

Tipping the point: local government and advancing democracy – challenges in an evolving transition

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This paper assumes a largely conceptual focus on local government. It deals with the conceptual contours of local government and its importance, and the way in which local government is a central pivot in the state and society building enterprise. A key question in this regard is whether the state at the local level is credible and effective as well as legitimate, because it delivers services and manages institutions properly or whether it is so because it is essentially democratic in nature? The argument I advance is that essentially both technocratic instrumental delivery capacity as well as developmental democracy will ensure more sustainable local government, and therefore legitimacy and credibility for government at the local level. One without the other will lead to reductions in perceptions of state legitimacy and credibility, and therefore in state confidence. It is also true that the absence of one renders the other ineffective, non-functional, and therefore moot. Implicit in this paper would be a focus on aspects of democratisation and representation, accountability and transparency, and State and Government legitimacy and credibility, and the changing notion of these in the face of increasing protest activity at the local level.

Introduction

While there are obvious political and ideological debates that occur at very localised levels in a society, recent research¹ shows that in many societies and states local politics, and therefore, local government, has considerable importance in shaping the national political system and the political and social cultures in a society. Therefore, local politics and local government should not be perceived as simply a subordinate level of politics and government of localised interest. Even in highly centralised states, local interests play a significant role in national politics and indeed in national policy making. Equally, the ignoring of such

local interests and the relegation of such, in highly centralised societies like the former Soviet Union [and now conceptually in evidence in South Africa's legacy], shows that in those same societies, the post-transition period gets saddled with challenges inherited significantly from the inadequate account taken of local politics, interests and government. Russia would not today be faced with the fractious tendencies in evidence, nor the splintered community syndrome that besets its polity, were it not the case that it failed – in its quest for centralisation – to strike a balance in the past, between national imperatives and local interests. In addition, several important theories on the nature of democracy and the state have been developed from studies of local politics and government. In essence then, history, culture and the inherited legacies of a polity determine the evolution of its political, social and governance cultures, and local government is an important facet of government and governance, hitherto ignored in the state building enterprise. In all of local government's speak as developmental and sustainable in ensuring viable communities, the basic fundamentals that underpin each of these at local government level has been ignored, if not in theory, then certainly in practice.

Essentially, South Africa has a relatively new system of local government. The South African Constitution and related sets of legislation pertaining to local government, defines local government as a sphere of government that aims:

- to provide democratic and accountable government for local communities
- to ensure the provision of services to communi-

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ties in a sustainable manner

- to promote social and economic development
- to promote a safe and healthy environment
- to encourage the involvement of communities and community organisations in matters of local government and governance.

In this sense, local government is a sphere of government, which is original and has its own Constitutionally enshrined powers and functions. In other words, it is not a third level of government crudely subordinate to provincial and national government. It is interrelated with provincial and national government in one overall system of co-operative governance, in which each sphere co-operates with the others. In addition to co-operative governance, a system of inter-governmental relations has had to be established in order to facilitate co-operative governance.

Fundamentally, the new system gives expression to the notion in the Constitution of developmental local government. This means that local government is not just an important site for the delivery of services, but it is crucial for economic and social development. The assumption is that by working effectively with the other two spheres of government and a range of public and other private or non-governmental social and political organisations and the private sector, local government is meant to contribute to economic growth, job creation and social development.

In this sense, governance is an important feature of local government and therefore, would in its role and function, comprise the complex set of mechanisms, processes and institutions through which citizens and groups articulate their interests, mediate their differences, and exercise some of their legal rights and obligations. Governance in a democracy would, amongst other things, be participatory, transparent and accountable. It also attempts to be equitable and to promote the rule of law, inclusivity and representativeness. In a democracy, local government should ensure that political, social and economic priorities are based on a broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources. However, within that process, it should equally allow for these priorities to be articulated and competed for on the basis of a competition for power amongst all political parties and interest groups in a society.

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Where we are?

From Transition to Transformation

Over the last ten years, local government, situated within the broader complex of South Africa's transition from Apartheid to democracy and transformation (from a closed society to an open one in which past legacies along with present challenges and future possibilities and probabilities), all have to be simultaneously addressed. In that sense, local government has progressed into an equal and autonomous sphere of government. Over the last five years, it has undergone further refinement and rationalisation in which the number of municipalities have been reduced from 843 to 284. The system of local government is established on the bedrock of the following pieces of legislation (apart from the Constitution from which it derives its original powers):

- The Municipal Demarcation Act
- The Municipal Structures Act
- The Municipal Systems Act
- The Municipal Properties Rates Act
- The Municipal Finance Management Act.

The new system of local government certainly advances South Africa's transition in several different spheres. It also has significant potential to deepen this transition and substantially contribute to meeting developmental challenges. The extent to which it does this, however, depends on how the system will actually be implemented and on how seriously local government will be taken in terms of the amount, range and quality of resources that are invested in it, and on how this sphere is located in the overall strategy of social and economic transformation.

In many senses, local government has been undergoing a far more intricate, protracted and challenging transition process than provincial and national government. The 5 December 2000 local government elections were the first truly non-racial, democratic local government elections as they dispensed with the 'racial quotas' of the previous elections. With the new demarcation of municipal boundaries on the basis of apparently rational criteria, the old racially determined apartheid boundaries were finally abolished. Previously separate localities were abolished and previously separate locales were melded together in terms of identity but also across the urban and rural divide, creating a de-racialised temporal spatial and geographic contiguity between different communities and areas with different economic, social, cultural and development profiles. This provides the potential basis for social and economic cohesion and the attendant advantages that this may have for planning, cohesion, mobility

(of goods and services) and more co-ordinated and integrated service delivery. The new municipalities represent a further step towards the de-racialisation of South African society. Sadly, however, this is where the good news in local government ends.

The challenges since these successes reveal the inability of the municipalities to work with new and currently untested methods. The context is a lack of access to resources, a deficit in skills, capacity and experience makes laudable and pioneering, yet seemingly ambitious goals, almost impossible to achieve. This vision of local government was premised simply on two things: access to adequate resources; and local skills and capacity to deliver, without necessarily treating local government in the same conceptual way that treats The State, in general – or the way in which the State or Government is conceptualised at the National Level. To be sure, the National Government, or the idea and figment of State at one level, would have particularities and peculiarities in the way in which it is established and the very specific challenges that it would face. But it is equally true that there are some elements that would be generic, wherever the type of state may be located. In addition, the cohesiveness of State and government requires that this figment and idea be adequately captured, theorised and conceptualised to lend it a significance that will add, rather than detract, the project of building a viable state in a viable democracy. For the local government level, this has not been adequately addressed, and at the symbolic level [in terms of the importance given to it, the way in which it is established, in powers and functions in relation to the National State and other intermediary levels] has had a marked impact at the level of the symptomatic. This is at the level at which it actually works: the delivery of services, accountability, oversight, anti-corruption, leadership, crime prevention, infrastructure development and investment, cohesive non-racial communities, economically viable entities and communities, identity constructs.

South Africa's transition from Apartheid together with the fact that an entirely new set of policy instruments, laws and legislation and policy and regulatory processes and procedures has led, perhaps inevitably, to 'transformation fatigue, varying degrees of organisational stress'², strain and all the attendant consequences of this, has to a large extent been ignored and left unappreciated. Organisational stress and transformation fatigue can, however, be addressed with several strategies. Naturally, slowing down the pace may be an option, but given the impetus for real and substantive transformation, together with the seemingly insurmountable challenges this may be

an easy, though rather unpopular and certainly an ill advised option. Transformation needs acceleration, rather than a staying of the pace. Deploying better leadership – political, management and administrative – as well as developing more appropriate strategies for organisational and transformational change, may be more advisable.

Larger municipalities = larger land mass, more people, bigger revenue base

While the transition process in local government has led to the amalgamation of previously disparate municipalities, it also meant very practical changes to spatial limits that new municipalities had to deal with, namely the provision of services. But municipalities also experienced shifts in the range of services that they had to provide, since given the widely differing demographics and the different income and economic profiles of areas that they inherited, service levels were historically different. The challenges in equalising them were serious, as was the fact that while the potential revenue bases increased, the ability to generate revenue, and also to simply collect it, was difficult in some places. This occurred particularly as the bureaucracies and administrations were now dealing with areas and communities with which they had no previous experience or affinity. This led not only to unfamiliarity with the terrain and cultures (and with the fact that in some cases elected representatives were forwarded by political parties that may not have been resident in the area), but also to crises in delivery, and ultimately to a crisis of democracy.

While much of these symptomatic problems and challenges have been addressed in the transition, the transformation effort will require better data on a range of indicators across all municipalities (ranging from demographic and spatial profiles of the areas through to economic and infrastructure profiles). It will be important that accurate information in this regard will have to inform interventions in the transformatory phase. In doing so, it will also represent a significant opportunity to address the more symbolic aspects: more substantial contact with elected representatives; better interfaces and responsiveness from councils; better understanding of communities, and community cultures and dynamics within local authorities. Most significantly, however, it is an opportunity to begin building

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community cohesion, social trust and confidence in local government that underpin viable communities in which local services and economies, ranging from water and sanitation and transport through to economic opportunity and development, rely on. In part, this will mean that local communities, together with government, build an intersecting body of interests that are mutually shared across state and society, but more importantly, between races, classes, economic groups and other stratificatory indicators.

The State: does size matter? Or is it scope or strength?

Given that state building – the creation of new governmental institutions and the strengthening of existing ones – is a crucial issue, it is obvious that local government, the edifice on which I would argue a viable state is built, and the most basic level at which citizens both interact with and procure public goods and services from the state, becomes critical to the broader state building project.

The general predictions of people who theorise about state building in the wake of the notion of ‘weak or failed states’³ are generally silent on the history of colonialism and imperialism (in South Africa’s case, Apartheid) as the fundamental determinant of the historical causes of weak or failed states. They are, however, predictably better at diagnosing the contemporary causes of state weakness and state failure.

While the subtleties of their historical purview may be wanting, their contention that ‘many of the developing world’s most serious problems, from aids to poverty, find their root causes in weak or failed states (at the most localised of levels)’⁴ is generally true.

The idea that building up, rather than limiting the power of the state, should be at the top of the agenda. This may strike some as a perverse or odd contention. After all, the dominant trend in world politics for the past generation has been the critique of ‘big government’, especially in the perspectives of dominant discourses in the Anglo-American academy and policy community. Yet in the developing world, it is precisely the absence of a ‘state presence’ (because of weak, incompetent or non-existent local government), that has been and continues to be a source of severe difficulty. Controversy over the size and scope, and indeed strength of the state, heavily shaped the politics of the twentieth century.

The basic problem, yet again, lay in the concep-

tual failure to unpack the different dimensions of ‘stateness’ and to understand how they may relate to democracy and development. It would, therefore, make sense to distinguish between the scope of the state (which refers to the different functions and goals taken on by government), and the strength of state power (which has to do with the ability of the state to plan, execute and administer policies, and to enforce regulations and laws transparently). In general then, the question is, what areas of life should the state be involved in (scope) and what is its capacity and ability to actually do so (strength)?

South Africa’s Constitution largely dispenses with the problem of state scope by creating a set of rights and responsibilities that reflects a post-1994 social consensus. As such, the Constitution is clear on the nature of the powers and functions of the local state and local government, and the body of laws and regulations that have been passed since 1994, reflective – together with the Constitution – of the values and aspirations of South African society in general. The Constitution includes the values that arbitrate and diffuse political power between the local, provincial and national Governments – as well as effect a necessary separation of powers and functions between the Legislature, Executive and Judiciary and place proscriptions on the power exercised by Government. In addition, there also had to be a prescription in the document for the manner in which Government had to function, the rules it had to abide by, the processes it had to engage in, and the procedures that it should follow. As such, state trajectory in South Africa is largely liberal democratic, with elements of radical social redistribution. This applies to local Government as well. The elements and dimensions in which state strength and state scope intersect would need to be considered at the local level in the following five critical⁵ dimensions:

a. The Regulatory: in which the state is able to manage and enforce the laws and contracts to protect property rights; the presence of a well functioning, effective judiciary whose functions and decisions are respected and enforced. While this is largely the domain of the National State (with the expanded powers, functions and roles of local government in areas of regulating local economies, licensing land use, aiming for environmental protection, investing in infrastructure and so forth), it is critical that effective regulatory capacity exists, either in local government itself, or in a department of state, parastatal or other public body that would do so on behalf of local government. In the absence of regulatory function, predatory interests begin to take root.

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b. Technical: in which the state has the ability to handle technical issues effectively. Increasingly, this is needed at a fairly complex level in engineering and public works, the delivery of basic services (like water, sanitation and electricity/power, public health [in the primary care sector], education, economic policy). States that lack the capacity to address this, face an erosion of legitimacy and authority.

c. Administrative: where the state requires capacity to manage its human and other resources effectively. Besides the need for managerial capacity, corruption has to be fought, mismanagement minimised and lack of discipline countered.

d. Extractive: the capacity to generate revenue. The absence of this capacity fuels a loss of revenue, and the growth of a culture in which meeting the obligations of legitimate authorities is not considered a norm. Local Government's role in this area is critical, despite the fact that it relies largely on national Government transfers, either of a prescriptive or discretionary kind. While the revenue base in many local governments or municipalities is weak, the fact that a revenue base does exist and that user fees are legitimate demands made by local authorities on citizens (water, electricity, property tax, vehicle licensing and so forth), means that in raising some of its own revenue – an obvious challenge for local government – this is a critical area.

e. Coercion and enforcement:⁶ the legitimate use of state power, like the judicial system and the police and defence forces to extract compliance to obligations, to enforce the rules, laws and regulations in a society. Enforcement refers to predictability (that while rules will be equally and fairly enforced, wrongdoing will be caught and indeed appropriately punished). While this is largely also a national government function, the expanded role of local government in licensing, land use authorisation, law enforcement and with the inception of city and metro or municipal policing, this aspect has come to take on new significance at local government level.

The pressing question for the present then is what ability is there for the state to exercise its capacity and what does it depend on? This is a critical issue in local government. Given the challenges at the level of local government, it can be argued then that both state scope and strength matter equally in all of the five areas outlined above. It is true that consigning extensive scope to the state in the absence of state strength allows for and creates the situation of an over-ambitious state with a range of legal competencies and an extensive range of activities and responsibilities that it, in reality, cannot perform well. In a developing country context like South Africa it is

clear that given the nature of the challenges faced, it would be optimal to have both state strength and state scope. However, the performance of most municipalities seems to suggest that state strength in many sectors, for a variety of historical and some contemporary contingent reasons, is in most cases actually weak at the local level. The obvious solution then, would be to reduce state scope and consign municipalities either to a different area of state, which then risks burdening or overburdening that area of state. The other option would be to cede scope outside of the state, usually to the private domain, which risks abrogating fundamental political and socio-economic rights and turns citizens into consumers.

There is yet the more difficult but most viable option which would enhance both state scope and state strength and, therefore, state size. This, however, would require not only the political will to do so in the face of a rapidly globalising world, but also the commitment to improve governance, deepen the penetration of the state, and build the capacity and infrastructure of the local state.

Each of these broad areas are undergirded by a series of requirements of their own. Improving governance would have to deal with better accountability, transparency, oversight and responsiveness to citizens. Deepening the penetration of the state would require an understanding of the cultures, history and social dynamics of communities, the instrumentality of more effective regulation, good leadership, and the effective representation of citizens that is inclusive and sensitive to diversity. In addition, fostering citizen participation will together with all these, and not in isolation, bring a greater amount of citizens into contact with the state and provide a stake in governance for citizens. Building the capacity of the local state would require accountable bureaucracies, skilled technocrats, and better instruments of management and administration and infrastructure investment. Each of these areas is interdependent and interrelated. There is no doubt, however, that with the local government transformation process, the essential elements of all the above exists in some form or another at the local level, some more than others in some cases. What is quite clear is that The State does exist at the local level; the real question is whether the state has sufficient penetration, is sufficiently in touch with its polity, and whether it is effective enough. In enhancing effectiveness, the measures taken and the instruments used to enhance this effectiveness, will essentially be guided by the

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choices made in this regard by the current political and bureaucratic leadership.

At the moment, the ensuing debate on this seems intent on revisiting the vexing question, of whether it is democracy that is required (and indeed what this might entail), as opposed to whether better delivery by government would be the solution to redressing the deficits left by decades of Apartheid and which would then be the solution to current Developmental challenges in building the State.

Delivery or democracy?

If indeed the state and its institutions at the local level do exist, and admittedly they do, the debate then focuses on the question of democratic consolidation or efficient and effective delivery of services. Whatever this debate may entail, and whatever its merits and demerits may be, its conclusion represents at least some consensus,

and that is that building the state is key.

This conclusion, however, lays open an entirely new set of conceptual variants to the question, and that is: what are the elements needed to build the state? In response, it seems as if the answers come as an either or set of basic or fundamental solutions as a set of first principles that are dichotomous. This suggests that democratic consolidation, decentralization, delivery, politics and performance seems to be caught in a mutually exclusive binary, with proponents of one or the other set of solutions seemingly emphasising one aspect (or set of aspects) of possible solutions over another, privileging one (or

some) to the exclusion of others.

The binary seems to arise from a consideration of the local State in two broad conceptual terms:

The Developmental Local State on the one hand and the Democratic Local State on the other: the debate on these two terms has been cast in largely mutually exclusive terms, with the attendant danger manifest in the tendency to confuse managerialism, public sector performance and delivery as being synonymous with the developmental state. This assumes that the democratic indicators required are already constitutionally enshrined. What this ignores is that democracy will not flourish, deepen or consolidate on the basis of their legal and constitutional or regulatory enshrinements but on the substantive, symbolic and lived experience of democracy and the ability to exercise the enshrinements of laws, policies and regulations. Of course the developmental state is this, but it is much more.

On the other hand, there is the tendency to conflate and confuse the idea of the democratic state with the classic notions of democratic indicators – in all their guises, from the liberal to the radical. But as radical as the conceptualisation of the democratic state may be, its exclusive focus on rights, responsiveness, representation, consultation, accountability, oversight, participation and voice is perhaps its weakness, as the democratic state is all of these things, but also much more. The assumption made here is that if the substantive democratic take root, the rest of the delivery requirements will simply fall into place, ignoring the instrumental requirements required.

Crudely put, the debate can be characterised as follows:

Those deliberating on the Democratic State seem to suggest that giving voice, expediting, crafting and streamlining participatory processes, promoting greater inclusiveness of the poor and marginalised and the deepening and consolidating of democracy in all its facets (diversity, protection and promotion of rights, representation and representativity, institutional separation of powers and functions, transparent decision making, accountability and oversight) themselves become panaceas for effective governance. Because of effective democratic governance (by implication better service delivery) as the theory suggests, that the government then really knows what the people want. But knowing what the people want, without really having either the infrastructure, capacity, managerial ability and process of delivering the elements of democracy themselves, will ring hollow in the absence of a change in the material conditions by which people symbolise and internalise the world.

On the other side of the divide, those deliberating on the developmental State seem to propose that developmentalism and the developmental state are somehow synonymous with the delivery state, and because there will be effective delivery, the state, by its nature, will then be democratic. Taking its cue, but somewhat crudely caricaturing the discourse emerging in the public service and from the locus of political power and office, the proposition is that managerial effectiveness, technocratic efficiency, and streamlined procedures and processes for the delivery of public goods and services alone, will give concrete expression to a developmental or delivery oriented state.

My characterisation obviously misses important nuances that either side proposes, but after a spate of social movement and civic protest activity in protest

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against the slow or perceptibly ineffective delivery of services, the polarisation between state and society has crystallised and served largely to crudify much of the policy and politics debate to some degree, casting it in terms which in essence become incomprehensible if one were to think about democracy and delivery in tandem.

The question that can then be teased out, given that the role of government has highlighted differing views about how state institutions should relate to their constituencies and communities, is should they be predominantly concerned with efficient, cost-effective service delivery and raising as much revenue as possible? On the other hand, should local government give more weight to building *social capital* – establishing trust, cooperation and coordination amongst people and institutions – so that community life can flourish? Should councils at local government level treat their constituents primarily as *customers* for the services they provide, or as *citizens* – with much broader needs and expectations (rights) – than just efficient and effective services?

The danger attendant with the polarisation of the debate between democracy and delivery and democratisation and developmentalism may lead to tendencies that lead to an uneven balance between one and the other: so it might correctly identify a need for better *management* – greater efficiency and effectiveness – but may fail to give sufficient attention to the need for better *governance*. One of the consequences of this ‘lop-sided’ approach to governance could potentially see a shift in the balance of power within councils from elected members to appointed officials (managers). Much of this is in evidence in the research reports noted at the end.⁷ What exactly have been the effects of this? Mainly inappropriate and ineffective modes and models of service delivery being used and implemented; inefficient administration and implementation of service delivery processes; of registering indigents and the poor for the free services that accrue to them as a part of their social wage; a lack of oversight by elected representatives over their officials and administrators; and therefore a corresponding lack of accountability of the appointed officials to elected councilors; and in turn politicians' lack of accountability to their parties, and moreover their constituents.

It is increasingly emerging that much of the social protest activity in evidence around the country activity can be split into two broad categories. The one is social movement/civic activity, which itself is disparate, in often distinct but also interrelated ways. Social movements have a strategy (however inadequate) and an alternative policy and political

project (signaled by organised political activity), a distinct ideological and political position, a political identity, organised structures and branches, regular meetings, and the like. At the same time, there is also more spontaneous, unorganised activity that happens through social movements which may or may not have organised structures, branches, meetings, and a fixed identity or policy and political project, seeking simply alternatives to what they consider to be the current neo-liberal state trajectory. Now this cohort will be unhappy (in colloquial terms) even if service delivery and the availability and accessibility of public goods and services improves. Some of the protests that occurred are simply spontaneous and instantaneous eruptions grounded in basic needs and are expressions of frustration, with low or slow levels of service delivery by local government, the lack of transparency in decision making, inability to participate or ineffective participation, and a lack of responsiveness or availability of their local politicians. This is much more about the perceived breakdown of local level democratic interfaces and technocratic inefficiency or inability, which would dissipate with improvements in this regard. This, then, in other words, does not seek to mobilise for an alternative political project. Particular inflections take on particular flavours depending on local circumstances and local histories.

Overall, however, democracy at local government level is faced with the following broad challenges:

- defining concrete ways of linking their sectoral focus to an empowerment strategy for poor communities that are directly affected by the issues;
- fostering sufficient legitimacy and credibility with NGOs, CBOs, social movements and the State to effectively fulfill an intermediary role to forge community empowerment and State enablement;
- the State playing a central role in supporting poor communities to improve their levels of organisation and management to improve their capability for democratic, collective decision-making and social action.
- contesting terrain of issues and agendas;
- enabling different value orientations and ideological persuasions to contest for the realisation of their interests; and

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- rendering all susceptible to subjective interests, competition and uncertainty.

Conclusion

The current political environment and the March 2006 local government elections in South Africa posed significant challenges as well as exciting opportunities. Dichotomies that follow the insular logic of simple, binary opposites proved simplistic in a context that is progressive and fluid, dynamic and in flux, and which additionally entrenches a rights based, formal political and institutional environment. Although

this environment encumbered bureaucracy, it did not automatically limit initiative. The challenge was to develop the capacity for constructive and mutually beneficial encounters across the spectrum.

Overall, local government can constitute itself as an arm of State that ‘in a more demanding society it becomes a more sophisticated level of State. State effectiveness is challenged with new resources to deal (with the challenges), new skills to acquire and new capacities to learn. This demands the emergence of a new type of State.

ENDNOTES

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- 3 Fukuyama, F. The imperative of State Building *Journal of Democracy*, Volume 15, No.2 April 2004
- 4 op cit
- 5 Brautigam, D. *State capacity and effective governance*. In *Agenda for Africa's economic renewal*, edited by B. Ndulo and N van de Walle. 1996, New Brunswick and Oxford: Transaction Publishers
- 6 My additional insertion to the four, a-d, identified by Brautigam
- 7 See:
 - a. Towards effective delivery: Synthesis report on the project entitled ‘Closing the gap between policy and implementation’, Dr Meshack M Khosa Research report no 98, February 2003 *Social policy series*, Centre for Policy Studies, Johannesburg
 - b. ‘Testing the limits of market-based solutions to the delivery of essential services: The Nelspruit Water Concession’ Dr Laila Smith, Shauna Mottiar and Fiona White, Research Report no 99, September 2003 *Social Policy Series*, Centre for Policy Studies, Johannesburg
 - c. ‘The struggle to deliver water services to the indigent: A case study on the public-public partnership in Harrismith with Rand Water’ Dr Laila Smith and Ebrahim Fakir, Research Report no 103, September 2003, Centre for Policy Studies, Johannesburg
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