

Institutions and governance diagnostic

Towards a capable and developmental state

A plan's success lies in its implementation. South Africa's national development plan will require collaboration between all sections of society, and strong leadership by government. To bring about a capable developmental state that can give effect to the national plan, it is necessary to identify areas where government is failing to provide realistic strategies for overcoming limitations in state capacity. This chapter highlights the main challenges that need to be addressed.

The state is not a homogeneous entity: there are areas of poor performance, but also areas of strong performance. The challenge is to focus on what can be learned from these variations. The state is made up of many different agencies within the public service, local government and state-owned enterprises. The Constitution sets out the core functions of government and the division of responsibilities and powers between national, provincial and local government, positioning South Africa as a unitary state with specific powers assigned to provinces and municipalities, but where responsibility for policy and oversight is at national level. The Constitution is an "ambitious" document that provides "not just conventional liberal protections but also certain socio-economic rights – to adequate housing, health care, water, and so on – which the government was charged with responsibility for progressively realising" (Butler 2009: 112). The constitutional framework is underpinned by a Bill of Rights that provides transformative possibilities, and strengthens and protects the continued involvement of civil society. The Constitution is acclaimed by many as a progressive and aspirational document written in plain, gender neutral language. Public acceptance of the Constitution resulted not just from the content of the document, but also from the consultative process through which the Constitution was drafted. This included the Constitutional Assembly's public education and awareness campaign throughout the country, as communities in rural and urban areas were mobilised to participate in public hearings, make submissions on the content of the Constitution and attend meetings in villages and towns across the country. The challenge South Africa now faces is to ensure it continues moving forwards on delivering and protecting the socio-economic rights set out in the Constitution.

This chapter focuses on key cross-cutting issues in four thematic areas. We first look at two critical areas for building a capable state: a competent public service and accountability, including effective measures to counter corruption. This is followed by a discussion of provincial and local government, given the vital role they play in the delivery of essential services. The chapter closes with a discussion of economic governance and what is needed

to promote a more inclusive model of development. Under each thematic area we focus on the main obstacles to the state achieving national objectives.

Why South Africa needs a capable state

Every South African depends on the state to lay the foundations of a successful economy and stable society. Government cannot determine outcomes on its own, but few outcomes can be achieved without its effective leadership. Ultimately, in a society with deep social and economic divisions, neither social nor economic transformation is possible without an effective state:

- The state provides the institutions and infrastructure that enable the economy and society to operate; its ability to carry out these functions has a profound impact on peoples' lives.
- An effective state intervenes on behalf of the poor, the voiceless and the marginalised. The poor are most reliant on the state and have the most to lose when it fails to deliver.
- Clear, firm and workable recommendations to improve state capacity are essential if the national plan is to deliver lasting change. Many countries have great plans, but lack the capability, resources and political will to implement them.

South Africa's plan must be ambitious but realistic. A central objective of the plan must therefore be to enhance the capability and effectiveness of state institutions.

Building a developmental state

The call to build a developmental state resonates because the policies pursued since 1994 have not gone far enough in addressing the inequalities of the past and, as a result, the proceeds of growth have been unevenly shared. Broadly defined, a developmental state brings about rapid and sustainable transformation in a country's economic and/or social conditions through active, intensive and effective intervention in the structural causes of economic or social underdevelopment. This model has been applied to the success of East Asian countries from the 1960s in achieving rapid economic growth alongside improvements in human wellbeing; in the Indian state of Kerala to bring about improvements in human wellbeing (without comparable economic improvements); and in Scandinavia to realise full employment and establish welfare states. There is no prototype of a developmental state: each country has pursued a unique set of policies in response to its own set of challenges.

South Africa can draw on lessons from other developmental states to formulate policies that work best for South African circumstances. Compared with the position of East Asian developmental states in the 1960s, South Africa has a more established corporate sector, access to rents from natural resources and a stronger civil society, which means there are important areas of expertise outside the state that it can draw upon. This makes it particularly important for the state "to forge programmatic and reciprocal relationships with trade unions, business, community organisations and so on [as] democratic deliberations, including at the local level, will be central to enhancing the state capacity in addressing the country's developmental challenges" (Edigheji 2010).

The developmental state model positions the state at the centre of efforts to transform society. This requires more than just a political and public commitment: it requires a public service that can effectively lead the transformation process.

The transformative role played by the bureaucracy in developmental states has been attributed not just to the recruitment of highly skilled public servants, but also to a sense of corporate identity derived from common purpose. Public servants who stand aloof from their citizens are not likely to be effective; in fact, the effectiveness of the public service in developmental states rests on close connections between public servants and wider society, while avoiding capture by interest groups. Public servants require channels of information that enable them to design realistic policy, and to be made aware of (and then work to overcome) obstacles to implementation.

Above all, a developmental state needs skilful implementers. More than refined policy analysis, it needs people who can get things done. This is not an easy balance, but it is something that public policy can realistically work towards: “developmental/transformational institutions are established to overcome capacity weaknesses; hence, weak capacity of the state is not an excuse but rather a *motive* for constructing a developmental state” (Edigheji 2010).

The developmental state model raises two questions about governance that need careful consideration. First, what forms of state capacity are needed to formulate and implement policy? Second, how does the nature of state-society relations affect policy formulation and implementation? These are priorities that a long-term planning process can and must pursue.

Uneven performance and citizens' experiences of the state

Public confidence in the state is low. Claims of corruption and incompetence abound in newspapers and in all manner of public discussions. These views should be taken seriously; the pursuit of a national plan has to be a collective exercise and that requires increased public confidence in the state's ability to deliver. Yet it is also necessary to keep in mind the challenges of transforming the state following the transition to democracy in 1994, as well as the significant achievements since then.

Apartheid left South Africa with fragmented and unrepresentative institutions designed to concentrate resources on a small section of the population. Government has reformed these institutions, while working towards standardising and massively extending the provision of basic services.

The state has delivered in some key areas. Access to schooling and to clean water has improved dramatically. Provision of social grants reached nearly 14 million people in 2010, up from 2 million in 1996. One of the most rapid increases was in the provision of electricity: in 1993, 51.9 percent of households had electric lighting, and by 2004 this figure had risen to 80.2 percent (Butler 2009).

However, in many areas service delivery has fallen dramatically short of expectations. This is especially true in some of the poorest parts of the country. Almost two decades after the end of apartheid, many of the poorest sections of society lack access to the basic services they need to provide a secure life for their families and opportunities for their children. These services are no longer denied on the basis of race, but rather because people live in areas where the state fails to meet its constitutional obligations. In practice, access to public

services is still determined by the overlapping categories of geographic location, race and wealth.

Variations in state performance have a dramatic and negative impact on poor and historically disadvantaged communities, both in terms of quality of life and access to opportunities. Tackling the areas where the state is failing to deliver is the greatest challenge for the viability of a national plan designed to deliver a better future for all South Africans.

Identifying opportunities for enhancing state performance

A failure to deliver is not only about a lack of money; indeed, the worst-performing institutions often fail to spend the resources allocated to them. While policy often focuses on gaps in financial provision, gaps in administrative capacity are equally important. Effectively addressing these issues can deliver major benefits by narrowing the gap between policy formulation and implementation.

Improving the capacity of poorly performing institutions is not an easy task. When poor performance is highly visible it is tempting to jump to quick solutions and set up new institutional structures. Too often these start from a standardised prescription of an ideal governance structure, as though one model could be rolled out across the world. Such an approach is likely to be disruptive, costly and ultimately ineffective. Only a small part of the way an institution operates is ever codified in formal rules. A wide range of informal practices are as, if not more, important for the way government institutions operate, yet these are neglected in most formal policy prescriptions.

An institution's legacy, the perspectives and attributes that staff bring to their jobs, and the way in which it is viewed by citizens are just as important as formal rules. Staff typically carry out many functions not specified in their contracts; they draw on their experience and their formal training; and they interact socially, which informs their attitudes to their work. How citizens experience the state is shaped by who they are and where they live, by their previous interactions with government, and by their social and economic status. The state does not exist in isolation from the people it serves.

To understand where the state succeeds and where it falls short, it is helpful to look at how particular agencies operate in specific locations. Reforms are more likely to be successful when they are tailored to context. A detailed analysis of the constraints and opportunities faced by different agencies and their staff will inform an unwavering and pragmatic commitment to improving the performance of public institutions. To achieve this, it is necessary to look at the way institutions operate in practice.

A competent public service

Providing high-quality public services is the single most important thing that can be done to overcome the inequalities of apartheid. Education, health, social security and infrastructure services enable people to develop their capabilities, enhancing both their quality of life and economic opportunities available to them.

To understand why service delivery has frequently fallen short of expectations, it is necessary to look closely at the performance of the public service. Performance depends on the way agencies are structured and the way individuals work within those agencies. This section examines some of the key factors affecting performance, including the instability created by frequent changes in both policies and leadership; the division of responsibilities

between different agencies; the need for public servants who are both in touch with society and bound together by a sense of professional common purpose; and the overarching issue of effective leadership.

The challenge of change

The public service faced immense challenges after 1994, centred on three overarching priorities:

- A system that determined access to services on the basis of race had to be converted into one where all sections of the population enjoyed equal access to public services.
- Apartheid delivered first-world services to white South Africans and services that deliberately constrained capability development for the majority black population. It also used the state as a vehicle for employment creation to empower whites and disempower blacks. Some form of affirmative action was therefore essential to ensure the public service became more representative.
- The apartheid state was characterised by fragmentation of government structures through the creation of Bantustans and so-called self-governing territories, as well as separate ministries serving different racial groups. To develop a coherent system that could pursue national rather than racial objectives, large-scale restructuring was required.

Cutting across these three essential dimensions of change are multiple initiatives to reform governance of the public service. This task, unlike the three mentioned above, is not driven by a compelling moral case, so it has attracted much greater disagreement. Arguments have been made for nationalisation or privatisation, for different management models, for devolution or centralisation. These debates can be influenced by the priorities of competing interest groups, by ideology or by obstacles faced by the public service. The debates need to focus on how the state can best deliver on its priorities. Yet they should also be approached with caution. South Africa has experimented with many such initiatives resulting in unintended consequences of uncertainty and instability in some areas. Transforming the public service remains incomplete, yet perpetual change is deeply destabilising. Some departments, such as the South African Police Service, have been in a perpetual state of restructuring. In most cases, not enough time was allowed to test the effectiveness of changes before further changes were made. The most radical change in public policy would be to avoid an endless stream of new initiatives in favour of a relentless focus on improving the way the public service operates to narrow the gap between policy and practice.

The temptation of the quick fixes and policy fads

Policies are implemented by organisations and the people working in them. Although this is obvious, it is too often forgotten as policy makers seek quick ways to overcome complex problems. Unfortunately, quick fixes are more likely to do lasting damage than to provide solutions. There is no getting around the complex challenge of enhancing institutional capacity.

For example, it is tempting to focus on individual initiatives to address specific health problems when dealing with the complex challenges involved in making the health system operate more effectively. While these programmes sometimes bring short-term benefits, the creation of parallel health systems has negative long-term consequences. A multitude of separate initiatives can exacerbate the demands on staff time and lead to “transformation

fatigue” as staff come to expect that initiatives will be transitory and quickly replaced by the next project. Isolated initiatives also divert attention from the overarching need to strengthen the main health systems, without which neither individual health initiatives nor wider health priorities can be implemented effectively (Schneider et al 2007).

Formal reforms moved rapidly in the education sector with the formation of one national department, provincial departments and districts. Budget allocations were adjusted and a new curriculum introduced. These changes were necessary for education to serve democracy, but there remains an enormous legacy of inequality. It is harder for children from deprived backgrounds to perform at school, and yet schools with the least resources and the most performance problems are concentrated in the poorest areas including the former Bantustans. Data presented in the Material Conditions chapter shows that the largest backlogs in school infrastructure are in the Eastern Cape, followed by KwaZulu-Natal and Limpopo. These three provinces account for 85 per cent of schools without water and 81 per cent of schools without electricity.

These problems are not simply about funding: they are also about institutional structures. Data shows that South Africa performs poorly on educational outcomes compared to the level of expenditure. Yet the underlying institutional reasons for these wide variations in the standards of education were ignored in 1998, when the new curriculum introduced a model of “outcomes-based education” that would have been ambitious in even the best-functioning school systems.

The new curriculum replaced the earlier system, which emphasised rote learning, with an outcomes-based approach that was intended to encourage students to operate as independent learners. The goal was to promote innovative teachers and free-thinking students. In practice, it massively stretched the resources and capabilities of schools, especially those in the most deprived areas. Outcomes-based education required skilled, creative and resourceful teachers, with small classes, adequate materials and longer school days. This might be possible in a minority of schools in more affluent areas, but it is far from the reality in most schools, especially those attended by children from poor households.

Outcomes-based education was perceived as a failure – it placed new burdens on teachers without enhancing student learning. This was a result of the failure to tailor the approach to existing capabilities or, more ambitiously, develop a workable plan for building the capacity of teachers and schools. This experience demonstrates the dangers of adopting approaches used elsewhere without carefully considering their suitability for South Africa. Indeed, elsewhere this education model had been restricted to vocational training, while a similar effort to implement it across the board in New Zealand proved unsustainable (Marais 2011). And outcomes-based education took precedence over more urgent priorities, such as upgrading infrastructure, enhancing teacher skill levels, addressing teacher absence or lateness, and the need for more teaching time. Addressing these fundamental issues could have helped lay the institutional foundation for a more gradual shift towards a system emphasising an outcomes-based vision of developing the critical capacities of the individual learner.

A similar issue has arisen in the water sector, where there has been “a tendency to translate legislation into overcomplicated and resource-intensive implementation strategies, such as the reserve systems, classification systems and water allocation procedures” (Schreiner et al 2009). The focus has been on “designing highly sophisticated water management strategies and then attempting to build the capacity to implement them”, but “this approach has not

been successful” as “the lack of capacity has impacted on the state’s ability to issue licences and to control water abstraction and discharge”. The experience of the water sector illustrates how difficult it can be to build capacity. It takes time and sustained effort. The governance of public service provision is inherently complex, and introducing new and complicated governance systems only makes the challenges more difficult.

The focus on quick fixes diverts attention from the complex institutional issues that need to be addressed. Searching for quick fixes is likely to be unproductive and frequently damaging, stretching already overburdened staff, undermining morale and weakening institutions that are still consolidating the major transformations they have undergone. It is not easy to resist the temptation for a quick fix. A major challenge for long-term planning is how to focus the attention of all parties on the need for long-term transformation, rather than short-term fads. This does not mean that organisational architectures should not be redesigned where appropriate, but it does mean that public policy needs to be informed by a healthy scepticism about whether this, on its own, will be sufficient.

Fragmented responsibilities

The delivery of public services requires appropriate infrastructure, skilled personnel, functioning institutional structures and competent leadership. None of these dimensions can function on its own, and shortcomings in any one of these areas can have a knock-on effect on the others. Karl von Holdt’s description of the difficulties that arise when a lift in a large public hospital stops working provides an indication of these challenges:

This meant that nurses had to carry meals and laundry, as well as patients, up and down stairs. On occasion, corpses too had to be manoeuvred down the steps. This problem resulted from the failure of the Department of Public Works to put in place a lift maintenance contract. This situation persisted for six months, as the provincial health department and Public Works were in dispute over the tender process and to whose budget the item belonged. In the meanwhile, the nurses (not to speak of the patients) continued to battle with the consequences (von Holdt 2010b).

As this example illustrates, the delivery of basic services requires different sections of the public service to work together. Depending on the service, effective collaboration is needed between departments, layers of government, public servants and political leaders.

When the different arms of government work together complex plans can be implemented reasonably well. For example, the social security system has been cited as an example of what can be achieved when strong and stable leadership, constitutional provisions, the building of appropriate institutions and budgetary prioritisation are brought together effectively.

Constitutional or legal provisions are an important first step, but they are not sufficient. The Constitution stipulates that access to health care is a right, but the health care system has remained deeply divided with per capita expenditure in the private sector being much higher than the equivalent public sector spending. Proposals for national health insurance seek to bring these different worlds together. However, its effectiveness will depend on improvements in the standard of public health care. This is as much about making the existing institutions work better as it is about levels of funding.

After 1994, the institutional structure of the health system changed rapidly, as 14 separate bodies were consolidated into one national department. Responsibility for health care is divided between national, provincial and local government, with the most basic administrative component being the district health system. However, district health structures “could not be properly established until local government boundaries were finalised in 2000” (Schneider et al 2007). Concerns about the capacity of local government led to responsibility for district health systems and primary health care being assigned to the provinces, which can delegate responsibility to local government if they so choose.

Although the 2005 National Health Act provides an overarching legal framework, practical difficulties continue to affect institutional relationships, particularly between provincial administrations and individual hospitals. Analysts have identified a “disjunction between those with authority to make decisions and those tasked with running the institution [which] undermines accountability for decisions (or failure to make decisions)” (von Holdt and Murphy 2007). While the Department of Health is formally responsible for policy, provincial departments may reallocate funding according to their own priorities, and the provincial treasury may even take money out of the health budget to fund other programmes. Management functions and financial resources are concentrated at the provincial level rather than being devolved to individual hospitals. For example, Chris Hani Baragwanath Hospital, which has a budget of R1.4 billion, has neither a bank account nor a chequebook.

While the problems in the health sector are specific, they do illustrate a pattern that affects collaboration in many areas of government activity. For example, the South Africa Institution of Civil Engineering (SAICE) notes that the relations between different sections of government can create problems for constructing and maintaining infrastructure, leading to “competing priorities or non-sequential project completion because of a lack of coordination across departments”. The institute cites as an example “the discontinuity between the recently completed Gauteng Freeway Improvement Project and the as yet incomplete public transport initiatives for the province” (SAICE 2011). Greater clarity in the division of responsibilities cannot improve service delivery on its own, but, as part of a wider set of measures, it can help managers and staff focus on providing services of a consistently high standard.

Professionalism

International evidence suggests that one of the most important factors in the state’s ability to pursue its objectives and effectively transform society is the people who work in the public service. It is vital that public servants have the skills they need to do their jobs. This seemingly straightforward statement raises the much more challenging question of the types of skills most needed. Some specialist roles require a more precise skill set than others. For example, doctors or engineers need expertise in their specialist field or subfield, while administrative or policy positions require individuals to have appropriate skills, but a specific qualification is less likely to be a prerequisite. Formal qualifications alone are insufficient for good performance. There are two other equally important variables:

- A sense of common purpose is essential. Public servants will be more effective when they feel they are working together in pursuit of a set of common objectives.
- Public servants cannot be too detached from the communities they serve. If public servants are drawn from a narrow elite, they are unlikely to fully

understand the needs and interests of the wider population to be able to deliver services appropriately.

Professionalism is therefore not just about training, but also about a sense of identity. A key objective should be to foster this identity and sense of purpose through creating working environments where commitment and passion is not only encouraged, but expected. This is particularly challenging when staff are poorly managed, overstretched or have too many competing demands.

Obstacles to building a sense of professional common purpose

A professional sense of common purpose is less likely to emerge when staff feel overstretched, are subject to too many competing demands or find that too many obstacles are put in their way. A Personnel Expenditure Review conducted in 2007 by the Department of Public Service and Administration showed that the public service is short of skilled professionals, especially in health, policing, infrastructure planning, engineering, finance and information technology. This problem has been compounded by a significant decline in lower-skilled jobs as “government has not employed lower-skilled workers (e.g. porters, messengers), which has resulted in professionals undertaking routine tasks” (Hassen and Altman 2007). The study cited government figures that “over 1 million jobs are needed to meet the skills need in the public service” and found that “personnel as a percentage of total consolidated spending ... decreased from 40.8 (1995/06) to 31.8 (2006/07)” as “government expenditure [grew] much more quickly than personnel expenditure”.

According to analysts, this has created difficulties in the health system due to “the problems of organisation, personnel and systems” (von Holdt and Murphy 2007). As more people became dependent on public health systems, the number of professional nurses declined. A recent study on primary health care conducted by the Public Service Commission (PSC) found that “officials in 81 percent of the clinics visited informed the inspection teams that they often did not have enough staff on duty to handle the number of patients” (PSC 2010b). When nurses feel overworked and frustrated, they call for higher salaries to compensate for the difficult working environment. Higher salaries leave less room to hire additional nurses, which leads to further frustration and more calls for salary increases. A chief professional nurse explains how the pressure of having to carry out a wide range of tasks due to the lack of support staff means that:

we always have to rush: we wash, we medicate, we move on. You miss some things. You cannot listen to the patient. You cannot be broad and implement things that would improve health care and staff morale. You cannot apply your knowledge and improve the unit. ... The pressure leads to absenteeism, as nurses we become demotivated and no longer have empathy. It affects the patients. You cannot have tea, you cannot eat. At the end, you suffer. You become sick. (cited in von Holdt and Murphy 2007)

Morale suffers in such challenging circumstances. To address low morale in the 1990s, the police service improved pay levels through grade inflation and salary increases. However, “salary growth so far outstripped the growth of the police budget as a whole that a moratorium had to be put on new enlistments, existing staff had to be encouraged to leave, and the budgets for new vehicles, vehicle repairs and even petrol had to be looted” (Altbeker 2005). This was not good for staff morale. While crime levels increased, the number of police declined by 20 percent from 1994 to 2000. Since then, however, “police management,

assisted by a rapidly growing budget, has executed a remarkable, but largely unacknowledged, turnaround” (Altbeker 2005). Police numbers grew by nearly a third between 2000 and 2005, accompanied by significant investments in new equipment.

Additional problems have been created by the decision to scale-down or close training institutions such as teacher and nursing colleges, which has eroded the state’s role in producing skilled professionals. This also applies to the training of engineers, planners and artisans. At the local government level, past practices of engaging professional institutes in the training, selection and development of senior managers have diminished, while bodies like the Institute of Municipal Finance Officers and Municipal Engineers have little influence over increasing capacity where it is most needed. The result has been a reduction in the number of professionals available to the state, and a looming crisis in the generational reproduction of professional expertise as the ageing cohorts continue to leave the system. This skills deficit has an adverse impact not only on front-line service delivery, for instance in schools and hospitals and Home Affairs offices, but also on the ability of government to engage in long-term planning, coordination across institutions, run efficient operations, ensure adequate maintenance of infrastructure, establish organisational systems and routines, and manage personnel and industrial relations. Information systems, human resource management and financial management are particularly weak areas, in addition to technical expertise such as engineering and town planning.

If delivery is to be improved, public servants need the time to take pride in their work. A clear, sensible human resources plan is required to increase staff numbers and improve working conditions.

Nowhere is the need for a sense of professional common purpose greater than in the education sector. Many black teachers were involved in progressive movements against apartheid. The South African Democratic Teachers Union emerged from the resistance movements formed during this period. Today, there is agreement on the need to improve education outcomes, but little common ground between government and teachers unions on how this objective should be achieved. The challenging conditions in which teachers work and the deleterious effects of frequent new initiatives on staff morale need to be understood. Improving educational standards requires that teachers, school principals, policy makers and unions work together, drawing on each party’s distinctive areas of expertise and uniting around the common goal of improving educational standards, especially in schools serving the poor.

Building this sense of common purpose within the public service is made more difficult when the lines of accountability blur the distinction between the public service and its political masters. Public servants are employees of the state, and account to elected leaders. The nature of this accountability should be managed in such a way that it does not undermine the distinction between party political imperatives informed by the popular mandate and the professional non-partisan obligations of the bureaucracy. The potential to forge a sense of common purpose and collective professional identity requires that this distinction is kept clear. Yet senior public servants report to an elected minister, not to a head of the public service. This creates scope for undue political interference in the appointment of senior staff, including deployment of cadres to posts for which they are not qualified, and political intervention in operational matters.

A study carried out by the PSC (2008) identified that this can lead to a high degree of instability, as heads of departments expressed a sense of insecurity in their jobs, believing

that they would not survive a change in political leadership. Research suggests that the impact varies between departments. In the South African Management Development Institute “an ever-changing leadership of several heads and acting heads in a dozen years” diverted attention away from the agency’s long-term objectives with “each new leader [introducing] a new set of strategies and approaches” (Mc Lennan and Orkin nd). In the case of housing and water services, “political instability, politically driven appointments, and interference in the work of the public service officials, in turn destabilises public service organisation, and undermines the planning, decision-making and skills of the administration” (von Holdt nd). This has also given rise to a perception that senior civil servants are often selected because of their political connections rather than their competence or prior experience. It will inevitably be difficult for departments to forge a sense of professional common purpose if their heads of department are not the best people for the job.

Building a representative public service

The apartheid system did not simply use the state to deliver services unequally: it also used the state as a vehicle for employment creation to empower (mostly male) Afrikaners and narrow the gap between Afrikaans and English-speaking whites. Prior to 1994 “more than 94 percent of senior posts in the public service were occupied by white people” (Naidoo 2008). Africans were concentrated in the lower rungs of the public service; those occupying senior posts were generally in the former Bantustans or departments of “native affairs”.

Affirmative action has focused on increasing the proportion of black people, women and people with disabilities in the public service. Some form of affirmative action was essential to ensure the public service became more representative of the population. The Constitution stipulates a requirement for affirmative action:

Public Administration must be broadly representative of the South African people, with employment management and personnel practices based on ability, objectives, fairness and the need to redress the imbalances of the past to achieve broad representation.

The 1998 White Paper on Affirmative Action in the Public Service argued that “achieving a broadly representative public administration was a key to restoring ‘legitimacy’ and ‘credibility’ in the eyes of the majority of South Africans” (Naidoo 2008). The White Paper also underlined the importance of linguistic representation, and the need for public servants to have an in-depth understanding of the communities they serve, particularly historically marginalised communities. Applied properly, affirmative action can enhance the performance of the public service.

Substantial progress has been made in representation. By 2004, the composition of the public service broadly reflected the country’s demographics and nearly 75 percent of all public servants were black. In 1995, only 7.9 percent of public service managers were female, but this figure “had more than trebled by 2004” (Naidoo 2008) and by 2010, 34 percent of senior management positions were held by women (DPSA 2010). This does not mean the composition of the public service has fully overcome the legacies of apartheid, as African representation is higher in the more junior posts. Even so, by 2006, nearly 60 percent of senior managers were black, and African representation in senior public service posts has increased more rapidly than it has in the private sector (Naidoo 2008).

The effects of affirmative action must be considered in the context of some of the challenges outlined above, including massively increased expectations of public service delivery,

organisational restructuring, and a reduction in the number of public servants between 1993 and 2006 by more than 150 000 (Naidoo 2008). Importantly, affirmative action has helped create a black middle class. It has also made the public service more representative, in racial terms, of the population it serves. However, the gap between the salary levels of public servants and the average population means that a public service that is increasingly racially representative may still become economically detached from the majority of the population. This challenge requires careful consideration.

The difficulties with affirmative action do not relate to the policy itself, which is an essential if limited tool for transformation. Problems arise when other aspects of the public service are operating imperfectly:

- Affirmative action requires good processes of selection, mentoring, training and career development. When managerial processes do not operate effectively there is a danger that affirmative action reduces the incentives to work hard and improve performance. This negatively affects everyone, but it has the most adverse effect on the poor, predominantly black population who are most dependent on public services.
- Poor or no selection criteria can lead to tokenism, nepotism and non-performance, demoralising incumbents and creating negative attitudes towards affirmative action among non-beneficiaries and staff in general. This is a failure of implementation.
- In some cases, posts are left unfilled if there are not enough qualified black people. Posts can be left vacant for years, or people are appointed to posts for which they are not qualified. Both outcomes undermine the performance of government departments and, ultimately, service delivery.

If the law is applied correctly, people should not be appointed if they lack the correct skills, experience or qualifications. Similarly, it is unjustifiable for key posts to be kept vacant for long periods because an appropriate black person cannot be found. The deeper problem lies in the education system, which is failing to provide adequate levels of education to historically marginalised groups. A more effective education system would allow affirmative action to coexist with competitive recruitment by increasing the numbers of qualified black people applying for posts.

Affirmative action will be most effective if the public service is constantly reminded that the objective is to improve representation, performance and especially service delivery to the poor. The danger is that by contributing to the creation of a small black elite, affirmative action could divert attention from the wider policy priorities that would ultimately have a far greater impact on racial inequalities. These challenges can only be addressed if affirmative action is seen as part of a wider process of societal transformation that requires an effective and representative public service.

Leadership

Leadership is central to enhancing state capacity. Formal rules and procedures must be implemented, but implementation is often far from simple – it may involve overcoming vested interests or challenging conventional methods. And a leader is not simply an enforcer of rules. A leader adopts a strategic vision, motivates and unites people, reconciles competing priorities and protects staff from excessive pressures. Leadership plays a key role in shaping the strategy, ethos, values, culture and performance of any organisation.

Good leadership is not just about technical skills or management expertise. Complex technocratic systems such as the centralised performance management system have been used to focus attention on formal procedures, but these systems are overly complex – administrators do not have the skills to use them and managers do not have the time. This leads to “staff demoralisation and disputes rather than enhanced performance” (von Holdt and Murphy 2007). Altbeker argues that “formal performance management systems frequently have unintended consequences, and may create perverse incentives for police officers to do the wrong things, such as manipulating statistics instead of policing crime, concentrating on easy cases rather than difficult ones” (paraphrased in von Holdt nd). As a result, “virtually the only number the management of the Police Service seems to care about is the amount of crime recorded at its police stations” (Altbeker 2007). Improving staff performance does not require complex systems; it requires clear lines of accountability, and engaged managers who seek to understand and overcome the challenges faced by their staff.

Leaders are responsible for delivering services more strategically and effectively. They are also faced with complex and interconnected problems, including climate change and carbon constraints, transnational terrorism and crime syndicates, international migration and rapid urbanisation. While the nature of these challenges varies, all leaders have to respond through organisations, and this requires them to draw on the collective capacity of society as a whole by forging interactive relationships and arrangements across different sectors and institutions. However, as highlighted above, innovation has tended to take the form of isolated initiatives that can contribute to increased turbulence in the public service. It is also tempting to resort to displacement activities, such as endlessly studying the problems, ignoring them or providing inadequate resources.

Leaders need to have more than technical expertise. They need to be able to identify opportunities and constraints, and find the best ways of working within different organisational strategies and cultures; they need to build cohesive leadership teams; they should be role-models for the values and culture of the organisation to reinforce the sense of professional identity and common purpose; they need to be visible and accessible, to both the public and their workforce, through regular engagements and genuine, meaningful interaction. To develop and recruit such leaders requires attention to a range of issues, including leadership training and development, how leaders are selected, how their performance is managed and how leadership transitions are handled at both national and subnational levels.

Promoting accountability and countering corruption

For a more effective state, there must be accountability. We have already addressed the need to improve public confidence in state structures, and this requires a close look at the existing forms of accountability. In broad terms, there are two forms of accountability:

- The standard hierarchical form. Junior public servants are accountable to their superiors; the public service is accountable to its political masters who are, in turn, held accountable by the electorate. Although the political-administrative interface is a vital component of democratic accountability, it can also undermine formal mechanisms where there is excessive political interference in the day-to-day operations of departments.
- The bottom-up approach to accountability. Citizens have mechanisms for holding public officials accountable at the level at which services are

delivered. This model can operate through a range of local-level committees, decentralised political structures or civil society organisations.

These two contrasting approaches work best in tandem. Bottom-up approaches are only likely to be effective where there is high-level commitment to citizen engagement. Citizen groups cannot be expected to have the time or resources to fulfil a complete monitoring role of the public service. They can, however, draw attention to shortcomings, highlighting issues that require attention. Senior public servants and ministers cannot realistically know everything that goes on in their departments, and citizen engagement can play an important role in bringing issues to their attention.

Accountability in the public service

Improving the consistency of public sector performance requires effective mechanisms for ensuring accountability of public servants to their managers, of senior managers to their political heads and to the citizens they serve. Yet, accountability mechanisms are frequently not implemented as managers seek to avoid taking responsibility, while being reluctant to devolve authority to those below them. Staff and trade unions also engage in practices that challenge or undermine the authority of managers. The result, in many cases, is the erosion of accountability and lines of authority, with an adverse impact on organisational performance. The absence of a process for consequences management is largely due to the lack of a coherent accountability framework which links job descriptions and responsibilities, performance management and bureaucratic purpose.

Accountability mechanisms can play an important role in reinforcing a sense of common purpose by clarifying core functions, and facilitating interaction between public servants and communities. However, there is also a danger that excessive accountability measures place an undue burden on already overstretched departments. When these measures divert attention from core tasks, they may become counter-productive and undermine morale. Accountability should be a two-way engagement – public servants are held accountable where they fall short, and effective sanctions are in place if necessary, but adequate opportunity is also given to voice concern about the obstacles they face in carrying out their work.

To improve performance throughout the state, government has identified 12 outcomes that are the focus of its activity, and which are monitored by the Department for Performance Monitoring and Evaluation in the Presidency. The objective is to improve interdepartmental collaboration and increase the accountability of ministers to the President by requiring each minister to sign a delivery agreement. If these objectives are set out and monitored in a straightforward, transparent and easily accessible way, they can help both political leaders and citizens identify where government is falling short of their expectations. However, measures of performance can only deliver results if they create the scope for a case-by-case analysis of the underlying reasons for strong or weak performance.

Political accountability and parliamentary oversight

In theory, ministers and Cabinet are collectively answerable to the legislature; in practice, this line of accountability is weak. In many political systems the strength of political parties means that accountability to the party becomes more important than accountability to the electorate as “the past 100 years have seen a mostly irreversible growth in the power of the executive branch around the world” (Butler 2009). South Africa is no exception. Capacity is often inadequate for scrutinising complex legislation; for example, at times the Parliamentary

Portfolio Committee on Minerals and Energy has only had access to one researcher (EGISA 2010: 23). Effective parliamentary oversight of the executive is necessary to maintain the democratic order. Improvements in parliamentary oversight are unlikely to be achieved through changes to formal structures. As Butler argues, “ultimately any executive is held to account not by careful institutional design but by the efforts of a country’s citizens using the full range of its political institutions and associations” (Butler 2009). This means increasing the political leadership’s acceptance of the legislature’s role in holding government to account, and “the research and analytical resources available to individual committees should be enhanced, and Parliament as a whole could be provided with at least a minimal capacity to formulate, cost, and analyse complex packages of integrated policy alternatives”.

Parliament has produced extensive and progressive legislation, but certain actions by individual members of Parliament have tested the ability and capacity of Parliament to protect its integrity. It is encouraging to note that for the first time, the Ethics Committee recently called for a probe by the Public Protector into the behaviour and actions of a member of the executive. Strengthening Parliament’s ability to oversee both its members and the executive could increase public confidence in Parliament and enhance democratic accountability.

Judicial oversight

The judiciary is responsible for upholding the laws of the country and for ensuring that all laws passed by Parliament comply with the Constitution. The Constitution provides for a separation of powers between the executive, legislature and judiciary and introduces various institutional checks and balances to prevent the abuse of state power. This provides the judiciary with an important and constitutionally protected role to play in holding government to account.

The Constitution introduced two central reforms of the judiciary: the establishment of the Constitutional Court and the Judicial Services Commission (JSC). The inclusion and configuration of these institutions were informed by emerging best practices in other constitutional democracies based upon the respect for human rights, the rule of law and in recognition of the role of an independent judiciary in upholding that order. The JSC was established through section 178 of the Constitution as an independent body to advise the government on any matter relating to the judiciary or the administration of justice, particularly in relation to the appointment and removal of judges. The JSC is composed of representatives from the judiciary, executive and legislature along with representation from the legal and academic profession.

The Constitutional Court was established as a separate entity to the existing court system and as a model for the future development and reform of the lower courts. Writing on the judiciary in South Africa, Penelope Andrews stated that “it may not be an overstatement to suggest that the South African Constitutional Court is currently viewed as one of the pre-eminent constitutional courts for interpreting international legal principles, particularly as those pertain to human rights” (Andrews 2008: 5). She goes on to add that the Constitutional Court has achieved a solid reputation and an impressive degree of credibility amongst South Africa’s leaders and citizens. Its judgements have been seen to be central to the transformative project of nation-building in South Africa.

The Constitution does not provide a blueprint for a transformed society nor does it stipulate the precise processes for achieving it. Instead it provides a set of institutions, rights and values for guiding processes of social change. Sandra Liebenberg describes the Constitution

as simultaneously backwards and forwards looking. The backward looking nature of the Constitution is aimed at redress of past injustices whereas the forward looking nature facilitates transformation of society.

The role of the judiciary and the courts in particular, should be viewed in this transformative context. South Africa's transformative constitution requires moving beyond the "bounded, static concept of the separation of powers doctrine" as a degree of cooperation is essential for empowering government to take the necessary developmental and redistributive measures envisaged by the Constitution, particularly in relation to socio-economic rights (Liebenberg 2010: 68). This requires a relationship of accountability, responsiveness and openness between the three branches. Proponents of this position refer to a "constitutional dialogue" between the different branches of government: "a dialogic, dynamic model of the separation of powers doctrine implies a nuanced role for the judiciary in the enforcement of socio-economic rights" (Liebenberg 2010: 70). Constitutional jurisprudence has been evolving and, as it has done so, the dynamic interpretation of the doctrine of the separation of powers has found resonance in the South African judicial system. This evolution of Constitutional jurisprudence creates the scope for the judiciary to play an oversight role in relation to whether the state is adequately fulfilling the transformative agenda set out in the Constitution.

Citizen participation and participatory accountability mechanisms

In recent years, citizens have resorted to protest action, sometimes violent, to draw attention to their demands. Many communities are frustrated and feel their voice is not being heard through formal channels. There is an urgent need to create more constructive forms of engagement, in which citizens feel there is a genuine desire to listen to and act on their concerns.

After 1994, entities such as community policing forums, drug local action committees, ward committees and school governing bodies were established to engage citizens. Many communities also have health committees that provide input into improvements in health services at a community level. These structures, however, should not be seen as extensions of government departments, but as forums which genuinely represent the interests of the community, especially the most vulnerable sectors of society. Public consultation is an essential aspect of law making, and one which elicits the active engagement of varied interest groups. National and provincial *izimbizo* have had a prominent place in public engagement in the past decade.

The growing number of protests across the country, however, makes clear that state-citizen relations have to improve to avoid instability. Government has to be genuinely accountable to its citizens, to encourage and facilitate citizen participation and show it values the views of citizens. One study found that "the majority of municipalities have thus far failed to give effect to the principles of Batho Pele and participatory democracy" and identified growing "public frustration with what are perceived to be meaningless exercises in participation through ward committees, public meetings (known by the isiZulu and isiXhosa term *imbizo*) and the like" (Tapscott 2007). A recent report on accountability in the public service reaches a similar conclusion, stating that "preliminary research findings suggest that ward committees are failing to enhance participatory local governance" (World Bank 2011).

Performance of ward committees varies significantly, and there is scope to learn from those that operate most effectively. However, without clear feedback mechanisms and genuine accountability, these efforts may appear superficial and, in turn, state-citizen relations may

become increasingly characterised by an atmosphere of mutual distrust. The 2009/10 Annual Report of the DPSA states that the “development and implementation of a Batho Pele intervention strategy was not undertaken due to focus being placed on [other initiatives]” (DBSA 2010: 5). This illustrates how developing a plethora of separate initiatives can undermine state capacity to implement existing policies.

The media has a vital role to play in picking up on, analysing and reporting citizen protests, and some go beyond this to put issues on the national agenda, and help to inform citizens about their rights. Civil society also plays an important role. One of the most widely cited examples of this is the role of the Treatment Action Campaign in pushing for the provision of antiretrovirals to people living with HIV. Many campaign groups were formed during the struggle with close ties to political parties, leading some to argue that they “have remained unwilling to confront and criticise” government (Butler 2009). However, he argues that “the past seven or eight years ... have seen a renaissance in localised political campaigning through the creation of networks of community-based mass movements” that have been prepared to oppose government policies.

The legitimacy of unelected bodies to speak out and confront government is sometimes questioned, but it is worth noting that big business and organised labour also have scope to influence and engage with government. More deliberate efforts are needed to ensure that the voices of those who claim to represent the poor and marginalised can also be heard. Like organisations representing business and organised labour, these bodies may be more inclined to push for short-term objectives, but international examples show that carefully considered relations between the state and voluntary organisations can improve the policy-making process. One of the most striking examples of this is India’s National Advisory Council, formed in 2004 to bring together activists and policy-oriented academics to advise the government on how it could improve its anti-poverty policy. The council has helped to increase the ambition and coherence of the government’s anti-poverty measures, but it has only been able to achieve this level of impact because the political leadership has been committed to pursuing a more pro-poor agenda. (www.nac.nic.in)

Giving voice to the poor and facilitating constructive participation, whether at a community level around service delivery, with organised labour, or with forums representing the unemployed, can contribute to building a strong, stable government. Such engagement enhances delivery, enables government to tailor policies to the needs of citizens and formulate an effective implementation plan, and can help secure buy-in from those most affected. To formulate and implement pro-poor policies there must be effective mechanisms for the voices of citizens to be heard, and the administrative and political elite must be prepared to listen to and engage with the views of the most marginalised.

Countering corruption, changing the conversation

One of the most striking breakdowns in accountability is corruption. Defined as the misuse of an official position for personal gain, corruption can occur in both the public and private sectors. It includes a wide range of issues, from selection of contractors, to enforcement of contracts, to access to services. Both the reality and the perception of corruption in South Africa is highly damaging to good relations between citizens and the state. It redirects the national conversation away from economic and social development, and nation building, towards a debilitating and divisive pessimism.

Corruption is often perceived as a recent, post-1994 phenomenon, but corruption was also widespread in the apartheid era. Research by the Institute for Security Studies provided

extensive evidence of “grand corruption” before 1994, concluding that “when the apartheid state was at its most repressive, it was also at its most corrupt” (ISS 2006). This in no way excuses corruption today, but South Africa cannot hope to develop adequate measures for tackling corruption without understanding its origins.

The clandestine nature of corruption makes it inherently difficult to measure. The advent of democracy has enabled much greater coverage of instances of corruption. Civil society and the media have played a prominent role in highlighting cases of corruption. Corruption is widely condemned, but remains a major problem. Most cases of corruption covered in the media are uncovered by government, and so a renewed effort to fight corruption can lead to a perception that corruption levels have increased. It was reported in the Public Service Biennial Report that the call volume to the government’s anti-corruption hotline from national departments increased from 204 in 2004/05 to 650 in 2007/08 and for provincial departments from 306 to 806 for the same period (PSC: 2008). Nonetheless, the NPC’s interactions with the agencies tasked with investigating cases of corruption make it clear that levels of corruption are worryingly high. South Africa is ranked 54th out of 178 countries in Transparency International’s Corruption Perception Index, which measures perceived levels of corruption with the 1st country being the least corrupt and 178th the most corrupt. The most recent national crime and victimisation survey conducted by the Institute for Security Studies suggested that approximately 3 percent of South Africans experienced corruption in 2007 (Pharaoh 2008:4. The PSC reported that most common cases reported to their hotline included fraud and corruption, followed by abuse of government vehicles, mismanagement of government funds, procurement irregularities, unethical behaviour, social grant fraud, appointment irregularities and corruption relating to RDP housing respectively. (PSC:2008)

To understand the causes of corruption it is important to focus on its nature as an illicit act that takes place between two or more parties. In the context of persistently high levels of inequality, these interactions are shaped by economic, political and social influence. For example, well-connected business people may be able to use their influence to override formal procedures when they come into contact with a relatively weak state. Similarly, if poor people are denied access to services to which they are entitled, their lack of resources and connections may make it difficult for them to demand their rights. Corruption needs to be approached as a systemic issue; opportunities for corruption are shaped by the interplay between formal institutions and wider social structures, including the high levels of inequality that shape all aspects of social relations.

The Special Investigating Unit similarly reported an increase in the number of reported cases. However, an increase in reported cases does not in itself indicate an increase in levels of corruption. It could also show confidence in the institutions investigating corruption, with a growing expectation that prosecutions will act as a deterrent. It also indicates a large number of people are not prepared to tolerate or ignore corruption in their daily lives.

In March 2011, the Special Investigating Unit reported to Parliament that it had been inundated with new cases from a cross-section of public entities involving corruption in the police, the public broadcaster, the land reform and housing subsidy systems, state departments and municipalities (Special Investigating Unit 2011). According to the reports of the Auditor-General, corruption in the public service is most prevalent in the procurement system. More openness and transparency, improved oversight of supply chains and enhanced enforcement could help reduce corruption in the procurement system.

The Auditor-General's reports identify the departments of Public Works, Education and Health as being most prone to maladministration, and the Special Investigating Unit has identified housing as a major source of fraudulent contracts. These services have a direct impact on South Africa's poorest communities. Municipalities are also more prone to corruption, especially where there are acute skill shortages. The correlation between skill shortages and lack of capacity, and the prevalence of maladministration, fraud and corruption needs to be explored further; it suggests that improving the functioning of the public service might be the single most effective way to deter corruption. While there is no doubt that corruption is a major issue, it should not be treated in isolation.

The entire country is harmed by corruption, but the costs fall most heavily on the poor through the impact on the quality and accessibility of public services. The fact that the costs of corruption are concentrated on those with the least influence is one of the key factors that makes it difficult to tackle. Even if it is only a small minority who engage in corrupt practices, it is demoralising for honest and committed people to work in a corrupt environment, especially if the public perception is that they are guilty by association. It is for these reasons that the country's intolerance of corruption must be unanimous and focused; sweeping generalisations are counterproductive.

Steps to counter corruption

Government has taken several significant steps to counter corruption since 1997. Various forums and agencies have been mandated to deal with different aspects of corruption. Whistle-blowing and anti-corruption hotlines have become a standard and accepted feature of state agencies; most departments have avenues for anonymous reporting. As a society that previously discouraged and even punished "snitching" or "impimpi", this is quite a remarkable transformation, demonstrating that it is possible to rapidly change behavioural norms.

The numerous anti-corruption agencies, forums and laws show some political will to address corruption. However, this multi-agency approach presents its own problems, due to overlapping mandates and the lack of strategic coordination of investigating bodies. Rivalry, competition and even smear tactics have sometimes hindered anti-corruption agencies. Their inability to work together and support each other compromises their effectiveness, and lowers public confidence. An overarching issue that needs to be considered is whether corruption is best dealt with by multiple separate agencies or by one agency with an overarching mandate.

Independent agencies that promote and maintain the integrity of state institutions – the Auditor General, the Public Protector and the PSC – report independently to Parliament on their findings. Reporting to Parliament is an important step in the process of accountability, but following up on those findings is even more important. This area is proving to be a key weakness in the fight against corruption, limiting the scope to hold individuals and departments accountable. Data from the PSC (2011) suggests that there is insufficient departmental capacity to investigate cases of corruption: between 2004 and 2010 the PSC received feedback on 39 percent of allegations of corruption it had referred to provinces and 25 percent of allegations referred to national departments. This does not necessarily mean allegations were not investigated, but it does highlight the difficulties in a centralised approach to tackling corruption.

Civil society has been proactive in the fight against corruption. The South African media has vociferously and persistently worked to expose corruption, and in many cases this has led to

investigations and prosecutions. Business, through Business Unity South Africa, has been running awareness and advocacy programmes to combat corruption through fraud prevention. Non-governmental organisations conduct research, advocacy and policy development to counter corruption.

The issue of corruption illustrates the importance of effective accountability mechanisms. South Africa requires a combination of formal and participatory approaches to accountability. Because formal structures will not always work effectively, citizens need other channels to raise their concerns. Equally, the state cannot abdicate responsibility. Where citizens see a genuine and sustained commitment to improve state performance, they are more likely to believe it could be beneficial to engage with mechanisms of accountability.

Provincial and local government

South Africa's democratic Constitution sought to turn the apartheid patchwork of different tiers of government into a coherent system, devolving appropriate functions to provincial and local levels, including districts, municipalities and metropolitan areas. It linked these administrative bodies to political representation, creating the potential for provincial and municipal government to be held directly accountable by the communities they serve.

This approach was consistent with the widely held view both inside and outside South Africa that decentralisation makes government more accountable and in tune with citizens' needs. But decentralisation is no panacea; it requires commitment and capacity to work effectively. This is particularly true in the South African context, where local administrations were shaped by very different histories. In forging a new South Africa, sub-national government had a special duty to assist historically deprived areas, but it was in these very areas that capacity was weakest.

Given the constitutional obligation to provide a decent standard of basic services to all, how can South Africa overcome the challenges presented by highly varied levels of organisational capacity? As with other institutional considerations, there are no shortcuts. This section sets out the commission's views on the primary challenges facing provincial and local government, including the relationship between responsibility and institutional capacity, the high levels of variation in capacity and performance, and the lack of attention given to shortages in skills and staffing capacity.

Constitutional provisions, devolution and intergovernmental relations

In many aspects of service delivery – such as school education, health, social welfare and housing – responsibilities are held jointly: provinces are responsible for implementation, while “national government is largely responsible for providing leadership, formulating policy, determining the regulatory framework, including setting minimum norms and standards, and monitoring overall implementation by provincial governments” (Pillay 2009). In many areas, the use of unconditional block grants to fund provinces gives them significant autonomy over how to use their resources, while making it difficult for national departments that determine policies to ensure sufficient resources are allocated for the implementation of those policies by the provinces.

The Constitution details the powers and responsibilities of provincial and local government in Schedules 4 and 5, but it lists “the functional areas without any detailed definitions of each functional area” (Steytler and Fessha 2007). There are two key areas of overlap: the first relates to the powers of the province to regulate and monitor areas falling under the

jurisdiction of the municipality; the other is where there is an overlap between provincial and municipal powers. For example, authority for health services and roads is assigned to both provincial and local government, requiring complex distinctions to be drawn about where services are located and who they serve.

Where ambiguity exists, authorities may either seek to demarcate their powers in a limited way to restrict their financial obligations or in an expansive way in order to extend their sphere of influence. In practice it is the question of cost that results in the most disagreements (Steytler and Fessha 2007). For example, municipalities frequently complain about unfunded mandates, as they deliver services for which they receive no funding, so overstressing municipal resources and potentially harming the standard of service delivery. As highlighted earlier, a lack of clarity about the extent of devolution and the division of responsibility can undermine the capacity of sub-national government and individual service providers to operate effectively.

In recent years increased attention has been given to questions of devolution and provisions for intergovernmental relations as set out in the Constitution, particularly in relation to the ways in which they affect service delivery coordination and capacity. Several key issues arise in this context. The first relates to the most effective mechanisms for national and provincial administrations to intervene in the affairs of provinces and municipalities, when necessary, without undermining the long-term capacity and autonomy of sub-national government. The second relates to how far it is necessary to allow for variation in the powers allotted to sub-national government, particularly for large metropolitan areas that are both major contributors to the national economy and house a substantial proportion of the country's population, both rich and poor. A third question is the most appropriate level for the provision of network services, such as water and sewerage, that require expensive infrastructure and specialist skills for management and maintenance.

At the heart of these issues is the question of how best to pursue a consistent approach to local government given wide variations in financial and administrative capacity.

Service delivery: uneven performance

The aggregate data shows significantly increased access to health care, education and housing since 1994. Yet there are substantial variations in the ability of provinces and municipalities to deliver these services effectively.

A report by the Department of Cooperative Governance and Traditional Affairs concluded that "much of local government" was "in distress" (COGTA 2009) and that there was significant variation in performance between "urban municipalities and those municipalities located in former homelands or predominantly rural areas". The PSC identified the same challenge in its recent report on the performance of provincial housing departments. The provinces with the weakest performance were the Eastern Cape and North West Province. The high level of variation in performance between municipalities and provinces is now widely accepted. A 2007 African National Congress discussion document highlighted the difficulty presented by "those provinces and municipalities with largely rural characteristics or sparse settlements having less effective public institutions" and "a coincidence between weak state capacity and poverty in these areas" (cited in Gumede 2007).

Provincial and local governments are therefore least able to deliver services in the areas of greatest need. The lack of quality service delivery has the greatest effect on poor households – and especially on women, who assume the extra burden of collecting water, and

maintaining and cleaning communal taps and toilets where they do not have private facilities. The provision of formal housing and decent services is therefore an important means of “alleviating the burden of domestic chores” (Beall 2004).

Financial and administrative capacity

Provinces draw the vast majority of their funds from central government. In 2009/10, about 96.5 per cent of combined provincial budgets came from national government, accounting for 42.5 per cent of government expenditure (National Treasury 2009). Local governments either raise their own revenue through property rates and fees for services, or rely on transfers from national government through the equitable share system.

The large metropolitan municipalities are able to raise most of their resources on their own, while rural municipalities are much more dependent on the equitable share. The metropolitan areas, with large cities and expansive tax bases, are generally the best-performing municipalities; their per capita expenditure is also among the highest in the country. By contrast, in the worst-performing municipalities in rural areas, including the former homelands, social security grants and remittances from labour migration are sometimes the only source of household income, and many people are too poor to pay for services (COGTA 2009).

The provinces and municipalities exhibiting the worst service delivery performance often cannot even spend the funds available to them. There are striking variations, for example, in the proportion of their capital budgets that provinces spend. In 2005/06 provinces overall spent 84.5 percent of this budget, but Mpumalanga only spent two-thirds of its capital budget, while North West, Northern Cape and Free State also spent significantly less than the average (Pillay 2009). This indicates the need for improving administrative capacity.

Recognition that some municipalities and provinces failed to spend their budgets creates a temptation for a quick fix. Targets for the proportion of budget spent or the number of services delivered may help to focus attention on areas where delivery is falling short, but they may also divert attention from the underlying reasons for these shortcomings. Given that many of the problems with service delivery relate to the poor quality of services, focusing too narrowly on making sure money gets spent can be counterproductive. It has been argued, for example, that the former Department of Provincial and Local Government’s focus on avoiding underspending by holding “municipalities accountable for their performance in spending funds and delivering quantifiable outputs” suggests “it is more concerned with the number of taps put in the ground or the number of buckets removed, rather than focusing on infrastructure quality and service performance” (Smith 2009). Long-term planning requires the creation and delivery of high-quality, sustainable services. The planning process needs to look beyond short-term targets and identify processes to strengthen capacity.

Institutional capacity: a fragmented legacy

The pre-1994 patchwork of sub-national government structures has been consolidated into nine provincial governments, six metropolitan districts, and 283 municipalities. On its own, this formal reorganisation could not overcome the damaging institutional legacies of the apartheid era but, with the focus on the complexities of organisational restructuring, there

was insufficient policy focus on addressing these deeper institutional legacies, particularly in the former bantustans¹.

During apartheid, large bureaucracies developed in former bantustans areas, but these often operated as vehicles of patronage for local chiefs, meaning that staff were frequently employed on the basis of “obedience and loyalty, not education or competence” (Picard 2005). Given that all provinces except Western Cape, Northern Cape and Gauteng incorporated parts of one or more homelands, this legacy had a major impact on their performance. Addressing this required a second project to tackle the norms and practices developed in the former bantustans. “While all the provinces should have embarked on extensive management training programmes extending over several years, particular attention should have been given to capacity-building efforts in the Eastern Cape and Northern Province [now Limpopo], in part because of the cumbersome integration of the two regions’ former homelands” (Picard 2005). The fact that this was not done has meant that, despite the rhetoric of a new dawn, administrative problems persisted and the promised improvements in service delivery were not delivered consistently.

The failure to plan for skills

While these administrative challenges have been particularly acute in provinces containing former bantustan administrations, skills shortages are widespread throughout provincial and municipal administrations. “Functions were devolved without sufficient staff and guidelines [meaning that often] people were administering extremely large amounts of money at local, district and provincial levels without the necessary skills” (Picard 2005). Moreover, “the training of administrative staff was an even lower priority at the provincial level than at the national level and in most cases was seriously neglected, in spite of the obvious need to increase the skills of staff”.

The shortfall applies not only to administrative skills but also to areas of specific technical expertise required for core functions. Mike Muller has noted that, despite the many warning signs, as late as 2004 “lack of capacity to take water projects through to implementation was still cited as a reason for the systemic failure of municipalities to spend their resources effectively” (Muller 2009). The lack of technical skills is a problem for both implementation and maintenance. As Chapter 4 on Material Conditions notes, a failure to maintain infrastructure dramatically increases long-term costs: “roads maintenance that is delayed for one year could cost three to six times more when there is eventually no choice but to do it” (SAICE 2011). In 2007, SAICE conducted a skills survey of 283 municipalities and found that “83 had no civil engineers, technologists or technicians on staff [while] a further 48 employed only one civil technician”. The study cited several reasons for this shortfall, including high vacancy rates, which were often attributed to budget constraints, “the inefficient deployment” of civil engineers and “the use of unqualified and inexperienced personnel in positions requiring technical ability” (SAICE 2011).

Many short-term responses to skills shortages do little to address long-term capacity constraints, particularly where there is “an over-reliance on consultants” (Munslow and Mc Lennan 2007). Engineers can be brought in to design and build infrastructure, but without in-house technical expertise, provincial and local governments lack the capacity to ensure the work is done to an adequate standard, or to maintain the infrastructure once the work has

¹ [Bantustans or former bantustans are used interchangeably with homelands and former homelands](#)

been completed. The lines of accountability between local governments and the electorate are blurred when the delivery chain is complex, involving other spheres of government and sometimes outside contractors.

South Africa must give adequate consideration to how administrative and technical staff are trained, recruited and retained. This is particularly true at the provincial and local level, where it is essential to ensure that staff have the right combination of technical skills and local knowledge to deliver services effectively. The challenges of delivering services in many rural localities underline the need to build a sense of professional common purpose.

Major challenges facing local government

The problem of uneven capacity and varied performance is particularly acute at the local government level. The current local government system has only been in place for just over a decade and there are, inevitably, significant challenges that remain to be addressed. Many municipalities are making progress despite major obstacles relating to finance, human resources and limited autonomy. There are many positive stories in the local government sector, ranging from municipalities that perform generally well to those that manage to fulfil their responsibilities in specific areas such as basic service delivery, poverty alleviation and infrastructure development. Nonetheless, it is clear from evidence accumulated in municipal performance reviews as well as from the data collated by Municipal IQ that greater attention needs to be given to the obstacles preventing the worst performing local and district municipalities from fulfilling their core functions.

The Constitution sets out the main objectives of the local government system: providing democratic and accountable government, ensuring the provision of services to communities in a sustainable manner, promoting social and economic development, promoting a safe and healthy environment, and encouraging the involvement of communities and community organisations in local government. The 1998 White Paper on Local Government highlighted the need for local government to focus on realising developmental outcomes, such as the provision of household infrastructure and services; the creation of liveable, integrated cities, towns and rural areas; the promotion of local economic development; community empowerment and redistribution. The White Paper also identified the need for municipalities to pursue integrated development planning and budgeting, and to work together with local citizens and other partners in order to fulfil their developmental mandate. All municipalities are expected to deliver on these functions despite the large variations in their levels of capacity.

Integrated development planning was seen as a mechanism to enable prioritisation and integration in municipal planning processes. Integrated Development Plans (IDPs) and Local Economic Development (LED) strategies are important tools for driving economic development at the local level but, to be effective, they need to take into account the resources and capacity that are available. This requires that municipalities liaise with districts, provinces and national government. As is to be expected, there is wide variation in how effectively municipalities fulfil these planning functions. In the metros, planning generally appears to be reasonably well-coordinated and effective. However, many districts and municipalities cite limited planning resources and lack of coordination between different spheres of government as major obstacles to implementing their IDPs and LED strategies.

It is questionable whether the current functions and powers of local government are sufficient to achieve the developmental goals set out in the Constitution and the 1998 White Paper. There is therefore a need to look, on a case by case basis, at the scope for transferring

certain functions, such as housing, public transport and land use planning, to local government. A lack of clarity about the powers and functions of local government impedes progress in service delivery across a range of municipalities. In many cases, it has led to municipalities being saddled with a burden of “unfunded mandates” in areas such as housing, libraries, roads, water treatment and other infrastructure.

The metros are generally in a better financial position than the rest of local government. This is due to their ability to generate their own revenues, to borrow on the capital markets, and to attract and retain staff with the appropriate financial management skills. Nonetheless, a number of non-metropolitan municipalities have obtained unqualified audits including Cape Winelands, Cacadu and Mogale City. Several other municipalities are recording significant progress in terms of financial governance. For example, Thabazimbi has achieved a marked increase in revenue collection and accountability mechanisms within its accounting systems, while Buffalo City is fully compliant with the requirements of the Municipal Finance Management Act (MFMA). Even though non-metropolitan municipalities are making progress with regard to financial governance, they continue to face a number of challenges. These include a low revenue base, limited fiscal transfers, an inability to attract and retain appropriately qualified personnel, an absence of appropriate financial management systems and difficulties with revenue collection.

The issues raised here suggest there is a need to look carefully at achieving a better fit between the capacity and responsibilities of local government. Given their relatively high level of resources, their relatively good performance and the distinctive challenges they face, there may be a case for giving metros a greater degree of autonomy. Outside the metros, the two-tier system of local government is not working as effectively as policy makers had intended partly because the districts lack the financial, human and physical resources they need to fulfil their planning and coordination role. The provinces are required to play a supporting and oversight role with regard to municipalities. Yet, while the metros generally have a good working relationship with the provinces, many districts and municipalities complain of poor or inadequate support from provinces, especially with regard to planning and local economic development. They also cite the problems created by the burden of regulation from both provincial and national government particularly with regard to reporting requirements. This can hinder local government’s ability to fulfil its developmental mandate, as an excessive burden of paperwork imposes a strain on local government’s limited financial and administrative resources.

The South African Local Government Association (SALGA) has identified several key factors affecting how well municipalities perform in the area of service delivery. These include the ability to attract and retain skilled staff; the existence of appropriate IT, financial and other systems; inculcating a culture of service delivery; and good working relationships between political and administrative leaderships with clear delineation of their respective roles. As with national and provincial government, a constructive working relationship between the political and administrative leadership can have a significant influence on municipal effectiveness in terms of service delivery and their ability to meet their broader developmental mandate. Ultimately, if decentralisation is to be effective, capacity must be developed at the local level and this will require a strategic focus from national government. For example, the nature and magnitude of the continuing skills crisis in the municipalities suggests that this issue cannot be resolved by the local government sphere on its own without a strategic approach from both provincial and national government.

Provincial and municipal governments are in the front line of service delivery. Devolution provides the mechanism for them to be held accountable at the local level both through the ballot box and, informally, through service delivery protests. However, devolution does not absolve national government of its responsibility for ensuring that services are delivered effectively and equitably. Just as national government needs to ensure that provincial and municipal administrations have the funds to carry out their core functions, it also needs to ensure that they have the administrative capacity. This requires focused attention on the administrative shortcomings of the provinces and municipalities that incorporated the former homelands. Here, it is essential to look beyond the story of formal organisational transformation to consider the ways in which these organisations continue to operate in practice. In the longer term, government needs a clear plan to build an adequate administrative and technical skills base with a professional common purpose.

Governing for inclusive economic development

In 1994 South Africa was faced with the legacy of decades of economic policies designed to privilege a white minority at the expense of the black, and particularly African, majority. If economic growth is to deliver sustainable and equitable outcomes, South Africa must overcome this legacy and its underlying inequalities. Ensuring that economic growth leads to inclusive development requires careful consideration of how the economy is governed.

Even the least interventionist governments take decisions that shape their economies. They create and maintain infrastructure. They provide security and legal structures without which property rights are likely to be too insecure for businesses to invest. They provide education, health and nutrition, contributing to a skilled and healthy workforce. By doing these things, they also help their citizens to develop the “capabilities” that economist and Nobel laureate Amartya Sen identifies as being central not only to sustainable economic growth, but also to growth that brings real benefits by improving people’s quality of life and “freedom to lead the kind of life they value leading”. Many countries also provide targeted support for particular sectors to promote national priorities.

There are no standard recipes for running an economy. The more fundamental question is not how the state should intervene, but what capacity it needs to intervene effectively. Where such capacity is lacking, policies either need to be revised or to be accompanied by a realistic strategy for enhancing capacity in the identified areas. Limitations on state capacity do not make ambitious economic policies unworkable, but they do mean the process of economic policy-making needs to take account of how these limitations can be addressed, or how policies can be tailored to the existing strengths of the state.

One of the most widely cited examples of organisational transformation is the case of the South African Revenue Service (SARS). The ability to collect taxes lies at the centre of the developmental state project. Financial resources are not on their own sufficient for the state to pursue its policies effectively, but they are a necessary prerequisite. Given South Africa’s high levels of inequality, taxation is a means for redistribution and the extension of public services; it also helps to forge a social contract between the state and its citizens. The experience of SARS demonstrates that complex obstacles to the implementation of policy can be overcome if policies are tailored to the local context with an awareness of the challenges and opportunities that exist.

State-owned enterprises: challenge and opportunity

Efforts to improve the performance of state-owned enterprises are generally regarded as only moderately successful, or unsuccessful. In 1994 there were more than 300 state-owned enterprises employing about 300 000 people. The “big four” – Transnet, Denel, Telkom and Eskom – accounted for 91 percent of the assets of the top 30 state-owned entities and employed 77 percent of their employees (Southall 2007). A central question was what to do with these entities. The ANC’s official policy, as set out in its 1992 report *Ready to Govern*, was initially to look at the issue of nationalisation/privatisation on a case-by-case basis, which in practice meant pursuing privatisation in a limited number of targeted areas.

Following the 2004 general election, as part of the shift towards a “developmental state”, government attention shifted away from its earlier (often half-hearted) efforts at privatising state-owned entities. By 2004, these entities employed 136 000 people and had combined assets of R175 billion (Southall 2007). For all their imperfections, there was increased recognition of the role these bodies might play. This shift was reinforced by greater international recognition that privatisation may be problematic or inappropriate where state-owned enterprises are involved in the provision of essential services (Gómez-Ibáñez 2004). For the provision of essential services, and especially those that rely on fixed infrastructure, it has increasingly been argued that privatisation may make the governance challenges more complex and the outcomes less equitable. Efforts were therefore made to improve the performance of these entities, with high-flying senior staff being brought in to run large enterprises.

State-owned companies have consistently been used as a tool for pursuing state objectives. During the apartheid era, the “linkages between state and private corporations played a vital role in the evolution and consolidation of the minerals energy complex – not least through key industrial strategies such as the development of large-scale electricity-generating capacity and of an indigenous fuel-chemical industry” (Marais 2011). The use of such enterprises under apartheid contributed to the skewed nature of the domestic economy, heavily dominated by a small number of capital-intensive public and private entities in the so-called minerals-energy-complex. In the democratic era, these parastatals have been used “as instruments for extending black control over the economy, increasing opportunities for an expanding black middle class, and for promoting black empowerment”. Following the initial partial sale of Telkom, the state withdrew from selling core assets, realising that it could not ensure a sufficient proportion was transferred to black control (Southall 2007).

It has been argued that state-owned enterprises can play a vital role in efforts to build a developmental state, as they did in East Asia, epitomised by the South Korean steel-maker, POSCO. A Presidential review is now being conducted, examining what measures can be taken to improve the performance of state-owned entities so that they can advance developmental objectives.

State-owned entities can support government’s economic strategies by providing infrastructure to business or reducing unequal access to public services. For example, Eskom “generates approximately 96 percent of South Africa’s electricity” with the remainder generated by eight municipalities, and responsibility for distribution being shared between Eskom and municipalities (Irwin and Yamamoto 2004). For municipalities, electricity provision provides “an important source of revenue ... that helps them to provide public services to citizens, as they add a surcharge to the electricity they buy from Eskom and then sell to consumers” (EGISA 2010). Between 1993 and 2000, South Africa doubled the proportion of households with access to electricity. In doing so it has provided cheap power

that serves the needs of industry and the population, but power cuts in early 2008 highlighted that adequate attention had not been given to production capacity.

A key reason for these difficulties seems to be that responsibility for policy and for decision-making is split between the Departments of Energy and Public Enterprises, the energy regulator and Eskom itself. There has also been instability in approaches to electricity distribution (see Chapter 4).

State-owned entities today face a wide range of objectives. They must serve the needs of capital-intensive industry; provide secure employment; boost black participation in the economy; help government to implement and learn from implementing industrial policy; and narrow inequalities in access to water, sanitation and electricity. The emphasis placed on these agencies makes it particularly important to ensure that they operate effectively and in the public interest over the long term. However, concerns have been raised about whether the existing governance structures are adequate to develop long-term strategies for meeting these multiple obligations. The challenge is to identify better ways of working so that the multiple and competing priorities that are recognised in formal documents can be balanced against each other more effectively in practice.

The role of regulators

Since 1994 South Africa has created regulators in many sectors to ensure that there is a fair mechanism for balancing the interests of producers and consumers, and to balance the cost of current services against the need for long-term investment.

To be effective, regulators need a degree of independence from the sector they regulate and from wider political pressures, along with a sound understanding of the challenges and opportunities in the sector. Achieving this combination of independence and sectoral knowledge is not easy. The perception is that “the government’s past attempts at regulation have at best been patchy” (*Business Day* 2010). A regulator needs to provide “a predictable and stable regulatory framework for each sector”, but in the case of airports and ports “Transnet and the Airports Company SA [have been] in dispute with their respective regulators, both claiming that unpredictable and variable tariff decisions are making investment decisions impossible” (*Business Day* 2010). Through legislation, “economic regulators in South Africa have been granted a large degree of executive authority” (Hodge et al 2008), but questions have been raised about whether they have the capacity to fulfil these functions.

Regulatory requirements, and the capacity needed by a regulator, should be treated on a case-by-case basis. A report commissioned by the Presidency concluded that, prior to setting up an independent regulator, it is important that “an assessment of alternative forms of oversight is conducted and such methods are adopted instead of a full-time regulator if they are less costly but equally effective” (Hodge et al 2008). Regulation is needed most where services are provided by private monopolies, or where government wishes to encourage private investors to compete with state-owned entities. In the case of public monopolies, the democratic process can provide an alternative route for regulation with decisions about pricing and investment being, in part, an inherently political decision about how resources should be allocated. This does not mean that public monopolies should not be subject to regulation, but it does mean that decisions to introduce independent regulators need to be based on a realistic analysis of how and why independent regulation will improve performance and accountability.

There is a need for a more nuanced understanding of when it is appropriate to establish independent regulators. For example, in the water sector, South Africa has followed the approach of “the majority of OECD countries” by keeping water supply “in the public domain and regulated by government, not by an independent regulator” (Muller 2007). Yet “the comparative evidence does not demonstrate any major negative impact as a result of this and there is no evidence that South Africa’s water sector performance is worse than that of sectors such as electricity and telecommunications, both of which have independent regulators”.

By contrast, Muller (2010) suggests that “electricity policy and governance has become unnecessarily complex and, with that, dysfunctional”. Where independent regulators are formed, careful consideration needs to be given to developing their capacity and independence, but in areas where an independent regulator is not essential it may be that simpler and less costly mechanisms can be found. Overall, the experience of creating independent regulators in South Africa demonstrates the difficulties that arise when there is a misfit between an agency’s capacity and its core functions.

What sort of state in 2025?

The state in 2025 will not be perfect but, with careful planning, it could look very different to what exists today. In the commission’s view, the country is faced with three possible broad trajectories:

- *A varied state* – The state could continue to operate broadly as it does today. A state with highly varied levels of performance, where pockets of excellence coexist with areas of weak performance, where people’s experiences of the state are shaped by who they are and where they live, with poor and historically marginalised groups who are most dependent on state services encountering the worst performance.
- *A state of last resort* – Growing levels of inequality and declining confidence in the state could lead to those who can afford to do so opting out of using public services. They turn increasingly to private schools, private hospitals, employ private security guards and travel by private cars rather than public transport. As this proportion of the population grows, a shrinking majority is left dependent on state services that fall further behind. Their experiences are increasingly distant from those who run the state or shape discussions about public policy, who only rarely make use of state services for themselves or their families.
- *A capable state* – The third possibility is not a perfect state, but it is sufficiently capable and effective that people broadly have faith in the services it delivers. Public services people are of a consistent standard for all South Africans.

How can South Africa move towards the third option? How can planning processes help build a capable and developmental state – a state of first resort, rather than last resort?

Progress towards such an outcome can be judged by the state’s performance in the following areas:

- Tackling unevenness in state performance.
- Ensuring that citizens’ experiences of the state are no longer determined by who they are and where they live.

- Reducing the gap between policy formulation and implementation, leading to improved performance and greater public confidence in the state.
- Offering stimulating and challenging career paths, leading to a strong sense of shared identity and common purpose among public servants.
- Ensuring that public servants are in tune with the needs of wider society, particularly those of the poor.
- Improving performance in national, provincial and local government, particularly when it comes to the state's ability to work in the interest of those who are most in need; and identifying and overcoming blockages to implementation.

A transformation along these lines will require a committed and sustained focus. It requires South Africa to move away from ad hoc responses to individual problems, and to develop a strategic, long-term approach to building state capacity.

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