

Promotion of Service Delivery in Terms of the Social Contract Theory in South Africa's Legal Framework

EA Okeng* & AC Diala**

Online ISSN
1727-3781

P·E·R

Pioneer in peer-reviewed,
open access online law publications

Authors

Ebi Okeng
Anthony Diala

Affiliation

Law Society of South Africa
University of Western Cape,
South Africa

Email

ebiattorneys@yahoo.com
adiala@uwc.ac.za

Date Submitted

22 January 2024

Date Revised

2 April 2024

Date Accepted

2 April 2024

Date Published

25 November 2024

Guest Editor

Prof BM Mupangavanhu

Journal Editor

Prof C Rautenbach

How to cite this contribution

Okeng EA and Diala AC
"Promotion of Service Delivery in
Terms of the Social Contract
Theory in South Africa's Legal
Framework" *PER / PELJ* 2024(27)
- DOI
<http://dx.doi.org/10.17159/1727-3781/2024/v27i0a17747>

Copyright



DOI

<http://dx.doi.org/10.17159/1727-3781/2024/v27i0a17747>

Abstract

As is evident in the prevailing water and electricity rationing, South Africa is reeling from a crisis of poor service delivery. Against the background of its apartheid history and liberal constitution, this article examines how South Africa's legal framework promotes efficient service delivery in the context of a social contract theory. Using a literature review and content analysis of legislation, this article argues that basic service delivery is a human right that underlies the core function of the State regarding its social contract with citizens. The article critiques cooperative governance and the demarcation of service delivery duties between the spheres of government in the 1996 Constitution, the *Municipal Structures Act*, the *Municipal Systems Act*, and the *Traditional Leadership and Governance Framework Act*. It demonstrates how the legal framework places a heavy burden on the local government to provide basic amenities. By highlighting how a social contract informs the purpose of the constitutional State, the article demonstrates why service delivery must be taken seriously in a nation desperately in need of socio-economic transformation.

Keywords

Human rights; service delivery; social contract theory; good governance; South Africa.

.....

1 Introduction

The article examines how South Africa's legal framework promotes service delivery in the context of a social contract theory. As we expatiate in Part II, a social contract is a moral and political theory about an express or implied pact between the State and its citizens regarding their rights and responsibilities.¹ In its contemporary understanding, the social contract theory views the State's authority over citizens as something derived from their electoral consent, which is given in return for the State's promotion of public welfare.² Here, the promotion of public welfare is synonymous with efficient service delivery, defined in this article as the regular provision of basic amenities that citizens depend on for survival and the ability to live a decent life. These amenities include water, electricity, housing, health care, sanitation and affordable education.³ In this context, the notion of a social contract posits that the State's primary purpose is to promote public welfare, implying that the State loses legitimacy when it fails in this duty. Given the importance of basic amenities, it is useful to assess the extent to which South African laws acknowledge the existence of a social contract and mandate the State to provide basic amenities to citizens. Our examination of the legal framework of service delivery focusses on the Constitution, the *Municipal Structures Act*, the *Municipal Systems Act*, and the *Traditional Leadership and Governance Framework Act*.⁴ The article is justified by six factors, which we present below in no particular order.

Firstly, following the repeal of key apartheid legislation in June 1991, South Africa began transitioning to a democratic regime that is founded on political accountability and judicial review, amongst other things.⁵ Between 1993 and 1994, the white minority government gave way to a new dispensation, which is based on a constitution with a liberal bill of rights.⁶ The framework of the

* Ebi A Okeng. LLD (UWC) LLM BA (Law) LLB (UNISA) Dip in Legal Practice (Oxbridge) Dip in Practice Management (LSSA). Advocate of the High Court of South Africa; Member of the Legal Practice Council Certified Election Observer, Law Society of South Africa. Email: ebiattorneys@yahoo.com.

** Anthony C Diala. PhD (UCT) LLM (HRDA, Pretoria) PGDip (NLS, Abuja) LLB (ESUT). Professor of Law, University of the Western Cape, South Africa. Email: adiala@uwc.ac.za. ORCID: <https://orcid.org/0000-0003-2582-0139>.

¹ See generally Rousseau *Social Contract*; Skyrms *Evolution of the Social Contract*.

² Ndinga-Kanga, Van der Merwe and Hartford 2020 *Journal of Intervention and Statebuilding* 22-41; Royce 2010 *Post Modern Openings* 45-62.

³ These examples are by no means exhaustive.

⁴ *Constitution of the Republic of South Africa*, 1996; *Local Government: Municipal Structures Act* 117 of 1998; *Local Government: Municipal Systems Act* 32 of 2000; and the *Traditional Leadership and Governance Framework Act* 41 of 2003.

⁵ The key laws consist of the *Population Registration Act* 30 of 1950, the *Group Areas Act* 41 of 1950, the *Native Lands Act* 27 of 1913 and the *Reservation of Separate Amenities Act* 49 of 1953.

⁶ *The Constitution of the Republic of South Africa*, 1996 (the Constitution).

new legal order is remarkable. For example, the first two paragraphs in the Preamble of the Constitution affirm South Africa's quest to "establish a society based on democratic values, social justice and fundamental human rights", in order to promote "a democratic and open society in which government is based on the will of the people." Apart from proclaiming itself as the supreme law of the Republic and guaranteeing that every citizen is equally protected by the law, the Constitution aims to "improve the quality of life of all citizens and free the potential of each person."⁷ Given the implications of the social contract for the nature and purpose of modern states, and given South Africa's troubled history, the efficient provision of basic amenities to citizens is a human rights obligation of the State.⁸

Secondly, the provision of basic amenities is closely linked to the right to life, human dignity and other fundamental rights that are legally enforceable in the courts. These rights are inherent in everyone simply by virtue of being human beings. In the context of a social contract, public officials are obliged to promote human rights through basic service delivery. This argument is supported by the interrelatedness of human rights, which was proclaimed in 1993 by the World Conference on Human Rights in Vienna, Austria. The Conference declared, among other things, that "All human rights are universal, indivisible, interdependent and interrelated."⁹ Other than the interrelatedness of human rights, enhancing service delivery in South African municipalities is important because of the country's history and current struggles to provide regular electricity, water, roads and other amenities.

Thirdly, South Africa has experienced a steady decline in governance standards since the early years of post-apartheid democracy.¹⁰ There is rampant corruption in public service, infrastructural decline, high crime and unemployment rates, and increasingly violent protests over the State's poor provision of basic amenities.¹¹ Furthermore, the ruling African National Congress appears too encumbered with corruption, among other things, to halt the nation's seeming slide towards state failure.¹² State failure denotes

⁷ Paragraphs 1-3 of the Constitution's Preamble state: "We, the people of South Africa, recognise the injustices of our past; honour those who suffered for justice and freedom in our land; respect those who have worked to build and develop our country; and believe that South Africa belongs to all who live in it, united in our diversity."

⁸ Section 27(1) of the Constitution states as follows: "Everyone has the right to have access to— (a) healthcare services, including reproductive healthcare; (b) sufficient food and water; and (c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance."

⁹ Article 5 of the *Vienna Declaration and Programme of Action* (1993).

¹⁰ Southall 2019 *Annals of the American Academy of Political and Social Science* 194-208.

¹¹ Imiera 2020 *De Jure* 70-89.

¹² Grootes 2022 <https://www.dailymaverick.co.za/article/2022-06-12-the-nationwide-failure-of-south-african-democracy/>.

the loss of a sovereign government's legitimacy and ability to provide basic amenities.¹³ In order to hold government officials more accountable for the manner in which they discharge their duties of public welfare, there is a need to better understand how the legal framework promotes service delivery in South Africa.

Fourthly, service delivery should be treated as an enforceable human rights obligation. From a constitutional perspective, this approach would exert pressure on the political branches of the State to improve good governance, which is critical in a post-conflict nation such as South Africa.¹⁴ Generally, good governance is the primary aim of popular sovereignty.¹⁵ Unlike in the distant past when most governments across the world were despotic, the idea of people choosing their own representatives through regular, free and fair elections underpins the authority of the modern state.¹⁶ Usually, democracies across the world operate with a supreme legal text known as a national constitution. This document defines the scope of public power, sets out the rights and duties of citizens and their leaders, and guarantees the freedoms and rights of the electorate. It empowers citizens to bring about positive change in their lives through both active participation in governance and holding their representatives responsible for public welfare.¹⁷ Under the *Constitution of the Republic of South Africa*, socio-economic rights hold significant importance. The Constitution enshrines a comprehensive framework that recognises and protects these rights and obliges the State to take reasonable legislative and other measures to progressively achieve their full realisation. It places a duty on the government to address historical inequalities and promote social justice. The constitutional recognition of socio-economic rights reflects South Africa's commitment to building an inclusive society that uplifts the lives of all its citizens and ensures equal opportunities for their well-being and development. In this sense alone, South Africa's supreme law establishes a social contract, irrespective of whether this contract is explicit or not.

Fifthly, improving service delivery in South Africa is vital because good governance has become the mantra in development programming. Along with rule of law reforms, it is now a condition precedent for the grant of loans and other development assistance by international financial institutions.¹⁸ According to the United Nations Economic and Social Commission for Asia

¹³ Herbst 1996 *International Security* 120-144.

¹⁴ See generally Sisk *Democratization in South Africa*.

¹⁵ Joseph 2001 *Economic and Political Weekly* 1011.

¹⁶ Berg-Schlosser 2004 *Acta Politica* 248-278.

¹⁷ Craig and Gilmour 1992 *Governance* 46-67; Brown "Accountability, Liberty, and the Constitution" 49-98.

¹⁸ Nanda 2006 *Annals of the American Academy of Political and Social Science* 271.

and the Pacific, good governance is characterised by eight features.¹⁹ These are participation, agreement or consensus, accountability, transparency, responsiveness, effectiveness, efficiency and equity. These eight elements focus on inclusiveness and adherence to the rule of law. Their purpose is to ensure that corruption is minimised, the views of minorities are considered, and "the voices of the most vulnerable in society are heard in decision-making."²⁰ These lofty aims ultimately coalesce in efficient service delivery.

Finally, deciphering how the legal framework encourages service delivery in the context of a social contract is important because the efficient provision of basic amenities is incompatible with corruption. Significantly, scholars have identified endemic corruption as a potent threat not only to sustainable development in South Africa, but also to its corporate survival.²¹ Endemic corruption characterises a dysfunctional democracy and defeats the welfare-driven purpose of the constitutional state. Arguably, democracy thrives on public accountability. As Pillay posits, "corruption fundamentally runs contrary to accountability and the rule of law because it undermines governance, diminishes public trust in the credibility of the state, and threatens the ethics of government and society."²²

This article is structured in four parts. Following this introduction, Part II conceptualises service delivery within the literature on social contract and good governance. It argues that service delivery is a human right that underlies the state's social contract with its citizens. Part III probes the extent to which South Africa's legal framework promotes service delivery. It shows how the demarcation of service delivery in the constitutional framework places an undue burden on the local government to provide basic amenities. In the context of cooperative governance between the spheres of government, Part III also examines the promotion of service delivery and social contract in the *Municipal Structures Act*, the *Municipal Systems Act*, and the *Traditional Leadership and Governance Framework Act*. Part IV offers a framework for understanding the State's obligation to provide basic amenities. It concludes by reiterating why policymakers must take service delivery seriously in South Africa.

¹⁹ United Nations Economic and Social Commission for Asia and the Pacific 2006 <http://www.unescap.org/huset/gg/governance.htm>.

²⁰ United Nations Economic and Social Commission for Asia and the Pacific 2006 <http://www.unescap.org/huset/gg/governance.htm>.

²¹ See, for example, Pillay 2017 *Administratio Publica Journal* 22-39; Pillay 2004 *International Journal of Public Sector Management* 586-605; Naidoo 2012 *Journal of Public Administration* 656-683, Fraser-Moleketi 2009 *Public Policy and Administration* 331-338.

²² Pillay 2004 *International Journal of Public Sector Management* 586.

2 Service delivery conceptualised within the social contract theory

To understand the link between service delivery and a social contract, a detailed explanation of the latter is required. The social contract theory has underpinned a Western understanding of governance and citizenship for many centuries.²³ It denotes a written or unwritten agreement governing the attitude of individuals and organisations in the family, workplace, community or nation state. A report commissioned by the World Bank defines social contract as "a dynamic agreement between state and society on their mutual roles and responsibilities."²⁴ This definition contains three core aspects that also apply to the notion of a social contract in Africa.²⁵

The first core aspect is the citizen-state bargain; the second is social outcomes that inform the contents of the social contract, and the third is resilience and dynamicity, which are discovered from how a social contract meets citizens' expectations.²⁶ In its modern usage, the term social contract describes the state's relationship with citizens. It refers to a situation whereby the state's authority over citizens is derived from their electoral consent, which it receives in return for ensuring public welfare.²⁷

As a philosophical theory of governance, the notion of a social contract developed to counter a state of anarchy. Put differently, it emerged from humanity's realisation that a lawless situation of "might is right" harms human wellbeing.²⁸ The belief in a social contract implies that people voluntarily give up certain rights they have under a "state of nature" in order to obtain the benefits of cooperative relations in organised government.²⁹ As explained below, this understanding of a social contract is significant for South Africa because the repressive conflict that characterised the apartheid system could be described as a state of nature.

2.1 Historical overview of social contract in South Africa

The apartheid system is regarded as illegitimate due to its repressive nature, as is evident in the sanctions imposed by the international community to abolish systemic discrimination.³⁰ Several political groups such as the African National Congress (ANC), the Pan African Congress

²³ See generally Skyrms *Evolution of the Social Contract*.

²⁴ Cloutier *et al* 2021 <http://hdl.handle.net/10986/36777> 23.

²⁵ For an overview of the social contract in South Africa, see Sisk *Democratization in South Africa*.

²⁶ Cloutier 2021 <https://openknowledge.worldbank.org/server/api/core/bitstreams/26a90318-dbe9-5752-9113-b243dc4eef18/content> 3.

²⁷ Royce 2010 *Post Modern Openings* 45-62.

²⁸ Hume "Of the Original Contract" 253-264.

²⁹ Taylor 2015 *Black and Gold* 4.

³⁰ Booth 2003 *Journal of Contemporary History* 477-493.

(PAC), the Inkatha Freedom Party and others spearheaded resistance to apartheid. For instance, in 1955, several political groups adopted a Freedom Charter asserting that "South Africa belongs to all who live in it."³¹

Despite the existence of this Freedom Charter, racial segregation continued. The Sharpeville massacre in 1960 convinced many anti-apartheid leaders that they could not achieve their objectives by peaceful means.³² Accordingly, both the PAC and the ANC established armed wings, neither of which posed a significant military threat to the apartheid State. The increasingly violent nature of political conflicts led to the imprisonment of many freedom fighters such as Nelson Mandela, one of the founders of *uMkhonto we Sizwe*, the military wing of the ANC.³³ His incarceration from 1963 to 1990 drew considerable international sanctions against South Africa and helped to garner worldwide support for the anti-apartheid movement.³⁴ When the majority of South Africans finally took charge of their political future, racial segregation was replaced with a constitutional democracy that purported to guarantee the rights of everyone in South Africa.³⁵

The new constitutional dispensation sought to protect the socio-economic rights of everyone, as well as to end the oppression of the majority black population. Such a radical shift in governance style was based to some extent on a social contract. Accordingly, there is a link between a social contract and efficient service delivery. To reiterate, constitutionalism was cemented by the people's representatives, who attended the Convention for a Democratic South Africa to negotiate the end of apartheid.³⁶ During these negotiations an agreement was reached between the political parties to limit the powers of the three formal organs of government: legislative power (law making), executive power (law implementation) and judicial power (adjudication of legal disputes).³⁷ This limitation or regulation of governmental functions recognises that power is exercised within boundaries and for specific purposes. It also recognises that the exercise of power aims to satisfy the social contract and is subject to judicial review. In

³¹ Yung and Shapiro 1995 *Politics and Society* 270.

³² The Sharpeville massacre is an incident that occurred in the Black township of Sharpeville on 21 March 1960, in which police fired on a crowd of Black people, killing or wounding around 250 of them. It is regarded as one of the first and most violent demonstrations against apartheid in South Africa.

³³ Walter Max Ulyate Sisulu is also credited for founding *uMkhonto we Sizwe* alongside Nelson Mandela. *uMkhonto we Sizwe* means "Spear of the Nation". For a detailed account of its activities, see Davis *ANC's War against Apartheid*.

³⁴ See generally Davis *ANC's War against Apartheid*.

³⁵ Yung and Shapiro 1995 *Politics and Society* 283.

³⁶ Rantete and Giliomee 1992 *African Affairs* 515-542.

³⁷ Rantete and Giliomee 1992 *African Affairs* 515-542.

this sense, constitutionalism, social contract and efficient service delivery are all derived from a body of rules and regulations that are generally accepted by the electorate as the charter of rights and obligations between them and the State. By abandoning apartheid and adopting a constitutional form of government, therefore, South Africa entered a social contract between government and the electorate, whose purpose is good governance.

It may be seen in this historical overview that the current South African political system was formed to promote public welfare and give people platforms to reach their full potential. The notion of a social contract implies that citizens have an enforceable claim for welfare against their elected officials whenever they fail to fulfil their part of the contractual bargain. As a political theory, social contract is closely linked to service delivery and good governance.

2.2 The ambit of service delivery

In the context of public governance, service delivery denotes the state's duty to meet citizens' needs for critical amenities such as housing, water, sanitation, electricity, healthcare and other infrastructure necessary for human survival.³⁸ Literature on the subject reveals two major views about efficient service delivery in developing countries, including South Africa.

The first view found in the literature links service delivery to the strength or efficacy of institutional mechanisms. For example, Koelble and LiPuma argued that poor service delivery in South Africa is caused by

a series of institutional shortcomings ranging from incoherence in national policy towards rural and urban development, ... [poor] financial controls and competencies, and a lack of skills affecting local officials ... to technical competencies in the core areas of electrification, basic water and sanitation, and refuse collection.³⁹

Kenosi argued that a poor record-keeping culture promotes bad governance and poor service delivery.⁴⁰ Others like Mathenjwa believe that the excessive assignment of functions from the national and provincial spheres of government to local government is at the heart of poor service delivery in South Africa.⁴¹ This excessive burden on local government creates an imbalance in governmental functions, since municipalities lack the capacity to fulfil their obligation to deliver basic amenities without sustained assistance from the national and provincial arms of government. From these views, poor support to the local government is partly attributable to the inherited systems of apartheid and their institutionalised racism. Scholars

³⁸ Biljohn and Lues 2020 *Int'l J Pub Admin* 229-241.

³⁹ Koelble and LiPuma 2010 *Social Dynamics* 565-589.

⁴⁰ Kenosi 2011 *Journal of the South African Society of Archivists* 19-25.

⁴¹ Mathenjwa 2014 *LDD* 181.

believe that apartheid prioritised service delivery for segregated, whites-only territories, with little or no concern for the areas inhabited by the majority black South Africans.⁴²

The second view of efficient service delivery relates the provision of basic amenities to the technical abilities and commitment of public officials. This actor-oriented view puts the blame on poor service delivery on individuals. Accordingly, it emphasises human elements such as corruption, ethnicity, political interests, religious inclination and lack of skills as key elements that influence the government's ability to provide basic amenities. Arguably the flipside of this view is that strong human agency can make up for the deficiencies of institutional mechanisms. This is partly the claim in Palmer and Parnell's book, *Building a Capable State: Service Delivery in Post-Apartheid South Africa*.⁴³ The authors used a comparison of middle-income countries and the apartheid era to argue that South Africans have enjoyed improved access to basic amenities since 1994 only due to political commitment to transformation. They further argue that even though improved service delivery has led to just a marginal decrease in poverty levels, building a capable, post-apartheid State is a long-term project that requires concerted agency.⁴⁴

Palmer and Parnell's work is significant for the social contract theory because it claims that the provision of basic amenities by the State should be assessed through the concept of capability rather than capacity.⁴⁵ As they put it, the capability of the State includes not only "human, natural and financial resources, and systems, but also the values, relationships and organisational culture" of government agencies.⁴⁶ Accordingly, officials have the power to exercise their agency in a transformative way that recognises the progressive realisation of basic amenities. This claim is significant for the refusal of the Constitutional Court to adopt the minimum core obligation of states in the enforcement of socio-economic rights.⁴⁷

The concept of the minimum core obligation requires states to ensure that their citizens enjoy at least essential levels of protection in their economic,

⁴² Sithole and Mathonsi 2015 *Africa's Public Service Delivery and Performance Review* 14.

⁴³ Palmer, Moodley and Parnell *Building a Capable State* 1-21.

⁴⁴ Palmer, Moodley and Parnell *Building a Capable State* 3.

⁴⁵ Their argument is reminiscent of Amartya Sen's capability approach, which is a normative approach to human welfare that draws attention to the actual capability of people to achieve their desired lives rather than solely their having the ability to do so. See generally Sen *Commodities and Capabilities*; Sen *Development as Freedom*.

⁴⁶ Palmer, Moodley and Parnell *Building a Capable State* 9.

⁴⁷ See *Nokotyana v Ekurhuleni Metropolitan Municipality* 2010 4 BCLR 312 (CC). For a discussion of similar cases, see Okeng *Post-1996 Service Delivery*. Also see Chenwi 2013 *De Jure* 744-746.

social, and cultural rights.⁴⁸ This requirement is irrespective of the state's level of available resources.⁴⁹ The concept was developed in 1990 by the United Nations Committee on Economic, Social and Cultural Rights, the body of independent experts that monitors the implementation of the *International Covenant on Economic, Social and Cultural Rights* by signatory states. As the Committee stated, "the satisfaction of, at the very least, minimum essential levels of each of the [socio-economic] rights is incumbent upon every State party."⁵⁰

The concept of the minimum core obligation gives states the freedom to implement socio-economic rights over time, "depending upon the availability of necessary resources, rather than requiring them to guarantee [all] rights immediately."⁵¹ We thus argue that South African courts should adopt the minimum core approach to enforce service delivery. The mere inclusion of justiciable socio-economic rights in the Constitution imposes a minimum core obligation on the State to fulfil these rights. Irrespective of one's position on the minimum core concept, the reality is that service delivery is the core function of government, whose breach encourages public protests.⁵² In this sense, service delivery is a human right whose violation should attract remedial action.

Furthermore, service delivery underlies the concept of developmental governance and the obligation of the constitutional State to provide basic amenities.⁵³ Indeed, the Local Government White Paper describes developmental governance as the commitment of local government to "working 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."⁵⁴ The White Paper enjoins State officials to prioritise service delivery to disadvantaged individuals and groups in communities who have historically been marginalised or excluded from the equitable distribution of basic amenities.⁵⁵ In short, it demands that government must play a developmental role in nation-building by taking reasonable steps,

⁴⁸ Liebenberg "Interpretation of Socio-Economic Rights" 2.

⁴⁹ Paragraph 25 of the *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (1986), which provides that "States Parties are obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all."

⁵⁰ *United Nations Committee on Economic, Social and Cultural Rights, General Comment No 3: The Nature of States Parties Obligations (Article 2 Para 1 of the Covenant)* UN Doc 12/14/1990 (1990).

⁵¹ Young 2008 *Yale J Int'l L* 121.

⁵² Alexander 2010 *Review of African Political Economy* 25-40.

⁵³ Mogale "Developmental Local Government" 215-243.

⁵⁴ Department of Provincial Affairs and Constitutional Development *White Paper on Local Government* 23.

⁵⁵ Department of Provincial Affairs and Constitutional Development *White Paper on Local Government* 20-26.

within the available resources, to ensure that all South Africans have access to adequate housing, health care, education, food, water and social security. This demand is in furtherance of the constitutional requirements for social transformation.

2.3 Interface of service delivery and social contract

Service delivery is closely linked to the notion of a social contract because public officials perform better when they act in cooperation.⁵⁶ Many scholars recognise that the South African Constitution envisages a system of cooperative governance.⁵⁷ In a general sense cooperative governance regards public administration as a partnership between the various spheres of government. It seeks to enhance friendly relations among government departments with the overall aim of ensuring that government delivers services to the people in an efficient and sustainable manner.⁵⁸ In practical terms, cooperative governance "implies that sub-national and national jurisdictions have certain political and legal obligations to support and consult one another on matters of common concern, to cooperate and maintain friendly relations."⁵⁹ While these obligations may seem obvious, they are not easy to fulfil due to the complexity of modern states. The activities of constitutional states are increasingly complex, competitive and constrained by limited budgets.⁶⁰ There is also an increasing merger of legislative powers between national, regional, and local governments. These factors – limited budgets, complex governance and concurrent legislative powers – are complicated by demands for good governance and accountability. Taken together, they make it imperative for the levels of government to function in a complementary manner.⁶¹

Cooperative governance is especially useful in stratified and post-conflict societies such as South Africa. In these types of societies, ethnic, religious and cultural pluralism make it imperative for government "to ensure public access to decision making, transparency of governmental processes and for creating fully democratic societies."⁶² For example, where a national government is composed of the dominant party, it may struggle to cooperate with a regional government that is dominated by an opposition party. Also, many national governments are made up of coalitions, which makes cooperation between civil servants difficult. Scholars believe that deviation from cooperative governance between the national, provincial and local

⁵⁶ Edwards 2008 *Politeia* 65-85.

⁵⁷ Mathenjwa 2014 *LDD* 179; Du Plessis 2008 *SAPL* 87-110. Also see ss 40 and 41 of the Constitution.

⁵⁸ De Villiers 1994 *SAPL* 430-437.

⁵⁹ Edwards 2008 *Politeia* 66.

⁶⁰ De Villiers 1994 *SAPL* 430-437.

⁶¹ De Villiers 1994 *SAPL* 430-437.

⁶² De Villiers 1994 *SAPL* 431.

government inhibits efficient service delivery.⁶³ Arguably, it also violates the social contract. This is the context that informs the next stage of this article: how South Africa's legal framework encourages efficient service delivery.

3 Legal framework of service delivery in South Africa

The primary laws and policies that regulate service delivery in a social contract context include the Constitution, the *Municipal Structures Act*, the *Municipal Systems Act*, the *Traditional Leadership and Governance Framework Act*, and the Public Service Charter of South Africa. These will be examined in turn.

3.1 The constitutional framework for service delivery

The Constitution does not devote a specific segment to service delivery. It mentions "basic services" four times⁶⁴ and "basic needs" once.⁶⁵ These provisions make service delivery a shared obligation among the national, provincial and municipal governments. Nevertheless, the Constitution places the burden for providing basic amenities primarily on municipalities. Under a heading titled "Developmental duties of municipalities", the Constitution in section 153 provides as follows:

A municipality must—

- (a) 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; and
- (b) participate in national and provincial development programmes.

Other than sections 153 and 227(1), the closest provision on service delivery is found in section 139(5) under a heading titled "Provincial intervention in local government".⁶⁶ It states as follows:

If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the relevant provincial executive must—

⁶³ See for example Koma 2010 *Journal of Public Administration* 111-120; Mubangizi 2005 *Journal of Public Administration* 633-648; Edwards 2008 *Politeia* 65-85; Du Plessis 2008 *SAPL* 87-110; Kanyane 2014 *Africa's Public Service Delivery & Performance Review* 90-110.

⁶⁴ Sections 139(5), 214(2) and 227(1) of the Constitution.

⁶⁵ Section 153(a) of the Constitution.

⁶⁶ Section 227(1) of the Constitution states that "Local government and each province — (a) is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it; and (b) may receive other allocations from national government revenue, either conditionally or unconditionally."

- (a) impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments ...

In addition to the above provisions, sections 155 and 156 of the Constitution establish municipalities and define their powers and functions. Section 156(4) authorises the national government and provincial governments to "assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government." Schedules 4 and 5 stipulate the legislative competence of the national and provincial governments. It appears that sections 155(7) and 156(1) give these two spheres of government considerable oversight powers over municipalities. Indeed, their combined reading with Part B of the Fourth Schedule of the Constitution imposes a duty on municipalities to provide basic amenities. However, the Fourth Schedule creates an implementation gap in two ways.

Firstly, municipalities are limited in their capacity to provide basic amenities due to the disparate funding between them and the other spheres of government. As noted earlier, section 153 of the Constitution requires municipalities to prioritise the basic needs of communities and to promote their social and economic development. By placing such a weighty developmental mandate on municipalities, this local sphere of governance is made to shoulder the major obligations of service delivery in South Africa without the commensurate budget and political clout of the other spheres. Indeed, commentators have criticised the inadequate constitutional support of local government by the provincial and national spheres and condemned their excessive control over municipalities.⁶⁷

Secondly, the allocation of service delivery in the constitutional framework does not meet the expectations of the social contract and the transformative intent of the Constitution. This is because local government carries the heaviest burden of providing basic amenities. This burden is notwithstanding the fact that it is at the lowest rung of the organisational and financial ladder. Moreover, over-monitoring of local government affects the statutory mandate of municipalities to function as independent branches of government.⁶⁸ The practice of treating municipalities as servants of the provincial and national spheres of government characterises the problem with service delivery in South Africa.⁶⁹ As Akinboade, Mokwena and Kinck explain, local authorities have few incentives for proactive service delivery initiatives because they have little room to exercise discretion when

⁶⁷ Palmer, Moodley and Parnell *Building a Capable State* 75-108.

⁶⁸ Section 154 of the Constitution.

⁶⁹ See generally Okeng *Post-1996 Service Delivery*.

opportunities arise or a threat of protest emerges.⁷⁰ Considering that the Constitution recognises the concept of cooperative governance, the excessive burden placed on municipalities hinders their efficient provision of basic amenities.⁷¹ For example, Schedule 4 of the Constitution provides for municipal health care services. Assuming that a person is injured in a rural area and requires an ambulance, s/he may not be able to obtain it because of poor or non-existent medical facilities arising from the financial/logistical constraints of the municipal government concerned.⁷²

It should be stressed that service delivery is an obligation shared between the national, provincial and local governments. Accordingly the higher spheres owe a duty of support to local government, and non-compliance by a municipality with its service delivery obligations reflects poorly on the higher spheres of government.⁷³ In this context of cooperation the Minister responsible for municipal government and the National Council of Provinces may veto a decision by the provincial government to intervene in a municipality if s/he concludes that the intervention was conducted improperly and/or for inadequate reasons.⁷⁴ Since the Constitution is not the only law that regulates service delivery in South Africa, to what extent do other laws in the legislative framework encourage the efficient provision of basic amenities?

3.2 The statutory frameworks on service delivery

Reddy, de Visser and de Vos believe that although the provisions of the Constitution supersede all laws governing municipalities, statutes are nonetheless the primary legal framework for promoting service delivery.⁷⁵ However, it is obvious that the supremacy and transformative spirit of the Constitution feeds into statutes, gives statutes normative authority, and holds them to the same level of accountability imposed by the Constitution. Generally, statutes give every municipal council executive powers and

⁷⁰ Akinboade, Mokwena and Kinck 2013 *International Journal of Social Economics* 472. Also see Akinboade, Kinck and Mokwena 2012 *International Journal of Social Economics* 182-199.

⁷¹ Also see sections 27(2), 40(1), 41 and 152(2) of the *Constitution*.

⁷² For example, the state of public healthcare in the Limpopo province was recently criticised. See Maphaka 2023 <https://www.iol.co.za/dailynews/opinion/the-state-of-south-africas-public-health-facilities-36a1f367-0ee2-4c79-b7da-c501ad82d4f0>. Also see Moeti *et al* 2023 *International Journal of Environmental Research and Public Health* 1-13.

⁷³ Section 155(7) of the *Constitution*.

⁷⁴ Sections 139(2)-(b) and (3)(b) of the *Constitution*.

⁷⁵ Reddy 2016 *Journal for Transdisciplinary Research in Southern Africa* 1-8; De Visser 2019 <https://foodsecurity.ac.za/wp-content/uploads/2019/04/CoE-FS-WP5-Multilevel-Government-Municipalities-and-Food-Security-17-Apr-19.pdf> 6-18; Brand, Freedman and De Vos *South African Constitutional Law* 331-349.

duties.⁷⁶ Statutes also give the executive council of a municipality discretion in the manner it performs its duties.⁷⁷ All municipalities are encouraged to promote citizens' participation in governance and to prioritise key needs. This is evident in the *Municipal Structures Act*, as will be demonstrated below.

3.2.1 *The Municipal Structures Act*

The *Municipal Structures Act* recognises that "the Constitution establishes local government as a distinctive sphere of government, interdependent, and interrelated with national and provincial spheres of government."⁷⁸ Importantly in the context of a social contract, it affirms that

there is fundamental agreement in our country on a vision of democratic and developmental local government, in which municipalities fulfil their constitutional obligations to ensure sustainable, effective and efficient municipal services [and] promote social and economic development.⁷⁹

The Act stipulates the division of functions and powers between municipalities.⁸⁰ It also stipulates measures to ensure the continuous provision of basic services in the event that a district or local municipality collapses or is likely to collapse because of lack of capacity.⁸¹ Municipalities are required to identify the needs of their communities and then to prioritise them. They are also expected to initiate processes for ensuring active community participation.⁸² This demand for community engagement is evident in the *Municipal Systems Act*.

3.2.2 *The Municipal Systems Act*

The *Municipal Systems Act* provides for the core principles, framework and procedures to ensure affordable access to basic amenities.⁸³ These measures try to promote the service delivery capacities of local government in line with the social contract theory.⁸⁴ The transformative impact of the Constitution on this legislation is most evident in section 73, which demands, among other things, that a municipality must promote the provisions of the Constitution and–

⁷⁶ See National Planning Commission "Building a Capable and Developmental State" 385.

⁷⁷ Department of Provincial Affairs and Constitutional Development *White Paper on Local Government 1*.

⁷⁸ Preamble 1 of the *Local Government: Municipal Structures Act 117 of 1998* (the *Municipal Structures Act*)

⁷⁹ Preamble 4 of the *Municipal Structures Act*.

⁸⁰ Section 8 of the *Municipal Structures Act*.

⁸¹ Section 87 of the *Municipal Structures Act*.

⁸² Para 4 of the Preamble and section 81 of the *Municipal Structures Act*.

⁸³ *Local Government: Municipal Systems Act 32 of 2000* (the *Municipal Systems Act*).

⁸⁴ Bekink 2006 *Principles of South African local government law 80-87*; s 3 of the *Municipal Systems Act*.

- (a) give priority to the basic needs of the local community;
- (b) promote the development of the local community; and
- (c) ensure that all members of the local community have access to at least the minimum level of basic municipal services.

Generally, the *Municipal Systems Act* regards municipalities as part of a system of co-operative government.⁸⁵ By clarifying the rights and duties of municipal councils and local communities⁸⁶ it takes an important step towards strengthening the social contract at the grassroots level.⁸⁷ Thus, municipalities should promote social and economic development in order to empower their communities, thereby creating liveable cities, towns and rural areas.⁸⁸

3.2.3 *The Traditional Leadership and Governance Framework Act*⁸⁹

Many municipalities are in rural areas, and some of them operate under kings and chiefs who exercise governance authority over their territories.⁹⁰ In this respect the most important statute on traditional governance is the *Traditional Leadership and Governance Framework Act* (TLGFA).

The TLGFA does not explicitly promote service delivery. However, its preamble states, among other things, that "the State recognises the need to provide appropriate support and capacity building to the institution of traditional leadership." Furthermore, it requires "the institution of traditional leadership ... [to] promote the principles of co-operative governance in its interaction with all spheres of government and organs of state." Importantly, section 4(1) of the TLGFA stipulates the functions of traditional councils to include "supporting municipalities in the identification of community needs."

In a statutory context, traditional leaders are recognised by the Premier. Once recognised, they act for a principal traditional community, which must within one year of the recognition establish a principal traditional council.⁹¹ These councils assist municipalities by identifying areas where service delivery is needed. Section 73 of the *Municipal Structures Act* states that a traditional council must co-operate with any relevant ward committee. However, this cooperation is problematic because South Africa's apartheid history still haunts the legitimacy of some traditional leaders. Due to the colonial/apartheid quest for control, some traditional leaders were agents of

⁸⁵ Section 3 of *Municipal Systems Act*.

⁸⁶ Seidman and Seidman *State and Law* 1-20.

⁸⁷ Sections 5-28 of the *Municipal Systems Act*.

⁸⁸ Section 153(1) of the Constitution; Waldron 1989 *Review of Politics* 22.

⁸⁹ *Traditional Leadership and Governance Framework Act* 41 of 2003.

⁹⁰ Ntsebeza 1999 *Comparative Studies of South Asia, Africa and the Middle East* 83-94.

⁹¹ Section 3B(1) of the *Traditional Leadership and Governance Framework Act* 41 of 2003.

the centrally controlled government apparatus,⁹² and owed little loyalty to their communities. Consequently, municipalities became arenas of political struggle. Given the perpetuation of some traditional leadership bloodlines through the male primogeniture rule, their legitimacy problems persist in the new democratic order with adverse effects on service delivery.⁹³

Furthermore, in many cases the development of municipalities depended on the racial group of the inhabitants and their loyalty to the central government.⁹⁴ Mojalefa and Koenane observed how some traditional leaders ruled their communities

as their personal fiefdoms for decades in order to satisfy their European masters. They were not elected, but the son would succeed the father or the uncle ... they enjoyed many privileges, by virtue of collaborating with the apartheid government.⁹⁵

After apartheid ended, rural communities started questioning the legitimacy of traditional leaders, whom many viewed as government puppets. Unsurprisingly, traditional leaders and local government officials often clash.⁹⁶ While some traditional leaders feel that elected councillors exclude them in matters of governance, some councillors feel that traditional leaders wield too much power.⁹⁷ Indeed, some traditional leaders see the introduction of local governance as a measure to curb their powers.⁹⁸ These perceptions hardly augur well for cooperative governance and service delivery, since section 8 of the amended TLGFA requires the provincial and national governments to promote partnerships between traditional councils and municipalities. Although the Constitution recognises the institution, status and role of traditional leadership according to customary law, it subjects traditional leadership to the Constitution and any applicable legislation.

The inadequacies in the statutory framework of local government contributed to the adoption of the Charter for Public Service.

⁹² See National Planning Commission "Building a Capable and Developmental State" 363 and 385.

⁹³ Diala 2022 <https://theconversation.com/what-the-zulu-kingship-judgment-tells-us-about-the-future-of-south-african-customary-law-178786>. See also National Planning Commission "Building a Capable and Developmental State" 399.

⁹⁴ Seidman and Seidman *State and Law* 1; National Planning Commission "Building a Capable and Developmental State" 363 and 393.

⁹⁵ Mojalefa and Koenane 2018 *Africa Review* 58-71.

⁹⁶ Ntsebeza 1999 *Comparative Studies of South Asia, Africa and the Middle East* 83-94.

⁹⁷ Mojalefa and Koenane 2018 *Africa Review* 58-71; Ntsebeza 1999 *Comparative Studies of South Asia, Africa and the Middle East* 83-94.

⁹⁸ Ntsebeza 1999 *Comparative Studies of South Asia, Africa and the Middle East* 83-94.

3.2.4 *Public Service Charter of South Africa*

Launched in 2013 by the then minister of public service and administration, Lindiwe Sisulu, the Public Service Charter (the Charter) is arguably the most important policy instrument for promoting service delivery in South Africa.⁹⁹ It regulates the functions of public servants and the State, which is represented by the Public Service Coordinating Bargaining Council. It outlines "the service standards that underpin the services offered by the State."¹⁰⁰ Importantly, its definition section states as follows:

This Service Charter is a social contract, commitment and agreement between the State and public servants. It is a written and signed document which sets out the partners' roles and responsibilities to improve performance, enhance and fast track the delivery of services to improve the lives of our people. It ... enables service beneficiaries to understand what they can expect from the State and will form the basis of engagement between government and citizens or organs of civil society.¹⁰¹

Even though the Charter may be regarded as "soft law",¹⁰² it is nevertheless intended to bind the State and its officials to provide basic services.¹⁰³ It mandates municipalities to deliver the basic amenities necessary to ensure an acceptable and reasonable quality of life for the people.¹⁰⁴ The Charter is supported by the *Intergovernmental Relations Act*, which established measures such as mediation and consultation for resolving disputes between governmental spheres.¹⁰⁵

3.3 *Problematic legal framework of service delivery*

The statutory allocation of service delivery is complicated because it places a heavy burden on the local government. Ironically, when this burden reflects in failure to ensure effective service delivery, the higher spheres of government decide to intervene in the autonomous operation of municipalities. This intervention is evident in many judicial decisions. A good example is *Mnquma Municipality v Premier of the Eastern Cape*.¹⁰⁶

⁹⁹ Objective 1 of the Republic of South Africa 2013 <https://www.gov.za/documents/other/public-service-charter-04-sep-2013> 2 (the Public Service Charter) states, among other things: "The Charter seeks to improve service delivery programmes [and] professionalise and encourage excellence in the public service."

¹⁰⁰ See Art 1 of the Public Service Charter 2013.

¹⁰¹ Definition of the Public Service Charter 3.

¹⁰² Soft law is a principle that lacks the force of a binding statute. For critique see Klabbers 1998 *Nord J Int'l L* 381-391.

¹⁰³ Ruiters 2018 *Journal of Asian and African Studies* 169-186.

¹⁰⁴ Reddy 2016 *Journal for Transdisciplinary Research in Southern Africa* 2.

¹⁰⁵ *Intergovernmental Relations Framework Act* 13 of 2005.

¹⁰⁶ *Mnquma Local Municipality v Premier of the Eastern Cape* (231/2009) [2009] ZAECBHC 14 (5 August 2009).

Here, a Special Investigating Unit (enabled by section 106 of the *Systems Act*) investigated allegations of maladministration in the Mquma Local Municipality. The MEC for Local Government in the province of the Eastern Cape ordered the municipality to halt all activities that had financial implications. The municipality replied that compliance with this order would cause service delivery to grind to a standstill, a situation that arguably contravenes the mandate of municipalities in section 153 of the Constitution to prioritise the needs of communities. After two failed attempts, the provincial executive dissolved the municipal council in terms of section 139(1)(c) of the Constitution. In response the municipality applied for a court order restraining the province from intervening and interfering with its right to perform its constitutional duties.

The parties asked the Eastern Cape High Court in Bisho to interpret section 139(1) of the Constitution. The municipality argued that intervention in municipal affairs is a last resort option and is restricted to ongoing failure to fulfil an executive obligation, not past failure. Furthermore, the phrase "executive obligation" in section 139 is limited to issues concerning the formulation of non-administrative actions such as policy and by-laws, and not service delivery issues. This implies that there should be no conflation of administrative actions with policy-making. The province counter-argued that a municipality's failure to comply with its constitutional and statutory obligations equates to a failure to fulfil an executive obligation. It further argued that a province could choose between issuing a directive, assuming a municipality's responsibilities, and dissolving its council.

The Court in the *Mquma Municipality* case distinguished between executive obligations and statutory obligations, and concluded that a failure to fulfil a statutory obligation would not necessarily result in a failure to fulfil an executive obligation. It found that the municipal council exercises both executive and legislative functions. It further found that the executive obligation of municipalities is limited by their functional areas and includes policy formulation, the enactment of bylaws and the provision of basic amenities to communities. Thus, the alleged failures of Mquma Municipality (for example the non-appointment of a performance audit committee) were related to its statutory duties rather than its executive obligations. Ultimately the Court ruled that the provincial executive has the power to choose dissolution as a method of intervention in a municipality. However, the conditions for such an intervention were absent in Mquma, since the provincial government had erroneously believed that the municipality was unable or unwilling to fulfil its executive obligations.

Similarly, in *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo*¹⁰⁷ the High Court in Gauteng granted an order restraining the executive provincial council from dissolving the municipality. However, the court refused to grant an order of costs against the provincial council. This was because the public purse should not be used to settle political disputes but should rather be deployed to improve infrastructure and services in the community.¹⁰⁸ Conversely, in the case of *Ngaka Modiri Molema District Municipality v Chairperson, North West Provincial Executive Council*¹⁰⁹ the High Court and the Constitutional Court dismissed a challenge to the decision of the North West Executive Council to dissolve the municipal council.¹¹⁰

Frequent litigation between the spheres of government highlights the complicated nature of the legal framework that regulates the responsibilities of municipalities and their relationship with other levels of government. In the *Mnquma* case, the court arguably diminished the status of local government by affirming that the provincial government may choose dissolution as a method of intervention in a municipality instead of using it as a measure of last resort. Generally, the willingness of provinces to intervene in the administration of municipalities is dependent on factors such as political relationships and the management of finances by the local government.¹¹¹ This is evident in the case of *Unemployed Peoples Movement v Premier for the Province of the Eastern Cape*.¹¹²

Here, the Unemployed Peoples Movement requested the High Court of the Eastern Cape in Grahamstown to declare, among other things, that Makana Municipality had violated section 152 of the Constitution by failing to provide basic services to communities and promoting a safe and healthy environment. It also accused the municipality of violating section 153(a) of the Constitution by failing to structure and manage its administration, budgeting and planning processes to prioritise basic needs and promote socio-economic development. The court granted the applicants' request to dissolve the municipal council and appoint an administrator on the ground that sections 152(1) and 153(a) of the Constitution had been violated. The court's decision to place the municipality under judicial administration was

¹⁰⁷ *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo* 2014 4 All SA 67 (GP).

¹⁰⁸ *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo* 2014 4 All SA 67 (GP) paras 80-81.

¹⁰⁹ *Ngaka Modiri Molema District Municipality v Chairperson, North West Provincial Executive Council* 2015 1 BCLR 72 (CC).

¹¹⁰ However, the Constitutional Court's dismissal of the application was on the basis of a lack of urgency, not on merit.

¹¹¹ Makoti and Odeku 2018 *African Journal of Public Affairs* 68-85.

¹¹² *Unemployed Peoples Movement v Premier for the Province of the Eastern Cape* (553/2019) [2020] ZAECGHC 47 (21 May 2020).

primarily based on the failure of the municipality to properly manage its finances and the failure of the provincial government to properly intervene. It stated:

Indeed, Makana's particular situation and the way in which it has been handled thus far is so embarrassing at so many different levels that, had National intervention been called for (as provided for in section 139(7) of the Constitution) this court would have been constrained to have given serious consideration to granting such relief.¹¹³

Ultimately, interventions by the provincial government undermine the executive autonomy of municipalities and disrupts their daily functioning. Also, interventions are almost usually accompanied by political disputes, which drain public resources. As Makoti and Odeku observed, the application of section 139(1) of the Constitution causes frequent litigation that inhibits service delivery.¹¹⁴ Arguably, it also violates the spirit of cooperative governance demanded by the Constitution, and by implication the social contract theory. Although the Constitution mandates cooperative governance, the current allocation of basic service delivery, which grants the national and provincial governments too much supervisory power over municipalities, hampers the provision of basic amenities.¹¹⁵ As is well known, millions of South Africans, especially poor people living in rural areas, lack adequate and affordable access to housing, electricity, sanitation, security and good roads. We will therefore conclude with a normative framework for efficient service delivery.

4 Towards a normative framework for efficient service delivery

The social contract theory offers a normative basis for understanding the duties of modern states. As explained earlier, this theory implies that the masses choose leaders during periodic elections and mandate these leaders to champion public security and welfare. Thus, the mandate of leadership is executed only through the provision of basic amenities.¹¹⁶

In a democratic context, social contract and service delivery are interrelated, interdependent and mutually constitutive concepts. They are the "glue that binds the state and society together."¹¹⁷ Although there is no established body of work on their mutually constitutive nature, the link between social contract and service delivery in South Africa may be traced to the era of negotiated settlement, which introduced constitutional democracy in the

¹¹³ *Unemployed Peoples Movement v Premier for the Province of the Eastern Cape* (553/2019) [2020] ZAECGHC 47 (21 May 2020) para 32.

¹¹⁴ Makoti and Odeku 2018 *African Journal of Public Affairs* 73.

¹¹⁵ Thornhill 2008 *Journal of Public Administration* 492-511.

¹¹⁶ Bilchitz 2010 *CCR* 59.

¹¹⁷ Mcloughlin 2015 *Governance* 343.

1990s. Under apartheid, an initially all-white Parliament was practically supreme, as it was not accountable to the judiciary. Parliamentary non-accountability enabled the impunity that characterised racial segregation and oppression of black South Africans by the white minority. In their quest to replace apartheid with a constitutional democracy that is anchored on judicial review, South Africans deliberately incorporated transformative provisions into their 1993 and 1996 constitutions. Judges have stressed how South Africa moved from a discriminatory past to a new dispensation aimed at service delivery through the promotion of human dignity, equality and freedom.¹¹⁸ For example, in 1995, Justice Mahomed declared:

All Constitutions seek to articulate, with differing degrees of intensity and detail, the shared aspirations of a nation; the values which bind its people, and which discipline its government and its national institutions ... In some countries, the Constitution only formalizes, in a legal instrument, a historical consensus of values and aspirations evolved incrementally from a stable and unbroken past to accommodate the needs of the future. The South African Constitution is different: it retains from the past only what is defensible and represents a decisive break from, and a ringing rejection of that part of the past which is disgracefully racist, authoritarian, insular, and repressive and a vigorous identification of and commitment to a democratic, universalistic, caring and aspirationally egalitarian ethos, expressly articulated in the Constitution.

Judging from South Africa's history and transformative framework, there is little doubt that efficient service delivery underpins the legitimacy of its government.

4.1 Taking service delivery seriously

Compared with the situation during apartheid, South Africa has improved in the distribution of basic amenities.¹¹⁹ This has been primarily due to the de-segregationist mode of governance adopted in the post-apartheid dispensation.¹²⁰ However, efficient service delivery remains a challenge, especially for many households in rural communities, where the majority of people struggle to obtain clean water, health care, electricity and adequate refuse disposal.¹²¹ As some recent *Afrobarometer* surveys reveal, over half of South Africans believe that municipalities fare poorly in the efficient provision of basic amenities.¹²² This perception is dangerous because of the purpose of modern governance.

¹¹⁸ Langa 2006 *Stell LR* 352.

¹¹⁹ Hirsch 2015 <https://theconversation.com/how-compromises-and-mistakes-made-in-the-mandela-era-hobbled-south-africas-economy-52156>.

¹²⁰ Section 153 of the Constitution.

¹²¹ Akinbade, Mokwena and Kinfaok 2013 *International Journal of Social Economics* 459-460.

¹²² Moosa and Hofmeyr 2021 https://www.afrobarometer.org/wp-content/uploads/2022/02/ad474-south_africans_trust_in_institutions_reaches_new_low-afrobarometer-20aug21.pdf 14-17. See also Nkomo Nkomo 2017

Furthermore, recent events such as power cuts (colloquially referred to as loadshedding) and water rationing demonstrate the existence of a crisis of service delivery in South Africa. Municipalities play a vital role in this crisis. The latest annual review of local municipalities published by the Auditor-General of South Africa shows a continued decline in the financial health of municipalities, evident in the lack of a clean audit for the majority of them.¹²³ Most of the best performing municipalities are in the Western Cape, while the worst performing municipalities are in the North-West, Northern Cape, and Eastern Cape.¹²⁴ A 2021 report shows a similar trend in how municipalities perform in the delivery of basic amenities.¹²⁵ The worst performing municipalities include Ingquza Hill (Eastern Cape), Ntabankulu Local Municipality (Eastern Cape), Tswaing Local Municipality (North West), uMhlabuyalingana Local Municipality (KwaZulu-Natal), and Ratlou Local Municipality (North West).¹²⁶ The performance of municipalities demonstrates the need for a social contract to guide the delivery of basic amenities in South Africa.

4.2 Conclusive remarks and recommendations

We have argued that the legitimacy of modern states is assessed, among other things, by how they promote service delivery. When South Africa adopted a liberal constitution with transformative governance values, it created a social contract that requires the government to provide basic amenities in an efficient manner. This contract is evident not just in the Constitution and the constitution-making process, but also in statutory laws and policies such as the *Municipal Systems Act*, the *Municipal Structures Act* and the Service Charter. Specifically, section 154 of the Constitution imposes a duty on the spheres of government to act cooperatively to ensure the efficient delivery of basic services to citizens. Read together with section

https://www.afrobarometer.org/wp-content/uploads/2022/02/ab_policypaperno42_local_service_delivery_in_southafrica.pdf 1-17.

¹²³ AGSA 2022 <https://mfma-2022.agsareports.co.za/pages/audit-outcomes>. Only 38 municipalities received a clean audit for the period in review, a decrease from 41 municipalities in 2020/21. The report also shows that the number of unqualified audits decreased from 104 to 100, while qualified audits increased from 78 to 83.

¹²⁴ The worst local municipalities are Joe Morolong; Kheis; Kgatelopele (Northern Cape); Madibeng; Ratlou; Kgetlengrivier; Maquassi Hills; Lekwa-Teemane; Ditsobotla; Mamusa, and Naledi (North-West); Lekwa (Mpumalanga); Makana; Sundays River Valley (Eastern Cape); Merafong City (Gauteng); Kannaland (Western Cape); Maluti-a-Phofung; Nketoana and Tokologo (Free State). The worst district municipalities are Mopani (Limpopo); Amathole (Eastern Cape) and uMkhanyakude (KwaZulu-Natal).

¹²⁵ Afriforum 2021 <https://afriforum.co.za/wp-content/uploads/2021/10/Report-on-worst-and-best-performing-municipalities-ENG-GFdB.pdf>.

¹²⁶ Comparatively, the best-performing municipalities are all in the Western Cape Province. These are Witzenberg, Swartland, Mossel Bay, Drakenstein, and Swellendam municipalities.

151(4) of the Constitution, section 154 requires the national and provincial spheres to respect the autonomy of local government.

However, the allocation of service delivery in the Constitution places an undue burden on local government. Also, the national and provincial spheres of government over-supervise municipalities more than they support them.¹²⁷ The Constitution therefore needs to better promote cooperative governance. Also, interventions in the affairs of local government usually result in protracted litigation that drains the public purse and inhibits service delivery. To avoid this situation, we recommend legislative reform to impose in-depth consultation and arbitration on the spheres of government before they undertake interventions in the local government. Arbitration is speedy and less costly in the resolution of disputes.

Furthermore, in the context of a supreme Bill of Rights, everyone has a right of access to essential amenities, irrespective of whether they can afford to pay for them. This right requires the State to take reasonable legislative and other measures within all available resources. Basic amenities should be accessible to all rather than to only a few who are wealthy or influential enough to access them.¹²⁸ However, "the progressive realisation of socio-economic rights ... remains a pipe dream for many poor and vulnerable people, 23 years [now 30 years] after the collapse of apartheid."¹²⁹ This situation is significant.

Due to post World War II developments in the concept of human rights, the State is legitimate not because it is inherently so, but because the people confer it with authority by agreeing to be governed by elected leaders. This is why the preamble of the 1996 Constitution starts with the declaration "We, the people of South Africa ...". Oosthuizen points out that many young people are beginning to question the post-apartheid promises of good governance and economic development.¹³⁰ In fact some of them view the negotiated settlement that ushered in democratic governance as a "victory for white monopoly capital at the expense of the legitimate claims of the black majority."¹³¹ As is evident in the rising spate of service delivery protests, these perceptions of governance are dangerous because they question not only the efficacy of the present system of governance, but also the legitimacy of those who run it. Loss of legitimacy is a key marker of a

¹²⁷ De Visser 2019 <https://foodsecurity.ac.za/wp-content/uploads/2019/04/CoE-FS-WP5-Multilevel-Government-Municipalities-and-Food-Security-17-Apr-19.pdf> 7-11.

¹²⁸ Currie and De Waal *Bill of Rights Handbook* 564-566.

¹²⁹ Bohler-Muller *et al* 2018 *Journal of Contemporary African Studies* 143-159.

¹³⁰ Oosthuizen 2016 <https://theconversation.com/why-south-africa-cant-deliver-on-the-social-contract-set-out-in-its-constitution-69119>.

¹³¹ Oosthuizen 2016 <https://theconversation.com/why-south-africa-cant-deliver-on-the-social-contract-set-out-in-its-constitution-69119>.

failing state.¹³² To avert governance failure, therefore, service delivery must be improved in South Africa's legal and policy framework.

Bibliography

Literature

Akinboade, Kinck and Mokwena 2012 *International Journal of Social Economics*

Akinboade OA, Kinck EC and Mokwena MP "An Analysis of Citizen Satisfaction with Public Service Delivery in the Sedibeng District Municipality of South Africa" 2012 *International Journal of Social Economics* 182-199

Akinboade, Mokwena and Kinck 2013 *International Journal of Social Economics*

Akinboade OA, Mokwena MP and Kinck EC "Understanding Citizens' Participation in Service Delivery Protests in South Africa's Sedibeng District Municipality" 2013 *International Journal of Social Economics* 458-478

Alexander 2010 *Review of African Political Economy*

Alexander P "Rebellion of the Poor: South Africa's Service Delivery Protests: A Preliminary Analysis" 2010 *Review of African Political Economy* 25-40

Bekink *Principles of South African Local Government Law*

Bekink B *Principles of South African Local Government Law* (LexisNexis Butterworths Durban 2006)

Berg-Schlosser 2004 *Acta Politica*

Berg-Schlosser D "Indicators of Democracy and Good Governance as Measures of the Quality of Democracy in Africa: A Critical Appraisal" 2004 *Acta Politica* 248-278

Bilchitz 2010 *CCR*

Bilchitz D "Citizenship and Community: Exploring the Right to Receive Basic Municipal Services in *Joseph*" 2010 *CCR* 45-78

Biljohn and Lues 2020 *Int'l J Pub Admin*

Biljohn MIM and Lues L "Citizen Participation, Social Innovation, and the Governance of Local Government Service Delivery: Findings from South Africa" 2020 *Int'l J Pub Admin* 229-241

Bohler-Muller 2018 *Journal of Contemporary African Studies*

Bohler-Muller N *et al* "Life After Judgment: The *Nokotyana* Case Re-examined" 2018 *Journal of Contemporary African Studies* 143-159

¹³² Rotberg 2002 *Washington Quarterly* 83-96.

Booth 2003 *Journal of Contemporary History*

Booth D "Hitting Apartheid for Six? The Politics of the South African Sports Boycott" 2003 *Journal of Contemporary History* 477-493

Brand, Freedman and De Vos *South African Constitutional Law*

Brand D, Freedman W and De Vos P (eds) *South African Constitutional Law in Context* 2nd ed (Oxford University Press Cape Town 2015)

Brown "Accountability, Liberty, and the Constitution"

Brown RL "Accountability, Liberty, and the Constitution" in Tushnet M (ed) *Bills of Rights* (Routledge London 2017) 49-98

Chenwi 2013 *De Jure*

Chenwi L "Unpacking "Progressive Realisation", Its Relation to Resources, Minimum Core and Reasonableness and Some Methodological Consideration for Assessing Compliance" 2013 *De Jure* 744-746

Craig and Gilmour 1992 *Governance*

Craig BH and Gilmour RS "The Constitution and Accountability for Public Functions" 1992 *Governance* 46-67

Currie and De Waal *Bill of Rights Handbook*

Currie I and de Waal J *The Bill of Rights Handbook* 6th ed (Juta Cape Town 2013)

Davis *ANC's War against Apartheid*

Davis SR *The ANC's War against Apartheid: Umkhonto We Sizwe and the Liberation of South Africa* (Indiana University Press Bloomington 2018)

De Villiers 1994 *SAPL*

De Villiers B "Intergovernmental Relations: The Duty to Co-operate – a German Perspective" 1994 *SAPL* 430-437

Department of Provincial Affairs and Constitutional Development *White Paper on Local Government*

Department of Provincial Affairs and Constitutional Development *The White Paper on Local Government* (The Department Pretoria 1998)

Du Plessis 2008 *SAPL*

Du Plessis W "Legal Mechanisms for Cooperative Governance in South Africa: Successes and Failures" 2008 *SAPL* 87-110

Edwards 2008 *Politeia*

Edwards T "Cooperative Governance in South Africa, with Specific Reference to the Challenges of Intergovernmental Relations" 2008 *Politeia* 65-85

- Fraser-Moleketi 2009 *Public Policy and Administration*
Fraser-Moleketi G "Towards a Common Understanding of Corruption in Africa" 2009 *Public Policy and Administration* 331-338
- Herbst 1996 *International Security*
Herbst J "Responding to State Failure in Africa" 1996 *International Security* 120-144
- Hume "Of the Original Contract"
Hume D "Of the Original Contract" in Miller EF (ed) *Essays: Moral, Political, Literary* (Liberty Fund Indianapolis 1985) 253-264
- Imiera 2020 *De Jure*
Imiera PP "The Corruption Race in Africa: Nigeria Versus South Africa, Who Cleans the Mess First?" 2020 *De Jure* 70-89
- Joseph 2001 *Economic and Political Weekly*
Joseph S "Democratic Good Governance: New Agenda for Change" 2001 *Economic and Political Weekly* 1011-1014
- Kanyane 2014 *Africa's Public Service Delivery & Performance Review*
Kanyane M "Exploring Challenges of Municipal Service Delivery in South Africa (1994-2013)" 2014 *Africa's Public Service Delivery & Performance Review* 90-110
- Kenosi 2011 *Journal of the South African Society of Archivists*
Kenosi L "Good Governance, Service Delivery and Records: The African Tragedy" 2011 *Journal of the South African Society of Archivists* 19-25
- Klabbers 1998 *Nord J Int'l L*
Klabbers J "The Undesirability of Soft Law" 1998 *Nord J Int'l L* 381-391
- Koelble and LiPuma 2010 *Social Dynamics*
Koelble TA and LiPuma E "Institutional Obstacles to Service Delivery in South Africa" 2010 *Social Dynamics* 565-589
- Koma 2010 *Journal of Public Administration*
Koma SB "The State of Local Government in South Africa: Issues, Trends and Options" 2010 *Journal of Public Administration* 111-120
- Langa 2006 *Stell LR*
Langa JP "Transformative Constitutionalism" 2006 *Stell LR* 351-360
- Liebenberg "Interpretation of Socio-Economic Rights"
Liebenberg S "The Interpretation of Socio-Economic Rights" in Woolman S and Bishop M (eds) *Constitutional Law of South Africa* (Juta Cape Town 2006) ch 33

Makoti and Odeku 2018 *African Journal of Public Affairs*

Makoti MZ and Odeku OK "Intervention into Municipal Affairs in South Africa and Its Impact on Municipal Basic Services" 2018 *African Journal of Public Affairs* 68-85

Mathenjwa 2014 *LDD*

Mathenjwa M "Contemporary Trends in Provincial Government Supervision of Local Government in South Africa" 2014 *LDD* 178-201

Mcloughlin 2015 *Governance*

Mcloughlin C "When Does Service Delivery Improve the Legitimacy of a Fragile or Conflict Affected State?" 2015 *Governance: An International Journal of Policy, Administration and Institutions* 341-356

Moeti *et al* 2023 *International Journal of Environmental Research and Public Health*

Moeti T *et al* "Factors Affecting Access to Public Healthcare Facilities in the City of Tshwane, South Africa" 2023 *International Journal of Environmental Research and Public Health* 1-13

Mogale "Developmental Local Government"

Mogale TM "Developmental Local Government and Decentralised Service Delivery in the Democratic South Africa" in Mhone G and Edigheji O (eds) *Governance in the New South Africa* (UCT Press 2003 Lansdowne) 215-243

Mojalefa and Koenane 2018 *Africa Review*

Mojalefa L and Koenane J "The Role and Significance of Traditional Leadership in the Governance of Modern Democratic South Africa" 2018 *Africa Review* 58-71

Mubangizi 2005 *Journal of Public Administration*

Mubangizi BC "Improving Public Service Delivery in the New South Africa: Some Reflections" 2005 *Journal of Public Administration* 633-648

Naidoo 2012 *Journal of Public Administration*

Naidoo G "The Critical Need for Ethical Leadership to Curb Corruption and Promote Good Governance in the South African Public Sector" 2012 *Journal of Public Administration* 656-683

Nanda 2006 *Annals of the American Academy of Political and Social Science*

Nanda VP "The 'Good Governance' Concept Revisited" 2006 *The Annals of the American Academy of Political and Social Science* 269-283

National Planning Commission "Building a Capable and Developmental State"

National Planning Commission "Building a Capable and Developmental State" in *Our Future: Make It Work. National Development Plan, 2030* (National Planning Commission Pretoria 2011) ch 13

Ndinga-Kanga, Van der Merwe and Hartford 2020 *Journal of Intervention and Statebuilding*

Ndinga-Kanga M, Van der Merwe H and Hartford D "Forging a Resilient Social Contract in South Africa: States and Societies Sustaining Peace in the Post-Apartheid Era" 2020 *Journal of Intervention and Statebuilding* 22-41

Ntsebeza 1999 *Comparative Studies of South Asia, Africa and the Middle East*

Ntsebeza L "Democratization and Traditional Authorities in the New South Africa" 1999 *Comparative Studies of South Asia, Africa and the Middle East* 83-94

Okeng *Post-1996 Service Delivery*

Okeng EA *Post-1996 Service Delivery in South Africa: Constitutional and Social Contract Perspectives* (LLD-thesis University of the Western Cape 2022)

Palmer, Moodley and Parnell *Building a Capable State*

Palmer I, Moodley N and Parnell S *Building a Capable State: Service Delivery in Post-Apartheid South Africa* (Zed Books London 2017)

Pillay 2017 *Administratio Publica Journal*

Pillay PS "Ethics, Public Trust, and Corruption: Reflections on South African Realities" 2017 *Administratio Publica Journal* 22-39

Pillay 2004 *International Journal of Public Sector Management*

Pillay S "Corruption – the Challenge to Good Governance: A South African Perspective" 2004 *International Journal of Public Sector Management* 586-605

Rantete and Giliomee 1992 *African Affairs*

Rantete J and Giliomee H "Transition to Democracy through Transaction? Bilateral Negotiations between the ANC and NP in South Africa" 1992 *African Affairs* 515-542

Reddy 2016 *Journal for Transdisciplinary Research in Southern Africa*

Reddy PS "The Politics of Service Delivery in South Africa: The Local Government Sphere in Context" 2016 *The Journal for Transdisciplinary Research in Southern Africa* 1-8

Rousseau *Social Contract*

Rousseau J *The Social Contract* (JM Dent London 1913)

Rotberg 2002 *Washington Quarterly*

Rotberg RI "The New Nature of Nation-State Failure" 2002 *Washington Quarterly* 83-96

Royce 2010 *Post Modern Openings*

Royce M. "Philosophical Perspectives on the Social Contract Theory: Hobbes, Kant and Buchanan Revisited: A Comparison of Historical Thought Surrounding the Philosophical Consequences of the Social Contract and Modern Public Choice Theory" 2010 *Post Modern Openings* 45-62

Ruiters 2018 *Journal of Asian and African Studies*

Ruiters G "The Moving Line between State Benevolence and Control: Municipal Indigent Programmes in South Africa" 2018 *Journal of Asian and African Studies* 169-186

Seidman and Seidman *State and Law*

Seidman A and Seidman RB *State and Law in the Development Process: Problem Solving and Institutional Change in the Third World* (St Martin's Press New York 1994)

Sen *Commodities and Capabilities*

Sen A *Commodities and Capabilities* (Oxford University Press Delhi 1999)

Sen *Development as Freedom*

Sen A *Development as Freedom* (Oxford University Press Oxford 2001)

Sisk *Democratization in South Africa*

Sisk T *Democratization in South Africa: The Elusive Social Contract* (Princeton University Press Princeton 1997)

Sithole and Mathonsi 2015 *Africa's Public Service Delivery and Performance Review*

Sithole S and Mathonsi S "Local Governance Service Delivery Issues during Apartheid and Post-Apartheid South Africa" 2015 *Africa's Public Service Delivery and Performance Review* 5-30

Skyrms *Evolution of the Social Contract*

Skyrms B *Evolution of the Social Contract* (Cambridge University Press Cambridge 2014)

Southall 2019 *Annals of the American Academy of Political and Social Science*

Southall R "Polarization in South Africa: Toward Democratic Deepening or Democratic Decay?" 2019 *The Annals of the American Academy of Political and Social Science* 194-208

Taylor 2015 *Black and Gold*

Taylor BB "Second Treatise of Social Contract: A Comparative Analysis of Locke and Rousseau" 2015 *Black and Gold* 1-7

Thornhill 2008 *Journal of Public Administration*

Thornhill C "The Transformed Local Government System: Some Lessons" 2008 *Journal of Public Administration* 492-511

Waldron 1989 *Review of Politics*

Waldron J "John Locke: Social Contract Versus Political Anthropology" 1989 *The Review of Politics* 3-28

Young 2008 *Yale J Int'l L*

Young KG "The Minimum Core of Economic and Social Rights: A Concept in Search of Content" 2008 *Yale Journal of International Law* 113-174

Yung and Shapiro 1995 *Politics and Society*

Yung C and Shapiro I "South Africa's Negotiated Transition: Democracy, Opposition and the New Constitutional Order" 1995 *Politics and Society* 269-308

Case law

Mnquma Local Municipality v Premier of the Eastern Cape (231/2009) [2009] ZAECBHC 14 (5 August 2009)

Mogalakwena Local Municipality v Provincial Executive Council, Limpopo 2014 4 All SA 67 (GP)

Ngaka Modiri Molema District Municipality v Chairperson, North West Provincial Executive Council 2015 1 BCLR 72 (CC)

Nokotyana v Ekurhuleni Metropolitan Municipality 2010 4 BCLR 312 (CC)

Unemployed Peoples Movement v Premier for the Province of the Eastern Cape (553/2019) [2020] ZAECGHC 47 (21 May 2020)

Legislation

Constitution of the Republic of South Africa, 1996

Group Areas Act 41 of 1950

Intergovernmental Relations Framework Act 13 of 2005

Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986)

Local Government: Municipal Structures Act 117 of 1998

Local Government: Municipal Systems Act 32 of 2000

Native Lands Act 27 of 1913

Population Registration Act 30 of 1950

Reservation of Separate Amenities Act 49 of 1953

Traditional Leadership and Governance Framework Act 41 of 2003

Vienna Declaration and Programme of Action (1993)

International instruments

International Covenant on Economic, Social and Cultural Rights (1966)

United Nations Committee on Economic, Social and Cultural Rights, General Comment No 3: The Nature of States Parties Obligations (Article 2 Para 1 of the Covenant) UN Doc 12/14/1990 (1990)

Internet sources

Afriforum 2021 <https://afriforum.co.za/wp-content/uploads/2021/10/Report-on-worst-and-best-performing-municipalities-ENG-GFdB.pdf>

Afriforum 2021 *South Africa's Worst and Best-Performing Municipalities* <https://afriforum.co.za/wp-content/uploads/2021/10/Report-on-worst-and-best-performing-municipalities-ENG-GFdB.pdf> accessed 24 June 2023

AGSA 2022 <https://mfma-2022.agsareports.co.za/pages/audit-outcomes>
Auditor-General of South Africa 2022 *State of Local Government: Audit Outcomes* <https://mfma-2022.agsareports.co.za/pages/audit-outcomes> accessed 23 March 2024

Cloutier 2021 <https://openknowledge.worldbank.org/server/api/core/bitstreams/26a90318-dbe9-5752-9113-b243dc4eef18/content>

Cloutier M 2021 *Social Contracts in Sub-Saharan Africa: Concepts and Measurements. World Bank Policy Research Working Paper 9788* <https://openknowledge.worldbank.org/server/api/core/bitstreams/26a90318-dbe9-5752-9113-b243dc4eef18/content> accessed 23 March 2024

Cloutier *et al* 2021 <http://hdl.handle.net/10986/36777>

Cloutier M *et al* 2021 *Social Contracts for Development: Bargaining, Contention, and Social Inclusion in Sub-Saharan Africa* <http://hdl.handle.net/10986/36777> accessed 29 June 2023

De Visser 2019 <https://foodsecurity.ac.za/wp-content/uploads/2019/04/CoE-FS-WP5-Multilevel-Government-Municipalities-and-Food-Security-17-Apr-19.pdf>

De Visser J 2019 *Multilevel Government, Municipalities and Food Security* <https://foodsecurity.ac.za/wp-content/uploads/2019/04/CoE-FS-WP5-Multilevel-Government-Municipalities-and-Food-Security-17-Apr-19.pdf> accessed 23 March 2024

Diala 2022 <https://theconversation.com/what-the-zulu-kingship-judgment-tells-us-about-the-future-of-south-african-customary-law-178786>

Diala AC 2022 *What the Zulu Kingship Judgment Tells Us about the Future of South African Customary Law* <https://theconversation.com/what-the-zulu-kingship-judgment-tells-us-about-the-future-of-south-african-customary-law-178786> accessed 29 June 2023

Grootes 2022 <https://www.dailymaverick.co.za/article/2022-06-12-the-nationwide-failure-of-south-african-democracy/>

Grootes S 2022 *The Nationwide Failure of South African Democracy* <https://www.dailymaverick.co.za/article/2022-06-12-the-nationwide-failure-of-south-african-democracy/> accessed 11 October 2022

Hirsch 2015 <https://theconversation.com/how-compromises-and-mistakes-made-in-the-mandela-era-hobbled-south-africas-economy-52156>

Hirsch A 2015 *How Compromises and Mistakes Made in the Mandela Era Hobbled South Africa's Economy* <https://theconversation.com/how-compromises-and-mistakes-made-in-the-mandela-era-hobbled-south-africas-economy-52156> accessed 21 October 2022

Maphaka 2023 <https://www.iol.co.za/dailynews/opinion/the-state-of-south-africas-public-health-facilities-36a1f367-0ee2-4c79-b7da-c501ad82d4f0>

Maphaka D 2023 *The State of South Africa's Public Health Facilities* <https://www.iol.co.za/dailynews/opinion/the-state-of-south-africas-public-health-facilities-36a1f367-0ee2-4c79-b7da-c501ad82d4f0> accessed 24 June 2023

Moosa and Hofmeyr 2021 https://www.afrobarometer.org/wp-content/uploads/2022/02/ad474-south_africans_trust_in_institutions_reaches_new_low-afrobarometer-20aug21.pdf

Moosa M and Hofmeyr J 2021 *South Africans' Trust in Institutions and Representatives Reaches New Low. Afrobarometer Dispatch No 474* https://www.afrobarometer.org/wp-content/uploads/2022/02/ad474-south_africans_trust_in_institutions_reaches_new_low-afrobarometer-20aug21.pdf accessed 23 March 2024

Nkomo 2017 https://www.afrobarometer.org/wp-content/uploads/2022/02/ab_policypaperno42_local_service_delivery_in_southafrica.pdf

Nkomo S 2017 *Public Service Delivery in South Africa: Councillors and Citizens Critical Links in Overcoming Persistent Inequities. Afrobarometer Policy Paper No 42* https://www.afrobarometer.org/wp-content/uploads/2022/02/ab_policypaperno42_local_service_delivery_in_southafrica.pdf accessed 23 March 2024

Oosthuizen 2016 <https://theconversation.com/why-south-africa-cant-deliver-on-the-social-contract-set-out-in-its-constitution-69119>

Oosthuizen M 2016 *Why South Africa Can't Deliver on the Social Contract Set Out in Its Constitution* <https://theconversation.com/why-south-africa-cant-deliver-on-the-social-contract-set-out-in-its-constitution-69119> accessed 19 October 2022

Republic of South Africa 2013 <https://www.gov.za/documents/other/public-service-charter-04-sep-2013>

Republic of South Africa 2013 *Service Charter. Public Service Coordinating Bargaining Council Resolution 1 of 2013* <https://www.gov.za/documents/other/public-service-charter-04-sep-2013> accessed 25 March 2024

United Nations Economic and Social Commission for Asia and the Pacific 2006 <http://www.unescap.org/huset/gg/governance.htm>

United Nations Economic and Social Commission for Asia and the Pacific 2006 *What is Good Governance?* <http://www.unescap.org/huset/gg/governance.htm> accessed 12 October 2022

List of Abbreviations

AGSA	Auditor-General of South Africa
ANC	African National Congress
CCR	Constitutional Court Review
Int'l J Pub Admin	International Journal of Public Administration
LDD	Law, Democracy and Development
Nord J Int'l L	Nordic Journal of International Law
PAC	Pan African Congress
SAPL	Southern African Public Law
Stell LR	Stellenbosch Law Review
TLGFA	Traditional Leadership and Governance Framework Act 41 of 2003
Yale J Int'l L	Yale Journal of International Law