enacted by the post-apartheid government. These, significantly, include the National House of Traditional Leaders Act (No. 10 of 1997), the Municipal Structures Act (No. 117 of 1998), the White Paper on Traditional Leadership and Governance (2003) and the Communal Land Rights Act (No. 11 of 2004), as well as a number of provincial statutes. The National House of Traditional Leaders Act provides for the formation of the National House of Traditional Leaders, whose function is to 'promote the role of traditional leadership within a democratic constitutional dispensation.' In the context of local government legislation, Section 81 and Subsections (1) – (4) of the Municipal Structures Act make provisions for the consultation of traditional leaders in decision-making in those local municipalities presiding over areas that fit the definition of a 'traditional community.'

Pertinent to the issue of the integration of traditional leadership into the South African governance system is the Traditional Leadership and Governance Framework Act (No. 41 of 2003) (TLGFA) which outlines the roles and functions of the institution of traditional leadership within the broader thrust of the post-1994 democratic dispensation in South Africa. In this regard, Section 2(1) (a) of the act defines a 'traditional community' as any community which 'is subject to a system of traditional leadership in terms of that community's customs', and accordingly observes what the act defines as 'a system of customary law'. Section 3.2 (b) of the White Paper on Traditional Leadership and Governance, on the other hand, emphasises the role of traditional leaders as 'custodians of culture, tradition and custom'. In addition to this, Section 3 (1) and (2) of the TLGFA provides for the establishment of traditional councils by a 'recognised traditional community'. Section 2 states that such a traditional council should be constituted of 40% of democratically elected members of the traditional community, and that 'at least a third of the members of the council must be women'. The accumulative aspect of transformation (i.e. incremental alignment with the Constitution) is in the wording itself – 'at least a third'.

While driven by a quest to deal with locally specific issues, the provincial acts also serve to reinforce the provisions of the TLGFA, particularly matters pertaining to the recognition of the institution of traditional leadership, and its roles, powers and functions, as well as those of traditional leaders, among others. Limpopo, KwaZulu-Natal and the Eastern Cape, for example, have enacted their own provincial acts, in conformity with the requirement of the national legislation, in particular the TLGFA, to address the question of traditional leadership, and matters relating to customary law and the administration of communal land and customary law within traditional communities. Their acts take the intentions of the national Framework further by recognising traditional leadership, traditional institutions and communities via the 'establishment and recognition' of traditional councils, to provide guidelines for the operation of traditional institutions, clarifying the roles and functions of traditional leaders and other related matters, as well as laying out codes of conduct for officials of traditional leadership institutions.

The TLGFA and its provincial counterparts make it the duty of a traditional community to, subject to recognition by the premier of a province, establish a 'traditional council in line with principles set out in provincial legislation' (Section 3 of the TLGFA). Traditional councils should have partnerships with municipalities 'based on the principles of mutual respect and recognition of the status and roles of the respective parties' (Section 5). According to the act, the traditional councils are new institutions that are aimed at replacing the old tribal authorities of the previous years.

The functions of Traditional Councils as stated in Section 4 of the act, are outlined as, in subsections (1) (a) '[a]dministering the affairs of the traditional community in accordance with customs and tradition', (1) (c) 'supporting municipalities in the identification of community needs', and (1) (h) 'promoting the ideals of co-operative governance, integrated development planning, sustainable development and service delivery', among others.

From the perspective of national government, traditional leadership has a central role to play in local governance, development and service delivery. This vision is best captured in the observation made by the former Minister for Provincial and Local Government, Sydney Mufamadi. Mufamadi writes in the foreword to the Draft White Paper on Traditional Leadership and Governance that:

It is the Department's considered view that the institution has a place in our democracy, and has a potential to transform and contribute enormously towards the restoration of the moral fibre of our society and in the reconstruction and development of the country, especially in rural areas. It is also important that conditions for democratic governance and stability in rural areas are created so that accelerated service delivery and sustainable development can be achieved. This will only be possible if measures are taken to ensure that people in rural areas shape the character and form of the institution of traditional leadership at a local level, inform how it operates and hold it accountable. (DPLG 2002: 4)

The minister's observation essentially describes the government's stance on traditional leaders: the necessary integration of the institution of traditional leadership in governance within the democratic dispensation, more particularly in rural areas.

## The perspective of traditional leaders

Engaging traditional leaders themselves during this fifteen year review did not yield the kind of feedback that one might assume exists, given what the democratic pragmatists have argued about the reassertion of traditional leadership on the agenda of a democratic government. The issues raised by traditional leaders show that, from their perspective, the 'achievements' have been tokenistic compared to their expectations of engaging a government oriented towards an African Renaissance and open to creating models that include indigenous systems. There is a level of disappointment that engagement with government has not matched expectations. Issues that the chairpersons of selected Houses of traditional leadership highlighted include:

- A 'superiority complex' of government in engaging traditional leadership, which is conveniently underpinned by the way legislation is framed – from the Constitution to other related pieces of legislation. This point is developed below.
- In some instances there is a contradiction between legislation and the actions of government. This is evident in how some provincial governments have not resourced traditional leadership or formalised interaction with traditional leaders, especially at the local level.
- Interference with traditional procedures even to the point of not following legislation.
- Ignoring attempts initiated by traditional leaders to negotiate issues pertaining to traditional leadership.
- Poor remuneration of traditional leaders.
- Gender equity in political participation versus attention solely on placement of women in terms of the social ideology of communities, i.e. equal voice versus lobbying for mere representation in community institutions.

*Amakhosi* argue that it is not a relationship of equality yet; it continues to be a relationship of state superiority over traditional leadership, a position underpinned in the Constitution, which suggests in Section 211.2. that 'A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs'. It does not say that traditional leadership may function according to applicable legislation and customs, because there is no presupposition of such policy and legislation being communally negotiated with traditional leaders. The implication is that traditional leadership must operate in its own cocoon and simply make sure that it aligns with the broader legislation. In defence, this attitude can be justified on the basis that there are other communities in South Africa that are not under traditional leadership. It can also be justified by noting that the above quote speaks specifically about 'a traditional authority' that must observe both the applicable legislation and customs. This phrase was therefore never directed at positioning traditional leadership in some way in relation to government. However, engaging traditional leaders shows that their issues are more than simply the semantics of policy; their challenges are at a more experiential level.

## Conclusion

There are clear signs that after a long period of uncertainty with regard to its approach towards traditional leadership, government is now adopting the view of organic democracy proponents. For example, current policies seem to indicate that government is seriously considering an integration of traditional leadership within the South African system of governance. However, this is at an early stage as there is still uncertainty as to whether government sees itself as having superior authority over traditional leaders or viewing traditional leadership as a parallel system of governance. This is very clear in the way the mandate of the Commission on Traditional Leadership Claims and Dispute is framed and in the manner in which government positions itself in legislation such as the Communal Land Rights Act, the Municipal Systems Act and the TLGFA and its provincial versions.

South African intellectuals are not in agreement about the relevance of traditional leadership in the South African political system. They are therefore generally ambiguous about how traditional leadership should operate, as well as how to engage their proposals on policy direction. Within this debate, however, there are clearly those who believe that there is a need to phase out traditional leadership from the South African political system, as well as those who are adamant that traditional leaders must be given administrative support and a flexible, mutually agreed, policy environment in which to work.

Traditional leaders are at an early stage of establishing their own systems of analysis and negotiation over a range of social issues at a national level, and using the administrative support of the state afforded by legislation. While they are convinced that their role is critical in the South African political system and that they make real contributions at local levels, the provincial and national levels have been grappling with what types of power and status they should have in terms of the roles they envisage for themselves. For their part, traditional leaders need to make stronger inputs on whether the specification of their roles by the government is desirable to them, given the integrated functions that they currently perform.

The fact that the state apparatus possesses every element of work that traditional leaders once performed, is used to argue the point of their irrelevance and anomalous place in a specifically defined democratic system. Specific issues are raised about their powers in collecting revenue from rural citizenry, their role in local government, in addition to questions about how they deal with customary issues and how this affects women in particular.

While the question of integration of traditional leadership with the state is crucial, and its delay has caused tension both at national and local levels, the approach of government and civil society has not been that of co-operatively crafting a solution, but one of confrontation on technical issues around synergies between state legislation and a customary political system. This standoff seems to be predicated on a denial of the historical nature of the problem, coupled with an insistence on synergised democratic logic (with democracy defined exclusively in terms of representation and open procedural routines). Area-based approaches to and area-based systems of democratic practices are not only inconceivable at this stage, but they are seen as unnecessary because they do not 'add up' with the broad and generic political discourse.

Participatory mechanisms need to be reviewed as there is a feeling among communities and civil society organisations that they have not been sufficiently consulted and, when they have taken the initiative to respond to policy making processes by making submissions, these submissions are ignored. Given the current standoff between the organic democracy proponents and the democracy pragmatists and how this is evidently influencing schools of thought in government, it is important perhaps to employ a variety of methodologies to capture the perceptions on rural governance. Methods could include consultation with communities on matters to do with traditional leadership policy, land management policy, and gender issues in rural governance. But it is also important to employ participatory methodologies and to invite input from indigenous knowledge in developing Integrated Development Plans and Land Use Management Plans. It is also important to devise research that is carefully designed not to see rural governance in isolation from land issues, poverty alleviation and socio-cultural values.

In addition, there is a need to come to a resolution about the legitimacy of investing in an indigenous system of governance with the view to making it work for the communities concerned. Both because traditional leaders operate in communities that are largely poor and because that which is indigenous is often relegated to heritage, merely in its aesthetic sense, there seems to be some hesitation to invest energy to develop a systemic linkage between a traditional leadership system and government. There is also some hesitation to develop a systematic funding and operational system that works for all provinces. These shortcomings are fundamental to all the currently experienced ambiguities. The African Renaissance is thus relegated to political rhetoric for ceremonial occasions.

Coupled with an urgent need to be precise about the legitimate existence of traditional leadership as part of governance in South African rural areas, there is also a need to specify government obligations to ensure smooth operations of the Houses of Traditional Leadership. This must be complemented by the Houses of Traditional Leadership developing their own systems of operation and accountability within the system of traditional leadership and between traditional leadership and government. Municipalities need to formulate institutional arrangements to work with traditional leaders on land use management, integrated development planning and other service delivery issues. Even the loose terms of 'advising', 'being consulted', and 'influencing' policy that are directed at local level relationships must be systematised with real working institutional mechanisms.

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