NON-STATE PROVIDERS OF BASIC SERVICES

Commissioned by Policy Division,
Department for International Development (DFID), UK

COUNTRY STUDIES

South Africa: Study of Non-State Providers of Basic Services

By

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# CONTENTS

**LIST OF ABBREVIATIONS**........................................................................................................ 5

**ACKNOWLEDGEMENTS**........................................................................................................... 7

**MAIN REPORT ON NON-STATE PROVIDERS IN SOUTH AFRICA**................................. 8

1  PURPOSE OF STUDY .................................................................................................................. 8

2  THE POLICY ENVIRONMENT FOR GOVERNMENT'S RELATIONSHIP WITH NON-STATE PROVIDERS ........................................................................................................... 9

3  LOCATING THE CASE STUDIES ............................................................................................. 10

4  POLICY DIALOGUE .................................................................................................................. 12

5  REGULATION .............................................................................................................................. 15

6  AGREEMENTS AND CONTRACTING FOR SERVICE DELIVERY ........................................ 20

7  FACILITATION OF NON-STATE PROVIDERS BY GOVERNMENT .................................... 28

8  GENERAL CONCLUSIONS ....................................................................................................... 30

**REFERENCES**.......................................................................................................................... 32
ANNEX THREE: NON-STATE PROVISION OF WATER AND SANITATION IN SOUTH AFRICA ................................................................. 83

1 INTRODUCTION ....................................................................................................................................................... 83

2 THE POLICY FRAMEWORK .......................................................................................................................... 84
  2.1 Wall-to-wall municipal government .............................................................................................................. 84
  2.2 The political logic for state delivery ............................................................................................................... 85
  2.3 Public private partnerships ............................................................................................................................. 86
  2.4 Strategic Framework for Water Services ....................................................................................................... 87
  2.5 Policy dialogue .................................................................................................................................................. 88
  2.6 NSPs in the water and sanitation sector of South Africa ............................................................................... 89
  2.7 A changing environment for the role of NSPs in service delivery ............................................................... 90
  2.8 Masibambane Water Services Sector Support Programme ........................................................................ 93
  2.9 NGOs versus private companies ................................................................................................................... 94

3 INTERVENTIONS .................................................................................................................................................. 96
  3.1 Case Study 1: Free basic services .................................................................................................................. 96
  3.2 Case Study 2: CBOs recognised as WSPs - Alfred Nzo District Municipality .............................................. 97
  3.3 Case Study 3: public-private-partnership - Dolphin Coast ........................................................................ 100

4 ANALYSIS ............................................................................................................................................................. 102
  4.1 Policy and legislation ...................................................................................................................................... 102
  4.2 Standards ......................................................................................................................................................... 102
  4.3 Regulation ......................................................................................................................................................... 102
  4.4 Commissioning service delivery through NSPs .......................................................................................... 102
  4.5 Disincentives for CBOs: addressing the Strategic Framework ................................................................. 103
  4.6 Impact of FWS/FBW ...................................................................................................................................... 104
  4.7 Performance and capacity .............................................................................................................................. 105

5 CONCLUSIONS .................................................................................................................................................. 108

6 IMPLICATIONS ................................................................................................................................................... 109

7 RECOMMENDATIONS ........................................................................................................................................ 110

REFERENCES AND BIBLIOGRAPHY .......................................................................................................................... 112

SUB APPENDIX A: PEOPLE CONSULTED IN COURSE OF DEVELOPING CASE STUDY REPORT ............................................... 115

SUB APPENDIX B – AN “INVITATION” TO POLICY DIALOGUE ...................................................................................... 116
**LIST OF ABBREVIATIONS**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
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<tbody>
<tr>
<td>ABIS</td>
<td>Alliance of Black Independent Schools</td>
</tr>
<tr>
<td>ABET</td>
<td>Adult Basic Education and Training</td>
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<tr>
<td>ABETI</td>
<td>Adult Basic Education and Training Institute</td>
</tr>
<tr>
<td>CBOs</td>
<td>Community Based Organisations</td>
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<tr>
<td>CDE</td>
<td>Centre for Development Enterprise</td>
</tr>
<tr>
<td>CIE</td>
<td>Catholic Institute of Education</td>
</tr>
<tr>
<td>COSATU</td>
<td>Congress of South African Trade Unions</td>
</tr>
<tr>
<td>ECD</td>
<td>Early Childhood Development</td>
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<tr>
<td>DFID</td>
<td>Department for International Development</td>
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<tr>
<td>DPLG</td>
<td>Department of Provincial and Local Government</td>
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<tr>
<td>DWAF</td>
<td>Department of Water Affairs and Forestry</td>
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<tr>
<td>ECD</td>
<td>Early Childhood Development</td>
</tr>
<tr>
<td>FBW</td>
<td>Free Basic Water</td>
</tr>
<tr>
<td>GDE</td>
<td>Gauteng Department of Education</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>GJLC</td>
<td>Gauteng Joint Liaison Committee</td>
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<tr>
<td>HBC</td>
<td>Home-Based Care</td>
</tr>
<tr>
<td>HPCSA</td>
<td>Health Professions Council of South Africa</td>
</tr>
<tr>
<td>HSRC</td>
<td>Human Sciences Research Council</td>
</tr>
<tr>
<td>ISASA</td>
<td>Independent Schools Association of Southern Africa</td>
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<tr>
<td>MEC</td>
<td>Member of the Executive Council</td>
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<tr>
<td>MCC</td>
<td>Medicines Control Council</td>
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<tr>
<td>MSA</td>
<td>Muslim Schools' Association</td>
</tr>
<tr>
<td>NAISA</td>
<td>National Alliance of Independent School Associations of Southern Africa</td>
</tr>
<tr>
<td>NDA</td>
<td>National Development Agency</td>
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<tr>
<td>NGOs</td>
<td>Non-Governmental Organisations</td>
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<td>NPOs</td>
<td>Non-profit Organisations</td>
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<tr>
<td>NSP</td>
<td>Non-state provider</td>
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<tr>
<td>PBO</td>
<td>Public Benefit Organisation</td>
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<tr>
<td>PDS</td>
<td>Part-Time District Surgeon</td>
</tr>
<tr>
<td>PL</td>
<td>Project Literacy</td>
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<tr>
<td>RDP</td>
<td>Reconstruction and Development Programme</td>
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<tr>
<td>SACE</td>
<td>South African Council of Educators</td>
</tr>
<tr>
<td>SACED</td>
<td>South African Congress for Early Childhood Development</td>
</tr>
<tr>
<td>SAIDE</td>
<td>South African Institute for Distance Education</td>
</tr>
<tr>
<td>SALGA</td>
<td>South African Local Government Association</td>
</tr>
<tr>
<td>SANLI</td>
<td>South African National Literacy Initiative</td>
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<tr>
<td>SAPC</td>
<td>Pharmacy Council of South Africa</td>
</tr>
<tr>
<td>SARS</td>
<td>South African Revenue Services</td>
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<tr>
<td>SETA</td>
<td>Sector Education and Training Authority</td>
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<tr>
<td>SSA</td>
<td>Support Services Agent</td>
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<tr>
<td>UNISA</td>
<td>University of South Africa</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>VDC</td>
<td>Village Development Committee</td>
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<tr>
<td>VLAP</td>
<td>Village Level Action Plan</td>
</tr>
<tr>
<td>VWC</td>
<td>Village Water Committee</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>WEDC</td>
<td>Water, Engineering and Development Centre</td>
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<tr>
<td>WSA</td>
<td>Water Services Authority</td>
</tr>
<tr>
<td>WSP</td>
<td>Water Services Provider</td>
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<tr>
<td>WSSLG</td>
<td>Water Services Sector Leadership Group</td>
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</table>
ACKNOWLEDGEMENTS

This study involved the cooperation of a large number of respondents across the state and non-state sectors to whom we are grateful. Detailed acknowledgements are contained in each of the sector studies.
1 PURPOSE OF STUDY

1. The underlying premise of this study of South Africa and five other countries is that poor people get many of their basic health, education, water and sanitation services from non-state providers. DFID, the sponsor of the studies, is concerned to know how governments may work with the non-state sector so as to increase the latter's incentive to offer quality services to the poor. We are asked to analyse what makes selected government 'interventions' succeed or fail, and how donors may support effective government engagement. The primary purpose of each country study is to provide sufficient evidence to allow the researchers to draw up guidelines on working with the non-state providers that matter most to the poor, while recognizing the need for different strategies in different contexts.

2. The team of researchers, based in the UK and South Africa, was asked to identify and describe a few selected cases of government (or civil society organizations in place of government) intervention to support the delivery of services by non-state providers (NSP) in three service sub-sectors: primary education, primary healthcare and drinking water supply/urban sanitation. These cases are intended to be illustrative of the use of different instruments of intervention; they are not intended to be comprehensive studies of non-state provision in the three sectors. They could cover any for-profit or not-for-profit provider, but DFID asked us to give special attention to the smaller and more informal types.

3. The sector studies that are the basis of this report are annexed. They adopted a common approach to (i) selecting examples of intervention and describing their background and context, (ii) describing the intervention and analysing its performance, and (iii) explaining performance in terms of the interests, institutional and organizational constraints and opportunities affecting the intervention. The studies focused on three broad forms of government (or civil society) intervention or action:

   i. Dialogue between state and non-state actors in deciding and reviewing policy and legislation about standards, regulatory and support systems, alternative service arrangements, roles, co-ordination and forms of collaboration

   ii. The implementation of interventions to
     (a) regulate non-state providers by government and independent bodies by formal regulation, oversight
     (b) hold non-state providers accountable to clients

   iii. The implementation of interventions to
     (a) commission service delivery
     (b) facilitate or support non-state providers.
2 THE POLICY ENVIRONMENT FOR GOVERNMENT’S RELATIONSHIP WITH NON-STATE PROVIDERS

4. The recent history of South Africa has provided a particular context for non-state provision. During the apartheid era state provision to the poor was heavily influenced by the overall state policies and NGOs with a mandate to address the needs of black South Africans found themselves with a special role. International donors favoured supporting this non-state provision rather than working through the state apparatus. Following the new regime this donor support has tended to switch back to working with government but donor support has been limited as South Africa’s economic success has made it a low priority for many donors.

5. The government itself formally welcomes non-state involvement but tends to view state provision of public services as the norm. There has been some general movement with respect to public-private partnerships where the private partner is a for-profit organisation but this push tends to exclude (perhaps by default rather than by design) not-for-profit bodies. This push in favour of private provision is most notable as originating in the Treasury where the Minister of Finance has spoken out in favour of privatisation. However observers note that, despite this central push, the scope of actual public-private partnership in South Africa appears limited (see the health section of this report). In some cases there appears to be a slightly hostile approach by public sector actors towards for-profit provision with the motives of such providers viewed with suspicion.

6. On the other hand a number of specific policy and legislative arrangements give particular support to non-state provision in particular activities. Thus in education the South African Schools Act (1996) enshrines the rights of non-state providers and in healthcare a small number of not-for-profit hospital providers (voluntary aided hospitals) are incorporated into the public provider system.

7. The apartheid era saw NGOs as potentially a threat to the state and therefore something in need of control. Concern to move away from this relationship has seen the state anxious to promote only a “light touch” form of overall regulation of the NGO sector with minimal procedural checks on NGOs rather than detailed oversight of their activities.

8. A number of other broad factors influence the scope and pattern of non-state provision. There is a relatively capable central government although capacity limitations are present particularly at the implementing level and particularly at decentralised levels such as provinces¹. An effective legal system means that control through the law is plausible. There is an extensive network of municipal government. Compared to other countries in the study, South Africa does not depend on aid funds and donors’ ability to influence policy is therefore limited. The state possesses a strong popular mandate expressed through democratic elections and this legitimates to some degree neglecting the preferences of non-state bodies in favour of its own perception of appropriate policies. Since the end of apartheid, the overall political climate has been stable allowing the basis in principle for stable partnership arrangements between the state and other actors. However policies in detail have evolved with, for example, a growing emphasis on efficiency and basic service coverage, which may in some ways act against the interest of non-state providers.

¹ See Bloch et al (2000) for study of how capacity building remains a priority.
9. The non-state sector is large. The Johns Hopkins comparative study included South Africa (Swilling and Russell, 2002) and puts the size of the sector as a R9.3 billion industry employing some 645,000 full-time equivalent workers in some 93,000 organisations.

10. Service provision in the sectors under consideration here is relatively good whilst still exhibiting significant problems. In healthcare a fundamental problem is equity with over 50% of healthcare expenditure spent in the private for-profit sector, which serves less than a fifth of the population. The public sector budget also appears poorly distributed spatially between provinces. The level of HIV AIDS faced is amongst the highest in the world (26.5% amongst pregnant women in 2003).

11. In education non-state provision of primary education itself is limited with around 3.2% of total enrolments being in independent schools of which less than half are at the primary stage. These independent schools are concentrated in a limited number of provinces. The limited role of non-state providers in direct primary school provision has meant that this study has looked at Early Childhood Development and at Adult Basic Education and Literacy as well as at non-state support roles in the state sector.

12. In water the key emphasis has been on the expansion of free basic services to all of the population. The policy shifts accompanying this have had a significant effect on the pattern of non-state involvement in the sector.

3 LOCATING THE CASE STUDIES

13. The case studies were chosen to illustrate broad themes of the role of the non-state sector in South Africa and interesting examples of innovative practice drawing on the team members' knowledge of the field. Geographic and time limitations meant that choice was to some extent restricted to what could be covered in a province and for health and education the team based itself in Pretoria and Johannesburg whilst for water and sanitation, cases were drawn from Durban.

14. The cases chosen emphasised areas where there was a poverty orientation in the service provided. Thus we do not cover the extensive for-profit hospital sector or the expensive independent schools aimed at the children of the elite. We were also asked to focus on smaller scale provision and have thus emphasised community level operations in activities such as water rather than large-scale commercial operations.

15. In education the nature of the sector has meant that we examine the role of non-state actors in three key types of service provision rather than focus on individual narrow interventions. The case studies then look at a range of government roles in respect of those services.

16. On water and sanitation the role of non-state providers has been strongly influenced by the adoption of municipalities as water service providers, in some cases reducing a role that had formerly been partly filled by NSPs. Thus in addition to the two conventional cases described we of non-state involvement as provider we examine how the role of NSPs in basic free service provision has declined.
17. In healthcare we emphasise cases where the state has entered into contracts with non-state providers and a classic case of state regulation of non-state provision. In this sector interesting examples of policy dialogue were limited.

<table>
<thead>
<tr>
<th>Function examined</th>
<th>NSP organization</th>
<th>Type of organization</th>
<th>Relationship with government</th>
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<tbody>
<tr>
<td><strong>Education</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Primary education provision</td>
<td>ISASA/CIE/MS A/ABIS/READ</td>
<td>Umbrella and support bodies Provider NGOs</td>
<td>Policy dialogue</td>
</tr>
<tr>
<td></td>
<td>Individual schools</td>
<td></td>
<td>State subsidy and regulation</td>
</tr>
<tr>
<td>Early Childhood Development</td>
<td>SACECD Providers</td>
<td>Umbrella body</td>
<td>Policy dialogue</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Variety</td>
<td>Regulation and some state subsidy</td>
</tr>
<tr>
<td>Adult Basic Education and Training</td>
<td>ABETI, Project Literacy</td>
<td>University-based NGO</td>
<td>Contractor</td>
</tr>
<tr>
<td><strong>Water and sanitation</strong></td>
<td></td>
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<tr>
<td>CBOS as Water Service Providers in Alfred Nzo</td>
<td>CBO-WSP Support Services Agent</td>
<td>Village based water-provider Private company</td>
<td>Regulation and enabling Contractor to support WSP</td>
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<tr>
<td>Public-Private partnership: Dolphin Coast</td>
<td>Siza Water Company</td>
<td>Subsidiary of international for-profit company</td>
<td>Regulation and concessionaire</td>
</tr>
<tr>
<td><strong>Health</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Primary healthcare provision by private GPs</td>
<td>Individual GPs</td>
<td>Individual</td>
<td>Contractor</td>
</tr>
<tr>
<td>Dispensing</td>
<td>Private pharmacies/dispensing doctors</td>
<td>Individuals small enterprises</td>
<td>Regulation</td>
</tr>
<tr>
<td>Home-based care services</td>
<td>Range of individual providers</td>
<td>NGOs and CBOs</td>
<td>Regulation and financial support</td>
</tr>
</tbody>
</table>

Table 1: Cases Studied in South Africa
4 POLICY DIALOGUE

18. There is a degree of ambiguity about the term policy dialogue. It can refer to dialogue about provision in the sector as a whole whether by state or non-state providers or it could be a dialogue about only part of that. NGOs and other non-state bodies that see themselves as lobbyists may be more interested in influencing state provision whilst the state may see dialogue as an extension to regulation and facilitation of non-state provision. Clearly an integrated approach in which all forms of provision are considered a holistic approach has attractions but this raises the question of whether non-state actors can simultaneously be providers of services and lobbyists for changes in state provision (or lobbyists for changes in the state’s relationship with non-state providers)

19. The size of the country, and the relatively large number of small providers means that in practice much dialogue is conducted through representative fora and draws on “umbrella bodies” that represent non-state provider interests.

20. In water there has been extensive consultation over policy issues in delivery of water and sanitation services as illustrated below.

21. It is difficult to determine whether the substantial policy dialogue in the field involving non-state bodies is a reflection of an underlying policy which recognised the role of state of community bodies or whether the causality was the opposite and the acceptance of a non-state role came first and caused the state to seek participation and consultation amongst non-state stakeholders. It is notable however that in this sector such non-state involvement occurred at a time when responsibility for service delivery was markedly shifting to the state sector in the form of local government. This would suggest that non-state participation in service provision will not necessarily result from participation and that other factors, such as in South Africa a concern for cost-effective provision of basic services, may outweigh interest in non-state provision.

22. Water does appear to have a relatively well-established set of permanent or semi-permanent fora for dialogue. This contrasts with education where policy dialogue appears to be a more ad hoc procedure with weak infrastructure and limited follow-through of issues arising.

23. In education clear dilemmas arose for non-state providers over engaging on policy dialogue. The major umbrella bodies considered in the case of primary education provision are umbrella bodies representing independent schools of various types. They receive state financial subsidy and this was seen by some as inhibiting critical interventions in policy dialogue.

24. The potential inhibition that state financing can have on providers in the policy dialogue arena is well-illustrated by the exceptional case of ISASA (the Independent Schools Association of South Africa) which represents largely higher-cost elite schools which mostly do not depend on the state subsidy. They are thus more confident that they can influence policy without suffering penalties although even they have taken a deliberate stand not to criticise government policy. This may reflect in part a primary concern with protecting the independence and autonomy of their own members rather than broader concerns with educational outcomes for all.
Policy Dialogue Bodies in Water and Sanitation

- **Water Services Sector Leadership Group (WSSLG):** This is a forum of officials, invited practitioners and researchers who receive reports from DWAF, debate policy, review implementation, and propose alternatives. Individual participants in the WSSLG have had an important role in the production of the Strategic Framework. Meetings are, at times, held away from Pretoria to allow more informal discussion and inter-personal exchange between officials and practitioners. As responsibility for implementation is passing over to DPLG the WSSLG may lose some of its raison d'être, but reports from the DPLG have often lead to invitations to debate their rapidly growing responsibility. Key debates within the WSSLG have been the provision of free basic water, issues relating to the backlog, and questions of the relationship of civil society and local government.

- **Masibambane:** Although Masibambane is basically an instrument of delivery bringing together donors, DWAF, municipalities, and some individual practitioners; it also can serve as a forum for receiving reports on implementation. The policy issues which the EU have insisted on in providing funding have (in addition to existing government policy) been gender mainstreaming and an emphasis on the development of civil society. In the context of ‘municipal-driven’ policy, there have often been lively debates at regional forums of Masibambane on these two issues which are not necessarily priorities within municipalities.

- **National Water Advisory Council:** This body is appointed by the Minister and includes such academics as Chris Buckley of the University of Natal who heads the Pollution Research Group, and participates in the UN Environment Program (UNEP) Regional Industrial Report (Africa) for WSSD. It appears to have a role primarily in terms of the establishment of engineering standards in the sector and in scientific concerns.

- **Water Forums:** Towards the conclusion of Ronnie Kasrils’ period of office a national water forum was established and two meetings held together with representatives of civil society. These groupings included the Anti-Privatization Forum, SANCO (National Civic Organisation), and local civil groups, which gathered under the umbrella of the SA Water Caucus (SAWC).

25. The extent to which this problem is real or imagined is hard to judge. Clearly some education non-state providers we met felt this to be a real problem. This perhaps reflects a weakness in government with sensitivity over criticism generally and a concern that some subjects (such as levels of adult literacy) should not be too widely broadcast.

26. Education also illustrates the problems of multiple small providers lacking a single common voice. Whilst umbrella bodies have emerged they sometimes have conflicting priorities between each other and are sometimes beset by internal conflicts. This limits the clarity and impact of their voice with government.
Conflicts between provision and dialogue in Education

Most of the non-state providers were concerned with issues of survival, except for ISASA which was confident of its future. This means that contentious advocacy was seen as something that was potentially dangerous and a diversion of scarce resources. Criticising the state could result in withdrawal of support or other pressures.

Thus, the Alliance of Black Independent Schools (ABIS) felt that because they had been challenging the state on a number of policy and implementation issues (e.g., on the subsidy norm that requires that schools should get 50 percent matriculation pass rate to qualify, on the calculation of subsidies which the Alliance argued was calculated to their disadvantage), their members had been deliberately harassed by state officials.

The harassment allegedly could include constant visits to those who are considered trouble-some, and deliberate delays and under payment of subsidies. The Muslim Schools Association confirmed similar experiences. Both organisations had largely abandoned their advocacy role. The ABIS in particular felt that some members of local government are bent on eradicating private schools for ideological reasons.

27. In healthcare the centrality of state provision and of for-profit private healthcare for the better-off has meant that policy dialogue on overall issues of policy is patchy with non-state involvement often focussing more on negotiating state regulation and contracting rather than affecting broader state policy. For example, in the pharmacy case study, umbrella bodies such as the Pharmacy Association of South Africa and the South African Medical Association (whose members include dispensing doctors) work with the state regulators to set the overall regulatory framework for this service. Recently attempts to change this have emerged with broader based for a at national and more local levels but these are as yet in their infancy.

28. Similarly in education much of the policy dialogue revolves not around broader issues of education policy but around the specific interests of the non-state providers such as the criteria for the receipt of state subsidies.

Conclusion

29. Policy dialogue, whilst displaying some positive lessons, most notably in water and sanitation, displays many problems. Where a state feels it is the natural provider of services and non-state providers are weak or disorganised or dependent on the state for resources, then policy dialogue is likely to be limited and often to focus on the particular provision of the non-state sector rather than broader concerns.

30. It is hard not to conclude that it is difficult to combine the role of provider with that of lobbyist. This presents difficult problems for those who wish to see a strong lobbying role from outside government. Providers possess knowledge from their delivery role which may well benefit broader provision. For example READ is an NGO that develops innovative programmes in education using largely non-state financing but where application within the state sector might well be beneficial. However READ appears to have limited voice to influence such extension of its acquired expertise to the state sector.
31. More fundamentally policy dialogue can be seen as a type of public good in economic terms where the benefits of improved policy flow to all. Economic analysis demonstrates that public goods are difficult to finance because of a collective action problem with free-riders not paying. The standard solution to the collective action problem is for government provision but in this case the public good concerned is itself the improvement of government policy so government will struggle fund the provision itself and any resulting institutions can easily become “stooge” bodies giving only the mildest of criticism. A second conventional solution is that providers of collective benefits finance that side of their work through charging for other services. (Thus trade unions’ collective benefits are often partly financed from fees for providing private membership benefits such as insurance or legal protection for example.) The education cases in particular suggest that conflicts of interest will arise here with the non-state providers to a degree becoming captured, or at least neutralised, in respect of a critical stance on policy dialogue by the threat of removal of government financing of their provision activities.

32. Thus providers may themselves be poorly placed to take part in policy dialogue in the broad sense despite their information advantages. In healthcare the resolution of this is for representative provider bodies to act as professional bodies. This gives them a legitimate role in detailed policy issues at a technical level and aligns them with government bodies in regulation (see below) but accepts that they will have a reduced role in broader policy concerns. This resolution leaves open the question however of who will engage in policy dialogue outside of political parties and how they can be financed. In the short term, one lesson for government itself is to be more open to constructive criticism from the non-state sector but this is more easily advocated than achieved.

33. From the government’s perspective, its confidence in its popular mandate and a (not unusual) sensitivity to criticism mean that it is not especially keen on critical and publicly aired policy dialogue. Unlike some developing countries, pressure form donors to undertake participatory processes is reduced and thus policy dialogue has tended to be fragile and ad hoc and to have focused more on non-state provision than on the total picture of service provision including state provision.

5 REGULATION

34. Overall regulation of non-state providers is limited in South Africa with the government making a conscious effort to move away from what it saw as the use of registration of NGOs as a controlling device under apartheid. Thus there is a “light touch” registration process for NGOs with minimal requirements about the submission of accounts etc.

35. The effectiveness of regulation needs to be considered against the background of the harm which non-regulation might permit or, alternatively, the good which regulation is supposed to promote. In this respect there is considerable difference between the cases surveyed.

36. In education regulation of schools is closely tied to the subsidy system with rules for the payment of subsidies to independent schools which require a number of features to be present including the achievement of a minimum standard on matriculation\(^2\), standards for

\(^2\) Strictly this affects secondary schools but its impact extends to primary education through the existence of combined or full-range schools.
management (such as keeping proper records and being able to manage school finances) and, interestingly, a non-competition requirement. The latter requires an independent school obtain a letter from neighbouring state schools that state school enrolment will not be under-

37. Each of these regulatory requirements is questionable. The matriculation requirement has some promise in that it does relate regulation to outputs (rather than, for example inputs such as teacher numbers). However this particular measure of performance is especially difficult in terms of its impact on equity and overall performance of the system. Schools which are least likely to meet this standard in terms of the background of their students are denied state subsidy thus perpetuating a system of inequity. A measure which related to the value-added by the school taking into account the background and prior achievement of its pupils might be more desirable but these are notoriously difficult to construct.

38. The standards for management seem more reasonable and there appears to be some variation between provinces in how these management issues are interpreted. Provincial staff justify them on the grounds of accountability. Inclusion of them however raises the question of how non-state provision is viewed. On the whole, the impression remains that non-state provision is seen as exceptional and that, where it exists, it must be controlled rather than encouraged or supported. Broader issues of regulation through inspection etc appear limited by capacity problems in provincial administrations.

39. Regulation did not seem to take account of some special features of the non-state sector. For example the registration of educators does not recognise educators trained by religious groups despite the fact that their training appears of similar quality to the standard state qualification.

40. The non-competition requirement reinforces the notion that non-state education is seen as an exception to be, at best, tolerated. The requirement does not seem to be applied so closely in the case of elite schools and means that a poor performing state school cannot easily be exposed to competition over recruitm ent of pupils where this might threaten its own financial viability. It is this condition which most closely questions the validity of the approach to education with the supposed harm of non-regulation turning out to be a threat to the continuity of state facilities.

41. Generally regulation appeared to be somewhat ahead of reality on the ground. This problem may not be restricted to non-state provision but could perhaps cause the non-state sector greater problems. In Early Childhood Development there is extensive guidance although this does not all appear to be binding in law. The guidance prescribes recommended ratios of learner to educator for example and seem to be set at levels which are affordable in the high-fee-paying affluent sector of the community but unrealistic in the context of community based provision. This regulation thus appears to default to a high level of service which, whilst desirable, may not support pro-poor provision. More generally regulation did not appear to do anything positively to promote pro-poor initiatives.

42. It is clear what dangers poor education, in its own right, might create and hence a role of controlling or regulating the provision of education is clearly entirely justified. In South Africa where state education at primary level is the norm (whilst not being universal) the state has developed a system of control for its own schools which is well-intentioned but hampered by issues of capacity. The switch from control of state schools to regulation of non-state schools however seems uncertain with the underlying harm of poor schooling not made
explicit. Instead of concentrating on extending standard systems of inspection etc into the non-state sector (or ensuring that the equivalent is achieved say through self-regulation) the state seems at times to view non-state provision itself as the harm to be limited by restrictions on funding support. The promotion of state education as an innovative alternative to the state, as a filler of gaps left by the state or as a desirable competitive pressure on the state seems absent.

43. Just as in education the capacity to undertake detailed regulation of service delivery (through inspection for example) is limited, the same appears true in water. The regulatory position is complicated by the changes in water service provision but the municipality is a key point of regulation of individual water service providers. The case of the Dolphin Coast concession appears to demonstrate real problems in controlling the concessionaire.

**Regulating a Water Concessionaire: The Dolphin Coast**

Regulation of the Dolphin Coast concession has been weak, particularly in relation to changing tariff structures and the high tariff increases since the start of the concession. While the municipality appears to hold significant powers within the concession, in practice this has not had a significant impact. Factors influencing this are considered to be:

- The lack of transparency surrounding reports and audits;
- The ineffective nature of the council’s Water Committee;
- An extensive re-organisation of the Borough of Dolphin Coast, with subsequent reallocation of officials; and
- A general sense of disempowerment amongst the councillors.

The relative weakness of local government and civil society in comparison to Siza Water is a key problem in ensuring regulation of the services. Capacity needs to be addressed and support provided to the municipality at appropriate levels. This is particularly necessary to ensure equitable services to the poor and that options for affordable tariff structures are considered.

44. Regulation of a for-profit provider has a clear economic rationale in the case of a natural monopoly like water where charging above the socially optimal price or under provision (in quantity and quality) are real threats. The Dolphin Coast case suggests two broad problems in the implementation of this concern – an overall capacity weakness in the local government and an imbalance of power and capacity between a weak small public sector body and a subsidiary of a large international for-profit company.

45. Above the municipalities in the water sector lies the Department of Water and Affairs and Forestry (DWAF). This is the lead regulator nationally but its regulatory impact is directly on municipalities as water service providers rather than on the non-state providers who are regulated in turn by the municipality. This perhaps raises questions about the appropriate location of detailed control where for-profit providers exist.

46. **Self regulation** may be an alternative to state regulation. In education ISASA has led the way in developing its own internal quality control system which is an interesting example of how providers’ interests in maintaining their own reputation or “brand” can be an alternative to externally imposed state regulation. In water the Mvula Trust developed over
years of working with communities a system of self regulation which emphasised retaining 
an appropriate role for the community. The emergence of for-profit contractors undertaking 
these roles seems to have been accompanied by a reduction in this form of self-regulation 
as contractors respond more narrowly to the controls of the contract.

47. In healthcare the pharmacy case represents a fairly sophisticated form of government 
regulation with two bodies set up as state regulatory bodies.

48. The rationale for regulation of the pharmacy sector is clear. Information asymmetry 
between users and providers means that consumers can receive poor advice or be sold 
inferior quality medicines. This intervention limits who can prescribe and allies classic direct 
state regulation with a partnership with a professional style of self-regulation. This 
intervention is generally regarded as successful with South Africa exhibiting low levels of 
informal drugs selling and no major cases f death arising from the sale of unsafe or illegal 
drugs. 

49. The success of this intervention seems attributable to a number of factors. Key 
stakeholders all support the general approach. This in part reflects self-interest of those who 
are organised. Formal, qualified pharmacists and dispensing doctors are keen on limiting 
the activities of informal providers for self-interested as well as altruistic reasons. Consumer 
bodies and medical insurers (as major purchasers at least indirectly of drugs) all support a 
regulated system. The general public support for the approach (or at least the absence of 
explicit opposition) in part perhaps derives from th long-established nature of the 
intervention – this is an intervention that isn’t “broke” and there are few calls to “fix it”.

50. Unlike some other cases reviewed here, this is an intervention that has its own 
dedicated regulatory body and funding that appears adequate. In part the adequacy of the 
funding is assisted by a partnership role from the formal providers and their professional 
bodies who have an interest in helping in the policing of the regulation by, for example 
proactively reporting local breaches by illegal providers rather than requiring the regulators 
themselves to seek out infractors.

51. Another success factor is the credibility of the penalties with reasonably high chances of 
detection and both state and professional support for effective sanctions.

52. The impact on the poor is more difficult to evaluate. Arguably the poor are the most 
likely to suffer from inappropriate or sub-standard drugs being limited by knowledge and 
resources from seeking more appropriate or higher quality supplies. On the other hand it is 
conceivable in some cases that the regulation means that only high quality services are 
permitted which may lie outside the resources of the poor when a better (albeit second-best) 
solution would be to permit cheaper provision. The extent of this is hard to judge and it is 
difficult to separate the narrow issue of regulation of drug retailing from the broader question 
of what drugs should be made available to the poor at subsidised or free rates.

3 Problems arising from the sale of Thalidomide in the 1960s are attributable to a failure of drug 
licensing rather than the separate but related issue of drug retailing discussed here and of course 
appeared in developed countries as well as in poorer countries.
Regulating the Pharmacy Sector

Retail pharmacists must be registered with the Pharmacy Council of South Africa (SAPC), and dispensing doctors with the Health Professions Council of South Africa (HPCSA). Pharmacies and pharmacists are directly regulated by the Pharmacy Act (Act 53 of 1974) (Republic of South Africa, 1974), whilst the production, licensing and distribution of pharmaceutical products is regulated by the Medicines and Related Substances Control Act (Act 101 of 1965) (Republic of South Africa, 1965). Under the terms of this Act, all pharmaceutical products available within South Africa have to be registered with the Medicines Control Council (MCC). It has been repeatedly amended since first promulgated to ensure its continuing relevance and effectiveness.

In general, the available regulations provide detailed guidelines on:
- Code of ethics governing professional practices;
- Premises, facility and equipment;
- Procurement, storage, dispensing and expired drug disposal procedures;
- Record-keeping and data management;
- Human resources;
- Management and administration;
- Inspections/sanctions.

The relationship between the MCC and SAPC is a central feature of the regulatory environment within which pharmacists work. For instance, retailers (as well as dispensing doctors) may only dispense drugs that have been approved and registered with the MCC. All drugs have a registration number that should appear on the packaging. Dispensing drugs not registered with the MCC may result in sanctions being imposed by both the statutory body and the legal system including a fine, imprisonment and being stuck off the professional register. In addition, the SAPC regularly clarifies the regulation requirements through the promulgation of rules relating to pharmacy practice (Republic of South Africa, 2004), to ensure that professional standards are maintained. These serve to remind the pharmacists of regulations and to ensure continued protection of the public from possible professional and/or criminal misconduct. Inspections of pharmacists are undertaken bi-annually.

“The vision of the pharmacy council is to ensure the provision of safe and adequate drugs to the public... It will penalise any pharmacist that has contravened that vision. Disciplinary action takes place against the pharmacist for not accommodating the vision of making sure that the public is safe.” (Personal communication: Siddiq Tayob)

53. The major concern in this case is the dispensing doctors. The effectiveness of the controls over this group appears weaker with their professional body less pro-active and the combined role of doctor and dispenser creating the possibility of enhanced conflicts of interest which a separation of roles in the normal case helps reduce. This has been the subject of considerable policy debate with proposals for a stronger role for the state in regulating these providers and some suggestions that such prescribing should be forbidden. This illustrates perhaps the limits to the relatively successful partnership in the mainstream pharmacy regulation with the self interest and political strength of the dispensing doctors lobby needing to be restrained by more direct regulation.
Conclusion

54. Regulation is a standard role of the state but these cases of regulation of non-state provision of services where the state has a direct interest itself in provision exhibit a series of dilemmas. The clearest cases of regulation are in pharmacy where the state itself is not for the most part a provider but has a strong interest through its broader healthcare objectives. A well-established set of regulatory bodies are funded and enabled to carry out the regulatory role.

55. In other sectors the state itself is a provider – in the case of primary education with provinces as the normal provider of primary education (outside the expensive elite private schools) and in water with municipalities elevated to be the normal water service providers.

56. This has perhaps led to confusion over what the role of regulation is – is it to eliminate harm to the public or is it to coordinate provision with the state sector or, at worst, to reduce competition with the state sector?

57. Regulation seems to work best where there is a clear harm to be dealt with and where there is a dedicated agency to pursue the mission of eradicating that harm. In water and education the role of regulation is mixed up with that of direct provision.

58. Equally capacity is important – in education and, sometimes in water, non-state provision is something of a distraction form direct provision and appears to be under-funded generally and to receive insufficient attention to the special needs of the non-state sector.

6 AGREEMENTS AND CONTRACTING FOR SERVICE DELIVERY

59. Contracting for service delivery is an activity present in all three sectors considered here. In healthcare, a long-established system for contracting out primary healthcare to existing private general practitioners (the Part-Time District Surgeon system) exists alongside a novel arrangement for contracting out home-based care to a range of NGOs and CBOs. These cases illustrate some of the classic problems with contract-based service provision in the social sectors.

60. A key problem is the specification of the service to be provided. Specification in terms of inputs can mean that intended policy outcomes are neglected but measuring and rewarding policy outcomes is difficult and can cause perverse incentives. The PDS system in fact uses a relatively crude contract design with payments for a list of services (inputs or perhaps strictly throughputs, rather than policy outcomes) rewarded and little attention to service quality. The reason for this seems in part the difficulty of doing anything else (especially when these contracts were first drawn up but still true today) and partly the fact that the underlying policy objective for this service appears much cruder than might be expected. The broad policy objective appears to the extension of access to healthcare to areas where otherwise poor patients would be denied access because there is a lack of state facilities and private facilities would be too expensive. The PDS system does appear successfully to open up access even if the quality of the resulting care is uncertain.
The home based care case represents perhaps a more considered approach to provision but one which is still evolving.

Contracting for Home-Based Care
Of the five models of home-based care (HBC) identified in South Africa (Russell and Schneider, 2000), this case study focuses on those where comprehensive services are provided. Such services include a range of support, advocacy and community mobilisation activities, as well as home visits and, in some cases, varying levels of nursing care. Rather than being seen as an alternative to publicly provided services, the national Department of Health (NDOH) has proposed a partnership approach between the state and NSPs to ensure a continuum of care (Russell and Schneider, 2000). Both it (National Department of Health, 2001) and provincial health departments (e.g. Gauteng Department of Health, 2002) have developed guidelines for the support and co-ordination of HBC activities which detail the nature of the intervention. In general, government provides funds and drugs, establishes referral relationships with public facilities, provides training and visits by public sector nurses to support the provision of services to NGOs/CBOs.

There is a standard contract format for the partnership agreements, although this must be adapted to the specific services provided, and contracts are held at the regional offices of the provincial health department. The minimum requirements of the HBC service are specified in the contract and include: home visits; a database of relevant services in the local area; training/counseling/support of family members to provide care in the home; and appropriate monitoring and referrals (to and from HBC providers, and from the HBC provider to community care and support centres). Government guidelines for HBC specify the criteria for referrals. The guidelines also establish minimum requirements for the organisational structure of the HBC provider. These include: a constitution; a management committee; a professional co-ordinator; 10-20 community caregivers (with a family/household member as primary caregiver in the home); identifying need; liaising with professionals in the area; facilitating training of caregivers; providing ongoing mentoring/supervision to caregivers; monitoring/evaluating/reporting and; project management/administration. Community carers are required to undergo a minimum of 2 weeks HBC training and 2 weeks counseling training; the minimum remuneration rate for community carers is also stipulated. Unpaid volunteers may also be employed by the provider.

The regional officials are supposed to monitor each NGO quarterly, check audited statements and compile a report, with a consolidated report sent to the province on a quarterly basis. Provincial officials also do spot checks to assist with monitoring.

As might be expected the contract is based around input and process concerns rather than around policy outcomes. Again however a closer examination of the government’s objectives in promoting this sort of provision might suggest a relatively simple policy is in place which this contract can deliver. The government emphasises efficient use of its limited healthcare resources in justifying the homecare based approach. Such care outside of hospitals is likely to be cheaper and draws on relatively low-cost (often voluntary) staff working for NGOs and CBOs. One interpretation of this is that such care is a merit good rather than a pure public good and the government is justified in funding it by a fairly crude calculation of its cost-benefit equation. Alternatively it may indeed represent a public good where, though precise calculations are not practical, the government believes it is likely that the low cost is worth paying for a fairly credible, albeit unproven, improvement in healthcare outcomes. A final suggestion might be that this contract is really intended to help foster a
market which has not otherwise developed (or has not developed fast enough to meet needs). Such an argument places it more in the facilitation field – see next section.

63. Another reason for the use of NGOs and CBOs in this field may be their convenience on both practical and political grounds. Such bodies already exist (albeit not universally with some patchiness of provision); unlike most conventional state healthcare providers they have some experience in homecare and, from a political perspective, their not-for profit status makes them a more acceptable provider in a politically contentious field.

64. In education the main financial relationship between government and primary school providers is a subsidy and we choose to treat this as facilitation and discuss it in the following section. However there are a number of other particular services where contracting does play a role. In adult education a contract arrangement between the National Department of Education and ABETI (Adult Basic Education and Training institute) exists through the South African National Literacy Initiative (SANLI). This project-based example of contracting illustrates a range of problems which project-funding in general (i.e. not just with non-state providers) suffers from.

**Contracted Support to Adult Literacy**

The National Department of Education supports ABETI through the South African National Literacy Initiative (SANLI). It funds UNISA, which supports posts in ABETI. This arrangement is one of contracting out service provision, which appears to have been successful in terms of the volume of learners reached. However, active engagement between the Department and ABETI is very limited, and the recent withdrawal of DFID funding has created a crisis in operation.

Facilitation requires resources provided in a predictable way. Both organisations feel that they have to manage high levels of uncertainty about resource flows which imposes administrative costs and threatens infrastructure which takes time to build but which can rapidly dissipate. There appears to be no medium term plan of public support for non-state literacy providers backed by resource allocation.

It is not clear how much these problems represent an ambivalent stance on contracting out services, how far they reflect real limits on resources available, and how far they result from changing relationships between NGOs and the State. It does seem clear that without these organisations and other non state literacy providers, levels of activity would be very low since the state has little delivery capacity itself.

65. This contract appears relatively crude again with the emphasis on funding inputs within a broader policy context. Where there is a plausible link between the inputs and the desired outcomes this can of course be an appropriate approach especially where funds are small and work is of an exploratory nature.

66. But project funding tends, as here to bring its own problems It has a finite life with little guarantee of continuity beyond the project lifetime. It can depend, again as here, on a complex basket of funding where withdrawal by one funder threatens the participation of other funders. Meeting funder administrative requirements and relatively frequent obligations to re-negotiate extensions consume management time where capacity is typically limited. Arrangements for mainstreaming lessons from limited pilots are often poor.

67. The literacy case appears to be one where initial objectives are being met but the relative costs of the programme and its sustainability are in some doubt. The home care
case may also suffer from some of these problems of project-based financing although the scale of the programme is much larger with perhaps more consideration given to its place in overall policy and more care devoted to establishing an appropriate infrastructure.

68. One interesting element of the home care-based approach is the use of intermediary bodies to manage the provision. This reflects a conscious response to the problems of state capacity to manage non-state provision.

Intermediary Bodies in Home Care Provision
An important factor limiting control by the agent is capacity, although capacity varies according to the size, resources and experience of the provider. The larger organisations such as the Hospice Association of South Africa and Red Cross, led by professional staff with considerable skills and a large asset base, are able to submit the detailed service plans required to secure government funding.

The smaller less-resourced and less-experienced NGOs/CBOs have less ability to organise themselves and face greater challenges in terms of medium to long-term sustainability. Although the state has attempted to support smaller NGOs/CBOs in submitting service plans, not all receive this technical assistance, given government’s over-stretched capacity. Although the larger NGOs are in some ways coordinating action among groups of providers across the country, most providers are not organised amongst themselves – further limiting their capacity and control.

69. The coordinating arrangements in this provision are still evolving with hierarchical models of a lead body coordinating others alongside other suggestions that the small providers need to organise themselves cooperatively.

70. Another interesting aspect of the home-care based approach is that the contractual arrangements blur into a facilitative relationship between state and non-state with special provision for financial support of some key functions – notably training, support to smaller providers to develop capacity in contracting and some support from public sector nurses. This perhaps illustrates how a conventional contract (payment for service) needs to be adapted in situations where the relationships between inputs and outcomes is less than fully clear and where outcomes are hard to measure.

71. Contracting in the water sector has evolved considerably in the recent period with the Alfred Nzo cased illustrating a complex relationship between three main contract players.

72. This use of an SSA as an intermediary between a local provider has some similarity with the intermediary bodies in the homecare case and is a clear response to capacity issues on both the municipality and CBO sides. As with other examples of contracting, it demonstrates that a degree of facilitation to small-scale providers is necessary to make the contractual model work.

73. Government capacity in the homecare based example remains problematic with perhaps an uneasy partnership between the national ministry and provincial health departments. The latter do not appear experienced in monitoring and enforcing this type of contract contributing to the currently uncertain understanding of just how successful this programme has been. The use of intermediary NGOs to some extent is a substitute for state capacity but some residual level of high level monitoring remains necessary to oversee the use of public funds.
74. The rapid expansion of the homecare based approach, in response to a crisis of need is in strong contrast to the PDS and some other cases where policy and capacity have evolved over a longer time period. This clearly represents a risk but to some extent is inevitable in response to a crisis. This may imply a need for additional monitoring in order to react to evolving lessons.

75. One possible argument in favour of the use of NSPs is the possible enhanced flexibility they give where human resources in particular can lie outside the rigidities if existing government personnel regulations. The PDS case provides an instructive caution against this thinking however. When one province sought to update its contract with PDSs and to dispense with the services of those who would not agree to the new terms, it found itself the subject of legal challenge from those affected. The courts found in favour of the PDSs arguing that they were state employees and therefore entitled to redundancy pay. This illustrates the complexities the use of non-state resources can have in a country with a relatively strong functioning legal system protecting employee and other rights.

76. The case of Alfred Nzo is also interesting in that it appears to be successful in part because of a high-level champion in the municipality which seems to have overcome the in-built bias against non-state provision observed elsewhere in this sector.

77. Some cases suggest that standard government approaches unintentionally get in the way of innovative use of NSPs. In education, respondents noted that standard tendering arrangements implied that bidders would always be private companies and assessed shareholder data in a way that could not be relevant to NGOs. In Alfred Nzo the standard arrangements developed by DWAF require competitive tendering whilst the Alfred Nzo model implies a deliberate choice of the local community as the provider which could hardly emerge from open tendering.
**Contract Arrangements in Alfred Nzo**

DWAF, working together with the then District Council undertook a pilot project in 1999 to establish an institutional model in 33 villages such that CBOs could be established and recognised as WSPs. The limitations of existing legislation (see section on Disincentives for NSPs) had to be overcome, to enable an operational model to be developed.

The previously existing Project Steering Committees, established to support the implementation phase of RDP-funded schemes, were recognised as being responsible for operation and maintenance of the schemes until such time as the WSPs would be established. A standardised model Constitution for the CBO operating as a WSP was drawn up, as well as model contracts for WSAs contracting CBOs as WSPs and SSAs. The model and contractual relationships established are indicated in the figure above.

Village Level Action Plans (VLAPs) were also developed, to identify clear roles and responsibilities for all stakeholders. Typically, this would involve the CBO fulfilling the following functions:

- Daily operation and minor repairs to the scheme;
- Customer relations;
- Communication with the community;
- Revenue collection; and
- Basic financial management and reporting.

There is no revenue collection outside of the towns, as people are accessing a free basic water service level through communal water points.

Such functions would be discussed in detail and agreed upon for each case (DWAF/Network Community Development Services, 2001). In one community the Water Committee is responsible for the operation of the scheme, installing yard connections, customer relations, revenue collection and overall financial management. Two people are employed to manage these responsibilities. In addition, trained operators operate the pump, install yard taps and carry out minor repair work to the reticulation network.

Within the contractual agreement, the CBO-WSP pays a seating allowance for the Board members (who enter into the contract with the WSA), as well as a salary and expenses for “staff” employed on the scheme – operator, treasurer and community liaison officer. The SSA provides capacity support to these staff members, as they develop the necessary skills to operate and maintain the schemes themselves.

Recognition has been given to the existing capacity limitations of CBOs to undertake the full range of WSP functions. The devised model allows for a phasing-in approach, in which the CBOs take on more responsibility and functions as capacity increases. A support services agent (SSA) provides the necessary training, ensuring that as milestones are reached, changes in responsibility are addressed and agreed upon by both the WSP and WSA. In this way, CBOs can progress from being employees on short-term contracts to eventually becoming fully-recognised Water Service Providers (Illing and Gibson, 2004).
79. Policy in water may have introduced a further bias in favour of municipalities and large for-profit providers. DWAF monitors municipalities on the basis of delivery of infrastructure rather than on delivery of sustainable services. This pushes municipalities to prioritise the construction of new facilities rather than to focus on what organisations are bets placed to manage a sustainable, responsive and efficient service on the basis of “what gets measured gets managed”. Arguably, because of their limited capital resources and restricted technical expertise, CBOs are particularly badly placed to involve themselves in infrastructure creation but well-placed to manage service delivery with facilities (assuming appropriate technology).

80. One argument in favour of the use of for-profit providers is that they may be more responsive to financial incentives and that, in turn, financial incentives are one of the easiest levers for government to use (total resources and priorities permitting). This seems to be the case in a mini-case noted in water and sanitation.

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**Financial incentives in sanitation**

The government’s current target is to achieve sanitation for all by 2008. Achieving this puts pressure on municipalities to deliver sanitation in a fast and efficient manner, resulting in the community-development approach becoming viewed as too slow and inefficient. Sanitation is in danger of reverting back to being “about toilet construction”.

The subsidy for rural household sanitation provision has increased from R600/household in the 1990s to R2,100 in 2004, opening the door for emerging private companies to work in the “sanitation business”.

One private company has successfully developed a programme and methodology for rapid latrine construction through high levels of community involvement (labour and material contributions), stream-lined government processes and extensive project management inputs. This is backed-up by the use of appropriate technology that is both affordable and suited to rapid construction. Latrines are “marketed” on the basis of convenience, dignity, status and security – with a resulting sense of pride in ownership. Changes in sanitation practices is expected to ensure ongoing maintenance and, if necessary, replacement or upgrading of family latrines as and when required.

Limited capacity within the health department results in little, if any, health education accompanying the process.

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81. In this case non-state providers could perhaps have equally responded to the opportunities offered by the increase in the subsidy but, in practice it was a for-profit body that did so. Whilst a single case cannot be relied upon this is suggestive that, in economic terms, the high-powered incentives financial subsidies can provide may result in more rapid responses from the commercial sector.
Conclusions

82. The use of contractual arrangements for service provision appears largely ad hoc and opportunistic with patterns depending on historic provision and perceived individual gaps in state provision. A number of factors bias state actors in favour of state provision with non-state provision sometimes tolerated or accepted as a convenient gap filler. Nevertheless the cases described do show at least the potential for, and sometimes the achievement of, important policy objectives.

83. A number of key success factors for expanding non-state provision seem to arise from these cases. Firstly allowing state-providers the control over policy on whether non-state provision is used seems likely to bias choice in favour of the state. In some western countries similar thinking has led to intentional splits between purchaser (in the sense of who decides what is paid for by the state and who funds it) on the one hand and provider (the organisation doing the actual delivery) on the other. In countries like the UK the motive for such a split was often to increase the scope for the for-profit sector but the same could apply here to not-for profit providers. It needs to be acknowledged however that experience elsewhere suggests that there are costs in making such a split. Expertise in the state sector is itself spread more thinly in such a split and there can be problems managing the state’s knowledge so that it contracts wisely. There are transactions costs to such splits and there may still be a residual state bias amongst public officials.

84. More fundamentally there may be questions over whether such a split is itself desirable – these are most obvious in education. We have placed the study of use of non-state schools in the section since the position is one of subsidy rather than contracting at full costs but the boundaries here are blurred. Examining the desirability of splitting purchasing from provision in education and then allowing a level playing field between state and non-state schools to win contracts would be similar to the use of vouchers (although unlike vouchers the state might make the decision over which schools to fund rather than individual parents). There is a large debate on vouchers which goes beyond the scope of this study and which our cases do not particularly illuminate.

85. A second critical factor for the use of non-state providers is that provision is more likely to be acceptable in new areas of provision rather than in existing ones. Home based care is perhaps the best example of this where non-state provision did not threaten existing providers.

86. A third factor is that capacity is crucial. Contracts need managing and locating responsibilities at municipal level especially may be problematic but even at provincial level capacity problems may be important. This argument is strongest where the contractor is a large organisation with experience as in the water concession case. On the whole however this argument needs to be treated cautiously. The effectiveness of non-state contracted provision needs to be compared not with a hypothetical ideal but with the real alternative. In practice the real alternative may be state provision where internal control and accountability mechanisms are also weak and for the same reasons of lack of capacity. Non-state provision, because of its relative novelty and because of concerns over abuse of state resources by outsiders, may be subject to more critical scrutiny than state provision but in reality be no more guilty of inefficiency.
87. This leads to a further issue that contracting not-for-profit for providers may be, at the least, more politically acceptable than contracting with commercial organisations. The underlying validity of this is questionable – motives of individuals working for not-for-profit organisations may not themselves be altruistic and good intentions might not outweigh poor incentives or low skills.

88. A model of contracting drawn from conventional economic literature suggests a balanced transaction between a provider and a client. The reality of many of the cases noted is of a powerful client (albeit limited by the pressures on it) and a weak set of providers. Some of the successful contracting practice shows attention in the contract to specifically fund capacity development on the NSP side and this appears an important lesson. This moves the nature of contracts in this field to more closely approximate a “relational contract” where legal agreements do not capture the degree of mutual support that the relationship in reality implies. Part of full relational contracting however is a long-term commitment on both sides and governments have not often been good at this – partly because conventional procurement rules do not sit easily with a relational model.

89. One of the longest lasting cases discussed, the PDS scheme, has some features of this de facto long term relational model because both sides lack realistic alternatives and thus depend on each other. The government depends on the PDSs for coverage on remote rural areas where conventional state provision would be expensive and the PDSs depend on the state for a significant slice of their established income. The long-term relationship in this case derives from the situation rather than from design but the lesson may be that government should seek to give long-term security to providers who are effective.

7 FACILITATION OF NON-STATE PROVIDERS BY GOVERNMENT

90. Facilitation here is interpreted widely to include arrange of forms of support to Non State Provision where such provision (or a degree of such provision) would have existed without government intervention. Additionally it can include cases where the government is trying to “kick-start” non-state provision that can then exist without full government support when it is established.

91. Some of the cases already discussed include elements of this. The healthcare contracting cases and the Alfred Nzo water case both involve contractual arrangements which provide an explicit degree of support to capacity building or management beyond a simple fee for services. One advantage of tying facilitation to contracts in this way is that training or other capacity-building interventions have a real application to focus on. Bloch et al (2000) note previous criticism of much support to NGOs was that trainees returned home and then were unable to utilise their new skills.

92. Similarly the underlying motive behind the homecare case can be seen as an intention to support a potentially important market that was growing too slowly without government cash.

93. A key case of financial facilitation that has not yet been discussed is the financial support to independent schools. However large elements of regulation of the non-state schools are tied to this financial subsidy.
Facilitation through Subsidy in Primary Schools

The main facilitating mechanism for non-state providers is the subsidy system. Without it many lower fee level schools would cease to be financially viable. The system is pro-poor in so far as more is given to lower fee schools. As noted these subsidies remain insufficient to support really low fee schools that could provide access to the poorest. Their only real option is likely to be a state school and a fee waiver.

ABIS and MSA appear to enrol more poor students than ISASA or the independent CIE schools. They see the subsidy system as facilitating, but inadequate. There are several reasons. First, two year old data is used to calculate the subsidies which then do not reflect price inflation. Second, Provincial Departments have control over subsidy budgets, and can decrease allocations for independent schools in a variety of ways since these are not protected in any way. In fact, in Gauteng the allocation per student has been decreasing significantly. The GDE pointed out that they spend money to provide scholar transport so that learners who do not have access to a school in their area could attend schools in other areas. This affect the amount of money the department is able to allocate to subsidies for independent schools. Third, not all students pay fees and a proportion may be given fee waivers. In independent schools every fee waiver represents a loss of income to the school so there are clear limits to how many such waivers can be given. In one Muslim school visited 25% of students had fee waivers. It depended on community contributions to make up the deficit generated. Fourth, subsidies are calculated on the basis of enrolment in the first week of term. Students often take longer than this to register. This can result in under payment or students being turned away.

Thought the legislative framework for non-state providers is facilitating in the sense that it is designed to allow them to operate, it is seen as restrictive in several ways. Independent schools have to be registered as not-for-profit organisations if they are to access state subsidies. This prevents owners and shareholders benefiting from their investments in schools since they cannot draw profits, and can only reinvest gains. This arguably undermines incentives to be more efficient and effective, and creates imbalances between risk and reward. There are good reasons why public subsidies should not be allowed to support private profit, especially where tax advantages are conferred on providers. Wholly commercial, unsubsidised providers can make profits. However they are unlikely to provide access to the poor since affordable fee rates will not generate attractive rates of return. The current mechanism does not appear to provide a mechanism that would encourage entrepreneurs to risk capital for schools that enrol low income students. This might not matter if the state was able to provide school places for all such students.

94. This case illustrates some of the problems using financial subsidies in a context where pro-poor concerns are strong. Some providers are for-profit and face incentives that punish favouring low-income students who may be unable to meet fees required even after subsidies. This would suggest that closer targeting in the use f the subsidy would gain more in terms of desired policy outcomes. That in turn would however require a strong evidence base to avoid frauds and to reduce transaction costs to an acceptable minimum. One alternative might be a voucher system that targeted poor families but this is itself problematic.
95. Where, as in South Africa, some of the regulatory efforts are tied to subsidies the effect of regulation can itself be diluted because its application to providers targeting more affluent clients is limited. This appears to happen in schools where the schools aimed at elite groups seem much less affected by state regulation.

96. Outside of the individual cases noted here there are some broader efforts which could be considered facilitative. Most notably the National Development Agency (NDA) has a mandate to provide grants to NGOs in the field of development and carries out a number of broader functions including research and coordination of the non-state sector. The NDA has had a difficult existence with relatively limited funding and capacity limitations on its grant handling role causing delays in setting up and in disbursement (Gardiner and Macanda, 2003). The non-grant-related functions appear challenging to a body of its size and it arguably lacks leverage to carry out some of these functions as a government appointed body when other independent coordinating bodies exist nationally and sectorally. Perhaps most crucially the NDA’s grant handling function is poorly co-ordinated with sectoral ministries in the fields to which it extends grants. Few of the informants we spoke to saw the NDA as delivering a strategic role and, disappointingly it is hard to see this innovative organisation having positive lessons for other countries.

Conclusion

97. Beyond these examples government positive government facilitation of NSPs seemed rare. The state is supportive in principle but its efforts focus on its own activities and on working on selective cases of gap-filling or where there is an established historic provision to improve capacity on narrow basis. In such cases facilitation is typically a part of a wider effort to engage NSPs through contracting.

98. The Johns Hopkins study estimated total government financial support to non-state providers as R5.8 billion equivalent to some 43% of total income. This included some half a billion of estimated foreign aid. (Swilling and Russell, 2003). It is important to note thus that government support (which includes both formal contract payments and broader subsidies) are very important to the sector as a whole even though the cases studies here suggest that the scope for government usage NSPs is broader than is currently utilised.

8 GENERAL CONCLUSIONS

99. Apart from the specific conclusions raised in the previous sections, the South Africa research team generated the following general conclusions relating to some of the hypotheses that the research as a whole is exploring.

- The pattern of NSP provision is South Africa is rather disappointing in the sectors we examined. There appeared more scope in water and healthcare than was being exploited and, whilst education may be properly the subject of state provision, even there the role of NSPs in supporting roles to state schools was underplayed
- This tends to support the hypothesis that NSP provision tends to be de facto a gap-filling response to state failure. The level of state failure in South Africa is relatively limited and hence NSP provision is relatively limited. Where there are gaps the state ay in time close them rather than accept permanent non-state
provision – this especially true in education given the overall policy on state provision

- The pattern of non-state provision derived from a range of historic and situational factors with no single dominating cause
- Past state failure had created particular forms of non-state provision but currently state failure was not a driving factor in the shaping of new provision
- NSPs are very diverse and understanding them requires a subtle approach that differentiates between a range of types
- Provision for an affluent elite was important notably in health and education. Non-state provision to the very poor was not necessarily the norm outside this group – in many cases non-state providers were forced by circumstances to provide charged for services which may be beyond the reach of the very poor
- Non-state provision in some cases was cheaper than state provision, partly because of the use of volunteers, partly because financial constraints forced lower terms and conditions
- Government’s commitment to public-private partnership appeared to be de facto more to for-profit private providers than small not-for profit NGOs or CBOs
- Umbrella bodies were crucial in many cases of policy dialogue and regulation but sometimes there was a failure to present a united front perhaps because of genuine underlying differences between some actors
- In financial relationships (both formal contracting and facilitative subsidies) umbrella bodies also played an important practical role. For similar reasons larger established NGOs were more credible to government in many cases than multiple small new providers
- The commitment to decentralisation was providing a paradoxical obstacle to use of NSPs because it created local bodies with a bias towards state provision
- The role of international donors was limited and in some cases private (usually business-oriented) donors were more important in funding some NGOs
- NSPs are seen as a challenge to state providers but this is more the case where there are existing providers than in cases of new provision
- Suspicion of NSPs is reduced (but not eliminated) where they are not-for profit
- Regulation is most clear and most effective where there is a separate body for regulation
- Government capacity to regulate or manage contracts with NSPs is limited but his receives undue focus relative to government’s limited capacity to manage its own delivery
- Convincing information on the performance of non-state providers is hard to come by but this is often a result of the nature of the services they provide and would often be equally true of state provision
- Whilst some non-state providers may have desirable values, this does not guarantee that service provision will always be in the interests of users. This suggest that long-term reliance NSPs will lead to increased focus on NSP accountability arrangements
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ANNEX ONE: NON-STATE PROVISION OF BASIC HEALTH CARE IN SOUTH AFRICA

1 INTRODUCTION

1.1 Non-state providers in the South African health sector

The formal South African health care delivery system is fragmented between the public and private sectors. The public sector serves the lower income, largely black, majority of the population through a network of primary care and referral facilities, and is funded primarily by taxation revenue. The private sector serves the higher income, largely white minority. It is funded primarily through voluntary medical insurance together with some out of pocket payments. Services are provided by independent general practitioners (GPs), private specialists and a limited number of private hospital companies, all of which work on a for-profit basis. Some private GPs and hospital companies work under full or part-time contracts with government; some publicly employed professionals work at the same time in private practice.

The broader range of for-profit providers involved in South African health care provision include those involved with pharmaceutical supply and distribution (such as retail pharmacies), a range of non-clinical service suppliers (e.g. security and cleaning companies) and a range of independent consultants (providing support for either policy development or implementation).

A very limited number of not-for-profit hospital providers (known as ‘voluntary aided hospitals’) are incorporated within the public provider system through specific funding arrangements. There is also a broader range of not-for-profit organizations working in the fields of health promotion, advocacy and analysis, or at the community level. Before 1994 the community level organisations implemented a range of innovative and experimental programmes, such as community health worker programmes; since 1994 their role in service delivery has shrunk considerably, at least until recently.

1.2 Health policy and NSPs

Since 1994 policy frameworks have consistently recognized the role of NSPs within the South African health sector. Most recently, the 2003 National Health Bill requires the Minister of Health to establish mechanisms that enable coordinated relationships with private providers and allows national and provincial government to enter into agreements with them in furtherance of the Bill’s objectives.

However, policy discourse since 1994 demonstrates some ambivalence towards NSPs. For-profit providers are often seen with suspicion by some health officials because they are tainted by their profit motives and, for some, links to the apartheid regime. Not-for-profit providers are, in contrast, recognized to have played important roles in the past on behalf of the poor, and to continue to support some important national initiatives. Nonetheless, in the immediate post 1994 period, these groups were seen in some ways as peripheral to health system development - given that the new government committed its own substantial resources to meeting the needs of the poor. However, this view appears to have changed more recently as the enormity of the HIV/AIDS crisis facing the country has
become apparent. Government is now specifically seeking to re-engage community level organisations in the provision of home-based care services to people living with HIV/AIDS.

7 Despite these ambivalent or dis-approving discourses, health and government policy frameworks supporting public private interactions/partnerships have been developed. The health guidelines encompass all types of NSP, although with a particular focus on for profit agents (National Department of Health, 2001a); whilst the guidelines developed by the national Treasury are explicitly oriented towards the types of companies that can take on major roles in equipment or infrastructure supply and maintenance (National Treasury, 2000). The emergence of government initiatives to establish agreements with not-for profit organizations providing home based care is now also generating policy frameworks that speak specifically to such organizations for this area of provision.

8 However, there remain very few opportunities for dialogue between government and any type of NSP. Although the 2003 National Health Bill establishes a national consultative forum in which NSPs could have representation, this structure is not yet functional. Other efforts to establish public-private fora at provincial and national level (for for-profit NSPs only) remain in their infancy.

1.3 Key challenges of the South African health system

9 The health system inherited from the apartheid era was highly inefficient and inequitable, directed towards political ends rather than health gain. In the health sector there were 18 different management authorities, responsible for a patchwork of geographic areas and for different forms of health care (some authorities were only responsible for preventive services, and others for curative services).

10 One of the first steps of the new government was to create a bureaucratic infrastructure to support coordinated management across all sectors. In the health sector this was accompanied by efforts to rationalize the governance of the public health system. Although these steps have created a coherent public health care referral network, the compromises surrounding the pre-1994 political negotiations have themselves established a complex system of governance across sectors. In the health sector, the three spheres of government are all responsible for different facets of the health system. The national level is primarily responsible for policy development and coordination, although provincial legislatures also have policy authority, and national level funds provides funding for some key services (such as the HIV/AIDS programme). The nine provincial departments of health are primarily responsible for delivering health care, including establishing agreements with local governments that clarify who does what in relation to the support of primary care (including home-based care) specifically. Managing the delivery of health care, thus, not only requires both basic organisational capacity but also effective coordination among the government actors jointly responsible for heath care delivery the health system

11 The first overarching challenge for the health system is, thus, the quite thin management and organizational capacity across the country, and particularly at the levels supporting primary and community-based services. Weaknesses in capacity include not simply skills’ deficits and personnel shortages, but also inadequate information systems, poorly functioning procurement systems, poor definition of roles and responsibilities, limited delegations of authority and a hierarchical and reactive culture of decision-making (Blaauw et al., 2003; Gilson et al., 1999). Many of these problems are part of the apartheid legacy, which viewed the civil service as an instrument of control not development. However,
despite much training and some development of organisational systems (particularly budgeting and planning frameworks) since 1994, problems remain due, particularly, to personnel turnover (generating continuing skills’ deficits), weak information system development and a failure to tackle the inherited decision-making culture (Health Systems Trust, 2001). A central problem is poor communication – both among the government actors that need to coordinate the delivery of health care (Blaauw et al., 2003) and with groups outside it, including the population.

12 Despite being a middle income country, resource availability and distribution is the second main problem facing the South African health system. In total, the country spends a considerable amount of money (over 8% of GDP) on health care. However, within this total over 50% is spent in the private for-profit sector that serves less than one-fifth of the population (Doherty et al., 2002). In addition, despite high levels of medical inflation, the total public sector health budget has remained stagnant, declining by 0.5% per year between 1997/8 and 2005/6 (National Department of Health, 2003). Fiscal restraint has been an important element of the national macro-economic framework since 1996 (Gilson et al., 1999). The public sector budget also remains inequitably distributed between provinces, given the underlying pattern of socio-economic and health need (Doherty et al., 2002). Overall, the mal-distribution of national health care resources, relative to population served, between the public and private health sectors is one of the greatest problems of inequity facing the country. It is exacerbated by constraints on public sector budgets and the current pattern of public sector allocation (McIntyre and Gilson, 2002).

13 The third main challenge facing the health system is the HIV/AIDS epidemic. The national average prevalence rate of HIV/AIDS among pregnant women was 26.5% in 2003, varying from 36.5% in Kwazulu-Natal to 12.4% in the Western Cape (National Department of Health/Department of Social Development, 2003). These are among the highest rates in the world and represent an enormous burden for the economy, the health system and the population at large.

2 OVERVIEW OF NSP CASE STUDIES

14 Across the array of NSPs working within the South African health sector, the detailed case studies selected for detailed consideration are:

2.1 Case study 1: The provision of primary care services by private GPs under contract to government, a case of government commissioning service delivery;

The part-time district surgeon system has been implemented in South Africa since the 1950s. Under the system government contracts private general practitioners (GPs) to provide primary care services to the poor patients of the public sector. The GPs under contract are primarily located in small towns in rural areas, where few or no public doctors are working. Although these providers are also expected to provide forensic and medico-legal duties, this case study focuses purely on their primary care role.
2.2 Case study 2: The widespread dispensing of safe and effective drugs by private pharmacies and dispensing doctors, a case of government regulation.

South Africa has a successful track record in ensuring the provision of safe and effective drugs to the whole population, including the poorest groups. Regulating pharmacists and dispensing doctors working within the private sector is essential to this achievement as a large proportion of drugs are sold over the counter in retail outlets or dispensed by local GPs, including to lower income patients. An effective regulatory environment has been created through a combination of legal requirements and sanctions, educational support and self-regulation, involving the oversight and monitoring of standards by a combination of government, health professions and communities. The case study is interesting, given concerns in many countries about the dangers of drug supply through unregulated retail outlets.

2.3 Case study 3: The provision of home-based care services by not-for profit organizations under agreements with government, a case of government facilitating service delivery both by financing and capacity building;

The provision of home-based care by non-governmental or community-based organisations is commonly seen as an important means of providing support to people living with HIV/AIDS, particularly those with the end-stage of the disease. The South African government has, therefore, moved towards establishing partnerships with such organisations under which the government provides funding, resources and support to such NSPs, and in return the organisations provide services as part of the continuum of HIV/AIDS care offered in the country. The case study focuses explicitly on partnerships with the health sector, although other sectors, such as the welfare sector, are also involved in similar arrangements.

3 THE SOUTH AFRICAN CASE STUDIES

3.1 Case 1: The Part-Time District Surgeon System

Introduction

Before 1994 part-time district Surgeon (PDS) services were frequently provided on racial lines with black, public patients served at the ‘back door’ of surgeries and white patients with medical insurance or paying out of pocket served at the ‘front door’. Public patients were required to obtain a certificate of indigence from a magistrate before attending for care. Since 1994, the management of PDS contracts has been the responsibility of the nine provincial governments. Three main policy changes have affected these contracts. First, across the country, fees for public primary care, including PDS services, were removed in 1996; second, in some provinces a referral system has been established under which patients see a primary care nurse before referral to the PDS; third, at least in the Free State province, the PDS contract has been re-structured by replacing the prior fee for service reimbursement mechanism with a time-based system based on sessions provided to the public sector (McIntyre et al., 1997).

This case study draws on a detailed assessment of the performance of the PDS contract in the late 1990s undertaken in two provinces that were at that time still using a fee
for service reimbursement approach. Little information is yet available about the performance of the PDS under the new sessional contracts.

17 The details of PDS contracts are often poorly specified. Some PDSs have been appointed until their 65th birthday; some contracts are understood to be open-ended or subject to monthly renewal (McIntyre, 1997). The common contract details include a simple fee for service design and a general list of the clinical, emergency and medical forensic services to be delivered (Palmer and Mills, 2003). PDSs also receive an honorarium, transport cost reimbursement for PDS work and a dispensing fee (McIntyre et al., 1997). PDSs are generally expected to deliver services on a 24-hour basis, and other issues such as locum cover during leave absences are also included in the contract. Since 1996, PDSs have been provided with drugs free of charge for dispensing to public patients (McIntyre et al., 1997). Quality of care standards and treatment protocols are not outlined in the contract. Instead, monitoring relies largely on monthly reports submitted to the provincial health department covering numbers of patients seen, diagnoses and drugs dispensed. In the new sessional contracts, the contract price is determined according to specific consultation time categories based on numbers of patients seen.

3.2 Analysis of the PDS system

Nature of the provider

18 PDSs are individual doctors, registered with Health Professions Council of South Africa, formerly known as the Medical and Dental Council of South Africa.

19 The scale of their operation is small in that they are contracted in their personal capacity by provincial health departments, to provide services within privately-owned facilities. They own and finance their facilities. However, they sometimes enter into small partnerships, hiring other GPs or nurses to provide the services for which they have been contracted. The use of individual contracts and the spatial distances between PDS practices makes it difficult for them to organise and mobilise to negotiate contract changes with the provincial governments on a collective basis.

20 Given the low numbers of private GPs and public doctors operating in the areas where they are based, the PDSs might in some ways be seen as monopolistic providers. However, in practice there is a dependency relationship between them and the state. This results from the fact that whilst the state needs the PDSs, given its own lack of doctors in rural areas, many rural GPs rely on income supplementation from public sector work given the low demand for their private services in predominantly poor rural areas. One study has shown that income from PDS contracts ranges from 20% to 90% of their total income (Palmer, 2003). However, PDSs are also motivated by factors such as ideological commitments to serving communities in which they live (McIntyre, 1997).

Explicit and technical cases for the intervention

21 The public sector’s main motive for contracting private GPs in this system is to ensure the availability of doctors’ services in rural areas. Although figures vary, in 1998/9, 50-75% of doctors worked in the private sector (Goudge et al., 2001), whilst (in 1992/93) 90% of public doctors worked in urban-based hospital facilities (McIntyre, 1997). In essence, PDS services can, therefore, be seen as a merit good, with the intervention undertaken to ensure equitable allocation of health personnel across the country.
In addition, given the overall context of resource mal-distribution within the health system and of fiscal restraint, the PDS system represents a pro-equity intervention within South Africa. It seeks to draw private sector resources into supporting the provision of primary health care to needy and currently under-served populations.

**Performance**

The available evidence suggests the PDS system (under the fee for service contract) has performed weakly. The available data do not allow an assessment either of whether the number of available posts adequately reflects the need for such services in rural areas, nor of the pattern of distribution within the country of those PDS posts that are filled. In 1996 420 of the total of 470 PDS posts then available were filled (McIntyre, 1997). The available evidence does, however, clearly point to the problems of quality of care and the technical inefficiency in service provision. The structural quality of facilities is poor, with cramped conditions and poor equipment reflecting the PDS unwillingness to invest in facilities for state patients. Poor record-keeping reflects results from doctors taking on most of the administrative tasks associated with their practice. Perhaps more importantly, the fee for service system encourages high patient volumes, short consultations and limited attention to the inter-personal aspects of care. Patient perceptions of care are often quite critical, including the concern that they are treated unfairly compared to paying patients (Palmer et al., 2000; Sinanovich and Palmer, 2000). Nonetheless, in 1995/96 the value of the mean salary and allowances per PDS varied across a range that at the top end exceeded the cost of employing a full time principal medical officer. The general lack of monitoring has also led to fraudulent claims and the sale of drugs intended for public patients to private patients (McIntyre, 1997).

3.3 Explaining the performance of the PDS System

**Assessment of the forces for and against effective implementation**

This NSP intervention has some political salience given the government’s commitment to improving primary care access, and some suspicion of private for profit providers. However, its implementation has mostly been a low politics issue, occurring within the bureaucratic arena. Although several policy commissions and committees have made some quite radical recommendations about how to re-structure the PDS system since 1994, in practice, few changes have actually been made (McIntyre, 1997; McIntyre et al 1997). Instead, government officials have sought to tackle the known performance problems through fairly simple forms of contract re-structuring, whilst retaining the intervention as a means of supporting access in rural areas.

Perhaps the historical and institutional legacy of a system that has been in place for over 50 years has provided some obstacles to change. In one sense, patients are used to the system and whilst welcoming free care and efforts to improve quality, sometimes recognise the PDS as embedded within the local socio-cultural environment. In addition, some PDS have themselves resisted contractual change fearing that proposals to provide care in public facilities would undermine their autonomy whilst a move away from the FFS mechanism would undermine their income levels (McIntyre, 1997). The Free State department of health’s move to re-structure the PDS contract also brought the legal system onto the side of those PDSs opposed to contractual change. The outcome of this case
fundamentally altered the nature of the government-PDS relationship in ways that may constrain future changes to the system (see Box 1).

**Box 1: Restructuring the PDS System – The Experience of the Free State**

In preparing to re-structure the PDS contract, the Free State department of health consulted a range of private practitioner and other stakeholder groups between 1994 and May 1996. It collected statistics on PDS service provision over a one and a half year period to calculate clinical service requirements in each town according to sessions or number of hours. These sessions were then offered to all doctors practising in the towns. Those who accepted were appointed on either a full- or part-time basis. Where these appointments were made, the existing PDS contracts were terminated. In some areas, however, especially where the existing PDS was the sole-practitioner, the old system remained. A new referral system was also established with the primary health nurse as gatekeeper.

Although the majority of the 70 Free State PDS agreed to accept the new contracts, nine refused and instituted legal action against the health department, with representation from the Medical Association of South Africa (MASA). The case was heard in the Labour Court and, and, on the basis of the old contract that stipulated monthly reimbursement and termination upon retirement age, the court ruled in favour of the PDS, declaring them to be state employees and not independent contractors.

As a result they are entitled to redundancy pay if their contracts are terminated before the end date. The department of health agreed to pay full severance packages to all PDS and then moved to implement the new sessional contract.

(Source: McIntyre et al. 1997)

**Impact of service characteristics on control by principals or agents**

26 Within the PDS system control by principals is weak. On one side, patients' power is undermined by the information asymmetry inherent in the doctor-patient relationship, and the lack of organised patient groups within the country. On the other hand, the characteristics of both the service and the contract preclude effective control by the state as contractor. It is always difficult to specify the outcomes of health care provision, in ways that allow control. Yet at primary care level, some specification of expected outputs is possible (such as quality standards, immunization coverage rates). However, vagueness about length of contract, information to be made available and monitoring procedures make the contract an ineffective tool of control. As noted, the legal determination that PDS are full-time employees of the state rather than independent contractors further weakens the existing contracts as a tool of control by principals.

27 Yet control by agents (PDSs) is also weak. Not only do they need the income derived from public work, but also they are, generally, not themselves adequately mobilised and organised to influence the contract. The Free State experience does, however, demonstrate that the professional body (previously known as the medical Association of South Africa, MASA), can at some times be mobilised on behalf of the heterogeneous PDS group.
**Capacity to perform interventions both generally and in relation to this particular intervention**

28 The general weaknesses of public sector capacity and coordination among relevant actors translate specifically into weak capacity to design and monitor PDS contracts (Palmer and Mills, 2003). As public sector salaries are not competitive with the private sector, the state has had difficulty attracting staff with the skills necessary to ensure effective contract arrangements. Nonetheless, the Free State experience of re-structuring PDS contracts does provide evidence of a proactive leadership, prepared to take on the risk of challenging vested interests, in some provinces. But capacity is uneven across provinces. For example, although most provinces are moving towards a computer-based system for recording PDS activities, in 1997 only one province had a comprehensive and functioning computer network with a computer in each PDS consulting room (McIntyre et al., 1997). The general difficulty of measuring health service outputs, even at primary care level, and the lack of information with which to monitor only exacerbates these capacity weaknesses. Finally, the macro-economic commitment to fiscal restraint makes it especially difficult to motivate for extra funds to strengthen implementation of an intervention that offers only a partial solution to the problems of primary care access across the country.

29 Overall, government capacity is weak with respect to: administrative systems and skills; limited experience of contract design; poor information systems; poor definition and co-ordination of roles; gaps between contract design and implementation agencies (Batley and Larbi, 2004).

**Conclusion**

30 This case study of government commissioning service delivery from NSPs highlights the:

- Importance of equity objectives rather than solely market failure as the rationale for government intervention;
- Situation of mutual dependency between government as contractor and NSP as contractee, limiting the control each has over the other;
- Particular difficulties of negotiating contracts or change in them with a heterogeneous group of providers and the potential for these providers to strengthen their power over government through collective action;
- Need to pay careful attention to contract design, and especially payment mechanisms, to ensure incentives that support equitable and good quality service provision;
- Complexity of implementing contracting arrangements that promote health care accessibility by the poor, given the difficulties of measuring outputs/outcomes and the capacity requirements of the task;
- Need for, and limits on, strong capacity, including pro-active leadership, in implementing contractual change.
3.4 Case 2: Regulating Dispensing by Retail Pharmacists and General Practitioners

Background

31 This case study focuses on the largely successful experience of effectively regulating drug retail/dispensing in South Africa. Although there are continuing concerns about matters such as drug prices and prescribing practices, South Africa has a strong track record in ensuring the supply of safe and effective drugs within the marketplace. This is in strong contrast to the experience of many other African and low-income countries.

32 The NSPs of focus in this case study are retail pharmacists and dispensing doctors (private general practitioners). Around 80% of pharmacists and nearly 75% of doctors work in the private sector (Doherty et al., 2002). Nearly 49% of pharmacists are in the retail sector and retail pharmacy accounts for 49% of the total pharmaceutical sales in South Africa; dispensing by general practitioners constitutes around 13% of the total sales volume (Andy Gray4, personal communication). Retail pharmacists must be registered with the Pharmacy Council of South Africa (SAPC), and dispensing doctors with the Health Professions Council of South Africa (HPCSA). Pharmacies and pharmacists are directly regulated by the Pharmacy Act (Act 53 of 1974) (Republic of South Africa, 1974), whilst the production, licensing and distribution of pharmaceutical products is regulated by the Medicines and Related Substances Control Act (Act 101 of 1965) (Republic of South Africa, 1965). Under the terms of this Act, all pharmaceutical products available within South Africa have to be registered with the Medicines Control Council (MCC). It has been repeatedly amended since first promulgated to ensure its continuing relevance and effectiveness.

33 In general, the available regulations provide detailed guidelines on:
- Code of ethics governing professional practices;
- Premises, facility and equipment;
- Procurement, storage, dispensing and expired drug disposal procedures;
- Record-keeping and data management;
- Human resources;
- Management and administration;
- Inspections/sanctions.

34 The relationship between the MCC and SAPC is a central feature of the regulatory environment within which pharmacists work. For instance, retailers (as well as dispensing doctors) may only dispense drugs that have been approved and registered with the MCC. All drugs have a registration number that should appear on the packaging. Dispensing drugs not registered with the MCC may result in sanctions being imposed by both the statutory body and the legal system including a fine, imprisonment and being stuck off the

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professional register. In addition, the SAPC regularly clarifies the regulation requirements through the promulgation of rules relating to pharmacy practice (Republic of South Africa, 2004), to ensure that professional standards are maintained. These serve to remind the pharmacists of regulations and to ensure continued protection of the public from possible professional and/or criminal misconduct. Inspections of pharmacists are undertaken bi-annually.

“The vision of the pharmacy council is to ensure the provision of safe and adequate drugs to the public… It will penalise any pharmacist that has contravened that vision. Disciplinary action takes place against the pharmacist for not accommodating the vision of making sure that the public is safe.” (Personal communication: Siddiq Tayob)

3.5 Analysis of regulatory interventions

Nature of providers affected

35 Through their registration with the relevant statutory body, both pharmacists and GPs receive registration numbers, and the legal entitlement to provide services in the formal private – as well as public – sector. The majority of both groups of providers are located in urban-settings and so the market for retail pharmacists and dispensing doctors is highly competitive.

36 The scale of operation of these NSPs is predominantly small. Most pharmacists and GPs work on a sole provider basis, although some GPs work in small partnerships. There is currently one major retail pharmacy franchise in the country, as a second competitor closed down recently. The franchise has bulk purchasing power with warehouses storing both drugs and non-essential products, passing administration and distribution costs onto the retail pharmacists. However, like other pharmacists and dispensing doctors, franchisees may choose to order drugs directly from pharmaceutical wholesalers. For both sets of providers, ownership lies with themselves, although those pharmacists associated with the pharmaceutical retail franchise may also receive capital from it.

37 Finally, although the motive of the providers is primarily profit-oriented, some also do have an ideological commitment to serve the communities in which they live and work.

The explicit and technical case for the intervention

38 The main motive of the government’s regulatory intervention is to ensure safe and effective drug dispensing/prescribing within the private sector. The regulation seeks to prevent both informal trading in drugs by non-qualified and unregistered providers and trading in drugs not registered with the MCC.

39 The need for the intervention derives from the information asymmetry inherent in the purchase of drugs by a consumer from the provider. In this instance, the state acts on behalf of the public to protect its safety. The intervention can also be seen as promoting equity.

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5 Siddiq Tayob is currently the Chairman of the Pharmaceutical Society of South Africa (PSSA).
6 Franchise pharmacists are styled on the American model and have super-market style arrangements retailing non-essential items in addition to scheduled medicines (personal communication: Siddiq Tayob)
Although not directly targeting the poor, by seeking to ensure equal access to quality drugs regardless of socio-economic status or geographical location it also protects the poor (who may be at most risk in an unregulated drug market, due to affordability and information problems).

**Performance of the intervention**

40 The success of the intervention is demonstrated by the country’s consistent record in achieving low levels informal and illegal drug retailing, and high levels of public safety in relation to drug dispensing and use. There have been no major cases of outbreaks, illnesses or death resulting from the sale of unsafe or illegal drugs since the experience with Thalidomide in the 1960s (which was itself a drug licensing rather than dispensing problem). In general, there are also high levels of compliance among retail pharmacists with respect to drug safety and effectiveness.

3.6 Explaining the performance of the intervention

**Assessment of the forces for and against effective implementation**

41 The current political salience of the intervention is relatively low, as the intervention has been implemented successfully over a period of years through the bureaucratic arena. However, the real dangers associated with ineffective regulation do still give the intervention political salience. Thus, all relevant actors recognise the importance of the intervention and support it.

42 A simple stakeholder analysis highlights the main stakeholders as the SAPC, MCC, and to a lesser extent the HPCSA. Pharmacists and dispensing doctors, although scattered in a competitive market, are also organised under professional umbrella bodies such as the Pharmacy Association of South Africa (PSSA) and South African Medical Association (SAMA) respectively. These umbrella bodies have considerable lobbying power and act to protect the interests of their respective professions. However, they are largely supportive of the aims of the regulatory framework as these reflect their own codes of conduct and professional standing. Although consumers are not organised in consumer protection groups, they still have the ability to hold providers accountable, by reporting malpractice and misconduct to the relevant regulatory authorities. In the case of retail pharmacists, nearly 90% of complaints to the SAPC come from individual consumers, with the rest resulting from peer-reporting and SAPC inspections (personal communication: Siddiq Tayob). This points to the important role that consumers can play in ensuring regulatory compliance. Finally, given concerns about medical cost inflation, insurers (called medical schemes within South Africa) are also increasingly reviewing drug dispensing patterns to contain costs, essentially acting as an additional watchdog.

**Impact of service characteristics on control by principal and agents**

43 The government’s control over dispensing practices is strengthened by the fact that the regulations focus on quite specific issues, only coming into effect after the drug has been registered with the MCC (and so already been judged efficacious and with limited side effects). The specific service characteristics that are subject to control through the dispensing regulations are, therefore, relatively easy to monitor. They include the dispensing of an unexpired drug licensed by the MCC (registration number to be displayed) with
relevant packaging of information for the consumer. Retail pharmacists are also expected to keep at least five years of information and to make this available, if requested, by inspectors from the SAPC. This information includes written prescriptions and dispensing records that could allow for a clinical review of treatment in terms of adherence to what constitute good clinical practice. Pharmacists are, in addition, required to have certain essential pharmacological textbooks and reference texts available on site. Consumer’s also play a role in regulating pharmacist practices and can exert some influence because the service of focus operates regularly and not in a time of crisis. In contrast, the process for monitoring dispensing doctors is much less clear. The HPCSA appears to have played a weaker role in this regard than the SAPC, and patients rarely act as watchdogs over doctors.

44 The agents, that is, both retail pharmacists and dispensing doctors are well organised, and have lobbying influence. However, rather than exercising this control to avoid regulations, a key feature of the regulatory environment is the high-degree of self-regulation. For pharmacists, this is partly related to the effective threat of sanctions, both by the SAPC and the criminal justice system. In addition, it is seen to be in the interests of the profession to maintain professional ethics and standards (personal communication: Siddiq Tayob).

**Capacity to perform interventions generally and this intervention in particular**

45 Unlike the other case studies, the capacity available to implement this intervention is quite strong. Both the SAPC, HPCSA and MCC are national statutory bodies, funded by a combination of tax-funding and registration fees from health professions or, for the MCC, drug licensing fees paid by pharmaceutical manufacturers.

46 The SAPC, for example, is comprised of qualified and skilled persons from pharmacy and related-professions. It meets frequently and may call urgent meetings when necessary. Its decision-making and control structures are clearly defined with clear lines of accountability. Nine members of the SAPC are pharmacists/related professions and 13 are appointed by the Minister of Health to ensure that any vested interests in retail pharmacy are potentially neutralised; members of the council need to declare vested interests. Inter-organisational arrangements are clearly defined between the SAPC, MCC and NDOH, strengthening the capacity to regulate effectively. There are also links with the departments of justice and the police services in the case of criminal sanctions being pursued against pharmacists and dispensing doctors. Inspectors are independently contracted by the SAPC, and are qualified registered pharmacists. They are supposed to visit each pharmacy bi-annually, but inspections may take place at any time. The inspectorate has also recently been strengthened.

47 The statutory bodies not only inspect, but also support, professionals. For pharmacists, the SAPC and MCC provide pharmacists with information about developments in their fields to ensure continuing professional development (CPD), through briefs and clinical journals. Moves are currently underway to ensure that pharmacists develop CPD portfolios that can be used to monitor the skills’ development necessary to ensuring regulatory compliance (personal communication: Siddiq Tayob). Doctors, on the other hand, are already expected to participate in a number of CPD activities per year as part of the HPCSA registration requirements. As these CPD activities are not specific to dispensing practice, it is unclear whether this training is supporting quality dispensing and prescribing behaviour. However, new regulations have just been promulgated that oblige all doctors
who wish to dispense to attend a course and sit an examination on dispensing/prescribing, before being licensed. This in an attempt to strengthen the regulatory control exercised over dispensing doctors.

48 Nonetheless, the key capacity weakness of this regulatory environment relates to dispensing doctors, as systems for routine monitoring and evaluation of prescribing/dispensing practices are weak. As noted, this issue is currently being addressed by amendments to the existing legislation. Under these new regulations, the Director-General in the National Department of Health will play a central role in issuing dispensing doctor licenses and in ensuring compliance with the regulations.

49 In terms of the wider institutional environment an important factor supporting effective regulation is that the legal/justice system is well-established and plays a role in ensuring that the threat of criminal action is an effective sanction. In addition the stable political system supports effective intervention by the regulatory authorities.

**Conclusion**

50 This case study of regulation emphasises the:

- Clear and defined focus of the intervention, and its place within the broader pharmaceutical regulatory framework;
- Long history of successful intervention in terms of what is now an accepted regulatory intervention in South Africa – and current efforts to strengthen control over dispensing doctors, specifically;
- Existence of effective capacity to regulate, involving adequately funded and specialist bodies linked to, but outside, the formal structures of government;
- Role of credible sanctions in effective regulation, that are to both professional status and legal action;
- Importance of self-regulation in achieving regulatory compliance, and the role for consumers as watchdogs;
- Role of organised bodies (both the statutory councils and professional bodies) as channels of communication/action between government and individual providers.

3.7 Case Study 3: Supporting the Provision of Home-Based Care

**Introduction**

51 The national average prevalence rate of HIV/AIDS among pregnant women was 26.5% in 2003, varying from 36.5% in Kwazulu-Natal to 12.4% in the Western Cape (National Department of Health/Department of Social Development, 2003). These are among the highest HIV prevalence rates in the world and demand urgent action to support people living with HIV/AIDS. Home based care (HBC) is one response to the epidemic.

52 Of the five models of home-based care (HBC) identified in South Africa (Russell and Schneider, 2000), this case study focusses on those where comprehensive services are provided. Such services include a range of support, advocacy and community mobilisation activities, as well as home visits and, in some cases, varying levels of nursing care. Rather than being seen as an alternative to publicly provided services, the national Department of
Health (NDOH) has proposed a partnership approach between the state and NSPs to ensure a continuum of care (Russell and Schneider, 2000). Both it (National Department of Health, 2000) and provincial health departments (e.g. Gauteng Department of Health, 2002) have developed guidelines for the support and co-ordination of HBC activities which detail the nature of the intervention. In general, government provides funds and drugs, establishes referral relationships with public facilities, provides training and visits by public sector nurses to support the provision of services to NGOs/CBOs.

53 There is a standard contract format for the partnership agreements, although this must be adapted to the specific services provided, and contracts are held at the regional offices of the provincial health department. The minimum requirements of the HBC service are specified in the contract and include: home visits; a database of relevant services in the local area; training/counselling/support of family members to provide care in the home; and appropriate monitoring and referrals (to and from HBC providers, and from the HBC provider to community care and support centres). Government guidelines for HBC specify the criteria for referrals. The guidelines also establish minimum requirements for the organisational structure of the HBC provider. These include: a constitution; a management committee; a professional co-ordinator; 10-20 community caregivers (with a family/household member as primary caregiver in the home); identifying need; liaising with professionals in the area; facilitating training of caregivers; providing ongoing mentoring/supervision to caregivers; monitoring/evaluating/reporting and; project management/administration. Community carers are required to undergo a minimum of 2 weeks HBC training and 2 weeks counselling training; the minimum remuneration rate for community carers is also stipulated. Unpaid volunteers may also be employed by the provider.

54 The regional officials are supposed to monitor each NGO quarterly, check audited statements and compile a report, with a consolidated report sent to the province on a quarterly basis. Provincial officials also do spot checks to assist with monitoring.

3.8 Analysis of Home-Based Care

Nature of the Provider

55 A recent survey indicated that there are currently 420 non-government organisations (NGOs), 321 community based organisations (CBOs), 31 faith-based organisations (FBOs) and 24 hospices contributing towards HBC service delivery in the country (National Department of Health/Department of Social Development, 2003). Although evidence is limited, the motives of these provider are likely to be predominantly altruistic and/or faith-based.

56 Government guidelines indicate that it prefers to enter into HBC partnerships with organisations that have both some track-record of management capacity and legal status (Gauteng Department of Health, 2002; National Department of Health, 2001b). For NGOs such status is granted through various options: registering with the Department of Welfare as a non-profit organisation; licensing under the Mental Health Act (1973) with the Department of Health Trust; registering as a Section 21 company (Gauteng Department of Health, no date). Although government prefers to enter into a HBC partnership with a legal entity, it will also consider working with NSPs (primarily CBOs) that work in geographical areas with particular needs, providing they submit adequate service plans and justify their funding application.
The distribution of actual and potential HBC providers across the country is quite variable, with greater numbers of providers located in urban compared to rural areas. In some senses, therefore, there may be some potential for competition among providers in urban areas and in more developed provinces. The scale of operation of these providers is also variable. A few larger NGOs, such as the Hospice Association of South Africa, have a national network (largely urban-based) and years of experience in providing palliative care, initially with oncology care and support. Most HBC providers are smaller organisations, and the smallest organisations are often based in rural and relatively dis-advantaged geographical areas. They often lack capacity in project management and do not focus exclusively on HIV/AIDS care (Project Support Association of South Africa, no date).

Although HBC providers are not government owned, they receive substantial funding from government, even for capital items. Their recurrent funding mainly comes from government (64%), combined with NGOs (21%), small contributions from international organisations (7%) and business (2.4%) and small scale fundraising activities (National Department of Health/Department of Social Development, 2003). This funding flow clearly highlights the high level of dependency on state funding.

Explicit and technical cases for the intervention

The public sector’s main motive for entering into HBC partnerships with NSPs is to use “our limited health care resources as optimally as possible. One of the best ways of doing so is through home-based care and community-based care” (Minister of Health in National Department of Health, 2001b). It has judged that many people in the end-stages of the disease will not be able to receive adequate care in public health facilities due to the: shortage of hospital beds; inadequate numbers of health professionals in the public sector; lack of resources for treatment and drugs; the unsuitability of hospitals as places for managing patients with terminal diseases; and the costs of institutional care (National Department of Health, 2001b).

Concern for efficiency, thus, underlies government support for HBC partnerships, including an intention to relieve pressure on existing government facilities. However, the government is also concerned to ensure that services are provided to those people living with HIV/AIDS who might, otherwise, receive little care in the end-stages of the disease. Few alternative providers are available in rural areas. NSPs are likely to have been identified by government as the provider of choice both because of their ideological orientation (non-profit) and because they are the organisations already working within poor communities. The intervention can, thus, effectively be seen as supporting a merit good. Given the focus on capacity development, it is also possible that it might be seen as supporting the creation of a market of providers for this good.

Performance

Government HBC guidelines have only recently been implemented and little coordinated information on performance in terms either of capacity development among HBC providers or service provision itself is yet available.
A study by the National Department of Health and Department of Social Development (2003) provides a useful overview of HBC activity in the country. The average percentage of HBC projects providing health care (other activities include counselling, support, food-parcel distribution) is 35.7%, with a range of 8.7% in the Northern Cape (predominantly rural with vast geographical area and small population) to 50% in Limpopo province (a rural and quite poor province). The province with the highest number of beneficiaries is Mpumulanga (rural and relatively poor). These data appear to suggest some initial success in supporting HBC providers and orienting HBC provision towards poorer communities.

The majority of personnel providing HBC are volunteers who do not receive stipends. There are seven times more volunteers than there are full-time care-givers (National Department of Health/Department of Social Development, 2003), and in relation to professionals there are nearly ten times more volunteers. Given that the current reliance on volunteers may not be sustainable in the long run (Johnson et al, 2001; Goudge et al, 2001b), there may need to be increased employment of, and expenditure on, salaries. Clearly this will have financial demands that may affect the overall sustainability of HBC provision unless adequate funding is made available.

There is little evidence yet of the quality of HBC. Johnson et al (2001) suggest that training is an essential aspect of ensuring quality of care in service delivery, and this is one support government intends to provide. In addition, the detailed service plans submitted by NGOs/CBOs in order to receive government funding must include monitoring/evaluation components, including a breakdown of personnel, training and organisational structure needed to ensure that quality is not undermined. It is not yet clear whether guidelines are adhered to, and whether or not quality of care is being achieved.

3.9 Explaining the (likely) performance of HBC

Assessment of the forces for and against effective implementation

Given the high prevalence rates and criticism of government HIV/AIDS policy in general, HIV/AIDS is a ‘high politics’, highly-contested and controversial health policy issue. However, HBC as an activity is much less contested than the provision of anti-retroviral therapy, for example.

Political will and support for HBC projects appears to be reflected in the huge planned increase in budgetary allocations to HBC – from R13million in 2001/1 to a forecasted R68million in 2002/3 (Adams and Claassens, 2001). There is also already widespread involvement of civil society actors (such as the Treatment Action Campaign (TAC), the trade unions and NGOs), in HIV/AIDS work, including HBC. Other actors supporting HBC are international donor agencies, such as the European Union. Through its Partnerships for Health programme it is supporting HBC and developing programmes to facilitate the building of government and NGO capacity to manage HBC partnerships.
Impact of service characteristics on control by principals or agents

67 Within the HBC intervention, control by the principal (government) is mixed. The main problems lie around contract enforcement given the difficulty of determining and measuring relevant outcomes and the implementation of contracts with large numbers of providers scattered around the country. Outcomes are likely to be associated either with providing social support and easing pain, or be linked to something like treatment adherence which is dependent on the actions of the patient as well as the provider. However, the government’s role as the main source of finance for HBC gives its considerable leverage in partnerships.

68 Another important factor limiting control by the agent is capacity, although capacity varies according to the size, resources and experience of the provider. The larger organisations such as the Hospice Association of South Africa and Red Cross, led by professional staff with considerable skills and a large asset base, are able to submit the detailed service plans required to secure government funding. The smaller less-resourced and less-experienced NGOs/CBOs have less ability to organise themselves and face greater challenges in terms of medium to long-term sustainability. Although the state has attempted to support smaller NGOs/CBOs in submitting service plans (Helen Schneider, personal communication), not all receive this technical assistance, given government’s over-stretched capacity. Although the larger NGOs are in some ways coordinating action among groups of providers across the country, most providers are not organised amongst themselves – further limiting their capacity and control.

Capacity to perform interventions generally and in this intervention in particular

69 Provincial health departments have significant capacity weaknesses that constrain their ability to implement, monitor and evaluate HBC activity (Goudge et al, 2001b), and capacity is also variable across areas within a province. The broader capacity problems of government are compounded by the numbers of providers that are supported and monitored under this intervention. Systems are still being developed to improve co-ordination with NGOs/CBOs. There has also been discussion of the need for umbrella NGO organisations to be established that can assist in provider capacity development, as well as providing a channel of communication with government (Goudge et al., 2001b).

70 Other demands and constraints on capacity include the difficulties of determining and monitoring the outcomes required from the intervention, and securing the information necessary for monitoring. There is also continuing uncertainty around how to manage the roles and responsibilities of state actors vis-à-vis relationships with NGOs/CBOs. The importance of networking with, and supporting, the NGOs/CBOs suggests that a standard contract may be inadequate to govern the relationship, and that more relational forms of contract may be needed. But relational contracting has its own unusual capacity demands. In addition, as intra-governmental relationships within the health sector are vital in ensuring the intervention’s success, conflict over policy and resources may undermine relationships and implementation (Blaauw et al., 2003). The large and rapid increases in funding for HBC will only further stretch the existing and limited capacity.

7 Helen Schneider is a health policy analyst working in the field of HIV/AIDS in South Africa.
Conclusion

71 The support and facilitation of HBC highlights that:

- The intervention has mixed and challenging objectives;
- The political salience of HIV/AIDS as an issue underlies the implementation of the intervention, and the resulting rapid increase in funding may add to the capacity demands of its implementation;
- Implementing the intervention successfully is likely to be very demanding, given the existing capacity limitations of both government and providers;
- Greater coordination among HBC providers might help to tackle some of the capacity challenges of the intervention for government, such as supporting organisational development as well as service delivery across a large number of providers.

4 BROAD THEMES OF EXPERIENCE

4.1 Why does government work with NSPs?

72 Since 1994, policy discourse and frameworks have often been ambivalent or weak with respect to NSPs. The post-apartheid government came to power with a mandate to tackle the inherited inequities and to serve the poor. Rather than relying on not-for-profit NSPs it took clear responsibility for serving the poor through the public sector. At the same time, an attitude of suspicion towards for-profit providers and uncertainty about how to manage them initially led government largely to ignore these providers.

73 However, for-profit NSPs already play important roles in the health system as a result of the apartheid era’s largely positive, and sometimes laissez-faire attitude towards them. In addition, it has been recognized that one of the biggest challenges still facing the health sector is the continuing mal-distribution of resources between the two sectors relative to the population each serves. This is one of the factors underlying the country’s poor performance in terms of the World Health Organisation’s 2000 ranking of health systems worldwide (World Health Organisation, 2000). Recent policy frameworks, therefore, seek to establish guidelines about how to work with them in ways that promote the policy goals of equity and efficiency, and maintaining financial sustainability.

74 The PDS system (case study 1) is, thus, important because it represents one of the few currently implemented interventions that actively draws for-profit NSPs into the overall task of serving the poor. As a long-established intervention it has proved both durable and difficult to change. The regulations governing dispensing practices (case study 2) are, similarly, largely an inheritance of the apartheid era (although recent efforts have been made to strengthen the regulation of dispensing doctors). Intended to protect the population as a whole, the intervention inevitably also protects the poor, who are generally the least powerful and most vulnerable in health care transactions.

75 The third case study, in contrast, represents an internationally accepted but new response to a health crisis that has become evident only in the post-apartheid era. The scale of the HIV/AIDS epidemic requires a massive response and so government has initiated partnerships with not-for-profit NSPs for home based care (case study 3). Its explicit objective is to ensure efficient resource use given concerns about the likely cost burdens of
providing care in hospitals for people with end-stage AIDS, given the lack of alternative forms of publicly funded services that might offer more appropriate care to the growing numbers of people living with the end-stage of the disease. Such care will simply not be provided by for-profit NSPs, particularly to the lower income rural and urban populations most affected. The government either has to extend its own service network, work with not-for-profit NSPs or leave people living with HIV/AIDS without care. Doing nothing has become an increasingly untenable position. Not-for-profit NSPs may appear to represent the best of the remaining two options because they already reach beyond the public sector within the communities where the need is greatest. The intervention does, thus, seek to support service delivery to the poor, in particular. It is, however, a particularly complex and so challenging intervention combining funding for service delivery with supporting the capacity development of the HBC providers themselves.

Overall, therefore, these three government interventions have mixed objectives. They all represent responses to market failure, and essentially (though perhaps only indirectly in the case of dispensing regulations) seek to serve/protect the poor. In addition, working with NSPs seems to reflect recognition of their existing and important roles within health care delivery as well as the public system’s own inability to address the health care problem of focus. Post-1994, the interventions must also be seen against the backdrop of the existing resource distribution patterns of the sector and public sector fiscal constraints.

4.2 How well do the NSP interventions perform?

The available evidence on performance is both limited and mixed. The important success of ensuring safe and effective drugs are dispensed is contrasted with the problems experienced in ensuring that PDS services are widely available and of good quality. The old fee for service system of the PDS contract combined with the government’s limited capacity to monitor performance as an important explanation of weak performance. There is as yet no evidence to judge whether the implementation of a session-based pricing mechanism has addressed these problems. The HBC experience is also still too limited to be able to make judgements yet about performance. Early signs suggest that providers are working within poorer provinces, though it is unclear whether within those provinces HBC providers are located in more impoverished communities. However, the concern has already been expressed that the current dependence of HBC providers on volunteers (rather than paid care givers) may not be sustainable in the long-term.

4.3 What key factors influence the performance of NSP interventions?

Across case studies the nature of the provider group represents an important challenge to effective implementation of the interventions considered, in the demands it places on government capacity. In each case, the provider group is made up of a large number of generally small-scale operators, fairly widely dispersed geographically, each of which must be monitored (and, in the case of the PDS systems and HBC, with each of which there is a contract/agreement. Indeed, the selection of these NSPs is in part because they serve more remote and so under-served populations. Only in case study 2 (dispensing regulations) is the provider group largely urban-based, perhaps easing the monitoring demands. In addition, these capacity demands are at least partly eased either by the altruistic motives of at least some providers (suggesting that less monitoring may be necessary), or because the providers are self-regulating (due to a concern to maintain ethical/professional standards or to the threat of disciplinary action if such standards are broken). Requiring those NSPs supported through the interventions to be legally recognized
providers (except in some instances in relation to HBC) gives this threat bite – being disciplined may lead the provider to lose the funding associated with the intervention and their right to practice. However, the PDS case study indicates that these pressures are not always enough to ensure good quality service provision even whilst the dispensing case study offers evidence of their positive influence.

79 In all case studies, the characteristics of the service of focus also influence the intervention’s implementation. The nesting of dispensing regulations within the broader pharmaceutical regulatory environment, together with the tight focus of these regulations on relatively easy to monitor service characteristics, facilitates implementation. This, and the routine use of the service, also provides a platform for some, limited, consumer/patient monitoring of provider behaviour, in addition to some monitoring of practice by medical insurers. The regulations also themselves require the provision of information for use in government monitoring. In contrast, the difficulties of specifying the outcomes expected from health care contracts has made monitoring PDSs difficult, and the information PDSs have to submit to government authorities does not allow assessment of quality of care. Consumer/patients also have too little power (due to the lack of consumer organizations, use of the service in times of crisis and information asymmetry) to act as watchdogs of provider behaviour. Similar problems are likely to arise in relation to HBC partnerships given their complexity (involving funding for varying packages of service delivery, as well as support for capacity building) and the apparently weak information requirements of the agreements. The dangers of weak and inappropriate contract specifications are clearly shown in the PDS case. Poor quality of care is largely a response to the use of a fee for service mechanism that provides perverse incentives for quality of care, as well as to weak monitoring mechanisms and long contracts that offer weak sanctions for poor performance.

80 In all cases studies, the nature of the service (with high professional content and difficult to specify outcomes) may allow the agent (NSPs) to exercise some control over service delivery. However, in practice, the potential for control by these agents is limited in the PDS and HBC case studies because they are small-scale providers, and are weakly organized amongst themselves. The importance of government funding to their economic survival or even existence seems likely to give it the upper hand in these relationships. In contrast, the professional bodies for pharmacists and doctors may allow these NSPs to exercise power from time to time. Even in the PDS case study, the role of the professional body in resisting changes to an NSP intervention is clear. However, in terms of dispensing regulations, the professional bodies rarely use this power due to their broad support for the existing regulatory frameworks, and for self-regulation.

81 Finally, the case studies also all suggest that the capacity of government to implement these interventions is perhaps most central to their (potential for) success. A common problem, therefore, is the generally weak and uneven government capacity in South Africa. This problem is in many respects a legacy of the apartheid era, but one that has not yet been fully countered by post-apartheid actions. The complex nature of the post-apartheid government structures has only added the problem of coordination to the other capacity challenges. Poor communication with NSPs and the public can also stimulate resistance to policy change.

82 Nonetheless, case study 2 (dispensing regulations) provides evidence of good capacity. This is associated with the existence of long-established, adequately-resourced statutory bodies responsible for specific tasks, and working within clear frameworks of accountability. These statutory bodies offer both sticks (the threat of being struck off the
professional register and subject to criminal justice; the need to prove continuing professional development) and carrots (education, sometimes linked to the requirement of continuing professional development) to encourage compliance with the regulatory frameworks.

83 The demands on government capacity of the PDS and HBC interventions are exacerbated both by the specific requirements of the particular forms of intervention (demanding unusual skills in government agencies) and by the lack of other bodies with or through which to negotiate, communicate, and work. In contrast, implementation of the dispensing regulations is not only supported by the role of statutory councils (backed up by legal requirements), but also by the broad support of the professional bodies for the regulatory aims. The role of an umbrella organization in supporting provider capacity development and acting as a communication channel for government may be particularly important in the case of HBC, given the complexity of the intervention. However, the establishment of strong provider groupings can act as a barrier to implementing regulations, or change in them – as outlined in the PDS case study. The capacity demands of the dispensing regulations are also slightly eased by the role of consumer as watchdog.

84 Finally, aspects of the broader institutional environment both add to the capacity challenges and offset them. The public sector’s fiscal constraints and the continuing uncertainty associated with the broader process of societal transformation pose problems. However, other features support the successful implementation of NSP interventions. In particular, the strong legal system and political stability both make any sanctions associated with an intervention credible, and may support the gradual development of government capacity to implement the intervention.
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ANNEX TWO: NON-STATE PROVISION OF BASIC EDUCATION IN SOUTH AFRICA

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1 INTRODUCTION

1. This research report explores non-state provision of basic education services in South Africa. In particular it reviews various interventions and investigates whether they are enabling or disabling of access by poor communities. The data is derived from interviews conducted with policy makers and non-state providers, and related documentation. Three aspects of intervention, namely, policy dialogue, regulatory frameworks and facilitation are used as an organising framework. Direct non-state provision of primary education is small in South Africa. The scope of the research was therefore expanded to include early childhood development (ECD) which is regarded as an integral part of basic education, and adult basic education and training (ABET) because some out-of-school youth acquire basic competencies through adult learning centres. This text reviews the broad range of non-state providers in South Africa and the policy framework within which they operate. The analysis then discusses insights from each of the three sub-sectors - primary schooling, early childhood education, and adult basic education and training. Concluding remarks identify findings relevant to the development of pro-poor non-state provision.

2. This study is limited in scope and was conducted over a short period of time. Its purpose was not to evaluate the interventions, but to portray non-state providers, identify the nature of policy dialogue, and collate perspectives on the efficacy of regulation and facilitation mechanisms. The report should be read with this limitation in mind.

1.1 Non-State Provision of Educational Services in South Africa

3. Under the apartheid governments before 1994 civil society organisations provided basic services to sections of the population legally excluded from basic education or receiving very limited services. Independent8 schooling grew slowly after 1948 and was supported by those who rejected “Christian National Education” for religious or anti-apartheid reasons. From the 1980s non-state providers were gradually accepted by the State as having a useful complementary role to play in delivering services and a more permissive climate

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8 Independent schools are those registered as such under the South African Schools Act and include not-for profit and for-profit educational providers which may or may not receive public subsidy.
developed. As apartheid crumbled the non-state education sector developed to include traditional elite private schools, newly established private schools enrolling black middle class children with or without a religious character and explicitly established to challenge apartheid schooling; and commercially run urban “street academies” tapping excess demand from poorer segments of the community (Muller, 1992). Until the mid 1990s significant support flowed to a range of non-state providers from external donors sympathetic to the anti-apartheid cause.

1 The current South African Schools Act (1996) enshrined the right of non-state providers to operate. As the State took responsibility for a unified and universal basic education system much external support was redirected through the Government of South Africa and away from direct subsidy of non-state providers. Many non-government organisations (NGOs) had to begin to redefine their role as partners in development with Government and Provincial authorities, rather than alternative providers in opposition to the State. Some of the services they provided were displaced by the secular and democratic State, others began to be sub-contracted by Government to both for-profit and not-for-profit providers. Non-state providers had to decide whether to become more integrated into programmes initiated and controlled by the State, or to continue to seek funding outside government. Morrow (2004) argues that integration compromises the critical advocacy role that many non-state providers played in the past. However, as direct external funding of non-state providers of magnitude has diminished to a trickle, the reality is that those NGOs which did not make the transition to more commercial operation drawing on corporate sources of funding and the paid educational service market place, have withered.

2 The situation is complicated by the lack of a clear and coherent policy on outsourcing by the State. Initial lack of enthusiasm by newly installed public educational administrators has been tempered by realizations that some non-state providers can provide complementary services effectively, especially where public sector capacity and delivery are lacking. Pampallis (2004: 429) argues that there remains a need for policy guidelines that will help individual managers on issues like “what should be outsourced, and how service providers should be selected”. The significant role envisaged for non-government providers in legislation has yet to be reflected in more than ad hoc responses to short term needs.

3 Recent estimates suggest that civil society organisations numbered around 100,000 in South Africa in 1999 and accounted for about 1.2 percent of the South African Gross Domestic Product (GDP). It is estimated that 53 percent of these organisations are community-based and they operate at a local level. Only about 6% of these are involved in educational services. This appears to be a relatively small proportion when compared to an average of 22% across the 28 countries which were reviewed (Swilling and Russell, 2002). Morrow (2004) cautions that the methods used in the study excluded many organisations which might be included in South Africa, for instance, the providers of voter education, job training programmes, public health and wellness education, and legal and human rights education. The majority of those included are involved in primary and secondary education (about 82 percent) with ABET providers constituting about 16 percent.

4 Available data suggest that non-state provision of primary education is very small in South Africa. In total about 3.2% of enrolments are in independent schools of which less than half are at primary level. Total participation may be greater if some higher estimates of the number of schools are credible, but these include unlicensed schools and unstable “fly
Early childhood provision is dominated by non-state providers but there is very little systematic data on the sub-sector. Provision is generally by individuals, families, and through community based organisations. In ABET the largest providers are the University of South Africa’s (UNISA) ABET Institute, and Project Literacy who have received external donor support in the past but receive little or none now.

2 THE POLICY CONTEXT

2.1 Legislative Map

5 Initially the post apartheid state recognised the important role that non-state organisations could play in the provision of basic services, reflecting their role in the struggle for democratic government. A myriad of new laws have affected non-state provision of educational services. The most important are the:

- South African Schools Act of 1996 (SASA) which gives the right to establish independent schools
- National Education Policy Act, No. 27 of 1996 (NEPA), and the associated national Norms and Standards for School Funding of 1998, which determine criteria for registration and subsidy
- Non-Profit Organisations Act of 1997 which defines an NPO as a trust, company or other association of persons established for a public purpose, the income and property of which is not distributed to its members or office bearers.
- National Development Agency Act of 1998 which was designed to foster partnerships between the government and non-state providers and established the NDA to channel support from government and international organisations to non-state providers.
- The Lotteries Act which provides support to registered non-profit organisations from the State Lottery.
- Income Tax Act of 2001, which requires independent schools to register as Public Benefit Organisations (PBOs) with the South African Revenue Services (SARS) to qualify for tax exemption which will only be granted to non-profit organisations.
- The Property Rates Bill which gives municipalities the right to levy rates on all property, with the power to grant rebates or full exemptions for PBOs.

6 Taken together this legislation provides the basis for legal operation of non-state providers. Key features protect the rights to operate, require adherence to minimum standards and the national curriculum, create conditions for pro-poor subsidy of schools, establish taxation status, and identify some possible channels of financial support. Universal access to public primary schooling is identified as a State responsibility. This responsibility will over time come to include what is now the Reception year of primary schooling (Grade 0) and is currently largely part of ECD. There are generally specified commitments to achieve universal literacy through ABET.

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9 The number of schools is estimated at about 1200 by (du Toit 2003). Hofmeyr and Lee (2004) suggest a total of as many as 2000.
10 The NDA is cross-sectoral and gives no grant support to formal education. More detailed consideration of its functions is therefore excluded from this research.
Throughout the legislation there are clauses which place responsibilities on the State to support non-profit service deliverers. In practice, much of the legislation has yet to embed itself and support has been sporadic rather than consistent. The national lottery and the NDA have been criticized for slow disbursement, and more generally procedures designed to ensure accountability for public funds have been criticized as often cumbersome, having high transaction costs, and creating compliance difficulties for smaller organisations (Gardiner and Macanda, 2003). In sum the legislative frameworks are extensive, and in principle they are actively supportive of non-state providers. However, there is much sentiment that regulation and facilitation within the legislative framework can be restrictive, is often not well implemented, and has not resulted in levels of support consistent with policy promise or expectations of providers that it might approach the historically high levels of the early 1990’s.

2.2 The Map of Formal Sector Non-State Basic Education Providers

The South African Schools Act of 1996 establishes two types of school: public schools (State provided) and independent schools (non-state provided). In line with the Constitution, the act prohibits racial discrimination in both public and independent schools. The Act states that the quality of education offered by independent schools may not be inferior to the quality of education offered by the public schools.

Several classifications of non-state providers exist (Muller 1992, Hofmeyr and Lee 2003, Deltiens et al 2004). Key differentiating features which interact are ownership and governance, religious affiliation, school size and location, catchment populations, and fee levels. Some idea of the diversity within the sub-sector is evident from the following observations.

Non-state independent schools are concentrated in three Provinces – Gauteng, Kwa-Zulu Natal, and Western Cape which together account for about 68 percent of the total (du Toit 2003). Of these some estimates suggest 44 per cent are affiliated to religious groups, about 28 percent are community based, and only 5 percent are for profit organisations, (du Toit 2003). Other estimates (Deltiens 2004) suggest that the great majority claim religious affiliation (80 percent), though not necessarily ownership, that Churches own about 31%, individuals and families about 25%, Trusts 22% and Companies 22%. The great majority of faith based schools are Christian with a small minority of other faiths. About 55% of all schools have less than 300 learners (du Toit 2003), or less than 200 learners at secondary level (Deltiens 2004). The estimates disagree but it is clear that most are small schools. Nearly 90% of schools are urban/sub-urban with very few in townships, or in rural areas (Deltiens 2004).

In terms of catchment populations, high cost elite schools with fees above Rand 12,000 draw on the wealthy national population concentrated around the urban centers. Faith-based schools attract those sympathetic to their beliefs. Community based schools are varied with local catchments and exist to serve unmet demand or provide an alternative to poor public schooling. Township and “street academies” are more likely to enroll low income students and those repeating after dropping out of public schools. They also may be attractive to quasi-legal migrants since their admissions procedures are often more flexible than other schools.
12 Around half of all independent schools charge less than Rand 6,000 tuition fees (du Toit, 2003) (40% according to Dieltiens, 2004). Very few appear to charge less than Rand 1,000 – probably less than 4%. Even at Rand 1,000 it is unlikely that the poor can afford to enrol (Lewin and Sayed, 2004). Some 18-20 million South Africans (45%) are living in poverty and between 25% and 30% live in extreme poverty, with an income less than R194 per adult per month (UNDP, 2000). Independent schools are unlikely to provide access to out-of-school youth because poverty accounts as an important reason for their exclusion from public schools. A detailed study of out-of-school children in 1998, found that direct costs such as school fees, transport costs and uniform costs prevented learners from registering at schools or resulted in them dropping out during the course of the year (Porteous et al, 1998). Scholarships and bursaries for poor learners have also become scarce in post-apartheid South Africa (Hofmeyr and Lee, 2004).

13 Non-state provision is shaped by the subsidy system. The National Norms and Standards for School Funding (1998) set minimum standards for subsidies to independent schools and recognise that “if all learners were to transfer to public schools, the cost of public education in certain provinces might increase by as much as five percent”. Subsidies “must serve explicit social purposes” and must show preference to independent schools that are well-managed, provide a good education, serve poor communities and individuals and are not operated for-profit. Criteria for funding include whether the school is registered, has a proven track record, and does not compete with a nearby public school of equivalent quality. The basic principle for estimation of average subsidies is to use the unit costs per pupil in State (public) education in the previous year. The formula used in the Norms provides that schools charging fees of more than two-and-a-half times the provincial average cost per pupil in a public school receive no subsidies. Those charging lower fees will receive subsidies calculated on a sliding scale - the lower their fees, the higher their subsidies.

14 Thus, schools charging less than about Rand 12,000 can qualify for the lowest subsidy level. At the low end schools can charge fees of about Rand 2,000 and operate at average public cost levels. Below this fee level normal school operation is problematic if teachers are paid at rates equivalent to government school teachers. These fee levels exclude the poorest households. Subsidies are linked to performance criteria at matriculation level which are seen by some to further disadvantage schools serving poor, low achieving populations.

11 To qualify schools must have a matriculation (grade 12) pass rate above 50% if they have secondary grades, the repetition rate in grades 11 and 12 should not be more than 20% and the school is not to engage in practices which artificially increase the grade 12 pass rate.
Figure 1 Allocation Table for Independent School Subsidies

<table>
<thead>
<tr>
<th>Fee Level</th>
<th>Subsidy level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 0.5 times (50%) of the provincial</td>
<td>Subsidy equal to 60% of the provincial average</td>
</tr>
<tr>
<td>average public cost per learner in ordinary</td>
<td>average cost per learner in ordinary public</td>
</tr>
<tr>
<td>public schools for the previous fiscal year.</td>
<td>schools.</td>
</tr>
<tr>
<td>Higher than 0.5 and up to 1.0 times the</td>
<td>Subsidy equal to 40% of the provincial average</td>
</tr>
<tr>
<td>provincial average public cost per learner</td>
<td>average cost per learner in ordinary public</td>
</tr>
<tr>
<td>in ordinary public schools for the previous</td>
<td>schools.</td>
</tr>
<tr>
<td>fiscal year.</td>
<td></td>
</tr>
<tr>
<td>Higher than 1.0 and up to 1.5 times the</td>
<td>Subsidy equal to 25% of the provincial average</td>
</tr>
<tr>
<td>provincial average public cost per learner</td>
<td>average cost per learner in ordinary public</td>
</tr>
<tr>
<td>in ordinary public schools for the previous</td>
<td>schools.</td>
</tr>
<tr>
<td>fiscal year.</td>
<td></td>
</tr>
<tr>
<td>Higher than 1.5 and up to 2.5 times the</td>
<td>Subsidy equal to 15% of the provincial average</td>
</tr>
<tr>
<td>provincial average public cost per learner</td>
<td>average cost per learner in ordinary public</td>
</tr>
<tr>
<td>in ordinary public schools for the previous</td>
<td>schools.</td>
</tr>
<tr>
<td>fiscal year.</td>
<td></td>
</tr>
<tr>
<td>Higher than 2.5 times the provincial</td>
<td>No subsidy</td>
</tr>
<tr>
<td>average public cost per learner in ordinary</td>
<td></td>
</tr>
<tr>
<td>public schools for the previous fiscal year.</td>
<td></td>
</tr>
</tbody>
</table>

Source: Government Gazette, 12 October 1998, No. 19347, section 151 (Figure 3)

3 INSIGHTS FROM NON STATE PROVIDERS OF PRIMARY SCHOOLING

Four umbrella organisations were identified that include the majority of non-state providers of primary schooling. These are the Independent Schools Association of Southern African (ISASA), Catholic Institute of Education (CIE), the Muslim Schools’ Association (MSA), and the Alliance of Black Independent Schools (ABIS). The National Alliance of Independent School Associations of Southern Africa (NAISA), is a coalition of the associations of independent school organisations, but seems not to have an identity as strong as those of its constituent members. Interviews with the associations were undertaken and one MSA school, one established ABIS school, and four informal settlement schools were visited. In addition READ Education Trust was included as an established non-profit organisation which sees itself as supporting state efforts to address educational problems related especially to literacy and which supports schools.

3.1 The Independent Schools Association of Southern African (ISASA)

ISASA is the largest umbrella organisation of providers of independent schooling in Southern Africa. It represents more than 360 schools in South Africa and 21 in other southern African countries. Its history is that it grew from previous associations of higher cost elite schools largely serving the white population. Only 8% of its members charge fees below Rand 5,000 per annum, 44% over Rand 22,000 (ISASA data). Most of its recent growth has been in mid-fee schools (Rand 6,000-rand 14,500). The majority of the schools it represents are in the 0 – 15% subsidy category, which means that they do not rely on subsidies for survival.

The association is a Section 21 body, which means that it is registered as a not-for-profit organisation. It is a subscription based organisation which also receives support from the
corporate sector. Since its formation in 1999, it has participated actively in national education policy debates. It provides support to its members on curriculum issues, promotes partnerships between schools and with their communities, maintains data on independent schools, provides some financial services including access to a pension scheme, and acts as an advocacy group (ISASA, 2004).

### 3.2 The Catholic Institute of Education (CIE)

18 The CIE was formed in 1985 by the Southern Africa Bishops’ Conference with the aim of providing in-service support and training to teachers in catholic schools. The Institute represents 377 catholic schools in South Africa. The schools are divided into mid to high cost independent schools (about 105) and “public schools on private property”. The latter are financed by the State as normal government schools, but the Church retains ownership of land and buildings. This arrangement arose because these schools largely serve poorer communities and could not sustain themselves without high levels of subsidy. They retain some aspects of being faith based schools. The CIE schools represent between 10% and 15% of all independent schools in South Africa. About 75 percent of these independent schools are in the townships and rural areas. The admission policy of their member schools is not based on religious affiliation. Most of the cost of the CIE infrastructure which supports Catholic schools is funded from international grants (50+%), and from domestic grants (35+%).

### 3.3 The Muslim Schools’ Association (MSA)

19 The Muslim Schools’ Association represents more than 90 percent of all independent Muslim schools and about 5 percent of the total independent schooling in South Africa (60 schools). It acts for the interests of Muslim schools in policy forums and coordinates the sharing of expertise and experience across the schools. The association also assists its members to raise funds. Most of the schools represented by the association depend on funding from communities, including contributions from zakat. Although the schools represented by the Association mainly cater for Muslims, its chairperson says that the schools also cater for a significant number of learners from previously disadvantaged background (mainly Africans) who may not be Muslims. The association has grown from the founding of the first school in 1984 with the most rapid growth occurring post 1994. Redundancy “packages” which resulted in early retirement of many teachers in the mid 1990s allowed some to set up new schools which have joined the association.

### 3.4 Alliance of Black Independent Schools (ABIS)

20 The Alliance of Black Independent Schools (ABIS) is an association representing schools at the low end of the market in Gauteng Province. According to its former chairperson, the Alliance represents about 60 schools in Gauteng catering for about 30,000 to 35,000 learners. Most of these schools are in inner city areas and informal settlements. The Alliance says that its members cater for the previously disadvantaged black majority and in most cases they provide where the state is not providing, or not providing effectively. Most of these schools rely on state subsidies which can constitute between 90 percent and 95 percent of schools’ income. Without these subsidies the schools could not function, nor could they keep fees within the reach of their students. Most appear to charge Rand 3,000 or less.
3.5 The READ Education Trust

21 READ Education Trust is a non-profit organisation which sees itself as supporting state efforts to address educational problems. The organisation was founded as an NGO in 1979 in response to poor communities’ reading needs. It provides support to educators and it also supplies books to poor schools. READ has developed learner materials to support the new curriculum and has piloted them in schools and offers them as its own approach to reading. The organisation is involved in campaigning for reading and literacy. READ sees itself as an organisation that prioritises the poor as its main target. Currently it relies heavily on private donors and corporate philanthropy, and the funds it generates from the services it provides to the government. There are no long term funds committed to READ by either government or private funders. READ claims to be involved with 7 percent of public schools.

3.6 Policy Dialogue with the State

22 Several issues arose from the interviews in relation to policy dialogue between the State and providing organisations. Firstly, there was a clear perception that the power of non-state providers to participate in policy development had diminished when compared to the mid 1990s. There seemed to be a number of reasons for this feeling. Most of the non-state providers were concerned with issues of survival, except for ISASA which was confident of its future. This means that contentious advocacy was seen as something that was potentially dangerous and a diversion of scarce resources. Criticising the state could result in withdrawal of support or other pressures. Thus, the Alliance of Black Independent Schools felt that because they had been challenging the state on a number of policy and implementation issues (e.g. on the subsidy norm that requires that schools should get 50 percent matriculation pass rate to qualify, on the calculation of subsidies which the Alliance argued was calculated to their disadvantage), their members had been deliberately harassed by state officials. The harassment allegedly could include constant visits to those who are considered trouble-some, and deliberate delays and under payment of subsidies. The MSA confirmed similar experiences. Both organisations had largely abandoned their advocacy role. The ABIS in particular felt that some members of local government are bent on eradicating private schools for ideological reasons.

23 ISASA has taken a deliberate stand not to criticise government policy. It appeared confident that it could continue to be effective in influencing policy without suffering penalties. Since few of its schools depend on subsidy, and most are elite, this is perhaps predictable. The CIE was also confident that its relationships with government were sufficiently strong for its views to be heard without undue tensions developing. The indication is that the CIE felt they only belong to NAISA because the government prefers to engage with a broader forum. The Institute was able to negotiate deeds of agreement for the Catholic schools with the government independent of NAISA.

24 Secondly, non-state school providers seem too small and too fragmented to make a sustained impact in terms of policy dialogue. The National Alliance of Independent School Associations of Southern Africa (NAISA) is weak and divided and appears to be dominated by ISASA as seen from the perspective of the National Department of Education. In Gauteng Province, the Gauteng Joint Liaison Committee (GJLC) has been established to facilitate policy dialogue between the provincial department of education and the independent schools. The Committee is composed of representatives of different associations of independent schools in Gauteng Province. The Committee meets four times...
a year – one meeting per term. The meetings are aimed at discussing policy issues relating to independent schools. The GDE acknowledges that the discussions have not always been successful and as a result some of the issues are resolved in court. From the point of view of the schools interviewed, the GJLC has not always been effective in addressing issues that affect the informal settlements schools. They pointed out that at times ABIS takes up issues on its own. As an example they pointed to the issue of how subsidies are calculated. In this case ABIS (without any support from the other associations) challenge the GDE on the formula used to calculated subsidies. Thus the constituent associations are seen to represent different interests and are at times in conflict with each other.

25 Three examples make the point. Subsidies are a major concern to both the Black Alliance and the Association of Muslim Schools, and their debates with the Department tend to focus mostly on the related formulas and payments. ISASA does not prioritise this issue, and appears more concerned with its independence and autonomy. The ABIS and the MSA are also exercised by the fact that their members are denied subsidies in areas where they compete with public schools unless they get a letter from the public school concerned, stating that they are not a threat to enrolments or other aspects of the schools. ISASA does not see this as a cause for concern since it is rarely applied in relation to their schools. Lastly the requirement that a school should achieve a 50 percent matriculation pass rate to qualify for subsidies affects members of the ABIS most directly, as they have the highest proportion of low achieving students.

26 Thirdly, South Africa has a very powerful state that does not rely on non-state providers for provision of primary education. Nor as Morrow (2004) points out are foreign donors able to influence education policy because of the State’s lack of dependence on external support, unlike in many other parts of Africa. The state projects a clear sense of agency, and has the power of a popular mandate. This means that it is able to ignore the interests of non-state providers if and when it chooses to do so. Members of the ABIS and MSA felt that often their concerns were ignored. They indicated that there was a gulf between national policy at the level of intent and aspiration for the sector, and its implementation through provincial governments which lacked capacity, and which might or might not be committed to supporting non-state providers.

27 Finally, READ is different from the associations discussed so far. It is a well established NGO which has had to adapt to a changing climate for funding. READ has a continuity of charismatic leadership. It is well established in its own purpose built premises and has regional offices and produces high quality materials. It has a diverse funding base of sponsors. In the past it received substantial international support but this has now fallen to a low level. Most of its sponsorship appears to be corporate with one particularly large programme supported by the Business Trust (Rand 155 million) which is coming to an end. This creates difficulties in managing the budget and keeping staff employed continuously. READ tenders to Provincial Departments of Education for projects, which it pilots, and then hands over once they are established. Negotiations can be lengthy, and submitting multiple small tenders is time consuming. Though it enjoys good relations with the National Department and some Provincial Departments it receives no core subsidy to smooth the flow of work and keep its cadre of expertise intact.

28 The picture that emerges is one where policy dialogue with non-state providers of schooling has been characterised by ad hoc consultation, uneven follow through, weak infrastructure, and occasional confrontation with critical issues resolved in courts. The issue of admission policy and the issue of calculation of subsidies are good examples of the
latter. The National Department of Education unilaterally decided on a raised the age of entry into independent schools. The independent schools successfully challenged the policy. The then Minister of Education appealed against the decision and he was unsuccessful. Even after the failed appeal, the Minister was still adamant that the decision would widen the gap between the privileged independent schools and the public schools. The calculation of subsidies was also challenged in the courts with a degree of success. The relationship between non-state providers and government is clearly not one of equals, nor should it be given their contributions to provision, and sources of legitimation. The relationships do indicate that some clearer understanding is needed of what dialogue should consist of, and how such dialogue could work more constructively with benefits for both interest groups.

3.7 Regulatory Framework Affecting Primary Schooling

29 The regulatory framework encompassing non-state schools has been outlined above. It includes statutory requirements in the form of norms and standards, provides for registration and accreditation and for quality assurance, and operates the subsidy system. ISASA does not regard the regulatory framework as generally problematic. It does feel that there are some difficulties arising from lack of capacity in Provincial Education Departments to implement some policies. Most frequently these are related to delays in the payment of subsidies and the time that it takes to get a school registered. The CIE raised similar issues. It allocates some of its staff specifically to engage Provincial Departments of Education and encourage them to deliver on their obligations. The MSA and ABIS are also concerned about registration procedures. It can take two years or more during which time subsidies are not available and is seen as a demanding process where the goal posts sometimes shift. Some schools remain unregistered as a result of being unable to meet the necessary conditions and a proportion of these have the characteristics of so-called fly-by-nights (informal, unstable schools run for commercial gain).

30 The GDE has acknowledged that they have capacity problems because of budgetary constraints. The department also agrees that registration does take time and it attributes this partly to lack of capacity and to the procedures used. The department pointed out that the application for registration first goes through the district office which checks if the school meets registration requirements and then recommends the school to the GDE (which does its own checking) – this is done to avoid corruption. In past the department dealt with schools that had health certificates, but when the GDE did its own evaluation found that they did not meet the health standards. So, to avoid this problem of fraudulent health certificates and other corruption the GDE has to do its own checking. The state has a duty to protect the public against such practices.

31 On subsidies the GDE said that they take time to process because schools often do not submit their audited statements in time. The department emphasised that it is important that schools should account for the money allocated to them. The department has dealt with a few independent schools where funds were misused – some of these cases are subject of criminal investigation. At times schools provide incorrect information (e.g. their enrolments often include part-time candidates). The GDE also indicated that whilst the department acknowledges that the independent schools do play an important role, the department is operating under budgetary constraints and therefore it prioritises the needs of public schools.
32 ISASA, as the largest and best established association, has initiated the establishment of its own quality assurance and accreditation system in anticipation of government requirements. This appears partly an attempt to pre-empt the imposition of a system, and certainly an initiative to influence whatever is established. This seems a constructive approach to partnership and could contribute to growth in state capacity. It would seem to benefit from a cross-sectoral approach involving the other associations, but this was not mentioned in interviews.

33 The ABIS in particular argued that the condition that requires a 50 percent matriculation pass rate for independent schools to qualify for subsidies is disadvantaging its poor schools. For schools to perform they need an appropriate level of resources. To deprive schools on the basis of missing the pass rate target is to perpetuate a vicious circle. Twelve schools, most of them in Orange Farm, had their subsidies withdrawn after they failed to obtain the 50 percent pass rate. ABIS is taking the State to court on this matter. The GDE has pointed out that they are not just using the 50 percent matriculation pass rate requirement when they consider schools for subsidies. The department said that over and above the 50 percent matriculation pass rate requirement for funding, the GDE has a management checklist that the department uses to monitor quality in schools. She said that the checklist accounts for 60 percent when a decision is made on whether the department should continue subsidising a particular school or not. The other 40 percent is based on the 50 percent matriculation pass rate requirement. The management checklist requires amongst other things that each school requesting funds should comply with the following:

- Schools should have capacity to handle public funds.
- Schools should have capacity to meet ongoing contractual obligations to suppliers of goods and services.
- Schools should have the ability to make educationally sound financial decisions.
- Schools should keep proper admissions and attendance registers.
- Schools should maintain proper financial records including full fee-payment records.
- According to the GDE Chief Education Specialist (Systems), these are necessary to ensure accountability. She said that in any case the 50 percent pass rate is not enough to use as a criteria for funding and that it was often manipulated by schools – weaker learners are registered as part-time candidates so that when they fail they do not affect the pass rate of the school. This is despite the fact that when schools request subsidies they indicate to the department that these candidates are registered on a fulltime basis.

34 The issue of 50 percent matriculation pass rate requirement is relevant for primary schooling as it creates a perverse outcome. The performance at the end of secondary school affects the resources available for primary students in combined/full range schools which have all grades. The Gauteng Department of Education (GDE) has revised subsidy rates so that primary and secondary students receive almost the same per capita despite the higher costs of secondary schooling. When subsidies are cut, primary schools may suffer as a result, even though their performance may be satisfactory. In the case in question the subsidies were cut but the Gauteng Department of Education did not follow up with an investigation of the reasons for the low pass rates. Schools enrolling poor students with little cultural capital in township environments are unlikely to perform well; where many are repeaters and drop outs from government schools the task may be doubly difficult.
The anti-competition clause in the Norms and Standards for Funding is seen by both MSA and ABIS as unnecessary and discouraging. The clause requires that an independent school acquires a letter from state schools in the area stating that the independent school will not undermine enrolment in state schools before they can qualify for state subsidy. In one case there has been some pressure on an independent school because an under-enrolled state school exists nearby and is generally thought to be of poor quality. It is not clear that transferring students would be beneficial to the under enrolled school. It would undermine the faith-based choice of families supporting the independent school.

A further point of difficulty arises because the rules for registration of educators by the South African Council of Education (SACE) do not recognise educators trained by religious groups. This is an impediment to staffing and some educators in religious schools remain unrecognised by SACE. Many of these educators have a qualification provided by religious groups which take the same number of years and is arguably of similar quality to the SACE recognised state qualification. Some recognition of prior learning would seem desirable for upgrading to qualified educator status, rather than having to take a full certification course.

Hofmeyr and Lee (2004: 163) argue that valuable resources and time are ‘squeeze[d] out of school management and administration’ as a result of independent schools having to deal with a panopoly of regulatory requirements. Unlike public schools, independent schools feel the burden of legislation more because they are treated as private employers and in some cases as private enterprises. They have to maintain accounts, arrange audits, employ staff, collect fees, solicit donations and undertake many administrative tasks that are not necessary in state schools. The costs of this fall on the school budget, whereas in state schools local government undertakes much of the administration. This appears not to be recognised in the subsidy formula levels, which seem to be based on average teaching costs in state schools without including a local government overhead.

Facilitation of Provision of Primary Schooling

The main facilitating mechanism for non-state providers is the subsidy system. Without it many lower fee level schools would cease to be financially viable. The system is pro-poor in so far as more is given to lower fee schools. As noted these subsidies remain insufficient to support really low fee schools that could provide access to the poorest. Their only real option is likely to be a state school and a fee waiver.

ABIS and MSA appear to enrol more poor students than ISASA or the independent CIE schools. They see the subsidy system as facilitating, but inadequate. There are several reasons. First, two year old data is used to calculate the subsidies which then do not reflect price inflation. Second, Provincial Departments have control over subsidy budgets, and can decrease allocations for independent schools in a variety of ways since these are not protected in any way. In fact, in Gauteng the allocation per student has been decreasing significantly. The GDE pointed out that they spend money to provide scholar transport so that learners who do not have access to a school in their area could attend schools in other areas. This affect the amount of money the department is able to allocate to subsidies for independent schools. Third, not all students pay fees and a proportion may be given fee waivers. In independent schools every fee waiver represents a loss of income to the school so there are clear limits to how many such waivers can be given. In one Muslim school visited 25% of students had fee waivers. It depended on community contributions to make up the deficit generated. Fourth, subsidies are calculated on the basis of enrolment in the
first week of term. Students often take longer than this to register. This can result in under payment or students being turned away.

40 Thought the legislative framework for non-state providers is facilitating in the sense that it is designed to allow them to operate, it is seen as restrictive in several ways. Independent schools have to be registered as not-for-profit organisations if they are to access state subsidies. This prevents owners and shareholders benefiting from their investments in schools since they cannot draw profits, and can only reinvest gains. This arguably undermines incentives to be more efficient and effective, and creates imbalances between risk and reward. There are good reasons why public subsidies should not be allowed to support private profit, especially where tax advantages are conferred on providers. Wholly commercial, unsubsidised providers can make profits. However they are unlikely to provide access to the poor since affordable fee rates will not generate attractive rates of return. The current mechanism does not appear to provide a mechanism that would encourage entrepreneurs to risk capital for schools that enrol low income students. This might not matter if the state was able to provide school places for all such students.

41 A counter point to the problems surrounding operation in poor communities concerns the competition that has developed between higher cost non-state providers and state schools. Ex-model C schools, which historically served the white community, had to chose whether to remain in the state system or become fully independent. Almost all remain in the state system. These schools have inherited good facilities and are allowed to charge fees agreed by their governing bodies. Many operate at the high fee levels (Rand 6,000 –Rand 12,000). In these schools all salaries are paid on a standard pupil teacher ratio of 40:1 (primary). Compared to similar independent schools these schools then receive fee income, and have salaries paid. These schools are partly protected from competition by the regulatory framework and are regarded by some as like private schools in the public system. The playing field between them and competing independent schools is not level.

42 Financial support is available from donations and through lottery money. Donations to non-profit organisations qualify for tax relief. The extent of these donations varies widely depending on the wealth of the communities and their coherence. The lottery does not seem a significant source of support to schools in the associations we researched. It was noted that the forms for requesting the lottery funds are complicated and tend to exclude smaller providers. The distribution of the lottery funds was also been criticised for being slow.

43 READ is in partnership with some Provincial Education Departments. This has worked successfully and sometimes results in avoiding the need to tender as a result of a continuing relationship. This is facilitating but is essentially an informal relationship. It advantages READ, but hypothetically disadvantages smaller providers without READ’s infrastructure, reputation and capacity. From READ’s point of view medium term service contracts would help ensure greater budgetary stability and maintain its capacity.

44 The representatives of the informal settlement schools argue that despite the fact that they see themselves as providing for the poorest communities the state has not been supportive. It was said that the number of the learners catered for by informal settlement schools is increasing as a result of influx from rural areas and neighbouring countries. It was also indicated that the existing schools are not sufficient to cater for the learners in the area. They pointed out that despite a management checklist constituting 60 percent of the overall evaluation of schools for subsidy purposes, as far as they were concerned that the
GDE has used the 50 percent matriculation pass rate requirement as the sole test to deny them subsidies. Despite their representations to the Gauteng Member of Executive Council (MEC) for education, their appeals for subsidies to be reinstated were ignored or not given due consideration though the regulations make provision for schools to appeal.

45 It was noted that these schools depend on subsidies as most of the learners’ parents cannot afford school fees. An example given was that in one of the schools fees are R50 per year, but more than half of the parents cannot afford this low level. In another school teachers have been working for months without pay because of the cut in subsidies. They only receive money for transport. 18 teachers resigned in one day after it was announced that one of the schools would not receive subsidy. The interviewees pointed out that those schools that do receive the subsidies receive them late and at times the wrong amounts are paid. Primary schools are not affected by the 50 percent pass rate requirement. These schools see the late payment and wrong calculations of subsidies as their major problem.

46 In sum, though there is facilitation of non-state providers of primary schooling, the system closely links it to regulation. The system does support non-government providers, but creates little incentive for growth in non-state provision, especially at the low cost end. By design or default some aspects of the system are, or are seen as, inhibiting rather than facilitating. This seems in part to reflect some ambivalence on the part of the State, and its agents, about the role it wishes non-government providers to play.

4 EARLY CHILDHOOD DEVELOPMENT

4.1 Overview

47 Early Childhood Development (ECD) officially covers all children from 0-9 years old. The ECD sector nominally provides support for children not enrolled in school and encompasses all their needs, not just those which are educational. Responsibilities are shared between Education Departments and Departments of Health, Social Development, Local Government and others.

48 Statistics on participation are unreliable. There appear to be just over one million learners enrolled in some form of ECD and about 50,000 ECD educators on about 24,000 sites. This can be compared to about 6 million children in the 0-6 year old age range. Provision is divided between some state provision in schools (17%), community based organisations (CBOs) (49%), and household and private providers (34%). The great majority of provision is non-state. Some providers are subsidised by other Departments and through the NDA.

49 The Department of Education’s main responsibility is to meet a target for 2010 by which time all 5 year olds should have access to a Reception Year (Grade R or Grade 0) in an accredited institution. This will involve increasing enrolment from about 200,000 currently to approaching 900,000, a very major expansion. The intention is that about 15% of provision would be supported through subsidies to community based organisations, and that the remainder would be financed through capitation grants to schools on the assumption that costs were about 70% of those per primary child.

50 Currently the sector is very diverse and much of it is unregulated and unregistered. ECD educators will have to be accredited by SACE and meet minimum qualification standards through accredited programmes. CBOs exist in many different forms. Some schools have
opened fee paying reception years partly to increase revenue. Local infrastructure to monitor and regulate ECD is very variable. Budgets are not ring fenced and there is considerable local discretion over how much support is given. This can result in little or none being available where other things are prioritised. Much ECD provision has been characterised as more child minding, than developmental support for children’s cognitive and affective welfare.

4.2 Policy dialogue

51 A co-ordinating Committee on early childhood development has been established to facilitate policy dialogue, not only with the non-state actors, but with other state actors. The committee is composed of the ECD Directorate of the Department of Education, Department of Social Development, the Office of the Rights of Children, Department of Health, and the South African Congress of Early Childhood Development (SACECD). SACECD is an umbrella body that represents about 6000 members nationally. This membership is composed of individual providers. SACECD does not only represent its members in important national fora, but it is also involved in capacity-building, lobbying, provision and fund-raising.

52 The National Department of Education, and other Departments hold bilateral meetings with various stakeholders, and meet with the SACECD. SACECD believes that although they were part of the consultation process on ECD policy and regulations their input was often ineffective. The regulations put stringent requirements for accreditation without offering support to achieve these conditions. For example, the government does not want to accredit organisations that offer units of the ECD qualification, and will only recognise full course providers. Most non-state providers do not have the capacity to organise the full course. Only Colleges of Education appear able to do this, but their capacity is very small compared to the demand created by universalising the reception year.

53 The Department feels that implementation of this policy on educator certification, along with the high standards required for registration is essential to maintain quality. It notes that SACECD was part of the decision to design the standards for accreditation. Its view is that ECD non-state providers are weak and fragmented, and that there were many different stakeholder voices with different interests. The national directorate has to proceed with implementation to keep on target to reach its goals. This seems problematic when much of the delivery of the services will be by non-state providers in the short term, especially that concerned with children below reception year age.

54 There does not appear to be much dialogue with the independent school associations on the Reception year programmes. The assumption is that most demand will be met in government institutions. Areas of confusion appear to remain, not least whether subsidies will be available to independent schools operating reception year programmes, and if so at what levels. This is not an issue for high cost schools, many of which will already be operating reception year programmes. It is definitive for low cost independent schools who may chose not to do this without subsidy.

55 Policy dialogue on ECD is complex because of the number of stakeholders with interests, the distribution of responsibility across many parts of national and local government, the fragmented nature of provision, the scale of the unmet demand for the services, and the ambitious targets set. Thought the state is dependent on CBOs and private providers and has very little capacity of its own to deliver ECD across the age
range, there appears very limited interest in making service delivery agreements with large scale NGOs rather than channelling money towards large numbers of CBOs of widely varying quality and motivation.

4.3 Regulation

56 Regulation of the ECD sector appears strong in documentation but weak in implementation. School based ECD will fall under Provincial supervision and quality assurance systems, many of which are already stretched in terms of capacity and are yet to develop special ECD expertise. Other providers fall under local government responsibilities where there may or may not be capacity. Given the existing number of sites to regulate, and the increase in numbers anticipated, this task will become more and more demanding.

57 The Guidelines for ECD services are extensive. As far as some SACECD is concerned they place unreasonable and unmeetable demand on providers, though their intention to raise standards is supported. For example, learner/educator ratios are recommended as 6:1, 12:1, and 20:1 for learners of 0-1.5 years, 1.5 years – 3 years, and 3 years – 4 years respectively. If implemented the number of educators needed would vastly exceed those currently available. At ratios of 30:1 for 5 year olds, the universalisation of Reception year will generate a demand for an additional 20,000 – 30,000 trained educators. If this is met partly through upgrading existing under qualified ECD educators there will be even fewer available for ECD below reception year level.

58 Thus the accreditation regulations are seen as an impediment because they do not recognise that the majority of ECD providers cannot meet the criteria without considerable additional support and time to build capacity. The regulations appear to meet the needs of more affluent sections of the community where providers can charge fees high enough to support high quality provision. They do not seem to be tuned or graded to reflect the capacity and resource base of many CBOs.

4.4 Facilitation

59 Our discussions indicated that the main ECD commitment, especially for the Department of Education, relates to Reception year. This will require considerable additional funding. There is a risk that other forms of ECD directed towards younger age groups will receive less support. Dependence on non-state providers to provide these services more extensively than currently is the case may require facilitation that goes well beyond exhortation.

60 ECD policy anticipates that subsidies will increase from about 25 percent coverage to 75 percent over the next six years. The effects of this on non-state providers are unknown, as are the possible consequences for families. It should allow more access if implemented. It may crowd out non-state providers from Reception year provision for low fee paying families.

61 Current plans account for up to 135,000 learners to be supported in CBOs that “become part of the public system” and be fully subsidised. It is not clear how these would then be distinguished from school provision and if they would then become state providers, or if they are effectively a contracted-out service. Private providers are not being offered any subsidy but will have to conform to policy and norms and standards. This is regulation rather than facilitation.
5 ADULT BASIC EDUCATION AND TRAINING RELATED TO LITERACY (ABET)

5.1 Overview

62 It is estimated that about 10 million South Africans could benefit from adult basic education to consolidate learning skills and literacy. These learners are those who were excluded from the education system in the past and those who suffered poor quality provision that failed to secure learning outcomes. Despite this extensive need the national Department of Education is spending less than 1 percent of its budget on ABET (Ramadiro, 2004).

63 The main government initiative for adult literacy is the South African National Literacy Initiative (SANLI) project coordinated by the National Department of Education. The University of South Africa’s (UNISA) ABET Institute (ABETI) is the main partner. It is a university based NGO with some of the posts funded by UNISA and is involved in both direct provision and development support. Though this programme used to receive DFID grants it no longer does so. Over and above direct provision the institute trains ABET educators who in turn participate in literacy provision. The Institute has established about 6,000 learning sites and more than 200,000 learners are currently enrolled in the literacy programmes. Although the Department of Education is a partner, the programme of service delivery is entirely driven by the Institute. Until the involvement of the UNISA ABET Institute there had been little recent development in the area of ABET provision directed towards the poor. The new Education Minister, Naledi Pandor, said, when she announced her priorities, that she was concerned about the slow progress in the area of ABET.

64 A second substantial provider with a long history is Project Literacy (PL). It started thirty years ago as a voluntary organisation and is established as a non-profit NGO. The organisation’s main area of focus is literacy and adult education. Today it is one of the biggest literacy organisations in South Africa. It employs about 450 educators on a part-me basis in addition to its staff of about 100 nationally. It now survives mainly on contract work, of which 70 percent is work for the Sector Education Training Authorities (SETA). Most of the remaining 30% is fee paying accredited courses for individuals and through company contracts. International funding from donors no longer figures in PL’s budget as significant (the last large grant was from USAID in 2002). As the chief executive officer of Project Literacy puts it they have “bought into registration and accreditation” because this will enable them to access SETA contracts. In terms of the new policy framework an organisation has to be registered and accredited to access government contracts and grants. It also needs to be registered as a non-profit organisation to qualify for tax exemptions.

65 Project Literacy competes with other non-state providers for contracts. PL used to target the poor as its prime constituency when it received grant funding linked to this target group. This is no longer feasible since the organisation has to sustain its income to retain its trained staff and capacity. PL will work on literacy projects for individuals and organisations that can pay the unsubsidised costs of service delivery. Project Literacy has collaborated with UNISA’s institute of ABET on various projects.
5.2 Policy Dialogue

66 Both ABETI and PL are of the view that policy dialogue with government on literacy issues is weak. There appears to be no forum or systematic review process that links providers with government and much that is decided is done so without consultation with ABETI and PL. Informal channels exists and are productive but somewhat arbitrary. This is thought to be partly reflection of the low priority accorded to literacy in practice budgetarily and politically. It is not high on the Department of Educations agenda, nor is it surrounded by targets related to political commitment.

67 The relationship between NGOs and government is thought to be more distant and less constructive than in the past. It is clear that there are sensitivities in government around control of the policy process, public discussion of lack of progress on adult literacy, and unease with critique, that can be reflected in real or threatened sanctions. This tempers the dialogue, especially where financial pressures demand that contracts keep flowing. Operational considerations over ride advocacy compared to the balance in the past.

5.3 Regulatory framework

68 Both organisations function as not-for-profit NGOs. Neither are opposed to regulation but both recognise that they have the infrastructure to support complex reporting requirements that smaller non-state providers could not provide. Full time staff are engaged in both compliance and in tendering for new business (four fundraisers) in PL which are financed from overheads.

69 Some aspects of tender regulations are thought to disadvantage not-for-profit organisations even when they are large and relatively efficient. The points system used apparently gives points based on the existence and composition of shareholders, and weights these in favour of participation by women and black South Africans. Organisations like PL do not have shareholders so they lose out on the points. The tendering process was felt to be less transparent than it could be, with little information available on failed bids.

70 Although PL no longer provides subsidised services for the poor it a pointed out that almost by definition illiterates are likely to be relatively poor. Most clients were now from amongst the employed, implying that they were not from the poorest groups, but were nevertheless low income earners. The regulatory system as experienced by PL and ABETI appears to have no pro-poor elements in it that influence activity.

5.4 Facilitation

71 The National Department of Education does support ABETI through the South African National Literacy Initiative (SANLI). It funds UNISA which supports posts in ABETI. This arrangement is one of contracting out service provision which appears to have been successful in terms of the volume of learners reached. However, active engagement between the Department and ABETI is very limited, and the recent withdrawal of DFID funding has created a crisis in operation.

72 Facilitation requires resources provided in a predictable way. Both organisations feel that they have to manage high levels of uncertainty about resource flows which imposes administrative costs and threatens infrastructure which takes time to build but which can
rapidly dissipate. There appears to be no medium term plan of public support for non-state literacy providers backed by resource allocation.

73 It is not clear how much these problems represent an ambivalent stance on contracting out services, how far they reflect real limits on resources available, and how far they result from changing relationships between NGOs and the State. It does seem clear that without these organisations and other non state literacy providers, levels of activity would be very low since the state has little delivery capacity itself.

6 CONCLUDING REMARKS

74 This research has explored non-state provision of primary schooling in South Africa, and has complemented this with a less detailed study of ECD and Basic Literacy programmes supported by non-state providers. It has generated insights into the nature of policy dialogue, regulation and facilitation. Several observations emerge.

6.1 Provision

75 Non-state provision of primary schooling is small in volume and it does not appear likely to grow significantly. Its existence arises from unmet demand in some unserved areas, and from differentiated demand where parents express a preference for faith-based or higher quality schooling than the state provides. The State is committed to universalise access to primary schooling and will probably succeed in the near future.

76 Non-state providers do not provide access for the poorest groups. Their fees, even with subsidy, will exclude low income households. Fee exemptions cannot be given on a large scale without undermining school finances. Few independent schools charge less than Rand 1,000 which is above the level of affordability of the poorest.

77 ECD is largely provided by non-state organisations many of which are community based and some wholly private. Policy is to absorb all 5 year olds into state supported ECD with about 15% of provision remaining in subsidised CBOs. Non-state providers are free to operate in an unsubsidised way. It is not clear how ambitious targets for participation can be met since there are both financial and non-financial constraints. Substantial expansion is envisaged but capacity to support, monitor, regulate, and deliver is very constrained.

78 Adult basic literacy is provided mostly through NGOs and the state has little delivery capacity. Currently the level of public resource allocation is low. Most activity is supported through employing organisations and SETAs and through ABETIs programmes, which have suffered from reduction in donor funding. In this sub-sector government policy backed by resource allocation is least clear.

79 The most likely future scenarios appear to be that non-state providers of primary schooling will remain active providing the subsidy system continues. They will service needs on the margin, should continue to deliver reasonable quality in the majority of sites (since they are accountable to fee paying students and parents), but may not do so where governance and supervision is weak and students undemanding. They will remain concentrated in urban and sub-urban areas with majority of students from middle and high income households. Those serving poorer communities are vulnerable to the extension of government services into unserved areas. If they lose subsidy as a result of poor performance and lack of compliance they will close.
80 In ECD the main activity will be the extension of universal enrolment to Reception grade. This is planned to occur mostly in government schools. The ceiling on subsidies will limit the growth of low cost CBOs delivering ECD. Private providers may operate at all cost levels. Those at the low end are unlikely to offer much more than child minding and will not be able to comply with registration standards. The supply of qualified ECD educators will be a constraint on growth. Non-state providers might offer training programmes but may have difficulty being accredited.

81 Adult basic literacy programmes will continue to be organised by non-state providers. Their coverage will be limited by funding and they will not address the needs of the poorest without subsidy. In the absence of real prioritisation, the sub-sector is likely to continue largely in its existing form.

6.2 Policy Dialogue

82 Policy dialogue between the state and non-state providers appears fragile across all the sub-sectors as seen from the perspective of providing organisations. Associations of independent schools are the most well organised and coherent but are still fragmented by different interests and motivations. The National Department generally appears to promulgate policy without much or any consultation and then responds to the associations if they have points at issue. From the State’s perspective this is an appropriate way to proceed given the small size of the sub-sector and some ambivalence to whether its own role extends much beyond regulation.

83 Though SACECD has been established it has yet to be seen as able to speak authoritatively for non-state providers of ECD. It may be that no organisation can, given the fragmentation and local nature of much provision. The sharing of responsibility for ECD across many department leads to coordination problems and in some cases a “receding locus of control” where it is not clear who is responsible for what. In ECD policy appears to be well ahead of implementation capacity. Some of the reasons may lie in the need for more realistic appraisal of what is possible given the resources available, and the capacities of providers.

84 Dialogue on basic adult literacy is minimal according to the accounts of two providing organisations. If the sub-sector were prioritised then such a dialogue needs development. Here the number of non-state providers of scale is limited and many of their interests appear similar.

85 Policy dialogue issues have several dimensions to which the research draws attention.

86 First, does the state regard such dialogue as productive, necessary, and helpful, or does it see it as a distraction, fraught with special pleading, and difficult to organise? The South Africa State is strong, centrist in many respects though it has a federal structure, and legitimate. It is also the main provider of educational services. And it has capacity problems itself in responding to all the demands made on it.

87 Second, if the state wishes to enter into dialogue with whom does it interact? Some non-state associations are formally constituted with representative constitutions and operating procedures which convey legitimacy. Others are loose groupings without much claim to be able to consult with or represent members and member organisations.
88 Third, dialogue requires common understanding of what is to be discussed, and what the nature of consultation should be. Few strong governments want to be mandated by associations and interest groups of stakeholders, though they may be predisposed to be seen to be taking advice.

89 Fourth, states sensitive to critique may not wish to promote open dialogue on sensitive issues, not least those concerned with service delivery. Where dialogue has contained advocacy and critique, and where non-state providers are dependent on state support and finance, critical dialogue may be muted and lose much of its value. Where concern with organisational survival has become a preoccupation, and where organisations are typically small and sparsely resourced participation in policy dialogue may seem an unnecessary distraction unless focused narrowly on matters essential to the organisation.

6.3 Regulation

90 This research indicates the important inter-relationships between regulation and facilitation. All our informants accepted the need for regulation in the public interest. Most of their concerns were that some regulation was inhibiting, some could be used vicariously, and that it was relatively easy for government bureaucracies to develop and detail criteria and conditions, but much more difficult to implement them in constructive ways. Where this was so regulation was seen as unwelcome, and likely to undermine facilitation.

91 Effective regulation assumes that general criteria can be applied across a diverse sector, that such criteria are reasonable and operationally feasible, reflect a balance between the interests of consumers and those of providers, and can be implemented effectively. There are examples in the research where provider perspectives were negative on each of these conditions. This is not an argument against regulation, but one in favour of continued development of regulatory systems in the light of evidence on how they operate. At the very least this would shed more light on whether the problems identified lie in the structures of regulation and their form, or in the ability (and costs) of implementing them effectively with the capacity realistically available.

6.4 Facilitation

92 Facilitation of non-state providers in South Africa has occurred, especially in relation to subsidies to independent schools, and to some ECD and ABET providers. However, it has not appeared to have a high priority. With respect to primary schooling, the State’s position is generally permissive but not facilitating in the sense that it regards itself as the main provider, and the provider of last resort for the poor. In the competition for public resources, non-state providers have no particular advantages.

93 In ECD facilitation is taking the form of increased subsidies, but this is in tension with regulation that may make it difficult for many CBOs to qualify. In ABET facilitation is not accompanied by the kind of substantial resources that are needed.

94 The research suggest that there are clear decisions that are needed about what roles different types of non-state providers should play. There is also need for the State to understand what it can facilitate and how, and what it cannot. The possible virtues and attractions of contracting-out service delivery of one form or another to non-state organisations of different kinds have to be balanced with facilitating regulation that does not
seek to replicate state provision to the extent that there is no difference between the two in governance or funding.

95 In conclusion South Africa provides a case study of non-state provision in an African country with high levels of existing participation, a strong state, and a developed framework for regulation and facilitation. It is clearly committed to providing basic services publicly. It sees the role of non-government providers as complementary in formal education. Its position in relation to ECD and ABET literacy programmes is less clear. Aspects of the former will be incorporated into State provision but realistically much will remain outside. In the latter, commitment to act is yet to be backed by appropriate resources and provision will almost certainly remain predominantly non-state. South Africa does facilitate various types of partnership, notably through subsidies. These can work well, but do have costs and are capable of producing perverse results.

96 If there are messages from this research for other Sub Saharan African countries, these have to be projected with caution. So much of what has been described is specific product of South Africa’s recent history and transition. It depends on a core of established providers, infrastructure which is extensive, human capacity to manage devolved institutions, and national and local government structures which are usually effective. Public interests are protected, and mixed mode provision (non-state provider/public subsidy) does work in many cases. But it does so on the margins of mass provision and, in basic education, is not the chosen method of providing access to the last of those unenrolled.
REFERENCES


**SUB ANNEX 1: POSSIBLE HYPOTHESES**

Some possible hypotheses arsing from the research include:

- Non-state providers of primary schooling in South Africa complement state provision and provide schooling of comparable quality at lower public costs. This is true in some parts of the sub-sector.

- Policy dialogue in South Africa between the organised non-state sector and government is shaped by ideology, differing views of the role of the new South African state, and the historic roles played by non-government organisations.

- Non-state providers of formal primary schooling do not provide access to the poorest. In ECD they may but quality is likely to be low.

- Provision of basic education by non-state providers has grown in response to unmet demand in unserved areas and differentiated demand for those dissatisfied with state provision. As the state reaches unserved areas it may displace non-state providers, especially for the poor.

- Regulation of a multiplicity of small providers, as in ECD below Grade R, is unlikely to be effective. Market facilitation may be helpful where there is the possibility of choice and competition.

- Community based providers need support and checks and balances on quality to assist their development

- Contracting out service delivery is more likely to be attractive through established NGOs than through a multiplicity of small scale organisations

- Long term partnerships with non-state providers backed by regularly resource support, require properly constituted and accountable providers and long term government commitment to a defined relationship in which both parties have confidence.
SUB ANNEX 2: INTERVIEWS

David Harrison (Former Chairperson of the Alliance) - Alliance of Black Independent Schools 20 May 2004

Anne Baker - Catholic Institute of Education 20 May 2004

Duncan Hindle (Deputy Director General) - Department of Education 19 May 2004

Marie-Louise Samuels (Director) - Department of Education – ECD Directorate 19 May 2004

Jacqu du Toit (Researcher) - Human Sciences Research Council 17 May 2004

Mahomed Sayeed Karodia (Chairperson) - Association of Muslim Schools 19 May 2004

Reuben Mogano (Project Manager) - National Development Agency 18 May 2004

Andrew Miller (Chief Executive Officer) - Project Literacy 18 May 2004

Cynthia Hugo (Director) - READ Education Trust 18 May 2004

Dumisani Ntombela (Chief Executive Officer) - South African Congress for Early Childhood Development 20 May 2004

Ian Moll – South African Institute for Distance Education 21 May 2004

Simon Lee (Communication Manager) – Independent Schools Association of Southern Africa – 21 May 2004

Veronica MacKay (Director) - UNISA – ABET Institute 3 June 2004


Mmule Madonsela – Gauteng Department of Education – 25th June

Solly Mkhabela – Iskhumbuzo School

Kenneth Dladla – Tshebetso School

Thomas Ngobeni – Sinqobile School

Basil Lenkwe - Jowto School
ANNEX THREE: NON-STATE PROVISION OF WATER AND SANITATION IN SOUTH AFRICA

1 INTRODUCTION

1. The Constitution of the Republic of South Africa unequivocally guarantees access to basic infrastructure services, including water and sanitation, electricity, health, and education as a basic human right. In addition to the constitution, service delivery in South Africa is governed by a series of legislation and sector-specific policy framework such as The Strategic Framework for Water Services (2003), all of which are underpinned by the Local Government White Paper (1998) and the Municipal Systems Act (2000).

2. Since installation of the democratically-elected government in 1994, the Department of Water Affairs and Forestry (DWAF) has sought to address the backlog of water supply and sanitation service provision to the poor of South Africa. DWAF has made commitments to providing all people with a basic water supply facility by 2008 and a functioning basic sanitation facility by 2010. Within a current population of around 43 million people, in 2004 approximately 4.3 million households (accounting for over 30% of the population) remain without access to a basic sanitation facility and 2.6 million households (over 10 million people, or almost 25% of the population) without access to a minimum level of water supply provision.

3. At the current rate of delivery, dates for achieving the targets are estimated at 2021 for sanitation provision and 2012 for water supply (DWAF, 2004). The targets are viewed as only realistically being achieved through an accelerated delivery programme. This has been a major driving force behind significant changes in the policy environment, legal and regulatory frameworks, budgetary allocations and institutional arrangements within the sector.

4. This environment of change is underpinned by a strong legal framework, with DWAF playing an increasingly regulatory function as local government takes responsibility for implementation of decentralised service delivery. Local and district municipalities become Water Service Authorities (WSAs), responsible for the planning, installation, management and maintenance of water supply and sanitation services, but with limited capacity to fulfil these obligations. The role played by NGOs working in close consultation with CBOs (such as village water committees) to support this capacity gap has been replaced by a formalised role for Water Services Providers (WSPs).

5. Under pressure to achieve fast-track service delivery, WSAs are increasingly either taking on the role of WSP themselves, or appointing private sector companies to carry out significant functions on their behalf. The Dolphin Coast District Municipality case study is an example of where the services of an international company was sought to take on the management of water and sanitation services to a rapidly developing coastal area north of Durban. The case is highlighting concerns over the Municipality’s ability to regulate the WSA to ensure equitable services to the poor.

6. Situations where the WSA has identified the need to maintain a role for CBOs in service provision, to ensure sustainability of rural water and sanitation schemes, are limited. One such example is identified in the Alfred Nzo District Municipality case.
study. While CBOs retain limited recognition as WSPs, scaling-up of the approach remains unlikely.

7. The government’s commitment to providing free basic levels of water supply and sanitation to all residents adds a further dimension in addressing the cost-recovery element of services to the poor. Profit-based NSPs will require incentives to provide efficient services to users where costs will not be recovered and cross-subsidisation is required.

8. In such an infrastructure-focussed environment, with an increasing involvement of for-profit organisations, the traditional role for NGOs, civil society and other value-driven non-state providers is fast diminishing. Such NSPs are having to rethink their strategy and adapt to the changes, while lobbying for demand-responsive approaches to continue until such time as capacity exists within all levels of government to provide water and sanitation services that truly benefit the poor.

2 THE POLICY FRAMEWORK

2.1 Wall-to-wall municipal government

9. Compared to many developing countries, South Africa has a fairly comprehensive policy framework with appropriate legislation in relation to the provision of water and sanitation in its broadest aspects. This exists in combination with a most unusual feature for a developing country of ‘wall-to-wall’ local government, which provides a 3-sphere structure of municipal government covering the entire country, from the most remote rural community to the metropolitan areas, with democratic representation and administrative structures.

10. Increasingly there is a debate about the shift of responsibility both for delivery and for operations and maintenance of life sustaining services from national line departments to municipalities. The process is very uneven with a high level of decentralisation in some sectors (including water and sanitation where there is a clear policy framework and a fairly rapid transfer of responsibility) and more uncertain and problematic in other sectors such as health and education, in which there is often a very unclear demarcation between municipal and provincial responsibilities.

11. The process of decentralization has two impulses. The first is that of financial responsibility in which the National Treasury is committed to see local municipalities taking responsibility for the funding and administration of facilities benefiting their citizens; increasingly responsibility for the maintenance of facilities is passing to the local level. The second is the commitment towards local democracy, in which citizens are able to voice their concerns, elect a leadership representing their opinions, and have a high level of public participation.

12. The Municipal Systems Act (2000) provides a statutory framework, which sanctions community participation in local governance. The Act clearly states that municipalities must encourage and create conditions for the local community to participate in the affairs of the community, including the preparation, implementation and review of development programmes and performance management systems. The Act also
provides directives on the mechanisms, processes and procedures for community participation, and how information may be communicated (pp. 15-17).

13. A key challenge remains that policies and framework agreements at national level are continuing to achieve minimal impact in terms of implementation at the local level.

2.2 The political logic for state delivery

14. The Local Government White Paper (1998) outlines a policy framework for local government to fulfill its constitutional obligations. It focuses on “developmental local government”, aimed at involving all spheres of government in all aspects of socio-economic development but each playing a different role. This has been described as “co-operative government”, which with respect to service delivery assigns responsibility for the provision of services to local government, and monitoring, regulatory and supporting functions to the national and provincial spheres of government.

15. The appropriate department of the central government, e.g. the Department of Water Affairs and Forestry (DWAF) in the water and sanitation sector, has the prerogative to determine the national sector policy, although at the local or municipal level local authorities may adopt policies suitable to their peculiar circumstances within their constitutional limits or the provisions of the Municipal Systems Act, the Water Services Act 1997, and the National Water Act, 1998. The administrative set-up follows a concerted drive towards decentralisation for reasons of public participation as a democratic form, to avoid the over-centralisation of power characteristic of the apartheid regime and to place local government in the centre of service delivery.

16. Municipalities are expected to empower the poor and ensure that they put in place service tariffs and credit control policies that take their needs into account (Municipal Systems Act, 2000). But it is hard to see how these needs feed into the planning of projects at all levels without taking into account resources available, and compromising the level of delivery that maximizes well being.

17. The drive within the state is to achieve better service delivery rather than the transfer of services to non state providers. In the Batho Pele white paper which sets out policy in relation to the civil service, the argument is both that there should be improved attitudes to customers/citizens and also that the real logic of delivery is efficiency. As was argued by Zola Skweyiya, then Minister for Public Service and Administration, cost savings were crucial to delivery, but so also was the need for the state to set a standard of delivery.

18. That is why a key part of Batho Pele is a relentless search for increased efficiency and the reduction of wastage within the Public Service. Every Rand wasted in cumbersome, inefficient processes, in delays and duplication, is money which could be invested in improving services. The aim is to progressively raise standards of service, especially for those whose access to public services have been limited in the past and whose needs are greatest (RSA, 1997).

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12 Batho Pele is the principle of “putting people first” as outlined in the Government’s White Paper for transforming public service delivery.
19. Explicit within this perspective is the view that the state itself should deliver and deliver more cost effectively, and implicitly that those in greatest need have most need of state provision.

2.3 Public private partnerships

20. Although there is a general trend in economic policy towards conservative approaches, privatisation in itself is highly contentious in South Africa. Government defines privatisation as divestment; the outright sale of state assets to the private sector. This is a very strictly limited view of private sector participation and is much contested. The definition is argued over as social movements and trade unions see any substantial participation by the private sector in public services in the operation and management of these services as increasing private sector participation or ‘privatisation’.

21. Despite this there is extensive involvement of construction firms and consultants generally in construction and building of infrastructure; this is relatively uncontroversial and the private sector is one of the greatest beneficiaries of state expenditure.

22. The provision of service at a municipal level has excited the opposition of trade unions, who fear the effects of private sector participation in threatening the jobs of existing workers, speeding up work and displacing social priorities from municipal services. In contesting policy, a National Framework has been agreed between SALGA (SA Local Government Association), COSATU (Congress of SA Trade Unions) and national government; this provides for priority to local government.

23. In terms of a resolution passed on June 30 1997, the parties to the National Labour Relations Forum for Local Government support local government as the preferred form of service delivery, and before public-private partnerships or any other form of private sector involvement are considered, local government must be given the opportunity to ensure the effective functioning of such service delivery.

24. In policy and subsequent legislation, government has clearly moved away from an acceptance of these conditions and there is considerable encouragement of public private partnerships (PPPs). There is considerable literature advocating public private partnerships, advising on the enabling documents, and setting out case studies to be followed. Specialist agencies such as the MIIU (Municipal Infrastructure Investment Unit) and departments of state such as the Treasury have published documents providing extensive endorsement of PPPs, setting out their advantages, and suggesting how they can be launched.

25. The advocacy, knowledge sharing, and enabling policy framework is well developed. The minister of Finance, Trevor Manuel, provides a strong endorsement of increased private participation and PPP generally:

26. “In many areas of public sector responsibility, the private sector is better able to deliver effective services, often because of the dynamics of competition, or because it generally has advanced technical or risk management capacity. By bringing private capital and expertise into state enterprises, we gain access to technology and skills transfer, as well

as to the capital needed for expansion and organizational renewal” (Department of Finance, 2000).

27. Given this strong policy encouragement, there are relatively few examples of public-private partnerships in the form of concessions, management contracts and private sector participation generally in providing or facilitating public services. The question remains over why there has been such a limited scope for PPPs in South Africa, despite the ringing endorsement of the Minister of Finance, the President, and other leading government representatives.

28. Government is committed to and has planned to have PPPs operating in municipal services. There has been extensive advocacy, enabling policy and supportive documentation from government departments and specialist agencies.

2.4 Strategic Framework for Water Services

29. The Strategic Framework for Water Services (DWAF, 2003), an update of the 1994 White Paper, provides a broad outline of the government’s policies, strategies and legislation to make water services accessible to all people in South Africa. The Framework spells out the government’s vision, goals and targets for the water services sector, and the elements which, in the government’s view, are critical to meeting its constitutional obligation to provide water services to the people, e.g. financial support and monitoring, regulatory, national standards, planning and institutional structures.

30. The Framework envisions that the following can be achieved:
   - All people living in South Africa having access to adequate, safe, appropriate and affordable water and sanitation services, using water wisely and practicing safe sanitation.
   - Water supply and sanitation services provided by effective, efficient and sustainable institutions that are accountable and responsive to those whom they serve.
   - Water services institutions reflect the cultural, gender and racial diversity in South Africa.
   - Water being used effectively, efficiently and sustainably in order to reduce poverty, improve human health and promote economic development. Water and wastewater are managed in an environmentally responsible and sustainable manner (p.5).

31. This vision underpins the water and sanitation services sector goals, at the centre of which is the need to provide water and sanitation equitably, affordably, effectively, efficiently and sustainably, and in a manner that is gender sensitive; i.e. taking into account the different needs and responsibilities of women and men with regard to water services and sanitation. The Framework also provides that all water services authorities are held accountable to their citizens, have adequate capacity to make wise choices (related to water services providers), and are able to regulate water services provision effectively (p. 5).

32. The government has set itself targets within which to achieve the goals. For instance, all people living in South Africa are expected to have access to a functioning basic water supply by 2008, and a functioning basic sanitation facility by 2010. The extent to which
these targets in particular may be met has become a subject for debate, particularly in view of slackening economic growth, unceasing population growth, the backlog of services which, in relation to population growth and reproduction of households, has been described as ‘a moving target’, and the seemingly lack of political will to commit adequate resources to the cause. The challenge of meeting the targets is, nonetheless, a test of the versatility of the service delivery system and its management as well.

33. The Municipal Systems Act empowers municipalities, among other things, to prioritize the basic needs of the local community. By virtue of the Water Services Act, 1997 and the National Water Act, 1998, local or municipal authorities are directly responsible for the supply of water and sanitation services to their areas of jurisdiction – designated the Water Services Authority (WSA). A municipality may provide water services through its own administration or other service providers, which could be other municipalities, individuals, public or private companies. In the event of contracting other water service providers (WSPs) the municipality remains responsible for ensuring that the service is delivered. In the event of the former, the municipality may, as provisioned in the Municipal Systems Act, create internal municipal service districts, on the basis of the needs of the service districts vis-à-vis the needs of the municipality, spelling out a clear policy framework to guide the establishment, regulation and management of the service districts.

34. Critical in these respects, a municipality must ensure that municipal services are provided efficiently, effectively and sustainably. In terms of the regulations and policy guidelines effective delivery implies that ‘the job is done well’. By efficiency it is meant that ‘resources are not wasted’ while sustainability implies that ‘services are financially, environmentally, institutionally and socially sustainable’.

35. Municipal managers are in the frontline of service delivery, responsible for managing impacts, which affect service quality, and economic viability, sustainability and continuity of services. It is their responsibility to guard against water loss through leakage, wastage and pollution, and service interruptions, keeping focus on the overall objective of social equity in service delivery.  

2.5 Policy dialogue

36. There is an extensive development both in white papers and in legislation for consultation, participation in policy issues and service delivery. The RDP spelt out the role for a developmental state in which the beneficiaries or poor participated extensively in decision-making and implementation. This notion has been carried forward particularly in the Municipal Systems Act 2000 but also in various practices and initiatives undertaken by departments.

37. In the water sector there are the following institutions providing for dialogue between civil society, the private sector, and government:

38. **Water Services Sector Leadership Group (WSSLG):** This is a forum of officials, invited practitioners and researchers who receive reports from DWAF, debate policy, review implementation, and propose alternatives. Individual participants in the WSSLG have had an important role in the production of the Strategic Framework. Meetings are,
at times, held away from Pretoria to allow more informal discussion and inter-personal exchange between officials and practitioners. As responsibility for implementation is passing over to DPLG the WSSLG may lose some of its raison d’etre, but reports from the DPLG have often lead to invitations to debate their rapidly growing responsibility. Key debates within the WSSLG have been the provision of free basic water, issues relating to the backlog, and questions of the relationship of civil society and local government.

39. **Masibambane**: Although Masibambane is basically an instrument of delivery bringing together donors, DWAF, municipalities, and some individual practitioners; it also can serve as a forum for receiving reports on implementation. The policy issues which the EU have insisted on in providing funding have (in addition to existing government policy) been gender mainstreaming and an emphasis on the development of civil society. In the context of ‘municipal-driven’ policy, there have often been lively debates at regional forums of Masibambane on these two issues which are not necessarily priorities within municipalities.

40. **National Water Advisory Council**: This body is appointed by the Minister and includes such academics as Chris Buckley of the University of Natal who heads the Pollution Research Group, and participates in the UN Environment Program (UNEP) Regional Industrial Report (Africa) for WSSD. It appears to have a role primarily in terms of the establishment of engineering standards in the sector and in scientific concerns.

41. **Water Forums**: Towards the conclusion of Ronnie Kasrils’ period of office a national water forum was established and two meetings held together with representatives of civil society. These groupings included the Anti-Privatization Forum, SANCO (National Civic Organisation), and local civil groups, which gathered under the umbrella of the SA Water Caucus (SAWC).

42. The debates on policy, particularly cut-offs, arrears, free basic water, and privatisation have been passionate (even heated), but Kasrils and SAWC have found them worthwhile. In Durban these meetings have been followed up with the eThekwini Water Forum which was convened shortly before the 14 April 2004 election and attended by top officials of the eThekwini Water Services and civic groups and activists concerned with displacement of people by dams.

43. South Africa has a tradition of relatively flexible arrangements for policy dialogue. The previous Minister, for instance, advertised in the national press to get responses to departmental initiatives and on the draft White Paper (which later became the Strategic Framework). See Appendix B.

2.6 **NSPs in the water and sanitation sector of South Africa**

44. The strong presumption throughout the country that “the state will provide” is based both on the legacy of state-led service provision during the apartheid era (albeit to a minimum standard in rural areas and townships) and the current legislative responsibility strongly reinforced by government commitment to services being provided through municipal structures. The state-dependency this has created has lead to independent service providers becoming an almost insignificant feature of the sector.
45. NGOs did not play a significant role in South Africa until the 1980’s, taking an increasing role in the post-apartheid era from the 1990s and into 2000s. Opportunities for private sector involvement in service delivery has only recently been created through the new role for local municipalities and the push for rapid service delivery to address the backlog of service provision.

46. Where non-state actors have played a role in the sector, it has been within a much more structured framework than in many developing or transitional countries. Those non-state actors that are present, generally fall within one of the categories identified below. Even here, most operate through providing contracted-in services to support an element of service delivery on behalf of the municipality, so can perhaps then be referred to as pseudo, or partial NSPs.

47. In addition there are social movements such as the Anti-Privatisation Forum which campaigns against disconnections, private participation in municipal services and increases in tariffs.

2.7 A changing environment for the role of NSPs in service delivery

48. NSPs, primarily in the form of consultants and to some extent NGOs, have played a central role in the development of rural water and sanitation infrastructure since the early 1990s. They would operate as an intermediary Project Agent, between the Implementing Agent (either DWAF or Mvula Trust) and the Village Water/Development Committee (representing the community).

49. Rural communities were strongly represented during the implementation of infrastructure provision through village water or development committees (VWCs or VDCs), managing labour inputs, ordering of materials, overseeing financial contributions, etc. Support came through consultants or NGOs undertaking technical designs, construction and financial training, hygiene promotion, etc., and where required contracted-in services for specialist tasks such as borehole drilling. Post-construction, responsibility for ongoing operation and maintenance of the service was given over to the VWC. In reality however, many consultants and other NGOs have continued to assist in the maintenance of systems, often at their own expense.

50. Involvement in urban service delivery was limited to a few cases where large private companies were awarded concession contracts, such as in the case of Dolphin Coast.

51. In the mid-to late-1990s and early years of the 2000s, a period of transition in handing-over responsibility to municipalities began. Funding and implementation responsibility began to channel through local government, who could either undertake projects directly with communities, or work through the support of the Project Agents. Mvula Trust began to play a decreasing role in implementation.

52. In many cases, VWCs began to take responsibility for operation and maintenance of schemes. Although many required on-going support from Project Agents, others became successful examples of community-managed schemes.

53. The extent to which Project Agents are involved in either infrastructure provision or sustained operation of services has been in decline since the process of decentralisation began to shift responsibility for service delivery to local government.
The demand for efficient and cost effective delivery of services has in many cases resulted in local municipalities being biased against a role in service delivery for CBOs and NGOs, who are viewed as lacking capacity to meet these demands (Galvin and Habib, 2004).

Table 1: Range of NSPs operating in South Africa

<table>
<thead>
<tr>
<th>‘Full’ NSPs</th>
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<tbody>
<tr>
<td><strong>Large companies</strong></td>
<td>This sector includes multinational companies which have tendered for concessions to manage water services in relatively small municipalities.</td>
</tr>
<tr>
<td><strong>Micro enterprises</strong></td>
<td>In some communities, micro enterprises are encouraged to undertake simple repairs in rural water projects and internal house plumbing. Other individuals may be vendors of water. There is very limited scope for such NSPs, who tend to go unrecognised by the state and therefore operate in a largely unregulated capacity.</td>
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<table>
<thead>
<tr>
<th>‘Partial’ NSPs</th>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Medium sized enterprises</strong></td>
<td>Medium sized enterprises in this sector are made up of professionals such as engineering consultants and Black Empowerment Enterprises (BEEs) which tender for contracts to provide sanitation, operational support, etc.</td>
</tr>
<tr>
<td><strong>54. NGOs</strong></td>
<td>There are a variety of NGOs, ranging from the ‘service delivery’ type such as Mvula Trust which prioritises community participation, to the Rural Development Sector Network which engages in campaigns and protests. Many consultants operate on a not-for-profit basis and are therefore considered more as NGOs than private sector companies.</td>
</tr>
<tr>
<td><strong>CBOs</strong></td>
<td>Community based organisations are of at least two types;</td>
</tr>
<tr>
<td></td>
<td>• The water committee type in rural communities which are involved in the community management of schemes; and</td>
</tr>
<tr>
<td></td>
<td>• More spontaneous organisations of protest and action in communities where citizens experience problems with water services. Not involved as such in service delivery, but support mechanisms surrounding delivery.</td>
</tr>
<tr>
<td></td>
<td>The definition of CBOs in the Strategic Framework is carefully framed to include community participation, to distinguish this category from small enterprises.</td>
</tr>
</tbody>
</table>

55. Project Agents primarily now operate in a role of Support Services Agent (SSA), providing specialist services as and when deemed necessary by the local government (WSA) to support the functioning of the water services provider (WSP).
Figure 1: Arrangement in the 1980s-1990s

Gov't funds

→ DWAF

→ Project Agent

→ Village Water Committee

Donor funds

→ Mvula Trust

→ Project Agent

→ Village Water Committee

Figure 2: Intermediate arrangement during mid- to late-1990s

Gov't funds

→ DWAF

Donor funds

→ Mvula Trust

Local government

→ Project Agent

→ Village Water Committee
56. Transitional arrangements have not always been seen in a positive light, especially in circumstances where local municipalities are in the process of taking over successful community-managed schemes.

**Nhlungwane Water Supply Scheme**

57. Nhlungwane water supply scheme is a showcase of sustainable community-management. Implemented in 1997 by Mvula Trust, the project has been financially sustainable, with a healthy reserve in the community’s bank account due to household contributions. The water committee received the inaugural WISA (Water Institute of South Africa) award for excellence in 2002.

58. Since that time, the local municipality has begun the process of taking on responsibility for the scheme. The municipality has requested that the water committee’s bank account be closed and the money handed over to the municipality, to support future operational and maintenance costs. The committee is likely to play a reduced role in ongoing service delivery and operation of the scheme.

59. Mvula Trust is lobbying for the water committee to continue playing a pivotal role in operation and maintenance of the scheme – on the basis of practicality and cost effectiveness influencing the scheme’s sustainability.

*(Dave Still, PID, personal communication, 20/05/04 and Martin Rall, Mvula Trust, personal communication, 21/05/04)*

**2.8 Masibambane Water Services Sector Support Programme**

60. Many donors are well aware of the importance of NGOs in sustaining service delivery, particularly in rural communities where the local municipality lacks the capacity to support scattered and remote schemes. Begun in 2001, the Masibambane Water Services Sector Support Programme is a 3-year collaborative programme between DWAF and the EU, providing improved water supply and sanitation services to 3 priority provinces (Eastern Cape, kwaZulu Natal and Limpopo), alongside institutional reform in support of the decentralisation process.
61. EU funds are conditional on local government working together with NGOs, supported through a 25% allocation to NGO involvement, so promoting local government-NGO partnership in service delivery (Galvin and Habib, 2004). An expected outcome of the Masibambane programme is “improved co-ordination between national, provincial and local government, NGOs, communities, the private sector and other role players” with local government, private sector and communities operating as Water Service Providers, as appropriate (background paper on Masibambane, “Information sheet for news package”, from DWAF website [www.dwaf.gov.za](http://www.dwaf.gov.za)).

62. A Masibambane mid-term review specialist report aimed at assessing the involvement of NGOs and CBOs in the programme has identified a number of factors restricting the role for civil society in the programme’s progress to date, including:

- Significantly, the differing view and perception of the role for civil society in the programme has led to different approaches being adopted. While the programme’s concept was for civil society to act in a role of advocacy, facilitation and monitoring, civil society groups and NGOs have positioned themselves as service providers.

- The misunderstanding over roles has led to an amount of internal strife, resulting in little constructive engagement between the key parties.

- The allocation of funds to support NGO involvement primarily went to Mvula Trust, as a representative of NGOs. In an effort to achieve performance targets on service delivery and efficiency, much of the implementation work has been subcontracted to professional organisations and private companies.

- NGOs have been hindered in the tendering process, due to their limited capital and flexibility to work within the financial procedures required by local government.

63. The resultant limited role and impact of civil society groups has led municipalities to be of the opinion that NGOs and CBOs are not an appropriate means by which to implement the programme, but that the role for civil society is an “imposition from national level structures” (DWAF, 2003a, page 166).

64. The programme has so far been successful in developing a sectoral approach, with progress towards decentralising responsibilities to local government institutions. The overall review however identifies weaknesses and ongoing challenges in addressing the participation of civil society (DWAF, 2003b). The specialist report questions the sustainability and replication opportunities of the Masibambane approach to other provinces within South Africa (DWAF, 2003a).

2.9 NGOs versus private companies

65. In the current environment of decentralisation, the generally held view within the NGO community is that municipalities are hostile to them, seeing NGOs as challenging the opportunity for municipalities to manage their own responsibility internally and provide representation of the people. The widely held perception that government should provide services free of charge – reinforced by implications of implementing the free
basic services policy – has led many implementers to move away from working directly with CBOs and NGOs in an attempt to deliver services in what they see to be the most cost-effective and efficient manner (Harvey and Kayaga, 2003). Private companies and emerging contractors, taking the place of NGOs in many instances, are offered direct service-contracts by the local municipality. Many formerly not-for-profit consultants and NGOs are moving into more private company oriented roles, undertaking construction contracts as opportunities for involvement in broader service provision decline (Dave Still, Director, PID - personal communication 19th May 2004).

3 The argument is often cited that many of the decentralisation initiatives are adopting such a state-centric approach that they undermine the very rationale for the decentralisation policy – that of enabling community participation and thus facilitating sustainable delivery (Galvin and Habib, 2004). At the same time, many communities are becoming more state-dependent, particularly with high levels of publicity generated over projects where the free basic water policy is being implemented by the local municipality.

4 The future role for NGOs and civil society groups in general may split between those who continue to undertake service provision in a more restricted manner, and those who move into areas of advocacy and lobbying for the reclaiming of demand-led, community-managed approaches. Donors can work with this new and emerging role for NGOs in helping to articulate the voice of the community.

5 “In the absence of NGOs, community-oriented decentralisation programmes could involve CBOs far more than they have. Indeed, donors could take the lead in making resources available for the organisation of communities so as to develop the structural capacity for state-civil society partnerships in service delivery.” (Galvin and Habib, 2004).

A changing role for Mvula Trust

6 Mvula Trust has been the leading NGO operating in the water and sanitation sector since 1993. It has operated under the principle of a demand-responsive approach enabling a sustainable service delivery model, particularly for poor rural communities.

7 As the implementing agent for a wide range of demand-led watsan schemes, it has worked through an array of Project Agents (former Support Service Agents) providing support to community-based village water committees (VWCs) in both water and sanitation projects and programmes.

8 With the transfer of responsibility to municipalities (although only in a handful of cases, such as Alfred Nzo District Municipality, has this officially occurred), Mvula Trust has a decreasing role in the implementation of projects. Their role is in a state of change, along with a host of smaller NGOs operating in the sector. Local municipalities’ perspective is not favourable to a role for NGOs – the voluntary nature of community participation is seen as a thing of the past, as the drive for fast track service delivery and achievement of ambitious targets favours private operations

9 A growing number of municipalities are however realising that they can’t manage rural schemes remotely. A place for CBOs may be created and Mvula Trust may have a role to play in strongly advocating for a community-based approach to be recognised.
(Based on views expressed during consultations with staff of Mvula Trust, DWAF and independent consultants)

**The drive for sanitation coverage**

10 The government’s current target is to achieve sanitation for all by 2008. Achieving this puts pressure on municipalities to deliver sanitation in a fast and efficient manner, resulting in the community-development approach becoming viewed as too slow and inefficient. Sanitation is in danger of reverting back to being “about toilet construction”.

11 The subsidy for rural household sanitation provision has increased from R600/household in the 1990s to R2,100 in 2004, opening the door for emerging private companies to work in the “sanitation business”.

12 One private company has successfully developed a programme and methodology for rapid latrine construction through high levels of community involvement (labour and material contributions), stream-lined government processes and extensive project management inputs. This is backed-up by the use of appropriate technology that is both affordable and suited to rapid construction.

13 Latrines are “marketed” on the basis of convenience, dignity, status and security – with a resulting sense of pride in ownership. Changes in sanitation practices is expected to ensure ongoing maintenance and, if necessary, replacement or upgrading of family latrines as and when required.

14 Limited capacity within the health department results in little, if any, health education accompanying the process.

(Based on personal communication during a site visit to a sanitation programme, KwaZulu-Natal, May 2004)

3 **INTERVENTIONS**

3.1 **Case Study 1: Free basic services**

2 The ANC Local Government Elections 2000 Manifesto states that the government would provide all residents with a free basic amount of water, electricity and other municipal services. The cholera outbreak that began in August 2000 prompted DWAF to introduce the policy of free basic water and sanitation services in 2001. On the premise that sustainability of services requires that they be affordable, everyone has the right to a free basic amount of water and a basic sanitation system, with households only being charged once they consume a service level above that basic amount.

3 There are evidently problems as well as opportunities in accelerating delivery at the local government level, but this is only the ‘functional’ level of state machinery. The wider questions of social redress, of genuine democratic forms of government, of public participation in decision-making and access to free basic services are also coming to the fore. In particular there is concern over the contradiction of cost-recovery and free basic services, and the financial viability of delivery systems as a result of the ‘culture of non-payment’, and the high rate of unemployment.
4 On a national average across the 9 provinces, 87% of municipalities are reported to be providing free basic water, serving 57% of the total population and 49% of the poor population (DWAF, 2004). In addition, implementation of the policy has been uneven across provinces, with a much lower percentage of people in poorer provinces receiving their free basic water allocation (Hazelton, 2004).

5 The unfortunate result of the policy being implemented at the municipal level is that the most capable of municipalities are able to provide free basic services in water and sanitation soon after the announcement in 2000, but the poorest of the poor located in rural communities with incipient and untested municipalities still wait for these services.

6 While across the provinces WSAs reported as having a free basic sanitation policy ranges from over 30% (Limpopo) to 100% (Mpumalanga) (ibid, 2004), effective implementation of the policy is limited. The often cited case for effective implementation of the free basic water and sanitation policy is that of eThekwini Municipality (Durban), which has been a front-runner in many aspects of implementing free basic services. The Municipality’s provision of free support services to sanitation systems has occurred through the commitment of the Municipality to implementing the policy. This has been enabled to a great extent through the Municipality having a strong resource base in terms of reliable revenue, commitment from top-level staff to the policy and recognition at a national level of the results. Replication of the implementation models for other municipalities raises questions of affordability.

7 While free services in basic water provision are accelerating, the provision of free sanitation is much more uncertain and statistics are unavailable on the DWAF website.

3.2 Case Study 2: CBOs recognised as WSPs - Alfred Nzo District Municipality (with reference to Vermeulen and de la Harpe, 2003)

**Context**

8 The District Municipality of Alfred Nzo was created in 2000 from a transitional District Council in a former homeland area. Prior to 1994, the area had no system of effective local government and was one of the most under-resourced areas in South Africa. After the formation of a provincial government in 1994, support from the government’s Reconstruction and Development Programme (RDP) saw growth in the establishment of informal community-based structures within the districts.

9 The vast majority of the population (estimated at 800,000) live in over 880 small, rural communities and 5 small rural towns. Many of the rural population access water from gravity-fed water schemes. This provides for a relatively high coverage of above 60%, while sanitation coverage remains very low at around 10% (Wijesekera, 2003).

10 The Municipality, realising their limited capacity to effectively manage a large number of scattered rural schemes, identified that the only viable option for ensuring sustainable service delivery was for community-based groups to maintain a position of management responsibility, as the recognised WSP. Issues of practicality and cost effectiveness were both important driving factors for the Municipality. On consultation, the communities also identified this as their preferred model of management.
Pilot contractual model

11 DWAF, working together with the then District Council undertook a pilot project in 1999 to establish an institutional model in 33 villages such that CBOs could be established and recognised as WSPs. The limitations of existing legislation (see section on Disincentives for NSPs) had to be overcome, to enable an operational model to be developed.

12 The previously existing Project Steering Committees, established to support the implementation phase of RDP-funded schemes, were recognised as being responsible for operation and maintenance of the schemes until such time as the WSPs would be established. A standardised model Constitution for the CBO operating as a WSP was drawn up, as well as model contracts for WSAs contracting CBOs as WSPs and SSAs. The model and contractual relationships established are indicated in Figure 4 below.

13 Village Level Action Plans (VLAPs) were also developed, to identify clear roles and responsibilities for all stakeholders. Typically, this would involve the CBO fulfilling the following functions:

- Daily operation and minor repairs to the scheme;
- Customer relations;
- Communication with the community;
- Revenue collection; and
- Basic financial management and reporting.

14 There is no revenue collection outside of the towns, as people are accessing a free basic water service level through communal water points.

15 Such functions would be discussed in detail and agreed upon for each case (DWAF/Network Community Development Services, 2001). In one community the Water Committee is responsible for the operation of the scheme, installing yard connections, customer relations, revenue collection and overall financial management. Two people are employed to manage these responsibilities. In addition, trained operators operate the pump, install yard taps and carry out minor repair work to the reticulation network.

16 Within the contractual agreement, the CBO-WSP pays a seating allowance for the Board members (who enter into the contract with the WSA), as well as a salary and expenses for “staff” employed on the scheme – operator, treasurer and community liaison officer. The SSA provides capacity support to these staff members, as they develop the necessary skills to operate and maintain the schemes themselves.

17 Recognition has been given to the existing capacity limitations of CBOs to undertake the full range of WSP functions. The devised model allows for a phasing-in approach, in which the CBOs take on more responsibility and functions as capacity increases. A support services agent (SSA) provides the necessary training, ensuring that as milestones are reached, changes in responsibility are addressed and agreed upon by both the WSP and WSA. In this way, CBOs can progress from being employees on short-term contracts to eventually becoming fully-recognised Water Service Providers (Illing and Gibson, 2004).
The enabling environment

A number of factors appear to have contributed to the favourable outcome of the Alfred Nzo model, which should be taken into consideration for the appropriateness of scaling-up such an approach:

- The model has been applied to predominantly rural communities supplied with many stand-alone gravity-fed water supply schemes. Operation and maintenance costs are therefore both relatively low and technically manageable within the skills and resources of the local community;
- The Municipality, identifying water and sanitation service provision as a priority, allocated 100% of its Equitable Share to this element of basic services to the poor;
- A key driver of the model worked at a high level in the Municipality;
- The Municipality operates on the basis of service-level targeting. Those supplied with water from standtaps receive water at no charge (identified as free basic water);
- As national legislation continues to be reviewed and revised, the Municipality maintains a dynamic process of updating the VLAPs and aspects of the model;
- The SSA provides a high level of ongoing mentoring and support to the CBOs – financed directly through the Municipality.

There are some contradictory elements in the provision of free basic services. The Municipality feels its policy is appropriate since it directs free basic water services at the poorest sections of the community. However, according to de la Harpe (2003,51) it is unclear why households with yard connections, which service level is higher than basic services, should only pay a flat rate of R10.00 per month, rather than paying a per kiloliter rate. It is also unclear why private higher levels of service (presumably higher than a yard connection) should get the first 2.5kl free per month, particularly since the VLAP states that these households are classified as “not being poor”.

Source: DWAF, 2001
Legislation

20 A significant challenge being addressed by the Municipality in this case is the factor of compliance with current legislation. For the model to be scaled-up, the Municipality – as the WSA – needed to formalise a contractual relationship with CBOs operating as WSPs, with the support of SSAs. Local government requires a competitive bidding process to establish the appointment of WSPs. The model adapted does not fully address this requirement, so the scheme is therefore something of a test case. The ongoing support of DWAF is essential to review and amend current legislation, such that it can enable the place of community management, through the role of CBO-WSPs.

Appropriate models of community-management

21 Alfred Nzo District Municipality, as WSA, contracts in support services to the CBO-WSP through a private company and NGOs (the SSAs). Members of the CBO-WSP are effectively employees of the Municipality. Under such circumstances, the model may not be seen in the broader context as one of true community management. It is perhaps more closely aligned with a form of “community contracting”, where the community is sub-contracted to the municipality to undertake aspects of service delivery. However, in so far as it is proving to be an appropriate and effective model of community management in the case of Alfred Nzo, it should be therefore explored as a replicable model for service delivery within the South African context and where similar conditions of strong municipal government and extensive decentralisation exist in other countries.

3.3 Case Study 3: public-private-partnership - Dolphin Coast

Background

22 Dolphin Coast, an area some 50kms north of Durban and running along the coastline of KwaZulu-Natal, has a distinct feature in the make up of its’ population. The area encompasses two very different zones, divided by a national freeway, link roads and a railway line all running parallel to the coastline. The coastal zone to the east is characterised by extremely affluent suburbs, with a high seasonal inflow of tourists and high revenue potential. The zone to the west – often referred to as the “shadow zone” – is characterised by townships of poor African and Indian populations scattered among extensive sugarcane farmland. Here, the communities typically receive very poor service provision from the local authorities which, together with a rapid population influx, high unemployment and crime, has resulted in an increased burden of ill health and poverty.

23 Those who motivated for the concession argued that service delivery in many municipalities was in crisis as 90% of the poor black population lived in areas inadequately supplied with essential urban services. In the case of the Dolphin Coat there was an ‘extremely poor’ infrastructure and in the informal settlements virtually no services at all. At the same time the demand for service provision was growing exponentially (nearly doubling between 1995-97). The Council felt it was completely incapable of providing these services as the municipality could not access capital markets directly and central government financial support was declining (Kotze et al: 1999).
24 The Dolphin Coast concession agreement has been one of the most publicised examples of a public-private-partnership in South Africa. The 30 year concession was awarded in 1999 to Siza Water Company - a subsidiary of the French multinational water company SAUR - to take over the assets of the local municipality, the Borough of Dolphin Coast (BoDC). In this role, Siza Water would administer water and sanitation services and collect tariffs from the residents of the area. A concession contract would enable the Borough to retain ownership of assets, while enabling improved management and capital investment to take place (Hemson and Batidzirai, 2002).

25 In the approach to the concession, the Borough of Dolphin Coast was given every assistance by government agencies. The Department of Constitutional Development and the Development Bank of SA (DBSA) gave assistance with the Request For Proposal, to design the concession agreement itself, and in the tender board to review the bids. Consultants were provided to present the idea of the concession to the communities and record their opinions. Consistent support was given over the period from 1996 until the concession commenced operations on 1 April 1999. The Borough was given full legal backing for the concession document and in guiding tendering through the procedures set out in legislation. Important political support was given when President Mbeki visited the borough in August 1999 and praised those who had steered the concession through all the stages of its development.

**Impact of the intervention on pro-poor services**

26 Three levels of service had already been established by the inception of the concession: a full domestic connection with flush toilets, access to standpipes and VIPs, or access only to standpipes. There was no explicit ‘pro-poor’ aspect to the concession document bar a general commitment by the company to serve all the people in the municipality and by the establishment of lower levels of service than a full domestic connection.

27 Within the poorer area of Dolphin Coast, most water is provided through communal standpipes and sanitation through provision of VIPs. Those houses built with in-house water connections have gradually been disconnected – in some cases at the request of the residents – as water bills have increased beyond the resident’s ability to pay. A recent survey found that over 90% of the poorer population is accessing water at street level (Hemson, 2004). There has been outspoken criticism of the tariff increases since the beginning of the concession.

28 Over time, other informal levels of service have become established: e.g. for people who have been unable to continue with their domestic connections a ‘pour-flush’ level is working with people using fresh water from standpipes or grey water from baths to flush toilets.

29 The people drawing their water from standpipes do not get free basic water, as electronic pre-payment discs cost R60 each and all levels of consumption are charged at the highest tariff.

**Institutional conditions and organisational capacity**

30 There exists very uneven institutional capacity between the Borough and Siza Water; the Borough personnel feel they have an acute shortage of skills and the necessary personnel and relatively limited capacity to regulate Siza Water. Local government in the
region has been in conditions of continual flux with boundary changes and renaming of
the emerging municipality of KwaDukuza, which now incorporates a nearby large town
and other smaller towns and settlements in the region. Although the concession is
audited, reports do not seem to be given systematic examination and are not publicly
available.

31 In comparison, Siza Company has the backing of a powerful multinational company,
legal and accounting experts, and wide international experience.

4 ANALYSIS

32 The case studies have identified various “interventions” within the water and sanitation
sector that have implications for aspects of policy, legislation and institutional
frameworks – as well as issues of capacity to delivery and maintain sustainable
services. These elements are briefly addressed here.

4.1 Policy and legislation

33 Government policy in the White Papers, together with the statutory framework for
municipal service provision, provide a strong political environment within which to
support service delivery by the state. A role for civil society is identified in the process,
but the legislation places requirements on NSPs that undermines opportunities for
CBOs and small scale, not-for-profit, organisations to play an active role.

34 The policy of providing free basic services has impacted greatly on service provision,
primarily through its limited implementation leaving many residents feeling confused as
to what services they should and shouldn’t be paying for and WSAs needing to
subsidise services to the poor from whom there is no element of cost recovery.

4.2 Standards

35 To achieve efficient and effective standards of service as stated in the Municipal
Systems Act (2000), municipalities tend to look within their own jurisdiction, or to the
private sector, to carry out service provision functions. This leaves limited opportunity for
CBOs and other small-scale NGOs to play an active role.

4.3 Regulation

36 Within the Strategic Framework for Water Services, WSAs (i.e. municipalities) are made
accountable to their citizens on the basis of having sufficient capacity to regulate service
providers. In the case of Dolphin Coast, capacity weaknesses within the Municipality
results in poor regulation of the Water Services Provider (Siza Water).

4.4 Commissioning service delivery through NSPs

37 With municipalities facing limited capacity to both deliver and regulate services within a
strong municipal system, NSPs have a role to play in supporting service provision.
Where this is occurring, it has tended to favour the private sector (Dolphin Coast and
box on sanitation provision), while commissioning service delivery through CBOs (Alfred
Nzo) is having to address legislative restrictions that act as a disincentive for such
NSPs.
4.5 Disincentives for CBOs: addressing the Strategic Framework

38 The Strategic Framework expresses the Government’s commitment to promoting a role for civil society in aspects of water service delivery. The Framework states that “DWAF will engage with other national government departments to secure the right of water services authorities to use community-based water services providers…without undertaking competitive tendering” (DWAF, 2003). Simultaneously, the public sector is identified as the preferred supplier of services. Local government legislation (Municipal Systems Act, 2000), while recognising a role for CBOs to operate as potential WSPs, is not conducive for CBOs to act in that role. The definition of a CBO (as opposed to a private sector enterprise) is unclear, and there is a prescriptive process towards establishing the service delivery agent (the WSP)...

39 “The prescribed process requires a municipality to first look into the possibility of an internal mechanism for service delivery i.e. providing the service itself. This includes looking into the possibility of restructuring itself to become the service provider. Only after looking at its own capacity to deliver services can the municipality consider an external mechanism i.e. a partnership with another public or private organisation.” (Wijesekera, 2003, p.18)

40 Addition factors inhibit the role of CBOs in service provision:

- The appointment of a CBO by local government is subject to competitive bidding and procurement process, such as the WSA having to authorise payment for purchases over R1,000 (less than £90), on the basis of 3 quotations;
- Municipalities are monitored on the basis of delivery of infrastructure rather than on sustainability of services. The pressure to deliver hinders a developmental approach – such that sanitation service provision is shifting back to being a “toilet-building exercise”;
- Recently passed Acts: the Local Government Municipal Systems Amendment Act No.44 of 2003 and Municipal Financial Management Act No. 56 of 2003, limit appointment of external WSPs to companies established in line with the Companies Act and utilities that are fully controlled by Municipalities or other state bodies.

41 Constraints that inhibit community management and private sector participation need to be addressed, to broaden the options for service delivery (Wijesekera and Sansom, 2003). This has been identified in DWAF’s guideline report on CBOs as WSPs, which recognises that “in many instances…CBO WSPs are the only viable option to achieve water services that are affordable, cost effective, reliable and sustainable” (DWAF/Network Community Development Services, 2001). The report identifies an approach to overcome the limitations – including affording CBOs special status for consideration as WSPs, such that they are exempt from the competitive procurement process (ibid, 2001). Such an approach requires an amendment to the Strategic Framework, so that CBOs can be identified and recognised as public-sector providers. The new model would enable the utilization of rural community dynamics to support system sustainability. However, perceptions within DWAF are not unilateral. A consistent
position is required, to provide a strong basis for lobbying DPLG on amending the relevant legislation (Abri Vermeulen, DWAF, personal communication, 21st May 2004).

4.6 Impact of FWS/FBW

42 The free basic water policy has not necessarily been welcomed by the non state providers. Mvula Trust immediately raised doubts about the policy and process and individual engineers have argued that the emphasis on free basic water was displacing the priority of delivery. In an important review David Still an engineer committed to rural delivery was sceptical about its impact and stated that professionals working in the field of community projects felt that the policy would ‘ultimately destroy the sustainability of rural water supply in South Africa’.

43 He argued that free basic water was a radical departure from well established policy:

44 The Free Basic Water Policy is indeed a radical shift in government policy, particularly regarding the provision of new reticulated schemes in rural areas. Until now, the common approach has been that government, whether national or local, would pay for the capital costs of schemes, provided that the beneficiaries would give their undertaking to pay the recurrent costs. All feasibility studies, business plans, PSC workshops, WSA/WSP agreements, and tariff structures were based on this philosophy. There were also those, such as the Mvula Trust, who from the outset advocated (and in their own projects insisted) on beneficiaries contributing in addition to an emergency asset replacement fund in order to qualify for assistance (Still, 2001).

45 The impact of free basic water has been complex. While Mvula Trust has reported that many of its schemes were becoming unsustainable, it is also true that free basic water was not effectively reaching the rural poor.

46 The free basic water policy, properly and fully implemented, to provide 6000 litres particularly to rural households would bring a substantial improvement in current consumption and probably considerable health benefits. Unfortunately the matter is not quite so simple. In the table below the statistics are presented from municipalities of the numbers benefiting and the numbers of poor benefiting.

47 The statistics indicate a weak form of equity intervention. Altogether a total of 30,6m out of South Africa’s 46m are benefiting from the free basic water policy.

48 However, although the poorest have been targeted to benefit from free basic water only 50% of the poor (that is households with an income below R1000 a month) or 15million actually benefit. This is partially because the poorest are still among those who have yet to have access to piped water (some 10million people), but also because those poor households in the rural areas have yet to be included in the program.
### Table 2: Beneficiaries of free basic water, FBW

<table>
<thead>
<tr>
<th></th>
<th>Total benefiting</th>
<th>Poor, percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Cape</td>
<td>2,838,562</td>
<td>78.2</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>594,682</td>
<td>67.7</td>
</tr>
<tr>
<td>Free State</td>
<td>2,845,595</td>
<td>63.3</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>5,820,107</td>
<td>61.8</td>
</tr>
<tr>
<td>North West</td>
<td>2,361,338</td>
<td>47.9</td>
</tr>
<tr>
<td>Gauteng</td>
<td>8,007,114</td>
<td>44.1</td>
</tr>
<tr>
<td>Western Cape</td>
<td>3,918,376</td>
<td>36.5</td>
</tr>
<tr>
<td>Limpopo</td>
<td>2,792,139</td>
<td>31.8</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>1,441,094</td>
<td>20.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>30,619,007</strong></td>
<td><strong>50.0</strong></td>
</tr>
</tbody>
</table>

50 Unfortunately the difficulties are most pronounced in the ‘rural’ and poor provinces of Mpumalanga and Limpopo where only 20.5% and 31.8% of poor people respectively are benefiting from free basic water. Similar instances are to be found among the more remote district councils of KwaZulu-Natal.

51 The free basic water policy has undoubtedly tended to reinforce state provision. Both civil society organisations and the private sector have been nervous about its application as they are increasingly dependent on municipalities to provide the funds to make free provision possible. The one example of non state provision quoted in this report (Siza Water in the Dolphin Coast) has not implemented free basic water except for those with direct household connections (a very small minority of the poor). The poorest who draw from communal taps have to meet the cost of an electronic card as well as the cost of charging this card.

52 The free basic water policy has made non state providers increasingly dependent on state funding as revenue from service provision to the poor (with the exception of the remaining untouched rural areas) has been curtailed although not ended.

### 4.7 Performance and capacity

**Cost effectiveness of CBOs as WSPs**

53 Key performance areas (KPAs) of the functions of Water Service Providers in the Alfred Nzo case include:

- Increasing maintenance,
- Administration,
- Customer relations and communication
- Reporting,
54 Within the CBO-WSP model, monitoring costs are found to increase as the level of CBO responsibility increases. However, overall O&M costs have been found to decrease, particularly where clustering of projects can be achieved. In the long-run, the CBOs are found to provide a more cost-effective means of addressing the performance criteria (Illing and Gibson, 2004).

**Addressing municipal capacity gaps**

55 The Alfred Nzo case has identified where a municipality, recognising and addressing its own capacity limitations, has enabled CBOs (village water committees) to contribute to sustained performance of water and sanitation services. In contrast, where municipalities have not addressed such limitations and water committees have ceased to operate for lack of recognition and incentive, projects are struggling to continue as communities feel disengaged from the process, households cease paying contributions to support operational and maintenance costs of water systems, and water schemes face the prospect of failing.

56 Early indications from a pilot project managed by eThekwini Municipality (formerly Durban Metropolitan) in 2003/4 are that large-scale ‘non-state’ participation – in the form of community-based intensive labour provision – in providing pit latrine emptying services in informal urban settlements, can enhance service delivery and efficiency. The project indicates that such ‘non-state providers’ are capable of filling a service demand gap that the Municipality may not be able to satisfy due to limited capacity, be it technical, managerial, or labour capacity.

57 Residents in the informal settlements identify that they have benefited from this partnership through institutional strengthening, job creation and improved access to more efficient services. The Municipality states that in the order of 30-40% of the project cost has been re-invested into the community through labour wages. Elements of the private sector (a local consultant responsible for overseeing the project and contractor who manage the employment of local labourers) have in addition gained commercial recognition through formalized partnerships with the Municipality (interview with Peter Davis, eThekwini Municipality and Martin Gardiner, UWP Consultants, 19th May 2004).

58 This does not represent a typical case of non-state provision in service delivery. However it perhaps represents a unique example of where the municipality has adopted a formal approach in engaging with both the private and community-based sectors in addressing support to on-going sanitation services in an urban context. In doing so, capacity limitations within the Municipality can be addressed. To ensure maximum benefit to the non-state actors, training opportunities to enhance roles and take on additional management responsibility should be built into any agreements.

**Regulation, quality and accountability**

59 Service delivery has gained a new emphasis, as reflected in the Government’s Batho Pele principle of “putting people first”. It is mainly concerned with making the implementation of plans, projects and decisions more effective and efficient (DPSA, 1997). The principle also implies that there needs to be clear lines of accountability through which responsibility for, and reporting on, the performance of departments with
responsibility for water, health and education are understood and made operational (Wallis, 2003). However, aspects of implementation such as monitoring, co-ordination and capacity building, while equally critical in the sustainability of infrastructure and infrastructural service delivery, are generally given less emphasis and resources than performance standards relating to infrastructure provision.

60 DWAF’s role in regulation and monitoring of the sector has been established in the Strategic Framework and through subsequent annual Strategic Assessments. The first Strategic Assessment of 2004 recognises the enormity of the task in providing effective regulation, especially as many municipal-level WSAs lack effective systems for reporting WSP compliance against established key performance indicators (DWAF, 2004).

61 NGOs working in the water sector in South Africa have, through years of engaging with rural communities in a value-based framework, established an understanding of elements of best practice (Tilley and Galvin, 2001). Mvula Trust, as an over-arching agency working closely with NGOs, enabled a system of “self-regulation” in the sector, as guidelines and models were established nationally and applied through the NGO community working directly with CBOs, as support service agents (SSAs).

62 With the role of SSAs more significantly taken on by emerging contractors and for-profit organisations, there is a weakening association between WSAs and the community. The role for the community is becoming more one of “consumer representation” through limited forums for dialogue.

63 Regulation of the Dolphin Coast concession has been weak, particularly in relation to changing tariff structures and the high tariff increases since the start of the concession. While the municipality appears to hold significant powers within the concession, in practice this has not had a significant impact. Factors influencing this are considered to be:

- The lack of transparency surrounding reports and audits;
- The ineffective nature of the council’s Water Committee;
- An extensive reorganisation of the Borough of Dolphin Coast, with subsequent reallocation of officials; and
- A general sense of disempowerment amongst the councillors.

64 The relative weakness of local government and civil society in comparison to Siza Water is a key problem in ensuring regulation of the services. Capacity needs to be addressed and support provided to the municipality at appropriate levels. This is particularly necessary to ensure equitable services to the poor and that options for affordable tariff structures are considered.
5 CONCLUSIONS

Limited research around policy dialogue towards setting frameworks for serving the poor

An extensive amount of investigation and reporting on pro-poor implementation frameworks takes place in the water and sanitation sector in South Africa. Much of this has identified weaknesses and gaps in the framework, but it has often fallen short of engaging the poor in policy-level dialogue to ultimately address high level commitments and resources to pro-poor services.

Ethical and ideological significance affecting political decisions

The Government’s Batho Pele principle of putting people first is a strong ideological force driving the move towards involvement of civil society in service delivery. In the process, the government has been strongly supporting the emergence of Black Empowerment Enterprises (BEEs) through the framework of preferential procurement. A negative impact has been to displace NGOs from the function of service delivery.

Blurring of boundaries

With the reduced role for NGOs and CBOs in service delivery, many NGOs are being forced to seek new positions in direct contracting, advocacy and community participation. This shift will contract the base for ‘professional’ NGOs which have to date been involved in service delivery.

Recognition of NSPs

The Alfred Nzo case highlights the challenge for civil society groups (CBOs, Village Development Committees, etc.), to receive formal recognition as WSPs within current legislation. While for-profit NSPs (primarily BEEs) have the competitive advantage, CBOs need to be recognised as a mechanism for ensuring long term sustainability of services in the absence of capacity within the municipality.

“Illicit” provision

As the water and sanitation sector is highly state-oriented, there is no significant contribution of illicit or semi-licit providers.

Growth of NSPs in relation to failure of the state to provide

The state has failed to deliver an acceptable level of service to many of the poor and rural areas of the country. The level of dependency on the state to provide services has inhibited NSP activity, except through the intervention and support of NGOs.

Unfriendly nature of government regulation

A municipality acting as the Water Services Authority (WSA) is responsible for planning, monitoring and regulating the provision of water and sanitation services by the WSP, in line with the Water Services Act. To enable CBOs the opportunity to operate as WSPs requires elements of the regulatory framework to be reviewed – for example in terms of contractual agreements, performance targets and indicators, and the management of assets.
Replication of community management requires sustained external support

The Alfred Nzo case supports a model of successful community management, currently under extensive observation to study its long term effectiveness and sustainability. Enabling its success is the agreed contractual support provided to the community by both service agents and the municipality. Constraints to scaling up the Alfred Nzo model of community management primarily exist in the requirements within local government legislation which has had to be “side-stepped”.

Contracting out of services – and government capacity to manage

Contracting-out the role of WSP to a large-scale private multinational company in Dolphin Coast was seen as an opportunity to ‘pilot’ the approach for wider encouragement. Limited capacity of the local municipality to manage and regulate the complex 30-year concession contract has led to inefficiencies and levels of service for the poor falling below those expected. The success or otherwise of such a pilot scheme is likely to predict the outcomes of ‘scaling up’ such an intervention.

Maintaining partnerships with NSPs assumes political stability and neutrality

South Africa benefits from a remarkably stable political arena, in which long term partnerships can occur. However, changes in government priorities towards efficient and effective services delivered as rapidly as possible is putting pressure on existing relationships between the state and the value-based NSPs (CBOs and NGOs) as municipalities look towards the private sector for support in service provision.

6 IMPLICATIONS

The extension of ‘wall to wall’ municipal government has narrowed the space for the organisations of civil society.

South Africa is possibly the only African country to espouse and effectively implement local government services for the people. Post-colonial governments have almost unanimously insisted that national government should be seen to provide services and this has only recently changed with the advocacy of fiscal and political decentralisation. Presidentialism has been the dominant style and powerful autocratic central leadership has been an unfortunate tradition.

In South Africa there have been somewhat different impulses, although also the same trends towards centralisation. It is argued here that a political imperative for democratic and participatory service delivery contends with a counter tendency for services built on a commercial model. The Batho Pele principles and the entire current drive to secure delivery is cemented on to the political imperative for the post-apartheid government and leaders to be highly visible in making delivery happen. In addition to this, the broad political rationale of any ruling party is to have politicians seen to be leading in passing benefits to the people. These trends tend to reinforce state provision.

The delivery system and municipal management in South Africa very much reduces the scope for NSPs, but it does not eliminate them.

There are policies specifically devised to encourage the role of NSPs in the water sector and to set out model contractual relationships between municipalities and NSPs. In addition, there are arrangements between donors, national departments and NSPs in the sector which are committed to providing a set proportion of funding to NSPs, such as the Masibambane Water Services Sector Support Programme.
**Accelerated delivery is becoming at the expense of sustainability.**

79 This is partially argued here; as delivery reaches increasing numbers there is a very much greater demand on municipal operations and maintenance. In the ‘mature’ municipalities (such as Stellenbosch) it is stated that operational costs are annually some 80% of capital costs; up to the present there has been almost exclusive attention to the drive to reach the unserved poor. In the future there will have to be greater attention both to capacity building in municipalities and to relatively simple techniques of ensuring continued operation in poor rural communities.

80 The proportion of financial support to the articulation of demands of the poor is small in comparison to financial support to delivery. The former is the more appropriate form of intervention by donors.

81 Civil society in South Africa is going through contortions. The strong advocacy groups are growing at one level (that is in the poor townships) and still incipient in rural areas. Strong and intelligent advocacy has not reached rural areas; subsequently Mvula Trust has become an implementing agency under vigorous challenge from Black Empowerment Enterprises. Strong advocacy (that is mobilisation in the best of the South African participatory tradition) among NGOs is being supplanted by (often unsuccessful) lobbying. There is a strong need for funding to reach the poor, particularly the incipient organisations of the rural poor, to assist in registering the voice of those either not being served or enduring very uneven levels of service.

*The decline of ‘service’ NGOs may bring them into a closer alliance with oppositional social movements.*

82 In the current milieu in which NGOs as implementing agencies are being displaced by BEE there are two choices; either to face an inevitable decline and pass away or to shift focus to strong forms of advocacy. Unfortunately it does not seem that the style of the ‘service’ NGOs is likely to change, although this is still a possibility. Oppositional social movements themselves wax and wane, but there is a common approach among many more activist NGOs and established social movements (such as COSATU) to place demands for improved services and welfare on the state. Between the two trends there is the possibility of a closer alliance.

7 **RECOMMENDATIONS**

*Understanding the nature of NSPs*

83 “Non State Providers” is a general ensemble rather than a category with internal coherence and cohesion. It includes a wide range of economic and institutional actors; from large companies (Siza Water) to community based organisations (Village Development Committees). A better understanding of all elements of NSPs is required, to best enable and support their contribution to the sector.

*The impact of free service provision*

84 The provision of free basic services has created disincentives for CBOs and NGOs to contribute to the process of service delivery. The gap remaining can only be filled by local government where sufficient capacity and resources to support capacity development exist. Capacity within local government must be enhanced where free basic services are offered.
The importance of building capacity

85 Capacity development of local government is key to enabling effective regulation of the private sector in service delivery. This could be supported through the setting up of pilot community-based programmes in poor areas, which could be used to monitor service improvements in defined low income areas against key indicators (such as the number and percentage increase of active pipe connections). Successful models could then be scaled-up as capacity within local government is developed.

Enhancing the regulatory function of the state

86 Conditions of private sector management based on formal agreements with for-profit NSPs must ensure pro-poor policies and requirements for monitoring the impact of services to the poor. Regulation of such for-profit NSPs could be enhanced and supported by establishing an independent regional regulator. The appropriate local authority is then delegated the regulatory functions of that authority, to support the regulatory role of the state.
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SUB APPENDIX B – AN “INVITATION” TO POLICY DIALOGUE

Concerned about water supply and sanitation... concerned about free basic water and water cut-offs?
The Minister of Water Affairs and Forestry, Ronnie Kasrile, MP invites you to comment on the Draft Water Services White Paper.

Government is working hard to improve our people’s water and sanitation services. During my recent In-Dep Programme many people who have water supply infrastructure complained about the lack of a regular supply of water. It was very concerning as most of these individuals are not aware of their rights and responsibilities as well as the rights and obligations of their Municipalities.

As your Minister entrusted in ensuring that all those living in this country have access to sufficient water supply, I feel it is my duty to inform you of your rights and responsibilities and those of your Municipality. Government policy is that:

• Everyone has the right to a basic supply of 25 litres clean water per day or 1000 litres per household per month, although some Municipalities may not yet be able to supply this.

• No one should be without a water supply for more than 7 full days in any year. If a public supply is interrupted for more than 24 hours, then the Municipality should inform you and make arrangements for emergency supplies.

• If you cannot afford to pay for your water, you are entitled to a free basic water supply.

• It is a criminal offence to connect to a public supply without the Municipality’s permission since this could harm other water users.

• If you are unable to pay your water bill, you should make arrangements with your Municipality. Although they may not withhold the basic supply, they may restrict you in this manner. If you interfere with the metering system you can lose it as a result. If you do notice any problems or indeed if you do not receive an explanation, you are still responsible to ensure payment.

• Municipalities must inform you before they discontinue your service.

• Municipalities must have a customer service where complaints can be lodged.

The Department of Water Affairs and Forestry is currently revising the 1994 White Paper on Water Supply and Sanitation, to address these and other issues.

We are now inviting a second round of comments on the Draft Water Services White Paper through consultation workshops, meetings and individual comments. The Draft White Paper is available on the Department’s website: www.dwa.gov.za or email Ms Breakfast Ntshana at telephone number (011) 338 8555.

The deadline for invited comments on this Draft White Paper is 20 November 2002, but has been extended to 15 February 2003 and comments should be addressed to Mr. Thabang Motlhaha at telephone number (012) 323 3077, e-mail Thabang.Motlhaha@wafi.gov.za or she may be contacted at telephone number (012) 328 8572 for further information.

Your Government is determined to lend a hand in making South Africa a better place for all by eradicating poverty and underdevelopment.

Form a partnership with your Government today – become involved!