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Law, Justice and Development Week 2013 Towards A Science of Delivery in Development

How Law and Justice Can Help Translate Voice, Social Contract and Accountability into Development Impact

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Legal complexity and Local Government in South Africa

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Context

- South Africa 1996 Constitution:
- 9 provinces
- 278 municipalities
 - constitutional protection
 - developmental mandate
- "Strangulation of local government" causes
- Intergovernmental complexity
- Anxiety with local government performance
- Inadequate coordination at senior govt. level





Consequences

- Cost of compliance
 - Legal services
 - Litigation costs
 - Outsourcing of key processes (e.g. integrated development planning)
- Too much law results in lawlessness
- Stifling innovation





constitutional power	who?
"regional planning and development"	both national and provincial govts.
"urban and rural development"	both national and provincial govts.
"provincial planning"	provincial government
"municipal planning"	local government
"environment"	both national and provincial govts.
"mining"	national government

• E.g who approves mining development in City area?





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Solutions

- Legislation to clarify who-does-what
 - E.g. Spatial Planning and Land Use Management Act, 2013
- Court judgments to clarify who-does-what
- Joint planning
- Intergovernmental negotiation & collaboration
 - IGR structures
 - Avoid or settle disputes





Anxiety with municipal performance



Service Delivery Protests 2007-2011: average of 11.61 protests/month 2012: 80% of protests turned violent. November 18, 2013



Constitution:

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- municipality has "right to govern"; but
- national / provincial govts must "see to effective performance"
- → overzealous, fragmented monitoring of subnational governments
- → imposition of procedural detail that removes discretion
- solutions:
 - consolidate monitoring
 - improve local checks and balances



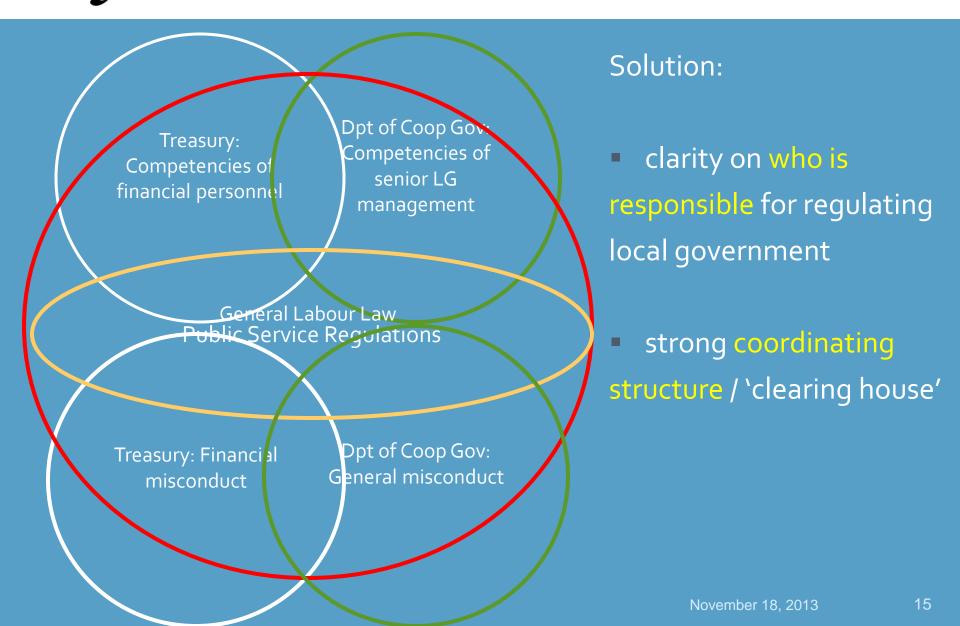


Inadequate coordination

- problem: corruption and underperformance in local public service
- response: 4 departments regulate local public service
 - 1. National Treasury
 - 2. Department of Cooperative Governance & Traditional Affairs
 - 3. Department of Public Service & Administration
 - 4. Department of Labour

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Thank You

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