

LJD

LAW,
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DEVELOPMENT



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

IGR complexity: who does what in land use control & planning?

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.

- Constitution:
 - 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

Treasury:
Competencies of
financial personnel

Dpt of Coop Gov:
Competencies of
senior LG
management

General Labour Law
Public Service Regulations

Treasury: Financial
misconduct

Dpt of Coop Gov:
General misconduct

Solution:

- clarity on **who is responsible** for regulating local government
- strong **coordinating structure** / 'clearing house'

Thank You

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