

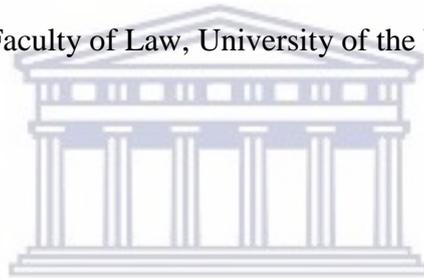
THE TRANSFORMATION OF
LOCAL GOVERNMENT SERVICE DELIVERY IN SOUTH AFRICA:
THE FAILURES AND LIMITS OF LEGISLATING NEW PUBLIC MANAGEMENT

by

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GENERAL DECLARATION

I, Phindile Ntliziywana, do hereby declare that *The Transformation of Local Government Service Delivery in South Africa: The Failures and Limits of Legislating New Public Management* is my original work and has not been submitted for any degree or examination in any university or institution of higher learning. While I have relied on numerous sources and materials to develop the main argument presented in this thesis, all the materials and sources used have been duly and properly acknowledged.

Signed.....

Date.....

Supervisor: Professor Nico Steytler

Signature.....

Date.....



ABSTRACT

Apartheid local government failed to deliver services to the people of South Africa. Instead, it created huge spatial/settlement distortions, economic disparities, skewed urban economic logic, and massive service and infrastructure backlog. This was not the case in apartheid white local government owing to the fact that it was built, partially, on the Weberian model of bureaucracy. With the end of apartheid and the re-incorporation of previously excluded communities into the mainstream of the civil service, there was an urgent need for rapid delivery of services in order to rectify the ravages of apartheid. However, the usefulness of the Weberian model in efficiently delivering services was open to question. Its continued insistence on qualifications and practical experience would have perpetuated the exclusion of the African majority who had been denied participation in the political and economic life. The Weberian bureaucracy, therefore, stood in the way of the new democratic government's intention to transform and deracialise the public service. As a result, the New Public Management (the NPM) was introduced as a policy in both the upper spheres and local government with the aim of ensuring rapid service delivery and deracialising public administration.

However, despite the introduction of the NPM at local government, poor service delivery is still endemic in many municipalities, partly due to corruption, patronage and skills deficits. These problems manifested themselves in the ever-increasing, and often violent, service delivery protests; the withholding of rates in some affluent municipalities; the rising number of provincial interventions in terms of section 139 of the Constitution; the issuing of disclaimers, adverse and qualified audit opinions by the Auditor-General because of poor financial management; and a flurry of court cases and reports on maladministration, corruption and fraud in the procurement of goods and services.

In an attempt to turn the tide at local-government level, there is now a resurgence of the Weberian model of service delivery. Since 2006, there has been a shift in thinking from a wholehearted commitment to the NPM paradigm, which promised to bring efficiency and effectiveness and rid the public service of tardiness, incompetence and time-servers. The persistent dysfunctionality of many municipalities and municipal entities has forced the government to rethink its theoretical position. The return of the Weberian model of service delivery in 2006 was occasioned by the disenchantment with the NPM paradigm which had then been in operation for five years.

This study traces and analyses the competing visions of how local governments should be organised to provide basic services effectively and efficiently – how the traditional Weberian approach brought to fruition only in the dying days of apartheid has been partially replaced by the New Public Management (NPM) approach in an attempt to ensure more effective service delivery and the transformation of the administrations. The study shows that after an initial

embrace of NPM, which produced mainly perverse results (and not effective service delivery), the pendulum has recently swung back to a Weberian approach. This thesis is advanced through a careful analysis of the relevant policies, legal frameworks, and practices.



DEDICATION

This dissertation is dedicated to my dearly beloved son, Lubambo. Thanks for keeping up with a busy father who was always working. May you learn from this achievement that there are no short cuts to success. Only hard work will take you there. To my late father, Mfowomzi Ntliziywana and my ailing mother, Nokuphela Ntliziywana, thank you for working tirelessly to ensure that we obtain what you could not get - education. It is a great pity that my father did not live long enough to see the fruits of his hard work. As for my mother, it was my hope back in 2009 that my Masters thesis would encourage her to regain her good health and live to see more to come. I am delighted that she has been spared to see yet another achievement. More is still to come.



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Special thanks also go to Prof. De Visser who, in his capacity as the coordinator of what was then called Local Government Project, now Multi-level Government Initiative, nudged me along to register for a PhD. His contribution did not end there; we wrote a number of articles together which helped sharpen some of my insights toward this study. I'm equally indebted to my colleagues at UCT, Profs. Danwood Chirwa, Hugh Corder, Pierre De Vos and Rashida Manjo for providing thoughtful insights in some of my chapters. Profs. Penny Andrews and Elrena van de Spuy, Khomotso Moshikaro, Jameelah Omar, Salona Lutchman, Drs. Robert Morrel and Cathy Powell, thank you all for keeping tabs with my progress and, in so doing encouraging me to soldier on. In your different capacities, you have provided a conducive environment for the successful completion of this study.

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I owe a lot and must extend my heartfelt gratitude to my son, Lubambo Ntliziywana, for understanding that Tata needed to do this, my brothers, Thozama, Thembelani, Luyolo and my sisters, Nolunyulo, Nolubabalo, Nongakuyise, Amanda for their emotional support and encouragement. Since my mother can never be thanked enough, may her dreams for her children be realized in her lifetime. I would be remiss not to mention Drs. Lucky Moni, Brian Mantlana and, most recently, Anele Gela, for setting a high standard and motivating me to pursue further studies to reach for the stars, as they did. Prof. Nongxa, you were a source of inspiration throughout my writing. Your example is worth emulating. Mnoneleli Lengoasa, Sibongile Majali, Mthuthuzeli Mkhubukeli, Monde Mketi and Mzoxolo Beko, you are hereby acknowledged for being there whenever I needed to talk. Mkhwe, Slumko Mahlasela and Mzala, Gcinuhlanga Ntsomi, your words of encouragement were a source of strength xa sukuba ndiswel'amandla. Amadodana ase Katolike, thanks for allowing me space to complete this study and motivating me along the way. Zizi, Father Qokolo, you kept on checking on me and my progress. I thank you for caring. Last but not least, MDF team, when I was in doubt you made me believe that I could do it. Xolisa Guzula and Fundiswa Mazwane, I now pass the baton to you.



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CHAPTER ONE:

Introduction

1 Background and problem statement

Apartheid local government failed to deliver services to the people of South Africa. This is due to the fact that there was no single, uniform system of local government at the time.¹ ‘Each province had its own configuration of local government institutions’², modelled on the framework of the British system of local government.³ The situation was compounded by the development, in accordance with the dominant notion of ‘own management for own areas’⁴, of separate local authorities for separated racial groups, which was meant to limit the extent to which affluent white local authorities would bear the financial burden of servicing disadvantaged African areas.⁵ The result was ‘a clever scheme of naked exploitation on the basis of race’⁶, one in which ‘well-resourced and viable commercial centres, with their strong revenue bases, were reserved as white areas’.⁷ These areas were protected from the influx of Africans by a number of statutes⁸ that formalised geographical and racial segregation, thus securing viable rates bases for white people.

On the other hand, the outlying and poor peri-urban areas (townships) without any meaningful formal economies were reserved for African people.⁹ These townships did not have an economic tax base as apartheid regulations barred retail and industrial developments in African areas, forcing African communities and retailers to spend most of their money in white areas.¹⁰ Designed to reinforce the policies of segregation and economic exclusion, local government

¹ De Visser J ‘Developmental local government in South Africa: Institutional fault lines’ (2009) 2 *Commonwealth Journal of Local Governance* 8 (hereafter De Visser 2009).

² De Visser 2009: 8.

³ They were established within the framework of the English Municipal Corporations Act of 1835.

⁴ De Visser 2009: 8.

⁵ *White Paper on Local Government* (9 March 1998) (hereafter *White Paper* 1998).

⁶ De Visser 2009: 8.

⁷ De Visser 2009: 8.

⁸ The Native Land Act 27 of 1913, the Urban Areas Act 21 of 1923 and the subsequent amendments to it, and the Native Trust and Land Act 18 of 1936, are some of the primary laws directed against the African population. The Group Areas Act 41 of 1950 came as a first attack on the land rights of coloureds and Indians.

⁹ De Visser 2009: 8.

¹⁰ *White Paper* 1998: 23 para. A.1.

institutions in townships were stillborn.¹¹ None of them had the resources to make any real difference to the quality of life of their constituencies.¹²

Furthermore, the majority of South Africa's African population was relegated to the homelands, where democratic local authorities similar to those in so-called 'white South Africa' did not exist. Instead, there was a patchwork of different non-democratic institutions – different systems of traditional leadership – which varied from one area to the next as determined by the apartheid geography.¹³ These institutions, seen as the extension of the apartheid state – given that they were used by the apartheid regime and were not accountable to their communities but to the political hegemony of apartheid – provided the public services normally associated with local government.¹⁴

The creation of different local government institutions for different racial groups resulted not only in 'a plethora of parallel bureaucracies responsible to multiple political authorities',¹⁵ but also in an unequal, skewed and racial distribution of wealth, resources and services to the people of South Africa.¹⁶ According to the *White Paper on Local Government*, this 'has fundamentally damaged the spatial, social and economic environments in which people live, work, raise families, and seek to fulfil their aspirations'.¹⁷ It left the townships and homelands in appalling social and economic conditions,¹⁸ as expenditure in these areas was a fraction of what it was in white areas.¹⁹ The legacy of an 'urban economic logic that systematically favoured white urban areas at the cost of black urban and peri-urban areas' has led to the 'tragic and absurd' results of deep, glaring structural disparities, extreme poverty and distorted settlement patterns.²⁰

¹¹ Picard LA & Mogale T *The Limits of Democratic Governance in South Africa* (2015) 129.

¹² *White Paper* 1998: 23 para. A.1.

¹³ Pycroft C 'Addressing rural poverty: Restructuring rural local government' in Pernnell S et al. (eds) *Democratising Local Government: The South African Experiment* (2002) 10.

¹⁴ Khunou SF 'Traditional leadership and independent Bantustans of South Africa: Some milestones of transformative constitutionalism beyond Apartheid' (2009) 12(4) *PER* 84.

¹⁵ Chipkin I 'Transcending bureaucracy: State transformation in the age of the manager' (2011) 77 *Transformation* 41 (hereafter Chipkin 2011).

¹⁶ Chipkin 2011: 41.

¹⁷ *White Paper* 1998: 13 "Introduction/executive summary".

¹⁸ *White Paper* 1998: 24 para. A.1.

¹⁹ Chipkin 2011: 41.

²⁰ *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BCLR 1458 (14 October 1998) para 122.

Apartheid white local government was built, partially, on the Weberian model of bureaucracy. The key components of the Weberian bureaucracy are: hierarchy of authority; qualifications-linked meritocracy; application of impersonal rules; security of tenure; and division of labour. However, not all apartheid local institutions exhibited these components. It was only the local government institutions in areas reserved for white people, the so-called white local authorities, which to a degree incorporated the elements of the Weberian bureaucracy. Towards the end of the apartheid era, they fully embraced the Weberian bureaucracy and became ‘premised on the idea of a machine-like Weberian bureaucracy’.²¹ As a result, they became ‘bureaucratic, law-driven, hierarchical, multi-layered, departmentally fragmented, inward-oriented, racial oligarchies’²² that ‘operated a brutal system of racial segregation and domination’.²³ Gumede and Sipholo describe this bureaucracy as ‘very rigid, hugely-bloated, and acutely geared towards material exploitation and extraction of resources and creations of colonial markets, with very little interest on improving the quality of life for the colonized’.²⁴

With the end of apartheid and the re-incorporation of previously excluded communities into the mainstream of the civil service, there was an urgent need for rapid delivery of services in order to rectify the ravages of apartheid. However, the usefulness of the Weberian model in efficiently delivering services was open to question. Its continued insistence on qualifications and practical experience would have perpetuated the exclusion of the African majority who had been denied participation in the political and economic life. The Weberian bureaucracy, therefore, stood in the way of the new democratic government’s intention to transform and deracialise the public service.

As a result, this government brought in the New Public Management (the NPM) as a policy in both the upper spheres and local government²⁵ with the aim of ensuring rapid service delivery and deracialising public administration. It put in place an elaborate legal framework to give effect to the NPM at local level, which sought to restructure local government internally and externally with the aim of ensuring effective service delivery.

²¹ Chipkin I ‘Set-up for failure: Racial redress in the Department of Public Service and Administration’ in Bentley K et al. (eds) *Racial Redress and Citizenship in South Africa* (2008) 136.

²² Chipkin 2011: 45.

²³ Chipkin 2011: 45.

²⁴ Gumede N & Sipholo KB ‘Governance, restructuring and the New Public Management reform: South African perspectives’ (2014) 4(6) *Journal of Educational and Social Research* 50 (hereafter Gumede & Sipholo 2014).

²⁵ At local level, NPM policy was introduced in 2000.

However, despite the introduction of the NPM at local government, poor service delivery is still endemic in many municipalities, partly due to corruption, patronage and skills deficits. In 2009, nine years after the ushering in of the NPM, the majority of municipalities were already showing signs of distress, and in some cases, of outright dysfunctionality. In this regard, a 2009 assessment conducted by the Department of Cooperative Government and Traditional Affairs (CoGTA) in the 283 municipalities that then existed in the country identified a ‘number of stubborn service delivery and governance problems ... in municipalities over the years’.²⁶ They included:

- huge service delivery and backlog challenges, e.g. housing, water and sanitation;
- poor communication and accountability relationships with communities;
- problems with the political administrative interface;
- corruption and fraud;
- poor financial management;
- weak civil society formations;
- intra- and inter-political party issues negatively affecting governance and delivery; and
- insufficient municipal capacity due to lack of scarce skills.²⁷

These problems manifested themselves in the ever-increasing, and often violent, service delivery protests;²⁸ the withholding of rates in some affluent municipalities;²⁹ the rising number of provincial interventions in terms of section 139 of the Constitution;³⁰ the issuing of disclaimers, adverse and qualified audit opinions by the Auditor-General because of poor

²⁶ Ministry for Cooperative Governance and Traditional Affairs *State of Local Government in South Africa: Overview Report - National State of Local Government* (2009) available at <http://www.gov.za/sites/www.gov.za/files/state-local-gov-rpt1.pdf>, 2009 (accessed 15 October 2016) 4 (hereafter *State of Local Government Report*).

²⁷ *State of Local Government Report* 2009: 4.

²⁸ Powell D, O’Donovan M & De Visser J *Civic Protest Barometer* available at http://dullahomarinstitute.org.za/our-focus/mlgi/civic-protests-barometer-2007-2014/at_download/file (accessed 18 October 2016).

²⁹ Powell D, De Visser J & May A et al. ‘The withholding of rates and taxes in five municipalities’ (2010) 12(4) *Local Government Bulletin* 9.

³⁰ Powell D, O’Donovan M & Ayele Z et al. *Municipal Audit Consistency Barometer* available at http://dullahomarinstitute.org.za/our-focus/mlgi/municipal-audit-consistency-barometer/at_download/file (accessed 15 October 2016).

financial management;³¹ and a flurry of court cases and reports on maladministration, corruption and fraud in the procurement of goods and services.³² The State of Local Government Report also identified three major reasons for provincial interventions in municipalities, namely, governance failures, financial failures and service delivery failures.³³

A subsequent country-wide programme, the Local Government Turnaround Strategy, which emerged from COGTA's earlier assessment of the state of local government in 2009, was created to address the factors undermining local government and to restore satisfactory performance in the country's municipalities. It also highlighted the following as core areas of concern:

- there are serious leadership and governance challenges in municipalities, including weak responsiveness and accountability to communities;
- the financial management of many municipalities is very poor;
- many municipalities are unable to deliver basic services or grow their economies;
- the legacy of apartheid spatial development patterns and inequity continues; and
- there is inadequate human resource capital to ensure professional administration and positive relations between labour, management and councils.³⁴

Five years later, the assessment of the state of local government was no better. A 2014 assessment of local government, which culminated in the policy document entitled *Back to Basics: Serving our Communities Better*,³⁵ placed then 278 municipalities in three categories.

The first category is the top-third municipalities which have got the basics right and are carrying out their tasks adequately.³⁶ These are mainly the metros and secondary cities. The second category concerns the middle third, i.e. those that are just managing or fairly

³¹ Powell D, O'Donovan M & Ayele Z et al. 'Operation Clean Audit 2014 – What went wrong and why?' available at <http://dullahomarinstitute.org.za/our-focus/mlgi/operation-.clean-audit-2014> (accessed 17 November 2016).

³² De Visser J & Steytler N 'Confronting the state of local government: The 2013 Constitutional Court decisions' (2016) VI *Constitutional Court Review* 1.

³³ *State of Local Government Report 2009*: 10.

³⁴ Ministry for Cooperative Governance and Traditional Affairs *Local Government Turnaround Strategy: Working Together, Turning the Tide in Local Government* (2009) 18 (hereafter *Local Government Turnaround Strategy*).

³⁵ Ministry for Cooperative Governance and Traditional Affairs *Back to Basics: Serving our Communities Better!* available at <http://www.cogta.gov.za/summit2014/wp-content/uploads/2014/10/LG-Back-to-Basics-Approach-Document.pdf> (accessed 15 November 2016) (hereafter *Back to Basics*).

³⁶ *Back to Basics* (2014) 4.

functional.³⁷ These are the rural towns that mostly have the basics in place and can deliver on the main functions of local government, but have some areas of deficient performance.³⁸ In the last category are the bottom-third of the country's municipalities, namely those that are 'frankly dysfunctional' due to poor governance, inadequate financial management, and poor accountability mechanisms. These are mostly rural municipalities with concentrated poverty and institutional weaknesses. They are marred by endemic corruption, dysfunctional councils, the absence of structured community engagement, poor financial management, and general decay.³⁹

The *Twenty Year Review*⁴⁰ came to similar conclusions about the state of local government. The Review notes that there are serious service delivery weaknesses in the majority of South African municipalities, which are 'compounded by a range of governance, institutional and financial weaknesses and the weak service-revenue link'.⁴¹ The 2015/2016 Annual Report of the national department responsible for local government (CoGTA) laments the fact that community protests have become a feature of local politics in recent times.⁴² It states that a variety of issues are at play, including instability of municipal administration; declining experience in key management positions; poor relations between elected and appointed officials; high vacancy rates after local elections; and the length of time it takes to conclude performance contracts.⁴³ The first service delivery protest in the new dispensation was recorded in 2004.⁴⁴ Currently, South Africa is seen as the protest capital of the world.⁴⁵

In an attempt to turn the tide at local-government level, there is now a resurgence in the Weberian model of service delivery. Since 2006, there has been a shift in thinking from a wholehearted commitment to the NPM paradigm, which promised to bring efficiency and effectiveness and rid the public service of tardiness, incompetence and time-servers. The

³⁷ *Back to Basics* (2014) 4.

³⁸ *Back to Basics* (2014) 4.

³⁹ *Back to Basics* (2014) 4.

⁴⁰ Ministry for Performance Monitoring and Evaluations *Twenty Year Review South Africa 1994 – 2014* available <http://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Local%20Government.pdf> (accessed 15 January 2017) (hereafter *Twenty Year Review*).

⁴¹ *Twenty Year Review* (2014) 11.

⁴² Ministry for Cooperative Governance and Traditional Affairs *2015/2016 Annual Report* (2016) (hereafter *2015/2016 Annual Report*).

⁴³ *2015/2016 Annual Report* 36.

⁴⁴ Alexander P 'Rebellion of the poor: South Africa's service delivery protests – a preliminary analysis' (2010) 37(123) *Review of African Political Economy* 25.

⁴⁵ Rodrigues C 'Black boers and other revolutionary songs' *Mail and Guardian* 5 April 2010 available at <http://thoughtleader.co.za/chrisrodrigues/2010/04/05/on-revolutionary-songs/> (accessed 15 March 2016).

persistent dysfunctionality of many municipalities and municipal entities has forced the government to rethink its theoretical position. The return of the Weberian model of service delivery in 2006 was occasioned by the disenchantment with the NPM paradigm which had then been in operation for five years.

While not abandoning the NPM paradigm, the government has been swiftly moving towards the Weberian model of service delivery by reintroducing qualifications-linked meritocracy, alongside the NPM's performance-linked meritocracy, in local public administration.

2 Research question

This study seeks to establish why the New Public Management, touted worldwide as the best model for effective delivery of service, has failed to live up to its promise of transforming service delivery for the better and why we see a resurgence of the Weberian model. The further question is whether any aspects of the NPM have survived, or should survive. These questions are answered through the following set of subsidiary questions:

1. Why did national government adopt the NPM policy at national and local level?
2. How were NPM principles expressed in the local government policy and legal framework?
3. Did the manner in which NPM principles were expressed in the legal framework facilitate or impede the implementation thereof?
4. Where the legal framework facilitated the implementation of NPM principles, did it have the desired results of improving service delivery?
5. Given the resurgence of Weberian model of service delivery, is there any role left for the NPM in the legal framework?

3 Argument

This study argues that the NPM was viewed as a break with the apartheid's racist, inefficient and partisan Weberian model of service delivery. The NPM was seen as a dynamic new system to rectify the damage caused by apartheid and deal with service and infrastructure backlogs. Moreover, the NPM also fitted in with the broader transformation imperatives of the new democratic government and the economic framework which was the dominant narrative

globally at the time. The NPM then became national policy and practice, and was also cascaded down to the local sphere of government.

It is further argued, firstly, that, at local-government level, NPM principles were expressed in an extensive legal framework which imposed managerialism in all municipalities. In this regard, municipalities were required by law to confer wider discretion and autonomy to managers, allow lateral or sideways entry into managerial positions and refrain from interfering in municipal administration, thereby effectively letting managers manage. The only tools municipal councils had at their disposal to counterbalance the autonomy of managers were short-term contracts and performance agreements. Secondly, the legal framework provided options for externalising service delivery. These options were public-private partnerships and corporatisation. Given the proximity of local government to the populace and its role in rectifying the ravages of apartheid, privatisation was not made an option at local level. This is so because privatisation entails a total transfer of ownership in municipal functions or assets to the private sector.

It is argued, moreover, that the manner in which NPM principles were expressed in law did not facilitate their implementation. To begin with, the methods or procedures for externalising services are so costly and toilsome that few municipalities use the option of externalising service delivery. First, the section 78 procedure of externalising services through a public-private partnership is unbearably difficult to implement. Secondly, a corporatised entity is still subject to the same laws and procedures as an ordinary service department. As such, corporatisation is no different to ordinary municipal administration and hence there is no incentive to corporatise services: it is simply an additional expense to the local fiscus.

In the second place, managerialism has not been fully implemented. First, it is the council that appoints a second-level manager (i.e. one below the municipal manager), even though the municipal manager, as a head of the administration and the accounting officer, is charged with the formation and development of an administration which is economical, effective, efficient and accountable.⁴⁶ This means, in essence, that while municipal managers are empowered with full discretion in supply chain management, specifically procurement decisions, by excluding political involvement, that same discretion is curtailed in human resource management, especially when it comes to the appointment of senior managers. Secondly, there is a paucity

⁴⁶ Section 55(1)(a) Local Government: Municipal Systems Act 32 of 2000 (hereafter Systems Act).

of laws and regulations emanating from national government and prescribing various actions and outcomes. This leaves scant scope of discretion for managers and, in effect, curtails their powers and stifles their innovativeness. Thirdly, conflicting regulations from CoGTA and the National Treasury confuse managers and thus undermine their ability to exercise discretion. The rivalry between these departments for control of local government leading to conflicting regulations is confounding managers in relation to which regulations to apply to which factual situation.

This study argues further that in instances where NPM principles were expressed in law in a manner that facilitated their implementation, the desired results were not achieved. In some instances, the implementation of the NPM has had adverse effects on service delivery. First, the open skills recruitment system led to patronage appointments or the appointment of unsuitable persons. Secondly, fixed-term contracts led to political manipulation, or what is called the revolving-door phenomenon. Given that the employment contracts coincide more or less with the term of a council, this NPM principles enables the incoming government to clean out the existing administration, in a manner that resembles a revolving door. Thirdly, the NPM allowed neo-patrimonialism to flourish. Lastly, corporatisation, where it was applied, did not lead to efficiency in the delivery of services to local residents. In the case of the City of Johannesburg Metropolitan Municipality, where corporatisation had been fully embraced, lack of efficiency in service delivery has led to the mooted reversal of the policy of using corporatisation as an external service delivery mechanism.

Furthermore, the study argues that the NPM's implementation led to a number of unintended consequences, such as patronage, corruption and maladministration, and that these consequences revived interest in the Weberian model of governance. Three national departments led the way in this regard: then Department of Provincial and Local Government (DPLG), now Co-operative Governance and Traditional Affairs (CoGTA), the National Treasury, and Department of Public Service and Administration (DPSA), that seem to be vying for regulatory control over local government. The DPLG initiated matters in 2006 by introducing qualifications and experience requirements for the appointment of local government managers, doing so via Performance Regulations.⁴⁷ The National Treasury

⁴⁷ Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers (GN R805 GG 29089 of 1 August 2006) (hereafter Performance Regulations).

followed hot on its heels in 2007 with its Competency Regulations.⁴⁸ These set out a comprehensive competency framework consisting of minimum qualifications, work-related experience, core managerial competencies and core occupational competencies for managers.

Not to be outdone, in 2011 CoGTA convinced parliament to amend certain provisions of the Systems Act dealing with the recruitment of managers, the intention of the amendment⁴⁹ being to provide new procedures and competency criteria for appointment, and consequences for appointments made otherwise than in terms of that competency criteria. CoGTA also issued Appointment Regulations⁵⁰ which contained detailed and prescriptive requirements for the appointment of managers. While these seemingly warring departments were competing in introducing the Weberian model at local government, the DPSA was waiting in the wings and eventually enacted the Public Administration Management Act,⁵¹ which also regulates employment in the public administration, including local government. However, the multiple regulations are causing confusion, since their sheer number and complexity make it difficult for municipalities to decide which regulations to apply, let alone decipher their meaning.

Secondly, the Systems Amendment Act refined and reinforced the Weberian principle of work-related experience by requiring an additional element of 'suitability'.⁵² In this regard, your previous experience must be experience that stands one in good stead. This is meant to weed out incompetent people who came in on an open-skills basis. The *Merafong*⁵³ judgment is instructive in this regard: here, the Labour Court found a municipal manager unsuitable because of the strong opinions expressed by the Auditor-General against him in relation to his previous position.⁵⁴ Thirdly, section 54A of the Systems Amendment Act provides for the separation of politics from the administration, another principle that reinforces the revival of Weberian model. Lastly, the resurrection of the Weberian bureaucracy was expressed through a renewed emphasis on professional institutes as a means by which to train and discipline their members.

⁴⁸ Local Government: Municipal Finance Management Act: Municipal Regulations on Minimum Competency Levels (GN R493 GG 29967 of 2007) (hereafter Competency Regulations).

⁴⁹ Local Government: Municipal Systems Amendment Act 7 of 2011 (hereafter Systems Amendment Act).

⁵⁰ Local Government: Regulations on Appointment and Condition of Employment of Senior Managers (GN 21 GG 37245 of 17 January 2014) (hereafter Appointment Regulations).

⁵¹ Act 11 of 2014.

⁵² Section 54A(2) Systems Act.

⁵³ *Merafong City Local Municipality v South African Municipality Workers Union ('SAMWU') and Another* (2016) 37 (ILJ) 1857 (LAC) (*Merafong vs SAMWU*).

⁵⁴ *SAMWU v Merafong* paras. 19 and 22.

It is argued as well that there is still a role left for the NPM to play in the legal framework, albeit a limited one. That role is to soften the harsh elements of the Weberian model. Not all of NPM principles that were incorporated into the legal framework are useful: they produced mainly negative outcomes, thus supporting claims that the NPM is not suitable for developing countries. Short-term contracts, for example, are not beneficial in the current juncture. Managers must be employed on a permanent basis and removed only after disciplinary proceedings. This can be reinforced through professional institutes, which would enforce ethics and discipline on their members. The only NPM principles that are relevant in this strongly Weberian milieu are

- limited sideway entries into local government;
- performance agreements to hold managers personally responsible for their own actions; and
- public-private partnerships (PPPs) for the purposes of mobilising resources and scarce skills from the private sector and transferring financial risks to the private sector. The infrastructure and service backlogs are still too large to be left to the public sector alone. However, the regulatory framework for PPP would have to be relaxed so that it is not as stringent and costly.

4 Literature review and significance of the study

A small body of literature is available on South Africa's application of the NPM. I begin this section on the literature that relates to the application of the NPM at the national level. In this regard, Cameron states that the introduction of the NPM gave line departments greater autonomy to promote improved service delivery by transferring human resource functions to the line departments.⁵⁵ Muthien in turn states that this manifested, inter alia, in the establishment of the senior management corps (SMS), which consists of employees in the top four levels in the public service, namely the Director-General, Deputy Director-General, Chief Director and Director; and their equivalents in the provinces.⁵⁶

⁵⁵ Cameron R 'New Public Management reforms in the South African public service: 1999–2009' (2009)44(4.1) *Journal of Public Administration* 910 920 (hereafter Cameron 2009).

⁵⁶ Muthien Y 'Public service reform: Key challenges of execution' (2014) 36(2) *Strategic Review for Southern Africa* 126 129 (hereafter Muthien 2014).

This came as a result of the unbundling of the highly centralised hierarchical policy and administration functions and the introduction of greater managerial autonomy by devolving executive decision-making to line-function heads of departments.⁵⁷ According to Kaul the authority that is devolved or decentralised to managers is in exchange for accountability for performance.⁵⁸ Cameron states that this is a trade-off between giving managers greater autonomy and monitoring their performance through performance agreements.⁵⁹ Kaul states, with regard to short-term appointments, that this NPM tenet undermined the career system which relied on time served for promotion.⁶⁰ The obsession with performance, according to Hughes, turned this tradition of long service on its head as it led to short-term appointments based on contracts.⁶¹

Cameron,⁶² in his seminal analysis of the NPM reforms in South African public service between 1999 and 2009, states that while there are elements of the NPM in the reform programme, the NPM has not taken off in South Africa in the way that has commonly been supposed. In his subsequent work, Cameron similarly looks at the impact of some of NPM principles relating to managerialism, namely letting managers manage, contract appointments and performance management, and concludes that, although these reforms were not implemented systematically, they influenced the political-administrative relationship.⁶³

Chipkin and Lipietz⁶⁴ look at the late 1990s' restructuring of the public sector and the initiatives to undo or 'transform' its bureaucratic form. They note that the growth of the NPM came about as a strategy to undo the bureaucracy in the public service. The literature by Swartz,⁶⁵ Bardill,⁶⁶

⁵⁷ Muthien 2014: 126-128.

⁵⁸ Kaul M 'Civil service reforms: Lessons from commonwealth experience' (1996) 16(2) *Public Administration and Development* 131 139 (hereafter Kaul 1996).

⁵⁹ Cameron 2009: 920.

⁶⁰ Kaul 1996: 131.

⁶¹ Hughes OE *Public Management and Administration* (1994) 44.

⁶² Cameron 2009: 915.

⁶³ Cameron R 'Redefining political-administrative relationships in South Africa' (2010) 76 *International Review of Administrative Sciences* 676.

⁶⁴ Chipkin I & Lipietz B 'Transforming South Africa's racial bureaucracy: New Public Management and public sector reform in contemporary South Africa' (2012) *Public Affairs Research Institute* (hereafter Chipkin & Lipietz 2012).

⁶⁵ Swartz D 'South Africa in Southern Africa: Governance and developmental challenges' (1999) 29(2) *Africanus* 41.

⁶⁶ Bardill J 'Towards a culture of good governance: the Presidential Review Commission and public sector reform in South Africa' (2000) 20(2) *Public Administration and Development* 103.

and Pieterse⁶⁷ on the reform of the public service and local government also echoes NPM principles. These authors discuss NPM principles as a feature of the overall governmental reform agenda. Tshandu and Kariuki⁶⁸ examine the restructuring of the South African administrative system in order to meet the developmental challenges of service delivery needs. They argue that commendable legislative reforms based on the NPM have been put in place in South Africa's public administration system in the post-1994 period. However, they state that the success of these reforms is encumbered by 'the fragility of the state bureaucracy as manifested in the silo approach characterising the South African government's operations, as well as capacity limitations'.⁶⁹ They use a case study of the Community Development Worker (CDW) programme, operating in the Eastern and Western Cape Provinces, to illustrate their argument.

Gumede and Dipholo⁷⁰ look at the restructuring initiatives and the NPM in the context of good governance. They conclude that the 'South African government has failed to take full advantage of the new wind of change thrust upon it by the NPM' ethos, which is why South Africa is still mired in 'bureaucratic red tape, systemic corruption, inefficiency, ineffectiveness, poor service delivery, poor accountability and nepotism, particularly in the award of government tenders to political dynasties of former liberation movements who claim their legitimacy from the liberation struggle'.⁷¹ They further state that owing to the incompetence of the human capital in South Africa, NPM principles are not implemented objectively. A work edited by Van Donk, et al.,⁷² especially the chapters by Schmidt,⁷³ Smith and Morris⁷⁴ and

⁶⁷ Pieterse E 'Participatory local governance in the making: Opportunities, constraints and prospects' in Parnell S, Pieterse E & Swilling M et al. (eds) *Democratising Local Government: The South African Experiment* (2002).

⁶⁸ Tshandu Z & Kariuki S 'Public administration and service delivery reforms: a post-1994 South African case' (2010) 17(2) *Public Administration* 189 (hereafter Tshandu and Kariuki 2010).

⁶⁹ Tshandu and Kariuki 2010: 189.

⁷⁰ Gumede & Sipholo 2014: 46.

⁷¹ Gumede & Sipholo 2014: 46.

⁷² Van Donk M, Swilling M & Pieterse, E et al. (eds) *Consolidating Developmental Local Government: The South African Experience* (2007).

⁷³ Schmidt D 'From spheres to tiers: Conceptions of local government in South Africa in the period 1994-2006' in Van Donk M, Swilling M & Pieterse E et al. (eds) *Consolidating Developmental Local Government: The South African experience* (2007).

⁷⁴ Smith L & Morris N 'Municipal entities: A panacea for service delivery constraints?' in Van Donk M, Swilling M & Pieterse E et al. (eds) *Consolidating Developmental Local Government: The South African experience* (2007).

Pickering,⁷⁵ reviews NPM principles as part of the overall governmental reform agenda and discusses how complex and contested some of these principles are.

There is some literature on the NPM model of service delivery as it relates to local government. In his article, 'Democracy and delivery: The rationalization of local government in South Africa', Pycroft⁷⁶ considers whether the legislative regime for local government can provide the necessary framework for overcoming the structural and systems weakness of the current form of local government. Thornhill⁷⁷ traces the stages in the development of the new system of local government and administration, focusing on the political structures, office-bearers and the administrative structures. His work examines the principles of the NPM and their implications for service delivery.

Pretorius and Schurink⁷⁸ focus on the role of leadership in assisting local government to achieve optimal service delivery. Koma's work⁷⁹ makes an assessment of, inter alia, the state of service delivery in local government, and proposes salient strategies for undertaking the 'mammoth task' of shifting from mediocrity to excellence in the delivery of services.

In an article entitled 'Performance management in the Systems Act: Implementing accountability', De Visser⁸⁰ explores the legal framework for a specific NPM principle, namely performance management. Similarly, Pickering's work on section 78 of the Systems Act focuses only on NPM principles relating to externalising municipal services.⁸¹ It makes an assessment of the difficulties municipalities encounter in implementing this provision.

⁷⁵ Pickering M 'The distribution of power: Local government and the electricity industry reforms' in Van Donk M, Swilling M & Pieterse E et al. (eds) *Consolidating Developmental Local Government: The South African Experience* (2007).

⁷⁶ Pycroft C 'Democracy and delivery: The rationalization of local government in South Africa' (2002) 66(1) *International Review of Administrative Sciences* 143.

⁷⁷ Thornhill C 'The transformed local government system: Some lessons' (2008) 43(2) *Journal of Public Administration* 492.

⁷⁸ Pretorius D & Schurink W 'Enhancing service delivery in local government: The case of a district municipality' (2007) 5(3) *SA Journal of Human Resource Management* 19.

⁷⁹ Koma SB 'The state of local government in South Africa: Issues, trends and options' (2010) 45(1) *Journal of Public Administration* 111.

⁸⁰ De Visser J 'Performance management in the Systems Act: Implementing accountability' (2001) 3(2) *Local Government Law Bulletin* 7.

⁸¹ Pickering M 'Choosing a service provider: Section 78 of the Systems Act' (2001) 3(4) *Local Government Law Bulletin* 3.

Similarly, Geraldine Mettler⁸² considers whether Chapter 8 of the Systems Act is a help or hindrance in extending and improving the delivery of municipal services. The articles by Mare⁸³ on the provision of municipal services through public-private partnerships, Reynolds⁸⁴ on the public-private partnership regulations, Mawoneke⁸⁵ on public-private partnership procurement process, and Fessha⁸⁶ on tying municipal manager's pay to performance, also discuss the tenets of the NPM in a piecemeal fashion.

The LL.M thesis by Johnson does more or less what this present study seeks to do, but on a small scale.⁸⁷ It examines the policy and legislative framework governing municipal outsourcing, a specific aspect of the NPM also referred to as public-private partnerships, and describes the general features of a range of current South African outsourcing contracts. It also asks more or less the same questions this study seeks to address, namely whether the policy and legislation regulating outsourcing accurately reflect the policy objectives, and whether the service delivery contracts adequately translate these objectives into effective and binding contractual terms.

In his book *Principles of South African Local Government Law*, Bekink discusses the legal framework for local government and 'evaluates the extent to which the new system complies with the general constitutional obligations'.⁸⁸ He discusses the various options a municipality could use in externalising its services. A chapter by Van de Waldt in a book on environmental law and local government in South Africa⁸⁹ also discusses the subject of external service delivery mechanisms. De Visser's book *Developmental Local Government: A case study of South Africa* discusses the transformation of local government service delivery. Steytler and De Visser,⁹⁰ in their seminal work, discuss many of these NPM principles in detail.

There is very limited legal analysis on the NPM as it relates to local government. The literature surveyed above, for example, discusses a legal aspect of a specific NPM principle and assess

⁸² Mettler G 'Municipal service: Is Chapter 8 of the Systems Act a help or a hindrance?' (2003) 5(2) *Local Government Bulletin* 10.

⁸³ Mare C 'Municipal services: Public-private partnerships' (2003) 5(4) *Local Government Bulletin* 5.

⁸⁴ Reynolds K 'The new municipal PPP regulations' (2005) 7(2) *Local Government Bulletin* 7.

⁸⁵ Mawoneke G 'The PPP procurement process' (2005) 7(3) *Local Government Bulletin* 12.

⁸⁶ Fessha Y 'Tying municipal manager's pay to performance' (2006) 8(3) *Local Government Bulletin* 9.

⁸⁷ Johnson CV *Outsourcing Basic Municipal Services: Policy, Legislation and Contracts* (LL.M thesis, University of the Western Cape, 2004).

⁸⁸ Bekink B *Principles of South African Local Government Law* (2006).

⁸⁹ Van der Waldt G 'Municipal service delivery and the environment' in Du Plessis AA (ed) *Local Government and Environmental Law in South Africa* (2015).

⁹⁰ Steytler N & De Visser J *Local Government Law of South Africa* (2007) (hereafter Steytler & De Visser 2007).

whether it thwarts or facilitates implementation of the NPM ethos for effective delivery of services. This does not give a global picture of the legal analysis on the NPM as a whole. For example, De Visser examines the legal framework for a specific the NPM principle, namely performance management. Similarly, Pickering focuses only on NPM principles relating to externalising municipal services. Likewise, Mettler only discusses Chapter 8 of the Systems Act. The same consideration applies to the articles by Mare, Reynolds, Mawoneke and Fessha Johnson's study is narrow in its focus, only analysing the legislative framework as it relates, narrowly, to public-private partnerships rather than the entire NPM package.

Even though Bekink does discuss the various options a municipality could use in externalising its services, he does not use the NPM as the philosophical or theoretical underpinning of such options. Neither does he set out to analyse the legislative framework underpinning the NPM and assess whether it frustrates or enables the proper implementation of the NPM in South Africa. The same can be said about the chapter by Van de Waldt, which treats the subject of external service delivery modes in general terms. De Visser's book does not discuss the transformation of local government service delivery in the light of the NPM paradigm, let alone assess the legislation underlying it. Similarly, Steytler and De Visser discuss many of these NPM principles broadly and not under the theme of the NPM.

From the above, it is clear that scholars have not addressed the questions which this thesis raises, namely why the NPM model of service delivery failed in South Africa and why we see a resurgence of the Weberian model. The leading scholars in this area come mostly from a social sciences background and do not offer the legal perspective this study brings to the issue, namely, whether the legislative framework underpinning the NPM facilitated or thwarted the implementation of the NPM for effective delivery of services at local government level. The legal literature surveyed above only discusses specific aspects of the legislative framework underpinning the NPM and not the legal regime for the NPM as a whole.

In some cases, while NPM principles are discussed, they are not discussed under the lenses of the NPM. The NPM is not presented as the philosophical underpinning for the principles of deconcentration of powers to managers, contract appointments, performance management, corporatisation and public-private partnerships. As a result, these principles are not analysed in the light of what the NPM model of service delivery sought to achieve, why it has failed to achieve the results and why we see the resurgence of the Weberian model of service delivery.

There is, therefore, a gap in the literature regarding the legislative framework that gives effect to the NPM ethos and whether it provides an enabling environment for NPM principles to be fully implemented in South Africa or not. This study seeks to plug that gap in the literature. It will thus contribute to an understanding of local government reforms in light of the NPM ethos and the way in which it sought to enhance the delivery of essential services.

5 Methodology

This study is based on a critical analysis and review of both primary and secondary literature relevant to the subject area. As this suggests, desk-oriented research is the methodology that is employed herein. The most important of the primary sources are the Constitution of South Africa, legislation and government policies. Reference is also made to the relevant case law that interprets the primary sources, and to regulations and government publications on the NPM.

In addition to using the primary sources above, this study also places considerable reliance on secondary sources such as scholarly works in the form of books and academic articles on New Public Management and the Weberian model of service delivery. Analysing these scholarly works about the approaches and experiences of other countries has provided useful lessons in understanding theoretical and conceptual foundations of the relevant models, especially the NPM. Given that the NPM reform movement began in the Anglo-Saxon world, this study has used the experiences of these countries to draw lessons on the implementation of the NPM reform wave herein. Furthermore, various internet sites were consulted for relevant data and updated information.

6 Overview of chapters

This study is presented in nine chapters. Chapter Two deals with theories of effective service delivery and looks in particular at the tension between the two of them, namely the Weberian model of bureaucracy and the NPM.

Chapter Three in turn is the first of five chapters which trace the history of this tension. It examines the manifestations of the Weberian model in apartheid local government and its peaking when the writing was on the wall for the demise of apartheid. The chapter shows that apartheid local government was steeped, to an extent, in Weberian dogma. However, the high point of Weberian model was during the dying days of apartheid.

Chapter Four examines the policy debates around the introduction of the New Public Management. It shows that these policy reforms heralded the incorporation of the NPM model of service delivery and shaped a national and local framework of the New Public Management.

Chapter Five discusses the practical implementation of the NPM model at national level. It looks at both the internal restructuring of the personnel management system as well as the service delivery apparatus through the lenses of the NPM.

Chapter Six looks at the internal restructuring of local public administration through the NPM prism. The focus is on NPM principles of managerial autonomy, performance management, and fixed-term contracts, collectively known as managerialism.

Chapter Seven explores the options available to municipalities for externalising the delivery of municipal services. These options are public-private partnerships and corporatisation. Privatisation is not an option at local government as it entails a total transfer of ownership of a municipal service or asset to a private company or provider – this is not permissible in terms of the *White Paper on Local Government*,⁹¹ given the important role the local sphere of government plays in the delivery of services.

Chapter Eight looks at the resurgence of the Weberian model of service delivery, what it seeks to achieve and how it is being implemented. It discusses the uncoordinated introduction of the legislative framework for a Weberian model by three government departments, namely CoGTA, the National Treasury, and DPSA.

Chapter Nine is the conclusion and contains recommendations. Although each chapter, where necessary, includes its own conclusions and recommendations, Chapter Nine draws the general conclusion and brings together all the major recommendations made in the study.

⁹¹ *White Paper* 1998: 168-9 para 2.2.7.

CHAPTER TWO:

Models for effective service delivery in South African local government

1 Introduction

Effective public administration is crucial for the functioning of modern states, whether they are developmental or not. In fact, for developmental states, such as South Africa, to live up to their developmental objectives, there must be an efficient and effective public administration, one which is committed to clearly outlined and systematically implemented development plans and programmes that consciously seek to address poverty and underdevelopment.

This chapter discusses the two theories of effective public administration that have dominated the discourse on the reform of the public service since the early twentieth century. As such, these theories will be used as an analytical framework for investigating the transformation of local government service delivery in South Africa. The two models in question are the classic theory of bureaucracy advanced by Max Weber and the modern New Public Management (the NPM) theory.

The first section of this chapter provides a conceptual exposition of Weberian bureaucracy. Thereafter it considers its key features, starting with the hierarchy of authority, division of labour, impersonal rules, meritocracy and security of tenure, and ending with an account of Weber's fears about the dangers of bureaucracy, especially in relation to democracy. The section concludes by looking at the weaknesses of this model. This discussion will shed light on some of the reasons for the introduction of the NPM.

The next section, then, turns to this second theory, the NPM, which Christopher Hood describes dismissively as a 'public management for all seasons'.¹ Its underpinnings are examined with the view to extrapolating certain lessons which are key to the aims of this thesis, namely understanding the transformation of local government service delivery in South Africa. After having identified the main characteristics of the NPM, the section considers several of the NPM's weaknesses, before comparing and contrasting the two models. This will provide

¹ Hood C 'A public management for all seasons?' (1991) 69 *Public Administration* 8 (hereafter Hood 1991).

an analytical prism through which to view South Africa's experience of administrative reform in subsequent chapters.

2 The Weberian administrative model

Experience tends universally to show that the purely bureaucratic type administrative organisation ... is ... from a purely technical point of view, capable of attaining the highest degree of efficiency and is in this sense formally the most rational known means of carrying out imperative control over human beings. It is superior to any other form in precision, in stability, in stringency of its discipline, and in its reliability. It thus makes possible a particular high degree of calculability of results for the heads of the organisation and for those acting in relation to it. It is finally superior both in intensive efficiency and in the scope of its operations, and is formally capable of application to all kinds of administrative tasks.²

Max Weber, the German scholar who became one of the most celebrated and influential social scientists of the twentieth century, as well as an essentially contested author,³ proposed that a purely bureaucratic state is by far the most effective and efficient form of an administrative state.⁴ He proposed that a modern bureaucratic state or organisation is the most efficient means of controlling the work of large numbers of people, ensuring that decisions are taken according to common criteria. It is technically superior to any other type of organisation in accomplishing complex goals. Furthermore, it brings about equality because civil service rules and codes of conduct reduce discrimination.⁵

Weber maintained that a bureaucratic organisation is rational, efficient and based on expertise because it masters a problem through the application of specialised knowledge. In his words, 'typically speaking, the modern bureaucracy is the most rational and thus inevitable technical instrument for the organisation of government'.⁶ According to Weber, bureaucracy optimises 'precision, speed, unambiguity ... continuity, unity, strict subordination, reduction of friction

² Weber M *The Theory of Social and Economic Organisation* (1964) (edited with a foreword by Talcott Parsons) 24.

³ Raadschelders JCN 'Did Max Weber's agony and ecstasy influence his profession' (2010) 70(2) *Public Administration Review* 304.

⁴ Weber M *The Theory of Social and Economic Organisation* (1947) (translated by Henderson AM & Parsons T) XII, 337 (hereafter Weber M 1947).

⁵ Weber M 1947: 122.

⁶ Weber M *Wirtschaft und Gesellschaft (Economy and Society)* (1980) 124-130 (hereafter Weber M 1980).

and of material and personal costs⁷ in the performance of tasks. He contrasts the modern rational form of bureaucracy, the ideal type bureaucracy, with earlier forms of organisation that relied, more or less, on customary practices and entitlement to office. Thus, he advocates for the distinction between, or separation of, person from office⁸, as will be seen later.

In his encyclopaedic masterpiece *Economy and Society*, published posthumously in 1922, Weber maintained that in order to achieve this level of performance, administrations or organisations must follow a certain structure, in no particular order of significance.⁹ First, positions must be fixed and legally prescribed. Secondly, organisational procedures must be codified in written rules. Thirdly, there must be clear lines of authority connecting superior and subordinate positions. Fourthly, employment in a bureaucratic post must require proven skills in the tasks involved. Lastly, in return for compensation, the individual functionary must devote full working time to the organisation and not permit outside considerations to influence the performance of tasks.¹⁰

From this structure, one can readily identify some of the key characteristics that Weber's ideal type bureaucracy should possess. An administration or organisation must have hierarchy of authority; division of labour; impersonal rules, be meritocratic, and provide security of tenure. Put differently, a 'Weberian bureaucracy consists of a hierarchically structured, professional, rule-bound, impersonal, meritocratic, appointed, and disciplined body of public servants with a specific set of competencies'.¹¹ These characteristics are considered in depth in what follows.

2.1 Hierarchy of authority

Weber maintained that the authority to give commands required for the execution of official duties should be distributed in a stable way and strictly circumscribed by rules that are placed at the disposal of officials.¹² In this regard, positions are arranged in a pyramidal fashion, with

⁷ Weber M 'Bureaucracy' in Kramer FA (ed) *Perspectives on Public Bureaucracy: A Reader on Organisations*. (1973) 6-9 (hereafter Weber 1973).

⁸ Höpfl HM 'Post-bureaucracy and Weber's "modern" bureaucrat' (2006) 19(1) *Journal of Organization Change Management* 17 (Höpfl 2006).

⁹ Weber M *Economy and Society* (1968) (edited by Guenther Roth and Claus Wittich) 967.

¹⁰ Weber 1973: 13.

¹¹ Sager F & Rosser C 'Weber, Wilson, and Hegel: Theories of modern bureaucracy; reflecting on seminal administrative theorists' (2009) *Public Administration Review* 1137 (hereafter Sager & Rosser 2009).

¹² Weber M *From Max Weber: Essays in Sociology* (1946) (edited and translated by Gerth H and Mills CW) 196 (hereafter Weber 1946).

each position responsible to the one above.¹³ This hierarchy is monocratic in the sense that ‘its apex is one person, not a college’.¹⁴ The creation of posts must start from the top and move down to the lowest level of public officials. Thus, once a post of head of department or director-general has been created, the next logical step is the creation of the post of the deputy-director general and then the lower echelons.¹⁵ Similarly, resources are assigned from the top to officials and offices.¹⁶ This is done in order to facilitate the cascading command system.¹⁷

The creation of a cascading system of command makes coordinated decision-making possible.¹⁸ It creates a firmly ordered system of super- and subordination in which there is supervision of the lower offices by the higher ones.¹⁹ Such a system not only creates clear lines of accountability between superior and subordinate positions,²⁰ but offers citizens the possibility of appealing the decisions of a lower office to its higher authority.²¹ It also imposes ‘strict and uniform discipline and control over the personnel’.²²

As Weber put it in his famous essay *Politics as a Vocation*:

The honour of the civil servant is vested in his ability to execute conscientiously the order of the superior authorities, exactly as if the order agreed with his own convictions. This holds even if the order appears wrong to him and if, despite the civil servant’s remonstrances, the authority insists on the order. Without this moral discipline and self-denial, in the highest sense, the whole apparatus falls apart.²³

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¹³ Klingner DE *Public Administration: A Management Approach* (1983) 45 (hereafter Klingner 1983).

¹⁴ Weber M *Wirtschaft und Gesellschaft (Economy and Society)* (1922) 128, 650 (hereafter Weber 1922).

¹⁵ Weber 1922: 125, 650, 655-6.

¹⁶ Weber 1922: 125.

¹⁷ Nengwekhulu RH ‘Public service delivery challenges facing the South African public service’ (2009) 44(2) *Journal of Public Administration* 346.

¹⁸ Giddens A *Central Problems in Social Theory: Action, Structure and Contradiction in Social Analysis* (1989) 278.

¹⁹ Weber 1946: 197.

²⁰ Bernstein SJ & O’Hara P *Public Administration: Organisations, People, and Public Policy* (1979) 41 (hereafter Bernstein & O’Hara 1979).

²¹ Shafritz JM & Hyde AC *Classics of Public Administration* (1992) 51.

²² Hopfl 2006: 10.

²³ Weber M ‘Politik als Beruf’ (1918) (a speech at Munich University, 1918, published in 1919 by Duncker & Humblodt, Munich. Later Published as “Politik als Beruf,” *Gesammelte Politische Schriften*, Muenchen, 1921) 11.

2.2 Division of labour

With regard to the division of labour, Weber asserted that the modern bureaucracy involves a neatly articulated division of labour, with personnel subject to strict and uniform discipline.^{24,25} He wrote that ‘the regular activities required for the purpose of the bureaucratically governed structure are assigned or distributed in a fixed way as official duties’.²⁶ Each office has a well-defined sphere of competencies, with duties or jobs clearly defined and marked off from those of other offices.²⁷

By their nature these functions are assigned to each position, as opposed to being assigned to a person.²⁸ They are also objective and, in their substance, they have been explicitly fixed by previous decisions.²⁹ This characteristic, in essence, creates a principle of fixed and official jurisdictional areas, each area being assigned regular activities as official duties.³⁰ Officials in the ideal Weberian bureaucracy ‘are grouped into *Behorden*, that is, bureaux, departments, agencies, sections or ministries’.³¹ In this regard, the emphasis should be on the positions rather than on persons.

Weber considered office-holding as a *Beruf* (a vocation or profession).³² This finds expression in two ways. First, there is a requirement for a prescribed course of training and special examinations. Secondly, the position of an official has the nature of a duty (*Pflichtcharakter*).³³ Weber maintained that holding office is not considered a source of income to be exploited for rents or emoluments in exchange for the rendering of certain services.³⁴ Nor is holding office to be considered the usual exchange of services for equivalents, as is the case with free labour

²⁴ Weber 1922: 665. The tasks involved in public service were indeed administrative in the dictionary sense that is, following the instructions provided by others without personal responsibility for results.

²⁵ Weber 1922: 125.

²⁶ Weber 1946: 197. See also Shafritz & Hyde 1992: 51.

²⁷ Marcellus IE ‘African cultural value system and the dilemma of bureaucratic malfunctioning: Implications for development in Africa’ (2009) 1(7) *Interdisciplinary Journal of Contemporary Research in Business* 152.

²⁸ Klingner 1983: 46.

²⁹ Sager & Rosser 2009: 1142.

³⁰ Weber M *From Max Weber: Essays in Sociology* (1958) (edited and translated by Gerth H and Mills CW) 650 (hereafter Weber 1958).

³¹ Weber 1922: 125, 650.

³² Weber 1922: 652.

³³ Weber 1922: 652.

³⁴ Weber 1922: 127. See also Shafritz & Hyde 1992: 53.

contracts.³⁵ Entrance into an office, rather, is considered an acceptance of a specific obligation of faithful management in return for a secure existence.³⁶

As such, Weber advocated for the separation of public and private life in terms of interests and finances.³⁷ Official activity should be kept segregated from the private life of officials or bureaucrats. In this regard, officials or bureaucrats have no independent status or income, and office does not become their property: ‘public monies and equipment are divorced from the private property of the official’.³⁸ Inspired by Karl Marx’s assertions about workers being separated from the means of production, Weber envisaged officials being progressively separated from ownership of the means of administration (*Verwaltungsmittel*).³⁹ This means, among other things, that officials cannot appropriate their positions or use their office and its endowments as private property from which to derive additional income.⁴⁰

2.3 Impersonal rules

Weber held that in his ideal type of bureaucracy, the ‘management of the office follows general rules, which are more or less stable, more or less exhaustive, and which can be learned’.⁴¹ In *Economy and Society*, Weber observed that bureaucracy means subjection to impersonal rules which require officials to deal with their subjects impersonally and without respect to person or his or her status.⁴² In his words, ‘all rule (*Herrschaft*) over a multiplicity of people normally requires a staff of administrators reliably executing the general ordinances and specific commands of the *Herrschaft* or a leader’.⁴³ Decision-making in this ideal bureaucracy must be based on the application of standardised rules to similar situations.⁴⁴

These rules should not be formulated on a case-by-case basis, but be abstract and general, applying equally to every bureaucrat or official.⁴⁵ The generality of these rules requires the categorisation of individual cases on the basis of objective criteria. This stands in sharp contrast

³⁵ Roth G & Wittich C *Economy and Society: An Outline of Interpretive Sociology* (1978) 959 (hereafter Roth & Wittich 1978).

³⁶ Weber 1946: 199. See also Roth & Wittich 1978a: 959.

³⁷ Weber 1922: 127, 665.

³⁸ Weber 1946: 197.

³⁹ Weber 1922: 127, 665.

⁴⁰ Etzioni-Halevy E *Bureaucracy and Democracy: A Political Dilemma* (1985) 28.

⁴¹ Weber 1946: 198.

⁴² Weber 1922: 123.

⁴³ Weber 1922: 123.

⁴⁴ Klingner 1983: 46.

⁴⁵ Bernstein & O’Hara 1979: 41.

to the dominant practice in patrimonial societies, where relationships are regulated according to individual privileges and bestowals of favour.⁴⁶

Impersonality refers to equality of treatment of all the officials and clients of an organisation. Officials should make decisions not on the basis of their personal views, but according to the responsibilities of their position and to applicable rules. By simply examining written records, authorities should easily determine if individuals dealing with the organisation or administration have been treated in accordance with these uniform and impersonal rules.⁴⁷

2.4 Meritocratic or professional appointments

Office-holding as a vocation (*Beruf*) also finds expression in the requirement of a prescribed course of training and a prescribed special examination as prerequisites of employment.⁴⁸ To this end, professional qualifications and knowledge (*Fachwissen*) are essential for employment into office and for the proper functioning of bureaucracy. Officials are selected on the basis of objective qualifications, acquired by training and established by examinations. As such, officials owe their positions to examinations and diplomas certifying their professional qualifications.⁴⁹ The selection and promotion should be based on objective, formal measures of expertise (*Fachwissen und Tatsachenkenntnis*, meaning ‘academic qualification and practical experience’).⁵⁰ This selection (*Ernennung*), not election, is done by superior authority on the basis of a contractual relationship between the officials and the organisation.⁵¹ This buttresses the idea of hierarchical subordination. According to Weber, should officials be elected, they would not derive their positions from above, from the superior authority in official hierarchy, but from below (from voters and political parties who give weight not to qualification but to the service such person renders to the political party bosses, in the case of political parties).⁵²

Bureaucrats should be ‘appointed to administrative offices because of their skills (meritocracy) and not because of their ancestry’.⁵³ All employees hired by the administration or organisation

⁴⁶ Weber 1946: 198.

⁴⁷ Bernstein. & O’Hara 1979: 41.

⁴⁸ Weber 1946: 198. See also Roth G & Wittich C 1978: 958.

⁴⁹ Weber 1922: 126-7.

⁵⁰ Klingner 1983: 46.

⁵¹ Weber 1922: 127, 653.

⁵² Weber 1946: 201.

⁵³ Sager & Rosser 2009: 1139.

must demonstrate their qualifications for the job through education, training, or experience. Sager and Rosser reinforce the idea of meritocratic appointment by saying that public servants' education is important, as they are supposed to be highly specialised professionals. According to Ringer, 'public servants are individual officials (not collegial bodies), recruited into a fixed hierarchy of offices on the basis of qualifications that may be ascertained by examinations and certified by diplomas'.⁵⁴

Appointment to office should be open to everyone. Individuals should not be appointed to office on account of their birth or native personal gifts.⁵⁵ The *objective factor* in their appointment should be knowledge and proof of ability.⁵⁶ Such proof guarantees that the state will get what it requires; and since it is the sole condition of appointment, it also guarantees to every citizen the chance of joining the class of civil servants.⁵⁷

The other element of professionalised bureaucracy is that it is subject to a code of professional ethics according to which officials will faithfully execute the duties attending their offices regardless of personal sentiment and disagreement with the policies involved.⁵⁸ As a result, modern bureaucracy is ready to serve whatever party is in power. Reinhard puts it thus: '[T]he security (calculability) of commercial transactions in a competitive economy depends upon this professional neutrality of the civil service.'⁵⁹ Thus, the indispensability of skilled administrators and predictable career ladders make modern bureaucracy autonomous, but professionalism makes it a subservient and neutral tool.⁶⁰

2.5 Security of tenure

Notwithstanding the concentration of expertise in the bureaucracy through meritocratic recruitment, the provision of opportunities for long-term career rewards is also central to the effectiveness of the bureaucracy.⁶¹ In this regard, bureaucratic jobs are for life, and carry a right to a pension and some security against arbitrary dismissal.⁶² This serves to guarantee that

⁵⁴ Sager & Rosser 2009: 1139.

⁵⁵ Sager & Rosser 2009: 1142.

⁵⁶ Sager & Rosser 2009: 1142.

⁵⁷ Sager & Rosser 2009: 1142.

⁵⁸ Reinhard B 'Bureaucracy and the problem of power' (1945) 5(3) *Public Administration Review* 205.

⁵⁹ Reinhard 1945: 205.

⁶⁰ Reinhard 1945: 205.

⁶¹ Evans P *Embedded Autonomy: States and Industrial Transformation* (1995) 30 (hereafter Evans 1995).

⁶² Weber 1922: 127, 654, 676.

specific office duties are discharged free from personal considerations.⁶³ As such, they should regard their work as a full-time career or tenure for life.⁶⁴ Making employees full-time career workers fosters an increased organisational control over them. Promotion is by 'next in line' (*aufrücken*) or seniority, not merit.⁶⁵ This means that there is no way of jumping the queue, in the sense that junior staff cannot overtake senior staff for promotion simply on the basis of performance. Performance or merit is not a requirement for promotion. It is a requirement only for appointment.

Similarly, salaries relate to status, not performance.⁶⁶ They are measured not in terms of work done, as in the case of a wage, but according to rank and possibly, according to the length of service, thus making the office a sought-after position.⁶⁷ The only danger with this, however, is the development of the 'right to office', with the concomitant guild-like 'status group closures of officialdom and economic security'.⁶⁸ Status group closures of officialdom and economic security mean that when there are too few controls, there is a danger that bureaucrats will use the authority conferred by their elite status or membership of control groups or guilds to dominate others, a practice which can be difficult to dislodge.

Instead, the professional public servant should 'find in his office his livelihood and the assured satisfaction of his particular interests'.⁶⁹ This insulates him or her from society, and is a precondition for a functioning bureaucracy.⁷⁰ Without this kind of insulation, the bureaucracy would be exposed to the push and pull of different interest groups. Thus, it is necessary to ensure the bureaucrats enough autonomy to resist corruption and capture by actors whose 'rent-seeking'⁷¹ behaviour would otherwise derail the state's efforts to promote development and formulate policy in the national interest. The ties between the local implementers within the

⁶³ Weber 1946: 202.

⁶⁴ Ringer F *Max Weber: An Intellectual Biography* (2004) 183 (hereafter Ringer 2004).

⁶⁵ This means that meritocracy only applies to appointment, not to promotion.

⁶⁶ Weber 1922: 127, 654, 676.

⁶⁷ Roth & Wittich 1978: 963.

⁶⁸ Roth & Wittich 1978: 963. Status group closures of officialdom and economic security mean that when there are too few controls, there is a danger of elite status or control groups, which become difficult to dislodge. Bureaucrats sometimes dominate people by using their authority.

⁶⁹ Sager & Rosser 2009: 1139.

⁷⁰ Evans 1995: 41.

⁷¹ Evans 1995: 41.

state apparatus and the rent-seekers outside it would undermine the state's functionality.⁷² It would result in the capture of state apparatus by rent-seekers.

In *Economy and Society*, Weber wrote:

According to experience, the relative optimum for the success and maintenance of a rigorous mechanization of the bureaucratic apparatus is offered by an assured salary connected with the opportunity of a career that is not dependent upon mere accident and arbitrariness. Taut discipline and control which at the same time have consideration for the official's sense of honour, and the development of prestige sentiments of the status group as well as the possibility of public criticism also work in the same direction. With all this, the bureaucratic apparatus functions more assuredly than does legal enslavement of functionaries.⁷³

It is important to create a strong corporate cohesion by conferring a distinctive and rewarding status on bureaucrats, by concentrating expertise in the bureaucracy through a highly selective process, and by providing opportunities for long-term career rewards.⁷⁴ Entrance into office is considered an acceptance of a specific obligation of faithful management in return for a secure existence. Without these benefits, which seek to insulate bureaucrats from social pressures, the alternative would be a rentier administration which is captured by privateers as their personal booty.

Accordingly, bureaucracy is capable of attaining the highest degree of rationality and effectiveness. From this perspective, the fully developed bureaucratic mechanism is to other organisations as the machine is to non-mechanical means of production.⁷⁵ This is the case because the division of labour minimises duplication of tasks as well as friction. Hierarchy facilitates central planning and coordination as well as control and discipline. Employment on the basis of qualifications makes for a higher level of knowledge and more competent work. Rules save effort by standardisation; they obviate the need to find a new solution for each individual problem; therefore, they also enable calculability of results. Impersonal detachment

⁷² Evans 1995: 41.

⁷³ Weber M *Economy and Society: An Outline of Interpretive Sociology* (1978) 197-8.

⁷⁴ Evans 1995: 41.

⁷⁵ Weber 1947: 214.

promotes objectivity and prevents irrational actions as well as such inequitable actions as favouritism on the one hand and discrimination on the other.⁷⁶

Weber also insisted that the bureaucracy should be led by a non-bureaucratic head to ensure an unquestioning commitment to the organisation's rationality.⁷⁷ In this regard, personal identification with that individual provides the psychological leverage that reinforces commitment to impersonal rules. This makes it necessary to consider the relationship between the non-bureaucratic head and his or her bureaucracy, a matter discussed below.

3 Political–administrative dichotomy

In his later works, Weber was ambivalent about the political implications of bureaucracy, especially those for democracy. He recognised that the power of the modern bureaucracy was in danger of becoming overwhelming, and this presented a possibility that bureaucracy would overpower democracy.⁷⁸ He was deeply concerned that those who staffed the bureaucracy would themselves become the masters of the state. He saw a potential situation in which the everyday rule of the bureaucracy over parliament and parliamentary government might develop into an uncontrollable bureaucratisation.⁷⁹

Although Weber regarded modern bureaucracy as the only rational form of organisation, one which was 'not only inevitable, but ultimately desirable as well',⁸⁰ he expressed his doubts about its influence. Jackson puts it thus: 'Weber feared that bureaucracy would enslave us all'.⁸¹ He feared that '[b]ureaucracy ... is a precision instrument which can put itself at the disposal of quite varied interests, purely political as well as purely economic ones, or any other sort'.⁸² Expert officials might acquire a great deal of concrete information, which is not always at the disposal of their political superiors, and use it as a source of bureaucratic power and dominate others through knowledge.⁸³ They might even resist policy changes proposed by their political masters, who find themselves in the position of 'dilettantes' or amateurs.⁸⁴

⁷⁶ Etzioni-Halevy 1985: 29.

⁷⁷ Weber 1947: 216.

⁷⁸ Weber 1980: 572, as discussed in Sager & Rosser 2009: 1138.

⁷⁹ Weber 1980: 570.

⁸⁰ Ringer 2004: 221.

⁸¹ Jackson MW 'Bureaucracy in Hegel's political theory' (1986) 18(2) *Administration & Society* 139-57.

⁸² Weber 1968: 990.

⁸³ Etzioni-Halevy 1985: 33.

⁸⁴ Etzioni-Halevy 1985: 33.

Linked to that is the code of bureaucratic secrecy, in terms of which the most important spheres of bureaucratic actions are withdrawn from public scrutiny. Citizens may complain to politicians about bureaucratic action, but that action's secrecy makes redress difficult. This is compounded by the fact that the code of secrecy extends to parliament as well. Bureaucracy fights every attempt by parliament to gain knowledge. In the final analysis, the extent to which bureaucracy exerts power over its political master, and thus endangers democracy, depends largely on the interests of that bureaucracy itself. If it chooses to overrule its master, there is nothing to prevent it from doing so, signalling the dictatorship of the officials. The ruler remains powerless against the bureaucracy.⁸⁵

In an effort to make the state work efficiently and rationally while at the same time keeping the public servant's influence in check, Weber advocated for a strict separation of the political and the administrative spheres.⁸⁶ He stressed the subordination of bureaucracy to its political master, the elected politician. He held that the bureaucrat should be bound by obedience to the political power holder: 'The honour of the civil servant is vested in his ability to execute conscientiously the order of the superior ... even if the order appears wrong.'⁸⁷

In his masterpieces, *Politics as a Vocation*, written in 1919, and *Economy and Society*, Weber distinguished between the political leaders and the public servants.⁸⁸ He asserted that whereas politicians had to 'prove themselves in the legislative and the electoral process and fulfil their duties with an ethic of responsibility, the administrators had to perform their administrative tasks neutrally and follow their political masters to the point of self-denial.'⁸⁹ Weber believed that 'the passionate struggle for power – "*ira et studium*" – is the politician's element, whereas the bureaucrat should strive to execute legal orders dutifully, without anger and passion – "*sine ira et studio*"'.⁹⁰ Overeem concludes that the German scholar 'argued that it was essential that administration stay out of politics'.⁹¹

⁸⁵ Weber 1958: 232-5.

⁸⁶ Sager & Rosser 2009: 1139.

⁸⁷ Weber 1946: 95.

⁸⁸ Sager & Rosser 2009: 1139.

⁸⁹ Sager & Rosser 2009: 1139.

⁹⁰ Weber M 'Politics as a profession' in Winckelmann J (ed) *Collected Political Writings: Max Weber* (1988) 434.

⁹¹ Overeem P 'The value of the dichotomy, politics, administration, and the political neutrality of administrators' (2005) 27(2) *Administrative Theory and Praxis* 315.

4 Summarising the Weberian administrative model

In sum, Weber pictures an effective public administration as a formalised, professionalised, hierarchically organised and meritocratic public administration. He insists on a bureaucracy that displays a clear pattern of authority, the efficient specialisation of tasks, the impersonal and professional ethics of the bureaucrat, and comprehensive record-keeping for ensuring reliability and accountability.

His ideal type of bureaucracy is structured in a manageable and predictable way: manageable, in the sense that jobs are clearly defined, work is performed by experts, and lines of accountability are clearly drawn; and predictable, in the sense that rules are not formulated on the case-by-case basis but are rather abstract and general, applying equally to everyone. However, Weber was not completely at ease with what he saw as the inevitable ascendancy of bureaucracy, fearing that it could become a tool too big for society to handle. Thus, he proposed a strict separation between administration and politics in order to keep the highly efficient and effective but potentially overwhelming bureaucratic apparatus out of politics.⁹²

The officials should not second-guess the orders of their political superior. If the official does not agree with them, he should resign. Without this moral discipline and self-denial, in the highest sense, the whole apparatus falls apart.

5 Problems with the Weberian administrative model

Criticism of the Weberian administrative model emerged from a number of disparate sources, some as early as the 1940s.⁹³ It gained momentum in the late 1960s, peaking in the 1980s through to the 1990s.⁹⁴ What follows is the summary of these different critiques.

Most critics tended to begin by acknowledging that the Weberian model is a great improvement on previous administrative thoughts and practices, such as the patronage and spoils systems.⁹⁵

⁹² Sager & Rosser 2009: 1140.

⁹³ Merton RK 'Bureaucratic structure and personality' (1940) 18(4) *Social Forces* 560 - 568; Selznick P 'An approach to a theory of bureaucracy' (1943) 8(1) *American Sociological Review* 47 - 54; Gouldner AW *Patterns of Industrial Bureaucracy* (1954); Gouldner AW 'Metaphysical pathos and the theory of bureaucracy' (1955) 49(2) *American Political Science Review* 496 - 507; Blau PM *The Dynamics of Bureaucracy* (1955).

⁹⁴ Crozier M *The Bureaucratic Phenomenon* (1964) (hereafter Crozier 1964); Bittner E 'The concept of organization' (1965) 32(1) *Social Research* 239 - 55; and many others.

⁹⁵ Chipkin & Lipietz 2012: 2, quoting Fukuyama 2010, who states in this regard that 'it is precisely the emergence of a professional cadre of state administrators (a mandarin class), whose ties to kin and tribe had been severed or severely weakened, that marks the emergence of the properly modern state form'.

They recognised that it has some strengths, and said it has proved its worth by ushering in the industrial economies of the twentieth century.⁹⁶ They said that its bureaucratic practices underscored industrialisation in the UK, the US and later Prussia, and it was also credited with the success of the most successful of modern states, the developmental states of Japan, South Korea and Taiwan⁹⁷— as well as, in a less dramatic fashion, the positive developmental experiences of Costa Rica, Mauritius and the Indian state of Kerala.⁹⁸

However, they then quickly retorted that it was developed at a particular stage of industrialisation. It suited a relatively small and stable public sector, but has reached a point of diminishing returns in the new era of information technology. They then launched their salvo against the Weberian bureaucratic model, by making six main criticisms: the size of the government, fixed and rigid procedures, the centralized bureaucracies, employment for life, inadequate mechanisms of accountability, and input domination.

5.1 The size of government

The critique relating to the size of the bureaucracy in a Weberian model was on two fronts, namely waste and poor performance. It was charged that the bloated⁹⁹ size of the administration means excessive expenditure is being devoted to funding administrative positions that are now thought unnecessary. The critics say that if it were just a matter of the money being wasted, that would be bad enough, but the inadequacies of a bloated administration have now become apparent, in particular, in terms of efficiency concerns. Hughes charges that because of its size, the tools of the Weberian bureaucracy are very slow and bureaucratic to achieve efficiency in government. This makes administrative performance worse rather than better.¹⁰⁰ In the same vein, Bergmann notes that it bogs one down in time-consuming and despair-creating red tape and paperwork.¹⁰¹

Because of its large size, the critique goes, this model is too cumbersome and dilatory for rapid decision-making and instant communication. It is not only large but lax. This makes it unsuited

⁹⁶ Vecchio RP *Organizational Behaviour* (1991).

⁹⁷ Chipkin & Lipietz 2012: 2, quoting Evans 1995.

⁹⁸ Chipkin & Lipietz 2012: 2, quoting Sandbrook et al. 2007.

⁹⁹ It should be noted that Weber did not envisage a large organisation. It only became large as a result of the specialisation of tasks where everyone performed tasks solely related to his or her office. This created a need to create other offices dealing with matters not dealt with elsewhere.

¹⁰⁰ Hughes OE *Public Management and Administration: An Introduction* (1994) 56.

¹⁰¹ Bergmann BR 'Bloated administration, blighted campuses' (1991) 77(6) *Academe* 16.

for an ‘economy in which economic value is based on information and its manipulation, rather than industrial production’.¹⁰² Although production is still important, it is increasingly based on information systems.¹⁰³ As such, the Weberian bureaucracy has become increasingly anachronistic and irrelevant to the needs of a society changing at breath-taking speed.¹⁰⁴

5.2 Fixed and rigid procedures

The first critique under this rubric is that in the Weberian bureaucratic model, the achievement of results is less important than maintaining processes and rules. Rules themselves become what the organisational effort is directed at achieving, instead of being means of fulfilling the organisation’s purpose. The discipline required of bureaucrats by rules may lead to ‘trained incapacity’, a rigidity of approach which makes it difficult to adapt to altered circumstances.¹⁰⁵ This leads to the undermining of organisational goals, the so-called ‘displacement of goals’ in favour of detailed enforcement of rules and procedures.¹⁰⁶ This also results in inefficiency and the deterioration of the administration’s supposed technical superiority.¹⁰⁷

Furthermore, individual bureaucrats might internalise the rules of the organisation and thereby making them ends in themselves, rather than the means they were meant to be.¹⁰⁸ This is done to protect the legitimacy of one’s actions. Bureaucrats might not be punished for following the rules, even if the consequences of such actions are catastrophic for the general public or the employer.¹⁰⁹ Hummel suggests that bureaucrats become mechanistic technicians who are detached from their humanity, emotions, society, and even their conscience.¹¹⁰ Al-Habil adds that bureaucracy forces humans to substitute their sense of right and wrong while performing their daily tasks in conformity with decisions, rules, and instructions imposed by higher

¹⁰² Pfiffner JP ‘Traditional public administration versus the New Public Management: Accountability versus efficiency’ in Benz A. et al. (eds) *Institutionenbildung in Regierung und Verwaltung: Festschrift für Klaus König* (2004) 4 (hereafter Pfiffner 2004).

¹⁰³ Pfiffner 2004: 3.

¹⁰⁴ Hughes OE *Public Management and Administration* (2003) 17 (hereafter Hughes 2003).

¹⁰⁵ Merton RK ‘Bureaucratic structure and personality’ in Merton et al. (eds) *Reader in Bureaucracy* (1952) 371.

¹⁰⁶ Wallis M *Bureaucracy* (1989) 10.

¹⁰⁷ Hughes 2003: 35.

¹⁰⁸ Dessler G *Organisational Theory: Integrating Structure and Behavior* (1980) 29.

¹⁰⁹ Clegg S *Modern Organizations: Organization Studies in the Post-modern World* (1990) 44 (hereafter Clegg 1990).

¹¹⁰ See also Bodley JH *The Power of Scale: A Global History Approach* (2002) 75.

supervisors, who might be distant from the real social context and its necessities.¹¹¹ Hummel describes this as ‘the bomb that threatens humanity’.¹¹²

This results in the perception that bureaucrats are uncaring and interested only in following rules and regulations. When an individual case does not fit into the rules and seems to require that an exception be made or a rule be stretched, it becomes difficult, if not impossible, for bureaucrats to meet it with alacrity and compassion. This then leaves the individual who is seeking the service with the impression that the bureaucrats are insensitive, unmotivated, overly rigid, unresponsiveness and interested only in serving their own interests and controlling the public.¹¹³ Hummel states that bureaucracy deals with human beings as cases rather than human beings who are in need for social and economic services.¹¹⁴ Thus Hummel concludes that bureaucracy is blind, deaf, and dumb.

Despite some of the advantages of the Weberian bureaucratic model (e.g. precision, continuity, stability, discipline, and reliability), the critics also argue that fixed and rigid procedures and orderly working patterns are not suitable for a constantly changing environment.¹¹⁵ Osborne and Gaebler argue that a Weberian bureaucracy does not function well in a rapidly changing, information-rich, knowledge-intensive society and economy such as that of the 1990s.¹¹⁶ The rigid structures of this model, it is argued, are ‘too cumbersome and inflexible to address the increasingly diverse and fast-changing needs of modern economic and social systems’.¹¹⁷ As such, the argument goes, these structures are prone to stagnation, inefficiency or, even worse, corruption.¹¹⁸ The excessive reliance on rules and regulations inhibit initiative and growth of the employees.

¹¹¹ Al-Habil W *Criticism for Max Weber’s Bureaucracy* (2007) 10.

¹¹² Hummel RP *The Bureaucratic Experience: The Post Modern Challenge* (2007) 24.

¹¹³ Cayer NJ *Public Personnel Administration* (2004) 67 (hereafter Cayer 2004).

¹¹⁴ Hummel 2007: 28.

¹¹⁵ Schön DA *The Reflective Practitioner: How Professionals Think in Action* (1983); Drucker P *The Frontiers of Management* (1986); and Argyris C *Overcoming Organizational Defences: Facilitating Organizational Learning* (1990).

¹¹⁶ Osborne D & Gaebler T *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* (1992) 12.

¹¹⁷ Chipkin & Lipietz 2012: 4.

¹¹⁸ Chipkin & Lipietz 2012: 4.

Crozier also argued that because of this fixation on rules and procedures, a bureaucratic organisation would not be able to self-correct its behaviour by reflecting on and learning from its past mistakes,¹¹⁹ as it puts emphasis on repetition.

5.3 Hierarchy

On the issue of hierarchy, it is argued that once an organisation is set up, the assumption is that establishing the hierarchy, the personnel system, and the like, would lead to satisfactory results by themselves. The efficiency and effectiveness of the organisation in performing its tasks become the concern of someone else. The critics argue that the traditional model has ‘dozens of levels, each with several sub-levels and with barriers established to restrict progress beyond certain point’.¹²⁰ This means the behaviour of workers is controlled from the top, and as such those closest to service delivery points are not able to react quickly enough. Their reaction time is slow because they become so concerned with superior orders and complying with rules that they lose sight of the overall goal or mission.¹²¹

In these dozens of levels, workers must wait to be told what to do by their immediate superiors, who in turn must wait for instructions from their superiors, and so on, because, as Thompson notes, authority is centralised but ability is decentralised.¹²² This bureaucratic culture produces inertia, a lack of enterprise, red tape, mediocrity and inefficiency.¹²³ Sapru states that ‘it encourages administrators to be risk-averse rather than risk-taking and to waste scarce resources instead of using them efficiently’.¹²⁴ It suppresses creativity and extinguishes imagination. It is argued that while there may be a need for order and precision in management, there is now a greater need for speed, flexibility and results, and hence for allowing the organisation to move faster in response to change and challenges.

5.4 Employment for life

In the Weberian bureaucracy, personnel rules are protective of individual employees. It is difficult to discipline employees and impossible to dismiss them despite manifest

¹¹⁹ Crozier 1964: 187.

¹²⁰ Hughes OE *Public Management and Administration: An introduction* (2012) 44.

¹²¹ Pfiffner 2004: 5.

¹²² Thompson V *Modern Organization* (1961).

¹²³ Hughes 2003.

¹²⁴ Sapru RK *Development Administration* (1994).

incompetence. The critique is that this breeds ‘time-servers’¹²⁵ not innovators¹²⁶ in that one cannot make the employees responsive if the employees do not feel like it.¹²⁷ Because of their assured existence, there is no incentive to respond to changes and this results in inertia. They can only be dismissed or disciplined for a wilful violation of the rules or for insubordination to authority or for theft, but even that happens only in circumscribed circumstances.¹²⁸ As such, this model encourages laxity and no longer provides maximum technical efficiency.

5.5 Input domination

Weberian bureaucracy is criticised for putting too much emphasis on inputs as opposed to outputs. It is obsessed with regulating processes and controlling inputs¹²⁹ that are used rather than concerning itself with results.¹³⁰ This is manifest in two ways. First, it encourages ill-discipline in resource use and allows inefficient use and wastage of scarce resources. The critics hold that public budgeting rewards those departments and programmes that spend their monies regardless of what they accomplished through the use of their resources. Saving money while performing the expected job is often rewarded by budget cuts, while those who spend all that they are allocated and ask for more often have a justification for greater resources.¹³¹ This leads to inefficiency, which is a failure to maximize output for a given expenditure or to minimize expenditures for a given output.¹³²

Secondly, it puts emphasis on regulating recruitment processes, focusing on qualifications of people coming into the organisation, not what they can deliver. Its insistence on qualifications excludes people who, while not certificated, might have a proven track record in terms of their outputs. In the Weberian model, these people do not qualify as they are not the best and the brightest.

¹²⁵ Hughes 2012: 44 defines time-servers as bureaucrats who do not work efficiently, who are impossible to dismiss and who merely wait for their retirement day.

¹²⁶ Blau PM *On the Nature of Organizations* (1974).

¹²⁷ Cayer 2004: 68.

¹²⁸ Cayer 2004: 68.

¹²⁹ Such as the number of personnel, the amount of money, the number of vehicles, number of computers, energy consumed, etc.

¹³⁰ Osborne & Gaebler 1992: 14.

¹³¹ Cayer 2004: 69.

¹³² Wilson JQ *Bureaucracy: What Government Agencies Do and Why They Do It* (1989) 147-148

6 The New Public Management

The late 1970s and early 1980s saw the emergence of a theory of effective public administration called the New Public Management (the NPM) or the ‘new managerialism’, as it is referred to in numerous studies.¹³³ ‘New Public Management’¹³⁴ is the term used to ‘chronicle, interpret, and assess the wave of efforts to reform executive government across the world’.¹³⁵ It is an alternative theory that represents a response or a reaction to the bureaucratic pathologies outlined in the preceding discussion. This new model is not a coherent theory per se; it actually has several incarnations, all representing the rejection of some elements of the Weberian bureaucratic state and coalescing under the broad appellation of New Public Management.¹³⁶ In essence, this model seeks to reorganise government in a way that palliates the latter’s ‘accountability deficits through the introduction of market-based mechanisms’.¹³⁷

Minogue contends that the NPM seeks to replace the highly centralised hierarchical organisation structures with decentralised management and further restructure and reduce the size of the public sector, including the central civil services, to make it slimmer.¹³⁸ The NPM’s emphasis is on transferring business and market principles and management techniques from the private into the public sector, which is in line with the neoliberal understanding of state and economy.¹³⁹ The different scholars that feature in this theme state that bureaucratic arrangements once successfully provided security, jobs and economic stability, ensured fairness and equity, and delivered the ‘one size fits all’ services that were needed for most of

¹³³ According to Drechsler W ‘The rise and demise of the New Public Management’ (2005) 33(1) *Post-Autistic Economics Review* 23 (hereafter Drechsler 2005), the NPM is part of neo-classical economic imperialism within the social sciences, which was strongly advocated strongly for by most of the international finance institutions, such as the World Bank and IMF.

¹³⁴ The concept is styled as such by such authors as Pollitt C *Managerialism and the Public Services: The Anglo-American Experience* (1990); Hood 1991; and Aucoin P ‘Administrative reform in public management: paradigms, principles, paradoxes and pendulums’ (1990) 3(2) *Governance: An International Journal of Policy, Administration, and Institutions* 115 – 137.

¹³⁵ Hood C & Peters G ‘The middle aging of the New Public Management: Into the age of paradox?’ (2004) 14(3) *Journal of Public Administration Research and Theory* 267 (hereafter Hood & Peters 2004).

¹³⁶ It is not a coherent theory but rather a discrete set of ideas. Hood refers to it as ‘a loose term whose usefulness lies in its convenience as a shorthand name for the set of broadly similar administrative doctrines which dominated the bureaucratic reform agenda during the late twentieth century’. Pollitt and his colleagues call it ‘a label which many academics have given to a series of reforms from the 1980s onwards to improve the efficiency and performance of Western governments and/or public sector organizations’. It is also-called a movement which lacked a single definitive ‘manifesto’.

¹³⁷ Chipkin & Lipietz 2012: 3.

¹³⁸ Minogue M & McCourt W *Internationalization of Public Management* (2001).

¹³⁹ Drechsler 2005: 17.

the twentieth century. Since the mid-1960s, however, organisational arrangements invented at the dawn of the industrial era have become anachronistic.

6.1 The spread of the NPM

The NPM first gained popularity in the ‘Anglo-Saxon’ countries¹⁴⁰ primarily as a reform movement informed by conservative and neoliberal economic policies directed at two things: restructuring the modes of providing services to the populace and transforming personnel management systems. In regard to the former, the welfare form of government was made leaner by, first, reducing its functions and privatising as much as could be taken over by the market.¹⁴¹ The goal was a slim, reduced, minimal state in which public activity is decreased and, if at all, exercised according to business principles of efficiency.¹⁴² Secondly, the remaining functions not affected by privatisation were outsourced¹⁴³ to external (mainly commercial) providers through competitive tendering.¹⁴⁴ Thirdly, the hierarchical Weberian public administration was transformed to become more efficient and effective¹⁴⁵ by creating entities, at arms-length but still under the control of the state, to perform governmental functions.¹⁴⁶ In all these goals, the NPM advocated for the primacy of markets in the production and distribution of goods and services.¹⁴⁷

In regard to the transformation of the personnel management system, the focus was on letting managers manage, performance management systems and short-term contracts. Letting managers manage was in response to Weberian hierarchical and cascading system of command in terms of which a manager must wait for an instruction before doing anything. Performance

¹⁴⁰ The term is not used in its original sense; it is used loosely to refer to UK, USA, Australia, New Zealand and Canada.

¹⁴¹ Woolmann H & Thurmaier K ‘Reforming local government institutions and the New Public Management in Europe and the US’ in Clark S et al. (eds) *Handbook on Local Politics* (2010) 2 (hereafter Woolmann & Thurmaier 2010).

¹⁴² Drechsler 2005: 17.

¹⁴³ According to Keraudren P & van Mierlo H ‘Theories of public management reform and their practical implications’ in Verheijen T & Coombes D (eds) *Innovation in Public Management* (1998) (hereafter Keraudren & van Mierlo 1998), the criteria is whether the function’s commercial viability may be maintained at less cost in the private sector or not.

¹⁴⁴ Woolmann & Thurmaier 2010: 2. Hood 1991 refers to the latter phenomenon as quasi-privatisation.

¹⁴⁵ Rosta M ‘What makes a New Public Management reform successful? An institutional analysis’ available at http://www.maxwell.syr.edu/uploadedFiles/conferences/pmrc/Files/Rosta_What%20makes%20a%20New%20Public%20Management%20reform%20successful_An%20institutional%20analysis.pdf Rosta 2011 (accessed 12 May 2016).

¹⁴⁶ Woolmann & Thurmaier 2010: 2.

¹⁴⁷ Ferlie W, Ashburner L & Fitzgerald L et al. *The New Public Management in Action* (1996) 17 (hereafter Ferlie et al. 1996).

management systems were meant to reverse the phenomenon of rigid compliance with rules which meant that officials were not accountable for own action, as long as they complied with rules and correct procedures.¹⁴⁸ Bureaucrats would thenceforth no longer be mechanistic technicians who are detached from their conscience. The fixed-term contract was a reaction to the phenomenon of time-servers created by an assured existence and lack of discipline characteristic of Weberian bureaucracy. Renewal or not of an employment contract now depends on whether a bureaucrat is delivering according to predetermined criteria. The ease of dismissing bureaucrats was meant as an incentive for them to be innovative and personally responsible for their actions.

In the United Kingdom, the NPM was introduced at the commencement of the prime ministerial term of Margaret Thatcher in 1979, while in the United States it commenced with the start of the presidential term of Ronald Reagan in 1980.¹⁴⁹ It is, however, argued that the pressure for public sector reform in the latter case predated the election of Reagan, with the 1978 Civil Service Reform Act¹⁵⁰ being passed during the Carter administration.¹⁵¹ The governments of New Zealand and Australia and later Canada joined the NPM reform wave between 1984 and 1990. Woolmann and Thurmaier argue that the receptiveness of Anglo-Saxon countries to the NPM reform was due to their common-law tradition, which neither distinguishes between public and private law, nor between public and private sector.¹⁵² It was thus easy to transfer managerialist principles from the business sector to public administration without having to struggle with legal and cultural barriers.

The successes of the NPM in the Anglo-Saxon countries led to the NPM administrative reforms being on the agendas of most of the other OECD countries¹⁵³ and other nations.¹⁵⁴ Green-Pedersen suggests that this was owing to the macroeconomic troubles that the OECD countries

¹⁴⁸ Clegg 1990: 44.

¹⁴⁹ Rosta 2011: 3.

¹⁵⁰ The Act reformed the civil service of the United States federal government, partly in response to the Watergate scandal (a major political scandal which led to the resignation of the Republican president, Richard Nixon, on August 9, 1974). The Act abolished the U.S. Civil Service Commission and distributed its functions primarily among three new agencies: the Office of Personnel Management (OPM), the Merit Systems Protection Board (MSPB), and the Federal Labor Relations Authority (FLRA).

¹⁵¹ Ferlie et al. 1996: 17.

¹⁵² Woolmann & Thurmaier 2010: 14.

¹⁵³ Note that the OECD countries also include Anglo-Saxon countries. The spread was therefore from the Anglo-Saxon OECD countries to non-Anglo-Saxon OECD countries, for example, the Scandinavian OECD countries and the Continental European OECD countries.

¹⁵⁴ Gruening G 'Origin and theoretical basis of New Public Management' (2001) 4(1) *International Public Management Journal* 2 (hereafter Gruening 2001).

faced in the 1970s and as such they were looking for solutions elsewhere.¹⁵⁵ In continental Europe, many governments were not easily moved by the NPM reform wave of wholesale restructuring. Instead, they modified many of the Anglo-Saxon ideas underpinning the NPM and re-interpreted them in line with their own national politico-administrative contexts. According to Woolmann and Thurmaier, their ‘Roman law-rooted rule of law tradition ... made them legally and culturally much less accessible and receptive to the NPM message’.¹⁵⁶ The Netherlands was the first civil law country to apply NPM principles in a more penetrating way.¹⁵⁷

The Scandinavian countries were also not averse to the idea of joining the NPM movement and applying its instruments. However, they were similarly cautious of simply copying such instruments without regard to their national politico-administrative contexts. They only employed those management techniques tailored to their own institutional environments, and as such ‘significantly altered the ... toolkit of the NPM’, as developed in the Anglo-Saxon countries.¹⁵⁸ The classic case of a Scandinavian country that displayed unwillingness to adopt NPM principles with enthusiastic gullibility was Sweden. While adopting some NPM principles, Sweden retained a social responsibility model which does not comport with the market-led theory, with its stress on efficiency in service delivery.¹⁵⁹ Reforms were mitigated by existing structures and traditions, and Sweden was more concerned with democratisation and modernisation than with ‘entrepreneurial government’ or imitating private sector practices.¹⁶⁰ The traditional democratic values, therefore, have continued to inform the Swedish public sector reorganisation.¹⁶¹ This has served to mitigate some of the ‘hard-edged marketization’ that Anglo-Saxon countries have applied, particularly New Zealand.¹⁶² The other Western European countries were also more selective and adaptive in incorporating the

¹⁵⁵ Green-Pedersen C ‘Market-type reforms of the Danish and Swedish service welfare states: different party strategies and different outcomes’. Paper presented at the 2001 Meeting of the IPSA Section of the Structure of Governance, University of Oklahoma, March 30–31.

¹⁵⁶ Woolmann & Thurmaier 2010: 14.

¹⁵⁷ Hemerijck A & Huiskamp R *Public Sector Reform under EMU: A Literature Review* (2002) (quoted in Rosta 2011: 6).

¹⁵⁸ Rosta 2011: 6.

¹⁵⁹ Ferlie et al. 1996: 19-21.

¹⁶⁰ Pollitt C, van Thiel S & Homburg V *New Public Management in Europe* (2007) 3 (hereafter Pollitt et al. 2007).

¹⁶¹ Ferlie et al. 1996: 19.

¹⁶² Pollitt et al. 2007: 3.

NPM ‘toolkit’. They incorporated NPM principles with material variations to tailor-make them for their formal and informal institutional environment.¹⁶³

It is evident that many governments throughout the Western world had to pick and choose reforms from the NPM toolbox, modify them to suit their own politico-administrative context and systems, or implement them in a different order or time-frame. According to Pollitt, this resulted in ‘reforms [in] the public sector hav[ing] the same labels in different countries but ... not necessarily ... the same in practice or in meaning’.¹⁶⁴ A cursory look at different governments applying the NPM paradigm shows both convergence and divergence.¹⁶⁵ Thus, Hood asserts that the NPM is emphatically not a parochial Anglo-Saxon development but a striking international trend¹⁶⁶ in public administration discernible from the mid-1970s onwards, which has had variable international impact.¹⁶⁷ Furthermore, variants of the NPM have emerged in different countries, depending on local history, culture, and political and managerial leadership.¹⁶⁸

In the developing world, the NPM toolkit was superimposed on the framework of the IMF/World Bank’s structural adjustment programmes, which emphasised cost-cutting, commercialisation and privatisation to maximise the efficiency of service delivery. This meant that in many developing countries, the NPM ideas were not home-grown; they were externally generated and imposed. Unlike most Western countries, many developing countries did not have an opportunity to adapt the NPM toolkit in order to tailor-make it for their own national politico-administrative contexts.¹⁶⁹ This imposition did not take account of the NPM’s Anglo-Saxon origins and the extent to which it was created in the context of that culture and its history.¹⁷⁰

¹⁶³ Rosta 2011: 6.

¹⁶⁴ Pollitt et al. 2007: 1.

¹⁶⁵ Pollitt et al. 2007: 1.

¹⁶⁶ Other States, however, especially in the developing world and to a lesser extent in Eastern Europe, did not have much of a choice in adapting the NPM ideas into their domestic contexts, given that these were imposed or strongly urged on them by Western-dominated international government organisations such as the EU, the World Bank and the IMF. In developing countries in particular, incorporating the NPM toolkit was part of the conditions for financial aid.

¹⁶⁷ Hood 1991: 8. As such, the use of the word ‘toolkit’ is misplaced, given the divergence of views in what constitutes the NPM.

¹⁶⁸ Ferlie et al. 1996: 16.

¹⁶⁹ Cameron & Thornhill 2009: 899.

¹⁷⁰ United Nations 2005: xi.

The above reflection reveals that the NPM reform theory is an empty canvas on which to paint whatever one wants. It means different things to different people. According to Pollitt et al., the NPM is nothing more than a ‘shopping centre’ where the governments and experts from different countries shop for management instruments closest to their tastes.¹⁷¹ Furthermore, the focus, timing, and rate of its adoption has varied depending on country-specific conditions and legal and cultural barriers.¹⁷² Cross-country commonalities as well as divergences characterised the adoption and application of NPM principles. As a result, there are disparate and sometimes contradictory views about the meaning and implications of this theory. Same as there are varied and often contradictory set of traits being proffered by its proponents/exponents. Pollitt et al. state that ‘there are simply too many different types of reforms, too many contextual variables and too many strands of theory’.¹⁷³

6.2 Definitions

The perennial problem with definitions is that they are always shrouded with the cloak of subjectivity, all the more so in a broad and divergent area like the NPM.¹⁷⁴ In the light of the NPM being an ‘empty canvas’, it is variously defined and dissensus abounds on what it actually entails. What is common to these definitions, however, is ‘the attempt to implement management ideas from business and private sector into the public services’¹⁷⁵ and the rejection of the Weberian bureaucratic model in an attempt to cut through the red tape and rigidity associated with old-style public administration and as a way of improving efficiency and service delivery.¹⁷⁶

The NPM represents a major shift from traditional public administration, with far greater attention now being paid to the achievement of results and the personal responsibility of managers. There is an express intention to move away from the classical bureaucracy to make organisations, personnel, and employment terms and conditions more flexible. Furthermore, organisational goals and personal objectives are to be set clearly to enable measurement of their

¹⁷¹ Pollitt et al. 2007: 7 (quoted in Rosta 2011: 6.) call the NPM a chameleon: it constantly changes its appearance to blend in with the local context.

¹⁷² Woolmann & Thurmaier 2010: 14.

¹⁷³ Pollitt et al. 2007: 6.

¹⁷⁴ Raghavan GN ‘New Public Management: Chennai’ (2004) *Centre for Civil Society Research* (hereafter Raghavan 2004).

¹⁷⁵ Haynes P *Managing Complexity in the Public Services* (2003) 192.

¹⁷⁶ Massey A & Johnston K (eds) *The International Handbook of Public Administration and Governance* (2015) 136.

achievement through performance indicators. Moreover, under this model, government functions are more likely to face market tests as a way of separating the purchasers of government services from providers – what Savas calls separation of ‘steering from rowing’.¹⁷⁷ The other feature of this model common to most theorists is the reduction of government functions through privatisation and other forms of market testing and contracting.¹⁷⁸ The NPM is thus a body of management thought or an ideological system based on notions generated in the private sector and imported into the public sector.¹⁷⁹

Hood asserts that ‘like most divinities, the NPM turned out to be somewhat mystical in essence, as no two authors ... listed exactly the same features in enumerating its traits’.¹⁸⁰ Manning explains the NPM as follows:

Generally it is used to describe a management culture that emphasises the centrality of the citizen or customer, as well as accountability for results. It also suggests structural or organisational choices that promote decentralised control through a variety of alternative service delivery mechanisms, including quasi-markets with public and private service providers competing for resources from policy makers and donors.

Hood in turn defines the NPM as ‘a pattern of policy and practice described as a style of organising public services’.¹⁸¹ He then identifies the doctrinal components thereof:

- hands-on professional management in the public sector;
- explicit standards and measures of performance, which were later termed as performance indicators;
- greater emphasis on output control;
- a shift to the disaggregation of units;
- a shift to greater competition;
- a stress on private-sector styles of management practice; and

¹⁷⁷ Savas ES *Privatization: The Key to Better Government* (1987) 288, 290.

¹⁷⁸ Hughes 2003: 44.

¹⁷⁹ Hood 1991, Hood C ‘The "New Public Management" in the eighties’ (1995) 20(2/3) *Accounting, Organization and Society* 93.

¹⁸⁰ Hood & Peters 2004: 268.

¹⁸¹ Hood 1991: 4.

- a stress on greater discipline and parsimony in resource use.¹⁸²

Borins defines the NPM as

a normative conceptualization of public administration consisting of several inter-related components; providing high quality services that citizens value; increasing the autonomy of public managers; rewarding organization and individuals on the basis of whether they meet demanding performance targets; ... and appreciative of the virtues of competition, and maintaining an open minded attitude about which public purposes should be performed by the private sector, rather than a public sector.¹⁸³

Despite this divergence about the meaning and implications of the NPM paradigm, a survey of the literature on the NPM reveals the following characteristics which appear to be ‘undisputed’ as they frequently recur in the writings of many theorists.¹⁸⁴ These include:

- privatisation,
- corporatisation,
- public-private partnerships or contracting out,
- transfer of managerial responsibilities,
- performance management,
- flexibility in hiring,
- competition, and
- improved financial management.

As such, the NPM is popularly denoted by concepts such as letting managers manage, performance auditing and reporting, outsourcing, marketization and total quality management.¹⁸⁵

There are, however, other characteristics proffered by some theorists but strongly rejected by others; it is a matter of dispute whether or not they form part of the NPM toolkit. This study will steer clear of the debatable traits and focus on those that find common acceptance.

¹⁸² Hood 1991: 4.

¹⁸³ Borins S ‘The New Public Management is here to stay’ (1995) 81(1) *Canadian Public Administration* 12.

¹⁸⁴ Gruening 2001: 2.

¹⁸⁵ Drechsler 2005: 1.

In response to the problems associated with the size of government, the NPM proposes to down-size the bloated forms of organisations by privatising as much functions as is possible, outsourcing some of those not taken over by the private sector and ‘splitting’ government up internally into more autonomous business units, with policy formulation and execution being split. With regard to problems associated with the hierarchy of authority or centralisation, the NPM puts forward a hypothesis that the best way to counter those inefficiencies is to decentralise or delayer or flatten the pyramid and ‘letting managers manage’.

As to the problems relating to fixed and rigid procedures, the NPM insists on performance management and customer orientation. The NPM model counters the problem of time-servers by introducing fixed-term contract management system. It then introduces business principles relating to value for money and parsimony to address the problem of wastage in resources use. These NPM principles are looked at in some detail in what follows.

6.3 Privatisation

As noted earlier, privatisation is one of the strategies to reduce the size of government by decreasing the number of personnel in the public sector as well as reducing public-sector functions in an attempt to make the public sector lean and mean.¹⁸⁶ The ultimate aim is to create ‘a more efficient and effective public service’.¹⁸⁷ In this regard, it is argued that in order for the public service to be efficient it must be a slim, reduced, and a minimal public service in which public activity is decreased.¹⁸⁸ Other mechanisms such as corporatisation and public-private partnerships, discussed below, come in to play to make the decreased activity exercised according to business principles of efficiency.¹⁸⁹

In the same way as other NPM principles, privatisation in developing countries was generally carried out at the insistence of the World Bank and has been part of structural adjustment programmes.¹⁹⁰ Governments were required to split their functions between small, strategic core functions, mostly relating to policy formulation, and a large operational periphery relating

¹⁸⁶ Ferlie et al. 1996: 13.

¹⁸⁷ Larbi GA ‘Overview of public sector management reform’ (1999) Discussion paper (112) 19 (hereafter Larbi 1999).

¹⁸⁸ Drechsler 2005: 7.

¹⁸⁹ Drechsler 2005: 17.

¹⁹⁰ Polidano C ‘Public management reform in developing countries: Issues and outcomes’ (1999) 1(1) *Public Management* 5 - 6 (hereafter Polidano 1999).

to policy implementation. The public sector then keeps only the core functions and privatises as much of the remaining non-strategic functions as could be taken over by the market.¹⁹¹ Furthermore, privatisation entails the outright sale of state assets to a private company. The phenomenon of privatisation is sometimes referred to as trimming the fat off government.

6.4 Corporatisation

Polidano states that corporatisation entails converting line departments of government into free-standing agencies or establishing semi-autonomous agencies or public entities, run by their own boards of directors, which render public functions on behalf of departments.¹⁹² These entities are variously labelled as executive agencies, special operating agencies, government corporations, contract agencies, public entities, state-owned enterprises and non-departmental public bodies, among other titles.¹⁹³ This phenomenon, sometimes called agencification, allows for the separation of policy-making and implementation functions or responsibilities in terms of which governments focus on policy formulation, while the agencies expend time and energy on implementation. The provision of public services is transferred from the realm of government into a corporation or agency, which has a contract-like, arm's-length relationship with the parent ministry and department.¹⁹⁴ In terms of this relationship, the parent ministry appoints the management of these entities, which then report to it at specified times. In this instance, the parent ministry retains one hundred per cent ownership of the entity.

The motives behind corporatisation are to ensure an arm's-length relationship between the entity or agency and government. The aim is to discourage political interference and to ensure that the entity is less constrained by regulations and red tape. This would ultimately ensure greater managerial flexibility which would lead to greater efficiency, effectiveness and responsiveness.¹⁹⁵ It is hoped that the distance between the department and the entity which frees the entity from departmental bureaucracy, encumbered by regulations and red-tape, with

¹⁹¹ Woolmann & Thurmaier 2010: 2

¹⁹² Polidano 1999: 6.

¹⁹³ Bilodeau N, Laurin C & Vining A “Choice of organizational form makes a real difference”: The impact of corporatization on government agencies in Canada’ (2006) 17(1) *Journal of Public Administration Research and Theory* 120 (hereafter Bilodeau et al. 2006).

¹⁹⁴ Bilodeau et al. 2006: 119.

¹⁹⁵ Wettenhall R ‘Public or private? Public corporations, companies and the decline of the middle ground’ (2001) 1(1) *Public Organization Review* 30. See also Thynne I & Wettenhall R ‘Public management and organizational autonomy: The continuing relevance of significant earlier knowledge’ (2005) 70(4) *International Review of Administrative Sciences* 620.

its associated inefficiencies such as slowness and unresponsiveness, will yield greater efficiency, cost savings and service quality. Secondly, it seeks to introduce business practices or private sector management techniques into the public service in order to achieve greater efficiency, cost savings or service quality improvements. The semi-autonomous entities would be run like a business. This leg of corporatisation is usually accompanied by the setting of performance targets along the lines of executive agencies in the UK or state-owned enterprises in New Zealand.¹⁹⁶

6.5 Outsourcing / private-public partnerships

As seen under the discussion on privatisation, in all these strategies the ultimate aim of the NPM is to break down the monolithic structure of the bureaucracy into small service delivery agencies that operate on business principles.¹⁹⁷ This was in reaction to large bureaucracies that were consuming significant amounts of the state funding. As a result of fiscal challenges this monolithic structure posed, the NPM proposed that states should mobilise alternative funding for service delivery from the private sector.¹⁹⁸

The terms ‘outsourcing’, ‘contracting out’ and ‘public-private partnerships’ (PPP) are used interchangeably. They all relate to a contract between a public institution and an individual or privately owned or controlled partnership, company, trust or other for-profit legal entity.¹⁹⁹ They are defined as long-term contractual arrangements between the government and a private partner whereby the latter delivers and funds public services using a capital asset, sharing the associated risks.²⁰⁰ In Korea, PPP projects are defined as projects

to build and operate infrastructure such as road, port, railway, school and environmental facilities – which have traditionally been constructed and run by government funding – with private capital, thus tapping the creativity and efficiency of private sector.²⁰¹

¹⁹⁶ Polidano 1999: 9.

¹⁹⁷ Buchanan J & Bouman RG ‘Corporatization and asset evaluation for government corporation’ (1990) 6(2) *Financial Accountability and Management* 78.

¹⁹⁸ Bovaird T ‘Public-private partnerships: From contested concepts to prevalent practice’ (2004) 70(2) *International Review of Administrative Sciences* 201.

¹⁹⁹ Reddy PS, Sing D & Moodleys S *Local Government Financing and Development in Southern Africa* (2003) 204.

²⁰⁰ OECD *Recommendations of the Council on Principles for Public Governance of Public-Private Partnerships* (2012) 18 (hereafter OECD 2012).

²⁰¹ OECD 2012: 19.

In the United Kingdom, PPP are defined as

arrangements typified by joint working between the public and private sectors. In their broadest sense, they can cover all types of collaboration across the private-public sector interface involving collaborative working together and risk sharing to deliver policies, services and infrastructure.²⁰²

In Australia, a PPP is defined

as relating to the provision of infrastructure and any related ancillary service which involve private investment or financing, with a present value of payments for a service to be made by the government (and/or by consumers) of more than AUD 10 million during the period of a partnership that do not relate to the general procurement of services.²⁰³

Public-private partnerships, therefore, serve two main purposes, namely to mobilise resources and skills from the private sector and to infuse business principles in the delivery of public services. However, the functions are still controlled by the state, which then enters into partnership with external or private providers. This relationship is controlled through contracts in terms of which the targets and outputs are specified.²⁰⁴ The idea here is that rivalry, at the procurement stage, is essential for lowering costs and improving the standard of services rendered.²⁰⁵

Essentially, corporatisation and public-private partnerships are what is referred to as quasi-markets. These are not markets in the business sense, because services are not sold to consumers as is the case with privatised services – ‘they are free at the point of use’.²⁰⁶ Furthermore, they are still regulated centrally. However, there is an attempt to simulate market-like mechanisms to make public service business-like, but not truly a business.²⁰⁷ One of the key features of quasi-markets is that public funding is allocated through competitive bidding. This has the effect of making organisations competitive, even at the level of delivery or provision.²⁰⁸ Similarly, the planning function (as a mechanism for the allocation of resources within the public sector) has now shifted from the public sector to quasi-markets.²⁰⁹

²⁰² OECD 2012: 19.

²⁰³ OECD 2012: 19.

²⁰⁴ Ferlie et al. 1996: 13.

²⁰⁵ Hood 1991: 3.

²⁰⁶ Ferlie et al. 1996: 57.

²⁰⁷ Ferlie et al. 1996: 57.

²⁰⁸ Ferlie et al. 1996: 57

²⁰⁹ Ferlie et al. 1996: 13.

6.6 Managerialism

The NPM not only proposes to reduce the number of personnel and decrease government activities, but also proposes that such activities must be performed by units closest to the site of service delivery and by letting managers at those units manage. This idea is referred to as managerialism and relates to the conferring of wide discretion and autonomy to managers with regard to organisational and staff issues. Managerialism encompasses the principles of decentralising decision-making power to managers (letting managers manage) and the attendant principles that are meant to circumscribe the managerial power and freedom enjoyed by managers, namely performance management and contract-based appointment. This is a paradoxical ‘autonomy for accountability’ trade-off that grants greater managerial power to managers to make decisions, while demanding that those managers adhere to more elaborated auditing mechanisms.²¹⁰ In what follows, each of the elements of managerialism is considered more closely.

6.6.1 Managerial autonomy

Managerial autonomy is concerned with flattening the pyramid. It seeks to debureaucratise the public service as well as delayer the hierarchies within it.²¹¹ It pushes for a move from management by hierarchy to the transfer of administrative functions from the centre to administrative units. In this case, the management control is transferred to line departments or administrative units with the aim of improving efficiency in service delivery.²¹² As a result, those people responsible for the delivery of services are required to be proactive managers as opposed to being reactive administrators.²¹³ They must be visible and hands-on managers that are free to manage by the use of discretionary power.²¹⁴ These managers must take personal responsibility for their actions and decisions and must not hide behind procedural correctness.

²¹⁰ Clarke J & Newman J *The Managerial State: Power, Politics and Ideology in the Remaking of Social Welfare* (1997) quoted in Ward SC ‘The machinations of managerialism: New public management and the diminishing power of professionals’ (2011) 4(2) *Journal of Cultural Economy* 211.

²¹¹ Ingraham PW ‘The reform agenda for national civil service system: External stress and internal strain’ in Bekke HAGM et al. (eds) *Civil Service Systems* (1996) 255.

²¹² Hope KR ‘The New Public Management: A perspective from Africa’ in McLaughlin K, Osborne SP & Ferlie W (eds.) *New Public Management: Current Trends and Future Prospects* (2002).

²¹³ Falconer PK ‘Public administration and the New Public Management: Lessons from the UK experience’ in Morton D et al. *New State, New Millennium, New Public Management* (1997) 68 (hereafter Falconer 1997).

²¹⁴ Falconer 1997: 71.

In essence, the transfer of powers to managers entails elevating the role of the manager in the bureaucracy and enabling him or her to make professional decisions.

Polidano asserts that this feature is concerned with ‘the abolition or downgrading of many central personnel and financial control mechanisms’,²¹⁵ which in the NPM jargon means giving line managers greater managerial authority and responsibility.²¹⁶ Hood,²¹⁷ in turn, describes this phenomenon as hands-on professional management, which essentially is concerned with letting the managers manage. The key concern here is whether public managers are free to manage their units in order to achieve the most efficient output. Cameron states that ‘devolving human resource and management functions to managers is an important component of the NPM’.²¹⁸ Such human resource functions include the organisation and staff issues, the appointment, promotion and transfer of members of staff, performance management, and the obligations, rights and privileges of officers and employees.²¹⁹

Managerial autonomy has three main facets, namely an open skills set; wide discretion conferred on managers; and minimal political interference. The principle of an open skills set entails a movement away from the closed Weberian career system of reserving positions only for those with skills, qualifications and experience, towards opening up appointments to everyone. In this regard, a proven track record plays a critical role. The focus shifts from the inputs, what qualifications managers have, to outputs, what managers can do. There is greater emphasis on outputs as opposed to rules/procedures relating to minimum qualifications, skills, competencies and experience. There is flexibility or openness in hiring, all linked to the achievement or not of performance targets. This therefore allows for sideways or lateral entries into municipal administration, as opposed to the bottom-up employment practices of the Weberian bureaucracy.

Wide discretion in turn relates to the strengthening of the discretionary power of managers, and giving subordinate levels and agencies more autonomy.²²⁰ The idea is to give line departments greater autonomy to promote improved service delivery by transferring such functions as

²¹⁵ Polidano 1999: 19.

²¹⁶ Polidano 1999: 19.

²¹⁷ Hood 1991: 4-5.

²¹⁸ Cameron 2009: 915.

²¹⁹ Cameron 2009: 915.

²²⁰ Christensen T & Lægheid P ‘The fragmented state – the challenges of combining efficiency, institutional norms and democracy’ (2004) Paper presented at the Centre for Research and Teaching in Economics (CIDE), Mexico City, January 15–16, 2004, quoting OECD 1996; Grønlie & Selle 1998.

human resource functions to the line departments.²²¹ It seeks to keep direct management control by shifting power from elected representatives to appointed managers, characterised by such concepts as 'letting managers manage' and 'strong managerial spine'.²²² Letting the managers manage means that managers are given more resources, tasks and responsibility and greater discretion in how to use, perform or exercise them.²²³ It is envisaged that senior managers are given more autonomy to execute their work individually or in self-organised teams.²²⁴

Minimal political interference, in its turn, is premised on the principle that managers must be free to take professional decisions and be held personally accountable for the decisions they take. This principle requires managers to personally account for the increased resources, tasks and responsibilities, which makes it less legitimate for politicians to interfere in the administration.²²⁵

6.6.2 Performance management

There are two central values to performance management. These relate to it being both a mechanism to tie managerial independence to the actual delivery of services as well as an accountability system for senior managers. First, according to Larbi, performance management relates to the entering of agreement, written and negotiated, between government and managers in which quantifiable targets are neatly set out for a given period of time and performance is measured against those targets at the end of the set period.²²⁶ This is a way of ensuring that they account for their exercise of the wide discretion they enjoy and are held personally responsible for their actions. According to Kaul, the authority devolved or decentralised to managers is in exchange for accountability for performance. Cameron states that this is a trade-off between giving managers greater autonomy and performance management. In return for being allowed greater autonomy, managers must be accountable for their performance through performance targets.²²⁷ Senior managers are expected to translate policy priorities and

²²¹ Cameron & Thornhill 2009: 915.

²²² Ferlie et al. 1996: 11.

²²³ Christensen T & Lægreid P 'New Public Management: The effects of contractualism and devolution on political control' (2001) 3(1) *Public Management Review* 10 (hereafter Christensen & Lægreid 2001).

²²⁴ *White Paper* 1998: 162 para. 2.2.1.

²²⁵ Christensen & Lægreid 2001: 10.

²²⁶ Larbi 1999: 23.

²²⁷ Minogue M, Polidano C & Hulme D (eds.) *Beyond the New Public Management: Changing Ideas and Practices in Governance* (1998) 26 (hereafter Minogue et al. 1998). See also United Nations *Unlocking the Human Potential for Public Sector Performance* (2005) 55.

organisational mandates into effective departmental strategies, plans and programmes that ultimately deliver a better life for the people of a country.²²⁸ Furthermore, performance management provides ‘a link between each individual and the overall strategy of the organisation’.²²⁹

Secondly, the NPM encourages extension of performance audits, both financial and professional, into the public sector. This comes in the place of monitoring compliance with rules and procedures, and insists on more transparent methods for the review of performance.²³⁰ The core theme of this element ‘embodies the belief that public sector organisations should increasingly be subjected to rigorous measures of performance’, as opposed to control only for rule compliance.²³¹ It signals a shift from ‘a process-oriented administration ... to an output-oriented administration’,²³² which emphasises *ex post* audit evaluation in checking for corruption and inefficiency, than *ex ante* controls.²³³

This is what Pollitt et al. call ‘judgment by results’.²³⁴ It encourages the setting of standards and bench-marking and a greater use of protocols as a means of assessing professional performance and compliance with standards. Here the emphasis is on performance indicators, evaluations and performance-related pay, and quality improvement.²³⁵ Hood asserts that this form of accountability requires clear statement of goals, in the form of performance indicators and targets against which performance is measured.²³⁶

Miller asserts that the performance management was introduced for the following reasons. First, it was aimed at providing an objective measure to assess managers’ performance. Secondly, it was aimed at determining whether the new corps of senior managers was performing its functions effectively. The third objective was to improve the political-administrative interface.²³⁷

²²⁸ Department of Public Service and Administration *Senior Management Service Handbook* (2003) 2.

²²⁹ Smith PC & Goddard M ‘Performance management and operational research: A marriage made in Heaven?’ (2002) 53(3) *Journal for Operational Research Society* 248.

²³⁰ Ferlie et al. 1996: 11.

²³¹ Falconer 1997: 71.

²³² Keraudren & van Mierlo 1998: 40.

²³³ Hood & Peters 2004: 271.

²³⁴ Pollitt C Girre X & Lonsdale J et al. *Performance or Compliance?* (1999).

²³⁵ Ferlie et al. 1996: 11.

²³⁶ Hood 1991: 4.

²³⁷ Miller K *Public Sector Reform Governance in South Africa* (2005) 191.

Another element is customer orientation. In the Weberian bureaucracy, rules take priority over citizens. The NPM insists that the members of the public are transformed into consumers with rights in the new 'public sector marketplace'.²³⁸ Consumers, in this regard, are no longer grateful, passive citizens but are actively shaping supply through their demands. Citizens are now put in a position of power, and the 'public sector marketplace' or the enterprise culture hinges on the notion of the 'sovereignty' of the customer.²³⁹ The primary consideration is the satisfaction of consumers, rather than the adherence to or respect for rules or procedures.

This element is ostensibly in response to the obsessiveness with rules and procedures of the old bureaucracy which resulted in lack of accountability to the customers. This obsessiveness had the effect of 'a lackadaisical attitude among the government personnel, who do not value the loss or gain of a customer, because of the monopoly they have over certain aspects of community activity'.²⁴⁰ This element, therefore, endeavours to bring in the core idea of being answerable to the consumer/customers, by incorporating greater service and client orientation among the public service providers.²⁴¹

6.6.3 Contract appointment

In Weberian bureaucracy, the apathetic attitude displayed by government personnel towards citizens is fuelled by their secure existence or employment for life. They feel they did not owe citizens anything. As a result, the NPM moves to weaken job security and pension entitlements.

The NPM pushes for a move away from a military-style public service ethic to contingent forms of employment such as greater flexibility in hiring and rewards and the concomitant weakening of job security or pension entitlements. In this regard, managers are hired on a short-term contract, rewarded according to their performance, and can theoretically be sacked if their work does not measure up.²⁴² The civil service, based on rules and processes, is replaced by an individualised work system and performance contracts. Seniority has no place in the NPM paradigm; only merit, based on outputs, is taken into account. This has resulted in the political-administrative relationships being based more on individual accountability. Political leaders

²³⁸ Falconer 1997: 71.

²³⁹ Du Gay P 'The cult(ure) of the customer' (1992) 29(4) *Journal of Management Studies* 615.

²⁴⁰ Raghavan 2004: 4.

²⁴¹ Raghavan 2004: 4.

²⁴² Kettl DF 'The global revolution in public management: Driving themes, missing links' (1997) 16(1) *Journal of Policy Analysis and Management* 448.

are supposed, through contracts, to specify targets and objectives more clearly, and performance should be controlled by use of quantitative indicators for monitoring results and for measuring efficiency.²⁴³ This removes the assured existence enjoyed by bureaucrats in the Weberian bureaucracy and creates incentives for time-servers to be innovative and work efficiently. The replacement of time-servers with innovators also means that much greater attention should be paid to the value-for-money principle in the use of resources. This introduces the element of parsimony in resource use, as will be discussed below.

6.7 Discipline in resource use

The NPM insists on an increased attention on financial controls, led by strong concerns for getting value-for-money, getting more from less and strengthening the finance function. Under this theme, public service agencies are urged to focus more on the way in which they use the financial and human resources at their disposal.²⁴⁴ Emphasis is shifted from spending to cost-cutting (i.e. cutting the costs of public service provisions while at the same time increasing the quality of such services).²⁴⁵ The value-for-money mentality, which is also explicable, in terms of getting cheaper and better public services for all, became dominant.²⁴⁶ In this regard, a flurry of elaborate cost and information systems were developed to anchor these goals.

6.8 Summarising the NPM

It has been established in the foregoing discussion that the NPM came to represent an alternative model of administration in the place of what it calls an anachronistic model. However, as mentioned previously, the NPM is not a coherent theory but rather a discrete set of ideas. It is an 'empty canvas' in which one could write whatever one wants or a shopping centre of management ideas closest to one's taste. Different countries shop for contrasting ideas leading to variations in the form and substance of the NPM found in different countries.²⁴⁷ However, the underlying theme of these variants is their reaction to the pathologies of the Weberian bureaucracy to which they seek to present a modern alternative. The NPM proposes

²⁴³ Christensen & Lægreid 2001: 10.

²⁴⁴ Falconer 1997.

²⁴⁵ Kalimullah NA, Ashraf KM & Ashaduzzaman MN 'New Public Management: Emergence and principles' (2012) 1(1) *BUP Journal* 13.

²⁴⁶ Hood 1991: 9.

²⁴⁷ Mongkol K 'The critical review of New Public Management model and its criticism' (2011) 5(1) *Research Journal of Business Management* 25 (hereafter Mongkol 2011).

alternatives to each of the impugned Weberian elements, which alternatives are heavily laden with market considerations.

What is clear, however, is that even NPM principles that are ostensibly a replacement of the Weberian principles did not produce the anticipated beneficial results. They, too, have some weaknesses of their own. This will be examined in the next sections.

7 Criticism of the NPM

There has been a significant shift in thinking about the effectiveness of the NPM. The enthusiasm for neoliberal policies brought about by the NPM between the 1980s and early 1990s is now tempered with caution.²⁴⁸ It has been recognised that reforming the public sector through the NPM way of imposing one template of reform on all irrespective of context, does not lend itself to clear and unambiguous solutions. It is unwise and unimplementable and in some cases has bred conflict and undermined stability. The NPM has proven not to be a panacea in the public sector.²⁴⁹

A number of criticisms have been levelled against the NPM. These range from the paradox of centralisation through decentralisation;²⁵⁰ the suitability of private sector management techniques in the public sector; controversy surrounding the benefits it brings; and its applicability in developing countries. What follows next is a detailed exposition of what each of these critiques entail.

7.1 The paradox of centralisation through “decentralisation”

This criticism stems from the oft-cited NPM phrases of ‘letting managers manage’, ‘strong managerial spine’ and ‘giving line managers greater managerial authority and responsibility’. The criticism in regard to these phrases relates to the phenomenon known as recentralisation, which is triggered by managerial autonomy. The critics of the NPM movement charge that empowering managers to manage programmes and budgets detracts from the accountability of elected politicians and distorts the lines of accountability. In this regard, it is argued that political executives have lost their control over the implementation of their policies following

²⁴⁸ Larbi 1999: 35.

²⁴⁹ Larbi 1999: 35.

²⁵⁰ The critics treat the transfer of powers and functions to managers, thus giving managers greater managerial responsibility the same as decentralisation, which is not necessarily the same thing.

managerial reforms put in place under the banner of managerial autonomy.²⁵¹ It is argued that this has resulted in the hunger of these political executives for more control over the public managers, leading to frequent interferences and meddling in managerial decision-making.

Consequently, the public service has become more politicised following the managerial reforms, and the senior servants find their positions becoming more insecure due to the political executives' desire for more control.²⁵² In essence, the NPM has complicated the relationship between executives and managers, because the politicians cannot rely on the top of the bureaucratic hierarchy to give instructions, as the latter is no longer in hierarchical control over lower-down managers who are now allowed to manage. The result is that politicians seek to intervene at all levels of the state bureaucracy.

7.2 Applicability of private sector principles in the public sector

The second criticism of the NPM concerns the applicability of private-sector management techniques in the public sector. It is argued that the principles of the private sector (managerialism and business models) may not be equally applicable to the public sector to serve as a benchmark for those in the public sector.²⁵³ Argyriades²⁵⁴ lends his weight to the critique of the introduction of market mechanisms in public administration. Kickert,²⁵⁵ in turn, points out that the NPM erroneously assumes that the public sector is not distinct from the private sector. Pollitt²⁵⁶ and Armstrong²⁵⁷ add that most areas of the public service and administration have distinct political, ethical, constitutional and social dimensions which make it different from the private sector. As such, it is argued that the NPM is flawed in that the principles it seeks to impose in the public sector are inappropriate because of contextual difference between the two sectors.²⁵⁸ The critics assert that the public sector 'has more

²⁵¹ Atreya B & Armstrong A 'A review of the criticisms and the future of New Public Management' (2002) *Victoria University Working Paper Series* 10 (hereafter Atreya & Armstrong 2002).

²⁵² Atreya & Armstrong 2002: 10.

²⁵³ Mongkol 2011: 37.

²⁵⁴ Department of Economic and Social Affairs *Decentralization: Conditions for Success. Lessons from Central and Eastern Europe and the Commonwealth of Independent States* (2002) 86.

²⁵⁵ Kickert WJM 'Public management in the United States and Europe. Paper presented for the conference on the New Public Management in international perspective' (2006) Institute of Public Finance and Fiscal Law, St Gallen.

²⁵⁶ Pollitt C *Managerialism and the Public Services: The Anglo-American Experience* (1990).

²⁵⁷ Armstrong A 'A comparative analysis: New Public Management—the way ahead?' (1998) 57(2) *Australian Journal of Public Administration* 26.

²⁵⁸ Considine M & Painter M (eds.) *Managerialism: The Great Debate* (1997).

complex objectives, more intricate accountabilities and a more turbulent political environment than the private sector'.²⁵⁹

Moreover, the relationship between the public sector managers and their political principals is of a different order to any relationship in the private sector. On this score, Goodsell states the major criticism of the application of the business model to governance to be the fact that 'it introduces privatised individual values in place of common community ideals'.²⁶⁰ The degree of freedom enjoyed in the private sector is not the same as that in the public sector. Private sector companies are free to lay off staff in times of recession and restructuring, while careful consideration must be given, in the public sector, to staff morale issues. Furthermore, the 'private sector is profit-oriented whereas the public sector has to be service-oriented to ensure societal equity'.²⁶¹ Minogue²⁶² argues that the NPM emphasis on efficiency does not comport with public sector values such as equity, community, democracy, citizenship and constitutional protection. Haque²⁶³ goes further to suggest that the NPM seeks to replace such public values as impartiality, equality, representation, integrity, fairness, welfare, citizenship and justice with business values such as efficiency, competition, profit and value for money.

7.3 Failure to fulfil its promise

The critique of the NPM in this regard is two-pronged, with both prongs relating to the professed NPM promise of infusing efficiency and effectiveness and lowering costs. First, the critics argue that instead of delivering on its central promise of lowering costs, the NPM has actually caused damage to the public service.²⁶⁴ It is argued that although the NPM claims to promote 'public goods' (i.e. cheaper and better public services for all), it has instead increased opportunities for corruption.²⁶⁵ The NPM is seen as promoting 'self-interest, individualisation, and aggressive behaviour that tends to undermine the public ethos, the public good, and

²⁵⁹ Mongkol 2011, quoting Flynn N 'Explaining the New Public Management: The importance of context' in McLaughlin K et al. (eds) *New Public Management: Current Trends and Future Prospects* (2002), Savoie DJ 'What is wrong with the new public management' in Osborne SP (ed) *Public Management: Critical Perspectives* (2002), Singh A 'Questioning the New Public Management' (2003) 63(1) *Public Administration Review*.

²⁶⁰ Goodsell CT *The Case for Bureaucracy: A Public Administration Polemic* (2004) 151.

²⁶¹ Atreya & Armstrong 2002: 11.

²⁶² Minogue et al. 1998: 30.

²⁶³ Haque MS 'Significance of accountability under the new approach to public governance' (2000) 66(4) *International Review of Administrative Sciences* 601.

²⁶⁴ Hood 1991: 9.

²⁶⁵ Balla SJ, Lodge M & Page EC (eds.) *The Oxford Handbook of Classics in Public Policy and Administration* (2015) 542 (hereafter Balla et al. 2015).

integrative behaviour in public bureaucracies'.²⁶⁶ Minogue notes that increased managerial autonomy has brought with it blurred accountability and a higher predilection to corruption. Ha-Joon Chang²⁶⁷ adds that the NPM-inspired reforms have often increased corruption. This is due to the increased contracts between state-sector functionaries and the private sector, creating new opportunities for bribes and future, direct or indirect, employment in the private sector. Chang claims that corruption often exists because there are too many market forces.²⁶⁸

Secondly, it is argued that the NPM cannot be said to be successful in infusing efficiency in the public service. In this regard, Drechsler states that '[w]e have no empirical evidence that the NPM reforms have led to any productivity increase or welfare maximization'.²⁶⁹ Van Mierlo in turn states that instead of efficiency gains, there is evidence in Western Europe and OECD countries of relative failure of the NPM paradigm.²⁷⁰

Furthermore, numerous studies refute the claim that private sector organisations are always more efficient than public sector organisations.²⁷¹ On this score, Murray states that '[t]he legend of private efficiency lives in company brochures but is seldom realised in the lives of the millions of [people] who fight the daily battle with insurance agencies or auto mechanics or TV repairs'.²⁷² Murray concludes that there are more similarities than differences between the public and private sector; there is a blending and mix, with neither sector having 'a corner on the morals market'.²⁷³ Furthermore, a survey conducted to evaluate the public's perceptions about quality of public sector services compared to private sector services found no significant differences in attitudes toward public and private services among respondents.²⁷⁴ This led Poister and Henry to conclude that 'the conventional wisdom that public services are inherently inferior to those offered by the private sector does not necessarily pervade attitudes toward government'.²⁷⁵ Goodsell, similarly, found favourable responses in numerous surveys

²⁶⁶ Balla et al. 2015: 542.

²⁶⁷ Chang Ha-Joon *Bad Samaritans: The Myth of Free Trade and the Secret History of Capitalism* (2007) 154 (hereafter Chang 2007).

²⁶⁸ Chang 2007: 154.

²⁶⁹ Drechsler 2005: 5.

²⁷⁰ Keraudren & van Mierlo 1998: 401

²⁷¹ Rainey HG & Chun YH 'Public and private management compared' in Ferlie E et al. (eds.) *The Oxford Handbook of Public Management* (2005) 73.

²⁷² Murray M 'Comparing public and private management: An exploratory essay' (1975) 35(4) *Public Administration Review* 366 (hereafter Murray 1975).

²⁷³ Murray 1975: 367.

²⁷⁴ Poister T & Henry G 'Citizen ratings of public and private service quality: A comparative perspective' (1994) 54(1) *Public Administration Review* 155 (hereafter Poister & Henry 1994).

²⁷⁵ Poister & Henry 1994: 155.

designed to solicit citizens' ratings of governmental agencies, thus debunking the grand myth deeply ingrained in popular culture, that citizens are not satisfied with their governmental agencies.²⁷⁶ There are many other studies refuting the claim of private sector superiority over the public sector.²⁷⁷

Downs and Larkey in turn found that governments are more efficient and businesses less efficient than popularly believed.²⁷⁸ Letza et al., in their turn, found that 'the argument of privatisation as a vehicle for efficiency gains is a myth'.²⁷⁹ There are numerous other authorities who are highly sceptical about the success of privatisation.²⁸⁰

7.4 Suitability for the developing countries

The critics of the NPM's applicability in developing countries begin by outlining some preconditions that are crucial for the successful application of the NPM model in transitional economies and developing countries. It is argued that the sophisticated, wide-ranging, comprehensive nature of the NPM reforms requires these preconditions for their successful implementation.²⁸¹ These preconditions include: having an acceptable level of economic growth; having experience in how to manage and operate in a market environment; the existence of a strong judicial system to control the market and to uphold the rule of law; the state capacity to ensure smooth transformation from the old public administration to the NPM; as well as the cultural context of each country.²⁸²

Based on those preconditions, they then postulate four criticisms in regard to the suitability of the NPM toolkit in developing countries. First, it is charged that the developing countries lack the necessary expertise, managerial capacity and resources to implement the rather

²⁷⁶ Goodsell CT *The Case for Bureaucracy: A Public Administration Polemic* (1985) 22 - 33.

²⁷⁷ See Miller TI & Kobayashi MM 'Citizen surveys: How to do them, how to use them, what they mean' (1991).

²⁷⁸ Downs GW & Larkey PD *The Search for Government Efficiency: From Hubris to Helplessness* (1986) 237.

²⁷⁹ Letza SR, Smallman C & Sun X 'Reframing privatisation: Deconstructing the myth of efficiency' (2004) 37(1) *Policy Sciences* 168.

²⁸⁰ See Curwen P *Public Enterprise: A Modern Approach* (1986); Bishop M & Kay J *Does Privatization Work? Lessons from the UK* (1988); Jackson P & Price C *Privatisation and Regulation: A Review of the Issues* (1994); Shaoul J 'The power of accounting: Reflecting on water privatisation' (1997) 10(3) *Accounting, Auditing and Accountability Journal* 382 - 405.

²⁸¹ Polidano 2001: 348. See also Caiden GE & Sundaram P 'The specificity of public service reform' (2004) 24(5) *Public Administration and Development* 373; Polidano 1999.

²⁸² Sarker AE 'New Public Management in developing countries: An analysis of success and failure with particular reference to Singapore and Bangladesh' (2006) 19(2) *International Journal of Public Sector Management* 195 (hereafter Sarker 2006).

sophisticated NPM reforms.²⁸³ The imposition of the NPM reforms by the IMF/World bank and international donor agencies (as aid conditionality) in developing countries did not take account of the state's capacity in those countries, which is a 'precondition for the successful implementation of the NPM reforms'.²⁸⁴ It is argued that developing countries may experience a culture shock and encountered additional layers of complexity as a result.²⁸⁵

Second, there is a paradox created by the application of managerial autonomy in developing countries. The World Bank argues that while this NPM principle is properly applied in developed countries, governments in developing countries rightfully retain centralised decision-making.²⁸⁶ This is important in order to supervise developmental programmes and to ensure that governments are in a position to lead their weak and impoverished economies out of the woods. While the NPM emphasises free markets and a weak state, most developing countries have adopted the notion of a developmental state which is premised on a strong interventionist activist state, and the two cannot stand side by side.²⁸⁷

Pushing for the NPM under these circumstances would mean that the leading public managers still retain control to make all decisions within their organisations and this can generate corruption and thus undermine a developmental agenda. Managerial autonomy itself provides greater freedom to public managers in the decentralised units than they are used to. Coupled with lower levels of supervision, this can create a fertile climate for corruption.²⁸⁸ Hughes also believes that the dramatic change from bureaucracy to market approach that the NPM advocates would contribute to a greater prevalence of corruption.²⁸⁹

Third, given the reliance of the NPM on market principles, its application in public policy and management in developing countries might present a problem as these countries often lack the

²⁸³ Polidano 1999; Caiden & Sundaram 2004.

²⁸⁴ Mongkol 2011, quoting McCourt W *Moving the Public Management Debate Forward: A Contingency Approach* (2001); Monteiro JO 'Institutional and organizational restructuring of the civil service in developing countries' (2002) A paper presented at the Fourth Global Forum on Reinventing Government: Capacity Development Workshops, Marakkesh, Morocco 10-11 December; Bale M & Dale T 'Public sector reform in New Zealand and its relevance to developing countries' (1998) 13(1) *The World Bank Research Observer* 103-21.

²⁸⁵ Polidano 1999.

²⁸⁶ World Bank *World Development Report 1997: The State in a Changing World* (1997) 97; Polidano C & Hulme D 'Editorial: Towards a post-New Public Management agenda' (2001) 3(1) *Public Management Review* 297.

²⁸⁷ Levin R 'Building a unified system of public administration' (2004) (Unpublished paper presented to the SA Public Management Conversation, Gordon's Bay 13).

²⁸⁸ Mongkol 2011: 38.

²⁸⁹ Hughes OE *Public Management and Administration: An Introduction* 3 ed (1998) 22.

necessary experience in the operation of markets.²⁹⁰ Sarker adds that the basic management infrastructure in developing countries is not developed enough to support the market-oriented reforms.²⁹¹ Hughes points out that the rule of law is a precondition for the market to be effective, as it ensures compliance with contracts. Mongkol corroborates that by stating ‘[u]ntil capital markets develop and domestic entrepreneurs arise, a market economy may not work in developing countries’.²⁹² Hughes charges that governments in developing countries usually find difficulty in adopting the contractual arrangements for the delivery of services owing to the absence of the necessary laws to enforce such contracts.²⁹³ Thus, McCurdy²⁹⁴ argues that the NPM’s attacks on the rules and regulations are misplaced, given that rules play an important stabilising role of structuring conduct in organisations, especially in developing countries.

In addition to the absence of the necessary laws to enforce contracts, some authors are of the view that contract appointments cannot work in developing countries. They say that given the general skills shortage in developing countries, it is burdensome having a contract system as it usually leads to the haemorrhaging of scarce skills.²⁹⁵ The short-term nature of these contracts translates to a rapid turnover of managers and concomitant failures of accountability. Managers often move on at the end of the contract and fail to account for problems they might have created.²⁹⁶ Furthermore, the short-term contracts lead to greater political control over senior officials.²⁹⁷ The same ‘capacity’ argument applies to privatisation in developing countries. Moreover, privatisation might inevitably lead to foreign ownership or ownership by one particular ethnic group, and this might derail the developmental project of developing countries or even worst, pose a risk to social cohesion.²⁹⁸

The fourth critique relates to the cultural ecology of each country and the NPM’s Anglo Saxon origins and the extent to which it was created in the context of that culture and its history.²⁹⁹ In this regard, the critique goes, an aspect of the NPM that might be useful in one developing

²⁹⁰ Hughes 2003.

²⁹¹ Sarker 2006.

²⁹² Mongkol 2011: 36.

²⁹³ Hughes 2003.

²⁹⁴ McCurdy HE ‘The cultural and ideological background’ in Rosenbloom DH et al. (eds.) *Revisiting Waldo’s Administrative State: Constancy and Change in Public Administration* (2006) 119-120.

²⁹⁵ Cameron 2009: 928.

²⁹⁶ Cameron 2009: 935.

²⁹⁷ Cameron 2009: 925.

²⁹⁸ Haque 2005: 613.

²⁹⁹ United Nations *Unlocking the Human Potential for Public Sector Performance* (2005) xi.

country might not necessarily be useful for another developing country.³⁰⁰ The one-size-fits-all approach of the NPM to public sector reform is problematic. Hughes contends that it should be considered that despite the success and improvement that the NPM can bring to the public sector, it could also result in reducing the performance of the public sector and even political instability.³⁰¹ Thus Bowornwathana claims that when the NPM techniques are imposed on developing countries or when developing countries borrow them from developed countries, a detailed look at politico-social environment must be had.³⁰²

4 Conclusion

This chapter discussed the two theories of effective public administration that dominated the discourse on the reform of the public service from the early twentieth century to date, namely the Weberian model and the NPM. Key themes that emerged in this discussion are as follows.

First, Weberian bureaucracy calls for the specialisation of tasks in that it creates a clear division of work with clear job descriptions. It creates a set of jurisdictional areas to which the needed activities are assigned as duties. These duties cannot be performed just by anyone; they require thorough training in a specialised area. Secondly, it calls for meritocratic recruitment. Entry into the organisation is based on a set of courses of training and usually on performance on prescribed examinations. Recruitment is based on merit, not on election or patronage. The main aim of this merit system is to prevent such things as partisan political interference in decision-making and their implementation. The hallmark of this system is neutral competence, with competence achieved through a system of hiring the best and the brightest for the positions. As a result, officials are not beholden to anyone for their jobs, they themselves worked hard for them. This improves their professional independence.

Thirdly, the professional independence of officials is insulated from the tug and pull of societal interests. They have the security of tenure that goes with a handsome salary and a pension. Working for the organisation is a full-time occupation, not a secondary activity to be exploited for rents or emoluments in exchange for the rendering of certain services. This is meant to insulate the officials from personal consideration and rent-seeking tendencies. Fourthly, Weberian bureaucracy advocates for a strict separation between politics and administration.

³⁰⁰ Mongkol 2011: 37.

³⁰¹ Hughes 1998.

³⁰² Bowornwathana B *Comparative Civil Service Reform: The United Kingdom, the United States of America, Japan and Thailand* (1995).

Accordingly, politicians should be confined to legislative and electoral processes (*era et studium*). Officials, on the other hand, should stay out of politics. They should perform their administrative tasks neutrally. They should follow the instructions of their political masters to point of self-denial. As such, the Weberian bureaucracy reinforces specialisation, meritocracy, professional independence and adherence to ethical standards, which are some of the elements of professionalisation.

The NPM, first, pushes for flexible human resource practices. This leads to a recruitment criterion that is rather ambiguous, the focus being on track record as opposed to qualifications. The NPM puts emphasis on business techniques. Furthermore, it pushes for short-term contract appointment as opposed to career appointments. Here, appointment is linked to performance or outputs, and failure to meet the agreed upon outputs results in failure to renew the contract at the end of its term. It is argued that this form of insecurity of tenure is meant to weed the system of time-servers and introduce innovators

Secondly, it pushes for deregulation and taking over of government services by the market. The argument in this score goes thus: 'private businesses can manage efficiently because they are not encumbered with the rules and regulations of merit systems and they can hire the workers they need in an efficient labour market'.³⁰³ Thirdly, the NPM decentralises a number of functions and then give more power to the managers. A lot of implementing discretion is delegated to lower levels in the production of goods and services, particularly to those closest to service delivery. Managers are, as a result, given greater control over hiring and firing personnel as well as the discretion on how money must be spent in order to accomplish policy objectives. The short-term contracts are then used for greater political control over senior officials.

The following table compares and contrasts the key elements of both these models. What is clear, however, is that these models cannot operate side by side in their original form; they contradict each other. In order for them to stand together some elements of both will have to be discarded.

The manifestations of the Weberian model and its toolkit in South Africa is the subject of the next chapter, chapter three. It will be shown in chapter three that the traditional Weberian

³⁰³ Pfiffner 2004: 6.

approach was in operation in South African local government since the colonial era, but was brought to fruition only in the dying days of apartheid.



Comparing and contrasting Weberian bureaucracy and the NPM

	Weberian bureaucracy	the NPM
1.	<p>Hierarchy of authority</p> <ul style="list-style-type: none"> • Positions are arranged in a pyramidal fashion, with each position responsible to the one above • Monocratic – its apex is one person, not a college • Creation of posts must start from the top and move down • Resources are <i>also</i> assigned from the top to officials and offices, in order to facilitate the cascading command system • A firmly ordered system of super- and subordination – supervision of the lower offices by the higher ones 	<p>Managerial autonomy</p> <ul style="list-style-type: none"> • Flattening of the pyramid • Transfer of administrative functions • Giving line managers greater managerial authority (letting managers manage) • Hands-on professional management • Personal responsibility for actions
2.	<p>Application of impersonal rules</p> <ul style="list-style-type: none"> • Office governed by general rules which are more or less stable, more or less exhaustive, and which can be learned • Officials to treat their subjects impersonally without respect to person or status • Decision-making based on application of standardised rules to similar situations 	<p>Achieving desired outcomes</p> <ul style="list-style-type: none"> • Rules are flexible to allow the achievement of outcomes • Provision of services governed by market principles • Use market mechanisms to improve performance in the public sector, through competition and a tender system

	<ul style="list-style-type: none"> • Abstract and general, applying equally to every bureaucrat or person, not according to individual privileges and bestowals of favour 	
3.	<p>Employment for life</p> <ul style="list-style-type: none"> • Bureaucratic jobs are for life and carry a right to a pension and some security against arbitrary dismissal • Guarantee discharge of duties free from all personal considerations • Promotion by next in line or seniority, not merit • Salaries relate to status not performance • Salary measured, not like a wage in terms of work done, but according to the rank and length of service, thus making the office a sought-after position 	<p>Short-term contracts</p> <ul style="list-style-type: none"> • Short-term appointments (flexible rules on tenure) • Appointment is linked to performance or outputs – failure to meet the agreed-upon outputs results in failure to renew the contract at the end of its term • Greater emphasis on outputs than rules or procedures and compliance • Performance-related pay schemes – bonus and incentives
4.	<p>Qualifications-linked meritocratic</p> <ul style="list-style-type: none"> • Office holding is a vocation • Merit determined through training and a prescribed special examination – prerequisites of employment • Officials owe their positions to examinations and diplomas certifying their professional qualifications • Bottom-up career system 	<p>Performance based meritocracy</p> <ul style="list-style-type: none"> • Office-holding is not a final career • Hiring is not based on certification but looks at track record • No bottom-up career advancement – introduce personnel from the top or sideways

	<ul style="list-style-type: none"> • Appointed because of their qualifications (meritocracy), not because of their ancestry, race or native personal gifts 	
5.	<p>Specialisation or division of labour</p> <ul style="list-style-type: none"> • Each office has a well-defined sphere of competence or duties which are assigned to each position, as opposed to being assigned to a person • Officials are grouped in bureaux, departments and ministries • Emphasis is on the positions rather than on persons • Office-holding is a duty of faithful management – it is not considered a source of income nor a usual exchange of services for equivalents • Separation of public and private life in terms of interests and finances – an office does not become one's own property 	<p>Marketisation</p> <ul style="list-style-type: none"> • Privatisation • Creating corporatised units or service delivery agencies based on business principles • Public-private partnerships • Controlled through contracts • Shift of functions to external bodies

WESTERN CAPE

CHAPTER THREE:

The Rise and Peaking of the Weberian Model of Service Delivery in South African Local Government

1 Introduction

This chapter discusses the manifestations of the Weberian model of service delivery in South Africa. It takes this discussion from the period of the unification of the four South African colonies – which saw the creation of a three-tier unitary system of government, with central state, four provinces and single-tier local government – to the end of formal apartheid in South Africa. However, as noted in Chapter Two, the existence of this model of delivery predates Max Weber. He did not formulate a new theory or come up with new concepts; he simply described what already existed in his immediate environment and elsewhere. This chapter, therefore, goes back to the pre-union period, i.e. the colonial period, to trace the roots of what existed in South Africa during the period under discussion. It, therefore, lays a foundation by a discussion of the colonial manifestations of the ideal type bureaucracy which was later theorised by Weber in the twentieth century.

The discussion will show that some traces of the early manifestations of the model as later theorised by Weber could be seen in South Africa, emanating from Britain and the Netherlands, as far back as the colonial era. It complied with what later became the Weberian toolkit. The concept of outsourcing and corporatisation never featured in discussions before 1988. Local government alone was responsible for service delivery through its personnel, thus implementing the full Weberian model of service delivery. However, the Weberian model had a slow acceptance in the Union and the Apartheid parliaments, only peaking in the dying days of the apartheid era. In what follows, some early traces of the Weberian toolkit will be highlighted, to give context to the discussion that will follow on the manifestation of Weberian bureaucracy in South Africa from 1910 to 1994.

2 Pre-Union manifestations of the Weberian model

From the 1800s to 1910 the colonial administration displayed the basic elements of the Weberian bureaucracy. There was strict hierarchy, compliance with rules and regulations was strictly enforced, there was specialisation of tasks, and only qualified officials were appointed

as governors or their aides.¹ The security of tenure element was similarly manifest. Cloete notes that this is probably why the British empire was considered ‘one of the most wonderful pieces of human administration the world has ever seen’.² However, the focus of this study is on local administration, to which I now turn.

Local government in South Africa largely owes its origins to the colonial history of the country, mainly the British influences. Initially, villages in the Cape colony, where local government originated, were so small that there was no need for the creation of separate government institutions for them. The central government of the Cape Colony took care of the needs of the residents in villages and small towns falling within its jurisdiction.³ However, as the population grew, a need arose for an authority to exercise control, resolve conflicts and render some essential services of a local nature which affected the daily lives of local citizens.⁴ The rendering of these essential services by colonial officials was becoming unsatisfactory as those officials used central/national standards, not the peculiar needs and circumstances of a particular locality. This necessitated a need for separate government institutions to ensure that each local community was governed and administered with proper recognition of its unique characteristics and true needs.⁵ This separate structure would mean that local citizens were involved in the determination of policies, as well as their implementation, for the provision of local public goods and services.⁶

Few elementary structures emerged in the Cape colony as early as 1685. However, the first real structure with an elected council, which marked the distinct form of local government as we know it today, was introduced in 1836 with the passing of Municipal Ordinance 9 of 1836 for the Cape Colony.⁷ It was modelled on the form of local government developed in England.⁸ This Ordinance laid a foundation for a system of local government with an elected council, comparable to present-day councils, when it took effect on 15 August 1836.⁹ The first

¹ Binza SM ‘The evolution of South African local governments: The politics of memory’ (2005) 30(2) *Journal for Contemporary History* 72 (hereafter Binza 2005).

² Cloete 1986: 22.

³ Binza 2005: 72.

⁴ Cloete JN *Central, Provincial, and Municipal Institutions of South Africa* (1982) 241 (hereafter Cloete 1982).

⁵ Cloete 1986: 10. See also Cloete 1982: 241.

⁶ Cloete 1982: 241.

⁷ Steytler N & De Visser J *Local Government Law of South Africa* (2007) 1-3.

⁸ English Municipal Corporations Act of 1835.

⁹ Tsatsire I, Raga K & Taylor JD et al. ‘Historical overview of specific local government transformatory developments in South Africa’ (2009) 57(1) *New Contree* 130 (hereafter Tsatsire et al. 2009).

Municipal Council ever to be elected in South Africa was that of Beaufort-West in 1837 followed by that of Cape Town in 1840.¹⁰

This model was replicated, with some modifications, first in the annexed Natal in 1847¹¹ and later in the two Boer Republics, in 1856 (Orange Free State), and 1883 (in Transvaal).¹² These laws provided for the election of councillors (known then as commissioners) who had to serve as members of the municipal council. Only the property owners were eligible to participate in such election. Furthermore, only persons who paid property taxes could be elected as councillors.¹³ However, among these minor modifications to the Cape Municipal Ordinance, the Natal Municipal Ordinance marked a significant improvement from the earlier Ordinance that was passed in the Cape. According to Craythorne,¹⁴ this newer legislation brought into being, for the first time in South Africa, the following concepts:

- towns were constituted as corporate bodies;
- representatives were elected by voters registered on a voters' roll;
- the councils decided on a local tax levied on property, which had been valued (rates);
- auditors had to be appointed;
- the Town Clerk and senior officials were appointed and not elected at a public meeting; and
- the committee system was introduced.¹⁵

Craythorne further notes that these developments in Natal were so advanced that it can be safely said that what happened in Natal influenced the development of local government in the whole of South Africa.¹⁶

Ordinance 9 of 1836 introduced structures and systems of governance which included the council, a weak mayoral system, various committee systems, the career system, town clerks,

¹⁰ Marais D *South Africa Constitutional Development: A Multi-Disciplinary Approach* (1989) 89 (hereafter Marais 1989).

¹¹ Natal Municipal Ordinance 5 of 1847.

¹² Green LP *History of Local Government in South Africa* (1957) 21 (hereafter Green 1957).

¹³ Green 1957: 19.

¹⁴ Craythorne DL *Municipal Administration: The Handbook* (2003) 10 (hereafter Craythorne 2003).

¹⁵ Craythorne 2003: 10.

¹⁶ Craythorne DL *Municipal Administration: The Handbook* (1997) 2 (hereafter Craythorne 1997).

and the Westminster system in the local authorities.¹⁷ These structures entailed the following principles. First, it established a hierarchy of authority. In the administration, the Ordinance provided for the appointment, by the council, of a secretary (town clerk), treasurer and other officers provided for in the regulations to constitute the municipal administration.¹⁸ From these structures emerged a hierarchy of authority, with the Town Clerks at the apex, followed by the treasurers and other officers provided for in the regulations.

Secondly, local governance was to be conducted in terms of rules and regulations. The Cape Ordinance, which was replicated in other regions, provided a framework within which municipal regulations and by-laws were drawn up, catering for the diverse needs of municipalities. It provided scope for the local inhabitants to use their initiative in terms of public participation.

Thirdly, a system of specialised tasks was introduced. Binza contends that the transformation process undertaken by the Cape Ordinance was that the performance of functions of public servants were stipulated in the acts, ordinances and by-laws.¹⁹ Contrary to their English counterparts, the municipal councillors at the Cape were allocated a wide range of responsibilities. In terms of the Cape Ordinance, the councillors were empowered to appoint street watchmen, to provide fire engines, to erect lamp posts, to lay water pipes, to erect bridges, reservoirs and fountains, to keep streets in good repair, to establish markets, to enforce regulations on weights and measures, to enter into contracts for work and materials, to dispose of municipal property and to abate public nuisances.²⁰ Out of these powers and functions developed offices such as electrical engineering divisions (responsible for street lighting and the like), civil engineering divisions (responsible for laying water pipes, erecting bridges, reservoirs and fountains), and fire brigade division (for the provision of fire engines).

Fourthly, the administrators were salaried and given security of tenure. Municipal officials were entitled to some form of remuneration. For example, the municipality of Cape Town, established in terms of Ordinance 1 of 1840, paid its town clerks (then referred to as secretary), their treasurer and their bookkeeper a salary of 200 British pounds a year each.²¹ Their term

¹⁷ Binza 2005: 72.

¹⁸ Green 1957: 24.

¹⁹ Binza 2005: 73.

²⁰ Warren D *Merchants, Commissioners and Wardmasters: Municipal Politics in Cape Town, 1840-1854* (unpublished Master's thesis, University of Cape Town, 1986) 14.

²¹ Green 1957: 22.

did not coincide with the term of the councillors, which was for a maximum of two years (one year in some cases). They stayed in office for consecutive terms and therefore enjoyed some fixity of tenure.²²

Fifthly, the principle of skills and meritocracy was slowly established. This resulted in the appointment of well-qualified, trained, and experienced English males occupying senior positions in the higher echelons of all South African municipalities.²³ For appointment purposes, qualifications and previous experience played a significant role.²⁴ Most of the officials had qualifications and already had work experience from the United Kingdom and other parts of the world. Only a few of these officials were university trained engineers; almost all of them had been trained through apprenticeship.²⁵ Essentially, the element of the Weberian bureaucracy relating to merit was met.

3 Weberian principles in local government

3.1 Local government in white areas

As could be seen from the background above, the systems of local government and administration which developed in Natal and the two Boer Republics were based on the Cape model. However, each of the systems in these territories gradually developed its own flavour and characteristics as influenced by local social, political and physical realities.²⁶ The developments in Natal, for example, markedly improved on the Cape model and introduced new notions in the system of local government and administration. However, even though the differences were evident for all to see, the basic principles and structures formulated in the Cape were not tempered with in any fundamental way.

3.1.1 Rules and regulations

When the Union of South Africa was established, the provisions of the constitutive Act, the South Africa Act, 1909, sought to maintain the *status quo ante* in terms of which all institutions

²² Green 1957: 24.

²³ Binza MS *An Evaluation of Policies for Attaining Excellence in Service Delivery in the Port Elizabeth Municipality* (unpublished Master's thesis, Port Elizabeth Technikon, 2000) 73.

²⁴ Mäki H & Haarhoff J 'Municipal engineers in Johannesburg and Pretoria before 1910' (2009) 5(2) *The Journal for Transdisciplinary Research in Southern Africa* 126 (hereafter Mäki & Haarhoff 2009).

²⁵ Mäki and Haarhoff 2009: 123.

²⁶ Cloete 1982: 242.

that existed before the Union were retained, ensuring that each of the four colonies (which became provinces) continued to develop their own distinctive system of local government. The power to legislate on municipal matters was conferred on the provincial councils in terms of the South African Act of 1909.²⁷

The provincial councils in all the four provinces passed a series of ordinances in their respective provinces to regulate the system of municipal government and administration.²⁸ In most cases the provincial councils passed legislation on general aspects of municipal governance and administration and, where necessary, on specific aspects. Examples of ordinances dealing with general aspects included the Natal Municipal Ordinance 11 of 1918; the Transvaal Local Government Ordinance 9 of 1912; the Cape Municipal Ordinance 10 of 1912; and the Orange Free State Local Government Ordinance 4 of 1913. The Transvaal Local Authorities Rating Ordinance 6 of 1912, Transvaal Municipal Elections Ordinance 8 of 1912, Cape Divisional Councils and Roads Ordinance 13 of 1917, City of Cape Town Unification Ordinance 19 of 1913 and the Natal Town Planning Ordinance 27 of 1949 are examples of ordinances dealing with specific aspects of local government.

The crux of the matter is that local authorities were created by laws passed by provincial authorities, which defined the scope of their local jurisdiction. In all provinces, detailed procedures and conditions were prescribed for

- the creation of municipalities or other local authorities,
- election of municipal councils,
- structures of local authorities,
- their powers and functions,
- their administration and staff establishment; and
- their finances.

There was little, if at all, that was left unregulated by provincial councils.

Moreover, municipal councils were also empowered to pass by-laws which were subject to assent by the provincial Administrators.²⁹ The provincial ordinances also prescribed specific

²⁷ Section 85 South African Act, 1909.

²⁸ Cloete 1982: 243.

²⁹ Cloete 1982: 244.

functions which were entrusted to local authorities. Section 72 of the Transvaal Ordinance 9 of 1912 and Chapter X of the Natal Local Authorities Ordinance 25 of 1970 provided that the municipal council may make, alter and revoke by-laws on a large number of specified subjects. These were the matters on which the council could make by-laws to supplement provisions of the relevant provincial ordinances and to provide for the manner in which local authorities could deal with these functions. The by-laws passed by municipal councils on those matters entrusted to local authorities were still subject to the approval of the provincial Administrator.³⁰ The procedure for making/passing these by-laws was also prescribed. In essence, municipal government and administration took place within the limits laid down by the provisions of either the act of Parliament or ordinances passed by provincial councils and its own by-laws and rules of orders.³¹

In sum, there were numerous rules and regulation with which to comply and the provincial Administrators, or municipal councils and their committees ensured rigid compliance with those regulations. Municipal councils were required to give directions to their officials about the manner in which the provisions of the relevant legislation, ordinances and by-laws were to be carried out. They also had a duty to supervise the activities of municipal officials in order to ensure strict adherence to rules and regulations.³² Similarly, provincial councils had a responsibility to oversee the performance by municipalities of their function. Nothing could be done without their approval or instigation. Moreover, failure to comply with statutory provisions was met with sanction. Given that local authorities were creatures of statutes, it was easy for provincial councils to disestablish them at will on account of failure to toe the line. This fact made it possible for provincial councils to hold local authorities on a tight leash.

3.1.2 Hierarchy of authority

Before discussing the internal hierarchy within the municipal administration, it is worth noting that the councillors served on a part-time basis and the mayor of a local government institution was merely *primus inter pares* with no executive or administrative functions. He or she was merely a ceremonial head of the council.³³ This allowed much more discretion to administration, especially the town clerks who were the head of the administration and

³⁰ Cloete 1982: 256.

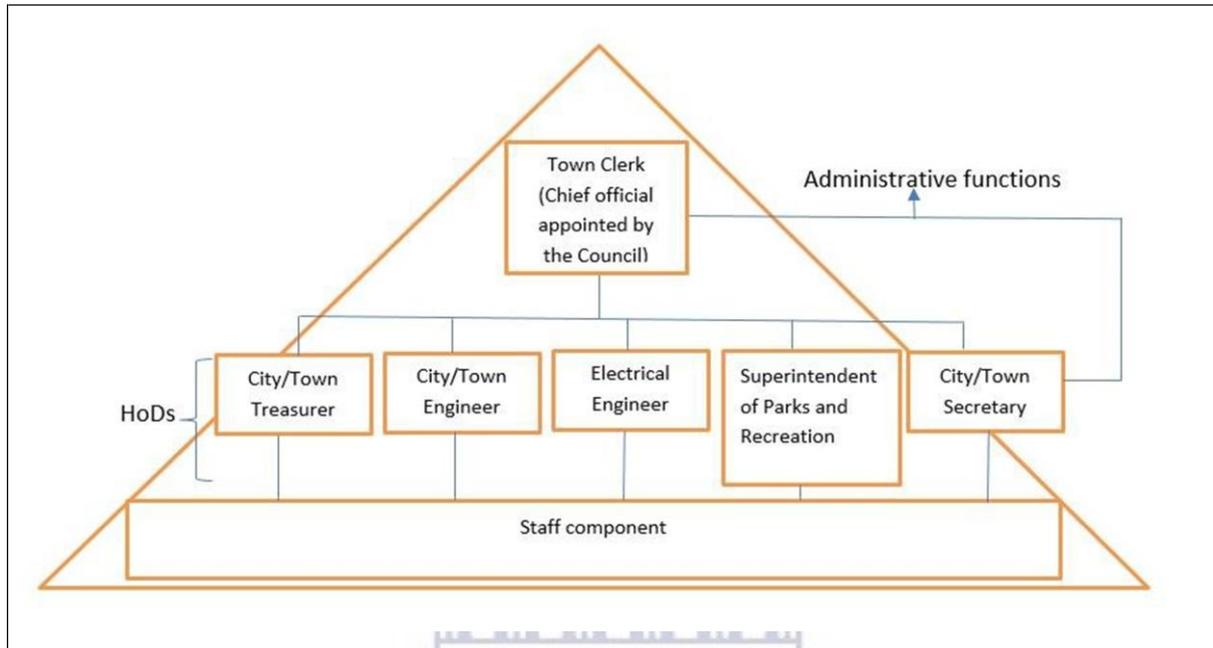
³¹ Cloete 1982: 255.

³² Cloete 1982: 257.

³³ Cloete 1982: 254.

sometimes designated the chief administrative and/or executive officer of the council. A typical structure of a white local authority is shown in the figure below.

Figure 1: Hierarchy within white local authorities



3.1.2.1 Town Clerks

The provincial councils in all four provinces provided for the administration of the municipalities. In Transvaal, for example, section 58 of Local Government Ordinance 9 of 1912 provides that

[t]he council shall from time to time appoint a town clerk and a medical officer of health ... and may also appoint such other officers as it may consider necessary and may pay such salaries and allowances to any such officers as it may determine.

Section 62 of the Local Government (Administration and Elections) Ordinance 50 of 1990 contains similar provisions. In Natal, section 199(1) of the Local Authorities Ordinance 25 of 1974 provided that a

council shall appoint a town clerk and another person as a treasurer ... The council shall also appoint a medical officer of health and a sanitary inspector ... and may appoint such other officers and servants as it may consider necessary.

In the Orange Free State and the Cape Province, it is section 67(1) of the Local Government Ordinance 8 of 1962 and section 60 of the Municipal Ordinance 20 of 1974, respectively, that provided for the appointment of these officials by the council.

The town clerk was the head of the administration and sometimes designated the chief administrative and/or executive officer of the council. However, no details were given of the functions which the town clerk had to perform in his capacity as chief administrative and executive officer. It was only in 1961, with the coming into operation of the Transvaal Local Government (Administration and Elections) Ordinance 40 of 1960, that a first real attempt at an exposition in law of the functions of the town clerk as chief administrative officer was made.³⁴ Section 65(1) of the Transvaal Ordinance provided that the town clerk

- (i.) shall be charged with and responsible to the management committee for the proper carrying out of all the directions of the council and the management committee, the co-ordination of the activities of the council, and the general supervision, control and the efficiency of the administration, organisation and management of the council's departments, sections or branches; and
- (ii.) shall be responsible for all communication between the management committee and the council's departments, section or branches.

This clearly indicated that the town clerk, who was also head of the administration or the chief administrative and executive officer, was at the apex of the hierarchy at local administration level. This role was also affirmed in the Cape Province in the case of *Uitenhage Municipality v Uys*.³⁵ In this case the town clerk, acting without the prior authorisation of the council, had given a lessee notice to vacate by 1 June 1972. The action was subsequently authorised by a council resolution on 15 November 1971. The court held that *ex post* ratification of the notice could be effected at any time before the stipulated period of notice began to run. Cloete J said:

[I]n a multitude of ways the town clerk acts and is required to act as the chief administrative officer of the town council. It is in my view an untenable

³⁴ Cloete JN *Provincial and Municipal Government and Administration: Selected Readings* (1978): 226 (hereafter Cloete 1978).

³⁵ 1974 (3) SA 800 (E).

argument that his unauthorised acts on behalf of the council could not be subsequently ratified by his principal.³⁶

The foregoing discussion, therefore, places the town clerk functionally at the top of the hierarchy and only responsible to management committee and/or council as his or her political principals.

3.1.2.2 Head of departments

The multiple committee system that was in operation in some municipalities made it difficult for town clerks to function as chief administrative officers. The office of the town clerk was relegated to the position of *primus inter pares* as these multiple committees of the council developed a practice of linking up directly with the heads of departments of the municipal administration instead of working through the town clerk.³⁷ To ensure that the town clerk was a principal officer of his council and that he was the only communication channel between the council and other officials, section 65(2) of the Transvaal Ordinance provided that

every head of a department [should], except in respect of such functions, duties or powers as [were] conferred or imposed on him by virtue of any other law, be subordinate and responsible to the town clerk for the proper management of the department entrusted to such head.

This, therefore, placed the heads of departments functionally below the town clerk. Furthermore, section 60(3) of the Cape Municipal Ordinance 20 of 1974 states that the town clerk or a departmental head may, in the exercise of his powers and the performance of his duties and functions, act through any employee under his control. This creates a hierarchy with the town clerk on top, heads of departments below him and any other employees under the head of department's control at the bottom.

3.1.3 Meritocracy

For the better part of the period under review (1910-1994) and until the late 1980s, the personal qualities and qualifications for the positions of the town clerks and treasurers³⁸ were nowhere in South Africa prescribed in law. Whereas local and provincial authorities could not appoint

³⁶ At para. 45.

³⁷ Cloete 1978: 224.

³⁸ The positions of the town clerk and town treasurer were sometimes held by one person. The Cape Municipal Ordinance 19 of 1951 and Ordinance 20 of 1974 provide that every council shall appoint a town clerk, a treasurer and such other employees as may be necessary, and allow that the office of town clerk and treasurer may be held by one person.

candidates without appropriate qualifications as carpenters, electricians, plumbers, health inspectors, engineers, etc., they did so for the position of town clerk. In fact, almost all the heads of departments, excepting the city/town treasurer, had to have appropriate qualifications before being appointed to such departments as the city/town civil engineer, city/town electrical engineer, city/town planner, and the medical officer. They made sure that they got the right people who were qualified for these positions.

However, from 1910 to 1988 the authorities were prepared to appoint individuals, without adequate qualifications, as chief officers³⁹ for all the above-mentioned departments as well as the treasurers. These were not even conditional appointments that subjected the employment of such individuals to on-the-job prescribed training. They were just appointed from clerical grades and were left to fend for themselves.⁴⁰ Essentially, there were no specific educational qualifications attached to the position of town clerks by provincial authorities. Each municipal council was free to determine its own requirements.

This situation was somewhat salvaged, informally, by the Institute of Town Clerks of Southern Africa and the Institute of Municipal Treasurers and Accountants, which operated on a voluntary basis but required their members to be in possession of a university degree or diploma, as seen hereunder.

3.1.3.1 The Institute of Town Clerks of Southern Africa

The Institute of Town Clerks of Southern Africa (the Institute), formed in November 1946, was a voluntary association aimed at promoting and improving the technical and professional knowledge of town clerks. Their knowledge and competence was then tested by examinations prescribed by the Institute.⁴¹ To this end, the Institute approved a syllabus in 1948 which consisted of courses offered by the Institute and others taken at any university for degree or non-degree purposes. To be a member of the Institute, a candidate had to be:

- 1) an Associate,
- 2) a Fellow,
- 3) *a white person*, and

³⁹ That is, the chief administrative officers.

⁴⁰ Cloete 1978: 231.

⁴¹ Craythorne DL *The Role of the Town Clerk in Municipal Government in South Africa* (unpublished MPub Thesis, University of Cape Town, 1977) 130 (hereafter Craythorne 1977).

4) elected by the Institute Council.⁴²

Eligibility for election as an Associate required one to be 21 years of age or older, to have passed the Final Examination of the Institute, and either be a town clerk or have been employed in an administrative position on the staff of the town clerk for not less than five years. In addition, the Institute Council must certify him fit and proper for election.

To be eligible for election as a Fellow, one had to be an Associate who was also a town clerk with no less than *ten years' experience* in a town clerk's department.⁴³ He ought to also satisfy the Institute Council that the nature of his duties as a town clerk justified his election as a Fellow.

There were also Special Class members, who might have been elected by the Institute Council as Fellows or Associates. This category was open to those who, although town clerks or on the staff of a town clerk, did not meet the above requirements of having been Associates, Fellows, and elected by the Institute Council. It was also open to those whose duties were similar to those of the town clerk. However, there was a proviso that persons in the Special Class category are not entitled to vote.⁴⁴

The membership requirements suggest that the Institute was catering for town clerks already in the employ of a local authority only. This means that one had to be employed by a local authority as a town clerk or in the office of the town clerk for a number of years⁴⁵ first before the Institute could consider admitting him as a member. Essentially, the Institute was established to remedy the neglect of central and provincial authorities of not prescribing specific educational qualifications to the post of the town clerks and of at least encouraging local authorities to adopt appropriate educational levels for their chief administrative and executive officers.

3.1.3.2 Institute of Municipal Treasurers and Accountants

Given that the office of the town clerk and that of the city/town treasurer were sometimes held by one person, the same disdain with which the office of the town clerk was treated was also extended to the office of the city/town treasurer. No particular form of study for qualification was required for the municipal finance official in South Africa. As was the case with town

⁴² Craythorne 1977: 135.

⁴³ Craythorne 1977: 135.

⁴⁴ Craythorne 1977: 135.

⁴⁵ Five years or more in the case of an Associate and ten years and above for Fellows.

clerks, this void was somehow filled by the Institute of Municipal Treasurers and Accountants of South Africa (IMTA) which set qualification requirements for the positions of city/town treasurer and city/town accountant.

IMTA was formed in 1929, with the aim to enhance the technical ability of municipal finance officials in South Africa.⁴⁶ This body initially designed a Diploma curriculum which was offered at local lecture schemes and correspondence institutions.⁴⁷ IMTA thereafter administered its own admission examinations for different levels of candidates. It was a condition of entry to all examinations that a candidate must be white, must register as a student member of IMTA and must have been employed on a full time basis in a Finance Department of a local authority.⁴⁸

IMTA's curriculum changed a number of times in response to the needs of its members. First, the changes of 1972 brought a graduate status to IMTA's qualifications.⁴⁹ The new curriculum contained fourteen prescribed university courses offered by the University of South Africa and other residential universities.⁵⁰ However, a candidate still had to write admission examinations after obtaining the fourteen courses. All the other conditions relating to race, student membership and continuous service in a Finance Department remained unchanged. The last change took place in the early 1980s and any one of the following degrees formed part of the curriculum: Bachelor of Commerce, Bachelor of Accounting Science, Bachelor of Accountancy, Bachelor of Business Science, or a degree approved by the Institute Council. The admission exams also fell away, signalling the formal acceptance of a general degree as a qualification for associate membership with relatively minor adaptations like the inclusion of five core courses and Accounting III Local Government.

However, given that these Institutes operated on a voluntary basis, meaning that town clerks and town treasures/accountants were not obliged to become members and the standards set by these Institutes were not enforceable, the skills vacuum persisted for some town clerks. These standards were only enforceable, and effective for career advancement, to those officials who volunteered to be members. Thus until 1988, as will be seen in section 4.3 below, the system that operated was not meritocratic in the Weberian sense of the word. There was no emphasis

⁴⁶ De Lange 2009: 6.

⁴⁷ Cowden JW *A History of the Institute of Municipal Treasurers and Accountants: 1929-1989* (1993) 31 (hereafter Cowden 1993).

⁴⁸ Cowden 1993: 20.

⁴⁹ Cowden 1993: 35.

⁵⁰ Cowden 1993: 34.

on qualifications or inputs. Side way entries to senior position as opposed to bottom up entry were the order of the day. Local authorities continued to employ people with no qualifications outside the Institute to the position of a town clerk.

It took hard lobbying by the Institute for local councils to appoint appropriately educated and trained individuals as town clerks/treasurers or to encourage those that were in the employ of local authorities to become members of these Institutes for further training. It was only then that local councils started appointing Associates from the Institutes. As such, the importance of being a member was that preference was given to them when local authorities appointed people to the position of town clerk/treasurer. The stringent membership requirements of the Institutes made their members attractive because of their supposed technical and professional knowledge as well as their experience, and the knowledge that the Institutes enforced strict ethical code on its members.

These Institutes therefore served as an in-service or on the job training mechanism for local authorities, though on a voluntary basis. Only those officials who wanted to enhance their performance and gain a bit of respect and prestige from peers became members. It was a matter of choice. There was no hard rule in this regard until 1988 when these Institutes were given statutory public recognition, putting an end to the voluntary nature of membership of these Institutes.

3.1.4 Specialisation of tasks

As has been noted already, municipal governance and administration took place within the limits laid down by acts of Parliament and ordinances passed by provincial councils. Local authorities were, therefore, obliged to perform only those functions prescribed for them by acts of Parliament and provincial ordinances. As also noted, each provincial council passed ordinances which provided for the creation of local authorities. These same ordinances detailed the specific matters which were entrusted to local government. In this regard, the provincial ordinances usually contained a long list of matters on which the local authorities might act. The typical functions on which almost all local authorities would always have to act included streets, parks or other open spaces, provision of water and electricity, rubbish removal,

sewerage disposal, storm water drainage, traffic control, environmental health, and town planning.⁵¹

The beginning of the formal recognition of specialisation occurred in the creation, by each council, of a number of functional departments/division for the performance of these functions.⁵² There was typically a town clerk's department or division headed by the town clerk, treasurer's department, city or town civil engineer's department, city or town electrical engineer's department, parks and recreation's department, and a department of a medical officer of health⁵³ to which the above matters or functions were allocated.⁵⁴

For the purposes of staffing, the work of these departments/divisions was divided into jobs or posts or offices so that decisions regarding recruitment, selection, placement, training, promotion and remuneration could be based on those jobs/posts/offices. This exercise entailed demarcating units of work which would be within the physical and mental abilities of individuals to staff these departments. An inventory of the tasks which were to be performed in a specific office was then compiled in such a manner that the requirements for the performance of each task were clear and the measurement of the extent of work to be done was undertaken. Then the experience, skills and qualifications necessary to do the work were determined.⁵⁵

This was then followed by the creation of a formal personnel establishment, in other words, a posts structure with hierarchy or ranking of posts within the department/division on the basis of demands made to the incumbent of the job. This was indispensable for the preparation of budgets. An establishment for each department was required so that personnel could be recruited to specific positions that they would specialise in.⁵⁶

In smaller municipalities, personnel officers (officers dividing tasks and establishing the posts structures) were usually the town clerks and/or one of their subordinates. In larger municipalities, a personnel officer had to be appointed to deal with all these issues. However, a trend developed in the cities where a service commission was created. For instance, the

⁵¹ Cloete 1982: 256.

⁵² Craythorne 1982: 9.

⁵³ Medical officers are only mentioned for the purposes of the discussion on specialisation of tasks. They are not discussed further.

⁵⁴ Cloete 1982: 261.

⁵⁵ Cloete *JJN Personal Administration* (1985) 100 (hereafter Cloete 1985).

⁵⁶ Cloete *JJN Personnel Administration and Management* (1997) 143 (hereafter Cloete 1997).

Durban Extended Powers Consolidated Ordinance 18 of 1976 provided, among other things, for the establishment of the Municipal Service Commission consisting of not less than three members appointed by the Administrator.⁵⁷ The city council could, therefore, delegate some of its personnel powers to its Municipal Service Commission.⁵⁸ In the Cape Town city council, the Municipality of Cape Town Administration Ordinance 24 of 1965 applied. Its provisions enjoined the Administrator of the Cape Province to appoint the members of the Municipal Service Commission for Cape Town, consisting of the chairman and three other members. Of the three men, one was nominated by the city council, one by the South African Association of Municipal Employees (SAAME as it then was, now IMATU), and one by the Cape Town Municipal Workers Union. Section 19 of the Ordinance prescribed the function of the commission.⁵⁹

The municipal service commissions established for Pretoria and Johannesburg were not provided for in provincial ordinances, as was the case elsewhere. Instead, they were established in terms of the regulations passed by the city councils pursuant to sections 62 and 80(2) of the Local Government Ordinance 17 of 1939, regulations which were subject to the approval of the Administrator.⁶⁰

Personnel matters were, therefore, dealt with by these commissions, which ultimately ensured that specialisation of tasks between and within department occurred smoothly.

3.1.5 Security of tenure

It should be highlighted from the outset here that municipal employees had no fixity of tenure conferred upon them by statute. However, their conditions of service relating to remuneration, guarantees, indemnity, protection, pensions and gratuities made municipal authorities attractive careers to persons qualified in a variety of fields. In what follows, some of the conditions of service that made local authorities a career of choice will be looked at in some detail.

⁵⁷ Section 89 Ordinance 18 of 1976.

⁵⁸ Cloete 1997: 141.

⁵⁹ Cloete 1977: 141.

⁶⁰ Cloete 1977: 141.

3.1.5.1 Remuneration

The ordinances from all the four provinces cemented the security of tenure of municipal officials. They provided that every council should determine the emoluments and allowances to be paid to its employees through a special resolution.⁶¹ To pass such decisions, the majority vote of the total number of councillors was required. Randell notes that the 1951 version of the Cape Ordinance required a two-thirds majority of the total number of councillors.⁶² Such decisions could not be delegated to committees of the council or to an employee.⁶³ This special resolution/determination, however, did not bar the council from inviting candidates for a position in the service of the council to state the notch in the scale of emoluments pertaining to such position at which he or she was prepared to accept such position or perform the duties attached to the position.⁶⁴

After this had been done and the appointment made, no council was permitted to reduce the emoluments or allowances of senior officials or alter their condition of service without their consent or that of the Administrator.⁶⁵ As far as the town clerk and the treasurer were concerned, the determination or redetermination of their emoluments and allowances by council required prior approval of the Administrator. If no such prior approval was obtained, councils were completely barred from going ahead with the determination or redeterminations of such emoluments and allowances.⁶⁶ It is argued that this served as a cushion against council and its councillors tempering with the remuneration of its employees. The employees in a sense were not beholden to councillors and the council for their positions and the concomitant remuneration, and, as such, their professional independence was secured.

Furthermore, any alterations or changes to the emoluments or conditions of service of officials other than senior officials were regulated by the provisions of the Industrial Conciliation Act 28 of 1958 (the Act).⁶⁷ In an event where the council reduced the emoluments or altered the conditions of service of any employee other than its chief executive officer, such employee

⁶¹ Section 63(1).

⁶² Randell GH & Bax KC *Handbook Relating to Municipal Law in the Province of the Cape of Good Hope South Africa* (1961) 51.

⁶³ Randell G H & Bax K C *Municipal Law in the Province of the Cape of Good Hope South Africa* (1977) 74 (hereafter Randell & Bax 1977).

⁶⁴ Section 61(1).

⁶⁵ Section 63(2) and (3) Cape Municipal Ordinance 20 of 1974.

⁶⁶ Section 63(3).

⁶⁷ Randell & Bax 1977: 74.

could invoke the protection under the Act.⁶⁸ This Act protected all the officials – except town clerks and treasurers, whose positions were sometimes occupied by the same person – such as secretary, chief medical officer of health, city or town engineer, city or town electrical engineer, city or town treasurer, manager or director of non-white affairs, manager or director of city or town transport, and clerk of the council.⁶⁹ The town clerks and treasurers were not covered by the protection under the Act. Their protection depended on the fact that council's intentions had to be referred to the Administrator for approval.⁷⁰ Municipal councils were also required to inform the Administrator promptly about any dispute concerning the remuneration of senior officials.⁷¹

In 1985, the conditions of service of town clerks and/or treasurers changed for the better. The Remuneration of Town Clerks Act⁷² classified town clerks into 15 classes for the purposes of determining their conditions of service. It then determined their remuneration according to these classes. This essentially meant that the salaries of town clerks were determined nationally. Furthermore, the Act provided for fringe benefits such as a housing and transport allowance.⁷³

3.1.5.2 Dismissal

The provincial ordinances further provided that a municipal council could not dismiss the town clerk and other specified officials without the approval of the Administrator.⁷⁴ Randell notes that the reasons for this provision, as far as the town clerk is concerned, was that in terms of section 2 of the Industrial Conciliation Act, any employee of a local authority designated by

⁶⁸ In the case of *Minister of Labour v Port Elizabeth Municipality*, 1952 (2) SA 522 (AD), the employees union approached the Minister to appoint a Conciliation Board under section 64 of the Industrial Conciliations Act to test whether the employer had altered or given notice to alter the conditions of employment of his employee. The Minister refused, arguing that the proposed amendments would not alter the conditions of service of the said employees. Furthermore, he did not think it was expedient in any event to appoint the Board. The Eastern Districts Local Division held that it had no jurisdiction to interfere with the decision of the Minister. In the Appellate Division, it was held that once an employer has altered or given notice to alter the conditions of employment of his employees, the employees have the right under section 64 to require the Minister to decide whether it is expedient to appoint the Board. Schreiner, J.A held that this right in no way depends upon the Minister's view on the question whether what the employer has done or proposed to do amounted to an alteration of the conditions of service. If there is doubt as to the correct answer to that question it must be decided by the courts, and the Minister could no more refuse jurisdiction where the facts bring the case within the true meaning of 'alter or give notice to alter' (at 359-60).

⁶⁹ Randell & Bax 1977: 74.

⁷⁰ Randell & Bax 1977: 74.

⁷¹ Section 63(4)(a) Cape Municipal Ordinance.

⁷² Act 115 of 1985.

⁷³ Cloete 1997: 144.

⁷⁴ Section 67(2).

such authority as its chief administrative officer, as required by sections of the provincial ordinance discussed earlier, is not an employee for the purposes of the Industrial Conciliation Act. It did not apply to him or her, and as such he or she was deprived of the protection afforded by the Act to all other employees. In the place of such deprivation, the proposal of the council to terminate his or her service ought to be subjected to an enquiry requested by the town clerk or by the Administrator.⁷⁵ A municipal council could also not dismiss a medical officer of health without the approval of the Minister of Health.⁷⁶

Furthermore, any suspension of any employee for any reason whatsoever by the mayor ought to be reported to the council no later than its next ordinary sitting after such suspension.⁷⁷ A notice suspending the services of an employee was not to be seen as a notice terminating his employment. It was held in *Gumede v Maphumulo Bantu School Board and Another*⁷⁸ that a subsequent letter terminating an employee's service as from the date of suspension would not deprive the employee of the right to claim his salary for the intervening period.

In the case of a town clerk, the council had a duty forthwith to report the fact of his or her suspension to the Administrator who could then reverse such suspension after taking into account all the relevant facts.⁷⁹

3.1.5.3 Pensions and gratuities

Over and above the security of tenure enjoyed by municipal officials, there were also a number of fringe benefits, resulting in local authorities being attractive careers to people qualified in a variety of professions.⁸⁰ For example, provisions were made in all the provinces for pension funds for municipal officials. First, municipal councils paid, with the approval of the Administrator, pensions and/or gratuities to employees who have been retired on grounds of superannuation or unfitness for duty and to the widows and dependants of employees who died while in service of the council.⁸¹ Such pension could not be revoked during the period for which they were granted. Secondly, municipal councils established a special fund for those employees who joined the service of the council below the age of 65 and were not members and/or not

⁷⁵ Randell & Bax 1977: 78.

⁷⁶ Cloete 1982: 260.

⁷⁷ Section 68(1) and (2).

⁷⁸ 1961 (1) SA 639 (N).

⁷⁹ Section 68(1) and (2).

⁸⁰ Cloete 1982: 261.

⁸¹ Section 72 Cape Municipal Ordinance 20 of 1974.

eligible to become members of the pension fund. This means that no official was left without benefits on his retirement, or his dependants on his death.

3.1.6 Conclusion

It is pointed out in the foregoing discussion that there was no official recognition of the appropriate qualification for the positions of the town clerks and treasurer for the better part of the twentieth century. It is suggested that these positions did not have a special status in the official circles. Appointments to other positions below that of the town clerk and the town or city treasurer were regulated. It took the formation of professional associations by the town/city treasurers and town clerks themselves to get these functionaries somehow regulated. However, these institutions/association operated on a voluntary basis, setting standards without state sanction and recognition. Even after the formation of these institutes, which were very effective in their 'watchdog' role and for career advancement, it took central government six decades, in the case of town/city treasurers, and over four decades, in the case of town clerks, to recognise their qualifications through statute.⁸²

In essence, there was a very slow acceptance of the Weberian model in the top echelons of white local authorities as it relates to meritocracy. However, there was high level of professionalism, as spearheaded by the Institute and IMTA, which operated on a voluntary basis and were not recognised by the regulatory regime for white local government.

3.2 Local government in coloured and Indian areas

The coloured and Indian populations had no separate homeland of their own. They were destined to live and develop parallel to but separately from whites in the same area, i.e. the so-called white South Africa. The arrangements made for them differed from those made for Africans.⁸³ The Group Areas Act of 1950⁸⁴ and the Population Registration Act of 1950⁸⁵ were the only measures for the segregation of South Africans (categorised into various racial groups) that had far-reaching effects on these two population groups. The Group Areas Act saw the

⁸² See section 4.3 below in this regard.

⁸³ Vosloo WB, Kotze DA & Jeppe WJO *Local Government in South Africa* (1974) 38 (hereafter Vosloo et al. 1974).

⁸⁴ Act 41 of 1950, which was amended in 1957, 1962 and 1965.

⁸⁵ Act 30 of 1950. This Act classified the population into different racial groups – white, Indian, coloured and black (African).

emergence of a network of separate residential areas in South African towns and cities. From the 1950s onwards, whites, coloureds and Indians had to live in their own racial group areas, with whites having the largest amount of, and generally the best, located land.⁸⁶

Sections 28 and 29 of the Group Areas Act provided for the establishment of local government institutions in three phases. These provisions were only carried out following the 1961 Niemand Committee of Investigation, whose terms of reference were to investigate the development of local government for urban coloured and Indian communities. The three-phased development process contained in the Act was endorsed as part of the Committee's recommendations. The first phase entailed the creation of consultative committees composed of nominated members. These structures functioned under the tutelage of a white local authority in whose area they were geographically situated; with advisory powers only.⁸⁷

The second phase entailed the establishment of management committees, with some members being elected and others nominated. Similarly, they were entrusted with advisory powers and were under the guidance of a white local authority in whose area of jurisdiction they fell.⁸⁸ However, in addition to these advisory powers, certain powers could be delegated by the 'parent' white local authority subject to the conditions prescribed by the Administrator of the province.⁸⁹

The last phase culminated in the granting of fully-fledged municipal status to the management committees equivalent to that of white local authorities. However, certain prerequisites had to be met before the implementation of the last phase. These were, first, that a committee had to be appointed to investigate whether a specific management committee (a phase two structure) should become a local authority (a phase three structure) or not. Secondly, such management committee must have sufficient revenue, trained staff, minimum area size and the capability of being geographically consolidated.⁹⁰

The various provincial administrations were enjoined to give effect to the provisions of the Act. The Cape Province, Transvaal, and Orange Free State followed the three stages of

⁸⁶ Fourie C *Land and the Cadastre in South Africa: Its History and Present Government Policy* (2000) 15.

⁸⁷ Tsatsire et al. 2009: 138.

⁸⁸ Tsatsire et al. 2009: 138.

⁸⁹ Vosloo et al. 1974: 46.

⁹⁰ Tsatsire et al. 2009: 138.

development of local government for coloured and Indian communities.⁹¹ The Natal Provincial administration, on the other hand, varied slightly from the process outlined in the Act. Instead, a two-phased process was followed. For its first phase, purely advisory local affairs committees with nominated members, to which elected members were later added, were established. For the second phase of development, the province transferred executive and fiscal powers to the advisory committees, thus giving them the independent local authority status.⁹²

By mid-1971, there were 22 coloured management committees and 53 consultative committees. For Indians, there was one town board, 16 local affairs committees, and seven consultative committees.⁹³ By the early 1980s it was decided that local government matters for the white, Indian and coloured populations would be an ‘own affairs’ matter of each house of parliament in terms of the 1983 Constitution of the Republic of South Africa⁹⁴ which provided for a tricameral system of government. Section 14(1) read with item 6 of Schedule 1 to the 1983 Constitution made local government institutions an own-affairs matter. This meant, in essence, that each house of parliament could decide what it does with ‘[l]ocal government within any area declared by or under any general law as a local government area for the population group in question’.⁹⁵ It was up to the House of Representatives (for coloureds) and House of Delegates (for Indians) to lift the status of these bodies to full municipal status with powers similar to those exercised by white local municipalities.

However, the coloured management committees and Indian local affairs committee never graduated to a full municipal status until they were subsumed by the Local Transitional Councils in 1993 after formal multi-party negotiations were initiated. There were still debates in 1989 about whether or not to give these bodies limited decision-making powers relating to development, namely housing and urban upgrading, which would not involve taking over local authorities’ traditional functions such as water and electricity supply.⁹⁶ The Natal Association of Local Affairs Committees rejected an attempt to ‘foist extra decision-making powers on

⁹¹ Vosloo et al. 1974: 47.

⁹² Vosloo et al. 1974: 47.

⁹³ Vosloo et al. 1974: 47.

⁹⁴ Constitution of the Republic of South Africa, Act 110 of 1983.

⁹⁵ Item 6 of Schedule 1 1983 Constitution.

⁹⁶ Debates of Parliament, 20/3/1989: Cols. 3435-36; 17/6/1989: Col. 948 quoted in Cameron R ‘Managing the coloured and Indian areas’ in Swilling M, Humphries R & Shubane K (eds) *Apartheid City in Transition* (1991) 395 (hereafter Cameron 1991).

LACs because it viewed this as a step toward eventual independent ethnic local authorities'.⁹⁷ Furthermore, the creation of a separate administration and infrastructure for these communities was rejected.⁹⁸ This means that the enthusiasm in some quarters for extra decision-making powers was not shared by all at the coloured and Indian local government level.⁹⁹

The rationale of putting phases of development towards ordinary local authority was to enable the coloured and Indian communities to gain a bit of experience, under the tutelage of white local authorities, on their way to full local government in their group areas.¹⁰⁰ As these structures were going up the rungs on the ladder to independent local authorities, they were given varied and added responsibilities. However, when the time was opportune for them to reach the status of independent local authorities, they did not take that opportunity. They rejected the creation of a separate administration and infrastructure, choosing instead to rely on the 'mother' white local authorities.¹⁰¹ They rejected attempts to impose additional decision-making powers, fearing that this was a slippery slope towards independent racial/ethnic local authorities, a position they ostensibly abhorred.¹⁰²

In the final analysis, these structures resembled the structures in African communities, discussed under section 3.3 below, in several material respects. First, they were not fully-fledged municipalities with their own infrastructure and administration. Instead, they relied on seconded officials, employed by parent white local authorities.¹⁰³ This meant that after 1990 there was a shortage of trained coloured and Indian staff, as they had to rely on the parent municipality. Secondly, they were appendages of white local authorities, with no powers similar to those exercised by white local authorities. Instead, greater executive powers could be delegated to them by their 'parent' white local authorities. Thirdly, they were characterised by little or no rates-generating commercial, industrial and mining areas. Neither did they have a rateable property. As in African areas, this lack of financial viability led to widespread community resistance which eventually rendered these committees unworkable.¹⁰⁴ As a result,

⁹⁷ Cameron 1991: 395, quoting *Sunday Tribune*, 29/3/1987.

⁹⁸ Cameron 1991: 395.

⁹⁹ Cameron 1991: 395.

¹⁰⁰ Vosloo et al. 1974: 47.

¹⁰¹ Cameron 1991: 395.

¹⁰² Cameron 1991: 396.

¹⁰³ Heymans C & White R 'Playing politics without power: The state of black local government in the South Africa of the 1980/90s' (1991) 18(1) *Politikon* 14 (hereafter Heymans & White 1991).

¹⁰⁴ Ismail N, Bayat S & Meyer I *Local Government Management* (1997) 50 (hereafter Ismail et al. 1997).

since 1962, none of the Indian and coloured urban areas progressed to becoming fully-fledged local authorities.¹⁰⁵

The majority of these structures remained advisory bodies. They never progressed to being fully-fledged local authorities with proper administration and infrastructure. The administrative staff working in these structures were employed and accountable elsewhere. They belonged to the hierarchy of white local authorities. As such these structures did not exhibit Weberian traits. Even in 1982, when African people were given local authorities of their own, the majority of coloureds and Indians still fell under the jurisdiction of advisory bodies attached to white local authorities.

3.3 Local Government in black urban areas

It is worth noting that the institutions of government discussed in 3.1 above provided the formal decision-making apparatus for whites only. Although there were other races within their areas of jurisdiction, i.e. in the whites-only areas, these institutions were representative of white people only. Other races had substructures that were appendages of the institutions of government serving white people. This state of affairs was made possible, initially, by the policies of segregation pushed by the 'Union government', and later, by the policies of separate development (apartheid) of the National Party government which came to power in 1948.

However, it would be remiss of me to apportion the root causes of divisions and separate development in our country to these two periods only. Such policies go far back in history to the first African-European encounter.¹⁰⁶ The whites had always thought of themselves a superior and in a way different from Africans socially and culturally. This was compounded by religious dogmas, perceived differences in standards of development and advancement, and economic imperatives that led to the introduction of slavery into our shores.¹⁰⁷ However, policies of segregation were still haphazard and sporadic; only prevalent in the economic field without much calculation.¹⁰⁸

¹⁰⁵ Reddy PS *Readings in Local Government Management and Development: A Southern African Perspective* (1996) 5.

¹⁰⁶ Vosloo et al. 1974: 32.

¹⁰⁷ Vosloo et al. 1974: 32.

¹⁰⁸ Vosloo et al. 1974: 32.

The first clearly calculated policy of segregation emerged in Natal after it became a British colony in 1843, designed by Shepstone in respect of Zulu people.¹⁰⁹ Marais notes that the system of administration of Africans introduced by Shepstone in Natal prefigured later apartheid.¹¹⁰ Shepstone created a distinction between tribal and detribalised groups, confining the tribalised group to segregated communally owned reserves under the trusteeship of government and indirectly ruled through traditional tribal institutions.¹¹¹ Those who were literate could apply to be classified as ‘detribalised’ and were then exempted from Bantu law and made subject to the Roman-Dutch system. They were then given a franchise, but subject to stringent requirements, namely that they had to be residents for 12 years, they had to have been exempted from Bantu law for seven years, they had to get a letter of recommendation from three white voters, and they had to get an endorsement by a magistrate. Vosloo notes that this was a skilful colour bar which barred Africans from registering as voters in 1907.¹¹²

Similar policies were adopted in Transvaal and the Orange Free State,¹¹³ with special areas set aside for Africans tribes. Those Africans living within the republics were treated unequally in all spheres of life. Special locations were set aside and Africans were barred from residing outside those areas specifically set aside for them. No significant policy changes were made when these two republics became British colonies after the South African war, also called Anglo-Boer war.¹¹⁴

3.3.1 From Union to tricameral parliaments

At the National Convention in 1908, the question of political rights for other races almost overturned the efforts of establishing a Union. The ‘Cape Liberals’ wanted the extension of such rights to other provinces as was the practice in the Cape colony, albeit in the form of a qualified franchise. The former Boer Republics, including Natal (which had become the British colony in 1843) were completely against granting the franchise to other races.¹¹⁵ A compromise

¹⁰⁹ However, the first-ever separate area delineated for a particular racial group, the Hottentots, was proclaimed by De Mist on 3 October 1803 at Bethelsdorp, also known as Genadendal.

¹¹⁰ Marais D *South Africa Constitutional Development: A Multi-Disciplinary Approach* (1989) 225 (hereafter Marais 1989).

¹¹¹ Vosloo et al. 1974: 32.

¹¹² Vosloo et al. 1974: 33.

¹¹³ But only in respect to segregation as there was no attempt to allow Africans on the voters’ roll in the Transvaal and Orange Free State.

¹¹⁴ Vosloo et al. 1974: 33.

¹¹⁵ Vosloo et al. 1974: 33.

was reached by maintaining a *status quo ante* in each province and in essence retaining a qualified franchise in the Cape only. In accepting the South African Bill, the then British Prime Minister, Asquith, said that he did not want ‘this great weapon of freedom and reconciliation’ between the English and the Afrikaners in South Africa to be shipwrecked by the issue of extending franchise to non-Europeans.¹¹⁶ However, the former Boer Republics seemed to have won the day, as other races were excluded from standing to be elected to the Union Parliament.¹¹⁷

The Union Constitution recognised Africans as separate and special communities subject to a system of differential rule. The control and administration of African affairs, derogatorily called ‘native affairs’, was vested in the Governor-General acting on the advice of the Cabinet.¹¹⁸ A Department of Native Affairs was then established to take over those areas previously administered by the different departments of native affairs of the four colonies.¹¹⁹ Through this department, a number of policies were passed to diminish the political status and role of Africans in the dominant institutions and political systems in South Africa. Furthermore, these policies regulated inter-racial contact in every walk of life.

The first batch of these policies was of an economic rather than socio-political nature. They dealt with work delimitation and were meant to counter what was called the ‘black peril’ in election campaigns.¹²⁰ Most of these policies emanated from the Hertzog era, save for the first Acts passed in 1911 and 1913 during the Botha government. This batch was directed towards segregating Africans as a result of white fears.¹²¹ The overwhelming majority of Africans were forced to live in rural areas and isolated from the mainstream of the South African economy. The 1911 Mines and Works Act¹²² introduced a colour bar to the economy and job reservation to labour relations. The 1913 Native Land Act¹²³ reserved 75 per cent of land in the country’s total surface area for whites and 8 per cent for Africans, and the rest was urban land and Crown

¹¹⁶ Marais 1989: 229.

¹¹⁷ Vosloo et al. 1974: 33.

¹¹⁸ Section 147 South African Act, 1909.

¹¹⁹ Evans TI *Bureaucracy and Race: Native Administration in South Africa* (1997) 31.

¹²⁰ Marais 1989: 241.

¹²¹ Vosloo et al. 1974: 34.

¹²² Act 12 of 1911.

¹²³ Act 27 of 1913.

or state land.¹²⁴ Much of the latter was demarcated for game reserves, forests, or other uses and only lightly occupied, but some was rented out to tenants.¹²⁵

3.3.2 Local governance structures for Africans

Pursuant to the findings of the Stallard Commission, which recommended that Africans should only be permitted in urban areas, which were essentially white areas, to administer to the needs of white people and should leave from those areas when they cease to do so,¹²⁶ there were no proper governance structures for Africans residing in urban areas until the 1980s. This is owing to the fact that their presence in so called white areas was ‘linked to their functionality for the urban economy.’¹²⁷ Instead, the Native (Urban Areas) Act of 1923,¹²⁸ which was passed to regulate the rapidly growing African population, created Advisory Boards to advise the white local authorities on how to administer Africans. This Act introduced territorial/residential segregation in urban areas and influx control measures¹²⁹ and enabled white local authorities to establish African locations and the mechanisms to administer them.¹³⁰ The reasons for the creation of this amorphous structure were that the homeland policy was based on the view that Africans would lose their South African citizenship and exercise their full political rights in the homelands.¹³¹ That was not to be, as millions of African people remained in the cities and, due to rural-urban migration and population growth, their numbers continued to grow.¹³² This necessitated some form of independent executive authority.

As a result, from the early 1960s onwards, the central government devised various institutional mechanisms to deal with this reality.¹³³ The Urban Bantu Councils Act of 1961 introduced Urban Bantu Councils (UBC) to administer matters assigned to them by the Minister of Native Affairs (of Bantu Administration and Development since 1958).¹³⁴ Similarly, these structures did not have powers; they relied on powers which might be assigned to them by white local authorities, subject to the approval of the Minister. It was up to a particular white local authority

¹²⁴ Beinart W *Twentieth-century South Africa* (2001) 10 (hereafter Beinart 2001).

¹²⁵ Beinart 2001: 10.

¹²⁶ Magubane BM *The Political Economy of Race and Class in South Africa* (1979) 125.

¹²⁷ Heymans & White 1991: 4.

¹²⁸ Act 21 of 1923.

¹²⁹ Vosloo et al. 1974: 34.

¹³⁰ Heymans & White 1991: 4.

¹³¹ Heymans & White 1991: 4.

¹³² Heymans & White 1991: 4.

¹³³ Vosloo et al. 1974: 43.

¹³⁴ Heymans & White 1991: 4.

to decide, after consultation with the Minister, to what extent and in what way its powers and functions would be assigned to its Urban Bantu Council.¹³⁵ Furthermore, this system was rejected, by the people it was meant to serve, as an organ of apartheid. These structures were seen as ‘devices designed to inveigle them into the implementation of apartheid’.¹³⁶

Ten years later, the Urban Bantu Councils were scrapped and the central government took over the control of townships from white local authorities and introduced Administration Boards in 1971.¹³⁷ The Administration Boards were appointed by the Minister and consisted mainly of white officials. They were all responsible to the Minister.¹³⁸ They were meant to ensure greater uniformity in the implementation of national policies relating to Africans, by excluding intermediary bodies that sometimes had discretion on whether to implement those policies or not.¹³⁹ The chairman of each board was supposed to be someone who supported separate development.

However, like the Urban Bantu Councils, these structures were rejected by the African people and their officials conflicted with township residents. That made them appear to be symbols of apartheid.¹⁴⁰ Political instability ensued, also fuelled by the 1976 students’ uprising, which led to massacres. The source of revenue of these structures (beer halls) were also set on fire. This led to the rethink of government and the introduction of fresh initiatives which

reflected an unprecedented official acknowledgement of the permanence of Africans outside the homelands and the legitimacy of their demands for political representation outside the homelands.¹⁴¹

These fresh initiatives were community councils.

In 1977, the central government introduced Community Councils in townships through the Community Councils Act 125 of 1977. They were a government response to the unrest that was spreading in African urban areas.¹⁴² These structures were still not fully-fledged local

¹³⁵ Vosloo et al. 1974: 45.

¹³⁶ Welsh D ‘The policies of control: Blacks in the common areas’ in Schrire R (ed) *South Africa: Public Policy Perspectives* (1982) 102 (hereafter Welsh 1982).

¹³⁷ Heymans & White 1991: 4.

¹³⁸ Welsh 1982: 98.

¹³⁹ Welsh 1982: 98.

¹⁴⁰ Heymans & White 1991: 5.

¹⁴¹ Heymans & White 1991: 5.

¹⁴² Rudolph H ‘Constitutional and administrative law: Separate development’ *Annual Survey of South African Law* (1977) 37.

governments comparable to white local authorities. When the community councils were introduced, it was said that they would be forerunners of fully-fledged municipal authorities for African urban areas.¹⁴³ All residents, including homeland citizens, could vote in council elections. However, the powers of the community councils were limited; the Minister had final say over most of their activities.¹⁴⁴ They had a weak financial capacity. They were viewed, similarly, as apartheid instruments the aim of which was to divert legitimate demands of Africans for full political participation.¹⁴⁵ All the above reasons made these structures very fragile, and further reforms seemed inevitable. Black Local Authorities were, indeed, established five years later in 1982.

In a similar way as local government structures for coloureds and Indians, all the structures discussed in the foregoing for Africans in urban areas were not fully-fledged local authorities, like the dominant political institutions in the white areas. They were advisory in nature, and as such did not have the kind of functional administration that lends itself to a proper Weberian analysis. They are included in this discussion for the sake of completeness.

The Weberian toolkit does not come out clearly in these arrangements as they lacked powers and functions, and as such did not have a fully functional administration to administer and execute them. For example, these structures not only relied on personnel from white local authorities, but also had to report to white local authority.¹⁴⁶ Moreover, white local authorities could, on their own initiative, establish these structures and assign to them some minor functions.¹⁴⁷ This buttressed the idea that these were subordinate structures of white local authorities subject to the control thereof. These structures were only meant to cater for those ‘temporary sojourners’ who would, after serving the needs of white residents, depart to their homelands ‘where they belonged’. They were therefore also temporary in nature.

¹⁴³ Cloete 1982: 288.

¹⁴⁴ Section 5 Community Councils Act 125 of 1977.

¹⁴⁵ Heymans & White 1991: 5.

¹⁴⁶ In the case of Bantu Advisory Councils.

¹⁴⁷ Khunou SF ‘Traditional leadership and independent bantustans of South Africa: Some milestones of transformative constitutionalism beyond apartheid’ (2009) 12(4) *PER* 105.

3.3.3 Black Local Authorities

In 1982, the central government passed the Black Local Authorities Act¹⁴⁸ in terms of which black local authorities were established. These structures exhibited some elements of the Weberian model of service delivery, as will be seen hereunder.

3.3.3.1 Rules and regulations

The local authorities established in term of the Black Local Authorities Act to govern African townships were granted full municipal status comparable to that of white local authorities. Structurally and functionally, these local authorities were in no way different from white local authorities, even in terms of official designations.¹⁴⁹ Mureinik notes that this Act was modelled on the Transvaal Local Government Ordinance 17 of 1939, with some departures here and there.¹⁵⁰ One such departure was that, unlike the white local authorities created under the Transvaal Ordinance, local authorities for Africans did not fall under the control of the provincial administration but under the national Department of Cooperation and Development. These structures replaced the community councils. However, the administration boards continued to exist side by side the new local authorities.

The establishment, functioning, powers and the election of local authorities in Africa urban areas was therefore in terms of the Black Local Authorities Act, which was amended in 1986.¹⁵¹ These were strictly enforced by the national departments under which these structures fell. However, provincial administration sometimes got involved. For example, Cameron notes that after the release of a report by Dr Simon Brand which proposed severe structural changes to address the fiscal predicaments in the Soweto City Council, all provincial administrations began to take punitive steps, in the form of withholding financial assistance, to get councils of Black Local Authorities (BLAs) to address their financial and administrative problems.¹⁵² Some of these administrative problems related to failures to provide proper services to

¹⁴⁸ Black Local Authorities Act 102 of 1982.

¹⁴⁹ Marais 1989: 248.

¹⁵⁰ Mureinik E & Luiz SM 'Constitutional law: Separate development' 1982 *Annual Survey of South African Law* 12.

¹⁵¹ Black Local Authorities Amendment Act 58 of 1986.

¹⁵² Heymans & White 1991: 7. For example, in 1989 the Transvaal Provincial Administration issued a warning to the city councils of Soweto and Lekoa to get their house in order or face having some of their responsibilities taken away. This warning became a reality for the Lekoa Council, which was disbanded by the Transvaal Provincial Administration in 1990 because of its failure to take satisfactory steps to rectify its administrative and financial problems.

residents, failure to appoint staff in key positions, and to observe financial regulations.¹⁵³ Local councils also made by-laws and rules of orders to regulate their internal arrangements. However, given that councillors and municipal property had since the mid-1980s become targets of physical attacks, the environment was not suitable for the proper making and application of rules and regulations.¹⁵⁴ Allegations of corruption emerged as a result, which added fuel to the fire of the already volatile political situation.¹⁵⁵

3.3.3.2 Hierarchy of authority

The majority of local government structures in African urban communities, from Advisory Boards of 1923 to Community Councils of 1977, generally did not have their own administrations, and remained little more than advisory structures to white local authorities on whom they relied for administrative, technical and financial support. Even later, when the Administration Boards were introduced and removed the responsibility for townships from white municipalities and had certain administrative and executive powers, the key areas of taxation and finance were still reserved for the white local authorities, resulting in a weak administration.¹⁵⁶ Furthermore, they were staffed by seconded white officials headed by a chief director, township managers and superintendents.¹⁵⁷

Given that in practice only whites could become town clerks, departmental heads or hold senior positions, this had the effect that even within the BLAs these positions were the preserve of whites from white municipalities and the Administration Board's personnel corps. Virtually no Africans held senior posts, chiefly because this was a new field of occupation among blacks and there was no pool of qualified black officials.¹⁵⁸ Mashumi¹⁵⁹ adds that the paucity of Africans trained for these positions was due to the job reservation measures contained in laws such as the Bantu Building Workers Act of 1951¹⁶⁰ and the Apprenticeship Act of 1944.¹⁶¹

¹⁵³ Cameron 1991: 18.

¹⁵⁴ Heymans & White 1991: 6.

¹⁵⁵ Heymans & White 1991: 6.

¹⁵⁶ Ismail et al. 1997: 50.

¹⁵⁷ Mashumi 2013: 627.

¹⁵⁸ Colin, in Venter 1991: 83.

¹⁵⁹ Mashumi 1997: 78.

¹⁶⁰ Act 27 of 1951.

¹⁶¹ Act 37 of 1944.

These Acts prohibited the employment of Africans in ‘skilled work’ in urban areas, and were used as ‘a safeguard against interracial competition’.¹⁶²

Apartheid effectively excluded Africans from acquiring vital managerial and technical skills. Municipal government administration as a career option, therefore, did not appeal to matriculated township youth and other African job-seekers.¹⁶³ Furthermore, as discussed in section 3.6.4.3 below, it was risky for Africans – a matter of life and death – to hold senior positions in these structures.¹⁶⁴ As a result, there was a heavy reliance on the limited number of skilled and experienced whites. The hierarchy in African local authorities was similar to that of white local authorities not only in terms of official designations but also in that the top echelons of African local authorities were lily white. As was the case in white local authorities, the hierarchy in the African local authorities was as shown in the diagram in section 3.1 above.

3.3.3.3 Meritocracy

Cameron notes that the newly created local authorities for Africans living in urban areas were ‘administratively constrained, financially weak and politically controversial’.¹⁶⁵ Their administrative structures were underdeveloped and not in a position to match those of their white counterparts. Even though the BLAs had a recognisable form, they lacked administrative and other skills because of the long history of exclusion, making them incapable of rendering services and development initiatives to the satisfaction of their communities.¹⁶⁶ There were very few senior African officials and these municipalities often had to rely on seconded white officials from white local authorities or higher tiers of government, whose long term career plans often did not include African local authorities and were anxious to get back into the ‘mainstream’ of civil service.¹⁶⁷ It is suggested that this marked the roots of the over-reliance on consultants which has been the practice over the years and was once again decried by President Jacob Zuma in recent years.¹⁶⁸

¹⁶² Mashumi 1997: 78.

¹⁶³ Mashumi 1997: 14.

¹⁶⁴ Colin, in Venter 1991: 83.

¹⁶⁵ Heymans & White 1991: 5.

¹⁶⁶ Heymans & White 1991: 14.

¹⁶⁷ Heymans & White 1991: 14.

¹⁶⁸ SAPA ‘Reduce dependence on consultants – Zuma’ News24 24 March 2015 available at <http://www.news24.com/SouthAfrica/News/Reduce-dependence-on-consultants-Zuma-20150324> (accessed 15 April 2015).

Furthermore, although the BLAs had full municipal status and their election procedure was on par with the elections of the existing white local authorities,¹⁶⁹ they had a fragile political base. They were rejected by African communities on the basis that they limited the opportunities for expression of their political aspirations to the local level and thus expected them to settle for less than full political expression at the highest level.¹⁷⁰ As such, no African official was willing to take a risk of working in such a volatile political environment in which municipal officials and municipal property became targets of physical attacks. Civic organisations and the protest movement seemed more prepared to interact with white officials whom they could clearly identify as agents of the state than with African officials and councillors whom they regarded as traitors of the political struggle.¹⁷¹

This was also fuelled by the simultaneous adoption of the tricameral constitution, which entrenched perceptions about the exclusion of Africans from the national body politic. The regulations issued in 1984¹⁷² for the improvement of communication between the various local authorities similarly did not include African local authorities. Even though African communities rejected local authorities in their areas, these developments that seemed to bypass them added insult to injury. Furthermore, there were conflicts between the new BLAs councillors and old guard white officials of the Administration Boards who retained control of the township administration until 1986. These political problems also contributed to the failure of these new structures to attract the most competent African officials.¹⁷³ For those who were already within the system, the political climate in which they had to carry out their duties impinged on their effectiveness and many of them eventually left fearing for their lives.¹⁷⁴

Furthermore, as noted earlier, the earlier structures for Africans living in urban areas did not have an administration because Africans, in line with the recommendations of the Stallard Commission, were seen as temporary sojourners in urban areas ministering only to the needs of white people. Their presence was linked and strictly limited to their utility in the urban economy. Once they had finished to so minister, they were supposed to leave to the homelands 'where they belonged'. They were denied political rights at all levels, and only gratified with

¹⁶⁹ Black Local Authorities: Regulations R1750 of 1983.

¹⁷⁰ Heymans & White 1991: 15.

¹⁷¹ Atkinson & Heymans 1986.

¹⁷² Issued in terms of the Promotion of Local Government Affairs Act 91 of 1983, published in GN R2451 GG 9490 of 1984.

¹⁷³ Heymans & White 1991: 14.

¹⁷⁴ Heymans & White 1991: 15.

advisory bodies that had no fully-fledged administration with offices and officials put in place. This meant that there was no pool of black candidates with relevant experience and expertise from which to appoint. The absence of this pool was also made possible by the policies of job reservation, which meant that only whites could be appointed to certain vocations. This led to severe shortages of staff in certain specialised fields in African local authorities.¹⁷⁵

This was compounded by the exclusionary nature of the Institute of Town Clerks of Southern Africa and IMTA, the institutes that were meant to improve qualifications and infuse professionalism in the sector, discussed in section 3.1.3 above. There were two hurdles that had to be passed before one could become a member of these institutes, namely a colour bar and qualifications hurdle. The requirement that one had to be a white person in order to be accepted as a member of these institutes meant that there was no way Africans could become members of them; this served as an absolute bar until it was scrapped in 1988. It was another instance of a skilful exclusion of Africans from the professionalisation initiatives that took place since the 1920s.

3.3.3.4 Security of tenure

Municipal officials in African local authorities did not have all the benefits enjoyed by white local authorities in terms of ordinances passed in their respective provinces. They had to rely only on national legislation in this regard. As could be expected, there were no uniform conditions of service across the local government sphere. Individual local authorities were allowed considerable freedom to employ officials and to determine the conditions of service of their officials subject only to national legislation.¹⁷⁶

Furthermore, the national legislation that provided for a uniform system of remuneration for town clerks excluded local authorities for African people. It only catered for town clerks for white, coloured and Indian local government institutions throughout South Africa. In terms of the Act,¹⁷⁷ town clerks in white, coloured and Indian local authorities were entitled to a fixed remuneration, which is 7.5 per cent higher than that of any other employee of the local authority.¹⁷⁸

¹⁷⁵ Cameron 1995: 401.

¹⁷⁶ Cloete 1986: 75.

¹⁷⁷ Remuneration of Town Clerks Act 115 of 1984

¹⁷⁸ Rudolph 1984: 9.

Furthermore, the fragility of these institutions, occasioned by their weak administrative and financial deficiencies and their political illegitimacy, threatened the tenure of these officials. The viability of African local authorities was in serious doubt as little was done to provide them with economically viable taxable sources.¹⁷⁹ The rent and service charge boycotts, together with the destruction of beer halls, further weakened the already non-existent revenue base and thus added to the non-viability of these institutions. Officials could not have physical security of tenure when the political environment was hostile. Furthermore, they could not be paid enough when the local authorities were struggling to sustain themselves. They could not offer the benefits enjoyed by white local authorities.

3.3.3.5 Specialisation of tasks

The African local authorities were given the same functions and powers that the white local authorities had been exercising for all those years. They had to provide a variety of services to African people in line with the powers and functions they were given. It was, therefore, necessary that they structure their administration to consist of a number of departments or divisions, especially in larger towns and cities. As noted earlier, they were similar to white local authorities even in terms of official designations. Typically, there was the office of the town clerk which stood elevated above other departments, the licensing division, treasurer's department, transport department, electricity department, engineer's department, parks and recreation division, housing division, roads division, and water division.¹⁸⁰ However, due to the shortage of skills noted above, African local authorities could not employ personnel according to their areas of specialisation into these divisions. Furthermore, in small local authorities, this specialisation of tasks was not as pronounced. A number of functions were performed by few departments. There was typically one foreman and a number of labourers under his or her control to perform a variety of tasks.

3.4 Homeland local authorities

It was stated in section 3.3 of this chapter that apartheid was not the beginning of geographic, institutional and social separation. Segregation was already a policy by the time apartheid was introduced in 1948. However, apartheid represented mostly a change in the intensity of the

¹⁷⁹ Heymans & White 1991:10.

¹⁸⁰ Cloete 1986: 76.

application of the policies of segregation.¹⁸¹ It entrenched the segregation of black residents in urban townships and the homelands.¹⁸² The foundation of apartheid was premised on the formation of artificial black nations or homelands in the so-called ‘reserves’.¹⁸³ In those homelands, where the majority of South Africa’s African population was relegated, democratic local authorities similar to those in the so-called ‘white South Africa’ did not exist. Instead, there existed a patchwork of different non-democratic institutions – different systems of traditional leadership – which varied from one area to the next as determined by the apartheid geography.¹⁸⁴ These institutions, seen as the extension of the apartheid state – as they were used by the apartheid regime and were not accountable to their communities but to the entire political hegemony of apartheid – provided the public services normally associated with local government.¹⁸⁵

This patchwork of undemocratic institutions, however, dates back to the colonial era. It was ushered in by the Glen Grey Act of 1894,¹⁸⁶ Native Affairs Act of 1920¹⁸⁷ (which was amended in 1927),¹⁸⁸ and the Native Administration Act of 1927.¹⁸⁹ The apartheid government added to this suit the Bantu Authorities Act of 1951¹⁹⁰ and the Promotion of Bantu Self-Government Act of 1959,¹⁹¹ the epitome of apartheid. The Glen Grey Act introduced the Transkeian General Council and the Glen Grey District Councils, which were later changed to a local council under the Native Affairs Act as amended in 1927. This Act introduced local and general councils in certain areas reserved for Africans, including the Transkei.¹⁹² At the time that the Bantu Administration Act was promulgated (1951), there were 26 local councils in the Transkei, with the overarching United Transkeian Territories General Council. There were eight local councils in the Ciskei and a Ciskei General Council at the head. In Transvaal, there were five local

¹⁸¹ Trevisan I *Independent Homelands: An Analysis of Selected Issues in South Africa-Homeland Relations* (1984) 46 (hereafter Trevisan 1984).

¹⁸² *Green Paper on Local Government* (1997) 12 (hereafter Green Paper 1997).

¹⁸³ Khunou 1999: 84.

¹⁸⁴ Pycroft 2002: 10.

¹⁸⁵ Khunou 1999: 84.

¹⁸⁶ Act 25 of 1894.

¹⁸⁷ Act 23 of 1920. This Act created a legal basis for the deportation of blacks into designated homeland reserve areas.

¹⁸⁸ Act 15 of 1927.

¹⁸⁹ Act 38 of 1927.

¹⁹⁰ Act 68 of 1951.

¹⁹¹ Act 46 of 1959.

¹⁹² Kahn E & Nolte JH ‘Local government law: Including law relating to townships and town planning’ *Annual Survey of South African Law* (1951) 19 (hereafter Kahn & Nolte 1951).

councils, three in Natal, and the Orange Free State had two reserve boards of management, with powers and functions similar to those of local councils.¹⁹³ These councils did not have legislative powers; they were merely advisory bodies to the Native Affairs Commission, which in turn was advisory to the Minister of Native Affairs.¹⁹⁴

The Bantu Administration Act did not immediately alter the existing structures of local government. Instead, it envisaged the establishment, by the Governor-General, of three new structures, namely tribal, regional and territorial authorities which would use tribal chiefs and their tribal councils.¹⁹⁵ However, it was made clear that the structures that then existed (the council system) would be gradually supplanted over time by these new structures (the authority system).¹⁹⁶ Acting under the powers conferred by the Bantu Administration Act, in the Transkei in 1956 the Governor-General disestablished the United Transkeian Territories General Council and the 26 district councils under it.¹⁹⁷ In their stead, 200 tribal authorities, 26 district authorities, seven regional authorities and one territorial authority were established.¹⁹⁸ Nationally the Act established seven territorial authorities for the different homelands.¹⁹⁹

A tribal authority consisted of the chief or headman of the tribe or community in question, and as many councillors as the Governor-General decided to appoint. It had the power to administer the affairs of the tribe or community for which it had been appointed.²⁰⁰ Its functions related to general administration, rendering of assistance and guidance to the chief or headman in connection with the performance of his functions, advising the government and any territorial or regional authority having jurisdiction over its area.²⁰¹ The tribal authority and the chief had to exercise their powers in line with local laws and customs applying to Africans residing in the locality.²⁰² Other areas, such as the Ciskei and Bophuthatswana, further established community authorities in respect of two or more tribes. These consisted of chiefs and councillors elected by the adult male members of the community. A community authority was

¹⁹³ Kahn & Nolte 1951: 17.

¹⁹⁴ Kahn & Nolte 1951: 17.

¹⁹⁵ Vosloo et al. 1974: 59.

¹⁹⁶ Hansard, Minister of Native Affairs, the Hon. Senator HF Verwoerd, *House of Assembly Debates*, 18 June 1951, cols. 9807 ff.

¹⁹⁷ Transkeian Bantu Authorities (Proc 180 GG 5736 of 31 August 1956).

¹⁹⁸ Kahn E 'Constitutional and administrative law: Native administration' *Annual Survey of South African Law* (1956) 36.

¹⁹⁹ Vosloo et al. 1974: 58.

²⁰⁰ Trevisan 1984: 47.

²⁰¹ Trevisan 1984: 47.

²⁰² Kahn & Nolte 1951: 18.

represented on the regional authority by its chairman, plus, in each case, one further councillor.²⁰³

A regional authority was established in respect of two or more areas of tribal authorities.²⁰⁴ It effectively replaced a local council. It consisted of elected representatives from the chiefs, headman and councillors of the tribal authorities within its area of jurisdiction. Its functions were to advise and make representation to the Minister of Native Affairs on matters of general interest²⁰⁵ and to exercise certain executive functions, similar to those of urban local authorities, such as the provision of education, roads and hospitals, subject to regulations and directions of the Minister. A regional authority also made by-laws in relation to these functions and levied poll tax, subject to the approval of the Governor-General.²⁰⁶

A territorial authority²⁰⁷ was a local authority with the widest area of jurisdiction. It was established in respect of the areas of two or more regional authorities.²⁰⁸ The territorial authority effectively replaced general councils. It was composed of members elected from among the members of the constituent regional authorities.²⁰⁹ However, the Minister appointed officers of the public service to act in a supervisory capacity in relation to a regional or territorial authority. Such officers had the right to speak at meetings, but could not vote. A territorial authority had such number of powers vested in its constituent regional authorities assigned to it.²¹⁰ This meant that the powers of a territorial authority were subtracted from the powers of regional authorities.²¹¹ However, the powers of a territorial authority were vastly expanded by the Promotion of Bantu Self-Government Act to the position of a semi-homeland

²⁰³ Kahn E 'Constitutional and administrative law: Separate development' *Annual Survey of South African Law* (1968) 37-8.

²⁰⁴ Trevisan 1984: 47.

²⁰⁵ Namely to provide, under the direction of the Minister, for the establishment and management of educational institutions, hospitals and clinics, the construction and maintenance of roads, bridges and other works of public utility, and for the improvement of farming methods and all the matters relating to agriculture.

²⁰⁶ Kahn and Nolte 1951: 18.

²⁰⁷ Namely the Transkei Territorial Authority (1956), Ciskei Territorial Authority (1961), Tswana Territorial Authority (1961), Lebowa Territorial Authority, Machangane Territorial Authority and Thohoyandou Territorial Authority (1962).

²⁰⁸ However, some territorial authorities were significantly large. The Zulu Territorial Authority, for example, was established in respect of areas of 20 regional authorities, while Ciskei Territorial Authority had nine, Tswanas 13, South Sothos two, Shangaans five, North Sotho 10 and Vendas three.

²⁰⁹ The Zulu Territorial Authority was composed of 199 members, with Chief Gatsha (Mangosuthu) Buthelezi as Chief Executive Officer.

²¹⁰ Kahn and Nolte 1951: 18.

²¹¹ Kahn E 'Constitutional and administrative law: Native administration' *Annual Survey of South African Law* (1959) 28.

or half-way homelands. However, at this stage the territorial authorities still acted as advisory bodies with no executive powers. Some of these powers included powers to recognise, appoint or depose chiefs or headmen, to provide for the markets and pounds, control of the erection and maintenance of buildings.²¹²

One of the priorities of the apartheid government was to create homelands or Bantustans in which to restrict black Africans in order to diffuse the growing pressure of black nationalism and channel it in the direction of ethnic nationalism.²¹³ A step towards this goal was achieved when the Transkei Territorial Authority, on its own initiative, requested and was given self-government in 1963, with its own legislative assembly and executive council constituted from among the members of the legislative assembly.²¹⁴ Even though it was said to be self-governing, certain powers were excluded from its legislative purview and the state president had the veto power over some of its enactments.²¹⁵ Other Territorial Authorities had to be nudged in this direction by the passing of the Bantu Homelands Constitution Act.²¹⁶ Central government had to constitute legislative assemblies for them, and this was done in 1971 (Tswana, Venda, Ciskei, Lebowa, Machangane and Basotho), and 1972 (KwaZulu), respectively.²¹⁷

Transkei, once again, was the ice-breaker in the move towards full independence, which it got on 26 October 1976.²¹⁸ The Bophuthatswana government followed the following year, on 6 December 1977,²¹⁹ Venda on 13 September 1979,²²⁰ Ciskei on 4 December 1981.²²¹ No changes were made in the system of local government in the new independent states. In terms of the Acts that conferred independence on these newly independent states,²²² all existing laws were to continue until repealed or amended by a competent authority in each state. Consequently, the Bantu authority system remained intact. The only change was that the territorial authority became a 'state' or a homeland and other structures below it, namely the

²¹² There were 320 tribal authorities, 19 regional authorities and one territorial authority in the Transkei at the end of 1959.

²¹³ Trevisan 1984: 58.

²¹⁴ Transkei Constitution Act No. 48 of 1963.

²¹⁵ Trevisan 1984: 70.

²¹⁶ No. 21 of 1971.

²¹⁷ Trevisan 1984: 71.

²¹⁸ In terms of the Status of the Transkei Act 100 of 1976.

²¹⁹ In terms of the Status of Bophuthatswana Act 89 of 1977.

²²⁰ In terms of the Status of Venda Act 107 of 1979.

²²¹ In terms of the Status of Ciskei Act 110 of 1981.

²²² Acts 100 of 1976, 89 of 1977, 107 of 1979 and 110 of 1981.

regional authority and tribal authority carried on with the functions of local government. In fact, the Bantu authority system seems to have outlived not just the homeland system, but also the transitional councils, established as part of the transformation of local government in terms of the Local Government Transitional Act. For example, the case of *Amahlubi Tribal Authority and Another v Premier, North-West Province and Others*²²³ reveals that tribal authorities were still in existence in 2001.

The foregoing discussion means that the Bantu authorities were not incorporated as part of the structures of local government that needed transformation, even though they were a limited form of local government exercising local government powers and performing local government functions. The Interim Constitution states that at the local level, a traditional leader is entitled, *ex officio*, to be a member of an elected local government within whose jurisdiction his community is located.²²⁴ This means that those traditional structures in the homelands that performed local government powers were allowed to exist side by side local government, only participating in local councils on an *ex officio* status.

In the final analysis, there was a limited form of local government in the homelands, starting with the councils system (which was ushered in during the colonial era as the extension of magisterial rule) and ending with the so-called Bantu authority system. One of the original objectives of the Bantu authority system was that Africans should take part in the government and administration of their homelands along traditional/tribal lines. In both systems, traditional leaders (chiefs and headmen) were doing the actual work of administrative and supervisory nature. As such, the administrative hierarchy consisted of the district magistrate at the helm, followed by chiefs, then headmen and lastly bureau clerks.²²⁵ At the end of 1970, there were 26 districts authorities (with district magistrates), five paramount chiefs, 79 recognised chiefs and about 846 headmen²²⁶

Vosloo et al. note, when it comes to meritocracy, that it was only the front-line staff (bureau clerks) who underwent some form of careful selection on the grounds of ability, education and

²²³ [2001] ZANWHC 33. This case dealt with the expansion of the Amahlubi tribal area in Bophuthatswana in 1990 to incorporate farms and trust land adjacent to it. This resulted in the reconstitution of the Tribal Authority of the Amahlubi tribe to include the chiefs, the headmen, the foremen of trust farms, and four other members of the tribe. This expansion meant that Government Notice No. 1279 of 19 June 1953, by which the AmaHlubi Tribal Authority was formed, was withdrawn.

²²⁴ Section 182 Constitution of the Republic of South Africa 200 of 1993.

²²⁵ Vosloo et al. 1974: 58.

²²⁶ Vosloo et al. 1974. 1974: 68.

personal qualities.²²⁷ No such requirements applied to chiefs and headmen, who also performed administrative tasks under the supervision of the magistrates. Furthermore, short courses lasting less than a week were also held for local government bureau clerks. As such, there was an indistinct semblance of meritocracy at the lower levels of administration. Moreover, there was no fixity of tenure for these officials. However, as a result of the recruitment criteria applied and the in-service training and experience offered to officials in the tribal authorities in the homelands, their turnover had been very slow.

Overall, the Weberian toolkit was not present in this patchwork of undemocratic local government institutions in the homelands. There was no fully-fledged administration comparable to structures in urban areas. These structures were only intended to be agents of the central state as regards local administration²²⁸ as well as local authorities for the provisions of services and assistance on development work.²²⁹ For example, tribal authorities only acted in an advisory capacity to regional authorities and government, and were generally responsible for the moral, social and spiritual well-being of the people they represent. Traditional leaders in the Bantu authority system, of whom most were aligned to the National Party government, performed very badly, doing only the minimum of work expected of them.²³⁰ Furthermore, they were not completely independent, since most of their decisions needed approval either by the state president or the relevant minister responsible for African affairs, and they relied on financial support from the apartheid government.

4 Reform measures

Seeing the writing on the wall for the demise of its hegemony, the apartheid government introduced a number of reforms in the 1980s such as the creation of inclusive, non-racial local government structures, rolling out training to municipal office-holders across races,²³¹ abolishing the racial requirement in the professional institutes and recognising the qualification requirements, for the first time, for town clerks and town treasurers. These reforms were also initiated to manage the tense political situation at the time.

²²⁷ Vosloo et al. 1974: 59.

²²⁸ The provision of public works and the maintenance of public roads.

²²⁹ Vosloo et al. 1974: 62.

²³⁰ Vosloo et al. 1974: 63.

²³¹ The repeal of the Black Employees' In-Service Training Act, 1976, by the Manpower Training Act means that the Act also applies to training in black local authorities.

4.1 Regional Services Councils

In 1985 the apartheid state attempted to calm political tensions by passing the Regional Services Councils Act, which envisaged the establishment, for the first time, of some sort of non-racial local government structure, namely the Regional Services Councils. One of its major aims was to prop up the collapsing BLAs by redirecting resources from white areas to disadvantaged African townships.²³² It initiated a system of ad hoc intergovernmental grants as a vehicle to channel resources to collapsing townships. These structures, Regional Services Councils, as well as Joint Services Boards (in Natal) were established as such vehicles. The Regional Services Councils also rendered bulk local services to adjacent municipalities, particularly to the worse affected African local authorities.²³³

These structures took decisions that had an impact on a number of municipalities within their areas of jurisdiction. Decisions concerning bulk services such as bulk supply of water and electricity, sewerage purification, land usage and transportation planning, roads and storm water drainage, passenger transport services, to mention just a few, were taken at this regional level jointly by representatives of adjacent municipalities.²³⁴ As such, these structures were the first non-racial intergovernmental structures in South Africa that facilitated consensus seeking and joint decision-making between Africans and whites on the redistribution of resources on a district-wide scale through the allocation of RSC levies and intergovernmental transfers.

However, these interventions were 'too little, too late' as they failed to counteract the fiscal failures of African local authorities and to quell community resistance and unrest.²³⁵ Instead, the majority of African local authorities were at the brink of collapse, some having been disbanded.²³⁶ By the late 1980s there was no effective local government in most townships and many homeland rural areas, as seen in section 3.4 above, and it was clear that African local authorities would never be viable.²³⁷ This further added to their legitimacy crisis and inflamed the increasingly politicised communities. The rejection of black local authorities was accompanied by popular uprising and rent/services boycotts in townships all over South Africa

²³² In terms of the Regional Services Council Act 109 of 1985.

²³³ Marais 1989: 249.

²³⁴ Rudolph GH 'Constitutional law' *Annual Survey of South African Law* (1985) 6 (hereafter Rudolph 1985).

²³⁵ Heymans & White 1991: 13.

²³⁶ Binza 2005: 76.

²³⁷ *Green Paper* 1997: 14.

that shook the foundations of the apartheid order.²³⁸ At this stage, the writing was on the wall for the collapse of apartheid order.

4.2 Training Board for Local Government Bodies

Another reform measure was the passing of the Local Government Training Act²³⁹ in response to the ‘crying need that existed countrywide, for a comprehensive strategy for the training of officials ... and management...’.²⁴⁰ This Act establishes the Training Board for Local Government Bodies, which is empowered to approve a training course for capacitating local government officials, among others.²⁴¹

This Act followed an earlier Act passed in the early 1980s by the central government, also with the aim to increase the skills of the existing local government practitioners, namely the Manpower Training Act of 1981.²⁴² This Act also created a training body, the Local Government Education and Training Board (LGETB). These two separately functioning boards were meant to coordinate local government training systems.

The Local Government Training Act created a fund to finance the training of local government practitioners, namely the Local Government Training Fund. Both these boards had been funded primarily by national government grants and levies on municipalities. Both were responsible for the on-the-job training, focusing on technical skills. They conducted training through training centres located throughout the country.²⁴³ However, these attempts were too generic and their training of local government practitioners did not specifically address the problems of these two functionaries, town clerks and town treasurers.

4.3 Statutory public recognition of IMTA and the Institute

Yet another reform measure was the recognition of the institutes that capacitated town clerks and municipal treasurer for decades. For years, the office of the town clerks and that of the town treasurers were treated disdainfully by the provincial and central authorities, the provincial authorities simply giving the town clerk fancy titles such as ‘chief administrative

²³⁸ *Green Paper* 1997: 14.

²³⁹ Act 41 of 1985.

²⁴⁰ Rudolph 1985: 7.

²⁴¹ Section 9(1) Local Government Training Act.

²⁴² Act 56 of 1981.

²⁴³ *White Paper* 1998: 174 para. 4.

and executive officer' without proper recognition of the personal qualities and qualifications expected of a chief administrative and executive officer. This state of affairs was responsible for the meaningless requirements seen in advertisements calling for applicants for vacant post of town clerks, for example, to have knowledge and experience in 'organisation and administration'.²⁴⁴ This was then explained with reference to the specific functions expected of the town clerk to 'organise and administer' as well as the personal qualities and qualifications regarded necessary to 'organise and administer'.²⁴⁵

However, realising that generic initiative did not cater sufficiently for the town clerks and the treasurer, the central government again legislated and gave content to the personal qualities and qualification attached to the post of town clerks and town treasurers by enacting legislation that gave statutory public recognition to IMTA and the Institute.

4.3.1 Profession of Town Clerks Act

In 1988, the central government tightened the personal qualities and qualifications attaching to the post of the town clerk by giving the office of the town clerk a professional status through the Profession of Town Clerks Act.²⁴⁶ The object of the Act was to lend professional status to the profession of town clerks in South Africa. From 1988 on, the Institute of Town Clerks of Southern Africa was recognised by statute. The Act applied to all local authorities, including Black Local Authorities.²⁴⁷ There was a new intent from the central state to close the loophole that enabled local authorities to, first, employ individuals from clerical positions without adequate educational qualification for the post of town clerks, and secondly, not subject those individuals to undergoing some form of training. It is suggested that this sudden change of heart was occasioned by the 'black peril' mentality as the end of apartheid was imminent. Unlike the position that had obtained before 1988, where white town clerks had a choice whether or not to register with the Institute, the candidates for the post of the town clerk had to be registered with the Town Clerks' Council first in order to be appointed by local authorities

²⁴⁴ Cloete 1978: 229.

²⁴⁵ Cloete 1978: 229.

²⁴⁶ Act 75 of 1988 (hereafter Profession of Town Clerks Act).

²⁴⁷ The Act defines 'local authority' to mean any local authority referred to in the Promotion of Local Government Affairs Act, 1983 (Act 91 of 1983), and any other authority or body recognised by the council by notice in the Gazette as a local authority for the purposes of this Act and as such applies to black local authorities as well. Thus, officials from black local authorities who did not have the benefit of the 40 years of training their white counterparts had were suddenly expected to comply with the same requirements.

as town clerks.²⁴⁸ More than anything, this was a concerted effort to exclude Africans even further, by applying higher standards to them far stricter than those applied to white personnel for all those four decades. The fact that white personnel had had a 40-years' head-start was not a factor.

In section 4 of the Act, provision was made for the necessary requirements for a person to be appointed as a member or an alternate member of the Town Clerk's Council. In addition to the requirement that a member ought to be a South African citizen, a person might only be appointed as a member or an alternate member if he or she was registered with the Town Clerks Council in terms of the Act.²⁴⁹ However, the Act granted the town clerks already in the employ of local authorities when it came into effect a period of grace with regard to this last requirement to allow them to register with the council.²⁵⁰ Section 18 provided that the registrar of the council should keep separate registers in respect of professional town clerks,²⁵¹ registered town clerks²⁵² and prospective town clerks.²⁵³ An applicant for registration ought to be 21 years of age or older, and ought to satisfy the registration committee that he or she was a fit and proper person and that he or she possessed the educational qualifications and the practical experience which the council prescribes.²⁵⁴

Section 14 of the Act envisaged the establishment and constitution of an education advisory committee the role of which would be to advise the Town Clerks' Council as regards the educational and other qualifications and requirements for the registration of persons as town clerks. This committee should consist of two persons designated by the Committee of University Principals to represent all universities in the Republic providing instruction in public administration or local government; three persons designated by the Federation of Municipal

²⁴⁸ Section 19 Profession of Town Clerk Act.

²⁴⁹ Section 4(1)(a)-(e) Profession of Town Clerks Act.

²⁵⁰ Section 4(4) Profession of Town Clerks Act.

²⁵¹ Section 21(2)(a) of the Act defines a professional town clerk as any person who, immediately prior to the commencement of this Act, is employed by a local authority as a town clerk and possesses the educational qualifications and the practical experience determined by the council as requirements for a professional town clerk.

²⁵² Section 1 of the Act defines a registered town clerk to mean a town clerk whose name appears in the register of the registered town clerks referred to in section 18(1)(b).

²⁵³ Section 21(3) of Act defines a prospective town clerks as '[a]ny person who is not a town clerk but possess the educational qualification and the practical experience which the council determines as requirements for registration as a prospective town clerk'.

²⁵⁴ Section 19 Profession of Town Clerks Act.

Employers' Organisations; three persons designated by the Town Clerks Council; and two persons by the Training Board for Local Government Bodies.

Out of this committee, the following qualification criterion for registration with the Town Clerk's Council in terms of the Profession of Town Clerks Act was devised. This qualification criterion was determined in terms of grades of local authorities graded from 1-15.²⁵⁵ For professional and prospective town clerks of all grades of local authorities, the educational qualifications were an appropriate bachelor's degree or academic equivalent, and membership of the Institute obtained through an examination conducted by the Institute. The experience required was dependent on a grade of the local authority concerned. For grades 10-15, the requisite experience was 10 years. Grades 7-9 required eight years' relevant experience. Grades 5-6 and 1-4 in turn required five and three years' relevant experience, respectively.²⁵⁶

For registered town clerks of grades 7-9 local authorities, the qualifications required were a diploma or other educational qualification of which at least one subject ought to relate to municipal government and administration up to third year level. The practical experience required was eight years.²⁵⁷ For grades 5-6 local authorities, registered town clerks ought to have had a diploma or other educational qualification of which at least one subject ought to relate to municipal government and administration to second-year level. The practical experience required was five years. Grades 1-4 local authorities only required standard 10 or equivalent plus three years appropriate experience. Any appointment of a person not registered with the Town Clerk's Council was impermissible and in effect null and void.²⁵⁸

4.3.2 Profession of Town Clerks Amendment Act, 77 of 1992

Furthermore, to prove that these legislative developments were nothing more than a strategy to exclude blacks, particularly Africans, the bar was raised once again in 1992 to include ethics, code of conduct and professionalism. Ethics was defined to include values relating to human conduct, with respect to rightness or wrongness of particular actions and to the goodness or badness of the motives and ends of such actions.²⁵⁹ From 1992, prospective town clerks had to

²⁵⁵ Mabuya B & Thornhill C *Local Government is Training in South Africa. A Report Compiled on Request of the Development Bank of Southern Africa* (1993) 42 (hereafter Mabuya & Thornhill 1993).

²⁵⁶ Mabuya & Thornhill 1993: 42.

²⁵⁷ Mabuya & Thornhill 1993: 42.

²⁵⁸ Section 20 Profession of Town Clerk Act.

²⁵⁹ Mafunisa MJ *Ethical Governance: A Training Manual* (2001) 335.

write, as part of the Institute's examination, additional modules relating to ethics, code of conduct and professionalism. Moreover, besides passing those modules, candidates also had to submit a script (5 000 words) on a subject prescribed by its examinations Committee.²⁶⁰

4.3.3 Municipal Accountants Act

Similarly, the Institute of Municipal Treasurers and Accountants received statutory public recognition in 1988 through the Municipal Accountants Act.²⁶¹ This was some sixty years after IMTA was established. The object of the Act was the establishment of a corps of professional municipal accountants. The purpose of the Act was '[t]o make provision for the establishment of a Board of Municipal Accountants; for the registration of the Municipal Accountants and control over their profession...'²⁶²

Section 2 of the Act provided for the establishment of a Board for Municipal Accountants, the authority of which was to regulate the profession of the municipal accountants and to train them. The Act prescribed the competencies for the municipal finance officers as well as compulsory registration at the Boards for Municipal Accountants before a person could be appointed as a chief financial officer and other municipal finance officers in a municipality. The Act enjoined the Board to determine the minimum qualifications required for a municipal accountant in order to be registered as such.²⁶³ Furthermore, section 6 of the Act determined the eligibility for membership of the Board for Municipal Accountants. It provided that no person shall be appointed as a member of the Board if he

- a) was not registered under this Act as a municipal accountant;
- b) was not employed by a local authority in a full-time capacity;
- c) ...

The Act provided that no local authority should employ a person who was not a municipal accountant and that any such appointment should be void.²⁶⁴ This in essence meant that

²⁶⁰ Mashumi VE 'Professionalising local government management: The post-institute of town clerks challenge' (2013) 48(4) *Journal of Public Administration* 630.

²⁶¹ Act 21 of 1988. The name of the Institute was changed in the Act only to reflect 'municipal accountants', since municipal treasurers' was regarded as confusing in the light of the varying designations for finance officers among local authorities in South Africa.

²⁶² The short title of the Municipal Accountants Act.

²⁶³ Section 9 Municipal Accountants Act.

²⁶⁴ Section 15(3)(a) and (b) Municipal Accountants Act

registered municipal accountants were members of IMTA. In fact, the Act criminalised any performance of the functions of the municipal accountant by a person who was not registered as a municipal accountant. It did that by ring-fencing the functions to be performed by municipal accountants for or in the employment of a local authority.²⁶⁵ These functions include the following:

- a) certify and sign the annual financial statements of a local authority;
- b) accept responsibility for the management of -
 - i. the financial department or section of a local authority;
 - ii. the annual budget and appropriation of financial resources;
 - iii. the maintenance of financial records;
 - iv. the income and expenditure of a local authority and the application of budgetary controls;
 - v. the internal auditing function and drawing up of audit programmes;
 - vi. the insurance and safeguarding of the assets of a local authority against financial risks;
 - vii. financial reporting to a local authority; and
 - viii. the raising and administering of loans and other funds, investments, and cash-flow management.

The Act then provided that any person, other than the municipal accountant, who performs these functions or holds himself out or allows himself to be held out as a municipal accountant, shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or in default of payment, to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.²⁶⁶ This was yet another attempt to preserve the system for white officials only. Similarly, this Act put whites, who had had opportunity for training for 60 years, on the same pedestal with Africans who did not have opportunities for training at all.

²⁶⁵ Section 15 Municipal Accountants Act.

²⁶⁶ Section 15(2) Municipal Accountants Act.

In sum, the racial requirement for admission into the institutes was scrapped in 1988 with the promulgation of Profession of Town Clerks Act and the Municipal Accountants Act. Anyone, regardless of race, could now become a member of the Town Clerk's Council or the Municipal Accountants' Board, provided he or she met the membership requirements. The provisions of these Acts applied to all local authorities, including Black Local Authorities.²⁶⁷ In terms of these Acts the candidates for the post of the town clerk or municipal accountant had to be registered with these bodies first in order to be appointed by local authorities into those positions.²⁶⁸ This meant that they had to meet the qualifications and experiential hurdle prescribed for membership.

This hurdle was that one must have had three to five years of continuous service experience at a finance department of a local authority, in the case of treasurers and accountants, or 10 years in a town clerk's department in the case of town clerks. This requirement kicked in in 1988 as the first hurdle (the colour bar) could now be passed. However, to be appointed as a member of these institutes meant that African officials employed in 1982 would only satisfy these qualification requirements in 1987, in the case of treasurers and accountants, and in 1992, in the case of town clerks. So even in 1988, no town clerks could become members of the Town Clerk's Council. Only very few treasurers and accountants could, those who were brave enough to risk their lives and remain in the employ of turbulent and volatile African local authorities during the 1980s. This was another clever scheme for excluding Africans from the mainstream of the civil service.

However, officials who were already in the employ of African local authorities were saved from the strict entry requirements by a period of grace granted in terms of the two Acts. The Town Clerks Act granted the town clerks already in the employ of local authorities when it came into effect a period of grace to register with the Town Clerks Council. The Municipal Accountants Act in turn provided that from a date to be determined, only municipal accountants could perform certain accounting functions. This gave these officials an opportunity to acquire the requisite qualifications and register with the relevant bodies before the said date. This further changed the position that had obtained before 1988 where town clerks or town treasurers and accountants had a choice whether or not to register with the Institute. All local authorities were debarred from appointing officials who were not members of these bodies.

As such, although meritocracy was a general requirement applying to all local authorities, African local authorities experienced some administrative problems owing to their late start and skills and administrative deficiencies. This was compounded by the fragile political context, discussed in section 3.3.3.3 above, within which they had to operate.

4.4 The high point of Weber followed by the NPM

The central government legalised the professionalism and tightened up the professional standards pursued by IMTA and the Institute in 1988 through the promulgation of the two Acts of parliament, namely the Profession of Town Clerks Act of 1988 and the Municipal Accountants Act of 1988. This, therefore, was the high point of the Weberian model in South Africa. All municipal employees had to meet the prescribed qualification requirements and undergo the prescribed course of training. As a result, the element of meritocracy that has been missing for all those years, as far as the town clerks and the treasurers were concerned, was now complied with.

It is suggested that these Acts were meant to close the loophole that allowed many town clerks and town treasurers to circumvent the route to membership of a professional association. It is further suggested that the changes brought about in 1988 were occasioned by the fact that the writing was on the wall for the end of apartheid and that as such the apartheid government was fearful that the current system, if not tightened up, would allow new unqualified African entrants in. So, these laws were an attempt to keep unqualified Africans out of the system. To get in, they had to meet strict requirements which were never applied to white personnel before 1988, thus giving white personnel a head-start over other races. As a result, the Weberian model was exclusive and it was used to perpetuate racialism. As discussed in the next chapter, this is one of the reasons why the post-apartheid government had to introduce a different model, the NPM, in the place of the Weberian model

5 Conclusion

The main thrust of this chapter was to analyse the rise and peaking of the Weberian ideal-type bureaucracy in South Africa. The focus was on the Weberian toolkit or elements which Weber proposed that any modern bureaucracy should possess in order to be effective. The study shows that before 1988, the delivery of services was the primary function of local authorities. Private sector involvement in the delivery of services through outsourcing and corporatisation never

featured in discussions. The primary concern was implementing a full Weberian model to empower personnel to do the job of service delivery.

It is revealed in the foregoing that the Weberian model of service delivery was manifest most in white local authorities where there was a developed system of local government with a fully functional administration. Local authorities for blacks, coloureds and Indians were appendages of the 'parent' white local authorities and only served to advise white local authorities on how to deliver services in those areas. As a consequence, there was no fully-fledged and fully functional administration in local authorities for these racial groups.

Even in white local authorities, there was a painstakingly slow process of the adoption of meritocracy, spanning over six decades. While other elements of the Weberian model were present in varying degree, meritocracy, especially for the higher-most echelons of municipal administration, was not present, and as such the systems did not fully embrace the Weberian model. No particular form of qualification was required for town clerks and municipal finance officials. Town clerks were merely glorified chief administrative and executive officer without proper recognition of the personal qualities and qualifications expected of such chief administrative and executive officer.

The process of the adoption of meritocracy was started in 1928 with the formation of the Institute of Municipal Treasurers and Accountants (followed by the Institute of Town Clerk of Southern Africa in 1946), as watchdogs guarding the profession of municipal treasurers and accountants and of town clerks, respectively. However, even though these institutes set their own standards and were very effective in terms of career advancement, they were merely voluntary institutions not sanctioned by the state and not able to force every official to become a member. As such, for over six decades, the municipal administration in white local authorities was non-Weberian in the sense that the requirements for meritocracy were not set in legislation. Municipalities could employ officials from outside the institutes. The voluntary nature of the institutes meant that not everyone was required to be a member before being appointed to local authorities. In fact, the reverse applied. Members of IMTA and the Institute had to be employed first before acquiring membership. This allowed a lot of sideways, and often unqualified, white entry into local government.

Furthermore, this slow process of the adoption of the Weberian model was skewed in favour of white personnel because of a race bar. First, other races were not allowed to be members of these Institutes. Secondly, other races could not be members of these institutes because, as has

been pointed out, another requirement of entry was that one must have worked as a town clerk or a treasury or in the town clerk's or treasurer's department in a local authority for a number of years. Given that there were no local authorities in African, coloured and Indian areas with a fully-fledged administration for all those years and that for the structures that existed they had to rely on seconded white personnel, the requirement that one ought to have been employed in a local authority for a number of years in order to be a member of the Institutes also served as a bar. Thirdly, given that the apartheid laws prevented black people from getting equal education opportunities and that certain occupations were reserved for whites only, making them inaccessible to Africans, it was nigh impossible for them to acquire the requisite qualifications prescribed for membership. This had a significant impact on the skills base of Africans (both urban and in the homelands), coloured and Indian communities on which these structures relied.

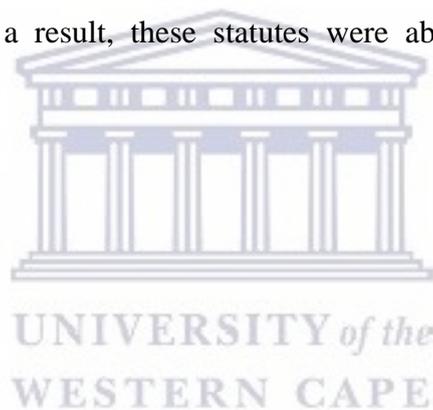
The adoption of meritocracy, which marked the high point of the Weberian model of service delivery, coincided with the changes in the political environment. First, local authorities were established for Africans living in urban areas as a measure to contain their struggles and uprising for inclusion that began in Soweto in 1976 and spread countrywide. That uprising profoundly changed the socio-political landscape in South Africa. Seeing that those structures were not performing as expected but that the uprising instead gathered momentum, with civics and other community bodies starting to organise, the government introduced an inclusive form of local government in 1985, the Regional Service Councils, to channel resources to collapsing townships and to quell the community resistance and unrest.

However, these interventions came too little too late as there was no effective government in most townships and it was clear that African local authorities would never be viable. Seeing that there was no way out save for ending the system of apartheid, the government decided in 1988 to adopt meritocracy in local government in the strict Weberian sense, thereby raising the bar to bar unqualified black entrants from getting in. It is suggested that this was a clever scheme of job reservation as the government was seeing the end of apartheid and was thus fearful of being overrun by unqualified blacks.

Even though there was a period of grace opened for officials who did not have the requisite qualification, it is suggested that this was opened only for whites as the bar was too high for other races who had been excluded from equal education opportunities and the mainstream of the public service for all those years. Further requirements that never existed before were added

in 1992 relating to ethics and professionalism. As a result, come 1994, municipal administration was dominated by white professionals and thus the need during the restructuring process to abrogate these laws that were meant to preserve whiteness. For example, IMTA had over 800 members in 1989, but all of which were white. As far as the Institute is concerned, it was reported in 1996 that there were no more than five black registered professional town clerks,²⁶⁹ indicating that there were similarly no black town clerks in 1988. The colour bar requirements made sure that no Africans were registered with the Institute and IMTA.

As will be seen in the next chapter, this led to ambivalence towards skills and professionalism, as they were used perversely to exclude other races. The changes introduced in 1988 were a clever strategy of maintaining the status quo of white domination in critical institutions of governance. The 1992 amendments were the final nail in the exclusion of African. As a result, the post-apartheid government believed that keeping these exclusionary laws would perpetuate apartheid exclusions and preserve whiteness in all spheres of economic and political life. The next chapter shows that, as a result, these statutes were abrogated in 1995 and 2003, respectively.



²⁶⁹ Mashumi 2013: 631.

CHAPTER FOUR:

The emergence of the New Public Management in South Africa

1 Introduction

This chapter traces the emergence of the New Public Management (NPM) in South Africa. It reveals that the seeds for the adoption of the NPM paradigm were sown in the 1980s, ostensibly as a response to the global economic crisis of the 1970s, among other things. That constituted the first phase of the adoption of NPM principles in South Africa. It is further revealed that the second phase of the adoption of NPM principles was when those seeds sown in the 1980s took root in the 1990s during the transformation of the public service. Initially, there were fears by the post-apartheid government that the NPM was an attempt by the apartheid government to denude the post-apartheid state of assets and retain the *status quo ante* of white ownership of economic wealth.¹ However, the post-apartheid state was confronted by a dysfunctional system of governance and service delivery that resulted in huge infrastructure and service backlogs. The NPM was presented as the only model of governance and service delivery that could reverse the legacy of apartheid. It furthermore was used to change the demographic profile of the public administration. The NPM was, therefore, introduced as an alternative to the centralist hierarchical system of governance and service delivery that obtained in the previous dispensation.

This chapter discusses the introduction of NPM principles in South Africa both during the dying days of the apartheid era and after the dawn of democracy. It focuses on legislative and policy developments underpinning the NPM. It discusses aspirational policy documents such as the Reconstruction and Development Programme (RDP); *RDP White Paper*; *White Paper on Transformation of Public Service and Administration* (1995 *White Paper*); section 195 of the Constitution; the Growth Employment and Redistribution policy (GEAR); the *White Paper on Human Resource Management and Administration* (1997 *White Paper*); the *White Paper on the Transformation of Public Service Delivery* (*Batho Pele White Paper*); and the Presidential Review Commission (PRC), to demonstrate a shift in thinking from the old-style model of service delivery to the NPM.

¹ Greenberg S *The State, Privatisation and the Public Sector in South Africa* (2006) 11 (hereafter Greenberg 2006).

All these policies, in one way or the other, have a bearing on the legislation of the NPM in South Africa. It is shown in the latter case that over and above the incorporation of NPM principles as part of the imperative to reform the public service characterised by racial domination, exclusion and job reservation, they were also introduced as part of the reform waves associated with the NPM that had engulfed both developed and developing economies alike. In this wave, the NPM was touted as ‘management for all seasons’ that would reverse the pathologies of the Weberian model and introduce efficiency, effectiveness and value-for-money in the rendering of services. In South Africa, the NPM was introduced to reverse the huge structural and service backlogs caused by a dysfunctional system of governance and overhaul the apartheid legacy. The multilateral institutions, the IMF in particular, which dictate the rules of the global economic game, also exerted enormous pressure on the post-apartheid government to adopt neoliberal policies as a condition for a loan received in 1993.

2 Sowing the seeds

The seeds for public service and local government reform in South Africa aligned to the NPM model were first sown by the National Party government in the 1980s. The impetus for such developments came from four fronts, which proved fortuitous for public sector reform.² The first was the effects of the global economic recession of the 1970s.³ The second was the influence of the move towards a lean and mean state in the UK and other industrialised countries.⁴ The third was the apartheid government’s political and economic isolation in the late 1980s, which inhibited any inflows of capital.⁵ The fourth was an attempt by the apartheid government, when it became evident that its demise was imminent, to denude the post-apartheid state of assets and retain the economic wealth of the country. Afrikaner capital was already, by the mid-1970s, calling for a reduction in state ownership and control of key sectors of the economy to be replaced by an aggressive entrepreneurship.⁶ The response of the

² Chipkin I & Lipietz B ‘Transforming South Africa’s racial bureaucracy: New Public Management and public sector reform in contemporary South Africa’ (2012) *Public Affairs Research Institute* 1 4 (hereafter Chipkin & Lipietz 2012).

³ Ayeni V *Empowering the Customer: The Citizen in Public Sector Reform* (2001) 40.

⁴ Van Niekerk S, Pape J & Xali M et al. *An Alternative View of Privatisation* (1999) 26 (hereafter Van Niekerk S, Pape J & Xali M et al. 1999).

⁵ Hirsch A *Season of Hope: Economic Reform under Mandela and Mbeki* (2006) 25.

⁶ O’Meara D *Forty Lost Years: The Apartheid State and the Politics of the National Party 1948-2004* (1996) 272.

apartheid government to these calls for the policy on the reduction of state and control of key industries was the partial privatisation of Sasol in 1981.⁷

Privatisation and deregulation became part of government policy thenceforth. In 1987 the National Party government published its *White Paper on Privatisation and Deregulation*,⁸ which made the case for privatisation and listed areas where the government had already fully or partially privatised its functions. With regard to the former, the motivation put forward by the 1987 *White Paper* for privatisation and deregulation entailed the following:

- the size of the public sector and government spending needed to be reduced to open up investment opportunities for the private sector;
- business must be allowed to develop and grow without state intervention and with minimum regulation; and
- cutbacks on state spending and money raised by selling off state assets could provide much-needed funds for government.⁹

With regard to the latter, the 1987 *White Paper* contained a full annexure of functions or activities that have already been fully or partially privatised by various government departments.¹⁰ Apart from non-essential functions such as catering, laundry, cleaning and security services, the list included construction and maintenance of roads and bridges, dams, water purification works, and some hospitals and institutions for the aged.¹¹ Iscor was the first public enterprise to be privatised in 1989 after the partial privatisation of Sasol in 1981.¹² It would seem, therefore, that the principles of the NPM had already taken root in South Africa at the fall of the apartheid order.

The National Party government also sought to introduce private-sector management principles, values, practices and policies within the public sector.¹³ Realising that it was struggling to finance apartheid, owing to economic sanctions and the global economic slump, the National

⁷ Greenberg 2006: 10.

⁸ *The White Paper on Privatisation and Deregulation in the Republic of South Africa* (WPG87 August 1987) (hereafter *White Paper* 1987).

⁹ *White Paper* 1987: 8.

¹⁰ *White Paper* 1987: 15.

¹¹ *White Paper* 1987: 15.

¹² Jerome A *Privatisation and Restructuring of State Assets in South Africa: Lessons from African Privatisation Experience* (2003) (hereafter Jerome 2003).

¹³ Greenberg 2006: 3.

Party government began a process of commercialising state-owned enterprises such as Eskom, Telkom and the Post Office so as to make them ‘efficient’ and prioritise profit-making.¹⁴ The Department of Privatisations was set up for the purposes of overseeing the sale of its portfolio of State-owned Enterprises and ensuring that restructuring along business lines took place.¹⁵

Thenceforth, the government hastened to lay out a plan to commercialise Eskom, state-owned forests, national parks, the sorghum beer industry and the South African Transport Services. The South African Transport Services was transformed into a public company called Transnet. The Department of Post and Telecommunications in turn was transformed into two public companies, Telkom and the South African Post Office. The Post Office was corporatised with the aim of later privatising it.¹⁶

3 The need for the transformation of the public service

‘The nationalisation of the mines, banks and monopoly industries is the policy of the ANC and a change or modification of our views, in this regard, is inconceivable’ – Nelson Mandela, February 1990 (quoted in Financial Mail 31 May 1996)

Since the democratic breakthrough in 1994, the new South African government committed itself to correcting the structural injustices of apartheid and colonialism and to improving the standards of living of all South Africans regardless of race.¹⁷ The economic tool it was intent on using was nationalisation, which had been its economic policy since the adoption of the Freedom Charter in 1956. However, the ANC at this stage did not have a clear model for service delivery. Although it was ambivalent towards the Weberian model, as adopting it would perpetuate apartheid dysfunctionality and exclusions, it also viewed the early attempts by the apartheid government to introduce the NPM model as an attempt to strip the post-apartheid state of assets and retain the *status quo ante* of white ownership of economic wealth.¹⁸

¹⁴ Van Niekerk S, Pape J & Xali M et al. 1999: 26.

¹⁵ *Presidential Review Committee* (2010) 9.

¹⁶ Jerome 2003: 8.

¹⁷ Maserumule MH ‘Engaged scholarship and liberatory science: A professoriate, Mount Grace, and SAAPAM in the decoloniality mix’ (2015) *Journal of Public Administration* 50(2) 200 213 (hereafter Maserumule 2015). According to Murray (2006), this was meant to shake off three centuries of oppressive, undemocratic government, first that of the Dutch and British and, in the twentieth century, that by white racist elite.

¹⁸ Greenberg 2006: 11.

The strategic objectives of the post-apartheid government were to build an inclusive, non-racial and a non-sexist, democratic society that is developmental in character.¹⁹ In this regard, the public administration and the state in general became the objects of numerous interventions aimed at ‘transforming’ it. Geraldine Fraser-Moleketi, the Minister of Public Service and Administration from 1999 to 2008, stated that the basis of this transformation

stem[med] from the need to address the profound inequities inherited from the past, the need to meet the moral, social and economic demands of the new South Africa and the challenge of national and international opportunities presented by the present climate of change ...²⁰

According to the *White Paper on the Transformation of the Public Service*, the post-apartheid government had eight priority areas to drive the process of transformation:

1. rationalisation and restructuring to ensure a unified, integrated and leaner public service;
2. institution-building and management to promote greater accountability and organisational and managerial effectiveness;
3. representativeness and affirmative action;
4. transforming service delivery to meet basic needs and redress past imbalances;
5. the democratisation of the state;
6. human resource development;
7. employment conditions and labour relations; and
8. the promotion of a professional service ethos.²¹

The public service had to be transformed on all fronts because it was not only racist and exclusionary, it was also dysfunctional. In all these areas, the usefulness of the Weberian model of service delivery was questioned. The key priority areas for the purposes of this study relate to rationalisation and restructuring, institution-building and management, representativeness and affirmative action and transforming service delivery. These priority areas can be summed

¹⁹ Fraser-Moleketi G *Public Service Reform in South Africa: An Overview of Selected Case Studies from 1994-2004* (Master's thesis, University of Pretoria, 2006) 20 (hereafter Fraser-Moleketi 2006).

²⁰ Fraser-Moleketi 2006: 12.

²¹ *White Paper on Transformation of the Public Service* (GN 1227 GG 16838 of 24 November 1995) para. 5.1 (hereafter *White Paper* 1995)

up into the following strategic goals, namely integration, inclusion, representation and restructuring. These are discussed hereunder in no particular order of significance.

3.1 Integration

The first strategic goal of the post-apartheid government was the *integration* or unification of the diverse and disparate apartheid-era bureaucracies into a single South African public administration that provides seamless services to the citizenry.²² Prior to 1994, the public service was styled and managed along racial and ethnic lines in terms of the various administrations, Bantustans and self-governing territories resulting in a highly fragmented public administration. There were eleven former administrations which included the Republic of South Africa, the ‘TBVC’ states, and the self-governing territories.²³ This goal of transformation was, therefore, concerned with the amalgamation/integration of these public service machineries into a single South African public service extending across the national and provincial spheres of government.²⁴

At a local level, this strategic goal saw a radical transformation and overhaul of local government from over a thousand race-based, illegitimate and subservient institutions to 842 wall-to-wall municipalities in terms of the Local Government Transition Act of 1993.²⁵ The transformation of local government was impelled by a legacy of an ‘urban economic logic that systematically favoured white urban areas at the cost of black urban and peri-urban areas’, with ‘tragic and absurd’ results.²⁶ It was in response to these tragic results, highlighted in the *White Paper on Local Government*, that the wall-to-wall municipalities were established, designed to deliver services across the length and breadth of South Africa and thus realise a better life for all.²⁷ The main aim of the new system of local government was to create and sustain humane, equitable and viable human settlements. Typically, each municipality now consists of several towns, as well as their rural hinterlands.²⁸

²² *White Paper* 1995 para. 8.1.

²³ *White Paper* 1995 para. 8.1.

²⁴ Fraser-Moleketi 2006: 63.

²⁵ Act 209 of 1993. In the year 2000, these municipalities were reduced further to 284.

²⁶ De Visser J ‘Developmental local government in South Africa: Institutional fault lines’ (2009) 2 *Commonwealth Journal of Local Governance* 8.

²⁷ Johnson V ‘Outsourcing of basic services: Contract analysis’ in De Visser JW & Mbazira C (eds) *Water Delivery: Public or Private?* (2006) 1.

²⁸ Atkinson D ‘Taking to the streets: Has developmental local government failed in South Africa?’ in Buhlungu S, Daniel J & Southall R et al. *State of the Nation: South Africa* (2007) 121.

This process was guided by the principle of promoting efficiency and effectiveness in the delivery of services.²⁹ The Weberian model of service delivery was of dubious value as it was attacked from all fronts for being mechanistic and dysfunctional. It was also associated with the ills of apartheid.

3.2 Inclusion

Secondly, the government had to change the direction of public spending to *include*, for the first time, the majority African population. This goal was triggered by the need to address the legacy of apartheid, a racially skewed history of oppression and exploitation, which left large swathes of the population marginalised, poor and without any or adequate health, housing and water.³⁰ The previous government's funding to different regions and departments was grossly unequal. For example, in some areas discrepancies in funding per pupil or per patient in mainly white and black schools or hospitals were often huge, and if not addressed would make a mockery of the integration process and amalgamation of the various administrations.³¹ In this regard, the 1995 *White Paper* notes that 'the system of service provision that developed under Apartheid was discriminatory and exclusionary, particularly towards black South Africans'.³²

As far as African communities were concerned, the apartheid public service was, true to the Weberian tradition, concerned more with the application of rules and procedures than with the delivery of services and development.³³ This therefore necessitated a concerted effort to include this section of the population in the mainstream of delivery. The usefulness of the Weberian model of delivery in extending services to the previously neglected communities was doubted.

3.3 Representation

Thirdly, the government undertook efforts to change the demographic character of the public service to make it more *representative* of the people it serves (South Africa's entire population), as enjoined by the Interim Constitution.³⁴ Apartheid bequeathed a public service that was

²⁹ *White Paper* 1995 para. 8.1.1.

³⁰ Padayachee V *The Development Decade? Economic and Social Change in South Africa, 1994-2004* (2006) 80.

³¹ Maphunye KJ 'The South African senior public service: Roles and the structure in post-1994 departments' (2002) 36(4) *Journal of Public Administration* 312-316.

³² *White Paper* 1995 para. 3.1.1.

³³ *White Paper* 1995 para. 3.1.1.

³⁴ Section 212 (2)(b) and Principle XXX of Schedule 4 of the Interim Constitution stress the need for a public service broadly representative of South African society.

unrepresentative, with senior management dominated by white males, that lacked legitimacy, with public officials being closely associated with the apartheid state, that had low levels of service delivery, that used centralised control and top-down management, that lacked accountability and transparency, that had ineffective management information and poor financial control systems, that made inappropriate use of staff resources, that had poorly paid and demotivated staff, that operated conflictual labour relations, and that lacked a professional ethos and work ethic.³⁵

The ANC policy document ‘Ready to Govern’, which precipitated these reforms, had this to say: ‘The whole of the civil service will have to be opened up so as to make it a truly South African civil service, and not the administrative arm of a racial minority.’³⁶ In this regard, the use of the Weberian model of delivery, with its insistence on inputs (prior qualifications and experience) would have perpetuated the exclusion of the African majority, contrary to what this strategic goal pursues. In this regard, the 1995 *White Paper* stated that the criteria and procedure for recruitment are ‘based on narrowly defined, culturally determined and exclusive view of qualifications, experience and achievement, rather than on a broad and more inclusive view of relevant competencies’.³⁷ The *White Paper on Human Resource Management* in turn stated:

It is essential to make the Public Service more accessible to external applicants, in order to include all sections of society and to inject fresh ideas and skills to assist the Public Service to achieve its transformation goals.³⁸

3.4 Restructuring

Lastly, the new government had to take measures to ‘de-bureaucratise’ the public service in South Africa and *restructure* it by breaking down the hierarchical, racial oligarchy in an effort to improve the efficiency and effectiveness of government departments.³⁹ The apartheid public service, which was strongly oriented towards control of the majority Africa population, had

³⁵ *White Paper* 1995 para. 3.1.1. See also Pycroft C ‘Local government in the new South Africa’ (1996) 16(3) *Public Administration and Development* 1986-1988 233 235.

³⁶ African National Congress ‘Ready to govern: ANC policy guidelines for a democratic South Africa’ available at <http://www.anc.org.za/show.php?id=227> (accessed 15 June 2016).

³⁷ *White Paper* 1995 para. 10.2.

³⁸ *The White Paper on Human Resource Management in the Public Service* (GG 18594 of 31 December 1997) para. 4.5.1 (hereafter *White Paper* 1997a).

³⁹ Chipkin I ‘Transcending bureaucracy: State transformation in the age of the manager’ (2011) 77(1) *Transformation* 1 (hereafter Chipkin 2011).

become highly authoritarian, centralised and rule-bound in its operation.⁴⁰ The *White Paper* states:

It was characterised in particular by the development of a vertical, top-down management structure. Democratic practices were discouraged, both internally and in interaction with the public. There was little or no incentive for creativity and responsiveness to the needs of citizens and clients.⁴¹

Furthermore, there was little accountability for actions. Accountability within the service was limited to bureaucratic accountability in that employees were only held accountable for adherence to rules and procedures rather than for the consequences of their actions. Efficiency and productivity were also not a consideration in holding officials to account.⁴² As such, this priority area implies the removal of unnecessary tiers of reporting and decentralising decision-making and responsibility, while at the same time increasing accountability for performance against specified objectives.⁴³ It also requires the introduction of a performance appraisal process in terms of newly defined job descriptions. It also implies contracting out state services on a competitive basis to private-sector organisations on a partnership basis.⁴⁴ The restructuring goal further implies the changes in management philosophy and practice, in order to enhance the performance, responsiveness and accountability of state institutions.⁴⁵

This last goal of the transformation process was clearly a rejection of the Weberian model of service delivery, which opened numerous doors for the reception of NPM principles. The Weberian model was not seen capable of addressing the urgent need to redress past imbalances in service provision and to promote social equity and thus meet the basic needs of the 40 per cent below the poverty line.⁴⁶ The next section examines early explicit moves towards the adoption of the NPM framework.

4 Early moves towards the NPM

The transformation process was foreshadowed and partly influenced by two consultative conferences which took place soon after the release of political prisoners and the return of the

⁴⁰ *White Paper* 1995 para. 3.1.1.

⁴¹ *White Paper* 1995 para. 3.1.1.

⁴² *White Paper* 1995 para. 3.1.1.

⁴³ *White Paper* 1995 para. 8.3(b). See also para. 9(a).

⁴⁴ *White Paper* 1995 para. 8.4.

⁴⁵ *White Paper* 1995 para. 9.

⁴⁶ *White Paper* 1995 para. 11.2.

exiles (during 1991-1992) at Mount Grace and Mont Fleur. These conferences were aimed at influencing theoretical approaches to public administration and the location of academic institutions in the practice of public administration. These conferences took place at the same time at opposite ends of South Africa and attracted different kinds of audiences. Mount Grace was purely academic, while Mont Fleur represented a cross-section of societal interests. What is common about these conferences is that they both were concerned with what the character of public service in South Africa should be. Their preoccupation was with the modalities and workings of the public sector in the new South Africa.⁴⁷ In what follows, I look at these conferences in some detail and the impact thereof.

4.1 Mount Grace I conference

The Mount Grace I conference took place in November 1991 at Mount Grace Hotel in the Magaliesberg near Johannesburg to debate new models for the South African public service.⁴⁸ A group of public administration academics and practitioners came together and adopted what they called the ‘Mount Grace Resolution’ on public sector transition. The participants were both anti-apartheid activists recently returned from exile and those sympathetic to the democratic struggle in South Africa.⁴⁹ With the African National Congress and other organisations recently unbanned and the end of apartheid in sight, their preoccupation was with the possible character of a post-apartheid public service and the model it would use in delivering services. Picard notes that there was a general fear that South Africa’s public service would face an identity crisis after 1990.⁵⁰

Mount Grace is a biblical construct from the Grace in the Sermon on the Mount, intended to enable people to see reality differently. This raises the question whether the Mount Grace resolutions on the direction of the public service enabled the new government to see reality differently.

⁴⁷ Chipkin & Lipietz 2012: 4.

⁴⁸ Picard LA *The State of the State: Institutional Transformation, Capacity and Political Change in South Africa* (2005) 201 (hereafter Picard 2005).

⁴⁹ Chipkin 2011: 45. Some anti-apartheid activists and academics, such as Enos Ngutshane and Job Mokgoro, joined either the government or parastatals.

⁵⁰ Picard 2005: 200.

First, Cameron and Milne refer to the Mount Grace I conference as ‘the watershed conference which tried to shape Public Administration in times of turbulence’.⁵¹ The resolutions they endorsed called for a break with the public administration of the apartheid era and championed the NPM.⁵² Cameron notes that this conference was a decisive attack on old apartheid public administration.⁵³ Mount Grace I was anti-bureaucratic, favouring markets and emphasising practitioners’ needs. Tshikwatamba⁵⁴ argues that Mount Grace carried out the equivalent of a coup of old public administration. The participants launched a sharp critique of the ‘wholly outdated principles and methods that made the apartheid public service a bureaucratic, law-driven, hierarchical, multi-layered, departmentally fragmented, inward-oriented, racial oligarchy’.⁵⁵ Instead, they sought to adapt Osborne and Gaebler’s *Reinventing Government* ideas to local circumstances, which called for governments to be customer-driven and market-oriented for the establishment of a new paradigm.⁵⁶ This empowered the new government to see things differently and thus precipitated the adoption of the NPM paradigm. Here, the emphasis was on cultivating an ‘entrepreneurial spirit’ to transform the public service.⁵⁷

Secondly, the apartheid public administration which was premised on the idea of a machine-like Weberian bureaucracy was juxtaposed with the corporate management approach, which recognised that public servants could not plausibly be conceived as obedient and neutral.⁵⁸ The latter put emphasis on the ‘important’ role of bureaucratic discretion in interpreting and implementing policy. Ultimately, the Mount Grace I conference proposed that discretion or influence could be best safeguarded in the hands of managers, effectively allowing managers to manage.⁵⁹

Thirdly, one of the initiatives that came out of the Mount Grace I meeting was the establishment of the Graduate School of Public and Development Management at the University of the

⁵¹ Cameron RG & Milne C ‘Minnowbrook, Mount Grace and the state of the discipline’ (2009) 44(2) *Journal of Public Administration* 380 380.

⁵² Fitzgerald P ‘Towards a developmental public administration paradigm’ in Fitzgerald P, McLennan A & Munslow B (eds) *Managing Sustainable Development In South Africa* (1995) 512 (hereafter Fitzgerald 1995).

⁵³ Cameron RG ‘Public administration in South Africa’ (2008) 15(2) *Administratio Publica* 43 48.

⁵⁴ Tshikwatamba NE ‘A critical and inter-disciplinary analysis of the selected criticism levelled against public administration’ (2007) 2(8) *Journal of Public Administration* 40.

⁵⁵ Fitzgerald 1995: 514.

⁵⁶ Osborn D & Gaebler T ‘Reinventing government’ (1993) 16(4) *Public Productivity and Management Review* 349 356.

⁵⁷ Chipkin 2011: 5.

⁵⁸ Chipkin 2011: 45.

⁵⁹ Fitzgerald 1995: 517.

Witwatersrand in Johannesburg. Its mandate was to train and form a new cadre of post-apartheid managers. As a result, a number of officials trained in this programme found their way to the Department of Public Service and Administration. These included the former Director-General (Robinson Ramaite), then Director of Service Delivery and Innovation (Khaya Ngema), a senior manager in the department (Salim Latib), former manager of the Capacity Building division (Lawrence Tsipane), and the former head of Corporate Services (Colleen Robinson). It was here that ideas around the NPM were formulated by what were to be the senior managers of the public service.⁶⁰

Furthermore, most schools and departments of public administration in institutions of higher learning in the country adopted the NPM as the basis of their curricular development or rearticulation efforts.⁶¹ Some even changed their designation from Public Administration to Public Management.⁶² Moreover, according to Theron et al.,⁶³ the Mount Grace 1 resolutions influenced the framers of the new constitution. He insists that section 195(1)(c) of the Constitution of the Republic of South Africa of 1996, which prescribed that ‘public administration must be development-oriented’, bears the imprints thereof.

4.2 Mont Fleur conference

The Mont Fleur conference was, among other things, convened to influence the economic model the new government was going to adopt.⁶⁴ It took place in the Western Cape Winelands in Mont Fleur conference Centre near Stellenbosch, just outside Cape Town, in September, November 1991 and March 1992, and brought together a diverse group of 22 prominent South Africans from across the ideological divide to analyse South Africa’s social, political, and economic crises and craft a way forward. These included politicians, activists, academics and

⁶⁰ Chipkin 2011: 46.

⁶¹ Maserumule 2015: 213.

⁶² Furthermore, academics and academic institutions were forced to operate as providers to education and training demands articulated and defined within government departments. Six schools of government (Pretoria, Stellenbosch, Fort Hare, Western Cape, Durban-Westville and Witwatersrand) formed, with the approval of the government, the Joint Universities Public Management Education Trust (JUPMET). The purpose of JUPMET was to build the institutional capacity of the participating providers to meet national management development needs.

⁶³ Theron F & Schwella E (eds) *The State of Public and Development Management in South Africa* (2000)69.

⁶⁴ Beery J, Eidinow E & Murphy N (eds) *The Mont Fleur Scenarios: What will South Africa be Like in the Year 2002?* (2009) 1 (hereafter Beery et al. 2009).

business people, notably Trevor Manuel, Tito Mboweni, Rob Davies, Saki Macozoma and Gugile Nkwinti, who all happened to be prominent members of the ANC.⁶⁵

Kahane, one of the facilitators in Mont Fleur, maintains that the purpose of Mont Fleur was ‘not to present definitive truths, but to stimulate debate on how to shape the next 10 years’.⁶⁶ The critical message coming out of Mont Fleur was the warning emanating from one of the scenarios presented, namely ‘Icarus’. The warning was against the dangers of a new government implementing populist economic policies. They revelled in caricatures, particularly their characterisation of a ‘popularly elected government which tries to achieve too much too quickly’ and succumbs to macro-economic populism.⁶⁷ In this regard, a warning was sounded in an ‘apocalyptic language [of] the country experienc[ing] an unprecedented economic crisis, resulting in social collapse and political chaos’.⁶⁸ This characterisation appeared to have made a deep impression on the ANC elites as the chief spokesperson on economic affairs for the ANC, Tito Mboweni, was later heard on the fringes of the conference stressing that his movement would avoid ‘crowding out the private sector and over time destroying a whole set of macro-economic balances, leading up to sharp economic decline and collapse – a kind of Icarus now, crash later’.⁶⁹

This warning was sobering for the liberation movements, particularly the ANC, which had dreamed of launching a range of social welfare programmes, driven by the state machinery, to uplift their people who had been oppressed and discriminated against for so long.⁷⁰

In contrast to the warning of a disaster that was couched in apocalyptic language, they were sold a model or a scenario which implied that the private sector was going to be part of service delivery the ‘Flight of the Flamingos’.⁷¹ The ‘Flight of the Flamingos’ entailed adopting ‘sound

⁶⁵ The full list of the Mont Fleur participants contains the following names: Dorothy Boesak, Rob Davies, Howard Gabriels, Adam Kahane, Koosum Kalyan, Michiel le Roux, Pieter le Roux, Johann Liebenberg, Saki Macozoma, Tito Mboweni, Gaby Magomola, Mosebyane Malatsi, Thobeka Cikizwa Mangwana, Trevor Manuel, Vincent Thabane Maphai, Philip Mohr, Nicky Morgan, Patrick Ncube, Gugile Nkwinti, Brian O’Connell, Mahlomola Skosana, Vivienne Taylor, Sue van der Merwe, Dr Winfried Veit, Christo Wiese.

⁶⁶ Le Roux P, Maphai V & Davis R et al. ‘The Mont Fleur scenarios: What will South Africa be like in the year 2002?’ (1992) 7(1) *Deeper News* 18 (hereafter Le Roux et al. 1992).

⁶⁷ Mohr P ‘Flight paths’ (1992) 11(5) *Leadership* 34 (hereafter Mohr 1992).

⁶⁸ Mohr 1992: 34.

⁶⁹ Mohr 1992: 34.

⁷⁰ Marais H *South Africa: Limits to Change* (1998) 105 (hereafter Marais 1998) argues that this flurry of interventions (economic scenarios and policy frameworks) aimed at forestalling the possible adoption of a new economic strategy that might be predicated on increased control over capital were aided by the ‘Washington consensus’ and the remnants of the high tide of Reaganism and Thatcherism.

⁷¹ Beery et al. 2009: 14.

policies and observ[ing] macro-economic constraints ... [within a] market-oriented economic system whilst promoting business confidence'.⁷² One of the necessary conditions for the successful take-off of the flamingos was the agreement that more efficient delivery systems would be the cornerstone of increasing effective service provision.⁷³ The private-sector techniques became apparent when it was acknowledged that these efficient delivery system 'would enable a government to deliver more at the same cost to the treasury'.⁷⁴ This is the value-for-money or more-for-less principle derived from the private sector. This was later expressed in the NPM principle of public-private partnerships. 'The Flight of the Flamingos', therefore, 'combined strategies that lead to significant improvements in social delivery with policies that create confidence in the economy'.⁷⁵

Consequently, the representatives of the liberation movement arrived in Mont Fleur as convinced advocates of nationalisation, which was going to be driven by a centralist state, but came out embracing fiscal conservatism, which implied the active role of the private sector in the delivery of services. The Mont Fleur scenario planning broke ground by changing key ANC role players' minds about pursuing a 'growth through redistribution' model.⁷⁶ Thus, by the year 1992, the former president Nelson Mandela was quoted as saying in the World Economic Forum in Davos, 'We visualise a mixed economy in which the private sector would play a central and critical role to ensure the creation of wealth and jobs.'⁷⁷ By extension, the private sector would play a central and critical role in the public service delivery.

4.3 Letter of intent

As noted earlier, the multilateral institutions that dictate the rules of the global economic game also played a role in shaping the direction of the public sector reforms in South Africa. To a large extent, it was the IMF that had an opportunity to influence the South Africa transitional government to switch to neoliberal policies associated with the NPM.⁷⁸ The World Bank had

⁷² Beery et al. 2009: 17.

⁷³ Le Roux et al. 1992: 18.

⁷⁴ Le Roux et al. 1992: 18.

⁷⁵ Le Roux et al. 1992: 17.

⁷⁶ Van der Westhuizen C *White Power and the Rise and Fall of the National Party* (2007) 243. Trevor Manuel was especially impressed by Derek Keys, a former mining executive who was brought in by De Klerk as minister of finance.

⁷⁷ Greenberg 2006: 11.

⁷⁸ 'Neoliberalism' broadly means the project of economic and social transformation under the sign of the free market. The essential feature of free market neoliberalism is deregulation and allowing the market to operate in traditional public sector terrain. This is where neoliberalism and the NPM converge.

less influence on South Africa.⁷⁹ In the early 1990s the transitional government, represented by both the apartheid government and the liberation movement, approached the IMF for a five-year loan, amounting to US \$850 million, in terms of a special facility for countries suffering balance-of-payment problems, the IMF's Compensatory and Contingency Financial Facility (CCFF).⁸⁰ Greenberg maintains that the loan was used to support South Africa's balance-of-payment problems caused by the drought, which resulted in a sharp drop in agricultural exports.⁸¹

The condition of the loan was the obligatory signing of a controversial Letter of Intent⁸² which represented a statement of the kind of economic policies and financial discipline the government will endeavour to follow in the following five years or so.⁸³ This letter was signed by the transitional government in 1993. The ANC was party to the signing of the agreement, thus binding itself to the macro-economic policies that formed part of the conditions.⁸⁴ Some of the conditionalities contained in the Letter of Intent, as recorded by Padayachee, included a commitment to freezing real wages in the public sector, stressed the importance of controlling inflation, promised monetary targeting, trade and industrial liberalisation, and repeatedly espoused the virtues of 'market forces' over 'regulatory interventions'.⁸⁵

For the purposes of this study, the key elements to take home are the expenditure containment, containing the civil service wage bill, and the refrain about the virtues of market forces over regulatory interventions.⁸⁶ These imply a lean public service with a reduced role in the delivery of services to the population. In this regard, the state cedes ground to the private sector to play an increasingly active role in the delivery of services. This later found expression in the NPM

⁷⁹ Padayachee V 'Development implications for South Africa of using IMF and World Bank loans and resources' in Baker P, Boraine A & Krafchik W (eds) *South Africa and the World Economy in the 1990s* (1993) 190. Marais (1998: 151-2) notes that the World Bank took a different route to the 'customarily strident injunctions' of the IMF and opened channels to the ANC and the trade unions after their unbanning in 1990.

⁸⁰ Marais 1998: 104.

⁸¹ Greenberg 2006: 13.

⁸² Even though this letter was written by the borrowing government, it was initially drawn up by the Fund's technical experts and provided a statement of the kind of economic policy and financial discipline the borrowing government would endeavour to follow in the following five years.

⁸³ Adelzadeh A & Padayachee V 'The RDP White Paper: Reconstruction of a development vision' (1994) 25(1) *Transformation* 58 (hereafter Adelzadeh & Padayachee 1994).

⁸⁴ Greenberg 2006: 13.

⁸⁵ Adelzadeh & Padayachee 1994: 589.

⁸⁶ Padayachee V *The South African Economy: 1994-2004* (2005) 549 (hereafter Padayachee 2005).

element of public-private partnership, and to a lesser extent, the creation of corporatised entities run on market principles.

4.4 ANC policy guidelines for a democratic South Africa

The 48th national conference of the ANC held in Durban in July 1991 adopted a policy document for a democratic South Africa, published in 1992, entitled *Ready to Govern*. This policy document was meant to serve as guidelines for a democratic South Africa. It, in a sense, was a launch-pad for the public service reform in South Africa. The *Ready to Govern* policy document is the first policy document emanating from the liberation movement which marked the initial shift in thinking and the embracing of the market principles. In a section dealing with economic policy, the document begins by placing emphasis on ‘macroeconomic balance’ along with the role of a ‘dynamic private sector’ in job creation.⁸⁷ It goes on to propose a mixed economic system where there will be ‘nationalisation, purchasing of shareholding in companies, establish[ment] of public corporations or joint ventures with the private sector, and reducing the public sector in certain areas in ways that will enhance efficiency...’.⁸⁸

It is clear from the language of this policy document that the liberation movement was beginning to adopt the neoliberal thinking associated with the NPM. For example, in the NPM parlance, some elements of the proposed mixed economy can be reduced to the following:

- the establishment of public corporation is referred to as corporatisation;
- joint ventures with the private sector are referred to as public-private partnerships; and
- reducing the public service to enhance efficiency relates to lean and mean public services; this also has elements of privatisation, because reducing the functions of the public service means those same functions could be taken over by the private sector.

I now turn to the policy levers of the transformation process, which will reveal the extent to which the NPM paradigm was legislated.

⁸⁷ African National Congress ‘Ready to Govern’ clause D 1.

⁸⁸ African National Congress ‘Ready to Govern’ clause D 1.

5 Policy development for New Public Management

As noted above, the *Ready to Govern* policy document constituted a launch-pad of the public service reform process. It re-stated the basic objectives of the incoming government as follows:

- to strive for the achievement of the rights of all South Africans to political and economic self-determination in a united South Africa;
- to overcome the legacy of inequality and injustice created by colonialism and apartheid, in a swift, progressive and principled way;
- to develop a sustainable economy and state infrastructure that will progressively improve the quality of life of all South Africans; and,
- to encourage the flourishing of the feeling that South Africa belongs to all who live in it, to promote a common loyalty and pride in the country and to create a universal sense of freedom and security within its borders.⁸⁹

The new government then embarked on a variety of transformational and developmental policy initiatives that sought to fulfil the objectives of the *Ready to Govern* document. These policy initiatives were clearly expressed in the RDP, developed back in 1993; RDP *White Paper* of 1994, the WPTPS of 1995; GEAR of 1996; WPHRM of 1997, Batho Pele *White Paper* of 1997; PRC in 1998; Accelerated and Shared Growth Initiative (ASGISA), in 2006; the New Growth Path of 2010; and the NDP of 2012.

All these developmental initiatives, with huge economic implications for the country, were aimed at transforming the models of service delivery in order to address the socio-economic challenges such as poverty, unemployment, and unequal distribution of resources that face the country. Public administration was expected to play a leading role in implementing the policies contained in the documents listed above.⁹⁰ These policy initiatives served as levers of transformation and some, more than others, catalysed the emergence of the NPM model in the public service, as will be seen in what follows. This chapter will focus only on the policy initiatives from 1990 leading up to the year 2000.

⁸⁹ African National Congress 'Ready to Govern' clause A 1.

⁹⁰ Maserumule 2015: 215.

5.1 Reconstruction and Development Programme

The Reconstruction and Development Programme (RDP) represents the first post-apartheid government's policy to inform the process of the public service reform. It was aimed at redressing the socio-economic imbalances and extreme poverty that beleaguers many communities.⁹¹ The RDP pushed for a developmental-type state in a mixed economy. In this regard, the state was envisaged as playing a leading and enabling role in achieving reconstruction and development while allowing the private sector to thrive. The RDP was intended to be a vision for the fundamental transformation of the public service and South African society, with an emphasis on welfare rights of the poor.⁹² It provided a broad framework for meeting basic social needs, reducing inequality and promoting investment and growth.⁹³ Its ultimate aim was to achieve social, political and economic justice through a process of 'empowerment through participation'.⁹⁴ Its central thrust was to reduce the poverty of the majority of South Africans and make services of an economic nature accessible to all.

As can be seen, the '*raison d'être* of the RDP was the legacy of exceptional poverty, both absolute and relative',⁹⁵ unemployment, and inequality in the distribution of income and wealth facing post-apartheid South Africa. The question was which model should be used to achieve this. In this regard, the RDP states that 'the public sector consist[ing] of the public service, the police and defence forces, the intelligence service, parastatals, public corporations and advisory bodies' and local government had to be restructured to develop more efficient systems of delivery.⁹⁶

While not completely abandoning the Weberian model of delivery, the RDP marked an initial shift in government policy towards the NPM. This attests to the influences of the Mount Grace, Mont Fleur and the IMF's Letter of Intent. It contained both the elements of the NPM and of Weberian model of service delivery. In regard to the latter, it envisaged a public service 'based

⁹¹ Lyons M *Third Sector: The Contribution of Non-profit and Cooperative Enterprise* (2001) 276 (hereafter Lyons 2001).

⁹² The *White Paper on Reconstruction and Development* (GN 353 GG 16085 of 23 November 1994) para. 7 (hereafter *RDP White Paper*).

⁹³ The Presidency *Twenty Years Review South Africa 1994-2014* (2014) 85 (hereafter Presidency 2014).

⁹⁴ Lyons 2001: 276.

⁹⁵ Blumenfeld J 'From icon to scapegoat: The experience of South Africa's Reconstruction and Development Programme' (1997) 15(1) *Development Policy Review* 66 (hereafter Blumenfeld 1997).

⁹⁶ African National Congress *Reconstruction and Development Programme* (1994) 126 (hereafter RDP 1994).

on merit, career principles, suitability, skills, competence and qualifications'.⁹⁷ Furthermore, it envisaged codes of conduct for all government officials, which would set the standards of professional service that all South Africa's people expect from the public sector.⁹⁸

In regard to the former, the RDP document envisaged corporatisation of state-owned enterprises, parastatals and state development institutions to ensure that they retain their independence from government departments.⁹⁹ It created an arms-length relationship between these bodies and their respective ministries. In terms of this relationship, these bodies had to submit an annual director's report to the relevant ministries, showing the use of allocated funds against the agreed-upon objectives.¹⁰⁰ The RDP also envisaged a periodic measurement and review of parastatal and departmental performance as well as appraisal of staff performance.¹⁰¹ This relates to the performance management system, which is a necessary tenet of the NPM paradigm. In essence, the RDP contains two key NPM principles, namely corporatisation and performance management.

When the RDP party policy turned into the *RDP White Paper*, it became clear that the RDP document was viewed by the ANC leadership as just a mobilising tool for electioneering purposes.

Five months after the RDP delivered the much-needed electoral victory in the 1994 elections, the ANC-in-government made an about-turn on its electoral promises. In September 1994 it released the *RDP White Paper*,¹⁰² which marked a sharp departure from both the goals and the ethos of the initial RDP document.¹⁰³ The *RDP White Paper* watered down the radical approach of the RDP in favour of the neoliberal framework associated with the NPM paradigm dominant at the time.¹⁰⁴ Unlike the RDP document, which placed emphasis on merit, career principles, suitability, skills, competence and qualifications, the *RDP White Paper* made coded references

⁹⁷ RDP 1994:127.

⁹⁸ RDP 1994:126.

⁹⁹ RDP 1994:128.

¹⁰⁰ RDP 1994:128.

¹⁰¹ RDP 1994:128.

¹⁰² This was a discussion document. The *White Paper* was published in November 1994.

¹⁰³ This can be attributed to the fact that the RDP document and the *RDP White Paper* were authored by vastly different constituencies: the former did not involve the participation of many academics, economists and business people, while the latter included mostly local business interests.

¹⁰⁴ Adelzadeh A 'From the RDP to GEAR: The gradual embracing of neoliberalism in economic policy' (1996) *Transformation* 31(1) 66. The conservative commentator Kevin Davie remarked that 'all signs now are that our policy-makers see that the objects of the RDP are wholly compatible with the three words [privatisation, liberalisation and convertibility] which so interest the money men'. See Marais 1998: 184.

to privatisation,¹⁰⁵ and emphasised the promotion of private sector involvement in the delivery of public goods.¹⁰⁶

In order to improve efficiency and effectiveness in the public service and its proper use of resources, the RDP *White Paper* envisaged a performance management system. It proposed that government ‘programmes must be based on clear business plans’.¹⁰⁷ These plans ought to provide for clear and measurable outputs, and for the assessment of performance by means of defined indicators. The structure and format of business plans as well as key performance indicators were to be aimed at ensuring uniform performance appraisal.¹⁰⁸ Furthermore, quoting President Mandela in his speech closing the Presidential Budget Vote debate, the *White Paper* proposed to introduce a new culture in the public service to ensure hands-on management.¹⁰⁹ This relates to the NPM principle of letting managers manage.

The NPM tenets that are relevant for the purposes of this study, coming out of the *White Paper*, are privatisation, managerial autonomy, and performance management. The Government of National Unity, for the first time, made positive references to the dreaded full-blown privatisation, which relates to the sale of state assets, and not just corporatisation, marking a clear shift in thinking toward the NPM and neoliberalism associated with it.¹¹⁰ However, as will be seen herein below and in Chapter Six, outright privatisation was later rejected both at national and local government levels.

Padayachee argues that this shift was a delicate balancing act in an effort to get the model of delivery and development right.¹¹¹ The pressures emanating from global sources and powerful local interest groups, especially internationally mobile Western capital, had to be balanced with the need to address the appalling legacy of apartheid characterised by racial oppression, exploitation and marginalisation, which resulted in the black majority being poor and without any or adequate health, housing and water.¹¹² Moreover, the Mount Grace 1 and Mont Fleur conferences, which adopted the NPM neoliberal principles as an alternative national

¹⁰⁵ RDP *White Paper* para. 3.3. See also Klandermans B & Roefs M *The State of the People: Citizens, Civil Society and Governance in South Africa 1994-2000* (2001) 19 (hereafter Klandermans & Roefs 2001).

¹⁰⁶ Webster E & Adler G ‘Towards a class compromise in South Africa’s “double transition”: Bargained liberalisation and the consolidation of democracy’ (1999) *Politics & Society* 27(3) 365.

¹⁰⁷ RDP *White Paper* para. 2.5.6.

¹⁰⁸ RDP *White Paper* para. 2.5.3.

¹⁰⁹ RDP *White Paper* para. 2.5.2.

¹¹⁰ RDP *White Paper* paras. 2.3.7 and 4.1.2.

¹¹¹ Padayachee 2005: 549.

¹¹² Padayachee 2005: 549.

development policy, and the subsequent signing of the controversial Letter of Intent, also brought pressure which precipitated the adoption of the principles related to the NPM paradigm.

What becomes apparent for our purposes is that the RDP *White Paper* marked the first official acceptance by the post-apartheid government of some elements of the NPM model. The *White Paper* was the official government policy that was meant to adopt the RDP policy of the ANC as the government policy. However, it changed it significantly, leaving out the radical welfarist commitments and putting it firmly within the NPM framework.

5.2 *White Paper on Public Service and Administration Transformation*

The second policy instrument in the process of transformation was the *White Paper on the Transformation of Public Service and Administration* published by the Ministry of Public Service and Administration in November 1995. The main aim of the 1995 *White Paper* was to serve as a broad framework of government policy during the process of transformation and reform of the public service.¹¹³ In its Chapter Five, the 1995 *White Paper* identified a number of priorities for the transformation of the public service. These included: (a) rationalising and restructuring the public service (including right-sizing and out-sourcing where appropriate) to ensure a 'leaner' and more unified and integrated service; (b) institution-building and management to promote greater accountability and organisational and managerial effectiveness; (c) increasing representation through affirmative action; (d) transforming service delivery to meet the basic needs and redress past imbalances; (e) improving internal democracy and external accountability; (f) human resource development and capacity-building; (g) improving employment conditions and labour relations; and (h) the promotion of a professional service ethos.¹¹⁴

Bardill contends that the vision, mission and goals of the 1995 *White Paper* were also premised on a major shift from the former mechanical model of service delivery (with its emphasis on centralisation, hierarchy, the procedural observance of rules and regulations and insulation from the public) towards a more organic, strategic, developmental and adaptive model, one with an increasing emphasis on the transfer of decision-making power to managers; the

¹¹³ La Grange R 'Labour law: Legislation' *Annual Survey of South African Law* (1995) 540.

¹¹⁴ *White Paper* 1995 para. 5.1.

corresponding strengthening of managerial responsibility and accountability for results; the democratisation of internal work procedures; the establishment of flatter organisational structures; the introduction of improved forms of co-operation and coordination (both vertical and horizontal); the development of team work and a programme-based approach to work; and the development of new forms of task-related rather than rule-based cultures.¹¹⁵

Of particular interest, the 1995 *White Paper* introduces NPM principles of ‘contracting-out of services through partnerships’,¹¹⁶ ‘devolution and decentralisation of managerial responsibility and accountability’,¹¹⁷ and performance auditing and appraisal.¹¹⁸

The 1995 *White Paper* envisaged improvement in productivity and efficiency savings and the elimination of waste. It proposed to do this by ‘decentralising’ decision-making and responsibility to managers, while at the same time increasing accountability for performance against specified objectives.¹¹⁹ These changes would take place against the backdrop of a rule-bound and procedure-laden culture inherited from the past which constrained creative and visionary thinking and leading. The 1995 *White Paper*, therefore, proposed to move increasingly towards a system where managerial responsibility would be devolved and decentralised in order to ensure that effective, timeous and responsible decision-making takes place at all levels within the public service.¹²⁰

This would reduce the annoying and wasteful delays which resulted from the old system of referring even the smallest decision to a higher authority. All staff in the new public service would be encouraged to take decisions and solve problems within their own areas of competence. It also proposes a move towards the introduction of a ‘performance appraisal system’ in terms of newly defined job descriptions.¹²¹ This system would also entail the introduction of performance related promotion criteria, instead of the seniority and educational qualifications based promotion and merit systems.¹²²

¹¹⁵ Bardill JE ‘Towards a culture of good governance: The Presidential Review Commission and public service reform in South Africa’ 2000 20(2) *Public Administration & Development* 103 105 (hereafter Bardill 2000).

¹¹⁶ *White Paper* 1995 paras. 2.4, 4, and 8.4.

¹¹⁷ *White Paper* 1995 paras. 9 and 14.3.1, read to mean managerial autonomy.

¹¹⁸ *White Paper* 1995 para. 5.2.4.

¹¹⁹ *White Paper* 1995 para. 9(a).

¹²⁰ *White Paper* 1995 para. 9.

¹²¹ *White Paper* 1995 para. 8.3.

¹²² *White Paper* 1995 para. 8.3.

The 1995 *White Paper* also envisages ‘contracting-out’ of government services on a competitive basis in an effort to create an efficient and cost-effective public service.¹²³ Of importance here is that the 1995 *White Paper* rejects outright privatisation,¹²⁴ but instead opts for contracting-out, on a partnership basis, to private-sector and non-governmental organisations. According to the 1995 *White Paper*,

[t]he move towards a leaner and more cost-effective public service in South Africa will therefore be based..., not on privatisation but on the creation of **effective partnerships** between government, labour, business and civil society, and the building of high levels of community involvement in the local delivery of services.¹²⁵

As can be seen, the 1995 *White Paper* sought to entrench NPM principles in the form of a policy. It therefore set the scene for the emergence of the NPM. Further evidence of the entrenchment of NPM principles will become apparent in what is to follow.

5.3 Presidential Review Commission (1998)

The 1995 *White Paper* contained a framework for a dramatic transformation of the public service in an effort to enable it to carry out the ambitious programme of reconstruction and development.¹²⁶ To add impetus to the transformation process, the 1995 *White Paper* envisaged the creation of a number of new and additional structures.¹²⁷ These proposed structures included a Presidential Review Commission (PRC) which was established¹²⁸ to carry out a comprehensive review of the objectives, structures, systems and functions, staffing and financing of public service and its statutory bodies and to make recommendations for improving and accelerating the transformation process.¹²⁹

¹²³ *White Paper* 1995 para. 8.4.

¹²⁴ According to Bardill (2000: 105), this was in recognition of the adverse effects of cost-cutting and privatisation in a number of developing countries, evidenced, for example, in declining service standards, worsening conditions of employment, rising unemployment and the increasing marginalisation of disadvantaged groups, in particular women and children.

¹²⁵ *White Paper* 1995 para. 4.

¹²⁶ Bardill 2000: 103.

¹²⁷ *White Paper* 1995 para. 6.2.

¹²⁸ Commission of Inquiry Regarding the Transformation and Reform of the Public Service (Proclamation R10 in GG 17020 of 8 March 1996).

¹²⁹ *White Paper* 1995 para. 6.2.1.

A Commission of Inquiry Regarding the Transformation and Reform of the Public Service, the official title of the PRC, was established by President Mandela in March 1996,¹³⁰ with the following terms of reference:

To inquire into the structures and functions of the public service and its statutory bodies; to conduct an internal audit and review of each ministry, department, provincial administration, organizational component, office and agency concerning its objectives, structure, function, staffing, financing and related matters; to conduct a review and revision of the systems, routines and procedures of planning, budgeting and financial execution in the public service, to increase public accountability; (and) to make recommendations and proposals regarding transformation and reform as envisaged in the White Paper on the Transformation of the Public Service.¹³¹

The role of the PRC was therefore to assist the process of transforming the public service from an instrument of discrimination and domination that was rule-bound, exercising centralised control and top-down management, into an enabling agency which serves and empowers all the people of the country in a fully accountable and transparent way.¹³² The ambit of the investigation that the PRC had to undertake was classified under four main themes, chief among which was the structure and functioning of the public service. A number of conclusions were made and recommendations taken. One conclusion stated that

some of the main obstacles to the progress and success of the transformation process include the bloated and fragmented nature of the national machinery of government; the lack of effective systems for monitoring performance and evaluating policy outcomes; the persistence of a rule-bound culture and the existence of a wide range of procedural bottlenecks that continue to hamper prompt and efficient levels of service delivery; the lack of skills and capacity; low staff morale; and continuing waste and corruption in some quarters.¹³³

The PRC recommended managerial autonomy in terms of service delivery, which opens the way for developing flexible systems and approaches to service delivery.¹³⁴ One of these approaches is multiple service delivery agencies (e.g. executive agencies), with varying degrees of institutional independence, responsibility and accountability.¹³⁵ It stated that these

¹³⁰ Proclamation R10 GG 17020 of 8 March 1996.

¹³¹ Proclamation R10 GG 17020 of 8 March 1996.

¹³² PRC 1998 para. 1.3.

¹³³ PRC 1998 para. 4.1.1.

¹³⁴ PRC 1998 64 para. 2.6.4.

¹³⁵ PRC 1998 64 para. 2.6.4.

agencies should operate within a framework of targets, outputs and outcomes.¹³⁶ The PRC recommended the establishment of an effective system of performance monitoring and evaluation.¹³⁷ The PRC also recommended using alternative service delivery options such as ‘out-sourcing’ or public-private/public-community partnership.¹³⁸

In terms of management, the PRC recommended ‘full managerial accountability and discretion over critical functions such as expenditure, procurement, staff appointments, salaries and service benefits, and training’.¹³⁹ It stated that this should occur within the framework of sufficient checks and balances and oversight. The PRC further recommended a move away from the traditional career-based public administration in favour of contract-based employment practices, especially at the management echelon.¹⁴⁰ It further recommended the creation of opportunities for greater mobility and, by so doing, developing an all-round, professional managerial corps with experience in a range of portfolios throughout the public administration.¹⁴¹

In essence, the PRC recommended corporatisation, public-private partnerships (outsourcing), managerialism expressed through greater managerial discretion and accountability, creation of a professional managerial corps (senior management service), performance management, and contract system. As far as performance management is concerned, the PRC proposed that it should operate at three levels, in line with international best practice, namely:

- the supervisory level, where middle-managers such as deputy and assistant directors primarily require efficiency performance reports;
- the executive managerial level, where DGs, Deputy DGs and chief directors require reports on the effectiveness of departmental strategy in meeting service level needs and objectives; and
- the political level, where ministers and portfolio committee members require reports on the broader social impact and outcomes of government policy.

¹³⁶ PRC 1998 64 para. 2.6.4.

¹³⁷ PRC 1998 para. 7.2.1.12.

¹³⁸ PRC 1998 para. 7.2.1.11.

¹³⁹ PRC 1998 64 para. 2.6.4.

¹⁴⁰ PRC 1998 94 para. 3.6.5.

¹⁴¹ PRC 1998 para. 7.2.1.10.

The PRC recommended a set of key performance measures and indicators that would allow proper monitoring and evaluation of policy processes, performance and outcomes. Accordingly, these measures ‘will need to be capable of measuring what they set out to do in a reliable and meaningful way, and thereby providing managers at different levels with accurate and relevant information that can be used to inform the on-going process of policy formulation, implementation and review’.¹⁴² The importance of a manageable set of meaningful indicators, and the sensitive interpretation of monitoring data (both quantitative and qualitative), were emphasised. Conversely, the use of such data in an over-simplistic way as conclusive proof of success or failure was warned against. The PRC emphasised that ‘such data should instead be used to try and obtain a realistic view of progress that has been made and to highlight those areas where scope exists for further improvement or investigation’.¹⁴³

As can be seen, the PRC’s recommendations were steeped in the NPM dogma. It contained all the relevant elements of the NPM in its recommendations.

5.4 The Constitution of the Republic of South Africa, 1996

Section 195(1) of the Constitution sets out the basic values and principles governing the conduct of the public administration. These values and principles are couched in the form of duties of government.¹⁴⁴ However, in a way comparable to the founding values in section 1 of the Constitution, they simply impose duties without giving rise to justiciable rights.¹⁴⁵ Section 195(2) in turn makes these duties applicable to the administration in every sphere of government, to organs of state and to public enterprises.

What is clear from these values and principles is that the Constitution gives us an idea of the kind of public administration that was envisaged. It was to pursue the goals of professionalism, impartiality, excellence, accountability, transparency, responsiveness, efficiency, effectiveness and equity as well as have a developmental and service orientation.¹⁴⁶ This marks a clear shift from the old-style public administration which valued procedural correctness over responsiveness and efficiency and whose officials were not putting high premium on

¹⁴² PRC 1998 3.8.2.5.

¹⁴³ PRC 1998 3.8.2.5.

¹⁴⁴ *Institute for Democracy in South Africa and Others v African National Congress and Others* 2005 (5) SA 39 (C) at para. 40.

¹⁴⁵ *Chirwa v Transnet Limited and Others* 2008 (3) BCLR 251 (CC).

¹⁴⁶ Section 195 Constitution.

accountability for their own actions regardless of the outcomes thereof. The Constitution insists that public administrators must be accountable not only for their actions but for the use of resources. In this regard, the resources must be used efficiently, economically and effectively.¹⁴⁷ This shift is clearly towards the NPM model of service delivery.

Furthermore, sections 195(1)(h) and (i) provide for the cultivation of good human resource practices to ensure that employment and personnel management practices are based on ability, objectivity, fairness and the need to redress the imbalances of the past in order to achieve broad representation.¹⁴⁸ It is suggested that these provisions introduce the NPM principle of open recruitment system, in terms of which posts must be advertised to reach a larger pool of applicants. This is a direct assault to the closed system of recruitment of the Weberian model which relies on appointment from a closed list of qualified people and the promotion of old personnel already in the system. Reliance on internal promotion would frustrate the constitutional duties of objectivity, fairness, redress and broad representation.

5.5 Growth, Employment and Redistribution Programme

It would seem that that initial shift in thinking towards the neoliberal framework (which represented an alternative model of development and service delivery) apparent in the RDP *White Paper*, the 1995 *White Paper*, and later the Constitution and the PRC, marked the unravelling of the ANC's national development policy. While the RDP was trotted out as representing the real development agenda of the ANC alliance, as early as August 1995 a new high-powered cabinet committee, chaired by then Deputy President Thabo Mbeki, was established to coordinate economic policy and, in particular, to find ways to accord greater policy priority to promoting economic growth.¹⁴⁹ Padayachee claims that this move was 'in part to reassure jittery international financial and currency markets of its fiscal prudence'.¹⁵⁰

Although then Deputy President Mbeki was initially at pains to emphasise that early drafts were 'an elaboration of the RDP base document and not its substitute', the ANC in government quickly moved to consolidate its economic strategy by publishing, in June 1996, an outright

¹⁴⁷ Section 195(1)(b) and (f) Constitution.

¹⁴⁸ Section 195(1)(h)-(i) Constitution.

¹⁴⁹ Blumenfeld 1997: 69.

¹⁵⁰ Padayachee 2005: 560.

neoliberal GEAR plan which saw the closure of the RDP Office.¹⁵¹ There was a clear retreat in the thinking and practice of the Congress Alliance to macro-economic issues, indicating a victory for the increasingly powerful neoliberal political elite over the older radical left-tradition.¹⁵² GEAR appeared to favour growth concerns over the equity preoccupations evident in the RDP document.¹⁵³ According to GEAR, government should not focus on owning assets or manufacturing enterprises. Rather, it should preoccupy itself with the following:

- regulating the economy, rather than being an owner or producer;
- encouraging foreign investment by providing a climate attractive to investors; and
- cutting back on state spending.¹⁵⁴

Of importance for the purposes of this study is the section dealing with public service reform. In this regard, GEAR gave a ringing endorsement of the earlier moves towards devolution to line departments of all career-related personnel functions.¹⁵⁵ When it comes to the NPM principle of privatisation, GEAR outlined the process of the restructuring of state assets, which included selling them off. According to GEAR, '[t]he nature of restructuring ... may involve the total sale of the asset, a partial sale to strategic equity partners or the sale of the asset with government retaining a strategic interest'.¹⁵⁶

GEAR also stated that the implementation of the public sector asset-restructuring programme will lead off with the sale of non-strategic assets and the creation of public-private partnerships in transport and telecommunications.¹⁵⁷ Essentially, GEAR advocated for privatisation, which

¹⁵¹ Padayachee 2005: 549. This new strategy was put together by a team of mostly white, male economists and presented as 'non-negotiable', closing possibilities of a country-wide consultation as had happened in the case of the RDP document. That team was made out of 17 technical experts, of whom 16 were white and 16, men. Six were economists drawn from South African universities: three from UCT, two from Stellenbosch and one from Durban-Westville. Three worked at the Development Bank of South Africa, two at the World Bank, and two at the South African Reserve Bank. There was one representative each from the departments of Finance, Labour, and Trade and Industry, as well as from the Deputy-President's office.

¹⁵² This powerful neoliberal political elite within the Congress Movement included several moderate economists, such as Thabo Mbeki, Trevor Manuel and Tito Mboweni, who had risen to high positions in the ANC and were therefore in a position to influence thinking.

¹⁵³ Klandermans & Roefs 2001: 20-1.

¹⁵⁴ Van Niekerk S, Pape J & Xali M et al. 1999: 31.

¹⁵⁵ Republic of South Africa *Growth, Employment and Redistribution: A Macroeconomic Strategy* (1996) para. 3.3 (hereafter GEAR 1996).

¹⁵⁶ GEAR 1996 para. 7.2.

¹⁵⁷ GEAR 1996 para. 2.2.

entailed the withdrawal of the central state from managing State-Owned Enterprises and the outsourcing of some of its core functions.

On the partnerships between state and private organisations in order to supplement government spending, GEAR states:

Recognising the limited capacity of the fiscus, government is committed to the applications of public/private partnerships based on cost recovery pricing where this can practically and fairly be effected.¹⁵⁸

GEAR therefore has also entrenched the NPM paradigm in the Republic. In this regard, Klandermans and Roefs state that following the publication of GEAR, the government started contacting out its services/business to private firms, which – as shown in the next chapter – in most cases resulted in the deterioration in the quality of the services.¹⁵⁹

5.6 *White Paper on Human Resource Management in the Public Service*

None of the policy documents discussed above, except the 1995 *White Paper*, directly addressed the reform of service delivery in the public service. Even though they all reveal a theoretical shift in the model of delivery, they only deal with this subject tangentially. The one policy document published to deal directly with this subject is the *White Paper on Human Resource Management in the Public Service (White Paper 1997a)* in 1997. The *White Paper 1997a* was issued to usher in ‘a managerial revolution in the public service’.¹⁶⁰ As the name suggests, the *White Paper 1997a* is only concerned with the internal restructuring of service delivery mechanisms. It sought to make a paradigm shift from personnel administration to human resource management.¹⁶¹ It sought to introduce a fundamental managerial shift from a centrally controlled, process-driven delivery mechanism to the one that is focused on service delivery outcomes, assigns managerial responsibility for results, and holds public servants accountable for their actions.¹⁶²

The *White Paper 1997a* explicitly rejects the Weberian model of service delivery that places emphasis on

¹⁵⁸ GEAR 1996 para. 7.1

¹⁵⁹ Klandermans & Roefs 2001: 21.

¹⁶⁰ *White Paper 1997a* para. 3.1.1.

¹⁶¹ *White Paper 1997a* para. 1.

¹⁶² *White Paper 1997a* para. 1.

- regulation and adherence to centrally-determined processes;
- the rigid classification of tasks and lack of workforce mobility;
- a strong sense of hierarchy and a reluctance to question those in higher authority;
- formality in interpersonal working relationships;
- the valuing of formal qualifications and seniority over other skills and experience;
- lack of workforce and ‘customer’ participation; and
- a tendency to exclude and discount the views and values of those outside the dominant group.

White Paper 1997a advocated for managerialism or the transfer of responsibility for human resource management to line managers. It explains this to mean two things. First, it means a shift of final responsibility and accountability from the centre to the periphery, namely from the centre to managers.¹⁶³ Secondly, it means the delegation or assignment of functions, powers and authority to a lower level.¹⁶⁴ It further pushes for an open skills set to ensure that employment criteria such as qualifications, health requirements, probation, temporary employment, and ill-health are no longer manipulated to restrict the careers of those from previously disadvantaged groups and to avoid dealing with poor performers.¹⁶⁵

White Paper 1997a also advocates for short-term contracts and the increasing use of part-time employment and more flexible working patterns in order to absorb fresh skills and manage operational requirements efficiently and effectively.¹⁶⁶ In this regard, it proposes three types of employment contracts, namely continuous employment contract, fixed-term employment contract, and temporary employment contract.¹⁶⁷ It also advocates for performance management in order to recognise and reward good performance and identify and deal with bad performance.¹⁶⁸

¹⁶³ *White Paper 1997a* para. 3.1.2.

¹⁶⁴ *White Paper 1997a* para. 3.1.2.

¹⁶⁵ *White Paper 1997a* para. 4.1.5.

¹⁶⁶ *White Paper 1997a* para. 4.1.2.

¹⁶⁷ *White Paper 1997a* para. 4.3.

¹⁶⁸ *White Paper 1997a* para. 4.1.4. See also para. 5.9.

5.7 White Paper on Transforming Public Service Delivery (*Batho Pele*)

The transformation process did not only focus on reforming structures, organisations and systems; it also centred on the people, the human resources, that should effect change as well as the attitudinal and cultural changes that are essential to make this transformation a reality. On this score, the ANC government, in 1997, passed the *White Paper on Transforming Public Service Delivery*¹⁶⁹ (*Batho Pele White Paper*), with the aim to creating a people-centred public service which is impartial, professional and committed to the public good.¹⁷⁰ ‘Batho pele’, a Sesotho expression meaning ‘people first’, is the name of the South African government’s programme for transforming public service delivery from an inefficient bureaucracy, with an overemphasis on rules, to an efficient, streamlined organisation with a culture of customer care, in which the needs of all the citizens of South Africa are truly served, irrespective of race, gender or creed.¹⁷¹ Then Minister of Public Service and Administration Fraser-Moleketi stated that the aim of the *Batho Pele White Paper* was to introduce a new work ethic and culture to redress the apartheid injustices in public administration and the provision of goods and services.¹⁷²

The *Batho Pele White Paper* is one policy instrument in the process of transforming the public service to ensuring that it is responsive to the needs of the public it serves.¹⁷³ It follows the lead of Chapter 10 of the Constitution,¹⁷⁴ which outlines the basic values and principles that should underpin the public service.¹⁷⁵ The *Batho Pele White Paper* shifts the transformation focus from development objectives and policies to improving the performance of the established institutions and the quality of public services. According to Fraser-Moleketi, this shift is from

democratic transformation of the public service [to] modernisation of the public service in order to optimally utilise developments and improvements in technology and systems thinking, to improve on the effectiveness and efficiency in the administration.

¹⁶⁹ The *White Paper on Transforming Public Service Delivery* (GN 1459 GG 18340 of 18 September 1997) (hereafter *Batho Pele White Paper*).

¹⁷⁰ Presidency 2014: 33.

¹⁷¹ Tsatsire I A *Critical Analysis of Challenges Facing Developmental Local Government: A Case Study of the Nelson Mandela Metropolitan Municipality* (unpublished doctoral thesis, Nelson Mandela Metropolitan University, 2008) 170.

¹⁷² Fraser-Moleketi 2006: 47.

¹⁷³ Presidency 2014: 26.

¹⁷⁴ Act 108 of 1996.

¹⁷⁵ Section 195 Constitution.

The *Batho Pele White Paper* contains eight principles, the so-called *Batho Pele* principles, which enjoin the public service and state institutions to solicit the inputs of the communities in their development programmes and inform them promptly or on request about the quality of services they are entitled to. The *Batho Pele* principles contain the NPM promise of efficiency, effectiveness, transparency, value for money and turning citizens into customers. Fraser-Moleketi agrees that the NPM is the basis of the philosophy of ‘putting the citizens first’, in line with the ‘citizens charters’ adopted in Britain.¹⁷⁶ In her words, ‘[t]he rhetoric of the NPM did creep into the policy documents including the *Batho Pele White Paper* in their reference to “customers”.’¹⁷⁷

6 Conclusion

It is clear from the foregoing that various policy instruments that aided the process of transformation introduced and entrenched NPM principles in the public services. All this was precipitated by the Mount Grace conference, which took resolutions that effectively rejected old-style public administration. The Mount Grace resolutions went as far as establishing an institution to train public sector officials. It is no wonder, then, that the majority of the policy instruments for transforming the state and public service made explicit reference to the principles of the NPM. Even though the RDP policy still favoured the active role of the state, associated with the Weberian bureaucracy, subsequent policies, in varying degrees, embraced the neoliberal posture associated with the NPM.

The RDP *White Paper* marked the shift in the policy outlook of the post-apartheid government toward embracing NPM principles. All subsequent policies only served to entrench NPM principles in varying degrees. The 1995 *White Paper* launched a move towards a transfer of decision-making powers to manager, outsourcing, performance management and key performance indicators

The PRC carried forward this shift by introducing alternative service delivery options such as out-sourcing or public-private/public-community partnerships. It also recommended managerial autonomy, performance-based contract appointment system and performance management system, which are all part of the NPM toolkit. The Constitution translated some of the NPM principles into duties of government. GEAR put the final nail in the old-style

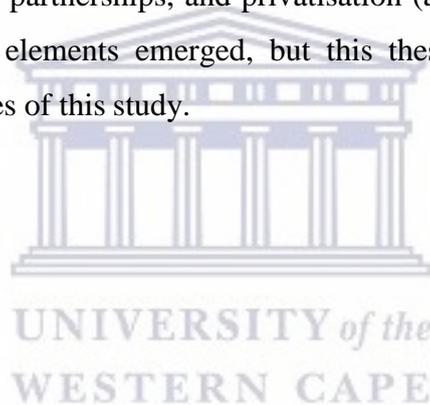
¹⁷⁶ Fraser-Moleketi 2006: 62.

¹⁷⁷ Fraser-Moleketi 2006: 85.

administration by advocating for managerial autonomy, privatisation and partnerships between state and private organisations.

The 1997 *White Paper* introduced a managerial revolution which completely rejected the old-style Weberian model of delivering service in favour of the NPM paradigm. Finally, the Batho Pele *White Paper* turned attention away from institutions to the people who were going to staff those institutions. It ensured that there was a mental shift towards NPM principles in the administration/management of the public administration by introducing such concepts as transparency, value for money and turning citizens into customers. This therefore meant that NPM principles did not only emerge during this period, but were also effectively entrenched.

In sum, the key NPM principles that emerged out the transformation policy process are the following: transfer of decision-making power to line managers, fixed-contract employment system, performance management systems (collectively referred to as managerialism), corporatisation, private-public partnerships, and privatisation (although rejected by the 1995 *White Paper*). Several other elements emerged, but this thesis will focus on the above, considered key for the purposes of this study.



CHAPTER FIVE:

The implementation of the NPM paradigm at a national level

1 Introduction

This chapter looks at the practical implementation of the NPM model of service delivery in South Africa. It reveals that the policy reforms discussed in the preceding chapter shaped a national framework of the NPM as well as the local government framework, the subject of the next chapter. In this regard, the NPM model of service delivery was implemented in two fronts, namely in the personnel management system and in the service delivery apparatus. This system and apparatus were transformed in line with the NPM paradigm of effective delivery of services.

In regard to personnel management practices, the national public service transformed internally and embraced the NPM tenet of managerialism, which entails decentralising powers to managers and keeping those managers on their toes through the contract system of appointment and a performance management system. Transfer of powers to managers, short-term contract and performance management systems are collectively referred to as managerialism.

On the service front, this chapter shows how some of the functions formerly performed by the state were restructured to reflect the NPM paradigm. This is referred to as external restructuring. The government resorted to alternative (external) modes of delivery, namely the NPM principles of corporatisation and public-private partnerships, with the ultimate aim to enhance the delivery of public goods and services. Some state services or functions were corporatised and outsourced (via PPP). As noted in the previous chapter, privatisation was rejected in South Africa.

The chapter concludes by making a brief assessment of the lessons derived from the experience of implementing the NPM at national level. Those lessons with relevance to local government will be taken up in the discussion of the next two chapters dealing with local government.

2 Restructuring the public sector

As noted in the preceding chapter, after coming into power the new government made its intention very clear in the *RDP White Paper* and the *White Paper on the Transformation of the*

*Public Service*¹ that it would embark on a process of transformation designed to reshape the public service fundamentally in order to fulfil its service delivery role in the new dispensation. This process was meant to rid the public service of some elements of Weberian bureaucracy and a number of challenges and constraints inherited from the past, which are identified in the 1995 *White Paper*. Chief among these constraints were lack of representativeness; lack of popular legitimacy; lack of service delivery; centralised control and top-down management; lack of accountability and transparency; absence of effective management information; low productivity; poorly paid and demotivated staff; conflicting labour relations; and a lack of a professional ethos and work ethic.²

As can be seen in the likely targets to get rid of, part of this transformation process was the process of administrative reform, required by the 1995 *White Paper*, to ensure that the South African civil service remains in step with the changing needs and requirements of the domestic and international environments.³ There is no consensus on the use of terminology when it comes to the reorganisation of the public or civil service. Cameron and Thornhill state that Pollitt and Bouckaert⁴ in their seminal study refer to ‘public management reform’, while Corkery, Daddah, O’Nuallain and Land⁵ use the term ‘public sector reform’.⁶ However, there is also a narrower use of the term ‘public service reform’ that generally refers to the core public/civil service and excludes the parastatals and local government.⁷

This study employs the latter distinction, and first discusses public service reform as it relates narrowly to the core public/civil service and parastatals. Under this rubric it focuses on personnel management and service delivery. In regard to personnel management, the tenet of managerialism and its attendant concepts of managerial autonomy, performance management and contract appointment are discussed. The study proceeds to canvass the reforms that took place on the service delivery front in state departments, with the focus on public-private

¹ GN 376 GG 16838 of 24 November 1995 (hereafter *White Paper* 1995).

² *White Paper* 1995: 8 para. 3.1. See also Muller JJ *Civil Service Systems in Comparative Perspective: South Africa – A Country Study* (1997).

³ *White Paper* 1995: 3 para. 1.2.

⁴ Pollitt C & Bouckaert G *Public Management Reform: A Comparative Analysis* (2004) 195.

⁵ Corkery J, Daddah TO & O’Nuallain C et al. *Management of Public Service Reform: A Comparative Review of Experiences in the Management of Programmes of Reform of Administrative Arm of the Central Government* (1998).

⁶ Cameron R & Thornhill C ‘Public service reform in South Africa: 1999-2009’ (2009) *Journal of Public Administration* 44(4) 897 (hereafter Cameron & Thornhill 2009).

⁷ Cameron & Thornhill 2009: 899.

partnerships and corporatisation. The other element of this distinction, which goes beyond the core of the public service and includes local government, is the subject of the next two chapters, Chapters Six and Seven.

2.1 Transforming the personnel management system

2.1.1 Transfer of powers to managers

As discussed in Chapter Two,⁸ the NPM principle of managerial autonomy or transfer of powers to managers relates to the elevation of the role of the manager in the bureaucracy and enabling him or her to make professional decision. This is done by handing over human resource and management functions such as the organisation and staff issues, the appointment, promotion, dismissal and transfer of members of staff, performance management, and the obligations, rights and privileges of officers to managers. It was further noted in Chapter Two that this principle engenders three main ideas, namely an open skills set; wide discretion conferred on managers; and minimal political interference.

2.1.1.1 Open skills set

As stated in Chapter Two under the discussion of managerial autonomy,⁹ an open skills set relates to the phenomenon of opening up appointments to the public service to everyone and not reserving them only for those with skills, qualifications and experience. A track record in the private sector or elsewhere in the public service is also taken into account. Here the focus is on what managers can do, as opposed to what they bring to the organisation. This therefore allows for sideways or lateral entries into the public service, as opposed to the bottom-up employment practices of the Weberian bureaucracy.

2.1.1.1.1 Regulatory Framework

The principle of open skills set was first conceptualised in the *1995 White Paper*, under the heading ‘Restructuring the Senior Management Echelon’. The *1995 White Paper* stated:

In the case of heads of departments and provincial administrations, the national norms and standards ... were adjusted ... to allow for the external advertisement of all posts, all of which are on a five-year contract basis.¹⁰

⁸ At section 6.4.1.

⁹ At section 6.4.1.

¹⁰ *White Paper* 1995: 33 para. 8.2.

The 1995 *White Paper* further states:

this was in recognition of the fact that the incumbents of such posts would have to play a major role in giving direction to the new national departments and administrations under changed circumstances.¹¹

In this regard, senior officials in the former administrations would compete for such posts with applicants drawn from outside the public service.¹²

The Constitution¹³ and the Public Services Act¹⁴ read with the Public Services Regulations¹⁵ took the principle of an open skills system of recruitment further by providing a legislative basis for it. The Public Services Act contains the idea of an open skills set in its definition of ‘employment practice’. On this score, employment practice is defined to include ‘recruitment procedures, advertising and selection criteria’.¹⁶ Advertisement means opening up recruitment to the broader sections of the population. In line with the constitutional objectives of objectivity, fairness, redress and broad representation, the Act requires due regard to be had to equality and other democratic values and principles enshrined in the Constitution in the making of appointments and the filling of posts in the public service.¹⁷ In essence, qualifications and seniority are not the only consideration taken account of in appointment and promotion decisions, as is the case in the closed employment system. The Act further provides that ‘all the persons who qualify for the appointment, transfer or promotion shall be considered’¹⁸ and that the evaluation of persons shall be based on ‘training, skills, competence, knowledge and the need to redress the imbalances of the past’.¹⁹

The Constitution in turn provides for the cultivation of good human resource practices to ensure that employment and personnel management practices are based on ability, objectivity, fairness and the need to redress the imbalances of the past in order to achieve broad representation.²⁰ It is suggested that this militates against a closed system of recruitment that relies on appointment

¹¹ *White Paper* 1995: 33 para. 8.2.

¹² *White Paper* 1995: 33 para. 8.2.

¹³ Constitution of the Republic of South Africa, 1996.

¹⁴ Public Services Act 103 of 1994.

¹⁵ Public Service Act 103 of 1994: Public Service Regulations, 2001 (GNR 1 GG 21951 of 5 January 2001 (as amended by RGN 441 GG 22308 of 25 May 2001) (hereafter Public Service Regulations 2001).

¹⁶ Section 1 Public Services Act.

¹⁷ Section 11(1) Public Services Act.

¹⁸ Section 11(2)(a) Public Services Act.

¹⁹ Section 11(2)(b) Public Services Act.

²⁰ Section 195(1)(h)-(i) Constitution.

from a closed list of qualified people and the promotion of old personnel already in the system. Reliance on internal promotion would frustrate the constitutional objectives of objectivity, fairness, redress and broad representation. These principles require that post must be advertised externally to reach a larger pool of applicants.

The Public Service Regulations in turn provide for an open skills set in an unambiguous language. They state that the posts of person recruited, selected and appointed to the Senior Management Service must, as far as possible, be filled through open competition.²¹ The Regulations further state that

an executing authority shall ensure that vacant posts in the department are so advertised as to reach, as efficiently and effectively as possible, the entire pool of potential applicants, especially persons historically disadvantaged.²²

The *White Paper on Human Resource Management in the Public Service*²³ also lends credence to the open skill system of recruitment. The *White Paper 1997a* envisaged the development of cost effective recruitment strategies to reach and attract candidates from all sections of the population.²⁴ It further states that ‘selection criteria ... will be based on competencies rather than undue over-emphasis on academic qualifications’.²⁵ The *White Paper 1997a* also states that ‘positions in the Public Service will be filled by ... open ... competition’²⁶ with the aim to

identify the most suitable person for the job from the widest possible pool of talent; make the Public Service more accessible to all sections of society; achieve employment equity, and provide equal opportunities for advancement for people at all levels within the Public Service.²⁷

The Presidential Review Commission Report²⁸ also weighs in on this NPM principle of opening the skills up to a wider pool of potential applicants. It recommends the development of clear Human Resources Provisioning (HRP) policies and procedures in terms of which

²¹ Regulation A, part II Public Service Regulations.

²² Regulation C.2 part II Public Service Regulations.

²³ The *White Paper on Human Resource Management in the Public Service* (GG 18594 of 31 December 1997) (hereafter *White Paper 1997a*).

²⁴ *White Paper 1997a*: 4 para. 17.

²⁵ *White Paper 1997a*: 4 para. 16.

²⁶ *White Paper 1997a*: 4 para. 16.

²⁷ *White Paper 1997a*: 4 para. 16.

²⁸ Presidential Review Commission Report of the Presidential Review Commission prepared for the State President of the Republic of South Africa (1998) (hereafter Presidential Review Commission 1998).

recruitment, selection and advertising policies are designed to attract the best possible candidates from the widest pool.²⁹

2.1.1.1.2 Practice

Ncholo asserts that there was a deliberate move away from the closed employment system to an open employment system that opened all posts to competition.³⁰ This was done to break the monopoly of filling posts exclusively by internal candidates, the majority of which were white males. In terms of this open system, all vacant posts are advertised externally to attract a pool of capable candidates both from the private and the public sector. Even though this practice bears the imprints of the NPM, in South Africa it also served the interests of the ANC government of creating a representative public service by attracting black candidates, particularly at management level into the public service.³¹ The closed system that hinged on long service would not have allowed the entry of black candidates who had been denied access to the mainstream of the public service by the discriminatory laws of the white regime.

The goal of the open skills system, therefore, is to ensure that high-calibre individuals are attracted into the public service and that reliance is not placed on the old guard because they were viewed as inefficient and representing only white males. It was hoped that through advertising and opening up the pool of potential applicant even to those who might not have qualifications but a proven track record nevertheless, high-calibre individuals would be attracted. They would get on-the-job training, as opposed to prior training as described by Weber, to bring them up to speed with the requirements of the job. The focus was on outcomes as opposed to inputs, thus the use of performance agreements, as will be discussed under performance management system below.

However, what has happened in practice is that, while attracting the required high-calibre individuals into the public service, the open skills system, through the representativeness considerations and the practice of cadre deployment, also allowed the entry of unqualified people into the system. Flexibility in hiring has opened doors to all kinds of irregular appointments. Given the policy-making and as such the political nature of some of the

²⁹ Presidential Review Commission 1998: 67 para. 2.7.1.2.

³⁰ Ncholo P 'Reforming the public service in South Africa: A policy framework' (2000) 20(2) *Public Administration and Development* 92.

³¹ Cameron 2009: 928.

managerial positions, political office bearers exert a certain level of influence³² in top appointments and appointment of advisers.³³ This is how the phenomenon of cadre deployment comes into play, as discussed under section 2.1.1.3 below.

Furthermore, the open skills recruitment system has allowed employment of personnel not based on merit but on policy considerations such as affirmative action. Affirmative action is a legal requirement linked to the goals of ensuring equity and representativeness in the public service. However, the affirmative action measures and cadre deployment practice must take account of the job requirements and should not be prioritised over the latter.³⁴ This was confirmed by the Constitutional Court in *South African Police Service v Solidarity obo Barnard*.³⁵

2.1.1.2 Wide discretion

As seen in Chapter Two,³⁶ the other principle that underpins managerial autonomy is the wide discretion conferred on managers. One of the main ideas behind this principle is to give line departments greater autonomy to promote improved service delivery by transferring human resources to them. It seeks to let the managers manage by giving them more resources, tasks, and responsibilities, and greater discretion in how to use, perform or exercise them.

2.1.1.2.1 Legislative framework

The principle of giving managers wider discretion was implemented in the South African public service through the formation of the senior management service (SMS). This element of managerialism was introduced by the 1995 *White Paper* and section 9 of the Public Service Act, 1994, as amended, which called for the transfer of managerial responsibility and accountability³⁷ in order to allow managers in the public service to lead and direct the change

³² This influence relates to the fact that candidates for posts of director-general and deputy director-general are recommended by a selection panel, which include ministers and deputy ministers. Directors-general are appointed by the president, with the concurrence of the cabinet, whereas deputy director-generals are appointed by ministers after consultation with the cabinet. Again, all are required to meet knowledge, skills and competence criteria.

³³ Public Service Commission *Building a Capable, Career-Oriented and Professional Public Service to Underpin a Capable and Developmental State in South Africa* (2016) 9 (hereafter Public Service Commission 2016).

³⁴ Public Service Commission 2016: 30.

³⁵ [2014] ZACC 23. In this case, the majority judgment underlined the requirement that beneficiaries of affirmative action must be equal to the task at hand. They must be suitably qualified people in order not to sacrifice efficiency and competence at the altar of remedial employment.

³⁶ At section 6.4.1.

³⁷ *White Paper* 1995: 37 para. 9(a).

process in a creative and visionary way.³⁸ In this regard, the 1995 *White Paper* proposed to give managers at all levels ‘the necessary flexibility, autonomy and resource control, particularly in relation to the recruitment of staff’,³⁹ in order to ensure that effective, timeous and responsible decision-making takes place at all levels within the public service.⁴⁰

This was also aimed at doing away with the rule-bound and procedure-laden culture inherited from the past, which constrained managerial creativity and innovation.⁴¹ The 1995 *White Paper* stated that at that moment many committed and potentially innovative managers felt that they were hamstrung by a plethora of rules, regulations and legislation, and in particular by the way in which these were perceived to be controlled and operated by the Public Service Commission.⁴² The 1995 *White Paper*, therefore, envisaged

empowering, challenging and motivating managers at all levels to be leaders, visionaries, initiators and effective communicators and decision-makers, capable of responding pro-actively to the challenges of the change process, rather than acting as the administrators of fixed rules and procedures.⁴³

This provided a basis for the creation of the SMS system.

The Presidential Review Commission report also lent credence to the idea of giving managers greater autonomy and discretion by requiring legislative and other changes to afford managers the necessary autonomy over expenditure, procurement, recruitment, salaries and service benefits, and training functions.⁴⁴ The report also required the provision of guidance and support to enable managers to exercise their decentralised powers efficiently and effectively.⁴⁵ The report further pointed out that the details of the devolution of managerial responsibility and accountability for human resources matters are spelled out more comprehensively in the *White Paper 1997a*.

The *White Paper 1997a* required a fundamental change in human resource management within the Public Service in order to increase ‘the delegation of managerial responsibility and authority to national departments and provincial administrations and, within departments, the

³⁸ *White Paper 1995*: 37 para. 9(a).

³⁹ *White Paper 1995*: 37 para. 9(a).

⁴⁰ *White Paper 1995*: 37 para. 9(a).

⁴¹ *White Paper 1995*: 37 para. 9(a).

⁴² *White Paper 1995*: 10 para. 3.1.2(h).

⁴³ *White Paper 1995*: 37 para. 9.

⁴⁴ Presidential Review Commission 1998: 175 para. 7.2.3.6, read with 63 para. 2.6.4.

⁴⁵ Presidential Review Commission 1998: 175 para. 7.2.3.6.

delegation of day-to-day management decisions to line managers'.⁴⁶ Within this framework, the prime responsibility for day-to-day management of human resources should rest with line managers.⁴⁷ The *White Paper 1997a* stated that this should mark

a fundamental managerial shift from a centrally controlled, process-driven Public Service to a service which is representative of all the people of South Africa; ... is focused on service delivery outcomes; assigns managerial responsibility for results, and for the resources consumed in producing them, to the lowest practicable level; [and] holds public servants accountable for their actions.⁴⁸

In keeping with the vision enunciated above, the Department of Public Service and Administration commissioned a report in 2000 on the establishment of a senior cadre of public servants.⁴⁹ The report recommended the establishment of an SMS programme incorporating managers between the ranks of director and director-general, with a flexible remuneration system based on a total cost-to-employer package and a competency framework to assess and develop management competencies.⁵⁰ In 2001, the senior management service was established in terms of the Public Service Regulations issued in 2001.⁵¹ This senior management corps consists of employees in the top four levels in the public service, namely the Director-General, Deputy Director-General, Chief Director and Director, and their equivalents in the provinces.

The establishment of the SMS corps was in keeping with global theoretical shifts.⁵² The SMS system in South Africa was modelled on the senior executive systems (SEs) that were created in a number of countries that adopted the NPM paradigm, notably the United States, United Kingdom (Senior Civil Service), Netherlands (Senior Public Service), Australia, Hungary and New Zealand.⁵³ Hughes contends that, with their emphasis on managerialism and efficiency, SEs have been a key component of the NPM reforms in many countries.⁵⁴ Quoting Hughes, Cameron asserts that the SE concept was aimed at developing a pool of senior managers who

⁴⁶ *White Paper 1997a*: 3 para. 8.

⁴⁷ *White Paper 1997a*: 4 para. 9.

⁴⁸ *White Paper 1997a*: 2 para. 9.

⁴⁹ Department of Public Service and Administration 2007: 23.

⁵⁰ Department of Public Service and Administration 2007: 23.

⁵¹ Public Service Regulations 2001.

⁵² Muthien 2014: 129.

⁵³ Hughes 2003; Manning and Parison 2004. However, different names were used in different countries.

⁵⁴ Hughes 2003.

could be transferred between positions and departments and who could develop an SES identity rather than a departmental one.⁵⁵

The key objectives of the SMS system included the need to ensure autonomy; improve the recruitment, selection and retention of managerial candidates; design an appropriate employment framework in order to attract high-calibre individuals; and create a mobile and flexible public-service-wide pool of managers for utilisation throughout the public service.⁵⁶ The SMS programme was developed out of recognition of the critical role that management plays in the effective and efficient functioning of the public service. Strengthening leadership and management capacity in government is its core function.⁵⁷ All of this was intended to create a better-calibre manager able to improve service delivery.⁵⁸

Thus, the NPM ethos saw the unbundling of the highly centralised hierarchical policy and administration functions and introduced greater managerial autonomy by devolving executive decision-making to line-function heads of departments.⁵⁹ Managers have greater freedom to deploy their inputs, for example by diverting money from staff to equipment, but are under scrutiny as far as results are concerned, which leads us to the next NPM tenet, that of performance management system. What follows next is a look at how the principle of conferring wide discretionary powers on managers has worked in practice. This will be coupled with an assessment of how the SMS system has been working in practice.

2.1.1.2.2 Practice

Since its inception in 2001, there has been a massive expansion in the SMS, with a larger pool of applicants from outside the public sector having been attracted for SMS positions. The aim of external appointments was to deracialise the public service and improve service delivery.⁶⁰ However, the majority of appointments are still from within the public sector. Cameron and Milne report that in 2001 there were 4 623 employees in the top four levels.⁶¹ That number had

⁵⁵ Cameron 2009: 924.

⁵⁶ Public Service Commission *Report on the Evaluation of the Training Needs of Senior Managers in the Public Sector* (2008) 7 (hereafter Public Service Commission 2008a).

⁵⁷ Ministry of Public Service and Administration *SMS Handbook* (2003) 1 (hereafter SMS Handbook 2003).

⁵⁸ Public Service Commission 2008a: 7.

⁵⁹ Muthien 2014: 128.

⁶⁰ It will be remembered that the mainstream of the public service was mostly white during the apartheid era, with a few black faces here and there, most of whom were coloureds and Indians. As such, it would have been counterproductive to insist on employing only from the public service. This would have kept the public service a whites-only bastion to the exclusion of the black majority which had been debarred from the public service.

⁶¹ Cameron & Milne 2008.

almost doubled by 2008, having risen to 8 592.⁶² During the 2008/09 financial year, the number of SMS members saw an increase of 20 per cent, by 2 165 to 10 943.⁶³ Even though the subsequent financial period (2009/10) saw a decrease from previous year's figure of 10 943 to 10 637, the flexible remuneration package system has enabled departments to recruit and largely retain SMS members and has made the public service able to compete fairly with the private sector. Staff turnover, especially at director level, has decreased, resulting in a more stable SMS corps.⁶⁴ As at March 2016, the total number of SMS members employed in the public service was 15 129.⁶⁵ There were only 47 acting appointments.⁶⁶

The above picture attests to the growth of the SMS corps. The current corps has also met the representivity target of ensuring that 75 per cent of the public service is comprised of blacks by 2005. As at 2009, blacks made up 79 per cent of the SMS corps.⁶⁷ As at January 2016, the demographic profile of the SMS corps comprised 80.4 per cent Africans, 8.8 per cent coloureds, 2.6 per cent Indians and 8.2 per cent whites.⁶⁸

2.1.1.3 Assessment

As mentioned in the foregoing, the NPM principle of decentralising powers to managers, while given full effect to by the legislative framework underpinning the NPM, has had adverse effects. First, although the open skills recruitment system requires, at most, that a person appointed as a manager must have skills and expertise to perform the duties associated with the post in question, it does not specify what those are. As a result, the introduction of the open skills recruitment system has opened the flood gates for patronage appointments, appointment of unsuitable persons or appointments based on policy considerations. It is used as a licence to appoint unsuitable and unqualified persons. These appointments are sometimes justified on the basis of affirmative action and cadre deployment practice.⁶⁹

⁶² Cameron & Milne 2008.

⁶³ Public Service Commission *Fact Sheet on the Duration of Employment per Grade of Senior Management Service Members* (2011) 2 (hereafter Public Service Commission 2011).

⁶⁴ Department of Public Service and Administration 2007.

⁶⁵ Public Service Commission *Vulindlela Human Resources Oversight Report* (2016) (hereafter Vulindlela HR Oversight Report 2016).

⁶⁶ Vulindlela HR Oversight Report 2016.

⁶⁷ Public Service Commission *The State of the Public Service Report* (2010) 70 (hereafter Public Service Commission 2010).

⁶⁸ Vulindlela HR Oversight Report 2016.

⁶⁹ Cadre Policy and Development Strategy (1997) of the ANC.

These policies were used by the post-apartheid government for the same reason the open skills system was used, namely to advance its transformation imperatives of redressing the legacy of apartheid, service delivery backlogs, demographic representivity of the public service and expediting the implementation of developmental policies.⁷⁰ The post-apartheid government did not trust the old guard enough with carrying out the much-needed transformation. However, it was forced to keep old apartheid civil servants as a result of the ‘sunset clause’, which created uncomfortable relationships between the political and administrative heads, with huge tension and suspicion.⁷¹ This was, according to the Presidential Review Commission, fuelled by a threat, real or perceived, of political sabotage by disloyal incumbents of the previous dispensation.⁷² The PRC recommended ‘political appointments’ within the service as a cushion against unsupportive public servants, but on an interim basis. However, the cadre deployment and affirmative action policies were used in a way that blemished the open skills recruitment system. Competent people were shunned, procedures flouted and instead cronies and unsuitable people appointed, possibly because there were no qualified black people and appointing whites would have perpetuated apartheid.

The dictionary meaning of a ‘cadre’ is a small group of trained people who form the basic unit of a military, political or business organisation. Tshishonga states that in service delivery terms,

a cadre should be a special unit of service men, forming a nucleus for expansion when necessary. The concept of a cadre or cadre deployment makes sense within the struggle, connoting a “group of activists in a communist or any revolutionary party who happen to be the members of such a group or grouping”.⁷³

Tshishonga further states that ‘a cadre is associated with tested commitment, trust, reliability and clear understanding of the organisational mandate assigned either to the individuals or a collective group’. From the foregoing, it becomes apparent therefore that the fundamental virtues of cadre deployment are discipline, skills, determination, conscientiousness, capacity

⁷⁰ Habib A *South Africa’s Suspended Revolution: Hopes and Prospects* (2013).

⁷¹ Ndletyana M ‘Affirmative action in the public service’ in Habib A & Bentley K (eds) *Racial Redress and Citizenship in South Africa* (2008).

⁷² PRC 1998: 21 para. 2.1.3. See also Mafunisa MJ ‘Separation of politics from the South African public service: Rhetoric or reality?’ (2003) 38(2) *Journal of Public Administration* 85-94.

⁷³ Tshishonga N ‘Cadre deployment and its implications on service delivery in South Africa: A human development capability approach’ (2014) *Journal of Public Administration* 49(3) 891-893 (hereafter Tshishonga 2014).

and capability based on training.⁷⁴ As can be seen, cadre deployment is not bad in itself, but it can be abused as is the case in South Africa. The public services both in China and Singapore, for example, can be termed ‘cadre organisations’.⁷⁵ But in both countries, the ruling political parties have ensured that those deployed are qualified. The point, therefore, is not whether a ruling party deployed its cadres to public service positions but rather whether those deployed are qualified and have the ability to perform the job. In the South African case, instead of deploying suitably qualified, skilled and disciplined personnel, incompetent and lazy people are deployed. Cadre deployment is used in a way that reflects clientelism and patronage, and the open recruitment system has not been able to stop this abuse and furtherance of patronage networks.

Similarly, the open skills recruitment system has allowed employment of personnel not based on merit but on policy considerations of affirmative action. As noted in the foregoing, affirmative action is a legal requirement linked to the goals of ensuring equity and representativeness in the public service. However, as stated in *South African Police Service v Solidarity obo Barnard* noted above, affirmative action measures and cadre deployment practices must take account of the job requirements and should not be prioritised over the latter.⁷⁶

Secondly, some of the members of the senior management service are political appointments. Unlike the case in most developmental states, such as Malaysia, Mauritius and Botswana, where politicians are not involved in the appointment of public servants,⁷⁷ the appointment of senior managers in South Africa is made by the President, the Premier,⁷⁸ the Minister of the department concerned, or a person to whom the power of appointment has been delegated,⁷⁹ or the Members of the Executive Council (MEC). When it comes to appointment of DGs/HoDs, the power of appointment rests with the President or a Premier of a province, who can delegate to executive authorities (ministers or members of the provincial executive councils). The appointment of the DG by the president or of the HOD by the Premier is made with the concurrence of the Cabinet or the Executive Council. DDGs in turn are appointed by the

⁷⁴ Tshishonga 2014: 894.

⁷⁵ Public Service Commission (2016) 24.

⁷⁶ *South African Police Service v Solidarity obo Barnard* para. 186.

⁷⁷ Public Service Commission 2016: 24.

⁷⁸ Section 12 Public Service Act.

⁷⁹ Sections 3(7) and 9 Public Service Act.

Ministers after the concurrence of the Cabinet.⁸⁰ In the developmental states mentioned, this is the responsibility of an independent agency, namely Public Service Commissions (Malaysia and Mauritius), Career Civil Servants (China) and Appointment Boards (Botswana).⁸¹

Even though the system of political appointments of SMS members was impelled by the need to transform the apartheid public service,⁸² it is now undermining the NPM principle of bestowing discretionary powers to managers. The very idea of the creation of an independent and distinct cadre of senior managers transferable within the public service is undermined by the political involvement in the appointment process. It opens room for politicians to appoint tepid and weak officials simply to be able to remote-control them once appointed.

Furthermore, given the policy-making and as such the political nature of some of the managerial positions, the political office-bearers exert a certain level of influence⁸³ in top appointments and appointment of advisers.⁸⁴ This results in the appointment of managers who show commitment and loyalty to individuals who influenced their appointment rather than to the organisation itself.⁸⁵ The very fact of their being appointed by a politician means that these managers are at the beck and call of politicians, which undermines their independence. Furthermore, they can be dismissed if they do not follow a particular line, and this makes them beholden to political principals. As a result, the wide discretion conferred upon them is curtailed by the fear of crossing their political principals and risk being dismissed.

In sum, the above reflections suggest that the new managerialism is not being properly implemented. As a result, it provides a mixed bag of results: while there are areas of success, there is also a vast room for improvement. The failure to appoint suitable people, the resultant instability which in turn causes disruption in service provisions, and the tumultuous relationship between HoDs and their political principals, all impact negatively on the performance of the SMS system and, ultimately, on managers' discretion and independence

⁸⁰ Public Service Commission 2016: 29.

⁸¹ Public Service Commission 2016: 24.

⁸² Public Service Commission 2016: 29.

⁸³ This influence relates to the fact that, over and above the fact of their being political appointees, candidates for the posts of director-general and deputy director-general are selected by panels consisting of ministers and deputy ministers. The final act of appointment of directors-general by the president, with the concurrence of the cabinet, or of deputy directors-general by ministers, after consultation with the cabinet, has already been influenced by politicians involved in the selection process.

⁸⁴ Public Service Commission *Recruitment, Retention, Career Pathing and Utilisation of Senior Management Service Members' Expertise and Skills in the Public Service* (2017): 19.

⁸⁵ In-Pang Fu 2015: 5.

2.1.2 Performance management system

2.1.2.1 NPM principles

As noted in Chapter Two,⁸⁶ performance management is a mechanism to tie managerial independence to the delivery of services, and as such it is an accountability measure for senior managers. It is aimed at keeping managerial autonomy in check. In this regard, managers are supposed to enter into performance agreements which specify targets against which performance is measured. This provides an objective measure to assess managers' performance and ensure that managers are judged on results.

2.1.2.2 Legislative framework

The 1995 *White Paper* proposes that the contracts of the senior management corps must be tied to the achievement of specific performance goals, in relation to service delivery and representativeness.⁸⁷ The Constitution in turn enjoins the public administration to be development-oriented⁸⁸ and accountable.⁸⁹ It further requires the cultivation of good human resource management and career-development practices, in order to maximise human potential.⁹⁰ These provisions are interpreted to relate to performance management, as they require accountability and circumscribing the managerial autonomy to issues of development and delivery.

The Public Service Amendment Act of 1997,⁹¹ the 1997 *White Paper on the New Employment Policy in the Public Service*⁹² and the Public Service Regulations of 2001 ushered in a new

⁸⁶ At section 6.4.2.

⁸⁷ *White Paper* 1995: 22 para. 6.1.3.

⁸⁸ Section 195(1)(c) Constitution.

⁸⁹ Section 195(1)(f) Constitution.

⁹⁰ Section 195(1)(h) Constitution.

⁹¹ The relevant sections of the Act are 3(5), 3B, and 7(3)(b). Section 3(5) assigns powers and duties concerning the internal organisation of a department to its Executing Authority. This includes the career incidents of employees other than HoDs, such as performance management and discipline in a department. Section 3B in turn assigns the president and relevant premiers the powers and duties concerning the appointment and other career incidents of HoDs, which may be delegated. Section 7(3)(b) provides for the following responsibilities of HoDs: efficient management and administration; effective utilisation and training of staff; maintenance of discipline; promotion of sound labour relations; and proper use and care of state property.

⁹² *White Paper on a New Employment Policy for the Public Service: Managing People in a Transformed Public Service* 9 September 1997 (hereafter *White Paper* 1997b). This lays the foundation for the regulatory framework regarding management of performance in the public service. *White Paper* 1997b states that the success of the public service in meeting its operational and developmental goals depends on public servants' efficiency and effectiveness in carrying out their duties.

performance management system in South Africa for the SMS.⁹³ A Director-General must enter into a performance agreement with his or her Minister, while in the case of a senior manager who is not a head of a department it would be with his or her immediate supervisor.⁹⁴

Chapter 4 of the Public Service Regulations of 2001, which establishes the SMS, provides for the process and requirements of performance management and development for members of the SMS.⁹⁵ Chapter 7 of the SMS Handbook⁹⁶ read with the Public Service Commission Bargaining Council Resolutions (PSCBC)⁹⁷ states that poor performance is among the misdemeanours that require disciplinary action. The SMS handbook and PSCBC Resolution 10 of 1999 state that in the event of poor performance, the employer must give written reasons if he or she is of the view that an employee is not performing in accordance with the job that the employee has been employed to do.⁹⁸ This must be followed by a process to improve performance, including agreeing on the time-frames by when performance should have improved.⁹⁹ Thereafter, disciplinary sanctions can be taken, which include counselling or coaching, verbal warnings, written warnings, a final written warning, suspension without pay for no longer than three months, demotions, a combination of the above, and dismissal.¹⁰⁰

The *White Paper* 1997b states that the performance assessment process identifies strengths and weaknesses and the interventions which are needed to deal with challenges, including the employee's future training needs and other developmental interventions, such as career counselling, coaching and mentoring.¹⁰¹ Recognising and rewarding employees who perform exceptionally well and whose skills are particularly valued are important. Where performance has not matched the requirements in the work plan, the assessment, both written and verbal, should be focused on identifying the reasons for this and on reaching mutual agreement on the steps to be taken to effect improvement. The steps may include interventions such as career counselling, mentoring, retraining, developmental opportunities and re-deployment. If the

⁹³ Miller K *Public Sector Reform Governance in South Africa* (2005) 86-89.

⁹⁴ Cameron 2009: 929.

⁹⁵ SMS Handbook 2003 at Chapter 4.

⁹⁶ SMS Handbook 2003: 199 Chapter 7.

⁹⁷ Resolution 10 of 1999 and Resolution 1 of 2003.

⁹⁸ Subsection 4.1 of PSCBC Resolution 10 of 1999.

⁹⁹ Subsection 4.3 of PSCBC Resolution 10 of 1999.

¹⁰⁰ SMS Handbook para. 15.11 read with 6.1(7).

¹⁰¹ *White Paper* 1997b: 27 para. 5.9.

desired improvement cannot be effected, dismissal on grounds of inefficiency can be considered, as the last resort.¹⁰²

2.1.2.3 Practice

In giving effect to the policy framework outlined above, the Department of Public Service and Administration (DPSA) in 2002 introduced the Performance Management and Development System (PMDS) for the SMS as an accountability framework necessary for planning performance, tracking progress of performance and reporting on performance outcomes.¹⁰³ The PMDS framework outlines the processes and provides the templates to be used by the SMS member and enables tracking of individual performance towards the attainment of the overall organisational goals. It also helps to clarify responsibilities, priorities and performance expectations between the SMS members and their supervisors through the signing of the performance agreement. The performance agreement then creates a sound basis for administrative decisions that include managing performance, recognising and addressing good and under-performance and ensuring accountability and delivery, when done properly.¹⁰⁴

This scheme of performance management, as mentioned, is meant to ensure that managers are judged on results. The Public Service Commission states that managing people's performance through performance contracts is an effective way of enhancing accountability for performance.¹⁰⁵ Monitoring is achieved through performance contracts and the specification of expectations within short-term contracts for staff at senior levels to provide the basis for a ministerial review of achievements.¹⁰⁶ This is the system of performance management, the primary orientation of which is developmental in nature. It provides for effective feedback in response to inadequate performance and for recognising outstanding performance.¹⁰⁷

Given South African citizens' heightened expectations of better service delivery, such an approach gives emphasis, through the principle of deconcentration, to improved individual and

¹⁰² *White Paper* 1997b: 27 para. 5.9.2.

¹⁰³ Public Service Commission *Report on the Implementation of the Performance Management and Development System for Senior Managers in the Free State Province* (2012) (hereafter Public Service Commission 2012a).

¹⁰⁴ Public Service Commission 2012a: 2.

¹⁰⁵ Public Service Commission *An Analysis of Performance Agreements as an Effective Performance Management Tool* (2008) 24 (hereafter Public Service Commission 2008b).

¹⁰⁶ SMS Handbook 2003: 22-30 Chapter 4.

¹⁰⁷ SMS Handbook 2003: 22-30 Chapter 4.

organisational performance as key enablers to improved service delivery.¹⁰⁸ As such, the focus has moved from measuring subjective personal qualities to measuring performance against pre-agreed outputs or outcomes. Through the application of the performance management system in the public service, the objectives and outputs agreed with individuals and teams are integrated with and support the achievement of organisational objectives.¹⁰⁹

The performance management system as implemented in South Africa has four key elements. The first of these is the mandatory assessment of demonstrated managerial competence of members of the SMS by means of the Core Management Criteria (CMC). This entails the mandatory signing of performance agreement, within three months of appointment and thereafter at the beginning of each financial year (31 March annually) by all members of the SMS.¹¹⁰ The performance of a member is reviewed on a quarterly basis. The criteria upon which the performance of senior managers is assessed consist of two components, both of which shall be contained in the performance agreement, namely Key Results Areas (KRAs) and Core Management Competence (CMC). The KRAs describe what is expected from a manager in terms of functional job requirements derived from outputs in the strategic/operational plan, while the CMC's are based on 11 core competencies against which every senior manager should be assessed. Accordingly, the performance contract which incorporates KRAs and CMCs is used as a standard assessment instrument on which to base decisions on probation, rewards, promotion and skills development.¹¹¹

The second key element of the performance management system is the standardised rating scale to which performance based rewards must be directly related. The third element relates to a two-tier reward system comprising pay progression and performance bonuses. The last element relates to the introduction of personal development plans.¹¹²

As noted in the foregoing, the SMS Handbook,¹¹³ read with the Public Service Commission Bargaining Council Resolutions¹¹⁴ and PSCBC Resolution 10 of 1999, outlines a procedure to be followed and sanctions to be imposed in an event of poor performance. The sanctions to be

¹⁰⁸ Public Service Commission *Report on the Management of Poor Performance in the Public Service* (2007) 41 (hereafter Public Service Commission 2007).

¹⁰⁹ Public Service Commission 2007: 41.

¹¹⁰ SMS Handbook 2003: 97 para. 8.1.

¹¹¹ SMS Handbook 2001 as updated in 2003.

¹¹² SMS Handbook 2001.

¹¹³ SMS Handbook 2003: 199 Chapter 7.

¹¹⁴ Resolution 10 of 1999 and Resolution 1 of 2003.

imposed are sequential and each sanction kicks in once the one before it fails to yield tangible outcomes. Of importance is that the performance management process is handled in a developmental rather than a punitive manner.¹¹⁵

2.1.2.4 Assessment

It would seem that the performance management system is poorly implemented. First, very few agreements are signed and there is less enforcement even to those agreements that have been signed.¹¹⁶ In this regard, the Public Service Commission raised a concern that the HoDs are not setting the right tone on the importance of concluding performance agreements.¹¹⁷ This concern emanated from the fact that during the 2006/07 to 2008/09, close to 20 per cent of HoDs failed to sign their performance agreements. Things became worse in 2009/10 when only 65 per cent of HoDs signed their performance agreement.¹¹⁸ This low level of compliance with the signing of performance agreements by senior officials is the case despite the fact that one of the apex priorities of government is to ensure that all SMS members sign their performance agreements timeously.¹¹⁹ Given the generally low compliance rates with the signing of performance agreements, the former president announced the signing of performance agreements as a priority in his State of the Nation Address in 2008.¹²⁰ Furthermore, Outcome 12 requires 100 per cent compliance with the signing of performance agreements by senior managers.¹²¹

The failure to sign performance agreement presents a difficulty because senior managers cannot be held accountable for non-performance if there is no agreement in place that outlines key priorities for implementation during the fiscal year.¹²² The failure of HoDs to sign performance agreements has effectively compromised the entire value chain of the performance management system, as organisational performance has to be cascaded from the accounting officer to the entire staff compliment. This means, therefore, that an HoD cannot

¹¹⁵ Public Service Commission 2007: 8.

¹¹⁶ Cameron 2009: 929-10.

¹¹⁷ Public Service Commission *The State of the Public Service Report* (2010) 51 (hereafter Public Service Commission 2010).

¹¹⁸ Public Service Commission 2010: 51-2.

¹¹⁹ Department of Public Service and Administration *Cabinet Lekgotla Report APEX Project 15: Regularise Employment and Performance Agreements at Designated Levels* (2008)

¹²⁰ Mbeki T, President of the Republic of South Africa. State of the Nation Address. Joint Sitting of Parliament. Cape Town. 8 February 2008.

¹²¹ Republic of South Africa *The Government Pocket Guide to South Africa: Government 2010/2011* (2011) 20.

¹²² Public Service Commission 2012a: 22.

effectively enter into performance agreements with subordinates when his or her performance agreement has not been concluded.¹²³

Secondly, there is a highly unsatisfactory level of performance evaluation. A number of Public Service Commission reports have raised this as a concern.¹²⁴ For example, the 2004 report pointed out that performance assessment is still a major challenge facing the public service.¹²⁵ It described compliance with guidelines as erratic and inconsistent.¹²⁶ Furthermore, performance is not managed on an ongoing basis and quarterly or bi-annual assessments do not take place as often as required.¹²⁷ In instances where performance is reviewed, this is done haphazardly or takes place as an afterthought because of challenges that require urgent intervention. Non-compliance with prescribed time-frames for concluding performance assessments often results in huge backlogs.¹²⁸

In its investigations, the PSC has, over the years, consistently found that the majority of grievances are related to performance management and salary-linked matters.¹²⁹ The 2006 report revealed that 52 per cent of grievances related to the way performance assessments are conducted.¹³⁰ The report of the subsequent year pointed out that in 2004/05 only 40 per cent of heads of departments were evaluated by their Executive Authorities.¹³¹ This situation only got worse in the 2005/06 financial year, with 50 per cent of HoDs at national level and 44 per cent at provincial level not having been evaluated.¹³² In 2010, only 51 per cent of HoDs had been evaluated. This represented a slight decline from the 56 per cent evaluation rate recorded in 2009.¹³³ For the 2013/14 and 2014/15 financial years, grievances relating to performance management rated the highest (2279) and account for 27 per cent of all the grievances

¹²³ Public Service Commission 2012a: 22.

¹²⁴ Cameron 2009: 930.

¹²⁵ Public Service Commission *State of the Public Service Report* (2004) 16, 34 (hereafter Public Service Commission 2004).

¹²⁶ Public Service Commission 2004: 16, 34.

¹²⁷ Public Service Commission *Report on the Roundtable Discussion on the Improper Management of the Performance Management and Development System (PMDs) which leads to Grievances in the Public Service* (2014) 10 (hereafter Public Service Commission 2014).

¹²⁸ Public Service Commission 2014: 10.

¹²⁹ Public Service Commission *Fact Sheet on Grievance Resolution for the 2014/15 Financial Year* (2015) 16 (hereafter Public Service Commission 2015).

¹³⁰ Public Service Commission *Report on the Evaluation of Performance and Compliance with the Batho Pele Principle of Access* (2006) 53.

¹³¹ Public Service Commission 2007: 45.

¹³² Public Service Commission *Report on Strategic Issues Emanating from the Evaluation of Heads of Department* (2008) 66 (herein Public Service Commission 2008c).

¹³³ Public Service Commission 2010: 53.

lodged.¹³⁴ This was also the case in previous financial years. In 2011/12, 33 per cent of all grievances were about performance assessments, and 24 per cent in 2012/13.¹³⁵

Thirdly, performance agreements are poorly formulated, resulting in appraisal outcomes that are biased towards or against the HoD.¹³⁶ In these instances, the performance appraisals fail to show an adequate correlation between the performance of the HoD as an individual and the overall performance of the department for which they are responsible.¹³⁷ Cameron points out that an interview with a senior official of the Public Service Commission cited the Commissioner of Police as an example of a manager getting a bonus while failing to perform the job of reducing crime adequately.¹³⁸

Furthermore, the PSC notes that ‘some of the performance agreements are finalised beyond the relevant financial year, thus raising concerns about their value as accountability mechanisms.’¹³⁹ This is despite the fact that it is a legal requirement to finalise performance agreements within the stipulated time-frames.¹⁴⁰ According to the PSC, by their very nature, performance agreements are supposed to translate departmental strategic plans into specific deliverables for employees.¹⁴¹ A failure to conclude a performance agreement for each employee within the stipulated time-frames, compromises accountability. Furthermore, it means that ‘training interventions will not be adequately aligned to developmental needs identified through the performance management process.’¹⁴² In addition, performance agreement is an instrument through which individual and organisational developmental needs are clearly articulated.¹⁴³ A failure to sign a performance agreement, therefore, means a failure to articulate individual and organisational developmental needs.

The foregoing discussion reflects the fact that the performance management system is not being implemented properly. Instead of tying the freedom enjoyed by the senior managers to performance, poor implementation of the performance management system, which includes

¹³⁴ Public Service Commission 2015: 16.

¹³⁵ Public Service Commission 2016: 47.

¹³⁶ Public Service Commission 2008c:18.

¹³⁷ Public Service Commission 2008c: 18.

¹³⁸ Cameron 2009:930.

¹³⁹ Public Service Commission 2014: 9.

¹⁴⁰ Public Service Commission 2014: 10.

¹⁴¹ Public Service Commission 2014: 10.

¹⁴² Public Service Commission 2014: 10.

¹⁴³ Public Service Commission 2014: 10.

non-compliance with time-frames, failure to monitor and review performance on a regular basis and lack of feedback to the employees has created gaps and loopholes in the system.¹⁴⁴ For example, some managers get performance bonuses even though their performance leaves a lot to be desired.¹⁴⁵ This sends a signal that relationships are assessed instead of actual performance. In some departments, a qualified audit report would be received, but senior managers would still be awarded performance bonuses.¹⁴⁶ Furthermore, performance agreements are not always signed. If they are signed at all, their evaluation is not up to standard. Even though there are few pockets of excellence, overall the above reflection leads to the conclusion that there are not enough skills to implement the performance management. Where there is cadre deployment or cronyism, it compromises performance assessment, as the cadre deployment is often influenced from outside the public service. The result is that performance assessment and/or sanctioning for poor performance are unlikely.

2.1.3 Contract appointments

2.1.3.1 NPM principles

It was seen in Chapter Two¹⁴⁷ that the NPM pushes for a move away from a military-style public service of being employed for life to contingent forms of employment, such as greater flexibility in hiring, short-term employment contracts and the concomitant weakening of job security or pension entitlements. The NPM advocates for hiring on a fixed-term contract, rewarding according to performance, and sacking if work does not measure up.

This individualised and contingent form of employment replaces the career civil service based on assured existence. Instead, it bases the political-administrative relationships more on individual accountability. Political leaders are supposed, through contracts, to specify targets and objectives more clearly, and performance should be controlled by use of quantitative indicators for monitoring results and for measuring efficiency. This removes the assured existence enjoyed by bureaucrats in the Weberian bureaucracy and creates incentives for mediocre time-servers to become innovative and work efficiently. The replacement of time-

¹⁴⁴ Public Service Commission 2014: 10.

¹⁴⁵ Public Service Commission *The Payment of Performance Incentives to Heads of Departments without Annual Performance Evaluations Conducted* (2008) 10 (hereafter Public Service Commission 2008d).

¹⁴⁶ Auditor General *General Report on the Provincial Audit Outcomes of Limpopo 2012-13* (2013) 14.

¹⁴⁷ At section 6.4.3.

servers with innovators also means that greater attention should be paid to the value-for-money principle in the use of resources. This introduces the element of parsimony in resource use.

Like the performance management system, the fixed-term contract system is an element of managerialism which seeks to enhance accountability for performance and resource use and to structure the autonomy enjoyed by managers.

2.1.3.2 Legislative framework

Implementing the contract appointment system, which was introduced in 1995 by the 1995 *White Paper*, section 12(1) of the Public Service Act provides that any person appointed, promoted or transferred to the office of head of department shall occupy that office for a period of five years from the date of his or her appointment, promotion or transfer, or the shorter period approved by the relevant executing authority. Sections 9 and 11 of the Public Services Act provide that all other managers from the DDGs downwards are appointed in the same way as any other career public servant. This means that their appointment is permanent. However, once appointed or promoted to the post of HoD, they automatically lose their status as permanent employees.¹⁴⁸

The position with regard to the five-year term was changed by a cabinet decision in 1999. According to this decision, HoDs of national departments or organisational components must as a general rule be appointed for a period of three years.¹⁴⁹

2.1.3.3 Practice

The adoption of this NPM tenet of contract appointment in South Africa heralded a move away from the closed Weberian career system towards the flexible tenure system which hinges on performance. Kaul states that this undermined the career system which relied on time served for promotion.¹⁵⁰ The obsession with performance, according to Hughes, turned this long-standing tradition of long service on its head as it led to short-term appointments based on contract. People's stay in the public sector now depends on their performance.¹⁵¹ If they do not perform according to performance expectations, then their contracts do not get renewed. The

¹⁴⁸ Department of Public Service and Administration 'Chapter 8: Employment of Heads of Department' in *SMS Handbook* (2003) 5 (hereafter *SMS Handbook* 2003).

¹⁴⁹ *SMS Handbook* 2003: 5.

¹⁵⁰ Kaul M 'Civil service reforms: Lessons from Commonwealth experience' (1996) 16(2) *Public Administration and Development* 131.

¹⁵¹ Cameron 2009: 926-7.

rationale therefore for the introduction of short-term contract appointment in South Africa was to keep senior managers on their toes.

In practice, however, the NPM tenet of contract appointment has not been fully implemented in South Africa. It is applied only to the higher most echelons of the senior management system, the HoDs. The rest of the SMS corps still has assured existence. This tool of ensuring accountability and of holding managerial autonomy in check does not apply to the entire SMS corps; instead the Weberian career system is still applicable. This means, therefore, that South Africa is selective in its application of the NPM, and as such it is unrealistic to expect massive changes in the delivery of services as promised by the NPM. The employment regimes for managers differ.

Furthermore, fixed-term contracts for the uppermost echelon of the public service, the HoDs, are linked to term of office of political head. This has led to the revolving-door phenomenon in which the incoming government cleans out the existing administration.

2.1.3.4 Assessment

The contract appointment system in South Africa, as applied to the elite, is not without its fair share of problems. Most of these problems relate to the high turnover of HoDs, which has been a source of concern to government.¹⁵² In its study on the duration of employment per grade of SMS members, the Public Service Commission found that the contract system contributes to the attrition of those SMS members it is applicable to, namely the HoDs. It found that one of the reasons for the majority of HoDs leaving the public service prematurely was the expiry of contract.¹⁵³ Once their contracts expire, they do not get renewed. Furthermore, the short-term contract excluded capable individuals from applying to the public service because of the uncertainty it brings.

The Public Service Commission conducted a study in 2008, assessing the turnover rate of HoDs during the 2003/04 to 2006/07 financial years in national and provincial departments. The recorded incidents of turnover during this period were 92 for the termination of service, 48 for transfers and 19 for the splitting of functions.¹⁵⁴ This accounted for 59 per cent of termination

¹⁵² Cameron 2009: 927.

¹⁵³ Public Service Commission 2011: 5.

¹⁵⁴ Public Service Commission *The Turn-over Rate of Heads of Department and its Implications for the Public Service* (2008) 9 (hereafter Public Service Commission 2008e).

of contracts, 30 per cent of transfers and 11 per cent of splitting of functions.¹⁵⁵ The most recent State of the Public Service quarterly bulletin reveals that the average number of years a Director-General serves on a five year contract is two years and seven month.¹⁵⁶ This mean that they serves only half on their term of contract.

In addition, the business opportunities and better pay presented by the private sector are pull factors. This leads to some HoDs, and other senior managers, prematurely terminating their contracts and exiting the public service because of better remuneration packages and working conditions in the private sector. They feel that if they do not grab the opportunities presented it might be too late for them to do so when their contracts formally expire.¹⁵⁷ This indicates that the introduction of the contract system of employment did not necessarily make the public service compete fairly with the private sector. Furthermore, many HoDs expressed concerns about their future in the public service as they had to give up more permanent and secure positions in the public service in order to take on the HoD post.¹⁵⁸

The turnover of HoDs has a multiplier effect on the turnover of the SMS cadre because invariably new HoDs focus substantive attention on building their own teams and hence departments usually experience some level of senior management turnover when a new HoD is appointed.¹⁵⁹ Consequently, the result of HoD turnover is that departments engage in exercises that result in changes to organisational structures, strategies and the overall operations of the department. Every time there is a change at the top, departments are reconfigured as the new HoD and/or political office bearer imposes his or her priorities and/or strategic perspectives.¹⁶⁰ These changes can be disruptive and impact on departmental stability and the delivery of services as it takes about six months to a year for the new HoD to settle in.¹⁶¹

In addition, it takes time to build relationships of trust and mutual respect in institutions, and once relationships are created, there is likelihood that energies, commitments and loyalties

¹⁵⁵ Splitting of functions occurs when certain functions are taken away from Department A and Department B is instead created to carry out such functions.

¹⁵⁶ Magubane K 'Rapid turnover of directors-general worries commission' *Business Day* 22 Sep 2017.

¹⁵⁷ Public Service Commission 2008e: 17.

¹⁵⁸ Public Service Commission 2008e: 18.

¹⁵⁹ Public Service Commission 2008e: 13.

¹⁶⁰ Public Service Commission *Report on the Effect of Turnover rate of Heads of Department on the Performance of Departments* (2012) 19 (hereafter Public Service Commission 2012b).

¹⁶¹ Public Service Commission 2008e: 13.

would be channelled towards the attainment of common strategic objectives.¹⁶² Senior management has to adapt to the new style and vision of the new HoD, resulting in the first six months to a year of appointment being unproductive.¹⁶³ Continuous changes in leadership over short periods affect the pace of the implementation of the strategic plan, as new leadership comes with its own priorities. Furthermore, the new HoDs are sometimes unable to account for work or progress that took place during the previous period.¹⁶⁴

In one of its studies conducted to evaluate the impact of HoDs' turnover rate on the performance of departments, the Public Service Commission reported that in instance where HoDs have been in the post for longer than three years, the performance of their departments or institutions shows signs of continued improvement.¹⁶⁵ In this regard, HoDs and senior managers were of the view that there is a need to review the contract appointment system as it tends to impact negatively on the stability and consequently, the performance of departments.¹⁶⁶ Staff morale and organisational effectiveness are negatively affected by a constant change of leadership at the highest level.¹⁶⁷ By contrast, stability in the senior management echelons enables departments to absorb a change in the political and administrative leadership more quickly than in instances where senior management is weak. Stability at top management impacts positively on the morale of staff, and thus contributes to effective service delivery.¹⁶⁸

Furthermore, the attrition of senior managers in the public service has a direct impact on the skills base therein. One of the concerns of government is to ensure that the expertise and experience of HoDs are not prematurely lost to the public service.¹⁶⁹ The three- to five-year contracts were, accordingly, seen as problematic because they are oftentimes used as a political tool to punish those HoDs viewed as 'recalcitrant'¹⁷⁰ by their political heads. In these instances, contracts are not renewed. Furthermore, there have been a number of high-profile cases where HoDs have left office prematurely because of conflict with executive authorities. This conflict

¹⁶² Public Service Commission 2012b: 17.

¹⁶³ Public Service Commission 2008e: 13.

¹⁶⁴ Public Service Commission 2008e: 14.

¹⁶⁵ Public Service Commission 2012b: 11.

¹⁶⁶ Public Service Commission 2012b: 11.

¹⁶⁷ Public Service Commission 2012b: 19.

¹⁶⁸ Public Service Commission 2012b: 19.

¹⁶⁹ Cameron 2009: 927.

¹⁷⁰ Those HoDs who stick by the rules are viewed as uncooperative and subsequently shifted out.

takes the form of political, personal or organisational differences or a combination of all of these.¹⁷¹ This leads to the haemorrhaging of institutional memory and organisational knowledge.¹⁷²

Other reasons for the high SMS turnover rate relate to change in political leadership. It is suggested that the HoD turnover usually gains momentum four months after elections.¹⁷³ This means that these incidents occur principally when there are certain developments such as changes in the political leadership. In this instance, the contract system is used as a revolving door where the political principal comes in with his new team and pushes out the old team.

It is further suggested that one of the main reasons for the turnover centres on the relationships between the executive authority and HoDs.¹⁷⁴ In this regard, the study shows that very few HoDs served more than one executive authority.¹⁷⁵ The general suggestion by some HoDs is that it is this relationship, and not necessarily competence to perform the job, that determines the length of the tenure of a HoD. Of the HoDs who formed part of the study, 89 per cent believed that their security of tenure is directly linked to their relationships with executive authorities.¹⁷⁶ This perception was confirmed by an earlier study on the effects of turnover rates, to the effect that in a number of cases, decisions to renew, extend or terminate the employment contract of a HoD are based purely on personal preferences rather than on performance management and development issues.¹⁷⁷ This implies that personal preferences rather than service delivery imperatives decide the future of the most senior public servants.¹⁷⁸

In sum, the evidence suggests that the system of contract appointments – at least in its pure NPM form – has not been fully implemented. It is only applicable to the elite while the rest of the managers are still enjoying an assured existence or secure tenure. Furthermore, in instances where it is applied, the desired results of improving accountability for results have not been achieved. Instead, it has led to political manipulation. The renewal or not of a contract depends not on performance and results but on the relationship with politicians. This forces managers to endear themselves to politicians and erodes their independence. The three-year contract has

¹⁷¹ Cameron 2009: 927.

¹⁷² Public Service Commission 2008e: ix, xi, 35-37.

¹⁷³ Public Service Commission 2008e: 20.

¹⁷⁴ Public Service Commission 2008e: 19.

¹⁷⁵ Public Service Commission 2008e: 19.

¹⁷⁶ Public Service Commission 2008e: 19.

¹⁷⁷ Public Service Commission 2012b: 21.

¹⁷⁸ Public Service Commission 2012b: 21.

led to greater political control over senior officials in that it is used to punish those managers viewed as too independent.

2.2 Reconfiguring the modes of service delivery

The reforms that took place internally, namely at the management level, which involved devolving decision-making powers to manager and limiting that power through performance management and contract system, were not the only aspects of transformation that took place in the public service. External restructuring also took place in a number of departments in an attempt to improve service delivery, especially to previously disadvantaged communities.

Traditionally, governments have been the main and sole providers of goods and services. However, after the introduction of the NPM model of delivery there has been a worldwide shift in focus from the traditional service delivery approaches to various innovative means, which are seen to be more effective, cost-efficient, customer-orientated, and flexible. With the introduction of the NPM in South Africa a point was raised that public service bureaucratic structures do not lend themselves to innovative, efficient, effective and responsive service delivery.¹⁷⁹

In order to address this problem, the post-apartheid government has sought innovative approaches to service delivery by looking at alternative organisation and governance arrangements. These involved the setting up of public enterprises or government agencies at arms' length from the line department to deliver specific services (usually self-contained services) based on commercial principles, or formal partnership with players from the private or voluntary sectors.¹⁸⁰ This saw the emergence of alternative service delivery mechanism such as corporatisation and public-private partnership (PPPs). As has been noted, privatisation was rejected by the 1995 *White Paper* and as such is not discussed herein.

2.2.1 Corporatisation

It was noted in Chapter Two¹⁸¹ that corporatisation relates to the phenomenon of establishing free-standing, semi-autonomous agencies or public entities which render public functions on behalf of departments. It allows for the separation of policy-making and implementation

¹⁷⁹ Public Service Commission 2003: v.

¹⁸⁰ Public Service Commission 2003: 5.

¹⁸¹ At section 6.2.

functions or responsibilities in terms of which governments focus on policy formulation, while the agencies expend time and energy on implementation. Corporatisation is intended to ensure an arm's-length relationship between the entity or agency and government and thus discourages political interference. It is hoped that these business units will be less constrained by red tape and political interference and have greater managerial flexibility, which will lead to greater efficiency, effectiveness and responsiveness. The use of corporatisation rather than full privatisation is aimed at taking advantage of private-sector efficiencies while maintaining public accountability.

Transnet also defines corporatisation as a process of converting a state-controlled organisation into a company in terms of the Company's Act,¹⁸² with the state remaining the sole shareholder.¹⁸³ In essence, corporatisation is the transformation of state assets, functions or departments into state-owned corporations, in order to introduce corporate management techniques to their administration.

2.2.1.1 Legislative framework

The Public Service Act is the starting point of any discussion on public entities. In terms of the Public Service Act, the Minister of Public Service and Administration and the Minister of Finance are given the mandate to oversee the overall functioning of the Public Service.¹⁸⁴ This is done by ensuring that any new or existing public function is allocated or transferred to the appropriate sphere of government, department and/or public entity and to eliminate any duplication of functions.¹⁸⁵ The Minister of Finance comes in by allocating appropriate resources and establishing uniform reporting and listing of all public entities,¹⁸⁶ nationally and in the provinces, to ensure that they are accountable to government.¹⁸⁷

Section 3(3)(a) of the Public Service Act enjoins the Minister of Public Service and Administration to advise the President regarding the establishment or abolition of any department or organisational component in the national sphere of government. Section 3(3)(b)

¹⁸² Companies Act 61 of 1973.

¹⁸³ Transnet Annual Report 1990/1991: 2.

¹⁸⁴ Section 3 read with section 38 of the Public Service Act of 1994.

¹⁸⁵ Section 3 Public Service Act.

¹⁸⁶ 'Listing' refers to the classification of public entities as set out in Schedules 2 and 3 of the PFMA. At the national sphere of government, public entities are classified as: major public entities (Schedule 2); national public entities (Schedule 3A); and national government business enterprises (Schedule 3B).

¹⁸⁷ Republic of South Africa *Interim Guide for Creating Public Entities at the National Sphere of Government* by Department of Public Service and Administration and National Treasury (2002) 3 (hereafter Republic of South Africa 2002).

in turn empowers the Minister to make a determination regarding the allocation of any function to, or the abolition of, any department or the transfer of any function from one department to another or from a department to any other body or from any other body to a department. Section 38(1)(m) read with section 54(2) of the PFMA enjoins the accounting officer of a department to consult with and seek prior written consent of the National Treasury on any new public entity which is intended to be established.

In a nutshell, public entities can be established for a new or an existing function(s). The Minister of Public Service and Administration's role is to make a determination regarding the allocation or transfer of such a function to the public entity so established. The Minister of Finance in turn allocates the concomitant resources to the public entity so established with effect from the start of a financial year.¹⁸⁸

2.2.1.2 Practice

It is important to note that the post-apartheid government inherited well over 300 public entities.¹⁸⁹ Currently, there are approximately 700 of them in South Africa, cutting across national, provincial and local spheres of government.¹⁹⁰ This means that over 400 public entities were created in the new dispensation to provide services formerly provided by government. In line with NPM thinking, these public entities were established with the expectation that they would improve the performance of government, be it through their policy advice, regulatory role, or service delivery, depending on why they were established in the first place.¹⁹¹

The present discussion on the restructuring of service delivery mechanisms does not seek to cover all of the public entities. It looks instead at whether the NPM principle of corporatisation was successful. Certain patterns emerged in the implementation of this principle at national level that provide an understanding of key problems confronting entities. These problems or difficulties relate to weak corporate governance; poor selection and development of board members; high turnover of board members; dysfunctional/conflictual working relationships;

¹⁸⁸ Republic of South Africa 2002: 3.

¹⁸⁹ Cassim 2004: 20.

¹⁹⁰ *SOE Review Magazine* (2014) available at <http://www.soereview.co.za/> (accessed 27 August 2016).

¹⁹¹ Public Service Commission 2011: 5.

the fact that corporatised entities are prone to corruption; and the limits of applying private sector models in public entities.

2.2.1.3 Weak corporate governance

The governance structure of corporatised entities or state-owned enterprises, is made up of a board of directors which oversees the management of the entity.¹⁹² The board is accountable to its main shareholder, the Minister of a sector department under which the entity falls, through the performance management system. The Minister plays an active role in ensuring that an entity is managed in accordance with the interests of Parliament and the public, and so plays a key part in the governance framework for an entity.¹⁹³ Members of the board are appointed, and can be dismissed, by Parliament, through the Minister. The board is responsible for setting the corporate objectives of an entity in line with government policies. The achievement of those objectives lies with the board.¹⁹⁴ The board is also responsible for developing policies governing the day-to-day operations of an entity and ensuring good governance, or overseeing implementation of those policies through the chief executive.¹⁹⁵

However, there are a number of instances that indicate that the boards either do not know what they are doing or fail to pick up problems or intervene in time.¹⁹⁶ This phenomenon is called corporate governance incompetence. A few examples of state-owned entities with weak corporate governance or corporate governance incompetence are listed below. First, the board of Eskom failed to steer Eskom in the right direction, resulting in power shortages which plunged much of the country into rolling blackouts and the shutting down of some major mining operations in South Africa, with enormous economic loss.¹⁹⁷ Furthermore, the failure to steer Eskom in the right direction has led to a failure to make profit, resulting in the board making numerous requests for double-digit tariff hikes. In 2007, the board asked for 18.7 per cent increase, 60 per cent in 2008, 45 per cent in 2009, and 16 per cent in 2012.¹⁹⁸ On all these occasions the National Energy Regulator (NERSA) refused to grant the increases, instead

¹⁹² National Treasury *Governance Oversight Role over State-Owned Entities (SOEs)* (2005) 15 (hereafter National Treasury 2005).

¹⁹³ National Treasury 2005: 16.

¹⁹⁴ Public Service Commission 2003: 17.

¹⁹⁵ Public Service Commission 2003: 17.

¹⁹⁶ McGregor L *Can South African State-Owned Companies Succeed?* (2014) 5 (hereafter McGregor 2014).

¹⁹⁷ Public Protector *Report on a Preliminary Investigation Relating to Electricity Load Shedding Implemented by Eskom Holdings Limited* (2008) 6 at para. 2.3.

¹⁹⁸ Kenny A 'The rise and fall of Eskom' *Politics Web* 18 March 2015 (hereafter Kenny 2015).

granting perfectly reasonable increases.¹⁹⁹ The strategic direction and capital expenditure for Eskom was only determined in 2014, years after the problem was identified.²⁰⁰ Moreover, Eskom was nominated as the worst company in the world in 2013 in term of social responsibility. In addition, it was downgraded by Standard and Poor and Fitch on account of poor standards and was also cited as having a poor credit rating.²⁰¹ The failure to steer Eskom in the right direction is indicative of corporate governance failures by the board.

Secondly, the chairperson and deputy chairperson of the board of the Armaments Corporation of South Africa SOC Ltd (Armscor) were dismissed by the Minister of Defence for various reasons.²⁰² The first reason was the various procurement projects which had failed to progress timeously as a result of the board's decisions or inaction.²⁰³ The second relates to Armscor's failure to conclude a service level agreement with the Department of Defence as required by the Armscor Act.²⁰⁴ The third relate to certain complaints which the Minister had received about Armscor from the defence industry, which led the Minister to infer that Armscor's relationship with the industry had broken down.²⁰⁵ In sum, under their leadership, Armscor and its Board had failed to fulfil effectively its statutory mandate.

Thirdly, the Public Protector report entitled *When Governance and Ethics Fail* found 'pathological corporate governance deficiencies at the SABC, including failure by the SABC Board to provide strategic oversight to the National Broadcaster as provided for in the SABC Board Charter and King III Report'.²⁰⁶ The report notes that this was occasioned by the failure of the executive directors (GCEO, COO and CFO) 'to provide the necessary support, information and guidance to help the Board discharge its fiduciary responsibilities effectively'.²⁰⁷ The report further notes that Mr Hlaudi Motsoeneng (COO) admitted to having caused the Board to make irregular and unlawful decisions.²⁰⁸ It was also found that the Board

¹⁹⁹ Kenny 2015.

²⁰⁰ McGregor 2014: 5.

²⁰¹ McGregor 2014: 5.

²⁰² *Minister of Defence and Military Veterans v Motau and Others* 2014 (5) SA 69 (CC) (hereafter *Motau judgment*).

²⁰³ *Motau judgment* para. [9].

²⁰⁴ *Motau judgment* para. [12].

²⁰⁵ *Motau judgment* para. [12].

²⁰⁶ Public Protector *When Governance Fails: A Report on an Investigation into Allegations of Maladministration, Systemic Corporate Governance Deficiencies, Abuse of Power and the Irregular Appointment of Mr Hlaudi Motsoeneng by the South African Broadcasting Corporation (SABC)* (2014) 20 at para. (g)(1) (hereafter Public Protector 2014).

²⁰⁷ Public Protector 2014: 20 para. (g)(2).

²⁰⁸ Public Protector 2014: 20 para. (g)(2).

was so dysfunctional that it allowed Dr Ben Ngubane (board chairperson) to act as an executive chairperson by authorising numerous salary increments for Mr Motsoeneng.²⁰⁹ The Board also allowed Mr Motsoeneng to operate above the law, undermining the GCEO, and causing staff to engage in unlawful conduct.²¹⁰

Fourthly, there are several other companies that have been in trouble over the years and which have cost the state billions of rands. These include the Public Investment Corporation Limited (PIC) and Government Employees Pension Fund (GEPF), Telkom, SAA, Denel, and the Post Office. McGregor states that ‘most of the problems could have been prevented had there been good corporate governance’.²¹¹ He goes further to state that ‘those responsible for governing State-owned Companies could have provided the necessary checks and balances and taken the right measures’.²¹²

Fifthly, a recent court judgment on the South African Social Security Agency (SASSA) reveals clear instances of corporate governance failures. In this case, the court invalidated a contract between SASSA and Cash Paymaster Services (Pty) Limited (CPS) to provide services for the payment of social grants for a period of five years.²¹³ However, the court suspended the order of invalidity subject to the award of a new five-year tender after following a proper procurement process. In the alternative, SASSA would take over the payment of social grants when the suspended contract with CPS came to an end on 31 March 2017. SASSA was ordered to report to the court on its progress in the new tender process and its outcome.²¹⁴ Pursuant to this order, SASSA reported, in November 2015, that it had decided not to award a new tender, but to take over the payment of social grants from 31 March 2017. The court accepted this assurance.

However, this assurance turned out to be baseless because in April 2016 SASSA became aware that it could not comply with the undertaking to the court that it would be able to pay social grants from 1 April 2017. In a way that violates corporate governance, SASSA decided to withhold this discovery from the court, only informing the Minister of Social Development in

²⁰⁹ Public Protector 2014: 20 para. (g)(3).

²¹⁰ Public Protector 2014: 20 para. (g)(4).

²¹¹ McGregor 2014: 5.

²¹² McGregor 2014: 5.

²¹³ *AllPay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer, South African Social Security Agency* 2014 (1) SA 604 (CC) (AllPay 1).

²¹⁴ *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (No. 2)* 2014 (4) SA 179 (CC).

October 2016. Like SASSA, the Minister did not do anything about this information, despite repeated warnings from advising counsel and CPS. At the time of writing, SASSA wanted to enter into a contract with CPS without a competitive tender process in order to continue the payment of social grants, on the grounds that CPS is the only entity capable of paying grants for the foreseeable future after 31 March 2017. In essence, SASSA seeks to do exactly what *AllPay 1* warned it against.

The court was only informed of these developments on 28 February 2017, when SASSA eventually launched an application for an order authorising it to extend the contract with CPS. However, the Minister ordered SASSA to withdraw the application and instead file a progress report. The Black Sash launched an urgent application which sought to rescue the situation.²¹⁵ The South African Post Office SOC Limited (SAPO) intervened, arguing that it has the capacity, immediately, or in the medium term, to take over the distribution of the grants.²¹⁶ The court stated that SASSA has demonstrated an inability to get its own affairs in order.²¹⁷ That inability has compromised the continued protection of access to their right to social assistance for grant recipients.²¹⁸ However, the court put all the blame on the Minister, the person who holds executive political office. It stated that

the office-holder ultimately responsible for the crisis and the events that led to it is the person who holds executive political office. It is the Minister who is required in terms of the Constitution to account to Parliament. That is the Minister, and the Minister alone.²¹⁹

Sixthly, most recently serious corporate governance failures became evident at PRASA when the acting CEO was fired for raising his remuneration by more than 350 per cent.²²⁰ This resulted in the dismissal of the entire Board by the Minister of Transport. The Minister was quoted as saying that the reasons she dismissed the Board was that ‘the Board disregarded [her] instructions to focus on pertinent issues and instead concerned itself with in-fighting and public

²¹⁵ *Black Sash Trust v Minister of Social Development and Others (Freedom Under Law NPC Intervening)* [2017] ZACC 8 at para. 23 (hereafter *SASSA judgment*).

²¹⁶ *SASSA judgment* para. 31.

²¹⁷ *SASSA judgment* para. 57.

²¹⁸ *SASSA judgment* para. 62.

²¹⁹ *SASSA judgment* para. 74.

²²⁰ Skae E ‘How governance failures messed up South Africa’s rail agency’ *Sowetan Live* 15 March 2017 (hereafter Skae 2017).

spats'.²²¹ She further said that 'this behaviour, coupled with declining performance, lack of governance and financial prudence at the agency had left her with no choice but to dissolve the Board'.²²²

One major reason often cited for corporate governance failures is the shortage of experience and expertise in the boards and executive directors and the high turnover of directors.²²³ Poor selection and development of board members are contributing factors to this problem.

2.2.1.4 Poor selection and development

Government and ministers are often accused of making political appointments that pay no regard to the mix of knowledge and expertise needed on the boards of state-owned entities.²²⁴ Moreover, government committees nominate board members and executives without consulting the board and, as such, without due regard to issues such as succession planning, development and retention of board members. In some instances, it is the board that makes irregular appointments that flout proper procedures. These have resulted in poor performance by state-owned entities and a high turnover of directors. Examples of this phenomenon are highlighted in what follows.

First, the Public Protector, as mentioned above, investigated the acting COO of the SABC and found that his appointment and salary progression were irregular and constituted improper conduct and maladministration.²²⁵ It was further found that the Board violated the SABC's Articles of Association dealing with appointments by allowing Motsoeneng to act without the requisite qualifications and Board resolution and to exceed the capped salary allowance.²²⁶ The SABC ignored the findings and recommendations of the Public Protector and instead appointed Motsoeneng as COO permanently.²²⁷ Motsoeneng's appointment as COO was eventually set aside by the court.²²⁸ However, Motsoeneng was subsequently appointed as Group

²²¹ Mabena S 'Public spats and litany of governance deficiencies derailed axed Prasa Board: Minister' *Sowetan Live* 13 March 2017 (hereafter Mabena 2017).

²²² Mabena 2017.

²²³ McGregor 2014: 5.

²²⁴ McGregor 2014: 5.

²²⁵ Public Protector 2014: 9 para. xxiv(a)(1). See also *Democratic Alliance v South African Broadcasting Corporation Limited and Others* 2015 (1) SA 551 (WCC) para. [10].

²²⁶ *Democratic Alliance v South African Broadcasting Corporation* at para. [10].

²²⁷ *South African Broadcasting Corporation Soc Ltd and Others v Democratic Alliance and Others* 2016 (2) SA 522 (SCA) at para. [9].

²²⁸ *Democratic Alliance v South African Broadcasting Corporation Soc Ltd and Others* 2016 (3) SA 468 (WCC) at para. [55].

Executive: Corporate Affairs in a manner that flouted the law. This appointment was also set aside by the court.²²⁹

Secondly, the GEPF consists mainly of political appointments. It is furthermore chaired by the ANC MP, thus making it difficult for independent directors to contribute meaningfully. In addition, the CEO finds difficulty in getting real value from the board.²³⁰ Thirdly, Telkom is in a similar position, with the majority of directors being political appointments, raising the dangers of a biased board.²³¹

Political appointments might lead to high turnover of directors owing to the politically charged environment. They might also lead to poor performance.

2.2.1.5 High turnover

High turnover in key positions can have dire consequences for good corporate governance and the smooth running of state-owned entities. It can also disrupt succession planning and the development of directors, resulting in a loss of institutional memory. Examples of this are provided below.

First, the CEO of the Public Investment Corporation (PIC), Elias Masilela, resigned in 2014 with two years of his five-year contract left, this after recording concerns about a questionable deal.²³² Masilela is reported to be highly efficient, having increased the PIC's assets by 60 per cent since 2010. He also sought to back development projects to underpin economic growth and fought for domestic control of companies.²³³ Secondly, Telkom has had five CEOs and four Board chairpersons in seven years. Thirdly, eight of the 14 board members of the SAA resigned in 2012, citing a difficult working relationship with the Department of Public Enterprises. Fourthly, Armscor had a completely new board in May 2014, the tenure of the old board having expired in April 2014. The previous chairperson and deputy chairperson were dismissed the previous year (2013), in response to which the court stated that

²²⁹ *Democratic Alliance v South African Broadcasting Corporation SOC Ltd (SABC) and Others; Democratic Alliance v Motsoeneng and Others* [2016] ZAWCHC 188 at para. 175.

²³⁰ McGregor 2014: 6.

²³¹ McGregor 2014: 6.

²³² McGregor 2014: 7.

²³³ SA Commercial Prop 'PIC's CEO Masilela resignation looms transparency speculation' *SA Commercial Prop – News* 20 June 2014 available at <http://www.sacommercialpropnews.co.za/m/property-companies-news/6846-pic-ceo-masilela-resignation-looms-transparency-speculation.html> (accessed 27 January 2017).

the Minister's response as to why she dismissed only General Motau and Ms Mokoena was resoundingly sound and logical. Had she dismissed the entire Board, she would have left Armscor, which has crucial obligations to fulfil, disabled and completely rudderless. The less invasive approach was to dismiss only the leadership of the Board, and to leave the Corporation with the necessary institutional knowledge to continue functioning.²³⁴

However, this statement was rendered nugatory when the Minister of Defence let the old board go and appoint a completely new board with no institutional memory.

Fifthly, the resignation of the Minister of Communications, Dina Pule, who was found guilty of lying to Parliament by the Ethics Committee and by a subsequent Public Protector's Report,²³⁵ left the Department of Communications under investigation. She also left a number of state-owned companies, such as the Post Office, in difficulties with large-scale board resignations. These resignations have reversed the progress made by these companies.²³⁶

2.2.1.6 Dysfunctional working relationships

Given that the government is the policy-maker and the owner of these entities, the rules it sets can come into conflict with the wishes of the management of these entities. The relationship between the board and the minister sometimes becomes conflictual and not in the best interest of the entity, Parliament and the public. In fact, poor relationships between some ministries and entities are common, often because boards feel that their work is being undermined and that they are not being treated with respect. These antagonistic, hostile, conflicting relationships and abusive power games take the focus away from the collaboration needed to achieve good results. A few examples of this problem are highlighted below.

First, the dismissal of the chairperson of the Board of Armscor and his deputy followed a deterioration in the relationship between them and successive Ministers of Defence.²³⁷ When the current Minister of Defence, Nosiviwe Mapisa-Nqakula, took office in 2012, there was already a lively dispute between the chairperson of the Board and the Minister's predecessor, Lindiwe Sisulu. Minister Sisulu attempted to dismiss the chairperson and appoint Ms Mokoena

²³⁴ *Motau judgment* para. [66].

²³⁵ Public Protector *Unsolicited Donation: Report of the Public Protector on an Investigation into Allegations of Maladministration, Corruption and a Potential Conflict of Interests against the Former Minister of Communications, Hon Dina Pule, MP in Connection with the Appointment of Service Providers to Render Event Management Services for the Hosting of the ICT Indaba Held in Cape Town from 4 to 7 June 2012* (2013) 202 at para. 10.

²³⁶ McGregor 2014: 7.

²³⁷ *Motau judgment* para. [5] - [8].

in his stead, but the chairperson refused to accept the dismissal on procedural grounds. Minister Mapisa-Nqakula resolved the dispute by retaining the chairperson and appointing Ms Mokoena as his deputy. The relationship soured when the chairperson missed three meetings, and the deputy chairperson, one, convened by the Minister to address various governance issues. When the Minister expressed her displeasure to the chairperson, the chairperson replied by bemoaning the late notice of the meetings and the fact that Board members ‘make a living in other endeavours’. The chairperson further asked the Minister to schedule future meetings with the Board through him as the chairperson. The Minister responded by terminating the chairperson’s and the deputy chairperson’s membership of the board.²³⁸

Secondly, the Public Protector, in its report *When Governance and Ethics Fail*, found the Minister of Communications, Dina Pule, to have acted improperly in the manner in which she unduly interfered in the affairs of the SABC, giving unlawful orders to the SABC Board and staff.²³⁹ This relates to the appointment of a certain Ms Duda to the position of CFO without her having applied for the position. Interviews and the selection process were conducted and a recommendation was made to the Minister, as the shareholder, to appoint Mr Msulwa Daka. However, the Minister rejected the recommendation and orchestrated the appointment of Ms Duda, who was interviewed, without having applied for the position, long after the recruitment and selection process had been closed. The Minister eventually appointed Ms Duda.²⁴⁰

Thirdly, the poor working relationship between the Minister of Public Enterprises and the Board of SAA resulted in the resignation of eight members of the Board in 2012, including the chairperson, Cheryl Carolus.²⁴¹ The SAA chairperson was quoted as saying: ‘The board has just become untenable, our reputation and professional integrity had just been dragged through the mud without any clarification or support, and I believe this had reached a point where the relationship has been broken irretrievably.’²⁴² This prompted the acting chairperson of Parliament’s public enterprises portfolio committee, Gerhard Koornhof, to express deep concern about the resignations.²⁴³ He was quoted as saying: ‘The board members and

²³⁸ *Motau judgment* para. [9].

²³⁹ Public Protector 2014: 21.

²⁴⁰ Public Protector 2014: 14 para. (d)(2).

²⁴¹ SAPA ‘New SAA board members appointed’ *IOL Business Report* 28 September 2012 (hereafter SAPA 2012).

²⁴² SAPA 2012.

²⁴³ SAPA 2012.

management of the parastatal need to find mechanisms to deal with the challenges that the airline is facing and find solutions.’²⁴⁴

Fourthly, when the PRASA Board was asked what went wrong in the governance of the PRASA, it put the blame squarely at the door of the Minister of Transport. It stated that ‘this is just another example of the shareholder undermining the board, something that’s becoming an all-too common dynamic within South Africa’s state-owned enterprises’.²⁴⁵ The Board further noted that this trend ‘can be seen in the frequent chopping and changing of state-owned enterprises boards over the past few years’.²⁴⁶ This indicates the strained or dysfunctional working relationship between the minister, as the shareholder, and the boards.

2.2.1.7 Prone to corruption

The first example where a state-owned entity was embroiled in allegation of corruption and/or maladministration is the Passenger Rail Agency of South Africa (PRASA). In a report entitled *Derailed: A Report on an Investigation into Allegations of Maladministration Relating to Financial Mismanagement, Tender Irregularities and Appointment Irregularities against Passenger Rail Agency of South Africa (PRASA)*, the Public Protector was asked to investigate 37 complaints of corruption, maladministration and improper conduct. The gist of the complaint was that

Mr. Montana, then Group Chief Executive Officer (GCEO) of PRASA, and/or PRASA, improperly awarded tenders; appointed service providers without following proper tender processes and allowed maladministration, corruption, conflict of interest and financial mismanagement, in the procurement of goods and services and managed human resources irregularly, including nepotism and the improper handling of whistle-blowers.²⁴⁷

²⁴⁴ SAPA 2012.

²⁴⁵ Skae 2017.

²⁴⁶ Skae 2017.

²⁴⁷ Public Protector *Derailed: A Report on an Investigation into Allegations of Maladministration Relating to Financial Mismanagement, Tender Irregularities and Appointment Irregularities against Passenger Rail Agency of South Africa (PRASA)* (2015) 5 at para. ix (hereafter Public Protector 2015).

The Public Protector found billions of rands of fruitless, wasteful and irregular expenditure at the agency.²⁴⁸ The Public Protector also found numerous instances of maladministration, corruption and nepotism.²⁴⁹

Secondly, the Public Protector's report *When Governance and Ethics Fail* further reveals instances of irregular appointments that border on corruption. First, it found with regard to the appointment of Mr Motsoeneng as the COO and Ms Motsweni into various position that the Board acted unlawfully.²⁵⁰ Secondly, it found in relation to their salary progressions, which were done without following proper procedures and in violation of applicable law, that the Board acted irregularly and that this constituted an abuse of power and maladministration.²⁵¹

Thirdly, the *State of Capture* report by the Public Protector found, with regard to the question of whether any state functionary in any organ of state or other person acted unlawfully, improperly or corruptly in connection with the appointment or removal of Boards of Directors of SOEs, that 'the Board at Eskom was improperly appointed and not in line with the spirit of the King III report on good Corporate Governance'.²⁵² As to whether any state functionary in any organ of state or other person acted unlawfully, improperly or corruptly in connection with the award of state contracts or tenders to Gupta-linked companies or persons, it was found that Eskom's decision to award a contract to Tegeta to supply Arnot Power Station was made solely for the purposes of funding Tegeta and enabling Tegeta to purchase all shares in OCH. It was further stated that 'the only entity which appears to have benefited from Eskom's decisions was Tegeta'.²⁵³

2.2.1.8 The limits of private sector techniques in the public sector

The above discussion paints a gloomy picture of SOEs. In a sense, the majority of SOEs are problematic. However, that does not represent a full picture. There are some SOEs that are performing optimally. For example, the creation of the South African National Roads Agency

²⁴⁸ Public Protector 2015: 360 para. 8.

²⁴⁹ Public Protector 2015: 360-386 paras 8.1.4-8.33.3.

²⁵⁰ Public Protector 2014 para. xxiv.

²⁵¹ Public Protector 2014 para. xxiv.

²⁵² Public Protector 2016 'State of Capture': 19 para. 8(a).

²⁵³ Public Protector 2016: 20 para. 9(c).

Limited (hereafter SANRAL)²⁵⁴ has improved service delivery.²⁵⁵ The construction, maintenance and management of roads were more efficiently and effectively undertaken under the agency than they had ever been by the Department of Transport before the establishment of the agency.²⁵⁶ As a result, the Public Service Commission endorsed corporatisation as an innovative service delivery model and a viable option in the regulatory transport environment.²⁵⁷

A study by the World Bank found that ‘[m]ore than 95 per cent of the roads SANRAL manages are in good to very good condition and 100 per cent of its roads are under routine maintenance contracts’.²⁵⁸ This has led to the government agreeing to transfer some of the unmaintained provincial roads to the national road network managed by SANRAL. Furthermore, provinces regularly ask SANRAL to provide technical assistance and help implement provincial road programmes.²⁵⁹ As such, these success factors made SANRAL the preferred road network manager in South Africa.²⁶⁰

Furthermore, the 2013/14 peer review by the Association of Southern African National Roads Agencies (ASANRA) indicated that SANRAL’s asset management meets PAS 55:2008 requirements for certification and that SANRAL is an international leader in asset management in the roads sector.²⁶¹ This review examined the status of asset management of the road agencies in Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Tanzania, Zambia, and Zimbabwe. The PAS 55:2008 standards are the international norm for good asset management practices, based on the Institute of Asset Management of the United Kingdom. As of 15 of January 2014, these standards were replaced by ISO 55000 (International Organisation for Standardisation, Switzerland) and SANRAL has made an application for certification under the new standards.²⁶²

²⁵⁴ SANRAL was created by the South African National Roads Agency Ltd Act 7 of 1998.

²⁵⁵ Public Service Commission *Report on the Evaluation of the Service Delivery Innovation of the Creation of Agencies at the Department of Transport* (2003) (hereafter Public Service Commission 2003).

²⁵⁶ Public Service Commission 2003: 38 para. 6.2.4.2.

²⁵⁷ Public Service Commission 2003: 38 para. 6.2.4.1.

²⁵⁸ Alam A, Mokate R & Plangemann KA *Making It Happen: Selected Case Studies of Institutional Reforms in South Africa* (2016) 175 (hereafter World Bank 2016).

²⁵⁹ Parliamentary Monitoring Group 2014.

²⁶⁰ World Bank 2016: 176.

²⁶¹ World Bank 2016: 176.

²⁶² World Bank 2016: 176.

Furthermore, in 2015 the Top Employers Institute, based in the Netherlands, recognised SANRAL as a top employer. This is owing to SANRAL's approach to performance management and the way it has transformed internally to better reflect South Africa's demographics. It is suggested that this has led to very low staff turnover.²⁶³ SANRAL is also reported to have world-class capacity-building and development mechanisms for its employees.²⁶⁴

However, the market principles of user-pay systems, cost-reflective pricing and cost recovery policies are not compatible with the public sector and are turning out to be the limits to corporatisation. For example, the user-pay system in the tolling of roads has generated opposition and public outcry from motorists, taxi associations, labour unions and political parties. As a result of this social pressure, the Minister of Transport suspended the tariffs and appointed a task team to review the fee structure. This, together with a number of court cases, delayed the implementation of the electronic tolling system and the collection of tolls. According to the Department of Transport, this has had a negative impact on the credit ratings for SANRAL and is said to be threatening the socioeconomic stability of the country.²⁶⁵ The negative impact on debt servicing of the delayed tolling of the GFIP has resulted in a ratings downgrade by Moody's.²⁶⁶ However, when the toll collections started in 2013, SANRAL's revenue collections increased significantly, resulting in Moody's changing its outlook from negative to stable and affirming its Baa3-rating for SANRAL in June 2014.²⁶⁷

Despite the revised tariff structure by the Department of Transport, opposition to the e-tolls have not subsided. The Constitutional Court has also weighed in on this matter on two occasions, both of which it found in favour of SANRAL and the user pay system through e-tolls.²⁶⁸ The public outcry also led to the establishment, by the Gauteng Premier after the bad showing of the ANC in the 2014 general elections, of an Advisory Panel on the socio-economic impact of the Gauteng e-tolls. The report of the Advisory Panel found e-tolls to have some benefits for the economy and the people of Gauteng.²⁶⁹ The Premier of Gauteng did not scrap

²⁶³ World Bank 2016: 175.

²⁶⁴ World Bank 2016: 175.

²⁶⁵ Department of Transport 2013: 22.

²⁶⁶ World Bank 2016: 173.

²⁶⁷ World Bank 2016: 173.

²⁶⁸ *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223(CC).

²⁶⁹ Gauteng Provincial Government Report 51-2.

the e-tolls but reviewed it to address the questions of affordability, equity, fairness, administrative simplicity, and sustainability.

Another review process, chaired by the Deputy President Cyril Ramaphosa with the Gauteng province, Ekurhuleni, Johannesburg Metro and the Tshwane Metro participating, was instituted. However, this review similarly did not scrap the electronic tolling system but altered it somewhat, effectively introducing a new and significantly reduced e-toll dispensation.²⁷⁰

The e-tolls might be the only impediment in future developments as the public outcry still continued after the publication of the review findings. This is also causing uncertainty about the future financing policy of national roads. What is clear is that the private-sector cost recovery pricing policies might not be appropriate for a country like South Africa, which is the most unequal nation in the world.

2.2.2 Public-private partnerships

It was noted in Chapter Two²⁷¹ that a PPP refers to a contract between a public institution and an individual or privately-owned or -controlled partnership, company, trust or other for-profit legal entity. In essence, PPPs are long-term contractual arrangements between the government and a private partner whereby the latter delivers and funds public services using a capital asset and sharing the associated risks. Public-private partnerships, therefore, serve two main purposes, namely to mobilise resources and skills from the private sector and to infuse business principles in the delivery of public services.

The National Treasury²⁷² defines PPPs as a commercial transaction – a contract – between a government institution and a private party where the private party performs an institutional function on behalf of the state and/or uses state property in terms of output specifications.²⁷³ In these instances, substantial financial, technical and operational risk in connection with the performance of the governmental function and/or use of state property is transferred to the private party. The private party receives a benefit for performing the governmental function or from utilising the state property, either by way of compensation from a revenue fund and charges or fees collected by the private party from users or customers of a service provided to

²⁷⁰ World Bank 2016: 174.

²⁷¹ At section 6.3.

²⁷² Regulation No. 16 of 2004 para. 16.1.

²⁷³ Regulation No. 16 of 2004 para. 16.1.

them, or by way of a combination of such compensation and such charges or fees.²⁷⁴ Creamer, quoted in Fombad, states that this partnership is centred on trust and on the notion of two parties coming together to harness the diverse interests of the nation for efficient delivery.²⁷⁵

In South Africa, PPPs were introduced because it was thought that traditional bureaucracies were not equipped to urgently deal with the infrastructure backlogs and poor levels of service delivery inherited from the colonial and apartheid past. In order to generate economic growth, provide infrastructure and deliver services, the South African government sought to tap on the strengths of the private sector to make the economy more competitive because alone it could not meet the developmental needs of South Africa.²⁷⁶ PPPs, like corporatisation, were thus adopted as alternatives to traditional bureaucracy and in the interests of better service delivery.

2.2.2.1 Legislative framework

The main legislation governing PPPs at the national and provincial levels is the Public Finance Management Act (PFMA).²⁷⁷ Section 76 of the PFMA enjoins the National Treasury to make regulations for a range of matters to do with the effective and efficient management and use of financial resources. The National Treasury's Regulation 16 gives effect to section 76, and provides precise and detailed instructions for PPPs. As such, the PFMA, together with the National Treasury Regulation 16,²⁷⁸ provides a mainstay of the legislative framework for PPPs. The National Treasury Regulation 16 defines three types of PPPs, namely where the private party performs an institutional function, where the private party acquires the use of state property for its own commercial purposes, and a hybrid of these two types.²⁷⁹ Payment in any of the above types takes place in one of the following three ways. First, the institution pays the private party for the delivery of the services. Secondly, the private party collects fees or charges from users of the service. Thirdly, payment is made through a combination of these.²⁸⁰

²⁷⁴ Fombad 2014: 68 maintains that this benefit is through unitary payment from government budget and user fees.

²⁷⁵ Fombad 2014: 68.

²⁷⁶ Nzimakwe 2006: 48.

²⁷⁷ No. 1 of 1999.

²⁷⁸ Public Finance Management Act, 1 of 1999: Treasury Regulation 16 (GN 37 GG 25915 of 16 January 2004), first issued in 2001 under (RGN 345 GG 22219 of 9 April 2001) and amended in 2002 under (RGN 740 GG 23463 of 25 May 2002).

²⁷⁹ National Treasury *Standardised PPP Provisions Issued in Accordance with Section 76(4)(g) of the Public Finance Management Act of 1999* (2005) 7 para. D.

²⁸⁰ National Treasury *Introducing Public-Private Partnerships in South Africa* (2007) 8.

The National Treasury effectively regulates and controls the procurement process and, by extension, the PPPs. To this end, a PPP Unit²⁸¹ was established in the National Treasury to supervise the PPP activities.²⁸² This Unit was envisaged to ‘provide quality technical assistance to institutions embarking on PPPs, throughout the PPP project cycle, to help them achieve a quality PPP projects’.²⁸³ To this end, the PPP Unit has designed a generic PPP project cycle in terms of Regulation 16 to ensure that PPPs at national level are carried out rigorously. In this regard, the process begins with the procuring institution registering the project with the PPP Unit after identifying a project that may be concluded as a PPP.²⁸⁴ The second step is to appoint private sector advisors by the procuring institution to do a feasibility study to determine whether the proposed PPP is the most appropriate mechanism and is in the best interests of the procuring institution.²⁸⁵ This step of the PPP project cycle concludes with treasury approval being granted, signifying a successful completion of the feasibility study.²⁸⁶

The third step in the PPP project cycle involves procurement.²⁸⁷ If the feasibility study shows that a PPP is a viable mechanism, the procuring institution must invite the market to submit bids for the particular project in question, namely the performance of an institutional function or the use of state property. However, the third step begins with the Treasury’s approval of the procurement documents, including a PPP agreement, before any issuing of procurement documents to any prospective bidders.²⁸⁸ After the market has submitted the bids and they have been evaluated, the procuring institution must submit a report for approval to the Treasury. This must take place prior to the appointment of the preferred bidder.²⁸⁹ After such approval, a suitable bidder may then be chosen.

The fourth and final step involves project implementation and management. This step begins with the accounting officer of the procuring institution submitting a PPP agreement and a management plan to the relevant treasury for approval.²⁹⁰ Once such approval has been

²⁸¹ Made up of five professional staff drawn from both the public and private sectors. Currently, the Unit comprises some 17 professional staff that are allocated projects depending upon individual sector expertise and interest.

²⁸² Price Water House Coopers 2005: 57.

²⁸³ Republic of South Africa *Public-Private Partnership Manual Module 6: Managing the PPP Agreement* (2004).

²⁸⁴ Regulation 16.3 Regulation 16.

²⁸⁵ Regulation 16.4 Regulation 16.

²⁸⁶ Regulation 16.4.2 Regulation 16.

²⁸⁷ Regulation 16.5 Regulation 16.

²⁸⁸ Regulation 16.5.1 Regulation 16.

²⁸⁹ Regulation 16.5.4 Regulation 16.

²⁹⁰ Regulation 16.6.1 Regulation 16.

obtained, a PPP agreement is then signed by the procuring institution and the successful bidder. The project is then implemented once a suitable bidder has been chosen and has signed the PPP agreement. While the successful bidder must implement the PPP project in line with the agreement, the accounting officer of the procuring institution must ensure that the PPP agreement is properly implemented, managed, enforced, monitored and reported on.²⁹¹

The various stages of approval in the PPP project cycle enable the Treasury to apply the three regulatory tests of affordability, value for money, and risk transfer at every stage of preparing for, procuring and managing a PPP agreement. Regulation 16 requires that the institution apply these tests throughout, and that specific treasury approvals enable the Treasury to test whether these tests have been applied at relevant stages of the project cycle. Treasury approval also applies for 'any material amendments to a PPP agreement including any material variations to the outputs therein, or any waivers contemplated or provided for in the PPP agreement'.²⁹² The tests are also applicable.

What follows next is a discussion of how this NPM element was implemented in practice, with specific reference to the water sector. Some major difficulties are illustrated, namely failure to transfer sufficient risk to the private sector; failure to develop managerial, technical and training capacity of local governments; the cost of the project; poor workmanship; and inability to infuse business principles. The choice of the water sector is influenced by parallel PPP projects in the water sector undertaken at local level. This discussion seeks to offer predictability or draw parallels for local government.

2.2.2.2 Public-private partnerships in the water sector

The post-apartheid government inherited huge services backlogs with respect to access to water supply and sanitation. Bond states that the distribution of water in South Africa was even more unequal, measured in class, race and gender terms, than the distribution of income.²⁹³ About 18 million people were without safe water supply and over 27 million without basic sanitation services.²⁹⁴ The new government was, therefore, facing a daunting task of developing and

²⁹¹ Regulation 16.7 Regulation 16.

²⁹² Regulation 16.8 Regulation 16.

²⁹³ Bond P *Unsustainable South Africa: Environment, Development and Social Protest* (2002) 35 (hereafter Bond 2002).

²⁹⁴ Bond 2002: 263. See also National Treasury 2011 Local Government Budgets and Expenditure Review 130.

implementing a systematic programme of rural water delivery almost from scratch.²⁹⁵ In order to ensure high standards of delivery and improved access in rural areas, the Department, in line with government policy to adopt the NPM as a model of delivery, embraced PPPs. It was driven to do as much as possible, as quickly as possible, to bridge the enormous gap in the living standards of its population.²⁹⁶ Rural water supply was one of the key priorities of the new government.²⁹⁷

The new government was concerned that it would take more than 30 years to meet the basic water supply backlog if a rapid infrastructure delivery programme was not put in place.²⁹⁸ The PPPs were, therefore, seen as a solution to the huge backlogs and the need to improve the basic human needs related to infrastructure, especially access to water and sanitation, which are vital to many aspects of everyday life and a better balanced national and indeed international economy. The government believed that by so doing it would accelerate the supply of water services to rural communities previously denied water and sanitation services under apartheid and the homeland system and that it would improve efficiency in the delivery of, and ultimately enhance access to, such services.²⁹⁹

Armed with that philosophy, in 1997 the Department roped in the private sector to carry out the rural water supply programme under a Build, Operate, Train and Transfer (BOTT) programme.³⁰⁰ The BOTT programme was organised around private sector companies which organised themselves into consortia to bid for provincial contracts.³⁰¹ Cook notes that

the rationale for the BOTT programme was to temporarily bypass the confusion and lack of capacity characteristic of the Transitional Local Councils (TLCs) while they were undergoing consolidations, re-structuring, re-staffing, and re-definitions of functional responsibilities.³⁰²

²⁹⁵ Greenberg 2005: 206.

²⁹⁶ Syme H, Hazelton D & Pitso R 'Evaluation of ODA for the water and sanitation sector' 10.

²⁹⁷ Greenberg 2005: 207.

²⁹⁸ Greenberg 2005: 209.

²⁹⁹ Mwebe H *The Impact of Privatisation on Socio-Economic Rights and Services in Africa: The Case of Water Privatisation in South Africa* (unpublished LL.M thesis, University of Pretoria, 2004) 2 (hereafter Mwebe 2004).

³⁰⁰ BOTT is one of the types of PPP in operation in South Africa. Others include DFBOs (design, finance, build, operate and transfer), DFOs (design, finance and operate), DBOTs (design, build, operate and transfer), equity partnership, and facilities management contract.

³⁰¹ Greenberg 2005: 209.

³⁰² Cook CE (2011) 8(3) *Service Delivery Review* 87. However, at the end of the BOTT programme in 2004, the department later phased out its role as an implementing agent by transferring water schemes to the relevant municipalities.

To this end, BOTT was supposed to bring in greater managerial, technical and training capacity from the private sector to work with local government and communities so that they could hit the ground running in collecting the revenue and in operating and maintaining the infrastructure when ownership was transferred to them.³⁰³ In this regard, four provincial contracts were handed to the private sector consortia with cooperation of DWAF and relevant departments in the provincial and local governments.³⁰⁴

The idea was to achieve economies of scale by designing and implementing as many large bulk water supply schemes as possible in the shortest possible period of time for the lowest possible cost per beneficiary.³⁰⁵ BOTT was promoted as being able to achieve various goals, namely accelerated delivery, sustainability, a programmatic approach, reduced management and administration costs, greater interaction with local government, cost-effective delivery and increased innovation.³⁰⁶ The BOTT tender documents also contained similar claims, with financing suggestions.³⁰⁷ The BOTT project was supposed to be completed between two to six years, depending on the scope of work and the time required to effect a handover to a local authority.³⁰⁸ The BOTT contract entailed:

- carrying out initial investigations on water supply and sanitation projects in consultation with community representatives and local authorities;
- preparing a business plan for each project, for which approval must be obtained from DWAF;
- Preparing an area business plan for all projects within a planning area, for which approval must also be obtained from DWAF;
- carrying out institutional and social development (ISD);
- designing and constructing project(s);
- operating and maintaining project(s) for a limited period of time;

³⁰³ DWAF (2000) Community Water Supply and Sanitation (CWSS) Programme, part of the Government's Reconstruction and Development Programme: Build Operate Train and Transfer Programme 2.

³⁰⁴ Cook CE (2011) 8(3) *Service Delivery Review* 87 (hereafter Cook 2011).

³⁰⁵ Cook 2011: 87.

³⁰⁶ Bakker K & Hemson D 'Privatising water – BOTT and hydropolitics in the new South Africa' (2000) 82(1) *South African Geographical Journal* 6 (hereafter Bakker & Hemson 2000).

³⁰⁷ Bakker & Hemson 2000: 6.

³⁰⁸ Bakker & Hemson 2000: 6.

- transferring the water supply system to the Water Service Authority; and
- mentoring the Water Service Authority.

These private sector consortia were given the right to build the infrastructure, operate it while training local government and communities in operation and maintenance, and then, at a later stage, transfer the schemes to them.³⁰⁹ They gained a monopoly over rural water supply programmes in these four provinces, controlling 300 out of a total of 357 water projects.³¹⁰ Cook notes that DWAF appears to have given the BOTT programme the de facto technocratic authority of engineering professionals, which gave the consortia ‘virtual override authority concerning underperforming and/or recalcitrant civil servants at the provincial and local levels of government’.³¹¹ However, as noted above, the BOTT programme did not replace the ways of providing water and sanitation at that time in the four provinces. It came in to augment the managerial, technical and training capacity of local government and water boards.³¹² In essence, BOTT incorporated a local government capacity-building programme to ensure sustainability of the implemented projects.

Given that the Constitution makes water services the responsibility of local government, these functions had to be transferred to elected local councils. Local government would take operational responsibility for new water supply schemes, together with the community. However, given that in many rural areas local government had to be built from scratch, targeted capacity-building support to local government had to be included in the BOTT contracts.³¹³ The BOTT Programme came to a natural end in early 2004 when all the water schemes were transferred to municipalities, in over approximately six years in operation.³¹⁴

2.2.2.3 Transfer of substantial financial, technical and operational risk

The BOTT contracts were entered into before the NPM principle of PPPs was given full effect to in the legislative framework. There was no legislative framework at the time that provided for risk transfer, and the private sector consortia took advantage of this situation. The

³⁰⁹ Greenberg 2005: 209.

³¹⁰ Greenberg 2005: 209.

³¹¹ Cook 2011: 88.

³¹² DWAF (2000) Community Water Supply and Sanitation (CWSS) Programme.

³¹³ DWAF *Reconstruction and Development Water Supply and Sanitation Programme 1996/97: Revision 1* (1996) 6 available at www-dwaf.pwv.gov.za/directorate/waterservices/pds/ (accessed 20 May 2017).

³¹⁴ Cook 2011: 87.

government tendered for BOTT as a conventional management contract for a guaranteed income.³¹⁵ As a result, no transfer of substantial technical, operational and financial risk took place, as is required under a PPP transaction. The government retained financial responsibility for the service and provided operating and investment capital.³¹⁶ In other words, funding for the infrastructure costs came from the state and the state itself bore the risk of losing that funding in cases of delays, poor performance or an act of nature happening. It paid for the establishment and running costs of offices at provincial and local level, which included office equipment, staff salaries, travelling costs, allowances for typing and printing and reproduction, while the BOTT consortia of private companies made no direct investment into the provision of water supply and as such bore no risks.³¹⁷ The government also failed to create systems for monitoring the contracts before signing them, leaving the impression that ‘BOTT was created in a vacuum and then dropped into a void’.³¹⁸

It is apparent from the foregoing that the BOTT contracts ran contrary to the NPM ethos of a PPP transaction. It is suggested that the new government was still wet behind the ear at this stage and hence made basic but costly errors. On the strength of this and other early experiences, it moved swiftly to issue PPP Regulations and to create a PPP Unit to guide the PPP process moving forward.³¹⁹

2.2.2.4 The cost of the project

The NPM tenet of PPPs embodies principles of affordability and value for money which were not yet incorporated into law at that stage. This has had some detrimental effects on cost containment in the implementation of the BOTT project. The false start in the legislative framework for PPP projects, especially the latter, has given rise to many issues encountered in the implementation of the BOTT programme. First, DWAF reported that the operators had inflated rates while not showing efficient delivery.³²⁰ In this regard, a study comparing the BOTT programme and a project of a similar size (Mvula Trust Projects) revealed that the per

³¹⁵ Bakker & Hemson 2000: 7.

³¹⁶ Bakker & Hemson 2000: 7.

³¹⁷ De Visser J, Cottle E & Mettler J ‘Realising the right of access to water: Pipe dream or watershed?’ (2003) 7(1) *Law, Democracy and Development* 14 (hereafter De Visser, Cottle & Mettler 2003).

³¹⁸ DWAF *The Review of the National BOTT Programme W 6018B – KwaZulu-Natal: Draft Report* (1998) 27 (hereafter DWAF 1998).

³¹⁹ National Treasury <http://www.ppp.gov.za/Pages/About.aspx>.

³²⁰ Department of Water Affairs and Forestry 2004: 10.

capita cost of BOTT was R1 640, compared with Mvula Trust's per capita cost of R380.³²¹ DWAF's KwaZulu-Natal regional office also raised concerns that the unit cost per borehole was significantly higher than would have been the case if the regional office or traditional implementing agents had managed construction.³²²

In essence, over and above the fact that the BOTT consortia of companies did not make any direct investment into the provision of water supply in South Africa, they were also wasteful and not cost-effective. This was contrary to the NPM ethos of affordability, value-for-money and cost-effectiveness. However, these principles were only embedded into South African law after the conclusion of these contracts.

To add insult to injury, BOTT was reported to be on average 2.7 times more expensive than Mvula Trust projects, prompting the Minister of Water Affairs and Forestry (as it then was) to admit 'that it was not clear whether greater private sector involvement had "achieved either efficiency or sustainability"'.³²³ A study by Lobina and Hall revealed that, in fact, private sector involvement has resulted in inefficiencies. It stated: 'Overall, public enterprises appear no less efficient than private companies, while being capable of development-oriented consideration of public interests.'³²⁴

Numerous other studies and evaluations also came to the same conclusion that BOTT fell short of 'rapid delivery' expectations.³²⁵ For example, Hemson criticised BOTT for being more expensive than publicly provided services and blamed it for skewing development priorities by introducing a profit motive.³²⁶ An external review team also stated that the reduced throughput signified that the process had become more expensive, raising concerns of value for money.³²⁷ Another external evaluation of BOTT by a team including World Bank staff suggested that there was 'cost-padding' resulting from the absence of competition. A DWAF review team

³²¹ Bond P, Dor G & Ruiters G 'Water for all in South Africa: Policies, pricing and people' (1999) Johannesburg: Rural Development Services Network (RDSN).

³²² Greenberg 2005: 210.

³²³ De Visser, Cottle & Mettler 2003 quoting Minister Kader Asmal's speech at the Stockholm Water Symposium in August 2000.

³²⁴ Lobina E & Hall D 'Public sector alternatives to water supply and sewerage privatization: case studies' (2000) 16(1) *Water Resources Development* 35-55.

³²⁵ DWAF 1998; Hemson & Bakker 2000, etc.

³²⁶ Hemson D *Beyond BOTT? Policy Perspectives in Water Delivery*, preliminary report to Rural Development Services Network, RDSN (1999).

³²⁷ External Review Team *External Review of the Build Operate Train and Transfer (BOTT) Programme* (1998) DWAF, Pretoria 36.

also severely criticised the work of BOTT in KwaZulu-Natal, even suggesting that the contract should be terminated because it was failing to achieve the BOTT objectives.³²⁸ It was further reported that during the transfer to municipalities, a lot of infrastructure was in a state of disrepair, yet municipalities were expected to immediately pay full cost for water.³²⁹ In essence, local government ‘inherited ‘white elephants’ with high price tags’.³³⁰ This was an instance of public money but private failure, with negative outcomes for rural households – typically the poorest and most under-serviced in the country. This points to the poor implementation of the NPM in South Africa.

2.2.2.5 The limits of private sector techniques in the public sector

The cost-recovery pricing policies pushed by the BOTT consortia proved problematic. These policies have served to undermine both the depth and the quality of water service extension to rural areas and raise troubling questions about the sustainability of a commercialised approach to water delivery in rural areas in particular and South Africa generally. These water companies did not view water as a right first rather than a commodity.³³¹ In some instances, they used a prepaid meter price policy which forced consumers to pay for their water use in advance.³³² This caused serious problems relating to sustainability and consumer affordability.³³³ Flynn and Chirwa argue that charging rural communities the full cost of service delivery leads to higher rates, because of absence of infrastructure,³³⁴ and perpetuates the effect of unfair discrimination in the past.³³⁵ The general drive for cost-reflective pricing and cost-recovery policies has also contributed to sharp increases in water prices that are usually above inflation.³³⁶

³²⁸ DWAF 1998.

³²⁹ Breslin E *Lessons from the Field: Rethinking Community Management for Sustainability* (1999) paper presented to Appropriate Practice Conference, East London, 14-17 March 22.

³³⁰ Greenberg 2005: 212.

³³¹ SAHRC 2014: 18.

³³² Adinda 2008: 22.

³³³ Bond 2002: 210.

³³⁴ In this regard, they state that the full cost of service includes the initial cost of installing the infrastructure (capital cost) and the expenses associated with operating and maintaining the infrastructure (marginal costs). White suburbs and the business sector benefit unfairly from the skewed investment policies of the past in the sense that the installation costs have been largely written off.

³³⁵ Flynn S & Chirwa DM ‘The constitutional implication of commercializing water in South Africa’ in McDonald D & Ruiters G *The Age of Commodity: Water Privatization in Southern Africa* (2005) 65-66 (hereafter Flynn & Chirwa 2005).

³³⁶ Eberhard 2005: 5310.

This is inimical to efficient and customer-focused delivery of water supply services. These contracts were not financially sustainable for the poor. Those households that failed to pay for water bills lost their access to clean water, even the free basic access,³³⁷ and sometimes faced eviction from their homes or blacklisting.³³⁸ This forced many households in rural areas to use unclean water, which resulted in a cholera epidemic in the country during the year 2002.³³⁹ The people these initiatives sought to cater for were finding it difficult to pay the increased costs of these services.³⁴⁰ Instead of ensuring a steady supply of water to poorer communities, the partnerships, with their ‘full cost recovery’ model and the introduction of ‘pre-paid metres’ led to disconnections of water to those who are unable to pay, thus reducing access.³⁴¹ Farlam states in this regard that early South African PPP projects suffered flaws and pitfalls such as the absence of pro-poor approaches.³⁴²

The profit motives of private companies could not be matched adequately with the legacy of apartheid relating to poverty, unemployment, landlessness and inability to pay for services. This has had a detrimental effect on the goals of extending access to previously impoverished communities and inevitably impacted negatively on the right of access to sufficient water as well as, ultimately, on the enjoyment of other socio-economic rights and services such as food, housing and health care.³⁴³ Instead of ensuring cost-effective and customer-orientated delivery, the PPPs have left the poor sections of our population, the customers, in a similar position to what they were in before the BOTT programme was introduced.

2.2.2.6 Failure to develop capacity of local governments

Even though training and capacity-building support to local government was made part of the contract in order for local governments to take operational responsibility for the new water schemes, the overall results were ‘mixed at best and disappointing at worst’.³⁴⁴ There were

³³⁷ Adinda 2008: 22.

³³⁸ Bond 2002: 213. See also Flynn & Chirwa 2005: 67 quoting Deedat et al. 2001; Fiil-Flynn 2001; McDonald and Pape 2002.

³³⁹ Adinda 2008: 23.

³⁴⁰ Mwebe 2004: 4.

³⁴¹ Mwebe 2004: 4.

³⁴² Farlam 2005.

³⁴³ Mwebe 2004: 5.

³⁴⁴ Buhl-Nielsen E & Pitso R *Danida Support to CWSS: North West Province – Pilot Project Descriptions, Resources and Lessons* (1999) available at www.waf.pwv.gov.za/directorate/waterservices/pds/danida (accessed 15 November 2016) (hereafter Buhl-Nielsen & Pitso 1999)

many obvious cases of poor value for money.³⁴⁵ In the Eastern Cape, it was reported that ‘councils lacking capacity would still need substantial practical support from external sources to meet their obligations to community water and sanitation schemes’.³⁴⁶ Bond reports that there were ‘poor technical design, poor community control functions ... systemic inconsistencies with neighbouring government-subsidised water schemes, and lack of training and transfer prospects’.³⁴⁷ This is despite the fact that BOTT was promoted as bringing in vastly greater managerial, technical and training capacity from the private sector to work with local government and communities so that many, many more projects can get going. This, plus the issue of poor workmanship, resulted in some municipalities refusing to take sole responsibility for the schemes.

As a result, the transfers in the four provinces did not go smoothly. In KwaZulu-Natal, some municipalities returned certain of their projects to the BOTT consortia.³⁴⁸ The DWAF review team concluded in this regard that ‘BOTT had failed to accelerate the delivery of projects and had offered very inadequate or non-existent training on institutional and social development (ISD) and operations and maintenance (O&M)’.³⁴⁹ In this regard, the Regional Council involved demanded that the ISD be reworked at no additional cost to DWAF and the Councils.³⁵⁰

A number of reasons have been identified for some of the problems above. First, the National Treasury argues that some of these problems are a result of lack of competition in PPP market.³⁵¹ Secondly, a study conducted to identify the challenges in the delivery of social and economic infrastructures through public-private partnership procurement arrangements in the sub-Saharan region, using South Africa as a case study for the region, found that there is a lack of capacity, policy direction and clarity among the political leaders and implementing agencies in the delivery of services through PPP projects.³⁵² This has resulted in inconsistency in the

³⁴⁵ Buhl-Nielsen & Pitso 1999: 47.

³⁴⁶ Pelpola K & Reeve C ‘M & E challenges in SA RDP: Community Water Supply and Sanitation Programme’ (2000) DWAF 11.

³⁴⁷ Bond 2002: 210.

³⁴⁸ Bakker & Hemson 2000: 8.

³⁴⁹ DWAF 1998.

³⁵⁰ Bakker & Hemson 2000: 8.

³⁵¹ PPP Unit 2007.

³⁵² Sanni AO & Hashim M ‘Building infrastructure through public-private partnerships in sub-Saharan Africa: Lessons from South Africa’ (2014) 143 *Procedia – Social and Behavioural Sciences* 133 136 (hereafter Sanni & Hashim 2014).

commitment of the government agencies, which affects the long-term implementation of PPP projects as they require longer time for the projects to be delivered.³⁵³ This is compounded by the mistrust among government's implementing agencies and a bias against PPPs.³⁵⁴ This also speaks to the lack of political will to address the challenges of infrastructure through PPP arrangements.

The problem of lack of capacity was also identified by an earlier study of public-private-partnerships in South Africa, which concluded that the BOTT experience demonstrates that there is 'a lack of public sector capacity in the implementation of public-private sector partnerships'.³⁵⁵ The 2014 study also indicates that there is lack of capacity among public officers to originate and implement PPP projects due to a lack of technical know-how, resources and authority.³⁵⁶ It was further reported that the resources in the PPP Unit are not capable of promoting the PPPs and helping to support the implementing agencies in developing same.³⁵⁷

2.2.2.7 PPPs in terms of the current regime

After these initial setbacks, there has not been enough enthusiasm for PPPs nationally. As a result, the number of PPP projects signed under Treasury Regulation 16 is relatively small. Since 2000 there are merely 24 signed PPP projects, only six of which are national PPP projects.³⁵⁸ The rest (18) are provincial PPP projects. The majority of the national PPPs concern non-essential services such as office accommodation, fleet management, information systems, and revenue collection. There are only two national projects on core national services, namely the State Vaccine Institute (health) and Moloto Rail Corridor Development (transport).

3 Conclusion

This chapter looked at how the personnel management practices and the provision of state services were transformed according to the NPM paradigm of service delivery. It was shown that the underlying consideration in both instances was to fast-track the delivery of services to the underprivileged and by so doing rectify the ravages of apartheid. It was thought that the

³⁵³ Sanni & Hashim 2014: 136.

³⁵⁴ Sanni & Hashim 2014: 137.

³⁵⁵ Bakker & Hemson 2000: 3-12.

³⁵⁶ Sanni & Hashim 2014: 137.

³⁵⁷ SPAID 2007.

³⁵⁸ National Treasury PPP Unit 2014.

traditional bureaucracy that operated in South Africa prior to the introduction of the NPM was ill-equipped to reverse the legacy of underdevelopment, neglect and impoverishment caused by apartheid. The promise of transforming the personnel management practices and introducing innovative service delivery methods was therefore to fast-track the delivery of services to communities in a cost-effective, efficient, and customer-oriented manner.

The assessment made in this chapter leads to the conclusion that the NPM model of service delivery was, in some instances, fully legislated and, therefore, incorporated into South Africa. This is particularly the case with regard to the NPM principle of managerialism and corporatisation. However, difficulties emerged in its practical implementation. In the first place, even though the NPM tenet of letting managers manage is given full effect, it has had adverse effects. For example, the open skills recruitment system has, through cadre deployment practice and the affirmative action policy, given politicians a licence to meddle in appointment processes. This has resulted in the appointment of unsuitable persons, sometimes for purposes of dispensing patronage or doing the politicians' bidding. Managers then lose any semblance of independence and, instead, become beholden to politicians who influence their appointments and on whom they depend for promotion or during the performance appraisal process. This study further reveals that the preferential treatment given to those managers beholden to politicians has an impact on staff morale and leads to organisational conflict, management turnover and the disruption of organisational stability and the delivery of services.

In the second place, the performance management system, while given full legal effect, is similarly not being fully and properly implemented in practice. First, even though the system has ensured that the free reign given to managers to manage is controlled through a system of accounting for performance, this study reveals that very few performance agreements have been signed and there is less enforcement even to the few agreements that have been signed. The failure to sign performance agreements holds severe repercussions for the entire performance management system in that senior managers cannot be held accountable for non-performance if there is no agreement in place that depicts key priorities for implementation during the fiscal year.

Secondly, it is shown that, in some cases, performance agreements are poorly formulated, resulting in appraisal outcomes that are either biased towards or against a senior manager. These conditions result in situations where managers get a performance bonus while failing to perform adequately or vice versa. As such, instead of tying the freedom enjoyed by the senior

managers to performance, poor implementation of the performance management system, which includes failure to sign performance agreements, non-compliance with time-frames, failure to monitor and review performance on a regular basis and lack of feedback to the employees, has a detrimental effect on efficient public administration. While this suggests that there is lack of skills base to implement performance management, it also suggests wilful disobedience. As a result, the law and fact do not match up – the performance management system is given full effect in law, but it is not given effect in practice.

In the third place, the contract system of appointment, which seeks to reduce poor performance, laxity and inertia in the public service has only been given effect to at the higher most echelon. Even at this level it routinely produces adverse results. Overall, it has not been given full effect to both in law and in fact. It is only applied to the elite and not the entire management team. Only HoDs and CEOs are appointed on a three-year contract. In terms of practical implementation, the contract system is used as a revolving door by politicians as it is more or less linked to the term of office of a political principal. As such, when a new political principal comes into office, he comes in with his or her own team and pushes out the old team.

Moreover, the short-term contract system is not applicable to the rest of the management cadre. This means that the rest of the management cadre is still employed, as in the Weberian era, on a permanent basis. If they do not perform optimally, there is no contract system to induce performance by threatening not to renew.

Thirdly, the contract system comes with a high level of uncertainty and no guarantee that managers can be redeployed when their term comes to an end. This has resulted in high turnover rate of senior managers. Concerns about future employment possibilities are the root cause of senior management turnover in the public service. The short-term contract also discourages capable individuals from applying to the public service because of this uncertainty.

Furthermore, the relationships between the executive authority and HoDs has an impact on the NPM tenet of letting managers manage. The professional independence of senior managers is sometimes compromised by this relationship because length of service, and even promotion, in the public service sometimes hinges on this relationship. These conditions do not create an environment conducive to letting managers manage.

In the fourth place, the introduction of the NPM tenet of corporatisation in South Africa was given full effect to in law in a manner that facilitated its implementation. However, the practice shows a gloomy picture, with few exceptions of excellence, as seen in section 2.2.1.2 above.

First, there was a complete collapse of corporate governance in a number of SOEs. Secondly, the dysfunctional working relationships between boards and the shareholders was manifested in the conflictual relationship between the chairperson, and his deputy, of the Board of Armscor and the Minister of Defence, which resulted in their dismissal. Thirdly, the SOEs are prone to corruption, as the Public Protector report on PRASA revealed. Fourthly, political appointments of board members of the SOEs that pay scant regard to the mix of knowledge and skills required on the boards play a role in the malaise in which the SOEs find themselves. Lastly, the selection of unsuitable qualified boards, coupled with the dysfunctional relationship between the boards and the executive authorities, leads to high turnover of board members. However, there are a few exceptional cases of excellence in this morass. SANRAL is one of them.

In the fifth place, the PPP tenet was given full effect to in law in a manner that facilitated implementation, even though that was done as an afterthought. A few earlier PPP projects took place on the strength of the initial aspirational policies which did not provide the necessary details. Some of those projects did not comply with the ethos of the NPM, which was later incorporated in the legislative framework that was introduced. For example, there was no transfer of sufficient risks to the private sector in the PPP water projects, as demanded by the NPM. Instead, the funding came from the state and the state itself bore the financial, operational and technical risks associated with the project. Furthermore, the three-pronged regulatory test that ensures affordability and value for money had not been formulated at that stage. Moreover, systems for monitoring the project were not put in place. As a result, it became a case of public money and private failure.

In sum, the evidence suggests that the manner in which the NPM model of delivery was given effect to at national level varied. There were instances where the legislative framework gave full effect thereto in a manner that facilitated its implementation. These instances relate to the open skills set, fixed-term contracts for the elite, performance management system, corporatisation and public-private partnerships.

However, the implementation of some of these NPM principles produced negative outcomes while others were simply poorly implemented. On the one hand, while opening the window for fresh air, mosquitoes and bugs also came in through the open recruitment system. This allowed patronage appointments and corruption. The fixed-term contracts in turn resulted in the haemorrhaging of scarce skills and rapid turnover of HoDs. It was used as a political tool to whip managers into line and thus curtail managerial independence. It leads to politicisation and

insecurity, and ultimately, to instability at the top. On the other hand, the performance management system was badly implemented owing to lack of skills. The public-private partnerships had a false start. Some PPP projects were entered into before a regulatory regime was put in place, with absurd results. However, once the regulatory regime for PPPs was put in place, national government was no longer enthusiastic about PPP,³⁵⁹ even though, overall, it has not disappeared from the agenda. In fact, these Regulations have helped and the comments are positive.

There were other instances where the legislative framework renders some of the NPM tenets unimplementable. The appointment of the SMS cadre by politicians renders the wide discretionary powers conferred on senior managers nugatory. Instead of exercising the freedom given to them to manage, they become beholden to their political principals in a manner that compromises their independence. Furthermore, limiting the application of fixed-term contracts only to the elite means that the rest of the public service still operates under the traditional model of service delivery. The rest of the public service is employed on a permanent basis in a manner that does not induce performance and personal accountability for own actions.

The foregoing considerations raise a question regarding the suitability of some of the NPM tenets, such as contract appointments and performance management, in South Africa because there is a general skills shortage. These NPM elements were fully implemented but were not a success owing to lack of skills. While performance management relies on the existence of the skills base for proper implementation, the contract system is flushing out the limited skills that exist. It is, therefore, seen as an unaffordable luxury to have a contract system which leads to brain drain. Other elements were not fully implemented, resulting in no success.

In the light of the overall national policy towards the NPM and the practice of it, the focus now shifts to local government. Given the problems at the national level, how has the implementation of the NPM fared at local government? First, how was it conceived and, secondly, how was it implemented, especially in the case of PPPs, noting that it is the national department that is implementing the PPPs at local government?

³⁵⁹ As the PPP unit at the National Treasury seems not to be functional, PPP are no longer strenuously pursued. There is no longer enthusiasm for PPP, even though it has not disappeared from the agenda.

CHAPTER SIX:

Implementation of the NPM Principle of Managerialism at Local Level

1 Introduction

This chapter discusses the transformation of the personnel management system¹ to embrace the NPM tenet of managerialism which, as noted in Chapters Two² and Five,³ includes managerial autonomy of decision-making, performance management and contractualism. It reveals that the restructuring of, or reforms in, local government, as was the case with the public service, were driven, among others, by the need to overcome the legacy of apartheid. The *White Paper on Local Government* outlines some of the ravages of the apartheid order to include: skewed settlement patterns which are functionally inefficient and costly; extreme concentration of taxable economic resources in formerly white areas; huge backlogs in service infrastructure in historically underdeveloped areas; great spatial separations and disparities between towns and townships, and urban sprawl; entrenched modes of decision-making, administration and delivery; and inability to leverage private sector resources for development.⁴

The main purposes of restructuring local government, therefore, were to create viable municipal institutions for dense rural settlements and create municipal institutions which recognise the linkages between urban and rural settlements. It was also impelled by the need to rebuild relations between municipalities and the local communities they serve.⁵ In sum, the restructuring or reform of local government was motivated by the need to improve the democratic and developmental nature of local government;⁶ re-articulate the local government relationship with other spheres of government;⁷ change jurisdiction in relationship to spaces;⁸

¹ This means the discussion is confined to section F of the *White Paper*. Reconfiguration of the modes of service delivery is the subject of the next chapter, Chapter Seven.

² At section 6.4.

³ At section 2.1.1.

⁴ *White Paper* 1998: 42 para. 4.1.

⁵ *White Paper* 1998: 42 para. 4.1.

⁶ *White Paper* 1998: 44 section B.

⁷ *White Paper* 1998: 75 section C.

⁸ *White Paper* 1998: 104 section D.

reconfigure modes of service delivery; ⁹ transform the personnel management system; ¹⁰ and introduce new financial systems.¹¹

Consistent with the NPM agenda of infusing greater efficiency, cost-effectiveness, value for money and improved delivery of services, the government sought to transform the systems of personnel management at local government. In the same way that personnel management was transformed in the public service, local government management, especially senior management, were given managerial autonomy and individual responsibility and appointed on short-term contracts in order to encourage effective delivery and ensure timely accomplishment of tasks.¹² Performance contracts were to be used as tools to measure these goals.¹³ The post-apartheid government also pushed for its transformation imperatives by introducing affirmative action policies, with specific focus on senior management positions, to make the public service reflect the country's demographics.¹⁴ This was important, inasmuch as the closed employment system that insisted on qualifications and years of experience¹⁵ would have excluded the majority of black South Africans.

According to Morgan N, Chipkin I & Meny-Gibert S et al. the transformation of the personnel management system was meant to catalyse a move away from what was seen as the authoritarian, hierarchical, operational and closed or exclusive system.¹⁶ They neatly summarise this to mean that managers

would be given more discretion to execute their work individually or in self-organised teams. Communication flows would also be improved, allowing for all [staff] to participate in organisational life. At the same time, a new staff training system would be developed, [one] more inclusive than the previous model [which] tended to exclude [black and] junior workers. It would also incorporate a wide range of skills development requirements and be delivered more systematically. Finally, local government training

⁹ *White Paper* 1998: 154 section F.

¹⁰ *White Paper* 1998: 154 section F.

¹¹ *White Paper* 1998: 180 section G.

¹² *White Paper* 1998: 160 para. 2.2.1.

¹³ *White Paper* 1998: 65 para. 3.2.

¹⁴ *White Paper* 1998: 161 para. 2.2.1.

¹⁵ As influenced by the Institute of Town Clerks of Southern Africa and the Institute of Municipal Treasurers and Accountants, which insisted in basing membership on race.

¹⁶ Morgan N, Chipkin I & Meny-Gibert S et al. 'Hollowing out the local state: Managerialism and skills in the water sector' (2015) *Public Affairs Research Institute* 20 (hereafter Morgan et al. 2015).

would be rationalised from two seemingly inefficient and wasteful systems into a single national system.¹⁷

The *White Paper* adds that new system would be ‘flexible, decentralised, demand-led, and structured to ensure continuous evaluation and improvement’.¹⁸

The sections below examine the NPM tenets of managerial autonomy, performance management and fixed-term contract system of employment.

2 Managerial autonomy

The meaning and significance of this NPM principle was discussed at length in Chapters Two¹⁹ and Five²⁰ and that discussion is not repeated here. Suffice it to say that managerial autonomy relates to letting managers manage. It encompasses three main ideas, namely an open skills set; wide discretion conferred on managers; and minimal political interference, which were also discussed previously.²¹ Of importance for present purposes is giving an idea of what each main idea relates to. Open skills sets involve opening up appointments to senior municipal administration to everyone and not reserving them only for those with predetermined sets of necessary skills, qualifications and experience. When it comes to the wide discretion conferred on senior managers, it is envisaged that senior managers will be given more autonomy to execute their work individually or in self-organised teams. Minimising political interference in turn entails freeing managers to take professional decisions and be held personally accountable for these decisions; constant political interference disturbs the NPM equation.

2.1 Legislative framework

As noted in the foregoing discussion, the NPM principle of managerial autonomy at local government level was systematically introduced through the *White Paper on Local Government*. The latter expounds the notion of elevating the role of the manager in the bureaucracy.²² The Structures Act, Systems Act and the MFMA give effect to the *White Paper on Local Government* and, as such, codify this NPM principle.

¹⁷ Morgan et al. 2015: 20.

¹⁸ *White Paper* 1998: 173-4 para. 4.

¹⁹ At section 6.4.

²⁰ At section 2.1.1.

²¹ See Chapter Two, section 6.4.1.

²² *White Paper* 1998: 162 para. 2.2.1.

At local level, the principle is enforced in particular at the two most senior levels of municipal administration, namely at the level of the municipal manager and those managers directly accountable to him or her, collectively referred to as section 57 managers.²³ These two levels constitute the executive echelon of municipalities, referred to as the senior management level.²⁴ Senior management level is defined to mean a management level associated with persons in senior management positions responsible for supervising staff in middle management positions.²⁵ It includes the municipal manager of a municipality or the chief executive officer of a municipal entity; any manager directly accountable either to the municipal manager, in the case of a municipality, or the chief executive officer, in the case of a municipal entity; and a person that occupies a position in a management level substantially similar to senior management level, outside the local government sphere.²⁶

The new manager, who would replace the old figure associated with the apartheid state, was envisaged as dynamic and innovative.²⁷ He or she would be unshackled from the old rules and enjoy greater discretionary power, in particular through a reduction of ‘procedural constraints on the handling of contracts, cash and staff’.²⁸

2.1.1 Open skills set

The Structures Act states that the municipal council must appoint the municipal manager, who is the head of the municipal administration as well as the accounting officer for the municipality.²⁹ The Systems Act contains similar provisions with regard to the appointment of a manager directly accountable to the municipal manager, but he or she must be appointed after consultation with the municipal manager.³⁰ In the period between 1998 and 2006,³¹ these statutes did not prescribe any form of qualification and experience, simply stating in each case that a person appointed as a municipal manager or a manager directly accountable to the

²³ With reference to the provision in the Systems Act that provides for their appointment.

²⁴ Koma SB ‘The state of local government in South Africa: Issues, trends and options’ (2010) 45(1.1) *Journal of Public Administration* 111 116 (hereafter Koma 2010).

²⁵ Regulation 1 Local Government: Municipal Finance Management Act: Municipal Regulations on Minimum Competency Levels (GN R493 GG 29967 of 2007) (hereafter Competency Regulations).

²⁶ Regulation 1 Competency Regulations. See also *Allen Paulse v Oudtshoorn Local Municipality and Others* (unreported Case No 25790/2011).

²⁷ Morgan et al. 2015: 20.

²⁸ Chipkin I ‘Transcending Bureaucracy: State transformation in the age of the manager’ (2011) 77(1) *Transformation: Critical Perspectives on Southern Africa* 31 46 (hereafter Chipkin 2011).

²⁹ Section 82 Structures Act.

³⁰ Section 56 Systems Act.

³¹ The period under discussion saw the implementation of the NPM in South African local government.

municipal manager must have skills and expertise to perform the duties associated with the post in question, without specifying what those skills should be.³²

This essentially entrenches the idea of an open skills set, where the focus is on the performance of the duties associated with the position in question rather than on a closed and listed set of skills. Anyone whose skills and expertise, in whatever field, enables him or her to perform the duties associated with the post is eligible for appointment. Accordingly, this NPM principle was fully given effect in a manner that facilitated implementation. In the discussion of practice below, the question of whether or not it was fully implemented is considered.

2.1.2 Wide discretion

The laws regulating the structures, systems and finances of local government have elevated the role of senior managers in the functioning of a municipality in line with the NPM ethos of managerial autonomy. First, sections 55 and 117 of the Systems Act read with section 82 of the Structures Act state that the municipal manager is the head of the municipal administration, the champion of the IDP and performance management, the service delivery agent, the interface between council and administration, the accounting officer as well as the custodian of all records and documents of the municipality.³³ Over and above these powers and functions, the municipal manager generally performs the functions and exercise the powers that are delegated to him by the municipal council, in which case, the discretion of the municipal manager is limited in the sense that the council can decide at any time to revoke those delegated powers. Such delegation does not divest the council of the responsibility for the exercise of those powers and the performance of those duties.³⁴

³² Sections 82(2) Structures Act and 56(2) Systems Act.

³³ Attendant on these roles is a full spectrum of powers and functions that can be exercised by the municipal manager only within the policy framework provided by the council. This is the fulcrum of the managerial responsibility and discretion conferred upon the municipal managers. The municipal manager has become hands-on in the management of municipal affairs. For example, as the interface between council and the administration, the municipal manager manages communication between administration and the municipality's political structures and office-bearers. In the role as the IDP and performance management, the municipal manager is responsible for the implementation of the municipality's IDP and ensuring that the administration operates in accordance with the municipality's performance management system. In the role as the service delivery agent, the municipal manager is responsible for the management of the provisions of service to local communities in a sustainable and equitable manner. Lastly, the municipal manager has the duty to implement legislation. In all these responsibilities, the municipal manager works hand in glove with heads of departments who are intimately attuned with the workings of the departments.

³⁴ Section 59(1)(b) Systems Act.

However, the powers contained in sections 55, 117 of the Systems Act and 82 of the Structures Act are derived directly from the statute; they are not delegated by the municipal council.³⁵ This is where the municipal manager derives the autonomy and wide discretion envisaged by the NPM. The Constitutional Court underscored the importance and centrality of the municipal manager in the system of local government when it stated that the municipal manager is ‘a key structure of a municipality and not merely a personnel appointment as contemplated in section 160(1)(d) of the Constitution’.³⁶ Essentially, the appointment of a municipal manager is not an ordinary personnel appointment, and as such it requires regulation in terms of an Act of Parliament.³⁷ It is now a statutory requirement that there must be a municipal manager for each municipality in the country.³⁸ The national equivalents of municipal managers are directors-general.

Secondly, in the case of section 56 managers or managers directly accountable to the municipal manager, the Free State High Court stated that these managers occupy ‘top management positions and are executive-style managers who should be working to meet targets, on a performance bonus system’.³⁹ These managers occupy the same position as heads of departments, as discussed in Chapter Five. As heads of their departments, they have full charge thereof and are answerable to the municipal manager, who has the responsibility for municipal administration, and ultimately to the municipal council.

However, the legal framework for local government contains certain conditions that constrain or impede the full implementation of this NPM element. First, there is a panoply of laws and regulation emanating from national government, prescribing certain actions and outcomes. Secondly, it is the council that appoints section 56 managers, even though the municipal manager, as head of the administration and the accounting officer, is charged with the formation of and development of an administration that is economical, effective, efficient and accountable.⁴⁰ Thirdly, there is rivalry between three national departments vying for regulatory control of local government, which results in the issuing of parallel but contradictory

³⁵ Ntliziywana P ‘Insulating administrative decision-making relating to individual staff appointments from political meddling: *Manana v King Sabata Dalindyebo Municipality*’ (2012) 129 *South African Law Journal* 49 55 (hereafter Ntliziywana 2012).

³⁶ *Executive Council of the Western Cape vs Minister for Provincial Affairs and Constitutional Development of the Republic of South Africa; Executive Council of KwaZulu-Natal vs President of the Republic of South Africa and Others* 1999 (12) BCLR 1360 (CC) (hereafter Executive Council) at para. 109.

³⁷ Executive Council paras. 107-109.

³⁸ Craythorne DL *Municipal Administration: The Handbook* (2006) 118 (hereafter Craythorne 2006).

³⁹ *Dihlabeng Local Municipality vs Nthute* [2009] JOL 23108 (O) at para. 116.

⁴⁰ Section 55(1)(a) Systems Act.

regulations for local government. This has a negative impact on managers in that it leaves them uncertain about which regulations to apply in a particular situation. These circumstances limit the full implementation of the legal framework giving effect to the NPM ethos of managerialism, and also constrains the discretion enjoyed by municipal managers. In what follows, these limits are explored in some detail.

2.1.2.1 Overregulation

The exercise of wide discretion requires that senior management operate in an environment encumbered by a minimum of regulations and red tape. Autonomy and managerial discretion presuppose that there are no orders being showered from other spheres prescribing what actions should be taken and the kinds of outcomes that should follow from them. Managerial autonomy is meant to increase responsibility, efficiency, and technical capacity in the delivery of services, the latter relating especially to the previously excluded communities, setting the management apart from the apartheid managers who took no personal responsibility for their own actions but only insisted on legal and procedural correctness.

However, in the context of South African local government, the opposite obtains. South African local governments are excessively regulated by national government.⁴¹ It would seem that the national sphere of government, even though it has decentralised general and specific powers to local government, does not trust local government enough to exercise those powers free from further regulation and prescription. The flurry of laws regulating local government⁴² are actually impeding or compromising the senior managers' discretion and their ability to perform. Instead of expending their energy on devising innovative solutions of delivering the much-needed services and in discharging local governments' developmental mandate, senior managers find themselves having to tick boxes and comply with hundreds if not thousands of 'musts' scattered throughout local government legislations.⁴³ This state of affairs has the potential to erode the managerial autonomy and relegate senior managers to being the implementing agents of other spheres.

⁴¹ Ntliziywana P 'Adding injury to insult: Intrusive laws on top of a weak system' (2016) VI *Constitutional Court Review* 32 48 (hereafter Ntliziywana 2016).

⁴² Performance Regulations of 2006, Competency Regulations of 2007, Systems Amendment Act of 2011, Appointment Regulations of 2014, and Public Administration Management Act of 2014.

⁴³ Ntliziywana 2016: 48.

The gravity of overregulation on managerial independence is neatly illustrated by the following scenario presented by De Visser:

The Municipal Manager of a small rural municipality needs to address the problem of a manager who is not performing, is possibly incompetent and is accused of mismanaging municipal funds. How many different laws must she consult to address this situation effectively and in accordance with the rule of law? On the issue of competency and performance, there are three laws The Municipal Manager may therefore have to consult at least six laws to deal with her problem, excluding internal council protocols and policies. Her efforts to deal with a real problem in line with the rule of law are thus complicated by [national overregulation of] ... local government.⁴⁴

2.1.2.2 Appointment of section 56 managers

Another issue that threatens the independence of senior managers is the appointment of senior managers. Even though the municipal manager, as a head of the administration and the accounting officer, is charged with the formation and development of an administration which is economical, effective, efficient and accountable, the law states that section 56 managers must be appointed by the municipal council, and not the municipal manager.⁴⁵ This is despite the provisions of the Systems Act to the effect that the administration formed and developed by the municipal manager must be managed by the municipal manager in accordance with the laws governing local government.⁴⁶ This raises the question of how municipal managers are expected to manage the administration if they cannot appoint their own team of executives.

In this regard, the National Development Plan (NDP) states that the appointment of senior managers by the council rather than the municipal manager often complicates or distorts the lines of accountability between senior managers and the municipal manager.⁴⁷ It makes it unclear whether they are accountable to councillors who appoint them or to the municipal manager who is the head of administration and the accounting officer of the municipality. As the author argues elsewhere in a slightly different context:

This has the potential to compromise the position of the municipal manager.
As the head of the administration, the municipal manager is answerable for his

⁴⁴ De Visser J 'Editorial' (2012) 14(3) *Local Government Bulletin* 1 1 (hereafter De Visser 2012).

⁴⁵ Section 56(1)(a) Systems Act.

⁴⁶ Section 55(1)(b) Systems Act.

⁴⁷ Republic of South Africa *National Development Plan: Vision for 2030* (2012) 415 (hereafter National Development Plan 2012).

or her administration. As such, the municipal manager should have the task of appointing, dismissing and disciplining his or her staff. Should councillors arrogate the power to themselves, [as is the case with section 56 managers] the municipal manager would be exposed to increasing insubordination on the part of his or her staff since they had not been appointed by him or her, and would feel that they were responsible to the council alone.⁴⁸

This constrains the discretion given to municipal managers to form and develop economic, effective, efficient and accountable administrations which they must manage within the law. It also constrains the discretion given to section 56 managers, as heads of their own departments, in that their appointment by politicians decreases their independence. They are at the beck and call of politicians. The NDP also proposes that municipal managers must be given authority over the appointment of managers reporting to them, because, as things stand, they (municipal managers) end up being answerable for matter over which they have little or no control.⁴⁹ The NDP states that this might lead to instability.⁵⁰

2.1.2.3 Minimal political interference

The lawmakers have adopted a contradictory approach to the NPM tenets of conferring wide discretion to managers/managerial autonomy. While they empower managers fully when it comes to supply chain management, specifically procurement decisions, by excluding political involvement, they do not do so in human resource management, especially the appointment of senior managers. Section 117 of the MFMA, entitled 'councillors barred from serving on municipal tender committees', makes it clear that no councillor may be a member of a bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer. The MFMA draws a clear distinction between the policy aspects of supply chain management and the implementation thereof.⁵¹ It states that the development and the adoption of a supply chain management policy is the sole preserve of the council. However, once adopted, the implementation of the policy is the prerogative of the municipal manager.⁵² In this regard, the municipal manager is in full charge of the tender or procurement process. He or she appoints the three key-decision-making

⁴⁸ Ntliziywana 2012: 56.

⁴⁹ National Development Plan 2012: 414.

⁵⁰ National Development Plan 2012: 414.

⁵¹ National Treasury 2005: 16.

⁵² Ntliziywana 2012: 57.

committees⁵³ that are involved in and supervise the tender process, all of them being composed of municipal officials.⁵⁴ The principle was confirmed in *Ortlieb and Associates v Camdeboo Local Municipal Council*,⁵⁵ where the court set aside an award of a bid because a councillor chaired the bid committee in contravention of section 117 of the MFMA.⁵⁶

The cushioning of administration from political influence in terms of section 117 of the MFMA is not limited to councillor membership of committees or attendance of their meetings. It extends to the entire tender process. This much was said in *Thabo Mogudi Security Services CC v Randfontein Local Municipality and Another*,⁵⁷ where the court stated:

[S]ection [117] was clearly enacted in order to ensure that politicians should not interfere in adjudication, recommendation or acceptance of tenders by a local authority ... in order to maintain the impartiality and integrity of the process. Politicians are by their nature agents of constituencies, and not impartial as officials of an organ of state ought to be. The plain intention of the section is therefore to avoid any involvement of councillors in the process...⁵⁸

Furthermore, the wide discretion conferred on municipal manager by section 117 of the MFMA means that it is only the municipal manager who can reject a recommended bid⁵⁹ or cancel a contract on grounds of corruption or fraudulent act during the bidding process.⁶⁰ The case of *Entsha Henra bk v Hessequa Munisipaliteit and Others*⁶¹ lends credence to this assertion, in that it states that even the mayoral committee may not decide on the exclusion of any tender for reasons of suspected corrupt action.⁶² The only recourse the council has is to exercise oversight over the implementation of the supply chain management policy, but it may not review the municipal manager's decision.⁶³

⁵³ Namely the bid specification committee, the bid evaluation committee, and the bid adjudication committee.

⁵⁴ Regulation 26(1)(b) Local Government: Municipal Supply Chain Management Regulations (GN R868 GG 27636, 30 May 2005) (hereafter SCM Regulations).

⁵⁵ *Ortlieb and Associates vs Camdeboo Local Municipal Council* 2005 JDR 0408 E (hereafter *Ortlieb* case).

⁵⁶ See also Ntliziywana 2012: 57.

⁵⁷ [2010] 4 All SA 314 (GSJ) (hereafter *Randfontein* case).

⁵⁸ *Randfontein* case para. 33.

⁵⁹ Regulation 38(1)(e) SCM Regulations.

⁶⁰ Regulation 38(f)(i) SCM Regulations.

⁶¹ [2008] ZAWCHC 25 (15 May 2008) (hereafter *Hessequa* case).

⁶² *Hessequa* case para. 28.

⁶³ *Hessequa* case para. 28 quoting Steytler N & De Visser J *Local Government Law of South Africa* (2007) 14-29 (hereafter Steytler & De Visser 2007).

Given that there are contextual similarities between supply chain management and human resource management and that they both have a propensity to attract political interference, it is perplexing that the lawmakers chose to treat these functions differently, thereby adopting a contradictory stance to the principle of managerial autonomy. It is inconsistent of the lawmakers to empower municipal managers only on supply chain management issues but not on human resource management issues as they both form an integral part of the principle of letting managers manage. They are the core functions of the municipal manager as the head of the municipal administration and as an accounting officer. Councillors should not be involved in the appointment of section 56 managers, which is the implementation of the recruitment policy.⁶⁴

When it decries political interference as one of the root causes of municipal dysfunction, the *State of Local Government Report* mentions staff appointment and procurement decision as the sites of such interference.⁶⁵ Furthermore, the Code of Conduct for Councillors contains a provision that prohibits councillors from interfering in the administration.⁶⁶ It is submitted that prohibiting councillors from interfering in the administration while allowing them to appoint the very same administration, is self-defeating. It is no use prohibiting councillor interference in the management and administration of any municipal department through the Code of Conduct for Councillors when heads of those departments are at the beck and call of politicians owing to their appointment. There is a possibility that the mere fact of appointment makes the administration beholden to the councillors who appointed them. A councillor would not need to interfere in the administration if he or she has a section 56 manager at his beck and call to do his or her bidding.⁶⁷ This creates fertile ground for corruption. Some councillors would deliberately push for the appointment of their consociates or cronies on the understanding that, once they are appointed, they would return the favour in cash or kind.

Furthermore, one of the duties of a municipal manager is the maintenance of discipline of staff.⁶⁸ The role played by councillors in the implementation of the recruitment policy, which

⁶⁴ Ntliziywana 2012: 57.

⁶⁵ Ministry for Cooperative Governance and Traditional Affairs *State of Local Government in South Africa: Overview Report - National State of Local Government* (2009) 72 (hereafter *State of Local Government Report* 2009).

⁶⁶ Item 11 Schedule 1 Systems Act.

⁶⁷ Twala C 'The African National Congress (ANC) and the cadre deployment policy in the post-apartheid South Africa: A product of democratic centralisation or a recipe for a constitutional crisis?' (2014) 14(2) *Journal of Social Sciences* 159 159 (hereafter Twala 2014).

⁶⁸ Section 55(1)(g) Systems Act.

means that the municipal manager cannot appoint his or her team of executives, might have deleterious effects for the proper maintenance of discipline by the municipal manager and for the sound and stable municipal administration.

First, it has the potential to cause confusion on where section 56 managers report, as they are appointed by the council. Some managers would be beholden, and prefer to account directly, to the council that appoints them. This distorts lines of accountability and compromises the position of the municipal manager as the head of the municipal administration. Secondly, as far as the maintenance of discipline is concerned, some managers could use the fact of their appointment to challenge the authority of the municipal manager.

It is therefore submitted that the municipal manager should have the powers to appoint, discipline and dismiss staff as part of his or her role as the head of the municipal administration and as an accounting officer. Ultimately, it is the municipal manager, and no one else, who accounts for his or her administration. It is an inconsistent application of the NPM principle of managerial autonomy for the lawmakers to prohibit interference in one part of the municipal managers function but not in other respects.

2.2 Practice

2.2.1 Open skills set

In practice, the fact that the laws do not require specific skills for senior management positions has opened the door for cadre deployment, the practice of assigning specific governance tasks to trusted members of a political organisation.⁶⁹ This practice is mostly, but not exclusively, used by the ANC to push for its transformation imperatives and ideological mandate. It places high premium on the loyalty of its members to its programme and ideological agenda, sometimes ahead of merit and even competence.⁷⁰ According to Chipkin, cadre deployment has seen the ‘movement of senior party officials into positions that maximise the fluid and often contradictory relationship between state and party’.⁷¹

⁶⁹ Booysen S *The African National Congress and the Regeneration of Political Power* (2011) 397.

⁷⁰ Twala 2014: 164. This is possibly because the numbers of skilled people within the ranks of the ANC have been limited due to historic exclusions of black people. Hence the ANC advocates for on-the-job learning in order to speed up transformation.

⁷¹ Chipkin I ‘Transcending bureaucracy: State transformation in the age of the manager’ (2011) 77 *Transformation* 3 (hereafter Chipkin 2011).

However, the cadre deployment practice is not at variance with this aspect of the NPM principle of managerialism, given that it too does not insist on a specific skills set. The problem only arises when councillors recruit the majority of their workforce in a manner that flouts the procedures and policies of sound human resource practices.⁷² One instance of this is the case of a municipality where a former tea-lady was promoted to being its chief financial officer.⁷³ Even though the focus of this NPM principle is on outputs and outcomes as opposed to qualifications and experience, senior managers must still be able to perform the tasks at hand. It stands to reason that a tea-lady would find difficulty in performing the tasks of a chief financial officer of a municipality. Furthermore, the application of this NPM principle in South Africa requires, at most, that a person appointed as a municipal manager or a manager directly accountable to the municipal manager must have skills and expertise to perform the duties associated with the post in question.

Accordingly, the problems prevalent at local government level are not a result of the introduction of the NPM but its inconsistent implementation. The example cited in the *State of Local Government Report* of parachuting a tea-lady to the position of chief financial officer is clearly a subversion of this principle of an open skills set. These kinds of practices are the reason that NPM principles are not living up to their promise of infusing efficiency, effectiveness and responsiveness in public service.

2.2.2 Wide discretion

This leg of the NPM principle of managerial autonomy was similarly not expressed in a manner that facilitates full implementation. First, the municipal manager is not permitted to constitute his or her own team of executives. Senior managers who report to him or her are appointed by the municipal council. Essentially, unlike the case in supply chain management practices, politicians are given free rein in human resource management practices. Their involvement is not only in the formulation and development of a recruitment policy, but in the actual appointments. This undermines the autonomy and discretion conferred on senior managers and invites untrammelled political interference in the running of the administration. This is how loyal cadres of political parties get appointed to dispense patronage. They then are beholden to

⁷² Ntliziywana 2012: 50. See also *The State of Local Government Report* 2009: 31.

⁷³ *The State of Local Government Report* 2009: 31.

a political party and councillors who appointed them rather than the municipal manager. This is the first affront to the NPM principle of letting managers manage.

Secondly, a number of national departments have been vying for regulatory control over local government and, in the process, issuing contradictory regulations that potentially choke managerial independence, innovativeness and flexibility. Furthermore, these departments have been throwing laws at local government with the aim to address the problems faced by municipalities and, by so doing, compromising and impeding the municipality's ability or right to exercise its powers or perform its functions.⁷⁴ Given that the senior management of a municipality is responsible and accountable for the administration and implementation of the municipality's by-laws and other legislation,⁷⁵ as well as the implementation of national and provincial legislation applicable to the municipality,⁷⁶ throwing laws at local government has a direct impact on their exercise of managerial discretion. Instead of expending their energy on devising innovative ways of delivering the much-needed services to the already impatient public, senior managers find themselves having to tick boxes and comply with a flurry of laws and their prescriptive requirements.⁷⁷

In their haste and overzealousness to fix local government, these departments have inadvertently created a snare that traps senior management instead of creating an enabling environment for local government to discharge its responsibilities.⁷⁸ It is submitted that this goes beyond the permissible limit of regulation in terms of section 155(7) of the Constitution. It encroaches on the geographical, functional or institutional integrity of local government in a manner contrary to section 41(1)(g) of the Constitution, which states that each sphere of government must exercise its powers and perform its functions in a manner that does not encroach on the geographical, functional or institutional integrity of other spheres. While the NPM gives wide discretion to managers, many laws take that discretion away. As indicated in the foregoing, because of these laws senior managers are reduced to ticking boxes instead of expending their energies devising and implementing new service delivery strategies. The courts have not invalidated laws because of overregulation in terms of section.⁴¹

⁷⁴ Ntliziywana 2016: 49.

⁷⁵ Section 55(1)(l) Systems Act.

⁷⁶ Section 55(1)(p) Systems Act.

⁷⁷ Ntliziywana 2016: 49.

⁷⁸ Ntliziywana 2016: 49.

2.2.3 Minimal political interference

The failure to bar politicians in the exercise of section 55 powers, which is clear evidence of the government's failure to give full effect to this NPM principle in a manner that facilitates its implementation, has invited numerous instances of interference in municipal administration. The most blatant recent instance took place in the Nelson Mandela Bay Metropolitan Municipality. After sustained political interference by the former executive mayor, Nkosinathi Benson Fihla and his deputy, Thando Ngcolomba, in the performance of her core functions, the former City Manager of the municipality, Dr Msengana-Ndlela, wrote a memorandum in exasperation to the Member of the Executive Council for Local Government and Traditional Affairs of the Eastern Cape (MEC) to no avail.⁷⁹ On realising that the intervention she sought from the MEC was not forthcoming and that the interference continued unbridled, effectively amounting to a constructive dismissal, she tendered her resignation on 31 May 2013, barely five months in office. She then took the matter to court, suing the municipality for damages on grounds of breach of a contract of employment.⁸⁰

In her court papers, Dr Msengana-Ndlela's complaint was five-pronged, with each of the prongs having to do with one form or another of undue political interference in the management of the municipality.⁸¹ First, she complained that she was unable to discharge her responsibilities as an accounting officer because of political interference. Secondly, she claimed that her attempts to protect the interests of the municipality and guard against possible irregular or unlawful expenditure were blatantly frustrated, thus hindering her in undertaking her accounting responsibilities in a collective leadership environment.⁸² Thirdly, and most importantly, she complained about political interference in the recruitment and appointment processes of senior managers. In this regard, the Executive Mayor and his Deputy intentionally placed undue political pressure on her by unilaterally rescinding council decisions relating to the macro-organisational structure, the enhancement of her office and the advertised positions.⁸³

⁷⁹ *Msengana-Ndlela v Nelson Mandela Bay Metropolitan Municipality* (3282/2013) [2015] ZAECPEHC 31 (hereafter *Msengana-Ndlela*) at para. 5.

⁸⁰ *Msengana-Ndlela* para. 1.

⁸¹ This was in contravention of item 11 of the Code of Conduct for Councillors.

⁸² *Msengana-Ndlela* para. 5.

⁸³ *Msengana-Ndlela* para. 5.

This goes to the heart of the inconsistencies in the implementation of the NPM conferring wide discretion on managers in that councillors not only set the recruitment policy to be implemented by the municipal manager, but also wanted to dictate the outcomes of the recruitment process, thus rendering the office of the municipal manager nugatory. This has not only hindered her in carrying out her responsibilities as Municipal Manager as contemplated in the Systems Act, but has compromised the position of the municipal manager.⁸⁴

The fourth prong of her complaint was that the Executive Mayor and his Deputy have placed undue political pressure on her to appoint a political advisor in the administration as an Acting Executive Director of Corporate Services and/or other senior managers, irrespective of that person's competencies, qualifications and experience.⁸⁵ Finally, she claims she was instructed to perform administrative acts that are contrary to government policies and procedures, in the name of 'majority rule'.⁸⁶ She claimed that she was threatened with violence and death by the Executive Mayor if she did not comply with such 'majority rule'.⁸⁷ She felt that her safety and security were severely compromised. She was furthermore instructed to appoint 16 members of the Mkhonto-Wesizwe Military Veterans Association (MKVA) as Close Protection Officers of the Executive Mayor and his Deputy, without due consideration of human resource policies and the availability of funds.⁸⁸ After none of the implicated individuals testified and refuted her evidence, the Eastern Cape High Court, Port Elizabeth, found in her favour, awarding her the sum of R3.1 million in damages.

This is a classic case of undue political interference that compromises the independence of senior managers in the discharge of their responsibilities. This shows that the implementation of the NPM in South Africa is fudged, resulting in some of the problems confronting local government. In this regard, the *State of Local Government Report* cites undue political interference of this kind as the root cause of dysfunction in municipalities.⁸⁹ This points to the fact that the South African government has failed to fully implement the NPM tenet of managerial autonomy, resulting in what may be termed fudged managerialism. The latter finds expression in the South African reality of decentralised functions combined with centralised

⁸⁴ *Msengana-Ndlela* para. 5.

⁸⁵ *Msengana-Ndlela* para. 5.

⁸⁶ *Msengana-Ndlela* para. 5.

⁸⁷ *Msengana-Ndlela* para. 5.

⁸⁸ *Msengana-Ndlela* para. 5.

⁸⁹ *The State of Local Government Report* 2009: 71.

politics, a situation where regional or even national political actors wish to prescribe outcomes in the recruitment and appointment processes.

Whereas governance in South Africa has been decentralised, politics have not.⁹⁰ The consequences of this are that

while the local party caucus of the ruling party in the municipality should ideally be the platform for rigorous debate of municipal issues on the basis of local concerns, it is often a proxy for regional and sometimes even national politics.⁹¹

As a result of this, political parties find it easy to unduly interfere in the affairs of the municipality, especially on whom to appoint. There is growing concern around the inappropriate relationship between regional party structures and municipalities.⁹² There are several reported instances where regional party structures seek to operate municipalities by remote control.⁹³ In what follows I will highlight two further instances of fudged-managerialism and its unintended consequences.

Another instance of outside influence in the running of municipal affairs that threatened the independence of senior management took place in the Amathole District Municipality in the Eastern Cape Province.⁹⁴ After an intensive recruitment and selection process, the municipality shortlisted two candidates for the post of the municipal manager, namely Dr Mlokoti and Adv. Zenzile, as the two outstanding candidates. During the selection process, an assessment of the relative strengths and weaknesses of the two candidates was undertaken, the conclusion being that Dr Mlokoti was the better candidate. The selection panel expressed reservations about Adv. Zenzile's lack of managerial experience.⁹⁵ However, the municipal council came to a different conclusion and appointed Adv. Zenzile. The aggrieved Dr Mlokoti took the matter to court, challenging the decision of the municipal council.

Outside interference, which was not refuted, was revealed in the judgment to the effect that 'the Regional Executive Committee of the ANC instructed the caucus to appoint Mr. Zenzile

⁹⁰ De Visser J 'The political-administrative interface in South African municipalities: Assessing the quality of local democracies' (2010) 5 *Commonwealth Journal of Local Governance* 86 88 (hereafter De Visser 2010).

⁹¹ De Visser 2010: 88.

⁹² De Visser 2010: 94.

⁹³ De Visser 2010: 94.

⁹⁴ *Mlokoti v Amathole District Municipality and Another* (2009) 30 ILJ 517 (E) (hereafter *Mlokoti case*).

⁹⁵ *Mlokoti case* paras. 15-17.

and the caucus carried out the instruction'.⁹⁶ This means that the appointed municipal manager's independence would be compromised as he would be indebted to outside forces. The judgment reveals that the executive mayor was not comfortable with this state of affairs and solicited two legal opinions, both of which advised against the appointment of Adv. Zenzile. However, the ANC caucus decided to withhold the opinions from the full council and the council therefore appointed Adv. Zenzile without the full knowledge of the legality or otherwise of their actions. The Court held the instruction of the ANC Regional Executive Committee as amounting to

an usurpation of the powers of [Amathole]'s council by a political body which, on the papers, does not appear even to have had sight of the documents relevant to the selection process including the findings of the interview panel. In my view, the involvement of the Regional Executive Council of the ANC in the circumstances described in [the papers] constituted an unauthorised and unwarranted intervention in the affairs of Amathole's council.⁹⁷

The Court agreed with Dr Mlokoti that the appointment of Adv. Zenzile was, indeed, illegal owing to the unauthorised and unwarranted interference by the ANC Regional Executive Council, and went on to appoint Dr Mlokoti on behalf of the municipality.⁹⁸

This instance of unwarranted external interference in the running of municipalities is not an isolated incident.⁹⁹ Interference of this kind threatens the newly acquired managerial independence of senior managers in that they are effectively accountable neither to the municipal manager nor the council but to external forces.¹⁰⁰ In the majority of cases, people who are appointed as municipal managers or senior manager are leaders of political parties seeking to dispense patronage amongst themselves. For example, a regional chairperson would want to be a municipal manager and effectively distort the lines of accountability because in the party hierarchy he or she is superior, but in the municipal hierarchy he or she is expected

⁹⁶ *Mlokoti* case para. 36.

⁹⁷ *Mlokoti* case paras. 36-37.

⁹⁸ *Mlokoti* case para. 39.

⁹⁹ See also the *Allen Paulse* case where the municipality shortlisted five candidates – TT Mnyimba, Mr T Paulse, Dr E Rankwana, Mr D du Plessis and Mr K Rosenberg – for the position of the municipal manager. The candidates were then subjected to the integrity and competency assessment. However, the outcome of this assessment was withheld from full council, which then appointed Mr Mnyimba on the basis of interview results. One of the aggrieved candidates, Mr Allen Paulse, took the matter to court, which declared the appointment null and void but refused to follow the *Mlokoti* precedent of appointing the right candidate itself. The Court furthermore did not decide on the issue of alleged political interference, which played out in the same way as in the *Mlokoti* case. There was overwhelming evidence that the selection process was manipulated to ensure a particular outcome.

¹⁰⁰ National Development Plan 2012: 415-6.

to report to the mayor who is his political junior. A 2009 study into the functionality of municipal governance arrangements reveals that

at times, party officials are appointed in positions below the section 57 appointments, where [CoGTA] and Treasury's competency rules are less of an impediment. The appointment of a party official who occupies a position higher than that of a councillor in party structures, to an administrative post, [plays] havoc with all the legal lines of accountability. For example, the distinction between the political and administrative functions of the municipality disappears where the official (who is a party office-holder) attends party caucus meetings. The council becomes subsidiary to the official and the latter gives the mayor and speaker instructions.¹⁰¹

However, a change in approach was effected in 2011, in an attempt to arrest this phenomenon. The Systems Act was amended in a manner that introduced the Weberian separation of politics from administration. In this regard, municipal senior management were prohibited from simultaneously holding political office in a political party.¹⁰² Accordingly, senior managers are barred from simultaneously holding the positions of chairperson, deputy chairperson, secretary, deputy secretary or treasurer of a party nationally or in any province, region or other area in which the party operates.¹⁰³ This was meant to ensure a clearer demarcation between the administrative and the political realms, and thus ensure that the administrative realm is properly cushioned from constant interference.¹⁰⁴ Although it works for elected leaders, the role of senior management is supposed to be non-partisan and professional.

This legislative intervention, which sought to forge a collective professional identity for senior managers by keeping this distinction clear, was invalidated on procedural grounds in *South African Municipal Workers' Union v Minister of Co-Operative Governance and Traditional Affairs*.¹⁰⁵ In an earlier judgment¹⁰⁶ the Amendment Act was challenged and invalidated because it followed the wrong legislative procedure. The Constitutional Court confirmed this order of invalidity, but suspended the order of invalidity for 24 months in order not to disrupt the day-to-day administration of municipalities and to allow Parliament to remedy the procedural defect. This means that the Act remains valid until the procedural defect is

¹⁰¹ De Visser J, Steytler N & May A *The Quality of Local Democracies: A Study into the Functionality of Municipal Governance Arrangements* (2009) (hereafter De Visser et al. 2009).

¹⁰² Section 56A(1) System Act.

¹⁰³ Section 1 System Act.

¹⁰⁴ National Development Plan 2012: 411.

¹⁰⁵ [2017] ZACC 7 (9 March 2017).

¹⁰⁶ *South African Municipal Workers' Union v Minister of Co-Operative Governance and Traditional Affairs* [2016] ZAGPPHC 733.

remedied. Even though a substantive challenge was launched on the constitutional validity of section 56A, both the High Court and the Constitutional Court did not express an opinion on this challenge, leaving it to Parliament to weigh the purpose sought to be achieved by the section and the constitutional rights it allegedly limits.

2.3 Assessment

The preceding discussion suggests that some elements of managerial autonomy at local government are not expressed in a manner that facilitates their implementation while others are. In regard to the former, while managers are insulated in some instances, i.e. in procurement decisions, they are made vulnerable to constant political interference in others, namely in appointment decisions. In the latter case, politicians are, by law, allowed to meddle in the exercise of section 55 managerial powers. As a result, managers have not been fully empowered to be risk-taking, innovative and efficient because those appointed on the party-political ticket take instructions from those parties. This design flaw in the legislative framework for managerial autonomy, which I call fudged managerialism, has not rectified the damages of apartheid as the introduction of the NPM in South Africa had sought to achieve. Instead, De Visser et al. state that ‘undue interference in the administration is a very real hindrance to service delivery’.¹⁰⁷

The undue interference which hampers delivery has led to an ever-growing number of protests, which is indicative of the fact that communities are not satisfied with the level of services delivered to them.¹⁰⁸ Other outward manifestation of discontent with municipal dysfunction include: the withholding of rates in some rural municipalities;¹⁰⁹ the rising number of provincial interventions in terms of section 139 of the Constitution;¹¹⁰ the issuing of disclaimers, adverse and qualified audit reports by the Auditor-General for the majority of municipalities because of their poor financial management;¹¹¹ and a plethora of court cases and reports on maladministration, corruption and fraud in the procurement of goods and services.

¹⁰⁷ (hereafter De Visser et al. 2009: 5).

¹⁰⁸ SALGA *Community Protest: Local Government Perceptions* (2015) 37.

¹⁰⁹ Powell D, De Visser J, May A & Ntliziywana P ‘The withholding of rates and taxes in five municipalities’ (2010) 12(4) *Local Government Bulletin* 9 9.

¹¹⁰ Powell D, O’Donovan M, Ayele Z & Chigwata T *Municipal Audit Consistency Barometer* (2013) 8.

¹¹¹ Powell D, O’Donovan M, Ayele Z & Chigwata T *Operation Clean Audit 2014: Why it failed and what can be learned* (2014) 5.

A 2009 study by the Department of Cooperative Governance and Traditional Affairs in each of the then 283 municipalities to assess the cause of poor performance or dysfunctionality revealed that these include a tension between the political and administrative interface; insufficient separation of powers between political parties and municipal councils; and poor compliance with the legislative and regulatory frameworks for municipalities.¹¹² On the triggers of section 139 interventions, the study cites governance issues that include political infighting, conflict between senior management and councillors and human resource management issues.¹¹³ A 2014 study by COGTA, five years later, showed that the picture had not changed.¹¹⁴

Some of the NPM tenets that were expressed in a manner that facilitated their implementation did not necessarily produce the intended outcomes. Instead, they often produced adverse outcomes. For example, the open skills set has resulted in the appointment of managers unable to perform the task of that office. In other instances, the open skills set has been overtaken by policy considerations.

3 Performance management system

3.1 NPM principles

A performance management system is both an accountability system for senior managers as well as a mechanism to tie managerial independence to the actual delivery of services. It was noted in Chapter Two¹¹⁵ that the NPM principle of performance management relates to the entering into agreement, written and negotiated, between government and managers in which quantifiable targets are set out for a given period of time and performance is measured against those targets at the end of it. The rationale is that the manner in which senior managers exercise their autonomy and professional independence must translate into efficiency, effectiveness and innovation in the delivery of services.

Performance management also ensures that managers take personal responsibility for their own actions, instead of hiding behind rules and procedural correctness. In this regard, the emphasis is on performance indicators, evaluations and performance related pay, and quality

¹¹² *The State of Local Government Report 2009*: 10.

¹¹³ *The State of Local Government Report 2009*: 10.

¹¹⁴ *Back to Basics* (2014) 4.

¹¹⁵ At section 6.4.2.

improvement. Taking personal responsibility for their own actions requires a clear statement of goals.

3.2 Legislative framework

The *White Paper on Local Government* introduced the performance management system as a tool and approach for making municipalities more developmental.¹¹⁶ In essence, there are three main reasons for the introduction of the performance management system in South African local government, namely to achieve development outcomes, to enable realistic planning and to enhance local government accountability.¹¹⁷ The function of holding managers accountable for their actions is not mentioned in the *White Paper*, but it can be inferred that the performance monitoring responsibility of municipal councils, audit committees and other spheres also serves as a counterweight to managerial autonomy.¹¹⁸ The *White Paper* states:

Performance management is critical to ensure that plans are being implemented, that they are having the desired development impact, and that resources are being used efficiently.¹¹⁹

Over and above introducing performance management as an instrument to ensure, among others, accountability, the *White Paper* states that accountability can also be achieved when communities are involved in developing some of the municipal key performance indicators.¹²⁰ The *White Paper* further states that performance monitoring indicators must be carefully designed in order to accurately reflect the efficiency, quality and value for money of municipal services.¹²¹ It states that poorly designed performance indicators can have a negative effect on delivery, and that it is critical that indicators focus on outcomes and not only outputs.¹²² The *White Paper* enjoins the national government to develop national performance management system which can be piloted by different municipalities.¹²³

¹¹⁶ *White Paper* 1998: 65 para. 3.2.

¹¹⁷ *White Paper* 1998: 59 para. 3. The National Planning Commission defines ‘accountability’ as referring to institutionalised practices of giving an account of how assigned responsibilities are carried out and public resources used. In a democracy, it is crucial for political leaders and public officials to account to the citizens for their actions. This is usually achieved through a system of institutional checks and balances.

¹¹⁸ *White Paper* 1998: 67 para. 3.2.

¹¹⁹ *White Paper* 1998: 66 para. 3.2.

¹²⁰ *White Paper* 1998: 65 para. 3.2.

¹²¹ *White Paper* 1998: 67 para. 3.2.

¹²² *White Paper* 1998: 67 para. 3.2.

¹²³ *White Paper* 1998: 68 para. 3.2.

As can be seen from the foregoing, the *White Paper* introduces the performance management system to do more than is expected under the NPM. It introduces it as a tool to achieve developmental local government, to ensure realistic planning, as an accountability measure and, by inference, as a ballast to managerial autonomy. Another objective of the performance management system, as introduced by the *White Paper*, is to ensure ‘efficiency, quality and value-for-money’.¹²⁴ As such, the *White Paper* uses the NPM tenet of performance management to best address local problems.

The Systems Act¹²⁵ and the MFMA take forward this NPM tenet introduced by the *White Paper*. The Systems Act provides for the establishment and development of a performance management system for each municipality in the manner commensurate with its resources; and the manner in which it should be monitored and reviewed by the municipality.¹²⁶ The performance management systems must set key performance indicators and targets and provide for the monitoring, review and reporting on municipal performance based on indicators linked to the IDP.¹²⁷ The Act requires all municipalities to ‘promote a culture of performance management among its political structures, political office bearers and councillors and its administration’.¹²⁸

The Act states that a performance agreement must be concluded within 60 days of appointment and annually thereafter, within one month after the beginning of a financial year of the municipality.¹²⁹ Failure to conclude the performance agreement within the specified periods results in the lapsing of the appointment. In the case of the municipal manager, the performance agreement must be entered into with the municipality as represented by the mayor or executive mayor, as the case may be.¹³⁰ When it comes to a manager directly accountable to the municipal manager, the performance agreement must be entered into with the municipal manager.¹³¹

The MFMA in turn enjoins the mayor to take all reasonable steps to ensure the performance agreements of municipal managers and section 56 managers are concluded and comply with

¹²⁴ *White Paper* 1998: 67 para. 3.2.

¹²⁵ Act 32 of 2000.

¹²⁶ Sections 38, 39 and 40 Systems Act.

¹²⁷ Section 41 Systems Act.

¹²⁸ Section 38(b) Systems Act.

¹²⁹ Section 57(2)(i) and (ii) Systems Act.

¹³⁰ Section 57(2)(b) Systems Act.

¹³¹ Section 57(2)(c) Systems Act.

the provisions of the Systems Act.¹³² The MFMA also requires the mayor to ensure that the performance agreements of said officials comply with the MFMA to promote sound financial management and that they are linked to the measurable performance objectives approved with the budget as well as to the service delivery and budget implementation plan.¹³³

The Systems Act spells out the contents of the performance agreement to include performance objectives and targets that must be met and the time-frames within which those objectives and targets must be met.¹³⁴ The Local Government: Municipal Planning and Performance Management Regulations,¹³⁵ issued in 2001, are silent on what the performance agreement should contain. They simply state that a performance management system must be adopted before or at the same time as the commencement by the municipality of the process of setting key performance indicators and targets in accordance with its Integrated Development Plan.¹³⁶

Further content to the performance agreement is given by the Local Government: Municipal Performance Regulation,¹³⁷ issued in 2006. These regulations sought to regulate how the performance of municipal managers and managers reporting directly to municipal managers will be uniformly directed, monitored and improved. Accordingly, the performance management system is designed to help the municipality to review the performance of senior managers and, in essence, hold them accountable for their actions.¹³⁸ The Performance Regulations state that the performance objectives and targets are set by the employer in consultation with the employee.¹³⁹ In giving content to the performance agreement, they state that performance objectives and targets spelt out in the principal Act shall include the following:

- (a) key objectives (the main tasks that need to be done);

¹³² Section 53(1)(c)(iii)(cc) MFMA.

¹³³ Section 53(1)(c)(iii)(aa) and (bb) MFMA.

¹³⁴ Section 57(4) Systems Act.

¹³⁵ Local Government: Municipal Planning and Performance Management Regulations (GN R796 GG 22605 of 2001) (hereafter Planning Regulations).

¹³⁶ Regulation 8 Planning Regulations.

¹³⁷ Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers (GN R805 GG 29089 of 1 August 2006) (hereafter Performance Regulations).

¹³⁸ Steytler & De Visser 2007: 8-58.

¹³⁹ Regulations 25(2) and 26(3) Performance Regulations.

- (b) key performance indicators (details of the evidence that must be provided to show that a key target has been achieved);
- (c) target dates (timeframe in which the task must be achieved);
- (d) weightings (relative importance of the key objectives to each other);¹⁴⁰ and
- (e) core competency requirements.¹⁴¹

These objectives and targets must be practical and measurable.¹⁴² They must measure efficiency, effectiveness, quality and the impact of the performance of the municipality, administrative component, structure, body or person for whom the target or objective has been set.¹⁴³ They must also be consistent with the municipality's development priorities and objectives set out in the Integrated Development Plan.¹⁴⁴

The performance agreement must also include a personal development plan aimed at addressing any developmental gaps.¹⁴⁵ Furthermore, the responsibilities of the accounting officer, as contained in the Municipal Finance Management Act, form part of the performance agreement of a municipal manager.¹⁴⁶ The Systems Act further provides that any regulations that relate to standards and procedures for evaluating performance of municipal managers or section 56 managers, and intervals for evaluation, must be regarded as forming part of the performance agreement.¹⁴⁷

In this regard, the Disciplinary Regulations¹⁴⁸ deal with standards and define sub-standard performance as 'poor work or unacceptable performance or failing to meet the required standards set for the post'.¹⁴⁹ The Systems Act further provides that the performance agreement must include the consequences of sub-standard performance.¹⁵⁰ The Disciplinary Regulations also regulate the procedure for dealing with sub-standard performance of municipal managers

¹⁴⁰ Regulations 25(2) and (3) Performance Regulations.

¹⁴¹ Regulation 26(5) Performance Regulations.

¹⁴² Section 57(5) Systems Act.

¹⁴³ Regulation 12(2)(b) Planning Regulations.

¹⁴⁴ Regulation 12(2)(e) Municipal Planning Regulations.

¹⁴⁵ Regulation 29 Performance Regulations.

¹⁴⁶ Section 57(4A) Systems Act.

¹⁴⁷ Section 57(4C) Systems Act.

¹⁴⁸ Local Government: Disciplinary Regulations for Senior Managers, 2010 (GN 344 GG 34213 of 21 April 2011) (hereafter Disciplinary Regulations).

¹⁴⁹ Regulation 1 Disciplinary Regulations.

¹⁵⁰ Section 57(4)(c) Systems Act.

and senior managers.¹⁵¹ In this light, they too form part of the performance agreement. The Systems Act regards the monitoring, measuring and evaluating of the performance of staff as an appropriate system and procedure to ensure fair, efficient, effective and transparent administration.¹⁵²

The Performance Regulations subject the employment of a municipal manager and those managers reporting directly to him or her to the signing of a separate performance agreement,¹⁵³ with the aim of measuring and evaluating their performance.¹⁵⁴ In terms of the regulations, the employer is enjoined to create an enabling environment that facilitates effective performance by its senior managers.¹⁵⁵ This includes an obligation to maintain a workable relationship with the managers, consulting them whenever exercise of powers or decisions to be taken will have an effect on the performance of their function.¹⁵⁶ When it comes to performance monitoring and evaluation, these regulations employ a carrot-and-stick approach to ensuring satisfactory performance. In the case of outstanding performance, the officials concerned are rewarded with a performance bonus for a job well done.¹⁵⁷ In the case of unacceptable performance, systemic remedial, developmental support or corrective steps are provided to assist such employees to improve their performance before the problem worsens.¹⁵⁸

Performance reviews are conducted quarterly in a financial year.¹⁵⁹ The performance of the municipal manager is evaluated by a panel consisting of the executive mayor; the chairperson of the performance audit committee, or of the audit committee in the absence of the performance audit committee; a member of the mayoral committee or executive committee, or a member of council in the case of plenary type municipalities; a mayor and/or municipal manager from another municipality; and a member of a ward committee, as nominated by the executive mayor or mayor.¹⁶⁰ When it comes to the evaluation of the performance of managers reporting directly to the municipal manager, the evaluation panel consists of the municipal manager; the chairperson of the performance audit committee or of the audit committee in the

¹⁵¹ Regulations 14-16 Disciplinary Regulations.

¹⁵² Section 67 Systems Act.

¹⁵³ Regulation 4 Performance Regulations.

¹⁵⁴ Regulation 27 Performance Regulations.

¹⁵⁵ Regulation 30(1) Performance Regulations.

¹⁵⁶ Regulation 31(1)(c) Performance Regulations.

¹⁵⁷ Regulation 32(2) Performance Regulations.

¹⁵⁸ Regulation 32(3)(a) Performance Regulations.

¹⁵⁹ Regulation 28(1) Performance Regulations.

¹⁶⁰ Regulation 27(4)(d) Performance Regulations.

absence of the performance audit committee; a member of the mayoral or executive committee or another member of council, in respect of plenary type municipalities; and a municipal manager from another municipality.¹⁶¹

The MFMA further requires each municipality and each municipal entity to have an internal audit unit which will advise the accounting officer and report to the audit committee on the implementation of matters relating performance management, among others.¹⁶² Furthermore, the MFMA requires the establishment of an independent audit committee in each municipality and each municipal entity to advise the municipality on matters relating to performance management and performance evaluation, among others.¹⁶³

3.3 Practice

Overall, the performance management system is aimed at linking the relationship between overall performance of the municipality and the performance of individual senior officials. At a micro-level, performance management is aimed at, first, achieving developmental local government, secondly, achieving realistic planning, thirdly, enhancing the accountability of senior managers, fourthly, structuring managerial autonomy, and lastly, ensuring efficiency, quality and value for money.

Furthermore, the performance management systems as applied in South Africa focuses on more than outputs by looking at outcomes as well. The *White Paper on Local Government* states that a performance management system which only measures outputs and not the outcomes will give a misleading picture of the effectiveness of the municipality's actions.¹⁶⁴ To clarify this point, it differentiates between these two concepts by using an example of a programme of cutting grass verges with the aim to maintain an orderly appearance in the streets and to discourage dumping of rubbish. In the case of an output, if a municipality cuts the grass regularly but fails to collect it, with the result of it becoming unsightly and leading to dumping of garden refuse by residents, it will have achieved its outputs. Outputs in this sense relate to the frequency of cutting the grass. The outcomes, on the other hand, relate to the intended goal of cutting the grass. The goal is to maintain an orderly appearance, and as such leaving the

¹⁶¹ Regulation 27(4)(e) Performance Regulations.

¹⁶² Section 165(1) and (2) MFMA.

¹⁶³ Section 166(1) and (2) MFMA.

¹⁶⁴ *White Paper* 1998: 67 para. 3.2.

grass uncollected defeats this purpose.¹⁶⁵ That is why the Systems Act states that the key performance indicators, as a yardstick for measuring performance, must go together with outcomes and impact.¹⁶⁶ As such, the performance management system as applied in South Africa sets the bar high for municipalities.

Given that the NPM tenet of performance management has taken a life of its own in South Africa, it will be difficult to assess its success solely on the basis of the NPM's original intent or promise, namely the external goals. The internal goals specific to the country in question must also be taken into account. As such, the assessment of the efficacy of the performance management system will look at whether it was fully implemented and, if so, whether it is achieving its internal goals. The assessment of its implementation in South Africa will look at the signing of performance agreement; monitoring the agreement; and acting upon the outcomes of monitoring.

3.3.1 Signing of performance agreements

The National Treasury states that despite the sound legislative framework outlined above governing the management of performance of senior managers in South African municipalities, municipal performance in the majority of cases remains poor.¹⁶⁷ In this regard, the Auditor-General states that the majority of municipalities do not strictly apply performance management policies and procedures to ensure that poor performance is adequately addressed.¹⁶⁸

An earlier study conducted by the Department of Cooperative Governance and Traditional Affairs in 2009 came to a similar conclusion. The study revealed that the challenges relating to poor performance and systemic failures in local government are partly due to the fact that many municipalities do not conclude performance agreements with their municipal managers and managers directly accountable to municipal managers at all or do not do so within stipulated time-frames.¹⁶⁹ It was found that 'there were frequent cases of performance management systems not established or complied with, and many municipal managers with non-signed

¹⁶⁵ *White Paper* 1998: 67 para. 3.2.

¹⁶⁶ Section 41 Systems Act.

¹⁶⁷ National Treasury 2011: 120.

¹⁶⁸ Auditor-General South Africa *Consolidated general report on the audit outcomes of Local Government 2011/12* (2013) 86 (hereafter Auditor-General South Africa 2013).

¹⁶⁹ *The State of Local Government Report 2009*: 30.

performance contracts.¹⁷⁰ This points to a failure of governance and the fact that municipal managers, in relation to section 56 managers, are failing in their duties as champions of performance management.

The magnitude of this non-compliance is such that out of 250 municipal managers in the employ of municipalities,¹⁷¹ only 174 (72 per cent) had signed performance agreements as at June 2008. This means that there were about 76 municipal managers and many more section 56 managers country-wide whose employment was not subject to the signing of performance agreements. The number rises to 103 municipalities if one takes into account unfilled municipal managers' positions during the same period. There was a slight improvement in 2009, with 196 (78 per cent) municipal managers having signed their performance agreements as at June 2009.¹⁷²

Although 76 (or 54 as at 2009) might suggest a relatively small degree of non-compliance, in order to achieve the goals set out in the legislative framework for performance management and thus rectify the devastations of apartheid, all senior managers must sign their performance agreements so that their performance can be assessed, to identify whether they are meeting the performance expectations related to their jobs. Furthermore, the performance agreement, as the yardstick for measuring performance, is the only basis for any rewarding of outstanding performance, including paying bonuses and progression to the next, and higher, remuneration package.¹⁷³ It is also the only basis for correcting unacceptable performance¹⁷⁴ and providing systemic remedial, developmental support or corrective steps.¹⁷⁵ Getting a fuller picture of performance or lack thereof in the country therefore requires that all municipal managers conclude their performance agreements within the stipulated time-frames.

It would seem that the problem of failure to sign performance agreements persists. The consolidated general reports on the audit outcomes of local government for the years 2011/12 to 2014/15 still paint a bleak picture. The reports highlight that 36 municipal managers did not have signed performance agreements in place for 2011/12, while 37 municipal managers' performance agreements for the same period did not comply with the provisions of the Systems

¹⁷⁰ *The State of Local Government Report 2009*: 30.

¹⁷¹ The vacancy rate was 33 municipal managers, given that there were 283 municipalities at the time.

¹⁷² *The State of Local Government Report 2009*: 30.

¹⁷³ Regulation 32(1) Performance Regulations.

¹⁷⁴ Regulation 32(2) Performance Regulations.

¹⁷⁵ Regulation 32(3)(a) Performance Regulations.

Act.¹⁷⁶ In the 2012/13 reporting cycle, 41 municipal managers did not have performance agreements in place.¹⁷⁷ A total of 34 municipalities did not adopt a performance management system in 2013/2014, while the system adopted by 41 was not compliant with the Systems Act.¹⁷⁸ The reports also revealed that section 56 managers did not have any performance agreements in place in 33 (10 per cent) municipalities for 2011/12,¹⁷⁹ 40 (12 per cent) for 2012/13¹⁸⁰ and 26 (10 per cent) for 2013/14.¹⁸¹

All of this indicates that the culture of performance management is not yet entrenched in South African local government. The NPM tenet of performance management is not fully implemented. This is the case despite the fact that a failure to sign a performance agreement within the stipulated timeframe results in the lapsing of the contract of employment,¹⁸² constitutes a breach of contract and can be used as a ground for termination of the employment contract.¹⁸³ The Auditor-General has also expressed concerns regarding local government's failure to embed the principles pertaining to the performance and productivity of employees.¹⁸⁴

The failure by senior managers to conclude their performance agreements has the potential to collapse the entire system of performance management. To add insult to injury, acting managers, of which there are many, do not have to sign performance agreements because, by law, they can only act for three months, renewable for a further three months.¹⁸⁵ First, as champions of the performance management, they are not setting the right tone regarding the importance of concluding performance agreements for the entire administration. The role of leadership is the most important human factor in the performance management system in the sense of encouraging, guiding and supporting their subordinates.¹⁸⁶ As such, if the leadership or senior management does not show full commitment to performance management, the system

¹⁷⁶ Auditor-General South Africa 2013.

¹⁷⁷ Auditor-General South Africa 2013: 60.

¹⁷⁸ Auditor-General South Africa *Consolidated general report on the audit outcomes of Local Government 2012/13* (2014) 69 (hereafter Auditor-General South Africa 2014)

¹⁷⁹ Auditor-General South Africa 2013: 105.

¹⁸⁰ Auditor-General South Africa 2014: 60.

¹⁸¹ Auditor-General South Africa *Consolidated general report on the audit outcomes of Local Government 2013/14* (2015) 81 (hereafter Auditor-General South Africa 2015).

¹⁸² Section 57(2)(a)(i) Systems Act.

¹⁸³ *The State of Local Government Report* 2009: 31.

¹⁸⁴ Auditor-General South Africa 2013: 60.

¹⁸⁵ Section 56(1)(c) Systems Act.

¹⁸⁶ Salem H *Organizational Performance Management and Measurement: The Lebanese Experience* (2003) 8.

is bound to crumble.¹⁸⁷ Secondly, as mentioned in Chapter Five¹⁸⁸ in relation to SMS members at national and provincial level, it creates a culture of impunity in that senior managers cannot be held accountable for non-performance if there is no agreement in place that outlines key priorities for implementation during the financial year.

Thirdly, the failure by municipal managers to sign performance agreements compromises the entire value chain of the performance management system as organisational performance has to be cascaded from the accounting officer to the entire staff to ensure the link between overall organisational performance and individual performance. How then can municipal managers enter into performance agreements with section 56 managers if they have not concluded theirs with the municipality as duly represented by the mayor or the executive mayor? They cannot effectively enter into performance agreements with subordinates when their performance agreements have not been concluded. Otherwise, that would mean there is no link between individual performance objectives and targets and the overall organisational objectives and targets. As such, a failure to sign a performance agreement by a municipal manager holds severe repercussions for the entire performance management system in a given municipality.

Accordingly, even though the legislative framework governing performance management seeks to do more than is envisaged by the NPM, South African municipalities are failing to even meet the bare minimum set by the NPM, namely accountability and structuring autonomy. Without a performance agreement in place, municipalities may find it difficult to monitor whether employees are meeting the performance expectations related to their jobs and the goals and strategies set out in its IDP.

This leads us to the question of whether or not municipalities and other relevant stakeholders are exercising their monitoring and evaluation role over the performance management system as demanded by the legislative framework highlighted above.

3.3.2 Monitoring the agreement

As highlighted in the legislative framework discussed above, there are three levels of monitoring performance agreements. The first two levels are done within the municipality through the internal performance audit and oversight committees and the quarterly performance

¹⁸⁷ Gaffoor S & Cloete F 'Knowledge management in local government: The case of Stellenbosch municipality' (2010) 12(1) *SA Journal of Information Management* 428.

¹⁸⁸ At section 2.3.1.

evaluation conducted by the municipality. The third level of monitoring is done by the upper spheres of government. In this regard, the Performance Regulations require municipalities, first, to submit copies of signed performance agreements to the MECs responsible for local government in the relevant province as well as the national minister responsible for local government within 14 days after their conclusion.¹⁸⁹ This allows the MECs and the Minister to check whether all municipalities have concluded performance agreements with their senior managers and whether such agreements comply with the provisions of the Systems Act. Furthermore, the performance assessment results of the municipal manager must be submitted to the MEC for local government as well as the national minister responsible for local government within 14 days after the conclusion of the assessment.¹⁹⁰

Given this elaborate monitoring framework, the problems of failure to sign performance agreements should not be happening. Furthermore, the poor levels of performance by municipalities should be a thing of the past because senior managers are incentivised to perform better through rewarding of outstanding performance (performance bonuses) and correction of unacceptable performance, including the procedure for dealing with sub-standard performance contained in the Disciplinary Regulations.¹⁹¹

However, the *State of Local Government* report indicates that in most municipalities performance management systems were either not developed or complied with.¹⁹² The report further highlights that many municipalities were not submitting copies of signed performance agreements to the MECs responsible for local government in the relevant province and the national minister as is required by law.¹⁹³ The report concludes by stating that this is mainly because of the poor monitoring and oversight capability of provincial government.¹⁹⁴ It is suggested that the national government is also failing in its responsibility to monitor local government. The foregoing indicates that it is not only municipal failures to monitor the performance management system that derail the culture of performance and good governance: other spheres charged with monitoring and supporting municipalities are also failing in this role.

¹⁸⁹ Regulation 4(5) Performance Regulations.

¹⁹⁰ Regulation 34(3) Performance Regulations.

¹⁹¹ Regulation 16 Disciplinary Regulations.

¹⁹² *The State of Local Government Report 2009*: 30.

¹⁹³ *The State of Local Government Report 2009*: 30.

¹⁹⁴ *The State of Local Government Report 2009*: 30.

Furthermore, the National Treasury states that given the fact that the performance management system is intended to create a nexus between the overall performance of the municipality and that of individuals employed in the municipality, it is puzzling that some senior managers are receiving performance bonuses when municipalities are clearly not performing.¹⁹⁵ In this regard, it was reported in 2011 that of the 283 municipalities in the country then, 147 of them received adverse audit outcomes for poor financial management. Of concern is that 56 of those municipalities paid performance bonuses, despite the reported poor performance.¹⁹⁶

To make matters worse, performance bonuses are paid despite failures to sign performance agreements.¹⁹⁷ In these circumstances, the National Treasury proposes that the 'no performance contract, no bonus' principle should apply.¹⁹⁸ Sheoraj further reports that the performance management system is so weak that 'managers are allowed to revise or change their performance targets late in the year to ensure that they receive their bonuses, [while] these changes do not align with organisational performance'.¹⁹⁹ It was further revealed that 'the largest non-compliance finding was that accounting officers did not take reasonable steps to prevent unauthorised, irregular and/or fruitless and wasteful expenditure in 253 municipalities'.²⁰⁰ This puts the municipal manager, as the accounting officer, head of administration and the champion of the performance management system in a difficult position. Furthermore, the most common finding in the 2013/14 audit cycle was that municipalities did not maintain an effective, efficient and transparent system of internal control regarding performance management.²⁰¹ This was the case in 59 municipalities. A further 44 municipalities did not have mechanisms to monitor and review their performance management system.²⁰²

This state of affair indicates that municipal councils, performance audit committees, oversight committees, provincial MECs, and national government are failing, first, to monitor whether senior managers have concluded their performance agreements and whether those agreements comply with the law. Secondly, they are failing to assess the performance of senior managers

¹⁹⁵ National Treasury *Local Government Budgets and Expenditure Review: 2003/04 - 2009/10* (2011) 120 (hereafter National Treasury 2011).

¹⁹⁶ Child K 'State to cap municipal manager salaries' *Mail & Guardian* 20 September 2011 (hereafter Child 2011).

¹⁹⁷ Child 2011.

¹⁹⁸ National Treasury 2011: 121.

¹⁹⁹ Sheoraj R *Overview of South Africa's Public Services: A Dialogue on Capacity Building Skills Readiness and Service Delivery* (unpublished Doctoral thesis, University of Pretoria, 2015) 301.

²⁰⁰ Auditor-General South Africa 2013: 12. See also *Twenty Year Review* 2014.

²⁰¹ Auditor-General South Africa 2014: 69.

²⁰² Auditor-General South Africa 2014: 69.

in relation to the key performance indicators and targets contained in the performance agreements. That is why managers are awarded bonuses without having signed their performance agreements, which are the basis for any rewarding of outstanding performance or correcting of unacceptable performance. This collapses the performance management system. It also deprives the system of local government of an opportunity to review its performance more regularly, such that interventions in operational matters where poor performance or the risks occur can be made promptly.

A good performance management system enables municipalities to appreciate the state of performance of its senior managers, and is used as an early-warning indicator which allows for appropriate intervention for correction or rewards.²⁰³ Quarterly reporting is supposed to be used to track the performance of senior managers and intervene where appropriate. The reward system should be used to motivate senior managers to maintain a culture of good performance. Failure to reward good performance, or rewarding of poorly performing managers, is demotivating and does not engender such a culture. Furthermore, poor monitoring results in poorly performing managers not getting the necessary developmental support they need. Accurate and truthful performance assessments are fundamental in reaching the necessary performance efficiency.

It is apparent from the foregoing that the NPM tenet of performance management which was codified into South African law is not being fully implemented. In this regard, Pulakos and O'Leary state that if performance management is not adequately implemented, it could damage senior manager's confidence and harm their relationship with the municipality.²⁰⁴ Furthermore, Makwethu suggests that there is a correlation between poor audit results and weaknesses in performance management.²⁰⁵ CoGTA proposes to institutionalise a performance management system to effect the changes that are required in the system.²⁰⁶ In this regard, CoGTA proposes to develop Local Government Back to Basics Strategy indicators which will measure whether municipalities are performing in terms of the basics, these being:

²⁰³ Sehoa MF *Implementation of Performance Management System on the Performance of Municipal Section 57 Managers in the Capricorn District Municipality, Limpopo Province* (unpublished Doctoral thesis, University of Limpopo, 2015) 102 (hereafter Sehoa 2015).

²⁰⁴ Pulakos ED & O'Leary RS 'Why is performance management broken?' (2011) 4(2) *Industrial and Organizational Psychology* 151.

²⁰⁵ Auditor-General South Africa *Media Release* (2016) 8.

²⁰⁶ *Back to Basics* (2014) 8.

- putting people first;
- delivering basic services;
- good governance;
- sound financial management; and
- building capacity.²⁰⁷

However, the problem is not the lack of policies and a regulatory regime. The problem lies in the implementation of the extant framework. Until such time as that legislative framework is implemented and fully given effect to, these commitments ring hollow. They only add another layer of compliance to the existing unimplemented framework.

3.3.3 Acting upon the outcomes of monitoring

A study conducted by CoGTA in 2014 highlights that ‘the primary problem we face in the local government system is that we don’t recognise and reward good performance adequately, nor are there sufficient consequences for under-performance’.²⁰⁸ This means, as discussed in the preceding section, performance monitoring and evaluation is hardly done, and where it is done, the outcomes of such monitoring are either not taken seriously or are not acted upon. In some cases, this has resulted in non-payment of performance bonuses to well-performing employees. This general lack of consequences was also highlighted by the Auditor-General’s report, which stated that at least 73 per cent of municipalities

showed signs of a general lack of consequences for poor performance. This is evidenced by the fact that modified audit opinions remained the norm. When officials and political leaders are not held accountable for their actions, the perception could be created that such behaviour and its results are acceptable and tolerated.²⁰⁹

The Auditor-General further stated that more than half of the municipalities blame their mayors and councillors, for being unresponsive to the issues identified by the audits and for not taking

²⁰⁷ *Back to Basics* (2014) 9.

²⁰⁸ *Back to Basics* (2014) 8.

²⁰⁹ Ministry for Performance Monitoring and Evaluations *Twenty Year Review South Africa 1994 – 2014* available <http://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Local%20Government.pdf> (accessed 15 January 2017) (hereafter *Twenty Year Review*). See also Auditor-General South Africa *Consolidated General Report on the audit outcomes of Local Government 2010-11* (2012) 12 (hereafter Auditor-General South Africa 2012).

recommendations seriously, for their poor audit outcomes.²¹⁰ The findings are that mayors and councillors are slow in taking up their responsibilities and do not take ownership of their role in implementing key controls. The report concluded by warning that if these widespread root causes are not addressed, they will continue to weaken the pillars of governance.²¹¹

According to Nengwekhulu, the lack of accountability and the absence of an effective disciplinary system within local government are two major factors contributing to its failure to perform.²¹² Deloitte adds the absence of consequences for failure to perform or achieve objectives to the list.²¹³ A study conducted by Afesis Corplan in partnership with the Eastern Cape's Department of Traditional and Local Government highlights the absence of consequences for unethical behaviour and poor performance as contributing to senior managers' lack of commitment to improve compliance and performance.²¹⁴ There is lack of consequences for poor performance and transgressions despite the fact that the legislative regime is clear on the consequences of non-compliance with legislation and the steps to be taken to deal with such transgressions.²¹⁵ In the 2014/15 audit report, the Auditor-General again decried the lack of consequences in local government for poor performance and transgressions as having contributed to slow response to the high levels of non-compliance, poor audit outcomes, supply chain management transgressions, and unauthorised, irregular as well as fruitless and wasteful expenditure.²¹⁶

3.4 Assessment

It is apparent from the foregoing that the legislative framework gave full effect to the NPM tenet of performance management in a manner that facilitated its implementation. However, the proof of the pudding is in the eating. In this regard, the fact that there are numerous failures to establish a performance management system in some municipalities, or to conclude the performance agreement at all, or within the specified periods, without consequences such as

²¹⁰ Auditor-General South Africa 2012: 12.

²¹¹ Auditor-General South Africa 2012: 12.

²¹² Nengwekhulu RH 'Public service delivery challenges facing the South African public service' (2009) 44(2) *Journal of Public Administration* 356.

²¹³ Deloitte 'Municipal Clean Audit Efficiency Series – Leadership Ownership' available at <http://deloitteblog.co.za/www102.cpt1.host-h.net/wp-content/uploads/2012/12/Municipal-Clean-Audit-EfficiencySeries-Leadership-Ownership.pdf> (accessed 13 February 2017).

²¹⁴ Ramutsheli M & Van Rensburg J 'The root causes for local government's failure to achieve its objectives' (2015) 17(2) *South African Journal of Accountability and Auditing Research* 107 113.

²¹⁵ Auditor-General South Africa 2014: 18.

²¹⁶ Auditor-General South Africa, Media Release 2016: 9.

the lapsing of the appointment, is telling. This failure indicates that the performance management system is not being fully implemented. There are many reasons for this non-compliance. One of them relates to the fact that the MFMA charges the mayors with the responsibility to take all reasonable steps to ensure the performance agreement of municipal managers and section 56 managers are concluded. Mayors also have to ensure that said agreements comply with the provisions of the Systems Act. In this regard, the majority of mayors lack the necessary capacity to draft performance agreements that comply with the relevant laws, to monitor adherence to them, and to enforce them. That is why there are reported cases of municipalities without a proper performance management system or senior managers without performance agreements.

The other reason relates to the cosiness between senior managers and politicians who are charged with monitoring and enforcing the performance management system. This intimate relationship results in managers receiving performance bonuses even if they do not have performance agreements or have them but have not performed according to the employers' expectations. Accordingly, although the performance management system is designed to help the municipality review the performance of senior managers on a regular basis and, in so doing, hold them accountable for their autonomy, this cosiness works against this principle. While the Systems Act requires the performance agreement to include consequences for sub-standard performance, mayors and councillors are tolerant. This fuels the culture of impunity and entitlement discussed above. A principle of 'negative audit outcome, no performance bonus' would stem this problem. It would also ensure that senior managers do not operate in silos, focusing on individual performance rather than organisational goals.

The foregoing discussion suggests that the sound legislative framework for performance management in South Africa is not matched by a performance culture at municipal level. This indicates that this NPM tenet is not fully implemented to infuse the culture of performance and accountability and thus enhance organisational efficiency and effectiveness. As a result, the culture of impunity that existed under apartheid still persists. These negative consequences do not flow directly from the NPM tenet of performance management because it has not been fully implemented. They flow from its half-hearted implementation due to lack of skills and political will.

4 Fixed-term contract

4.1 NPM principles

It was seen in Chapter Two²¹⁷ that the NPM pushes for a move away from a military-style public service of being employed for life to contingent forms of employment, such as greater flexibility in hiring and rewards and the concomitant weakening of job security or pension entitlements. In this regard, managers are hired on a fixed-term contract, rewarded according to their performance, and can theoretically be sacked if their work does not measure up. Through contracts, political leaders are supposed to specify targets and objectives more clearly, and performance should be controlled by use of quantitative indicators for monitoring results and for measuring efficiency. This removes the assured existence enjoyed by bureaucrats in the Weberian bureaucracy and creates incentives for mediocre time-servers to become innovative and work efficiently.

Like the performance management system, the fixed-term contract system or contractualism seeks to enhance accountability for performance and resource use and to structure the autonomy enjoyed by managers. In what follows, I look at whether this NPM principle is fully operationalised in South Africa and, if so, whether it is living up to its promise.

4.2 Legislative framework

The NPM tenet of contractualism or performance-based contract systems for senior management at local government level was also introduced by the *White Paper*.²¹⁸ As seen in the preceding section and in Chapter Two, it entails giving senior management short-term contracts, with the employer (municipalities) reserving the right and the ability to let them go more easily and regularly if their performance is unsatisfactory. This tenet, therefore, also serves to structure managerial independence. Furthermore, in exchange for letting managers manage, municipalities, over and above the performance management system, use this device to hold senior management accountable for their own actions. The *White Paper* states:

Performance based contracts can improve accountability and induce a focus on outputs. Municipalities should consider the introduction of performance-based contracts for the first two or three reporting levels of senior officials.

²¹⁷ At section 6.4.3.

²¹⁸ *White Paper* 1998: 160 para. 2.2.1.

These posts would remain professional appointments, but employment contracts would specify job outputs (results to be achieved) and performance standards. Contracts would be renewable based on an assessment of performance against specified targets.²¹⁹

The *White Paper* further states that management reform should involve building a culture of commitment to results and value for money and should include the introduction of performance-based contracts for senior staff.²²⁰ It is thought that performance-based contracts can improve accountability and induce a focus on outputs.²²¹ This signals a shift from management that remains predominantly white and historically schooled in rigid, authoritarian and outdated management practices.²²² Employment contracts would only be renewed based on an assessment of performance against specified targets.²²³ Therefore, contractualism, same as performance management, enables local government to adopt a zero-tolerance stance towards inefficiencies and lack of productivity and thus creates a municipality better equipped to deliver efficiently, economically and effectively on its promises to the people.²²⁴

The Systems Act and the MFMA codify this tenet into law. Section 57(6) of the Systems Act prescribes only fixed-term employment as an essential term of the employment contract of the municipal manager, and this section also determines this fixed term.²²⁵ This employment contract is for a fixed term of five years.²²⁶ If the contract is concluded during the term of a council, it may not exceed one year after the election of the next council.²²⁷ In the case of section 56 managers, the Act leaves the employment terms to the parties to decide, but holds the door open for council to elect to also apply section 57(6) to a section 56 manager, in which case this fact must be recorded in the employment contract itself.²²⁸

²¹⁹ *White Paper* 1998: 160 para. 2.2.1.

²²⁰ *White Paper* 1998: 160 para. 2.2.1.

²²¹ *White Paper* 1998: 160 para. 2.2.1.

²²² *White Paper* 1998: 160 para. 2.2.1.

²²³ *White Paper* 1998: 161 para. 2.2.1.

²²⁴ Sehoa 2015: 4.

²²⁵ *Uthukela District Municipality vs Khoza and Others* (D 735/2013) [2015] ZALCD 19 (hereafter *Uthukela* case) at para. 48.

²²⁶ Section 57(6) read with the repealed section 57(7) Systems Act. Given that this discussion is for the period 2000-2006, the repealed section 57(7), which sought to extend the application of fixed-term contracts to section 56 manager, is still applicable.

²²⁷ Section 57(5)(a) Systems Act.

²²⁸ *Uthukela* case para. 48.

There should be no expectation that the contract will be renewed or extended beyond the expiry date;²²⁹ instead, the contract must provide for the cancellation thereof in the case of non-compliance with the employment contract or performance agreement or as a result of medical incapacity.²³⁰ Renewal or otherwise for a fixed period depends on the prior satisfactory attainment of identified performance objectives and targets.²³¹ However, terms of renewal could be included, by agreement between the contracting parties, in the contract.²³² This was the case in *Maphumulo Local Municipality v Mhlongo and Others*.²³³ In this case, the employment contract contained a term of renewal to the effect that ‘absent poor performance or incompatibility as determined by the Mayor, a municipal manager at the Maphumulo Municipality could expect a renewal of his fixed term contract’.²³⁴ The court, agreeing with the arbitration award of the CCMA, held that this clause created a reasonable expectation for renewal.²³⁵

The appointment contract of a municipal manager and managers directly accountable to him or her is subject to the terms and conditions of the Systems Act, MFMA and any other legislation imposing obligations on these functionaries.²³⁶ The employment contract must include details of duties, remuneration, benefits and other terms and conditions of employment as agreed to by the parties, provided that such agreement is consistent with the Systems Act, and any regulation issued pursuant thereto applicable to municipal managers and section 56 managers.²³⁷ The Systems Act further states that any regulations that relate to duties, remuneration, benefits and other terms and conditions of employment of municipal managers

²²⁹ Regulation 4(3) Performance Regulations.

²³⁰ Section 57(6)(b) Systems Act read with regulation 2(3)(b) Performance Regulations.

²³¹ *Tshongweni v Ekurhuleni Metropolitan Municipality* (2012) 33 ILJ 2847 (LAC) at para. 33.

²³² Section 57(6)(b) Systems Act.

²³³ (D1198/13) [2016] ZALCD 2 (hereafter *Maphumulo* case).

²³⁴ *Maphumulo* para. 41. In terms of clause 3.3, the municipal manager shall have to prove that he has performed his duties under this agreement to the satisfaction of the Mayor, and the Mayor will have to be satisfied of the Municipal Manager’s work performance. In determining such work performance, the Mayor must be guided by the Municipal Manager’s performance in terms of the Performance Management System, as well as his compatibility with the Mayor and the Executive Authority, and provided that:

3.3.1 All performance agreements concluded and required to be concluded between the Mayor and the municipal manager have been fulfilled,

3.3.2 Any other terms must be a basis for renewal (e.g. same remuneration),

3.3.3 the failure to renew or extend the period referred to in 3.2, which renewal or extension shall not be unreasonably withheld, could be a matter for arbitration.

²³⁵ *Maphumulo* case at paras. 42 and 43.

²³⁶ Regulation 4(1) Performance Regulations.

²³⁷ Section 57(3)(a) Systems Act.

or section 56 managers must be regarded as forming part of the contract.²³⁸ Steytler and De Visser state that the contract must, in general, reflect the values and principles referred to in section 50 and 51 of the Systems Act.²³⁹ Furthermore, the Systems Act provides that it must reflect the values and principles embodied in the Code of Conduct for staff members.²⁴⁰ Finally, the municipality's staff systems and procedures also apply to a municipal manager or a section 56 manager.²⁴¹

The all-informing idea behind the introduction of the fixed-term contract system, according to the *White Paper*, was to 'improve accountability and induce a focus on outputs'.²⁴² The *White Paper* proposes that employment contracts be used to induce performance in that they would only 'be renewable based on an assessment of performance against specified targets'.²⁴³ This is what the national government sought to achieve by the introduction of the fixed-term contract system, and it is in line with the rationale behind this NPM tenet of hiring on a fixed-term contract, rewarding according to performance, and sacking if work does not measure up.²⁴⁴ In this way, time-servers are jolted out of the system and replaced by people who are innovative and work efficiently, thus ensuring efficiency, cost-effectiveness and value for money. The fixed-term contract system also serves to structure managerial autonomy.

At first blush, the foregoing discussion suggests that there is coherence between the classical NPM principle and its operationalisation in South Africa. However, a closer look reveals that section 57(6), which provides for a five-years' fixed-term appointments for municipal managers, and section 57(7), which seeks to extend the application of section 57(6) to section 56 managers, make a distinction between the municipal manager and the section 56 manager. This distinction relates to the fact that section 57(6) determines what the fixed-term is for municipal managers only. In the case of section 56 managers, any terms and conditions relating to their appointment would have to be determined by the council at its discretion, and this would include any fixed term of employment.²⁴⁵ The council therefore does not have a choice

²³⁸ Section 57(3A) Systems Act.

²³⁹ Steytler & De Visser 2007: 8-46.

²⁴⁰ Section 57(6)(d) Systems Act.

²⁴¹ Section 67(3) Systems Act.

²⁴² *White Paper* 1998: 160 para. 2.2.1.

²⁴³ *White Paper* 1998: 160 para. 2.2.1.

²⁴⁴ Kettl DF 'The global revolution in public management: Driving themes, missing links' (1997) 16(1) *Journal of Policy Analysis and Management* 448.

²⁴⁵ *Uthukela* para. 48.

when it comes to the municipal manager. In regard to section 56 managers, the council has a choice between a fixed-term appointment of five years, i.e. the extension of section 57(6) to section 56 managers, and any term of employment determined by agreement.²⁴⁶ It essentially leaves it to the council to decide whether to restrict the contract to the fixed term of five years in terms of section 57(7) or fixed term of any number of years determined by agreement or a permanent contract of employment. This means that not all senior managers are strictly on short-term contract.

In practice, municipalities have been choosing all the three options, namely permanent appointment; a five-year fixed-term contract in terms of section 57(7); and any fixed term of employment. This means, therefore, that senior managers are subject to different employment regimes. Not all of senior managers are subjected to the system that induces a focus on outputs. This indicates that this NPM tenet is not fully implemented. Any assessment of the success or otherwise of the contract employment system in South Africa is, therefore, constrained by this reality. The original intent of the NPM tenet of short-term appointments was to weed the system of time-servers or turn them into innovators and thus improve accountability and induce a focus on outcomes. How can we weed out time-servers in the system in South Africa if a significant segment of senior managers is appointed on a permanent basis or on long-term contracts?

4.3 Practice

4.3.1 Insecurity of tenure

As highlighted in the preceding chapter, instead of weeding out time-servers, the short-term employment system has had adverse effects on the commitment of senior management to organisational goals. Short-term contracts work against ‘long-term leadership and mission stability’ and invite interference by politicians in the appointment and operations of senior managers, ultimately leading to the rapid turnover of top-level managers seen in many municipalities.²⁴⁷

The *Maphumulo* case neatly illustrates this point. In this case, despite there being a renewal clause and after Mr Mhlongo had made out a case for further renewal of his contract, the Mayor

²⁴⁶ *Uthukela* case at paras. 48 and 49.

²⁴⁷ Zulu Z *Selecting an Appropriate Organisational Performance Management System for South African Municipalities* (unpublished MBA thesis, Durban University of Technology, 2006) 29.

sought to rely on the instructions of the Regional Working Committee (RWC) of the ANC for a final decision.²⁴⁸ At the CCMA, the arbitrator found that

the probable cause of the non-renewal of Mhlongo's fixed term contract was the decision of the ANC's RWC. However, this body's attitude towards Mhlongo had no statutory or contractual standing. It was the terms of Mhlongo's contract, paired with the absence of any criticism from the Mayor that properly and reasonably conditioned his expectation of a renewal.²⁴⁹

The Labour Court agreed with this finding and stated:

Indeed, the arbitrator specifically found that the absence of a performance agreement was not the true cause for the non-renewal of Mhlongo's contract. The true cause instead appeared to be the decision of a non-statutory body, the RWC of the ANC, to replace him. This was not a proper legal basis for a non-renewal, especially in light of the terms of the contract the municipality had signed with him.²⁵⁰

This case shows that, in some instances, the renewal or not of municipal managers' fixed-term contracts is susceptible to political influence. This makes the position of senior managers tenuous and reliant on patronage from or sucking-up to politicians. It would seem that the basis for renewal is not whether one is meeting the performance expectations of his contract and performance agreement, as envisaged by the NPM, but whether politicians find you useful or not. In this regard, when managers realise that their performance and efforts have no bearing on their rewards, their enthusiasm to do more is curtailed.²⁵¹ Their best option is to endear themselves to politicians and compromise their independence in the process.

The Municipal Demarcation Board, in its capacity assessment report of 2012, agrees that municipalities are 'highly volatile organisations' owing to insecurity of tenure.²⁵² It is argued that the short-term contracts have resulted in less than 50 per cent of municipal managers' contracts being renewed after five years in office.²⁵³ Given this trend, some municipal

²⁴⁸ *Maphumulo* case at paras. 5 and 6.

²⁴⁹ *Maphumulo* case: para. 16.

²⁵⁰ *Maphumulo* case: para. 39.

²⁵¹ Dzimbiri LB 'Experiences in new public management in Africa: The case of performance management systems in Botswana' (2008) 33(4) *Africa Development* 43-49.

²⁵² Municipal Demarcation Board *State of Municipal Capacity Assessment 2010/2011* (2012) 148 (hereafter Municipal Demarcation Board 2012).

²⁵³ Smit E *Factors Impeding Performance Management of Municipalities in the Western Cape, South Africa* (unpublished Doctoral thesis, Cape Peninsula University of Technology, 2015) 47 (hereafter Smit 2015).

managers jump ship even before the end of their term. Furthermore, it was reported in 2012 that one out of six section 57 managers exited their municipality in the course of the year.²⁵⁴ As a consequence, the average number of years that municipal managers have been in their position as municipal managers is three years and three months.²⁵⁵ In the metros and secondary cities, the Municipal Demarcation Board reports that this figure is even lower.²⁵⁶ That is surely not conducive to improved accountability and focus on outputs, as envisaged by the contract management system. Rapid turnover rates at senior management level are costly, contribute to low staff morale, and affect organisational performance.²⁵⁷

The anxieties about future job prospects which the short-term contracts raise mean that senior managers cannot have a single-minded commitment to their jobs of ensuring efficient and effective delivery of services and economic use of resources.²⁵⁸ Short-term contracts lead to senior management turnover, with the concomitant loss of skilled employees, reduction in knowledge, increased workloads and decreased staff morale.²⁵⁹ Replacing the lost capacity and rebuilding staff morale in order to improve service delivery is not an overnight enterprise.

It can also be argued that the short-term employment system undermines the idea of managerial autonomy, as introduced in South Africa. The idea was that there would be a distinctive and experienced cadre of senior managers transferable within the public service, in this context within local government. Short-term contracts are forcing these managers out of the system to the private sector and other spheres of government. That is why, 18 years after the introduction of managerialism, we still sit with municipal managers having served, on average, only three years as municipal managers. Their overall experience at local government is 10.3 years.²⁶⁰ It stands to reason therefore that, on average, they have been in the system of local government for only two terms. This is despite the fact that we are in the fourth term of local government and 18 years since the introduction of managerialism in South African municipalities. If this trend continues, there is a likelihood that the current corps will leave the system, taking with it skills and institutional memory.

²⁵⁴ Municipal Demarcation Board 2012: 149.

²⁵⁵ Municipal Demarcation Board 2012: 149.

²⁵⁶ Municipal Demarcation Board 2012: 149.

²⁵⁷ Allen DG *Retaining Talent: A guide to Analysing and Managing Employee Turnover* (2008) 3.

²⁵⁸ Smit 2015: 47.

²⁵⁹ Nzimande NB *High Staff Turnover: A Study for the Gauteng Department of Finance* (unpublished Masters Thesis, UNISA, 2012) 13.

²⁶⁰ Municipal Demarcation Board 2012: 149.

This picture is the same with respect to the length of relevant work experience of other senior managers. The Municipal Demarcation Board reports that chief financial officers generally have more experience as financials officials, at 11.24 years, but have been in their current position, that is as, as chief financial officers, for only four years on average.²⁶¹ This means that senior manager are relatively new in their positions as senior managers, even though their experience of local government is just over two terms. The likelihood of their staying longer and establishing their own systems and carrying them through is slim because of fixed-term contracts and the political machinations associated with these. They are either removed or leave before establishing their ways of doing things, and this causes instability.

As a result, for many municipalities the contract employment system is an impediment to skills retention. Some contracts are not renewed, while other managers exit the system prematurely to find alternative employment out of fear that their contracts will not be renewed. The absence of continuity at top management level and limited commitment to organisational goals therefore lead to poor performance.

4.3.2 The revolving-door phenomenon

Experience has shown that immediately after elections municipalities often dismiss, or enter into settlement agreements or so-called ‘golden handshakes’ with, senior managers for reasons that are normally not based on any legal basis.²⁶² This practice happens mostly to managers on fixed-term contracts as they do not require a protracted disciplinary process before being fired. The contract of a manager on a fixed-term contract can be terminated on the agreement of a golden handshake. This practice usually takes place under the guise of cadre deployment and by replacing senior managers with senior managers that can be trusted – who will give effect to election promises. However, this practice also happens between factions of the same political party where there are no major ideological differences between the previous administration and the current one. It is a perversion of cadre deployment that borders on cronyism or a spoils system.

The case of *Abdullah vs Kouga Municipality and Another*²⁶³ lays this practice bare. In *casu*, after the May 2011 election, the Kouga Municipality suspended Mr Abdullah, the Chief

²⁶¹ Municipal Demarcation Board 2012: 149.

²⁶² Molathwa O “‘No more golden handshakes,’ says Minister Des van Rooyen’ *Sowetan Live* 10 June 2016 (hereafter Molathwa 2016).

²⁶³ *Abdullah v Kouga Municipality and Another* (2012) 33 ILJ 1850 (LC) (hereafter *Abdullah case*).

Financial Officer of the municipality, for a period of 10 months for misconduct and incompetence. Mr Abdullah took the matter to the Labour Court for an order setting aside his suspension. An interim order was granted in his favour and was to be made final on 2 February 2012. In a way that shows that the municipality simply wanted to get rid of him, they terminated his fixed-term contract two days after the interim order was granted on grounds of loss of trust and offered to pay the remainder of the contract, together with all leave due to him. The municipality also invited him to bring to the municipality's attention any other monies due to him. The municipality sought, too, to withdraw all allegations of misconduct and poor work performance or incapacity.²⁶⁴

Mr Abdullah argued that withdrawing all allegations of misconduct and poor work performance and seeking to expunge all reference in the council records to same was an implicit acknowledgement that there was no lawful basis for the termination of his contract. Mr Abdullah also argued that the failure to follow proper procedures for misconduct and poor performance in terms of the Disciplinary Regulations before terminating his services also constituted a breach of contract.²⁶⁵ The court highlighted that the municipality is entitled to suspending a senior manager on pay if it does not want to make use of the senior manager's services. However, it concluded that the summary termination of Mr Abdullah's services was unlawful. The court refused to reinstate him, saying it would not be appropriate given the breakdown of trust alleged by the municipality.²⁶⁶ In the end, the municipality achieved what it sought to do, namely to rid itself of the chief financial officer for reasons that have no basis in law.

Before the 3 August 2016 local elections, the Minister of Co-operative Governance and Traditional Affairs, Des van Rooyen, issued a stern warning to all municipalities against arbitrary dismissal of senior managers and giving them golden handshakes, saying that this is draining millions away from service delivery and compromising municipal budgets.²⁶⁷ Despite this warning, a number of municipalities that had a change of political administration have been involved in a witch-hunt to purge officials appointed by the previous administration. The Democratic Alliance (DA) has been conducting forensic audits in the number of municipalities it has won. The stated aim is to uncover wrongdoing which will give it the reason to dismiss

²⁶⁴ *Abdullah* at paras. 1-3.

²⁶⁵ *Abdullah* case para. 4.

²⁶⁶ *Abdullah* case para. 18.

²⁶⁷ Molathhwa 2016.

the senior managers concerned. The first instance of purging following the said forensic audit took place in the City of Johannesburg Metropolitan Municipality. Mayor Herman Mashaba is reported to have asked the City's group audit and assurance services head, Ms Sinaye Nxumalo, to leave her post with immediate effect for failing to attend to cases of alleged corruption and for failing to hand over forensic reports of the alleged corruption to the Auditor-General.²⁶⁸ The jury is still out in other DA-run municipalities who have conducted similar investigations. It is suggested that their ultimate objective is to dismiss and they are now looking for pretexts to achieve that purpose.

4.3.3 Assessment

It appears from the foregoing that some aspects of the fixed-term system of appointment were given full effect to in a manner that facilitates implementation, and others not. First, while some senior managers are employed strictly on fixed-term contracts, others are employed through a variety of differing employment regimes. These include contracts of five-year terms, contracts of any number of years and permanent appointments. Save for the fixed term of five years, other regimes do not improve accountability and induce a focus on outputs. Furthermore, they do not subject senior managers to accountability for their own actions and performance and, by so doing, weed time-servers out of the system. They actually do the opposite, by letting time-servers be.

Secondly, even when the fixed-term employment system is consistent with the classical NPM tenet, as is the case with the employment regime for municipal managers, its implementation is frustrated by political realities on the ground. Given our past of racial domination, there is a level of distrust between those political parties who were part of the racist regime and those who were fighting against it. Accordingly, when there is shift in the balance of political forces in council, senior managers appointed by the previous administration become casualties. The rationale is that they cannot be entrusted with the mandate of carrying out their manifesto for fear of sabotage. However, this practice also happens between factions within a political party. Usually this is about jostling for resources and putting cronies or patronage networks into positions of responsibility with the aim to dispense patronage. In the end, the renewal of the contracts of senior managers is not dependent on their meeting their contractual obligation but rather on their endearing themselves to politicians. If they were appointed by the previous

²⁶⁸ Whittles G 'Mashaba shows chief risk officer the door' *Mail & Guardian* 2 December 2016.

administration or faction, they will have to endear themselves to councillors for survival, compromising themselves in the process. In the end, this NPM tenet is not being fully implemented in South Africa.

It is further suggested that the NPM tenet of short-term contracts is tailored for a different set of circumstances where there is no shortage of skilled administrators. In those circumstances, the failure to renew a contract, and the attendant anxieties that lead to senior managers exiting the system prematurely, would not cause any headaches if there were a pool of equally skilled and competent people out there ready to take over. In the South African context, we do not have the luxury of a pool of skilled personnel waiting on the side-lines to be deployed to municipalities. The loss of skilled senior managers through short-term contracts leaves a void that is hard to fill and results failures to deliver services to communities.

5 Conclusion

It becomes apparent in the foregoing that the NPM tenets of managerial autonomy, performance management and fixed-term employment system are not yielding the desired outcomes. Two reasons for this emerge from the discussion above.

First, some the NPM tenets, namely wide discretion and fixed-term contracts, were not expressed in a manner that facilitates their full implementation. In the case of wide discretion, senior managers are, first, not given the full spectrum of discretionary powers. While they are insulated in some instances, i.e. in procurement decisions, they are made vulnerable to constant political interference in others, namely in appointment decisions. The fact that the appointment of section 56 managers is, by law, the sole preserve of council invites political meddling in the exercise of section 55 managerial powers. A municipal manager, as the head of the administration and the accounting officer of a municipality, is not able to constitute, and by implication discipline and dismiss, his own team of executives. This is an affront to managerial independence as it weakens the position of the municipal manager. In the majority of cases the municipal manager has difficulty in disciplining his own team because they are beholden to politicians and owe him or her no allegiance. Senior managers appointed on the party-political ticket might feel they need to take instructions from those parties.

In this sense, senior managers (both municipal manager and section 56 managers) have not been fully empowered to manage the municipal administration. They are vulnerable to the tug

and pull of political, if not factional, interests. This is a design flaw in the legislative framework for managerialism, one which was termed fudged managerialism.

Secondly, there is a panoply of laws emanating from other spheres of government, mostly national government, that seek to direct how municipalities must go about doing certain things and even prescribing certain outcomes. These laws are compromising managerial discretion in that senior managers are reduced to ticking boxes in an attempt to comply with those laws instead of exercising their managerial independence in devising innovative solutions to the problems confronting local government and expending their energies implementing those strategies. Even though they are conferred managerial discretion and autonomy, they are relegated to being the implementing agents of other spheres.

When it comes to the fixed-term system of appointments, there are varying contractual regimes for senior managers. While some senior managers are employed strictly on fixed-term contracts in line with the NPM ethos, others are employed through a variety of employment regimes, ranging from contracts of five-year terms and contracts of any number of years, to permanent appointments. These employment regimes do not cohere with the NPM ethos of contractualism. They do not improve efficiency and accountability by inducing a focus on outputs and subjecting senior managers to accountability for their own actions and performance and by so doing weeding time-servers out of the system.

The second reason for the failure of these NPM tenets to yield the desired outcomes is that while some the NPM elements were expressed in law in a manner that facilitates their implementation, their implementation often produces adverse outcomes. In the first place, even though the fixed-term employment system for municipal managers was given full effect in a manner that facilitates implementation, its implementation encounters a different reality on the ground. First, it encounters a South African specific political reality. A shift in the balance of political forces in council results in senior managers appointed by the previous administration becoming casualties. This makes the renewal of the contracts of senior managers dependent on the relationship with politicians instead of the meeting of contractual obligation.

Secondly, it meets the reality of an absence of skills base. In this regard, it is suggested that the NPM tenet of short-term contracts is tailored for a different set of circumstances where there is no shortage of skilled administrators. In those circumstances, there is a pool of skilled and competent administrators waiting to be deployed. A loss of a senior manager through short term contracts does not spell disaster for service delivery. In South Africa, it takes months to

years to fill vacant posts because of shortage of skilled senior managers. The loss of skilled senior managers through short-term contracts leaves a void that is hard to fill and results in failures to deliver services to communities.

In the second place, the performance management system has similarly encountered the reality of a shortage of skills and lack of political will. As a result, there are numerous failures to establish a performance management system in some municipalities, or to conclude the performance agreement at all, or within the specified periods. What is worrying is that this does not attract any consequences despite the law stating that in such case there should be severe consequences, including the lapsing of the appointment. To make matters worse, performance bonuses are paid in instances where there is no performance agreement in place and where performance is sub-standard. This indicates that there is no proper monitoring and oversight even though the law spells these responsibilities out clearly. Even in cases where monitoring does take place, there is no culture of acting upon the results of monitoring. This breeds a culture of impunity where there are no consequences for wrong doing in local government. The National Treasury and the Auditor-General have been warning against this culture for some time now. This indicates that the performance management system is not being fully implemented. It is not taken seriously.

Some of the reason for non-compliance relate to the fact that the majority of mayors lack the necessary capacity to draft performance agreements that comply with the relevant laws, to monitor performance and to enforce the agreements. The other reason relates to the cosiness between senior managers and politicians who are charged with monitoring and enforcing the performance management system. This cosy relationship results in a situation where managers who do not have performance agreements, or who have them but are not performing according to the employers' expectations, receive performance bonuses. This fuels the culture of impunity and entitlement discussed above. Poor performance is being rewarded in contravention of the performance management system.

This suggests that even though the NPM tenet of performance management as introduced in South Africa is given full effect to in a manner that facilitates its implementation, South African municipalities are falling short in fully implementing it. Even though there is a sound legislative framework for performance management in South Africa, the performance management system has fallen short of creating a performance culture at municipal level. Instead, impunity and unaccountability for own actions characteristic of managers in the apartheid regime still

obtains. This is a result of a lack of skills and political will. Lack of political will results in half-hearted commitment and implementation of the performance management system.

The three elements of managerialism were partially, but never fully, implemented in the legal framework. Where they were, their implementation in practice has often resulted in the opposite of the intended outcomes. Although the partial implementation of the NPM can be blamed for the failure of the NPM to deliver the intended results, the main reason for this is the difficult circumstances on the ground in which they had to take root: a skills shortage and rampant political interference.



CHAPTER SEVEN:

Implementation of the NPM Tenets of Corporatisation and PPPs at Local Level

1 Introduction

This chapter looks at the practical implementation of key NPM tenets with regard to the reconfiguration of the modes of service delivery. It reveals that the need to resolve the problems created by apartheid has led to consideration of alternative mechanisms for the delivery of services. These mechanisms are public-private partnerships and corporatisation. The rationale for their introduction was to draw on private sector skills, resources and practices to speed up the delivery of services to communities and thus address the infrastructure backlogs and disparities characteristic of South Africa. Traditional methods of delivering services were viewed as anachronistic, monopolistic and wasteful. The idea is that an institution operating on business principles would be more efficient and cost-effective than an ordinary service department.

In what follows, I give a brief background to the reconfiguration of modes of service delivery in South African local government. This is followed by a discussion of the NPM principles of public-private partnerships and corporatisation as reflected in policy and law. Privatisation is left out because the policy framework for local government militates against divesting municipalities of the responsibility to deliver core municipal services such as water, electricity and solid waste collection and disposal.

2 Reconfiguring modes of service delivery

The *Green Paper on Local Government*¹ is the basis for the transformation of modes of service delivery in South African municipalities. The post-apartheid government viewed the traditional ways in which municipal authorities rendered services as inefficient and monopolistic as municipalities were solely responsible for all components of service delivery.² Municipal authorities tended to create line municipal departments or functions as a way of providing

¹ *Green Paper on Local Government* (October 1997) 15 para. 1 (hereafter *Green Paper 1997*).

² *Green Paper 1997*: 79 para. 2.

services to communities.³ The *Green Paper* in turn outlines the full spectrum of service delivery options for mobilising additional capacity and resources for effective service delivery.⁴ Among the panoply of options that municipalities could select in enhancing the provision of services were ‘public delivery, public utilities, public-public partnerships, public-private partnerships, and public-community partnerships’.⁵

Other imperatives that impelled the introduction of alternative service delivery mechanisms included the need to achieve the objectives of the RDP and to rectify infrastructure deficits and disparities.⁶ Given that municipalities are no longer limited to delivering a narrow range of services yet also face decreasing revenue sources, an increase in the population they have to serve, and ever-increasing service delivery responsibilities,⁷ the post-apartheid government had to explore alternative and innovative means of delivering local services.⁸ The *White Paper* therefore suggested reforms that would allow other actors, including the private sector, non-governmental organisations and other state entities, to render services on behalf of municipalities. The *White Paper* states:

Municipalities have a range of delivery options to enhance service provision. They need to strategically assess and plan the most appropriate forms of service delivery for their areas. Their administrations need to be geared to implement the chosen delivery options in the most effective manner and so ensure maximum benefit to their communities.⁹

The *White Paper* further states that these options include building on existing capacity; corporatisation; public–public partnerships; partnerships with community-based organisations and non-governmental organisations; contracting out; and complete transfers of ownership (privatisation).¹⁰ In choosing an appropriate mix of service delivery options, the *White Paper* provides some guiding principles for municipalities, which include accessibility of services to all citizens; affordability of services; quality of products and services; accountability for

³ Nyamukachi PM *Options for Urban Service Delivery in South Africa with Special Reference to the Tshwane Metropolitan Municipality* (unpublished Doctoral thesis, University of Pretoria, 2005) 44 (hereafter Nyamukachi 2005).

⁴ *Green Paper* 1997: 42 para. 2.3.

⁵ *Green Paper* 1997: 42 para. 2.3.

⁶ The *White Paper* on Municipal Service Partnerships 2000: 5.

⁷ Ntliziywana P ‘Adding injury to insult: Intrusive laws on top of a weak system’ (2016) VI *Constitutional Law Review* 34.

⁸ Nyamukachii 2005: 44.

⁹ The *White Paper on Local Government* (9 March 1998) 159 para. 2.2 (hereafter *White Paper* 1998).

¹⁰ *White Paper* 1998: 159 para. 2.2.

services; integrated development and services; sustainability of services; value for money; ensuring and promoting the competitiveness of local commerce and industry; and promoting democracy.¹¹ The *White Paper* further states:

In assessing the appropriateness of different service delivery mechanisms, the choice is not between public and private provision. Rather the real issue is finding an appropriate combination of options which most effectively achieves their policy objective.¹²

The *White Paper on Municipal Service Partnerships*¹³ gives impetus to the adoption of alternative service delivery mechanisms. It focuses exclusively on municipal service delivery options and builds on and refines the provisions of the previous *White Paper on Local Government*.¹⁴ Its stated aim was

to provide a clear framework within which to leverage and marshal the resources of public institutions, CBOs, NGOs, and the private sector towards meeting the country's overall development objectives.¹⁵

The two assumptions therefore appear to be that 'flexibility' and a 'commercial' management style are beneficial to service delivery and that the typical municipal way of operating tends not to exhibit these qualities.¹⁶

The Systems Act takes these reform proposals of configuring modes of service delivery forward and concretises them into law. Chapter 8 of the Systems Act outlines the options available to municipalities as well as the criteria to be used when deciding on service delivery mechanisms. Section 78 of the Systems Act, for example, sets out the criteria and procedure that would help municipalities in deciding what the most viable option would be to provide the service. This section guides municipalities in choosing between delivering the service themselves or appointing an external service provider to do so in terms of a service

¹¹ *White Paper* 1998: 159 para. 2.2.

¹² *White Paper* 1998: 79 para. 2.3.

¹³ The *White Paper on Municipal Service Partnerships* (GN 1689 GG 21126 of 26 April 2000) 1 (hereafter *White Paper* 2000).

¹⁴ Johnson CV *Outsourcing Basic Municipal Services: Policy, Legislation and Contracts* (unpublished LLM thesis, University of the Western Cape, 2004) 2 (hereafter Johnson 2004).

¹⁵ *White Paper* 2000: 1.

¹⁶ Johnson 2004: 7.

delivery agreement. A complete list of service delivery mechanisms is contained in section 76 and these are categorised as either internal or external mechanisms.¹⁷

Another piece of legislation with a bearing on alternative service delivery mechanisms at local level is the MFMA.¹⁸ The MFMA, dealing with the financial management of municipalities and municipal entities,¹⁹ contains specific provisions relating to public-private partnerships and deals with feasibility, procurement, contracting, security and debt.²⁰ For example, section 120 specifically requires a feasibility assessment to be carried out before a public-private partnership is concluded.²¹

In what follows, I look at the two alternative service delivery mechanisms that were applied in South African municipalities, namely public-private partnerships and corporatisation. When it comes to privatisation, the 1995 *White Paper* rejected privatisation, while the 1998 *White Paper* indicates that ‘the transfer of ownership is not an option for core municipal services, particularly water, electricity and solid waste collection and disposal.’²² It further states that such services play a central role in meeting the material, social and economic needs of communities, and that as such ownership of infrastructure and assets associated therewith should ideally be kept in the public sphere.²³ This effectively also rules out privatisation of core municipal services such as the ones listed above. As a result, there has not been any form of privatisation of core municipal service at local government. Municipalities have, instead, resorted to mechanisms that do not divest the council of control, such as corporatisation and public-private partnerships.

3 Public-private Partnerships

3.1 NPM principles

As has been highlighted in Chapter Two,²⁴ public-private partnerships are defined as long-term contractual arrangements between the government and a private partner whereby the latter delivers and funds public services using a capital asset, sharing the associated risks. They are

¹⁷ Section 76(a) and (b) Systems Act.

¹⁸ Local Government: Municipal Finance Management Act 56 of 2003.

¹⁹ Long title to the MFMA.

²⁰ Section 120 MFMA.

²¹ Section 120(4) MFMA.

²² *White Paper* 1998: 168-9 para. 2.2.7.

²³ *White Paper* 1998: 169 para. 2.2.7.

²⁴ At section 6.3.

an NPM strategy through which the private sector participates in the delivery of public services to serve the aim of imbuing the public service with the efficiency, effectiveness and value-for-money approaches associated with business practices. As in other strategies, the ultimate aim of this strategy is to break down the monolithic structure of the bureaucracy into small service delivery agencies that operate on business principles. This was in reaction to the large bureaucracies that were consuming significant amounts of state funding. As a result of the fiscal challenges this posed, the NPM proposed that states should mobilise alternative funding for service delivery from the private sector.

PPPs, therefore, serve two main purposes, namely to mobilise resources and skills from the private sector and to infuse business principles in the delivery of public services. However, the functions are still controlled by the state, which then enters into partnership with external or private providers. This relationship is controlled through contracts.

3.2 Legislative Framework

The legal foundation for municipal PPPs is section 78 of the Systems Act. The regulations issued in terms of section 168 of the MFMA supplement the Systems Act by defining PPPs.²⁵ In a way that mirrors the definition proffered by Regulation 16 discussed in Chapter Five²⁶ in relation to national government, the PPP Regulations define public-private partnerships as

a commercial transaction between a municipality and a private party in terms of which the private party –

- (a) performs a municipal function for or on behalf of a municipality, or acquires the management or use of municipal property for its own commercial purposes, or both performs a municipal function for or on behalf of a municipality and acquires the management or use of municipal property for its own commercial purposes; and
- (b) assumes substantial financial, technical and operational risks in connection with
 - (i) the performance of the municipal function;
 - (ii) the management or use of the municipal property; or
 - (iii) both; and

²⁵ Local Government: Municipal Finance Management Act: Municipal Public-Private Partnership Regulations (GN R309 GG 27431 of 1 April 2005) (hereafter Municipal PPP Regulations).

²⁶ At section 3.4.

(c) receives a benefit from performing the municipal function or from utilising the municipal property or from both, by way of –

- (i) consideration to be paid or given by the municipality or a municipal entity under the sole or shared control of the municipality;
- (ii) charges or fees to be collected by the private party from users or customers of a service provided to them; or
- (iii) a combination of the benefits referred to in subparagraphs (i) and (ii).²⁷

The private party that is party to this PPP transaction is in turn defined as excluding a municipality, a municipal entity or an organ of state.²⁸ From this definition of public-private partnerships, one can identify three types of public-private partnerships. In the first place, this definition talks about a public-private partnership where the private party perform a municipal function²⁹ for or on behalf of the municipality. In the second place, the definition refers to a partnership where a private party acquires the management or use of a municipal property³⁰ for its own commercial purposes. In the third place, the regulations identify a hybrid of the two types.³¹

Payment in any of the three types takes place in the following manner. First, the municipality itself can pay the private party for the delivery of the service. Secondly, the private party, on its own initiative, can collect fees or charges from users or customers of the service. Thirdly, a municipality can pay a portion, while the rest is recuperated through the collection of fees or charges from the users of the service.³² In any event, the private party assumes substantial financial, technical and operational risk in connection with the performance of the municipal function or the management or use of the municipal property, or both the performance of a municipal function and the management or use of the municipal property.

²⁷ Regulation 1 Municipal PPP Regulations.

²⁸ Regulation 1 Municipal PPP Regulations.

²⁹ A municipal function is defined to include a municipal service and any other activity within the legal competence of a municipality. It is thus broader than a municipal service.

³⁰ A municipal property is defined as any movable, immovable or intellectual property, owned by or under the control of the municipality; or a municipal entity under the sole or shared control of the municipality.

³¹ National Treasury & Department of Provincial and Local Government *Municipal Service Delivery and PPP Guidelines* of 2007: 6 (hereafter PPP Guidelines of 2007).

³² PPP Guidelines of 2007: 6.

Steytler and De Visser state that ‘the partnership element of the [public-private partnership] is restricted to the continuous involvement of the municipality in the service delivery through its monitoring and authority function’.³³ This is a goal-oriented relationship. The accounting officer (municipal manager) is responsible for managing the PPP contract by measuring outputs, monitoring and regulating performance, liaising effectively, and settling disputes.³⁴

3.2.1 Section 78 Systems Act

As an alternative (external) delivery mechanisms, PPPs are regulated by Chapter 8 of the Systems Act. The Systems Act states that a municipality ‘exercises its legislative or executive authority by providing municipal services to the local community, or appointing appropriate service providers’.³⁵ Section 78 sets out the procedure that a municipality must follow when choosing between delivering the service itself or appointing an external service provider to deliver the service in terms of a service delivery agreement. The Systems Act lists five such external mechanisms, which include ‘any other institution, entity or person legally competent to operate a business activity’.³⁶ It is suggested that this refers to the private sector and any partnership with such institutions, entities or persons is a public-private partnership.

When a municipality has to decide on a mechanism to deliver a particular service, it has to follow the procedure outlined in section 78 of the Systems Act. The section 78 procedure entails a four-step process. First, an initial review of the way the municipality currently provides a particular service must be conducted.³⁷ Secondly, if the use of an external provider is contemplated or explored, a further inquiry must be held.³⁸ Thirdly, if private actors are considered, a competitive bidding process must be embarked upon. Lastly, certain procedural and substantive requirements must be met when negotiating a service delivery agreement. In what follows, I look at this process in some detail.

³³ Steytler N & De Visser J *Local Government Law of South Africa* (2007) 9 - 36 (hereafter Steytler & De Visser 2007).

³⁴ PPP Guidelines of 2007: 6.

³⁵ Section 11(3)(f) Systems Act.

³⁶ Section 76(b)(e) Systems Act.

³⁷ Section 78(1) Systems Acts.

³⁸ Section 78(3) Systems Acts.

3.2.1.1 Initial internal review

When conducting the review to decide on the appropriate mechanism for the delivery of a particular service, the municipality must focus on three areas: the municipality as the service provider, general labour issues and broad social and economic considerations.³⁹

With regards to the first area, namely, the municipality as a service provider, the assessment must be on the direct and indirect costs and benefits associated with the project if the service is provided by the municipality.⁴⁰ The municipality must further assess whether it has the ‘capacity and potential future capacity to furnish the skills, expertise and resources necessary’ for the internal provision of the service.⁴¹ It must also assess the extent to which the re-organisation of its administration and development of human resource capacity could be better utilised to provide the service internally.⁴² Regarding labour issues, the enquiry considers what the likely impact will be on development, job creation and employment patterns in the municipality.⁴³ In this regard, the views of organised labour must be considered.⁴⁴ The third line of enquiry is discretionary and deals with the broad economics of service delivery. In this regard, the municipality may take into account any developing trends in the sustainable provision of municipal services generally. Steytler and De Visser state that this may include general information on the prevalence, effectiveness and economics of outsourcing municipal services.

Having concluded this review, the municipality has two avenues to pursue. First, it may decide to keep the provision of the service in-house, namely through an internal mechanism.⁴⁵ In such an event, the municipality must allocate sufficient human and financial resources to provide a proper service and transform the provision of that service in accordance with the requirements of the Systems Act.⁴⁶ Secondly, before arriving at the decision to provide the service in-house,

³⁹ Steytler & De Visser 2007: 9-27.

⁴⁰ Section 78(1)(a)(i) Systems Act.

⁴¹ Section 78(1)(a)(ii) Systems Act.

⁴² Section 78(1)(a)(iii) Systems Act.

⁴³ Section 78(1)(a)(iv) Systems Act.

⁴⁴ Section 78(1)(a)(v) Systems Act.

⁴⁵ Section 78(2)(a) Systems Act.

⁴⁶ Section 79 Systems Act.

it may explore the possibility of providing the service through an external mechanism.⁴⁷ This option requires yet a further enquiry to be conducted, accompanied by a feasibility study.⁴⁸

3.2.1.2 External mechanism review

In exploring the use of an external provider, the focus of the inquiry is on which category of external providers would be the most suitable. To determine this, the municipality must follow the lines of enquiry similar to those in the initial internal review discussed above.⁴⁹ First, the municipality must ascertain the views of the local community. To this end, the municipality must give notice to the community of its intention to explore the option of using an external provider.⁵⁰ The High Court underscored the importance of this requirement when it displayed willingness to nullify a service agreement because no effective community consultation occurred.⁵¹

The second line of inquiry focuses on possible service providers. In this regard, ‘the direct and indirect costs and benefits associated with the project, including the expected effects of any service delivery mechanism on the environment and on human health, well-being and safety’ must be taken into account.⁵² Other issues to take account of are the capacity of the prospective providers to deliver the service.⁵³

The third line of inquiry deals with developmental, economic and labour issues. In this regard, the likely impact of delivering the service through an external mechanism ‘on development, job creation, and employment patterns in the municipality’ must be taken into account.⁵⁴ The views of organised labour must also be taken into consideration.⁵⁵

A further enquiry was added into the existing enquiries by an amendment to the Systems Act in 2003. It added a feasibility study which takes account of a number of factors. First, there must be a clear indication of the services that the municipality is considering providing through

⁴⁷ Section 78(2)(b) Systems Act.

⁴⁸ Section 78(3) Systems Act.

⁴⁹ Section 78(3) Systems Act.

⁵⁰ Section 78(3)(a) Systems Act.

⁵¹ *Nkonkobe Municipality v Water Services SA (Pty) Ltd* [2001] ZAECHC 3 (hereafter *Nkonkobe* case).

⁵² Section 78(3)(b)(i) Systems Act.

⁵³ Section 78(3)(b)(ii) Systems Act.

⁵⁴ Section 78(3)(b)(iv) Systems Act.

⁵⁵ Section 78(3)(b)(v) Systems Act.

an external service provider⁵⁶ and how long such externalisation will be.⁵⁷ Secondly, the projected outcomes of providing the service through an external service provider must be shown.⁵⁸ In this regard, there must be an assessment of the extent to which the externalised service will provide value for money, address the needs of the poor, be affordable for the municipality and residents, and transfer appropriate technical, operational and financial risk to the provider.⁵⁹ Thirdly, the projected impact on the municipality's staff, assets and liabilities must be shown.⁶⁰ Similarly, the projected impact on the municipality's integrated development plan,⁶¹ and its budget and income generation⁶² must be indicated.

Section 78 leaves room open for the Minister for local government to prescribe any other matter that must be considered.⁶³ In this regard, the following may be included in the feasibility study:

- the strategic and operational costs and benefits of an external mechanism in terms of the municipality's strategic objectives; and
- an assessment of the municipality's capacity to effectively monitor the provision of the service through an external mechanism and to enforce the service agreement.⁶⁴

As can be seen, the scope of the feasibility study is extensive and, as a corollary, toilsome and costly. In this regard, the national or the relevant provincial government is enjoined, in accordance with an agreement with a municipality, to assist in carrying out the feasibility study and thus alleviate the burden of toil and costs.⁶⁵

After the second enquiry relating to the use of external mechanisms, the municipality must make the choice between an internal or external provider. It is guided in its choice by the general principles relating to the provision of municipal services.⁶⁶ These principles require municipal services to be:

- equitable and accessible;

⁵⁶ Section 78(3)(c)(i) Systems Act.

⁵⁷ Section 78(3)(c)(ii) Systems Act.

⁵⁸ Section 78(3)(c)(iii) Systems Act.

⁵⁹ Section 78(3)(c)(iv) Systems Act.

⁶⁰ Section 78(3)(c)(v) Systems Act.

⁶¹ Section 78(3)(c)(vi) Systems Act.

⁶² Section 78(3)(c)(vii) Systems Act.

⁶³ Section 78(3)(c)(viii) Systems Act.

⁶⁴ Section 86A(1)(k) Systems Act.

⁶⁵ Section 78(6) Systems Act.

⁶⁶ Section 78(4) Systems Act.

- provided in a manner that is conducive to prudent, economic, efficient and effective use of available resources, and the improvement of standards of quality over time; and
- financially and environmentally sustainable.⁶⁷

The Minister for Local Government may also, through regulations or guidelines, prescribe criteria that must be taken into account when assessing the options.⁶⁸ Steytler and De Visser contend that given the very general nature of the guidelines provided in the Systems Act, which could include all manner of considerations, a cost-benefit analysis between internal and external mechanism⁶⁹ would be appropriate at this stage⁷⁰ to guide the choice between an internal or external provider. Johnson in turn argues that ‘the decision to outsource cannot be made solely on commercial principles, but must also take place within the wider context of the municipality’s constitutional obligation to give priority to the basic needs of the community’.⁷¹

If the choice falls on an external provider, further processes may follow, depending on whether the provider is from the public or private sector.⁷² If the provider is another municipality, that municipality must conduct its own feasibility study.⁷³ However, where the external service provider is a private actor, a competitive bidding process is required.⁷⁴ In all other instances, where the provider is a municipal entity or a national or provincial organ of state, negotiations towards a service delivery agreement with such provider may commence.⁷⁵ Given that this discussion is about public-private partnerships, defined above to mean a commercial transaction between a municipality and a private party, the next cause of action is competitive bidding.

3.2.1.3 Competitive bidding for private actors

Competitive bidding is the third step in the four-step process prescribed by Chapter 8 of the Systems Act. It is triggered if the choice falls on an external provider that is a private actor, whether for profit or not. In this regard, the Systems Act states that a service delivery agreement

⁶⁷ Section 73(2) Systems Act.

⁶⁸ Section 86A(1)(f) Systems Act.

⁶⁹ This is an issue that should be canvassed thoroughly in the feasibility study that the municipality must undertake.

⁷⁰ Steytler & De Visser 2007: 9-30.

⁷¹ Johnson 2004: 42-43.

⁷² Steytler & De Visser 2007: 9-30.

⁷³ Section 80(3) Systems Act.

⁷⁴ Section 80(1)(b) Systems Act.

⁷⁵ This is examined in the discussion below of corporatisation.

may only be concluded after a competitive bidding process prescribed by the MFMA has been followed.⁷⁶ Over and above the municipality's supply chain management policy framework, the Systems Act adds a few general principles of sound procurement.⁷⁷

First, the selection process must allow all prospective service providers equal and simultaneous access to information relevant to the bidding process.⁷⁸ Secondly, the process must take into account 'the need to promote the empowerment of small and emerging enterprises'⁷⁹ which must take place in terms of the Preferential Procurement Policy Framework Act.⁸⁰ The Systems Act also provides for preferential procurement. It states that a municipality 'may determine a preference for categories of service providers in order to advance the interests of persons disadvantaged by unfair discrimination'.⁸¹ However, the manner in which such preference is exercised must not compromise or limit the quality, coverage, cost and developmental impact of the services.⁸² Thirdly, the competitive bidding process must 'minimise the possibility of fraud and corruption'.⁸³ In this regard, the selection process 'must be fair, equitable, transparent, cost-effective and competitive'.⁸⁴ Its design and execution must 'make the municipality accountable to the local community about the progress with selecting a service provider, and reasons for any decision in this regard'.⁸⁵

When selecting a service provider, a municipality must apply the criteria listed in section 78, as well as any preferences for categories of service providers it has identified.⁸⁶ In regard to the latter, 'once a municipality has determined the goals of its preferential procurement policy, it must obviously abide by them'.⁸⁷ The criteria relevant for the awarding of a contract relates, among other things, to 'the capacity and potential future capacity of prospective service providers to furnish the skills, expertise and resources necessary for the provision of services',⁸⁸ as well as providing value for money, affordability for the municipality and transfer of

⁷⁶ Section 83(1)(a) Systems Act with reference to Chapter 11 of the MFMA.

⁷⁷ Steytler & De Visser 2007: 9-31.

⁷⁸ Section 83(1)(b) Systems Act.

⁷⁹ Section 83(1)(e) Systems Act.

⁸⁰ Act 5 of 2000.

⁸¹ Section 83(2) Systems Act.

⁸² Section 83(2) Systems Act.

⁸³ Section 83(1)(c) Systems Act.

⁸⁴ Section 83(3) Systems Act.

⁸⁵ Section 83(1)(d) Systems Act.

⁸⁶ Section 83(4) Systems Act.

⁸⁷ Steytler & De Visser 2007: 9-32.

⁸⁸ Section 78(3)(b)(ii) Systems Act.

appropriate technical, operational and financial risk to the provider.⁸⁹ Once a preferred bidder has been selected, the next and final step in terms of the section 78 procedure is to conclude, through negotiations between the municipality and the selected private party, a service delivery agreement.

3.2.1.4 The service delivery agreement

A service delivery agreement is an agreement between a municipality and an external service provider to provide municipal services on behalf of the municipality. It is linked to the delivery of identified outputs as they relate to the service. The conclusion of a service delivery agreement is preceded by negotiations of its terms and conditions on the basis of the bidding documents and any addenda, amendments or variations thereto that were provided to all bidders.⁹⁰ The modifications, amendments and variations during the negotiations, however, may not materially affect the integrity of the bidding process.⁹¹ If the municipality fails to reach an agreement with the preferred bidder within a reasonable time, the municipality may negotiate with the next-ranked bidder.⁹² Overall, the service delivery agreement must comply with a framework prescribed by the Systems Act. However, the Minister for local government may also prescribe the minimum content of the service delivery agreement by regulation.⁹³ Furthermore, the Minister may provide municipalities with a standard draft agreement to help them deal with the complexity of service delivery agreements.⁹⁴

Importantly, when the municipality opts for using an external provider, it cannot divest itself of its responsibilities to provide that service to the community. The contents of the service delivery agreement must, therefore, reflect the municipality's continuous responsibility for the proper delivery of that service.⁹⁵ In this regard, section 81 of the Systems Act explicitly provides that 'a municipality remains responsible for ensuring that the service is provided to the local community in terms of the provisions of this Act'.⁹⁶ In view of this, the municipality must regulate the provision of the service by subjecting it to its performance management

⁸⁹ Section 78(3)(c)(iv) Systems Act.

⁹⁰ Section 84(1) Systems Act.

⁹¹ Section 84(1) Systems Act.

⁹² Section 84(2) Systems Act.

⁹³ Section 86A(1)(j) Systems Act.

⁹⁴ Section 86A(1)(i) Systems Act.

⁹⁵ Steytler & De Visser 2007: 9-33.

⁹⁶ Section 81(1) Systems Act.

system.⁹⁷ This means that the service delivery agreement must either set appropriate key performance indicators, as well as measurable performance targets in line with the development priorities and objectives contained in the municipality's IDP, or be accompanied by a performance agreement setting out the same. Thereafter the municipality must monitor and assess the implementation of the service delivery agreement within the framework of the performance management system⁹⁸ by imposing appropriate reporting obligations. Furthermore, the contract/agreement must be made subject to the changes that may result from the periodic review of the IDP, as the service remains subject to the development priorities and objectives of the municipality in terms of the IDP.⁹⁹

Furthermore, the appointing municipality must continue to control the setting and adjustment of tariffs in line with its own tariff policy.¹⁰⁰ However, the service delivery agreement may make provisions for the provider to adjust tariffs, as long as this is done strictly within the parameters set by the municipality.¹⁰¹ Furthermore, in negotiating the agreement, the municipality must 'generally exercise its service authority so as to ensure uninterrupted delivery of the service in the best interest of the local community'.¹⁰² More specifically, there must be provisions in the service delivery agreement that ensure the continuity of the service if the provider, for whatever reason, is unable to perform its functions.¹⁰³ As any service delivery contract has a limited lifespan, provision must be made for the municipality to take over the service, including all assets, when the agreement expires or is terminated.¹⁰⁴ Finally, the service delivery agreement must provide for a dispute-resolution mechanism to settle dispute between the municipality and the service provider.¹⁰⁵

The Systems Act gives a municipality wide discretion to negotiate the terms of a municipal service delivery agreement. These terms relate to the broad planning and operational responsibilities for a service, the provision of subsidies for the poor, the use of the municipality's workforce,¹⁰⁶ and assignment of particular responsibilities that the municipality

⁹⁷ Section 81(1)(a) read with section 41 Systems Act.

⁹⁸ Section 81(1)(b) Systems Act.

⁹⁹ Section 81(1)(c) Systems Act.

¹⁰⁰ Section 81(1)(d) Systems Act.

¹⁰¹ Section 81(3) Systems Act.

¹⁰² Section 81(1)(e) Systems Act.

¹⁰³ Section 81(2)(d) Systems Act.

¹⁰⁴ Section 81(2)(e) Systems Act.

¹⁰⁵ Section 81(2)(bA) Systems Act.

¹⁰⁶ Steytler & De Visser 2007: 9-34.

usually exercise to a service provider.¹⁰⁷ Assignment in this instance should be read to mean delegation, since the overall import of section 81 militates against divestment of responsibility for the rendering of municipal services.¹⁰⁸ The municipal responsibilities that may be assigned or delegated include:

- (a) developing and implementing a detailed service delivery plan within the framework of the municipality's IDP;
- (b) the operational planning, management and provision of the service;
- (c) undertaking social and economic development that directly relates to the provision of the service;
- (d) customer management;
- (e) managing its own accounting, financial management, budgeting, investment and borrowing activities within a framework of transparency, accountability, reporting and financial control determined by the municipality; and
- (f) the collection of service fees for the provider's account in accordance with the municipality's tariff policy and the municipality's credit control measures.¹⁰⁹

These assigned responsibilities should be exercised within the overall policy framework of the municipality. In this regard, a service delivery plan must fit into the framework of the municipality's IDP, and the collection of service fees must be in accordance with the council's tariff policy.¹¹⁰ A service delivery agreement may also provide that the municipality must pass on funds to the service provider for the subsidisation of services to the poor¹¹¹ in line with national policies providing free basic services to the poor.¹¹² This must take place through a transparent system, subject to performance monitoring and auditing.¹¹³ A municipality may also second or transfer any of its staff members to the service provider, subject to the concurrence of the staff members concerned and in accordance with the applicable labour

¹⁰⁷ Section 81(2)(a) Systems Act.

¹⁰⁸ Section 81 Systems Act.

¹⁰⁹ Section 81(2)(i)-(vi) Systems Act.

¹¹⁰ Steytler & De Visser 2007: 9-34.

¹¹¹ Section 81(2)(b) Systems Act.

¹¹² Steytler & De Visser 2007: 9-34.

¹¹³ Section 81(2)(b) Systems Act.

laws.¹¹⁴ Finally, the Minister for Local Government may regulate the furnishing of performance guarantees by service providers through regulations or guidelines.¹¹⁵

Since the impact of service delivery will be directly felt by the local community, the municipality must follow a mandatory public consultation process. This process is three-pronged. The first prong of consultation should take place before the conclusion of a service delivery agreement until the agreement has been concluded. In this regard, the municipality must establish ‘a programme for community consultation and information dissemination regarding the appointment of the external provider and the contents of the service delivery agreement’.¹¹⁶ This process includes communicating the contents of the agreement to the community through the media.¹¹⁷ The second prong of consultation takes place once the final terms of the agreement have been settled and the contract concluded. In this regard, copies of the service delivery agreement must be made available at municipal offices during office hours.¹¹⁸ In order to reach the local communities, the municipality must also give notice of the particulars of the service that will be provided under the agreement, the name of the provider and the place and period where copies of the agreement are available for inspection.¹¹⁹

The third prong takes place when an agreement with the private actor has to be amended. In this regard, since the appointment of the private actor was subject to competitive bidding, the agreement may only be amended after the local community has been consulted.¹²⁰ This requires that the community must be given reasonable notice of the intention to amend the agreement and the reasons for the amendment, as well as sufficient opportunity to make representations to the municipality.¹²¹ Johnson suggests that this onerous duty to consult must be taken to relate to material amendments only, not minor ones, as there are bound to be a lot of minor amendments in a long-term agreement.¹²²

I have gone purposefully into the details of the provisions to show that the procedure for outsourcing the provision of municipal services is prohibitively onerous and convoluted. This mechanism involves complex contractual and operational arrangements which require

¹¹⁴ Section 81(2)(c) Systems Act.

¹¹⁵ Section 86A(1)(l) Systems Act.

¹¹⁶ Section 80(2) Systems Act.

¹¹⁷ Section 80(2) Systems Act.

¹¹⁸ Section 84(3)(a) Systems Act.

¹¹⁹ Section 84(3)(b) Systems Act.

¹²⁰ Section 81(4) Systems Act.

¹²¹ Section 81(4) Systems Act.

¹²² Johnson 2004: 54.

financial and legal skills as well as technical and project management expertise. Moreover, despite this complexity, the MFMA adds another layer of daunting legal requirements for outsourcing municipal services through PPPs. Over and above the four-pronged procedure in terms of section 78, further layers of procedures and compliance await municipalities in the MFMA.

3.2.2 Section 120 of the MFMA and Regulations

The complexity of outsourcing the provision of municipal services is compounded by section 120 of the MFMA, which adds a further layer of regulation to PPP transactions. As a result, there is a certain level of overlap between the provisions of the section 78 of the Systems Act and section 120 of the MFMA, although Steytler and De Visser gamely propose a harmonious reading of these statutes that avoids conflict.¹²³ Moreover, yet another layer of regulation was added in 2005 with the issuing of an extensive set of regulations governing the implementation of PPPs.¹²⁴ This discussion will look at both section 120 of the MFMA and the PPP Regulations issued in terms of the MFMA.

Section 120 of the MFMA applies when a municipality considers entering into a PPP as defined in the PPP Regulations.¹²⁵ So, over and above the section 78 procedure prescribed in terms of the Systems Act, the MFMA, through section 120, introduces an additional procedure that must be followed when a municipality considers entering into a PPP. However, the two procedures are distinguishable, on two fronts. First, the application of section 120 procedure is more limited than the procedure prescribed in the Systems Act, as it applies to only two of the five external service delivery mechanism listed in section 76 of the Systems Act, namely a private party and NGOs. This idea is derived from the definition of a PPP as a commercial transaction between a municipality and a private party, with the latter defined as excluding a municipality, a municipal entity or an organ of state.¹²⁶ Essentially, the Systems Act in turn applies to all five external service delivery mechanisms.

Secondly, the ambit of section 120 is, at the same time, broader than that of the Systems Act, in that PPPs also include the outsourcing of activities that do not entail municipal services.¹²⁷

¹²³ Steytler & De Visser 2007: 9-37.

¹²⁴ PPP Regulations of 2007.

¹²⁵ Regulation 1 'Public-Private Partnerships' PPP Regulations.

¹²⁶ Regulation 1 'Public-Private Partnerships' PPP Regulations.

¹²⁷ Steytler & De Visser 2007: 9-35.

So, for example, when a municipality wants to outsource the management or use of its property to a private party, the municipal property does not constitute a municipal service but can be subject to a PPP transaction. Provisions of the Systems Act do not find application, as this is not a municipal service. Similarly, when a municipality wants to outsource its information technology requirements for its internal functioning to a private firm, this falls outside the ambit of Chapter 8 of the Systems Act as it does not entail a municipal service.¹²⁸ However, both these examples, while falling outside the ambit of the Systems Act, are still subject to the requirements of section 120 of the MFMA.

Section 120 also contains an elaborate process that must be followed before concluding a PPP. First, a feasibility study must be conducted. Secondly, a broad consultation process must be undertaken. Thirdly, if the PPP will have multi-year budgetary implications for the municipality, then additional procedural requirements must be met.

3.2.2.1 Feasibility study

In a way similar to externalising a municipal service, a municipality must conduct a feasibility study before concluding a PPP.¹²⁹ However, in this case the municipal manager must first notify the National Treasury and the provincial treasury in writing of the municipality's intention and also provide information about the municipality's ability to comply with the requirements of section 120 of the MFMA.¹³⁰ The National Treasury or provincial treasury may in turn instruct the municipal manager to appoint a person with appropriate skills and experience, either from within the municipality or outside, as the transaction advisor to assist and advise the municipality on the preparation and procurement of the PPP.¹³¹

Once the feasibility study has been initiated, it must focus on the following aspects. First, it must explain the strategic and operational benefits of the PPP for the municipality in terms of its objectives.¹³² In essence, it must describe how the agreement will provide value for money to the municipality, be affordable, transfer appropriate technical, operational and financial risks to the private party, and impact on the municipality's revenue flows and its current and future

¹²⁸ Steytler & De Visser 2007: 9-36.

¹²⁹ Section 120(4) MFMA.

¹³⁰ Regulation 2(1)(a) PPP Regulations.

¹³¹ Regulation 2(1)(b) PPP Regulations.

¹³² Section 120(4)(a) MFMA.

budgets.¹³³ Secondly, it must describe in specific terms the nature of the private party's role in the PPP, as well as the extent to which this role, both legally and by nature, can be performed by a private party.¹³⁴ Thirdly, the feasibility study must explain the capacity of the municipality to effectively monitor, manage and enforce the agreement.¹³⁵ Fourthly, the study must take into account all relevant information.¹³⁶ Finally, in terms of the PPP Regulations, the study must recommend an appropriate plan for the procurement of the proposed PPP if outsourcing is the preferred option.¹³⁷

As with the feasibility study prescribed in terms of section 78 of the Systems Act, which requires skills, resources and time, the national government may assist municipalities in carrying out the feasibility study in terms of section 120 of the MFMA.¹³⁸ As this feasibility study would overlap with the one prescribed in section 78 of the Systems Act, Steytler and De Visser maintain that duplicating the process can be avoided.¹³⁹ In this regard, where outsourcing through a PPP is contemplated, the assessment and the feasibility study done in terms of section 78(3)(b) and (c) of the Systems Act, respectively, will suffice.¹⁴⁰ However, the assessment and the feasibility study must cover the issues prescribed in the PPP Regulations and the reports on the assessment and the feasibility study must be included in the documents that are eventually submitted to the council.¹⁴¹

3.2.2.2 Consultation process

After the completion of the feasibility study, the next step is the broad consultation process before the matter is served before the council for a decision.¹⁴² This consultation process entails, first, that the municipal manager must make the particulars of the proposed PPP, including the report of the feasibility study, public within 60 days before the council considers the matter.¹⁴³ In this regard, the local community and other interested persons must be invited

¹³³ Section 120(4)(b)(iii) MFMA.

¹³⁴ Section 120(4)(b)(i) and (ii) MFMA.

¹³⁵ Section 120(4)(d) MFMA.

¹³⁶ Section 120(4)(c) MFMA.

¹³⁷ Regulation 3(1)(d) PPP Regulations.

¹³⁸ Section 120(5) MFMA.

¹³⁹ Steytler & De Visser 2007: 9-38.

¹⁴⁰ Regulation 3(3) PPP Regulations.

¹⁴¹ Regulation 3(3) PPP Regulations.

¹⁴² Regulation 4(2)(a) PPP Regulations.

¹⁴³ The procedure is prescribed in section 21A Systems Act.

to make comments and representations.¹⁴⁴ Secondly, the views of the municipality's intergovernmental relations (IGR) partners¹⁴⁵ must be solicited.¹⁴⁶ After receiving the comments of interested parties within the stipulated 60 days' period, the municipal manager must submit the report of the feasibility study and other relevant documentation to the council for a decision. The council must then make a decision, in principle, on whether the municipality should continue with the proposed PPP.¹⁴⁷ Once this decision is made, the council falls out of the picture if the only decision left is the selection of the appropriate private partner. The usual rules of procurement then kick in to identify the preferred private party in line with the Systems Act. However, where the PPP will have multi-year budgetary implications, section 33 of the MFMA must be complied with.¹⁴⁸

3.2.3.3 Long-term PPPs

A municipality may enter into long-term contracts that may impose financial obligations beyond the three years covered in its budget.¹⁴⁹ The MFMA imposes a number of additional procedural requirements in such cases. First, a consultation process akin to the section 120(6)(b) process discussed immediately above must be followed. In this regard, the municipality must consult with the community and the national and provincial governments.¹⁵⁰ Secondly, the council must consider the matter, taking into account the projected financial obligations for every year of the contract, the impact on future tariffs and revenue, and the comments of the parties whose views were sought.¹⁵¹ Lastly, if the council decides to conclude the contract, it must adopt a resolution which

¹⁴⁴ Section 120(6)(b) MFMA.

¹⁴⁵ Namely the National Treasury, the Department responsible for local government, the responsible department in the case of the provision of water, sanitation, electricity or any other prescribed service and any other national or provincial organ of state that may be prescribed. The views and recommendations of the National Treasury must be sought on the following matters:

- (a) *the proposed terms and conditions of the draft PPP agreements;*
- (b) *the municipality's plan for the effective management of the agreement after its conclusion;*
- (c) *the preferred bidder's competency to enter into the PPP agreement and its capacity to comply with the obligations in terms of the agreement (regulation 4(3) PPP Regulations).*

¹⁴⁶ Section 120(6)(c) MFMA.

¹⁴⁷ Section 120(6)(a) MFMA.

¹⁴⁸ Section 120(7) MFMA.

¹⁴⁹ Section 33(1) MFMA.

¹⁵⁰ Section 33(1)(a) MFMA.

¹⁵¹ Section 33(1)(b) MFMA.

- determines that the municipality will secure a significant capital investment or derive significant financial income or benefit from the contract;
- approves the contract as it is to be executed; and
- authorises the municipal manager to sign the contract on behalf of the municipality.¹⁵²

The final step in the procedures prior to the conclusion of a PPP is the procurement process.

3.2.3.4 The procurement process

The supply chain management system also applies to PPPs as well.¹⁵³ Moreover, the PPP Regulations have added more requirements. First, the municipal manager must solicit the views and recommendation of the National Treasury and the provincial treasury on the proposed bid documentation at least 30 days before the bids are publicly invited.¹⁵⁴ Secondly, the views of the treasuries must also be sought on the evaluation of the bids and any preferred bidder at least 30 day before any award is made.¹⁵⁵ In this regard, both the bid evaluation and the bid adjudication committees involved in the two distinct phases of the procurement process need to solicit the views of the treasuries. However, the treasuries' views are only advisory, as the committees concerned would have to make the recommendations and take the final decisions, respectively. The final award to a preferred private party leads to the second-last step in the MFMA procedure of concluding an agreement.

3.2.3.5 PPP agreements

The PPP Regulations set a number of qualitative requirements for PPP agreements. First, the object of the agreement must be to provide value for money and be affordable for the municipality.¹⁵⁶ Secondly, the nature of the private party's role must be described in specific terms.¹⁵⁷ In this regard, the agreement must also impose financial management duties on the private party, including transparent processes relating to internal financial control, budgeting, accountability and reporting.¹⁵⁸ Thirdly, the agreement must confer effective power on the

¹⁵² Section 33(1)(c) MFMA.

¹⁵³ Regulation 4(1) PPP Regulations.

¹⁵⁴ Regulation 4(1)(a) PPP Regulations.

¹⁵⁵ Regulation 4(1)(b) PPP Regulations.

¹⁵⁶ Regulations 5(1)(a) and (b) PPP Regulations.

¹⁵⁷ Regulation 5(1)(c) PPP Regulations.

¹⁵⁸ Regulation 5(1)(e) PPP Regulations.

municipality to monitor the private party's performance under the agreement and to manage and enforce the agreement.¹⁵⁹ Fourthly, there must be provision for the termination of the agreement if the private party fails to comply with its terms and condition or deliberately provides incorrect or misleading information to the municipality.¹⁶⁰

Fifthly, a number of anti-corruption measures must be included. In this regard, the private party must be restrained, for the full duration of the agreement, from offering employment, consultancy or other contracts to an official¹⁶¹ of the municipality or a municipal entity under the sole or shared control of the municipality, otherwise than in terms of the agreement.¹⁶² The same prohibition applies to a person who was an official at any time during a period of one year before the offer was made.¹⁶³ The agreement must further restrain a private party from offering employment, consultancy or other contracts to an employee of the municipality directly involved in the negotiation of the agreement¹⁶⁴ for a period of three years. The private party is also prohibited from employing any municipal employee who participated in the negotiations of the PPP agreement, except if participation was peripheral, for a period of three years.¹⁶⁵ Sixthly, the provisions of section 116(1) of the MFMA apply, including the requirements that the agreement must be in writing, that dispute-resolution mechanisms be included, and that periodic review of the agreement take place where it is for longer than three years.¹⁶⁶

The PPP agreement is concluded once the municipal manager appends his or her signature,¹⁶⁷ following the fulfilment of all the procedural requirements such as council approval of the long-

¹⁵⁹ Regulation 5(1)(d) PPP Regulations.

¹⁶⁰ Regulation 5(1)(f) PPP Regulations.

¹⁶¹ An official in this case is defined in section 1(1) MFMA as:

- (a) *an employee of the municipality or municipal entity;*
- (b) *a person seconded to a municipality or municipal entity to work as a member of the staff of the municipality or municipal entity; or*
- (c) *a person contracted by a municipality or municipal entity to work as a member of the staff of the municipality or the municipal entity otherwise than as an employee.*

¹⁶² Regulation 5(1)(g)(i) PPP Regulations.

¹⁶³ Regulation 5(1)(g)(ii) PPP Regulations.

¹⁶⁴ Regulation 5(1)(h) PPP Regulations.

¹⁶⁵ Regulation 5(2) PPP Regulations.

¹⁶⁶ 116(1) MFMA.

¹⁶⁷ Regulation 6(1) PPP Regulation.

term contracts.¹⁶⁸ However, the conclusion of the PPP agreement is not the end of the road for a municipality. It must still play an active role in the ‘maintenance’ of the contract.¹⁶⁹

3.2.3.6 Contract maintenance

The municipality, through the municipal manager as accounting officer, must take all reasonable steps to ensure that the PPP agreement is enforced and the outsourced activity is effectively and efficiently carried out in accordance with the agreement.¹⁷⁰ If it is the municipal property that is the subject of the PPP, the municipal manager must ensure that the property ‘is appropriately protected against forfeiture, theft, loss, wastage or misuse’.¹⁷¹ In essence, the municipal manager must monitor the performance of the private party on a monthly basis.¹⁷² This requires the municipal manager to establish the capacity in the administration to assist him or her in performing this function and overseeing the day-to-day management of the contract.¹⁷³ To this end, the municipal manager must appoint a project officer, from either inside or outside the municipality, who has the appropriate skills and experience.¹⁷⁴ Finally, the municipal manager must regularly report to the council on the management of the contract and the performance of the contractor.¹⁷⁵

A PPP agreement may be amended according to the rules of the MFMA.¹⁷⁶ First, the reasons for the proposed amendment must be tabled in the council.¹⁷⁷ Secondly, the municipality must give reasonable notice to the local community of the intention to amend the contract or agreement and invite representations on the issue.¹⁷⁸ Overall, the amendment must be ‘consistent with the basic essentials’ of the agreement as set out in the PPP Regulations.¹⁷⁹ Finally, the municipal manager must solicit the views and recommendations of the National Treasury and the provincial treasury on the reasons for the amendment at least 60 days before the agreement is amended.¹⁸⁰

¹⁶⁸ Section 33 MFMA read with regulation 6(2) PPP Regulations.

¹⁶⁹ Steytler & De Visser 2007: 9-41.

¹⁷⁰ Regulation 8(a) PPP Regulations.

¹⁷¹ Regulation 8(b) PPP Regulations.

¹⁷² Section 116(2)(b) MFMA.

¹⁷³ Section 116(2)(c) MFMA read with regulation 8(c) PPP Regulations.

¹⁷⁴ Regulation 7 PPP Regulations.

¹⁷⁵ Section 116(2)(b) MFMA.

¹⁷⁶ Steytler & De Visser 2007: 9-41.

¹⁷⁷ Section 116(3)(a) MFMA.

¹⁷⁸ Section 116(3)(b) MFMA.

¹⁷⁹ Regulation 9(1)(b) PPP Regulations.

¹⁸⁰ Regulation 9(2) PPP Regulations.

3.3 Coherence with the NPM

It was noted in the foregoing that the rationale behind PPPs is to mobilise resources and skills from the private sector, transfer substantial risk to the private provider and infuse business principles in the public sector, thereby ensuring that the delivery of public services is based on principles of efficiency, effectiveness and value for money. There seems to be coherence between this rationale of the classical NPM tenet of public-private partnerships and how PPPs were conceived and operationalised in South Africa.

First, the principle of mobilising resources and skills from the private sector finds expression in the legislative framework governing PPPs in South Africa. In this regard, one of the issues that form part of an enquiry required in exploring the use of an external provider is the capacity of the prospective providers to deliver the service.¹⁸¹ Furthermore, the Systems Act provides that the capacity and potential future capacity of prospective service providers to furnish the skills, expertise and resources necessary for the provision of services form part of a criteria relevant for the awarding of a contract.¹⁸²

As such, the private party to a PPP must display the capacity now and in the future to furnish the necessary skills and resources for the provision of a service. A private party, for example, must not only design and build but also finance, operate and maintain the facilities for the provision of the service under a long-term contract. At the end of the contract, the facilities so built are transferred to the municipality.¹⁸³ In essence, a municipality purchases a complete and fully maintained facility or service. Every investment made by the private party remains local government's property at the end of the contract period.¹⁸⁴ Furthermore, during the duration of the contract, the expertise for the provision of the service is provided by the private party.

Secondly, the legislative framework buttresses the need for the transfer of financial, technical and operational risk to the private provider. In the first place, the definition of a PPP states that the private party must assume substantial financial, technical and operational risks in connection with the performance of the municipal function, or the management or use of the municipal property, or both. In the second place, the Systems Act and the MFMA are replete

¹⁸¹ Section 78(3)(b)(ii) Systems Act.

¹⁸² Section 78(3)(b)(ii) Systems Act.

¹⁸³ *The White Paper on Municipal Service Partnerships* (2004) 7.

¹⁸⁴ Mitchell D *Capacity Development for Partnerships in South Africa: Increasing Service Delivery through Partnerships between Private and Public Sector* (2007) International Business Leaders Forum, GTZ: 23.

with provisions providing for the transfer of risk to the private party. As seen in the discussion of the legislative framework above, the Systems Act requires an assessment, during the feasibility study, of the extent to which the externalised service will transfer appropriate technical, operational and financial risk to the provider.¹⁸⁵ Furthermore, during the competitive bidding stage, the Systems Act uses the transfer of appropriate technical, operational and financial risk to the private provider as part of a criteria relevant for the awarding of a contract.¹⁸⁶ The MFMA in turn provides that the feasibility study must describe how the agreement will provide value for money to the municipality, be affordable, transfer appropriate technical, operational and financial risks to the private party.¹⁸⁷

Thirdly, the NPM principle of retaining ownership and control of the outsourced service or property or both in the municipality is sufficiently reflected in the legislative framework. Section 81 of the Systems Act makes it clear that when the municipality opts for using an external provider, it cannot divest itself of its responsibilities to provide that service to the community. A municipality remains responsible for ensuring that the service is provided to the local community in terms of the provisions of this Act.¹⁸⁸ To this end, the contents of the service delivery agreement must reflect the municipality's continuous responsibility for the proper delivery of that service.¹⁸⁹ In negotiating the agreement, the municipality must also exercise its service authority so as to ensure uninterrupted delivery of the service in the best interest of the local community.¹⁹⁰ To this end, there must be provisions in the service delivery agreement that ensure the continuity of the service if the provider, for whatever reason, is unable to perform its functions.¹⁹¹ Furthermore, provision must be made for the municipality to take over the service, including all assets, when the agreement expires or is terminated.¹⁹²

Moreover, the municipality must regulate the provision of the service by subjecting it to its performance management system,¹⁹³ and monitor the implementation of the service delivery agreement within the framework of the performance management system¹⁹⁴ by imposing

¹⁸⁵ Section 78(3)(c)(iv) Systems Act.

¹⁸⁶ Section 78(3)(c)(iv) Systems Act.

¹⁸⁷ Section 120(4)(b)(iii) MFMA.

¹⁸⁸ Section 81(1) Systems Act.

¹⁸⁹ Steytler & De Visser 2007: 9-33.

¹⁹⁰ Section 81(1)(e) Systems Act.

¹⁹¹ Section 81(2)(d) Systems Act.

¹⁹² Section 81(2)(e) Systems Act.

¹⁹³ Section 81(1)(a) read with section 41 Systems Act.

¹⁹⁴ Section 81(1)(b) Systems Act.

appropriate reporting obligations. In this regard, the agreement must confer effective power on the municipality to monitor the private party's performance under the agreement and to manage and enforce the agreement.¹⁹⁵ Likewise, the agreement must be made subject to the changes that may result from the periodic review of the IDP, as the service remains subject to the development priorities and objectives of the municipality in terms of the IDP.¹⁹⁶ Additionally, the municipality must control the setting and adjustment of tariffs in line with its own tariff policy.¹⁹⁷ As a result, the legislative framework for PPPs gives full effect to NPM principle of PPP.

3.4 Practice

Overall, the incidence or use of PPPs in South African municipalities is minimal. As at 2014 there are only 27 active municipal PPPs in 21 municipalities registered as current projects in the National Treasury PPP Unit.¹⁹⁸ Three of these are in the water sector, three in waste management, seven in tourism, three in accommodation, six in the energy sector, one in the fleet environment, one in the housing sector, and the rest in an undefined category called 'other'.¹⁹⁹

This poor showing in the incidence of PPPs, or lack of interest in the use of PPPs by the majority of municipalities, can be explained by concerns that have been raised since the current PPP regime came about in 2003 and 2005. One such concern is that the legislative framework is cumbersome and complex, thus requiring additional capacities within municipalities in terms of skills, institutional structures and legal prowess.²⁰⁰ This poses a challenge to the majority of South African municipalities, especially the non-metros. Although the risks are transferred to the private sector, the cost and toil of the extensive sections 78 and 120 procedures is prohibitive.

¹⁹⁵ Regulation 5(1)(d) PPP Regulations.

¹⁹⁶ Section 81(1)(c) Systems Act.

¹⁹⁷ Section 81(1)(d) Systems Act.

¹⁹⁸ National Treasury PPP Unit *Public-Private Partnership* available at <http://www.ppp.gov.za/Lists/PPP%20Project%20List%20Master/Municipal.aspx> (accessed 15 March 2017) (hereafter National Treasury Public-Private Partnership).

¹⁹⁹ National Treasury PPP Unit.

²⁰⁰ Cruywagen D 'Public-Private Partnerships Municipal Focus' 2016 available <http://municipalfocus.co.za/public-private-partnerships/> (accessed 15 July 2016).

As a result of the complexity of the PPP regime, the transaction costs, defined to mean the costs to establish and maintain a partnership, the legal, financial and technical advisory costs for both the public and the private partners, as well as the costs for organising the bidding process, are high. As a result, only 21 out of 257 municipalities²⁰¹ have ventured to use PPPs as a mechanism to deliver services.²⁰² Furthermore, even though the majority of these current PPPs were initiated in 2011, none of them has actually reached the final stage, namely the signing of the PPP agreement. Even the private sector has shown signs of reluctance to get involved in municipal PPPs, which are relatively smaller projects. It considers that the complex rules that have to be followed for the implementation of PPPs make sense for large-scale projects, which are profitable over a longer period of time, allowing the important initial investment to be covered. The existing rules are viewed as too restrictive for smaller projects.²⁰³

Given that the national government is enjoined, in terms of both section 120 of the MFMA²⁰⁴ and section 78 of the Systems Act,²⁰⁵ to assist municipalities in carrying out the feasibility studies is established a PPP Unit, situated in the National Treasury, to do the following. First, the PPP unit provides technical assistance to municipalities through project feasibility studies, procurement and management.²⁰⁶ Secondly, the PPP Unit is aimed at promoting an enabling environment for PPPs by facilitating certainty in the regulatory framework, developing best practice guidelines, and providing training, among other things.²⁰⁷ However, there does not seem to be certainty in the regulatory framework for PPPs, and the technical assistance offered to municipalities does not seem to sway them into opting for the PPP route when contemplating the modes of service delivery. As things stand, municipalities have to consult the Systems Act, the MFMA and its attendant PPP Regulations, and sector legislation governing the particular service to be outsourced.

Furthermore, the PPP Unit has not been active in assisting municipalities in carrying out the prescribed procedure for outsourcing and so ensuring that compliance with the various legal

²⁰¹ This is the latest number of municipalities after the redemarcation that took effect after the August 2016 local elections.

²⁰² National Treasury Public-Private Partnership.

²⁰³ Castalia Strategic Advisors & Ukhamba Advisory Services, 2007: i-ii.

²⁰⁴ Section 120(5) MFMA.

²⁰⁵ Section 78(6) Systems Act.

²⁰⁶ National Treasury Public-Private Partnership.

²⁰⁷ National Treasury PPP Unit.

provisions is not too daunting for small municipalities.²⁰⁸ As a result, the complexity and elaborate nature of the outsourcing procedures are swaying municipalities against the outsourcing route.²⁰⁹

The second possible reason for the minimal use of the PPPs is the fact that even after outsourcing the service, the municipality is still required by law to play an active role in the maintenance of the PPP contract. First, the municipality must still play an active role in ensuring that the PPP agreement is enforced and the outsourced activity is effectively and efficiently carried out in accordance with the agreement. Secondly, if a municipal property is the subject of the PPP, the municipality must ensure that such property is appropriately protected against forfeiture, theft, loss, wastage or misuse. Thirdly, the municipality must monitor the performance of the private party on a monthly basis.

As seen herein above, this requires the municipal manager to establish the capacity in the administration to assist in performing this function and overseeing the day-to-day management of the contract. This also includes the appointment of a project officer, from either inside or outside the municipality, who has the appropriate skills and experience. So much for outsourcing the service or property to a private provider. It looks much as if the municipality is still actively involved in the provision of the service rather than having outsourced it. There are hence no incentives for a municipality to go through a bruising section 78 and 120 procedure only to play an even more active role than before in the provision of the service, to the extent of establishing additional capacity or appointing project officers.

The next section examines examples of public-private partnerships in the water sector at local level. Although water is a key service that municipalities must deliver, one that requires engineering skills and resources, there are few public-private partnership contracts in the water sector. The majority of municipalities, especially in rural areas, do not have the necessary skills and resources.²¹⁰ To complicate matters further, the Water Services Act²¹¹ contains additional requirements for outsourcing water and sanitation services. A striking feature in the requirements of the Water Services Act, which sets it apart from the Systems Act and the

²⁰⁸ Johnson 2004: 63.

²⁰⁹ Johnson 2004: 63.

²¹⁰ In this regard, a need exists for the development of a section 78 investigation guideline to help struggling municipalities. It could also be used as a monitoring tool.

²¹¹ Act 108 of 1997.

MFMA, is that a municipality is obliged, when assessing and selecting a potential providers, first to consider all known public sector providers ‘which are willing and able to perform the relevant functions’ before it can look at the private sector.²¹² Furthermore, the municipality is required to publicly disclose its intention to enter into or renew a contract with an external provider.²¹³ The potential water services provider must also disclose any other interests it may have with the municipality and the rate of return on investment, if any, it will gain from the contract.²¹⁴

This demonstrates an ambivalence towards outsourcing water and sanitation services that is contrary to the ethos of the 1998 and 2000 *White Papers*, both of which encourage outsourcing to and involvement of the private sector where appropriate.²¹⁵ As seen above, the 1998 *White Paper* states categorically in this regard that the issue is not one of choosing between public and private providers but finding the most appropriate combination of options for achieving a policy objective.

A further set of regulations governing contracts entered into with external water service providers was issued in 2002.²¹⁶ These provide for matters that must be included in a water services contract, many of which overlap with Systems Act and MFMA requirements.²¹⁷ The matters include setting performance targets,²¹⁸ protection of assets,²¹⁹ annual reports,²²⁰ and dispute-resolution mechanisms.²²¹ Furthermore, the regulations prohibit a contract from exceeding 30 years in duration.²²² The regulations also provide that the contract ‘must provide an incentive for the water service provider to perform efficiently and effectively’.²²³

Johnson maintains that even though the Water Services Act and the regulation issued pursuant thereto are adding to, and to some extent duplicating, the already existing requirements for a municipality to outsource its services, they can be easily dovetailed with the overall

²¹² Section 19(2) Water Service Act.

²¹³ Section 19(3) Water Service Act.

²¹⁴ Section 19(4) Water Service Act.

²¹⁵ Johnson 2004: 65.

²¹⁶ Water Services Provider Contract Regulations (GN R980 GG 23636 of 19 July 2002) (hereafter Water Regulations).

²¹⁷ Johnson 2004: 61.

²¹⁸ Regulation 5 Water Regulations.

²¹⁹ Regulation 11 Water Regulations.

²²⁰ Regulation 19 Water Regulations.

²²¹ Regulation 22 Water Regulations.

²²² Regulation 9(a) Water Regulations.

²²³ Regulation 12(a) Water Regulations.

outsourcing framework contained in the Systems Act.²²⁴ However, that does not change the complexity of outsourcing requirements for the majority of municipalities. A small rural municipality which is considering outsourcing some of its services due to its limited size and resources has to consult, depending on which outsourcing options are chosen, at least three different pieces of legislation, conduct at least three different public participation processes and conduct at least three assessment and/or feasibility studies, all of them slightly different. This is unduly burdensome for the majority of municipalities, hence the minimal use made of PPPs, especially in the water sector.

As a result, there are only three municipalities countrywide with active public-private partnership water projects, namely Sedibeng District Municipality, eThekweni Metropolitan Municipality²²⁵ and Lephhalale local municipality.²²⁶ The one water project at Lephhalale local municipality is at feasibility-study stage. The Lephhalale local municipality's IDP of 2014 stated that the '[s]ection 78 process with regard to determination of appropriate mechanisms for water provisioning' would only be finalised in 2016.²²⁷ Consequently, Lephhalale local municipality similarly does not lend itself to proper analysis as there is no track record of implementation as yet.

The water PPP projects that lend themselves to analysis, owing to the period of time in operation, are projects that predate the current PPP regime. One of them was concluded in 1999 between the Mbombela local municipality (formerly Nelspruit Town Council) and a British company, BiWater, which is the parent company of Greater Nelspruit Utility Corporation, now operating under the name Sembcorp Silulumanzi.²²⁸ This transaction was entered into because of the water constraints in the newly amalgamated municipality.²²⁹

²²⁴ Johnson 2004: 62.

²²⁵ In 2005 the eThekweni Municipality started the section 78 process to review of the way in which it is structured to deliver water services, with the overall intention of improving the efficiency, affordability and sustainability of the delivery of water services within its area of supply. A report on the results of the section 78 feasibility study was submitted in 2008, at which time the decision was made not to change the current arrangement for the provision of the water service.

²²⁶ National Treasury database, available at <http://www.ppp.gov.za/Lists/PPP%20Project%20List%20Master/Water.aspx> (accessed 26 September 2016). The database was last updated in March 2013.

²²⁷ Lephhalale 2014-2016 IDP: 191.

²²⁸ Bender P & Gibson S *Case Study for the 10 Years of the Mbombela (Nelspruit) Water and Sanitation Concession, South Africa* (2010) 15. In July 2010, Silulumanzi was sold to Sembcorp of Singapore and became Sembcorp Silulumanzi.

²²⁹ Gibson S 'Service delivery solutions for water services – Learning from private business: water and wastewater' (2012) 37(1) *IMIESA* 33.

Prior to 1995, the Nelspruit Town Council served a population of only 25 000 residents, all of which received full reticulation, at high pressure, of water supply and waterborne sanitation services.²³⁰ This changed in 1995 with the formation of the Nelspruit Transitional Local Council and later Mbombela local municipality, as the population served by the new municipality increased ten-fold to 250 000,²³¹ all of which predominantly relied on the tax base of the town of Nelspruit.²³² The majority of the newly added areas had never been serviced with water and sanitation before, placing considerable strain on existing resources. Furthermore, the Nelspruit Transitional Local Council's capital budget, only a third of which was set aside for water services (R8.5 million) was 'woefully inadequate to meet service needs'.²³³ The municipality, therefore, entered into a PPP for 30 years with Greater Nelspruit Utility Corporation.

As it is a public-private partnership, all fixed assets remain the property of the municipality – none of the assets can be sold without permission of the municipality. Sembcorp Silulumanzi will return the assets in a specified condition at the end of the 30-year contract.²³⁴ At the time this thesis was written, the contract was in its seventeenth year and was therefore ripe for assessment. Given that the concession was entered into before 2000, the changes in municipal boundaries following the 2000 elections have inadvertently resulted in half of the population in Mbombela local municipality being served by a private company, with the other half served by the municipality itself.²³⁵

This PPP was 'hailed as the type of public-private partnership that is needed to ensure investment to extend and sustain water services'.²³⁶ Indeed, infrastructure was extended to previously excluded areas.²³⁷ In this regard, the Institute of Municipal Engineering of Southern Africa (IMESA) reported in 2012 that 'virtually every household in the concession area now

²³⁰ Brown J *Water Service Subsidies and the Poor: A Case Study of Greater Nelspruit Utility Company, Mbombela Municipality, South Africa* (2005) 9 (hereafter Brown 2005).

²³¹ A number of townships and the previous Kangwane self-governing territory were incorporated into the new entity.

²³² Smith L, Gillet, A & White F 'Public money, private failure: Testing the limits of market-based solutions for water delivery in Nelspruit' in McDonald DA & Ruiters G (eds) *The Age of Commodity: Water Privatization in Southern Africa* (2003) 9. Nelspruit, the principal town of Mbombela, is also the capital of Mpumalanga province.

²³³ Smith et al. 2003: 9.

²³⁴ Brown 2005: 25.

²³⁵ Mbombela Local Municipality is both a Water Service Authority and a Water Service Provider.

²³⁶ De Visser JW & Mbazira C *Water Delivery: Public or Private?* (2006) 48 (hereafter De Visser & Mbazira 2006).

²³⁷ Smith, Gillet & White 2004: 135 quoted in De Visser & Mbazira 2006: 48.

has some access to water'.²³⁸ This means that 94 per cent of households in 2012 had some form of access to the formal water system, compared to 45 per cent in 1999, and 88 per cent was receiving water on a daily basis.²³⁹ IMESA further reports that the 'water and effluent quality is excellent in the systems operated by the concessionaire'.²⁴⁰ This was corroborated by the Blue and Green Drop Awards received by the company from the Department of Water Affairs.²⁴¹ Furthermore, water and sanitation tariffs are similar to, even lower than, those in comparable municipalities.²⁴²

However, this transaction is not without its challenges. The concessionaire, GNUC, has had major difficulty in navigating South Africa's realities of deep poverty, which have resulted in non-payment for water services.²⁴³ The market principles of cost reflective pricing and cost recovery systems attendant to a PPP transaction were rendered nugatory by the grinding poverty, combined with the legacy of non-payment as a means of protest against illegitimate apartheid local authorities. Smith therefore argues that the application of some of NPM principles is not appropriate for the South African reality.²⁴⁴ The abstract principles of the NPM flounder when they hit the concrete reality on the ground.

Another example of a PPP transaction that proved unsuited for the South African reality also predates the current PPP regime. In this case, in 1995 the former Fort Beaufort Transitional Local Council, later called Nkonkobe local municipality,²⁴⁵ awarded a 10-year contract to Water and Sanitation Services South Africa (WSSA), a subsidiary of a French water multinational Suez Lyonnaise.²⁴⁶ The contract entailed that WSSA would manage and operate water and sanitation services in return for management fees.²⁴⁷ Similarly, Nkonkobe local

²³⁸ Gibson S 'Service delivery solutions for water services - learning from private business: water and wastewater' (2012) 37(1) *IMIESA* 33 (hereafter Gibson 2012).

²³⁹ Gibson 2012: 33.

²⁴⁰ Gibson 2012: 33.

²⁴¹ Department of Water and Sanitation *Blue Drop Report* (2014) 3. See also 2011 Green Drop Report.

²⁴² Gibson 2012: 33-4.

²⁴³ Smith L, Mottiar S & White F *Testing the Limits of Market-based Solutions to the Delivery of Essential Services: The Nelspruit Water Concession* (2003) 8 (hereafter Smith et al. 2003).

²⁴⁴ Smith et al. 2003: 9.

²⁴⁵ Nkonkobe Local Municipality was disestablished after the 3 August 2016 municipal elections and merged with Nxuba Local Municipality to form Raymond Mhlaba Local Municipality.

²⁴⁶ *Nkonkobe case*: 2.

²⁴⁷ De Visser JW 'Water privatisation contract cancelled' (2002) 4(2) *Local Government Bulletin* 11.

municipality is comprised of poverty-stricken rural areas where people are unable to pay for services. It includes Alice, Fort Beaufort, Middeldrift and Seymour.²⁴⁸

When the municipality could not pay the management fees, owing to non-payment by residents and to the fact that the fees had started absorbing a fifth of the municipality's budget,²⁴⁹ problems in the contract emerged. WSSA threatened to discontinue water delivery to municipal residents, and the municipality in turn sought a court intervention. The municipality was saved by the court, which found the contract invalid on grounds that the public participation procedures were not followed before the contract was entered into. The court then nullified the contract in 2001.²⁵⁰

These contracts have proved difficult for consumers, workers and for the water companies alike, because they are based on a rigorous cost recovery system in terms of which water is provided on the basis of the ability to pay rather than as a basic need.²⁵¹ When this system of commodification of water hits the reality of grinding poverty on the ground, it is turned on its head. This supports the assertion that some NPM principles are not suitable for application in their pure form in the South African context.

3.5 Assessment

It emerges from the forgoing that the legislative framework for municipal PPPs did not give expression to this NPM principle in a manner that facilitates proper implementation. The procedures for outsourcing the provision of municipal services are prohibitively onerous and convoluted. First, the section 78 procedure is impossible to implement. It entails four stages, all of which require some form of an elaborate assessment or a feasibility study. Secondly, section 120 of the MFMA and PPP Regulations further complicate the procedure for externalising services by imposing additional layers of compliance. As a result, the use of PPPs in local government is minimal. The CEO of the South African Local Government Association (SALGA), Xolile George, has added his voice to the complex nature of this procedure, stating that 'legal requirements for public-private partnerships are daunting for municipalities, especially smaller non-metros with limited capacity'.²⁵² As a result, only 21 out of 257

²⁴⁸ Hall D, Bayliss K, Lobina E *Water Privatisation in Africa: Municipal Services Project Conference* (2002) 11.

²⁴⁹ Smith et al. 2004: 159.

²⁵⁰ *Nkonkobe* case: 17.

²⁵¹ De Visser and Mbazira 2006: 49.

²⁵² George X *Municipal Public-Private Partnerships for the Delivery of Sustainable Human Settlements: Opportunities and Constraints* (2013) 6.

municipalities countrywide have attempted externalising services using public-private partnerships.

Even though there might be coherence between the classical PPP and how it is operationalised in South Africa, the process towards the conclusion of the South African PPP is shrouded in layers upon layers of procedure and compliance. These procedures require time, resources and know-how within the staff of the municipality contemplating originating and implementing a PPP. The unfortunate reality is that all or most of these preconditions are lacking in the majority of municipalities in South Africa. The PPP Unit has not been active in providing the technical assistance required at different stages of externalising the service through public-private partnerships. As a result, the PPP process takes a considerable amount of administrative time and cost.²⁵³ The duration of the overall PPP process from inception to procurement, takes between two to five years to complete, depending on the capacity of a municipality.²⁵⁴ As at 2014, of the 27 projects initiated in 2011, seven were still at an inception stage, 10 at a feasibility study stage, seven at a procurement stage and three at a negotiations stage.²⁵⁵

By overprescribing the use of PPPs, as a direct result of pressure from the unions, which argued that PPPs were the preliminary step towards privatisation,²⁵⁶ the government demonstrated that is not serious about making PPPs work. It is submitted that central government did not trust municipalities enough to go about PPP professionally, and thus prescribed at length how things should be done. The ill-effects of mistrust are real given the fact that about a quarter of municipalities are dysfunctional.²⁵⁷

It also emerges that there is a policy bias, in the water and sanitation sector, toward traditional public procurement and against PPPs. The Water Services Act, for example, in complete disregard of the purport of the 1998 and 2000 *White Papers*, places an obligation on municipalities, when assessing and selecting potential providers, to first consider public sector

²⁵³ National Treasury *Public Sector Supply Chain Management Review* (2015)43.

²⁵⁴ Republic of South Africa *Public-Private Partnership Manual Module 6: Managing the PPP Agreement* (2004) 384.

²⁵⁵ National Treasury PPP Unit Public-Private Partnership available at <http://www.ppp.gov.za/Lists/PPP%20Project%20List%20Master/Municipal.aspx> (accessed 18 June 2017) (hereafter PPP Unit Public-Private Partnership).

²⁵⁶ Hemson D *Privatisation, Public-Private Partnerships and Outsourcing: The Challenge to Local Governance* (1997) 18.

²⁵⁷ *Back to Basics* (2014) 4.

providers before they can look at the private sector. This means that municipalities are discouraged from taking the PPP route when outsourcing their water and sanitation services.

It is further apparent that even when an external company is appointed to provide a service to communities on behalf of the municipality, the municipality still remains responsible for ensuring that those services are delivered properly. This serves as a disincentive for most municipalities wishing to opt for the PPP route in delivering services. Why should municipalities go through a toilsome and expensive PPP procedure trying to get a private company to deliver services to communities on their behalf if they are still, by law, required to regulate the provision of the service, monitor and assess whether the service provider is keeping to the agreement, including how well it is performing the service, and use their authority and resources to make sure that services are delivered without interruption and in the best interests of the local community?

The majority of municipalities thus have little option but to insist on performing the functions themselves even though they are not doing well in this regard. The resources and expertise that come with partnering with a private company are offset by the transaction costs of establishing and maintaining a partnership. It is suggested that this is prohibitive for both the municipality and the private provider, since the complex rules that have to be followed make sense only for large-scale projects, which are profitable only over a longer period of time that allows the important initial investment to be covered. There is therefore a lack of fiscal imperative to use municipal PPPs.

Furthermore, and linked to the issue of lack of fiscal imperatives, the rationale of transferring significant risks to the private provider collides head-on with the concrete reality of grinding poverty and underdevelopment in South African municipalities. In the majority of cases the private company is expected to recover its management fees or payment for performing the municipal function or for utilising the municipal property, by way of charges or fees it collects from users or customers of a service provided to them. However, given the fact that majority of South African municipalities are servicing poor residents, coupled with the culture of non-payment, the NPM market principles of cost-reflective pricing and cost-recovery systems attendant on a PPP transaction are proving futile. Instead, enforcing strict credit control measures to improve payment levels, such as water cut-offs, removing meters, and reducing the 24-hour supply to intermittent hours during the day and night, have resulted in increasing

levels of illegal reconnections.²⁵⁸ This reinforces the assertion that the abstract ideals of the NPM are found wanting when they hit the concrete realities on the ground. PPPs are not suited for the South African reality of poverty and joblessness.

4 Corporatisation

4.1 NPM principles

Corporatisation is another item on the NPM menu, one which entails converting line departments of government into free-standing agencies or establishing semi-autonomous agencies or public entities, run by their own boards of directors, that render public functions on behalf of departments.²⁵⁹ This allows for the separation of policy-making and implementation functions or responsibilities in terms of which governments focus on policy formulation while the agencies work on implementation. The provision of public services is transferred from the realm of government into a corporation or agency, which has a contract-like, arm's-length relationship with the parent municipality. In terms of this relationship, the parent municipality appoints the management of these entities, which then report to it at specified times. The agency would be run like a business

4.2 Legislative framework

The *White Paper on Local Government* defines corporatisation, in the context of local government, as the separation of service delivery units from council, the aim being to offer the management of service units greater autonomy and flexibility in introducing commercial management practices in the delivery of services.²⁶⁰ The rationale for the creation of semi-autonomous or self-standing entities is to ensure an arm's-length distance between the entity and the parent municipality. The *Municipal Infrastructure Investment Unit* further defines corporatisation as a creation of an independent separate legal corporate entity to manage the provision of a municipal service, the ownership of which remains with the municipality but which operates with the freedom and flexibility associated with private sector business²⁶¹

²⁵⁸ Smith 2003: 12.

²⁵⁹ See Chapter Two, section 6.2 for more information.

²⁶⁰ *White Paper* 1998 163 para. 2.2.2.

²⁶¹ Service Delivery Options 2003.

Corporatisation therefore proposes to separate service delivery units from the bureaucratic environment of municipalities, thus ensuring that they operate in a deregulated environment. It is also aimed at addressing some of the administrative problems that emanate from an old system which is ‘controlled and managed through rigid and top-down procedures, which have hindered responsiveness and stifled initiative ...’.²⁶² It is hoped that institutions operating on business principles will have greater managerial flexibility and thus be more cost-effective, efficient and responsive than ordinary service departments.²⁶³ For example, the municipality must demonstrate ‘a need to perform that function or power in accordance with business practices in order to achieve the strategic objectives of the municipality more efficiently’ before establishing a private company.²⁶⁴ As a counterweight, the municipal council must set policy and service standards and hold the unit to account against those standards.²⁶⁵ The council must clearly define ‘reporting requirements and accountability mechanisms’.²⁶⁶

4.2.1 Types of entities

Before the enactment of the Systems Act in 2000, municipalities created municipal entities in a variety of legal clothes. These included companies, co-operatives, trusts, or other corporate entities.²⁶⁷ The enactment of the Systems Act did not fundamentally change the situation but allowed instead for greater flexibility in the creation of municipal entities, provided they were under the control and ownership of a municipality.²⁶⁸ This legal position was fundamentally altered in 2003 when the MFMA and the amendments to the Systems Act introduced an entirely new regime which is extensively regulated. Section 82 of the Systems Act was repealed²⁶⁹ and a new Chapter 8A was added, setting out three types of municipal entities and their governing structures.²⁷⁰ Currently, there are only three types of municipal entities that may be established by municipalities, namely a private company; a service utility for a municipality, or a multi-jurisdictional service utility catering for more than one municipality.²⁷¹

²⁶² *Green Paper*: 78 para. 1.

²⁶³ Kaul M *Management Reforms in Government: A Review of International Practice and Strategies* (2000) 86.

²⁶⁴ Section 86E(1)(b)(1)(i) Systems Act.

²⁶⁵ *White Paper* 1998: 163 para. 2.2.2.

²⁶⁶ *White Paper* 1998: 163 para. 2.2.2.

²⁶⁷ Steytler N, Ntliziywana P & De Visser J A *Study into Policy Intent and Practice as Regards Municipal Entities* (2010) 6 (hereafter Steytler, Ntliziywana & De Visser 2010).

²⁶⁸ Section 82(1)(a) Systems Act.

²⁶⁹ Repealed by section 14 Act 44 of 2003.

²⁷⁰ Inserted by section 18 Act 44 of 2003.

²⁷¹ Section 86(B)(1) Systems Act.

The MFMA prescribes a process to be followed when establishing or acquiring an entity. This process entails, first, the consideration of the relevant factors, and, secondly, consultation with the relevant parties on the basis of the consideration made. The relevant factors that require consideration are as follows:

- the financial implications of establishing or participating in an entity, which includes the implications of acquiring an interest in a private company that would render that company a municipal entity;²⁷²
- the precise function or service that such entity would perform on behalf of a municipality;²⁷³ and
- the impact that the shifting of the function to the entity will have on the municipality's staff, assets and liabilities.²⁷⁴

The second aspect of the process entails consulting with the public²⁷⁵ and inviting comments from the local community, organised labour and other interested persons within 90 days before the meeting of the council at which the proposed establishment of the entity is to be considered for approval.²⁷⁶ The municipality must also solicit the views and recommendations of the following relevant parties:

- the National Treasury and the relevant provincial treasury;²⁷⁷
- the national and provincial departments responsible for local government;²⁷⁸ and
- the MEC for local government in the province.²⁷⁹

²⁷² Section 84(3) MFMA.

²⁷³ Section 84(1)(a) MFMA.

²⁷⁴ This includes the assessment of the number of staff to be transferred; the number that would become redundant; the consequent cost of retrenchment or retention of redundant staff; whether assets will be transferred to the entity or become obsolete; and whether to cede (or retain) any debt or liabilities to the entity (section 84(1)(b)(i)-(vii) MFMA).

²⁷⁵ Section 84(2)(a)(i)(aa) MFMA.

²⁷⁶ Section 84(2)(a)(i)(bb) MFMA.

²⁷⁷ Section 84(2)(a)(ii)(aa) MFMA.

²⁷⁸ Section 84(2)(a)(ii)(bb) MFMA.

²⁷⁹ Section 84(2)(a)(ii)(cc) MFMA.

At the meeting considering the matter, the council must consider the assessment report and the comments and recommendations of the parties who have been consulted.²⁸⁰ In what follows, the three types of municipal entities will be examined in some detail.

4.2.1.1 Private company

A municipality may establish or acquire a private company or an interest in such a company in one of following three options. First, a municipality may establish a company or acquire full ownership of a private company.²⁸¹ Secondly, it may jointly with other municipalities and/or national or provincial organs of state, establish or acquire a company.²⁸² This company only becomes a municipal entity when the municipality has effective control over it.²⁸³ In the case where the national and/or provincial organs of state are in control, the company is referred to as the public entity²⁸⁴ governed by the PFMA.²⁸⁵ Thirdly, a municipality may acquire or hold an interest in a private company jointly with a party other than an organ of state, provided that the company is in the effective control of the municipality, singly or collectively with other municipalities.²⁸⁶ In all these three options, the crucial requirement is that organs of state must have effective control of the private company. A municipality may thus have a minority interest only when an organ of state holds effective control.²⁸⁷

The Systems Act sets three basic requirements for the establishment or acquisition of a company.²⁸⁸ First, the purpose must be to use the company as a mechanism to assist in the performance of any of the municipality's functions and powers.²⁸⁹ Secondly, and more demanding, the municipality must be able to demonstrate that there is a need to perform that function or power in accordance with business practices in order to achieve the strategic

²⁸⁰ Section 84(2)(b) MFMA.

²⁸¹ Section 86C(2)(a) Systems Act.

²⁸² Section 86C(2)(b) Systems Act.

²⁸³ Section 86D(1)(a) Systems Act.

²⁸⁴ Section 86D(1)(b) Systems Act.

²⁸⁵ Act 1 of 1999.

²⁸⁶ Section 86C(2)(c) Systems Act.

²⁸⁷ Section 1 of the Systems Act defines effective control as the power of a shareholder to appoint or remove at least the majority of the board of directors or to control at least the majority of the voting rights at a general meeting of the company.

²⁸⁸ Section 86E(1)(c) Systems Act.

²⁸⁹ Section 86E(1)(a) Systems Act.

objectives of the municipality more effectively.²⁹⁰ Thirdly, a demonstrable case should also be made that the company would benefit the local community.²⁹¹

Further requirements are added when two or more municipalities intend to establish or acquire a company. First, they must have reached an agreement on proposals for shared control of the company. Secondly, they must consider cash flow projections on the company's proposed operations for at least three financial years.²⁹² Furthermore, when the company is to be used as a mechanism to provide a municipal service, the requirements of Chapter 8 of the Systems Act must be met.²⁹³

The establishment or acquisition of the company is done in terms of the Companies Act²⁹⁴ and any other law regulating companies. Similarly, the internal governance structure of the private company is governed by the Companies Act.²⁹⁵ However, in case of conflict between the Companies Act or any other applicable legislation and the Systems Act, the Systems Act prevails.²⁹⁶ The private company which is a municipal entity must restrict its activities to the purpose for which it is used by the parent municipality.²⁹⁷ It cannot have functions or powers wider than those of the parent municipality or municipalities. A municipality may transfer ownership or otherwise dispose of a wholly-owned company in accordance with the provisions of the PFMA.²⁹⁸ Of importance is, first, that the permanent disposal of ownership of a capital asset that is needed to provide the minimum level of basic municipal services is prohibited. Secondly, the disposal may not result in the remaining shareholding municipalities losing effective control over a company to a non-state investor.²⁹⁹

²⁹⁰ Section 86E(1)(b)(i) Systems Act. As the decision to establish an entity rests with the council, it is the council that must be convinced that there is a demonstrable need and benefit. A full motivation must be submitted to the council and other interested parties who must be consulted on the decision.

²⁹¹ Section 86E(1)(b)(ii) Systems Act. The benefit to the local community should refer to better service delivery in terms of costs, quality and sustainability.

²⁹² Section 86F(b) and (c) Systems Act.

²⁹³ Section 86E(2) Systems Act.

²⁹⁴ Act 71 of 2008.

²⁹⁵ Section 86C(3) Systems Act.

²⁹⁶ Section 86C(3) Systems Act.

²⁹⁷ Section 86D(2)(a) Systems Act.

²⁹⁸ Section 86G(a) Systems Act.

²⁹⁹ Section 86 S 86G(b)(ii) Systems Act.

4.2.1.2 Service utility

A service utility is a municipal entity established in terms of a by-law that creates a juristic person under the sole control of the municipality.³⁰⁰ As the by-law is the legal basis of the utility, the municipality cannot confer on the utility any functions or powers that fall outside its competence.³⁰¹ The same three basic requirements for the establishment or acquisition of a company also apply to setting up a service utility.³⁰² Similarly, when a utility is to be used as a mechanism to provide a municipal service, the requirements of Chapter 8 of the Systems Act must be met.³⁰³

The by-law establishing the utility must set out all aspects of its governance and operations in a manner consistent with the Systems Act and the MFMA.³⁰⁴ Section 86H(2)(a)-(d) spells out what those governance and operational aspects of the utility should be and they are not repeated here. The municipality may disestablish a utility by repealing the by-law.³⁰⁵ In such an event, all assets, liabilities, rights and obligations of the utility vest in the municipality.³⁰⁶ Furthermore, staff of the utility must be dealt with in terms of the applicable labour law.³⁰⁷

4.2.1.3 Multi-jurisdictional service entity

A multi-jurisdictional service entity is established by more than one municipality by a written agreement that creates a juristic person in the same manner as any partnership is formed.³⁰⁸ However, the Minister for Local Government can, in the national interests and in consultation with the cabinet member responsible for the functional area in question, also request two or more municipalities to establish such an entity.³⁰⁹ This type is created to perform any functions or powers of the participating municipalities, within their respective areas of jurisdiction or a

³⁰⁰ Section 86I(1) Systems Act.

³⁰¹ Section 86I(2)(b) Systems Act.

³⁰² Section 86J(2)(c) Systems Act. However, further conditions may be prescribed by the minister responsible for local government.

³⁰³ Section 86J(2) Systems Act.

³⁰⁴ Section 86H(2) and (3) Systems Act.

³⁰⁵ Section 86K(1) Systems Act.

³⁰⁶ Section 86K(2)(a) Systems Act.

³⁰⁷ Section 86K(2)(b) Systems Act.

³⁰⁸ Section 87 Systems Act.

³⁰⁹ Section 88 Systems Act.

designated part of those areas.³¹⁰ This means the utility is restricted in its activities to the objects of its establishment and the competences conferred upon it by its founding agreement.³¹¹

The agreement, which is the legal basis for the formation of the multi-jurisdictional service utility, must describe the totality of its structure and functioning, including the rights, obligations and responsibilities of the parent municipalities.³¹² This includes the amendment of the agreement and any other matter necessary for the proper functioning of the utility.³¹³ Section 89 of the Systems Act spells out what the agreement should contain and this is not repeated here. The utility is terminated automatically when there is only one municipality left or when the parent municipalities so decide by a written agreement. Termination may also follow automatically upon the termination date or the fulfilment of any condition that was set in the agreement³¹⁴

4.3 Coherence with the NPM

There seems to be, at first glance, coherence between the NPM tenet of corporatisation and how it is operationalised in South Africa. Even though the modalities or the particular brands used in South Africa might be unique, their overall purpose is in line with the original intent of this NPM tenet. First, the idea of creating a free-standing entity outside the parent department or ministry is to establish an institution which operates at arm's length from the parent municipality. The Systems Act clearly encapsulates this principle when it provides that the parent municipality must allow the board of directors and the chief executive officer (CEO) to fulfil their responsibilities.³¹⁵ This instruction applies also to mayors, who must exercise control over the entity. Such control should not impede the entity in the performance of its operational responsibilities.³¹⁶ When the mayor monitors the operational functions of the entity, it must be done without interfering in the performance of those functions.³¹⁷

³¹⁰ Section 87 Systems Act.

³¹¹ Section 90(2) Systems Act.

³¹² Section 89 Systems Act.

³¹³ Section 89(i)(ii) and (iv) Systems Act.

³¹⁴ Section 93 Systems Act.

³¹⁵ Section 93A(b) Systems Act.

³¹⁶ Section 56(1)(b) MFMA.

³¹⁷ Section 56(2) MFMA.

Furthermore, the mayor is the official link between the entity and the council.³¹⁸ This means that councillors play no role in the functioning of the entity. In instances where councillors purport to interfere in the financial affairs of the entity or the responsibilities of the board, the CEO must promptly report such interference to the speaker of the council and thereby enforce this separation between the council and the entity.³¹⁹ The Systems Act further ensures this arm's-length relationship with the municipality by disqualifying councillors or officials of a parent municipality from being a director of the municipal entity.³²⁰ Furthermore, the Chief Executive Officer of a municipal entity, appointed by the board, is accountable to the board for the management of the entity.³²¹ While the municipality sets the upper limits of the salary, allowances and other benefits of the CEO and senior managers, the board determines the remuneration package. This is meant to ensure the financial independence of the CEO.

Secondly, the municipality must exercise effective control over the entity. The primary duty of the parent municipality is to ensure that the entity 'is managed responsibly and transparently, and meets its statutory, contractual and other obligations'.³²² There are a number of mechanisms through which the municipality does this. First, the municipality participates in the making of some decisions and must authorise others. In this regard, the municipality must, by agreement with the entity, set and monitor annual performance objectives and indicators.³²³ The councils must, each financial year, also approve the entity's proposed budget submitted to it by the board.³²⁴ The parent municipality also exerts control by exercising shareholders rights and powers that it has over the entity.³²⁵ This entails the mayor convening any meeting of shareholders of a company or other general meeting comprising the board of directors and municipal representatives in order for the board to account for any of its actions.³²⁶ Other instances of exercising effective control relate to the monitoring and intervention measures the parent municipality has at its disposal. These range from having a municipal representative

³¹⁸ Section 93D(2) Systems Act.

³¹⁹ Section 103 MFMA.

³²⁰ Section 93F Systems Act.

³²¹ Section 93J(2) Systems Act.

³²² Section 93A(a)(ii) Systems Act.

³²³ Section 93B(a) and (b) Systems Act.

³²⁴ Section 87(1) and (2) MFMA.

³²⁵ Section 93A(a) Systems Act.

³²⁶ Section 93D(2)(b) Systems Act.

attend board meetings,³²⁷ regular reporting,³²⁸ appointment of an audit committee for the entity,³²⁹ removal of directors,³³⁰ imposing a financial plan,³³¹ to the liquidation of the entity.³³²

Furthermore, there exists an extensive regulatory framework in terms of which the municipality exercises firm control over the entity. In this regard, the directors are subject to the Code of Conduct applicable to councillors, and the CEO and staff of the entity to the Code of Conduct applicable to municipal staff.³³³ Furthermore, the same formal regulatory regime applicable to municipalities also applies to the entities in a manner that runs counter to the principle of letting managers manage. For example, the tight financial regime that the MFMA imposes on municipalities is also applicable to municipal entities. The tight regulatory control of the entity might impede the proper implementation of corporatisation. The other rationale for creating a stand-alone entity away from the parent municipality is precisely to cushion it from the strictures of regulation and red-tape. It would seem that in South Africa municipal entities are subject to the same laws and regulation as the parent municipality, which does not cohere with the original intent of the NPM tenet of corporatisation. As such, the manner in which the legislative framework gives expression to this NPM tenet impedes its proper implementation.

South Africa is not alone in subjecting entities to the tight regulatory regime applicable to municipalities. Even a developed nation such as Norway seems to be in the same boat. A study of 12 Norwegian municipalities that were corporatised compared to those that were not, found that ‘these municipalities did not differ from Norwegian municipalities generally’. The division of administration into four departments, each headed by a department manager, did not differ. The corporatised entities mirrored the service departmental structure, with a system of political boards elected by the municipal council. The price for increased freedom for operational managers, in Norway as is the case in the UK and South Africa, has been an increase in efforts for more coordination and control from the strategic level.³³⁴

³²⁷ Section 93I(1) read with section 93D(1)(a) Systems Act.

³²⁸ Sections 87(11), 88(2), 127(1), 128(a) and (b), 104, 102(1), 173 MFMA.

³²⁹ Sections 166(4)(a), 166(5) and 166(2) MFMA.

³³⁰ Sections 93G(b) and (c)(i), and Schedule Systems Act.

³³¹ Section 109(b) MFMA.

³³² S93C(b) Systems Act.

³³³ Section 93L Systems Act.

³³⁴ Torsteinsen H ‘Why does post-bureaucracy lead to more formalism?’ (2012) 38(3) *Local Government Studies* 327.

Singapore, which according to the UN country classification report³³⁵ is a developing nation such as South Africa, falls in another category. Corporatised entities in Singapore are not suffering from the bureaucratic clutches associated with service departments. They enjoy ‘substantial discretion in prioritizing their programmes, apportioning financial and other resources, and delivering services’. These entities are sufficiently autonomous in Singapore, which is proving to be a success story among developing countries.³³⁶

4.4 Practice

4.4.1 Prevalence of municipal entities

The extent of corporatisation in South African municipalities after the introduction of the new regime in 2003 is minimal, because corporate entities are no different from ordinary municipal administration and as such there is no incentive to corporatise services. Before 2003, 91 municipal entities, which existed in a variety of legal clothes, were in existence. Gauteng province had the highest number, recording 44 of these municipal entities. The situation changed with the introduction of the new and elaborate regulatory regime in 2003. As at 30 June 2014, there were 62 municipal entities countrywide.³³⁷ It would seem that despite changes in the law that limited the choice of municipal entities to three, the pre-2003 forms of entities are still operational. In this regard, the majority of section 21 companies and other private companies and trusts established before the 2003 amendments, are still in existence, with section 21 companies remaining the most commonly used to date. For example, of the 62 municipal entities in existence as at 2014, there were 32 private companies; 18 section 21 companies; seven service utilities and five trusts.³³⁸ In 2010, approximately 13 per cent of municipal entities in South Africa were classified as service utilities. Private companies and section 21 companies including trusts accounted for 87 per cent of municipal entities, per type.³³⁹ This is despite municipalities’ having been encouraged to take all the necessary steps

³³⁵ United Nations *World Economic Situation and Prospects 2017: Country Classification* available at https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/2017wesp_full_en.pdf (accessed 25 April 2017).

³³⁶ Sarker AE ‘New Public Management in developing countries: An analysis of success and failure with particular reference to Singapore and Bangladesh’ (2006) 19(2) *International Journal of Public Sector Management* 195.

³³⁷ National Treasury *Municipal Entities Report* (2014) 2.

³³⁸ National Treasury *Municipal Entities Report* (2014) 4.

³³⁹ National Treasury *Updated Municipal Entities Report* (2010) 4.

to convert non-compliance structures such as section 21 companies, trusts and other forms into the three appropriate entities.

These municipal entities perform the following municipal functions:

- 27 perform economic development and planning including business development;
- seven perform housing-related services;
- five entities perform sanitation or sewerage function;
- five support community facilities;
- four oversee transport and roads;
- three perform tourism functions; and
- the rest are divided between electricity services, finance and administration, markets, public safety, solid waste, and water.³⁴⁰

Overall, there is only one municipality that has fully embraced corporatisation and taken the route of establishing municipal entities for rendering the majority of its core services. While other municipalities are experimenting with a variety of service delivery mechanisms, with the majority resorting to traditional methods of delivering services, the City of Johannesburg Metropolitan Municipality has gone all-out on the corporatisation route. In this regard, there are 12 municipal entities in the City of Johannesburg alone, compared to four in the City of Tshwane, three in Ekurhuleni Metro, three in Nelson Mandela Bay Metro, two in EThekweni Metro, and two in the City of Cape Town.³⁴¹ The City of Johannesburg is thus the only example of the NPM being in full effect in this regard.

However, the City council, elected on 3 August 2016 is considering re-incorporating all its entities into mainstream municipal administration because of apparent lack of coordination and wastage.³⁴² Other reasons cited for this mooted move to absorb municipal entities are, first, that some of them have been accused of mismanagement and corruption,³⁴³ and secondly, that this

³⁴⁰ National Treasury *Municipal Entities Report* (2014) 4.

³⁴¹ Steytler, Ntliziywana & De Visser 2010: 17-19.

³⁴² Sekhotho K 'City of Joburg approves integration of local SOEs' *EyeWitness News* 29 January 2017.

³⁴³ Mashego P 'Joburg mulls absorbing municipal entities' *Business Day* 8 November 2016.

move is meant to foster accountability and improve service delivery to the residents.³⁴⁴ In the words of Mashaba, the Executive Mayor of the City of Johannesburg: ‘With the service delivery challenges we have inherited in our city, the governance structure of entities is cumbersome and inefficient.’³⁴⁵

In what follows, I discuss one example of a municipal entity of the City of Johannesburg to explain how the city’s system worked.³⁴⁶

4.4.2 Johannesburg Roads Agency (JRA)

The Johannesburg Roads Agency (Pty) Ltd is one of the private companies that operated in the previous regime and survived the amendments introducing the current regime. It was established in late 2000 as a company under the old section 82 of the Systems Act.³⁴⁷ One major consideration for its establishment was the ‘ring-fencing’ of staff from the Roads and Stormwater Departments of the City of Johannesburg.³⁴⁸ It was then incorporated in the same year under the Companies Act as a section 21 company³⁴⁹ and commenced its business on 1 January 2001.³⁵⁰ The City of Johannesburg is the sole shareholder of the Company, making the company a Municipal Entity.³⁵¹ The 2014/2015 Annual Report states that this municipal entity was

formed as an alternative service delivery mechanism and [its] establishment and management is regulated under Chapter 8A of the Municipal Systems Act. The main purpose of the [municipal entity] is to ensure efficient and cost-effective service delivery. Although the [Johannesburg Roads Agency] is formed under the MSA it remains a registered State-owned Company (SOC) and is thus also regulated by the Companies Act 71 of 2008 (the Companies Act) and exists as a separate legal entity from its shareholder. It is thus mandatory for the business and affairs of the [Johannesburg Roads Agency]

³⁴⁴ Magubane K ‘Joburg metro set to take control of municipal entities’ *Business Day* 30 January 2017 (hereafter Magubane 2017).

³⁴⁵ Magubane 2017.

³⁴⁶ Other entities in the City of Johannesburg are City Power; Johannesburg City Parks and Zoo; Johannesburg Development Agency; Joburg Market; Johannesburg Social Housing Company; Pikitup; Johannesburg Water; Metrobus; Metropolitan Trading Company; Joburg Theatre Company; and Johannesburg Property Company.

³⁴⁷ JRA 2014/15 Annual Report: part 3.

³⁴⁸ Dlamini MAV, Froneman ZJ & Clarke WSD *Transformation of The Roads Delivery Process and System: The Johannesburg Initiative* (2001) 1.

³⁴⁹ JRA 2005/6 Annual Report states that it is an association incorporated under section 21.

³⁵⁰ JRA 2009/10 Annual Report: 4.

³⁵¹ JRA 2014/15 Annual Report: part 3.

to be managed by the Board while taking into account its authority, and responsibility, as an accounting authority in relation to the City.³⁵²

In terms of the founding documents of the company, and the Service Delivery Agreement entered into between the City of Johannesburg Metropolitan Municipality and the company, the mandate of the company is to design, construct and maintain roads and roads-related infrastructure within the jurisdiction of the City of Johannesburg.³⁵³ The Johannesburg Roads Agency has been at the forefront in planning, designing, construction, operation, control, rehabilitation and maintenance of the roads and storm water infrastructure in the City of Johannesburg.³⁵⁴

The company is managed by a Board of Directors, comprising of both executive and non-executive directors.³⁵⁵ All non-executive directors are appointed by the main shareholder annually and the selection process is driven solely by the shareholder in accordance with the City's governance framework.³⁵⁶ The executive directors have five-year fixed-term contracts with the company and they report the City of Johannesburg, the shareholder, on their performance.³⁵⁷ The annual reports of the company state that it works in partnership with SANRAL, the public entity responsible for construction and maintenance of roads nationally, discussed in Chapter Five. After the 2006 local government elections, the City of Johannesburg adopted a new governance model, the cluster system. In terms of this model the company was clustered with another municipal entity, Metrobus, under the Transportation cluster/sector of the City. The company and Metrobus now have to account to the Member of the Mayoral Committee (MMC) responsible for transportation.³⁵⁸

4.5 Assessment

It was mentioned in the foregoing discussion that the legislative framework for alternative service delivery mechanisms introduced in 2003 hampered the implementation of corporatisation. It is elaborate and onerous. From a process point of view, the most demanding aspects of the exercise are the initial steps attendant on the decision to transfer the delivery of

³⁵² JRA 2014/15 Annual Report: part 3.

³⁵³ JRA 2014/15 Annual Report: 6.

³⁵⁴ JRA 2014/15 Annual Report: part 3.

³⁵⁵ All the directors are non-executive, save for the Managing Director and the Chief Financial Officer, with the role of the Chairman and the Chief Executive Officer being separate.

³⁵⁶ JRA 2015/16 Mid-Year Report: 6.

³⁵⁷ JRA 2015/16 Mid-Year Report: 6.

³⁵⁸ JRA 2014/15 Annual Report: part 3.

a municipal service to an entity. In this regard, section 78 of the Systems Act prescribes the procedure that a municipality must follow when choosing between delivering the service itself or appointing an external service provider to do so in terms of a service delivery agreement. An elaborate review must be conducted when deciding which mechanism (whether internal or external) is to be adopted for a particular service.

The process entails a three-step process. First, an initial review of the way the municipality provides a particular service must be conducted.³⁵⁹ Secondly, if the use of an external provider is explored, a further enquiry, which includes a feasibility study that takes into account a number of factors, must be held.³⁶⁰ Finally, certain procedural and substantive requirements must be met when negotiating a service delivery agreement.³⁶¹

In the absence of case studies on why municipalities have not opted for corporatisation, a number of reasons are advanced. First, these elaborate processes, which are extremely difficult and expensive for some municipalities, are possibly why the majority of municipalities have decided to overlook establishing municipal entities as an option. Given the expenses involved, this mode of service delivery is not widely used by all categories of municipalities. It is used mostly by metros, district municipalities and secondary cities. All the metros have one form of a municipal entity or another, not all the district municipalities have them, and very few small municipalities have them.³⁶² However, other metros have not opted for municipal entities as a mechanism to provide basic municipal services. The City of Cape Town and EThekweni metro have decided to use entities almost exclusively for convention centres.³⁶³ Because of the onerous nature of the current regime, the majority of municipalities with municipal entities that predate, and are not compliant with, the current regime are not prepared to convert them into any of the three permissible entities.

Secondly, there is a further layer of procedural requirements to be met after deciding to adopt municipal entities as an external service delivery mechanism. These tight and inflexible legal requirements make the advantages that corporatisation would provide of dubious value, and as such corporatisation is an unlikely option for the majority of municipalities.

³⁵⁹ Section 78(1) and (2) Systems Act.

³⁶⁰ Section 78(3) Systems Act.

³⁶¹ Sections 80 and 84 Systems Act.

³⁶² National Treasury: Annexure A to the Municipal Entities Report as at 31 October 2014.

³⁶³ Steytler, Ntliziywana & De Visser 2010: 30.

Thirdly, the other reason that led municipalities not to opt for corporatisation is opposition from the unions. They have always been vehemently opposed to corporatisation, arguing that is a precursor to privatisation, an end-result that is inimical to their interests and a people-centred service model.³⁶⁴ Corporatisation, therefore, was a battle many municipalities were not prepared to wage. The political environment was not favourable towards corporatising municipal services.

Lastly, placing municipal entity in the same regulatory regime as municipalities has proven to be costly. Local government is an overregulated environment as it is. Establishing municipal entities as an alternative service delivery mechanism only adds an extra layer of governance and cost into the system. In this regard, an official of the City of Cape Town pointed out that the cost of compliance for the Cape Town International Convention Centre is R5 million per year, as at 2010.³⁶⁵ If municipal entities have to comply with the elaborate legal regime regulating local government in the same way that municipalities do and bear the same cost of compliance, then there is no incentive for municipalities to opt for municipal entities. Municipalities might as well do the job themselves. As a result, South African municipalities have resorted to the traditional and conventional ways of rendering services, ones which were viewed by the *Green Paper* as inefficient and monopolistic, solely responsible for all components of delivering core municipal services.

In the final analysis, due to union pressures and the felt need for uniformity, the NPM tenet was never fully expressed in law. A trend is that where a municipality has the necessary capacity and expertise to provide basic services, there is no incentive to opt for corporatisation.³⁶⁶ However, where a particular area falls outside the traditional activities of the municipality, and as such there is no established capacity and expertise in that area, then corporatisation is seen as a viable option. A few examples of this trend are in the large metros of EThekweni and Cape Town. First, they both opted for municipal entities as a vehicle to run convention centres in Durban and Cape Town, which are not core municipal services. Secondly, the EThekweni metro established a municipal entity called Durban Marine Theme Park, with the aim of stimulating economic growth. Because running a theme park is not a core municipal business, a municipal entity was created for this purpose. Thirdly, the City of Cape

³⁶⁴ Steytler, Ntliziywana & De Visser 2010: 30.

³⁶⁵ Steytler, Ntliziywana & De Visser 2010: 31

³⁶⁶ Steytler, Ntliziywana & De Visser 2010: 30.

Town resolved to establish a company to operate its rapid bus transport (BRT) system. Given that the provision of public transport was a new venture for the City, the operation of the BRT was to be entrusted to a municipal entity in the form of a private company.³⁶⁷

All of this indicates that the original intent of this NPM tenet – separating service delivery units from the municipality to offer them greater autonomy and flexibility and to introduce business practices to achieve greater efficiency – is not the main consideration in opting for corporatisation. It would seem that only Johannesburg metro has opted for corporatisation as a mechanism for effective delivery of its core municipal services. However, deeper digging shows that even in this case corporatisation was used to counter the exodus of skilled personnel after 1995.³⁶⁸ Even though it is the only metro to corporatise most of its core municipal services, its motive was not to ensure an arm's-length distance and to introduce business practices with the aim to achieve greater efficiency. The motive was to attract and/or retain skilled personnel during the turbulent period of transformation.³⁶⁹

On the basis of this assessment, it is suggested that corporatisation, as with other NPM tenets, is not fully implemented in South African municipalities either. Where it is used as an alternative service delivery mechanism, it is used for the wrong reasons, namely to supplement a shortage of skills or lack of expertise in a particular area.

The other indication that corporatisation in South Africa is wrongly implemented is in the area compliance with the regulatory regime applicable to municipalities. The requirement that the entity must be at arm's-length but under the effective control of a municipality is misread to mean corporatised entities are subject to the same regulatory regime as municipalities. Municipal entities in South Africa are subject to the same tight procurement regime, competency level requirements, and to the latest budget and reporting regulations.³⁷⁰ Effective control is not the same thing as overregulation. These are two different things. Effective control relates to monitoring and reporting requirements, not subjecting the entity to the same overregulated environment. This defeats the purposes of creating a stand-alone entity. It is supposed to operate in a deregulated and flexible environment.

³⁶⁷ City of Cape Town *Business Plan: Phase 1A of Cape Town's MyCiTi Integrated Rapid Transit System* (2010) 67.

³⁶⁸ Steytler, Ntliziywana & De Visser 2010: 30.

³⁶⁹ Steytler, Ntliziywana & De Visser 2010: 30.

³⁷⁰ Steytler, Ntliziywana & De Visser 2010: 31.

5 Conclusion

This chapter looked at how the modes of delivering services were reconfigured to include a full spectrum of service delivery option aligned with the NPM paradigm. This marked a sharp departure from the traditional and conventional methods in which municipal authorities rendered services to communities. These were viewed as inefficient and monopolistic as they tended to be responsible for all components of service delivery – jacks of all trades but masters of none. The introduction of alternative delivery mechanisms such as PPPs and corporatisation was meant to infuse private sector practices and techniques into municipalities and thereby ensure that the delivery of services becomes more efficient and cost-effective, and yields greater value for money, than an ordinary service department. Other imperatives that impelled the introduction of these service delivery options were the developmental needs of South Africa. These options were meant to draw resources and expertise from the private sector in order to help in rectifying the damages of apartheid manifested in infrastructure deficits, structural disparities, service backlogs and grinding poverty.

However, the use of these alternative service delivery mechanism has been parsimonious. Very few municipalities make use of these alternative mechanisms for the delivery of services. Currently, there are only 62 municipal entities in operation and 27 active PPPs. This is largely owing, first, to the introduction of the new regulatory regime in 2003 which is much more elaborate and inflexible than before, impeding the proper implementation of these NPM principles. The section 78 process for deciding on a service delivery mechanism is burdensome and costly for municipalities and in fact serves as a disincentive for opting for external mechanisms of service delivery. Before the introduction of this new regime, a municipality could establish a company, or partner with an existing company in the case of a PPP, and be governed by the generic rules of company law and the service delivery agreement.

This flexibility was negated by the 2003 amendments and the subsequent National Treasury regulations, effectively subjecting the private company to the same tight procurement regime applicable to municipalities. In the case of municipal entities, the same competency level requirements and budget and reporting regulations also apply, thus placing them in the same regulatory regime as municipalities. This added an extra layer of costly compliance, one that raises serious concerns about the value of these alternative service delivery mechanism. To avoid the extra compliance cost, the majority of municipalities have resorted to doing the job themselves.

Secondly, even after an alternative external mechanism is established to provide a service to communities on behalf of the municipality, the municipality still remains responsible for ensuring that those services are delivered properly. This serves as a disincentive for most municipalities in choosing alternative delivery mechanism. Municipalities would rather provide the service themselves than subject themselves to additional and costly responsibilities. It would seem that municipalities are not prepared to go through a toilsome and costly section 78 procedure in order to get a private company to deliver services to communities on their behalf only to be actively involved again in the provision of the service(s). The law requires municipalities to regulate the provision of the service, monitor and assess whether the service provider is keeping to the agreement, including how well it is performing the service, and use its authority and resources to make sure that services are delivered without interruption and in the best interests of the local community. A municipality needs to have a parallel department with the necessary skills to be able to monitor the provision of a service(s). Even though the private company is meant to bring resources and skills into the partnership, that benefit is cancelled by the transaction costs of establishing and maintaining a partnership. These benefits would only be realised if the PPP Unit were to bear the cost and responsibility of a section 78 process for deciding on a service delivery mechanism.

Thirdly, there is a policy bias in some sectors against the use of external mechanism for the delivery of services and towards traditional public procurement. In the water and sanitation sector, for example, municipalities are enjoined to first consider public sector providers before they can look at the private sector. This discourages municipalities from using these external mechanisms for the delivery of their water and sanitation services. The unions have also exerted huge pressure against the use of alternative modes of service delivery, given that these mechanisms are seen as precursors to full-blown privatisation that threatens job security.

Furthermore, in instances where the alternative modes of delivery are used at all, they are not used for their original intent. Corporatisation and PPPs are increasingly being used to plug the capacity gaps or lack of expertise in the few municipality that have opted for external modes of delivery. For example, municipalities with the necessary capacity and expertise to provide basic services do not use municipal entities or PPP to deliver services on their behalf. They deliver the services themselves. However, where a particular area falls outside the traditional activities of a municipality, and as such there is no established capacity and expertise in that area, then these alternative modes of service delivery are used.

A few examples of this trend, as far as corporatisation is concerned, are in the large metros of EThekweni and Cape Town which opted for municipal entities as a vehicle to run convention centres in Durban and Cape Town, and Theme Park (in Durban) which are not core municipal services. Moreover, the City of Cape Town aims to establish a company to operate its rapid bus transport (BRT) system, the provision of public transport being a new venture for the City. All of this indicates that the original intent of this NPM tenet of separating service delivery units from the municipality to offer them greater autonomy and flexibility and to introduce business practices to achieve greater efficiency is not the main consideration for opting for corporatisation.

Fourthly, these tenets seem to be inappropriate for use in the South African context. For example, the rationale of transferring significant risks to the private provider in PPPs is undermined by the concrete reality of grinding poverty and underdevelopment in South African municipalities. In terms of this rationale, the private company is expected to recover its management fees or payment for performing the municipal function or for utilising the municipal property, by way of charges or fees it collects from users or customers of a service provided to them. However, given the fact that the majority of South African municipalities are servicing poor communities, coupled with the culture of non-payment, the NPM market principles of cost reflective pricing and cost recovery systems attendant to a PPP transaction are rendered futile. Instead, enforcing strict credit control measures to improve payment levels has led to increasing levels of illegal reconnections and lawlessness.

CHAPTER EIGHT:

The Resurgence of Weberian Bureaucracy at the Local Level

1 Introduction

This chapter discusses the resurgence of the Weberian model of service delivery in local government. Throughout the three previous chapters, it was shown that the Weberian model of service delivery was not displaced. Instead, the NPM model which sought to supplant it never took off as envisaged – it was too difficult to implement. In instances where the NPM was implemented, it often produced adverse outcomes such as patronage, corruption, maladministration, to mention just a few. As a result of the failures by the NPM model of delivery to produce the intended goods and the unintended consequences it brought about, there has been a resurgence of Weberian model of governance alongside the NPM model. National government has been incrementally reintroducing qualifications-linked meritocracy side by side with the NPM's performance-linked meritocracy in local public administration in a manner that reinforces professionalisation of the sector. These developments lend credence to the critique that the NPM is unsuitable to developing countries, South Africa included.

As seen in the introduction to this thesis, this resurgence is spearheaded by three national departments, then DPLG¹ (now CoGTA),² the National Treasury,³ and Department of Public Service and Administration (DPSA),⁴ which introduced the regulations, new legislation and amendments to existing legislation, respectively, to provide for qualifications and experience requirements. Over and above the enforceable qualification criteria, the Systems Amendment Act requires an additional element of 'suitability',⁵ which reinforces both the Weberian and the NPM models. This means that the bar has somewhat been raised as both the Weberian and the

¹ Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers (GN R805 GG 29089 of 1 August 2006) (hereafter Performance Regulations).

² Municipal Systems Amendment Act, 7 of 2011. As noted in Chapter Six, in *South African Municipal Workers' Union v Minister of Co-Operative Governance and Traditional Affairs* [2017] ZACC 7 this legislative amendment was invalidated for want of compliance with provisions relating to its passage through parliament. However, it remains operative until such time as the defect is rectified. CoGTA also issued Local Government: Regulations on Appointment and Condition of Employment of Senior Managers (GN 21 GG 37245 of 17 January 2014) (hereafter Appointment Regulations) to give flesh to some of its amendments.

³ Local Government: Municipal Regulations on Minimum Competency Levels (GN R493 GG 29967 of 15 June 2007) (hereafter Competency Regulations).

⁴ Public Administration Management Act 11 of 2014.

⁵ Section 54A(2) Systems Act.

NPM elements form part of appointment requirements. The resurgence of the Weberian bureaucracy is further expressed through the separation of politics from the administration,⁶ and resurrection of the idea of professional institutes that would train and discipline members.

The Weberian elements that are re-emerging, and which also reinforce the NPM, namely qualifications, experience, suitability, professional independence, ethics and professional institutes, can be summed up in the broad appellation of 'professionalism'. They reinforce the idea of professionalisation of local government. Professionalisation is defined to include the appointment on the basis of professional qualifications and knowledge and subjection to a code of professional ethics in order to maximise human potential and ensure efficient, economic and effective use of resources.⁷ This chapter, therefore, is only concerned with why these requirements are being brought back and how they find application.

2 Constitutional framework

The idea of professionalism in South African public administration is rooted in the Constitution. The constitutional basis for professionalisation of local government lies in section 195(1) and (2).⁸ Section 195(1)(a)-(i) outlines the principles and values governing public administration, which include promoting and maintaining a high standard of professional ethics and cultivating good human resource management and career-development practices to maximize human potential, promote efficient, economic and effective use of resources, and ensure accountable and transparent administration. As such, the values and principles contained in section 195(1) reinforce the idea of professionalisation of the public administration as defined above and in Chapter Two.

Section 195(2) of the Constitution in turn provides that these principles of professionalism apply to administration in every sphere of government. In essence, these principles find

⁶ In terms of section 56A Systems Amendment Act. This section was a substantive challenge in *South African Municipal Workers' Union v Minister of Co-Operative Governance and Traditional Affairs*. It was challenged for limiting the constitutional rights of senior managers, some of whom happened to be members of SAMWU. Both the High Court ([2016] ZAGPPHC 733 of 23 February 2016) and the Constitutional Court refused to entertain this substantive challenge, remitting the matter instead to parliament.

⁷ School of Government, UWC *Desk-Top Study Towards the Development of a National Professionalisation Framework for Local Government: Draft Concept Paper* (2012) 9.

⁸ Motala Z & Ramaphosa C *Constitutional Law: An Analysis and Cases* (2002) 195. See also Ntliziywana P *Professionalisation of Local Government: Legal Avenues for Enforcing Compliance with the Competency Framework* (unpublished LLM thesis, University of the Western Cape, 2009) 24 (hereafter Ntliziywana 2009).

application to the local sphere of government as well.⁹ This was confirmed by the Constitutional Court in *Premier of the Province of the Western Cape v President of the RSA* which held that

Chapter 10 applies to all aspects of public administration prescribing the basic values and principles that have to be adhered to, making it clear that they apply to administration in every sphere of government.¹⁰

The courts have also underscored the importance of these principles and of adhering to them. In *Hardy Venture CC v Tshwane Metropolitan Municipality*¹¹ the High Court was concerned with the failure by the Tshwane Metropolitan Municipality to consider the application for approval of outdoor advertising and then the failure to address suitably the applicant's correspondence in connection therewith. The Court held that the basic values and principles governing public administration as set out in section 195 of the Constitution were applicable and needed to be adhered to by the Tshwane Metropolitan Municipality.¹² The Court held further that the failure to adhere to these principles has a potential of generating inefficiency and unfairness and consequently of lapsing into a bureaucratic culture, which is inimical to the constitutional ethos. Furthermore, it held that professionalism, efficiency, fairness, accountability, transparency and accessibility are discrete values that ensure cost-effective governance and administration.¹³

Over and above providing for the principles and values of professionalism which should govern administration in all spheres of government, the Constitution enjoins national and provincial governments to regulate the exercise by municipalities of their executive authority in order to ensure that municipalities perform their functions effectively.¹⁴ Essentially, national and provincial governments can and are empowered to use the powers of regulation to enforce the values and principles contained in section 195 of the Constitution so that municipalities can exercise their powers and perform their functions effectively. To this end, the national government, through the Municipal Systems Act and the MFMA, and regulations issued

⁹ Ntliziywana 2009: 25.

¹⁰ *Premier of the Province of the Western Cape v President of the RSA*, 1999 (4) BCLR 382 (CC) (hereafter *Premier, Western Cape*) at para. 44.

¹¹ *Hardy Ventures CC v Tshwane Metropolitan Municipality* 2004 (1) SA 199 (T) (hereafter *Hardy Ventures*).

¹² *Hardy Ventures* para. 9.

¹³ *Hardy Ventures* para. 9.

¹⁴ Section 155(7) Constitution.

pursuant thereto, sets out the parameters within which municipalities must structure their administration to reflect the values and principles outlined above.¹⁵

The power of regulation conferred on the upper spheres of government by section 155(7) of the Constitution only entails setting parameters within which local government can operate and responsibly exercise its functions.¹⁶ It does not extend to the prescription of details of what local government has to do. In the words of the Constitution Court in the *First Certification* judgment, the term ‘regulate’ means ‘a broad managing or controlling rather than a direct authorisation function’.¹⁷ This was confirmed in the *Habitat Council* judgment, where the Constitutional Court held that section 155(7) does not entail the usurpation of the power or the performance of the function itself, but permits national and provincial government to determine norms and guidelines.¹⁸

3 Legislative framework

As noted in the preceding section, the Systems Act and the MFMA are the primary pieces of legislation giving effect to the provisions of section 155(7) of the Constitution. These statutes are aimed at seeing to the effective performance by municipalities of their functions by regulating their human resource management and financial administrations to reflect the values and principles of professionalism outlined above, among other matters.

3.1 Systems Act

The Systems Act, in particular, augments these constitutional values and principles of a high standard of professional ethics in municipal administration. Section 195(1) has provisions relating to the duties of the municipal council,¹⁹ the duties of the municipal administration,²⁰

¹⁵ Ntliziywana P ‘Insulating administrative decision-making relating to individual staff appointments from political meddling: *Manana v King Sabata Dalindyebo Municipality*’ (2012) 129 *South African Law Journal* 49 54 (hereafter Ntliziywana 2012).

¹⁶ Ntliziywana 2012: 49.

¹⁷ *Ex Parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa*, 1996 [1996] ZACC 26, 1996 (4) SA 744 (CC), 1996 (10) BCLR 1253 (CC) at para. 377.

¹⁸ *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others* 2014 (4) SA 437 (CC) at para. 22.

¹⁹ Section 4(2) Systems Act.

²⁰ Section 6 Systems Act.

and the principles that should guide the municipality in establishing and organising its administration.²¹

The Systems Act also envisage the promulgation of regulations to give further effect to the regulation of recruitment practices, ethics and discipline and thus ensure adherence to the values and principles governing local public administration.²² The Systems Act has most recently been amended²³ to modify certain provisions dealing with the recruitment of staff in the upper echelons of municipal administration.²⁴ Certain provisions were amended to provide for new procedures and competency criteria for appointments, and for the consequences of non-compliant appointments.

3.2 Performance regulations

Section 72 of the Systems Act enjoins the national minister responsible for local government to make regulations dealing with capacity-building within municipal administration²⁵ and, by so doing, giving effect to the values and principles of professionalism. The regulations envisaged by section 72 were promulgated in 2006 as the Performance Regulation discussed in section 3.2 of Chapter Six.²⁶ Even though their main focus is to regulate how the performance of municipal managers and managers reporting directly to municipal managers will be uniformly directed, monitored and improved, as seen in the preceding chapter they contain a generic framework for competency requirements for the posts of municipal managers and managers accountable to them.²⁷

The Performance Regulations, in their competency framework, prescribe minimum qualification and experiential requirements for the appointment of the municipal staff at a management level. This means that the appointment of senior managers is made subject to the candidates' meeting predetermined qualification standards.²⁸ In this regard, the Performance Regulations provide that the municipal managers must have a recognised bachelor's degree in

²¹ Section 52 Systems Act.

²² Section 120 read with section 72 Systems Act and section 168 MFMA.

²³ Local Government: Municipal Systems Amendment Act 7 of 2011.

²⁴ Ntliziywana P 'Adding injury to insult: Intrusive laws on top of a weak system' (2016) VI *Constitutional Court Review* 32 41 (hereafter Ntliziywana 2016).

²⁵ Section 72(1)(d) Systems Act.

²⁶ Performance Regulations.

²⁷ Regulation 38 Performance Regulations.

²⁸ Ntliziywana 2009: 31-2.

relevant fields, a minimum of five years' experience at senior management level, core managerial competencies, and core occupational competencies providing for knowledge, skills, communication and exceptional and dynamic creativity to improve the functioning of the municipality.²⁹ Regulation 4(b) specifically provides for 'the submission of original certificates or certified copies thereof of the employee's academic and professional qualifications and proof of previous employment prior to the signing of the employment contract'.³⁰ Accordingly, the regulations make it an inherent requirement of the job that such managers must have a recognised bachelor's degree in a relevant field, five years relevant experience and core managerial and occupational competences.³¹

It is submitted that the inclusion of a qualification and experience requirement alongside the NPM performance management system in the 2006 Regulations signalled an initial theoretical shift in thinking away from NPM tenets toward Weberian ones. After five years of the implementation of the performance management system in terms of the 2001 Municipal Planning and Performance Regulations, coupled with in-service training, the government decided to tighten up the performance management system by introducing two key instruments, namely employment contracts and performance agreements meant to 'ensure a basis for performance and continuous improvement in local government'.³² These instruments were also meant 'to create an enabling environment for enhanced performance and accountability'.³³ The Weberian tenet of a qualifications-linked meritocracy was also introduced because the NPM tenet of performance-linked meritocracy facilitated patronage rather than performance.

The courts have had an opportunity to test the effectiveness of the Performance Regulations in *Allen Paulse v Oudtshoorn Local Municipality and Others*.³⁴ This case was highlighted but not discussed in the preceding chapter. The court in *Allen Paulse* was concerned with the review of the appointment of a municipal manager against the new section 54A of the Systems Amendment Act,³⁵ which provides that the appointment of a senior manager is null and void if he or she does not possess the prescribed qualifications and competencies.³⁶ Given that the

²⁹ Regulations 38 and 8 Performance Regulations.

³⁰ Regulation 4(b) Performance Regulations.

³¹ Regulation 38 Performance Regulations.

³² Preamble to Performance Regulations.

³³ Preamble to Performance Regulations.

³⁴ *Allen Paulse v Oudtshoorn Local Municipality and Others* (unreported Case No 25790/2011) (hereafter *Allen Paulse*).

³⁵ The Systems Amendment Act is discussed in some detail in section 3.3 below.

³⁶ *Allen Paulse* para. 35.

regulations that were meant to give content to the competency criteria, the Appointment Regulations, were not yet promulgated at the time, the court relied on the competency criteria contained in the Performance Regulations.

The facts of the matter are, as highlighted in Chapter Six, that the Oudtshoorn Local Municipality (the municipality) shortlisted five candidates for the position of the municipal manager. The candidates were then subjected to the integrity and competency assessment in terms of which Mr Mnyimba scored a competence rating of 4 out of 13 competencies, prompting the selection panel to remark that he lacked managerial experience but demonstrated potential. Mr Paulse, on the other hand, obtained a competency rating of 8 out of 13, prompting the selection panel to state that he is an experienced, client-oriented manager with sound judgment. In terms of the interview results, Mr Mnyimba was the top candidate with 485 points, followed by Mr Paulse at 402. However, the outcomes of the competency assessment were withheld from full council, which then appointed Mr Mnyimba on the basis of interview results.³⁷

The unsuccessful candidate, Mr Paulse, was aggrieved by the outcome and took the matter to the Western Cape High Court for the review and setting aside of the appointment of the new municipal manager (Mr. Mnyimba). Mr Paulse argued that Mr Mnyimba did not possess the competencies and the experience required in terms of regulation 38 of the Performance Regulations and that he could not be saved by an interview.

The central issues in this matter turned on whether an interview is determinative in the recruitment process without objective facts such as the prescribed competency criteria, and on the meaning of 'senior management level for the purposes of determining the requisite five years' experience at senior management level'. In regard to the former, Mr Paulse argued that the competency assessment showed that Mr Mnyimba did not have the requisite competencies and experience prescribed by regulation 38 of the Performance Regulations and that he could not be saved by an interview. In support, Mr Bredell argued that an interview should not be the primary deciding factor for making appointments. Objective factors should take precedence.

In relation to the latter, Mr Paulse argued that Mr Mnyimba did not have the requisite five years' experience at senior management level as required by regulation 38 of Performance Regulations. Mr Bredell in support argued that the highest level at which Mr Mnyimba had

³⁷ *Allen Paulse* para. 45.

ever served while at Eden District Municipality was that of an assistant director (level three), which is below senior management level. At that level, he was accountable to the compliance manager who in turn reports to the municipal manager. Mr Bredell further argued that the executive mayor's reliance on Mr Mnyimba's experience as a manager of his own business was absurd, as only relevant experience should count.

In deciding on the role of the interview in the recruitment and appointment process, the Court lent credence to the results of the competency assessment and said they speak for themselves in that Mr Mnyimba did not meet the minimum competency criteria. He could only lay claim to only four of the 13 tested competencies. On the meaning of 'senior management level' in regulation 38 for the purposes of determining the relevant experience, the Court defined the concept to mean 'the level at which the following categories of persons are employed: a manager directly accountable to the municipal manager or a person who occupies a substantially similar position outside the local government sphere'.³⁸ Accordingly, the Court was not convinced that running a small consultancy company on a part-time basis could be equated with senior-management-level experience.

The Court further held that Mr Mnyimba's position at Eden District Municipality was not as the manager of performance management but as assistant director, a position below senior management level. As a result, the Court nullified the decision to appoint Mr Mnyimba as a municipal manager and any contract concluded with him in consequence of such decision. The Court found Mr Mnyimba's lack of relevant qualifications and experience a just cause to set aside his appointment.

This case provides clear evidence that the resurgence of Weberian model, with its emphasis on inputs, through the Performance Regulations has put an abrupt stop to the open skills recruitment system with its patronage appointments, to the shock of many. The reaction of the executive mayor and the provincial executive structure of the ANC bears testimony to this shock. Even after the Court had pronounced itself on the issue of qualifications-based meritocracy and thus effectively clarified the legal position with regard to the competency

³⁸ This definition has been expanded in the Appointment Regulation to the effect that 'senior management level' means a management level associated with persons in senior management positions responsible for supervising staff in middle management positions; such persons include the municipal manager of a municipality or the chief executive officer of a municipal entity; any manager directly accountable either to the municipal manager or the chief executive officer; and a person who occupies a position in a management level outside the local government sphere which is substantially similar to senior management level.

criteria, the executive mayor of Oudtshoorn municipality, Mr Gordon April, instructed lawyers to appeal the court decision.³⁹

When this decision to appeal the court decision was itself reversed at a council meeting of 26 July 2012, 15 days later the mayor and the municipality launched an urgent interdict in the Western Cape High Court to reverse the council's decision, to which the Court ruled that the matter was not urgent and would be heard in November.⁴⁰ Even the provincial executive structure of the ANC threw its weight behind the executive mayor. Then ANC provincial secretary Songezo Mjongile pledged the party's support for the actions of the Oudtshoorn municipality, adding that the court's ruling was based on a technical argument about the requirements of a municipal manager. He further said that politically there was 'a deeper background to the story'.⁴¹

The appointment of Mnyimba is clear evidence of exactly the kind of patronage appointments the Weberian model seeks to eradicate. This case shows that the Performance Regulations actually have teeth, although they do not contain an enforcement mechanism but instead rely on a court process. Not quite convinced that the Performance Regulations went far enough in dealing with patronage and the jobs-for-pals phenomenon, the National Treasury tightened the qualifications-linked meritocracy even further by issuing Competency Regulations, which are discussed next. The promulgation of the Performance Regulations marked the unravelling in government's theoretical thinking as this move was soon followed by a comprehensive set of regulations issued by the National Treasury, followed by yet another set of regulations issued by CoGTA, both containing a competency framework.

3.3 Municipal Finance Management Act

Another piece of legislation that gives effect to the principles of professionalism contained in section 195 of the Constitution is the Municipal Finance Management Act (MFMA). It regulates financial administration of municipalities with the ultimate aim to 'secure sound and sustainable management of the financial affairs of municipalities...'.⁴² The MFMA governs

³⁹ Makinana A 'ANC won't give up on 'incompetent' cadre' *Mail & Guardian* 17 Aug 2012 (hereafter Makinana 2012).

⁴⁰ Makinana 2012.

⁴¹ Makinana 2012.

⁴² MFMA 'Long title'.

the fiscal and financial affairs of municipalities.⁴³ In giving effect to the principles of high standards of professional ethics in municipal administration, the MFMA requires officials to meet prescribed competency criteria in financial and supply chain management.⁴⁴

It further enjoins the National Treasury to make regulations or issue guidelines that prescribe financial management competency levels for senior management, among others.⁴⁵ The Regulations envisaged by the MFMA were promulgated in 2007.⁴⁶ The MFMA further provide that the prescribed competency criteria is not only applicable in appointment stages, but is also relevant for the purposes of the development and training of staff to meet the prescribed competency levels and thus maintain a high standard of professionalism demanded by section 195.⁴⁷ In this regard, the National Treasury or provincial treasuries are enjoined to assist municipalities in the development and training of its officials.⁴⁸

3.4 Competency Regulations of 2007

The Competency Regulations provide for general and minimum competencies required of senior and middle managers.⁴⁹ These competencies relate to higher education qualifications; work-related experience; core managerial and occupational competencies; and competency in unit standards that senior and middle managers must have before they could be employed as such.⁵⁰ The National Treasury has also issued guidelines for the competency levels of each category of senior and middle managers to give further content to the Competency Regulations. In this regard, there exist separate guidelines for the competency levels of accounting officers (municipal managers), section 56 managers, chief financial officers, finance officials at middle management, and for heads of supply chain management and supply chain senior managers. All of these are aimed at explaining the Competency Regulations with specific reference to the relevant category of a senior or middle manager in question.⁵¹

⁴³ Ntliziywana 2009: 27.

⁴⁴ Sections 83, 107 and 119 MFMA.

⁴⁵ Section 168 MFMA.

⁴⁶ Competency Regulations.

⁴⁷ Section 83(2) MFMA.

⁴⁸ Section 83(3) MFMA.

⁴⁹ Regulations 2-12 Competency Regulations.

⁵⁰ Regulations 3, 5, 7, 9, 11 and 12 Competency Regulations. However, the focus in this thesis is on senior managers.

⁵¹ Ntliziywana 2009: 28.

In the ensuing section, the contents of the minimum competency framework contained in the Competency Regulations as they relate to senior managers will be discussed. Focus will be devoted to the competency requirements for managers and officials at the senior management level contained therein. These relate to higher education qualifications, work-related experience and core competencies as well as proficiency in competency areas.

3.4.1 Higher education qualifications

The first competency requirement giving effect to the constitutional principles of professionalism enunciated above is higher education qualifications. The Competency Regulations prescribe minimum qualifications for the appointment of the municipal officials at a management level. This means that in order to be appointed into management positions, one has to meet predetermined qualification requirements. For the post of the municipal manager, the Competency Regulations require at least NQF level 6 or a Certificate in Municipal Financial Management.⁵²

In terms of the Guideline for Municipal Competency Levels: Accounting Officers,⁵³ the type of qualification at NQF level 6 is a first degree and Higher Diplomas.⁵⁴ However, in terms of the National Qualifications Framework Act,⁵⁵ which repeals the South African Qualifications Authority Act⁵⁶ in its entirety, read with the recent amendments to the National Qualifications Framework Act,⁵⁷ NQF level 6 is equivalent to a National Diploma and Advanced certificate.⁵⁸ For the purposes of this dissertation, the discussion focuses on the bachelor's degree because the Competency Regulations define the NQF as referring to the National Qualification Framework prescribed in terms of SAQAA.⁵⁹ Accordingly, in order to be appointed as a municipal manager one must have a bachelor's degree and a Higher Certificate. Alternatively,

⁵² Regulation 3 Competency Regulations.

⁵³ *Guideline for Municipal Competency Levels: Accounting Officers Municipal Regulations on Minimum Competency Levels* (2007) 2.

⁵⁴ Isaacman J, Elliott G & Pahad M et al. *Understanding the National Qualifications Framework: A Guide to Lifelong Learning* (1997) 24.

⁵⁵ National Framework Act 67 of 2008.

⁵⁶ South African Qualifications Authority Act 58 of 1995 (SAQAA).

⁵⁷ National Qualifications Framework Act (67/2008): Amendment to the determination of the sub-framework that comprise the National Qualification Framework (GN 891 GG 36803 of 30 August 2013) (hereafter Amendment NQF Act).

⁵⁸ Schedule to Amendment NQF Act.

⁵⁹ Regulation 1 Competency Regulations.

one must have a Certificate in Municipal Financial Management, which is also at NQF level 6, in order to be appointed as a municipal manager.

With regard to the latter, the National Treasury, working with the South African Qualifications Authority (SAQA) and the Local Government Sector Education and Training Authority (LGSETA), has put together the Municipal Finance Management Programme (MFMP), which is a training programme structured to meet the competency areas contained in the Competency Regulations.⁶⁰ Accordingly, in as far as qualifications are concerned, to be appointed as a municipal manager one must have a bachelor's degree or a Higher Certificate, failing which one must do or have done the MFMP.

As regards the qualification requirements for senior managers (managers reporting directly to the municipal manager), the Competency Regulations make a distinction between different categories of municipalities relative to their budget size.⁶¹ The first category relates to low-capacity municipalities with an annual budget below R500 million. In this category, the regulations require either a bachelor's degree in relevant fields and Higher Diplomas or a Certificate in Municipal Financial Management.⁶² In the case of high-capacity municipalities with the annual budget of a value equal to or in excess of R500 million, the Competency Regulations prescribe an honours degree, a post-graduate certificate and a diploma in a relevant field.⁶³ A chief financial officer is treated slightly differently from other senior managers. Instead of being required to do the Municipal Finance Management Programme and thus have a certificate in Municipal Financial Management as an alternative to an honours degree, a post-graduate diploma and a diploma in a relevant field, the alternative for chief financial officers in high-capacity municipalities is to become chartered accountants in South Africa.⁶⁴

3.4.2 Work-related experience

Work-related experience is the second competency requirement prescribed by the Competency Regulations. In a clear shift from the NPM ethos of appointing at a lateral level, the Competency Regulations relax the practice of looking to the private sector for solutions and instead requires a mix of local government-related experience at senior management level and

⁶⁰ Ntliziywana 2011: 17.

⁶¹ Regulations 5 and 7 Competency Regulations.

⁶² Regulations 5 and 7 Competency Regulations read with Guideline for Senior Managers

⁶³ Regulations 5 and 7 Competency Regulations read with Guideline for Senior Managers.

⁶⁴ Regulation 5 Competency Regulations read with Guideline for Chief Financial Officers.

experience outside local government but in a management level substantially similar to senior management level.⁶⁵ Given that local government is a very complex animal, the aim is to ensure that senior managers hit the ground running in capably and diligently discharging the responsibilities and performing the tasks conferred upon them by the Constitution, the Systems Act, the MFMA and other legislation applicable to local government.⁶⁶

With regard to the municipal manager, the Competency Regulations require a minimum of five years' experience at senior management level.⁶⁷ The Competency Regulations again make a differentiation between categories of municipalities when it comes to the work-related experience required from senior managers according to their budget size. In the case of low-capacity municipalities or medium-sized municipalities with an annual budget valued below R500 million, a senior manager must have five years' experience at middle management level.⁶⁸ In the case of high-capacity municipalities, the work-related experience required of senior managers is the same across the board – no distinction is made between senior managers and chief financial officers. Accordingly, all senior managers must have seven years work-related experience, five at senior management level and two at middle management level.⁶⁹

3.4.3 Competency areas

The other competency requirement that gives further effect to the principles of professionalism concerns competency areas.⁷⁰ These are financial and supply chain management skills specific to a particular post that are deemed essential for proper and effective execution of the responsibilities attendant to that post.

In this regard, the Competency Regulations contain at most 11 competency areas, which are accredited against the published South African Qualifications Authority (SAQA) registered unit standards. As a result, each of the competency areas is divided into a number of Unit Standards (US ID) that match the skills and knowledge required in respect of the competency areas.⁷¹ Each competency area has one or more unit standard(s) attendant on it. For example, in the case of a municipal manager and the Chief Financial Officer, the competency area of

⁶⁵ Regulation 1 Competency Regulations.

⁶⁶ Ntiziwana 2009: 32.

⁶⁷ Regulation 3 Competency Regulations.

⁶⁸ Regulation 7 Competency Regulations.

⁶⁹ Regulation 7 Competency Regulations.

⁷⁰ Ntiziwana 2009: 33.

⁷¹ Guideline for Accounting Officer: 1.

‘operational financial management’ is made up of five unit standards while ‘risk and change management’ has only one unit standard.⁷² Operational financial management as it relates to senior managers other than a municipal manager and Chief Financial Officer has three unit standards.⁷³ The Competency Regulations provide that senior managers must be competent in all unit standards prescribed for each competency area.⁷⁴

As noted above, the National Treasury, working with SAQA and LGSETA, has put together a comprehensive training programme, the MFMP, structured to address all the unit standards prescribed by the Competency Regulations.⁷⁵ The unit standards are registered on the National Qualifications Framework by the South African Qualifications Authority.⁷⁶ The MFMP for senior managers is equivalent to qualifications at NQF level 6, namely the prescribed National Certificate in Municipal Financial Management, SAQA ID 48965.⁷⁷ The LGSETA has also accredited a number of training providers for the purposes of undertaking the training of senior managers on the MFMP towards obtaining the Certificate in Municipal Financial Management.⁷⁸ Furthermore, LGSETA has registered assessors whose role is to determine the extent to which qualifications and experience meet the prescribed competency areas.⁷⁹ In this regard, the Competency Regulations require municipal managers to ensure that the competencies of all senior managers are assessed in order to identify competency gaps and address them through the MFMP.⁸⁰

The Competency Regulations enjoin municipalities to assist their senior managers by providing resources and opportunities for training to attain the required competency levels.⁸¹ Furthermore, the National Treasury has made available funding in the form of the Financial

⁷² Regulations 3 and 5 Competency Regulations.

⁷³ Regulation 7 Competency Regulations.

⁷⁴ Regulations 3, 5 and 7 Competency Regulations.

⁷⁵ MFMA Circular 47 Capacity Building and Training 2009: 1.

⁷⁶ National Treasury, NQF level 6 Municipal Financial Management: iii.

⁷⁷ MFMA Circular 47 Capacity Building and Training 2009: 1.

⁷⁸ MFMA Circular 47 Capacity Building and Training 2009: 2. A list of these training providers, or so-called Education Training and Development (ETD) providers, is available on the National Treasury website under ‘Training and Validation’. Only these accredited ETD providers can offer the Certificate in Municipal Finance Management.

⁷⁹ MFMA Circular 47 Capacity Building and Training 2009: 3. See also Guidelines for Accounting Officers, CFOs and senior managers.

⁸⁰ Regulation 13 Competency Regulations.

⁸¹ Regulation 17 Competency Regulations.

Management Grant to all municipalities, which may be applied towards the cost of financial management training in accordance with the grant criteria.⁸²

3.4.4 Core managerial and occupational competencies

The Competency Regulations also prescribe core managerial and occupational competencies, as described in the Performance Regulations issued in terms of the Systems Act, discussed above. These core competencies form part of the competency framework that is aimed at professionalising local government. Under core competency requirements, the Performance Regulations distinguish between core managerial competencies and core occupational competencies.⁸³ However, there is a significant overlap between the competency areas discussed immediately above and the core competency requirements.

It is submitted, therefore, that the MFMP would also cover core managerial and occupational competency to a large degree, except for soft skills such as integrity, honesty and communication. For example, while the eleven competency areas are made up of 21 unit standards, the MFMP training offer 28 unit standards. The discussion of the core competency requirements is hence subsumed by the foregoing discussion of competency areas.

These requirements are not consistent with the Weberian tenet of meritocracy, as articulated in Chapter Two, in that lateral entries from the private sector and other spheres into local public administration are not completely abandoned. Even so, the focus has shifted from the NPM outputs or outcomes to Weberian inputs. Unlike previously, persons appointed from outside local government will have to prove their skills, expertise, qualifications, experience and competencies before appointment. They cannot simply be appointed on condition that they will produce results later; they must prove competence upfront. This means that the focus is no longer on what they can deliver post-appointment but what they bring to the organisation which is verifiable upfront. Despite having proven capabilities elsewhere, if a person does not comply with entry requirements, then he or she is excluded.

The Msengana-Ndlela debacle is a case in point. Dr Msengana-Ndlela had run the national department responsible for local government successfully for five years, receiving successive

⁸² MFMA Circular No. 47 Capacity Building and Training 2009: 3.

⁸³ Regulation 38(3) Performance Regulations.

clean audits. However, her proven capabilities and experience fell short of the qualification requirements demanded for the post of municipal manager of a metropolitan municipality.⁸⁴

3.5 Implementation

The Competency Regulations took effect on 1 July 2007, but gave a five-year period of grace within which all senior managers throughout the country were required to attain the minimum competency levels.⁸⁵ This grace period started on 1 January 2008 and was supposed to end on 31 December 2012.⁸⁶ At the time, the National Treasury knew that many senior officials in local government did not yet meet these requirements.⁸⁷ The staggered implementation was thus meant to give municipalities sufficient time to address skills gap and ensure compliance with the prescribed competency criteria in a way that did not disrupt day-to-day operations.⁸⁸

However, the National Treasury extended this deadline thrice by, first, issuing a circular on 20 April 2012 in which the deadline was shifted to 30 June 2014.⁸⁹ This circular applied only to ‘special merit cases’ (those who required more time to complete the few remaining unit standards) and the Treasury would decide, on a case-by-case basis, whether or not a particular official was a ‘special merit case’.⁹⁰

Secondly, this deadline was further extended on 14 March 2014 for 18 months to 30 September 2015, effectively extending the period of grace to eight years.⁹¹ This extension came after the realisation that officials in 269 of the country’s 278 municipalities were still not compliant.⁹² Unlike the 2012 extension which catered only for ‘special merit cases’, the 2014 extension covered every official until 30 September 2015. Given the length of this special dispensation, eight years, one cannot think of a reason why municipal officials would be found non-

⁸⁴ *Msengana-Ndlela v Nelson Mandela Bay Metropolitan Municipality* (3282/2013) [2015] ZAECPEHC 31.

⁸⁵ Regulation 15 Competency Regulations.

⁸⁶ Regulation 15 read with regulation 18 Competency Regulations.

⁸⁷ Ntliziywana P & De Visser J *Talking Good Governance Blog* (2014) available at <http://dullahomarinstitute.org.za/multilevel-govt/mlgi/talking-good-governance/sorry-sir-but-my-dog-ate-my-ipad-2013-minister-gordhan2019s-leniency-for-municipalities> (herein Ntliziywana & De Visser 2014).

⁸⁸ MFMA Circular No. 60 of April 2012.

⁸⁹ MFMA Circular No. 60 of April 2012

⁹⁰ MFMA Circular No. 60 of April 2012: 4. See also *Stevens v Cape Agulhas Local Municipality and Others* (A358/15) [2016] ZAWCHC 57 at para. 47.

⁹¹ Local Government: Exemption from Regulations 15 and 18 of Municipal Regulations on Minimum Competency Levels, 2007 (GN 179 GG 37432 of 14 March 2014) (hereafter MFMA First Exemptions Notice).

⁹² Magome M & Sidimba L ‘Gordhan throws municipal staff a lifeline’ *Sunday Independent* 6 April 2014 available at <http://www.iol.co.za/business/news/gordhan-throws-municipal-staff-a-lifeline-1671752> (accessed 15 October 2016).

compliant. Thirdly, even though the Minister of COGTA, Pravin Gordhan, and Minister of Finance, Nhlanhla Nene, issued a media statement that no further extension would be granted,⁹³ one was granted on 3 February 2017 for another 18 months.⁹⁴ This Exemption Notice applies to both existing officials and new appointments. As a result, the effective date of the competency framework is 1 September 2018.

The Competency Regulations sternly provide that no municipality may, with effect from 1 September 2018, employ a person as a senior manager if that person does not meet the competency levels prescribed therein.⁹⁵ For those managers already in the employ of municipalities when the Competency Regulations took effect, the municipal manager is enjoined to assess their competencies to identify gaps.⁹⁶ If this assessment indeed reveals gaps in their existing qualifications and experience and that they thus do not meet the minimum competency levels, then their continued employment is made conditional on them attaining the requisite competencies within the prescribed time-frame.⁹⁷ Regulation 16 provides that if an official not meeting the competency levels is appointed, attainment of the prescribed competency levels within the period of grace must be included in his or her performance agreement as a performance target. Regulation 17 enjoins the municipalities to assist their officials to attain the competency levels.⁹⁸

3.6 Interpretation difficulties

These regulations, however, raised difficulties of interpretation around a number of complex issues. These issues relate to who is affected by the Competency Regulations; the legal consequences thereof for non-compliant officials relative to when they were appointed; whether the Regulations apply retrospectively; whether the competency requirements are in the alternative (i.e. whether meeting some, not all, will do); whether the exemptions and extensions apply to existing or new appointments; the actual legal consequences for non-compliant senior

⁹³ CoGTA and National Treasury 'Minimum competency levels for municipal officials effective from October 2015' *Media Statement* 30 September 2015.

⁹⁴ Local Government: Municipal Finance Management Act, 2003: Exemption from Regulations 15 and 18 of Municipal Regulations on Minimum Competency Levels, 2007 (GN No. 91 GG 40593 of 03 February 2017) (hereafter MFMA Second Exemption Notice).

⁹⁵ Regulation 18(1) Competency Regulations.

⁹⁶ Regulation 13 Competency Regulations.

⁹⁷ Regulation 18(2) Competency Regulations.

⁹⁸ See also section 83 MFMA.

managers at the end of the period of grace; and many more. In what follows, I will address only a few of these complex interpretative issues.

3.6.1 Who is affected?

The Competency Regulations apply to financial officials as well as supply chain management officials at both senior and middle management levels. This is where the problem lies: who are financial officials? The term ‘financial official’ is defined to mean an official exercising financial management responsibilities, which includes the accounting officer, chief financial officer, senior manager and other financial officials.⁹⁹ Accordingly, for an official to be regarded as a financial official, he or she must exercise financial management responsibilities.¹⁰⁰

However, given the breadth of the definition, these regulations appear to apply to all senior managers, including Human Resource managers, Specialised Technical Services managers, Corporate Services Managers or Water and Sanitation Services managers or their equivalents, even though their jobs at face value do not appear to have any financial management aspects. A closer look at their jobs, however, reveals that these do have a financial aspect in that the officials compile and oversee departmental budgets. But do they exercise financial management responsibilities? The authors has argued elsewhere that many of them do.¹⁰¹ For example, the Water and Sanitation Services manager of the City of Cape Town oversees the compilation and implementation of a massive capital budget (R1.5 billion as at 2016) and an even more impressive operating budget (R5.4 billion as at 2014).¹⁰² Implementing such a budget must surely constitute exercising financial management responsibilities, and this category of managers should therefore attract the attention of the Competency Regulations. As a result, all managers that report to the Municipal Manager are affected by the regulations by virtue of their exercising financial management responsibilities.¹⁰³

This conclusion is confirmed by the statement from the National Treasury released on 30 September 2015 to the effect that there are ‘other lower level officials with financial

⁹⁹ Regulation 1 Competency Regulations.

¹⁰⁰ *Mathabathe v Emfuleni Local Municipality and Others* (J 511/2013) [2013] ZALCJHB 45 at para. 15.

¹⁰¹ Ntliziywana 2016: 51.

¹⁰² City of Cape Town 2016/17 Annual Budget. See the Submission by the Social Justice Coalition on the Cape Town 2016/17 Draft Budget – 29 April 2016.

¹⁰³ Ntliziywana & De Visser 2014.

management responsibilities not immediately affected by these requirements such as your clerks and financial management interns, among others'.¹⁰⁴ If clerks and interns exercise financial management responsibilities, senior managers who oversee large departmental budgets surely also do the same.

3.6.2 Legal consequences of non-compliance

The Competency Regulations make a distinction between three categories of financial and supply chain management officials to which this question applies, relative to their appointment date.¹⁰⁵ The consequences of not meeting the minimum requirements are different for each category.

3.6.2.1 Non-compliant appointments before 1 July 2007

The first category relates to those officials who were appointed before the Competency Regulations came into effect, i.e. before 1 July 2007. In this regard, the Competency Regulations provide that their continued employment is not affected, as long as they comply with the competency requirements before the end of the grace period. As indicated earlier, this period was meant to end on 31 December 2012. However, the National Treasury extended this deadline thrice on 20 April 2012 for 30 June 2014,¹⁰⁶ on 14 March 2014 for 30 September 2015,¹⁰⁷ and on 3 February 2017 for 31 August 2018.¹⁰⁸ Accordingly, this category of officials is safe, as long as they comply with the competency requirements on or before 1 September 2018. Given the length of this special dispensation, 10 years, one cannot conceive of a reason why this category of officials would be found non-compliant.

3.6.2.2 Non-compliant appointment after 1 July 2007

The second category of officials are those that were appointed after 1 July 2007 but before the end of the grace period. This category includes every senior manager appointed after 1 July 2007 but before 31 August 2018. The majority of the current municipal officials fall in this category. In this regard, the Competency Regulations provide that a municipality may employ

¹⁰⁴ National Treasury *Media Statement* available at <http://www.gov.za/speeches/minimum-competency-levels-municipal-officials-effective-october-2015-30-sep-2015-0000>.

¹⁰⁵ Regulations 15, 16 and 18 Competency Regulations.

¹⁰⁶ MFMA Circular No. 60 of 2012.

¹⁰⁷ MFMA First Exemptions Notice 2014.

¹⁰⁸ MFMA Second Exemptions Notice 2017.

officials that do not meet the prescribed minimum competency levels, provided that their continued employment is made conditional on them attaining the required competency criteria before the end of the grace period.¹⁰⁹ The attainment of minimum competency levels before the stipulated time-frame must be included as a performance target in the officials' performance agreement.¹¹⁰ As such, they also benefit from the five-year period of grace which was later extended to a ten-year period. If such officials do not meet the minimum competency criteria before the end of the grace period, they would be in breach of the employment contract.

However, the Competency Regulations are not clear on what exactly the legal consequences are. On a literal reading of regulation 18(1), which states that no municipality may 'employ' as opposed to 'appoint', one is led to conclude that all employment contracts of defaulting officials in the 'employ' of municipalities on 31 August 2018 are automatically invalidated retrospectively. No municipality may have in their employ a person as a financial or supply chain management official if that person does not meet the competency levels prescribed for the relevant position in terms of the Competency Regulations.¹¹¹

Even though enough time has been given for senior officials to comply, this literal interpretation would have the deleterious and absurd consequence of a massive exodus of senior managers, which could not have been the intentions of the lawmaker. Furthermore, it would effectively exclude anyone outside of local government from applying for senior management posts in a municipality if he or she does not already possess the minimum competencies as prescribed, thus dramatically decreasing the pool of available and skilled persons that are able to work in local government, including national or provincial officials or experts outside of local government.

However, it is difficult to maintain that there are automatic legal consequences for the officials in question, as South Africa's labour laws militate against such automatic encroachments on a person's employment contract. So, what must a municipality do? Is it compelled to dismiss these officials, or perhaps demote them? As yet, the National Treasury has not told municipalities what to do. It simply said, in a joint media statement with CoGTA on 30 September 2015, that the process that municipal councils as employers can follow to enforce

¹⁰⁹ Regulation 18(2) Competency Regulations.

¹¹⁰ Regulation 16 Competency Regulations. See also MFMA Second Exemption Notice 2017.

¹¹¹ Regulation 18(1) Competency Regulations.

these requirements should be consistent with the Labour Relations Act, Systems Act as amended, and Performance Regulations as amended by the Appointment Regulations, the MFMA, the Competency Regulations and the MFMA Exemption Notice.¹¹² The two departments also offered to support municipal councils to manage the enforcement of these requirements in line with the given legislative framework.¹¹³

In effect, municipalities are left to their own devices in this maze of legal requirements. As such, we are likely to see varied and disparate outcomes from the application of the same legal principles, a situation that is not conducive to legal certainty or in harmony with the principle of legality and the rule of law.¹¹⁴

3.6.2.3 Non-compliant appointments after 31 August 2018

In the last category are those officials who are appointed after the end of the grace period, i.e. after August 2018. The legal consequences of a non-compliant appointment seem to be clear and straightforward in this regard. The Competency Regulations provide that, after the end of the grace period, no official who does not meet the requisite minimum competency levels may be employed (read to mean appointed).¹¹⁵ If there are appointments made contrary to this regulation, then such appointments would be unlawful and can be challenged in court.

However, this category is not as obviously defined as one may think. There are in fact three different scenarios. First, it could relate to ‘new recruits’, i.e. individuals from outside local government who are appointed into a position that falls under the Competency Regulations. The legal position is clear in this regard. In terms of regulation 18(1) of the Competency Regulations no non-compliant appointment may be made. If it is made, it is clearly unlawful and can be challenged in court.

Secondly, it could relate to an official who already works in local government but outside the reach of the Competency Regulations and who is subsequently promoted into a position where the regulations do apply. Regulation 18(1) seems to be applicable in this regard as well. Thirdly, it could relate to an official who works in local government and falls within the reach of the Competency Regulations but who assumes a new senior position in local government for which a different set of criteria apply. For example, an official in the middle management

¹¹² National Treasury Media Statement 2015: 2.

¹¹³ National Treasury Media Statement 2015: 2.

¹¹⁴ Ntliziywana 2016: 43-7.

¹¹⁵ Regulation 18(1) Competency Regulations.

level (who thus required a Diploma in Municipal Financial Management at NQF level 5) is promoted to senior manager and now requires a Certificate in Municipal Financial Management at NQF level 6. It is not immediately clear what the legal consequences are in this regard.

These legal difficulties need to be clarified. Municipal councils should not be left to their own devices lest they be used as a political tool to exclude exactly the kind of competent officials who are meant to be appointed in the first place. The case of *Msengana-Ndlela*,¹¹⁶ discussed at length in Chapter Six and herein below, is instructive in this regard.

3.6.2.4 What is the meaning of ‘competent in’?

The term ‘competent in’ could easily be interpreted to mean that the relevant official must, either through previous experience or qualifications, be ‘competent in’ the unit standards prescribed for financial and supply chain management officials. This would mean therefore that they do not need to do the MFMP. If, on the other hand, a senior manager does not have the prior experience or qualifications to meet those competencies, then the unit standards are prescribed to ensure that such person can meet the desired competencies. This interpretation would ensure that even people from the private sector stand a chance of being employed in local government if they have done the MFMP or are deemed competent in the competency areas through previous experience and/or qualifications.

However, the phrase ‘competent in’ should not be read in isolation. The Competency Regulations state, in the case of an accounting officer, for example, that

[t]he accounting officer of a municipality ... must comply with the minimum competency levels required for higher education qualification, work-related experience, core managerial and occupational competencies *and be competent in* the unit standards prescribed for the financial and supply chain management competency areas as set out below.¹¹⁷

The Competency Regulations then set out the higher education required (bachelor’s degree or a Certificate in Municipal Financial Management); work-related experience (five years at senior management level); core managerial and occupational competencies (as described in the Performance Regulations); and financial and supply chain management competency areas

¹¹⁶ *Msengana-Ndlela v Nelson Mandela Bay Metropolitan Municipality* (3282/2013) [2015] ZAECPHC 31.

¹¹⁷ Emphases added.

(which are the required minimum competency levels in unit standards). What is clear is that these minimum competency requirements are not listed in an either-or fashion. All of them have to be complied with: one cannot pick and choose which of them to comply with. For example, if an official does not have the prior experience to meet these requirements, he or she cannot be saved by the MFMP. The unit standards, which result in a certificate in Municipal Financial Management, are not designed to ensure that such person can meet the desired competencies. They are an additional requirement on their own.

Another difficulty with the Competency Regulations is that officials with PhDs, MBAs and, in the case of CFOs, those registered as Chartered Accountants, are still required to attend the MFMP depending on the assessment of their existing qualification and the competency gaps identified. That is why regulation 13 enjoins the municipal manager to assess the existing competencies of officials with the aim to identify competency gaps and address them through the MFMP. It is possible that through this assessment one's MBA or PhD could be found to be encompassing all or most of the unit standards in much greater detail. It is also possible that through this process a CFO, who has all the necessary qualifications and may even be a chartered accountant with local government experience, might be found not to have competency gaps and thus be excused from undertaking the MFMP.

What is clear, however, is that officials cannot, on the mere basis of their educational qualification and experience, expect to be exempted from complying with the further two requirements. In high-capacity municipalities, for example, regulation 5 states that a CFO must, first, either have an honours degree or be a chartered accountant. Secondly, he or she must have seven years' related experience. Thirdly, he or she must possess core managerial and occupational competencies. Lastly, he or she must have the required minimum competency levels in unit standards. So, over and above qualifications (either honours or registration as chartered accountant) and experience, the CFO must also have the required minimum competency levels in unit standards. In the case of a CFO, a Certificate in Municipal Financial Management is not an alternative to qualifications but an addition to them.

Another peculiar example is that of a CFO at a low-capacity municipality. Regulation 6 provides that he or she must either have a bachelor's degree in relevant fields or a Certificate in Municipal Financial Management; five years' work-related experience; core managerial and occupational competencies; and the required minimum competency levels in unit standards, which translates to a Certificate in Municipal Financial Management. The absurdity of this

regulation is that the Certificate in Municipal Financial Management is both an alternative and an addition. This means that if an official does not have a bachelor's degree, he or she can do the MFMP instead and get the Certificate in Municipal Financial Management. However, if an official does have a bachelor's degree, he or she still needs to be assessed to ascertain how far that bachelor's degree offsets competency areas. In essence, such officials would still need to undertake the MFMP and get the Certificate in Municipal Financial Management.

This is why Dr Msengana-Ndlela was challenged for not having the skills, expertise, qualifications and competencies prescribed by law despite her having two bachelor's degrees, a master's degree and a PhD and having been a director-general of a national government department for seven years.¹¹⁸ The one qualification Msengana-Ndlela lacked was that she had not completed the Municipal Finance Management Programme required by the Competency Regulations.¹¹⁹ She was supposed to undergo an assessment to see if that would absolve her from doing the MFMP, given her qualifications, years of experience and proven capability.

On this interpretation, the Competency Regulations appear to be counterproductive in that they are used to exclude precisely the kind of personnel required to achieve excellence. This is how a former director-general with a PhD and seven years' experience in a national department that is responsible for all of local government could be deemed unsuitable. Local government really cannot afford to exclude high-calibre individuals such as Msengana-Ndlela from the pool of eligible candidates, because qualifications ultimately offer no guarantee of excellence – proven capability comes the closest.¹²⁰

If left unclarified, the Competency Regulations risk being (ab)used in an attempt to exclude exactly the kind of high-calibre individual required from the pool of eligible candidates in a manner that defeats the larger objective that the Competency Regulations sought to achieve – 'to professionalise the local government sector to make it a career choice for talented officials and to some extent mitigate some of the root causes of poor financial management and service

¹¹⁸ Ntliziywana P & De Visser J 'The unexpected pitfalls of professionalising local government' *Politics Web* 28 June 2013 (hereafter Ntliziywana & De Visser 2013).

¹¹⁹ Ntliziywana 2016: 45.

¹²⁰ Ntliziywana & De Visser 2013.

delivery'.¹²¹ This can only be done by recruiting qualified, experienced and competent personnel.¹²²

Lastly, the Competency Regulations are reliant on municipal processes – they do not have a mechanism for external enforcement. The MFMA simply states that a municipality must provide resources or opportunities for the training of said officials to meet the prescribed competency levels.¹²³ It says of the national and provincial treasuries that they 'may assist municipalities in the training of said officials'.¹²⁴ Regulation 13 in turn enjoins the municipal manager to monitor and take steps to ensure compliance with the prescribed competency levels within the time-frame.¹²⁵ Regulation 17 simply repeats the provisions of section 83(2) of the MFMA. Regulation 18 merely states that 'no municipality may ... employ a person ... if that person does not meet the competency levels',¹²⁶ without indicating in clear terms how to enforce this provision and what the actual consequences are in the event of a breach. It means that the Competency Regulations do not have teeth when it comes to enforcement. This gap, that of an insufficient enforcement mechanism, was filled by the amendments to the Systems Act, to which I now turn.

3.7 Systems Amendment Act

Important amendments to the Systems Act were effected in 2011. These amendments make further provision for the appointment of municipal managers and managers directly accountable to municipal managers. They also provide for procedures and competency criteria for such appointments, and for the consequences of appointments made otherwise than in accordance with such procedures and criteria. In terms of the Amendment Act, to be appointed as a municipal manager or a section 56 manager a person must have specific qualifications and experience, which are set out in a separate set of regulations issued pursuant to this provision.¹²⁷ Appointments made in contravention of such minimum competences and the recruitment process are invalid.¹²⁸

¹²¹ CoGTA and National Treasury *Media Statement* 30 September 2015.

¹²² Ntliziywana 2016: 45.

¹²³ Section 83(2) MFMA.

¹²⁴ Section 83(3) MFMA.

¹²⁵ Regulation 13 Competency Regulations.

¹²⁶ Regulation 18 Competency Regulations.

¹²⁷ Section 54A(2) read with section 56(1)(b) Systems Amendment Act 2011.

¹²⁸ Section 54A(3) read with section 56(2) Systems Amendment Act 2011.

The Amendment Act further provides for an external enforcement mechanism in the implementation of these requirements. Accordingly, municipalities must report to the MEC for Local Government on each senior management appointment made, and the MEC must in turn pass the report on to the Minister.¹²⁹ If a person is appointed in contravention of the requirements contained in the regulations,¹³⁰ the MEC must enforce compliance by the municipalities with such requirements by taking appropriate steps that include applying to court for a declaratory order on the validity of the appointment or taking any other legal action against the municipality.¹³¹ If the MEC fails to enforce compliance with the competence framework, the minister responsible for local government may have to step in.¹³² It should be noted that no such external enforcement exists under the Performance Regulations, MFMA and Competency Regulations.

In the event that no suitable candidate can be found through the normal recruitment process, something which is already happening in a number of smaller and rural-based municipalities,¹³³ the municipality may ask the MEC for local government to second a qualified official.¹³⁴ If the MEC is unable to second anyone, the municipality may ask the minister responsible for local government to do so.¹³⁵

The Amendment Act also deals with ethical issues and thus gives effect to the values and principles of high standards of professional ethics in municipal administration. It provides that a staff member dismissed for misconduct cannot be re-employed elsewhere for a certain period of time. In essence, the Act sets a moratorium on the re-employment of such staff by other municipalities or other spheres. The Act provides that the duration of the moratorium must still be prescribed through regulations. However, when a staff member is dismissed for financial misconduct, the Act itself sets the duration of the moratorium at 10 years.¹³⁷

¹²⁹ Section 56(4A) Systems Amendment Act 2011.

¹³⁰ See next section.

¹³¹ Section 54A(8) Systems Amendment Act 2011.

¹³² Section 54A(9) Systems Amendment Act 2011.

¹³³ Parliamentary Monitoring Group 'Public Service Commission & MECs of local government on status of municipalities' 4 September 2012.

¹³⁴ Section 54A(6)(a) Systems Amendment Act 2011.

¹³⁵ Section 54A(6)(b) Systems Amendment Act 2011.

¹³⁶ Section 57A(1) Systems Amendment Act 2011.

¹³⁷ Section 57A(3) Systems Amendment Act 2011.

As noted in the forgoing discussion, the Amendment Act provides for the Minister to enact regulations that are going to spell out qualifications and experience required for appointment into senior management positions as well as the moratorium for specific categories of dismissed senior managers. The ensuing discussion looks specifically at those regulations.

3.8 Appointment Regulations

The regulations envisaged by the Amendment Act setting out the minimum competence requirements and recruitment processes were promulgated in 2014 as Regulations on Appointment and Condition of Employment of Senior Managers.¹³⁸ The main objectives of these regulations are ‘to create a career local public administration governed by the values and principles of public administration as enshrined in Chapter 10 of the Constitution characterised by a high standard of professionalism’.¹³⁹ The Appointment Regulations also outline the government’s resolve to professionalise local public administration.¹⁴⁰

The Appointment Regulations reiterate the provisions of the Amendment Act relating to the invalidity of an appointment made otherwise than in terms of the prescribed requirements and rely on the provisions for external enforcement contained therein. They state that no person may be appointed as a senior manager unless such a person possesses the relevant competencies, qualifications, experience and knowledge set out in Annexures A and B.¹⁴¹ Annexure B provides content to the competency framework relating to qualifications and experience, while Annexure A outlines the core managerial and occupational competencies. Accordingly, senior managers must have a bachelor’s degree in a relevant field (mostly social sciences, public administration or law), five years’ relevant experience, advanced knowledge and the competencies set out in Annexure A of the Appointment Regulations.¹⁴² The Appointment Regulations further provide that an applicant for a senior manager post must disclose his or her academic qualifications, proven experience and competencies.¹⁴³

The Performance Regulations do not contain similar provisions prohibiting appointments made otherwise than in terms of the competency framework contained therein. They simply state that

¹³⁸ Appointment Regulations.

¹³⁹ CoGTA Circular No. 2 of 2014: 3.

¹⁴⁰ CoGTA Circular No. 2 of 2014: 3.

¹⁴¹ Regulations 8 and 9 Appointment Regulations.

¹⁴² Annexure B Appointment Regulations.

¹⁴³ Regulation 11 Appointment Regulations.

the competency framework constitutes an inherent requirement of the job¹⁴⁴ and employment of senior managers must be subject to ‘the submission of original certificates or certified copies thereof of the employee's academic and professional qualifications and proof of previous employment prior to the signing of the employment contract’.¹⁴⁵ They further exempt those employees who do not meet the prescribed competencies when the regulations take effect¹⁴⁶ and enjoin municipalities to assess them in order to identify capacity gaps for the purposes of development.¹⁴⁷

Furthermore, they do not provide for an enforcement mechanism in the event of failure to comply with the competency framework contained therein. Even though the Competency Regulations in turn prohibit the employment of persons who do not meet the competency framework contained therein,¹⁴⁸ they nevertheless do not provide for an enforcement mechanism. As seen in section 3.4.2 above, there is no clarity and certainty on the actual legal position in the event of a failure to meet the competency framework contained in the regulations. As such, the Appointment Regulations, read with the Systems Amendment Act, are remedying this defect in the two earlier regulations.

The Appointment Regulations further repeal and replace a number of regulations in the Performance Regulations, especially those relating to making qualifications, experience and core competencies an inherent requirement of the job.¹⁴⁹ This essentially means that the competency framework contained in the Performance Regulations has now been replaced by the one contained in the Appointment Regulations. As such, reliance can no longer be placed on the Performance Regulations in assessing whether an official meets the qualifications and experiential requirements. This is now extensively regulated by the Appointment Regulations and is subject to external enforcement, leaving the Performance Regulation to deal with performance management issues only.

The difference between the competency framework contained in the Performance Regulation and that contained in the Appointment Regulations is that the former, in addition to

¹⁴⁴ Regulation 38 Performance Regulations.

¹⁴⁵ Regulation 4(4)(b) Performance Regulations.

¹⁴⁶ Regulation 39(4)(b) Performance Regulations.

¹⁴⁷ Regulation 39(4)(a) Performance Regulations.

¹⁴⁸ Regulation 38 Competency Regulations.

¹⁴⁹ Regulation 46 Appointment Regulations.

qualifications and experience, requires core managerial and occupational competencies,¹⁵⁰ while the latter requires instead leading competencies, core competencies and the eight *Batho Pele* principles.¹⁵¹ There is an overlap between the old core managerial and occupational competencies, on the one hand, and the new leading competencies and core competencies, on the other. The only additions are the levels of achieving the leading and core competencies¹⁵² and the *Batho Pele* principles. The qualification and experience requirements are still the same, namely a recognised bachelor's degree in public administration or relevant field and a minimum of five years' experience at senior management level. As such, the Appointment Regulations were merely tightening professionalism in this score. The *Batho Pele* principles now have to be taken account of when appointing a senior manager.

In relation to the Competency Regulations, the competency framework contained in the Appointment Regulations, while tightening ethics and professionalism, seems to be lowering the bar somewhat. First, the Appointment Regulations treat all municipalities in the same manner. They do not make the differentiation that the Competency Regulations do in relation to a municipality's budget size. As a result, all senior managers, regardless of whether they are appointed in high-capacity municipalities or not, need to have a bachelor's degree in the relevant field, five years' experience at senior management level, and critical leading competencies and core competencies. In addition, the eight *Batho Pele* principles must be taken into account. Given that these two sets of regulation exist side by side, municipalities could easily choose the less stringent Appointment Regulations when appointing senior managers, other than the CFOs,¹⁵³ in high-capacity municipalities, thereby rendering the Competency Regulations redundant. This is not conducive to legal certainty.

The second instance where the Appointment Regulations are lowering the bar is in relation to the certificate of competence. While it is a compulsory requirement under the Competency Regulations for a senior manager to have a certificate in municipal financial management, as discussed in section 3.4.2.4 above, the Appointment Regulations in turn say that a certificate of competence in a particular field is not a requirement but an added advantage.¹⁵⁴ Similarly,

¹⁵⁰ Regulation 26 Performance Regulations.

¹⁵¹ Annexure A Appointment Regulations.

¹⁵² Moving from basic, competent and advanced to superior.

¹⁵³ Annexure B of the Appointment Regulations states that the competency framework for CFOs is as prescribed under the Competency Regulations.

¹⁵⁴ Annexure B Appointment Regulations.

municipalities could easily choose the less stringent of the two regulations and render the Competency Regulations redundant.

The Appointment Regulations further respond to the issue raised in the Amendment Act of prescribing a moratorium on the reappointment of senior managers dismissed for misconduct. In this regard, Schedule 2 to the Appointment Regulations contains 11 categories of misconduct and the time period that must expire before a person is re-employed in a municipality. When it comes to financial misconduct, the moratorium is 10 years.¹⁵⁵ For all other categories of misconduct, the moratorium is five years. For the breach of the Code of Conduct, the moratorium is two years.¹⁵⁶ None of the earlier Regulations addressed this issue of ethics.

3.9 Testing the mettle of the Appointment Regulations

Courts have had an opportunity to test the effectiveness of the provisions of the Systems Act relating to the competency criteria for the appointment of senior managers and the regulations issued in furtherance of the objectives of the System Act.

It should be noted that the provision of the Systems Act and the regulations issued pursuant thereto are not an end in themselves. They were enacted to fulfil a particular function, namely to promote the constitutional values and principles of professionalism and, as such, to make local government administration a professional, efficient, responsive, impartial, accountable, and transparent administration.¹⁵⁷ The *South African Municipality Workers Union v Merafong City Local Municipality*¹⁵⁸ case is an instance of the application of the competency criteria which goes beyond merely looking at the prescribed competency criteria to what this competency criteria is meant to achieve. The lesson drawn from this instance is that the conduct of senior managers must align with the ethos of the professionalisation initiatives, which is possibly why the *Batho Pele* principles are included as a key factor to consider. That is what the Labour Court was called upon to look at in *SAMWU v Merafong*.

This case involved the appointment of a certain Mr Mabaso as a municipal manager of the Merafong City Local Municipality in 2012. The facts of the case indicate that Mr Mabaso is

¹⁵⁵ Schedule 2 Appointment Regulations.

¹⁵⁶ Schedule 2 Appointment Regulations.

¹⁵⁷ Section 195(1) Constitution.

¹⁵⁸ *South African Municipality Workers Union and Another v Merafong City Local Municipality and Others* [2013] ZALCJHB 64 (SAMWU V Merafong case)

eminently qualified and experienced for the purposes of the Systems Act.¹⁵⁹ Before the appointment in question, he had served as the municipal manager of a district municipality (Sisonke District Municipality) for more than 10 years, thus satisfying the experiential requirement. He holds a bachelor's degree in Public Administration.¹⁶⁰ As it is, this meets the prescribed requirements. However, Mr Mabaso also hold an Honours degree in Public Administration.¹⁶¹ If one were to look only at the prescribed competency criteria of the Appointment Regulations, this would be the end of it.

The challenge before the Labour Court was that Mr Mabaso was not a suitable person to be appointed a municipal manager, regard being had to the provisions of section 54A(2) of the Systems Act.¹⁶² As mentioned above, this section requires a person applying for the position of municipal manager to at least have the skills, expertise, competencies and the prescribed qualifications. Relying on the report of the Auditor-General of the 2009/10 and 2010/11 financial years in respect of the management and financial affairs of Sisonke District Municipality, it was contended that Mr Mabaso lacked the requirements demanded in the section, in view of his having been the municipal manager for the relevant period covered by the report.¹⁶³

In the report, the Auditor-General expressed strong opinions regarding, first, the municipality's liquidity ratio and financial stability, which threatened the viability and very existence of the municipality. Secondly, the municipality had incurred irregular expenditure to the tune of R351.9 million as a result of contracts awarded in contravention of procurement laws¹⁶⁴ and of Mr Mabaso's failure to prevent irregular expenditure. Thirdly, Mr Mabaso failed to meet the requirements of the MFMA before committing the municipality to long-term debt. Finally, Mr Mabaso and the municipal council did not exercise adequate oversight over compliance with relevant laws and regulations.

¹⁵⁹ These facts appear in an appeal launched by the Merafong City Local Municipality to the Labour Appeal Court in which the Appeal Court reversed the decision of the court below on a technical ground that the Minister was not given an opportunity to remedy the defect. The appeal case is reported as *Merafong City Local Municipality v South African Municipality Workers Union ('SAMWU') and Another* (2016) 37 (ILJ) 1857 (LAC) (*Merafong vs SAMWU*).

¹⁶⁰ *Merafong v SAMWU* paras. 3 and 4.

¹⁶¹ *Merafong v SAMWU* para. 4.

¹⁶² *SAMWU v Merafong* paras. 5-9.

¹⁶³ *SAMWU v Merafong* para. 18.

¹⁶⁴ In particular the Municipal Supply Chain Management Regulations.

It was further argued that as an accounting officer Mr Mabaso had failed to implement controls to ensure that documents and records are filed properly and easily retrievable and available for audit purposes. The report noted that some of these problems were identified in the previous audit cycle and were brought to the attention of the municipality. The contention was that Mr Mabaso clearly failed to address those concerns and that, in appointing him without considering his past performance, the Merafong Municipal Council acted irrationally and its decision is liable to be set aside.

The Labour Court held that section 54A(2), read with section 55(2), section 54A(4)(b) of the Systems Act, and section 195 of the Constitution, makes it clear that for appointment as municipal manager, the appointee must possess adequate knowledge and ability to perform the statutory duties of municipal manager. It held that the only inference to be drawn from the Auditor-General's reports for 2010 and 2011 was that Mr Mabaso was not 'suitable' to be appointed as municipal manager.¹⁶⁵ The Court held that section 54A(3) of the Systems Act plainly rendered void the appointment of an unsuitable person to that position and that Mr Mabaso was shown not suitable for the position. The Court further held that the municipality's process in making the appointment was defective, because in essence it omitted canvassing the said Auditor-General's reports with Mr Mabaso.¹⁶⁶ The Court further held that the municipality did not act rationally in making the appointment, because it disregarded 'material, reliable and available information' which was relevant to the suitability of Mr Mabaso, and that his appointment in those circumstances was unreasonable and irrational.¹⁶⁷

This case brings to the fore the additional criterion brought about by the Systems Amendment Act and the Appointment Regulation issued pursuant thereto. This criterion is suitability. Over and above the competency criteria for appointment, senior managers must also be suitable, having regard to their past experience. This criterion puts to a halt the phenomenon of senior managers mishandling municipal finances and/or being involved in corrupt practices and still relying on that experience for promotion or appointment elsewhere. The Amendment Act and the Appointment Regulations, through the introduction of the *Batho Pele* principles, are introducing the culture of consequences which has been absent for some time now. Previous experience is not taken for its own sake, but is now used to test a candidate's suitability.

¹⁶⁵ *SAMWU v Merafong* paras. 19 and 22.

¹⁶⁶ *SAMWU v Merafong* para. 27.

¹⁶⁷ *SAMWU v Merafong* para. 27.

4 Implications for managerialism

The resurgence of some elements of the Weberian form of bureaucracy naturally would have implications for the NPM tenet of managerialism. The autonomy enjoyed by managers must be accompanied by proven skills, expertise, qualifications, experience and competencies. This has consequences for the open skills recruitment practice. However, as has been noted, the Weberian elements exist side by side with the NPM elements. A limited form of lateral appointment still obtains. Municipalities do not appoint the best and the brightest fresh from college, who then grow within the systems to become senior managers. Senior managers from the private sector or elsewhere are appointed, provided they meet the Weberian competency criteria now in existence, albeit contradictory. The definition of ‘senior management level’ in the *Paulse* case, which includes the level at which a person who occupies a position in a management level outside the local government sphere but which is substantially similar to senior management level inside the local government sphere, leaves the room open for appointment outside local government.

Even though sideways appointments are still permissible, the focus has now shifted from outputs to inputs. As indicated in section 3.4.4 above, new entrants from outside local government will have to prove their inputs before appointment. Despite proven capabilities elsewhere, a failure to prove, or comply with, entry requirements holds severe repercussions, as demonstrated by the tale of Dr Msengana-Ndlela. This blanket exclusion deprives local government of the kinds of managers required to turn the tide of dysfunction. As was seen in *Merafong v SAMWU*, entry requirements do not offer any guarantee of excellence, whereas proven capability does. In *casu*, a municipal manager with all the necessary qualifications was held to be unable to perform the statutory duties of a municipal manager for failing to exercise adequate oversight over compliance with relevant laws and regulations. This failure resulted in large sums of irregular, wasteful and unauthorised expenditure. The court had to reverse his new appointment.

Furthermore, the abrupt resurgence of the Weberian model collided head-on with the existing practice of open skills recruitment. The *Paulse* case, in which politicians sought to influence the outcomes of an appointment process by withholding the outcomes of the competency assessment from full council, provides evidence of the old practice vis-à-vis the new. This led the council to appoint the second-best candidate, which was lawful in terms of the old practice but unlawful in terms of the new, resulting in its being reversed in court. Even after the court

action, there was a relentless outside political influence forcing the council to appeal the court decision.

Moreover, the professionalisation drive is not compatible with short-term contracts. The Competency Regulations which gave senior officials a special dispensation of 10 years for them to acquire certain skills, expertise, qualifications and competencies might be frustrated by the short-term contracts. Even though officials had to train for all those years, there is no guarantee that they will be retained at local government. It would be wasteful to train them only to lose them to other spheres due to the job insecurity that comes with short-term contracts.

The other dilemma presented by the Weberian notion of qualifications as an entry requirement is the complexity of the laws that decree those requirements. Their complexity would have severe repercussions for managerialism as they confuse even judges. The case of *Mahura v Greater Taung Local Municipality*, where a judge misdirected himself in several material respects is a case in point. If these laws confuse even judges, what would the situation be with senior managers, let alone politicians? It is submitted that these laws are a convenient instrument in the hands of politicians to enable them to interfere in the day-to-day running of a municipality and to exclude unwanted officials. Many instances, such as the *Allan Paulse* case, the Msengana-Ndlela debacle and the *Merafong* case, have illustrated the dangers of leaving important decisions regarding senior appointments to politicians. This has implications for managerialism.

5 Informal initiatives towards professionalisation

The professionalisation initiative of the national government was supported by the ‘professionals in the system’ who were seeking to establish a gatekeeping mechanism through professional associations. These associations were hoping eventually to obtain statutory recognition as they had under apartheid.¹⁶⁸ The repeal of the statutes that gave these professional association statutory recognition during apartheid left a vacuum in the regulation of the municipal finance and town clerk¹⁶⁹ profession. Nothing was put in place to enforce the registration, skills development and professional status of candidates before they could be appointed into senior municipal positions. Instead, generic qualifications had no focus on local government and the enforcement of professional ethics, and as such were not appropriate for

¹⁶⁸ See Chapter Three, section 4.3.

¹⁶⁹ Now called municipal manager.

the local government sector. Municipal finance officers, in effect, no longer fell under the auspices of a professional body that had the power and competency to regulate their respective professions and competency.

The system of local government faced serious problems of incapacity, incompetence, fraud, corruption and the general dysfunction detailed in the preceding chapter. This was due to the exclusion of South Africa's black majority from the training and professional development of municipal managers and finance officials in the past and the halting of such training and professional development in the current dispensation. The new demands of local government to rectify the after-effects of apartheid required more skills and expertise, which were not there.¹⁷⁰ On the other hand, the MFMA, which repealed and replaced the Municipal Accountants Act, insists on the appointment of suitably qualified persons.¹⁷¹

It is submitted that, contrary to the popular narrative, the problems of skills deficit at local government are not due to affirmative action and cadre deployment policies. They are a result of the exclusion of generations of black people, first, from the body politic and, secondly, from membership of and training by these professional institutes. Affirmative action and cadre deployment policies would mean nothing if there were proper governance structures in black areas and a large enough pool of trained and competent black candidates from which to choose. These policies are necessary to reverse the exclusion of the majority of black managers, and professional association must 'come to the party' to train as many of those already in the system as possible, in line with the competency frameworks currently in operation.

However, given that most of this training was previously done on the job after suitable appointment¹⁷² in the same way as envisaged by the laws and regulations ushering in the resurgence of the Weberian model, the likes of Msengana-Ndlela would still be kept out. The Competency Regulations, for example, only give a period of grace to those senior managers currently in the system and within the reach of the competency framework contained therein. What about those who are in the system but not within the reach of the Competency Regulations, or those who are not already in the system? To cater for the Msengana-Ndlelas of

¹⁷⁰ Buthelezi & Dollery 2004.

¹⁷¹ Section 83 MFMA.

¹⁷² Even though membership of the professional bodies was voluntary before 1988, one had to be employed at a municipality to be a member. In 1988, membership of these professional bodies ceased to be voluntary. All town clerks and municipal accountants or treasurers had to be members; they could not perform the functions of town clerks or treasurers functions without being members.

the world, it is important to retain some of the NPM's privileging of experience over formal qualifications. Moreover, people die or move on to other careers. Reliance cannot be placed on the officials currently in the employ of municipalities for the entire local government sector. There must be a second layer pool of managers which is being trained, in line with the current framework, to take over from the current pool. Professional associations would come in handy in this regard by using the already existing competency framework to train another layer of municipal officials.

The Institute of Municipal Finance Officers, discussed immediately below, already caters for the second, even the third, layer pool of municipal employees. It has three categories of members that are not directly employed by municipalities. First, there is a Junior Member of IMFO (JIMFO) who is required to have completed Grade 12 (NQF level 4) and is doing in-service training anywhere in the public service.¹⁷³ Secondly, there is a General Member, meaning '[a]ny person ... who is involved in finance matters but do[es] not have a finance related qualification'.¹⁷⁴ The following are included in this category: municipal managers, officials in a related institution involved in financial or audit matters, and officials in the private sector involved in municipal finance or municipal auditing.¹⁷⁵ The third category relates to persons who are full-time students in a finance- or auditing-related qualification at a tertiary institution and who are not working in a Local Authority.¹⁷⁶ This opens room for training of persons not yet in the system.

The next sections examine the role of these associations.

5.1 Institute of Municipal Finance Officers

As a result of the vacuum created by the repeal of the Profession of Town Clerks Act and the Municipal Accountants Act, a number of institutes emerged to fill it. In the case of municipal finance officials,¹⁷⁷ the Institute of Municipal Finance Officers (the IMFO), a transformed version of the Institute of Municipal Treasurers and Accountants, took charge and maintained

¹⁷³ IMFO *Membership Booklet* available at <http://cdn.entelectonline.co.za/wm-566841-cmsimages/MEMBERSHIPBOOKLETprofile.pdf> (accessed 1 July 2017) (hereafter IMFO Membership Booklet).

¹⁷⁴ IMFO Membership Booklet.

¹⁷⁵ IMFO Membership Booklet.

¹⁷⁶ IMFO Membership Booklet.

¹⁷⁷ The IMFO represents finance, audit, risk management, performance management and related professionals in the public sector.

self-regulation. However, given that there is no hard rule requiring registration with the institute before appointment to municipal jobs, some finance officials are not members of the IMFO.¹⁷⁸ The only relevance of the IMFO is as an advisory body.¹⁷⁹ For example, it has been playing a critical role in rendering expert advice on financial matters to key local government stakeholders such as CoGTA, SALGA, LGSETA and the National Treasury.¹⁸⁰ The IMFO also provides input on legislation and financial regulations, and participates in and contributes to standard-setting by the Accounting Standards Board.¹⁸¹

With the promulgation of the Competency Regulations, the IMFO has slowly regained its lost status. It has now aligned its membership requirements with the competency criteria prescribed in terms of the Competency Regulation and has been playing a critical role in helping finance officials meet the deadline.¹⁸² It is now once again at the forefront of promoting the professional status of municipal finance officials, and this is a sure way of promoting the institute and attracting new members. There have even been reported instances of the IMFO paying the tuition fees of finance officials for the MFMP in order to meet the prescribed criteria.¹⁸³ The IMFO is registered with SAQA in accordance with the provisions of the National Qualifications Framework Act of 2008.¹⁸⁴

The IMFO, working with the National Treasury and LGSETA, also assists in the assessment of competencies by providing its qualified assessors, and it is thus in a perfect position to identify capacity gaps.¹⁸⁵ This gives the IMFO a central role to play not only in training and skills development but in developing an ethical code of conduct with which members must comply. The IMFO has also been proactive in the management and monitoring of the progress of each CFO and each finance officer's development programme.¹⁸⁶

The remaining task for the IMFO is to lobby for the introduction of legislation that will change its status to a statutory body to promote professional development of municipal employees and

¹⁷⁸ LGSETA *Turnaround and Repositioning Plan* (2014) 10.

¹⁷⁹ School of Government, UWC *Draft Concept Paper towards the Development of a National Professionalisation Framework for Local Government* (2012) 26 (hereafter *Draft Concept Paper*).

¹⁸⁰ *Draft Concept Paper* 2012: 26.

¹⁸¹ IMFO Annual Report 2016: 53.

¹⁸² De Lange 2009: 7.

¹⁸³ *Mathabathe v Emfuleni Local Municipality and Others* (J 511/2013) [2013] ZALCJHB 45 at para. 5.

¹⁸⁴ *Draft Concept Paper* 2012: 27.

¹⁸⁵ De Lange 2009: 8.

¹⁸⁶ IMFO Annual Report 2016: 38.

enforce the code of conduct.¹⁸⁷ It is submitted that the alarming levels of dysfunctionality, lack of consequences for irregular and wasteful use of municipal resources, fraud and corruption would be the thing of the past were the IMFO to be given statutory recognition in a way similar to how the Municipal Accountants Act gave IMTA statutory public recognition in 1988.¹⁸⁸

As things stand, the IMFO cannot be effective in enforcing its codes of professional ethics because not every financial officer is a member of it. Only a statute, such as the Municipal Accountants Act, would buttress IMFO's mission to promote the values and principles of professionalism contained in section 195 of the Constitution. The standards have been set already through the Competency Regulations, Systems Act and Appointment Regulations. The legislation simply needs to mandate IMFO to enforce these standards and ring-fence the functions relating to financial officials so that only those who are members of it and subject to its rules can perform them. This is a preferable to policing the competency framework contained in the regulations, because professional associations, unlike the provinces which are empowered to enforce compliance therewith, are not subject to political influence.

It is further submitted that this would improve ethics in many municipalities. As things stand, section 57A of the Systems Act, which prescribes a moratorium on the reemployment of municipal officials dismissed for misconduct, waits for municipal processes, namely a disciplinary process and a dismissal, to take place. What if no dismissal ever takes place? A publicly recognised IMFO, on the other hand, would act on mere allegation with prima facie proof, investigate them and enforce its codes because its reputation depends on it.

5.2 Institute of Local Government Management of South Africa

This Institute has similarly metamorphosed a number of times in an attempt to shed its racist past. As opposed to the erstwhile Institute of Town Clerks, which represented only town clerks, the Institute represents all senior managers.¹⁸⁹ After the repeal of the Profession of Town Clerks Act in 1995, there was a lull for two years. The ILGM was eventually established in 1997 to be the premier professional body for local government managers.¹⁹⁰ Similarly, the ILMG initially determined its own standards for the professional development and capacitation of its

¹⁸⁷ De Lange 2010: 25. See also IMFO Annual Report 2016: 4.

¹⁸⁸ Act 117 of 1998.

¹⁸⁹ *Draft Concept Paper* 2012: 27.

¹⁹⁰ *Draft Concept Paper* 2012: 27.

members. It also provides a professional development, information-sharing and networking opportunities for its members, and has a code of ethics to which members must comply. However, as can be expected, not all managers are members of the ILGM, and as such its code of ethics cannot be effective across the board.¹⁹¹

The ILGM has been a vocal proponent of the professionalisation of local government management, arguing that membership of the ILGM should be made mandatory for all managers in local government so that its code of ethics would be applicable to all.¹⁹² A small victory, but certainly one that goes a long way, was achieved when SAQA recognised the ILGM as a professional body for the purposes of the National Qualifications Framework Act 67 of 2008 late in 2013.¹⁹³ In addition, SAQA approved a new professional designation for those municipal managers who comply with the competency requirements in terms of the Systems Act and the Appointment Regulations, namely ‘Accredited Municipal Manager’, abbreviated as AMM.¹⁹⁴

The qualification relates directly to competencies outlined in the new competency profiles for municipal managers, established by the national Department of Cooperative Governance, in terms of the amended Systems Act. As such, while the IMFO has aligned its entry requirements and professional development to the Competency Regulations, the ILGM has aligned its requirements to the Systems Act and the Appointment Regulations.

It has even established a Regulatory and Professionalisation Committee which has made concrete proposals on the legislation to drive the professionalisation process.¹⁹⁵ Draft legislation, submitted to CoGTA for consideration, envisages the establishment of a South African Professional Local Government Management Council (SAPLGMC) which would have broad statutory powers in determining education and qualification standards for the profession of local government manager. This body would also act as an education and training quality assurer under the SAQA Act for all local government management qualifications; in certifying membership of the profession; in the accreditation of education and training providers; and in the regulation of the professional behaviour of local government managers.

¹⁹¹ LGSETA *Turnaround and Repositioning Plan* (2014) 38.

¹⁹² ILGM website available at <http://www.ilgm.co.za/Professionalisation.aspx>.

¹⁹³ Draft Concept Paper 2012: 27.

¹⁹⁴ ILGM website available at <http://www.ilgm.co.za/Professionalisation.aspx>.

¹⁹⁵ *Draft Concept Paper* 2012: 27.

Similarly, this institute plays a central role in professionalisation initiatives, and the last step to cementing its position would be a statute that recognises it as such. This would go a long way in turning the tide in the largely dysfunctional sphere of government and thereby promoting the values and principles contained in section 195 of the Constitution.

To counter the gatekeeping nature of these association, which has the potential to exclude the likes of Msengana-Ndlela, they must be allowed to recruit members who are not in the employ of municipalities and train them as a pool of employees to replace the current officials. Furthermore, limited sideways entry into local government in line with the NPM must be allowed.

6 Conclusion

This chapter brings to light a shift in thinking from wholehearted commitment to the NPM paradigm, which promised to infuse efficiency and effectiveness in the public service and rid it of incompetence. Persistent dysfunctionality among municipalities and municipal entities has forced a rethink of the government's theoretical position.

After an initial embrace of NPM, which produced mainly perverse results (and not effective service delivery), the pendulum has recently swung back to a Weberian approach. National government is swiftly reintroducing qualifications-based meritocracy in the local public administration. New entrants into the employ of local government need to go through a prescribed course of training and special examination. However, the resurrection of the Weberian model does not seek to supplant the NPM model – it is reintroduced side by side the NPM model. For example, lateral entry from the private sector and other spheres into local public administration are still allowed. The focus, however, has now shifted from outputs or outcomes to inputs. New entrants have to prove qualifications and competencies (inputs) upfront, they cannot be appointed on condition that they will produce results (outputs) in some future date. This means the focus is no longer on what they can deliver, relative to what they have done elsewhere, but what qualification, skills and expertise they bring to the organisation. Proven capabilities elsewhere, short of compliance with entry requirements, do not cut it. This was aptly demonstrated in the case of Dr Msengana-Ndlela.

Even though the return of the Weberian model, which reinforces professionalism, is to be lauded, overemphasising entry requirements at the expense of proven ability does not guarantee excellence of service delivery. This much was made clear in *Merafong v SAMWU* where a

municipal manager with all the necessary qualifications was held to be unable to perform the statutory duties of a municipal manager for failing to exercise adequate oversight over compliance with relevant laws and regulations. This failure resulted in large sums of irregular, wasteful and unauthorised expenditure.

Furthermore, as the discussion has shown, the return to the Weberian form of bureaucracy has had some negative impact on the NPM tenet of managerialism. Over and above contractualism and the performance management system that serve as counterweights to managerial autonomy, that autonomy must now also be accompanied by proven skills, expertise, qualifications, experience and competencies. This provides an opportunity for undue political meddling in the appointment of senior managers and ultimately in their operations. Instances of such meddling were highlighted in this chapter. The *Paulse* case, in which politicians sought to influence the outcomes of an appointment process by withholding the outcomes of the competency assessment from full council leading the council to appoint the second-best candidate, is a case in point. Furthermore, even though this council decision was reversed in court, there was a relentless outside political influence forcing the council to appeal the court decision.

Even though the MEC has an oversight responsibility over appointments, if councillors can successfully withhold information from council it would equally be easy to do this to the MEC. The cases above illustrate the dangers of leaving the appointment of senior officials to politicians. This has repercussions for the notion of letting managers manage free from interference.

Moreover, the professionalisation drive is not compatible with short-term contracts. The Competency Regulations, which gave senior officials a special dispensation of 10 years in which to acquire certain skills, expertise, qualifications and competencies, might be frustrated by short-term contracts. Even though officials had to train for all those years, the short-term contract systems do not offer any security regarding future employment prospects. There is no guarantee that they will be retained at local government. It would be wasteful to train them only to lose them to other spheres or to the private sector because of the uncertainties and job insecurity that come with short-term contracts.

The other dilemma presented by the Weberian element of qualifications as an entry requirement is the complexity of the laws that decree those requirements. Their complexity also holds severe repercussions for managerialism as they confuse even judges. The case of *Mahura v Greater*

Taung Local Municipality, discussed earlier, underlines this complexity. In this case the complexities of these laws confused the judge, leading him to apply the law incorrectly and arrived at a mistaken conclusion. If these laws confuse even legal specialists such as judges, how could we expect non-specialist administrator, let alone politicians, to understand them? This has the potential to create inconsistent application of the laws throughout the country.

It is proposed that the best solution for these and the many other problems besetting local government is for the national government to return to the statutory-association model of professionalisation which mandates existing professional associations to enforce the existing standards. The standards have been set already in the Competency Regulations, Systems Amendment Act and Appointment Regulations, as discussed above. IMFO and the ILGM have also aligned their own requirements with those standards. Furthermore, these institutes have both been accredited by SAQA as professional associations. What remains is for them to be given the sanction, through statute, to regulate their respective sectors and for their functions be ring-fenced.

The advantages of recognising these institutes through legislation are many and varied and are the only available solution to making local government a career of choice and thus turning the tide in local government. First, ring-fencing the functions of senior managers, on the one hand, and finance officials, on the other, would ensure that all these officials belong to professional institutes and are thus bound by codes of ethics. Currently, the reach of IMFO and ILGM's codes of conduct is limited as not all senior managers belong to these institutes. The only way to force them to belong to the institutes is to ring-fence functions and criminalise exercise of those function otherwise than by members of the institutes. Accordingly, these institutes would not only focus on capacity-building and professional development but also enforce ethics, thereby addressing corruption, laziness, mismanagement.

It may be argued in this regard that the Systems Amendment Act already deals with such issues through the moratorium it sets, among others. However, in order for the MEC to enforce the moratorium, he or she must first wait for municipal disciplinary processes to unfold and for someone to be found guilty and dismissed. There must be a dismissal for misconduct before the moratorium on reappointment kicks in. What if the majority of cases do not reach that stage? The professional institutes, on the other hand, will act on mere allegations – with prima facie proof of misconduct – because their credibility and reputation depends on it. For example, instance, where the Auditor-General expresses an opinion on the finances of a municipality,

the relevant body would have to act to rectify the problems so that the Auditor-General's findings do not go unaddressed, as is currently the case.

Secondly, it would make local government a career of choice in that not everyone would be allowed to exercise the functions of senior managers, as was the case after the enactment of the Profession of Town Clerks and the Municipal Accountants Acts of 1988. These Acts restricted the performance of certain functions to members only, making it difficult for non-members to perform such functions. In fact, it was a criminal offence to do so. As such, the institutes would take care of training of their members in the laws currently in existence and develop members to be able to perform their functions. These institutes would also play a role in managing the performance of managers through their own rules and thus help municipalities in the processes. This process would deter senior officials from hopping to other spheres or to the private sector. Long-term service would come with its perks. It would also halt the phenomenon of introducing officials from the top, without experience or knowledge of local government. However, limited lateral entries should be permitted so as to include those managers not currently in the employ of local government but who are highly skilled and experienced.

These institutes would also train enough managers so that there is an available pool of competent managers to choose from whenever a vacancy appears. This would halt the phenomenon of secondment of personnel from other spheres who otherwise do not have the right skills for the sector. Furthermore, this would help in the even distribution of skills throughout the country. Skills distribution would not depend on economic context. If there is a vacancy and there is a manager available and ready for appointment, then an institute would make a recommendation. Vacant funded posts would be a thing of the past.

Most importantly, the institutes would arrest the problem of leaving each municipality to its own devices in interpreting laws. Now that the institutes have aligned the existing laws with their requirements, this would foster a common understanding of the laws. It would be easier for the institutes to engage National Treasury or CoGTA on what it sought to achieve on behalf of its members than for individual municipalities to send such requests to the National Treasury or solicits varied and contradictory legal opinions.

Chapter Nine: Conclusion

1 Outline of the main argument

At the beginning of this study it was asserted that local government under apartheid failed to deliver services to the people of South Africa. Instead, it caused structural disparities, service backlogs, and gross inequalities within and among the South African population based on race. This was partly attributable to the pathologies of the Weberian model of service delivery, which obtained, partially, at the time until it was fully implemented in 1988. With the end of apartheid, and the need for rapid service delivery to rectify the damage done by apartheid, the usefulness of the Weberian model was in doubt. Its efficiency was regarded by the new government of dubious value in addressing the challenges it faced. The new government instead brought in a new model of service delivery, the NPM, as a policy and law in both national, provincial and local levels of government. The main problem, however, was that poor service delivery persisted despite the introduction of the NPM. This forced a rethink by the new government, which led to a resurgence of the Weberian model.

The main purpose of this study, therefore, was to examine the failures and limits of legislating the NPM in South Africa. The study sought to investigate whether the introduction of NPM principles in local government legal framework had the desired effect of transforming service delivery for the better. It also sought to investigate why, in recent times, there has been a resurgence of the Weberian model. The study posed five substantive questions to guide this investigation: One, why did the national government adopt the NPM policy at national and local levels? Two, how were NPM principles expressed in the government's policy and legislative framework (both national and local)? Three, did the manner in which NPM principles were expressed in the legal framework facilitate or thwart the implementation of the NPM? Four, where the legal framework facilitated implementation of NPM principles, did this have the desired results of improving service delivery? Five, given the resurgence of the Weberian model of delivery, is any role left for the NPM in the legal framework? The findings of this study are outlined below.

2 The rise and fall of Weberianism

The apartheid white local government, which operated a brutal system of racial segregation and domination, was partially modelled along Weberian lines.¹ It was characterised by a ‘bureaucratic, law-driven, hierarchical, multi-layered, departmentally fragmented, inward-oriented, racial oligarchy’.² The Weberian model became more pronounced and was fully embraced towards the end of the apartheid era as a result of the enactment of the Professions of Town Clerks Act³ and the Municipal Accountants Act.⁴ The real reason for the full adoption of the Weberian bureaucracy was to close the loophole that allowed many town clerks and town treasurers to circumvent the enforced route to be a town clerk or treasurer through professional associations. The changes brought about in 1988 were occasioned by the fact that the writing was on the wall for apartheid and as such the apartheid government was fearful that the system, if not tightened up, would allow in new unqualified black entrants, Africans in particular. So, these laws were an attempt to keep unqualified blacks out of the system. To get in, they had to meet new strict requirements that were not applied to white personnel before 1988, namely qualification, prior experience and memberships of a professional association.

The rationale for the fall of the Weberian model, with the end of apartheid, and the adoption of the NPM model of delivery by the post-apartheid government can, therefore, be located within the context of the damage caused by apartheid and the need for rapid delivery of services to rectify those ravages. The Weberian model that obtained during the apartheid era would not provide rapid service delivery because it was racist and static. It was racist in the sense that it ensured ‘the development of separate local authorities for separated racial groups, under the leading theme of ‘own management for own areas’,⁵ which was meant to limit the extent to which affluent white local authorities would bear the financial burden of servicing disadvantaged African areas.⁶ This produced ‘a clever scheme of naked exploitation on the basis of race’,⁷ as the well-resourced and viable commercial centres, with their strong revenue

¹ Chipkin I ‘Transcending bureaucracy: State transformation in the age of the manager’ (2011) 77 *Transformation* 41 (hereafter Chipkin 2011).

² Fitzgerald P ‘Towards a developmental public administration paradigm’ in Fitzgerald P, McLennan A & Munslow B (eds) *Managing Sustainable Development in South Africa* (1995) 512 (hereafter Fitzgerald 1995).

³ Act 75 of 1988.

⁴ Act 21 of 1988.

⁵ De Visser J ‘Developmental local government in South Africa: Institutional fault lines’ (2009) 2 *Commonwealth Journal of Local Governance* 8 (hereafter De Visser 2009).

⁶ The *White Paper on Local Government* (9 March 1998).

⁷ De Visser 2009: 8.

base, were reserved as white areas.⁸ These areas were protected from the influx of Africans by a number of statutes which formalised geographical and racial segregation, thus securing viable rates bases for white people. The reality of the apartheid past was one of a ‘balkanised’, fragmented public administration which was divided racially and ethnically.⁹ The result was a plethora of parallel bureaucracies responsible to multiple political authorities.¹⁰

Furthermore, the local government system was exploitative in the sense that it reserved the outlying and poor peri-urban areas (townships) without any meaningful formal economies for African people.¹¹ These townships did not have an economic tax base as apartheid regulations barred retail and industrial developments in African areas, forcing African communities and retailers to spend most of their money in white areas.¹² Moreover, expenditure on black South Africans was a fraction of what it was on whites.¹³ This rendered the local government institutions therein, which were designed to reinforce the policies of segregation and economic exclusion, stillborn.¹⁴ None of these institutions had resources to make any meaningful impact on the quality of life of their constituencies.¹⁵ Given the strict hierarchy in the Weberian model of delivery, the administration was forced to follow blindly the political dictates of the day and implement these racist and exploitative policies.

The Weberian model was static in the sense that it was slow to act and bureaucratic, resulting in inefficiencies.¹⁶ Officials were fixated on procedural correctness and compliance with rules. They lacked discretion and autonomy to act independently, and waited for superior orders before they could act on anything. This resulted in reels of time-consuming and despair-creating red tape and paperwork,¹⁷ making the administration too dilatory for instant decision-making and communication. Furthermore, the administration was not only large but lax.

The other reasons for the adoption of the NPM by the post-apartheid government were, first, that the post-apartheid government was inundated by an international reform wave towards the NPM. In this regard, the NPM was promoted as the model that would bring efficiency in the

⁸ De Visser 2009: 8.

⁹ Fraser-Moleketi G *Public Service Reform in South Africa: An Overview of Selected Case studies from 1994-2004* (Master's thesis, University of Pretoria, 2006) 20 (hereafter Fraser-Moleketi 2006).

¹⁰ Chipkin 2011: 1.

¹¹ De Visser 2009: 8.

¹² *White Paper* 1998: 23 para. A.1.

¹³ Chipkin 2011:1.

¹⁴ Picard LA & Mogale T *The Limits of Democratic Governance in South Africa* (2015) 129.

¹⁵ *White Paper* 1998: 23 para. A.1.

¹⁶ Hughes 1994: 56.

¹⁷ Bergmann 1991: 16.

delivery of the much-needed services. This period also coincided with the collapse of the Soviet Union and the growing dominance of the neo-liberal project. Secondly, the NPM was introduced in response to imperatives to transform the public administration. Among these imperatives was the need to deracialise the public service, something which the Weberian model stood to obstruct. Thirdly, the post-apartheid government was influenced by the international financial institutions that dictate the rules of the global economic game, and the leading sectors of capital, towards adopting the NPM model.

3 The emergence and expression of NPM principles

The second question asked how NPM principles were expressed in local government policy and legal framework. To answer this question, I needed to look at the national level where the policies and legislation were set. The study demonstrated, in Chapter Four, that the national aspirational policy documents, namely the Reconstruction and Development Programme,¹⁸ the *White Paper on Transformation of Public Service and Administration*,¹⁹ section 195 of the Constitution,²⁰ the *White Paper on Human Resource Management and Administration*,²¹ *White Paper on a New Employment Policy for the Public Service*,²² and the Presidential Review Commission²³ laid the foundation for the expression of NPM principles. In this regard, these principles were expressed through managerialism, which includes professionalising decision-making power,²⁴ performance management²⁵ and the contract appointment system;²⁶ public-private partnerships,²⁷ and corporatisation.²⁸

¹⁸ African National Congress *Reconstruction and Development Programme* (1994).

¹⁹ The *White Paper on Transformation of the Public Service* (GN 1227 GG 16838 of 24 November 1995).

²⁰ Constitution of the Republic of South Africa, 1996.

²¹ The *White Paper on Human Resource Management in the Public Service* (GG 18594 of 31 December 1997).

²² The *White Paper on a New Employment Policy for the Public Service: Managing People in a Transformed Public Service* 9 September 1997.

²³ Commission of Inquiry Regarding the Transformation and Reform of the Public Service (Proclamation R10 in GG 17020 of 8 March 1996).

²⁴ *White Paper* 1995: 33 para. 8.2 and 37 para. 9; Presidential Review Commission 1998: 175 para. 7.2.3.6, read with 63 para. 2.6.4.

²⁵ *White Paper* 1995: 22 para. 6.1.3; section 195 Constitution; *White Paper on a New Employment Policy*: 27 para. 5.9.

²⁶ *White Paper* 1995: 189 para. 8.2.

²⁷ Presidential Review Commission: 166 para. 7.2.1.

²⁸ African National Congress *Reconstruction and Development Programme* (1994) 128.

Chapter Five in turn demonstrated the manner in which the legislative framework²⁹ governing public service gave expression to the NPM principles of decentralising decision-making power,³⁰ performance management,³¹ contract employment,³² public-private partnerships, and corporatisation at national level.³³

Following the national example, the legislative framework for local government gave effect to the NPM principles of managerialism, public-private partnerships and corporatisation. As seen immediately above, managerialism encompasses the principles of transferring decision-making power to managers (letting managers manage) and the attendant principles that are meant to circumscribe managerial power and freedom, namely performance management and contract-based appointment.

In regard to letting managers manage, the law confers wide discretion and autonomy on managers with regard to organisational and staff issues such as the appointment, promotion, dismissal and transfer of members of staff, performance management, and the obligations, rights and privileges of managers. In this regard, the *White Paper on Local Government* elevates the role of the manager in the bureaucracy by delegating³⁴ operational management responsibilities to managers.³⁵ Furthermore, sections 55 and 66 of the Systems Act contain a full spectrum of powers and functions relating to organisational and staff issues which can only be exercised by the municipal manager within the policy framework provided by the council. The municipal manager also plays a role in the appointment of section 56 managers by council. These appointments can only be done after consultation with the municipal manager.³⁶

Moreover, the laws regulating the structures, systems and finances of local government have widened the discretion of senior managers in the functioning of a municipality. In this regard, the Structures Act states that the municipal manager is the head of the municipal administration and is also the accounting officer for the municipality.³⁷ The Systems Act, which repealed

²⁹ Public Service Act 103 of 1994, Public Service Regulations, 2001 (GN R1 of 5 January 2001), and Public Finance Management Act 1 of 1999.

³⁰ Section 9 Public Service Act Public Service Regulations, 2001 (GN R.1 of 5 January 2001).

³¹ Sections 3(5), 3B and 7(3)(b) Public Service Act. See also Chapter 4 of the Public Service Regulations.

³² Section 12(1) Public Service Act.

³³ Section 3 Public Service Act read with sections 38(1)(m) and 54(2) of the PFMA.

³⁴ 'Delegating' is used loosely in this context. It does not carry its usual meaning of temporarily transferring powers and revoking them at an appropriate time. Here responsibilities are permanently transferred to managers.

³⁵ *White Paper* 1998: 162 para. 2.2.1.

³⁶ Section 56(1) Systems Act.

³⁷ Section 82 Structures Act.

section 82 of the Structures Act, and the MFMA, contain similar provisions with regard to the widened role of the municipal manager.³⁸ In this regards, the municipal manager is the head of the municipal administration,³⁹ the champion of the IDP and performance management,⁴⁰ the service delivery agent,⁴¹ the interface between council and administration,⁴² the accounting officer⁴³ as well as the custodian of all records and documents of the municipality.⁴⁴ Over and above these powers and functions, the municipal manager generally performs the functions and exercises the powers that are delegated to him by the municipal council, in which case the discretion of the municipal manager is limited in the sense that the council can decide at any time to revoke those delegated powers.⁴⁵

This is the fulcrum of the managerial responsibility and discretion conferred upon municipal managers. The municipal manager has become hands-on in the management of municipal affairs. For example, as the interface between council and the administration, the municipal manager manages communication between administration and the municipality's political structures and office-bearers. In the role as the champion of the IDP and performance management, the municipal manager is responsible for the implementation of the municipality's IDP and ensuring that the administration operates in accordance with the municipality's performance management system. In the role as the service delivery agent, the municipal manager is responsible for the management of the provision of services to local communities in a sustainable and equitable manner. Lastly, the municipal manager has the duty to implement legislation.

In all these responsibilities, the municipal manager works hand in glove with heads of departments who are intimately attuned with the workings of the departments. Municipal councils and councillors are barred from interfering in municipal administration and in the exercise of these powers and thereby compromising the discretionary power and autonomy conferred on managers.⁴⁶

³⁸ Section 55 Systems Act.

³⁹ Section 55(1)(a) Systems Act.

⁴⁰ Section 55(1)(c) Systems Act.

⁴¹ Section 55(1)(d) Systems Act.

⁴² Section 55(1)(j) Systems Act.

⁴³ Section 55(2) Systems Act read with section 60 MFMA.

⁴⁴ Section 117 Systems Act read with section 63 MFMA.

⁴⁵ Section 55(1)(m) Systems Act.

⁴⁶ Item 11 Code of Conduct for Councillors read with section 117 MFMA.

Municipal councils, on the other hand, are given the performance management system and contract-based appointment system as tools to keep managerial autonomy in check.⁴⁷ Section 57(1)(a) and (b) of the Systems Act states that the appointment of senior managers can only be done in terms of a written employment contract with the municipality and subject to a separate performance agreement. Section 57(6)(b) further states that the employment contract of a municipal manager must include a provision for the cancellation of the contract in the case of non-compliance with the employment contract or the performance agreement. Section 57 read with regulation 4(4)(a) of Performance Regulations therefore imposes an obligation on municipal councils to conclude employment contracts and performance agreements with senior managers upon appointment and, in the case of performance agreements, annually thereafter, and conduct quarterly reviews of senior managers' performance each year. If municipal councils are not happy with the performance of managers, they could either terminate the contract of employment on grounds of poor performance or not renew it at the expiration of its term.⁴⁸ Renewal or otherwise of the employment contract depends on the prior satisfactory attainment of identified performance objectives and targets.⁴⁹

Section 54A(4) of the Systems Act further provides for an open skills recruitment system, which entails the external advertisement of all posts to allow senior officials in the former administrations to compete for such posts with applicants drawn from outside local government. This principle seeks to open up recruitment to the broader sections of the population in line with the constitutional objectives of objectivity, fairness, redress and broad representation enunciated in section 195 of the Constitution. Furthermore, in the period between 1998 and 2006, the Systems and Structures Acts did not prescribe any form of qualification and experience, simply stating in each case that a person appointed as a municipal manager or a manager directly accountable to the municipal manager must have skills and expertise to perform the duties associated with the post in question, without specifying what those skills should be.⁵⁰

⁴⁷ Section 57 Systems Act.

⁴⁸ Section 57(6)(b) Systems Act read with regulation 32(3) Performance Regulations and regulation 16 of Disciplinary Regulations.

⁴⁹ *Tshongweni v Ekurhuleni Metropolitan Municipality* (2012) 33 ILJ 2847 (LAC) at para. 33.

⁵⁰ Sections 82(2) Structures Act and 56(2) Systems Act.

In essence, qualifications and seniority were not the only consideration taken account of in appointment and promotion decisions, as is the case in the closed employment system. Reliance on internal promotion would frustrate the constitutional objectives of objectivity, fairness, redress and broad representation.⁵¹ These principles require that posts must be advertised nationally to reach and attract a larger pool of applicants and ensure open competition, especially from persons historically disadvantaged, to ensure, ultimately, a public administration that is broadly representative of the South African people. The selection criteria are based on competencies, as indicated by track record in performance, rather than undue over-emphasis of academic qualifications. The aim is to make local government jobs more accessible to all sections of society, achieve employment equity, and provide equal opportunities for advancement for people at all levels within local government.

Local government policies and legislation further provide municipalities with options to externalise service delivery through public-private partnerships and corporatisation.⁵² The *Green Paper on Local Government* outlines the full spectrum of service delivery options to choose from to mobilise additional capacity and resources for effective service delivery. These include public-private partnerships and corporatisation.⁵³ The *White Paper on Local Government* states:

Municipalities have a range of delivery options to enhance service provision. They need to strategically assess and plan the most appropriate forms of service delivery for their areas. Their administrations need to be geared to implement the chosen delivery options in the most effective manner and so ensure maximum benefit to their communities.⁵⁴

The Systems Act, in chapter 8, outlines the various options available to municipalities as well as the criteria to be used when deciding on service delivery mechanisms. Section 76 of the Systems Act contains a complete list of service delivery mechanisms, categorised as either internal or external mechanisms.⁵⁵ Section 78 of the Systems Act sets out the criteria and procedure that would help municipalities in deciding which would be the most viable option to provide the service. This section guides municipalities in choosing between

⁵¹ Section 195(1)(i) Constitution.

⁵² Sections 76 and 78 Systems Act read with section 120 MFMA.

⁵³ *Green Paper* 1997: 42 para. 2.3.

⁵⁴ *White Paper* 1998: 159 para. 2.2.

⁵⁵ Section 76(a) and (b) Systems Act.

delivering the service themselves or appointing an external service provider to do so in terms of a service delivery agreement.

Another piece of legislation having a bearing on alternative service delivery mechanisms at local level is the MFMA. It concerns the financial management of municipalities and municipal entities, has provisions relating to public-private partnerships, and deals with feasibility, procurement, contracting, security and debt.⁵⁶ For example, section 120 specifically requires a feasibility assessment to be carried out before a public-private partnership is concluded.⁵⁷

Both these options seek to introduce business practices or private sector management techniques into local government in order to achieve greater efficiency, cost-savings or service-quality improvements. The benefits of the public-private partnership option is the mobilising of resources (alternative funding) and scarce skills from the private sector and transferring of substantial financial, technical and operational risks in connection with the performance of the municipal function to the private sector. The benefits of corporatisation are the business practices or private sector management techniques in the delivery of services and the arm's-length distance or autonomy enjoyed by municipal entities, which ensures more freedom and flexibility from the municipal bureaucracy, with its associated red tape and deficiencies. In principle, the answer to the above question sounds as though the NPM was given full expression, but when looking deeper at the manner in which it was expressed, a different picture emerges.

4 The manner in which NPM principles were expressed

With regard to the question whether the manner in which these NPM principles were expressed in law facilitated or impeded the implementation of the NPM, it is revealed, in Chapters Six and Seven, that there is a mixed bag of outcomes. In some instances, the law is clearly showing hesitancy to give full effect to the NPM, while in others it gives full expression in a manner that facilitates implementation. Some NPM principles were expressed in a manner that thwarted or impeded the full implementation of the NPM.

When it comes to managerialism, four legislative issues impede the proper implementation of the NPM. The first is that section 56(1)(a) of the Systems Act provides that it is the council

⁵⁶ Section 120 MFMA.

⁵⁷ Section 120(4) MFMA.

itself that appoints second-level managers (below the municipal manager) and that distorts the lines of accountability.⁵⁸ This contradicts the provisions of the Systems Act that the municipal manager, as a head of the administration and the accounting officer, is charged with the formation and development of an administration that is economical, effective, efficient and accountable.⁵⁹ Furthermore, the municipal manager alone is accountable for the proper functioning of municipal administration, including the maintenance of discipline.⁶⁰ This raises the question as to how municipal managers are expected to manage the administration and maintain discipline if they cannot appoint their own team of executives.

This constrains the discretion given to municipal managers to form and develop an economic, effective, efficient and accountable administration which they must manage within the law.⁶¹ It also constrains the discretion given to section 56 managers, as heads of their own departments, in that their appointment by politicians decreases their independence. They are at the beck and call of politicians to do their bidding. The National Development Plan agrees that the appointment of senior managers by the council rather than the municipal manager often complicates or distorts the lines of accountability between senior managers and the municipal manager.⁶² The National Development Plan also proposes that a municipal manager must be given authority over appointments of managers reporting to him or her because, as things stand, he or she ends up being answerable for issues he or she has limited or no control over, in a way that undermines his or her authority.⁶³ Furthermore, even though the Code of Conduct for Councillors contains a provision that prohibits councillors from interfering in the administration,⁶⁴ prohibiting councillors from interfering in the administration, while allowing them to appoint the very same administration, is self-defeating. There is a possibility that the mere fact of appointment makes the administration beholden to the councillors who appointed them.

When it comes to the maintenance of discipline of staff by the municipal manager,⁶⁵ some managers could use the fact of their appointment to challenge the authority of the municipal

⁵⁸ Section 56(1)(a) Systems Act.

⁵⁹ Section 55(1)(a) Systems Act.

⁶⁰ Section 55(1)(g) Systems Act.

⁶¹ Section 55(1)(a) Systems Act.

⁶² National Development Plan 2012: 415.

⁶³ National Development Plan 2012: 414.

⁶⁴ Item 11 Schedule 1 Systems Act.

⁶⁵ Section 55(1)(g) Systems Act.

manager. This would undermine the authority of the municipal manager and render municipal administration ungovernable. Ultimately, it is the municipal manager, and no one else, who accounts for his or her administration. Furthermore, since the employment contracts of senior managers are concluded with the council but their performance agreements with the municipal manager, the municipal manager is in a difficult position as far as enforcing the performance management system and disciplining his or her staff is concerned, which has the potential to render the authority of the municipal manager nugatory.

It is an inconsistent application of the NPM principle of managerialism, therefore, for the lawmakers to prohibit interference in procurement decisions but not in appointment decisions. This means, in essence, that while municipal managers are empowered with full discretion in supply chain management, specifically procurement decisions, by the exclusion of political involvement,⁶⁶ that same discretion is curtailed in human resource management, especially the appointment of senior managers. There are contextual similarities between supply chain management and human resource management, and they both have a propensity to attract political interference. In the same way as in procurement decisions, the role of the council and councillors should be limited to the formulation and adoption of the recruitment policy, and not on implementation of the policy.⁶⁷ It is inconsistent of the lawmakers to empower managers only in supply chain management issues but not in human resource management issues, as both sets of issues are integral to the principle of letting managers manage: they relate to the core functions of the municipal manager as the head of the municipal administration and an accounting officer. Councillors should not be involved in the appointment of section 56 managers, which is the implementation of the recruitment policy.⁶⁸

The second is that there is a panoply of laws and regulations, emanating from national government and prescribing certain actions and outcomes.⁶⁹ This leaves little scope for discretion by managers and, in effect, curtails their powers and chokes their innovativeness. Instead of expending time and energy devising innovative ways of delivering services to the communities, managers are stuck in ticking boxes and meeting the prescriptive demands of the many laws governing the sector. A comparison of the national and provincial levels reveals

⁶⁶ Section 117 MFMA.

⁶⁷ Ntliziywana 2012: 57.

⁶⁸ Ntliziywana 2012: 57.

⁶⁹ Performance Regulations of 2006, Competency Regulations of 2007, Systems Amendment Act of 2011, Appointment Regulations of 2014, and Public Administration Management Act of 2014.

that the public service in these two spheres does not suffer from the same problem of overregulation, indicating that there is a level of mistrust towards local government. The overregulation at local level impedes the exercise of the wide discretion conferred on senior management as they find themselves operating in an environment that is encumbered by regulations and red tape. Autonomy and managerial discretion presuppose that other spheres are not issuing showers orders as to what actions should be taken and what kinds of outcomes should follow from these actions. This state of affairs has the potential to erode managerial autonomy and relegate senior managers to being the implementing agent of other spheres.

The third is that there are conflicting laws from CoGTA and the National Treasury, and most recently DPSA, which are confusing managers and as thus are undermining their discretion. The rivalry between these departments vying for regulatory control of local government is having a negative impact on managers in that it is confusing them in relation to which regulations to apply to which factual situation. Managers are caught in between the three ministries, a situation that is not conducive for the proper exercise of their autonomy.

The fourth is the varying contractual regimes for senior managers. Not all senior managers are strictly on short-term contract. When it comes to the municipal manager, section 57(6) prescribes fixed-term employment of five years.⁷⁰ If the contract is concluded during the term of a council, it may not exceed one year after the election of the next council.⁷¹ In the case of section 56 managers, the Act leaves the employment terms to the parties to decide, but leaves room open for council to elect to also apply section 57(6) to a section 56 manager, in which case this fact must be recorded in the employment contract itself.⁷²

The whole idea behind the introduction of the fixed-term contract system was to improve accountability and induce a focus on outputs.⁷³ The employment contracts are used to induce performance in that they would only 'be renewable based on an assessment of performance against specified targets'.⁷⁴ The application of different employment regimes to senior managers, therefore, means that the regime that improves accountability and induces

⁷⁰ *Uthukela District Municipality vs Khoza and Others (D 735/2013) [2015] ZALCD 19 (Uthukela case)* at para. 48. See also section 57(6) read with the repealed section 57(7) of the Systems Act. Given that this discussion is for the period 2000-2006, the repealed section 57(7), which sought to extend the application of fixed-term contracts to section 56 managers, is still applicable

⁷¹ Section 57(5)(a) Systems Act.

⁷² *Uthukela case* at para. 48.

⁷³ *White Paper* 1998: 160 para. 2.2.1.

⁷⁴ *White Paper* 1998: 160 para. 2.2.1.

performance is only applicable to the municipal managers and not to heads of departments. It is left to the discretion of the council, when it comes to second level managers, whether to extend the regime or not. In the exercise of their discretion, municipal councils might, and indeed have, exclude(d) a significant section of section 56 managers.

With regard to public-private partnerships, it is argued that the procedures for externalising services are convoluted, complex and costly and, as such, very few municipalities are using public-private partnerships as options for externalising service delivery. First, the section 78 procedure is impossible to implement. It entails four stages, all of which require an elaborate assessment or feasibility study. Section 120 of the MFMA and the PPP Regulations complicate the procedure for externalising services by imposing additional layers of compliance.

As a result of this complexity, only 21 out of 257 municipalities countrywide have attempted externalising services using public-private partnerships.⁷⁵ None of these public-private partnerships have reached the implementation stage, even though majority of them were initiated in 2011. In essence, none of the registered public-private partnerships with regard to providing core services are functional. It is argued that the complex nature of the legislative framework giving expression to the NPM principle of public-private partnership requires additional capacities within municipalities and that this poses a challenge for a number of municipalities. The PPP Unit has not been active in providing the technical assistance required at different stages of externalising the service through public-private partnerships.

A comparative analysis of the procedure for externalising a service through public-private partnerships at national and provincial levels reveals that the procedure therein is much simpler. At national level, the first two reviews, namely initial internal review and external mechanism review, are bypassed. The national process begins with the inception phase in terms of which the procuring institution registers the project with the PPP Unit.⁷⁶ This is followed by a feasibility study on the most appropriate mechanism for procuring the project.⁷⁷ If the feasibility study shows that the PPP is the viable option, the National Treasury gives it its stamp of approval and the procuring institution invites the market to submit bids for the provisions of

⁷⁵ National Treasury PPP Unit *Public Private Partnership* available at <http://www.ppp.gov.za/Lists/PPPpercent20Projectpercent20Listpercent20Master/Municipal.aspx> (accessed 15 March 2017).

⁷⁶ Regulation 16.3 Treasury Regulation 16 (*GG* 23463 of 25 May 2002).

⁷⁷ Regulation 16.4 Treasury Regulation 16.

service. Once a suitable bidder has been chosen, the project is implemented.⁷⁸ Unlike the section 78 procedure and the further procedure added by the MFMA and its Regulations, the procedure in terms of Regulation 16 is not complex. As a result, as at 2015 there were 24 active PPP and 50 more in the pipeline for only 35 national departments,⁷⁹ compared with only 27 PPP for the entire local government sector, consisting of 257 municipalities.

This raises the question of why the government is using different standards for national government and local government. The phenomenon can be explained by the general mistrust displayed by the national government in the ability of local government to act responsibly. Such mistrust also explains the flurry of laws, discussed above, overregulating local government.

When it comes to corporatisation, it is argued that even though corporatisation ensures an arm's-length distance between the entity and municipal administration, a corporatised entity is still subject to the same laws and procedures as an ordinary service department. The tight financial regime the MFMA imposes on municipalities is also applicable to municipal entities.⁸⁰ The human resource management regime, namely appointment procedures, performance management system and conditions of service applicable to municipalities, is also applicable to municipal entities.⁸¹ Tight regulatory control of entities runs counter to the rationale for creating a stand-alone entity away from the parent municipality so as to cushion it from the strictures of regulation and red tape. As a result, corporatisation is no different than ordinary municipal administration, and as such there is no incentive to corporatise services. It is simply an additional expense to the local fiscus.

As a result, only 39 municipalities⁸² out of 257 are utilising municipal entities for the delivery of a service(s). The rest of the 223 municipalities have been discouraged by the strict regulatory regime introduced in 2003. Since then there are only 62 municipal entities countrywide, as opposed to the 91 that existed before the introduction of the strict regime in 2003. The majority of these were created before 2003. Of the 34 municipalities, only the City of Johannesburg Metropolitan Municipality has corporatised most of its major or core functions, with 12 entities as at 2017. This is an example of the NPM taking over, signifying that the City of Johannesburg

⁷⁸ Regulation 16.6 Treasury Regulation 16.

⁷⁹ World Bank *Establishing Public-Private Partnerships: Lessons Learned from the Global South* (2015) 4.

⁸⁰ Sections 84-104 MFMA.

⁸¹ Steytler, Ntliziywana & De Visser 2010: 30.

⁸² This number decreased to 34 after the 2016 local government elections.

has fully embraced corporatisation. However, because of lack of coordination and wastage, the City of Johannesburg is re-incorporating all its entities into mainstream municipal administration.

Furthermore, because of the tight regulatory regime for entities, the trend is to use municipal entities to plug capacity gaps in the municipality. This means that where a municipality has the necessary capacity and expertise to provide basic services, there is no incentive to opt for corporatisation.⁸³ However, where a particular area falls outside the traditional activities of the municipality, and as such there is no established capacity and expertise in that area, then corporatisation is seen as a viable option.

A few examples of this trend are in the large metros of EThekweni and Cape Town. First, they both opted for municipal entities as a vehicle to run convention centres in Durban and Cape Town, which are not core municipal services. Secondly, the EThekweni metro established a municipal entity called Durban Marine Theme Park with the aim to stimulate economic growth. Because running a theme park is not core municipal business, a municipal entity was created for this purpose. Thirdly, the City of Cape Town established a company to operate its rapid bus transport (BRT) system. Given that the provision of public transport was a new venture for the City, the operation of the BRT was entrusted to a municipal entity in the form of a private company. All this indicates that the original intent of this NPM tenet of separating service delivery units from the municipality to offer them greater autonomy and flexibility and to introduce business practices to achieve greater efficiency did not prove feasible in most cases. It proved usable where much specialised services were required, and not the-run-of-the-mill municipal services as the City of Johannesburg has tried.

There are other instances where the legal framework gives full expression to NPM principles in a manner that facilitates their implementation. These instances relate to the open skills recruitment system, the fixed-term contract for municipal managers and performance management. With regard to open skill set, between 1998 and 2006 the law required the person to be appointed as a municipal manager or a manager directly accountable to the municipal manager to have skills and expertise to perform the duties associated with the post in question, without specifying what those skills should be.⁸⁴ Furthermore, the law states that the post must

⁸³ Steytler, Ntiziwana & De Visser 2010: 30.

⁸⁴ Section 82 Structures Act.

be advertised nationally to attract the larger pool of potential candidates.⁸⁵ This means opening up recruitment to the broader sections of the population. It is argued that this is in line with the constitutional objectives of objectivity, fairness, redress and broad representation. In essence, qualifications and seniority are not the only consideration taken account of in appointment and promotion decisions, as is the case in the closed employment system. All the persons who qualify for the appointment, transfer or promotion shall be considered and the evaluation of persons shall be based on training, skills, competence, knowledge and the need to redress the imbalances of the past.

The second instance where the legislative framework facilitated the implementation of NPM principles was with regard to fixed-term contracts for municipal managers. The Systems Act, in line with the NPM principle of fixed-term contracts, prescribes the appointment of municipal managers to a fixed-term of five years.⁸⁶ The Systems Act further states that if the contract is concluded during the term of a council, it may not exceed one year after the election of the next council.⁸⁷ This makes the five-year term of a municipal manager coincide more or less with the five-year term of council.

The third instance where the legislative framework facilitated the implementation of NPM principles was in relation to the performance management system. The Systems Act and the MFMA gave full effect to the NPM tenet of performance management system in a manner that facilitates implementation. First, the Systems Act deals with the manner in which municipalities should deal with performance management. It provides for the establishment and development of a performance management system for each and every municipality in the country in the manner that is commensurate with its resources; and for the manner in which it should be monitored and reviewed by the municipality.⁸⁸ The performance management systems must set key performance indicators and targets and provide for the monitoring, review and reporting on municipal performance based on indicators linked to the IDP.⁸⁹ The Act requires all municipalities to 'promote a culture of performance management among its political structures, political office bearers and councillors and its administration'.⁹⁰

⁸⁵ Sections 54A(4) and 56(3) Systems Act.

⁸⁶ Section 57(6) read with the repealed section 57(7) Systems Act.

⁸⁷ Section 57(5)(a) Systems Act.

⁸⁸ Sections 38, 39 and 40 Systems Act.

⁸⁹ Sections 41 Systems Act.

⁹⁰ Sections 38(b) Systems Act.

The Act further states that a performance agreement must be concluded within 60 days of appointment and annually thereafter, within one month after the beginning of a financial year of the municipality.⁹¹ Failure to conclude the performance agreement within the specified periods result in the lapsing of the appointment. In the case of the municipal manager, the performance agreement must be entered into with the municipality as represented by the mayor or executive mayor, as the case may be.⁹² When it comes to a manager directly accountable to the municipal manager, the performance agreement must be entered into with the municipal manager.⁹³

The MFMA in turn enjoins the mayor to take all reasonable steps to ensure that the performance agreements of municipal managers and section 56 managers are concluded and comply with the provisions of the Systems Act.⁹⁴ The MFMA also requires the mayor to ensure that the performance agreements of said officials comply with the MFMA to promote sound financial management and are linked to the measurable performance objectives approved with the budget and to the service delivery and budget implementation plan.⁹⁵

The Performance Regulations in turn subject the employment of a municipal manager and those managers reporting directly to him or her to the signing of a separate performance agreement,⁹⁶ with the aim of measuring and evaluating their performance.⁹⁷ In terms of the regulations, the employer is enjoined to create an enabling environment that facilitates effective performance by its senior managers.⁹⁸ This includes an obligation to maintain a workable relationship with the managers, consulting them whenever the exercise of powers or decisions to be taken will have an effect on the performance of their function.⁹⁹ When it comes to performance monitoring and evaluation, these regulations employ a carrot-and-stick approach to ensuring satisfactory performance. In the case of outstanding performance, the officials concerned are rewarded with a performance bonus for a job well done.¹⁰⁰ In the case of unacceptable

⁹¹ Section 57(2)(i) and (ii) Systems Act.

⁹² Section 57(2)(b) Systems Act.

⁹³ Section 57(2)(c) Systems Act.

⁹⁴ Section 53(1)(c)(iii)(cc) MFMA.

⁹⁵ Section 53(1)(c)(iii)(aa) and (bb) MFMA.

⁹⁶ Regulation 4 Performance Regulations.

⁹⁷ Regulation 27 Performance Regulations.

⁹⁸ Regulation 30(1) Performance Regulations.

⁹⁹ Regulation 31(1)(c) Performance Regulations.

¹⁰⁰ Regulation 32(2) Performance Regulations.

performance, systemic remedial, developmental support or corrective steps are provided to assist such employees to improve their performance before the problem worsens.¹⁰¹

The picture that emerges of the way in which NPM principles were expressed in the legislative framework for local government is one of poor implementation and mistrust of local government institutions by national government, which translates into hesitancy to give full effect to the NPM. Unfortunately, the NPM is not the winner in both instances. Where the national government clearly has no choice but to implement national policy imperatives or priorities, it gives full expression to the NPM at local government. The open skills recruitment system, for example, fitted in with the government's transformation imperatives of deracialising the public administration. That is why it is given full expression even at local level. The same can be said for the fixed-term contract for municipal managers, which ensured that the incoming government cleans out the old administrators and puts in people favourably disposed to its policies and vision. Performance management came in handy to keep the old administrators still in the system in check.

However, it would seem that there was no clear alignment between certain NPM principles and legitimate government priorities. First, regarding the appointment of second-level managers, the national government decided to throw caution to the wind and reserved that role for council in case there were still old administrators in the system. If a municipal manager happened to belong to the old regime, it was going to be difficult to entrust him or her with the important task of deracialisation. That was best left to incoming politicians.

Secondly, the panoply of laws thrown at local level prescribing certain actions and outcomes – which, by the way, is not the case at national level – clearly shows that national government does not quite trust local government to act responsibly. Thus, it prescribed what actions to take and the outcomes of those actions.

Thirdly, the rivalry between three national departments vying for regulatory control of local government also indicates that the mistrust of local government is a dominant narrative at national level. The only problem is that each of these departments sees itself playing a role in regulating local government and prescribing actions and outcomes. The mistrust of local government also plays itself out in the different standards prescribed for PPPs at national and

¹⁰¹ Regulation 32(3)(a) Performance Regulations.

local level. At national level, the procedure is simpler and quicker, whereas at local level it is complex, convoluted and costly.

The varying contractual regimes for senior managers and the fact that corporatised entities are still subject to the laws and procedures that an ordinary service department is subjected to could be explained as a design flaw in the system. Overall, the balance tilted against the NPM. The national government showed hesitancy in giving full expression to the NPM at local level.

5 Factors in the legal framework that facilitated the NPM implementation

In instances where NPM principles were expressed in law in a manner that facilitated their implementation, the desired results were often not achieved: the implementation of the NPM has routinely had adverse effects. First, the open skills recruitment system led to patronage appointments or the appointment of unsuitable persons. Although the open skills recruitment systems requires at most that a person appointed as a manager must have skills and expertise to perform the duties associated with the post in question, it did not specify what those skills should be.¹⁰² It placed the emphasis on performance rather than qualifications, and this opened the floodgates for appointments that flout the rules and procedures.¹⁰³ The open skills recruitment systems has been used as a licence to appoint unsuitable and unqualified persons.¹⁰⁴ Some of these appointments are justified on the basis of affirmative action and cadre deployment policies, while others are purely for patronage reasons. The open skills recruitment system was too open to stop any of it. This NPM principle therefore allowed neo-patrimonialism to flourish. This is attributable to a design flaw, which is indicative of the unsuitability of this NPM principle in the South African context.

Secondly, fixed-term contracts for municipal managers and those section 56 managers also on fixed-term contracts led to political manipulation and the revolving-door phenomenon. Given that the fixed-term employment contracts of senior managers coincide more or less with the term of a council, this NPM principles enables the incoming government to clean out the existing administration. Furthermore, short-term contracts are being used as a stick to punish those senior managers who do not toe a particular political line, and more importantly follow

¹⁰² Sections 82(2) Structures Act and 56(2) Systems Act.

¹⁰³ Ntliziywana 2012: 50. See also the *State of Local Government Report 2009*: 31.

¹⁰⁴ *The State of Local Government Report 2009*: 31.

certain financial directives. Once their contracts expire, these do not get renewed even if the officials performed well in terms of the performance agreement. In essence, the five-year contract for municipal managers and those section 56 managers also on fixed-term contracts has been a source of anxiety and instability in municipal administration.

The high turnover of municipal managers, as is the case with HoDs at national level, has a multiplier effect on the turnover of the senior management because invariably new municipal managers come with new strategies, bring new organisational structures and focus substantive attention on building their own teams.¹⁰⁵ Every time there is a change at the top, some form of reconfiguration takes place when a new manager arrives with his or her own priorities, approach or strategic perspective.¹⁰⁶ Sometimes they fail to leverage on the gains made by the previous municipal manager and are unable to account for work or progress that took place during the previous period. These changes can be disruptive and impact on stability and the delivery of services as it takes about six months to a year for the new municipal manager to settle in.

In addition, it takes time to build relationships of trust and mutual respect in institutions, and once relationships are created, there is a likelihood that energies, commitments and loyalties will be channelled towards common strategic objectives. Senior management has to adapt to the new style and vision of the new municipal manager, resulting in the first six months to a year of appointment being unproductive. Continuous changes in leadership over short periods affects the pace of the implementation of the strategic plan.¹⁰⁷ This is another indication of unsuitability of the NPM principle (fixed-term employment system) in South Africa, adding weight to the critique that that the NPM is not suitable in developing countries.

Thirdly, the performance management system is poorly implemented because it relies on the capacity of the mayor which is not always there. As a result, many municipalities do not conclude performance agreements with their municipal managers and managers directly accountable to municipal managers at all, or they do not do so within stipulated time-frames.¹⁰⁸ There are frequent cases of performance management systems not established or complied

¹⁰⁵ Public Service Commission 2008e: 13.

¹⁰⁶ Nzimande 2012: 14.

¹⁰⁷ Smit 2015: 47.

¹⁰⁸ *The State of Local Government Report 2009*: 30.

with, and many municipal managers with non-signed performance contracts.¹⁰⁹ This is not an isolated case of two or three municipalities not having signed a performance agreement with their municipal managers - the number is quite alarming. In this regard, the number was 76 in 2008, 54 in 2009, 36 in 2011, and 41 in 2012.¹¹⁰

All of this indicates that the culture of performance management is not yet entrenched in South African local government, either due to incapacity or lack of political will. To add insult to injury, acting managers, of which there are many, do not have to sign performance agreements because, by law, they can only act for three months, renewable for a further three months.¹¹¹ This is creating a culture of impunity in that senior managers cannot be held accountable for non-performance if there is no agreement in place that outlines key priorities for implementation during the financial year.

Furthermore, the failure by municipal managers to sign performance agreements is compromising the entire value chain of the performance management system as organisational performance has to be cascaded from the accounting officer to the entire staff to ensure linkages between overall organisational performance and individual performance.¹¹² How, then, can municipal managers enter into performance agreements with section 56 managers if they have not concluded theirs with the municipality as duly represented by the mayor or the executive mayor? They cannot effectively enter into performance agreements with subordinates when their performance agreements have not been concluded. That would mean otherwise that there is no link between individual performance objectives and targets and the overall organisational objectives and targets. As such, a failure to sign a performance agreement by a municipal manager holds severe repercussions for the entire performance management system in a given municipality. Once again, this is a pointer that adds weight to the critique regarding the suitability of the NPM in developing countries on the basis of lack state capacity which is a precondition for the successful implementation of the NPM.¹¹³

Lastly, corporatisation in the City of Johannesburg has not worked. The City is the only municipality that has gone all-out in embracing corporatisation in relation to most of its core municipal services. The City has opted for corporatisation as a mechanism for effective

¹⁰⁹ *The State of Local Government Report 2009*: 30.

¹¹⁰ *The State of Local Government Report 2009*: 30.

¹¹¹ Section 56(1)(c) Systems Act.

¹¹² Public Service Commission 2012b: 22.

¹¹³ Mongkol 2011 quoting McCourt 2001, Monteiro 2002, Bale & Dale 1998.

delivery of its major services. It is not just the only municipality but also the only metro to corporatise most of its core municipal services. However, corporatisation has not led to efficiency in the delivery of services to local residents. In the words of Herman Mashaba, the Executive Mayor of the City of Johannesburg, ‘The entities have struggled with achieving service delivery levels which have been satisfactory for our residents.’¹¹⁴

This was occasioned, first, by the difficulties in getting suitable boards of directors for all 12 municipal entities therein. Secondly, there were difficulties in getting 12 good managers; not all 12 managers recruited on each occasion are likely to be good. Thirdly, there were difficulties in getting cooperation between all 12 entities. It is well-nigh impossible to get all entities to work in harmony when they are operating at arm’s-length, removed from the municipal manager who should be able to coordinate. Lastly, for entities to work, there should be duplication of personnel. In this regard, there should be skilled personnel in the municipality in order to be able to monitor the entities’ performance. If there are no such skilled personnel, there can be no proper controls over entities. This assessment is in line with the findings of levels of productivity of municipal companies in Portugal. The research published in 2011 found that these companies had low levels of productivity compared to levels achieved by the in-house former municipal service.¹¹⁵

In the case of the City of Johannesburg, such lack of coordination and low levels of productivity have led to the mooted reversal of the policy to use corporatisation as an external service delivery mechanism. In this regard, the City of Johannesburg is in the process of reintegrating all its municipal entities into the City’s administration. However, it is not certain when this move will be implemented, as the City recently announced the appointment of the board chairpersons and various board members of municipal entities to ‘achieve the service delivery demanded by our residents’.¹¹⁶ It remains to be seen whether this new leadership is meant to lead the reincorporation of all municipal entities in the City of Johannesburg into the metro’s administration. This suggests that corporatisation in South Africa is not working, and this leads to questions of suitability of the NPM in developing countries. All the questions of suitability

¹¹⁴ Statement by Cllr Herman Mashaba, Executive Mayor, City of Johannesburg, on the occasion of the City’s 2015/16 Annual General Meeting (AGM) for Municipal Entities held on 17 March 2017 (Mashaba 2017).

¹¹⁵ Da Cruz NF & Marques RC ‘Viability of municipal companies in the provision of urban infrastructure services’ (2011) 37(1) *Local Government Studies* 108.

¹¹⁶ Mashaba 2017.

raised in this section will be considered when addressing the next question relating to the resurgence of Weberian bureaucracy.

6 Resurgence of the Weberian model

As a result of the failures of the NPM model of delivery, there has been a resurgence of the Weberian model of governance. While not completely abandoning the NPM paradigm, the government has been swiftly moving towards the Weberian model of service delivery by reintroducing qualifications-linked meritocracy alongside the NPM's performance-linked meritocracy in local public administration. Some of the changes also reinforce the NPM, not only the Weberian model. This resurgence is spearheaded by three national departments, then DPLG (now CoGTA), the National Treasury and Department of Public Service and Administration (DPSA), that seem to be vying for regulatory control over local government.

First, the DPLG kicked off this resurgence in 2006 by introducing qualifications and experience requirements for the appointment of local government managers through Performance Regulations.¹¹⁷ This is clearly a Weberian element. These regulations, in addition to the performance management system, which is an NPM element, contained enforceable qualification criteria. The National Treasury followed in 2007 by passing the purely Weberian Competency Regulations¹¹⁸ containing a comprehensive competency framework which consists of minimum qualifications, work-related experience, core managerial competencies and core occupational competencies for managers. As a result, a prescribed course of training and a prescribed special examination are once again prerequisites for employment in local government.

In 2011 CoGTA amended provisions of the Systems Act dealing with recruitment of managers to provide for new procedures and competency criteria for appointment, and for the consequences of non-compliant appointments. CoGTA further issued Appointment Regulations¹¹⁹ which gives further effect to the competency framework contained in the amended Systems Act. DPSA entered the fray by enacting the Public Administration

¹¹⁷ Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly accountable to Municipal Managers (GN R805 GG 29089 of 1 August 2006).

¹¹⁸ Local Government: Municipal Regulations on Minimum Competency Levels (GN R493 GG 29967 of 15 June 2007).

¹¹⁹ Local Government: Regulations on Appointment and Condition of Employment of Senior Managers (GN 21 GG 37245 of 17 January 2014).

Management Act,¹²⁰ which also regulates employment in the public administration, including local government. This Act also authorises the Minister of Public Service and Administration to prescribe compulsory educational requirements for employment in the public administration.¹²¹

These multiple regulations are causing confusion as their sheer volume and complexity is making it difficult for municipalities to decide which regulations to apply and to decipher their meaning. The overzealousness of national government is proving to be counterproductive.

Secondly, the Systems Amendment Act further refined and reinforced the Weberian principle of work-related experience by requiring an additional element of ‘suitability’.¹²² This element also reinforces the NPM as it also looks at track record, and not only at qualifications. In this regard, an applicant’s previous experience must be an experience that stands him or her in good stead. This is meant to weed the system of the incompetent people that came in through an open skills basis. The *Merafong*¹²³ judgment is instructive in this regard, where the Labour Court found the municipal manager unsuitable, despite the fact that he met the qualification requirements, because of the strong opinions expressed by the Auditor-General against him in relation to his previous position.¹²⁴ Consequently, the bar has now been raised as both the Weberian and the NPM elements form part of appointment requirements.

Thirdly, section 56A of the Systems Amendment Act provides for the separation of politics from the administration, another principle that reinforces the resurgence of Weberian model as well as the NPM tenet of letting managers manage. As noted in Chapter Two, the Weberian model wanted a clear separation between politics and administration. The role of politicians was to set policy and that of administrators was implement that policy to the point of self-denial.¹²⁵

Lastly, the resurrection of the Weberian bureaucracy was expressed through the resurgence of the idea of professional institutes which could train and discipline members. This is purely a Weberian tenet.

¹²⁰ Act 11 of 2014.

¹²¹ Section 13 Public Administration Management Act.

¹²² Section 54A(2) Systems Act.

¹²³ *Merafong City Local Municipality v South African Municipality Workers Union and Another* [2016] ZALAC 12 (*Merafong v SAMWU*).

¹²⁴ *SAMWU v Merafong* paras 19 and 22.

¹²⁵ Sager & Rosser 2009: 1139.

Even though lateral entries from the private sector and other spheres into local public administration are not completely abandoned, the focus has shifted from outputs or outcomes back to inputs. As explained in chapter eight under section 3.4.4, this shift in focus has changed the position dramatically. A person appointed from outside local government will have to show that he or she meets the entry requirements relating to skills, expertise, qualifications, experience and competencies before appointment. The previous position where they could simply be appointed on condition that they will produce results later, has changed. Managers now have to prove their performance capability beyond trust that they can perform later, but through hard facts.¹²⁶ Trust is good, but facts and figures are much better. This means that the focus is no longer at what they can later deliver but what they bring to the organisation. So, despite proven capabilities elsewhere, if a person does not comply with entry requirements, then he or she is excluded. The Msengana-Ndlela debacle discussed in chapter eight aptly illustrates this point.¹²⁷

The resurgence of the Weberian model is occasioned by the failure of the NPM to deliver on its promises. That failure of the NPM to deliver services confirms the critique of its suitability in developing countries. The critique holds true in the case of South Africa, where the NPM failed to deliver due to a lack of skills, weaknesses in the rule of law, the nature of political culture, design flaws in the legislative framework, and intrinsic shortcomings in certain NPM principles themselves.

First, the critique asserts that because the NPM relies on the existence of skills, expertise and capacity for the successful implementation of its sophisticated reforms, it could hardly succeed in developing countries because generally they are lacking in that front.¹²⁸ These are the preconditions for the successful implementation of the NPM reforms. It has been shown in South Africa that the mayors, upon whose capacity the performance management system relies, often lack the necessary skills, expertise and capacity resulting in poor implementation of the performance management system. Similarly, corporatisation in the City of Johannesburg has been shown to have failed due to lack of skilled boards of directors, managers, and municipal staff to settle and monitor service level agreements. The lack of such skills has made

¹²⁶ Torsteinsen H 'Why does post-bureaucracy lead to more formalism?' (2012) 38(3) *Local Government Studies* 341.

¹²⁷ See also *Msengana-Ndlela v Nelson Mandela Bay Metropolitan Municipality* (3282/2013) [2015] ZACPEHC 31.

¹²⁸ Polidano 1999; Caiden & Sundaram 2004.

corporatisation unsuitable in South Africa. The same problem of skills shortage also holds true for public-private partnerships as well. Public-private partnerships are unsuitable in South Africa because there is a lack of skills base and as a result they do not perform the redistributive function they were meant to perform.

In the case of short-term contracts, the critique asserts that given the general skills shortage in developing countries, it is burdensome to have a contract system that leads to the haemorrhaging of scarce skills and the existing institutional memory.¹²⁹ The argument is that the short-term nature of these contracts translates into a rapid turnover of managers and the concomitant failures of accountability. In South Africa, this NPM principle has been shown to be eroding the existing skills in local government. Managers often move on or are forced out at the end of the contract and fail to account for problems they might have caused. Furthermore, as has been seen with the revolving-door phenomenon in South Africa, the short-term contracts lead to greater political control over senior managers.¹³⁰ This also manifests in the use of short term contracts as a stick to punish those senior managers who do not toe a particular political line, and follow certain financial directives. As such, these principles, because they rely on capacity, proved unsuitable for South Africa. The conception of short-term contracts was simply bad for application in developing countries, confirming the critique regarding the suitability of the NPM in developing countries.

However, in the case of the performance management system, enough capacity is being developed and the tide is slowly turning. For example, 76 municipalities out of 278 in 2008 did not have performance agreements in place for their municipal managers.¹³¹ That figure has gone down significantly in subsequent years, signifying that South Africa is not doing so badly in the area of mayoral capacity development. In 2014, the figure had gone down to 26 municipal managers.¹³² As such, there is ample room for improvement. South Africa is slowly gaining the necessary capacity in this front, which is a precondition for the successful implementation of the NPM reforms. On the managerial front, however, this progress is blemished by the short-term employment system and the political culture attendant to it. Local government is bleeding capable managers as a result of short-term contracts.

¹²⁹ Cameron 2009: 928.

¹³⁰ Cameron 2009: 925.

¹³¹ *The State of Local Government Report* 2009: 30.

¹³² AGSA 2015: 81.

Secondly, the open skills system has proven to be unsuitable in the South African context because of a flaw in its design. It was so wide open that there was no way it could monitor who comes into the system, and it has also fallen foul to a political culture of abuse of processes. One of the preconditions for the success of the NPM is a set of pre-existing rules to enforce it.¹³³ Given the relaxation of the rules and, as such, the absence of the rule of law in this area, this principle is susceptible to abuse for narrow political interests or patronage, and has the potential to plunge the public administration into chaos.

Thirdly, the appointment of second-level managers by councils rather than municipal managers and the varying contractual regimes for senior managers are also design flaws in the legislative framework giving effect to the NPM. However, while the first flaw undermines managerial autonomy, the second one, where senior managers are appointed on a permanent contract, has ensured stability in senior management. Even though it is a design flaw, it turns out to be a good mistake because short-term contracts are a bad idea in countries with shortage of skilled personnel.

Fourthly, NPM principles of managerial autonomy and public-private partnerships similarly proved unsuitable in South Africa because of the paradox of recentralisation. The critics of the NPM movement charge that empowering managers to manage programmes and budgets detracts from the accountability of elected politicians and distorts the lines of accountability. In this regard, it is argued that political executives have lost their control over the implementation of their policies following managerial reforms put in place under the banner of managerial autonomy.¹³⁴ It is argued that this has resulted in the hunger of these political executives for more control over public managers, leading to frequent interference in managerial decision-making. While decentralising certain powers and functions, governments in developing countries rightfully retain centralised decision-making.¹³⁵ This is important because most developing countries have adopted the notion of a developmental state, that is, a strong, interventionist activist state.¹³⁶ In order to supervise developmental programmes and to ensure that they are in a position to guide their weak and impoverished economies out of the woods, developmental states need to retain centralised decision-making power.

¹³³ Sarker 2006.

¹³⁴ Atreya & Armstrong 2002: 10.

¹³⁵ World Bank 1997, Polidano & Hulme 2001.

¹³⁶ Levin 2004: 13.

In the first place, this has manifested itself in South Africa in the panoply of laws thrown at local level prescribing certain actions and outcomes. While delegating certain powers and functions to manager, national government has issued a number of prescriptive demands to ensure that local government acts responsibly. True to this paradox, this clearly shows that the national government did not quite trust local government managers to pursue its developmental programme and to act responsibly, thus it has centralised decision-making in the form of central laws that prescribed what actions to take and the outcomes of those actions. No similar prescription of detail of how managers should conduct themselves is found at national and provincial levels.

In the second place, the need for the national government to play a supervisory role over local government, which is seen as recentralisation, has played itself out in the rivalry between three national departments vying for regulatory control of local government. This also indicates that the mistrust of local government is a dominant narrative at national level. The problem is that each of these departments sees itself playing a role in regulating local government and prescribing actions and outcomes, thus the rivalry and lack of coordination. The same rivalry is not found in relations to the provinces, because they belong to the public service and as such operate within the national norms and standards under the direct supervision of national government.

Thirdly, the mistrust of local government apparent in the moves to centralise decision-making also plays itself out in the different standards prescribed for PPPs at national and local level. At national level, the procedure is simpler and quicker while at local level it is overly onerous and costly. All these initiatives aimed at retaining centralised decision-making power and regaining control of local government have delivered local government into the bureaucratic clutches of national government.

South Africa is not alone in this paradox, however. Even developed countries are affected by increased bureaucratisation following transfer of powers to line managers and agencification. In this regard, a study of regulation inside the UK government 10 years after it reorganised most of its civil service into agencies revealed that regulation of government in many domains have increased in formality, complexity, intensity and specialisation.¹³⁷ McSweeny refers to

¹³⁷ Torsteinsen 2012: 327.

numerous other studies showing a trend of increasing bureaucratisation, one evident in increased powers of inspection and in the reassertion of hierarchy over every area of public management in the UK, including local government.¹³⁸

Another developed nation, Norway, seems to be in the same boat. A study of 12 Norwegian municipalities that were corporatised compared to the Norwegian municipalities that were not, found that, in the same way as municipal entities in South Africa are treated like service departments, ‘these municipalities did not differ from Norwegian municipalities generally’.¹³⁹ The division of administration into four departments, each headed by a department manager, did not differ. The corporatised entities mirrored the service departmental structure, with a system of political boards elected by the municipal council. The price for increased freedom for operational managers, in Norway as in the UK and South Africa, has been an increase in efforts for more coordination and control from the strategic level.

By contrast, corporatised entities in Singapore are not suffering from the red-taped associated with service departments. They are sufficiently autonomous and wield substantial discretion in going about their business. As noted in chapter seven, Singapore, which is classified as a developing country like South Africa,¹⁴⁰ is leading the way and is proving to be a success story among developing countries.¹⁴¹

In sum, even though the argument why the NPM is not good for governance holds true for South Africa, given that there is no recorded success story of the NPM since its inception, this argument also applies to other countries, not just in developing countries. It has been shown in the foregoing that there are the NPM success stories as well as failures both in the developing and the developed world, even though South Africa per se has not recorded a success story in 17 years. However, the failures of South Africa are not representative of the failures of developing countries; Singapore and Ghana are prime examples of success stories in varying degrees. Furthermore, even in South Africa some elements work better than others. As Polidano puts it, ‘the outcome of individual NPM initiatives depends on localised contingency

¹³⁸ McSweeney B ‘Are we living in a post-bureaucratic epoch?’ (2006) 19(1) *Journal of Organisational Change Management* 28.

¹³⁹ Torsteinsen 2012: 327.

¹⁴⁰ United Nations *World Economic Situation and Prospects 2017: Country Classification* available at https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/2017wesp_full_en.pdf (accessed 25 April 2017).

¹⁴¹ Sarker AE ‘New Public Management in developing countries: An analysis of success and failure with particular reference to Singapore and Bangladesh’ 19(2) *International Journal of Public Sector Management* (2006) 195.

factors rather than any general national characteristics.¹⁴² For example, Ghana showed relative failure in its management reform in the health and state enterprise sectors, while its achievements in revenue authorities are spectacular.¹⁴³ Moreover, there is a diversity of motives behind the adoption of the NPM reforms.

The NPM, therefore, could only be said to be inappropriate in developing countries if it is taken as a package, as opposed to a number of separate techniques, because a number of elements work while others do not, depending on the motives behind the NPM reforms and what Polidano refers to as ‘localised contingency factors’. This is the case in all countries which have adopted the NPM reforms, including the UK where these reforms emanated, not only in developing countries. It is for this reason that all countries adopting the NPM reforms, both developed and developing, need to keep an open mind as to what may work and what may not, and to be guided by the needs of the situation.

7 Recommendations: The future role of NPM

The question that remains unanswered is whether there is anything left for the NPM despite its failures and the dominant resurgence of the Weberian model. It is argued that there is still a further role left for the NPM, albeit very limited, namely to soften the hard edges of the Weberian model, to mobilise resources from the private sector in order to help rectify the ravages of apartheid, to insulate professional decision-making by managers from political meddling and to hold managers personally responsible for their actions. There are four NPM elements that can achieve this: letting managers manage, limited sideways entry, performance management systems, and public-private partnerships. Below are the recommendations on how the NPM can still play a role alongside the Weberian model.

First, with regard to letting managers manage, this is an element that is also recognised by the Weberian model, namely separation of politics from administration. This element is aimed at ensuring stability in municipal administration and to minimise political interference. It is recommended that political involvement needs to be completely outlawed in the implementation of policies. That is the domain of the administration. As is the case in supply chain management practices, councillors should be barred from appointing senior managers and, as such, playing any role in the implementation of human resource management policies.

¹⁴² Polidano C ‘Public management reform in developing countries: issues and outcomes’ (1999) 1(1) *Public Management* 121 (hereafter Polidano 1999).

¹⁴³ Polidano 1999: 130.

It is therefore recommended that municipal managers should have the powers to appoint, discipline and dismiss their staff as part of their role as heads of municipal administrations and as accounting officers.

Secondly, the NPM can still play a role to soften the harsh elements of the Weberian model through sideways entries. There are many instances where a strict focus on qualifications has overlooked highly competent officials either from the private sector or from elsewhere in the state machinery who happened not to have the requisite qualification for local government but to have proven themselves in practice. Qualifications alone do not offer any guarantee that performance will be up to standard. Given the ravages of apartheid that are still stark, it would be counterproductive, therefore, to exclude competent officials with proven track record either within local government or elsewhere. It is recommended that limited sideway entries into local government, in line with the open skills recruitment system, is one NPM principle that should be used in the current juncture. Section 54A(4)(b) of the Systems Act recognises the need for sideway entries by requiring the appointment of a suitable person. As explained in the *Merafong* judgment, the requirement of suitability encompasses skills, expertise, competence and the prescribed qualifications¹⁴⁴ and, as such, the NPM requirement of track record as well as the Weberian requirement of qualification. In essence, the new recruits entering from the sides would have to pass the Weberian requirement of qualifications as well as show their suitability in terms of track record. They would have to show facts and figures about their suitability before joining the organisation.

Thirdly, the NPM can still play the role of mobilising resources and scarce skills from the private sector and transferring financial risks to the private sector. In this regard, it is recommended that public-private partnerships should be used. The infrastructure and service backlogs are still too large to be left to the public sector alone. However, the regulatory framework for PPPs should be relaxed so that it is not as stringent and costly. The PPPs regime applicable at local government should be aligned with that applicable at national and provincial levels. The latter is less cumbersome and relatively easy to implement compared to the currently regime applicable at local level. If trust is the problem, then differentiation should be allowed and large metros should be enabled to do so easily.

¹⁴⁴ *Merafong vs SAMWU* paras 58 and 90.

Fourthly, given our chequered history of officials committing untold atrocities and not taking personal responsibility for them but instead hiding behind procedural correctness or the fact that they were following orders, there is still a need for a system that would hold managers personally responsible for their own actions. It is recommended that the performance management system should be applied in this regard. However, the mayors would have to be capacitated to be able to implement and enforce the performance management system. Furthermore, the provincial government would have to play its oversight role more assertively. The current failures to establish a performance management system, to enter into performance agreements, and to enforce the system arise from a lack of capacity and political will to enforce the performance management system.

That notwithstanding, not all NPM principles that were incorporated into the legal framework are useful, as many have produced mainly negative outcomes. Short-term contracts, for example, are not useful in the current juncture. Even though short-term contracts are an important ballast to the phenomenon of time-servers, they have had detrimental effects on stable administration, skills retention and institutional memory. They lead to a rapid haemorrhaging of competent personnel, resulting in instability and loss of institutional memory, and South Africa is not at a stage where it has a large pool of competent officials lying in wait. Short-term contracts also provide a fertile ground for corruption as managers tend to engage in corrupt activities in preparation for life out of office. It is therefore recommended that managers must be employed on a permanent basis and only removed after disciplinary proceedings. This can be reinforced by further professionalisation through institutes, which would enforce the ethics and discipline of their members. Professional associations would help to monitor performance, enforce ethics and train and develop managers professionally. That would ensure stability, skills retention and a corruption-free environment.

In sum, Weberian model of delivery was partly abandoned because of its failures to provide services to our people, among other things, during the apartheid era. The model of service delivery that came in its place, the NPM, is also not delivering on its promise of infusing efficiency and effectiveness in the delivery of services. Now we are seeing the resurgence of the Weberian model alongside the NPM model which is still in operation. As a result, there is an untidy and clumsy use of models of service delivery that contradict each other. For example, while the Weberian model insists on qualifications, the short-term contracts flush qualified personnel out of the system. It is recommended that short-term contracts should be done away with and that there must be a strict separation between politics and administration to exclude council in the appointment of senior managers. That would ensure stability. Furthermore, the

hard edges of the Weberian model need to be softened by the use of some the NPM elements that do not contradict the Weberian model, such as limited open skills recruitment systems. The limited use of open skills set is recommended to ensure sideways entry of those competent managers lost from the system because of short-term contracts and others with track record of performance from other sectors and/or spheres. Furthermore, the performance management system is recommended to carry on ensuring that managers are held accountable for their actions. Public-private partnerships are, in turn, recommended to mobilise much-needed resources from the private sector to rectify the ravages of apartheid.



BIBLIOGRAPHY

OFFICIAL DOCUMENTS

Constitution

Bantu Homelands Constitution (National States Constitution Act), Act 21 of 1971

Constitution of the Republic of South Africa, Act 200 of 1993

Constitution of the Republic of South Africa, 1996

Constitution of the Republic of South Africa, Act 110 of 1983

Union of South Africa South Africa Act, 1909

Transkei Constitution, Act 48 of 1963

Legislation

Black Local Authorities Act 102 of 1982

Cape Divisional Councils and Roads Ordinance 13 of 1917

Cape Municipal Ordinance 10 of 1912

Cape Municipal Ordinance 9 of 1836

Cape Municipal Ordinance 19 of 1951

Cape Municipal Ordinance 20 of 1974

City of Cape Town Unification Ordinance 19 of 1913

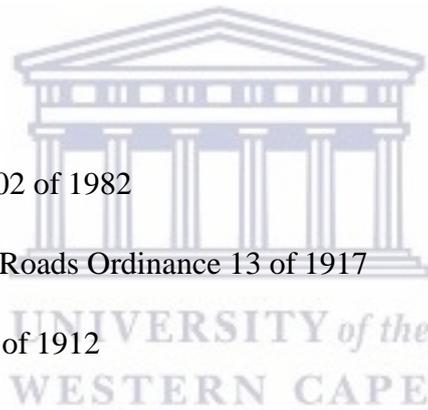
Community Councils Act 125 of 1977

Companies Act 61 of 1973

Durban Extended Powers Consolidated Ordinance 18 of 1976

Industrial Conciliations Act 11 of 1924

Industrial Conciliation Act 28 of 1958



Labour Relations Act 66 of 1995

Local Government: Municipal Finance Management Act 56 of 2003

Local Government: Municipal Structures Act 117 of 1998

Local Government: Municipal Systems Act Act 32 of 2000

Local Government: Municipal Systems Amendment Act 7 of 2011

Local Government Ordinance 17 of 1939

Local Government Training Act 41 of 1985

Local Government Transition Act 209 of 1993

Manpower Training Act 56 of 1981

Mines and Works Act 12 of 1911

Municipal Accountants Act 21 of 1988

Natal Municipal Ordinance 5 of 1847

Natal Municipal Ordinance 11 of 1918

Natal Local Authorities Ordinance 25 of 1974

Natal Town Planning Ordinance 27 of 1949

National Qualifications Framework Act 67 of 2008

Native (Urban Areas) Act 21 of 1923

Native Land Act 27 of 1913

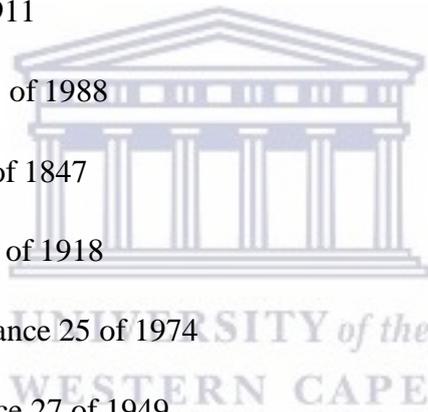
Orange Free State Local Government Ordinance 4 of 1913

Profession of Town Clerks Act 75 of 1988

Preferential Procurement Policy Framework Act 5 of 2000

Public Service Act 103 of 1994

Regional Services Act 109 of 1985



Remuneration of Town Clerks Act 115 of 1985

South African Qualifications Authority Act 58 of 1995

South African National Roads Agency Ltd Act 7 of 1998

Status of the Transkei Act 100 of 1976

Status of Bophuthatswana Act 89 of 1977

Status of Venda Act 107 of 1979

Status of Ciskei Act 110 of 1981

Transvaal Local Authorities Rating Ordinance 6 of 1912

Transvaal Local Government Ordinance 9 of 1912

Transvaal Municipal Elections Ordinance 8 of 1912

Delegated legislation

Black Local Authorities Regulations in GN R 1750 GG 8844 of 1983

Local Government: Disciplinary Regulations for Senior Managers in GN 344 GG 34213 of 21 April 2011

Local Government: Municipal Finance Management Act: Exemption from Regulations 15 and 18 of Municipal Regulations on Minimum Competency Levels, 2007 in GN 179 GG 37432 of 14 March 2014

Local Government: Municipal Finance Management Act: Exemption from Regulations 15 and 18 of Municipal Regulations on Minimum Competency Levels, 2007 in GN 91 GG 40593 of 03 February 2017

Local Government: Municipal Finance Management Act: Municipal Public-Private Partnership Regulations in GNR 309 GG 27431 1 April 2005

Local Government: Municipal Finance Management Act: Municipal Regulations on Minimum Competency Levels in GN R493 GG 29967 of 15 June 2007

Local Government: Municipal Performance Regulations for Municipal Managers and Managers directly accountable to Municipal Managers in GNR 805 GG 29089 of 1 August 2006

Local Government: Municipal Planning and Performance Management Regulations in GNR 796 GG 22605 of 24 August 2001

Local Government: Municipal Supply Chain Management Regulations in GN R868 GG 27636 of 30 May 2005

Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers in GN 167 GG 36223 of 7 March 2013

Local Government: Regulations on Appointment and Condition of Employment of Senior Managers in GN 21 GG 37245 of 17 January 2014

Public Finance Management Act, 1 of 1999: Treasury Regulation 16 in GNR 345 GG 22219 of 9 Apr 2001

Public Finance Management Act, 1 of 1999: Treasury Regulation 16 in GNR 740 GG 23463 of 25 May 2002

Public Finance Management Act, 1 of 1999: Treasury Regulation 16 in GN 37 GG 25915 of 16 January 2004

National Qualifications Framework Act: Amendment to the determination of the sub-framework that comprise the National Qualification Framework in GN 891 GG 36803 of 30 August 2013.

Public Service Act 103 of 1994: Public Service Regulations in GNR 1 GG 21951 of 5 January 2001 (as amended by RGN 441 GG 22308 of 25 May 2001)

Promotion of Local Government Affairs Act 91 of 1983: Regulations for the Improvement of Communication between Local Authorities and Coloured and Indian Consultative, Local Affairs and Management Committees in GNR 2451 GG 9490 of 9 November 1984

Water Services Provider Contract Regulations in GNR 980 GG 23636 of 19 July 2002

WHITE PAPERS

Terms of Reference on the Establishment of the Presidential Review Commission: the Commission of Inquiry Regarding the Transformation and Reform of the Public Service (Proc R10 GG 17020 of 8 March 1996)

Green Paper on Local Government (16 October 1997)

White Paper on Human Resource Management in the Public Service (GN 2011 GG 18594 of 31 December 1997)

White Paper on Local Government (GN 423 of 9 March 1998)

White Paper on Municipal Service Partnerships (GN 1689 GG 21126 of 26 April 2000)

White Paper on Municipal Service Partnerships (2004)

White Paper on a New Employment Policy for the Public Service: Managing People in a Transformed Public Service (8 October 1997)

White Paper on Privatisation and Deregulation in the Republic of South Africa (WPG87 of August 1987)

White Paper on Reconstruction and Development (GN 353 in GG 16085 of 23 November 1994)

White Paper on Transformation of the Public Service (GN 376 in GG 16838 of 24 November 1995)

White Paper on Transforming Public Service Delivery (GN 1459 in GG 18340 of 1 October 1997)



REPORTS AND POLICY DOCUMENTS

African National Congress Ready to Govern, ANC Policy Guidelines for a Democratic South Africa (1992) Umanyano Publishing: Johannesburg

African National Congress The Reconstruction and Development Programme (1994) Umanyano Publishing: Johannesburg

Auditor-General South Africa Consolidated General Report on the audit outcomes of Local Government 2010-11 (2012) Office of the Auditor General: Pretoria

Auditor-General South Africa Consolidated general report on the audit outcomes of Local Government 2011-12 (2013) Office of the Auditor General: Pretoria

Auditor-General South Africa Consolidated general report on the audit outcomes of Local Government 2012/13 (2014) Office of the Auditor General: Pretoria

Auditor-General South Africa Consolidated general report on the audit outcomes of Local Government 2013/14 (2015) Office of the Auditor General: Pretoria

City of Cape Town Metropolitan Municipality *Business Plan: Phase 1A of Cape Town's MyCiTi Integrated Rapid Transit System* (2010) City of Cape Town: Cape Town

Department of Economic and Social Affairs *Decentralization: Conditions for Success. Lessons from Central and Eastern Europe and the Commonwealth of Independent States* (2002) United Nations: New York

Ministry of Water Affairs and Forestry *External Review Team: External Review of the Build Operate Train and Transfer (BOTT) Programme* (1998) Department of Water Affairs and Forestry: Pretoria

MFMA Circular 47 Capacity Building and Training (13 February 2009)

MFMA Circular 60 Minimum Competency Level Regulations (20 April 2012)

Ministry for Cooperative Governance and Traditional Affairs *Local Government Turnaround Strategy: Working Together, Turning the Tide in Local Government* (2009) Department of Cooperative Governance and Traditional Affairs: Pretoria

Ministry for Cooperative Governance and Traditional Affairs *2015/2016 Annual Report* (2016) Department of Cooperative Governance and Traditional Affairs: Pretoria

Ministry of Cooperative Governance and Traditional Affairs *Desk-Top Study Towards the Development of a National Professionalisation Framework for Local Government: Draft Concept Paper* (2012) Department of Cooperative Governance and Traditional Affairs: Pretoria

Ministry of Provincial and Local Government *Performance Management Guide for Municipalities* (2001) Department of Provincial and Local Government: Pretoria

Ministry of Public Service and Administration *Senior Management Service Handbook* (2003) Department of Public Service and Administration: Pretoria

Ministry of Public Service and Administration *Cabinet Lekgotla Report APEX Project 15: Regularise Employment and Performance Agreements at Designated Levels* (2008) Department of Public Service and Administration: Pretoria

Ministry of Public Service and Administration *Public Service Coordinating Bargaining Council Resolution No 10 of 1998* (1998) Department of Public Service and Administration: Pretoria

Ministry of Public Service and Administration *Public Service Coordinating Bargaining Council Resolution No 1 of 2003* (2003) Department of Public Service and Administration: Pretoria

Ministry of Public Service and Administration *Senior Management Service: Overview of Review Reports 2000–2006* (2006) Department of Public Service and Administration: Pretoria

Ministry of Public Service and Administration *SMS Handbook* (2003) Department of Public Service and Administration: Pretoria

Ministry of Finance *Standardised PPP Provisions Issued in Accordance with Section 76(4)(g) of the Public Finance Management Act of 1999* (2005) National Treasury: Pretoria

Ministry of Finance *Local Government Budgets and Expenditure Review: 2003/04 - 2009/10* (2011) National Treasury: Pretoria

Ministry of Finance *Local Government Database: Municipal Entities report as at 30 June 2006* National Treasury: Pretoria.

Ministry of Finance *Local Government Database: Municipal Entities report as at 30 June 2010* National Treasury: Pretoria.

Ministry of Finance *Local Government Database: Municipal Entities report as at 30 June 2014* National Treasury: Pretoria.

Ministry of Water and Sanitation *Blue Drop Report* (2014) Department of Water and Sanitation: Pretoria

Ministry of Water and Sanitation *Green Drop Report* (2014) Department of Water and Sanitation: Pretoria

Municipal Demarcation Board *State Municipal Capacity Assessment 2010/2011* (2012) Municipal Demarcation Board: Johannesburg.

National Treasury/Department of Provincial and Local Government *Municipal Service Delivery and PPP Guidelines* (2007) Republic of South Africa: Pretoria

Parliamentary Monitoring Group *Public Service Commission & MECs of local government on status of municipalities* (2012) Parliament of the Republic of South Africa: Cape Town

Presidential Review Commission *Report of the Presidential Review Commission prepared for the State President of the Republic of South Africa* (1998) Government Printers: Pretoria

Public Protector South Africa *Report on a Preliminary Investigation Relating to Electricity Load Shedding Implemented by Eskom Holdings Limited* (2008) The Office of the Public Protector: Pretoria

Public Protector South Africa *When Governance Fails: A Report on an Investigation into Allegations of Maladministration, Systemic Corporate Governance Deficiencies, Abuse of Power and the Irregular Appointment of Mr Hlaudi Motsoeneng by the South African Broadcasting Corporation (SABC)* (2014) The Office of the Public Protector: Pretoria

Public Protector South Africa *Unsolicited Donation: Report of the Public Protector on an Investigation into Allegations of Maladministration, Corruption and a Potential Conflict of Interests against the Former Minister of Communications, Hon Dina Pule, MP in Connection with the Appointment of Service Providers to Render Event Management Services for the Hosting of the ICT Indaba Held in Cape Town from 4 to 7 June 2012* (2013) The Office of the Public Protector: Pretoria

Public Protector South Africa *Derailed: A Report on an Investigation into Allegations of Maladministration Relating to Financial Mismanagement, Tender Irregularities and Appointment Irregularities against Passenger Rail Agency of South Africa (PRASA)* (2015) The Office of the Public Protector: Pretoria

Public Service Commission *Report on the Evaluation of the Service Delivery Innovation of the Creation of Agencies at the Department of Transport* (2003) Government Printer: Pretoria

Public Service Commission *State of the Public Service Report* (2004) Department of Public Service and Administration: Pretoria

Public Service Commission *Report on the Evaluation of Performance and Compliance with the Batho Pele Principle of Access* (2006) Department of Public Service and Administration: Pretoria

Public Service Commission *State of the Public Service Report* (2007) Department of Public Service and Administration: Pretoria

Public Service Commission *Report on the Management of Poor Performance in the Public Service* (2007) Department of Public Service and Administration: Pretoria

Public Service Commission *Report on the Evaluation of the Training Needs of Senior Managers in the Public Sector* (2008a) Department of Public Service and Administration: Pretoria

Public Service Commission *An Analysis of Performance Agreements as an Effective Performance Management Tool* (2008b) Department of Public Service and Administration: Pretoria

Public Service Commission *Report on Strategic Issues Emanating from the Evaluation of Heads of Department* (2008c) Department of Public Service and Administration: Pretoria

Public Service Commission *The Payment of Performance Incentives to Heads of Departments without Annual Performance Evaluations Conducted* (2008d) Department of Public Service and Administration: Pretoria

Public Service Commission *The Turn-over Rate of Heads of Department and its Implications for the Public Service* (2008e) Department of Public Service and Administration: Pretoria

Public Service Commission *The State of the Public Service Report* (2010) Department of Public Service and Administration: Pretoria

Public Service Commission *Fact Sheet on the Duration of Employment per Grade of Senior Management Service Members* (2011) Department of Public Service and Administration: Pretoria

Public Service Commission *Report on the Implementation of the Performance Management and Development System for Senior Managers in the Free-State Province* (2012a) Department of Public Service and Administration: Pretoria

Public Service Commission *Report on the Effect of Turnover rate of Heads of Department on the Performance of Departments* (2012b) Department of Public Service and Administration: Pretoria

Public Service Commission *Report on the Roundtable Discussion on the Improper Management of the Performance Management and Development System (Pmds) which leads to Grievances in the Public Service* (2014) Department of Public Service and Administration: Pretoria

Public Service Commission *Fact Sheet on Grievance Resolution for the 2014/15 Financial Year* (2015) Department of Public Service and Administration: Pretoria

Public Service Commission *Building a Capable, Career-Oriented and Professional Public Service to Underpin a Capable and Developmental State in South Africa: Discussion Document* (2016) Department of Public Service and Administration: Pretoria

Public Service Commission *Vulindlela Human Resources Oversight Report* (2016) Department of Public Service and Administration: Pretoria

Public Service Commission *Recruitment, Retention, Career Pathing and Utilisation of Senior Management Service Members' Expertise and Skills in the Public Service* (2017) Department of Public Service and Administration: Pretoria

Republic of South Africa *Growth, Employment and Redistribution: A Macroeconomic Strategy* (1996) Government Printers: Pretoria

Republic of South Africa *Guideline for Municipal Competency Levels: Accounting Officers: Municipal Regulations on Minimum Competency Levels* (2007) National Treasury: Pretoria

Republic of South Africa *Guideline for Municipal Competency Levels: Chief Financial Officers: Municipal Regulations on Minimum Competency Levels* (2007) National Treasury: Pretoria

Republic of South Africa *Guidelines for Municipal Competency Levels: Senior Managers: Municipal Regulations on Minimum Competency Levels* (2007) National Treasury: Pretoria

Republic of South Africa *Interim Guide for Creating Public Entities at the National Sphere of Government by Department of Public Service and Administration and National Treasury* (2002) Government Printer: Pretoria

Republic of South Africa *National Development Plan: Vision for 2030* (2012) Government Printer: Pretoria

Republic of South Africa *Public–Private Partnership Manual Module 6: Managing the PPP Agreement* (2004) National Treasury: Pretoria

Republic of South Africa *The Government pocket guide to South Africa: Government 2010/2011* (2011) The Presidency: Pretoria

South African Local Government Association *Community Protest: Local Government Perceptions* (2015) SALGA: Pretoria

United Nations *Unlocking the Human Potential for Public Sector Performance* World Public Report: New York

World Bank *World development Report 1997: The state in a changing world* The World Bank: New York

BOOKS

Alam A, Mokate R & Plangemann KA (eds) *Making It Happen: Selected Case Studies of Institutional Reforms in South Africa* (2016) The World Bank: Washington.

Al-Habil W *Criticism for Max Weber's Bureaucracy* (2007) The Islamic University of Gaza: College of Commerce.

Allen DG *Retaining Talent: A Guide to Analysing and Managing Employee Turnover* (2008) SHRM Foundation: USA.

- Argyris C *Overcoming Organizational Defences: Facilitating Organizational Learning* (1990) Needham Heights, Mass: Allyn & Bacon.
- Argyriades D *Human Resources Development for Decentralization* (2000) United Nations: New York.
- Ayeni V *Empowering the Customer: The Citizen in Public Sector Reform* (No. 13) (2001) Commonwealth Secretariat.
- Balla SJ, Lodge M & Page EC (eds.) *The Oxford Handbook of Classics in Public Policy and Administration* (2015) Oxford University Press: UK.
- Beery J, Eidinow E & Murphy N (eds) *The Mont Fleur Scenarios: What will South Africa be like in the Year 2002?* (2009) Global Business Network: Emeryville CA.
- Beinart W *Twentieth-century South Africa* (2001) Oxford University Press: New York
- Bekink B *Principles of South African Local Government Law* (2006) LexisNexis: Durban.
- Bernstein SJ & O'Hara P *Public Administration: Organisations, People, and Public Policy* (1979) Harper and Row Publishers Inc: New York
- Bishop M & Kay J *Does Privatisation Work? Lessons from the UK* (1988) Centre for Business Strategy: London.
- Blau PM *The Dynamics of Bureaucracy* (1955) University of Chicago Press: Chicago.
- Blau PM *On the Nature of Organizations* (1974) Wiley: New York.
- Bodley JH *The Power of Scale: A Global History Approach* (2002) Armonk, N.Y.: M.E. Sharpe.
- Bond P *Unsustainable South Africa: Environment, Development and Social Protest* (2002) UKZN Press: Petermaritzberg.
- Bond P, Dor G & Ruiters G *Water for All in South Africa: Policies, Pricing and People* (1999) Rural Development Services Network (RDSN): Johannesburg.
- Booyesen S *The African National Congress and the Regeneration of Political Power* (2011) Wits University Press: Johannesburg.
- Bowornwathana B *Comparative Civil Service Reform: The United Kingdom, the United States of America, Japan and Thailand* (1995) Chulalongkorn University Press: Bangkok.
- Cayer NJ *Public Personnel Administration* 4 ed. (2004) Wadsworth/Thomson: Belmont, CA.

- Chang Ha-Joon *Bad Samaritans: The Myth of Free Trade and the Secret History of Capitalism* (2007) Bloomsbury Press: New York.
- Clarke J & Newman J *The Managerial State: Power, Politics and Ideology in the Remaking of Social Welfare* (1997) Sage: London.
- Clegg S *Modern Organizations: Organization Studies in the Post-modern World* (1990) Sage: London.
- Cloete JN *Introduction to Public Administration* (1986) JL van Schaik: Pretoria.
- Cloete JN *Provincial and Municipal Government and Administration: Selected Readings* (1978) JL van Schaik: Pretoria.
- Cloete JN *Central, Provincial and Municipal Institutions in South Africa* (1982) JL van Schaik: Pretoria.
- Cloete JN *Personnel Administration* (1985) JL van Schaik: Pretoria.
- Cloete JN *Towns and Cities: Their Government and Administration* (1986) JL van Schaik: Pretoria.
- Cloete JN *South African Municipal Government and Administration* (1997) JL van Schaik: Pretoria.
- Considine M & Painter M (eds) *Managerialism: The Great Debate* (1997) Melbourne University Press: Carlton South.
- Corkery J, Daddah TO & O'Nuallain C et al. *Management of Public Service Reform: A Comparative Review of Experiences in the Management of Programmes of reform of Administrative Arm of the Central Government* (1998) IOS Press: Amsterdam.
- Cowden JW *A History of the Institute of Municipal Treasurers and Accountants: 1929-1989* (1993) Goldfields Press: South Africa
- Craythorne DL *Municipal Administration: The Handbook* 4 ed (1997) Juta: Cape Town.
- Craythorne DL *Municipal Administration: The Handbook* 5 ed (2003) Juta & Co: Lansdowne
- Craythorne DL *Municipal Administration: The Handbook* 6 ed (2006) Juta: Cape Town.
- Crozier M *The Bureaucratic Phenomenon* (1964) University of Chicago Press: Chicago.
- Curwen P *Public Enterprise: A Modern Approach* (1986) Wheatsheaf: London.

Dessler G *Organisational Theory: Integrating Structure and Behavior* (1980) Prentice-Hall: Englewood Cliffs, NJ.

De Visser J *Developmental Local Government: A Case Study of South Africa* (2005) Intersentia: Antwerp and Oxford.

De Visser JW & Mbazira C (eds) *Water Delivery: Public or Private?* (2006) Centre for Environmental Law and Policy/NILOS: Utrecht.

Drucker P *The Frontiers of Management* (1986) Dutton: New York.

Etzioni-Halevy E *Bureaucracy and Democracy: A Political Dilemma* (1985) Routledge and Kegan Paul: London.

Evans P *Embedded Autonomy: States and Industrial Transformation* (1995) Princeton University Press: Princeton, New Jersey.

Evans TI *Bureaucracy and Race: Native Administration in South Africa* (1997) University of California Press: Berkeley.

Ferlie W, Ashburner L & Fitzgerald L et al. *The New Public Management in Action* (1996) Oxford University Press: New York.

Fiske E & Ladd H *Elusive Equity: Education Reform in Post-apartheid South Africa* (2004) Brookings Institute: Washington, DC.

Fukuyama F *The Origins of Political Order* (2010) D & M Publishers Inc: USA.

Garson GD & Overnam ES *Public Management Research in the United States* (1983) Praeger: New York.

Giddens A *Central Problems in Social Theory: Action, Structure and Contradiction in Social Analysis* (1979) University of California Press: Berkeley.

Goodsell CT *The Case for Bureaucracy: A Public Administration Polemic* (1985) Chatham House Publishers Inc: Chatham, New Jersey.

Goodsell CT *The Case for Bureaucracy: A Public Administration Polemic* 4 ed (2004) CQ Press: Washington, DC.

Gouldner AW *Patterns of Industrial Bureaucracy* (1954) Free Press: Glencoe.

Green LP *History of Local Government in South Africa* (1957) Juta & CO, limited: Cape Town.

Greenberg S *The State, Privatisation and the Public Sector in South Africa* (2006) Southern African Peoples' Solidarity Network (SAPSN): Harare.

Grønlie T & Selle P (eds.) *Ein Stat? Fristillingas Fire Ansikt* (1998) Samlaget: Oslo.

Habib A *South Africa's Suspended Revolution: Hopes and Prospects* (2013) Wits University Press: Johannesburg.

Hanekom SX & Thornhill C *Public Administration in Contemporary Society* (1983) Macmillan South Africa: Johannesburg.

Haynes P *Managing Complexity in the Public Services* (2003) Open University Press: Maidenhead.

Hemerijck A & Huiskamp R *Public Sector Reform under EMU: A Literature Review* (2002) European Foundation: Dublin.

Henderson AM & Parsons T *From Max Weber: The Theory of Social and Economic Organisation* (1947) Free Press: New York

Hirsch A *Season of Hope: Economic Reform under Mandela and Mbeki* (2005) University of KwaZulu-Natal Press: Durban.

Hughes OE *Public Management and Administration: An Introduction* (1994) Palgrave MacMillan: London.

Hughes OE *Public Management and Administration: An Introduction* 3 ed (1998) Palgrave MacMillan: New York.

Hughes OE *Public Management and Administration* 3 ed (2003) Palgrave Macmillan: Basingstoke.

Hughes OE *Public Management and Administration: An introduction* 4 ed (2012) Palgrave Macmillan: Basingstoke.

Hummel RP *The Bureaucratic Experience: The Post Modern Challenge* (2007) ME Sharpe: New York.

Isaacman J, Elliott G & Pahad M et al. *Understanding the National Qualifications Framework: A Guide to Lifelong Learning* 2 ed (1997) Heinemann: Johannesburg.

Ismail N, Bayat S & Meyer I *Local Government Management* (1997) Halfway House: Thomson.

Jackson P & Price C *Privatisation and Regulation: A Review of the Issues* (1994) Longman Group Ltd: Essex.

Jerome A *Privatisation and Restructuring of State Assets in South Africa: Lessons from African Privatisation Experience* (2003) National Institute for Economic Policy: South Africa.

Kaul M *Management Reforms in Government: A Review of International Practice and Strategies* (2000) CAPAM & COMSEC: London.

Klandermans B & Roefs M *The State of the People: Citizens, Civil Society and Governance in South Africa 1994-2000* (2001) HSRC: Pretoria.

Klingner DE *Public Administration: A Management Approach* (1983) Houghton-Mifflin: Boston.

Lyons M *Third Sector: The Contribution of Non-profit and Cooperative Enterprise*. (2001) Alien and Unwin: Sydney.

Magubane BM *The Political Economy of Race and Class in South Africa* (1979) Monthly Review Press: New York and London.

Manning N & Parison N *Determining the Structure and Functions of Government: Program and Functional Reviews* (2004) World Bank: Moscow.

Marais H *South Africa: Limits to Change: The Political Economy of Transition* (1998) Zed Books: London.

Marais D *South Africa: Constitutional Development, a Multi-disciplinary Approach* (1989) Sigma Press: Pretoria.

Massey A *Managing the Public Sector: A Comparative Analysis of the United Kingdom and the United States* (1993) Edward Elgar: UK.

Massey A & Johnston K (eds) *The International Handbook of Public Administration and Governance* (2015) Edward Elgar: UK.

McDonald DA & Pape J *Cost Recovery and the Crisis of Service Delivery in South Africa* (2002) HSRC Press: Cape Town.

McDonald DA & Ruiters G (eds) *The Age of Commodity: Water Privatization in Southern Africa* (2005) Earthscan: London.

Metcalf L & Richards S *Improving Public Management* 2 ed (1990) Sage Publication: London.

- Miller K *Public Sector Reform Governance in South Africa* (2005) Ashgate: Aldershot.
- Miller TI & Kobayashi MM *Citizen Surveys: How to do Them, How to use Them, What They Mean* 2 ed. (2000) International City/County Management Association: Washington, DC.
- Minogue M, Polidano C & Hulme D (eds.) *Beyond the New Public Management: Changing Ideas and Practices in Governance* (1998) Edward Elgar: Cheltenham, UK.
- Minogue M & McCourt W (eds.) *Internationalization of Public Management* (2001) Edward Elgar: Cheltenham, UK.
- Motala Z & Ramaphosa C *Constitutional Law: Analysis and Cases* (2002) Oxford University Press Southern Africa: Cape Town.
- O'Meara D *Forty Lost Years: The Apartheid State and the Politics of the National Party, 1948-1994* (1996) Ravan Press: Johannesburg
- Osborne D & Gaebler T *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* (1992) Reading, Mass: Addison-Wesley.
- Padayachee V (ed) *The Development Decade?: Economic and Social Change in South Africa, 1994-2004* (2006) HSRC Press: Cape Town.
- Picard LA *The State of the State: Institutional Transformation, Capacity and Political Change in South Africa* (2005) Witwatersrand University Press: Johannesburg.
- Picard LA & Mogale T *The Limits of Democratic Governance in South Africa* (2015) Lynne Rienner Publishers, Inc: USA.
- Pollitt C *Managerialism and the Public Services: The Anglo-American Experience* (1990) Blackwell: Oxford.
- Pollitt C *Managerialism and the Public Services: Cuts or Cultural change in the 1990s?* (1993) Blackwell: Oxford.
- Pollitt C, Girre X & Lonsdale J et al. *Performance or Compliance? Performance Audit and Public Management in Five Countries* (1999) Oxford University Press: Oxford.
- Pollitt C & Bouckaert G *Public Management Reform: A Comparative Analysis* (2004) Oxford University Press: Oxford.
- Randell GH & Bax KC *Handbook Relating to Municipal Law in the Province of the Cape of Good Hope South Africa* 2 ed (1961) Butterworths: Durban.

Randell GH & Bax KC *Municipal Law in the Province of the Cape of Good Hope South Africa* 4 ed (1977) Butterworths: Durban.

Reddy PS, Sing D & Moodleys S *Local Government Financing and Development in Southern Africa* (2003) Oxford University Press: Cape Town.

Reddy PS *Readings in Local Government Management and Development: A Southern African Perspective* (1996) Juta & Co: Cape Town.

Ringer F *Max Weber: An Intellectual Biography* (2004) University of Chicago Press: Chicago.

Roth G & Wittich C *Economy and Society: An Outline of Interpretive Sociology* (1978) University of California Press: Berkeley.

Savas ES *Privatization: The Key to Better Government* (1987) Chatham House: Chatham.

Salem H *Organizational Performance Management and Measurement: The Lebanese Experience* (2003) Economic and Social Council: Beirut.

Sandbrook R, Edelman M & Heller P et al. *Social Democracy in the Global Periphery: Origins, Challenges, Prospects* (2007) Cambridge University Press: Cambridge.

Sapru RK *Development Administration* (1994) Sterling Publishers Private Limited: New Delhi.

Schön DA *The Reflective Practitioner: How Professionals Think in Action* (1983) Basic Books: New York.

Shafritz JM & Hyde AC *Classics of Public Administration* (1992) Brooks/Cole Publishing Company: California.

Steytler N & De Visser J *Local Government Law of South Africa* (2007) LexisNexis: Durban.

Theron F & Schwella E (eds) *The State of Public and Development Management in South Africa* (2000) Stellenbosch University, School of Public Management and Planning: Bellville.

Thompson V *Modern Organization* (1961) Alfred A. Knopf: New York.

Van Donk M, Swilling M & Pieterse, E et al. (eds) *Consolidating Developmental Local Government: The South African Experience* (2007) UCT Press: Cape Town.

Van Niekerk S, Pape J & Xali M et al. *An Alternative View of Privatisation* (1999) ILRIG: Cape Town.

Vecchio RP *Organizational Behaviour* 2 ed (1991) Dryden Press: Chicago.

Vosloo WB, Kotze DA & Jeppe WJO *Local Government in South Africa* (1974) Academica: Pretoria.

Wallis M *Bureaucracy* (1989) Macmillan: London.

Weber M *Wirtschaft und Gesellschaft (Economy and Society)* (1922) University of California Press: Berkeley, California.

Weber M *Economy and Society* (1968) (edited by Guenther Roth and Claus Wittich) Bedminster Press: New York.

Weber M *Economy and Society: An Outline of Interpretive Sociology* (1978) University of California Press: Berkeley, California.

Weber M *From Max Weber: Essays in Sociology* (edited and translated by Gerth H and Mills CW) (1946) Oxford University Press: New York

Weber M *From Max Weber: Essays in Sociology* (edited and translated by Gerth H and Mills CW) (1958) Oxford University Press: New York

Weber M *The Theory of Social and Economic Organisation* (1947) (translated by Henderson AM & Parsons T) The Free Press: New York.

Weber M *The Theory of Social and Economic Organisation* (1964) (edited with a foreword by Talcott Parsons) The Free Press: New York.

Weber M *Wirtschaft und Gesellschaft: Grundriss der verstehenden Soziologie* (1980) JCB Mohr (Paul Siebeck): Tübingen.

Van der Westhuizen C *White Power and the Rise and Fall of the National Party* (2007) Zebra Press: Cape Town.

Wilson JQ *Bureaucracy: What Government Agencies Do and Why They Do It* (1989) Basic Books: New York.

CHAPTERS IN BOOKS

Atkinson D 'Taking to the streets: Has the developmental local government failed in South Africa?' in Buhlungu S, Daniel J & Southall R (eds) *State of the Nation: South Africa* (2007) Human Science Research Council Press: Cape Town 53-77.

Bodasing A 'Principles and objectives of public administration in a constitutional democracy' in Chaskalson et al. (eds) *Constitutional Law of South Africa* 2 ed (2008) Juta Ltd and Company Ltd: Lansdowne 23A1-23A58.

Bowornwathana B 'Responses of public administration system of Thailand to global challenges' in Salleh SH & Carino LV (eds) *Globalisation and the Asian Public Sector* (1995) The Asian and Pacific Development Centre: Kuala Lumpur 365 – 430.

Cameron RG 'Managing the coloured and Indian areas' in Swilling M, Humphries R & Shubane K (eds) *Apartheid City in Transition* (1991) Oxford University Press: Cape Town 48 – 63.

Chipkin I 'Set-up for failure: Racial redress in the Department of Public Service and Administration' in Bentley K & Habib A (eds) *Racial Redress and Citizenship in South Africa* (2008) HSRC: Cape Town 129 – 152.

Davis D 'From the Freedom Charter to the Washington Consensus' in Everatt D & Maphai V (eds) *The Real State of the Nation: South Africa After 1990* (2003) Interfund: Johannesburg 31 - 50.

Falconer PK 'Public administration and the New Public Management: Lessons from the UK experience' in Morton D et al. *New State, New Millennium, New Public Management* (1997) School of Public Administration: Ljubljana 67 - 83.

Fitzgerald P 'Towards a developmental public administration paradigm' in Fitzgerald P, McLennan A & Munslow B (eds) *Managing Sustainable Development in South Africa* (1995) Oxford University Press: Cape Town 63 – 85.

Flynn N 'Explaining the New Public Management: The Importance of context' in McLaughlin K, Osborne S & Ferlie E (eds) *New Public Management: Current Trends and Future Prospects* (2002 Routledge: London 57 - 76.

Flynn S & Chirwa DM 'The constitutional implication of commercializing water in South Africa' in McDonald D & Ruiters G *The Age of Commodity: Water Privatization in Southern Africa* (2005) Earthscan: UK 59 – 76.

Fraser-Moleketi G & Van Dyk-Robertson H 'The interaction between governance, policy and public service reform in democratic South Africa' in Olowu D & Mukwena R (eds) *Governance in Southern Africa and Beyond: Experiences of Institutional and Public Policy Reform in Developing Countries* (2003) Gamsberg Macmillan Publishers: Windhoek 45 – 60.

Hesmon D & O'Donovan M 'Putting numbers to the scorecard: presidential targets and the state of delivery' in Buhlungu S et al. (eds) *State of the nation: South Africa* (2006) Human Science Research Council Press: Cape Town 53 - 77.

Hope KR 'The New Public Management: A perspective from Africa' in McLaughlin K, Osborne SP & Ewan F (eds) *New Public Management: Current Trends and Future Prospects* (2002) Routledge: London 210 – 226.

Houston G & Muthien Y 'South Africa: A transformative state?' in Muthien YG, Khosa MM & Magubane B (eds) *Democracy and Governance Review: Mandela's Legacy 1994-1999* (2000) HSRC: Pretoria 32 – 68.

Hughes OE 'The traditional model of public administration' in Hughes, O.E. *Public Management and Administration: An Introduction* (1998) Macmillan: London 22 – 51.

Ingraham PW 'The reform agenda for national civil service system: External stress and internal strain' in Bekke HAGM, Perry JL & Toonen TAJ (eds) *Civil Service Systems* (1996) Indiana University Press: Bloomington 247 – 267.

Johnson V 'Outsourcing of basic services: Contract analysis' in De Visser JW & Mbazira C (eds) *Water Delivery: Public or Private?* (2006) Centre for Environmental Law and Policy/NILOS: Utrecht 87 – 110.

Kalberg S 'The bureaucracy I: External form, technical superiority, ethos, and inequality' in Weber M *Readings and Commentary on Modernity* (2008) Blackwell Publishers: United Kingdom 194 – 198.

Keraudren P & van Mierlo H 'Theories of public management reform and their practical implications' in Verheijen T & Coombes D (eds) *Innovation in Public Management* (1998) Edward Elgar: Cheltenham 39 – 56.

McCurdy HE 'The cultural and ideological background' in Rosenbloom DH et al. (eds) *Revisiting Waldo's Administrative State: Constancy and Change in Public Administration* (2006) Georgetown University Press: Washington D.C. 35 – 54.

McCourt W 'The NPM agenda for service delivery: A suitable model for developing countries?' in McCourt W & Minogue M *The Internationalisation of Public Management: Reinventing the Third World State* (2001) Edward Elgar: Cheltenham 107–128.

Merton RK 'Bureaucratic structure and personality' in Merton RK (ed) *Reader in Bureaucracy* (1952) Free Press: New York 361 – 371.

Minogue M 'Changing the state: Concepts and practice in the reform of the public sector' in Minogue M, Polidano C & Hume D *Beyond the New Public Management: Changing Ideas and Practices in Governance* (1998) Edward Elgar: Cheltenham 17–37.

Murray C 'Republic of South Africa' in Le Roy K, Saunders C & Kincaid J (eds) *Legislative, Executive and Judicial Governance in Federal Countries* (2006) McGill-Queen's University Press: Canada 258 – 288.

Nealer E 'Local government and service delivery' in van der Walddt, G (eds) *Municipal Management – Serving the People* (2007) Juta: Lansdowne 147 – 164.

Ndletyana M 'Affirmative action in the public service' in Habib A & Bentley K (eds) *Racial Redress and Citizenship in South Africa* HSRC Press: Cape Town 77 – 98.

Padayachee V 'Development implications for South Africa of using IMF and World Bank loans and resources' in Baker P, Boraine A & Krafchik W (eds) *South Africa and the World Economy in the 1990s* (1993) David Philips: Cape Town 184 – 203.

Pfiffner JP 'Traditional public administration versus the New Public Management: Accountability versus efficiency' in Benz A, Siedentopf H & Sommermann KP (eds) *Institutionenbildung in Regierung und Verwaltung: Festschrift für Klaus König* (2004) Duncker & Humboldt: Berlin, Germany 443 – 454.

Pickering M 'The distribution of power: Local government and the electricity industry reforms' in Van Donk M, Swilling M & Pieterse E et al. (eds) *Consolidating Developmental Local Government: The South African Experience* (2007) UCT Press: Cape Town 445 – 462.

Pieterse E 'Participatory local governance in the making: Opportunities, constraints and prospects' in Parnell S, Pieterse E & Swilling M et al. (eds) *Democratising Local Government: The South African Experiment* (2002) UCT Press: Cape Town.

Powell D 'Imperfect transition - local government reform in South Africa 1994-2012' in Booyesen S (ed) *Local Elections in South Africa: Parties, People, Politics* (2012) African Sun Media: Bloemfontein 11 – 30.

Pycroft C 'Addressing rural poverty: Restructuring local government' in Parnell S, Pieterse E & Swilling S et al. *Democratising Local Government: The South African Experiment* (2002) UCT Press: Cape Town 105 – 126.

Rainey HG & Chun YH 'Public and private management compared' in Ferlie E, Lynn L & Pollitt C (eds) *The Oxford Handbook of Public Management* (2005) Oxford University Press: Oxford 72–102.

Savoie DJ 'What is wrong with the New Public Management' in Osborne SP (ed) *Public Management: Critical Perspectives* (2002) Routledge: London 263 – 273.

Schmidt D 'From spheres to tiers: Conceptions of local government in South Africa in the period 1994-2006' in Van Donk M, Swilling M & Pieterse E et al. (eds) *Consolidating Developmental Local Government: The South African Experience* (2007) UCT Press: Cape Town 109 – 129.

Smith L & Morris N 'Municipal entities: A panacea for service delivery constraints?' in Van Donk M, Swilling M & Pieterse E et al. (eds) *Consolidating Developmental Local Government: The South African Experience* (2007) UCT Press: Cape Town 423 – 443.

Smith L, Gillet, A & White F 'Public money, private failure: Testing the limits of market-based solutions for water delivery in Nelspruit' in McDonald DA & Ruiters G (eds) *The Age of Commodity: Water Privatization in Southern Africa* (2003) Earthscan: London 130 – 148.

Southall R 'Introduction: The ANC state, more dysfunctional than developmental?' in Buhlungu S, Daniel J & Southall R et al. *State of the Nation: South Africa* (2007) HSRC Press & Michigan State University Press: Cape Town & East Lansing 1 – 26.

Thompson KA 'Religious organizations: The cultural perspective' in Salaman G & Thompson K (eds) *People and Organizations* (1973) Longman: London 293 – 302.

Van der Waldt G 'Municipal service delivery and the environment' in Du Plessis AA (ed) *Local Government and Environmental Law in South Africa* (2015) Juta: Cape Town Juta Cape Town 2015) 319 – 344.

Weber M 'The profession and vocation of politics' in Lassman P & Speirs R (eds) *Political Writings* (1994) Cambridge University Press: Cambridge 309 – 369.

Weber M 'Bureaucracy' in Kramer FA (ed) *Perspectives on Public Bureaucracy: A Reader on Organisations*. (1973) Winthrop Publishers Inc.: Cambridge 6 – 34.

Weber M 'Politics as a profession' in Winckelmann J (ed) *Collected Political Writings: Max Weber* (1988) UTB Stuttgart: Germany 423 – 450.

Welsh D 'The policies of control: Blacks in the common areas' in Schrire (ed) *South Africa: Public Policy Perspectives* (1982) Juta: Cape Town 101 – 113.

Woolmann H & Thurmaier K 'Reforming local government institutions and the New Public Management in Europe and the US' in Clark S, John P & Mossberger K (eds) *Handbook on Local Politics* (2010) Oxford: Oxford University Press 179 – 208.

Zimmerman D 'The practicalities of rule use' in Douglas J (ed) *Understanding Everyday Life* (1971) Routledge and Kegan Paul: London 221 – 238.

JOURNAL ARTICLES

Abdul-Hakim 'Single public service: Challenges ahead' (2004) 6(5) *Local Government Bulletin* 10 – 11.

Ackroyd S, Kirkpatrick I & Walker RM 'Public management reform in the UK and its consequences for professional organization: A comparative analysis' (2007) 85(1) *Public Administration* 9 – 26.

Adler PS & Borys B 'Two types of bureaucracy: Enabling and coercive' (1996) 41(1) *Administrative Science Quarterly* 61 - 89.

Adelzadeh A & Padayachee V 'The RDP White Paper: Reconstruction of a development vision (1994) 25(1) *Transformation* 1 – 18.

Adelzadeh A 'From the RDP to GEAR: The gradual embracing of neoliberalism in economic policy' (1996) 31(1) *Transformation* 66 – 95.

Adinda S 'Water privatization - An optimal and efficient means for developing countries' (2008) *Essay in economics* 1 – 31.

Alexander P 'Rebellion of the poor: South Africa's service delivery protests – a preliminary analysis' (2010) 37(123) *Review of African Political Economy* 25-40.

Armstrong A 'A comparative analysis: New Public Management – the way ahead?' (1998) 57(2) *Australian Journal of Public Administration* 12–26.

Aucoin P 'Administrative reform in public management: Paradigms, principles, paradoxes and pendulums (1990) 3(1) *Governance* 115 - 137.

Bardill JE 'Towards a culture of good governance: The Presidential Review Commission and public service reform in South Africa' (2000) 20(2) *Public Administration & Development* 103 – 118.

Bakker K & Hemson D 'Privatising water – BOTT and hydropolitics in the new South Africa' (2000) 82(1) *South African Geographical Journal* 3 – 12.

Bale M & Dale T 'Public sector reform in New Zealand and its relevance to the developing countries' (1998) 13(1) *World Bank Observer* 103 – 121.

Bergmann BR 'Bloated administration, blighted campuses' (1991) 77(6) *Academe* 12-16

Bilodeau N, Laurin C & Vining A "“Choice of organizational form makes a real difference”": The impact of corporatization on government agencies in Canada' (2006) 17(1) *Journal of Public Administration Research and Theory* 119–147.

Binza SM 'The evolution of South African local governments: The politics of memory' (2005) 30(2) *Journal for Contemporary History* 69 – 87.

Bittner E 'The concept of organization' (1965) 31(1) *Social Research* 239 – 255.

Blumenfeld J 'From icon to scapegoat: The experience of South Africa's Reconstruction and Development Programme' (1997) 15(1) *Development Policy Review* 65 -

Borins S 'The New Public Management is here to stay' (1995) 81(1) *Canadian Public Administration* 122 - 132.

Buchanan J & Bouman RG 'Corporatization and asset evaluation for government corporation' (1990) 6(2) *Financial Accountability and Management* 77 - 92.

Bovaird T 'Public - private partnerships: From contested concepts to prevalent practice (2004) 70(2) *International Review of Administrative Sciences* 199 - 215.

Boyle R 'Civil service management trends: Challenges for the 1990s administration' (1991) 39(3) *Journal of the Institute of Public Administration of Ireland* 234 - 247.

Buthelezi A & Dollery B 'An exploratory analysis of local government failure in South Africa' (2004) 28(2) *Journal for Studies in Economics and Econometrics* 91 - 105.

Butler Sir R 'Reinventing British government' (1994) 72(1) *Public Administration* 263 - 270.

Caiden GE & Sundaram P 'The specificity of public service reform' (2004) 24(1) *Public Administration Development* 373 - 383.

Cameron RG 'The history of devolution of powers to local authorities' (1996) 20(1) *Local Government Studies* 19 - 39.

Cameron RG 'Public administration in South Africa: The state of the academic field' (2008) 15(2) *Administration Public* 43 - 68.

Cameron RG 'New Public Management reforms in the South African public service: 1999-2009' (2009) 44(4.1) *Journal of Public Administration* 910 - 942.

Cameron RG & Milne C 'Minnowbrook, Mount Grace and the state of the discipline' (2009) 44(2) *Journal of Public Administration* 380 - 395.

Cameron RG & Thornhill C 'Public service reform in South Africa: 1999-2009' (2009) 44(4) *Journal of Public Administration* 897 - 909.

Cameron RG 'Redefining political-administrative relationships in South Africa' (2010) 76(4) *International Review of Administrative Sciences* 676 - 701.

Chipkin I 'Transcending bureaucracy: State transformation in the age of the manager' (2011) 77(1) *Transformation: Critical Perspectives on Southern Africa* 31 - 51.

Chipkin I 'Histories and cultures of the public service in SA' (2011) *Public Affairs Research Institute*.

Chipkin I & Lipietz B 'Transforming South Africa's racial bureaucracy: New Public Management and public sector reform in contemporary South Africa' (2012) 1 *Public Affairs Research Institute* 1 – 27.

Christensen T & Lægveid P 'New Public Management: The effects of contractualism and devolution on political control' (2001) 3(1) *Public Management Review* 73 – 94.

Christmas A 'Service delivery protests: Failure to deliver or failure to communicate (2007) 9(4) *Local Government Bulletin* 6 - 7.

Da Cruz NF & Marques RC 'Viability of municipal companies in the provision of urban infrastructure services' (2011) 37(1) *Local Government Studies* 93 – 110.

De Lange D 'IMFO membership qualification requirements' (2009) *Journal of the Institute of Municipal Finance Officers* 6-8.

De Visser J, Cottle E & Mettler J 'Realising the right of access to water: Pipe dream or watershed?' (2003) 7(1) *Law, Democracy and Development* 27 – 53.

De Visser J 'Local government powers' (2002) 17 *SA Public Law* 223 - 243.

De Visser J 'Court condemns political interference in municipal manager's appointment (2009) 11(1) *Local Government Bulletin* 5 – 7.

De Visser J 'New leaders, persistent challenges: What lies in store for local government? (2009) 11(2) *Local Government Bulletin* 4 – 6.

De Visser J 'Developmental local government in South Africa: Institutional fault lines' (2009) 2(1) *Commonwealth Journal of Local Governance* 7 – 25.

De Visser J 'Editorial' (2012) 14(3) *Local Government Bulletin* 1 – 12.

De Visser J 'Performance management in the Systems Act: Implementing accountability' (2001) 3(2) *Local Government Law Bulletin* 6 – 8.

De Visser J 'The political-administrative interface in South African municipalities: Assessing the quality of local democracies' (2010) 5 *Commonwealth Journal of Local Governance* 86 – 101.

De Visser J 'Water privatisation contract cancelled' (2002) 4(2) *Local Government Law Bulletin* 12 – 13.

De Visser J & Steytler N 'Confronting the state of local government: The 2013 Constitutional Court decisions' (2016) VI *Constitutional Court Review* 1 – 23.

Drechsler W 'The rise and demise of the New Public Management' (2005) 33 *Post-Autistic Economics Review* 17 – 28.

Du Gay P 'The culture of the customer' (1992) 29(4) *Journal of Management Studies* 615 – 633.

Dzimbiri LB 'Experiences in new public management in Africa: The case of performance management systems in Botswana' (2008) 33(4) *Africa Development* 43 – 58.

Eberhard AA 'From state to market and back again: South Africa's power sector reforms' (2005) 50 *Economic and Political Weekly* XL 5309 – 5317.

Fessha Y 'Tying municipal managers pay to performance' (2006) 8(3) *Local Government Bulletin* 10 – 12.

Fine B 'Privatisation and the RDP: A critical Assessment' (1995) 27(1) *Transformation* 1 – 23.

Fombad MC 'Enhancing accountability in public – private partnerships in South Africa' (2014) 18(3) *Southern African Business Review* 66 – 92.

Fourie F & Burger P 'An economic analysis and assessment of public – private partnerships (PPPs)' (2000) 68(4) *South African Journal of Economics* 305 – 316.

Gaffoor S & Cloete F 'Knowledge management in local government: The case of Stellenbosch municipality' (2010) 12(1) *SA Journal of Information Management* 1 – 7.

Gibson S 'Service delivery solutions for water services - learning from private business: Water and wastewater' (2012) 37(1) *IMIESA* 29 – 31.

Gow JI & Dufor C 'Is the new public management a paradigm? Does it matter?' (2002) 66(4) *International Review of Administrative Sciences* 573–598.

Gouldner AW 'Metaphysical pathos and the theory of bureaucracy' (1995) 49 *American Political Science Review* 496 – 507.

Gruening G 'Origin and theoretical basis of New Public Management' (2001) 4(1) *International Public Management Journal* 1 – 25.

Gumede N & Sipholo KB 'Governance, restructuring and the New Public Management reform: South African perspectives' (2014) 4(6) *Journal of Educational and Social Research* 43 – 50.

Haque MS 'Significance of accountability under the new approach to public governance (2000) 66(4) *International Review of Administrative Sciences* 599–617.

Heymans C & White R 'Playing politics without power: The state of black local government in the South Africa of the 1980/90s' (1991) 18(1) *Politikon* 2 – 27.

Hood C 'A Public management for all seasons?' (1991) *Public Administration* 3 – 19.

Hood C 'Paradoxes of public sector managerialism, old public management and public service bargains (2000) 3(1) *International Public Management Journal* 1 – 22.

Hood C 'The "New Public Management" in the eighties' (1995) 20(2/3) *Accounting, Organization and Society* 93 – 109.

Hood C & Peters G 'The middle aging of the New Public Management: Into the age of paradox?' (2004) 14(3) *Journal of Public Administration Research and Theory* 267-282.

Höpfl HM 'Post-bureaucracy and Weber's "modern" bureaucrat' (2006) 19(1) *Journal of Organization Change Management* 8 – 21.

In-Pang Fu 'Favouritism: Ethical dilemmas viewed through multiple paradigms' (2015) 8(1) *Journal of Values-Based Leadership* 1 – 7.

Jackson MW 'Bureaucracy in Hegel's political theory' (1986) 18(2) *Administration & Society* 139–157.

Johnston I & Callender G 'Vulnerable governments: Inadvertent de-skilling in the new global economic and managerialist paradigm?' (1997) 63(1) *International Review of Administrative Sciences* 41 – 56.

Kaboolian L 'The New Public Management: Challenging the boundaries of the management vs administration debate' (1998) 58(3) *Public Administration Review* 189 – 193.

Kahn E 'Constitutional and administrative law: Separate development' (1961) *Annual Survey of South African Law* 57 – 60.

Kahn E 'Constitutional and administrative law: Native administration' (1959) *Annual Survey of South African Law* 28 – 32.

Kahn E 'Constitutional and administrative law: Separate development' (1968) *Annual Survey of South African Law* 33 – 43.

Kahn E & Nolte JH 'Local government law: Including law relating to townships and town planning' (1951) *Annual Survey of South African Law* 35 – 50.

Kaul M 'Civil service reforms: Lessons from commonwealth experience' (1996) 16(2) *Public Administration and Development* 131–150.

Kettl DF 'The global revolution in public management: Driving themes, missing links' (1997) 16 *Journal of Policy Analysis and Management* 446 – 462.

Kalimullah NA, Ashraf KM & Ashaduzzaman MN 'New Public Management: Emergence and principles' (2012) 1(1) *BUP Journal* 1-22.

Khademian AM 'What do we want public managers to be? Comparing reforms' (1998) 58(3) *Public Administration Review* 269 – 273.

Khunou SF 'Traditional leadership and independent Bantustans of South Africa: Some milestones of transformative constitutionalism beyond Apartheid' (2009) 12(4) *PER* 81 – 122.

Kickert W & Toonen TAJ 'Public administration in the Netherlands: Expansion, diversification and consolidation' (2006) 84(4) *Public Administration* 969 – 987.

Koma SB 'The state of local government in South Africa: Issues, trends and options' (2010) 45(1.1) *Journal of Public Administration* 111 – 120.

Kolzow DR 'Public private partnerships: The economic development of organisation of the 90s' (1994) 12(1) *Economic Development Review* 1 – 25.

Lacey R 'Internal markets in the public sector: The case of the British National Health Service' (1997) 17(1) *Public Administration and Development* 141 – 159.

Lægreid P 'Top civil servants under contract' (2000) 78(4) *Public Administration* 879 – 896.

Lagrange R 'Labour law: Legislation' (1995) *Annual Survey of South African Law* 498 – 582.

Letza SR, Smallman C & Sun X 'Reframing privatisation: Deconstructing the myth of efficiency' (2004) 37(2) *Policy Sciences* 159 – 171.

Lobina E & Hall D 'Public sector alternatives to water supply and sewerage privatization: case studies' (2000) 16(1) *International Journal of Water Resources Development* 35–55.

Love JH & Frank HS 'Deregulation and professional boundaries: Evidence from the English legal profession' (1997) 26(2) *Business and Economic History* 792 – 804.

Mahlatsi LK 'State of the municipalities' (2006) 8(1) *Local Government Bulletin* 7 – 9.

Maor M 'The paradox of managerialism' (1999) 59(1) *Public Administration Review* 5–18.

Maphunye KJ 'The South African senior public service: Roles and the structure in post-1994 departments' (2002) 36(4) *Journal of Public Administration* 312 – 323.

Marcellus IE 'African cultural value system and the dilemma of bureaucratic malfunctioning: Implications for development in Africa' (2009) 1(7) *Interdisciplinary Journal of Contemporary Research in Business* 149 – 171.

Mäki H & Haarhoff J 'Municipal engineers in Johannesburg and Pretoria before 1910' (2009) 5(2) *The Journal for Transdisciplinary Research in Southern Africa* 230 – 247.

Manyaka RK & Sebola MP 'Impact of performance management on service delivery in the South African public service' (2012) 47(11) *Journal of Public Administration* 299 -310.

Mare C 'Municipal services: Public-private partnerships' (2003) 5(4) *Local Government Bulletin* 5 – 8.

Mascarenhas RC 'Building an enterprise culture in the public sector: Reform of the public sector in Australia, Britain, and New Zealand' (1993) 53(4) *Public Administration Review* 319 – 328.

Maserumule MH 'Engaged scholarship and liberatory science: A professoriate, Mount Grace, and SAAPAM in the decoloniality mix' (2015) *Journal of Public Administration* 50(2) 200 – 222.

Mashumi VE 'Professionalising local government management: The post-institute of town clerks challenge' (2013) 48(4) *Journal of Public Administration* 625 – 639.

Mawoneke G 'The PPP procurement process' (2005) 7(3) *Local Government Bulletin* 11 – 12.

McSweeney B 'Are we living in a post-bureaucratic epoch?' (2006) 19(1) *Journal of Organisational Change Management*

Mettler G 'Municipal service: Is chapter 8 of the Systems Act a help or a hindrance?' (2003) 5(2) *Local Government Bulletin* 9 – 11.

Merton RK 'Bureaucratic structure and personality' (1940) 18(4) *Social Forces* 560 - 568

Mitchell-Weaver C & Manning B 'Public-private partnerships in third world development: A conceptual overview' (1991) 26(4) *Studies in Comparative International Development* 45 – 67.

Mofolo M 'Strengthening performance management system implementation in South African municipalities' (2012) 1(1) *Africa's Public Service Delivery and Performance Review* 72 – 86.

- Mongkol K 'The critical review of New Public Management model and its criticism' (2011) 5(1) *Research Journal of Business Management* 35 – 43.
- Moon MJ 'The pursuit of managerial entrepreneurship: Does organization matter?' (1999) 59(1) *Public Administration Review* 31 – 43.
- Morgan N, Chipkin I & Meny-Gibert S et al. 'Hollowing out the local state: Managerialism and skills in the water sector' (2015) *Public Affairs Research Institute* 1 – 55
- Mureinik E & Luiz SM 'Constitutional law: Separate development' 1982 *Annual Survey of South African Law* 1(56) 11 – 24.
- Murray M 'Comparing public and private management: An exploratory essay' (1975) (35(1) *Public Administration Review* 364 – 372.
- Muthien Y 'Public service reform: Key challenges of execution' (2014) 36(2) *Strategic Review for Southern Africa* 126 – 142.
- Nattrass N 'Gambling on investment: Competing economic strategies in South Africa' (1997) 21 *Transformation* 25–42.
- Naudé Y, Gorst-Allman P & Rohwer E 'A cheap and simple passive sampler using silicone rubber for the analysis of surface water by gas chromatography-time of flight mass spectrometry' 2015 14(2) *Water SA* 182 – 188.
- Ncholo P 'Reforming the public service in South Africa: A policy framework' (2000) 20(2) *Public Administration and Development* 87 – 102.
- Nengwekhulu RH 'Public service delivery challenges facing the South African public service' (2009) 44(2) *Journal of Public Administration* 341 – 363.
- Norman R & Gregory R 'Paradoxes and pendulum swings: Performance management in New Zealand's public sector' (2003) 62(4) *Australian Journal of Public Administration* 35 – 49.
- Ntliziywana P 'The implication of noncompliance with Treasury's competency requirements' (2011) 13(4) *Local Government Bulletin* 16 – 18.
- Ntliziywana P 'Adding injury to insult: Intrusive laws on top of a weak system' (2016) V *Constitutional Court Review* 32 – 56.
- Ntliziywana P 'Insulating administrative decision-making relating to individual staff appointments from political meddling: *Manana v King Sabata Dalindyebo Municipality*' (2012) 129 *South African Law Journal* 49 – 58.

- Nzimakwe TI 'Public private partnerships: Implications for development' (2006) 36(1) *Africanus* 48 – 57.
- Osborne D & Gaebler T 'Reinventing government' (1993) 16(4) *Public Productivity and Management Review* 349 – 356.
- Ormond D 'Improving government performance' (1993) 184 *The OECD Observer* 4 – 8.
- Overeem P 'The value of the dichotomy, politics, administration, and the political neutrality of administrators' (2005) 27(2) *Administrative Theory and Praxis* 311–329.
- Padayachee V 'The South African economy: 1994 – 2004' (2005) *Social research*, 549 – 580.
- Pickering M 'Choosing a service provider: Section 78 of the Systems Act' (2001) 3(4) *Local Government Law Bulletin* 3 – 6.
- Poister T & Henry G 'Citizen ratings of public and private service quality: A comparative perspective' (1994) 54(1) *Public Administration Review* 155 – 159.
- Polidano C 'Public management reform in developing countries: Issues and outcome' (1999) 1(1) *Public Management* 121–132.
- Polidano C & Hulme D 'Editorial: Towards a post-New Public Management agenda' (2001) 3 *Public Management Review* 297–303.
- Pollitt C, van Thiel S & Homburg V 'New Public Management in Europe' (2007) *Management Online Review* 1 – 7.
- Powell D, de Visser J & May A et al. 'The withholding of rates and taxes in five municipalities' (2010) 12(4) *Local Government Bulletin* 9 – 12.
- Pretorius D & Schurink W 'Enhancing service delivery in local government: The case of a district municipality' (2007) 5(3) *SA Journal of Human Resource Management* 19 – 29.
- Pycroft C 'Democracy and delivery: The rationalization of local government in South Africa' (2002) 66(1) *International Review of Administrative Sciences* 143 – 159.
- Pycroft C 'Local government in the new South Africa' (1996) 16(3) *Public Administration and Development 1986 - 1988* 233 – 245.
- Ramutsheli M & Van Rensburg J 'The root causes for local government's failure to achieve its objectives' (2015) 17(2) *South African Journal of Accountability and Auditing Research* 107 - 118.

- Reinhard B 'Bureaucracy and the problem of power' (1945) 5(3) *Public Administration Review* 194 – 209.
- Reynolds K 'The new municipal PPP Regulations' (2005) 7(2) *Local Government Bulletin* 9 – 11.
- Ronald CM 'The "Reinventing government" exercise: Misinterpreting the problem, misjudging the consequences' (1994) 54(2) *Public Administration Review* 111 – 122.
- Rudolph HG 'Constitutional and administrative law: Separate development' *Annual Survey of South African Law* (1977) 27 – 40.
- Rudolph HG 'Constitutional and administrative law: Separate development' *Annual Survey of South African Law* (1985) 32 – 41.
- Russell EW & Bvuma DG 'Alternative service delivery and public service transformation in South Africa' (2001) 14(3) *International Journal of Public Sector Management* 241 – 265.
- Pulakos ED & O'Leary RS 'Why is performance management broken?' (2011) 4(2) *Industrial and Organizational Psychology* 146 – 164.
- Sager F & Rosser C 'Weber, Wilson, and Hegel: Theories of modern bureaucracy; reflecting on seminal administrative theorists' (2009) *Public Administration Review* 1136 – 1146.
- Sanni AO & Hashim M 'Building infrastructure through public-private partnerships in sub-Saharan Africa: Lessons from South Africa' (2014) 143 *Procedia – Social and Behavioural Sciences* 133 – 138.
- Sarker AE 'New public management in developing countries: an analysis of success and failure with particular reference to Singapore and Bangladesh' (2006) 19(2) *International Journal of Public Sector Management* 180 – 203.
- Schachter HL & Raadschelders JCN 'Did Max Weber's agony and ecstasy influence his scholarship? A Book Review Essay' (2010) *Public Administration Review* 304 – 316.
- Schwella E 'Bad public leadership in SA: The Jackie Selebi Case' (2013) 41(1) *Scientia Militaria* 65 - 90.
- Selznick P 'An approach to a theory of bureaucracy' (1943) 8(1) *American Sociological Review* 47 – 54.
- Shah A & Schacter M 'Combating corruption: look before you leap (2004) 41(4) *Finance and Development* 40 – 43.

- Shaoul J 'The power of accounting: Reflecting on water privatization?' (1997) 10(3) *Accounting, Auditing & Accountability Journal* 382 – 405.
- Smith PC & Goddard M 'Performance management and operational research: A marriage made in heaven?' (2002) 53(3) *Journal for Operational Research Society* 247 – 255.
- Steytler N 'Intervention in municipalities: Amendment to section 139 of the constitution' (2003) 5(1) *Local government bulletin* 5 – 7.
- Steytler N 'Setting service delivery targets' (2004) 6(3) *Local Government Bulletin* 4 – 5.
- Steytler N 'Socio-economic rights and the process of privatizing basic municipal services' (2004) 8(2) *Law, Democracy and Development* 157 – 180.
- Steytler N 'Local government capacity: Municipal Demarcation Board national report' (2005) 7(2) *Local Government Bulletin* 1 – 4.
- Steytler N 'The strangulation of local government: Stifling innovation, experience and local responsiveness' (2008) 10(1) *Local Government Bulletin* 6 – 8.
- Singh A 'Questioning the New Public Management' (2003) 63(1) *Public Administration Review* 116 – 119.
- Streak J 'The GEAR legacy: Did GEAR fail or move South Africa forward in development?' (2005) 21(2) *Development Southern Africa* 271–288.
- Swartz D 'South Africa in Southern Africa: Governance and developmental challenges' 29(2) *Africanus* 41 – 60
- Thornhill C 'The transformed local government system: Some lessons' (2008) 43(2) *Journal of Public Administration* 492 – 511.
- Thynne I & Wettenhall R 'Public management and organizational autonomy: the continuing relevance of significant earlier knowledge' (2005) 70(4) *International Review of Administrative Science* 609 – 621.
- Torsteinsen H 'Why does post-bureaucracy lead to more formalism?' (2012) 38(3) *Local Government Studies* 321 – 344.
- Tshandu Z & Kariuki S 'Public administration and service delivery reforms: a post-1994 South African case' (2010) 17(2) *Public Administration* 189 – 208.
- Tshikwatamba NE 'A critical and inter-disciplinary analysis of the selected criticisms levelled against public administration' (2007) 2(8) *Journal of Public Administration* 33 – 43.

Tshishonga N 'Cadre deployment and its implications on service delivery in South Africa: A human development capability approach' (2014) *Journal of Public Administration* 49(3) 891 – 908.

Tsatsire I, Raga K & Taylor JD et al. 'Historical overview of specific local government transformatory developments in South Africa' (2009) *57 New Contree* 129 – 147.

Twala C 'The African National Congress (ANC) and the cadre deployment policy in the post-apartheid South Africa: A product of democratic centralisation or a recipe for a constitutional crisis?' (2014) 14(2) *Journal of Social Sciences* 159 – 165.

Ward SC 'The machinations of managerialism: New public management and the diminishing power of professionals' (2011) 4(2) *Journal of Cultural Economy* 205 – 215.

Webster E & Adler G 'Toward a class compromise in South Africa's "double transition": Bargained liberalisation and the consolidation of democracy' (1999) 27(3) *Politics & Society* 347 – 385.

Weeks J 'Stuck in low GEAR? Macroeconomic policy in South Africa, 1996–1998' (1999) 23 *Cambridge Journal of Economics* 795–811.

Wettenhall R 'Public or private? Public corporations, companies and the decline of the middle ground' (2001) 1(1) *Public Organization Review* 17 – 40.



CASE LAW

Abdullah v Kouga Municipality and Another (P01/12) [2012] ZALCPE 4; [2012] 5 BLLR 425 (LC); (2012) 33 ILJ 1850 (LC).

Allen Paulse v Oudtshoorn Local Municipality and Others (unreported Case No 25790/2011).

AllPay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer, South African Social Security Agency 2014 (1) SA 604 (CC).

AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (No. 2) 2014 (4) SA 179 (CC).

Beck and Others v Kopanong Plaaslike Munisipaliteit and Others (3772/2002) [2003] ZAFSHC 34.

Black Sash Trust v Minister of Social Development and Others (Freedom Under Law NPC Intervening) [2017] ZACC 8.

Chirwa v Transnet Limited and Others 2008 (3) BCLR 251 (CC).

Democratic Alliance v South African Broadcasting Corporation Limited and Others 2015 (1) SA 551 (WCC).

Democratic Alliance v South African Broadcasting Corporation Soc Ltd and Others 2016 (3) SA 468 (WCC).

Democratic Alliance v South African Broadcasting Corporation SOC Ltd (SABC) and Others; Democratic Alliance v Motsoeneng and Others [2016] ZAWCHC 188.

Dihlabeng Local Municipality vs Nthute [2009] JOL 23108 (O)

South African Broadcasting Corporation Soc Ltd and Others v Democratic Alliance and Others 2016 (2) SA 522 (SCA).

Executive Council of the Western Cape v Minister of Provincial Affairs and Constitutional Development; Executive Council of KwaZulu-Natal v President of the Republic of South Africa and Others 1999 (12) BCLR 1360 (CC).

Ex Parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa 1996 (10) BCLR 1253 (CC).

Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others 1998 (12) BCLR 1458 (CC).

Government of the Republic of South Africa and Others v Grootboom and Others 2000 (11) BCLR 1169 (CC).

Hardy Ventures CC v Tshwane Metropolitan Municipality 2004 (1) SA 199 (T).

Institute for Democracy in South Africa and Others v African National Congress and Others 2005 (5) SA 39 (C).

Mahura v Greater Taung Local Municipality and Others (M83/2014) [2014] ZANWHC 58.

Mathabathe v Emfuleni Local Municipality and Others (J 511/2013) [2013] ZALCJHB 45.

Maphumulo Local Municipality v Mhlongo and Others (D1198/13) [2016] ZALCD 2.

Mbana v Mnquma Municipality 2004 (1) BCLR 83 (Tk).

Merafong City Local Municipality v South African Municipality Workers Union and Another (2016) 37 (ILJ) 1857 (LAC).

Mgoqi v City of Cape Town and Another, In re: City of Cape Town v Mgoqi and Another [2006] JOL 17349 (C).

Minister of Labour v Port Elizabeth Municipality 1952 (2) S.A. 522 A.D.

Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others 2014 (4) SA 437 (CC).

Minister of Defence and Military Veterans v Motau and Others 2014 (5) SA 69 (CC)

Mlokoti v Amathole District Municipality and Another (2009) 30 ILJ 517 (E).

Msengana-Ndlela v Nelson Mandela Bay Metropolitan Municipality (3282/2013) [2015] ZAECPHC 31.

National Treasury and Others v Opposition to Urban Tolling Alliance and Others 2012 (6) SA 223 (CC)

Nkonkobe Municipality v Water Services SA (Pty) Ltd [2001] ZAECHC 3

Premier of the Province of the Western Cape v President of the RSA, 1999 (4) BCLR 382 (CC).

Premier of the Province of the Western Cape v President of the RSA, 1999 (4) BCLR 382 (CC).

South African Municipality Workers Union and Another v Merafong City Local Municipality and Others [2013] ZALCJHB 64.

South African Municipal Workers' Union v Minister of Co-Operative Governance and Traditional Affairs [2016] ZAGPPHC 733.

South African Municipal Workers' Union v Minister of Co-Operative Governance and Traditional Affairs [2017] ZACC 7.

Stevens v Cape Agulhas Local Municipality and Others (A358/15) [2016] ZAWCHC 57.

Taung Local Municipality and Another v Mahura (CIV APP HC 8/15) [2015] ZANWHC 76.

Tshongweni v Ekurhuleni Metropolitan Municipality (2012) 33 ILJ 2847 (LAC).

Uthukela District Municipality vs Khoza and Others (D 735/2013) [2015] ZALCD 19.

PAPERS AND DISSERTATIONS

Atreya B & Armstrong A *A Review of the Criticisms and the Future of New Public Management* (Victoria University Working Paper Series, Melbourne, 2002).

Breslin E *Lessons from the Field: Rethinking Community Management for Sustainability* (a paper presented to Appropriate Practice Conference, East London, 1999).

Binza MS *An Evaluation of Policies for Attaining Excellence in Service Delivery in the Port Elizabeth Municipality* (unpublished Master's thesis, Port Elizabeth Technikon, 2000)

Brown J *Water Service Subsidies and the Poor: A Case Study of Greater Nelspruit Utility Company, Mbombela Municipality, South Africa* (Manchester, UK, CRC Working Paper No. 112, 2005).

Cameron RG & Milne C *Consociational Bureaucracy in the South African Public Service* (unpublished paper, Cape Town, 2008).

Craythorne DL *The Role of the Town Clerk in Municipal Government in South Africa* (unpublished MPub Thesis, University of Cape Town, 1977).

Craythorne DL *Metropolitan Local Government for Greater Cape Town* (unpublished PhD thesis, University of Cape Town, 1982)

Christensen T & Lægveid P *The Fragmented State – the Challenges of Combining Efficiency, Institutional Norms and Democracy* (a paper presented at the Centre for Research and Teaching in Economics (CIDE), Mexico City, 2004).

Dlamini MAV, Froneman ZJ & Clarke WSD *Transformation of The Roads Delivery Process and System: The Johannesburg Initiative* (a paper presented at the 20th Annual South African Transport Conference entitled "Meeting the transport challenges in Southern Africa", CSIR International Convention Centre, Pretoria, 2001).

Fourie C *Land and the Cadastre in South Africa: Its History and Present Government Policy* (a paper presented as a Guest Lecture at the International Institute of Aerospace Survey and Earth Sciences (ITC), Enschede, Netherlands, 2000).

Fraser-Moleketi G *Public Service Reform in South Africa: An Overview of Selected Case Studies from 1994-2004* (unpublished Master's thesis, University of Pretoria, 2006).

Green-Pedersen C *Market-type Reforms of the Danish and Swedish Service Welfare States: Different Party Strategies and Different Outcomes* (paper presented at the Meeting of the IPSA Section of the Structure of Governance, University of Oklahoma, 2001).

Hall D, Bayliss K & Lobina E *Water Privatization in Africa* (a paper presented at Municipal Services Project Conference, University of Witswatersrand, Johannesburg, 2002).

Hemson D *Beyond BOTT? Policy Perspectives in Water Delivery* (preliminary report to Rural Development Services Network, RDSN, 1999).

Hemson D *Privatisation, Public-Private Partnerships and Outsourcing: The Challenge to Local Governance* (a paper presented to the Local Government White Paper Research Process, Johannesburg, 1997)

Johnson CV *Outsourcing Basic Municipal Services: Policy, Legislation and Contracts* (unpublished LL.M thesis, University of the Western Cape, 2004).

Kickert WJM *Public Management in the United States and Europe* (a paper presented for the conference on the New Public Management in International Perspective, St Gallen, 2006).

Larbi GA *Overview of Public Sector Management Reform* (a United Nations Research Institute for Social development discussion paper 112, 1999).

Levin R *Building a Unified System of Public Administration* (unpublished paper presented to the SA Public Management Conversation, Gordan's Bay, 2004).

Mabuya B & Thornhill C *Local Government is Training in South Africa* (a report compiled on request of the Development Bank of Southern Africa, 1993).

Mafunisa MJ *Ethical Governance* (a training manual prepared for municipal councillors and officials for the University of Pretoria, 2001).

Mbeki T *State of the Nation Address* (delivered in a joint sitting of Parliament, Cape Town, 8 February 2008).

Mitchell D *Capacity Development for Partnerships in South Africa: Increasing Service Delivery through Partnerships between Private and Public Sector* (a report commissioned by GTZ on the needs assessment, 2007).

Monteiro O *Public Administration and Management Innovation in Developing Countries: Institutional and Organizational Restructuring of the Civil Service in Developing Countries* (a paper developed for the UNDP, 2002).

Muller JJ et al. *Civil Service Systems in Comparative Perspective: South Africa — A Country Study* (a paper presented at the Conference on Civil Service Systems in Comparative Perspective, School of Public and Environmental Affairs, Indiana University, 1997).

Mwebe H *The Impact of Privatisation on Socio-Economic Rights and Services in Africa: The Case of Water Privatisation in South Africa* (unpublished LL.M thesis, University of Pretoria, 2004)

Ntliziywana P *Professionalisation of Local Government: Legal Avenues for Enforcing Compliance with the Competency Framework* (unpublished LL.M thesis, University of the Western Cape, 2009)

Nyamukachi PM *Options for Urban Service Delivery in South Africa with Special Reference to the Tshwane Metropolitan Municipality* (unpublished Doctoral thesis, University of Pretoria, 2005)

Nzimande NB *High Staff Turnover: A Study for the Gauteng Department of Finance* (unpublished Master's thesis, UNISA, 2012).

Sehoa MF *Implementation of Performance Management System on the Performance of Municipal Section 57 Managers in the Capricorn District Municipality, Limpopo Province* (unpublished Doctoral thesis, University of Limpopo, 2015)

Sheoraj R *Overview of South Africa's Public Services: A Dialogue on Capacity Building Skills Readiness and Service Delivery* (unpublished Doctoral thesis, University of Pretoria, 2015)

Smit E *Factors Impeding Performance Management of Municipalities in the Western Cape, South Africa* (unpublished Doctoral thesis, Cape Peninsula University of Technology, 2015)

Syme H, Hazelton D & Pitso R *Pitso Evaluation of ODA for the Water and Sanitation Sector* (a Development Cooperation Report II for South Africa 1994–1999, prepared for the South African Department of Finance: International Development Cooperation, 2000).

Raghavan GN *New Public Management: Chennai* (Centre for Civil Society Research Internship Papers, 2004).

Steytler N, Ntliziywana P & De Visser J *A Study into Policy Intent and Practice as Regards Municipal Entities* (unpublished report commissioned by the Development Bank of Southern Africa, 2010).

Trevisan I *Independent Homelands: An Analysis of Selected Issues in South Africa-Homeland Relations* (unpublished Master's thesis, University of Cape Town, 1984)

Tsatsire I *A Critical Analysis of Challenges Facing Developmental Local Government: A Case Study of the Nelson Mandela Metropolitan Municipality* (unpublished Doctoral thesis, Nelson Mandela Metropolitan University, 2008)

Warren D *Merchants, Commissioners and Wardmasters: Municipal Politics in Cape Town, 1840-1854* (unpublished Master's thesis, University of Cape Town, 1986)

Zulu Z *Selecting an Appropriate Organisational Performance Management System for South African Municipalities* (unpublished MBA thesis, Durban University of Technology, 2006).

George X *Municipal Public-Private Partnerships for the Delivery of Sustainable Human Settlements: Opportunities and Constraints* (a paper the Southern African Housing Foundation International Conference, Cape Town, 2013).

NEWSPAPERS

Child K 'State to cap municipal manager salaries' *Mail & Guardian* 20 September 2011.

Kenny A 'The rise and fall of Eskom' *Politics Web* 18 March 2015

Le Roux P, Maphai V & Davis R et al. 'The Mont Fleur scenarios: What will South Africa be like in the year 2002?' (1992) 7(1) *Deeper News* 18

Magubane K 'Joburg metro set to take control of municipal entities' *Business Day* 30 January 2017

Magubane K 'Rapid turnover of directors-general worries commission' *Business Day* 22 Sep 2017

Mabena S 'Public spats and litany of governance deficiencies derailed axed Prasa Board: Minister' *Sowetan Live* 13 March 2017

Makinana A 'ANC won't give up on 'incompetent' cadre' *Mail & Guardian* 17 August 2012

Mashego P 'Joburg mulls absorbing municipal entities' *Business Day* 8 November 2016.

Molatlhwa O "'No more golden handshakes,'" says Minister Des van Rooyen' *Sowetan Live* 10 June 2016

Ntliziywana P & De Visser J 'The unexpected pitfalls of professionalising local government' *Politics Web* 28 June 2013.

SAPA 'New SAA board members appointed' *IOL Business Report* 28 September 2012

Skae E 'How governance failures messed up South Africa's rail agency' *Sowetan Live* 15 March 2017.

Sekhotho K 'City of Joburg approves integration of local SOEs' *EyeWitness News* 29 January 2017.

Whittles G 'Mashaba shows chief risk officer the door' *Mail & Guardian* 2 December 2016

INTERNET

Bender P & Gibson S *Case Study for the 10 Years of the Mbombela (Nelspruit) Water and Sanitation Concession, South Africa* (2010) available at <http://www.ppp.gov.za/LegalAspects/CaseStudies/NelspruitCaseStudyFinal20May2010.pdf> (Accessed 20 November 2016).

Buhl-Nielsen E & Pitso R *Danida Support to CWSS: North West Province – Pilot Project Descriptions, Resources and Lessons* (1999) available at www.dwaf.pwv.gov.za/directorate/waterservices/pds/danida (accessed 15 November 2016).

Cruywagen D 'Public-Private Partnerships Municipal Focus' 2016 available at <http://municipalfocus.co.za/public-private-partnerships/> (accessed 15 July 2016).

De Visser J, Steytler N & May A *The Quality of Local Democracies: A Study into the Functionality of Municipal Governance Arrangements* (2009) available at <http://www.mlgi.org.za/publications/publications-by-theme/local-government-in-south-africa/municipal-administration/The%20quality%20of%20local%20democracies%20A%20study%20into%20the%20functionality%20of%20municipal%20governance%20arrangements.pdf/view> (accessed 20 November 2016).

Deloitte 'Municipal Clean Audit Efficiency Series – Leadership Ownership' available at <http://deloitteblog.co.za/www102.cpt1.host-h.net/wp-content/uploads/2012/12/Municipal-Clean-Audit-EfficiencySeries-Leadership-Ownership.pdf> (accessed 13 February 2017).

Magome M & Sidimba L 'Gordhan throws municipal staff a lifeline' *Sunday Independent* 6 April 2014 available at <http://www.iol.co.za/business/news/gordhan-throws-municipal-staff-a-lifeline-1671752> (accessed 15 October 2016).

Ministry for Department of Cooperative Governance and Traditional Affairs *Back to Basics: Serving our Communities Better!* available at <http://www.cogta.gov.za/summit2014/wp-content/uploads/2014/10/LG-Back-to-Basics-Approach-Document.pdf> (accessed 15 November 2016)

Ministry for Cooperative Governance and Traditional Affairs *State of Local Government in South Africa: Overview Report - National State of Local Government* (2009) available at <http://www.gov.za/sites/www.gov.za/files/state-local-gov-rpt1.pdf>, 2009 (accessed 15 October 2016)

Ministry for Performance Monitoring and Evaluations *Twenty Year Review South Africa 1994 – 2014* available

[http://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20 YR%20Local%20Government.pdf](http://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20%20YR%20Local%20Government.pdf) (accessed 15 January 2017)

Municipal Dermarcation Board Survey (2005/5) Personnel Issue available at <http://www.treasury.gov.za/publications/igfr/2006/lg/6.%20Chapter%205%20-%20Personnel%20issues.pdf> (accessed on 23-07-09).

National Treasury (2004) available at http://www.treasury.gov.za/comm_media/press/2005/2005020201.pdf (accessed on 30-07-09).

National Treasury, Media Statement available at <http://www.gov.za/speeches/minimum-competency-levels-municipal-officials-effective-october-2015-30-sep-2015-0000>.

National Treasury PPP Unit *Public-Private Partnership* available at <http://www.ppp.gov.za/Lists/PPP%20Project%20List%20Master/Municipal.aspx> (accessed 15 March 2017)

Newsletter 29 - Why do most municipalities fail to deliver? *The municipal outreach project* available at <http://www.eumunicipaloutreach.org.za/newsletters/newsletter-29-2013-why-do-most-municipalities-fail-to-deliver-2013-10-july-2009/> (accessed on 08-07-09).

Ntliziywana P & De Visser J *Talking Good Governance Blog* (2014) available at <http://dullahomarinate.org.za/multilevel-govt/mlgi/talking-good-governance/sorry-sir-but-my-dog-ate-my-ipad-2013-minister-gordhan2019s-leniency-for-municipalities> (accessed 20 April 2017).

Powell D, O'Donovan M & De Visser J *Civic Protest Barometer* available at http://dullahomarinate.org.za/our-focus/mlgi/civic-protests-barometer-2007-2014/at_download/file (accessed 18 October 2016).

Powell D, O'Donovan M & Ayele Z et al. *Municipal Audit Consistency Barometer* available at http://dullahomarinate.org.za/our-focus/mlgi/municipal-audit-consistency-barometer/at_download/file (accessed 15 October 2016).

Powell D, O'Donovan M & Ayele Z et al. 'Operation Clean Audit 2014 – What went wrong and why?' available at <http://dullahomarinate.org.za/our-focus/mlgi/operation-.clean-audit-2014> (accessed 17 November 2016).

Price Water House Coopers 'Delivering the PPP promise: A review of PPP issues and activity' available at <https://www.pwc.com/gx/en/government-infrastructure/pdf/promisereport.pdf> (accessed 20 November 2015)

Rodrigues C 'Black boers and other revolutionary songs' *Mail and Guardian* 5 April 2010 available at <http://thoughtleader.co.za/chrisrodrigues/2010/04/05/on-revolutionary-songs/> (accessed 15 March 2016).

Rosta M 'What makes a New Public Management reform successful? An institutional analysis' available at http://www.maxwell.syr.edu/uploadedFiles/conferences/pmrc/Files/Rosta_What%20makes%20a%20New%20Public%20Management%20reform%20successful_An%20institutional%20analysis.pdf (accessed 15 August 2015).

SAPA 'Reduce dependence on consultants – Zuma' News24 24 March 2015 available at <http://www.news24.com/SouthAfrica/News/Reduce-dependence-on-consultants-Zuma-20150324> (accessed 15 April 2015).

SA Commercial Prop 'PIC's CEO Masilela resignation looms transparency speculation' SA Commercial Prop – News 20 June 2014 available at <http://www.sacommercialpropnews.co.za/m/property-companies-news/6846-pic-ceo-masilela-resignation-looms-transparency-speculation.html> (accessed 27 January 2017).

SOE Review Magazine 'The magazine for state-owned companies, entities and statutory bodies (2014) available at <http://www.soereview.co.za/> (accessed 27 August 2016).

