

Conference

**CONSTITUTIONAL DEMOCRACY:
THE ROLE OF PROVINCIAL AND LOCAL GOVERNMENT
IN MAKING GOVERNANCE MORE EFFECTIVE,
ACCOUNTABLE AND INNOVATIVE**



CONFERENCE

CONSTITUTIONAL DEMOCRACY: THE ROLE OF PROVINCIAL/REGIONAL AND LOCAL GOVERNMENT IN MAKING GOVERNANCE MORE EFFECTIVE, ACCOUNTABLE AND INNOVATIVE

Wednesday 19 August 2015		
08:30	Registration (coffee/tea on arrival)	
09:00 Theme 1	<p>Creating Space for Governing Closer to the People</p> <p>Welcome - Prof Erwin Schwella</p> <p>The Constitutional Case for Cooperative Government– Ms Phephelaphi Dube (Centre for Constitutional Rights)</p> <p>Bringing the central government closer to citizens – Dr Gordon DiGiacomo (University of Ottawa, Canada)</p>	
10:30 – 11:00	Coffee & tea	
11:00 Theme 1 (continues)	<p>Democratic Constitutionalism in the German State: Legislatures, Sub-National Constitutionalism and Multilevel Systems – Dr Werner Reutter (University of Leipzig, Germany)</p> <p>The Performance of South African Public Entities is a Barometer for Constitutional Democracy – Phakamani Buthelezi & Prof Hans Bossert (School of Public Leadership (SPL), Stellenbosch University)</p> <p>Discussion</p>	
12:15	<p>Introduction: Local Government & Local Finance in Japan</p> <p>Dr Hirofumi Kawakita Japan International Co-operation Agency (JICA)</p>	
12:45	Lunch	
13:45 – 16:00 Theme 2	<p>Making Regions and Cities Smart: Innovation in Governance</p> <p>A Critical Analysis of Digital Social Innovation and its Potential in Strengthening Constitutional Democracy – Wouter Grové (UWC CoLab)</p> <p>Governance - A Systems Perspective – Boy Janse van Rensburg (Hessequa Social Lab)</p> <p>The Municipal Institutional Capacity Model (MICM): A Theoretical Framework to Support a Local Government Improvement Strategy in South Africa – Louis Scheepers (Saldanha Bay Municipality)</p> <p>Dealing with the soft issues that undermine service delivery – Prof Peter Franks (SPL, Stellenbosch University)</p> <p>Better government decision making through the integration of non-financial information – Dr Lianne Dijkstra (Sustainable Impact) & Prof Hans Bossert (SPL, Stellenbosch University)</p> <p>Discussion</p>	

18:00 Nitida Wine Estate, Durbanville	Welcome Dinner with Guest Speaker: Minister Dr Ivan Meyer, Western Cape Minister of Finance Theme: Role of Provinces and Municipalities 20 Years into Democracy Book launch	
Thursday 20 August 2015		
08:30 for 9:00	coffee/tea on arrival	
9:00 Theme 3	<p>Institutional Innovation: New Forms Of Participatory Democracy At Sub-National Level</p> <p>New forms of governance – Prof Francesco Palermo (European Academy (EURAC), Bolzano, Italy)</p> <p>E-governance as an Innovative Participation Democracy Strategy: The South African Social Security Agency (SASSA)</p> <p>Luzuko Qina (SASSA) & Francois Theron (SPL, Stellenbosch University)</p> <p>Participatory democracy in a comparative perspective – Martina Trettel (EURAC, Bolzano, Italy)</p> <p>Intellectual Empowerment of Citizens: A Critical Step in Government of the People - Dr Ntandazo Sifolo (Independent Researcher, LeadershipINDABA Fellow)</p> <p>Discussion</p>	<p>Case studies (Parallel session)</p> <ol style="list-style-type: none"> 1. Municipal mentoring project – Adv Werner Zybrands 2. Local government social lab – Thys Pretorius (SPL, Stellenbosch University) 3. Free Wi-Fi – James Divine (Project Isizwe) 4. Regional Innovation Fora, and engagement platform for supporting Innovation at a Local Level - Johann Strauss
10:30 – 11:00	Coffee & tea	
11:00 Theme 3 (continues)	<p>Institutional Innovation: New Forms Of Participatory Democracy At Sub-National Level</p> <p>Learning-based Governance Innovation: Metaphors, Concepts and Analysis: A Case Analysis of the Stellenbosch Good Governance Forum (SGGF) – Prof Erwin Schwella (SPL, Stellenbosch University) and panelists</p> <p>Institutional Innovation: New Forms of Participatory Democracy at Sub-National Level in IBSA Members - Dr Aprajita Kashyap (GGS Indraprastha University, New Delhi, India)</p> <p>Examining the relationship between sub-national structures and civil society organisations: is there evidence of innovative governance? – Nikiwe Kaunda & Prof Hans Bossert (SPL, Stellenbosch University)</p> <p>Discussion</p>	
13:00	Lunch	

14:00 – 16:00 Theme 4	<p>Other Spheres of Government: Co-Creating Space for Partnerships and Modernising Governance</p> <p>Knowledge-based and Partnership-based Governance Facilitates Social Innovation: The Case of Hessequa Municipality from a Reflective Angle – Dr Joan Prins (Hessequa Municipality)</p> <p>David or Goliath: Engaging Cities and Citizens Towards the 2015 Paris Climate Negotiations – Bruce Haase (Speaking Sustainably) & Prof Hans Bossert (SPL, Stellenbosch University)</p> <p>Aesthetic Leadership in our Fragile World: Towards a Nation Building Plan Using Ntsikana Kagabha Paradise City Models – Dr George Tsibani (SPL, Stellenbosch University)</p> <p>Discussion</p>	
Friday 21 August 2015		
08:30 for 9:00	coffee/tea on arrival	
9:00 Theme 4 (continues)	<p>Other Spheres of Government: Co-Creating Space for Partnerships and Modernising Governance</p> <p>Co-production in Education - Shaping a better future – Marleen Engelbrecht (UNISA) & Dr Dirk Brand (SPL, Stellenbosch University)</p> <p>Co-Production of Public Services - An Innovative Participatory Approach to Strengthen Local Democracy in South Africa - Nthuthuko Mchunu (City of Cape Town) & Francois Theron (SPL, Stellenbosch University)</p> <p>The constitutional court’s thin end of the wedge: Opening space for governing land use closer to the people - Prof Jaap de Visser (University of the Western Cape)</p> <p>Discussion</p>	
10:15 – 10:45	Coffee & tea	
10:45 Theme 5	<p>Local Government Finance – Reform and Innovation in International Context and Prospects for South Africa</p> <p>Trade Rules and Local Government – Prof Ichiro Araki (Yokohama National University, Japan)</p> <p>Financial relations in comparative perspective – Matteo Nicolini (EURAC, Bolzano, Italy)</p> <p>Financing Rural Municipalities: Issues of Adequacy and Equity - Bongani Khumalo and Dr Mkhululi Ncube (Financial and Fiscal Commission)</p> <p>Financial Reform and Multi-Level Governance - A Balancing Act – Dr Dirk Brand (SPL, Stellenbosch University)</p> <p>Discussion</p>	
12:45	Closing remarks by conference partners	
13:00	Light Lunch/Cocktail Function	

THEME 1

Phephelaphi Dube

Phephelaphi Dube is a legal officer with the Centre for Constitutional Rights, a unit within the FW De Klerk Foundation. She holds an LL.B from the University of Fort Hare and an LL.M from Stellenbosch University as well as a post graduate diploma in European Studies from the University of Vienna in Austria. She completed her articles at the Rhodes University Legal Aid Clinic in 2003. She specialises in Public International Law, Constitutional Law, Property Law as well as Human Rights Law. Prior to joining the FW de Klerk Foundation, Phephelaphi held a research fellowship with the Ludwig Boltzmann Initiative College for Human Rights in the European Context at the University of Vienna. She also previously worked as a researcher with the South African Research Chair in Property Law at Stellenbosch University and has clerked for the Vice President of the International Criminal Court. Phephelaphi is a member of the African Network of Constitutional Lawyers and the Cape Press Club.

Dr Gordon DiGiacomo

Dr. Gordon DiGiacomo received his doctorate in political science in 2010 from Carleton University, Ottawa, Ontario, Canada. He teaches political science (part-time) at the University of Ottawa and has occasionally taught constitutional law at Carleton University. His areas of interest are constitutions, federalism and human rights. He has written considerably on Canadian federalism. His edited collection, *The Case for Centralized Federalism*, was published in 2010 and early in 2016 his edited volume on human rights will be published by the University of Toronto Press.

Dr Werner Reutter

PD Dr. Werner Reutter has a B.A. in Public Administration and a Diploma (M.A.) and Ph.D. in Political Science. He is affiliated with the University Leipzig, the Department of Political Science. His subject field of expertise and areas of interest include Constitutional politics, Federalism, Parliamentarism, German political system, National and international trade union politics, and Western democracies in comparative perspective.

Phakamani Buthelezi

Phakamani M. Buthelezi MSc. MCRP is a researcher and senior manager in the field of water governance and IWRM. Currently he is CEO of Breede-Overberg Catchment Management Agency, South Africa.

Prof Hans Bossert

Prof. Dr. Hans Bossert, PHD, is a Professor of Public Governance at Nyenrode Business Universiteit in Breukelen, The Netherlands and an Extraordinary Professor at the School of Public Leadership (US SPL), University of Stellenbosch. His subject field of expertise and areas of interest include Public Sector Management, Privatizations and public-private arrangements.

Dr Hirofumi Kawakita

Hirofumi Kawakita, PhD, is a Senior Advisor for the Japan International Cooperation Agency. His subject field of expertise and areas of interest include Local Finance, Taxation and Public Financial Management. He has 10 years' experience in the Japanese Municipality Official (mainly tax department and planning department) and 10 years' experience in the Japan International Cooperation Agency as a project/program formation expert in the field of Local Finance and Local government administration.

THEME 2

Wouter Grové

Wouter Grové is a Project Manager, Institutional Planning, UWC. His qualifications include a B.Admin (International Relations) and M.Com in Information Systems. He is involved at the Western Cape CoLab for eInclusion and Social Innovation and the University of the Western Cape. His subject field of expertise and areas of interest include Digital Social Innovation; Game-based learning and Civic Engagement.

Boy Janse van Rensburg

Mr. WT Boy Janse van Rensburg is a resident of Albertinia in the Hessequa region. He is a fellow of the School of Public Leadership at the University of Stellenbosch and was a member of the 2014/2015 LeadershipINDABA (co-ordinated by the same institution). He holds a Masters degree in Futures Studies, a Masters degree in Energy Studies, a degree in Chemical Engineering and a B.Comm. degree. Areas of interest include systems thinking and the development of rural areas through effective governance and strategic planning.

Louis Scheepers

Louis Scheepers is a committed and experienced career civil servant and local government practitioner with 23 years of experience in the management of district and local municipalities. He currently serves as the municipal manager of Saldanha Bay Municipality. Louis has just completed a PhD in Public Management & Development Planning at the School of Public Leadership of the Stellenbosch University (the degree will be conferred on him in December 2015). The title of his dissertation is *An Institutional Capacity Model for Municipalities in South Africa*. He also holds a Masters in Public Administration (MPA) from the University of the Western Cape and a National Diploma in Public Management (ND: Pub Man) from the erstwhile Technikon South Africa.

Prof Peter Franks

Peter E. Franks is Professor Extraordinary at the School for Public Leadership, University of Stellenbosch. He is registered as an Industrial Psychologist with the Health Professions Council of South Africa (HPCSA) with a PhD in Social Psychology from the State University of New York at Stony Brook (1975). As a Social Psychologist he has worked in a wide variety of areas, including economics, politics, human resources, development, management both private and public, leadership, as well as the history of social psychology. As a Dean, Executive Dean and Deputy Vice Chancellor he initiated many developments at the University of Limpopo founding the Graduate School of Leadership and the Edupark Campus among other things. He has contributed in many ways to the process of transforming the democratic South Africa at a Local Provincial and National level.

Dr Lianne Dijkstra

Drs. L.J. Dijkstra is a researcher and senior advisor in the field of social development and sustainable entrepreneurship. Her focus lies on Corporate Sustainability, Responsibility & Reporting. With a background in business ethics, governance and risk management, her interest lies in creating both business and societal value. She is an associate partner of Sustainalize (www.sustainalize.nl), Utrecht, The Netherlands.

THEME 3

Prof Francesco Palermo

Prof. Dr. Francesco Palermo is Professor of Comparative Constitutional Law, University of Verona, and Director of the Institute for Studies on Federalism and Regionalism, EURAC, Bolzano/Bozen (Italy). He graduated from the University of Trento and holds a PhD from

the University of Innsbruck (Austria). Main academic and practical expertise include Comparative, Italian and European Constitutional Law, Federalism and Regionalism, Minority Issues, European Integration, Legal Terminology and Translation, Constitutional transition in Central, Eastern and South-Eastern Europe, Judicial review. As former Senior legal adviser to the OSCE High Commissioner on National Minorities, he is currently the President of the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities and a non-party senator from South Tyrol in Rome.

Luzuko Qina

Rev Luzuko Luntu Qina, is a Senior Manager responsible for Communication and Marketing in the South African Social Security Agency (SASSA), Eastern Cape, East London. Luzuko holds, BA Honors and MA in Theology (University of Pretoria), BPA Honors and MPA (Stellenbosch University). Luzuko has been engaging several stakeholders both internationally and from within the country at grassroot, political and strategic level, wherein numerous gaps were identified in service delivery resulting in him researching and studying public participation.

Francois Theron

Mr. Francois Theron received his BA; BA Honours and MA from Stellenbosch University. He is currently a Senior lecturer at the School of Public Leadership (Stellenbosch University). His subject field of expertise and areas of interest include Development Studies/Social Anthropology theoretical and practical discourse; public participation discourse: invited/invented spaces for grassroots development; community development theory and practice; community capacity-building, social learning and social capital/Indigenous Knowledge Systems (IKS's), empowerment, grassroots resilience and sustainable human development; developmental/good/local governance and the role of development change agents; human planning, agency/beneficiary planning social compacts and co-production principles; and Participatory Action Research (PAR) methodology.

Martina Trettel

Dott.ssa Martina Trettel, Researcher at the Institute for Studies on Federalism and Regionalism at EURAC, Bolzano/Bozen and PhD Candidate in European and International Law at the University of Verona. Main research interests: Italian and Comparative Constitutional Law, Regionalism and Regional Law of Trentino-South Tyrol, Institutional Innovation and participatory democracy, Comparative fiscal federalism, Comparative Constitutional Justice.

Dr Ntandazo Sifolo

Dr Ntandazo Sifolo received his Doctor of Philosophy in Political Science from the University of KwaZulu Natal. He is a Fellow of the School of Public Leadership, Public Leadership Forum at Stellenbosch University. His subject field of expertise include international relations & his areas of interest include trans-disciplinary studies (governance, business, international relations, African politics, leadership, and development).

Prof Erwin Schwella

Prof. Dr. Erwin Schwella holds BA (Law), BA Hons, MPA and PhD (Stell) qualifications. He is a National Research Foundation rated academic researcher in South Africa. He is a member of the Board of the Greater Tygerberg Partnership and founding academic and board member of this governance partnership for innovation; a member of the Board of the Council for Health Service Accreditation and Chair of the Council of Health Service Accreditation of Southern Africa (COHSASA); a member of the Board, Centre for Executive Leadership and Governance at Rutgers University, Newark, New Jersey, USA; Co-Chair of the Study Group on Administrative Leadership of IIAS (International Institute of Administrative Sciences) based in Leuven, Belgium; Member of the Statutory Training and Development Board of the Namibian Institute of Public Administration and Management (NIPAM), Windhoek, Namibia; Professorial Fellow of the Leiden Leadership Centre, Leiden University, Leiden, The Netherlands; Chair, Public Leadership Member Interest Group, International Leadership Association, Maryland, United States of America with global membership. His subject field of expertise and areas of interest include being a Professor of Public Leadership at Stellenbosch University and holding a professorial appointment with Leiden University in the Netherlands. He has held high level consultancy government briefs from with all spheres of South African government since democracy as well as for the European Union, the British and the Namibian Governments.

Dr Aprajita Kashyap

Dr. Aprajita Kashyap has more than ten years of teaching and research experience on different aspects of polity, governance, federalism and environment. She pursued her M.A. (Politics and International Relations), M.Phil. and Ph.D. (Title "Brazil's Environmental Policy and Programmes in the Amazon Region") from the School of International Studies, Jawaharlal Nehru University, Delhi. Dr. Kashyap has worked as an Assistant Professor at GGS Indraprastha University, Delhi, India teaching Political Science and International Relations in the the five-year integrated law programme since 2007. She has been associated with the Young Professional's Programme of the Forum of Federations which is a global

network on federalism and multilevel governance, supports better governance through learning among practitioners and experts. Her knowledge was augmented by a Summer Diploma Course in 2009 from the University of Fribourg Switzerland on “Federalism, Decentralization and Diversity: Division of Power and Democratic Governance in Multicultural Societies”. She was selected as an Emerging Leaders Fellow at the Australia India Institute of the University of Melbourne in 2013 where she published a paper on resource federalism.

Nikiwe Kaunda

Ms Nikiwe Kaunda, MPHIL Labour Law, is a PHD Candidate at the SPL and a Programme Manager at an NGO. Her subject field of expertise and areas of interest include sustainable development and entrepreneurship

THEME 4

Dr Joan Prins

Dr Joan Prins has received her BA in History and Cultural History (University of Stellenbosch), BA Hons in Political Science (UNISA), MA in Cultural History (UNISA), D Litt et Phil in Cultural History (UNISA), National Diploma in Archival Science (National Government), and various training qualifications in Integrated Development Planning, Local Economic Development Planning and Performance Management. She is the Ward Councillor and Speaker of Hessequa Municipality and a Fellow of Indaba Leadership, a project of the School of Public Leadership Public Leadership Forum (SPLPLF) situated in the School of Public Leadership (SPL) at Stellenbosch University (SU). Her subject field of expertise and areas of interest include Municipal integrated development planning, local economic development planning, Performance management, and Political development and change.

Bruce Haase

B. Haase MSc is a consultant in the field of sustainable development and entrepreneurship. He is based in Amsterdam, The Netherlands.

Dr George Tsibani

Dr Fumene George Tsibani has BA, HDE, BED, MA and PhD, and more than 27 years of experience in Capacity Building, Training and Development complemented by Programme

Evaluation and Research in Public Policy and Management working with various sectoral departments, State Owned Enterprises (SOEs), Developmental Finance Institution (DFI) such as DBSA, and International Development Agencies such as DANIDA, DFID, and USAID. He was very instrumental in facilitating Community Water Supply and Sanitation Services Programmes (CWSSP) in early 1990s as part of Operation Hunger (NGO) in the Eastern Cape, and advancing skills revolution with the SETA system. This report reflects his personal observations, interpretations and in-depth analysis of the YALI Southern Conference proceedings as a delegate of LeadAfrika.

Marleen Engelbrecht

Ms Marleen Engelbrecht obtained a MComm (Public Management); HonsBComm (Public Management) and BComm (Management Sciences) at Stellenbosch University. She is currently a lecturer at the University of South Africa (UNISA) and her areas of interest include local government, organisational design, change management and community engagement.

Dr Dirk Brand

Dr Dirk Brand's qualifications include a BComm LLB LLM (European Union Law), LLD (Constitutional Law) and Advocate of the High Court of South Africa. He is an Extraordinary Senior Lecturer at the School of Public Leadership, Stellenbosch University; a Co-chair at the Study Group on Co-production of Public Services, IIAS; and a Board member of the Research Committee on Federalism and Multi-level Governance, IPSA. His subject field of expertise and interest includes constitutional law, international relations, good governance, financial intergovernmental relations and public governance.

Nthuthuko Mchunu

Nthuthuko Mchunu has a Master's degree in Public Management and Development. He is affiliated with the City of Cape Town. He is interested in public participation, with interests in service delivery issues, including the role of the third sector, good governance, community development and active citizenship.

Prof Jaap de Visser

Jaap de Visser (LLB, LLB, LLD) is Director of the University of the Western Cape's Dullah Omar Institute (formerly: Community Law Centre). He is a C2-rated scientist with South

Africa's National Research Foundation and co-author of Local Government Law of South Africa. His research, teaching and consulting focuses on multilevel government, local government and federalism in Africa and he has published widely on these topics. Prof De Visser is a visiting professor at Addis Ababa University and has conducted research on multilevel government in South Africa, Uganda, Zimbabwe, Ethiopia, Lesotho and Kenya. He has consulted for many national and international organisations, including the World Bank, UNHABITAT, Forum of Federations, GIZ, South Africa's Department of Cooperative Government, the City of Cape Town and many other municipalities in South Africa. He was lead consultant on the Western Cape Land Use Planning Act of 2014 and has been appointed by the UNDP to review Lesotho's Local Government Act.

THEME 5

Prof Ichiro Araki

Professor Ichiro ARAKI is from the Faculty of International Social Sciences, Yokohama National University. His subject field of expertise and areas of interest include International economic law and policy. Professor Araki has been involved in the multilateral trading system in various capacities including national government official, WTO Secretariat officer, dispute settlement panellist and academic advisor.

Matteo Nicolini

Matteo Nicolini is Assistant Professor of Public Comparative Law in the Department of Law of the University of Verona and Researcher in the Institute for Studies on Regionalism and Federalism of the European Academy of Bolzano/Bozen (EURAC). His fields of research include public comparative law, Italian and European constitutional law, federalism and regionalism, judicial review of legislation, law and literature, legal geography, Southern African law. He is author of several publications in Italian, Spanish and English. Among them, the monographs *Partecipazione regionale e «norme di procedura». Profili di diritto costituzionale italiano ed europeo* (Naples: Edizioni Scientifiche Italiane, 2009); (with Francesco Palermo) *Il bicameralismo. Pluralismo e limiti della rappresentanza in prospettiva comparata* (Naples, Edizioni Scientifiche Italiane, 2013); the volumes edited with Francesco Palermo *Federalismo fiscale in Europa. Esperienze straniere e spunti per il caso italiano* (Naples: Edizioni Scientifiche Italiane, 2012), and (with Daniele Butturini), *Tipologie ed effetti temporali delle decisioni di incostituzionalità. Percorsi di diritto costituzionale interno e comparato* (Naples: Edizioni Scientifiche Italiane, 2014). He is also

co-author of the entry *Sources of Law in Italy*. *International Encyclopaedia of Law* (Alphen aan den Rijn, Kluwer Law International, 2013): 41-70.

Bongani Khumalo

Bongani Khumalo has background in the field of economics which includes technical competencies, a list of publications and also technical reports and conference papers done both individually and also with teams. He received his Bachelor of Science Honours Economics and his Master of Science Degree Economics at the University of Zimbabwe. He spent close to eight years in academia where he conducted research and also taught at both under and post graduate levels. He has worked in the area of intergovernmental fiscal relations for the past 12 years and has worldwide experience on how different countries have gone about implementing fiscal decentralisation programs and also developing applying different funding frameworks. He is currently employed at the highest level in the Financial and Fiscal Commission (an independent State Institution established in terms of the Constitution) as Chairman and Chief Executive.

Dr Mkhululi Ncube

Dr Mkhululi Ncube is a public finance economist with a PhD in Economics from Gothenburg University, Sweden. He is currently a Program Manager in the Local Government Unit at the Financial and Fiscal Commission responsible for local government fiscal policies and budget analysis. Mkhululi has vast experience in the academic field with peer reviewed publications in various fields of economics. His present research interests include climate change and fiscal policies, local government issues and gender. He is passionate about local economic development issues and sustainable resource utilisation in urban spaces.

THEME 1

CREATING SPACE FOR GOVERNING CLOSER TO THE PEOPLE

The Constitutional Case for Cooperative Government

Author: Ms Phephelaphi Dube (Centre for Constitutional Rights)

Abstract:

In the talks leading up to the adoption of the new Constitution, a hotly contested topic was that of the creation of provinces with constitutionally guaranteed powers. Some political parties were averse to the notion of federalism while others welcomed it. Those opposed to the provinces viewed them as a costly and unnecessarily duplication of services while others saw the provinces as vital in the concretisation of the nation's democracy as well as necessary for improved service delivery.

Two decades later, there are nine provinces but there is still political debate with critics viewing them as risks to national unity and integration. However, the reality is that provinces with local government are a fundamental function of South Africa's constitutional democracy. The Constitution establishes a framework in which all three spheres of government must exercise their powers and importantly how they must respect, care for, support and cooperate with each other.

As such, this paper sets out the constitutional framework for provincial and local governments in context of the notion of cooperative government. Importantly, the paper seeks to reflect on functional areas of concurrent national and provincial competence, but also exclusive provincial competence - and how these spheres of government should be harmonised under the Constitution.

Bringing the Central Government to the People

Author: Prof Gordon DiGiacomo (University Ottawa)

Abstract:

The paper will focus on South Africa's federalism. Its central contention is that the country's constitutional democracy will be strengthened if reforms to the local and provincial governments are accompanied by reforms to the institutions of the federal government as well. It will open with brief comments on decentralization and on the form that it often takes, namely, federalism. Among other things, it will note that, although the 1990s could be described as a time of decentralization, by 2007 a scholar of comparative federalism, Pablo Beramendi, was impelled to write: "The more scholars find out about federalism and decentralization, the more cautious they become in predicting their effects or advocating their adoption." The author takes this comment to mean that the demands we place on sub-national governments need to be reasonable. The paper will begin with a concise attempt to show why decentralization plans have not always worked out as hoped.

The second section will focus on the relationship between federalism and democracy in South Africa. The perspective will be informed by (a) research on the relationship between federalism and democracy; (b) the realities of the country's politics; and (c) the author's understanding of the federalism in other countries, including Canada.

The third section is based on the premise that the building of a constitutional democracy in a federally structured state is not the responsibility of one sphere of government. It will, therefore, advance some suggestions for institutional reform at the federal level. In addition, consistent with the premise, the author will discuss the potential of various ways of bringing the federal level of government, as well as the sub-national levels, closer to the people, including one, known as the Citizens' Assembly, with which the author have personal experience.

Democratic Constitutionalism in the German State: Legislatures, Sub-National Constitutionalism and Multilevel Systems

Author: Dr Werner Reutter (Department of Political Science, University Leipzig)

Abstract:

According to the standard theory on democratic representation a parliament not only has to 'stand for' but also to 'act for' its people. The 16 sub-national parliaments in Germany are supposed to accomplish this task by passing laws, making decisions, and by holding the executive to account. However, in the European and German multilevel system the capacity of German state parliaments to effectively 'act for' its people is severely limited, if not suspended at all. However, this means that political self-determination – or in other words: constitutional democracy – is severely limited in the German states, if at all possible.

This paper addresses this question and explore how the German states addressed these issues and how they tried to strengthen constitutional democracy at the sub-national level. The role that German sub-national parliaments played in constitutional politics, as well as how German sub-national parliaments dealt with European integration will be analysed.

The Performance of South African Public Entities is a Barometer for Constitutional Democracy

Authors: Mr Phakamani Buthelezi & Prof Hans Bossert (School of Public Leadership)

Abstract:

The dawn of constitutional democracy in 1994 brought about many expectations. The majority of South Africans was expecting to see a country that has completely shut off its ugly past and open a new horizon of hope. The new horizon of hope was to be characterised by *inter alia.*, an improved service delivery culture to the general public and that the material living conditions of the citizenry will be taken to the zenith point. For example, it was never imagined that there will be energy challenges, water challenges, housing challenges and an ever increasing rate of unemployment. Whilst the expectations' coefficient curve took an upward trend little was ever mentioned that the demands of the South African public exceed the affordability levels and institutional capacity of the state.

The inability of the state to meet and exceed all the expectations seems to be an

obstacle in strengthening constitutional democracy. In order to strengthen constitutional democracy, South Africa needs to invest in and rely on its public institutions / entities. The argument is that public entities are the main vehicles propelling the state's performance. In other words, South Africa has to do the following: evaluate the general performance of its public entities, utilise systems thinking as an integral part of strategic management as an enabler in strategy formulation and strategic management, improve strategic management both as a practice and discipline in the public sector institutions and finally formulate a practical business model that will add value to the performance of public entities as an enabler for sound policy formulation as well as performance.

There is no doubt that so much has been achieved since the dawn of constitutional democracy in the country. Equally, there are still areas for improvement. The argument is that public institutions / public entities are better placed to strengthen constitutional democracy and are instruments for the implementation of the National Development Plan. This argument becomes very relevant when South Africa intends addressing all major socio-economic challenges. Thus, the power to address those challenges is largely dependent on the readiness and capacity of public entities to complement the role of the state. Public entities are generally regarded as institutional instruments that encourage participatory democracy and avenues that bring the state closer to the people through their simple decision-making mechanism. Hence, it is worthwhile to continuously evaluate their existence as part of the system that supports constitutional democracy.

Introduction: Local Government & Local Finance in Japan

Author: Dr Hirofumi Kawakita (JICA)

Abstract:

Each country has been developing their governance and service delivery system through sub-national function. Local government in Japan is no exception. Also the Local government system in Japan is quite a new topic for South Africa. Therefore, this presentation briefly provides basic characteristics / features of Japanese Local government administration which is comprised of Japanese Local Government Structure, Local Public Service System, Function of Local Governments and Local Finance.

THEME 2

MAKING REGIONS AND CITIES SMART: INNOVATION IN GOVERNANCE

A Critical Analysis of Digital Social Innovation and Its Potential in Strengthening Constitutional Democracy

Author: Mr Wouter Grové (UWC CoLab)

Abstract:

Civic Society, Business, Government and Society are becoming increasingly connected through online digital platforms. The increasingly networked nature of social innovation (as integrated networks of societal, public, private and research actors) has also been acknowledged. Digital Social Innovation (DSI) has been described as a particular form of social innovation aiming to promote “innovation and social change based on the network effect: meaning internet connections, web collaborative tools, sharing of open data and a process of bottom-up peer-supported activities and applications”. The increasing role of digital technology as driver of social development is also becoming evident. Recently attempts have also been made to link the paradigm of open innovation to that of social innovation resulting in the suggested concept of “Open Social innovation”.

There are currently high expectations around the potential role of digital technology as mechanism to bring government closer to the people. A couple of dynamics problematizes these interactions and may impact the potential successful use of these platforms as catalysts, facilitators and/or mediators of inclusive governance and social innovation. Some of these dynamics include digital inclusion; concerns about online privacy; concerns about increasing disintermediation by online platforms; increasing algorithmically determined decisions around network membership and access to relevant decision-making information.

This paper explores this problem against the background of some of the challenges and opportunities it presents to constitutional democracy.

Governance – A Systems Perspective

Author: Mr Boy Janse van Rensburg (LeadershipINDABA Fellow, SPL)

Abstract:

Governments govern very complex systems, and often in very simplistic ways that are not adequate to meet the demands of our times and contexts. New paradigms and tools are required to transform and replace outdated governing processes so that governments can remain relevant and govern effectively.

This paper provides an overview of general system properties and the nature of complex systems. Reference is made to seven multi-dimensional system aspects as defined by Elisabeth Dostal (i.e. environment, ethos, objectives, processes, structure, substance and governance of systems).

Integral Theory, developed by Ken Wilber, provides a unique and complementary framework that can assist planners in developing a holistic perspective that can be used as a smart tool for analysis, interpretation, planning and governance.

Another conceptual framework that can be used to create an understanding of complex systems is called Causal Layered Analysis (CLA). The CLA framework, which is very similar to the iceberg model, consists of four interdependent levels of systems dynamics.

All these frameworks and perspectives allows one to convert data into information, which can be converted into knowledge, which can be used to develop a proper systems understanding, which is a foundation upon which wisdom is built. Wisdom is the ability to make wise choices. Donella Meadows' wisdom and understanding of systems enabled her to develop a hierarchy of places to intervene in systems in order to affect lasting change. This hierarchy will be reviewed as well.

If governance is the process of guiding a community towards a desired future then the quality of such governance is co-determined by a number of key variables including trust and respect; the capacity and skills of governors to govern; the tools available for planning and governing; constructive participation of stakeholders; smart and strong leadership; a culture of learning and improvement, and residents that take accountability for their own future.

The concepts discussed will be illustrated with reference to practical examples.

The Municipal Institutional Capacity Model (MICM): A Theoretical Framework to Support a Local Government Improvement Strategy in South Africa

Author: Louis Scheepers (Saldanha Bay Municipality)

Abstract:

The Municipal Institutional Capacity Model (MICM) is based on the PhD dissertation titled *An Institutional Capacity Model of Municipalities in South Africa* submitted by Mr Louis Scheepers in partial fulfilment of the requirements for the degree PhD in Public Management & Development Planning in the School of Public Leadership of the University of Stellenbosch¹.

The MICM is a theoretical model dealing with ‘what’ local governments should do on the one hand, and ‘how’ they should do it on the other. It, the MICM, is concerned with the potential of municipalities, based on their institutional capacity elements, to perform the functions and powers allocated to them in terms of the Constitution and other legislation. The model attempts to determine the viability as well as the sustainability of municipalities, enabled by their natural, social and environmental endowments and their institutional capacity (leadership & innovation; long term visioning & planning; revenue; public participation; and human resources) to perform their constitutional mandate. It can therefore serve as framework to develop tools to predict what the likely performance of a municipality will be, given its institutional capacity (the meso level). These predictions can in turn be used to influence changes at the macro level (the system of local government as a whole). The impact of the model, notwithstanding its application on the meso level, will thus be at the macro level.

The MICM was subjected to internal as well as external validation. The internal validation is based on a triangulation of calibrating the MICM with (1) the continuities between the different eras of local government development in South Africa; (2) the developmental mandate of local government; (3) the constitutional and legislative mandate of local government in South Africa; (4) the status quo in respect of local government

¹ The dissertation is in its final stages of examination and it is expected that the degree will be conferred in November 2015.

performance in South Africa; and (5) the discourse on institutional capacity and capacity measurement. The external validation of the model consisted of an expert validation workshop in which four experts engaged with the MICM and considered whether the MICM provides predictive and structural validity and whether the model outputs agree with an external entity, in this case, municipalities in South Africa.

Dealing with the 'soft' issues that undermine service delivery at all levels

Author: Prof. Peter Franks (SPL, Stellenbosch University)

Abstract:

This paper will provide a broad analysis of the current crisis of public servicing in South Africa, highlighting the so-called soft issues that have proved so intractable over the past twenty years. The issues of implementation had been raised since the mid 90's for instance Franks, Glass, Craffort and de Jager (1996). Numerous new systems were implemented including an attempt to reward excellence which collapsed when as the Minister of Education at the time Naledi Pandor pointed out, that they all evaluate each other as excellent. Performance Management was attempted but also fell afoul of the same comradery among the cadres.

Following the publication of the National Development Plan, the Minister of Finance, publicly acknowledged the intractability of these issues and challenges when he said in his 2013 Budget Speech to Parliament: "There are also too many people who have a stake in keeping the system the way it is. Our solutions, hitherto, have not matched the size and complexity of the challenge. I cannot simply wave a magic wand to make these problems disappear. This is going to take a special effort from all of us in Government, assisted by people in business and broader society. And it will take time. But we are determined to make progress."

It is a critical moment for South Africa, wherein, if the challenges faced are not confronted at their root, they will continue to undermine the technical efforts to deal with the symptoms. At root are issues of conflicts of interest, and confusion of values. A primary confusion is that of adhering to a constitution and a national democratic revolution at the same time. Another confusion, is what Mr Ben Mthembu, then Chairperson of the Public Service Commission, described as a, "...lack of clarity on what constitutes good practice and what is not acceptable" (2013). He provides an example: "In African culture we believe in taking care of people who are important to us, by ensuring they are fed and provided with opportunities. We know this has limits, but what are they? It is important

that we have a conversation about how far well intentioned and good-hearted cultural practices should extend in the professional realm and where they must stop”.

There are many other, so called soft issues, such as the notion of participation which unless carefully managed can easily be misused and manipulated in the service of partial interests and even corrupt practices. South Africa needs to face these challenges in all their complexity and be careful not to reduce, basically, political, values, cultural and social problems to legalistic and technical solutions.

Better government decision making through the integration of non-financial information

Authors: Dr Lianne Dijkstra (Sustainable Impact) & Prof Hans Bossert (SPL, Stellenbosch University)

Abstract:

In this paper we research the integration of non-financial information for decision making of managers in government. Furthermore is explored how the integration of non-financial information leads to more inclusive decisions. Inclusive meaning the societal performance is included in the decision-making process by managers.

Civil society is focusing more and more on common societal goals and its requests for comprehensive and sustainable societal solutions. A tendency of shifting interests both in civil society and governments is noticeable. Expectations seem to shift to cooperation, to openness, to commitment, and to connectivity. Therewith value indicators have shifted from being merely financial and budget-oriented to being outcome, societal value performance indicators, expressed in aspects of environment, health, living context, education and meaningfulness. Linking outcomes to organizational activities as a basis for effective governance is a complex topic. It is often referred to as ‘an ongoing challenge’ to be able to demonstrate an understandable and explanatory connection between public sector activities and societal outcomes.

Stakeholders hold government more and more accountable for the public impact in respect of their own operations as well as administrative/governing responsibilities. A new reality seems to be emerging, whereas governments are facing a reality of being responsible instead of taking control. In order to be a responsible government, and so creating societal value, governmental objectives and goals should be in line with its stakeholder’s expectations.

Hypothesized is that the improvements of societal performance will be the result of measurement and review of the integrated performance information. As a condition the governments' internal and external reporting environment should therefore be conducive to understanding and articulating government's strategies.

In this paper we will show, based on case studies and supported with references from academic theories, how integrated information enables better long-term management decisions what eventually will lead to improving societal performance of governmental organizations.

THEME 3

INSTITUTIONAL INNOVATION: NEW FORMS OF PARTICIPATORY DEMOCRACY AT SUB-NATIONAL LEVEL

New Forms of Governance

Author: Prof Francesco Palermo (EURAC)

Abstract:

The paper proceeds from the contemporary crisis of legitimacy and decision-making processes, especially but not exclusively in Europe. Demands for more participation and claims for accommodation of pluralism beyond mere parliamentary representation are common to modern democracies. Responses so far have been unsystematic, although many attempts have been made at various levels to provide broader participation and inclusion in decision-making. While it is commonly argued that participatory processes are more suited for lower levels of government and rather administrative issues, comparative practice shows that such processes are taking place to a surprising extent also at constitutional level.

After a brief contextualization of the problem, the paper goes on to describe some of the more significant European experiences of the past years. These include the supranational level (from the convention set up to draft the EU charter of fundamental rights to the new procedure for amending treaties set out in article 48.3 TEU), the national level (cases of Austria, Iceland, Ireland and Italy) and the sub-national one (with particular regard to the recent experience of some Italian regions). While very different in origin, procedure and outcome, all these cases have in common the search for more inclusive and complementary processes to amend constitutions at various levels in the European context.

The paper concludes by arguing for a more thorough analysis of the phenomenon, which has so far received too little attention, particularly by lawyers. It is contended, in particular, that such processes are especially useful when it comes to “constitutional maintenance”, as they are at odds with revolutionary aims and rather tend to introduce changes without breaking with the overall constitutional structure. Furthermore, it is argued that federal studies can provide useful insights to identify procedural solutions, as federalism is the oldest and more consolidated constitutional instrument for the institutional accommodation of pluralistic claims and their regulation. Finally, it can

be concluded that the spreading of participatory practices is encouraged in a multi-level context such as the European legal space, to which mutual influence and cross-fertilization are inherent.

E-Governance as an Innovative Participation Democracy Strategy: The South African Social Security Agency (SASSA)

Authors: Mr Luzuko Qina (South African Social Security Agency) & Mr Francois Theron (School of Public Leadership, Stellenbosch University)

Abstract:

E-governance needs to be located in the international citizen participation and democracy debate. The International Association for Public Participation states that participation strategies require to inform, consult, involve, collaborate and empower the citizenry. Citizens must be heard on matters that affect them and through their participation should enter into partnerships which results in co-production of local governance programmes and projects which impact on them. The question is: can e-governance enable the above?

This paper focusses on a development strategy introduced by the South African Social Security Agency (SASSA), wherein an electronic payment system is implemented to pay all social grant recipients. This initiative aimed at reducing fraud and corruption, improving accountability and transparency, has strengthened constitutional democracy through financial and material inclusion. The e-governance strategy employed by SASSA becomes a continuous optimisation of government service delivery, constituency participation and good governance by transforming internal and external relationships. The rights of the poor and the vulnerable are protected and this initiative is commended by the South African Reserve Bank.

The strategy implemented by SASSA has opportunities and challenges for both citizens and the State in a society that experiences a digital divide. Communicating development processes and goals should become a primary objective of any institution. An appropriate citizen participation strategy at a level of citizen power whose consequence will be an improved service delivery free from complaints and protestations is ideal for South Africa.

Democratic innovations and participatory democracy from a comparative perspective

Author: Ms Martina Trettel (EURAC)

Abstract:

The so-called “democratic innovation” is, nowadays, conceived as a set of different instruments and procedures, which can revise traditional decisional mechanisms based on representation, on the one side, and, directly involve citizens in public decisional procedures, on the other side.

The paper aims to ascertain whether it is possible to fit such democratic innovations into legally and/ or constitutionally regulated decision-making processes and how to translate participatory democracy principles into practice, by creating instruments and rules that can cohabit with representative structures.

To answer the abovementioned questions the paper –firstly– analyzes different experiences of decision-making, which took place through *ad hoc* organized participatory processes (participatory budgeting in Porto Alegre, citizens assembly on electoral reform in British Columbia, etc). The research then investigates those cases in which have been adopted permanent legal regulations for participatory processes (such as the Public debate in France).

The paper opposes one-time participatory experiments and legally regulated participatory arrangements, in order to investigate which option better fits the decision-making processes of contemporary constitutional systems.

The objective of the comparative analysis of worldwide democratic innovations is twofold: on one hand, it tries to demonstrate that democracy - as a government tool - might be concretely restructured in order to better match the current needs; on the other hand, it could help to explore the reality in order to imagine what constitutional democracy might mean and might become in the future.

Intellectual Empowerment of Citizens: A Critical Step in Government of the People

Author: Dr Ntandazo Sifolo (Independent researcher, LeadershipINDABA Fellow)

Abstract:

The socioeconomic development of the country like South Africa is the task that should be attended to through a people centred approach. Indeed the National Development Plan (NDP) vision 2030 highlights the importance of enhancing the capabilities of the people of South Africa so that they can advance their lives as they desire. The Plan highlights the critical aspects of developing the capabilities of the country so that it can grow faster. Thus, there is an expectation that is created where the people will play a pivotal role and work to raise living standards for all, especially the poor.

Unfortunately, the greater understanding of the relationship between the elected and the electorate is lacking in the South African context. It is only through intellectual empowerment that the people will understand their power to those that have been allowed to wield power on behalf of the society. Any government should begin its tenure with the understanding that it is handmaiden of the people of South Africa regardless of political affiliation. Therefore, such responsibility could be revoked and leaders could be charged if they breach the contract and fail to deliver on the expectations of the people.

Learning Based Governance Innovation: Metaphors, Concepts and Analysis: A Case Analysis of the Stellenbosch Good Governance Forum (SGGF)

Author: Prof Erwin Schwella (SGGF) & panel

Abstract:

In this panel discussion innovation in governance based upon a dynamic learning approach to innovation in governance will be introduced and discussed by a panel of 3 to 4 panellists with the objective of explaining how this learning approach, which includes the multi-helix partners of academia, government, civil society and business can contribute to governance and social innovation. The ideas, institutionalisation and implementation of such an approach will be introduced and elaborated upon utilising the creative metaphors and innovative concepts related to this approach in order to analyse the case of the social and innovation facilitating role of the SGGF.

The learning governance approach to innovation is institutionalised through an iterative co creation innovation methodology and architecture using the learning ideas and concepts related to innovation through multi helix partnership based action learning that is change oriented, mindful, cyclic, qualitative and participative. During the panel discussion, Metaphors which support the creative analogies for innovation will be linked to innovation concepts as the conceptual and theoretical drivers of this approach. The metaphors and concepts will then be used to analyse the case of the SGGF as an example of learning based governance innovation.

Institutional Innovation: New Forms of Participatory Democracy at Sub-National Level in IBSA Members

Author: Dr. Aprajita Kashyap (GGS Indraprastha University, New Delhi, India)

Abstract:

The UN Secretary-General's High-Level Panel on the Post-2015 agenda wrote in its report: "Local authorities form a vital bridge between national governments, communities and citizens will have a critical role in setting priorities, executing plans, monitoring results and engaging with local firms and communities." As a prelude to this conviction, democratic decentralization has spread in most countries which have elected sub-national governments as a first step towards devolving political, fiscal, and administrative powers to this third tier of governance. Alternatively termed the principle of *subsidiarity*, it ensures that local issues are best decided closest to the concerned citizens. Empowerment of local political bodies create institutions that are more accountable to local citizens and take into consideration the local needs and preferences. The benefits of participatory democracy are numerous: reduces regional, linguistic, religious and ethnic conflicts by accommodating diverse aspirations; makes easier the demands for transparency and accountability when leaders work close to the people; deepening of democracy ensues when people participate in decision making, recognize and demand their rights; results in effective public services delivery due to easing of logistical challenges to providing access to health, education and public safety; and importantly empowers women and marginalized groups.

The problems faced in the IBSA Forum members are similar -a sizeable gap between the policy and their implementation; lack of financial and human resources, decision-making autonomy, and mechanisms to discharge responsibilities with the local government. The paper within the theme of the conference would aim to explore whether institutional innovations in decentralized governance can achieve sustainable, inclusive and poverty-alleviating growth; probe if the governments have been performing in accordance with their constitutional mandates; whether innovations and new forms of participatory democracy within India and Brazil can proffer valuable lessons for South Africa.

Examining the Relationship between Sub-National Structures and Civil Society Organisations: Is There Evidence of Innovative Governance?

Author: Ms Nikiwe Kaunda & Prof Hans Bossert (SPL, Stellenbosch University)

Abstract:

NGOs sometimes are involved in the process of providing public services, often providing services where the state fails or complementing those already being provided by the state. Like Public Private Partnerships (PPPs), these joint ventures between the State and non-private sector actors, illustrate the role and significance of civil society in providing, complementing or improving public services and, is viewed as an important component of social programme delivery. Civil society is known to come up with innovative and responsive programmes to meet the arisen needs of the communities that they serve and, need to work within the sub-national governance framework in order to (i) effectively implement their work, (ii) meaningfully reach out to their targeted population groups. However, in order for civil society to be even more responsive in addressing arising social needs, they need to be encouraged to operate in an outcomes-based manner which emphasises accountability to these two interest groups: the State and service beneficiaries. This is especially important because in terms of social programming and service delivery, civil society organisations often embark on the following activities: sensitising communities and raising awareness about policy, programmes and entitlements, facilitating the mobilisation of communities so that they can establish structures (or sit on existing structures) to actively participate in addressing social problems, helping communities to establish programme monitoring processes e.g. through the use of community score-cards as well as the use of Information Systems to map and monitor service delivery.

However, it is not just community groups that are involved in this manner because we have seen evidence that civil society organisations themselves, also sometimes sit on decentralised public programming structures that have been set up by the state at local (municipal), district and provincial level, a trend taking place across South Africa and the region, too. Therefore, as civil society organisations gradually morph into public service delivery entities in themselves, it is essential to study this trend and make recommendations about how best they can do so within a development and governance framework that facilitates increased accountability from civil society organisations to the state, as well as their service beneficiaries. This paper will therefore examine the relationship between sub-national structures and civil society organisations, and establish whether there is evidence of an innovative governance framework that can be documented. It is hoped this will contribute towards evidence of instances where there is a co-creation of space for governance innovation and partnerships.

THEME 4

OTHER SPHERES OF GOVERNMENT: CO-CREATING SPACE FOR PARTNERSHIPS AND MODERNISING GOVERNANCE

Knowledge-based and Partnership-based Governance Facilitates Social Innovation: The Case of Hessequa Municipality from a Reflective Angle

Author: Dr Joan Prins (Hessequa Municipality)

Abstract:

The story of Hessequa Municipality and the birth of the Hessequa Innovation Helix is a story of a multi-dimensional focus and approach. On the one hand the municipality and its Council are confronted with questions about long term financial and organizational sustainability, why the local economy is one of the slowest growing in the Western Cape and how to harness all the different communities within the area behind one vision and one set of ideas and goals. On the other hand the broad community of Hessequa are experiencing various problems, have dissimilar and divergent ideas about how their problems can be solved and who should be responsible for addressing the issues on the table. At the same time there are specific sets of skills and knowledge embedded within the community. Against this background it was evident that partnerships could not only play an important role to foster strategic thinking and give birth to new ideas, but also to assist with institutionalization and implementation.

Local government in South Africa functions within a multi-sphere system characterised by the principles of co-operative government. This suggests the possibility of partnerships amongst the realm of government itself. Furthermore the innovative National Development Plan holds strong views on the importance of provincial and local government to assist with its implementation and the question whether innovative governance can contribute to better governance in all spheres of governance, and if so, how? To assist us Hessequa Municipality introduced a platform for so-called Grey Power within our region to assist in strategic thinking. Then the School for Public Leadership of the University of Stellenbosch introduced their concept of an innovation helix to the municipality. The Hessequa Innovation Helix was consequently formed – consisting of the municipality, Western Cape Government, civil society, organized private economic sectors and academic institutions such as the University of Stellenbosch and the School for Public Leadership as well as local educational institutions.

The helix serves as incubator for new innovative ideas and the processes of institutionalization and implementation.

David or Goliath: Engaging Cities and Citizens towards the 2015 Paris Climate Negotiations

Author: Mr Bruce Haase (Speaking Sustainability) & Prof Hans Bossert (SPL, Stellenbosch University)

Abstract:

This paper looks at the increasing role of cities and sub-national governments leading up to the UN global climate negotiations in Paris in December 2015 (COP21) and its consequences for South-African local governments. In the vacuum created by the inability of national governments to reach a legally binding global agreement on emission reductions, cities and sub-national governments have taken on an increasingly important role. Cities were officially recognised during the Bali COP13 as government partners, and out of this, the Local Government Climate Roadmap was developed². Globally the important role of cities can be seen in three key areas 1) piloting local GHG reduction projects including energy efficiency projects 2) supporting development of renewable energy within their jurisdictions, 3) developing adaptation strategies to protect their citizens and cities from climate change impacts³. Not since the Kyoto protocol have national governments been able to reach a legally binding international agreement on emissions reductions. International negotiations on new targets have stalled for a number of reasons, including questions around historic responsibility and the rights of emerging economies to catch-up in terms of economic growth. Cities are less fettered by such disagreements between nations and better positioned to develop locally appropriate solutions. Organizations representing local and sub-national government are increasingly active in this space, including, ICLEI and the organization of mayors C40. In South Africa the municipality of eThekweni (city of Durban) has developed an independent climate change strategy and Cape Town and the Western Cape Province have played a leading role in the development of renewable energy in South Africa through the Green Cape initiative⁴. Considerable commitments by cities and sub-national governments have already been made.

This paper looks at examples from Europe and South Africa. It is hypothesized that the role of experimentation will be the same for South-African cities and subnational governments as it is for cities in Europe. Based on case studies these hypotheses will either be validated or rejected. This paper will draw on cases provided during an ICLEI event in Brussels (May/2015) and an EU Sustainable Energy Week event (“European Cities Driving the energy transition” (June/2015) and public information from the relevant South African cities.

2 ICLEI, (April, 2015)

3 Corfee-Morlot, J. et al. (2009)

4 Green Cape (April 2015)

Aesthetic Leadership in our Fragile World: Towards a Nation Building Plan Using Ntsikana Kagabha Paradise City Models

Authors: Dr Fumene George Tsibani (SPL, Stellenbosch University)

Abstract:

The paper argues that ‘social cohesion’ using aesthetic relational values will not only co-create space for governance innovation and partnership in integrated rural and urban infrastructure investment programme (IR&UIIP) to feed into a Nation Building Plan (NBP) between 2015 and 2064, but also ensure that human and biodiversity needs are restored for aesthetic environmental management leading to good enough governance for public good or *pro bona*. Through Integrated Rural & Urban Infrastructure Investment Programme (IR&UIIP) as part of NBP, it is argued that collective efforts, and co-creating governance partnership leading to an adoption of a Sustainable Action Plan (SAP) can significantly unify South Africans as was recently demonstrated in previous bulk infrastructure investment global interventions such as Rugby World Cup in 1995 and the Fédération Internationale de Football Association (FIFA) or International Federation of Association Football (IFA) Soccer World Cup in 2010 in South Africa respectively. Using North-South and South- South Methodologies, the paper provides a road map for NBP whereby APDF is adopted to implement IR&UIIP as part of NBP in the Eastern Cape as a ‘home of legends’ or ‘frontier war province’.

The paper defines aesthetic relational values in the context of a fragile environment or landscape which requires, inter alia, politicians and international leaders to make appropriate decisions to implement APDF to eradicate poverty using green economy combined with Ntsikana kaGabha 19th century lofty advice on socio-economic cohesion if IR&UIIP can be implemented as part of sustainable action plan (SAP) to feed into a NBP between 2015 and 2064.

Co-production in Education – Shaping a better future

Authors: Dr Dirk Brand (SGGF) & Ms Marleen Engelbrecht (UNISA)

Abstract:

In various countries around the world co-production of public services receives varying degrees of attention. In the theoretical development of the concept it is evident that it encompasses a whole range of possible co-production activities. It, in essence, refers to the contributions both by citizens and the public sector in the production of public services. Thus, both the public sector, as well as citizens make better use of their respective assets and resources in order to achieve better outcomes and improvements in efficiency. It therefore refers to any active behaviour of anyone outside the government and who acts in co-operation with the government.

In terms of the education sector, how does the basic concept of co-production of public services apply to school education, in particular in an environment where education output is not up to standard? School education in South Africa is currently in a crisis. This paper will address this question by discussing a case study in education provision in South Africa.

The case study in this paper will be Partners for Possibility which is a program initiated from the community and which involves business leaders who partner with school principals to improve a school's performance. This paper will discuss this program in detail, including the contribution of each partner in improving the delivery of education in public schools, whilst also considering the application of the current theoretical model of co-production in this environment.

Co-Production of Public Services – An Innovative Participatory Approach to Strengthen Local Democracy in South Africa

Authors: Mr Ntuthuko Mchunu (City of Cape Town) & Mr Francois Theron (Stellenbosch University)

Abstract:

Constitutional democracy in South Africa did not only present hope to grassroots beneficiaries, but on the part of government it presented a task of building democracy and ensuring the equitable production and delivery of public services to citizens, including ensuring their participation in the decisions affecting their lives. However, outcomes indicate low levels of grassroots participation and measures intended to enhance participatory processes are seemingly ineffective which defeats the ideals of good democratic local governance.

Participatory strategies like Integrated Development Planning (IDP) often fails to deliver effective local governance in that the grassroots' willingness to work within the State's invited spaces has decreased, rendering it a strategy perceived as a product of a top-down approach that treats the grassroots as passive recipients rather than active participants in public service delivery decision-making processes. The result is broad spread frustration resulting in grassroots protests that have become a ritual. The vision of a developmental, legitimate, transparent, responsive and accountably local government remains elusive due to lack of local government to engage its beneficiaries via public participatory planning partnership's (P4's) through which the public experience that their participation *actually* have an impact on local affairs.

The paper reviews international literature on participation, co-production, good local governance and democracy to argue that a partnership between professionals and grassroots beneficiaries promises not to only enable transparency and reciprocity among partners, but to change the livelihoods and wellbeing of grassroots beneficiaries. An abridged case study on a grassroots, municipal-level service delivery programme in the Kwazulu-Natal (KZN) Province of South Africa is presented to demonstrate the potential benefit of a co-production through P4's which results in good local governance that strengthens local democracy.

Following an analytical, theoretical and explanatory approach, the authors relied on secondary data, previous research and participatory observation as well as the outcomes of workshops with local/provincial/national government officials during programmes on participation and good governance.

The Constitutional Court's Thin End of the Wedge: Opening Space for Governing Land Use Closer to the People

Author: Prof Jaap de Visser (UWC)

Abstract:

Land use planning and control is essential for development. The development of spatial plans with a spatial vision for a national, provincial or municipal area and the exercise of control over development activity are two critical policy levers. They may be used to facilitate desirable development and/or to discourage undesirable development. The 1996 African Constitution envisaged a radical transformation of the land use planning sector in South Africa. As a key instrument of segregation and exploitation under apartheid, the law and machinery for land use planning urgently had to be changed to become more progressive, more democratic, more effective and more inclusive.

The new role of provincial and local governments turned out to be the most contentious aspect of this reform. Uncertainty as to how the Constitution divides planning powers between national, provincial and local government paralysed the much-needed planning reform for no fewer than fifteen years. The uncertainty persisted until the Constitutional Court stepped in and delivered, in rapid succession, four judgments in which power over land use planning and control was shifted from provincial governments to local governments. A new national framework law, focusing largely on setting out the intergovernmental architecture for land use planning and control followed soon. This paper examines and reflects on this 'devolution by court injunction' and questions arising from it.

THEME 5

LOCAL GOVERNMENT FINANCE: REFORM AND INNOVATION IN THE INTERNATIONAL CONTEXT AND PROSPECTS FOR SOUTH AFRICA

Trade Rules and Local Government

Author: Prof Ichiro Araki (Yokohama National University, Japan)

Abstract:

Public Citizen, a U.S.-based civil society group, has made the following alarming statement about the relationship between trade rules and local governments. “Starting with the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) in the mid-90s, international ‘trade’ agreement provisions began invading traditional state policy space - delving deeply into matters of state law. Today, U.S. trade agreements contain numerous non-trade policy obligations and regulatory constraints to which U.S. federal, state, and local governments are bound to conform their domestic policies. These ‘trade’ agreements are shifting an ever-increasing number of issues away from local decision-making bodies and into inaccessible foreign venues where few citizens or elected officials can follow”.

My tentative conclusion is that Public Citizen’s concerns are a bit overblown, but there are issues that will have to be borne in mind when local governments make policy decisions involving trade rules. Trade in this sense is not limited to regulation trade in goods at the border but it covers trade in services (cross-border supply of services such as financial, telecommunication, business and other services), technical barriers to trade (involving standards and technical regulations) and government procurement. These issues appear to be a purely academic discussion, detached from the realities in Africa. For instance, as of today there is not a single signatory (or even an observer) from Africa to the Agreement on Government Procurement under the auspices of the WTO.

In the paper, I will start the discussion with an overview of current rules under the WTO. Then, I will focus on specific arrangements in the General Agreement on Trade in Services (GATS), the Agreement of Technical Barriers to Trade and the Agreement on Government Procurement. Finally, I will touch upon the development of these issues in regional trade agreements.

Financial Relations in Comparative Perspective

Author: Mr Matteo Nicolini (EURAC)

Abstract:

The first concept the paper will examine will be that of ‘fiscal federalism’. Comparative legal scholars usually propose classifications of the mechanisms implementing financial relations. However, variety does not only characterize concepts, models, and criteria for classifying financial relations. Variety also denotes the expressions scholars employ in order to label the mechanisms presiding the allocation of financial powers – and these arrays of classifications give raise to significant problems. This is particularly true as far the concept of fiscal federalism is concerned: its meaning depends on whether financial relations are examined either through the lenses of economics or from a legal perspective.

Focussing on *legal* ‘fiscal federalism’, the papers will then examine the constitutive features of financial fiscal relations, and therefore propose a renovated taxonomy of the same features. It is apparent that the power of levying taxes, of imposing fees, and equalization allow constituent units to fully discharge their constitutional responsibilities without any interference from the central level of government. To put it another way, federal and regional constitutions require correspondence between revenues, expenditures and responsibilities.

Such correspondence does not only entail equivalence between the two sides of financial relations – the revenue side and the expenditure one –; it also establishes a close relation between financial proceeds, financial powers, and constitutional responsibilities. Last but not least, it implies financial responsibility and political accountability of the different tiers of governments. Such correspondence between revenues, expenditures and discharge of responsibilities represents thus a mechanism, which allow to monitor the way governments implement constitutionally assigned policies.

The paper will deliver a comparative survey of the different constitutional contexts where such correspondence is expressly required; it will also articulate such correspondence rule into two separate principles: the principle of separation and that of connection.

Financing Rural Municipalities: Issues of Adequacy and Equity

Author: Mr Bongani Khumalo & Dr Mkhululi Ncube (Financial & Fiscal Commission)

Abstract:

South Africa is currently grappling with the triple challenges of poverty, inequality and unemployment. To deal with these challenges, the country requires a strong national economy. It is important to emphasize that underpinning a strong national economy is a strong local government that has the resources to deliver the public services that communities need. The local government, as the sphere closest to people, plays a key role in facilitating development and improving living standards. Local governments are typically assigned a range of functions by the constitution and other legal provisions. The sector has an important mandate of providing local communities with economic and social services, among others, local planning, infrastructure and services for economic activities, e.g. electricity, water and sanitation, refuse removal, roads, local economic development, and community services.

To discharge their functions local governments rely on their own revenues and (albeit in different proportions) on national and provincial transfers. Over the past two decades the local government sector has received a steady increase in transfers from national and provincial governments in a bid to see the sector fulfil its constitutional assigned mandate. The increase in resources going to the local government sector has not translated into commensurate service delivery improvements in the majority of municipalities. Many municipalities, in particular rural ones, face a number of challenges. Many rural municipalities face declining revenue bases due to higher levels of unemployment and continuous population losses in the form of rural urban migration. Challenges faced by rural municipalities have been perceived as a byproduct of insufficient financing by national government and that the distribution of such transfers between rural and urban municipalities is inequitable. The purpose of this paper is to examine the adequacy of funding for rural municipalities relative to their mandate; and that the transfer system is equitable. Using cost functions, the results suggests that resources allocated to rural municipalities in the form of local government equitable share are inadequate to enable rural municipalities provide basic services to communities as specified in the constitution. As many rural municipalities have no significant revenue base, it is important that the quantum of resources is increased.

Financial Reform and Multi-Level Governance - A Balancing Act

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Abstract:

Globalisation, rapid technological development and the information revolution are important international factors influencing the functioning of multi-level systems of government. Regional and local governments, especially cities, play an increasing international role. Cities compete internationally in various ways, whether it is to attract tourists, major conferences or hosting of major international sporting events such as the Olympic Games. How does this affect the domestic financial arrangements in multi-level systems? What impact does it have on governance in municipalities? Is the original constitutional framework still relevant, or should it be adapted to take the changing circumstances into account? In various multi-level systems of government constitutional, legal or administrative reform initiatives are debated and implemented in order to deal with domestic and international challenges.

After 20 years of democracy in South Africa there is a growing need to review and reform the financial intergovernmental relations system, in particular the funding of local government. Most of the municipalities in South Africa are struggling to function properly and to meet the constitutional standard for the delivery of services to their local communities. Building of more administrative capacity is taking place but is not enough. Local government financial reform cannot be done in isolation, but requires a careful consideration of the needs and interests of national and provincial government as well as the changing international environment and how that impact on all levels of government. Improvement of the financial governance within individual municipalities is part of the local government financial reform that is needed in South Africa. Competing interests might require a fine balancing act to enact financial reform to the benefit of all levels of government. Innovation in the delivery and financing of public services is necessary to transform municipalities in effective and efficient citizen centric institutions. This paper analyses the current challenges and opportunities for reform in South Africa.

