SOUTH AFRICA'S CHANGING LAND TRANSPORT LANDSCAPE

THE ROLE OF MUNICIPAL GOVERNMENT UNDER THE NATIONAL LAND TRANSPORT ACT.

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ABSTRACT

The introduction of the National Land Transport Act in 2009 fundamentally altered the landscape of transport provision in South Africa. For the first time, the municipal government sphere has been given responsibility for the bulk of functions related to public transport. Municipalities are now responsible for the development, implementation and monitoring of land transport strategies in their area. Whilst most of the metros already have established capacity to deal with some of these duties, already constrained local municipalities outside of the metros face many challenges in taking on these new responsibilities. This paper outlines some of the institutional mechanisms available to local government under the NLTA to build up organizational and financial capacity through support from national and provincial government whilst at the same time allowing the delivery of the most appropriate scale of public transport services to take place at the local government level.

INTRODUCTION

Section 11 of the National Land Transport Act (NLTA) of 2009 outlines the respective national, provincial and local government responsibilities for the provision of land transport in South Africa. Under this legislation the municipal sphere of government has been allocated the vast bulk of the public transport responsibilities with provincial and national government taking a more strategic and oversight role.

This focus on local government is consistent with the intent of the Constitution which allocates the provision of government services at the most local level of government appropriate to the task. Under the NLTA, the roles of national and provincial government are concentrated on support, co-ordination, regulation, monitoring and capacity building.

Whilst the Act does not distinguish between local and district municipalities, it needs to be read in conjunction with schedule 4B of the constitution as well as section 84 of the Municipal Structures Act which places responsibility for municipal transport services at the local municipality level.

It is important to recognize that the transport solutions for different municipalities (and the institutional and financial arrangements supporting those solutions) are going to differ according to the economic and spatial characteristics specific to their particular area.

Table 1 below outlines the current land public transport usage of the different categories of municipalities in South Africa, whilst table 2 describes the public transport solution required of each category.

A quality public transport service means different things in different areas and it is vital that the system design is appropriate for the needs of the local population. Given the size of their economies, the distances travelled and the frequency of services required to support their commuter population, the transport solutions designed for urban areas are going to require a larger scale of investment in infrastructure and a greater level of service than those in rural areas.

Table 1: Public transport usage by category of local municipality

	Large Cities	Emerging Cities	Towns	Rural	South Africa
Number of municipalities	5	8	18	231	262
Population*	13,675,221	4,943,164	4,195,399	22,573,425	45,387,209
% Population	30.10%	10.90%	9.20%	49.70%	100.00%
Bus users**	1,107,693	400,396	260,115	2,618,517	4,386,721
% of Bus users	25%	9%	6%	60%	100%
Taxi users**	3,883,763	1,403,859	1,132,758	3,408,587	9,828,966
% of Taxi users	40%	14%	12%	35%	100%
Total road public transport users	4,991,456	1,804,255	1,392,872	6,027,104	14,215,687
% of Total road public transport users	35%	13%	10%	42%	100%

* Department of Statistics (2001) ** Derived Data: Department of Transport (2003)

Table 2: Public transport solutions

Large Cities	• Dedicated BRT roadways on main transit corridors • Scheduled services on supporting secondary corridors • Integrated ticketing systems • New vehicle fleets • Transformation of existing taxi industry • Comprehensive full network public transport service
Emerging Cities	• Priority public transport services on dominant movement corridors • New vehicle fleets • Feeder bus system on existing road network • Transformation of existing taxi industry • Comprehensive full network public transport service
Towns	• Services on existing road network • New vehicle fleets

	• Links main centre to outlying commuter settlements
Rural	• Formalisation of minibus taxi industry • Vehicle recapitilisation • Minimal built environment infrastructure • Scheduled services rural areas to main economic hubs

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Transport systems in the metropolitans are highly complex systems requiring significant financial and human capacity to deal with a wide range of planning, procurement, contracting, financial and project management processes. These are multi-year projects and often take place over a number of phases.

For example, some of the elements of a Bus Rapid Transit (BRT) type system include dedicated road infrastructure, integrated ticketing systems and new vehicle fleets. These scheduled services are expected to operate for 18 hours a day, 7 days a week. The incorporation of the minibus taxi industry into these systems requires another whole set of processes that involve highly specialized skills.

In contrast, on the other end of the spectrum are the low density rural areas. The transport solution required for these communities is a lot less complex and may only involve the formalization of minibus taxi operations into a scheduled service that connects the rural centre to neighbouring economic nodes and main regional centres. Depending on local need, these services may only operate on a daily or weekly basis. Clearly, the financial and institutional capacity required to manage these systems is far less onerous than that of a metropolitan centre.

THE ALLOCATION OF PUBLIC TRANSPORT RESPONSIBILITIES BY THE NLTA

Section 11 of the NLTA allocates transport responsibilities to the three spheres of government and these are broadly divided into strategic, regulatory and operational functions.

The national sphere of government is primarily responsible for developing national strategic frameworks, guidelines, standards, regulations and draft model contracts. The Provincial sphere of government is responsible for formulating provincial transport policy and strategy so that it is in line with the framework of national policy and strategy. These provincial strategies and policies in turn provide the framework for municipal policies and plans.

Both national & provincial spheres have vital capacity building & co-ordination (liaison) responsibilities. The national sphere is responsible for capacitating and monitoring provinces and municipalities that lack the capacity or resources to perform their transport functions as well as engaging with other national government departments that have an impact on transport issues.

Similarly the provincial sphere is responsible for co-ordinating municipalities in order to ensure that land transport is efficiently executed in the province. The Act also gives the provincial sphere responsibility for ensuring that municipalities that lack capacity are given the resources to perform their land transport functions.

Section 11c of the NLTA assigns 28 responsibilities for land transport to the municipal sphere of government which is responsible for exercising control over the delivery of public transport services through the planning, implementation and management of modally integrated public transport networks and travel corridors. This involves a range of

responsibilities including policy and strategy development, the provision of public transport information, marketing, managing the safety of public transport users, traffic management, fare management and the monitoring and management of operator contracts amongst others.

The 28 responsibilities allocated in Section 11c are not only for public transport but relate to a range of other land transport functions such as the promulgation of municipal by laws (ii) or managing the municipal road system (xviii). Of the 28 responsibilities, seven are the most critical to setting up a public transport system:

> *"(xx) introducing establishing or assisting in or encouraging and facilitating the establishment of integrated ticketing systems, the managing thereof including through-ticketing and determining measures for the regulation and control of revenue-sharing among operators involved in those systems;*
>
> *(xxi) subject to standards set by the Minister under section 5(5), if any, set standards for interoperability between fare collection and ticketing systems in its area;*
>
> *(xxiii) in the case of gross cost contracts for subsidised services, determining fare structures and fare levels and periodically adjusting fares after publishing the proposed adjustment for public comment;*
>
> *(xxiv) determining concessionary fares for special categories of passengers in the prescribed manner;*
>
> *(xxv) exercising control over service delivery through—*
>
> *(i) the setting of operational and technical standards and monitoring compliance therewith; and*
>
> *(ii) the monitoring of contracts and concessions;*
>
> *(xxvi) concluding subsidised service contracts, commercial service contracts, and negotiated contracts contemplated in section 41(1) with operators for services within their areas;*
>
> *(xxvii) developing and managing intelligent transport systems for their areas in the prescribed manner;"*.

The intent of the NLTA is clear, it places the local sphere of government at the front and centre of public transport service delivery in South Africa whilst relying on national and provincial governments to co-ordinate and build capacity.

UNDERSTANDING THE CAPACITY OF LOCAL MUNICIPALITIES

Very few municipalities (particularly outside of the large metros) have the financial and institutional capacity to design, implement and manage public transport systems. For example, the technology required to establish and manage integrated ticketing systems or intelligent transport systems can only be sourced from the private banking sector.

Of course, as illustrated in Table 1, the capacity required by the municipality to provide public transport services will be determined by the complexity of its public transport solution. The metros will require far more financial and organizational resources to implement their public transport systems than what will be required by the municipalities in the rural areas.

In order to effectively deliver on their public transport responsibilities, local municipalities must first understand what capacity is required to deliver public transport services and this triggers the considerations articulated in Section 78 of the Municipal Systems Act (MSA, 2000).

According to the MSA a municipal service is defined as:

> *“a service that a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether –*

(a) *such a service is provided, or to be provided, by the municipality through an internal mechanism contemplated in section 76 or by engaging an external mechanism contemplated in section 76; and*

(b) *fees, charges or tariffs are levied in respect of such a service or not;"*.

Clearly, a public transport service can be defined as a municipal service as it provides a direct benefit to the local community. Section 78 of the MSA sets out a process by which municipalities must select the mechanism through which they can deliver a new municipal service or significantly upgrade, extend or improve an existing service.

As a result regardless of whether a municipality currently has a transport service that it needs to change in order to become better aligned with the stipulations of section 11 of the NLTA or whether it is introducing a completely new service, it is still required to follow a two-step section 78 investigation process.

Firstly, the municipality must explore whether it can fulfil its municipal transport responsibilities via an internal mechanism which is defined as a department, administrative unit or business unit under the control of its administration.

During this assessment it must determine whether it has the skills, expertise and resources necessary to provide the service internally, both immediately and into the future. It must also factor in the direct and indirect costs and benefits (e.g. environmental impact, human health, safety and well-being, economic development, job creation and employment patterns) to the municipality by providing the mechanism internally. This also requires the municipality to solicit the views of organized labour.

If the municipality determines that it is not feasible to implement the service through an internal mechanism, then the second step of the process is to evaluate the feasibility of an external mechanism. Examples of external mechanisms include municipal entities, other municipalities, organs of state, community based organisations or any other institution or entity.

Consideration of an external mechanism follows a similar assessment of the costs and benefits of doing so to that which were followed in exploring the merits of using an internal mechanism.

It must also conduct a feasibility assessment as to whether providing the transport service through an external mechanism will provide value for money, assist the poor, be affordable and transfer the appropriate level of technical, operational and financial risk. In this study it must also identify which type of external mechanism will be used, how long it will be used for and what the expected outputs will be. This assessment needs to also include an understanding of the projected impact on the financial status of the municipality's staff, assets, liabilities and budgets.

Before the municipality can determine whether it should use an internal or external mechanism to provide public transport services, it needs to identify which functions it will need to champion in order to do so.

It is clear then that for most, if not all, municipalities that they will have to explore using an external mechanism to implement a public transport service as mandated by the NLTA as they simply do not currently have the capacity to establish and run these services using internal capacity. It is very important however that the municipality follows the section 78 process without any preconceived outcome in mind and it must be a genuine attempt at ascertaining whether the public transport service can be provided internally.

INSTITUTIONAL MODELS FOR PROVIDING PUBLIC TRANSPORT SERVICES:

The NLTA offers a variety of external mechanism options to capacity constrained municipalities for the provision of public transport services.

The first recognition made by the legislation is defining the municipality as the contracting authority. This allows the municipality to contract with other third party service providers for the provision of public transport services by operators and related functions such as integrated ticketing, electronic and field monitoring, marketing, infrastructure maintenance etc.

No matter how much a municipality outsources these functions, it will still be required to administer, monitor and manage the contracts that govern these services and this requires financial and organizational capacity that may be absent. In these cases, municipalities can look to Section 12 of the NLTA for guidance which enables under-capacitated municipalities to seek support from other local and provincial government bodies.

The following choices are available to municipalities for the development of public transport systems in their area

Development in partnership with the Provincial government:

Section 12(1) allows for the municipalities to enter into an agreement with a province to provide for *"the joint exercise or performance of their respective powers and functions".* Such an agreement will have to outline the respective roles of the Province and the Municipality for the delivery of each function that falls within the agreement. This arrangement is demonstrated in Figure 1 below.

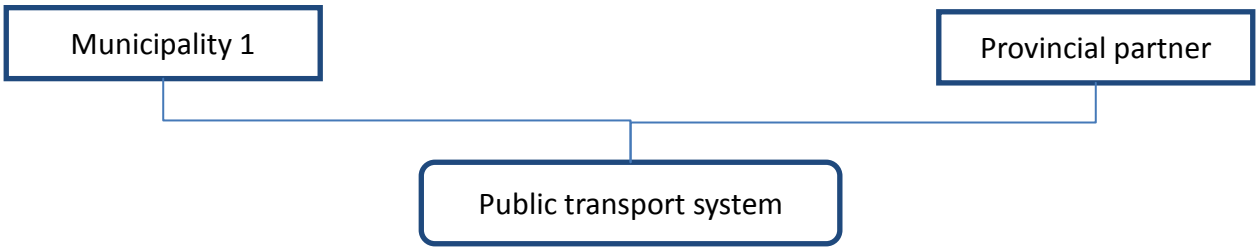

Figure 1: Partnership with Provincial Government

The Province cannot be assigned control for these functions, the NLTA intends for both the municipality and the Province to work together to fulfil these functions. The ambit of these agreements can extend to financial arrangements and payment obligations, reporting processes and governing issues, capacity building and transfer programmes and organizational designs that are jointly managed by the signatories.

This is a favourable option for areas that have no public transport systems in place and require significant financial and operational support to establish new systems. In these cases, municipalities can leverage the skills, resources and institutional memory of their Provincial partners to set up a new system. From a Provincial perspective, this is a highly resource intensive approach and should probably only be used in a few cases where it is necessary to set up systems rather than being applied in every municipality across the Province.

Development in partnership with an adjacent municipality/ies

Section 12(2) provides a second option in which municipalities can agree to join up with their neighbouring municipalities for the joint exercise and performance of their functions. As illustrated in Figure 2 below, two or more adjacent municipalities can set up their own public transport systems via a multijurisdictional municipal entity structure in order to take advantages of any economies of scale that are on offer.

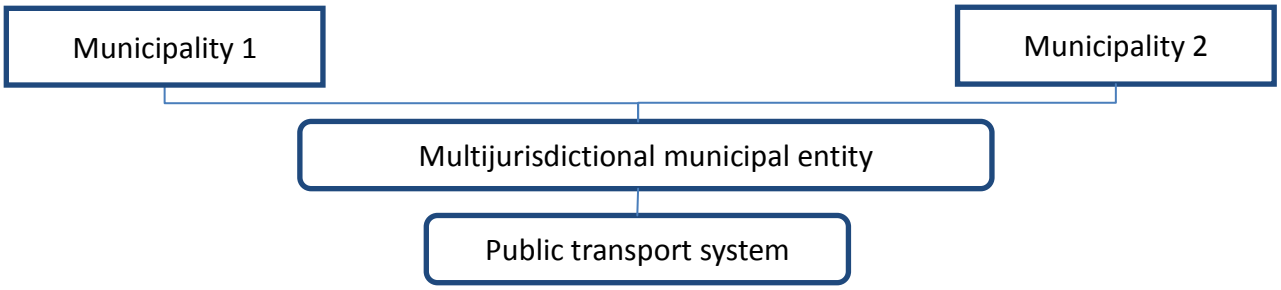

Figure 2: Partnership with adjacent municipality

These structures will need to adhere to the stipulations of the Municipal Structures Act. An additional disadvantage of this structure is the complexity of the institutional and governance relationships between the participating municipalities which takes significant amounts of time and resources to establish. That said, this arrangement does follow the intent of the NLTA (and the Constitution) by placing the provision of public transport services at its most local level.

Outsourcing responsibilities to a neighbouring municipality

The third option is for an undercapacitated municipality to outsource their responsibilities to an already established public transport system. As established systems increase in scale, they will be able to sustainably provide public transport systems over a larger and larger network.

Thus it can also make sense for under-capacitated municipalities to join up with successful neighbouring transport systems rather than investing the time and resources required to establish complex financial and governance relationships with a Provincial government that will ultimately disengage from the system at a later stage. This structure is demonstrated in Figure 3 below.

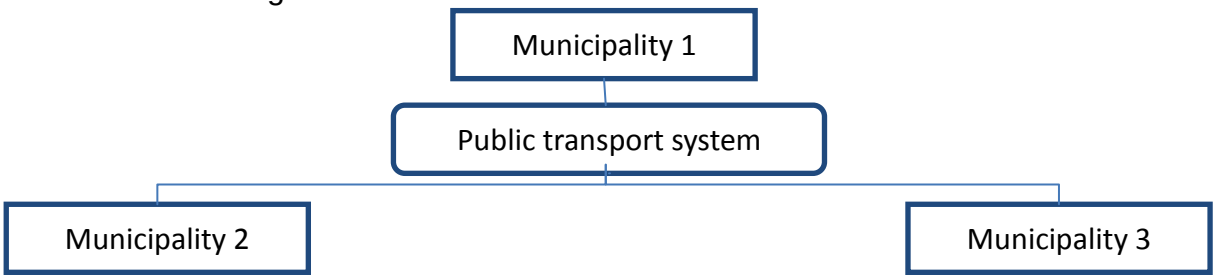

Figure 3: Outsourcing to an established municipal transport system

Despite the advantage of requiring less resources and time to establish such a structure, the more junior (or more dependent) municipalities in this structure surrender significant control in the planning and management of public transport services.

CONCLUSIONS:

The NLTA fundamentally altered how land transport is managed in South Africa by allocating responsibilities to the local government sphere. Whilst it is clear that the institutional and financial capacity required to maintain a public transport system is dependent on its scale and complexity, on the whole municipal governments do not have the financial or technical resources to implement the full scope of responsibilities allocated to them under Section 11 of the legislation.

Under section 78 of the Municipal Systems Act municipalities are first required to do a full assessment of the capacity required to provide a public transport service using their own internal resources before they begin to explore using an external mechanism.

If an external mechanism can be used, Municipalities can then look to Section 12 of the NLTA for options to access skills and resources from provincial government or neighbouring municipalities.

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