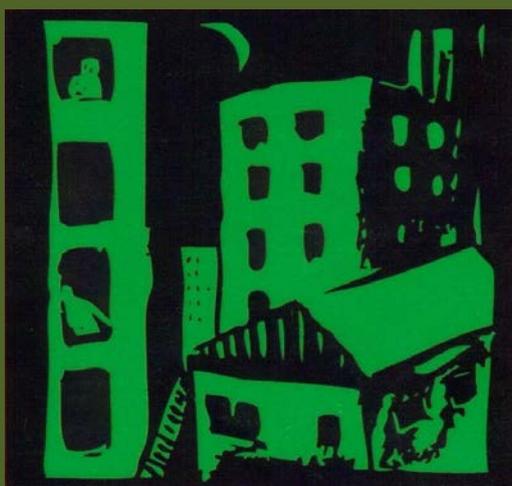


# LAW DEMOCRACY & DEVELOPMENT



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## The readiness of South African law and policy for the pursuit of Sustainable Development Goal 11

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### 1 INTRODUCTION

Today, the world is the city's oyster. Long gone are the days when municipalities of the world governed and planned in a vacuum that was shaped only by national law and policy. Globalization and unprecedented urban growth have generated such opportunities and challenges that the world is more interested than ever in the form and function of its cities and urban human settlements. Notably, cities are positioning themselves as critical to global interests (such as reacting to climate change and terrorism) and increasingly find themselves central in and responsive to international fora where national programs appear to be absent or ineffective.<sup>1</sup> There is a move towards

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<sup>1</sup> Davidson K & Gleeson B "The new urban assertions: no prospect there" in Archer K & Bezdecny K (eds) *Handbook of cities and the environment* (Cheltenham: Edward Elgar 2016) 424.

“urban centrality”, a system where “cities deploy..., individually and collectively, the power they have accrued over time to evade and dislodge state and other forms of territorial power mainly unnoticed by national governments”.<sup>2</sup> One of the most visible examples is climate politics, which is no longer confined to international or national forums – city governments actively develop and participate in transnational climate urban governance through city climate networks, for example. The growing body of scholarship on the Anthropocene also re-conceptualizes “the urban” and cities. In this context, cities cease to be viewed as “places where nature stops”.<sup>3</sup> It thus came as no surprise when the Sustainable Development Goals (SDGs) included a goal dedicated to cities. Goal 11 is devoted to sustainable cities (as a metaphor for urban centres) and communities and the objective for the future is to make cities and human settlements inclusive, safe, resilient and sustainable.<sup>4</sup> While sustainability is a far-reaching term, SDG 11 creates a very specific framework for cities and urban centres when one considers its ten supplementary targets. The targets are set for the year 2030 and speak to issues such as housing, cultural and natural resource protection, disaster risk reduction, resilience, service delivery, resource efficiency, mobility and development planning. The targets are relevant and necessary but the feasibility of their pursuit given the limited timeframe, remain to be seen.

The 17 SDGs are significant everywhere but are particularly meaningful in the African context. In 2015 the African Union Commission adopted its long-term Agenda 2063 – the Africa We Want<sup>5</sup> and an accompanying first ten-year implementation plan.<sup>6</sup> The Agenda has a strong regional flair focused on the challenges and resources of Africa but it also echoes many of the messages conveyed in the SDGs. None of its seven overarching aspirations speaks directly to urbanization or cities, but it is stated in the Agenda that the continent will accelerate the implementation of its program of action to provide opportunities for all Africans to have decent and affordable housing in clean, secure and well-planned environments, and to improve the livelihoods of the great percentage of people working and living in slums and informal settlements.<sup>7</sup> The implementation plan foregrounds the need for increased investment in urban settlements: for instance to promote housing and reduce slums; to promote access to sustainable urban transport; to address the inadequacy of water systems; and to

<sup>2</sup> See Davidson & Gleeson (2016) 424.

<sup>3</sup> Karaliotas L & Bettini G “Urban resilience, the local and the politics of the Anthropocene: reflections on the future of the urban environment” in Archer K & Bezdecny K (eds) *Handbook of cities and the environment* (Cheltenham: Edward Elgar 2016) 71.

<sup>4</sup> United Nations Development Program (UNDP) “Sustainable Development Goals” (date unknown), available at <http://www.globalgoals.org/global-goals/sustainable-cities-and-communities/> (accessed 12 April 2017).

<sup>5</sup> African Union Commission “Agenda 2063 – the Africa we want” (2015), available at <http://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf> (accessed 12 April 2017) (Agenda 2063). Agenda 2063 was developed as a “Shared Strategic Framework for Inclusive Growth and Sustainable Development” for the African continent.

<sup>6</sup> African Union Commission “Agenda 2063: First Ten-year Implementation Plan 2014-2023” (2015), available at <http://www.un.org/en/africa/osaa/pdf/au/agenda2063-first10yearimplementation.pdf> (accessed 12 April 2017) (First Ten-year Implementation Plan).

<sup>7</sup> Paragraph 72(b) of Agenda 2063.

improve internet connectivity and the provision of electricity. While they strive for improved governance, African countries are expected to put in place measures to ensure the full decentralization and rationalization of their fiscal and administrative functions and to build the associated capacities for municipalities and local government bodies.<sup>8</sup>

The overall vision of SDG 11 echoes in many ways the vision that was set for the municipalities of South Africa after the demise of apartheid. In fact, SDG 11 now serves as an international torch light casting additional light on the trajectory that the country set out to embark on more than two decades ago. At first glance and not focusing on the timeframes as such, there is harmony and policy fit between what South Africa committed to after 1994 and the global organising principles on urban growth and development. In South Africa, the “legal” face of local government changed significantly with the adoption of the Constitution in 1996.<sup>9</sup> The Constitution unequivocally announced a new dispensation where local government would have autonomy and a place in the government system far more “powerful” than in the past.<sup>10</sup> Developmental local government came into being. This was regarded as one of the definitive features of the new democratic dispensation. The White Paper on Local Government (1998) describes “developmental local government” as a local government system committed to working with the community to create sustainable human settlements which provide for a decent quality of life and meet the social, economic and material needs of communities in a holistic way.<sup>11</sup> In this system of developmental local government municipalities have extensive, and mostly autonomous, legislative and executive authority, including the power to raise revenue through the imposition of rates and other taxes, levies, duties and loans. The principle of subsidiarity is also reflected in the Constitution to the extent that section 156(4) determines that under specified conditions, the national and provincial authorities must assign to a municipality the administration of a 'national' or 'provincial' matter which necessarily relates to local government. Local government further functions in a system of co-operative governance where it is expected of all functionaries in all three spheres of government to provide effective, transparent, accountable and coherent government in a manner that does not violate the geographical, functional or institutional integrity of another organ of State.

While the law and policy framework on local government creates a strong sense of what ought to be, it is the lived experiences of people, inter-governmental audit results, and visible changes in local government structures and functions that set the status quo. Recent reports on local governance in South Africa have revealed that there are issues of economic exclusion,<sup>12</sup> unsustainable growth<sup>13</sup> and financial

<sup>8</sup> First Ten-year Implementation Plan 69.

<sup>9</sup> Constitution of the Republic of South Africa, 1996 (the Constitution).

<sup>10</sup> See ch 7 of the Constitution. Local government comprises three categories of municipalities, namely, metropolitan, district and local.

<sup>11</sup> Section B: Developmental Local Government of the *White Paper on Local Government* (1998).

<sup>12</sup> See SA Cities Network *State of South African Cities Report 2016* (Braamfontein: SACN 2016) 126-159.

<sup>13</sup> See SA Cities Network (2016) 5-199.

mismanagement,<sup>14</sup> for example. There are, however, also exemplary developments in the area of municipal climate change mitigation and adaptation,<sup>15</sup> smarter waste management technology,<sup>16</sup> and interesting projects on inner-city urban renewal.<sup>17</sup> The messages are mixed, but one can safely conclude that developmental local government in South Africa is being stretched and challenged in various ways, including in the area of good local governance.<sup>18</sup> It is therefore not unexpected that questions would arise surrounding the readiness of South African law and policy and governance practice to respond to the expectations of SDG 11 and its subsidiary targets.

Against the background of the above, this article notionally explores (a) the compatibility of existing South African law and policy with the sustainable city objective contained in SDG 11; (b) areas emphasized in SDG 11 that are underplayed or overstated in the current law and policy context; and (c) how to best charter some of the expected challenges in meeting the 2030 deadline set by SDG 11. The analysis is done from a law and policy perspective and focusses holistically on urban localities (ie on larger metropolitan cities as well as smaller urban areas such as towns). While undeniably necessary, a critical evaluation of local governance practice falls beyond the scope of this article.

## 2 CITIES AS GLOBAL ACTORS AND THE MAINSTREAM THINKING CAPTURED IN SDG 11

City governments across the world have become global governance actors, a fact which must have been one of the impetuses behind the development of Goal 11 of the SDGs. What is meant by the term “global actor” in this context, given that local authorities are usually elected by, representative of, and responsible to local communities in complex national government structures? Stiglitz and Kaldor state:

"Many of today's major global governance challenges become tangible, urgent, and practical in cities worldwide. Urban leaders and activists have had to deal with many issues long before national governments and interstate treaties addressed them. Cities are sites where these challenges can be studied empirically and where policy design and implementation often is more feasible than at the national level. Among these global governance challenges are those concerning the environment: human insecurity, including the violence against people of all ages and a proliferation of racisms; and the sharp rise in economic forms of violence. Cities also

<sup>14</sup> See Auditor-General South Africa “Auditor-General reports an overall, encouraging five-year improvement in local government audit results” (2016), available at [https://www.agsa.co.za/Portals/0/MFMA%202014-15/Section%201-9%20MFMA%202014-2015/FINAL%20MEDIA%20RELEASE%20\(MFMA%202016\)%20FN.pdf](https://www.agsa.co.za/Portals/0/MFMA%202014-15/Section%201-9%20MFMA%202014-2015/FINAL%20MEDIA%20RELEASE%20(MFMA%202016)%20FN.pdf) (accessed 13 April 2017).

<sup>15</sup> See, for example, Academy of Science of South Africa *Towards a low-carbon city – focus on Durban* (Pretoria: ASSAF 2013).

<sup>16</sup> See Nel S *Waste law and policy perspectives on municipal “land-fill to gas” CDM projects in South Africa* (unpublished LLM dissertation, North-West University, 2015).

<sup>17</sup> See, for example, Mail and Guardian Special Report *A strategic vision for Johannesburg* (2016), available at <https://mg.co.za/article/2016-04-15-00-a-strategic-vision-for-johannesburg> (accessed 13 April 2017).

<sup>18</sup> See the discussion on the state of the pursuit of well-governed cities in South Africa in SA Cities Network (2016) 203-235.

constitute a frontier space for new types of environmentally sustainable energy sources, construction processes, and infrastructures."<sup>19</sup>

Urbanization will continue to bring about major global and local changes; especially with many countries in the developing world now entering the high-growth and rapid-transition era of booming urban growth. One of the predicted impacts is the increased effect on the global carrying capacity of the earth. This has consequences for the making of decisions and policies on health, migration, production, the use of natural resources, land use, spatial planning, environmental governance, safety, resilience etc. The diffusion of governing power in, and new forms of governance relevant to, urbanization reinforce its impact on the global pursuit of sustainability – spatially, but also through the global economy, information flows and social networks.<sup>20</sup>

It follows that cities and national governments today exist in a global system of polycentric governance, and a new governance architecture that conceive of a variety of centres of decision making and action that are formally independent of one another but that function within an interdependent system of relations. The net result, even though not yet fully understood, is that: (a) the pursuit of any global goal (eg sustainability) takes place in an institutional framework that operates worldwide at and between a variety of territorial and functional scales that, (b) involve a plethora of new and familiar State and non-State governance actors with varying degrees and types of governing authority.

With the publication of the 1987 Brundtland Report and its coining of the concept of sustainable development, the “remit of cities in addressing environmental issues was recast as central to the new agenda”.<sup>21</sup> The Report’s Chapter 9 on “The Urban Challenge” argued that as most members of the world’s future population will live in urban areas, cities should be central to the pursuit of sustainable development.<sup>22</sup> There has since been growing emphasis on the city – a development that resonates with the view that today cities are sites “where policy design and implementation [are] more feasible than at the national level”.<sup>23</sup>

From a legal perspective, cities are government units. They are micro-governments (municipalities or local authorities) overseen by State authorities. Some cities are increasingly aware of their importance and of the necessity of fostering a growing dialogue among politically elected mayors (councils) and administrators to exchange best practices in sustainability governance. Some advocate common interests,

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<sup>19</sup> Sassen S “A focus on cities takes us beyond existing governance frameworks” in Stiglitz J & Kaldor M (eds) *The quest for security: protection without protectionism and the challenge of global governance* (New York: Columbia Press 2013) 243.

<sup>20</sup> On these challenges and the role that cities might play in emerging global networks see further Khanna P *Connectography: mapping the global network revolution* (London: Weidenfeld & Nicolson 2016) 49-60.

<sup>21</sup> Bulkeley H & Betsill M “Rethinking sustainable cities: multilevel governance and the ‘urban’ politics of climate change” (2005) 14(1) *Environmental Politics* 42 at 44.

<sup>22</sup> For a work critical of proclamations of a so-called “urban age” and the underlying statistics, see Brenner N & Schmid C “The ‘urban age’ in question” (2014) 38 *International Journal of Urban and Regional Research* 731.

<sup>23</sup> Sassen (2013) 243.

such as, climate action and the optimization of new information technology systems.<sup>24</sup> City governments are increasingly acknowledged as co-global governors to the extent that they participate directly and indirectly in matters of global governance. Various city governments increasingly have global “standing”, both in the countries and governments of which they are part, but also in a collective sense as part of international networks of, and global forums for, cities, such as, the C40 Cities Climate Leadership Group<sup>25</sup> and Local Governments for Sustainability (ICLEI).<sup>26</sup> The view that State regulation at the national level has “hollowed out”<sup>27</sup> tends to ring true. It has been stated that “central powers are being displaced upwards towards supra-national regulatory institutions, devolved downwards towards sub-national scales of governance such as regional and local states (cities) and they increasingly move horizontally to inter-regional and trans-local organizations”.<sup>28</sup> These shifts cause serious changes in the internal workings of governments, generally. They also have direct bearing on the management of environmental, social, economic and governance/political conditions within and by cities as well as on the way in which we understand cities to contribute to global sustainable development. In sum, these shifts create the canvass on which SDG 11 has been painted.

Goal 11 envisages that by 2030 the cities of the world should be safe, inclusive, resilient and sustainable.<sup>29</sup> This goal is ambitious. It ultimately suggests global agreement that a sub-national scale of intervention is necessary for sustainable development; intervention that requires spatially targetted planning and various other actions across scales of government. Goal 11 endorses the view that globally cities (a) contribute to unsustainable development, but (b) can be drivers of change with respect to basic services, accessible and sustainable transport systems, human settlement planning, the reduction of the risk of disaster, climate change mitigation and adaptation etc. This duality finds itself in line with broader characterizations of cities and urban settlements as being simultaneously the source of pressing contemporary problems as well as the answer to these problems. The Goal is broadly framed, relates to various other SDGs,<sup>30</sup> and speaks to the dimensions of sustainable development – it is highly

<sup>24</sup> See Aust HP “Shining cities on the hill? The global city, climate change, and international law” (2015) 26(1) *European Journal of International Law* 255 at 261-265.

<sup>25</sup> See information on this global network at C40 “C40 Cities” (2017). Available at <http://www.c40.org/> (accessed 13 April 2017).

<sup>26</sup> See information on this global organization at ICLEI “Home” (2017). Available at <http://www.iclei.org/> (accessed 13 April 2017).

<sup>27</sup> Marcotullio PJ & McGranahan G “Scaling the urban environmental challenge” in Marcotullio PJ & McGranahan G (eds) *Scaling urban environmental challenges* (London: Earthscan 2007) at 9.

<sup>28</sup> Marcotullio & McGranahan (2007) 9.

<sup>29</sup> See more on Goal 11 at United Nations Knowledge Platform “Sustainable Development Goal 11” (date unknown), available at <https://sustainabledevelopment.un.org/sdg11> (accessed 13 April 2017).

<sup>30</sup> Eg Goals 1 (no poverty), 3 (good health and wellbeing), 6 (clean water and sanitation), 7 (affordable and clean energy), 8 (decent work and economic growth), 9 (industry, innovation and infrastructure), 10 (reduced inequality), 13 (climate action), and 16 (peace, justice and strong institutions).

inclusive, in accordance with the view that cities are pathways to social, economic and environmentally sustainable development.<sup>31</sup>

As suggested earlier, the ambitiousness and reach of Goal 11 lie in its ten subsidiary targets. In 2015 the countries of the world agreed that in the 15 years up until 2030 they will: ensure access for all to adequate, safe and affordable housing and basic services; upgrade slums; provide access to safe, affordable, accessible and sustainable transport systems for all, improving road safety, notably by expanding public transport, with special attention to the needs of those in vulnerable situations, women, children, persons with disabilities and older persons; enhance inclusive and sustainable urbanization and the capacity for participatory, integrated and sustainable human settlement planning and management in all countries; protect and safeguard the world's cultural and natural heritage; significantly reduce the number of deaths and the number of people affected; substantially decrease the direct economic losses relative to global gross domestic product caused by disasters, including water-related disasters, with a focus on protecting the poor and people in vulnerable situations; reduce the adverse per capita environmental impact of cities, including by paying special attention to air quality and municipal and other waste management; provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities; support positive economic, social and environmental links between urban, peri-urban and rural areas by strengthening national and regional development planning; by 2020, substantially increase the number of cities and human settlements adopting and implementing integrated policies and plans towards inclusion, resource efficiency, mitigation and adaptation to climate change, resilience to disasters, and develop and implement holistic disaster risk management at all levels; and support least developed countries in building sustainable and resilient buildings utilizing local materials. One of SDG 11's overarching objectives speaks to "sustainability" – the cities and human settlements of the world must be "sustainable". In short, SDG 11 envisages urban sustainability.

Various different typologies have been developed to group and understand the constituent elements of sustainable cities.<sup>32</sup> One particularly meaningful conceptual arrangement that covers the basic concepts of the theory of "sustainable urbanism" centres upon the following seven elements: bioregionalism; urban form; land use; density; transportation / mobility; green infrastructure; and open space biodiversity networks.<sup>33</sup> Many other typologies exist (including those fashioned by the subsidiary

<sup>31</sup> Note that some regard the Goal 11 terminology as problematic. There is possible tension in the wording of the Goal that deals with overlapping and contradictory aspirations of inclusion, safety, sustainability and resilience. The SDGs nonetheless denote cities as drivers of both localized and global urban transformation.

<sup>32</sup> See, for example, Doust K "Toward a typology of sustainability for cities" (2014) 1(3) *Journal of Traffic and Transport Engineering* 180, Jabareen JR "Sustainable urban forms: their typologies, models and concepts" (2006) 26 *Journal of Planning Education and Research* 38, and Kasioumi E "Sustainable urbanism: vision and planning process through an examination of two model neighborhood developments" (2011) 24 *Berkeley Planning Journal* 91 at 91-94.

<sup>33</sup> Pizarro RE "North American and European sustainable urbanism: toward a theoretical model for sustainable urban design" in Archer K & Bezdecny K (eds) *Handbook of cities and the environment* (Cheltenham: Edward Elgar 2016) 87.

SDG 11 targets) but what we get from the theory of sustainable urbanism is that cities must pursue the following: Bioregionalism by means of which cities aim at local and regional self-sufficiency, and take full advantage of, and nurture local / regional food production, the local / regional economy, power production, and other activities that sustain and support their populations.<sup>34</sup> In the South African context one may expect a dedication to bioregionalism to result in policy, law or behavioural trends that advance local economic development<sup>35</sup> and that serve as an incentive to produce, support and expand locally. With South Africa being reported as the third most biodiverse country in the world and the only country to contain an entire floral kingdom within its borders, the element of bioregionalism is very relevant.<sup>36</sup> It has been reported that some cities in the country are already exploring ways of using the planning of land use to enable the natural and built environment to co-exist in such a way as to maintain ecological infrastructure and to protect biodiversity.<sup>37</sup>

Cities must focus and improve on their “urban form”, a term which refers to the physicality of the city as an interconnected system of masses (eg buildings) and voids (eg spaces), and which is further associated with energy consumption, mobility and transportation, and with other less physical aspects, such as, social interaction, a sense of place and the feeling of enclosure within the urban fabric.<sup>38</sup> Understood in this way, the matter of urban form is highly relevant in the South African context, where the urban space still exhibits the stark features of planning for apartheid. Several of South Africa’s urban areas still consist of variously built and haphazardly situated patchworks, disconnected in terms of transportation, uneven in the provision of services, such as electricity, still reliant on coal-based sources of energy, impervious to social interaction and people’s feelings, and hostile to a sense of inclusion.<sup>39</sup> A matter of grave concern is that, despite the progress achieved in housing delivery, human settlement patterns in South Africa remain dysfunctional across the country, the housing market is fractured, there is inequitable access to its workings and benefits, and there is an ongoing housing affordability problem.<sup>40</sup>

It is further expected of cities to ensure mixed land use which places residential, commercial and institutional activities together within the city’s bounds. This follows from the idea that historical strict separation added to low-density, low-rise and auto-dependent urban environments.<sup>41</sup> The urban planning landscape in South Africa has a history of fragmentation and of having played a particularly prominent role in the

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<sup>34</sup> See Pizarro (2016) 89-90.

<sup>35</sup> For some perspectives on the meaning of local economic development in the South African context, see Humby T “Local economic development” in Du Plessis A (ed) *Environmental law and local government in South Africa* (Cape Town: Juta 2015) 195-199.

<sup>36</sup> SA Cities Network (2016)189.

<sup>37</sup> SA Cities Network (2016) 189.

<sup>38</sup> Pizarro (2016) 91.

<sup>39</sup> SA Cities Network (2016) 198-199.

<sup>40</sup> Department of Human Settlements *Towards a policy foundation for the development of human settlements legislation* (Pretoria: The Department 2015) 6.

<sup>41</sup> See Pizarro (2016) 95.

realization of the ideology of apartheid.<sup>42</sup> The notion of sustainable cities is therefore particularly meaningful for the country.

Density is the next dimension of sustainable urbanism and is directly related inter alia to the reduction of greenhouse gases – “[t]he feasibility of mass public transit by way of buses, light rail (trams), metros, and trains, one of the main strategies to reduce greenhouse gas emissions, depends on how many people within a given urban area ... are likely to use those services”.<sup>43</sup> Density is directly dependent on spatial planning but strategic planning and economic trends are as influential in this regard. In South Africa there is a need for regeneration and densification to develop integrated social neighbourhoods. The understanding is that in South Africa “compact cities” may contribute to “a spatially transformed city in its broadest sense of achieving social, economic and environmental values”.<sup>44</sup>

To be sustainable, cities and other urban settlements must question and devise sustainable urban transport systems – a contentious project, given the historical design of many cities.<sup>45</sup> What is known, though, is that a sustainable urban transport system leans towards human-powered transport (eg walking and cycling) and is highly dependent on the matter of density. It has also been stated in the context of the Global North that “(t)he exponential growth of ride sharing, car sharing, car-clubs and last-mile delivery services are just the beginning of a global shift away from personal vehicle ownership to a shared, on-demand model”.<sup>46</sup> The transportation and mobility context in South Africa is as relevant but quite different from that of many countries in the Global North. The law and policy framework applicable to shared mobility modes has a long and complex history, closely tied to the impacts of the apartheid system.<sup>47</sup> Aspects of mobility have for the past five decades been regulated in terms of a fragmented law and policy framework. This is so despite the understanding that urban public transport networks and systems continue to be critically important, given the “spatial marginalization of the urban poor who live in state-subsidized housing and informal settlements on the periphery of large cities”.<sup>48</sup>

Cities are expected further to rethink conventional infrastructure systems, such as, those supporting the provision of water services, chemical-based sewage treatment, and coal-based electricity and sewage treatment plants.<sup>49</sup> It is expected that cities will move towards “green infrastructure”, a term which refers to the systems already described above, albeit powered by non-fossil fuel sources of energy and non-chemical-based or oil-based products, in smaller decentralized facilities located in

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<sup>42</sup> See Van Wyk J *Planning law* 2<sup>nd</sup> ed (Cape Town: Juta 2012) 1.

<sup>43</sup> Pizarro (2016) 96-97.

<sup>44</sup> SA Cities Network (2016) 199.

<sup>45</sup> Pizarro (2016) 98-101.

<sup>46</sup> Pizarro (2016) 101.

<sup>47</sup> Walters J “Overview of public transport policy developments in South Africa” (2013) 39(1) *Research in Transportation Economics* 34 at 35.

<sup>48</sup> SA Cities Network (2016) 136.

<sup>49</sup> Pizarro (2016) 102.

neighbourhoods or urban districts.<sup>50</sup> The demand for city infrastructure upgrades and expansion is great in South Africa. For example, the existing landfills (dumping in landfills is still the most common method of waste disposal) are not coping with the volumes of waste generated.<sup>51</sup> This element of sustainable urbanism is also relevant from the perspective of the country's commitment to progressively cutting the use of coal-based energy in response to the need for climate change mitigation and to aggressively preserve scarce water resources.

The last of the elements of urban sustainability in the typology of Pizarro is the rethinking of the use of open spaces.<sup>52</sup> The idea is that open spaces should be thought of not only as green open spaces dotting the urban landscape but also as wildlife and native vegetation corridors doubling as recreational spaces and areas for placing some green infrastructure (eg constructed wetlands to clean grey water). The overall idea is that local indigenous vegetation and wildlife should be preserved and enhanced in open spaces and through biodiversity networks.<sup>53</sup> In South Africa not much attention has thus far been paid to the mainstreaming of the notion of urban ecology, but some city governments, such as eThekweni Metropolitan Municipality, have adopted an open-space management system. The eThekweni D'MOSS is "a system of open spaces, some 74 000 ha of land and water, that incorporates areas of high biodiversity value linked together in a viable network of open spaces".<sup>54</sup> As far as could be established there is not yet any dedicated process or requirement to force the use of indigenous species in the development and upgrade of open spaces.<sup>55</sup>

Post the SDG's adoption, changes in local governance systems, law (and enforcement, in institutional design and in the domestic spread of governing authority will be critical to stimulating the pursuit of Goal 11. This thinking is reinforced by Sassen's claim:<sup>56</sup>

"Urban complexity and diversity are augmented by the fact that urban sustainability requires engaging the legal systems and profit logics that underlie and enable many of the environmentally damaging aspects of our societies. The question of urban sustainability cannot be reduced to modest interventions that leave these major systems untouched. The actual features of these systems vary across countries and across the North-South divide. Although in some of the other environmental domains it is possible to confine the discussion of the subject to scientific knowledge, this is not the case when dealing with cities. Nonscientific elements are a

<sup>50</sup> Pizarro (2016) 102-108.

<sup>51</sup> SA Cities Network (2016) 177.

<sup>52</sup> Pizarro (2016) 109.

<sup>53</sup> Pizarro (2016) 109.

<sup>54</sup> See EtheKweni Metropolitan Municipality "What is the Durban Metropolitan Open Space System" (2011), available at [http://www.durban.gov.za/City\\_Services/development\\_planning\\_management/environmental\\_planning\\_climate\\_protection/Durban\\_Open\\_Space/Pages/-What-is-the-Durban-Metropolitan-Open-Space-System.aspx](http://www.durban.gov.za/City_Services/development_planning_management/environmental_planning_climate_protection/Durban_Open_Space/Pages/-What-is-the-Durban-Metropolitan-Open-Space-System.aspx) (accessed 19 April 2017).

<sup>55</sup> For a discussion of the meaning and relevance of urban ecology as understood in the South African context, see Du Toit M & Cilliers S "Urban ecology" in Du Plessis A (ed) *Environmental law and local government in South Africa* (Cape Town: Juta 2015) 756.

<sup>56</sup> Sassen (2013) 240.

crucial part of the picture. Questions of power, poverty and inequality, and of ideology and cultural preferences are all part of the question and the answer."

For SDG 11 to be realized in domestic local government dispensations, introspection is inevitable. How local authorities govern and where they put the emphasis in planning and budgeting, for example, must be evaluated and modified where necessary. However, it will be easier to effect change and to escalate the necessary action in a national law and policy environment that is responsive and accommodating. The next section proceeds to question to what extent the normative objectives set for "sustainable" cities and human settlements in SDG 11 fit the existing framework law and policy for local government in South Africa.

### **3 COMPATIBILITY OF SOUTH AFRICAN LOCAL GOVERNMENT LAW AND POLICY**

South Africa has a fairly young yet extensive local government law and policy framework dealing with the systems, structures, financial management, demarcation etc of cities and other municipalities. Given that this framework has been in existence for a number of years already, it seems fair to question to what extent it reflects and complements the priorities and subsidiary objectives of SDG 11 as a specific articulation of the elements of sustainable urbanism. Such exploration may in fact help to identify some of the synergies and potential gaps between the global vision for sustainable urbanism and South Africa's domestic vision for its own medium- to long-term urban development. For this purpose it is also significant that South Africa recently adopted its national Integrated Urban Development Framework (IUDF) and Implementation Plan (2016).<sup>57</sup>

#### **3.1 The legal framework**

The core suite of local government legislation comprises the Local Government: Municipal Systems Act 32 of 2000 (Systems Act), the Local Government: Municipal Finance Management Act 56 of 2003 (MFMA), and the Local Government: Municipal Structures Act 117 of 1998. These Acts function in tandem with other key legislation, eg the Local Government: Municipal Demarcation Act 27 of 1998 and the Local Government: Municipal Property Rates Act 6 of 2004.

The Constitution is, however, where it all starts. The Constitution is rather vocal on the notion of local government as a partner in the country's pursuit of sustainable development. From Chapter 7 of the Constitution one gathers that the constitutional objectives, duties and status of municipalities unequivocally speak to development, with the municipalities forming the autonomous yet co-dependent local sphere of government.<sup>58</sup> The objects of local government include: to ensure the provision of

<sup>57</sup> Department of Cooperative Government and Traditional Affairs "Integrated Urban Development Framework" (2016), available at <http://www.cogta.gov.za/?programmes=the-integrated-urban-development-framework-iudf> (accessed 19 April 2017).

<sup>58</sup> See ss 151-154 & 156 and ch 3 of the Constitution.

services to communities in a sustainable manner; to promote a safe and healthy environment; and to encourage the involvement of communities in matters of local government.<sup>59</sup> The most prominent development duty of local government is to structure and manage municipal administrations, budgeting and planning processes in such a way that they prioritize the basic needs of the community while also promoting their social and economic development.<sup>60</sup> These provisions must be read with the division of government authority as captured in Schedules 4 and 5 of the Constitution and the principles of co-operative government provided in Chapter 3. From the latter we learn that municipalities have legislative and/or executive authority over matters, such as, electricity provision, local transportation, air quality management, noise control, and domestic waste management,<sup>61</sup> but that the execution of municipal authority happens in a system of shared government power, with provincial and national authorities having an oversight, co-ordinating and monitoring function, for example.<sup>62</sup> It is also relevant for present purposes to note that section 24 of the Constitution affords everyone in South Africa the right to an environment that is not detrimental to health or wellbeing<sup>63</sup> and the right to an environment that is protected, but with due acknowledgment of the need for ecologically sustainable development.<sup>64</sup> The fulfilment of this right is as much the duty of South Africa's city governments as it is the duty of the national and provincial government spheres.<sup>65</sup>

An inclusive reading of the body of local government Acts shows that the focus of its substantive content does not fall on "sustainable urbanism" as such, the term referring broadly to the application of principles underlying sustainability and resilience to the design, planning, and administration/operation of cities and urban localities. The focus in South African local government law in relation to the elements of sustainable urbanism is at best, at this moment, primarily directed at the immediate and short- to medium-term (5-year) development needs and related expectations of community members. The legal framework translates these needs and expectations into the language of (basic) service delivery, measures to advance participatory democracy and operational requirements related to planning, procurement, budgeting, performance management etc. Unlike the principles of environmental management that one finds in the National Environmental Management Act 107 of 1998 or the spatial planning principles in the Spatial Land-Use Management Act 16 of 2013 (SPLUMA), for example, there is no coherent set of statutorily entrenched principles for sustainable urbanism or the pursuit and maintenance of sustainable human settlements. One may

<sup>59</sup> See ss 152(1)(b) & (e) of the Constitution.

<sup>60</sup> See s 153(a) of the Constitution.

<sup>61</sup> See Schedules 4B & 5B of the Constitution.

<sup>62</sup> See ch 3 and s 154 of the Constitution, for example.

<sup>63</sup> See s 24(a) of the Constitution.

<sup>64</sup> See s 24(b) of the Constitution. For a discussion of the duties of local government arising from the environmental rights in the Constitution, see Feris L "Environmental rights protected in the Constitution of South Africa" in Du Plessis A (ed) *Environmental law and local government in South Africa* (Cape Town: Juta 2015) at 219-240.

<sup>65</sup> For an extensive discussion of this matter, see Du Plessis A *Fulfilment of South Africa's constitutional environmental right in the local government sphere* (LLD thesis, North-West University, 2009).

argue, though, that SPLUMA contains principles relevant to the *design* and *planning* of sustainable cities.<sup>66</sup> Yet there are no sustainable urbanism principles in law that also serve to direct the *administration* and *operation* of cities and other urban localities. In fact, even though the notion of developmental government has been adopted in both the Constitution and in the *White Paper on Local Government*, no guiding principles in law exist to direct its actual pursuit.

There is, however, reason for optimism considering the significant room to manoeuvre the application of the *governance instruments* to be found in the local government law framework. Several of the legally devised governance instruments a) find indirect application to sustainable urbanism and, as such, b) may help to facilitate the pursuit of sustainable cities as per SDG 11. South African local government law provides for instruments that are designed to enable municipalities to govern well. Instruments, such as, the legally required risk management system, the integrated development plan (IDP) with its sector plans, the annual municipal budgets, the service delivery budget implementation plan (SDBIP), the performance management system (PMS), the supply chain management policy, the tariff policy, by-laws, and the internal audit plan of cities, are typical examples of governance instruments related to the objectives set by SDG 11 and the elements of sustainable urbanism. These instruments have application to sustainable urbanism and the pursuit of sustainable cities because of their objectives, their intended outcomes, or as a result of the role players in society and government that they involve. While a detailed analysis of every local governance instrument falls beyond the scope of this article, it would be relevant for present purposes to explain the usefulness of at least a few.

In terms of the MFMA, every municipality must have and maintain an effective, efficient and transparent system of risk management. This system is typically a legally required governance instrument. Risk identification must take place on a regular basis and a risk management policy must be adopted and implemented.<sup>67</sup> While it is possible for the risk management system to be focussed exclusively on financial risk, good governance demands that risk be seen as broadly as possible, ie it must take an enterprise risk management view. A city's risk management system must ideally identify and address all risks that have the potential to disrupt the achievement of the city's strategic and operational objectives – including the pursuit of sustainable urbanism. These risks could typically include environmental risks, such as, water scarcity, droughts, floods, threats to the protection of ecosystem services and the loss of institutional memory relating to environmental management in the city, for example. These risks could further include risks related to the delayed identification of necessary open spaces, short-sighted spatial planning, fragmented transportation reform, and

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<sup>66</sup> Some of the development principles in s 7 of SPLUMA include the principle of spatial justice, whereby land development procedures must include provisions that accommodate access to secure tenure and the incremental upgrading of informal areas, for example, and the principle of spatial sustainability, whereby land development must be promoted in locations that are sustainable and that limit urban sprawl.

<sup>67</sup> See ss 62(1)(c)(i) & 95(1)(c) of the MFMA.

infrastructure failure. It follows that a risk management plan could assist a city to avoid preventable regressions as far as efforts to achieve sustainable urbanism are concerned.

As explained earlier, developmental governance is the constitutional mandate of every city and municipality in the country. It speaks to the broad constitutional objective of local government to be developmental, and to the specific duty of municipalities to realize peoples' rights, including the rights in sections 24 (environment), 25 (property), 26 (housing) and 27(1)(b) (water) of the Constitution. A South African city's IDP is the instrument of choice for "development-oriented planning". In terms of the Systems Act, every municipality must adopt an IDP - the development and management planning instrument created in terms of law that "links, integrates and co-ordinates plans and takes into account proposals for the development of the municipality".<sup>68</sup> Cities must implement their IDPs and all their affairs must be conducted consistent with it. The IDP is legally binding on all of the city's decision making and also on decisions and actions of others within its jurisdiction – eg local businesses, developers and the local community – provided that the commitments made in, and the duties created by, the IDP are discharged by means of additional instruments, such as, the city's policies, by-laws, action plans etc. The IDP guides the preparation of any action plans for the implementation of strategies identified by the city. The Systems Act provides the legal framework for the development, adoption, revision and implementation of a city's IDP and demands that the IDP be aligned with the plans of other municipalities as well as with relevant provincial and national plans. By the same token, it may be expected that any other plan of the city be aligned with its most recent IDP. The city's IDP must form the "policy framework" and the "general basis" for the its annual and other budgets. In other words, the IDP typically dictates what should be budgeted for in terms of development in a city in general. The Local Government: Municipal Planning and Performance Management Regulations of 2001 (the Regulations) determine in regulation 6 that the IDP must inform a city's annual budget, since the latter must be based on the city's development priorities, objectives, and performance targets – all of which must be captured in the IDP. In terms of the Systems Act and the Regulations, the IDP must reflect, for example: the city's vision for its long-term development, with special emphasis on the most critical development and internal transformation needs; an assessment of the existing level of development in the city, which must include the identification of communities within its jurisdiction which do not have access to basic municipal services such as water and sanitation; any investment initiatives of the city; and any development initiatives of an infrastructural, physical, social, economic and institutional kind. By law, several "sector plans" must also form part of the IDP. Some of the sector plans of a city to be included in the IDP typically include: the Disaster Management Plan; the Financial Plan; the Spatial Development Framework (SDF); the local Air Quality Management Plan; the local Waste Management

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<sup>68</sup> See s 25(1) of the Systems Act.

Plan; the Water Services Development Plan; an Integrated Human Settlements Plan; an Integrated Transport Plan; and the Built Environment Performance Plan.<sup>69</sup>

In the context of sustainable urbanism, the framework laws on local government with its provision for certain governance instruments is accompanied by various relevant sector-specific laws.<sup>70</sup> These find general application across the three spheres of government and the focus is not on cities and human settlements per se. However, what one gathers from this collection of pieces of legislation is that the legislature sees a role for city governments (as representative of the urban domain) in the pursuit of *other* sector-specific objectives. This role takes the form of governor and the governed.<sup>71</sup> For example, the NEM: Waste Act demands that the construction of a new landfill site or the upgrade of such a site must be authorised by the relevant authorities (ie those 'governing' municipalities).<sup>72</sup> The gist of the objectives of the NEM: Biodiversity Management Act<sup>73</sup> (read with the NEMA and the Constitution) suggests that the mandate of municipalities over biodiversity is far broader than simply overseeing municipal parks and beaches. Municipalities (as governors) are generally responsible for managing local nature reserves and conservation areas falling within their municipal boundaries.<sup>74</sup> The Social Housing Act 16 of 2008 determines that in giving priority to the needs of low- and medium-income households in respect of social housing development, the local sphere of government must ensure that its housing programs are responsive to local housing demands, and special priority must be given to the needs of women, children, child-headed households, persons with disabilities and the elderly. Furthermore, cities (local government) must: support the economic development of low- to medium-income communities by providing housing close to jobs, markets and transport and by stimulating job opportunities to emerging entrepreneurs in the housing services and construction industries; ensure the social, physical and economic integration of housing development into existing urban and inner-city areas through the creation of quality living environments; and further ensure medium to higher density in respect of social housing development to ensure the economical utilization of land and services.<sup>75</sup> The National Land Transport Act 5 of 2009 provides that the municipal sphere of government is responsible for developing land transport policy and strategy

<sup>69</sup> Follow the discussion on the IDP sector plans of environmental relevance in Nel JG, Du Plessis W & Du Plessis A "Instrumentation for local environmental governance" in Du Plessis A (ed) *Environmental law and local government in South Africa* (Cape Town: Juta 2015) at 111 &145-148.

<sup>70</sup> Notably, the SPLUMA, the National Land Transport Act 5 of 2009, the National Energy Act 34 of 2008, the Infrastructure Development Act 23 of 2014, the National Environmental Management Act 107 of 1998, the Water Services Act 108 of 1997, the NEM: Air Quality Act 39 of 2004, the National Water Act 36 of 1998, the NEM: Waste Act 59 of 2008, the NEM: Biodiversity Act 10 of 2004, the National Housing Act 107 1997, and the Disaster Management Act 57 of 2002.

<sup>71</sup> For an explanation of the idea that a municipality is both a governor and the governed, see Nel JG, Du Plessis A & Retief F "Key elements for municipal action" in Du Plessis A (ed) *Environmental law and local government in South Africa* (Cape Town: Juta 2015) 43-52.

<sup>72</sup> See s 19 of the NEM: Waste Act. For a detailed discussion see Alberts R "Waste" in Du Plessis A (ed) *Environmental law and local government in South Africa* (Cape Town: Juta 2015) 419-420.

<sup>73</sup> See s 2 of the NEM: Biodiversity Act.

<sup>74</sup> See the discussion in Paterson A "Biodiversity" in Du Plessis A (ed) *Environmental law and local government in South Africa* (Cape Town: Juta 2015) at 731.

<sup>75</sup> See s 2(1) of the Social Housing Act 16 of 2008.

within its area based on national and provincial guidelines, which includes its vision for the area and incorporates spatial development policies on matters such as densification and infilling as well as development corridors.<sup>76</sup> Cities are further responsible for financial planning with regard to land transport within or affecting their area, with particular reference to transport planning, infrastructure, operations, services, maintenance, monitoring and administration, with due focus on the rehabilitation and maintenance of infrastructure.<sup>77</sup> Cities are also responsible for developing, implementing and monitoring a strategy to prevent, minimize or reduce any adverse impacts of the land transport system on the environment in their area, to promote safety and security in public transport, and to conclude subsidized service contracts, commercial service contracts, and negotiated contracts with operators for services within their areas.<sup>78</sup> These are but a few of the examples of the way in which existing sector law also covers matters of sustainable urbanism. The effectiveness of the governance for urban sustainability effort will however depend on application, dedication and the setting of priorities.

A general overview of the sector-specific laws shows that while bits and pieces of their provisions relate to some of the elements of sustainable cities, coherence is lacking. In other words, in the absence of principles for sustainable urbanism in its totality, local government law offers a scattered range of relevant provisions with very little consistency and explicit interlinkages. It should however be added that this fragmentation in the law does not render any of the mentioned governance instruments any less meaningful. The emphasis rather shifts to the need for application of the human mind, ie it is essentially the responsibility of champion officials and councillors in a municipality to identify, evaluate, combine and apply the available instrumentation in a fashion that fits a municipality's distinctive features and resources.

### 3.2 The policy framework

Since the commencement of the new democratic government system, South Africa has seen an explosion of new government policies in the area of “development”. The *White Paper on Local Government* is the main national local government policy but has been followed since by various programmatic developments, eg the "Back to Basics Program" of the Department of Cooperative Government and Traditional Affairs in 2015. For present purposes, the most recent and insightful policy on urban human settlements is the Integrated Urban Development Framework and Implementation Plan (2016) (IUDF). The IUDF and its Implementation Plan must, however, be read with other national policies such as the *White Paper on Local Government* (1998), the *White Paper on the Energy Policy of the Republic of South Africa* (1998), the *White Paper on the Renewable Energy Policy of the Republic of South Africa* (2003), the *National Housing and Subsidy Policy Programs* (2010), the *National Climate Change Response White Paper*

<sup>76</sup> See s 11(1)(c)(i) of the National Land Transport Act.

<sup>77</sup> See s 11(1)(c)(v) of the National Land Transport Act.

<sup>78</sup> See ss 11(1)(c)(viii), (xiii) & (xxvi) of the National Land Transport Act 5 of 2009.

(2011), the National Transport Master Plan (2010) and the overarching National Development Plan 2030 (2012).

The points in the IUDF and the accompanying policies that speak to sustainable urbanism are the following:

- The “outcomes which development local government seeks to achieve may differ over time”. With the adoption of the Constitution and the initial policy framework, the key envisaged outcomes were: a) the provision of household infrastructure and services; b) the creation of livable, integrated cities, towns and rural areas; c) local economic development; and d) community empowerment and redistribution;<sup>79</sup>
- Spatial transformation should be effected by steering urban growth towards a sustainable growth model of compact, connected and co-ordinated cities and towns;<sup>80</sup>
- South Africa has different types of cities and towns, each with different roles and requirements;<sup>81</sup>
- The transformative vision for South African cities and towns resulted in four strategic goals: spatial integration; inclusion and access; growth and governance;<sup>82</sup>
- As a strategic goal, spatial integration refers to the forging of new spatial forms in settlement, transport, social and economic areas;<sup>83</sup>
- As a strategic goal, inclusion and access refer to social and economic services, opportunities and choices;<sup>84</sup>
- The strategic goal of growth refers to the harnessing of urban dynamism for inclusive, sustainable economic growth and development;<sup>85</sup>
- As a strategic goal, governance denotes the enhancement of the capacity of the State and its citizens to work together to achieve spatial and social integration;<sup>86</sup>
- The policy levers for the transformative vision for urban development in South Africa are: (a) integrated urban planning and management; (b) integrated transport and mobility; (c) integrated sustainable human settlements; (d) integrated urban infrastructure; (e) efficient land governance and management;

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<sup>79</sup> Paragraph 2 of the *White Paper on Local Government*.

<sup>80</sup> IUDF at 7.

<sup>81</sup> IUDF 8.

<sup>82</sup> IUDF 8.

<sup>83</sup> IUDF 8.

<sup>84</sup> IUDF 8.

<sup>85</sup> IUDF 8.

<sup>86</sup> IUDF 8.

(f) inclusive economic development; (g) empowered active communities; (h) effective urban governance; and (i) sustainable finances;<sup>87</sup>

- In the sustainable urban development context there are cross-cutting issues such as rural-urban interdependencies, urban resilience, urban safety, and disaster risk reduction and mitigation measures;<sup>88</sup>
- Cities must promote mixed use and mixed income development and should plan and invest to meet current and future land use and infrastructural needs for residential, commercial and industrial development;<sup>89</sup>
- Cities must play a proactive role in addressing energy issues in the communities they represent;<sup>90</sup>
- The easier points for renewable (non-coal based) energy are generally in the urban household and industrial sectors;<sup>91</sup>
- Government's Social Housing Programme focuses mainly on achieving urban integration and upgrading and is applicable only in declared restructuring zones;<sup>92</sup>
- Government acknowledges that there is a need to address the inequities of the apartheid-induced spatial frameworks of our cities and towns by promoting integration across income and population group divides;<sup>93</sup>
- Government acknowledges that urban human settlements face several climate change challenges and these are exacerbated by "poor urban management" eg poor storm water drainage systems and urban-induced soil erosion causing flash flooding;<sup>94</sup>
- Cities in South Africa are particularly vulnerable to climate change because they are slow to adapt to changes in the environment and, have entrenched dependencies on specific delivery mechanisms for critical services;<sup>95</sup>
- To address the climate change vulnerability of South Africa's urban settlements, the government intends, for example, to investigate how to leverage opportunities presented by urban densification to build climate resilient urban infrastructure and promote behavioural change as part of urban planning and growth management and to "strengthen and enhance decision support tools and systems", such as, integrated planning, geographic information systems, and asset management components for public infrastructure. It is also the intention

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<sup>87</sup> IUDF 8-10.

<sup>88</sup> IUDF 10.

<sup>89</sup> Paragraph 2.2 of the *White Paper on Local Government* (1998).

<sup>90</sup> *Energy Policy of the Republic of South Africa* (1998) 98.

<sup>91</sup> *White Paper on the Renewable Energy Policy of the Republic of South Africa* (2003) i.

<sup>92</sup> National Housing and Subsidy Policy Programs (2010) 12.

<sup>93</sup> National Housing and Subsidy Policy Programs (2010) 10.

<sup>94</sup> *National Climate Change Response White Paper* (2011) 21.

<sup>95</sup> *National Climate Change Response White Paper* (2011) 21.

to ensure that land-use zoning regulations are enforced and that urban land-use planning considers the impacts of climate change and the need to sustain ecosystem services;<sup>96</sup>

- The government is of the view that in supporting the notion of “smart cities”, transit-oriented developments will be able to support the requirements of public transport in that they create spatial density and attract regenerative development around public transport corridors that help build passenger numbers. “Transit-oriented developments” in this context refers to mixed-use residential and commercial areas designed to maximize access to public transport and to incorporate features to encourage the use of public transport;<sup>97</sup>
- The government admits that limited integrated land use and public transport planning is taking place in South Africa and that public transport does not play a big enough role in supporting accessibility and mobility objectives. Public transport roll-out is also admitted to be constrained by a lack of institutional capacity;<sup>98</sup>
- One of the critical actions of government set for the period up until 2030 is the development of new spatial norms and standards – densifying cities, improving transport, locating jobs where people live, upgrading informal settlements, and fixing housing market gaps;<sup>99</sup>
- According to government, providing sustainable transport services that are efficient and inclusive is inextricably linked to the need for spatial change in South Africa's cities and improvement in related transport corridors;<sup>100</sup>
- The State will review its housing policies to better realise constitutional housing rights, ensure that the delivery of housing is to be used to restructure towns and cities and strengthen the livelihood prospects of households;<sup>101</sup>
- Towns and cities are connected in varying degrees into wider urban systems and their development reflects global and local forces. Economic activity is becoming consolidated in the largest cities;<sup>102</sup> and
- Despite slower urbanisation than in other parts of Africa, another 7.8 million people will be living in South African cities in 2030 and a further 6 million by 2050, putting pressure on municipalities to deliver services. A large proportion of new urban residents will be poor, reflecting a phenomenon referred to as the urbanisation of poverty.<sup>103</sup>

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<sup>96</sup> National Climate Change Response White Paper (2011) 22.

<sup>97</sup> National Transport Master Plan (2010) para 11.2.

<sup>98</sup> National Transport Master Plan (2010) para 11.2.

<sup>99</sup> National Development Plan 2030 (2012) 34.

<sup>100</sup> National Development Plan 2030 (2012) 188.

<sup>101</sup> National Development Plan 2030 (2012) 259.

<sup>102</sup> National Development Plan 2030 (2012) 266.

<sup>103</sup> National Development Plan 2030 (2012) 266.

### 3.3 A matter of relative (reasonable) compatibility?

Motivating the imperative to create the sustainable city is the need to provide human societies with basic securities.<sup>104</sup> In South Africa, this need remains more real than ever. Sustainable urbanism must however be understood in geographical, social, political and legal contexts. It must also be acknowledged that “sustainable urbanism” is an arena of competing discourses.<sup>105</sup> One discourse sees the urban environment as a technical issue of air and water pollution, to be addressed through the use of new technology and market adjustments. Others view the urban environment as a backdrop to urban inequality and alienation, where the solution lies in social justice movements and progressive politics. A third discourse points to the “green” end of the spectrum – a city solely reliant on handmade bicycles and local organic food, for example. The point being, as indicated by Ravetz, that “one person’s sustainable future utopia, appears to be another’s dystopia”.<sup>106</sup> It follows that sustainable urbanism and the pursuit of sustainable cities<sup>107</sup>

"must be informed not by a vision of a city of maps and statistics, but rather by an analysis of the city as it is experienced by urban dwellers, with the difficulties and opportunities that cities offer for sustaining our livelihoods and providing for our well-being. Recognizing this gap between the reality and its representation is necessary, as ideas of urban sustainability and eco-cities are often informed by visions of ideal cities (most often Western cities) and driven by objectives or large-scale technological investments, which do not reflect the complex realities of life in cities around the world, nor the challenges and opportunities specific to cities of the Global South."

Sustainable Development Goal 11 offers the world a norm to work towards in the next 13 years. It is as unfair to compare the urban context of South Africa with that of Norway as it is to compare that of Uganda with Germany, for example. Development contexts, urban realities and the design and functioning of government systems differ immensely. An acknowledgment of which is pervasively absent from the wording of SDG 11. As Wilson and Smith state: “(A)lthough local government capacity in African cities has generally improved in recent decades, the priority for state reform in Africa has been primarily focused on national governments and political legitimacy”.<sup>108</sup> It may be different on other continents and it may perhaps not even be true for each and every African country. Any reflection on the achievements or obstacles in the pursuit of SDG 11 must be sensitive towards the local distinctiveness and actual context of each urban area.

All of the above said, South Africa has committed to the SDGs and to SDG 11 specifically, which means that the country must at least question the suitability of its urban development laws, policies and related governance practices. A thorough

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<sup>104</sup> Pizarro (2016) 110.

<sup>105</sup> Ravetz J “Sustainable urban futures: Contested transitions and creative pathways” in Archer K & Bezdecny K (eds) *Handbook of cities and the environment* (Cheltenham: Edward Elgar 2016) 119.

<sup>106</sup> Ravetz (2016) 119.

<sup>107</sup> Guibrunet L & Castán Broto V “Towards an urban metabolic analysis of the informal city” in Archer K & Bezdecny K (eds) *Handbook of cities and the environment* (Cheltenham: Edward Elgar 2016) 167.

<sup>108</sup> Wilson RH & Smith TG “Urban resilience to climate change challenges in Africa” in Archer K & Bezdecny K (eds) *Handbook of cities and the environment* (Cheltenham: Edward Elgar 2016) 208.

investigation into local governance practice falls beyond the scope of this article's methodology and focus. From the review of national local government and other law relevant to urban development, it appears as if the focus truly falls on "developmental local government" with several glances towards aspects of the more inclusive notion of "sustainable urbanism". There is not much in the legal framework *per se* that commits city governments to bioregionalism, green infrastructure, open space biodiversity networks and improved mobility, but there are a significant number of principles and provisions on urban form, land use, density, and transportation, for example. Yet even where a matter, such as, green infrastructure is not expressly provided for, some of the local government instruments eg budgets, supply chain management policies and IDPs, may be (and should ultimately be) cleverly utilized to push forward the development of green infrastructure. The same holds for using municipalities' planning authority in terms of the SPLUMA and the Constitution to push for projects aimed at bioregionalism. I am therefore of the view that most of the SDG 11 objectives and the elements of sustainable urbanism can successfully be married with the substantive provisions in, or the functionality of, the governance instruments created in terms of existing statutory law.

Despite some of the policies being almost two decades old, the urban policy framework in South Africa is submerged in visions and ideals that speak to aspects covered in SDG 11 and the distinct elements of urban sustainability. As one may expect, the policy framework tends to put emphasis on South Africa's unique needs and urban contexts, and may be seen to prioritize issues, such as, urban form, density, transportation reform and service delivery, above matters, such as, bioregionalism, green infrastructure, and open space biodiversity networks. The urban policy framework in South Africa complements most of what is envisaged in SDG 11 while also focussing on and prioritising (laudably so) what the people of the country desire, eg improved housing, liveability and urban safety.

While this assessment may come across as particularly optimistic, it is important to mention that the urban law and policy framework of South Africa is at most a regulatory and visionary patchwork. What we have for the pursuit of sustainable cities and sustainable urbanism at the moment is a framework that comprises miscellaneous and incongruous parts. For this reason one can say that the existing local government law and policy framework is reasonably compatible with the sustainable city objective contained in SDG 11, with some areas being underplayed (eg issues of bioregionalism) and others receiving repetitive attention (eg the need for changes in urban form). On paper and as a matter of principle, South African municipalities have the necessary authority and the instrumentats to do what SDG 11 envisions for all cities and urban localities across the world. Failures in performance can hardly be ascribed to a poor or lacking law and policy framework which is an incredibly important advantage – one which many countries of the world do not have.

#### 4 CONCLUSION: 2015, 2030 AND THE YEARS IN-BETWEEN

There are highly complex forces behind the urban problems underlying unsustainable development, such as, air pollution, inadequate housing and human settlement infrastructure, poor waste and water management, natural resource protection, inadequate transport systems, the lack of sustainable access to electricity, and the effective reduction of the risk of disaster. Goal 11 introduced a limited number of subsidiary targets and indicators for sustainable urban governance or sustainable urbanism, which is essentially a vast and complex domain. One of the operational difficulties with Goal 11 is that there are no standardized metrics to track progress with its inherent objectives. No indicators have been developed to also reflect the *quality* of city policies or plans together with *quantitative* measures eg improved access to adequate housing and access to affordable and safe transport. Enormous differences in the challenges facing cities and the resources available to deal with them mean that the principles of and benchmarks for universality, integration and transformation as suggested in Goal 11 will have to be realized and met differentially within and across nations. Country- and city-specific targets and indicators will have to be agreed upon in a wider framework of reporting on progress in terms of this Goal. Be that as it may, the overarching focal points in SDG 11, translated into matters one may expect city governments and municipalities in South Africa to address in future, are more or less clear. What is not self-evident, though, is how to approach local governance in order to achieve the overarching and subsidiary, more “tangible” objectives set in SDG 11.

The South African government is of the view that in the next 30 years rapid urbanization and rural depopulation are likely to be the key factors in determining demographic trends.<sup>109</sup> South Africa is slightly more urban than the global average with about 60 per cent of the population urbanized, and this is projected to be about 70 per cent with a total population of 58.5 million by 2030.<sup>110</sup> The projection is thus that by 2030 nearly three out of every five persons in the country will live in urban areas – in the likes of the City of Johannesburg and beyond. This “will have implications for planning, infrastructure, and the delivery of basic services including an increasing demand for housing”.<sup>111</sup> From the perspective of sustainable urbanism and the pursuit of sustainable cities, the time between now and 2030 counts. How, then, to best chart some of the expected challenges in meeting the SDG 11 2030 deadline?

From the literature on how to improve micro- and macro- government systems one gets a sense of what will have to happen in South Africa between now and 2030. It has been stated that the “urban challenge’ is ultimately a political one since political regulation of our relationships with nature in cities is a question of democracy, governance, and the associated politics”,<sup>112</sup> and that it is about the ideological and logical tension between what is and what ought to be.<sup>113</sup> Political will is bound to be

<sup>109</sup> Department of Human Settlements (2015) 12.

<sup>110</sup> Department of Human Settlements (2015) 12.

<sup>111</sup> Department of Human Settlements (2015) 12.

<sup>112</sup> Davidson & Gleeson (2016) 415.

<sup>113</sup> Davidson & Gleeson (2016) 416.

critical. The urban reality across the world has resulted in a discourse that focuses on challenges and limitations, but the SDGs suggest that we should not be held hostage to a discourse that limits our sense of the possible - in South Africa or elsewhere. Goal 11 calls for mindshifts at various levels. In the light of the existence of various inherent conflicts of interest and various potential implementation challenges, the need for institutional and legal reform and the adaptation of governance systems will be necessary. For one, sustainable urbanism requires a change in how municipal councillors, administrations and communities understand the dynamics of and the linkages between (a) urbanization, (b) the unique workings of cities and their governing councils and (c) global governance in the big picture of the pursuit of sustainable development. Burns and Bottelier remind us, in a metaphorical manner:

"It is tempting to regard local commons as ultimately less important than the policies made by more concentrated centers of power at regional, national and international levels. Quite the contrary. Just as any complex ecosystem depends on the most ordinary organisms – plankton in the oceans, microscopic bacteria within animals, as well as the intermediate, organically connected systems – so any efforts to secure large-scale or planetary commons will depend on the creation of effective 'scale linking' systems."<sup>114</sup>

The city in South Africa is an important and real strategic space for “the direct and brutal confrontation between forces” that are both destructive *to* the natural and living environment and increasingly acutely needed *for* urban sustainability and viability.<sup>115</sup> To govern within any strategic space requires a well-thought-out, negotiated and consolidated approach to governance. It requires a vision and strategies to attain it (things that one typically finds in policy documents), but it also requires legally embedded principles for decision-making and governance instruments with legal force and standing in law to be able to enforce actual outcomes. While such principles may not yet be well articulated, some of the existing structures created in terms of local government law and the range of governance instrumentation encapsulated in local government, environmental, fiscal, housing, health and other laws, can and should be used to map onto SDG 11.

Goal 11 is about safe, sustainable, resilient and inclusive urban localities for this world, a goal which in my view should be understood in relation to the subject matter itself - but the actual starting point is the sustainability, safety, resilience and inclusiveness of the micro-governance system of the frontier space itself. In South Africa as elsewhere a sub-national scale of intervention by co-global governors (our cities) is necessary - intervention that requires spatially targetted planning (eg at city and at the peri-urban level) as well as various other actions across the three spheres of government. South African cities themselves remain however at the helm of driving grassroots level progress and change. They are fortunate to have, for the most part, an enabling law and policy framework, but this framework is void of tangible, concrete and measurable national targets for sustainable urbanism. National spatial planning law contains principles relevant to the design and planning of sustainable cities but there

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<sup>114</sup> Weston BH & Bollier D *Green governance: ecological survival, human rights, and the law of the commons* (Cambridge: Cambridge University Press 2013) 236.

<sup>115</sup> See Sassen (2013) 249.

are no sustainable urbanism principles in law to direct the administration and operation of our cities. This suggests that the country (as well as each urban human settlement and its authority) will have, as a very first step, to clearly define what a sustainable city means to it, and how access for all to such a city is to be measured and progressively pursued.