Working Paper

Urban_Law@work for *Developmental Local Government* in South Africa

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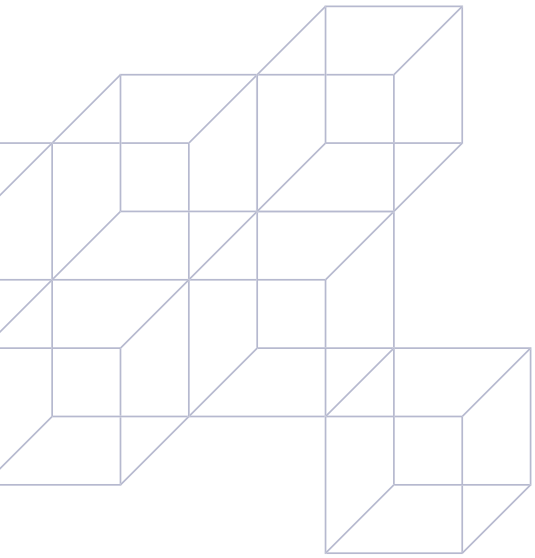

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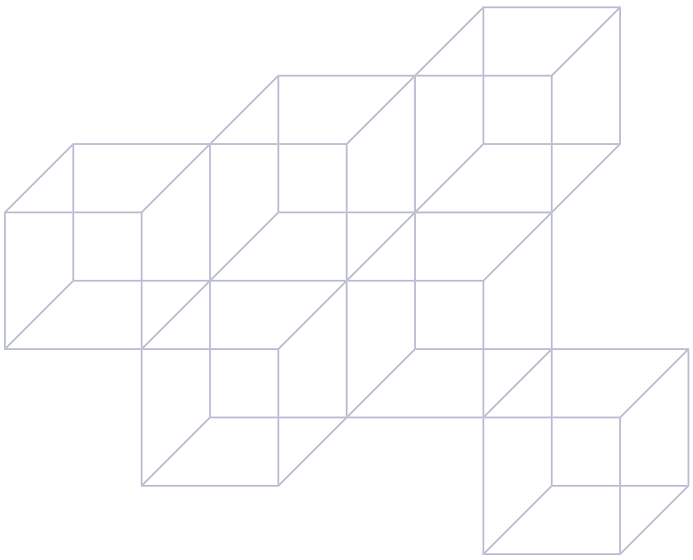
LIST OF ACRONYMS

CCA	Climate Change Act 22 of 2024
CIGFARO	Chartered Institute of Government Finance, Audit and Risk Officers
CoGTA	Department of Cooperative Governance and Traditional Affairs
Constitution	Constitution of the Republic of South Africa, 1996
KAS	Konrad-Adenauer Foundation
MFMA	Local Government: Municipal Finance Management Act, 56 of 2003
MPRA	Municipal Property Rates Act 6 of 2004
NEMA	National Environmental Management Act 107 of 1998
NGO	Non-governmental organisation
Structures Act	Local Government: Municipal Structures Act 117 of 1998
Systems Act	Local Government: Municipal Systems Act 32 of 2000
SALGA	South African Local Government Association
SDGs	United Nations Sustainable Development Goals
SPLUMA	Spatial Planning and Land Use Management Act 16 of 2013
ULSG Chair	Chair in Urban Law and Sustainability Governance



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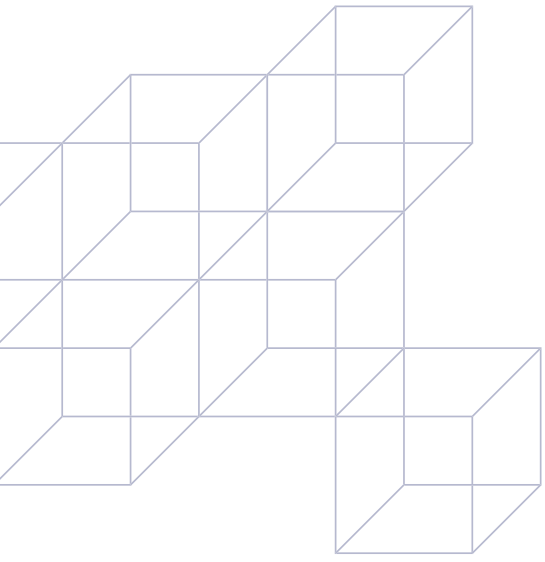


Executive Summary

The law is a key instrument in regulating and steering urban life, everywhere. In South Africa, the Constitution of the Republic of South Africa, 1996 (the Constitution), is the supreme law. Many of its provisions have a direct bearing on the rights and duties of those people and institutions operating in the urban sphere. These include the three spheres of government, industries and other private actors, as well as ordinary people living and working in the country's towns and cities. The constitutional framework with its rights, duties and division of functions is complemented by a suite of national local government legislation; other national sectoral laws on matters ranging from the environment, housing and disaster risk management, to health, property and transportation; some provincial laws; as well as a large number of municipal bylaws that are the culmination of the autonomous legislative powers that every municipality has. Together, this large body of law should collectively enable developmental local government and draw figurative boundaries to help ensure orderly co-habitation and co-functioning in urban places.

Many institutions and people are involved in the development, implementation, and enforcement of the law in South Africa. The network of laws and supporting institutional architecture is vast and not without its challenges and complications. Yet, it is important to continuously ensure that the law complements the developmental local government policy ideal that was articulated in 1998 in South Africa's first White Paper on Local Government. The White Paper, at the time, defined developmental local government as:

> local government committed to work with citizens and groups within the community to find sustainable ways to meet their social, economic, and material needs and improve the quality of their lives. It should target especially those members and groups within communities that are most often marginalised or excluded, such as women, disabled people, and very poor people.

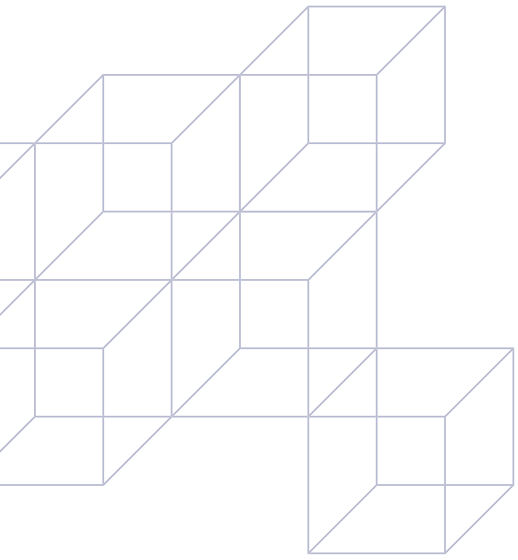
Developmental local government thus points at the process and substance (economic, social and environmental) of local governance.

The purpose of this Working Paper is to focus on some of the legal dimensions of developmental local government and to define urban law from a South African perspective insofar as it relates to local government. It further critically assesses some of the challenges and strengths of the current urban law framework as implemented and experienced by different stakeholders within local government in different provinces in the country. Some gaps in the urban law legal framework, which are impeding the actualisation of developmental local government, are highlighted. The research showed that these include, for example, a lack of appreciation for legal pluralism, legislative fragmentation and a lack of coherence in the laws applicable to specific areas or contexts.

This Working Paper is the culmination of a collaboration between the Stellenbosch University Chair in Urban Law and Sustainability Governance (ULSG Chair) and the Konrad-Adenauer Foundation (KAS), Cape Town Office. The publication would, however, not have been possible without the input of local government actors such as municipal officials, the South African Local Government Association (SALGA) and non-governmental organisations, as well as consultants operating in the local government space. Together, these entities all contributed to the authors' understanding of challenges with a law and regulatory framework comprising multiple different parts, as alluded to above.

The key and overarching message conveyed in this Paper is that South African law has the potential to deliver on what 'urban law' is notionally expected to do and that developmental local government need not be stuck in legislative fragmentation and incoherence. However, there are challenges to overcome.

The authors trust that this message will assist in the ongoing transformation of local government law and governance for developmental local government in South Africa.



PART 1

Introduction

The law is key in regulating and steering urban life, everywhere. In South Africa, the Constitution of the Republic of South Africa, 1996 (the Constitution), is the supreme law. Many of its provisions have a direct bearing on the rights and duties of those people and institutions operating in the urban sphere. These typically include the three spheres of government with their different line functionaries, industries and other private actors, as well as ordinary people living and working in the country's towns and cities. The constitutional framework is complemented by a suite of national local government legislation; national sectoral laws on matters ranging from the environment, housing and disaster risk management, to health, property and transportation; some provincial laws; as well as a large number of municipal bylaws that are the culmination of the legislative powers that every municipality has. Together, these laws enable developmental local government and draw figurative boundaries to help ensure orderly co-habitation and co-functioning in urban places. Put differently: these laws form the basis of what we understand to be 'urban law' as far as they concern the relationship between public authorities responsible for towns and cities, and the people and institutions that occupy such cities and towns.

It follows that many institutions and people are involved in the development, implementation, and enforcement of urban law. The network of laws and institutional architecture is vast and not without its challenges and complications. Yet, it is important to continuously ensure that the body of urban law complements the developmental local government policy ideal that was conceptualised in 1998 in South Africa's first White Paper on Local Government (the White Paper).[1]

The White Paper, at the time, defined developmental local government as:

> local government committed to work with citizens and groups within the community to find sustainable ways to meet their social, economic, and material needs and improve the quality of their lives. It should target especially those members and groups within communities that are most often marginalised or excluded, such as women, disabled people, and very poor people.[2]

It follows that developmental local government concerns the procedural and substantive aspects of local governance.

This Paper is the culmination of a collaboration between the Stellenbosch University Chair in Urban Law and Sustainability Governance (ULSG Chair) and the Konrad-Adenauer Foundation (KAS), Cape Town Office. The key message conveyed is that South African law has the potential to deliver on what 'urban law' is notionally expected to do and that developmental local government need not be stuck in legislative fragmentation and incoherence. However, some challenges need to be overcome.

The authors trust that this message will assist in the ongoing transformation of local government law and governance for developmental local government in South Africa.

This Paper comprises five parts. The remainder of Part 1 takes a step back to ask where and how today's local government system came about and what it implies for any process of transformation moving forward. The notion of 'urban law' and its relevance for present purposes is introduced in Part

1 White Paper on Local Government (Gen N 423 in GG 18739 of 13 March 1998).
2 Ibid 43-44.

2. Part 3 zooms in on the scope and sources of urban law in South Africa with a focus on legislation and the courts. Part 4 turns to the outcome of the interactive project workshop that was held to identify some of the key challenges and strengths of the design and implementation of the country's rich multi-source body of urban law. Part 5 draws the Paper to a close.

The dawn of a new local government system and urban law

The history of the current South African local government system is well-documented. It developed in response to a troubled political and legal history and was created with a vision of democratic, responsive governance for millions of people living in diverse human settlements across the country. Albie Sachs helps us understand the relationship between this 'response' and 'vision' that coalesced in the local government system we know today, when stating that:

> Darkness is no different in different parts of the city, nor is refuse cleaner or dirtier. Yet, our planners have managed to create concepts of white darkness, which must be dispelled by streetlights, and black darkness, which is to be endured as a natural condition. Similarly, the rubbish from white homes, which already have the advantage of water-borne sewerage systems, is deemed worthier of being collected than that from black homes … Access to amenities should be provided on an equal basis.[3]

Although politically loaded, this short narrative captures the pre-constitutional reality of several local communities in South Africa. The Constitution (especially chapter 2, the Bill of Rights) brought about an irreversible legal transformation aimed at eradicating scenarios such as the one depicted above.[4] As part of the transformation process, local government has undergone fundamental changes, especially in the decade after the Constitution was adopted.[5] In the words of De Visser:[6]

> Local government is no longer the stepchild of national and provincial government. It is now a mature partner of national and provincial government.

Some of the primary attributes of local government in the democratic dispensation include that:

a) A municipality is defined in section 2(b) of the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act) as a composite entity, an organ of state, which consists of three elements: the municipal council as the elected political structure, the municipal administration and the local community.[7]
b) South Africa has wall-to-wall local government, which means that every piece of land in the country falls within the area of at least one municipality.[8]
c) Local government comprises a total of 257 municipalities[9] as opposed to the approximately 840 local authorities that existed prior to 1994.[10]
d) Local government is a sphere of government and not a level of government, as was the

3 Albie Sachs, *Advancing Human Rights in South Africa* (Oxford University Press 1992) 50.
4 The transformation process has taken place in a way that is unique when one considers international trends. See, for example, Mark Swilling (ed), Governing Africa's Cities (Witwatersrand University Press 1997) from where one can observe that all the political systems that have gone through a non-revolutionary regime transition from authoritarianism to democracy, South Africa is the only one where this transition occurred simultaneously at a national and sub-national (local) level.
5 For brief historic accounts of the development of local government in South Africa, see, for example, Jennifer Robinson, 'Continuities and Discontinuities in South African Local Government', in Mirjam van Donk and others (eds), *Consolidating Developmental Local Government: Lessons from the South African Experience* (UCT Press 2008) 27–49. See Iain Currie and Johan de Waal (eds), *Constitutional and Administrative Law* (Juta 2002) 214–15 for the history behind the legal changes that had to ensure the transition of local government from a racially-based apartheid system to one that is non-racial and democratic.
6 Jaap de Visser, *'Powers of Local Government'* (2002) 17 SA Public Law 223, 243.
7 The community of the municipality is defined to include four distinct groups, namely residents of the municipality, ratepayers, civil society formations and non-visitors, namely visitors and other people residing outside the municipality who, because of their presence in the area, make use of municipal services or facilities.
8 On the notion of wall-to-wall local government, see Jaap de Visser, *Developmental Local Government: A Case Study of South Africa* (Intersentia 2005) 75.
9 Section 2 of the Local Government: Municipal Systems Act 32 of 2000 provides that a municipality is an organ of state within the local sphere of government. It has a separate legal personality, which excludes liability on the part of its community for the actions of the municipality.
10 See section 151(1) of the Constitution. Today, the municipal boundaries are determined by the Municipal Demarcation Board, established in terms of the Local Government: Municipal Demarcation Act 27 of 1998.

case prior to 1996. This has rather profound implications pertaining to the powers of local authorities, one of which is that local government is no longer subordinate to provincial and national government.[11] However, this 'autonomy' can still, in some ways, be 'regulated' by provincial and national legislation. For instance, local bylaws are subordinate to the content of provincial and national legislation, although they would emanate from original law-making power as opposed to delegated law-making power.

e) Local councils are the decision-making bodies of all local authorities, and these are democratically elected once every four years in order to establish representative and participatory local government.
f) There is no clear separation of executive and legislative powers at the local government level, as both types of authority are vested in the municipal council.
g) The new local government dispensation introduced new instruments of governance, including mechanisms for participatory governance, integrated development planning, localised political accountability, service delivery partnership options and economic development centered on community preferences.
h) Local government is developmentally oriented and should therefore drive social, economic and environmental development alongside the mandate of service delivery. The developmental role of local government should be fulfilled in the context of the fact that one of its constitutional objects is to provide democratic and accountable government.[12]
i) Local government is furthermore embedded in the system of intergovernmental relations and cooperative government.
j) In addition, local government also establishes the primary sphere of government that traditional leadership can feed into in order for traditional communities to partake in the decision-making processes that affect them.

The basic features of contemporary local government are accompanied by the fact that 'as much as local government is protected by the constitutional guarantees of autonomy, municipalities must abide also by the constitutional demands, including the obligations of the Bill of Rights … in the case of socio-economic rights more than mere respecting of rights is required'.[13] Further, the Systems Act expressly affirms the duty of municipalities, together with other organs of state, to contribute to the progressive realisation of socio-economic rights and the material well-being of people in South Africa. This has proven to have been a tall order in the decades that followed the constitutional transition.

Be that as it may, democratisation and constitutional reform in South Africa ensured that local government today is clothed with several crucial autonomous functions and powers. These functions and powers are outlined in the Constitution as well as framework local government law and are indicative of the elevated status of local authorities when compared to how it was during the apartheid past.

Constitutional elevation of local government

Local government was afforded constitutional recognition in chapter 10 of the Interim Constitution for the first time in the constitutional history of South Africa. In the Constitution as it stands, chapter 7 is devoted to local government – it was the last chapter to be completed before the text was adopted on 8 May 1996. It is the relationship between local government and governments in other spheres which determines the status of local government. Section 40 of the Constitution states that government comprises three spheres, namely national, provincial and local. These spheres are 'distinctive, interdependent

11 See section 151(4) of the Constitution; George G Devenish, 'Federalism Revisited: The South African Paradigm' (2006) 17 Stellenbosch Law Review 129, 157–58; *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BCLR 1458 (CC) para 38.

12 The value of local democracy lies therein that it contributes to constitutionalism in the following respects: it brings about diversity and pluralism in a complex policy environment; it promotes active participation by both individuals and local communities in the day-to-day government of the country; it provides for the resolution of conflict within a particular community by creating a common focus for community identity; it disperses political power, thus preventing a too great concentration at any particular level of government; it leads to greater efficiency and to enhanced legitimacy because of greater sensitivity to local needs and conditions.

13 See section 7(2) of the Constitution and section 4(2)(j) of the Systems Act. This view has also been endorsed by various court cases the past three decades on the duties of local government following from the constitutional housing and environmental rights, for example.

and interrelated' and must (1) observe and adhere to the principles of cooperative government and intergovernmental relations and (2) conduct their activities within the constitutional parameters of cooperative government. The elevated status of local government is presumably best captured where the Constitution provides in section 151 that:

> (3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.
> (4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

Although not expressly stated like this, it is clear that local government is clothed with a certain level of autonomy within the structure of government. This autonomy is, however, restricted by the parameters set by the notion of cooperative governance, national and provincial legislation, and, of course, the Constitution itself. When read with the constitutional chapters on provincial and national government, it becomes evident that local government autonomy is not as comprehensive as that of national or provincial government. Although the status of municipalities has improved and been elevated, these authorities are still subject to intervention by provincial and national governments, as was indicated above.[14] Still, neither provincial nor national legislative authority (legislation) nor executive authority (decision-making, etc.) may impede municipalities' right to exercise their powers or perform their functions as outlined in the Constitution.

Constitutional interpretation could hence be important in issues where the status of local government is debated.[15] Several meanings may be derived, for example, from the fact that local government is constitutionally recognised as a 'sphere' as opposed to a 'level' of government. The spherical composition of government directs South Africa away from a hierarchical division of government structures and powers, meaning that provincial and national government are not automatically permitted to encroach on or intervene in the powers or functions of local government institutions (municipalities). National and provincial government institutions will at all times be bound by the limits set by the Constitution when intruding in local government.[16] Bekink[17] states that the reference to 'sphere' of government refers to a 'government of distinctiveness and cooperation in contrast with a government of subordination'. This view is confirmed by Nel,[18] who states that a sphere of government suggests a 'governing partnership' that is on equal footing with regional and national or federal spheres of government.

Each of the three spheres of the South African government is treated independently in the Constitution[19] and 'local government' itself is not listed as a functional area of national and/or provincial competence in schedules 4(a) and 5(a) of the Constitution. This affirms that local government has an elevated and autonomous constitutional status that does not depend on the execution of national or provincial legislative and/or executive authority.[20] The spherical composition of government also accentuates the idea of interrelated governance. This implies that obligations that befall all three spheres of government (such as the positive obligations imposed by the constitutional environmental right in section 24(b) of the Constitution) should be fulfilled in an integrated fashion and that the action of one

14 See also the discussion in Johandri Wright, Felix Dube and Anél du Plessis, 'Judicial Enforcement of Mandatory Provincial Interventions in Municipalities in South Africa' (2022) 55 Verfassung und Recht in Übersee 105–25.

15 The existing status of local government has been expressly confirmed also by the Constitutional Court in *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BCLR 1458 (CC) para 126 and Cameron J in *CDA Boerdery (Edms) Bpk and Others v The Nelson Mandela Metropolitan Municipality and Others* 2007 (4) SA 276 (SCA) 32, 36. In these (older order) decisions, the courts reiterated the change in status of local government following the adoption of the Constitution.

16 It should be observed that local government enjoys representation in the National Council of Provinces and that it is represented in the national sphere by the South African Local Government Association (SALGA).

17 Bernard Bekink, *Principles of South African Local Government Law* (LexisNexis 2006) 64.

18 Johan G Nel, 'Policy Responses at the Local Sphere of Government: Complexities and Diversity' in HS Geyer (ed), *International Handbook of Urban Policy* (Edward Elgar 2007) 275.

19 Chapters 5, 6 and 7 of the Constitution.

20 See Norman Levy and Chris Tapscott (eds), *Intergovernmental Relations in South Africa: The Challenges of Co-operative Government* (IDASA 2001) 68; Jaap de Visser, 'Powers of Local Government' (2002) 17 SA Public Law 223–43.

sphere should be complementary to that of the remaining two spheres of government. To this point we return later in this Paper.

The evolution of developmental local government policy

The local government system we know today, however, is more than the sum of the technical provisions regarding its status in the Constitution. From the objectives of local government in chapter 7 of the Constitution and the subsequent explanation of what local government was expected to do and become in the 1998 White Paper (currently under review), it is clear that municipalities must serve a transformative role in every sense of the word.

Local government may be said to have a grand-scale developmental responsibility. This arises from the fact that the Constitution refers to the 'developmental duties' of local government. The original legislative and executive power of local government emphasises the responsibility of municipalities to utilise their constitutional space prudently and in the interest of development. The idea of 'developmental local government' implies an inseparable linkage between the concepts of 'development' and 'decentralisation' as well as the fulfilment of particular socio-economic rights. In dissecting the notion of developmental local government, it has been stated that the most straightforward and recognisable element of a definition of development is the satisfaction of material needs – the improvement of the material well-being of people (the standard of living).[21] The second element relates to choice and emanates from everyone's inherent dignity – every person should have the ability and opportunity to make choices about their well-being. The third element relates to intra-generational equity (referred to as intersocial equity) and intergenerational equity.[22] Developmental local government, hence, translates into the gradual advancement of social, economic and environmental conditions (relating to people's material well-being) to the equal benefit of the entire society and generations of people through the involvement of people.[23] This interpretation is also in line with the international development agenda (the United Nations Sustainable Development Goals or SDGs), which states in Goal 11 that cities should increasingly become safe, inclusive, sustainable and resilient.[24]

The legal intricacies surrounding this gradual advancement of social, economic and environmental conditions in urban spaces led to the emergence of the concept of 'urban law', generally. As explained later in this Working Paper, this is not a concept or description unique to South Africa, and its relevance is increasing as more and more cities are confronted with legally relevant/regulatory questions around inclusivity, safety, resilience and sustainability.[25] The latter focus has been fuelled by the wording of the 'urban goal' in the SDGs.[26]

On the eve of another local government election in South Africa in 2026, this Working Paper is concerned not so much with technical local government law, but is interested in understanding very specifically whether and how local government and local communities see and experience *urban law @ work* for a transformed and uplifted society where justice and well-being can flourish. The question as to what 'urban law' means in this context is addressed in the next section of this Paper.

Objective, scope and methodology of this Paper

Against the background of the fact that many local governments for some years have not optimally functioned in South Africa and that another local government election is around the corner, the purpose of this Working Paper is to describe urban law from a South African perspective insofar as it relates to

21 Jaap de Visser, *Developmental Local Government: A Case Study of South Africa* (Intersentia 2005) 10–11.
22 Ibid 12–13.
23 On developmental local government in South Africa, see Mirjam van Donk and others (eds), *Consolidating Developmental Local Government: Lessons from the South African Experience* (UCT Press 2008).
24 United Nations Department of Economic and Social Affairs, 'Sustainable Development Goals' <https://sdgs.un.org/goals> accessed 28 November 2025.
25 Note that Goal 11 was the first 'urban goal' to have ever made it into a global development agenda of this kind.
26 See in this regard, Anél du Plessis, 'The Readiness of South African Law for the Pursuit of SDG 11' (2017) 21 Law, Democracy and Development 239–62.

developmental local government. It further identifies and assesses some of the challenges and strengths of the current urban law framework as experienced by different stakeholders within local government. Some gaps in the urban law and governance framework, which are impeding the implementation of developmental local government, are highlighted. In essence, the idea behind this Working Paper is to identify gaps that may require intervention to address overarching deficiencies and weaknesses in the urban law framework, which holds significant 'developmental' promise for millions of people. The critical reflections in this Paper are mostly based on the experience within local government – i.e. within municipalities of various sizes and situated in different provinces in the country.

The research presented here is very limited in its scope, but it does give the reader a good sense of the experiences in local government. The research has further been done with a focus on the South African urban context – towns and cities, albeit without dismissing the critical linkages between life and governance in rural and urban settings and the blurred administrative lines and geographical borders between them. The research captured is based on desktop, doctrinal legal research, combined with the feedback and input from local government stakeholders gathered during a two-day in-person workshop held in Cape Town in June 2025. The latter workshop was attended by 35 people. The participants hailed from institutions such as Category A, B and C municipalities, SALGA, private sector representatives, the Chartered Institute of Government Finance, Audit and Risk Officers (CIGFARO), students and academics.

The workshop was designed towards developing and publishing this Working Paper. The workshop built on urban law theory and literature as well as political, government and societal inputs garnered through a few focus group discussions involving stakeholders from as many of South Africa's provinces as was practically possible to gather.

Following the background above, Part 2 below explores the concept of urban law as applicable in South Africa. Attention is paid to how urban law generally connects with the long-awaited vision for developmental local government in the country. The Paper further explores some of the sources of urban law (focusing on domestic legislation and case law), before venturing into an exposition of how challenging and/or enabling these sources are experienced to be by local government stakeholders. The latter discussion draws on the inputs received during the workshop mentioned above. The Paper concludes with recommendations and a future outlook for the research in this field that remains to be done.

PART 2

The notion of 'urban law'

The notion of urban law is not new. But, as with other emerging and hybrid areas of law, such as medical law, sports law, education law and construction law, it is comparatively speaking still in its baby shoes with not much more than two hands full of academics and other institutions consistently and in-depth engaging with its meaning, scope, relevance, and future development. Based on the existing publications accessible in the English language, how is urban law generally defined, and why is it relevant?

Urban law defined

There is no single definition of urban law that finds general application to all countries, cities and urban areas. Some scholarly authors and institutions have, over time, attempted to define this area of law according to its composition and function.

UN-Habitat states that urban law is the broad-ranging collection of diverse policies, laws, decisions and practices that govern the management and development of the urban environment.[27] This definition is quite broad and has a functional orientation.

Authors Glasser and Berrisford[28] have done extensive work on urban development and its intersection with law in the South African and broader African contexts. They describe urban law as the law that shapes cities, their land use, institutions and finances. For them, urban law determines whether a city is efficient or inefficient or, sometimes, whether it is more efficient for some residents than for others. It is the law that enables effective citizen participation in the planning and governance of a city and that helps ensure fairness, transparency and inclusivity. Urban law further encompasses laws governing city council meetings, city records, budgeting, accounting and reporting. It reflects key areas of a country's constitutional law, particularly the division of powers between city (or local) government and national or regional/state/provincial government, as well as the content of important human rights such as the rights to property, to housing or shelter, and to a decent environment. These authors, in essence, argue that urban law is changing and developing as fast as cities are and that it largely concerns the powers and duties of authorities responsible for town and city development and life in these spaces. They also make the very valid point that urban law in the African context is complex.

According to Layard,[29] urban law asks how cities are legally co-produced, managing themselves, their residents (both human and otherwise), as well as their landscapes, financial flows and reputations. For her, urban law holds potential not only to understand the 'how' of law applicable to cities but also to inform the 'how to'. Lanyard argues that, when taking all the difficulties and limitations into account, we can identify three broad sets of reasons for developing urban law as a field of study. The first is its potential to contribute to vibrant interdisciplinary research; the second is to put law in the service of improved urban quality; the third is to further develop legal concepts and understandings of interest to lawyers, including governance, territory, jurisdiction, sovereignty, networks and money. Layard's interpretation of urban law suggests that it is an emerging field of socio-legal studies focused on the city rather than law for its own sake, aiming to develop a coherent body of work. When studying urban law, the aim is accordingly to

27 See the Urban Policy Platform facilitated by UN-Habitat: Urban Policy Platform, 'What is Urban Law?' <https://urbanpolicyplatform.org/urban-law/> accessed 28 November 2025.

28 Matthew Glasser and Stephen Berrisford, 'Urban Law: A Key to Accountable Urban Government and Effective Urban Service Delivery' (2015) 6 World Bank Legal Review 211–32.

29 Antonia Layard, 'Researching Urban Law' (2020) 21 German Law Journal 1446–63.

understand how law produces and is produced by the city in all its messiness and dynamism.

Pieterse[30] sees the notion of urban law encompassing legal norms generated by urban local governments, the different conglomerations of laws and regulations that shape urban governance structures, processes and relationships, and the interactions between these. As a study field, urban law, for the author, also aims to understand how law produces and is produced by the city.[31] Accordingly, the subject matter of urban law varies across jurisdictions and contexts, and is drawn from across different sub-fields of private and public, international and domestic law. For present purposes, this suggests that urban law comprises many sources – some of which may be more directly relevant for developmental local government's pursuit in South Africa, than others.

Berrisford and McAuslan[32] state that in Africa, new urban infrastructure has to be provided, new areas for urban growth developed, and new systems of governing and managing cities put in place. All this has to be done in accordance with laws (urban law) that provide clarity, give everyone a fair hearing, prepare cities for a climate-resilient future and create efficient systems of decision-making and administration. According to the authors, new urban laws may draw on international experience but should not be dominated by it. African lawmakers should rather focus on the context within which other countries' laws have worked: what were the political, administrative and legal factors in those countries that led to a particular type of law's success (or failure)?[33] They argue that cities need to find legal solutions to their urban problems that are designed to meet the complexities of these problems. This requires taking some Western-style laws and some locally emerging ones, identifying the aspects of each that are effective, and knitting these together into a model that works.

Davidson[34] describes urban law in a reflexive manner as an expansive discipline that considers a range of traditional legal questions – local government authority, judicial review of regulatory process and individual rights, among others – as they inform the life of cities. For him, urban law is also about a kind of place (a city or cities) as a trans-substantive lens through which to consider doctrine and legal institutions.[35]

Together, these mostly scholarly definitions suggest that urban law is a body of law (primary and secondary sources) that is oriented toward and studied for finding solutions to problems in cities through an inclusive interpretation of different sources of law and the forces behind them. It is, however, also aimed at enabling a better life for urbanites whilst protecting the rights of various stakeholders. It follows that urban law is about more than the sum of rules and do's and don'ts. It is also about asking who should ultimately help design and improve the operation of the body of law that steers life in cities and towns. It is interested in the outcome of a new law as much as it is interested in the problem or relationship such law seeks to address. In the South African context, one may take this one step further by asking how urban law intersects with the ideal of healthy, flourishing communities, bolstered by a system of developmental local government.

Urban law in the South African context

For the authors of this Paper, urban law in South Africa denotes an evolving hybrid field of study and government practice spanning public and private law. Its sources, in the widest possible sense, are international law and policy, domestic constitutional

30 Marius Pieterse, 'Corporate Power, Urban Governance and Urban Law' (2022) 131 Cities https://doi.org/10.1016/j.cities.2022.103893, 3.

31 Marius Pieterse, 'Corporate Power, Urban Governance and Urban Law' (2022) 131 Cities https://doi.org/10.1016/j.cities.2022.103893, 3.

32 Stephen Berrisford and Patrick McAuslan, *Reforming Urban Laws in Africa: A Practical Guide* (African Centre for Cities and others 2017) 5–17.

33 Stephen Berrisford and Patrick McAuslan, *Reforming Urban Laws in Africa: A Practical Guide* (African Centre for Cities and others 2017) 5–17.

34 Nestor M Davidson, 'What is Urban Law Today? An Introductory Essay in Honour of the Fortieth Anniversary of the Fordham Urban Law Journal' (2013) 40 Fordham Urban Law Journal 1579, 1588.

35 Nestor M Davidson, 'What is Urban Law Today? An Introductory Essay in Honour of the Fortieth Anniversary of the Fordham Urban Law Journal' (2013) 40 Fordham Urban Law Journal 1579, 1588.

law, multi-level statutory law with accompanying regulations, judicial decisions, customary (indigenous) law, academic discourse, as well as governance instruments, plans and policies with regulatory influence and legal force at the municipal level.

Urban law is accordingly the sum of many constituent parts (fields of law). It concerns the legally relevant dynamics of urban geography, urban politics, urban demographics, urban planning, municipal finance, urban ecology and urban anthropology. The objects of urban law include, but are not limited to, public administration, the built environment, the natural environment, service delivery and other forms of infrastructure and technology, urban space, finance and investment, land-use, property, the phenomenon of informality, as well as political and governance systems. The subjects of urban law include, but are not limited to, the individual in and aspiring to become part of the city, migrants and refugees, formal and informal labourers, local communities, public sector actors, private sector actors including investors, non-governmental and community-based institutions and associations, institutions of learning, the media, traditional communities and leadership, political parties and labour unions, organised local government associations, global city networks, and municipalities (administrations and councils). It also includes regional, transnational, and international governance structures, as well as bilateral and multinational development agencies involved in urban development.

The purpose of urban law is arguably to be enabling and transformative (e.g. through legal instruments and principles such as public participation, tenure security, inclusivity, social justice, human rights protection, environmental protection, climate resilience, fairness, access to information, short- and long term planning and improved human health and well-being) and to regulate (e.g. the relationships between the subjects and objects of urban law mentioned earlier) by way of legally recognised and quasi-legal governance instruments and mechanisms.

In the final instance, urban law understands local authorities (municipalities) in charge of urban spaces to govern and to be governed, and municipal boundaries to be porous and relative. This suggests that urban law is also very much about the division of authority between the different 'governing' parts within 'the government' and guiding the relationship between these parts.

Urban law and 'developmental local government'

What then is the linkage between urban law as a somewhat theoretical concept and 'developmental local government' as a very practically orientated design feature of post-apartheid South Africa? The nexus between urban law and developmental local government lies in what they aim to achieve and how they aim to achieve it.

As explained earlier, urban law is a body of legal sources and processes that shape the governance, management and development of urban areas, in relation to land use, housing, infrastructure, environmental management, public space, transport and local government. Developmental local government, on the other hand, is local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic, and material needs and, eventually, improve their quality of life.[36] Both, therefore, focus on how the relationship between people and governance structures materialises to achieve transformative outcomes. Further, like urban law, developmental local government provides instruments to forge new formal institutions, to weave formal and informal networks of collaboration between citizens and officials, and to utilise new opportunities for trade and profitable production.[37] An important feature of developmental local government is local economic development policy based on the concept of mobilising resources and communities to build convergence of interests in the competitive advantage of localities, thus creating the capacity

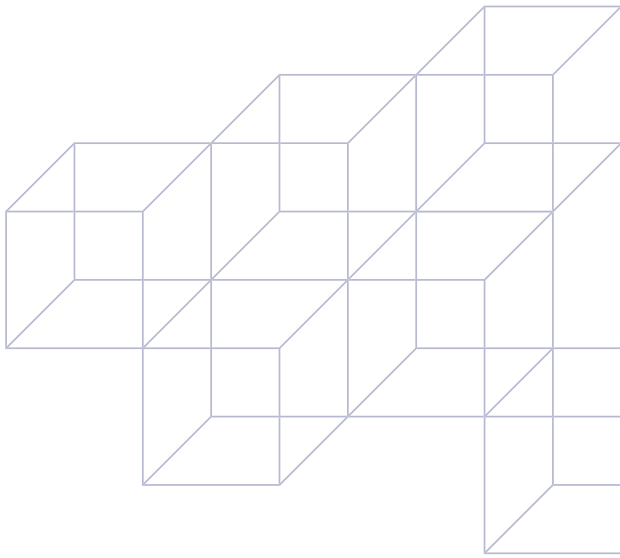
36 SB Koma, 'Developmental Local Government Issues, Trends and Options in South Africa' (2012) 5 African Journal of Public Affairs 2105, 2109.
37 Ibid 2109.

of, or empowering, communities and individuals, including the poor, to access these opportunities.[38]

The history of the two concepts may have drawn them to each other in that they are both products of the new local government agenda, which seeks to incorporate principles of community participation in the governance of local affairs, to the extent that local communities are perceived as 'partners' in the governance of local affairs.[39] Urban law gains traction in the minds of scholars and ordinary people alike because cities are constantly confronted with rising inequality, climate-change pressures, and the need for inclusive urbanisation, to name but a few. Urban law is therefore not merely about regulating spaces but about structuring power, access and development within the urban context, aligning with the Constitution's commitment to developmental local government.

The normative foundations of urban law, such as spatial justice, developmental governance, and participatory democracy, have not been fully realised, to date, in the implementation of the developmental local government ideal. Issues such as legal fragmentation, under-regulated public participation, and poor coordination between local, provincial, and national spheres expose the disjuncture between the ideal of urban law and developmental local government. To this point we return later in this Paper.

Urban law should function within and through the legal frameworks that define, empower and restrict the aspirations of a developmental local government. The legal frameworks through which the urban law mandate is dispersed are founded in key statutes such as the Systems Act and the Structures Act,[40] the Spatial Planning and Land Use Management Act,[41] the National Environmental Management Act,[42] the Municipal Finance Management Act,[43] the Municipal Property Rates Act,[44] and the Climate Change Act.[45] These all contribute in one way or another to the legal architecture governing urban areas. In addition, section 156(2) of the Constitution explicitly empowers municipalities to make and administer bylaws for the effective administration of the matters listed in schedules 4B and 5B, which include municipal planning, water and sanitation, local roads, public transport, street trading and local environmental matters,[46] giving them an active legislative role.[47] This is further discussed below.



38 Ibid 2109.
39 Ryan Fester, 'Cape Town Civic Organizations – In Search of Meaningful Participation' in Good Governance Learning Network, *Developmental Local Government: Dream Deferred? Perspectives from Civil Society on Local Governance in South Africa* (GGLN 2018) 18.
40 Local Government: Municipal Structures Act 117 of 1998.
41 Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA).
42 National Environmental Management Act 107 of 1998 (NEMA).
43 Local Government: Municipal Finance Management Act 56 of 2003 (MFMA).
44 Local Government: Municipal Property Rates Act 6 of 2004 (MPRA).
45 Climate Change Act 22 of 2024 (CCA).
46 Section 156(2) of the Constitution.
47 Ibid.

PART 3

Sources and scope of urban law in South Africa

In the South African context, urban law is best understood as a complex and multifaceted field or area of law, rather than a discrete legal discipline. As in the global discourse, urban law represents the collection of policies, laws, decisions and practices that govern the management and development of the urban environment.[48] This part of the discussion focuses on the legal instruments that constitute the primary, foundational sources of urban law in South Africa. It latches on to the radical shift in the status of local government brought about by the 1996 Constitution, as discussed earlier, and introduces the key national legislation designed to give effect to the constitutional vision of developmental local government.

It merits mentioning at this point that, for South Africa, any credible analysis of modern-day urban law should be fundamentally entrenched in an understanding of its historical purpose. This is largely because the present-day South African city is the 'physical manifestation' of both the colonial and apartheid project of racial segregation, economic exploitation and political disenfranchisement.[49] Before 1994, the previous dispensation used planning laws, property laws and influx controls as the main instruments for creating and enforcing spatial segregation and the resultant spatial injustice.[50] Several laws were not merely discriminatory but legal instruments responsible for ripping the social fabric apart by mainly prohibiting black people from either owning land or residing in designated urban areas. Planning laws were used as tools of oppression and created spatial injustice. For this reason, the post-1994 legal order engaged in a complex project of using the very same law to undo what law itself created – anchored in a transformative Constitution.

The Constitution

The Constitution initiated a 'formal and substantive revolution' as far as it concerns the status of local government. As explained earlier, it fundamentally reconfigured the architecture of the state by rejecting the old hierarchical model and elevating local government to a distinct and autonomous sphere of government, co-equal in status with the national and provincial spheres.[51] This was one of the most significant innovations of the Constitution, establishing, for the first time, a 'wall-to-wall' system of municipalities covering the entire territory of the Republic. The Constitution is thus the bedrock of South African urban law, providing the source code for municipal power and purpose.[52] It establishes the mandate and authority that all subsequent legislation seeks to operationalise.

The Constitution is also the cornerstone of local government autonomy. It declares that a municipality has the 'right to govern, on its own initiative, the local government affairs of its community'.[53] This provision is revolutionary in that it confers original, constitutionally derived power directly upon municipalities. As such, municipalities no longer

48 Urban Policy Platform, 'What is Urban Law?' <https://urbanpolicyplatform.org/urban-law/> accessed 28 November 2025.
49 See Lungelwa Kaywood, *South African Perspectives on the Promotion of Public Value in Local Government* (PhD-thesis, North-West University 2024) ch 3 on historical evolution of local government in South Africa.
50 The Natives Land Act of 1913 and the Group Areas Act of 1950 were the main pieces of legislation used to enforce spatial segregation.
51 See chapter 3 of the Constitution.
52 See chapter 7 of the Constitution.
53 Section 151(3) of the Constitution

exercise powers delegated from 'above' but rather exercise their inherent right to govern local affairs (subject to limits set by the Constitution and valid national and provincial legislation).

Section 152 outlines the fundamental purposes of local government, thereby framing the objectives of all urban law and policy. These objects are broad and ambitious. They provide for a democratic and accountable local government; one responsible for ensuring the sustainable provision of services; promoting social and economic development; fostering a safe and healthy environment; and encouraging community involvement in matters of local government.[54] Therefore, municipalities are more than mere service providers; they have been designed to be the engines of development and democratic participation.

Section 153 gives concrete expression to the concept of developmental local government, which became the cornerstone of the 1998 White Paper as discussed earlier. In this section, a direct constitutional duty is placed on every municipality to 'structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community'.[55] The developmental mandate is arguably the single most important guide for post-apartheid urban law, requiring that all municipal actions be oriented towards improving the quality of life for all citizens, particularly the poor.

While chapter 7 of the Constitution establishes municipal autonomy, chapter 3 makes it clear that this autonomy is not absolute. It situates local government within a framework of 'co-operative government', where the three spheres (national, provincial and local) are 'distinctive, interdependent and interrelated'.[56] This principle requires mutual respect and cooperation among the spheres. Critically, section 154(1) places a positive duty on national and provincial governments to support and strengthen the capacity of municipalities to manage their own affairs, exercise their powers and perform their functions. This introduces the central, and often challenging, dynamic of South African urban governance: the relationship between constitutionally guaranteed autonomy and the constitutional duty of oversight and support from other spheres of government.

Against this background, the Constitution arguably lays the basis for all sources of urban law in South Africa. It similarly determines the scope of powers of those organs of state involved in urban governance (and the relationships between them) whilst setting out the procedural and substantive rights that the people and institutions working and living in cities and towns are entitled to. These substantive rights range from the rights to equality, dignity and life[57] to the rights of access to adequate housing and water[58] and an environment not detrimental to human health and well-being.[59] The procedural rights include the rights of access to justice, access to information and to just administrative action.[60]

While the Constitution provides the foundational principles, it is national legislation that brings it to life. A suite of framework national laws dealing with local government matters and passed primarily in the late 1990s and early 2000s, establishes the 'operating system and structure' for urban governance in South Africa.

An extensive body of national framework legislation

It is not possible in a Paper of this nature to expand on the details of each and every national law that has a bearing on local governance in South Africa. From a legislative design perspective, it is, however, important to know that Parliament passed a suite of national Acts that regulate local government affairs in an overarching manner and without intruding on the autonomy of municipalities as promised in the

54 See section 152 of the Constitution for a full list of the objects of local government.
55 The developmental duty of local government in section 153 of the Constitution.
56 Section 40 of the Constitution.
57 Sections 9, 10 and 11 of the Constitution.
58 Sections 26 and 27(1)(b) of the Constitution.
59 Section 24(a) of the Constitution.
60 Sections 32, 33 and 34 of the Constitution.

Constitution. These 'framework' Acts include, for example, the Systems Act, the Structures Act and the MFMA. Together, these Acts unpack in greater detail the vision for developmental local government set out in the Constitution. For example, the Systems Act contains rules and provisions on how municipal services should be delivered, how strategic planning should be conducted at the municipal level, and the involvement of communities and other stakeholders in municipal decision-making. This Act also caters for municipal performance management and defines municipal services, basic municipal services and 'a municipality'. In the Structures Act, more detail is provided on the different categories and other structures one finds within municipalities. The Act expands on the roles of various public office bearers in local government and provides more detail on the division of functions between different categories of municipalities. The MFMA is devoted to municipal finance management and is a complex piece of legislation that governs the duties and functions of different functionaries within a municipality and dictates annual and other budgeting and reporting processes. Together, these framework local government Acts provide the backbone of local governance and create a national standard of sorts without impeding on the law-making authority of municipalities.

Sector-specific national, provincial and local laws in abundance

The national laws that apply to the urban space in South Africa are numerous. A large number of laws have a direct or indirect bearing on developmental local government and local government affairs generally.[61] The national and provincial Acts speak to sectors such as disaster risk management, housing, health, spatial planning, environmental management, water services management, labour, occupational health and safety, public infrastructure, climate change and construction. Many of these sector areas can be broken down further if one considers that national legislation on environmental management encapsulates Acts applicable to water management, waste management, air quality management, integrated coastal management, biodiversity, cultural heritage, pollution control and protected areas, for example.[62] In some of these sectors, one would also encounter provincial laws. One recent example of a provincial Act with direct implications for local government is the Gauteng Township Economy Development Act 2 of 2022. One of the most recent national laws with direct implications for local government is the Climate Change Act 22 of 2024.

Essentially, these national and provincial sector laws lay down principles and frameworks for decision-making and planning in the areas they apply to, but they also offer local governance tools that help ensure some consistency (standardisation) across the country or a province. Several provide for aspects of cooperative government, such as intergovernmental forums that municipalities are expected to participate in.

The legal landscape, however, is also marked by hundreds of local laws or municipal bylaws.[63] These are the 'legislation' made by municipal councils within the bounds of their legislative authority established in the Constitution. A bylaw is applicable within the boundaries of the specific municipality and is usually used to regulate a specific area of municipal governance, such as rates and taxes, air quality, noise, markets and spatial planning. A municipality such as Drakenstein has bylaws that address matters such as informal trading, integrated waste management, controlled parking areas, public amenities, streets and water and sanitation services.[64]

This complex web of laws, however, is not the only 'law' applicable to urban governance and developmental local government. Other sources of law also find application, such as contracts, agreements, common law principles, rules in traditional and religious legal systems and judicial precedent. This just shows that urban law is broad

61 For the most recent and extensive publication on *local government law in South Africa*, see Nico Steytler and Jaap De Visser Local Government Law of South Africa 17th Issue (LexisNexis, 2025).

62 See the detail of this legislative landscape in Anél A du Plessis (ed), *Environmental Law and Local Government in South Africa* 2nd edn (Juta 2022).

63 A useful source in this regard is Open By-laws available <https://openbylaws.org.za> accessed 25 November 2025.

64 See Drakenstein Municipality By-laws: LawLibrary, 'Drakenstein Municipality By-laws' https://openbylaws.org.za/legislation/za-wc023/ accessed 28 November 2025.

in its design and scope, and may, in principle, be challenging to navigate.

Messages from the South African courts

As a result of many challenges in and with local government, the courts play a significant role in the interpretation, application and enforcement of urban law. Through a series of landmark judgments over the past three decades (one of the most oft-cited is the case of *Government of the Republic of South Africa v Grootboom)*[65], the courts have not merely interpreted the law but have actively shaped it, delineating the boundaries of municipal power, giving substantive and procedural content to socio-economic rights, and judicially confirming the duties of the state in its interactions with people in cities.

The courts have, for example, been vocal on the role of different public and private actors in the realisation of rights, the improvement of services to advance urban life and the division of legislative (law-making) authority between national, provincial and local spheres of government.

The courts have also had several opportunities to pronounce on municipal autonomy. They have repeatedly affirmed that municipalities are not subordinate to the provinces or national government in the sense of being mere agents or delegations: they are constitutional actors with an original right to govern local affairs. This gives local government real 'space' to pursue development tailored to local conditions – not just implement top-down instructions. A very specific example of such a case is the matter of *Maccsand (Pty) Ltd v City of Cape Town*.[66]

The courts interpreted the powers and incidental powers of municipalities in a broad way to support their developmental mandate. They have emphasised that the powers of municipalities – including what may be deemed 'incidental' or 'reasonably necessary' – should not be read too narrowly. Such broad construction is necessary to enable every municipality to fulfil its developmental mandate effectively. This broad interpretive posture also facilitates municipal competence in areas that may not be explicitly spelt out but are necessary for meaningful planning, development, service delivery and local governance. Two examples of such cases are the *Le Sueur v Ethekwini Municipality - case*[67] *and the case of Marius Nel v Hessequa Local Municipallity).*[68]

The integration of socio-economic rights and developmental obligations has also reached the courts. The courts have agreed that by virtue of their developmental mandate and constitutionally conferred powers, municipalities are appropriate institutions to facilitate the progressive realisation of socio-economic rights at a local level (water, sanitation, electricity, environment). This essentially means that local government is not only about efficient administration or planning, but also about social justice, equality and human dignity.

As suggested earlier, the three spheres of government all play a role in developmental (local) government and must support each other. The courts have not shied away from confirming that South Africa's constitutional design does not isolate municipalities; rather, it envisages a system of cooperative government. As stated earlier, provincial and local government have duties to support and strengthen local government capacity (legislative, financial, institutional), especially where needed to achieve developmental outcomes. The courts have also emphasised that within this cooperative framework, when assessing failures or dysfunction, municipalities cannot always be judged in isolation, but must be seen to operate within the broader system of intergovernmental support and obligations.

The courts may, in fact, be called the guardians of municipalities' developmental mandate, considering how they approach cases that involve municipal

65 *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC).
66 *Maccsand (Pty) Ltd v City of Cape Town and Others 2012 (4)* SA 181 (CC).
67 *Le Sueur and Another v Ethekwini Municipality and Others* (9714/11) [2013] ZAKZPHC 6 (30 January 2013).
68 *Marius Nel and Others v Hessequa Local Municipality and Others (2015)* (High Court, Western Cape Division, Cape Town) Case No 12576/2013, (judgment delivered by the Western Cape High Court on 14 December 2015.)

accountability and responsibility. Municipalities are bound by the 'principle of legality' which suggests that they may only exercise powers legally conferred, and must respect procedural and constitutional constraints. At the same time, where municipalities fail to uphold their developmental and service-delivery obligations (or act unlawfully), courts have intervened – in some cases, compelling remedial action, or even supporting higher-sphere intervention under constitutional mechanisms.

The number of cases requiring the courts to pronounce on accountability, human rights duties, governance mandates, and the duties of different local government actors is rising year by year. Some of the striking cases include, for example, the case of *Mazibuko and Others v City of Johannesburg and Others*[69] where the Constitutional Court confirmed that the constitutional right to water (section 27(1)(b) of the Constitution) requires the State/municipality to take 'reasonable measures' to realise access to water progressively, but does not guarantee unlimited water on demand – leaving room for policies (e.g. free basic water and prepaid meters) so long as reasonable. In the case of *Afriforum NPC v Ngwathe Local Municipality and 14 Others*,[70] the Free State High Court ordered the dissolution of the municipal council for persistent failure to deliver basic municipal services (water, sanitation, waste management, infrastructure). The court confirmed a breach of the municipality's constitutional obligations under chapter 7 of the Constitution. The court also required provincial-level intervention (under the constitutional powers of provincial oversight) given the municipality's dysfunction and collapse. In the cases of *City of Johannesburg v Blue Moonlight Properties and Others*[71] and later, *Dladla v City of Johannesburg and Others*,[72] the courts found that municipalities have a constitutional duty to provide temporary emergency shelter when evicting people who would otherwise be rendered homeless. In the *Dladla* matter, it was found that certain lock-out and family-separation rules in emergency shelters violated residents' constitutional rights to dignity, privacy and security of the person. It is court cases like these that illustrate that service delivery – particularly housing and emergency accommodation – is not limited to utilities but extends to dignified treatment, shelter and socio-economic rights. In other words, the mandate and duties of municipalities span beyond service delivery into developmental local government.

69 *Mazibuko and Others v City of Johannesburg and Others* 2010 (4) SA 1 (CC).
70 *Afriforum NPC v Ngwathe Local Municipality and 14 Others* (2264/2024) [2025] ZAFSHC 184 (20 June 2025).
71 *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) BCLR 150 (CC).
72 *Dladla and Another v City of Johannesburg and Others* 2018 (2) BCLR 119 (CC).

PART 4

Some challenges and strengths in the design and implementation of urban law

In South Africa, urban law has not yet crystallised as a discrete legal field. It is instead dispersed across multiple statutes and governance levels, anchored in the constitutional framework that grants municipalities original legislative authority. Urban law, although not yet formally codified as a distinct legal discipline, operates through and within the multilevel legal frameworks that define, empower and constrain local government. However, the practical application of urban law at the local level reveals persistent and systemic challenges that complicate the translation of legal and policy mandates (such as developmental local government) into meaningful governance outcomes. Some of these challenges are discussed here and draw on inputs received during the stakeholder workshop held to complement the theory covered in this Working Paper.

The identified challenges

Fragmentation and overregulation

A dominant theme was the fragmentation of the various laws applicable to local government and local governance in South Africa. The participating local government officials reported difficulties in navigating multiple, overlapping national and provincial statutes and policies. For example, legislation relating to spatial planning, housing, disaster risk reduction and environmental protection often crosses jurisdictional and functional lines without coordination. The coexistence of outdated and new laws, such as pre-1994 regulations, which remain in effect alongside post-constitutional laws, creates legal uncertainty for both regulators and those regulated. The point was raised that the landscape is confusing at times and that even lawyers grapple with some of the conflicting or confusing legal duties and rights captured in the multiplicity of laws.

It was said that the legal fragmentation is further compounded by a) a multiplicity of governance instruments such as strategic and space-based plans; and b) overregulation. Participants cited examples where the proliferation of regulations imposed excessive compliance duties without providing corresponding support. Every participant agreed that the regulatory landscape is becoming more complex with every new piece of law being passed, and this is challenging for seasoned local government officials as well as newcomers. It was observed that very few municipalities have a dedicated officer who tracks and communicates the developments in new or amended laws that may have a bearing on the work and projects of the municipality, for example. One municipality present at the workshop has a contracted officials assisting with the identification and sharing of new local government law, policy and other developments. This was found to be incredibly useful for councillors and officials alike.

Capacity and technical constraints in municipalities

The participants underscored the continued need to address technical and institutional capacity constraints within local government. This claim is definitely not new. Many municipalities, particularly those from under-resourced urban areas, lack dedicated personnel with legal drafting skills or experience in constitutional and administrative law, for example. This situation is compounded by the over-reliance on consultants, whose services are often unaffordable or misaligned with municipal realities. It suggests that capacity constraints sometimes fracture the legal position even further.

Furthermore, the role of councillors as legislators emerged as a structural constraint. While councillors are entrusted with law-making functions, they often do not possess the necessary legal training or support capacity to engage meaningfully in the drafting, analysis, evaluation or amendment of laws. This leads to a disconnect between municipal councils and the efficiency/quality of the legal instruments they are responsible for adopting. Sector-specific training and ongoing legal literacy programmes were identified as critical for bridging this gap.

The participants showed appreciation for the fact that the quality of urban law generally depends on clear and locally relevant provisions; well-constructed legal instruments that are effective in translating policy into practice and that are integrated with national standards that reflect international urban development commitments. It is also dependent on clear processes for assessing and reviewing legislation and regulations.

Legal pluralism and informality in complex municipal geographical spaces

Another challenge identified was legal pluralism, particularly in municipalities that encompass both urban and traditional rural areas. Legal pluralism in this context is understood as the co-existence of various sources of law and authority. For instance, municipalities such as Ngqushwa Local Municipality (Peddie) and Buffalo City operate within a space where there is a mixture of customary authority, informal settlements and formal urban settlements. The application of uniform bylaws in such a diverse socio-spatial context often leads to implementation failures, contestation or irrelevance, for example.

Against this background, participants called for a closer examination of whether a 'one-size-fits-all' legislative model is appropriate in such municipalities. Participants advocated for greater recognition of customary law in such localised and sometimes unique circumstances, as well as the development of urban law instruments that reflect the nuanced social and spatial realities within municipalities. This would require legal frameworks that are not only technically sound but co-produced with, and socially embedded within, communities. These frameworks also have to be premised on the founding values of the Constitution, which seek to redress the injustices of the past.

The application of urban law is further complicated by the diverse spatial and socio-political configurations within municipalities. Workshop participants stated, in addition to what has been flagged above, that uniform laws applied across varied contexts often produce conflict or non-compliance, especially where traditional leadership structures are sidelined, or legal pluralism is not meaningfully recognised. With densely populated informal settlements, established suburbs, traditional rural areas, and mixed-use zones, a single regulatory framework does not adequately respond to the varied social realities, and this has a direct bearing on development potential in these places.

It was further stated that urban law is often most visibly contested in spaces where informality is a preferred economic and housing option. Bylaws regulating street trading, housing or public health frequently target informal economies and vulnerable residents, for example. While intended to ensure order and health, such bylaws may conflict with constitutional rights, including the rights to dignity, livelihood, and access to housing. This pointed to the unintended consequences of law designed for preconceived and set ideas of what urban law is or should be.

The fact that South Africa's municipalities are not exclusively urban in character exacerbates

the situation. Many municipalities in South Africa encompass urban centres, informal settlements, rural areas under traditional authorities and townships, all within a single jurisdiction. A legal framework focusing on the dynamics of purely 'urban' or 'formal' spaces could be construed as excluding or deprioritising communities living in informal or rural settings on the urban periphery, with unintended consequences of rejection and/or contestation.

Political interference and a sense of 'governance breakdown'

Many municipal officials at the workshop described how political dynamics undermine different local government processes. The challenge with the law-making process was alluded to above. The officials also held that in one example, municipal bylaws are sometimes delayed, obstructed or selectively enforced based on political agendas. In some cases, political leaders have reportedly discouraged communities from complying with municipal laws or paying for services, thereby undermining legal authority and financial viability. This interference disrupts the principle of separation of powers and cooperative governance. It also erodes public trust in municipal institutions and contributes to selective or arbitrary law enforcement.

Participants proposed stronger accountability mechanisms, including consequence management and clearer institutional safeguards to protect legal processes from political encroachment. Participants showed appreciation for the difficulty with the conflation of legislative and executive authority in a municipal council. They also hinted at the failure of the Code of Conduct for Councillors and the accompanying regulations[73] to deliver on its vision to curb political interference in certain administrative aspects of municipal governance.

The suggestion was made that a significant investment in the functioning and skills of councillors designated as chairpersons of committees of local structures is critically important, so that they can effectively exercise their oversight function to ensure transparency. A better understanding of the developmental mandate of local government seems widely needed. The participants repeatedly stated that, in addition to the matter of political interference, municipal officials who are 'fit for purpose' should be appointed. For the participants, this was one of the issues that contributed to the dominant sense of 'government breakdown', and that prevents the body of urban law from delivering on the development of local government promise.

Participation and legitimacy gaps

While South African law mandates public participation, for example, in law-making processes, workshop participants overwhelmingly agreed that such participation is often superficial and procedurally driven. Communities are not given adequate notice, accessible information or meaningful opportunities to influence legislative content, for example. Language barriers, inaccessible venues and digital exclusion further limit participation.

Participants called for a reimagining of participation as a substantive democratic exercise rather than a formal requirement. Innovative strategies, including multilingual materials, local radio outreach, a door-to-door election-campaigning style, the use of loudspeakers for calling community meetings, and targeted information campaigns through schools, spaza shops in communities, and SASSA offices, were suggested to ensure more inclusive, accessible, and legitimate processes.

The general sentiment shared was that a participatory approach is often positively associated with socially inclusive innovation processes and cultural value creation. Participation is indispensable for the promotion of equality and the inclusion of vulnerable people who live and work in cities and towns.

The point was also raised that local government could be more directly and meaningfully involved in the passage of national and provincial laws that affect municipalities. In this way, design errors could be identified early and mitigated before an Act is passed and then needs to be enforced without the necessary support in place.

73 Schedule 7 of the Structures Act, read with the Code of Conduct for Councillors Regulations (GN 3538 in GN 48786 of 14 June 2023).

The identified strengths

Carefully crafted national local government laws

The participants indicated that when hearing and seeing an outline and the objectives of South African 'urban law', they feel proud. The sentiment was shared that little seems to be wrong with South African law at face value and that huge strides have been made since the fall of apartheid for law and policy to help achieve social justice, also in urban spaces.

It was acknowledged that, unlike many developing countries, local government law in South Africa is well developed and premised on the founding values of the Constitution and constitutional principles. There was concurrence that different pieces of legislation exist to govern each (or most) eventualities related to local governance and that various provisions, in principle, make cooperative government possible and desirable. The range of human rights that people in South Africa enjoy was also highlighted.

The remark was made that the Parliament is active and has produced a lot of legislation in the past three decades, so that at a national level, there is probably no further need for more legislation. The problem is not so much the quantity of law, but rather the spread thereof along the lines of sectors and line functionaries in the national government sphere.

Enabling autonomy and authority for city and town governments

Recalling the position of local government prior to 1994, the participants remarked that the autonomy of local government in South Africa (discussed earlier) calls for celebration and that the Constitution and national law on local government create ample space for municipalities to fulfil their developmental mandate. The law-making power of municipalities was highlighted as an underutilised instrument through which municipalities can make a significant difference in their local communities, should the necessary law-making skills and commitment exist. Unlike a policy, a bylaw is of longer duration and can withstand political ebb and flow. The participants, for this reason, indicated that bylaw-making authority can be as enabling as local government autonomy itself, but it depends on various factors, with legal drafting skills being the most prominent.

One of the matters that was raised is that informality in the South African urban context may require municipalities to rethink how to draft and enforce 'traditional' bylaws. It was said that bylaws can easily become hard-to-enforce command-and-control instruments, but that, through creative drafting, they can also be used to incorporate incentives and disincentives that may be more attractive in informal environments.

A celebration of pluralistic urban law and multiple stakeholders

Legal pluralism, from an urban law perspective, refers to the idea that cities are governed not by a single unified legal system, but by multiple overlapping, interacting and sometimes competing legal orders that shape how urban space is regulated, experienced and contested. That this marks the South African urban reality should be clear by now.

The participants indicated that this pluralistic system creates tensions and potential conflict as already described, but that it also symbolises the diversity of norms, rules and principles that apply in the African urban setting. The sentiment was shared that, rather than wishing away the plurality of law (indigenous law, religious legal systems, national and local law, etc.), mechanisms should be identified to make navigating the legal landscape slightly easier. One suggested way is a 'municipal code' that thematically groups together all of the relevant laws in and for a specific local area.

Another positive aspect that was raised towards the end of the workshop was that a lot of creativity and experience sits within and among different local government stakeholders. These range from non-governmental organisations (NGOs) to officials, researchers, units within universities and colleagues working for SALGA and the Department of Cooperative Governance and Traditional Affairs (CoGTA).

PART 5

Concluding observations

Urban law is a study field, but it is also an area of law that determines people's health, well-being and experience in the urban localities where they work, live and play.

The South African urban law trajectory has a difficult and disturbing history, and what came about in terms of legal design and implementation after apartheid is not without its challenges. Municipalities struggle to navigate the legal landscape at multiple levels, and this affects people's rights and entitlements in cities and towns. It also has an impact on their trust and belief in the South African democratic order and a local government system that delivers on its developmental promise.

Our combination of desktop research and engagement with local government stakeholders showed that developmental local government is the end goal of the existing urban law framework in South Africa. It is clear where we should be heading, but how to get there, considering the diverse kinds of municipalities we have and the diversity of issues and challenges they face, is not always clear. It became evident that local government stakeholders, at times, struggle to articulate exactly what the barriers are to ensuring that the law better serves developmental local government. From this, one may deduce blurred lines between law, politics, governance and economic conditions. The courts have, however, shown commitment to local government accountability and delivery on developmental local government promises. This underscores the need to find solutions to the challenges of making the letter of the law work for people.

Our engagement workshop was not a discussion about the doctrinal development of urban law in South Africa, but an unpacking of the daily legal and administrative constraints municipalities face. Issues such as legal fragmentation, under-regulated public participation and poor coordination between the local, provincial and national spheres revealed the gap between the ideal of urban law and the regulatory reality at the local level. Participants, for example, suggested a 'one-stop-shop' legal framework, modelled on the integration seen in the NEMA, to facilitate greater coherence and accessibility in navigating obligations in terms of the suite of local government legislation. The main question then became who should ultimately take ownership of such a process. Consensus could not be reached.

What became evident during this project is that there is a lot of expertise and commitment among local government stakeholders and that various lessons have been learned since 1994. While the challenges in urban law and governance are many, each has a potential solution that must be unlocked through engagement and deliberate action with developmental local government and social justice as the end goals.

The cry of most local government stakeholders has been one for more collaboration and support. Municipalities are fighting many battles, and a persistent challenge is to articulate how local and national support should look in a system where the autonomy of local government is not negotiable. A pertinent question is where the responsibility of SALGA begins and ends as opposed to that CoGTA. This clearly leaves room for extensive future deliberations and research.

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