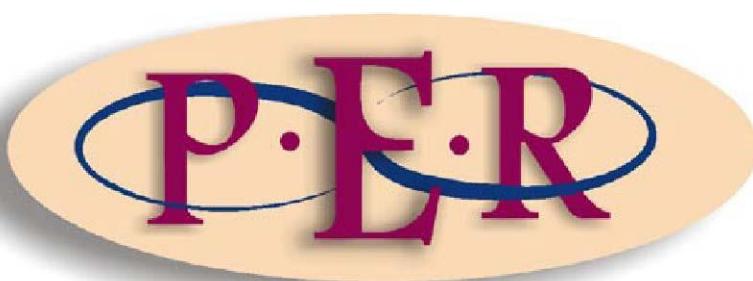


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A CRITICAL INVESTIGATION OF THE RELEVANCE AND POTENTIAL OF IDPs AS A LOCAL GOVERNANCE INSTRUMENT FOR PURSUING SOCIAL JUSTICE IN SOUTH AFRICA

ON Fuo*

1 Introduction

The *Constitution of the Republic of South Africa, 1996* (hereafter the *Constitution*) is described as transformative because it is committed to correcting the injustices of the past and to establishing a society based on democratic values, social justice and human rights.¹ This commitment is expressed in the Preamble to the *Constitution*, which indicates that it was adopted:

as the supreme law of the Republic so as to heal the divisions of the past and to establish a society based on democratic values, social justice and fundamental human rights; lay the foundations of a democratic and open society in which government is based on the will of the people and every citizen is equally protected by the law; improve the quality of life of all citizens and free the potential of each person.

The above constitutional commitment constitutes the basis of the vision of transformative constitutionalism which has been the subject of extensive academic discourse.² South African scholars and jurists commenting on the transformative

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¹ Klare 1998 *SAJHR* 153; Pieterse 2005 *SAPL* 156-161; Brands *Courts, Socio-economic Rights and Transformative Politics* 70; De Vos 2001 *SAJHR* 260; Stewart 2011 *Diritto Pubblico Comparato ed Europeo* 1513; Fuo 2013 *Obiter* 77-84.

² This constitutional project has caught the interest of academics in South Africa and abroad as well as judges who have written articles, chapters in books and books on issues related to transformative constitutionalism. Examples of such articles include: Langa 2006 *Stell LR* 351-360; Moseneke 2002 *SAJHR* 309-319; Albertyn and Goldblatt 1998 *SAJHR* 248-276; Roux 2009 *Stell LR* 258-285; Stewart 2010 *Penn St Int'l L Rev* 487-512; Liebenberg 2006 *Stell LR* 5-36; Pieterse 2005 *SAPL* 155-165; De Vos 2001 *SAJHR* 258-276; Botha 2002 *TSAR* 612-627; Van Marle 2009 *Stell LR* 286-301; Sibanda 2011 *Stell LR* 482-500; Solange 2011 *Stell LR* 542-565. In terms of books on this subject, see for example: Botha *Rights and Democracy*; Liebenberg *Socio-Economic rights*; Liebenberg and Quinot *Law and Poverty*.

vision of the *Constitution* agree that the above preambular commitment suggests that one of the central objectives of the post-apartheid constitutional state is to establish a society based on social justice.³ This commitment has been affirmed by the Constitutional Court in several cases.⁴ However, although the constitutional commitment to social justice remains an ideal which may never be completely achieved, scholars and jurists agree that it places an obligation on all spheres of government and organs of state to pursue this commitment.⁵ It is further trite that the entrenchment of a variety of rights in the Constitution is one of the mechanisms through which social justice can be pursued.⁶

Although the concept of social justice and the means of realising it remain contentious issues for modern jurisprudence,⁷ recent policy documents adopted by Government in the United Kingdom suggests that social justice is primarily concerned with addressing poverty in all its forms,⁸ and focuses "on helping the most disadvantaged and hard-to-reach families and individuals" in society.⁹ In the same vein, scholars and jurists in South Africa are of the view that social justice is primarily concerned with the eradication of extreme poverty and socio-economic inequalities in order to ensure that all citizens command the material resources needed to participate equally in socio-political life.¹⁰ Chaskalson explains that a society in which "there will be social justice" is one in which "the basic needs of all

³ Klare 1998 *SAJHR* 153; Liebenberg 2006 *Stell LR* 6; Pieterse 2005 *SAPL* 158-159; Fuo 2013 *Obiter* 79-84.

⁴ *Government of the Republic of South Africa v Grootboom* 2000 11 BCLR 1169 (CC) (*Grootboom* case) para 1; *Soobramoney v Minister of Health, Kwazulu-Natal* 1997 12 BCLR 1691 (CC) paras 8-9; *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties Ltd 39 (Pty)* 2012 2 BCLR 150 (CC) (*Blue Moonlight Properties* case) para 2.

⁵ See Van der Walt "South African Reading of Frank Michelman's Theory" 163-164; Langa 2006 *Stell LR* 354; Pieterse 2005 *SAPL* 159.

⁶ Albertyn and Goldblatt 1998 *SAJHR* 249; Liebenberg *Socio-economic Rights* 29; Van der Walt "South African Reading of Frank Michelman's Theory" 163-165; Langa 2006 *Stell LR* 354; Pieterse 2005 *SAPL* 159. S 7(2) of the *Constitution of the Republic of South Africa*, 1996 obliges all spheres of government and organs of state to respect, promote, protect and fulfill the rights in the Bill of Rights.

⁷ Van Blerk *Jurisprudence* 127; Sooka "Transforming our Society" 193.

⁸ See Parliament of Great Britain *Social Justice* 4.

⁹ See Parliament of Great Britain *Social Justice* 4.

¹⁰ Pieterse 2005 *SAPL* 164-165; Chaskalson 2000 *SAJHR* 204-205. See Fraser "Social Justice" 36.

our people will be met, in which we will live together in harmony, showing respect and concern for one another".¹¹

Even though all the rights in the *Constitution* are interrelated, interdependent and mutually reinforcing,¹² the realisation of the so-called socio-economic rights¹³ are perceived to have the potential to facilitate the pursuit of social justice, because they specifically seek to secure a satisfactory basic quality of life for all members of society and afford entitlements to the material conditions required for human welfare.¹⁴ Justice Moseneke has argued that other fundamental rights cannot be meaningfully enjoyed by the poor without the substantive realisation of socio-economic rights.¹⁵ Furthermore, the attempt to realise the socio-economic rights is considered to have a transformative potential, because the *Constitution* imposes positive duties on government to adopt reasonable legislative and other measures to realise them.¹⁶ Against this background, the transformative vision of the *Constitution* translates into a mandate which places an obligation on the three spheres of government to fulfil socio-economic rights to the benefit of impoverished people.¹⁷

However, the realisation of socio-economic rights represents just one of the mechanisms that could be used to pursue social justice. This position is evident from the affirmation by world leaders at the *Copenhagen Summit on Social Development* (1995) that social development aims at promoting social justice¹⁸ and that social justice cannot be attained without respect for and the protection of all human rights and fundamental freedoms.¹⁹ In addition, the pursuit of social justice informed the

¹¹ Chaskalson 2000 *SAJHR* 205.

¹² *Grootboom* case para 83.

¹³ The classical division of rights into different categories based on the nature of the so-called positive and negative obligations they impose is often artificial. See *Liebenberg Socio-economic Rights* 54-59, 219.

¹⁴ Brand "Introduction to Socio-economic Rights" 3; Du Plessis 2011 *SAJHR* 282; Fuo 2013 *Obiter* 82-86.

¹⁵ Moseneke 2002 *SAJHR* 318. See Fuo 2013 *Obiter* 83.

¹⁶ See ss 26(2) and 27(2) of the *Constitution*; Brand "Introduction to Socio-economic Rights" 9-12; Liebenberg *Socio-economic Rights* 54-59.

¹⁷ See Brand "Introduction to Socio-economic Rights" 12-20; Pieterse 2007 *Hum Rts Q* 796-822; Van der Walt "South African Reading of Frank Michelman's Theory" 163-165; Pieterse 2005 *SAPL* 155-166; Fuo 2013 *Obiter* 77-84.

¹⁸ See *UN Report of the UN Summit for Social Development* (1995) para 29.

¹⁹ See *UN Report of the UN Summit for Social Development* (1995) para 5; *UN Social Justice* 57.

adoption of the *Millennium Declaration and Millennium Development Goals* (MDGs).²⁰ Moreover, Burns and Hattingh suggest that one of the central features of sustainable development is the pursuit of social justice.²¹

Furthermore, as a result of post-apartheid institutional reform, local government has been significantly transformed into a "co-responsible" sphere of government with extensive legislative and executive powers and functions, tasked with the realisation of an expanded "developmental" mandate.²² This mandate requires that municipalities should promote socio-economic development; protect the environment; provide democratic and accountable government; promote community involvement in local government matters; ensure that the basic needs of community residents are met; and implement legislative and other measures that will contribute to the realisation of the rights entrenched in sections 24, 25(5), 26, 27 and 29 of the *Constitution*.²³ This wide range of duties illustrate that, unlike the previous situation, where local government merely played a service delivery role, municipalities now have an expanded developmental mandate.²⁴ De Visser argues *inter alia* that "developmental local government" requires municipalities to explicitly target poverty and improve the material well-being of all South Africans.²⁵ To De Visser, integral components of the development process such as poverty alleviation can be achieved

²⁰ The need for social justice was identified in the *UN Millennium Declaration* as driving the achievement of the *Millennium Development Goals*. See generally para 6 of the *UN Millennium Declaration (Millennium Development Goals)* (2000).

²¹ Burns and Hattingh 2007 *SAJELP* 3-5. For a similar view, De Visser *Developmental Local Government* 13.

²² See *City of Cape Town v Robertson* 2005 2 SA 323 (CC) (*City of Cape Town case*) para 60; De Visser *Developmental Local Government* 9-13, 113-114; Du Plessis 2010 *Stell LR* 265-267; Christmas and De Visser 2009 *CJLG* 107; De Visser 2009 *CJLG* 12-14; "Section B: Developmental Local Government" in the *White Paper on Local Government* (1998). See generally ss 151-153, 156 of the *Constitution*.

²³ The "developmental mandate" of local government captures the obligation imposed on municipalities by ss 152 and 153 of the *Constitution*. See De Visser *Developmental Local Government* 9-13, 72; Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right* 461; "Section B: Developmental Local Government" in the *White Paper on Local Government* (1998). See ss 7(2), 26(2) and 27(2) of the *Constitution* read jointly; s 4(2)(j) and 23(1)(c) of the *Local Government: Municipal Systems Act* 32 of 2000 (*Systems Act*); De Visser 2003 *LDD* 201-215.

²⁴ See De Visser *Developmental Local Government* 59-70; Zybrands "Local Government" 143-145.

²⁵ De Visser *Developmental Local Government* 10-11. See also Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right* 461.

through economic growth and redistribution alone.²⁶ De Visser argues that if local government does not adopt redistributive strategies, it is unlikely that economic growth will positively impact on the most vulnerable segments of society.²⁷ By implementing measures that target the poor and specifically ensure that their basic needs are met, municipalities contribute towards pursuing the transformative constitutional mandate and social justice.

While there is consensus that all spheres of government and organs of state must contribute towards achieving the transformative objectives of the *Constitution* and the pursuit of social justice,²⁸ no academic attention has been given to the potential role of local government. Arguably, local government can contribute to the pursuit of social justice by using the governance instruments or tools available to them. Governance instruments, after all, are the mechanisms through which governments pursue public purposes and defined objectives, allocate resources, and communicate to the public their understanding of the collective problems of society as well as their vision for the future.²⁹ In South Africa, policy, resolutions, by-laws and IDPs, *inter alia*, have been identified as local governance instruments.³⁰ However, integrated development planning is considered local government's leading governance instrument.³¹ The *Systems Act* obliges every municipality to undertake "developmentally oriented planning"³² in order to ensure that it: strives to achieve the constitutional objects of local government; gives effect to its developmental duties; and contributes, together with other organs of state, to the progressive realisation of the socio-economic rights contained in sections 24, 25, 26, 27 and 29 of the *Constitution*.³³ This obligation suggests that the objective of integrated

²⁶ De Visser *Developmental Local Government* 12.

²⁷ De Visser *Developmental Local Government* 12.

²⁸ See Langa 2006 *Stell LR* 354; Pieterse 2005 *SAPL* 159.

²⁹ See Salomon 2000-2001 *Fordham Urb LJ* 1624; Linder and Peters "Study of Policy Instruments" 33-34; Fuo 2013 *PELJ*.

³⁰ See Steytler 2011 *SAPL* 484-496; Harrison "Origins and Outcomes" 321-337; Patel "Tools and Trade-offs" 357-376; Berrisford and Kihato "Local Government Planning" 377-403; Du Plessis 2010 *Stell LR* 274-275.

³¹ See Part III: "Tools and Regulatory Instruments of Developmental Local Government" in Van Donk *Consolidating Developmental Local Government* 317; Harrison "Origins and Outcomes" 321.

³² The meaning of "developmentally-oriented planning" is explored in 3.1 below.

³³ See s 23(1)(a)-(c) of the *Systems Act*.

development planning is to provide a strategic planning framework which enables municipalities to effectively realise their expanded developmental mandate, including the socio-economic rights that fall under their area of competence.³⁴ In the context of the socio-economic rights entrenched in the *Constitution*, the obligation to engage in planning could be understood against the backdrop of the fact that sections 24(b), 25(5), 26(2), 27(2) and 29(1)(b) of the *Constitution* oblige government to "adopt legislative and other measures" to realise relevant socio-economic rights. In view of this obligation, it is suggested that IDPs constitute one of the instruments that could be used by municipalities to implement constitutional socio-economic rights³⁵ to the benefit of the poor.

The purpose of this article is to explore and critically investigate the relevance and potential of IDPs in contributing towards the pursuit of social justice in South Africa. In other words, this article asks if IDPs and the applicable law and policy framework command municipalities to adopt and implement measures that could eradicate poverty and extreme inequalities in access to basic services. In order to answer this question the article is divided into four parts. The first part begins by tracing the background to integrated development planning in South Africa. This is followed by a discussion of the legal and policy framework in order to establish the potential of IDPs to contribute towards the pursuit of social justice. Against this backdrop, part three provides an overall assessment of the potential of IDPs to contribute towards the pursuit of social justice. This is followed by the conclusion.

It should be noted that despite the importance of the IDP as a leading legally prescribed governance instrument for South African municipalities,³⁶ published

³⁴ See ss 7(2), 26(2) and 27(2) of the *Constitution* read jointly. See also ss 4(2)(j) and 23(1)(c) of the *Systems Act*; De Visser 2003 *LDL* 201-215.

³⁵ The Constitutional Court has established that, in order to comply with the obligations imposed *inter alia*, by ss 26(2) and 27(2) of the *Constitution*, government must devise a "comprehensive and workable plan". See *Grootboom* case para 38. At the local government level, the IDP could be seen as a comprehensive plan that is adopted to give effect to the duties imposed on municipalities by the *Constitution* in respect of socio-economic rights. See Du Plessis and Du Plessis "Balancing of Sustainability Interests" 432; *Blue Moonlight Properties* case para 24.

³⁶ Harrison "Origins and Outcomes" 321.

academic material on this subject remains meagre.³⁷ The analysis in this article relies on the limited (published) academic material on the subject, the main legal framework for IDPs (chapter 5 of the *Systems Act*), the White Paper on Local Government (1998), the *IDP Guide Packs*³⁸ and the (*Final Draft*) *Policy Paper on Integrated Development Planning* (2000).³⁹ This analysis should be understood against the backdrop of the obligation imposed by the Constitution on all spheres of government to implement socio-economic rights in order to meet the basic needs of the poor.

2 Background to integrated development planning in South Africa

Although South Africa's local government integrated development planning may have its context-specific features, local government "strategic planning" has emerged internationally as one of the leading governance instruments for municipalities.⁴⁰ This notwithstanding, before 2012, planning and resource allocation across all spheres of government in democratic South Africa was guided by the so-called national *Medium Term Strategic Framework*.⁴¹ The *Medium Term Strategic Framework* was linked to the country's five-year electoral cycle and defined the strategic objectives and targets of government for the period of its elected term.⁴² In

³⁷ See Harrison "Origins and Outcomes" 321. In the context of socio-economic rights, Du Plessis has examined the potential of integrated development planning in specifically facilitating the realisation of environmental rights. See Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right* 463-465.

³⁸ The *IDP Guide Packs Series, Guides 0-6* (2001) were developed by the Decentralised Development Planning (DDP) Task Team in the DPLG (now CoGTA) with support from the German Agency for Technical Cooperation (GTZ) to guide municipal managers, technical officers and councillors on how to prepare, integrate and manage the many dimensions involved in the IDP.

³⁹ *CoGTA (Final Draft) Policy Paper on Integrated Development Planning* (2000).

⁴⁰ An interesting book on this subject is: Gordon *Strategic Planning*. See also Clarke and Stewart *Planning for Change; Bertocci Strategic Planning and Management*. For a historical background to strategic planning, see Mercer *Strategic Planning* 2-5.

⁴¹ Thus far, the following medium-term strategic frameworks have been adopted in South Africa: *Presidency's Medium Term Strategic Framework: A Framework to Guide Government's Programme in the Electoral Mandate Period 2004-2009* (2004); *Presidency's Together Doing More and Better: Medium Term Strategic Framework: A Framework to Guide Government's Programme in the Electoral Mandate Period 2009-2014* (2009).

⁴² See *Presidency's Together Doing More and Better: Medium Term Strategic Framework: A Framework to Guide Government's Programme in the Electoral Mandate Period 2009-2014* (2009) 1-4; *Presidency's Medium Term Strategic Framework: A Framework to Guide Government's Programme in the Electoral Mandate Period 2004-2009* (2004) paras 1-4.

September 2009, under the presidency of Jacob Zuma, the "initial ideas" on long-term government strategic planning were set out for public comment in the *Green Paper on National Strategic Planning* (2009),⁴³ which justified the need for a long-term national strategic plan and proposed the establishment of a National Planning Commission to design such a plan for the country.⁴⁴ It lamented the absence of a coherent long-term strategic plan for the country and stressed that this had negatively affected government's ability to realise its "developmental objectives and priorities".⁴⁵ It argued that the ideals enshrined in the *Constitution* (inclusive of social justice) "cannot be pursued in an *ad hoc* manner".⁴⁶ It further argued that the existence of a coordinated long-term national strategic plan would ensure that national government "priorities [were] given due attention in allocating resources and responsibilities in all spheres of government".⁴⁷ According to the *Green Paper on National Strategic Planning* (2009), national strategic planning is about clearly defining the objectives that South Africa sets for itself and assessing at the macro-level where the country is in relation to those objectives.⁴⁸ A national strategic plan would also describe the policies, programmes, other options and trade-offs required to achieve national objectives and the specific interconnected roles that various institutions in government are meant to play in strategic planning.⁴⁹ In addition, it indicated that national strategic planning in South Africa also seeks to correct the spatial dislocations of the past.⁵⁰

The initial ideas and vision of national strategic planning that were outlined in the *Green Paper on National Strategic Planning* (2009) were given detailed content by the NPC in the *National Development Plan* in 2011. The main objectives of the *National Development Plan* (2011) are to eliminate poverty and sharply reduce inequalities by 2030.⁵¹ Integral to these overriding objectives is the commitment

⁴³ See the *Green Paper on National Strategic Planning* (2009) 1.

⁴⁴ *Green Paper: National Strategic Planning* (2009) 1.

⁴⁵ *Green Paper: National Strategic Planning* (2009) 1.

⁴⁶ *Green Paper: National Strategic Planning* (2009) 6.

⁴⁷ *Green Paper: National Strategic Planning* (2009) 4.

⁴⁸ *Green Paper: National Strategic Planning* (2009) 5.

⁴⁹ *Green Paper: National Strategic Planning* (2009) 5.

⁵⁰ *Green Paper: National Strategic Planning* (2009) 6.

⁵¹ See *National Development Plan* (2011) 1-3.

inter alia to develop human capabilities and where necessary provide free basic services to the poor, in order to facilitate the capacity of all citizens to participate in making development choices.⁵² The *National Development Plan* (2011) outlines the vision, general and specific targets, policy and planning priorities and implementable actions of the state that should ensure the realisation by 2030 of defined outcomes in the main areas of focus such as health, human settlement, social protection, economic growth, employment creation, environmental protection and infrastructure development.⁵³ The national government expects that all the main areas of focus of the *National Development Plan* (2011) should be able to positively impact on poverty eradication and the reduction of inequalities.⁵⁴ The *National Development Plan* (2011) has received broad support from within all spheres of government, the private sector and political parties as South Africa's long-term strategic plan.⁵⁵ However, the *National Development Plan* (2011) recognises that its objectives can be realised only if "there is strong leadership and focused implementation".⁵⁶

Although the *National Development Plan* (2011) represents South Africa's national long-term strategic development plan, the national government continues to produce and be guided by the *Medium Term Strategic Framework* (MTSF).⁵⁷ As already indicated in the beginning of this section, the MTSF is a five-year national strategic framework which is linked to the national government's electoral mandate period.⁵⁸ The MTSF "is a statement of intent" that identifies the development challenges facing South Africa and is aligned to the priorities and strategies identified in the national long-term strategic plan.⁵⁹ The objectives of the current MTSF include halving poverty and unemployment, reducing socio-economic inequalities and

⁵² See *National Development Plan* (2011) 1-3, 21.

⁵³ See further, *National Development Plan* (2011) 1-39. For a summary of the targets, priorities and actions in the various areas, see *National Development Plan* (2011) 10-39.

⁵⁴ See *National Development Plan* (2011) 2.

⁵⁵ See National Planning Commission 2011 www.npconline.co.za.

⁵⁶ See *National Development Plan* (2011) 3.

⁵⁷ *Presidency's Together Doing More and Better: Medium Term Strategic Framework: A Framework to Guide Government's Programme in the Electoral Mandate Period 2009-2014* (2009).

⁵⁸ *Green Paper: National Strategic Planning* (2009) 4; "Introduction" in *Presidency's Together Doing More and Better: Medium Term Strategic Framework: A Framework to Guide Government's Programme in the Electoral Mandate Period 2009-2014* (2009).

⁵⁹ See *Presidency's Together Doing More and Better: Medium Term Strategic Framework: A Framework to Guide Government's Programme in the Electoral Mandate Period 2009-2014* (2009) paras 1-8; *Green Paper: National Strategic Planning* (2009) 4.

ensuring universal access to basic services by 2014.⁶⁰ At the moment, municipalities are expected to align their IDPs with the priorities identified in the MTSF⁶¹ and the national strategic plan.⁶² At the provincial level, it is expected that IDPs should be linked to the *Provincial Growth and Development Strategy* (PGDS).⁶³ The PGDS is a strategic framework that is supposed to guide development for each province as a whole.⁶⁴ It is aligned *inter alia* to the priorities of the MTSF and is supposed to take into consideration the strengths, constraints and specific needs of each province.⁶⁵ In addition, it serves as a tool through which the provincial sphere of government is supposed to provide guidance to municipalities on how matters relating to economic planning, infrastructure investment and development spending should take place in the province.⁶⁶ The PGDS serves as a mechanism through which provincial governments could enhance the implementation of national priorities, taking into consideration contextual needs.⁶⁷

In the context of local government, it has been suggested that the negative effects of fragmented and project-based planning were generally recognised by some government officials in South Africa during the late 1980s.⁶⁸ Following the institutional reconstruction of the democratic state and the establishment of local government as an "autonomous" sphere of government,⁶⁹ it became more evident that an instrument would have to be developed that would enable newly established municipalities to plan and perform their functions in a "co-ordinated, strategic,

⁶⁰ See *Presidency's Together Doing More and Better: Medium Term Strategic Framework: A Framework to Guide Government's Programme in the Electoral Mandate Period 2009-2014* (2009) para 10.

⁶¹ See *Presidency's Together Doing More and Better: Medium Term Strategic Framework: A Framework to Guide Government's Programme in the Electoral Mandate Period 2009-2014* (2009) para 3.

⁶² *Green Paper: National Strategic Planning* (2009) 4.

⁶³ See Harrison "Integrated Development Plans" 187; *Integrated Development Plan of Tlokwe City Council* (2011) 90; *Mangaung Metropolitan Municipality: Integrated Development Plan 2012-2016* (2012) 6, 66.

⁶⁴ *Provincial Growth and Development Strategy Guidelines* (2005) 2.

⁶⁵ See *Provincial Growth and Development Strategy Guidelines* (2005) 2.

⁶⁶ *Provincial Growth and Development Strategy Guidelines* (2005) 1-3.

⁶⁷ See *Provincial Growth and Development Strategy Guidelines* (2005) 2.

⁶⁸ Binns and Nel 2002 *Regional Studies* 923.

⁶⁹ Hattingh *Governmental Relations* 3; Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right* 463; Simeon and Murray 2001 *Publius* 65-92; Malan 2005 *Politeia* 226-243.

developmental and fiscally responsible" manner.⁷⁰ Significant decentralisation also meant that municipalities would have to take responsibility for strategic planning within their jurisdictions.⁷¹ The system of integrated development planning was introduced as a direct response to this need.⁷² The *Systems Act* strengthened the legal basis for IDPs with chapter 5 exclusively dedicated to integrated development planning at the local government level. The *Systems Act* requires each municipal council, during its elected term, to design and adopt an IDP for the development of the municipality, for the short and medium to long term.⁷³ When the first term of elected councillors under the *Systems Act* started on 6 December 2000, the IDP system came into effect. It is regarded as the main strategic planning instrument to be used by municipalities to realise their expanded developmental mandate.⁷⁴ Integrated development planning created a platform of convergence for all sectoral developmental policies, plans and programmes that are directly linked to the constitutional and legislative mandate of local government.⁷⁵ It allowed municipalities to develop an holistic approach to development that takes into account linkages between relevant sectors during the various stages of planning, implementation and monitoring of development policies, plans and programmes for the entire municipal area.⁷⁶

Although integrated development planning was introduced into South Africa primarily to address the weaknesses of apartheid development planning,⁷⁷ it was equally influenced by the need to align the country's planning system with prevailing

⁷⁰ See Harrison "Origins and Outcomes" 323; Harrison "Integrated Development Plans" 196; Sowman and Brown 2006 *J Environ Plann Manag* 695-696.

⁷¹ Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right* 463.

⁷² Harrison "Origins and Outcomes" 323.

⁷³ See s 25 (and generally ch 5) of the *Systems Act*; Harrison "Origins and Outcomes" 330.

⁷⁴ See Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right* 463-464; Atkinson *Local Government* 3; Harrison "Integrated Development Plans" 186-187; "3.1 Integrated development planning, budgeting and performance monitoring" in the *White Paper on Local Government* (1998).

⁷⁵ CoGTA (*Final Draft*) *Policy Paper on Integrated Development Planning* (2000) 4.

⁷⁶ CoGTA (*A Final Draft*) *Policy Paper on Integrated Development Planning* (2000) 15.

⁷⁷ See "3.1.1 Why do integrated development planning?" in the *White Paper on Local Government* (1998); Harrison "Origins and Outcomes" 323; Harrison "Integrated Development Plans" 192-194; Sowman and Brown 2006 *J Environ Plann* 695-698.

international practices.⁷⁸ For example, there is the view that integrated development planning in South Africa was an implicit response to the country's commitment to UN *Agenda 21*, which placed sustainability at the forefront of development.⁷⁹ UN *Agenda 21* introduced a new form of thinking world-wide, that promotes the integration of economic, social and environmental considerations in the design, implementation and management of government policies, plans and programmes so as to increase efficiency and sustainability in development.⁸⁰ In addition, the various programme areas/chapters of UN *Agenda 21* stress the need for national governments to adopt integrated human development strategies, policies and programmes that *inter alia*: combat poverty and provide the poor with access to fresh water, sanitation and basic education;⁸¹ protect and promote human health;⁸² promote greater involvement of local levels of government, NGOs and affected communities in policy design and implementation; build and strengthen the capacity of local institutions; and promote national and regional monitoring and oversight over local authorities as well as the alignment of budgetary processes.⁸³

Todes argues that, although South Africa's IDPs have a relationship with UN *Agenda 21* in that they seek to develop regional/territorial strategies that respond to intertwined environmental, social and economic conditions, IDPs are not primarily about sustainability.⁸⁴ The author argues that South Africa's IDPs are meant to be holistic multi-sectoral plans which guide the future development of defined municipal areas, giving direction to both municipalities and other spheres of government

⁷⁸ Harrison "Origins and Outcomes" 324-325; Harrison "Integrated Development Plans" 187-189; Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right* 463; Mojapelo *Effectiveness of the Integrated Development Planning* 15-16.

⁷⁹ See Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right* 463; Harrison "Origins and Outcomes" 325; Du Plessis and Du Plessis "Striking the Sustainability Balance" 449; *South Africa's Review Report for the Sixteenth Session of the United Nations Commission on Sustainable Development* (2008) 40; Todes 2004 *J Environ Plann Manag* 844. Chapter 28 of UN "Agenda 21" entitled: "Local Authorities' Initiative in Support of Agenda 21" explores how local governments can promote sustainable development at the local level.

⁸⁰ See UN "Agenda 21", "Chapter 8: Integrating Environment and Development in Decision-Making" para 8.2.

⁸¹ See ch 3 of UN "Agenda 21" for details.

⁸² See ch 6 of UN "Agenda 21" for details.

⁸³ See ch 28 of UN "Agenda 21"; para 28.3 of UN "Agenda 21". See also ch 8: "Integrating Environment and Development in Decision-Making" para 8.3; ch 7: "Promoting Sustainable Human Settlement Development"; ch 4: "Changing Consumption Patterns" para 4.7 "Objectives".

⁸⁴ Todes 2004 *J Environ Plann Manag* 850.

operating within the area.⁸⁵ The system of integrated development planning seeks to enable municipalities to "understand the various dynamics operating within their area, develop a concrete vision for the area, and strategies for realising and financing that vision".⁸⁶ It seeks to promote public participation in development planning, needs prioritisation through strategic focus, integration and equity in the planning and allocation of scarce resources.⁸⁷

What has emerged from the preceding paragraphs is that, in addition to the requirements of its expanded developmental mandate, an IDP is supposed to be linked to the country's development priorities identified in the *National Development Plan* (2011), the MTSF and PGDS. In addition, the IDP must seek to promote the realisation of the country's commitments to UN *Agenda 21*. Given the fact that UN *Agenda 21*, the current MTSF, the *National Development Plan* (2011) and local government's expanded developmental mandate focus *inter alia* on enhancing public participation,⁸⁸ combating poverty⁸⁹ and reducing extreme forms of inequalities⁹⁰ *inter alia* by providing free basic services to the poor, one may expect that these areas of emphasis will be reflected in the priorities and strategies of IDPs.⁹¹ By

⁸⁵ Todes 2004 *J Environ Plann Manag* 844, 849.

⁸⁶ See "3.1.1 Why do integrated development planning?" in the *White Paper on Local Government* (1998).

⁸⁷ See Binns and Nel 2002 *Regional Studies* 923; Patel and Powell "Intergovernmental Delivery" 352; *CoGTA (Final Draft) Policy Paper on Integrated Development Planning* (2000) 12-14; "3 Tools and approaches for developmental local government" in *White Paper on Local Government* (1998).

⁸⁸ See s 152 (a) and (e) of the *Constitution*; ch 4 of the *Systems Act*; *National Development Plan* (2011) 1-3 and 21; "Characteristics of developmental local government" in the *White Paper on Local Government* (1998); *Presidency's Together Doing More and Better: Medium Term Strategic Framework: A Framework to Guide Government's Programme in the Electoral Mandate Period 2009-2014* (2009) para 24; Generally "Section III: Strengthening the Role of Major Groups" in UN "Agenda 21".

⁸⁹ See *National Development Plan* (2011) 1-3; Preamble to the *Systems Act*; "Maximising social development and economic growth" in the *White Paper on Local Government* (1998); *Presidency's Together Doing More and Better: Medium Term Strategic Framework: A Framework to Guide Government's Programme in the Electoral Mandate Period 2009-2014* (2009) para 10; and ch 3 of UN "Agenda 21".

⁹⁰ See *National Development Plan* (2011) 1-3; Preamble to the *Systems Act*; "Democratising development, empowering and redistribution" in the *White Paper on Local Government* (1998); *Presidency's Together Doing More and Better: Medium Term Strategic Framework: A Framework to Guide Government's Programme in the Electoral Mandate Period 2009-2014* (2009) para 10; and ch 3 of UN "Agenda 21".

⁹¹ See ch 3 of UN "Agenda 21"; *Presidency's Together Doing More and Better: Medium Term Strategic Framework: A Framework to Guide Government's Programme in the Electoral Mandate*

prioritising public participation, poverty eradication and the elimination of extreme inequalities in the IDP, it is suggested that this could enhance the value and potential of IDPs in meeting the basic needs of the poor and facilitating their equal participation in socio-political life.⁹²

3 Legal and policy framework for IDPs

This part critically examines the legal and policy frameworks on IDPs, illustrating the extent to which they have the potential to enable municipalities to contribute towards social justice in South Africa. In order to perform this task, this part of the article begins by discussing the constitutional and legislative basis for IDPs. This discussion is followed by a critical evaluation of how relevant generic features of the IDP could foster the pursuit of social justice by specifically enabling municipalities to respond to the basic needs of the poor.

3.1 Constitutional and legislative basis for IDPs

The IDP fits into the planning obligations imposed by the *Constitution* on local government. Section 153 of the *Constitution* obliges every municipality to structure and manage its planning processes in order to enable it to give priority to the basic needs of communities, promote socio-economic development within its jurisdiction, and participate in national and provincial development programmes. This provision demonstrates that the satisfaction of the basic needs is only one of the objectives that should guide municipal planning.

Although section 153 of the *Constitution* makes it clear that the obligation to satisfy the basic needs of communities appear as one of the main objectives of local government planning, it does not expressly link local government planning *per se*

Period 2009-2014 (2009) para 10; *National Development Plan* (2011) 1-3, 21; and s 153(a) of the *Constitution*.

⁹² These areas are prioritised in some of the IDPs reviewed. See *Integrated Development Plan of Tlokwe City Council* (2011) 87, 89; *Five Year Plan for Cape Town 2012-2017: Draft Review* (2013) 8-10; *Mangaung Metropolitan Municipality: Integrated Development Plan 2012-2016* (2012) 59-64; *City of Tshwane Integrated Development Plan 2011-2016* (2011) 103-109.

and the realisation of local government's socio-economic rights responsibilities. However, this lacuna is closed by section 23(1) of the *Systems Act*, which obliges every municipality to undertake "developmentally-oriented planning" so as to ensure that it meets the objects and developmental duties of local government and contributes, together with other organs of state, to the progressive realisation of constitutional socio-economic rights.⁹³

In addition, if one takes into consideration the expanded "developmental" mandate of local government, it is possible to argue that although section 153 of the *Constitution* does not directly link municipal "planning processes" to the realisation of socio-economic rights, this is implied. This argument is supported by the view that for municipalities to be "development-oriented" they must strive towards achieving their duties relating to both the constitutional objects of local government and the socio-economic rights of people who reside in the municipality.⁹⁴ This may explain why the phrasing of section 23 of the *Systems Act* conveys the idea that "developmentally-oriented planning" must strive to ensure that it gives effect to: the objects of local government; the developmental duties of local government; and contribute to the realisation of socio-economic rights. Secondly, local government planning could be implied in the socio-economic rights obligations imposed by the *Constitution* on all spheres of government to adopt reasonable "legislative and *other measures*" to progressively realise socio-economic rights.⁹⁵ The Constitutional Court has held that this obligation requires *inter alia* that government must adopt and implement a comprehensive and workable plan to give effect to socio-economic rights.⁹⁶ From this perspective it could also be argued that the strategic plan (IDP), which is the product of the planning process at the municipal level, is one of the "other measures" contemplated by the *Constitution* to realise socio-economic rights.⁹⁷

⁹³ Those entrenched in ss 24, 25, 26, 27 and 29 of the *Constitution*. See s 23(1)(a)-(c) of the *Systems Act*.

⁹⁴ See Pieterse and Van Donk "Developmental Local Government" 53-54; Mthethwa "Address".

⁹⁵ See ss 25(5), 26(2), 27(2) and 29(1)(b) of the *Constitution*.

⁹⁶ See *Grootboom* case para 38.

⁹⁷ See *Grootboom* case para 38; *Blue Moonlight Properties* case para 24. See also ACHPR *Principles and Guidelines* 15.

It is mandatory for each municipal council to adopt a strategic plan (IDP) for the development of the municipality within a prescribed period shortly after the start of its elected term.⁹⁸ It is important to note that in addition to their consensus on the conventional process of local government strategic planning,⁹⁹ experts share the view that a blanket approach to strategic planning cannot be prescribed to all municipalities due to the diversity of local conditions.¹⁰⁰ Despite the experts' caution about prescribing a universal model of strategic planning to municipalities, the *Systems Act* prescribes in detail the process that must be followed by all municipalities in planning, drafting, adopting and reviewing IDPs.¹⁰¹ The prescribed process includes: undertaking pre-planning activities (which include the consideration and adoption of a draft strategic plan and the specification of time frames for the various steps involved in the IDP process);¹⁰² facilitating public involvement through appropriate mechanisms in the various steps of the IDP process in order to ascertain development needs and priorities;¹⁰³ and identifying all planning requirements binding on the municipality by virtue of national or provincial legislation.¹⁰⁴ The *Systems Act* further requires that each district municipality should plan and adopt an IDP framework for its area as a whole, in close consultation with local municipalities.¹⁰⁵ Local municipalities are obliged to align their IDPs with the district IDP framework.¹⁰⁶

In addition to the pre-planning and public participation required by section 29(1) of the *Systems Act*, section 26 of the *Systems Act* mandates that an IDP must contain the following core components:¹⁰⁷ the municipal council's vision for the long-term

⁹⁸ See s 25 of the *Systems Act*.

⁹⁹ For details of the conventional strategic planning process, see: Streib and Poister 2005 *Public Administration Review* 46; Roering and Bryson 1988 *Public Administration Review* 995; Mercer *Strategic Planning* 2, 5; Clarke and Stewart *Planning for Change* 9; Gordon *Strategic Planning* 77; Bryson 1988 *Long Range Planning* 73-81.

¹⁰⁰ Clarke and Stewart *Planning for Change* (1998) vii; Bertocci *Strategic Planning and Management* 40; Streib and Poister 2005 *Public Administration Review* 45-46.

¹⁰¹ See generally ss 27-34 of the *Systems Act*.

¹⁰² See s 29(1)(a) of the *Systems Act*.

¹⁰³ See s 29(1)(b)(i)-(iii) of the *Systems Act*. Ch 4 of the *Systems Act* regulates in detail the process of public participation in local governance.

¹⁰⁴ See s 29(1)(c) of the *Systems Act*.

¹⁰⁵ See ss 27 and 29(2)(a) of the *Systems Act*.

¹⁰⁶ See s 29(3)(a) of the *Systems Act*.

¹⁰⁷ See Harrison "Integrated Development Plans" 187.

development of the municipality, with an emphasis on the municipality's most critical development and internal transformation needs; an assessment of the existing level of development in the municipality, which includes identification of the communities who do not have access to basic services; the council's development priorities and objectives for its elected term; the council's development strategies; a spatial development framework which must include the provision of basic guidelines for a land-use management system for the municipality; applicable disaster management plans; a financial plan; key performance indicators and performance targets.¹⁰⁸

Once the IDP is adopted by a municipal council, it serves as an operational guideline to the legislative and executive "branches" of a municipality.¹⁰⁹ As a strategic plan, the IDP should thus serve as the blueprint for making legislative and executive decisions directed towards furthering the expanded developmental mandate of local government in any municipality.¹¹⁰ As already indicated in the previous paragraph, although experts are wary about prescribing a blanket approach to local government strategic planning, the *Systems Act* prescribes a universal approach to be followed by all municipalities. The practical effect of this systematising is that it restricts the ability of municipalities to take individual initiative in strategic planning and may prejudice municipalities that have limited human and financial resources with which to comply with the numerous requirements of the *Systems Act*.¹¹¹

In addition to ensuring that the basic needs of the poor are prioritised in the goals and objectives of an IDP, section 26 of the *Systems Act* prescribes that an IDP must have "development strategies". The *Systems Act* does not define what constitutes a development strategy. Gordon defines a strategy as the "step-by-step means by

¹⁰⁸ See s 26(a)-(i) of the *Systems Act*. Performance indicators and performance targets are predetermined benchmarks that are used by a municipality to assess/monitor the extent to which it has made progress in achieving its objectives and to ascertain where further action is required to address identified problems. They can also be used to measure the achievement of service delivery targets set for individuals or functional teams in a municipality. See Clarke and Stewart *Planning for Change* 61-63; Gordon *Strategic Planning* 55-60; *Integrated Development Plan of the Tlokwe City Council* (2011) 160-162.

¹⁰⁹ See s 35(1)(a) and (b) of the *Systems Act*.

¹¹⁰ See Sowman and Brown 2006 *J Environ Plann Manag* 699. See further: Gordon *Strategic Planning* 54; Bryson 1988 *Long Range Planning* 78.

¹¹¹ See De Visser 2009 *CJLG* 22-23.

which an organisation reaches its objectives".¹¹² Local government development strategies "provide answers to the question of how" a municipality will achieve its objectives.¹¹³ Strategies in a local government strategic plan consist of plans, "programmes, events, operations, and projects" which are to be implemented by a municipality in order to realise its objectives.¹¹⁴ This suggests that a particular strategy or set of strategies could be adopted by a municipality to specifically meet the material needs of the poor.¹¹⁵ For example, in order to improve service delivery and address the needs of the poor such as water, electricity and sanitation, the strategies of the Tlokwe City Council include the sourcing of external funds.¹¹⁶ This may require that municipalities establish private-public partnerships and engage international donors.¹¹⁷

In addition to development strategies, the *Systems Act* obliges municipalities to include specific plans in the IDP such as a disaster management plan and a financial plan.¹¹⁸ The list of plans contemplated in section 26 of the *Systems Act* is not exhaustive. Other legislation may specifically require the inclusion of sector-specific plans in the IDP. For example, section 3(3) of the *Water Services Act* imposes an obligation on water services authorities (including metropolitan and district municipalities) to provide a Water Services Development Plan (WSDP) in their IDPs. A WSDP is directly relevant to ensuring that municipalities continue to provide potable water to communities, including poor households, for example. In addition, because of the nature of the legislative and executive powers of local government, a municipality could adopt and include in its IDP any other plan or development strategy that it deems necessary to realise its expanded developmental mandate

¹¹² Gordon *Strategic Planning* 45.

¹¹³ *Integrated Development Plan of the Tlokwe City Council* (2011) 89.

¹¹⁴ Gordon *Strategic Planning* 45.

¹¹⁵ For examples of specific strategies that are adopted to realise specific priorities, see *Integrated Development Plan of the Tlokwe City Council* (2011) 88-92.

¹¹⁶ *Integrated Development Plan of the Tlokwe City Council* (2011) 89-90.

¹¹⁷ In governing a community, a municipality has powers to adopt and implement any measures to further its developmental mandate provided this does not contravene the *Constitution* or existing legislation. See s 151(3) of the *Constitution*; *City of Cape Town* case para 60; Du Plessis 2010 *Stell LR* 269.

¹¹⁸ See s 26(a)-(i) of the *Systems Act*.

provided this does not contravene the *Constitution* or any relevant legislation.¹¹⁹ This demonstrates that an IDP is not a static legal tool. The ability of municipalities to design and implement plans and development strategies not specifically prescribed by local government legislation means that they could utilise this flexibility to leverage sector plans and resources that could be used to meet the needs of the poor, thereby enhancing the value and potential of the IDP in the pursuit of social justice. This notwithstanding, the greatest strength of a strategic plan such as the IDP could lie in its deliberate attempt to produce positive change.¹²⁰ Instead of allowing the transformative constitutional mandate and social justice to be realised through "disjointed incrementalism",¹²¹ the legal and policy framework for IDPs provides a structured scheme that could be used to prioritise and meet the needs of the poor. However, some writers have cautioned that the IDP appears to be too ambitious given the limited financial resources at the disposal of municipalities and the severe shortage of skilled personnel.¹²²

3.2 Relevant generic features of IDPs

To prevent erratic planning, the *Systems Act* provides that the process to be followed by a municipality to draft, consider and adopt the IDP must be in accordance with a predetermined programme which specifies time frames for the different steps.¹²³ As indicated above, this sub-section does not venture into the details of the IDP process but rather discusses from a thematic point of view relevant generic features of the IDP, in order to illustrate the potential of the IDP as a legal governance instrument that could be used by municipalities to meet the basic needs of the poor.

¹¹⁹ See s 151(3) of the *Constitution*; Du Plessis 2010 *Stell LR* 269; *City of Cape Town* case para 60.

¹²⁰ See Roering and Bryson 1988 *Public Administration Review* 995.

¹²¹ This idea is borrowed from Roering and Bryson. See Roering and Bryson 1988 *Public Administration Review* 995.

¹²² See De Visser 2009 *CJLG* 22-23; Coetzee 2010 *SSB/TRP* 25.

¹²³ See s 29(1)(a) of the *Systems Act*.

3.2.1 Sector-specific components of an IDP

As explained in the introduction, the implementation of socio-economic rights contributes to the pursuit of the transformative constitutional mandate and social justice because this enables impoverished rights-holders to access the material resources needed to facilitate their participation in socio-political life as true equals.¹²⁴ This view is informed by the fact that by implementing socio-economic rights, impoverished rights-holders could gain access to basic resources such as water, housing, sanitation, electricity, healthcare services, education, land and a healthy environment.¹²⁵ As evident from the above discussion, municipalities are obliged by the *Constitution* and legislation to contribute, together with other organs of state, to the progressive realisation of defined socio-economic rights.¹²⁶

To ensure that IDPs contribute towards the realisation of socio-economic rights, section 23(1)(c) of the *Systems Act* specifically compels every municipality to undertake "development-oriented" planning that would enable it *inter alia* to contribute to the progressive realisation of the fundamental rights entrenched in sections 24, 25, 26, 27 and 29 of the *Constitution*. This implies that, in any given context, the priorities and implementable actions envisaged by an IDP should speak to that which is necessary to realise socio-economic rights. Section 156 and Schedules 4B and 5B of the *Constitution* give an indication of the areas of socio-economic rights where local government has some law-making and executive powers with respect to the identified constitutional socio-economic rights. Section 156 and Schedules 4B and 5B of the *Constitution* illustrate that local government lacks explicit executive and legislative authority with respect for example to the right of access to social security and social assistance. In terms of these constitutional provisions, local government has varying degrees of responsibility with respect to the rights of access to water, sanitation, electricity, (municipal) healthcare services, and environmental rights. Although the approval and management of housing

¹²⁴ See Brand "Introduction to Socio-economic Rights" 12-20; Pieterse 2007 *Hum Rts Q* 796-822; Van der Walt "South African Reading of Frank Michelman's Theory" 163-165.

¹²⁵ See Pieterse 2007 *Hum Rts Q* 796-822; Langa 2006 *Stell LR* 351-352.

¹²⁶ See Steytler and De Visser *Local Government Law* 9-12; *R A Le Sueur v EThekweni Municipality* 2013 Case No 9714/11 para 19.

construction - which falls under the housing functions in Schedule 4A of the *Constitution*, an area of concurrent provincial and national competence - has been allocated to some municipalities with the necessary resources to speed up housing delivery,¹²⁷ the Constitutional Court clarified the housing responsibilities of municipalities in *Blue Moonlight Properties*.¹²⁸

One of the issues that the Constitutional Court dealt with in *Blue Moonlight Properties* relates to the powers and functions of municipalities with regard to housing.¹²⁹ The Court noted that in terms of Part A of Schedule 4 of the *Constitution*, housing is one of the functional areas of concurrent national and provincial legislative competence.¹³⁰ However, in order to establish the housing responsibilities of the City of Johannesburg, the Court provided a detailed exposition of the constitutional, legislative and policy framework informing the role of local government re the right of access to housing.¹³¹ The Court noted that section 9 of the *Housing Act*¹³² obliges municipalities, as part of the process of integrated development planning, to take "all reasonable and necessary steps within the context of national and provincial housing legislation and policy" to ensure, *inter alia*, that the inhabitants of their respective areas have access to adequate housing.¹³³ This suggests that subject to national and provincial housing legislation and policies, municipalities could adopt by-laws on housing issues. The Court stressed that as per its earlier jurisprudence in *Grootboom*, the duty to provide housing under section 26 of the *Constitution* falls on all three spheres of government, who must operate in accordance with the principles of co-operative government.¹³⁴ Contrary to arguments raised by the City that the provision of housing was a primary responsibility for

¹²⁷ On 4 March 2011, the following municipalities were assigned new powers to approve and manage housing construction programmes: Johannesburg, Ekurhuleni, Tshwane, Nelson Mandela Bay and Cape Town metropolitan municipalities and the Frances Baard and Pixley ka Seme district municipalities in the Northern Cape. See Department of Human Settlements 2011 www.info.gov.za.

¹²⁸ For details of the facts, see *Blue Moonlight Properties* case paras 1-9.

¹²⁹ *Blue Moonlight Properties* case para 1.

¹³⁰ *Blue Moonlight Properties* case para 20.

¹³¹ See *Blue Moonlight Properties* case paras 21-28.

¹³² *Housing Act* 107 of 1997. This Act was specifically enacted to give effect to the constitutional right of access to adequate housing. See *Blue Moonlight Properties* case para 24.

¹³³ *Blue Moonlight Properties* case para 24.

¹³⁴ *Blue Moonlight Properties* case para 42.

national and provincial government which did not place an obligation on municipalities to self-fund housing projects especially in emergency situations,¹³⁵ the Court held, based on the proper interpretation of the constitutional, legislative and policy framework on the right of access to adequate housing, as well as on its earlier jurisprudence in *Grootboom*, that there was no basis for the City's argument.¹³⁶ The Court held that the assertion that local government is not entitled to self-fund housing projects in the realm of emergency situations to which it is best situated to react, to engage with and prospectively to plan around, was based on a misconception of its jurisprudence in *Grootboom*.¹³⁷ The Court held that based on the powers and functions of municipalities, including those relating to housing as spelt out by the *Constitution*, relevant legislation and policies, it would hardly be possible for the City to carry out its constitutional and legislative obligations without being entitled or obliged to fund itself in the sphere of emergency housing.¹³⁸ The Court also held that the City's argument that it would have acted *ultra-vires* by responding to the emergency housing needs of the occupiers without an express legislative obligation was unpersuasive.¹³⁹ Based on an interpretation of relevant provisions of the *National Housing Code* (2009), the Court held that:¹⁴⁰

Besides its entitlement to approach the province for assistance, the City has both the power and the duty to finance its own emergency housing scheme. Local government must first consider whether it is able to address an emergency housing situation out of its own means. The right to apply to the province for funds does not preclude this. The City has a duty to plan and budget proactively for situations like that of the Occupiers.

Based on an analysis of the relevant policy and legal framework on housing, the Court concluded that the City's interpretation of Chapter 12 of the *Housing Code* (2009) as neither permitting nor obliging it to take measures to provide emergency accommodation after having been refused financial assistance by the province was

¹³⁵ See *Blue Moonlight Properties* case paras 47-53.

¹³⁶ See *Blue Moonlight Properties* case para 57.

¹³⁷ See *Blue Moonlight Properties* case para 57.

¹³⁸ See *Blue Moonlight Properties* case para 53.

¹³⁹ For details, see *Blue Moonlight Properties* case paras 58-67.

¹⁴⁰ See *Blue Moonlight Properties* case para 67.

incorrect and that the City was obliged to provide temporary accommodation.¹⁴¹ It declared the City's housing policy unconstitutional in that it excluded people evicted by a private landowner from its temporary housing programme, as opposed to those relocated by the City.¹⁴²

Blue Moonlight Properties demonstrates that although the provision of housing is a responsibility shared by all spheres of government, there seems to be confusion at the local government level about the specific responsibilities of municipalities which could be integrated into the strategic planning process. This confusion seems to stem from a rigid interpretation of the housing competencies of the various spheres of government as set out in Schedules 4 and 5 of the *Constitution*. This confusion creates uncertainty in local governance. Although the jurisprudence of the Constitutional Court may help in clarifying some of this confusion, some experts have proposed that government should consider amending Schedules 4B and 5B of the *Constitution* to expressly confer on metropolitan municipalities in particular constitutional competence over the provision of housing.¹⁴³ Although it has been argued that this will enable especially metropolitan municipalities play the type of developmental role required by their mandate,¹⁴⁴ this may also help in eliminating confusion amongst municipalities regarding their housing responsibilities. *Blue Moonlight Properties* also clearly demonstrates that section 156 of the *Constitution* is not the only source of power for local government when it comes to issues that cut across the duties of municipalities relating to socio-economic rights. In addition to powers specifically conferred on municipalities by legislation and policies, it is necessary to be guided by the Constitutional Court's jurisprudence particularly in relation to how it has interpreted the constitutional duty imposed on all spheres of government to adopt reasonable legislative and other measures to give effect to the socio-economic rights.

¹⁴¹ For details, see *Blue Moonlight Properties* case para 96.

¹⁴² For details, see *Blue Moonlight Properties* case para 97.

¹⁴³ For a detailed discussion on this issue, see Christmas and De Visser 2009 2 *CJLG* 111-118; De Visser 2009 *CJLG* 20-21.

¹⁴⁴ See Christmas and De Visser 2009 *CJLG* 111-118; De Visser 2009 *CJLG* 20-21.

Integrated development planning at the local government level is supposed to cover different "sectors" that also directly relate to the above areas of socio-economic rights, where local government has some law-making and executive powers. The *IDP Guide V* defines a "sector" as a specific aspect of human need such as water, sanitation, housing, health, a healthy environment, land, energy (electricity) and education, for example.¹⁴⁵ The approach adopted in *IDP Guide V* is that, in developing and implementing IDPs, "specific sectors should only be considered" in the various processes by a municipality when such sectors are relevant to local priorities.¹⁴⁶ Due to the fact that local circumstances differ from one municipal area to another, local priorities will also differ.¹⁴⁷ However, it is generally expected that the sectors listed above should be provided for in the IDP planning process.¹⁴⁸ This implies that, given a municipality's context, sector-specific needs should be considered in the IDP process and included in a municipality's goals, objectives and strategies. As earlier indicated, strategies in a strategic plan include plans, projects and programmes that are aimed at realising the objectives of a municipality.¹⁴⁹ Although the IDP provides a framework for integrated strategic planning, it may be desirable for some sectors to have sector-specific strategies (depending on local priorities) in order to maximise sector-specific outcomes. For example, all priorities and objectives identified by the Tlokwe City Council have specifically defined strategies.¹⁵⁰ In line with this need, legislation sometimes obliges municipalities to develop sector-specific strategies such as plans, as part of the IDP. The following are sector-specific examples prescribed by legislation or policies:

The *Systems Act* obliges every municipality to include in its IDP a spatial development framework (SDF).¹⁵¹ This obligation is reiterated by the newly adopted *Spatial Planning and Land Use Management Act* (SPLUMA).¹⁵² The SDF should constitute the basis for all decisions relating to spatial planning and land-use

¹⁴⁵ See *IDP Guide Pack V*(2001) 5 and 38.

¹⁴⁶ See *IDP Guide Pack V*(2001) 5.

¹⁴⁷ See *IDP Guide Pack V*(2001) 38.

¹⁴⁸ See *IDP Guide Pack V*(2001) 6.

¹⁴⁹ See Gordon *Strategic Planning* 45.

¹⁵⁰ See *Integrated Development Plan of the Tlokwe City Council* (2011) 89-92.

¹⁵¹ See s 26(e) of the *Systems Act*.

¹⁵² See s 20(2) of the *Spatial Planning and Land Use Management Act* 16 of 2013.

management within a municipality's jurisdiction.¹⁵³ It is required that a municipal SDF must assist in integrating, coordinating, aligning and expressing development policies and plans emanating from the various sectors of the various spheres of government as they apply within the municipal area.¹⁵⁴ An SDF is important in ensuring that injustices of the past are addressed, including socio-economic inequalities that were exacerbated by apartheid spatial planning.¹⁵⁵ The Preamble to SPLUMA acknowledges the role of spatial planning in contributing towards the State's constitutional obligation to realise the rights in sections 24, 25, 26 and 27 of the *Constitution*. It indicates that "a land use planning system that is protective of the environment" falls within the range of "reasonable legislative and other measures" that should be adopted to give effect to section 24 of the *Constitution*. Through the implementation of a land-use planning and management system conditions can be created that will enable citizens to gain access to land on an equitable basis, to enjoy the right of access to housing which includes an equitable spatial pattern and sustainable human settlements, and to facilitate the progressive realisation of the right to sufficient food and water.¹⁵⁶

Despite the relevance and potential of SPLUMA and municipal SDFs in contributing towards the realisation of constitutional socio-economic rights and the pursuit of social justice, it remains to be seen how local government will address some of the potential challenges that may arise from their implementation. For example, although SPLUMA defines municipal planning as including the control and regulation of land within the municipal area where the nature, scale and intensity of the land use do not affect the planning mandate of provincial government or the national interest,¹⁵⁷ it is difficult to absolutely predetermine the interests of national and provincial governments in land falling within the jurisdiction of all municipalities. This is largely because national and provincial interests will evolve according to changing

¹⁵³ See *IDP Guide Pack V*(2001) 19.

¹⁵⁴ See s 12(5) of the *Spatial Planning and Land Use Management Act* 16 of 2013.

¹⁵⁵ See "3.1.1 Why do integrated development planning?" in the *White Paper on Local Government* (1998); Harrison "Integrated Development Plans" 192-194; Sowman and Brown 2006 *J Environ Plann Manag* 695-698.

¹⁵⁶ See Preamble to the *Spatial Planning and Land Use Management Act* 16 of 2013. The principle of spatial justice seeks to correct past injustices as they relate to access to and use of land.

¹⁵⁷ See s 5(1)(a)-(c) of the *Spatial Planning and Land Use Management Act* 16 of 2013.

circumstances. This means that, just like the planning function, the interests of national, provincial and local government could still overlap over land.¹⁵⁸ The negative impact of such overlap on overall municipal service delivery cannot be underestimated.¹⁵⁹ SPLUMA contemplates such overlaps and provides mechanisms for resolving potential intergovernmental conflicts.¹⁶⁰ However, one could expect with a degree of certainty that in instances where there is an overlap of interests on land, national and provincial interests will override municipal interests. In addition, the success of established conflict resolution mechanisms will depend on political will. Moreover, one could argue that it seems contradictory that even though housing does not appear as a local government area of competence in Schedules 5B and 4B of the *Constitution*, SPLUMA requires that a municipal SDF must estimate the demand of housing units across different socio-economic categories and the planned location and density of future housing developments within each municipal jurisdiction.¹⁶¹ The requirement that municipalities should plan for future housing developments within their jurisdiction confirms the view canvassed by De Visser that for local government to effectively fulfil its expanded developmental mandate, municipalities (especially metros) should be given express constitutional competence over housing delivery.¹⁶² Furthermore, the fact that SDFs are supposed to include areas under traditional leadership and to address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere of government,¹⁶³ may exacerbate existing tensions between traditional authorities and

¹⁵⁸ This scenario is clearly illustrated in *Maccsand (Pty) Ltd v City of Cape Town* 2012 7 BCLR 690 (CC) (*Maccsand case*). See *Maccsand* case paras 1-22, 37-47. The Preamble suggests that while planning is within the legislative competence of national and provincial governments, municipal planning is "primarily" the executive function of the local sphere of government. See also s 23 of the *Spatial Planning and Land Use Management Act* 16 of 2013. However, municipalities can adopt by-laws concerning spatial planning and the development or use of land. See s 6(1)(a) of the *Spatial Planning and Land Use Management Act* 16 of 2013.

¹⁵⁹ Christmas and De Visser 2009 *CJLG* 111. For a detailed discussion on the overlap of functional areas between provincial and local government, see Steytler and Fessha *Defining Provincial and Local Government Powers* 6-9; Christmas and De Visser 2009 *CJLG* 110-111.

¹⁶⁰ See generally ss 9(3); 12(2)(a) and 22(3) of the *Spatial Planning and Land Use Management Act* 16 of 2013.

¹⁶¹ See s 21(f) of the *Spatial Planning and Land Use Management Act* 16 of 2013. See further s 21(g)-(p) for the content of a municipal spatial development framework.

¹⁶² Christmas and De Visser 2009 2 *CJLG* 111-118; De Visser 2009 *CJLG* 20-21.

¹⁶³ See s 12(h) of the *Spatial Planning and Land Use Management Act* 16 of 2013.

government, since some traditional authorities already feel that municipalities have taken over their historical administrative functions.¹⁶⁴

As indicated above, in terms of the water sector, section 3(3) of the *Water Services Act* imposes an obligation on water services authorities to provide a Water Services Development Plan (WSDP) in their IDPs.¹⁶⁵ Furthermore, in the energy sector the *White Paper on Energy (1998)*¹⁶⁶ requires that electricity should be linked to every municipality's Infrastructure Investment Plan (IIP) and that an Integrated Energy Plan (IEP) should be part of the IDP.¹⁶⁷ Through its WSDP and IEP a municipality could ensure that poor people have access to potable water supply and electricity, for example. Access to a supply of potable water could reduce the spread of communicable diseases amongst the poor. Moreover, access to a potable water supply and to electricity could improve the levels of their economic productivity amongst the poor and generally improve their quality of life.¹⁶⁸ In addition, as part of the IDP, section 33 of the *National Health Act* requires health managers of all metropolitan and district municipalities to develop a district health plan that will ensure that residents have access to primary healthcare services. The lack of access to basic services such as potable water, electricity and healthcare services is seen as a symptom of poverty.¹⁶⁹ Through sector-specific plans that address human needs such as water, electricity and healthcare, *inter alia*, municipalities could (re)distribute resources to the poor.

The relevance of diverse sectors in the IDP in this context lies in the fact that they are directly linked to the various socio-economic rights that local government is mandated to jointly realise with other spheres of government. This means that, depending on the priority needs of communities, municipalities could develop strategies which prioritise the needs of the poor in a wide range of areas. This

¹⁶⁴ See Rugege 2003 LDD 171-181.

¹⁶⁵ See *IDP Guide Pack V*(2001) 65.

¹⁶⁶ *White Paper on the Energy Policy of the Republic of South Africa (1998)*.

¹⁶⁷ See "8.1 Integrated energy planning" in *White Paper on the Energy Policy of the Republic of South Africa (1998)* 72-73; *IDP Guide Pack V*(2001) 56.

¹⁶⁸ See *IDP Guide Pack V*(2001) 63.

¹⁶⁹ See *IDP Guide Pack V*(2001) 63.

indicates the flexible nature of the IDP as a local governance instrument. In addition to the prescribed content, it may include "voluntary" content. The multitude of sectors that converge in the IDP makes it directly relevant and theoretically gives it enormous potential to contribute towards the pursuit of social justice because, depending on the context, strategies could be directed to respond to the needs of the poor in diverse areas. In addition, the integration of diverse sectoral strategies in an IDP allows for the optimal allocation of limited resources between sectors and across communities in a manner that promotes (re)distribution and the empowerment of the poor.¹⁷⁰ Despite the potential that this multi-sectoral approach to planning may hold, De Visser argues that:¹⁷¹

In this framework, the municipality is expected to be the pivot that skilfully mediates the tremendous and varied needs of a municipal community with the requirements of departments and parastatals in two other spheres of government... The intergovernmental aspiration, embedded in the planning framework, which envisages the IDP to be a reflection of the entire government's vision for the municipal area may be an ambitious attempt at cooperative planning across the three spheres. However, the insistence on this wholesale alignment of municipal budgets and plans may also just be an offshoot of the distrust of municipalities as custodians of local development. There is no doubt that pervasive trends of corruption, mismanagement, immature politics and a skills deficit in many municipalities do little to dispel this distrust.

The above extract suggests that the potential of IDPs to contribute towards meeting the needs of communities is seriously diminished by high levels of corruption, maladministration and the lack of skilled personnel in most municipalities.

3.2.2 Interconnected strategic planning

South Africa has a multi-sphere system of government which must operate in accordance with constitutionally entrenched principles of co-operative government.¹⁷² The constitutional mandate to pursue social justice is therefore

¹⁷⁰ Sowman and Brown 2006 *J Environ Plann Manag* 699.

¹⁷¹ De Visser 2009 *CJLG* 22-23.

¹⁷² See Du Plessis 2008 *SAPL* 90-92; Layman *Intergovernmental Relations* 8; De Villiers and Sindane *Cooperative Government*; De Visser *Developmental Local Government* 209-254.

shared by all three spheres of government and organs of state.¹⁷³ From a more general theoretical perspective, Fraser argues that because the state is multi-layered in nature, deliberations about institutionalising social justice should take place at the national, regional and local levels of government, depending on their areas of competence.¹⁷⁴ Fraser's argument is consistent with what is generally referred to as the principle of institutional subsidiarity.¹⁷⁵ This principle dictates that government decisions should be taken and implemented at the level appropriate to the type of decision.¹⁷⁶ In South Africa, although the original powers and functions of local government are entrenched in the Constitution,¹⁷⁷ the application of the subsidiarity principle makes it possible for national and provincial spheres of government to further assign or allocate powers and functions to local government.¹⁷⁸ Furthermore, it should be noted that because the functional areas of the three spheres of government often overlap, it is important for all spheres of government to work in partnership by adhering to the constitutional principles of co-operative government and intergovernmental relations.¹⁷⁹ Co-operative government obliges the various spheres of government and organs of state to resolve disputes in a friendly manner and provides that intergovernmental relations should be promoted and facilitated through the channels, structures and mechanisms established by the *Intergovernmental Relations Framework Act* (IGRFA).¹⁸⁰ Where an organ of state or sphere of government fails to exhaust the dispute resolution mechanisms created by

¹⁷³ Langa 2006 *Stell LR* 358; Pieterse 2005 *SAPL* 164-165; Chaskalson 2000 *SAJHR* 204-205.

¹⁷⁴ See Fraser "Social Justice" 87-88.

¹⁷⁵ See Friesen 2003 *Federal Governance* 5-6; Marquardt 1994 *Fordham Int'l LJ* 619-622.

¹⁷⁶ UN-HABITAT *International Guidelines* 4 paras 1-6; De Visser *Developmental Local Government* 142.

¹⁷⁷ See s 156 of the *Constitution*; *Fedsure Life Assurance v Greater Johannesburg Transitional Metropolitan Council* 1998 12 BCLR 1458 (CC) para 36; De Visser *Developmental Local Government* 114.

¹⁷⁸ Section 156(4) of the *Constitution*; De Visser "Institutional Subsidiarity" 3-12. See also De Visser 2010 *Stell LR* 90-115.

¹⁷⁹ These principles are outlined in ch 3 of the *Constitution*. See the *Maccsand* case paras 37, 47; Steytler and Fessha *Defining Provincial and Local Government Powers* 6-9; Christmas and De Visser 2009 *CJLG* 111.

¹⁸⁰ The *Intergovernmental Relations Framework Act* 13 of 2005 (IGRFA) was enacted to give effect to s 41(2) of the *Constitution*. See Woolman 2009 *LDI* 62-75; ch 2 of the IGRFA which outlines the composition and roles of the various intergovernmental structures (the President's Co-ordinating Council; "MinMECs"- a forum where national ministers and their provincial counterparts meet; provincial intergovernmental forums; and municipal intergovernmental forums). See Layman *Intergovernmental Relations* 14-15; Edwards 2008 *Politeia* 68-72; Malan 2005 *Politeia* 230-236.

the *IGRFA*, a court will not entertain such a dispute.¹⁸¹ Against the above background, it seems that social justice can be pursued only through a consolidated response from all spheres of government.

In South Africa the IDP is part of government's interconnected planning system. The IDP is supposed to link, integrate and co-ordinate the policies, plans and strategies of a municipality with those of national and provincial government (especially at various sectoral levels) as well as those of other affected municipalities - in such a case, between district and local municipalities.¹⁸² This obligation is reinforced by the requirement that municipalities must participate in national and provincial development programmes.¹⁸³

Each of the sectors discussed above has national and at times provincial departments with sector-specific policies and programmes that must be taken into consideration by municipalities in designing IDPs.¹⁸⁴ This ensures that policies, plans and other strategies adopted by municipalities are aligned with those of national and provincial government. The emphasis on interconnected planning highlights the strong concern for policy coherence across all spheres of government.¹⁸⁵ Through the IDP, different plans and strategies are integrated, co-ordinated and linked to the use of financial, natural, physical and human resources.¹⁸⁶ From this point of view, it could be argued that an interconnected approach to planning may prevent the wastage of limited resources and promote a more coherent response to priorities defined by national and provincial governments (such as eliminating poverty and extreme inequalities) as well as those specifically identified by municipalities.

Where municipalities are required to comply with planning requirements in terms of national or provincial legislation, the responsible organ of state is obliged to consult

¹⁸¹ Section 41(3) of the *Constitution*; Woolman 2009 *LDL* 63-65.

¹⁸² See *Integrated Development Plan of the Tlokwe City Council* (2011) 15; Cloete and Thornhill *South African Municipal Government* 121; Sowman and Brown 2006 *J Environ Plann Manag* 700; ss 24, 29(1)(b)(iii) of the *Systems Act*.

¹⁸³ See s 153(b) of the *Constitution* and s 24(2) of the *Systems Act*.

¹⁸⁴ See *IDP Guide Pack V*(2001) 38.

¹⁸⁵ Harrison "Origins and Outcomes" 33.

¹⁸⁶ *Integrated Development Plan of the Tlokwe City Council* (2011) 18.

with the affected municipality and to take reasonable steps to assist that municipality to meet prescribed time limits and any other requirements relevant to IDPs.¹⁸⁷ In addition to financial assistance, support by national and provincial governments may take different forms.¹⁸⁸ For example, the national sphere of government could support the IDP process by providing a broad framework within which co-ordinated action and integrated planning could take place. This could be done by prescribing minimum standards in the various sectors, which prescription would then constitute the basis for linkages between the different spheres of government.¹⁸⁹ The national sphere of government could also support municipalities if, for example, the Minister for Co-operative Government and Traditional Affairs issued guidelines to further regulate *inter alia* the details of IDPs; the criteria for planning, drafting, adoption or review of IDPs; and the process for the amendment of IDPs.¹⁹⁰ Furthermore, strategic sector officials in relevant government departments could support the IDP process by providing technical sector-specific information as well as departmental operational and capital budgetary information during the IDP design process.¹⁹¹ Despite the potential benefits, it has been argued that the requirements for interconnected planning across the various spheres of government has made the IDP process tightly regulated with specified deadlines that often put municipalities under extreme pressure.¹⁹² It is suggested that the degree of pressure exerted on municipalities to comply with deadlines seems to ignore the onerous legislative planning requirements that must be complied with.¹⁹³

In order to address potential conflicts in the area of spatial planning, SPLUMA provides that the Minister may, after consultation with organs of state in the provincial and local spheres of government, prescribe procedures to resolve and prevent conflicts or inconsistencies which may emerge from spatial plans, frameworks and policies of other spheres of government and between a spatial plan,

¹⁸⁷ See s 24(4) of the *Systems Act*.

¹⁸⁸ See "Basics of IDPs" in *IDP Guide Pack* (2001) 8-9.

¹⁸⁹ *CoGTA (Final Draft) Policy Paper on Integrated Development Planning* (2000) 8.

¹⁹⁰ See generally s 37 of the *Systems Act*.

¹⁹¹ See *Integrated Development Plan of the Tlokwe City Council* (2011) 25.

¹⁹² De Visser 2009 *CJLG* 23.

¹⁹³ De Visser 2009 *CJLG* 23.

framework and policies relating to land-use of any other organ of state.¹⁹⁴ In addition, to minimise the potential for conflicts, the SPLUMA requires that all spheres of government must participate in the spatial planning and land-use management processes that impact on each other to ensure that the plans and programmes are coordinated, consistent and in harmony with one another.¹⁹⁵

In addition to the various types of support described above, the provincial department of local government could support integration in the IDP process by performing its oversight role.¹⁹⁶ Specifically, the MEC for local government in each province is expected *inter alia* to monitor the prescribed IDP process; to assist municipalities with the planning, drafting, adoption and review of IDPs; to facilitate the alignment and co-ordination of the IDPs of different municipalities (especially district and local municipalities); to ensure the alignment of the IDPs with provincial and national plans, strategies and programmes; and to take any appropriate steps to resolve IDP-related disputes or differences, especially between district and local municipalities.¹⁹⁷ Where an IDP-related dispute cannot be resolved by the MEC for local government, such a dispute can be referred for a decision to an *ad hoc* committee.¹⁹⁸ The MEC for local government appoints the *ad hoc* committee, which consists of members representing the three spheres of government.¹⁹⁹ A matter before an *ad hoc* committee is decided if at least two spheres of government agree on the matter.²⁰⁰ In terms of spatial planning, where a provincial SDF is inconsistent with a municipal SDF, the Premier must in accordance with the IRFA take the steps needed to support the revision of those spatial development frameworks in order to ensure consistency.²⁰¹ It can be argued that because a municipal SDF constitutes a

¹⁹⁴ See 9(3) of the *Spatial Planning and Land Use Management Act* 16 of 2013.

¹⁹⁵ See s 12(2)(a) of the *Spatial Planning and Land Use Management Act* 16 of 2013.

¹⁹⁶ See s 31 of the *Systems Act*.

¹⁹⁷ See s 31(a) to (d) of the *Systems Act*. Municipalities are expected to submit a copy of adopted IDPs to the MEC of the province, together with the "Process Plan" and the "Framework for the IDP" (in the case of district municipalities) within 10 days after adoption, for assessment.

¹⁹⁸ See s 32(2)-(4) of the *Systems Act*.

¹⁹⁹ See generally s 33 of the *Systems Act*. The procedure and manner of referring an objection to an *ad hoc* committee as well as the proceeding are respectively outlined in ss 4 and 5 of the *Local Government: Municipal Planning and Performance Management Regulations* (2001) (GN R796 in GG 22605 of 24 August 2001).

²⁰⁰ See s 33(4) of the *Systems Act*.

²⁰¹ See s 22(3) of the *Spatial Planning and Land Use Management Act* 16 of 2013.

component of an IDP, this provision leads to a duplication of functions due to the fact that the *Systems Act* obliges the MEC for local government to co-ordinate and facilitate the alignment of the IDP with the plans, programmes and strategies of national and provincial organs of state.²⁰² Furthermore, the MECs for local government in each province are required to annually compile and submit to their respective provincial legislatures, to the Minister and the National Council of Provinces, a consolidated report on the performance of municipalities in their respective provinces. The reports must identify municipalities that under-performed during the year and propose necessary remedial action to be taken.²⁰³ This oversight role could ensure that struggling municipalities are provided with context-specific support which will enable them to effectively discharge their integrated development planning functions, for example.

Although interconnected planning and adherence to the principles of co-operative governance could ensure that all spheres of government adopt consolidated strategies in pursuit of social justice, Harrison suggests that, while the Department of Co-operative Government and Traditional Affairs has provided municipalities with the much-needed support in developing and implementing IDPs, provincial support is weak, and provinces often display low levels of commitment and engagement to the IDP process.²⁰⁴ However, recent reports indicate that national and provincial governments have adopted a series of measures to support municipalities in their attempts to fulfil their expanded developmental mandate.²⁰⁵ For example, at the beginning of this year, pursuant to their constitutional powers,²⁰⁶ the Nelson Mandela Bay municipality became the first metro to be placed under administration

²⁰² See s 31(c) of the *Systems Act*.

²⁰³ See s 47 of the *Systems Act*. See also s 48 under which the Minister may annually compile and submit to Parliament and the MECs for local government a consolidated report on the performance of local government.

²⁰⁴ Harrison "Origins and Outcomes" 331. See *Consolidated General Report on the Audit Outcomes of Local Government 2011-2012* (2013) 104.

²⁰⁵ Chapters 4 and 5 of the *Local Government Budgets and Expenditure Review 2006/2007-2012/2013* (2011) describes a series of measures that have been put in place to ensure that national and provincial governments provide municipalities with the support needed to realise their mandates. See also *Consolidated General Report on the Audit Outcomes of Local Government 2011-2012* (2013) 154-168; *Local Government Turn Around Strategy* (2009) 19-25.

²⁰⁶ Section 100 of the *Constitution* deals with the powers of national government to intervene in a provincial administration whereas s 139 gives provincial executives the powers to intervene in a municipality when it fails to perform its executive functions.

by national and provincial government in order to restore full functionality.²⁰⁷ By providing policy guidance and financial support that may be needed by municipalities, national and provincial governments facilitate the ability of municipalities to identify, prioritise and meet the basic needs of poor, disadvantaged and marginalised people.

However, despite the attempts made by national and provincial government to support local government, there is also evidence that various spheres of government often ignore established channels for intergovernmental dispute resolution, therefore deciding to settle intergovernmental disputes in court.²⁰⁸ The decision to engage in expensive litigation procedures in settling government differences often leads to the dissipation of scarce resources that could be used to execute "developmental" projects, including the implementation of projects that give effect to socio-economic rights.²⁰⁹

3.2.3 Implementation, monitoring and performance management

Once a municipal council adopts an IDP, it becomes the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development in the municipality.²¹⁰ A municipality that cannot implement the plans and strategies contained in its adopted IDP arguably cannot meaningfully contribute towards the pursuit of its expanded developmental mandate, and by extension the pursuit of social justice. Streib and Poister argue that:²¹¹

The more important issue, however, concerns putting plans into action. Strategic planning is an action-oriented type of planning that is useful only if it is carefully linked to implementation - and this is often where the process breaks down. Strategic plans do not implement themselves...

²⁰⁷ See Shepstone and Wylie Date Unknown www.wylie.co.za.

²⁰⁸ See for example: *Maccsand case; Beja v Premier of the Western Cape* 2011 10 BCLR 1077 (WCC) (*Beja* case) paras 162-172.

²⁰⁹ See *Beja* case paras 162-172.

²¹⁰ See s 35(1)(a) of the *Systems Act*.

²¹¹ Streib and Poister 2005 *Public Administration Review* 46.

What is evident from the above extract is that, without implementation, the potential of strategic plans such as IDPs is seriously diminished. In addition, it is important to ensure that the implementation of a strategic plan is constantly monitored and reviewed.²¹² This means that, during the implementation of a strategic plan, municipalities should put in place mechanisms to continuously check the extent to which the IDPs respond to institutional and community needs. Where it is observed that the implementation of the strategic plan does not contribute towards achieving defined objectives, it should be revised accordingly to cater for changing circumstances.²¹³ This is to ensure that the implementation of adopted plans and strategies achieves defined objectives.

One of the strengths of the system of IDPs is that municipalities are obliged to establish a performance management system in order to ensure effective implementation of adopted plans and strategies.²¹⁴ Established performance management systems may be context specific, equal to the resources of a municipality and in line with the priorities, objectives and targets contained in an IDP.²¹⁵ Each municipality is required to promote a culture of performance management amongst its political structures, political office bearers and councillors, including its general administration, in order to ensure that the council is run in an economical, effective, efficient and accountable manner.²¹⁶ The performance management system must set appropriate key performance indicators.²¹⁷ These serve as a yardstick for measuring individual and municipal performance, including their outcomes and impact in relation to the development priorities and objectives set out in the IDP. Through the use of key performance indicators it is possible to assess the extent to which a municipality has succeeded in achieving its goals and objectives, including the extent to which it has succeeded in combating poverty and extreme inequalities in access to social services. It is suggested that the involvement

²¹² Gordon *Strategic Planning* 12.

²¹³ See Gordon *Strategic Planning* 12.

²¹⁴ See ch 6 (ss 38-49) of the *Systems Act*.

²¹⁵ See s 38(a)(i)-(iii) of the *Systems Act*.

²¹⁶ See s 38(b) and (c) of the *Systems Act*.

²¹⁷ See s 41(1)(a)-(b) of the *Systems Act*.

of the community and the Minister in setting appropriate key performance indicators could help in enhancing accountability in the IDP process.²¹⁸

Also linked to performance management and the IDP is municipal finance management. The key piece of legislation on municipal finance management is the *Local Government: Municipal Finance Management Act*.²¹⁹ Generally, the *Municipal Finance Management Act* aims to secure sound and sustainable management of the fiscal and financial affairs of municipalities by establishing norms and standards *inter alia* for ensuring transparency, accountability, and appropriate lines of responsibility in the fiscal and financial affairs of municipalities; the management of municipal revenues, expenditures, assets, liabilities, financial dealings and budgetary and financial planning processes, as well as the coordination of these processes with those of other organs of state in other spheres of government; the handling of financial problems in municipalities; and supply-chain management.²²⁰ As already stated, a key component of the IDP is a financial plan, which must include a budget projection for at least the next three years.²²¹ Each municipal council must, each financial year, approve an annual budget for the municipality before the start of the financial year.²²² The mayor is obliged to co-ordinate the processes for preparing the annual budget and for reviewing the municipality's IDP and budget-related policies to ensure that the tabled budget and any revisions of the IDP and budget-related policies are mutually consistent and credible.²²³ Furthermore, when preparing the annual budget, the mayor of the municipality must take into account the municipality's IDP, the national budget, the relevant provincial budget, and the national government's fiscal and macro-economic policy; and must also take all reasonable steps to ensure that the municipality revises the IDP, taking into account realistic revenue and expenditure projections for future years.²²⁴ Once a budget is approved, a municipality can incur expenditure only in terms of the approved budget

²¹⁸ For details, see ss 42, 43 of the *Systems Act*.

²¹⁹ *Local Government: Municipal Finance Management Act* 56 of 2003 (*Municipal Finance Management Act*).

²²⁰ See Preamble and s 2 of the *Municipal Finance Management Act*.

²²¹ See s 26(h) of the *Systems Act*.

²²² See s 16(1)-(3) of the *Municipal Finance Management Act* for details.

²²³ See s 21(1)(a) of the *Municipal Finance Management Act*.

²²⁴ See generally s 21(2) of the *Municipal Finance Management Act*.

and within the limits of the amounts appropriated for the different votes in the approved budget.²²⁵

In terms of the *Municipal Financial Management Act*, long-term budgetary commitments required for the implementation of IDPs often require a broad range of support across all spheres of government. For example, although a municipal council may enter into a contract which may impose financial obligations on the municipality beyond the three years covered in the annual budget of that year, it may do so only after receiving the support of the national and provincial treasuries, the national department responsible for local government and, if the contract involves the provision of water, sanitation, electricity or any other prescribed service, the responsible national department.²²⁶ The multitude of actors that must be consulted in long-term contracts involving the provision of basic services such as water, sanitation and electricity may generally slow down the pace of implementing IDPs. However, it is hoped that when the *Draft Infrastructure Development Bill*²²⁷ becomes law, responsibility for the implementation of bulk infrastructure in the areas of water, sanitation and electricity may be shared between municipalities and the Presidential Infrastructure Co-ordinating Commission (PICC).²²⁸ The PICC is expected to facilitate and co-ordinate the development of all infrastructure and strategic projects with significant economic and social importance to South Africa.²²⁹ The type of infrastructure and strategic projects envisaged by the *Draft Infrastructure Development Bill* include the construction of: power stations or installations for harnessing any source of energy; health facilities; sewage works; waste management and disposal facilities; and water works and water infrastructure.²³⁰ This indicates that although the IDPs of municipalities will contain defined objectives in relation to the provision to communities of basic services such as water, electricity and sanitation, the responsibility for the development of the necessary infrastructure

²²⁵ Sections 15(a) and (b) of the *Municipal Finance Management Act*.

²²⁶ See generally s 33(1)(a) of the *Municipal Finance Management Act*.

²²⁷ *Draft Infrastructure Development Bill* (2013) (GN 99 of GG 36143 of 8 February 2013).

²²⁸ For the composition of the Presidential Infrastructure Co-ordinating Commission, see s 3 of *Draft Infrastructure Development Bill* (2013). The chairperson of SALGA represents the interest of municipalities.

²²⁹ See s 4 of *Draft Infrastructure Development Bill* (2013).

²³⁰ See s 7 read with Schedule 1 of *Draft Infrastructure Development Bill* (2013).

may in future lie with the PICC. This demonstrates that although attention will be given to the development of the necessary infrastructure at the highest level, close partnership and co-operation between different spheres of government will remain important in ensuring that the IDPs are implemented.

It is important to note that, in designing and implementing budgets and IDPs generally, councillors, IDP managers and other council officials must be guided by the basic values and principles governing public administration, the Code of Conduct for Councillors and the Code of Conduct for Municipal Employees.²³¹ Public administration principles, the Code of Conduct for Councillors and the Code for Municipal Employees demand *inter alia* that municipal councillors, managers and other council officials should: ensure the efficient, economic and effective use of resources; provide services impartially, fairly, equitably and without bias; respond to people's needs; and promote accountability. If these values and principles, together with the norms and standards outlined in the *Municipal Finance Management Act*, are respected, this could ensure that municipal resources are effectively managed to enable equitable (re)distribution to poor, disadvantaged and marginalised people. However, reports of corruption, mismanagement, nepotism and a lack of accountability at the level of many municipalities suggest that in practice little attempt is made by some councillors, managers and local government officials to adhere to these values and principles.²³² If this practice continues unabated, this may obstruct progress in the pursuit of social justice. In addition, the severe shortage of skilled personnel in most municipalities is another serious constraint. This problem is expressed in a recent government report as follows:²³³

In most municipalities, there is a general lack of the technical skills and knowledge necessary for performing key duties in financial management from an operational perspective. This is a major constraint and one of the biggest challenges facing municipalities. These technical skills include planning, engineering, project management and plant operating. Inadequate capacity at the senior management

²³¹ See s 195 of the *Constitution*; ss 50, 54 and Schedules 1 and 2 of the *Systems Act*.

²³² See *Consolidated General Report on the Audit Outcomes of Local Government* (2012) 50-57, 63-64; *Consolidated General Report on the Audit Outcomes of Local Government* (2013) 21, 62-85; *CoGTA State of Local Government in South Africa Report* (2009) 10; De Visser 2009 *CJLG* 23.

²³³ See *Local Government Budgets and Expenditure Review* (2011) 87-88. See *State Municipal Assessment 2010/2011: National Trends in Municipal Capacity* (2012).

level and a lack of appropriate financial management skills in municipalities results in poor service delivery. Furthermore, a high turnover of senior management in municipalities, particularly chief financial officers, is a major issue affecting municipalities' capacity to manage their finances properly and thus lay a sound foundation to expand and improve service delivery.

It is estimated that more than fifty percent of planners employed across municipalities in the country are in metros, and that the majority are in the City of Cape Town alone.²³⁴ This means that there remains a severe shortage of planners across the country. The lack of capacity at the local government level means that municipalities have increasingly resorted to the use of consultants to realise IDPs.²³⁵

3.2.4 Public participation

An important feature of integrated development planning is the obligation imposed on municipalities to encourage and create conditions for local communities to participate in the preparation, implementation and review of IDPs.²³⁶ It is believed that by promoting public participation in the design and implementation of plans and policies aimed at promoting the pursuit of social justice, government can better understand and prioritise the actual needs of the poor.²³⁷ In drafting an IDP, each municipality is required to use the mechanisms, processes and procedures established in accordance with chapter 4 of the *Systems Act* to ensure that local communities are consulted about their development needs and priorities and that they participate in the drafting of the IDP.²³⁸ In addition, municipalities are obliged to identify and consult traditional authorities and other role players such as civil society organisations in the process of drafting IDPs.²³⁹ As part of their obligation to promote public participation in the IDP process, municipalities are required to use their resources and annually allocate funds for building the capacity of community members, councillors and council officials to enable them to participate in local

²³⁴ *State Municipal Assessment 2010/2011: National Trends in Municipal Capacity* (2012) 58-60.

²³⁵ *Consolidated General Report on the Audit Outcomes of Local Government* (2013) 17, 101, 114-118; De Visser 2009 *CJLG* 22-23.

²³⁶ See s 16(1)(a) of the *Systems Act*.

²³⁷ See Pieterse 2007 *Hum Rts Q* 819; Pieterse 2005 *SAPL* 159; Liebenberg *Socio-economic Rights* 31; Sen 2005 *Journal of Human Development* 157-160.

²³⁸ See s 29(1)(b)(i)-(ii) of the *Systems Act*.

²³⁹ See s 29(1)(b)(iii) of the *Systems Act*.

governance generally.²⁴⁰ The *Systems Act* also requires municipalities to put in place specific measures to ensure that people who cannot read or write, women, people with disabilities and other disadvantaged people participate in the IDP process.²⁴¹ In some municipalities, IDP Representative Forums and ward committees are the preferred channels used to ensure that community residents and civil society organisations participate in the IDP process.²⁴²

From a more general perspective, taking into consideration the extensive provisions on the right to public participation at the local government level, De Visser argues that the *Systems Act* has made "a concerted attempt to rejuvenate the battered relationship" that existed between the state and society in the old order and that the Act legislates what can be called a "social pact" between community residents and municipalities.²⁴³ According to De Visser, the Act "shows a remarkable commitment to ensuring public participation".²⁴⁴ Despite the elaborate legislative framework and the guarantees of the right to public participation in local governance, the potential impact of such provisions in guiding the IDP design and implementation process is doubted, given the absence of quality participation at the local government level.²⁴⁵ Apart from the fact that communities often ignore the mechanisms created for public participation in local governance in favour of street protests, it has been argued that the tendency of municipal officials is to see the framework for public participation in the *Systems Act* as the legal and therefore the strategic minimum which must be complied with, which has led to the misconception "that Chapter 4 of the Systems Act outlines the process of public participation".²⁴⁶ To De Visser:²⁴⁷

²⁴⁰ See s 16(1)(b)-(c) of the *Systems Act*.

²⁴¹ See s 17(3)(a)-(d) of the *Systems Act*.

²⁴² See *Integrated Development Plan of the Tlokwe City Council* (2011) 26; *Mangaung Metropolitan Municipality: Integrated Development Plan 2012-2016* (2012) 13-14.

²⁴³ De Visser *Developmental Local Government* 105.

²⁴⁴ De Visser *Developmental Local Government* 105. See also Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right* 476

²⁴⁵ De Visser *Developmental Local Government* 106; Holness 2011 *SAPL* 11; Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right* 477.

²⁴⁶ De Visser *Developmental Local Government* 106. Emphasis of De Visser. See De Visser 2009 *CJLG* 18-19; Chenwi 2011 *SAPL* 128-129; Holness 2011 *SAPL* 9.

²⁴⁷ De Visser *Developmental Local Government* 106. Own emphasis.

Public participation then becomes a technical exercise, where officials "tick off" the relevant sections of the Act after yet another poorly attended public hearing. *The success of public participation will not come from the framework of the Municipal Systems Act but from the creativity displayed by municipalities in their own policies and by-laws on public participation.*

From the above extract, it appears that municipalities will have to develop creative ways to engage with local communities. It is argued that in the absence of creativity on the part of municipalities, the Constitutional Court's jurisprudence on meaningful engagement can provide a useful start for local government authorities.²⁴⁸ In *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others*²⁴⁹ the Court interpreted the obligation of municipalities to promote public participation in local governance as requiring "meaningful engagement".²⁵⁰ Meaningful engagement requires *inter alia* that where a municipality's strategy, policy or plan is expected to affect a large number of people, there is a greater need for "*structured, consistent and careful engagement*".²⁵¹ However, the process of meaningful engagement can work only if both sides act reasonably and in good faith.²⁵²

3.2.5 Legal status of IDP

After an IDP is drafted it must be adopted by the council of a municipality. As in other local government matters, a majority of the members of a Municipal Council must be present before a vote may be taken on the adoption of the IDP.²⁵³ Adoption is then decided by a majority of the votes cast.²⁵⁴ Upon adoption, the IDP becomes the principal strategic planning instrument which guides and informs all planning and development and all decisions with regard to planning, management and

²⁴⁸ For a detailed discussion of the Constitutional Court's jurisprudence on this topic, see: See Chenwi 2011 *SAPL* 128-156; Holness 2011 *SAPL* 1-36; Muller 2011 *Stell LR* 742-758.

²⁴⁹ *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg* 2008 5 *BCLR* 475 (CC) (*Occupiers of 51 Olivia Road case*).

²⁵⁰ *Occupiers of 51 Olivia Road case* paras 13-15.

²⁵¹ *Occupiers of 51 Olivia Road case* para 19. Own emphasis.

²⁵² *Occupiers of 51 Olivia Road case* para 20.

²⁵³ This is inferred from a reading of s 160(3) of the *Constitution*.

²⁵⁴ See 160(3)(c) of the *Constitution*.

development in a municipality.²⁵⁵ An adopted IDP binds the municipality in the exercise of its executive authority, except where it is inconsistent with national or provincial legislation.²⁵⁶ These provisions mean that a municipality must conduct its affairs in a manner that is consistent with the content of its integrated development plan and may not deviate from it.²⁵⁷ For example, the manner in which a municipality utilises its financial resources must be consistent with the budgetary allocations made in the financial plan - which is part and parcel of the IDP. However, the IDP is not a static plan, as it is supposed to be (annually) reviewed and amended by a municipality in accordance with prescribed procedure.²⁵⁸ An amendment of the IDP could ordinarily suggest a modification of commitments in plans (sectoral and financial plans) and strategies as well as the concomitant reallocation of resources, for example.

Due to the fact that IDPs are tied to the elected term of councillors, an adopted IDP is supposed to guide and inform all planning, management and development in a municipality for a period of five years. However, a newly elected municipal council can adopt the IDP of its predecessor with or without amendments after consultation with all relevant stakeholders.²⁵⁹ This opens up the potential for continuity in the implementation of policies, plans and programmes that had previously been adopted. This offers the possibility that people may have sustainable access to municipal services. It should be noted that an IDP "binds all other persons to the extent that those parts of the integrated development plan that impose duties or affect the rights of those persons have been passed as a by-law".²⁶⁰ This suggests that without transformation into by-laws, for example, the IDP is an internally binding document. It binds the councillors, executive and administrative officials of a municipality. Based on its legal status, the IDP can be described as the pivot upon which all development activities in a municipality revolve. The facts that an IDP is

²⁵⁵ See s 35(1)(a) of the *Systems Act*.

²⁵⁶ See s 35(1)(b) of the *Systems Act*.

²⁵⁷ See s 36 of the *Systems Act*.

²⁵⁸ See s 34 of the *Systems Act*. The process for amending an IDP is spelt out in s 3 of the *Local Government: Municipal Planning and Performance Management Regulations* (2001) GN R796 in GG 22605 of 24 August 2001.

²⁵⁹ See ss 25(2)-(3) and 34 of the *Systems Act*.

²⁶⁰ See s 35(1)(c) of the *Systems Act*.

internally binding and can be reviewed and "amended" suggest that it could be considered a legal governance instrument without an externally binding effect.

Municipalities are obliged to give notice to the public about the adoption of the IDP within fourteen days following the adoption; to make copies or extracts of the adopted IDP available to the public at specified places; and to publish a summary of the IDP.²⁶¹ Through these measures awareness is created amongst members of the community, residents and other interested stakeholders of how the IDP may, for example, affect their socio-economic rights and of the structures and programmes that have been put in place to give effect to these rights.

4 Potential of IDPs to contribute towards the pursuit of social justice

The legal and policy framework for IDPs provides a scheme through which diverse sector-specific components that cater for a wide range of basic human needs converge in one strategic instrument - the IDP. Through the IDP, municipalities are expected to work closely with communities and other spheres of government to identify priorities, define goals and objectives, and develop strategies directed towards eradicating poverty and reducing extreme inequalities. Due to the fact that the IDP remains the principal strategic planning instrument which guides and informs all planning, management and development in a municipality,²⁶² it is possible to link, to an extent, successes recorded by municipalities in discharging their developmental duties to the extent to which they have complied with the legal framework on integrated development planning.

Since IDPs came into operation in 2000, municipalities have "made significant progress in both planning and service delivery in a more inclusive and integrated manner".²⁶³ It is reported that areas of progress include *inter alia* the fact that more

²⁶¹ See ss 25(4)(a)-(c) of the *Systems Act*.

²⁶² See s 35(1)(a) of the *Systems Act*.

²⁶³ *Western Cape Department of Local Government and Housing: Summary: IDP Hearings 2005* (2005) 2.

poor people have access to basic needs such as water, electricity and sanitation.²⁶⁴ At the dawn of democracy, only about 38 percent of households were electrified,²⁶⁵ about 42 percent lacked access to the basic level of basic sanitation,²⁶⁶ and less than sixty percent had access to clean drinking water.²⁶⁷ Recent statistics of the 2011 Census support the view that municipalities have made enormous progress in satisfying the basic needs of all South Africans.²⁶⁸ Although the figures demonstrate laudable progress from the pre 2000 era,²⁶⁹ the percentage of South Africans who do not have access to basic services translates into millions of people in terms of numbers. However, the progress made in facilitating access to basic needs such as electricity, water and sanitation, albeit to varying degree, attests to the relevance of IDPs to servicing the constitutional rights and their potential to contribute towards the pursuit of social justice in South Africa.

Despite the progress recorded in the delivery of municipal services, the above analysis indicates that there are still problems relating to the design and implementation of IDPs which could partly be attributed to the legal and policy framework. In assessing the potential of the IDP in promoting the country's broad developmental goals at the local level, De Visser argues that:²⁷⁰

The IDP has become a tightly regulated process that must absorb the input of a multitude of development actors towards the adoption of a document within tight deadlines. This process has thus become a "pressure cooker", which is incompatible with unwieldy community input which tends to disrupt intergovernmental cohesion and adherence to intergovernmental deadlines...There is then a real danger that communities and community organisations will become disgruntled with the IDP, as they perceive the process to be inadequate in responding to their needs. A more realistic approach to intergovernmental planning and alignment may be apposite. It may be worthwhile to consider the identification of a number of national key priorities and insist on their alignment, while relaxing the effort towards synchronisation on other, less important policy areas. This may provide the necessary room for municipalities to develop their planning capabilities, devise mechanisms for genuine interaction with communities, and display creativity.

²⁶⁴ See *Western Cape Department of Local Government and Housing: Summary: IDP Hearings 2005 (2005) 3; Statistics South Africa Census 2011: Highlights of Key Results (2012) 11-19.*

²⁶⁵ Ruiters "Free Basic Electricity" 249.

²⁶⁶ *Review of Sanitation Policy and Practice in South Africa 2001-2008* (2010) 1.

²⁶⁷ See Algotsson and Murombo *Water Supply and Sanitation* 8.

²⁶⁸ *Statistics South Africa Census 2011: Highlights of Key Results* (2012) 12-19.

²⁶⁹ See *Statistics South Africa Census 2011: Highlights of Key Results* (2012) 12-19.

²⁷⁰ De Visser 2009 *CJLG* 23.

Some of the concerns expressed by De Visser above are reflected in Coetze's argument that, in its current form, the rigid and structured process of the IDP system is yet to prove that it can facilitate the type of development that is urgently needed at the local level.²⁷¹ To Coetze, the IDP system is not well understood, supported, and respected by the various role players and "has become an octopus with too many tentacles", creating confusion and frustration in local government.²⁷² Despite all its weaknesses, Coetze argues that:²⁷³

Despite all the critique on the IDP system, which in recent years has experienced a painful transformation and development process, it is however, not suggested that the IDP system be abandoned and replaced with a new one. *On the contrary, the IDP could, in view of its integrated, participatory and potentially strategic and developmental nature be the ideal mechanism to make planning, (state) government, our regions and country more developmental, and to create ultimate sustainable human development...* The IDP can only fulfil a developmental function if it becomes an integral part of not only the various government (alignment) but also society (embedded) and more specifically the private sector and business communities (partnerships for implementation).

Although Coetze's concession in the above extract is formed within the broader context of the country's developmental aspirations, it is worth quoting in this context because it highlights that despite its challenges, the relevant generic features discussed above increase the relevance and potential of IDPs as a local governance instrument in the pursuit of social justice.²⁷⁴ In addition, there is consensus that the effective implementation of IDPs has great potential to enhance sustainable development, meet the basic needs of all and enable municipalities to realise socio-economic rights.²⁷⁵ This potential has been attributed to the fact that local government strategic planning:

- enables municipalities to align financial and institutional resources with agreed policy objectives and programmes;

²⁷¹ Coetze 2010 *SSB/TRP* 25.

²⁷² Coetze 2010 *SSB/TRP* 25.

²⁷³ Coetze 2010 *SSB/TRP* 25. Own emphasis.

²⁷⁴ See Visser 2003 *SAGJ* 99-111.

²⁷⁵ See Cloete and Thornhill *South African Municipal Government* 121-122; Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right* 464-469; Coetze 2010 *SSB/TRP* 25.

- ensures the integration of local government activities with development planning activities at the provincial and national government levels, thereby enhancing co-operative governance amongst all spheres of government;
- facilitates interaction, engagement, communication and the building of alliances within and between the various spheres of government, thereby strengthening intergovernmental co-operation;
- provides a basis for democratic engagement between local government and local communities, since the content of IDPs is supposed to be informed by local needs that are identified through a process of public participation;
- enables local leaders to gain access to development resources, promotes the effective use of limited resources and ensures the accountability of local leaders;
- enables municipalities to reflect on their obligations and systematically prioritise their programmes and resource allocation in a manner that meets the urgent needs of their communities;
- assists municipalities to focus on environmental sustainability as a key component of their service delivery and development strategies;
- enables local authorities to discharge the obligations flowing from South Africa's commitment to *Local Agenda 21*;
- helps municipalities to develop a holistic strategy for poverty alleviation and other associated socio-economic challenges; and
- enables development to remain abreast with the dynamic nature of society, given the in-built performance monitoring and review processes of IDP.²⁷⁶

5 Conclusion

Following the transition to democracy, local government became a co-responsible sphere of government with a wide range of powers and functions, and was specifically mandated to play an expanded developmental role. This mandate

²⁷⁶ See Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right* 464-466; Cloete and Thornhill *South African Municipal Government* 121-122; CoGTA (Final Draft) *Policy Paper on Integrated Development Planning* (2000) 22-23; Coetzee 2010 SSB/TRP 25; "3.1.1 Why do integrated development planning?" in the *White Paper on Local Government* (1998); Harrison "Origins and Outcomes" 321.

requires that municipalities should promote sustainable development, meet the basic needs of communities and contribute towards realising defined constitutional socio-economic rights. As a co-responsible sphere of government, local government is obliged to contribute towards achieving the transformative commitments of the *Constitution*, including the pursuit of social justice. Although the pursuit of social justice remains a constitutional commitment which may never be completely realised, in practice it requires all spheres of government to implement measures that combat poverty and extreme inequalities in access to basic services.

In addition to the above reforms, a conscious effort was made to correct the weaknesses of apartheid development planning and ensure that municipalities plan and execute their expanded developmental mandate in a strategic, co-ordinated and fiscally responsible manner. The system of IDPs was introduced in response to this need. The IDP remains the main legally prescribed local governance instrument to be used by municipalities to realise their expanded constitutional mandate.

This article has specifically explored and critically investigated the relevance to the realisation of the constitutional rights and the potential of IDPs to contribute towards the pursuit of social justice in South Africa. An analysis of the legal and policy framework underpinning IDPs as well as the implementation thereof revealed mixed results about their potential to play such roles. Following the implementation of the IDP system, municipalities have made great progress in planning and providing basic services to communities in a more inclusive and integrated manner. Recent statistics show that enormous progress has been made by municipalities in responding to the basic needs of communities, such as housing, water, electricity and sanitation. It was argued that the multitude of sectors that converge in an IDP - addressing diverse areas of human needs - gives the system enormous potential as an instrument that could be tailored, depending on the context, to contribute towards the pursuit of social justice by specifically responding to the different needs of the poor. Moreover, it was established that the legal and policy frameworks on IDPs have generic features that could increase their relevance and potential in the pursuit of social justice, including the mandatory requirements for public participation,

intergovernmental co-ordination and cooperation, establishing performance management systems, and financial management. It was argued that the greatest strength of IDP lies in its deliberate attempt to produce positive change at the grass-root level and that it provides a structured scheme that could be used by municipalities to pursue constitutional objectives.

Despite its potential, the design and implementation of IDPs is constrained by the limitation of financial resources, corruption, mismanagement and the severe shortage of skilled personnel in most municipalities in the country. In addition, although experts suggest that a blanket formula for strategic planning cannot be prescribed to municipalities, the *Systems Act* prescribes in detail the approach and process that must be followed by municipalities. It was argued that compliance with the tightly regulated system restricts the ability of municipalities to take personal initiative and places a heavy burden on municipalities with limited resources. In addition, it was argued that the overlap of functions such as spatial planning and the confusion about the specific responsibilities of municipalities over the provision of housing has the potential to increase uncertainty in local governance. Apart from the fact that all spheres of government have executive and legislative competence over land planning, their interests in land may overlap. Although there are mechanisms that have been put in place to resolve potential conflicts of interest, their effectiveness will depend largely on the existence of appropriate political will, and one can expect that national and provincial interests over land will almost certainly override municipal interests. The evidence suggest that, instead of resolving intergovernmental disputes in channels established for that purpose, municipalities often settle disputes with other spheres of government in court. Engaging in expensive litigation means the waste of limited resources which could be used to deliver services. Furthermore, the many mechanisms created by the elaborate framework for public participation are underutilised at the level of most municipalities.

It is suggested that despite the challenges faced in the implementation of the IDP system, it has the potential to respond to the needs of communities. Instead of

jettisoning the system, national and provincial governments should increase their support to struggling municipalities. A concerted effort must be made by all role players to co-operate in the design and implementation of IDPs. Where conflicts arise, affected parties should exhaust the established channels for resolving intergovernmental disputes before resorting to courts. Government should also consider an amendment to the relevant Schedules of the *Constitution* in order to give at least metropolitan municipalities express competence over housing delivery. This could help to clear the existing confusion regarding the nature of housing responsibilities that may be integrated in the IDP, and could enable metros in particular to be more responsive to the housing needs of communities. In addition, municipalities should explore innovative ways to redirect the energy currently expended on street protests about poor service delivery (or the lack thereof) into some form of constructive engagement between communities and local government officials. It is suggested that the Constitutional Court's jurisprudence on meaningful engagement could provide a useful starting point.

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List of abbreviations

ACHPR	African Commission on Human and Peoples' Rights
CJLG	Commonwealth Journal of Local Governance
CoGTA	Department of Co-operative Government and Traditional Affairs
DDP	Decentralised Development Planning
DPLG	Department of Provincial and Local Government
Fordham Int'l LJ	Fordham International Law Journal
Fordham Urb LJ	Fordham Urban Law Journal
GTZ	German Agency for Technical Cooperation
Hum Rts Q	Human Rights Quarterly
IGRFA	Intergovernmental Relations Framework Act
IDP	Integrated development planning
IEP	Integrated Energy Plan
IIP	Infrastructure Investment Plan

J Environ Plann Manag	Journal of Environmental Planning and Management
LDL	Law, Democracy and Development
MDGs	Millennium Declaration and Millennium Development Goals
MTSF	Medium Term Strategic Framework
NPC	National Planning Commission
PELJ	Potchefstroom Electronic Law Journal
Penn St Int'l L Rev	Penn State International Law Review
PICC	Presidential Infrastructure Co-ordinating Commission
PGDS	Provincial Growth and Development Strategy
SAGJ	South African Geographical Journal
SAJHR	South African Journal on Human Rights
SAJELP	South African Journal of Environmental Law and Policy
SALGA	South African Local Government Association
SAPL	South African Public Law
SDF	Spatial development framework
SPLUMA	Spatial Planning and Land Use Management Act
SSB/TRP	Stads- en Streeksbeplanning/Town and Regional Planning
Stell LR	Stellenbosch Law Review
TSAR	Tydskrif vir die Suid-Afrikaanse Reg
UN	United Nations
WSDP	Water Services Development Plan

A CRITICAL INVESTIGATION OF THE RELEVANCE AND POTENTIAL OF IDPs AS A LOCAL GOVERNANCE INSTRUMENT FOR PURSUING SOCIAL JUSTICE IN SOUTH AFRICA

ON Fuo*

SUMMARY

Unlike the situation in the past, when local government's role was limited to service delivery, local government is now constitutionally mandated to play an expanded developmental role. As a "co-responsible" sphere of government, local government is obliged to contribute towards realising the transformative constitutional mandate aimed at social justice. South African scholars and jurists share the view that social justice is primarily concerned with the eradication of poverty and extreme inequalities in access to basic services, and aims to ensure that poor people command sufficient material resources to facilitate their equal participation in socio-political life. In order to enable municipalities to fulfil their broad constitutional mandate, the system of integrated development planning (IDPs) came into effect in South Africa in 2000. Each municipality is obliged to design, adopt and implement an integrated development plan in order to achieve its expanded constitutional mandate. The IDP is considered to be the chief legally prescribed governance instrument for South African municipalities.

The purpose of this article is to explore and critically investigate the relevance and potential of IDPs in contributing towards the achievement of social justice in South Africa. This article argues *inter alia* that the multitude of sectors that converge in an IDP makes it directly relevant and gives it enormous potential to contribute towards

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social justice because, depending on the context, municipalities could include and implement strategies that specifically respond to diverse areas of human need. In this regard, the legal and policy frameworks for IDPs provide a structured scheme that could be used by municipalities to prioritise and meet the basic needs of especially the poor. Despite its potential, it is argued that the ability of IDPs to respond to the basic needs of the poor is largely constrained by a series of implementation challenges partly attributed to the underlying legal and policy framework.

KEYWORDS: Transformative constitutionalism; Social justice; Local government, IDPs.