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THE COMPLEXITIES OF LIQUOR LICENSING IN SOUTH AFRICA AND ITS IMPACT ON LAND USE PLANNING AND URBAN MANAGEMENT: THE CASE OF JOHANNESBURG AND GAUTENG, USING YEOVILLE BELLEVUE AND ALEXANDRA AS A CASE STUDY

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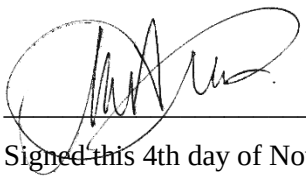
A research report submitted to
the Faculty of Engineering and the Built Environment,
University of the Witwatersrand, Johannesburg,
in partial fulfilment of the requirements for
the degree of Master of Science in Development Planning

Johannesburg 2019

Declaration

I declare that this research report is my own unaided work. It is being submitted to the Degree of Master of Science to the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination to any other University.



Signed this 4th day of November, 2019

Abstract

South Africa's post-apartheid Constitution gives responsibility for liquor licensing to provinces, and municipal planning and control of liquor outlets to local authorities. It also calls for public participation in matters of government. This report unpacks the relationship between municipal planning and liquor regulation, and questions the rationale of the constitutional allocation of these functions. It also explores the extent to which citizens are able to influence decisions on the awarding of liquor licences and the management of liquor outlets. This is done using a combination of ethnographic reflection, desktop research, and an interview-based case study. The findings reveal general dissatisfaction with the current institutional arrangements and common cause that participatory processes are inadequate. The report recommends that section 156(4) of the Constitution be invoked to devolve liquor licensing from provinces to municipalities, and offers a neighbourhood-based solution to facilitate effective involvement of citizens in liquor-related decisions affecting their lives.

Dedicated to all those

whose lives,

in myriad ways

directly or indirectly,

are disrupted by alcohol

because of industry greed and political inertia;

who have yet to find their collective voice

to speak up and speak out

for their freedom to choose

to drink or not to drink,

what to drink and how to drink;

for their rights to health, safety and general well-being

and the power to exercise those rights;

especially those whose economic status, gender, age. health

makes them more vulnerable than most.

Thank you

I had no idea what going back to university 45 years after dropping out would entail. I managed a post-graduate diploma in planning in 2017 and then embarked on an MSc Development Planning in 2018. This report is the final stage of the Masters and the last lap of an interesting challenge.

Thank you to all those at Wits School of Architecture and Planning who supported my application to study as a 'differently-qualified' person sans even an undergraduate degree.

Thanks to my supervisor, Prof Fana Sihlongonyane, who, like everyone else, was initially baffled by my choice of research topic. I am grateful that he became an enthusiastic convert to the idea and gave me as much support as I allowed him to – I apologise for my 'absence of presence'.

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My kids, Oli and Nicci, who continue to inspire and motivate me to do something useful with my life. I hope I've been a halfway decent parent.

Sheila Drew, who was with me and supported me when I effectively started this journey in 1997 in Yeoville Bellevue. *'Working at the beginning of a story without knowing the end' – Victor Jara*

Prof Phil Harrison, who saw something in me worth nurturing and afforded me the rare privilege of writing up my Yeoville Bellevue neighbourhood development experiences for Wits in 2012, even though I had absolutely no academic credentials at the time. Thank you for helping me to pluck up the courage to go further.

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The late George Lebone, my 'brother-from-another-mother', the late Elizabeth Letlhaku, and so many other people in Yeoville Bellevue, at Wits, and in my world who have honoured me and continue to honour me with their friendship, support and collaboration. Thank you, thank you, thank you.

Finally, I (like Ricky Gervais) 'thank god for making me an atheist'. As a result, I can claim full credit for producing this work myself – I also accept that I am exclusively responsible for any mistakes, questionable assumptions and intellectual inadequacies. Not too many, I hope.

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Acronyms

ADF	African Diaspora Forum
ANC	African National Congress
CA	Constitutional Assembly
CBO	Community-Based Organisation
CC	Constitutional Court
COGTA	(Department of) Cooperative Governance and Traditional Affairs
CoJ	City of Johannesburg/Joburg
CPF	Community Police Forum
DFA	Development Facilitation Act, 67 of 1995
DP	Democratic Party
DTI	Department of Trade and Industry
GDED	Gauteng Department of Economic Affairs
GDFEA	Gauteng Department of Finance and Economic Affairs
GLA	Gauteng Liquor Act, 2 of 2003
GLB	Gauteng Liquor Board
GLF	Gauteng Liquor Forum
GPG	Gauteng Provincial Government
IDP	Integrated Development Plan
IFP	Inkatha Freedom Party
JDA	Johannesburg Development Agency
JLC	Johannesburg Local Committee (of the Gauteng Liquor Board)
MEC	Member of the Executive Committee (provincial government)
NP	National Party
RSA	Republic of South Africa
SAAPA	Southern African Alcohol Policy Alliance
SALGA	South African Local Government Association
SALTA	South African Liquor Traders' Association
SAPS	South African Police Service
SPLUMA	Spatial Planning and Land Use Management Act, 16 of 2013
YBRA	Yeoville Bellevue Ratepayers Association
YCDF	Yeoville Community Development Forum
YCPF	Yeoville Community Police Forum
YSF	Yeoville Stakeholders Forum
WCLA	Western Cape Liquor Authority
WCPG	Western Cape Provincial Government

Chapter 1.
People, power, planning and phuzaing[1]

"The right course of action is always a matter of choice, never of fact"
– *(Davidoff, 1965)*

a. Introduction

The Constitution of post-apartheid South Africa is a roadmap to an inclusionary, developmental democracy, founded on the principles of human rights, social justice, and the health and well-being of all. At the same time, it makes provision for mechanisms to address the injustices and inequities of the past. Following the first democratic election of 1994 and the finalising of the Constitution, new policies to give effect to its provisions were developed and corresponding legislation enacted. A new state structure geared to meet the demands of the new dispensation slowly replaced the old one. This was not a simple change of government from one experienced political party to another in an established democracy. It was a transition to an entirely new system, implemented by a liberation movement with no previous experience of government which had to learn as it went along. Road blocks, detours and decisions on whether to turn left or right or go north or south were inevitable.

This research report focuses on a specific set of intersecting challenges – municipal planning, liquor regulation and public participation. It explores the relationship between them, constitutionally and in practice. The Constitution specifies who is responsible for municipal planning and for liquor regulation. It also enjoins the three spheres of government – national, provincial and local – to facilitate the active participation of citizens in the affairs of government. Local government specifically is expected to do so through adopting a participatory governance approach.

The research uses a desktop study to investigate the origins and intent of these constitutional provisions and a case study to assess the extent and impact of their implementation in two specific localities of the City of Johannesburg (CoJ) in Gauteng province. It undertakes a global scan of which spheres of government in other countries have responsibility for the regulation of liquor, with a particular focus on where the authority to issue liquor licences is located. Finally, it conducts a literature review of theoretical perspectives such as governance, participation and localism and their significance in the ongoing debates about planning, liquor management and democracy. Based on the outcome of the research, the report offers a set of recommendations for future action.

[1] In Nguni languages (e.g. isiZulu), 'ukuphuza' means 'to drink' anything potable. However, in township slang, 'phuza' is specifically associated with drinking of liquor. So it is used, for example, to describe someone who clearly drinks a lot and so has a 'phuza face' (or is a 'phuza face') or in the term 'Phuza Thursday', which basically encourages people to 'celebrate' the coming of the weekend by starting on serious social drinking on a Thursday night instead of the traditional Friday.

b. Constitutional and legal background

i. The Constitution: government and the people

South Africa's world-renowned Constitution establishes the country as a "sovereign, democratic state … [with] [u]niversal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness". A rights-based constitution, it commits government to pursuing a 'developmental' agenda, based on the principle of 'participatory governance'. It creates three autonomous but interdependent spheres of government across which a range of legislative and administrative responsibilities are divided. It enjoins the three spheres to work together in a spirit of co-operation and good faith and to facilitate citizen participation in the affairs of government (RSA, 1996).[2]

The term 'spheres' was chosen over 'tiers' to denote an arrangement whereby the three 'spheres' have an equal, cooperative relationship, rather than one based on the authority of one level over the other (van Wyk, 2012), i.e. a horizontal rather than vertical relationship. Nevertheless, the Constitution does give national monitoring and oversight powers over provinces, allowing national to take remedial action to deal with challenges in a province, should national deem it necessary. Provincial governments have a similar relationship with local government, with the power to intervene in municipalities and to place municipalities under administration should they be deemed, by province, to be unable or unfit to carry out their mandate (van Wyk, 2012).

Furthermore, provincial legislation must be aligned with that of national (RSA, 1996, s146-150), and local government bylaws with those of province and national (ibid: s151(3); s156(3)). In addition, national has the power to pass legislation that affects (and is binding on) provinces (ibid: s76). Finally, national or province must devolve to local government any administrative function – including any of those in Schedules 4A and 5A of the Constitution – that necessarily relates to local government, if a) such function would be better carried out by local government and b) a local authority has the capacity to administer it (ibid:156(4)). It is in Schedules 4 and 5 that the functions that are the focus of this research are located – Schedule 4B allocates *Municipal planning* to local government, while Schedule 5A gives *Liquor licences* to provinces and 5B gives *Control of undertakings that sell liquor to the public* to local government.[3]

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[2] In this report, the term 'citizen' has the same meaning as that of the Montreal Charter of Rights and Responsibilities of 2006. It defines "citizens" as "any person living within the city territory", regardless of national origin (Purcell, 2013, p. 143). It therefore includes the large number of unnaturalised foreign nationals in South African towns and cities who generally are not regarded as 'citizens' by government and society in general, but occupy the same spaces as formally-recognised citizens.

[3] 'Liquor' is the preferred term in the text. However, 'alcohol' and 'liquor' are both used in policy documents, legislation, academic work and media reports. For example, in South Africa we have the Liquor Act, but there is also the Control of Marketing of Alcoholic Beverages bill. In this report, there is only one meaning implied by both terms: intoxicating drinks consumed by people.

Section 41 of the Constitution deals with cooperative government. It calls for respect for the three sphere system; for one sphere not to encroach on the powers and functions of the others; and for the three spheres to work co-operatively, to consult and coordinate, and to avoid going to court to resolve differences between them (RSA, 1996).

Subsection 41(2), calls for "An Act of Parliament (that) must - (a) establish or provide for structures and institutions to promote and facilitate intergovernmental relations; and (b) provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes" (ibid). The Intergovernmental Relations Framework Act (Act 13 of 2005) was drafted and approved in 2005 in compliance with the said requirement.

Citizen participation in public affairs is a cornerstone of South Africa's democracy. Chapters 4 and 6 of the Constitution specify the structure, activities, duties and obligations of national government (the Executive, Parliament and the National Council of Provinces) and provincial governments respectively. All three entities are required to facilitate the involvement and participation of citizens in government matters and proceedings (RSA, 1996). Chapter 7, which focuses on local government, calls on municipalities to "to encourage the involvement of communities and community organisations in the matters of local government" (ibid, s152(1)(e)).

Figure 1 shows the linkages between the different spheres of government. It reflects the horizontal relationships between the different spheres; the need for intergovernmental cooperation; the need for alignment of provincial legislation with that of national, and of local government legislation with that of national or provincial; the oversight and monitoring function exercise by national over provinces and provinces over municipalities; the requirement that local government encourage citizens to participate in government processes; and the possibility of national or province devolving responsibilities to local government.

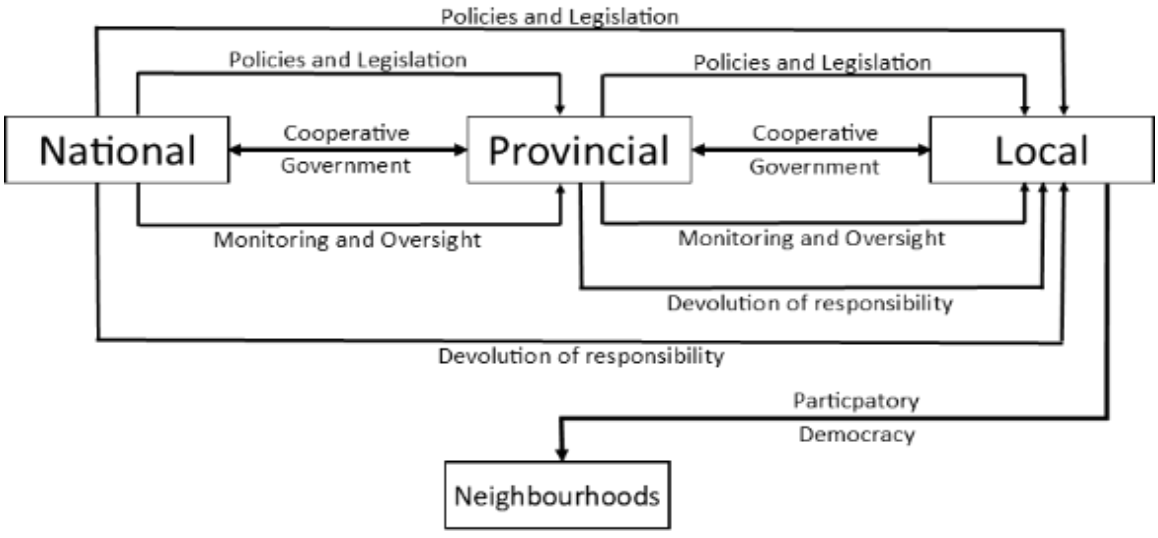


Figure 1: Relationships between spheres of government and between government and the people

ii. Constitutional mandates: municipal planning and liquor regulation

The Constitution doesn't explain why it has allocated *Liquor licences* to provinces and *Municipal planning* and *Control of undertakings that sell liquor to the public* to municipalities, nor is there a description of what each entails. Such clarity is normally provided in Green Papers, White Papers, legislation and regulations. However, disputes can and do arise within and between spheres of government in respect of overlaps between functions or interpretations of functions (de Visser, 2004) (van Wyk, 2012). While these conflicts should be resolved where possible with the help of the Intergovernmental Relations Framework Act (RSA, 2005), they are also, on occasion, dealt with through the courts.

Municipal planning

Clarification on the meaning of municipal planning has been provided in two important court rulings. In a dispute between the City of Johannesburg and the Gauteng Development Tribunal, a dispute arose over the meaning of *Municipal planning*.[4] The court ruled that: "'planning' in the context of municipal affairs is a term which has assumed a particular, well-established meaning which includes the zoning of land and the establishment of townships. In that context, the term is commonly used to define the control and regulation of the use of land" (van Wyk, 2012, p. 298).

In a minority judgement in another case[5], Yacoob J said that local government has responsibility for 'municipal planning' and therefore "municipalities must engage in integrated development planning as set out in the Local Government: Municipal Systems Act 32 of 2000. An integrated development plan must include a spatial development framework that must set out the objectives that reflect the desired spatial form of the municipality as well as strategies to achieve those objectives. The strategies must indicate desired patterns of land use, address the spatial reconstruction of the municipality, and relate to the nature and location of development in the municipality. Moreover, the spatial framework must set out the basic guidelines for a land use management system in the municipality" (van Wyk, 2012, p. 295).

Liquor licensing and liquor control

In the 2000 Liquor Bill case, national government was deemed to be encroaching on provincial powers with its proposed Liquor Bill.[6] The court ruled that the bulk manufacturing and wholesale

[4] Johannesburg Metropolitan Municipality v Gauteng Development Tribunal 2010 6 SA 182 (CC)
[5] Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd 2009 1 SA 337 (CC)
[6] Ex parte President of the Republic of South Africa In re: Constitutionality of the Liquor Bill 2000 1 BCLR 1 (CC); 2000 1 SA 732 (CC).

distribution of liquor is a national responsibility, but that the *retail* selling of liquor for the purpose of consumption is a provincial responsibility. A retail seller must be licensed in terms of provincial legislation (de Visser, 2004).

de Visser suggests that the reason provinces were given retail liquor licensing to administer was to attain uniformity in respect of retail liquor across a province (ibid). He submits that such uniformity would be in terms of "three themes, namely (1) a fair, equitable and flourishing liquor retail market, (2) health and basic safety and (3) security and reducing socio-economic costs of alcohol consumption" (de Visser, 2004, p. 366). He says that *Control of undertakings that sell liquor to the public* is concerned with public order issues connected to liquor outlets. "Local government's perspective in regulating the liquor industry is: *the impact that the act of selling liquor has on the community around a liquor outlet*. The composition of the two Schedules, particularly their local government components, bears testimony to this constitutional intention, he says. Competencies such as 'Municipal planning', 'Amusement facilities', 'Control of public nuisances', 'Noise pollution', 'Public places' and 'Traffic and parking' are all aimed at regulating 'public order effects' of a myriad of activities, including the sale of liquor" (de Visser, 2004, p. 368).

It must be noted here that it is not entirely clear why the provincial 'uniformity themes' of "health and basic safety", and "security and reducing socio-economic costs of alcohol consumption" (de Visser, 2004, p. 366) are seen to be different in essence to the local government responsibility for "the impact that the act of selling liquor has on the community around a liquor outlet" (de Visser, 2004, p. 368).

Municipal planning and liquor regulation[7]

The Liquor Bill case of 2000 also established a link between municipal planning and liquor licensing. In his judgement, Justice Cameron said a liquor licence was for "the sale of liquor *at specified premises* (my italics)" (de Visser, 2004, p. 366). He thus suggests a *spatial* aspect to liquor licensing which is linked to a number of planning-related objectives, including "the desired spatial form of the municipality … desired patterns of land use … the spatial reconstruction of the municipality … the nature and location of development in the municipality" (van Wyk, 2012, p. 295) and "the control and regulation of the use of land" (van Wyk, 2012, p. 298).

The spatial aspect of liquor regulation is further confirmed in s23(4) of the Gauteng Liquor Act, 2 of 2003 which requires that "[a]pplications for tavern, pool club, pub, liquor store and night club liquor licences shall also be accompanied by unequivocal approval by the relevant department of

[7] Throughout this report, the term 'liquor regulation' means all aspects of the regulation of retail liquor sales and consumption, including the processing of liquor licence applications and the control of liquor outlets.

the relevant metropolitan or district council, in addition to any zoning or planning or environmental laws requirements" (GDFEA, 2003).[8]

The Draft Gauteng Liquor Policy of 2011, which sought to review and amend the Gauteng Liquor Act of 2003, highlights a number of land use management issues arising from the licensing of alcohol outlets. These include: "Non-compliance of liquor traders with municipal town planning schemes; Sound town planning principles to be identified as guidance for the consideration of liquor applications, specifically in residential areas; Linkage between various liquor licences and land use provisions not defined; *Lack of Liquor Policies at municipal level that are integrated with other planning instruments;* and *Pro-active spatial planning to identify appropriate sites for liquor sales*" (my italics) (GDED, 2011, p. 21).

The purpose of this digression into the Constitution, legislation and court rulings is to explore and clarify the meaning and implications of the three constitutional mandates and to establish the functional links between them. The entanglement of municipal planning, liquor licensing and liquor control means they cannot be approached in isolation from each other (Davidoff, 1965). Provinces must be mindful of the spatial implications of the awarding of a liquor licence. Municipal planning is governed by regulations such as the Johannesburg Land Use Scheme (CoJ, 2018) which specifies which categories of property may or may not be used for running businesses, including those that sell liquor. Control of liquor outlets is concerned with the impact of the selling of liquor by licensed (and unlicensed) outlets on their immediate environment, i.e. the consequences for those living or working or moving in the environs of the geographic location of the premises dispensing liquor. This needs to be respected by provinces when issuing licences and by municipal planners in the course of their work. Municipalities must be reciprocally alert to the objectives of the Gauteng Liquor Act (GDFEA, 2003) and the national Liquor Act (RSA, 2003). One of the aims of the national Act is "facilitat[ing] … the entry of new participants into the industry … [and] diversity of ownership in the industry" (RSA, 2003). For province to succeed in doing this, therefore, might require some flexibility around land use policy by municipalities.[9]

[8] There is nothing to indicate why only five types of licences are included in this section of the Gauteng Liquor Act, 2 of 2003. The Act itself lists 18 different licences, including five off-consumption licences (that is, outlets where people can buy alcohol, but not consume it on the premises where they bought it – at a bottle store, for example). So why do only five of 18 need local authority approval and, secondly, what are the implications of s23(4) for shebeen permits and shebeen licences? The shebeen permits and licences could not have been included in the list of those needing local authority approval because they did not exist in 2003 when the Act was promulgated (GDFEA, 2003).

[9] It is notable that the national Liquor Act, 2003, calls for intergovernmental co-operation in respect of liquor matters. However, in spelling out the need for such co-operation, the Act only talks about national government and provincial governments. Co-operation with local government, which is responsible for control of retail liquor outlets, is not mentioned at all (RSA, 2003).

Challenges of alignment

An ongoing court case between the CoJ and a liquor outlet is an example of the failure of a province to consider municipal bylaws when passing legislation.[10] In 2004, the then Gauteng Department of Finance and Economic Affairs (GDFEA), issued shebeen permits to all unlicensed liquor outlets in the province. The permit system was part of "a phased in approach, whereby Shebeens would be given an opportunity to comply with the [Gauteng Liquor] Act [2 of 2003]" (GDFEA, 2003:s141(1)(m)).[11] The GDFEA didn't consult municipalities or require shebeens to comply with land use regulations or municipal bylaws. The CoJ brought a case against the owner of the liquor outlet for trading from a premises not zoned for business. Her defence was that province had given her the permit without asking for proof of compliance with municipal bylaws. In another case, the court ruled that the Gauteng Liquor Board (GLB) should never grant a license, provisional or otherwise, without the applicant first getting approval from the relevant municipality.[12]

In the Western Cape, a different challenge has arisen. The City of Cape Town (CoCT) passed a *Control of undertakings that sell liquor to the public bylaw* in 2013 (CoCT, 2013). The Western Cape Liquor Authority (WCLA) is concerned that, using this bylaw, councillors of the Cape Town Metro can extend the drinking hours set by the WCLA when it awarded a particular licence.

Finally, in another case cited by de Visser (2004) – Bulk Deals Six vs Chairman (sic) of the Liquor Board of the Western Cape in 2002 – the Board "contended that the Act required it to consider the impact of granting a licence on the residents of the surrounding area" (de Visser, 2004, p. 369). The view held by the Board appears consistent with de Visser's conclusion that provinces had to concern themselves with 'mitigating the security and other socio-economic challenges related to liquor'. But the court disagreed, saying that "the Board has overemphasised the interests of the residents", that "issues such as traffic noise are dealt with (through, for example, zoning) at local level" and that "the Board should have considered issues such as market principles and the nature of the establishment" (ibid).

When writing about the case brought by the CoJ against the Gauteng Development Tribunal over the implementation of the Development Facilitation Act, van Wyk (2010) described the "parallel planning" problem that the DFA created as a "recipe for disaster" (van Wyk, 2010, p. 214). The

[10] City of Johannesburg vs Cecilia Myra Dongo and one other (227/09) [2016], hereinafter Dongo

[11] The word 'shebeen' is Irish (Gaelic) in origin and originally meant 'illicit whisky'. Over time, still in Ireland, it came to mean 'illegal liquor outlet' and today has that meaning in South Africa and elsewhere (Smithers, 2013). Shebeens are similar to what historically were called 'alehouses' in Britain and 'ordinaries' in the United States – private dwellings in part of which liquor was sold, usually for on-site consumption (Phillips, 2014).

[12] Barnard vs Gauteng Liquor Board 29556/2014

cases cited above suggest that the continued lack of alignment between municipal planning and liquor regulation may also turn out to be a 'recipe for disaster.

iii. Constitutional and legislative requirements for public participation

Van der Waldt (2004) provides a useful overview of what he calls "the various statutory obligations that developmental local government [in South Africa] has to adhere to, to be truly participative and democratic" (van der Waldt, 2004, p. 1). He includes relevant policy documents, legislation and agreements in South Africa and internationally that have a bearing on the issue. Three of these documents are the SA Constitution (1996), the Municipal Structures Act (1998) and the Municipal Systems Act (2000).

In this regard, section 57(1)(b) relating to the National Assembly, section 70(1)(b) regarding the National Council of Provinces, and section 16(1)(b) in respect of Provincial Government, are identical. Each national and provincial structure is required to "make rules and orders concerning its business, with due regard to *representative* and *participatory democracy*, *accountability*, *transparency* and *public involvement*" (my italics) (RSA, 1996).

For local government, s152(1) reads as follows: (1) The objects of local government are (a) to provide *democratic* and *accountable* government for *local communities*; (b) to ensure the provision of services to communities in a sustainable manner; (c) to promote social and economic development; (d) to promote a safe and healthy environment; and (e) to encourage the *involvement* of *communities* and *community organisations* in the matters of local government (my italics) (ibid).

The Municipal Structures Act introduces the idea of Ward Committees. In section 72(3), it says that "[t]he object of a ward committee is to enhance *participatory democracy* in local government" (my italics) (RSA, 1998). Under the title "Development of culture of *community participation*", s16(1) of the Municipal Systems Act says that "[a] municipality *must* develop a culture of *municipal governance* that complements *formal representative government* with a system of *participatory governance*" (my italics) (RSA, 2000). It also lists ways this could happen (e.g. involvement in Integrated Development Plan (IDP) processes, performance management, the budget etc) and what the municipality must do to facilitate public participation. But then section 16(2) sets forth the following *caveat:* "Subsection (1) must not be interpreted as permitting interference with a municipal council's right to govern and to exercise the executive and legislative authority of the municipality" (ibid).

For the most part, these calls for public participation in the Constitution and the two municipal Acts are not prescriptive. The word 'must' is only used in connection with participation in s19 of the Municipal Structures Act and s16 of the Municipal Systems Act, which is perhaps why Piper & von Lieres (2006) conclude that only local government is legally required to implement

'participatory governance' (Piper & von Lieres, 2006). The phrases 'with due regard to' (for national and provincial) and 'encourage the involvement of' (for local government) do not convey a sense of verifiable obligation. The tentative nature of these clauses makes monitoring and evaluating their implementation difficult and therefore undermines the call for *accountability* that is associated with them. Van der Waldt (2004) talks about 'statutory obligations' but says nothing about how these are to be enforced. He argues that local government lacks capacity to carry out its overall responsibilities and needs civil society participation to achieve 'good governance', hence the need for the aforesaid 'statutory obligation'. However, he claims, 'practical constraints' prevent local government from adhering to the spirit of citizen participation embodied in the various 'statutory obligations' he sets out in his paper, but he says nothing of the consequences to them of failing to do so (van der Waldt, 2004).

This would seem to suggest that the 'obligations' he lists are not really obligations, but more like guidelines. In his conclusion he notes that " [t]o establish a democratic social contract between local government and its citizens requires institutional arrangements and political will" (van der Waldt, 2004, p. 17). The 'political will' to foreground public participation in civic matters in South Africa is manifest in the Constitution and the policies, laws and regulations which guide different spheres of government. But there is little evidence to suggest that government has the 'political will' to ensure *compliance* with the requirements for public participation. This is important because, as will be seen later, there are serious questions being raised inside and outside government about whether meaningful public participation is actually happening.

c. Problem statement

The original impetus for this research was the experiences of a neighbourhood development project in the Johannesburg inner-city suburbs of Yeoville Bellevue. The project engaged extensively with, *inter alia*, the City of Johannesburg (CoJ) from 1997 to 2013, working to address a range of municipal planning and urban management issues. Some of the project's interactions were with the Johannesburg Development Agency (JDA), a CoJ entity tasked with implementing catalytic capital projects across the city. Members of the project also monitored applications for liquor licenses; attended Gauteng Liquor Board (GLB) hearings to challenge certain applications; and attempted to use existing legislative and administrative tools for approaching the issue of unlicensed liquor outlets and licensed outlets that did not comply with their license conditions. To facilitate broader community participation in municipal planning and liquor-related issues, the project produced Yeovue News, a free weekly knock-and-drop community newsletter. The paper shared information about liquor licence applications and advised people on their participatory rights and on the available mechanisms through which they could engage with the CoJ, the South African Police Service (SAPS), the GLB, and other entities in the Gauteng Provincial Government (GPG) – and encouraged them to do so.

There were many challenges in carrying out this work. Two of these are the subject of this research report: the lack of alignment and integration of municipal planning and liquor regulation, and the lack of meaningful public participation in government affairs.

What became clear over the years was that the liquor licensing regime was confusing, inefficient, inconsistent, opaque and non-inclusive. Province is constitutionally responsible for processing retail liquor license applications. They have to do so in terms of two imperatives: protection of public health and well-being, and promotion of economic development. Licensing decisions must take account of municipal bylaws, particularly with respect to land use regulations. In terms of s119 of the Gauteng Liquor Act, GLB liquor inspectors must monitor compliance by liquor licence holders. However, municipalities are responsible for *Control of undertakings that sell liquor to the public*, but the boundaries between their regulatory responsibilities and those of the GLB were not clear. The role of the SAPS in respect of liquor management was also confusing, sometimes to the SAPS themselves.

The GLB was not very efficient, taking excessively long to process applications, with the result that applicants turned to the courts to get their licence applications approved. Rather than amending the flawed Gauteng Liquor Act, the GLB decided, unofficially, to ignore certain sections, such as the unworkable aim of limiting the awarding of licences to premises that are more than 500m from an educational facility or a faith-based institution.[13] This decision confused and angered people in the neighbourhood, especially those who were unhappy about the proximity of liquor outlets to a school or a church. The GLB was not very transparent – it was, and still is, difficult to get a list of the members of the Board, thus limiting their accountability to the public. They didn't (and don't) have a proactive programme of reaching out to the public to inform them about their activities and about the role that the public can play in relation to liquor licensing and management. They didn't (and don't) provide easy access to information about licensed outlets in Gauteng.

A related challenge was the lack of effective processes to facilitate meaningful public participation in municipal planning and in liquor regulation. The experience of the Yeoville Bellevue project was generally that participation was superficial and tokenistic. This was the case with universal processes such as the IDP as well as with specific initiatives that targeted Yeoville Bellevue (e.g. the Yeoville Task Team that met with the MMC for the Inner City until 2006, and the Inner City Charter Forum which ran from 2006 until around 2012). The project had limited influence in these processes, confirming that the s16(2) of the Municipal Systems Act really did 'protect' local government from "interference with a municipal council's right to govern and to exercise the executive and legislative authority of the municipality" (RSA, 2000). "… the law located the ultimate right to rule with elected

[13] The Gauteng Department of Economic Development has passed a new Act (3 of 2014) which allows for a more flexible approach to the 500m restriction. However, although it has been approved and promulgated, it has never been implemented (GDED, 2014).

representatives and not the public, and … allows municipalities to cherry pick which participatory decisions they want to implement" (Piper & von Lieres, 2006, p. 10).

Communication of information was also very poor. The average citizen only learned about a new policy or piece of legislation once it had been passed, if at all. Residents usually only knew about land use and development applications and liquor license applications once they'd already been granted. The authorities argued that there was opportunity for people to comment or object, that the policy process was publicised and people were invited to hearings, that the re-zoning and liquor license applications were advertised in the newspaper and in the Government Gazette. However, currently utilised means of communicating government information are generally so disconnected from the day-to-day reality of people's lives that most of them never knew what was happening, even in their own neighbourhoods (Smithers, 2013). Their right to participation is, as a result, a right in name only.[14]

The challenges faced by the Yeoville Bellevue project were not new, unique or easy. They confront people in other neighbourhoods of Johannesburg and in other municipalities in Gauteng and across the country, albeit differently in different neighbourhoods, e.g. rich and poor, (more) black and (more) white, urban and rural. They demonstrate the need to address the entangled relationship of municipal planning, liquor licensing and liquor control, and highlight the weaknesses in the participatory process. These will not resolve themselves on their own. They must be addressed – in an inclusive, collaborative process involving all stakeholders – in the interests of the health and well-being of all citizens and of the realisation of meaningful, participatory democratic practice.

d. Aim of the research

The aim of this research is to explore the dynamics of the intersecting functions of municipal planning and liquor regulation and to identify what the weakness in the system are; why they are there; and how they impact on society. It is also to assess critically the participatory process, in its own right and in relation to its current success or otherwise in empowering citizens at neighbourhood level to have a meaningful say in how municipal planning and liquor regulation happen.

Based on the outcome of the research, the report will make a set of recommendations that will seek to do two things. The one is to offer a functional solution to the identified challenges of misalignment between municipal planning and liquor regulation. The other is to propose an appropriate participatory approach which will promote a full, meaningful, inclusive, empowering mode of citizen involvement in these critical public issues.

[14] Municipal applications – re-zonings, consent use applications, removal of restrictions applications etc – are slightly different in that the applicant has to deliver notices to the neighbours immediately adjacent to the property for which an application has been made. But this still only reaches a handful of people.

e. Rationale for the research

Legal academic Jaap de Visser has unpacked usefully the implications of the constitutional separation of retail liquor licensing and control of retail liquor outlets across two spheres of government. He explains the functions, and their interrelationship, in terms of the separation. However, he doesn't question the logic of it. In fact, his approach seems to have been to deduce a rationale for giving liquor licensing to provinces – the pursuit of uniformity – and then to construct an argument based on that deduction (de Visser, 2004). His paper also touches on the relationship between municipal planning and liquor licensing.

In a more general analysis of overlapping municipal and provincial functions (including those that are liquor-related), Steytler and Fessha observe: "In the case of a conflict between a local by-law and a national or provincial law, the general rule is that the by-law is invalid. However, the by-law may still trump a valid national or provincial law if the latter 'compromise[s] or impede[s] a municipality's ability or right to exercise its powers or perform its functions'" (Steytler & Fessha, 2007, p. 196). Though they do not make specific suggestions in this regard, they draw the reader's attention to s156(4) of the Constitution. It decrees that national and provincial governments *must* "assign to a municipal council the administration of a matter listed in Schedules 4A or 5A if the matter in question 'necessarily relates' to local government, would most effectively be administered locally, and the municipality has both the will and capacity to administer it" (Steytler & Fessha, 2007, p. 197).[15]

Zack and Silverman approach the issue from a different perspective in their report on the outcomes of a Hillbrow/Berea (Johannesburg) land use management study. In it, they cite a view expressed by a number of stakeholders in the study area: "This provincial-level licensing function seats a critical land use management decision at too far a distance from the law enforcement and land use management functions of the study area" (Zack & Silverman, 2007, p. 14). In so doing, they highlight the separation of liquor licensing from liquor control and municipal planning, the lack of alignment between all three, and the implications for general land use and related management.

However, like de Visser and Steytler and Fessha, they do not take the issue further. The rationale of this research report, then, *is* to take the issue further, given the identified challenges arising out of the current placement of the functions. Rather than accepting the reality of the current allocation and trying to deduce and explain an underlying logic to it, the research set out to discover the origins of the decision to give liquor licensing to provinces and liquor control to municipalities. It also investigated global trends to see which sphere of government is generally given the mandate for liquor licensing and if

[15] The Constitution says "has the capacity to administer it" (RSA, 1996), not 'both the will and the capacity' to do so. It is possible Steytler and Fessha have deduced the 'will' aspect from an earlier phrase in the section which says the function must be allocated "by agreement and subject to any conditions" (ibid).

there is any literature on the relationship between liquor licensing and municipal planning in other countries.

Decisions in respect of municipal planning and liquor regulation can have profound consequences for the lives of people at neighbourhood level. These decisions can be difficult to modify or reverse and can continue to affect people negatively for years, if not decades. A further rationale for the research was to look at current trends in participatory thinking with a view to proposing viable governance and participation strategies to enable fully inclusive involvement of stakeholders in liquor management and its interface with municipal planning.

f. Research questions

Main research question: What are the implications for effective liquor management, efficient spatial planning and meaningful public participation, of the Constitution allocating responsibility for liquor licensing to provincial government and municipal planning and control of retail liquor outlets to local government?

Sub-question 1: What (and why) are the roles played by the three spheres of government in respect of liquor licensing and what institutional and other challenges, if any, result from the allocation of these separate but related responsibilities to these different spheres?

Sub-question 2: What would be the implications, especially for the integrity of the municipality's planning function, of invoking section 156(4) of the Constitution to devolve responsibility for liquor licensing from provincial government to municipalities?

Sub-question 3: What are respondent's perceptions of the socio-economic challenges arising from the consumption of alcohol in South Africa and how do they think municipal planning, land use planning in particular, could mitigate these challenges, if at all?

Sub-question 4: What are the implications, from a participatory democracy perspective, of the allocation of liquor licensing to provincial government as opposed to local government?

g. Limitations to the research

The main research for this report is limited to reviewing practice in one province (Gauteng), focusing on one metropolitan municipality (Johannesburg), with a case study in two neighbourhoods (Yeoville Bellevue and Alexandra) in that municipality. Johannesburg is not a typical municipality – it is one of eight metros out of a total of 257 municipalities country-wide. The two neighbourhoods are not typical – Johannesburg doesn't have a 'typical' suburb. It comprises a wide variety of types, many very different to the case study suburbs. It may arguably have been better to do the research in at least three provinces and in a mix of municipalities in each of the three to get a more nuanced set of findings. This

was not possible, but this limitation doesn't mean the research will be of no value to other areas. The constitutional allocation of functions to provinces and local government applies nation-wide, as does the issue of public participation. So the questions being researched should be of interest to the rest of the city, the province and the country. However, this does not imply that conditions and practices are the same everywhere.

The desktop research for this report drew on intellectual resources from across the world. The challenges of regulating liquor, of aligning such regulation with municipal planning, and of normalising effective public participatory processes are common to most countries across the globe. The research should therefore be of some academic and practical interest to researchers and other practitioners in the world, at least for comparative purposes.

Where the research may have limitations in South Africa is in respect of the applicability of its recommendations. Johannesburg is arguably the most resourced local authority – in financial and human terms – in South Africa. It is one of around 7% of municipalities that are well-functioning. Of the rest, 31% are regarded as reasonably functional, 31% almost dysfunctional, and 31% dysfunctional (COGTA, 2018). One of the potential outcomes of the research is a conclusion that s156(4) of the Constitution should be invoked to devolve responsibility for *Liquor licences* from provinces to local government. This will pose capacity problems for most municipalities. While Johannesburg may be in a position to take on this new responsibility (and even that is not certain), it is less likely that others, especially the most challenged 62%, would be in a position to do so.

However, this will not render the research meaningless for all but a few municipalities. S156(4) is clear that devolution must only take place if a municipality has the capacity to take on the function. So even if the research argues that, *in principle*, liquor licensing should be a municipal function, provinces will only be obliged to devolve to those that have capacity. Then, as municipalities develop capacity, devolution would be able to take place on a rolling basis across the country.

Whatever recommendations are made will pose different challenges for different municipalities. But the limitations set out above are unlikely to result in a finding that is so local and so restricted as to be of value only to Johannesburg. Nevertheless, it may be useful to take the study further in order to test the findings of this report and their broader applicability. If so, the work done in Johannesburg would provide a very good platform from which to launch a further, more extensive research process.

h. Chapters of the report

One: **Introduction, background, problem statement, research questions, aims and rationale of the research, limitations, structure of the report**

This chapter lays the foundations for the research report, explaining its significance and what it seeks to achieve.

Two: **Literature review, conceptual framework**

There is intense scholarship and practical investigation into planning practice, the challenges of liquor management, and sustainable, meaningful methods of citizen participation in public affairs. Chapter 2 explores local and global trends in order to establish a theoretical perspective from which to undertake the research for this report.

Three: **Research methods, ethical considerations**

Chapter 3 outlines which methods are used for this research and why, and discusses the ethical implications of the research process.

Four: **Short history of liquor globally and in South Africa and current approached to liquor management in other countries**

The current challenges related to liquor management (and its relationship with municipal planning) are informed by the past history of liquor policy and legislation in South Africa. Furthermore, most countries in the world are facing similar challenges to those confronting South Africa. The chapter therefore contains a short overview of the history of liquor in the world in general and in South Africa in particular, as well as a review of how liquor is managed in a sample of other countries in the world.

Five: **Presentation and analysis of the data collected**

The primary source of data for the report is a case study using semi-structured interviews. Chapter 5 is a distillation of the responses of interviewees, presented under five generic themes. The chapter ends with a general analysis of the outcomes of the research.

Six: **Conclusion and recommendations**

The final chapter begins with a conclusion based on the findings of the case study, the literature review and the desktop study. It is followed by a set of recommendations which respond to the findings and present a way forward.

Chapter 2.
Reviewing the terrain: current theory and practice

"The foundation of democracy is faith in the capacities of human nature; faith in human intelligence, and in the power of pooled and cooperative experience."
– *(Dewey, 1937)*

a. Introduction

There is a plethora of information on issues pertinent to this research such as institutional and political forms of government; municipal planning (in all its aspects); urban development and urban management; constitutionalism and law; arguments and proposals for and against control of the manufacture, distribution and control of liquor; colonialism and apartheid; human rights and social justice; and the extensive literature on governance and public participation. The focus of this literature review will be on the spatiality of liquor and its implications for municipal planning, its 'wicked' nature and the need for a 'governance' approach to dealing with it, the underlying democratic and participatory principles embodied in the notion of governance, and some comments on the issue of localism.

b. Context

The context in which this literature review is taking place has been set out above in the Background, the Problem Statement and the Rationale for the research. In summary, an unintended consequence of the constitutional allocation of the functions of liquor licensing, municipal planning and liquor control is a misalignment of these functions to the extent that it is difficult for each of them – for different reasons – to be implemented optimally. It is no exaggeration to say that this misalignment has had a serious – in some instances catastrophic – impact on the lives and livelihoods of citizens in neighbourhoods across the country. What's more, the experience of the average citizen is that there is little or nothing that he or she can do about it.

The Constitution offers the hope of better life for all in its Preamble, Founding Provisions and Bill of Rights. It promises a voice for citizens in the many clauses that refer to public involvement, participation, participatory democracy, participatory governance, transparency and accountability. However, the same Constitution makes it clear that the power of citizens is limited – s16(2)(1) says that the promise of participatory governance "must not be interpreted as permitting interference with a municipal council's right to govern and to exercise the executive and legislative authority of the municipality" (RSA, 1996). The Public Participation Framework for the South African Legislative Sector (2013) confirms this limitation – simplifying Arnstein's Ladder (Arnstein, 1969), it suggests that there are four ways in which the public can 'participate'. These include: "1. "Inform[ing]" the public … [by] providing the[m] … with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions … 2. "Consult[ing]" … [by means of which] the public is

invited to provide feedback, input or comment on analyses, alternatives and/or decisions … 3. "Involve[ing]" … the public [by] … provid[ing them] with opportunity for dialogue and interaction. This could also be described as direct public participation throughout the process to ensure that issues and concerns are consistently understood and considered. *However, it is the understanding that the legislature is still the decision maker* (my italics) … 4. "Collaborat[ion]" … [where] the public is provided with opportunity to partner or work jointly with decision-makers and the identification of the preferred solution. *However, as with "Involve", it is still the understanding that the legislature is still the ultimate decision-maker. In the end, all the input received will be taken into account and the legislature will make the final decision*" (my italics) (SALS, 2013, p. 29). Furthermore, the Framework acknowledges that "Public Participation practice in South Africa remains an aspiration" (ibid, p. 37).

Bearing these limitations in mind and the many papers and reports that echo the sentiment that participation in South Africa is but an 'aspiration', this paper has narrowed its objectives. It has addressed the issue of public participation from the perspective of the entanglement of liquor regulation and municipal planning and not more broadly for local government or other spheres of government. If the findings are helpful in other contexts, that would be a bonus.

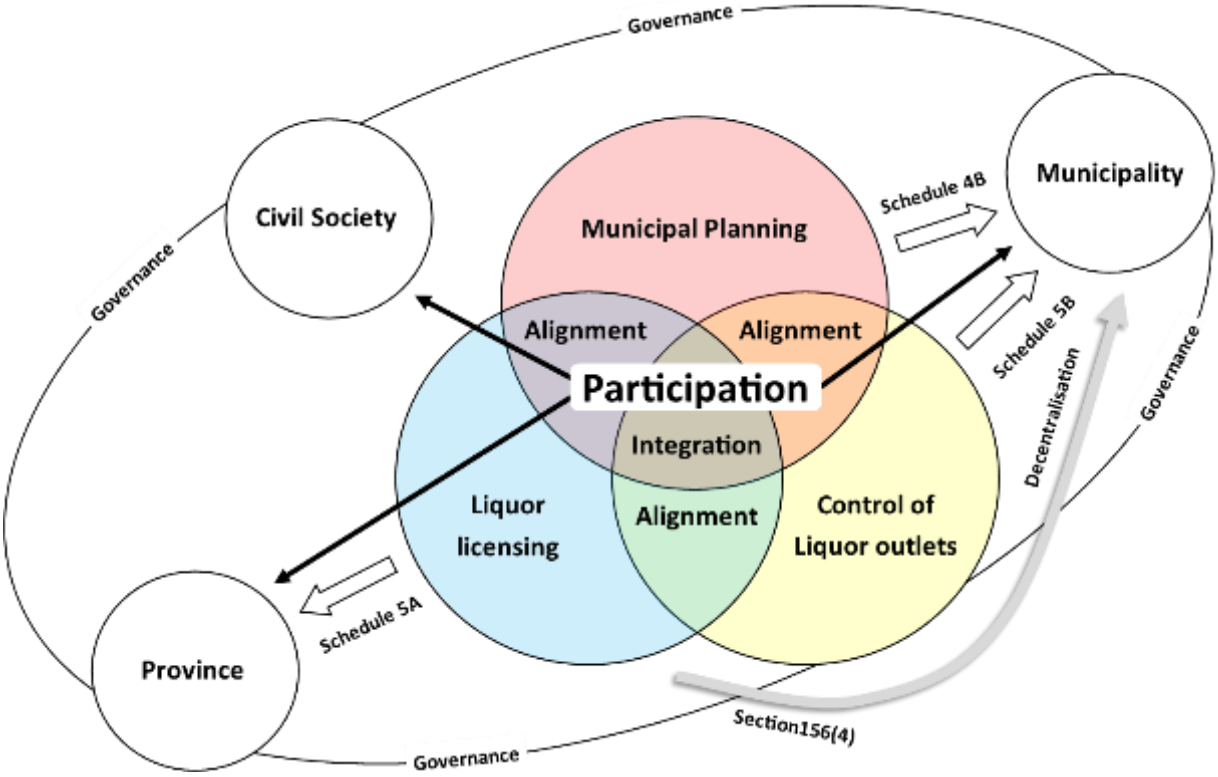


Figure 2: Thematic diagram

c. The spatiality of liquor

In the first chapter, it was suggested that municipal planning and liquor legislation are entangled because of the *spatiality* of liquor. Gruenewald says that there are a "[t]hree truisms about drinking and problems [related to drinking]: Drinking must take place some place; Any problem related to drinking must take place some place; and These may be the same or different places" (Gruenewald, 2017).

Researchers in a wide range of disciplines – public health and safety (Gruenewald, 2017) (Martineau, et al., 2013), urban theory (Jayne, et al., 2006) (Bell, 2007), governance (Herrick, 2014) (de Visser, 2004) and others – all refer to the spatiality of alcohol in some way, whether this is to do with the location of liquor outlets, the density of outlets within a neighbourhood, the geographic impact of outlets or the impact (positive and negative) on economic development in a neighbourhood of the presence of liquor outlets.

Legislation in South Africa, e.g. the Gauteng Liquor Act, 2 of 2003, implicitly (if unintentionally) recognises the spatiality of alcohol by, for example, discouraging the proximity of liquor outlets to places of education and places of worship (GDFEA, 2003), albeit in a clumsy, unenforceable manner which doesn't take account of contextual spatial reality (Smithers, 2013). The relationship between liquor licensing and municipal planning is also indicated in s23(4), which reads: "Applications for tavern, pool club, pub, liquor store and night club liquor licences shall also be accompanied by unequivocal approval by the relevant department of the relevant metropolitan or district council, in addition to any zoning or planning or environmental laws requirements" (GDFEA, 2003).

Land use management bylaws and regulations place limits on the types of property on which liquor can be sold, reinforcing the spatial implications of liquor licences (City Council of Johannesburg, 1979) (CoJ, 2018). These land use regulations are contentious, given the history of spatial exclusion under apartheid and its continuing impact, including the lack of alignment between different land-use schemes within one municipality.[16] The 'one-size-fits-all' approach to liquor legislation in most provinces has the effect (intended or otherwise) of threatening the future of most liquor outlets in historically black townships and informal settlements because most are in residential areas on properties that don't have business rights (Charman & Petersen, 2010) (GDED, 2011).

However, Ovens (2007) cautions that "[t]he absence of land use management enforcement in poor black areas of the city is only tolerated because of low expectations by poor people who do not expect state protection, and is racist. Differential practices of enforcement also perpetuate segregation in the quality of life in neighbourhoods and the failure to enforce the public good implied by normal land use

[16] One of requirements of SPLUMA (2013) is that all municipalities must implement one common land use scheme.

management regulations mitigates against both race and class integration and precludes neighbourhood improvement and the development of a positive land market" (cited in (Charlton, 2008, p. 9).

For many people living in the said areas, the high number of liquor outlets and their sometimes anti-social manner of operating, is an example of the issues that Ovens is highlighting. de Visser (2004) says that the local government mandate to control liquor outlets is related to the impact that the selling of liquor can have on the surrounding community (de Visser, 2004). The negative spatial impact of liquor selling can manifest as problems with noise, parking, traffic, litter, public urination, unsafe streets, reduced quality of life, and a downturn in the economy and property prices, all issues that would normally be addressed by the kind of land use management enforcement Ovens is referencing.

The issues raised by Charman and Petersen and by Ovens point to the 'wicked' nature of liquor and the need for an approach to dealing with it that takes its 'wickedness' into account.

d. "A lion you cannot kill …": working with 'wicked' problems[17]

Leonie Sandercock describes Patsy Healey's notion of planning – "managing our co-existence in shared space" – as the "most beguiling yet offered" (Sandercock, 2000, p. 13). Elsewhere, Healey says: "I understand planning to be a governance practice that has evolved to address the difficulties created by the complex colocations of activities and their relations and the impacts these colocations generate across space–time. It is a practice that is not merely concerned with managing existing relations but with imagining and opening up future potentialities for improving the conditions of daily life existence and enrichment for humans in their coexistence with each other and the rest of the animate and inanimate world … It involves the formation and practising of complex public realm judgments about what to do and how to do it" (Healey, 2009, p. 277).

Knowing 'what to do and how to do it' is a critical question in both planning and liquor management. Rittel and Webber (1973) have characterised planning as a 'wicked' problem. The abstract to their paper, which looks specifically at the challenges of planning, gives a useful overview of the nature of a 'wicked' problem:

"The search for scientific bases for confronting problems of social policy is bound to fail, because of the nature of these problems. They are "wicked" problems, whereas science has developed to deal with "tame" problems. Policy problems cannot be definitively described. Moreover, in a pluralistic society there is nothing like the undisputable public good; there is no objective definition of equity; policies that respond

[17] In 1980, I was doing research on rural community projects in Southern Africa (bead-making, basketry, pottery etc) and trying to work out what made so many of them short-lived. One respondent described the challenge of finding buyers for their products as "a lion you cannot kill". In his world, lions were a danger, but they could be killed. A lion that could not be killed was clearly disconcerting. Now, in 2019, I understand him to have been saying that marketing was a 'wicked' problem, one to which there was no easy, right or permanent solution.

to social problems cannot be meaningfully correct or false; and it makes no sense to talk about "optimal solutions" to social problems unless severe qualifications are imposed first. Even worse, there are no "solutions" in the sense of definitive and objective answers" (Rittel & Webber, 1973, p. 155).

Rittel and Webber make it clear that problems are not 'wicked' in an ethical sense. It is that they can be difficult, if not impossible, to understand and fix. Their aim is to capture the frustrating nature of such problems with a view to helping people to develop effective ways of dealing with them (ibid).

Like municipal planning, liquor has been termed a 'wicked' problem (Pennay, 2012) (Petticrew, et al., 2009) (Chambers, et al., 2017) (Pavlychko & Krawchenko, 2011) (Herrick, 2014). The management of liquor has been a challenge for societies around the world for as long as recorded history (Phillips, 2014). It continues to thwart easy resolution. Simultaneously achieving the two objectives normally associated with the product – 1) mitigating the harmful use of liquor and 2) reaping the economic benefits of the liquor trade – seems an intractable challenge. It is a situation "where the problem is defined differently by various stakeholders; there are ingrained normative and cultural assumptions and practices embedded in the issue, and there are multiple, complex intervening variables such as economic development and institutional capacity" (Pavlychko & Krawchenko, 2011, p. 60). [18]

For Rittel and Webber, 'wicked' problems are never 'solved'. They can only be (re)solved temporarily, because, in applying a particular (re)solution, other problems are created that will in turn require (re)solution (Rittel & Webber, 1973). Thus, what could be called the 'ultimate' (re)solution to the challenges posed by liquor – a ban on the sale of the product – failed in the United States and South Africa – largely because it spawned new problems which needed to be (re)solved. In the United States, where total prohibition was in force from 1920-1933, the illegal trade in liquor helped create a criminal gang network that still exists today (Phillips, 2014). In South Africa, a racially-specific ban on the sale of 'white' alcohol (spirits, wine and 'clear beer', a term used to distinguish it from traditional African brews which are 'cloudy') (Jernigan & Obot, 2006) (Herrick & Parnell, 2014)) to black drinkers was in place from the late 19th century until 1961. The ban was lifted after the government-appointed Malan Commission decided it was not sustainable, in part because of the extensive illegal trade that saw black drinkers get access to 'white' liquor despite the restrictions (La Hausse, 1988). Attempts to address the 'wicked' liquor problem are a preoccupation of virtually every country in the world today (WHO, 2018). While many may accept that a permanent solution is not achievable, they nevertheless attempt to mitigate the problem as best they can within the constraints of the liquor policy framework they have adopted.

[18] Rittel and Webber's clarification of the sense in which they use the word 'wicked' (above) is particularly important with respect to liquor. All too often, liquor is characterised as a 'moral' issue by politicians, faith-based organisations, temperance bodies and the general public. This is reflected in phrases like 'demon drink' and 'sin tax'. The harmful use of liquor is not simply a personal problem, responsibility for which can be reduced to the morality and life choices of an isolated individual. It is a complex societal issue, with a profound impact on the health and well-being of the citizenry as whole. Its 'wickedness' lies in its intractability and, as such, it requires a holistic societal intervention to seek out (re)solutions.

e. The current discourses of liquor

The prevailing discourses on liquor are perceived and experienced differently by different stakeholders, contributing to the 'wicked' problem of finding a way to manage the product. The discourses are identified by Smit as: "the public health discourse, the economic discourse and the socio-cultural discourse" (Smit, 2014, p. 60). This report focuses on the discourses of public health and the economy as they are broadly associated with the overall objectives of liquor policy and liquor legislation, nationally and provincially.

The two primary goals of liquor policy in South Africa are: a) to reduce the socio-economic and other costs of alcohol abuse; and b) to promote the development of a responsible and sustainable liquor industry (RSA, 2003). For purposes of this report, Smit's discourses of public health and the economy, respectively, are associated with these two goals. The aim of policies and legislation which target the harmful use of liquor are specifically intended to create an environment in which health, safety and wellbeing are prioritised and promoted. The particular economy focus in South Africa is on facilitating entry into the alcohol economy by those who were previously excluded by apartheid policies and practices (GDED, 2011) (NPC, 2012) (DTI, 2015).

The problem is that there isn't sufficient sustained engagement with all stakeholders on how to achieve these two seemingly contradictory objectives. This is manifest in the responses of stakeholders to attempts by government to introduce legislation and regulations. If the new laws introduce stricter regulation in order to protect public health, those whose financial interests are threatened come out most strongly against it. On the other hand, if the proposed changes are aimed at making it easier for entrepreneurs to get licences and run liquor outlets, there is a reaction from those concerned about public health, public safety and general community well-being (GDED, 2011) (Thlobelo, 2018). Complicating the issue further is the customary location of liquor licensing in provincial departments responsible for economic development, thereby implicitly foregrounding the economic aspect of liquor. The exception is the Western Cape where liquor licensing has been moved from Economic Development and Tourism to Community Safety. The reasoning of the Western Cape Provincial Government (WCPG) is that liquor regulation is primarily about policing and not about economic development (Meyer, 2015).

The entanglement of municipal planning and liquor regulation emanating from the spatial implications of the retail sale and consumption of liquor suggests that there is a *planning* discourse of liquor as well. However, it would be a mistake to suggest that liquor regulation is *purely* a planning issue, just as it is a problem to see it as primarily the *economy* or fundamentally *policing*. The risk of doing so is that planning 'rules' would be applied in a mechanical way, not taking into account the specificity of liquor in all its complexity and the contextual reality in a neighbourhood where a liquor licence is in contention (Charman & Petersen, 2010). Critics of the Gauteng Liquor Act (2003) have raised concerns about

section 23(4) which calls for the 'unequivocal' approval of a municipality before a licence can be issued. They argue that it allows municipalities to unilaterally prioritise land use restrictions over economic development (Tlhobelo, 2018).

Tlhobelo argues in the same article – which is primarily about a court judgement which declared the Gauteng Shebeen Licence Regulations (2013) to be *ultra vires* – that 'a fine balancing act' was needed to come up with an alternative to the Regulations. He says:

> "This balancing act by the MEC through the Gauteng Liquor Board, in the phasing in of shebeens into the Gauteng Liquor Act, will require the collaboration of all stakeholders, including liquor traders' associations; relevant municipal departments dealing with town planning and spatial planning; law enforcement, such as the South African Police; metropolitan police; liquor inspectors; interested members of society; advocacy groups dealing with alcohol abuse; and all other interested parties affected by the trade of liquor in Gauteng" (ibid).

This is not essentially different to Lavery's observation:

> "Wicked problems come with an extensive web of stakeholders and a complex set of interests. C[ommunity] E[ngagement] offers a strategy and logic for engaging – or attempting to engage – with the full range of relevant stakeholders, including opponents, in order to gain a better understanding of how their interests are affected and whether there are any potentially viable pathways to success" (Lavery, 2018, p. 164).

These two perspectives echo Rittel and Webber's assertion that " … in a pluralistic society there is nothing like the undisputable public good" (Rittel & Webber, 1973, p. 155). It cannot be assumed, they argue, that there is a homogeneity of interests or perspectives within a particular neighbourhood. It is also unlikely, even in an organised neighbourhood, that there will be one structure that can claim to speak for all of the people in that area (ibid). For many contemporary theorists and practitioners, therefore, finding the 'best' (re)solution can only be achieved using a collaborative or participatory approach involving all stakeholders. These stakeholders – government, civil society, business – must commit themselves to a collective process of inquiry if they want to find a way forward with which everyone can live. This is regarded as particularly critical in the global South, where practices imported from the global North are often adopted without question (Davidoff, 1965) (Innes & Booher, 2004) (Innes, 2004) (Healey, 1998) (Watson, 2016) (Conklin, 2005) (Williams, 2008) (Sihlongonyane, 2015).

f. Democracy and participation – losing meaning and effect

"Symbolic inclusion does not necessarily entail material re-distribution"
– Faranak Miraftab (2009)

Lavery's contention that participation (or community engagement) is necessary to tackle 'wicked' problem is a widely-held view. But there are some who suggest that this argument is 'totalistic' and simplistic (Alford & Head, 2017) and even that public participation itself is a 'wicked' problem. "Determining who participates and how is wicked, tricky, and even aggressive … participatory spaces are not neutral; they are created for multiple purposes, providing opportunities for inclusion, but also exclusion and hierarchy … [there are] several paradoxes of participation" (Sprain, 2016, p. 62).

There isn't a common understanding of what it is, there is no simple method of achieving it, attempts to implement it often create new challenges, by definition it needs the involvement of a range of stakeholders to work together to try and craft a workable way of implementing it. The range of literature continually generated by the idea of participation is perversely encouraging – generally and in South Africa. For South Africa it is encouraging because the failure to achieve meaningful participation is not unique to the country.

In fact, it is possible to celebrate the fact that "never in the country's history have law and policy-making and development practice been as democratic and participatory as under the present dispensation" (Smith & de Visser, 2009, p. 2). "… the 'participatory turn' in South Africa did not simply involve the expansion and democratising of already-existing participatory and representative institutions. It was predicated, first and foremost, on the successful dismantling of authoritarian state institutions and the establishment of a liberal democratic order, including a substantial rights framework" (Piper & von Lieres, 2006, p. 2). It was a "serious undisputed euphoric concept" (Sihlongonyane, 2015, p. 84) adopted post-1994 in South Africa to indicate a shift away from the top-down approach to planning and development characteristic of the apartheid government.

But, while it's easy to understand why there was virtually no public participation in the apartheid years in South Africa, it's less easy to explain away the poor performance of participatory practice in contemporary South Africa and other democratic countries around the world. Even attempts to introduce statutory mechanisms to encourage participation (e.g. ward committees in South Africa) are less than successful. But, as Davidoff argues anyway: "There is something very shameful to our society in the necessity to have organized citizen participation. Such participation should be the norm in an enlightened democracy." (Davidoff, 1965, p. 334)

The problem is that "the idea of citizen participation is a little like eating spinach: no one is against it in principle because it is good for you" (Arnstein, 1969, p. 216). It is "an infinitely malleable concept, 'participation' can be used to evoke – and to signify – almost anything that involves people … the term

… [is] mired in a morass of competing referents" (Cornwall, 2008, p. 269). It is a catch-all 'buzzword' – "[p]olitically ambivalent and definitionally vague, 'participation' has historically been used both to enable ordinary people to gain political agency and as a means of maintaining relations of rule, for neutralising political opposition, and for taxing the poorest – ends tried and tested in the colonial era well before being deployed in the service of neoliberalism" (Cornwall & Brock, 2005, p. 1046). Ballard cautions that "participation does not necessarily embody a set of values in and of itself. Rather it should be seen as a method that can have different kinds of outcomes" (Ballard, 2008, p. 169).

Vitale also says participation "is instrumental … one way to diminish social inequalities and achieve a *de facto,* rather than a simply formal, democracy … a necessary activity if goals are to be met and concrete problems solved … formation of active, conscious citizens is [not an end in itself, but] essential to the consolidation of the participatory model, the strengthening of public life and the improvement of decisionmaking processes" (Vitale, 2006, p. 750). Vitale's formulation goes to the heart of this report – enabling citizens to materially influence the process of the licensing and ongoing regulation of liquor outlets within the broader context of municipal planning.

While there are many 'types' of participation (often framed as democratic practice), the one with the most currency at present is deliberative democracy, frequently compared to participatory democracy (Hildreth, 2012). In his paper, Hildreth worries that deliberation lacks the 'political action' and concern about 'structural inequality' that characterises participatory democracy (ibid). Young (in Fung, 2004) contends, on the other hand, that the participatory and deliberative approaches are both so 'radical' in their full form, that they can only be realised if accompanied by significant institutional changes (Fung, 2004). In defending consensus-building against its critics, Innes says it is not 'an ideal type', but enables "robust choices about the future in real world situations" (Innes, 2004, p. 9). This, she says, is very important to her because she is a practitioner, not a theorist (ibid). Quick and Bryson remind readers that collaboration (which is at the heart of all participatory practices) is not easy. It's a "hard solution to a hard set of problems" (Quick & Bryson, 2016, p. 7). But, for Innes and Booher, and many other writers, collaborative practice and participation play an important role in building the capacity of individuals to begin to play a deciding role in their own lives (Innes & Booher, 2003) (Pateman, 1970) (Arnstein, 1969).

Critical challenges in processes of participation are issues of power, inclusion and exclusion. Too often, those who participate are the 'usual suspects' (white, male, resourced, languaged), not only because others are deliberately excluded, but also because they are not deliberately included. An unequal society will create unequal relationships in participatory spaces unless active steps are taken to prevent it happening. As participation is very often geared towards addressing the needs of the poor and disadvantaged, active steps must be taken to include them in ways that increase their capacity to contribute meaningfully (Gaventa, 2002) (Pateman, 1970) (Williams, 2008) (Cornwall, 2002) (Gaventa, 2006). "If there are significant power/resource imbalances between stakeholders, such that

important stakeholders cannot participate in a meaningful way, then effective collaborative governance requires a commitment to a positive strategy of empowerment and representation of weaker or disadvantaged stakeholders" (Ansell & Gash, 2008, pp. 551-552).

Davidoff (1965) argues along similar lines in advancing his idea of 'advocacy planning': "But there is one social group which at present is particularly in need of the assistance of planners. This group includes organizations representing low-income families. At a time when concern for the condition of the poor finds institutionalization in community action programs, it would be appropriate for planners concerned with such groups to find means to plan with them. The plans prepared for these groups would seek to combat poverty and would propose programs affording new and better opportunities to the members of the organization and to families similarly situated." (Davidoff, 1965, p. 334)

Fung's (2005) response to situations where privileged actors use their power to stymie true deliberation or to exclude others is the 'deliberative activist' whose fall-back position is non-persuasive means (protests, sit-ins etc) to get people back to the deliberation table (Fung, 2005). Such action can be directed equally against the state and against non-cooperative non-government actors.

Liquor regulation and municipal planning are issues that affect the lived experience of people in neighbourhoods. While participation is complex and difficult and very often not meaningful, Fung suggests the following three principles which could contribute to more successful participation and deliberation: "(1) a focus on specific, tangible problems, (2) involvement of ordinary people affected by these problems and officials close to them, and (3) the deliberative development of solutions to these problems" (Fung & Wright, 2001, p. 17). There's a real chance that liquor regulation (and its planning implications) can be undertaken using such an approach. It could be actioned through a neighbourhood-based entity adopting an inclusive, deliberative process involving all key stakeholders, supported by a meaningful governance approach with a government structure committed to real, participatory engagement that allows neighbourhood participants a part in decision-making, s16(2)(1) of the Municipal Systems Act notwithstanding. Issues of power, exclusion, process and impact will have to be confronted from the outset to make it work.

g. Governance: sharing power with the people

The increasing complexity of governing, the 'wicked' nature of many of the issues to be addressed, and the breakdown of trust between government and the citizenry have led, over many decades, to a shift from government to governance (Pierre, 1999) (Daviter, 2017) (Innes & Booher, 2003). Governance "includes a whole range of actors and institutions, and it is the relationships and interactions between them that determine what happens within the city" (Devas, 2004, p. 25). It is a shift from "vertical, monocentric, and unilateral steering" to the "horizontal, pluricentric, and multilateral" (Hendriks, 2014, p. 555). Governance is, essentially, a structured form of participation and faces all the same challenges that participation does in attempting to give citizens a meaningful voice in matters that affect them.

Government ‘governs’ together with other agencies in society – most commonly civil society and the corporate sector. The ‘practice’ of governance varies widely, given the sometimes significant differences in objectives of the various stakeholders. These differences are not only between government, the corporate sector and civil society, but within each of these interest groups as well. There are also invariably inequalities of power which can significantly affect the interaction between stakeholders and the outcomes of such interaction (Devas, 2004).

The move from government to governance is also the result of pressure from the citizenry. It is part of the long-standing fight for something more than a representative democracy in which the extent of their political involvement is voting every few years for someone else to speak for them (Gaventa, 2003). At least since the 1960s, people in many countries have demanded to be part of policy- and decision-making on matters that directly impact on their own lives. (Michels, 2011) (Pateman, 2012) (Watson, 2014). Innes & Booher (2003) talk about governance *with capacity* “ that encourages diverse voices and interests, making sure they are informed and empowered to play roles in governance” (Innes & Booher, 2003). For Healey, the goal is also “[g]overnance that transcends bureaucracy and promotes innovation and creativity” (Healey, 2004, p. 11). By this, she means governance that itself is innovative and creative and that enables innovation and creativity in society, economically and culturally (ibid).

A system of ‘governance’ that involves non-governmental actors doesn’t absolve government of its responsibility to deliver. Gaventa and Cornwall believe the goal is to “work both sides of the equation … In both South and North, there is growing consensus that the way forward is found in a focus on both a more active and engaged civil society which can express demands of the citizenry *and* on a more responsive and effective state which can secure the delivery of needed public services (Cornwall & Gaventa, 2001, p. 32). Quoting Putnam (1993), Hendriks says: “A governance model may be considered *responsive* to the degree and way in which it has organized representation, participation, accessibility, and openness. A model of governance may be considered *effective* to the degree and way in which it shows an ability to actually do things, solve problems, and deliver value for money” (Hendriks, 2014, pp. 566-567, from Putnam, 1993).

But the idea of inclusive governance is contested. For some, the more conventional and conservative approach of government more or less exclusively ‘running’ a country offers a certain stability and predictability. The political legitimacy of elected officials is not generally challenged (and if it is, such challenge is resisted) and the roles of technical and administrative staff are understood. Governance – the sharing of authority, representation and decision-making with non-government actors – introduces uncertainty and anxiety. Elected officials and public servants are no longer sure of their roles and powers. At the same time, it’s also difficult to know who the ‘legitimate’ representatives of the people are. This is not just about contestation for recognition between elected officials and civil society, but within civil society itself (Gaventa, 2004).

Governance can also be a sham, used to co-opt and demobilise. 'Governance' and 'public participation' have become the mantra of global institutions such as the World Bank. However, their interpretation of governance appears to be more technocratic than democratic, prompting criticism from a number of theorists and practitioners (Miraftab, 2004) (Sihlongonyane, 2009) (Nadeem, 2016) (Liepetz, 2008) (Cornwall, 2002). Miraftab describes it as a "hegemonic drive of neoliberal capitalism to stabilize state–citizen relations by implicating civil society in governance" (Miraftab, 2009, p. 32). However – and Miraftab does concede this – even if the promotion of governance principles by a government is a sleight of hand to neutralise potential resistance and contestation, there are unintended possibilities for civil society to itself subvert the process and turn it to their advantage (Miraftab, 2004).

While the notion of governance is not in the Constituion, it is reflected in s16(1) of the Municipal Systems Act, 32 of 2000: "A municipality must develop a *culture of municipal governance* that complements *formal representative government* with a *system of participatory governance*" (my italics) (RSA, 2000). It is not clear exactly what the drafters meant when they used the word 'governance'. Further on in s16(1), there is talk of participation in the affairs of the municipality, in performance management, in the budget and in strategic decisions on service delivery. The municipality is enjoined to create the conditions for this to happen and even allocate funds for this purpose (ibid). But then, in s16(2), it says: "Subsection (1) must not be interpreted as permitting interference with a municipal council's right to govern and to exercise the executive and legislative authority of the municipality" (ibid). As indicated above, the same perspective is contained in the Public Partricipation Framework for the South African Legislative Sector which says twice that government is the 'decision'maker' (SALS, 2013). It would seem that s16(2) and the Framework do exactly what Lofchie (1989) says they shouldn't: "[g]overnance does not prejudge the locus or character of real decisional authority" (McCarney, 2003, p. 35). This does raise questions both about what the drafters of the Act understood governance to mean and about government's commitment to public participation.

S16(1) has three distinct concepts. *Formal representative government* is, as noted above, essentially the democratic process of electing a government to represent the people. *Participatory governance* is a system in which non-government actors actively participate in a structured (and sometimes unstructured) way with government to achieve the socio-eonomic goals that government would, in the past, have been expected to achieve on their own. A *culture of municipal governance* seems to use the word 'governance' in a more conventional, dictionary sense – "the action or manner of governing a state, organization, etc".[19] So it would seem that the Act is calling for: local government that operates in a way which ensures that people in local communities don't just vote, but that they also collaborate with local government in the IDP and other planning processes, monitor local government performance,

[19] https://en.oxforddictionaries.com/definition/governance

participate in preparing the budget, and contribute to the setting of service delivery targets, all without interfering with local government's right to govern and have final decision-making power.

If the above is a fair summary of what the Municipal Systems Act is calling for, then it perhaps not surprising that the ward committee system and the IDP process have, to date, largely failed to give citizens a real and meaningful say in governance. Substantive participation in public affairs has not been realised, despite the hopefulness and good intentions embodied in the Constitution and other legislation (Piper & von Lieres, 2006) (Qwabe & Mdaka, 2011). It has been, and remains, as the SALS Framework says, 'an aspiration' (SALS, 2013). The implications for civil society, for social movements, for community-based organisations, for the citizenry at large, it that the battle for a more inclusive and empowering notion of governance must still be fought.

h. Localism

It is argued by some that "[l]ocal government provides citizens with the best opportunity to engage with government between elections [because] …it deal[s] with issues that most directly affect people" (Eglin & Ngamlana, 2015, p. 34). Indeed, the initial calls for more power at local level came from disaffected groups such as women, disenfranchised youth and others who argued against excessive central power over local affairs. The World Bank and neoliberal institutions joined the call for decentralisation, but with a different agenda. They were critical of what they perceived as the inefficiencies of central governments and pushed the decentralisation agenda to reduce the power of the centre (Work, 2002). A perceived lack of capacity in local government led, in some instances, to government outsourcing to the private sector. The result was government more oriented to efficiency than to meeting social needs. The desire for greater democracy that drove the initial call for decentralisation by activists did not materialise (Miraftab, et al., 2008).

In the White Paper on Local Government, developmental local government is described as "local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic, and material needs and improve the quality of their lives" (Pieterse, 2007, p. 3). This includes holding "decision-makers [especially government] accountable for implementing …. decisions" (Eglin & Ngamlana, 2015).

The Constitution also reflects the view that local government is the sphere in which the public should be involved. While there are clauses which encourage national and provincial governments to structure their activities mindful of public involvement and participation, s152(1)(e) very directly requires municipalities to "encourage the involvement of communities and community organisations in the matters of local government" (RSA, 1996), while the Municipal Systems Act obliges them to adopt a 'participatory governance' approach (RSA, 2000).

Miraftab *et al* have acknowledged that, depending on local circumstances and political will, amongst others, decentralisation can indeed enable democratic participation. They also point out that it's not simply a case of centralisation or decentralisation, but that successful decentralisation relies on a strong central government (Miraftab, et al., 2008). It seems, therefore, that opportunities exist in South Africa, using the requirement of a participatory governance approach by local government, to push for a democratised decentralisation which will allow for meaningful participation by citizens in governance in their neighbourhoods and in their cities – and that this can happen without weakening central government. Because the impact of the harmful use of liquor is felt by people where they live, work and play, the localisation of retail liquor regulation and its integration with municipal planning could mean a realisation of the original intentions of those who originally made the call for democratic decentralisation.

i. End note

The reason for this inquiry is to arrive at findings which, if implemented, would result in two related outcomes. The first is a functional arrangement which would ensure that liquor licensing policy and implementation are fully integrated with, and complementary to, municipal planning objectives and strategies. The second is that those functional arrangements, together with other facilitating mechanisms (for example, access to basic information and neighbourhood planning or liquor committees), empower citizens to have a meaningful, material say over municipal planning processes and liquor licensing and regulation in their neighbourhoods.

Underpinning this investigation is the reasonable notion that people should be adequately and holistically protected in their particular spatial context and the even more reasonable notion that they should play an active part in deciding what needs to be done to secure that protection.

There are then two key themes that will inform the research: the legislative environment (the Constitution [especially the Bill of Rights, s156(4) and Schedules 4 and 5], laws and bylaws, regulations and policy frameworks) and public participation (and related themes such as democracy, governance, decentralisation, accountability).

Chapter 3.
Looking for answers: means and methods

"Working at the beginning of a story without knowing the end"
– *(Jara, 1973)*

a. Introduction

The primary aim of this report is to explore the entanglement of municipal planning and the regulation of liquor, the potential for conflict in the relationship between provincial and local authorities in respect of the said functions, and the extent of public participation in these processes. To do this, I drew on my own experience in the Yeoville Bellevue community, in relation to both planning and liquor-related issues. I also did background research, sourcing a range of documents related to the development of the current liquor licensing system in South Africa. In addition, I looked at documentation dealing with the liquor licensing systems in other countries for comparative purposes. The key research method was a case study involving two neighbourhoods of Johannesburg, namely Alexandra and Yeoville Bellevue. The case studies comprised a series of interviews with key stakeholders in government and civil society.

b. Looking from the inside – an auto-ethnographic perspective

My long history in politics and neighbourhood development meant that I did not conduct the research for this report as an observer, but from the vantage point of a participant. This participation was most direct in the neighbourhood of Yeoville Bellevue. I have had a relationship with the area for more than 50 years, first becoming a resident in 1975. After further intermittent periods of living there, I became a permanent Yeoville Bellevueite in 1988. From 1997, I began to involve myself in neighbourhood development issues. This was a very new experience for me – although I had been a social justice activist from 1972 as part of the anti-apartheid movement, I had never worked on local issues. This was because, as a white South African, I had the 'privilege' of living in areas that were well-resourced and well-managed. In black, Indian and coloured areas, those involved in the anti-apartheid struggle were engaged not just at provincial and national level, but also within their own communities where service delivery was poor and sometimes non-existent.

My work in Yeoville Bellevue was at first purely voluntary. I was working for the Gauteng Provincial Government (GPG) and undertook my community activities at night and over weekends. I worked in a number of organisations, including the Ward 67 branch of the African National Congress (ANC), the Yeoville Community Development Forum (YCDF), the Yeoville Community Police Forum (YCPF), the Yeoville Stakeholders Forum (YSF), the African Diaspora Forum (ADF), the Yeoville Bellevue Ratepayers Association (YBRA) and other smaller, more ephemeral entities. In most instances, I was either an executive member or the chairperson. From 2008 until around 2013, I was employed fulltime as the executive director of the Yeoville Bellevue Community Development Trust (YBCDT), a

community-based neighbourhood development vehicle funded by the Johannesburg Development Agency (JDA) and the Development Bank of Southern Africa (DBSA). In mid-2015, I left Yeoville Bellevue, although I have maintained contact with the area and am still involved in one or two small projects there.

I have had a long, though sporadic relationship with Alexandra, starting when I was a teenager. It intensified in the 1980s through my political involvement with activists from the area. More recently, I have worked with young people from Alex on a campaign around liquor advertising through the Southern African Alcohol Policy Alliance in South Africa (SAAPA SA), of which I am currently the National Coordinator.

My time of working on neighbourhood development meant that I interacted for many years with officials and politicians from various government departments and entities. Foremost amongst these was the Gauteng Department of Economic Development (GDED), the Gauteng Liquor Board (GLB), the City of Johannesburg (CoJ) (especially the department responsible for planning), the Johannesburg Development Agency (JDA) and the SAPS. Finally, I had working relationships with other non-government organisations such as the Central Johannesburg Partnership (CJP), street trader organisations, and students and lecturers from the University of the Witwatersrand.

Because of this history, I did not have difficulties securing interviews. People that I knew and had worked with were happy to talk to me. My contacts in different sectors helped me to reach other people with whom I had no personal history, some of whom knew of me and my work. In some instances, even interviewees that I met for the first time through the research were willing to assist me to secure meetings with other possible respondents.

Ethnography emerged as a response to the traditional anthropological approach to studying people and their cultures and practices. Anthropologists would move in and out of the community they were studying, observing what was happening as an outsider. Objectivity was regarded as critical to such studies – the observer was not to 'insert' him or herself into the subject of the study. Ethnography, on the other hand, argues that it is possible to achieve a greater 'truth' about a people or a place or a practice through the ethnographer immersing him or herself in the environment which is the focus of their research. Through a variety of methods – spending an extended period of time living in the community that is being studied, participant observation, learning the language of the area, engaging in the culture and rituals of the community, self-reflection etc – the researcher is believed to be more likely to produce an honest and realistic narrative than someone who visited the same area sporadically as a disconnected onlooker (Adams, 2012) (Wilkinson, 2013) (Willis & Trondman, 2002) (Tedlock, 1991) and others.

Clifford Geertz (1973), cited in Wilkinson (2013) talks about the difference between a "'thin' or purely factual description" and a "'thick' description [which] is one of contextualising what is being studied in order to understand what its meaning is in that particular context, situation or instance" (Wilkinson,

2013, p. 132). In addition, the ethnographic process is deepened by "two further dimensions … reflexivity and positionality" (ibid). Reflexivity is defined as "the need to be critically conscious of what one is doing as one does it" (ibid) and positionality as describing "the researcher's relationships to her research, which are recognised as influencing the research process and outcomes" (ibid, p. 134).

My situation is different to that of the usual ethnographer, even the type who has "gone native" (Tedlock, 1991, p. 69), "'native' refer[ring] not to a concept of aboriginality, but rather to 'anyone who has grown up within a specific cultural milieu'" (Adams, 2012). Of course, in South Africa, one has to be particularly sensitive in using the term 'native', given that it was one of the many perjorative and demeaning terms used by whites to 'other' and subjugate black people.

The early period of my life in Yeoville Bellevue occurred during apartheid. To an outsider who was not aware of my anti-apartheid activities, I was just another young white South African male living in the neighbourhood. I was a 'native' of the area, 'belonging' there in a very political sense, as it was classified as a 'white' area in terms of the Group Areas Act, 41 of 1950.

In the 1980s, there were tentative demographic shifts in innercity neighbourhoods like Yeoville Bellevue. The following decade, however, was characterised by rapid, fundamental change following the repeal of the Group Areas Act and other apartheid legislation, and the start of the negotiations that led to the first-ever democratic elections in South Africa. In 1991, the population of Yeoville Bellevue was around 18 000, just under 80% of whom were white. By 1998, the population had more than doubled and was over 90% black (Smithers, 2013). The majority of whites had decamped to other suburbs, other cities and other countries. Subsequently, the area has also attracted a large number of migrants, mainly from the rest of Africa – the 2011 census estimated migrants to comprise 52% of the Yeoville Bellevue population (ibid).

I didn't leave. I had spent my adult life fighting for an integrated South Africa and Yeoville Bellevue had, in a short period of time, become integrated, more so than most other neighbourhoods across the country. I was at home. So when I began development work in Yeoville Bellevue in 1997, some of which involved research, I did so not as an outsider, but as a 'native' of the neighbourhood.

There were obvious differences between me and the bulk of people living in the area from the late 1990s onwards. I was white, middle class, educated, employed, and still enjoying many of the benefits of my 'privileged' position in South Africa (and Africa and the world). Nevertheless, I was no less part of the neighbourhood than anyone else and this was generally confirmed in my relationships with people living and working alongside me.

Moreover, I was an active resident, not just of Yeoville Bellevue, but of Johannesburg itself. This meant understanding my work in Yeoville Bellevue not as an isolated neighbourhood, but as an integral part of Johannesburg, itself continually transforming in post-apartheid South Africa. I had not 'gone native',

I had been a 'native' of the area for a long time and therefore my research could be characterised, in part, as auto-ethnographic, which is described by Tetnowski & Damico (2014) as "a member of a group or interaction stud[ying] their own group or an activity they are participating in" (Tetnowski & Damico, 2014). Nevertheless, particularly with respect to the Yeoville Bellevue interviews, I have taken care not to allow my own 'voice' to interfere with the views of the respondents.

The transformation of Yeoville Bellevue has been a challenging one and structures that I worked with sought to ensure that the people living and working in the neighbourhood had a meaningful influence over decisions around the neighbourhood's future (including in relation to the allocation and regulation of liquor licences) (Smithers, 2013).

Challenges include overcrowding, unemployment, poverty, infrastructural degradation, economic decline, crime, substance abuse and other socio-economic issues, exacerbated by an ineffective urban governance strategy by the CoJ. In contrast to (and in spite of) these real impediments to the achievement of a reasonable lived experience for the people of the neighbourhood, Yeoville Bellevue was, and remains, a dynamic, vibrant, pan-African econo-cultural environment that deserves to be protected and improved.

In the process of carrying out our work, we regularly came up against the liquor regulation system and the challenges posed by liquor in Yeoville Bellevue. There was a licensing system that appeared to be granting licences fairly indiscriminately; the sale of alcohol from unlicensed premises; premises (licensed and unlicensed) that behaved in an anti-social manner, impacting negatively on the day-to-day lives of people living and working in the area; and limitations on the ability of citizens to make their voices heard in relation to these challenges.

I participated in a number of liquor licence application hearings in the Johannesburg Local Committee of the Gauteng Liquor Board and in hearings of the Gauteng Liquor Board itself. I also actively promoted the sharing of liquor licence application information with citizens in the area with a view to enabling them to object to those licences, should they wish to do so.

I wrote a number of articles on the subject of liquor licensing and post-licensing regulation of outlets, especially in relation to problems created by such outlets for members of the community. These articles appeared in our own weekly neighbourhood newsletter, of which I was the editor, and in provincial and national newspapers. I have on occasion been interviewed on radio and television on the topic. In 2013, I was commissioned by Professor Philip Harrison, the South African Research Chair in Development Planning and Modelling, School of Architecture and Planning, University of the Witwatersrand, to produce an ethnographic report of my work in Yeoville Bellevue. This was launched in 2013 and contains a dedicated section on the challenges around liquor in that neighbourhood (Smithers, 2013, pp. 48-55).[20]

[20] Available for free download from http://bit.ly/2F1kgi5

In 2013, I initiated the taking of legal action against the Gauteng Department of Economic Development and the Gauteng Liquor Board (YBRA and one other vs Gauteng Department of Economic Development and 21 others, 2013) to challenge the Gauteng Shebeen Licence Regulations (GDED, 2013). We considered the regulations to be unconstitutional, impacting directly on the rights of ordinary citizens living in Gauteng. This was because the Regulations did not oblige shebeen licence applicants to advertise their applications – even though this is a requirement for applications for all other licenses categorised in the Gauteng Liquor Act (GDFEA, 2003). The principle underpinning this requirement is that members of the public must be made aware of liquor license applications because they have the right to comment on, or object to, such applications, just as they have the right to have a say in land use management decisions, e.g. a rezoning application or a new development. This is because, in both instances, the lived experience of the people living in the vicinity of the premises for which the application has been made may be impacted – it is therefore logical for people to have the right to have a say over the decision on whether the application is approved or not. We were successful in having the Shebeen Regulations declared *ultra vires* because they did not allow people that right. The GDED has been instructed by the court to develop new regulations by November 2019.

Finally, I have served on the Board of the South African chapter of the Southern African Alcohol Policy Alliance (SAAPA SA) and am currently the National Coordinator. SAAPA Region is an organisation operating in eight Southern African countries, including South Africa. It is dedicated to advancing the right of ordinary citizens to participate fully in the formulation and implementation of alcohol policy in their respective countries. While the outcome of this research will be noted and possibly utilised by SAAPA SA and/or SAAPA Region, it is not commissioned by, or specifically intended to further the interests of, SAAPA SA and/or SAAPA Region.

These experiences have shaped my understanding of the societal impact of alcohol and of the shortcomings of the current regulatory environment. I am therefore not approaching the topic as a disinterested observer. Nevertheless, I will approach the research with an open, enquiring mind and the necessary academic rigour.

My final disclosure in this section is that I am myself a moderate drinker. I am therefore not approaching my research as a teetotaller or, indeed, as someone who is in principle opposed to the distribution and consumption of liquor. I recognise that the consumption of liquor has been part of human practice for a very long time – an article in National Geographic magazine cites evidence that people have been producing alcohol for more than 9 000 years (Curry, 2017) – and that this is unlikely to change in the near future, if ever. My concern is the rights of citizens to have a meaningful say over decisions concerning whatever distribution and consumption of liquor does take place, given that it is ‘no ordinary commodity’ (Babor & Caetano, 2003) and has the potential to impact very negatively on their lives if not properly managed.

c. Contextualising the research – liquor in South Africa and the world

In order to provide context for the research topic of this report, it was important to understand a number of issues: the history of liquor in the world and in South Africa and its entanglement with the present; the original motivation for the constitutional allocation of the mandates for municipal planning, retail liquor licensing and control of retail liquor outlets; how implementing one impacts on the others; the current and potential role of public participation in dealing with the 'wicked problems' of municipal planning and liquor regulation; global trends in the spatial management of liquor and what can be learned from both scholarly and practitioner-based reflections and findings.

Extensive desktop research was done to source a wide range of material including: journal articles, books and other relevant published and peer-reviewed material; and all forms of 'grey literature', including material produced by civil society organisations, South African legislation (national, provincial and local) and selected international legislation, and media articles, print and electronic, textual, audial and visual.[21] The objective was to gain a comprehensive overview of the subject and to see what might be relevant to the purpose of this report. Where necessary, hard copy material was sourced from public and personal libraries as well.

d. The perspectives of stakeholders – case study in two neighbourhoods

The main aim of this report was to research the impact of the current constitutional delegation of responsibilities on the work of different arms of the state and on people spatially implicated by liquor outlets in residential, mixed use and business neighbourhoods. Key to the investigation were issues of communication, cooperation, participation, inclusion and (dis)empowerment. It was therefore important to get first-hand insight into the experience of stakeholders working in the state and those living in communities and working in community structures. The case study method provided an opportunity to access that experience through interviews with respondents from two neighbourhoods in Johannesburg, namely Alexandra and Yeoville Bellevue.

As indicated above, I lived and worked in Yeoville Bellevue for many years and so am intimately aware of the challenges of the neighbourhood. I also have a number of ongoing connections with the area, even though I no longer live there. My history in the area made it easy for me to identify the right people and secure interviews with them.

[21] Grey literature is "information produced on all levels *(sic)* of government, academics, business and industry in electronic and print formats not controlled by commercial publishing i.e. where publishing is not the primary activity of the producing body" (GLISC, 2007)

I have had experience of Alexandra since the 1960s and have worked closely with a number of people from the neighbourhood, in the 1970s and 1980s, and more recently in the current decade. Once again, this helped me to secure interviews and the cooperation of the interviewees.

Both areas are profoundly affected by municipal planning issues and by the socio-economic impact of the harmful use of liquor. It was therefore more useful to engage with residents and officials connected with these particular areas than it would have been to talk to people in an area which had less exposure to such challenges. This is because the issues at the heart of this research – the effectiveness of the allocation of constitutional mandates and the extent of public participation around municipal planning and the distribution and consumption of alcohol – are so immediately critical to the people of Yeoville Bellevue and Alexandra and to the officials in various government entities that have to deal with these issues in the chosen areas on a day-to-day basis.

Interviews were conducted with people who either live or work in the two neighbourhoods and with others who work directly or indirectly with municipal planning and alcohol issues in these and other areas. These included officials from the GPG and the CoJ who are involved in the liquor licensing process, the liquor outlet regulation process, and municipal planning and urban management processes. The respondents from the two neighbourhoods included SAPS officials, Ward Councillors, Community Police Forum members and community leaders (see maps below). Further interviews were conducted with a representative from the SA Local Government Association (SALGA), two liquor lawyers and representatives from two liquor trader bodies.

The interviews provided rich insight into the understanding and experience of all interviewees of the interface between the liquor licensing and regulation environment and municipal planning. Respondents had, to a degree dependent on the extent of the involvement of each in the liquor milieu, thought about the challenges associated with liquor regulation, municipal planning and society. All respondents were extremely cooperative and generous with their time. Although some had criticisms of other role-players, there was no hostility or animosity. All seemed genuinely interested in contributing to the overall project of finding a (re)solution to the many challenges associated with liquor, some making useful suggestions for improving the situation.

The list of interviewees appears below. There is a brief biography of each (below) which indicates the name of their structure and the position they occupy (without being too specific with the latter); where they are from originally (all but one person interviewed currently lives in Gauteng); their highest educational achievement; how long they have had dealings with planning and/or liquor regulation; what that specific involvement is; and whether they themselves drink or not.

Respondents were asked whether they drink with a view to gauging whether their views are based on being anti-liquor (for religious or other reasons) or whether they are simply concerned with the current liquor management regime. There is a global temperance movement (which generally preaches

abstention rather than temperance) which would like to see an end to liquor consumption altogether. It was important for this research not to be dominated by supporters of the temperance movement or by the opinions of people with strong moral or religious objections to liquor and to keep the focus on functional arrangements and public participation.

- **Representatives from the City of Johannesburg (CoJ) (Officials) | Adult | 3**
  - **Manager in Development Planning**
  - From Johannesburg Metro area
  - Has a B Tech Town Planning (wanted to be an architect, but was directed to planning)
  - Has been with the CoJ for around 20 years
  - Has worked with the GLB on liquor issues for many years
  - Does drink alcohol

  - **Manager in Development Planning**
  - Originally from Limpopo
  - Masters in Town and Regional Planning Urban Studies
  - Has been in the CoJ for less than five years
  - Is part of the CoJ approval chain for liquor licences
  - Doesn't drink alcohol

  - **Manager in Environmental Health**
  - From Johannesburg Metro area
  - B Tech Environmental Health
  - Been with the CoJ for more than 30 years
  - Has worked directly on liquor issues in the past, but no longer – has staff who do
  - Does drink alcohol
- **Representatives from the CoJ (Ward Councillors) | Adult | 2**
  - **Ward Councillor in one of the Alexandra wards**
  - From Johannesburg Metro area
  - Matric
  - Councillor for three years to date – wants to 'make a difference'
  - Assists community with following up on liquor-related problems
  - Does drink alcohol

  - **Ward Councillor in one of the Yeoville Bellevue wards**
  - From Johannesburg Metro area
  - Matric
  - Councillor for eight years to date – worked on Ward Committee before that
  - Assists community with following up on liquor-related problems
  - Does drink alcohol
- **Representative from SA Local Government Association (SALGA) | Adult | 1**
  - **Specialist in Development Planning at SALGA**
  - Originally from Limpopo
  - BSc Honours Regional and Development Planning
  - Joined in 2010, left 2017
  - Represented SALGA on liquor issues in meetings with government departments etc
  - Does drink alcohol

- **Representatives from the Gauteng Liquor Board (GLB) | Adult | 2**

  - **Manager in the GLB**
  - From Johannesburg Metro area
  - Has an MBA
  - Has been with the GLB for over ten years
  - Works with the public (traders and citizens) on liquor issues
  - Doesn't drink alcohol

  - **Member of the Johannesburg Local Committee of the GLB**
  - From Free State
  - B Proc LLB
  - Was with the JLC GLB for 11 years (no longer there)
  - Helped to process applications for recommendation to the GLB
  - Does drink alcohol

- **Representatives from the South African Police Service | Adult | 2**

  - **Officer from Alexandra Police Station**
  - Limpopo
  - B Tech Policing
  - 28 years
  - Works with whoever is the station's Liquor Officer
  - Drinks alcohol occasionally

  - **Officer from Yeoville Police Station**
  - Originally from KwaZulu Natal
  - Diploma in Police Administration
  - With SAPS for over 30 years, in Yeoville for nearly 20 years
  - Was once Liquor Officer, now works with Liquor Officer
  - Doesn't drink alcohol

- **Members of Community Police Forums (statutory structures) | Adult | 2**

  - **Member of the Alexandra Community Police Forum (ACPF)**
  - Born in Limpopo, in Alex from a young age
  - Matric
  - 18 years with CPF, before that a Street patroller from 1996
  - Works with SAPS and community on *inter alia* liquor-related issues
  - Occasional drinker of alcohol

  - **Member of the Yeoville Community Police Forum (YCPF)**
  - Originally from KwaZulu Natal
  - University degree
  - 20 years
  - Works with SAPS and community on inter alia liquor-related issues
  - Drink alcohol very occasionally. Sometimes months pass without a drink.

- **Community representatives (from non-statutory structures) | Adult | 2**

  - **Member of the Alexandra Civic Association (ACA)**
  - Originally from Limpopo
  - Matric
  - With ACA from 2015
  - Community interests at heart – assists with liquor-related issues
  - Does drink alcohol – interview took place in a tavern in Alexandra (in the interests of disclosure, I had a drink too)

- **Member of the Yeoville Bellevue Ratepayers Association (YBRA)**
- Originally from Eastern Cape
- B Admin Hons (Industrial Psychology)
- Active in Yeoville Bellevue for nearly 20 years
- Has made objections to applications and attended hearings
- Doesn't drink alcohol (except champagne for toasting)

- **Representatives from Liquor Trader bodies| Adult | 2**

- **Member of the Gauteng Liquor Forum (GLF)**
- From Ekurhuleni Metro area
- Matric
- Selling liquor from 1999, member of GLF from 2008
- Representing the interests of liquor traders in Gauteng
- Does drink alcohol

- **Member of the South African Liquor Traders' Association (SALTA)**
- From Johannesburg Metro area
- Matric
- Has had a shebeen since the 1980s, involved in SALTA from 2007
- Representing the interests of liquor traders in Gauteng and South Africa
- Does drink alcohol

- **Members of legal profession (dealing in liquor licensing) | Adult | 2**

- **Lawyer and liquor licence consultant**
- From Johannesburg Metro area
- LLB
- Involved in liquor issues from 2016, always been interested in social justice
- Represents licence applicants and licensees in court cases, consultant, writer
- Does drink alcohol

- **Liquor lawyer**
- Originally from Tshwane Metro area
- BA LLB
- Involved in liquor law since 1979 through circumstance
- All aspects of liquor law, for and against applications, advice and consultancy
- Does drink alcohol

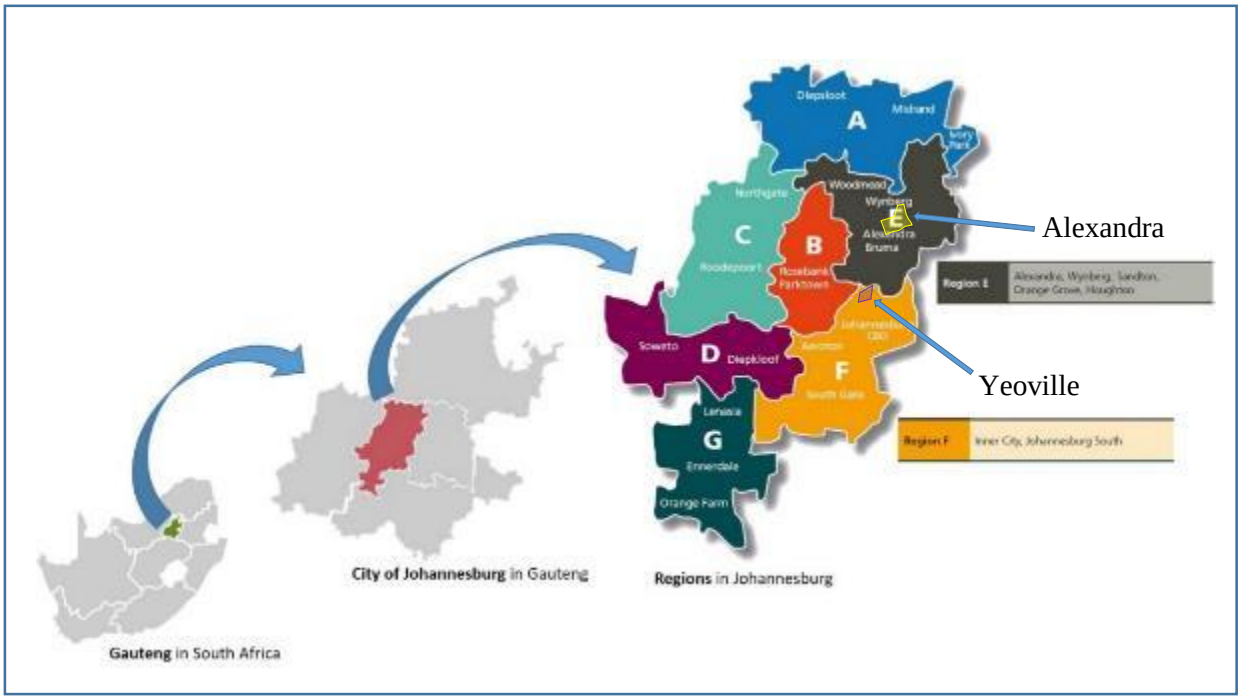


Figure 3: Locating the case study areas

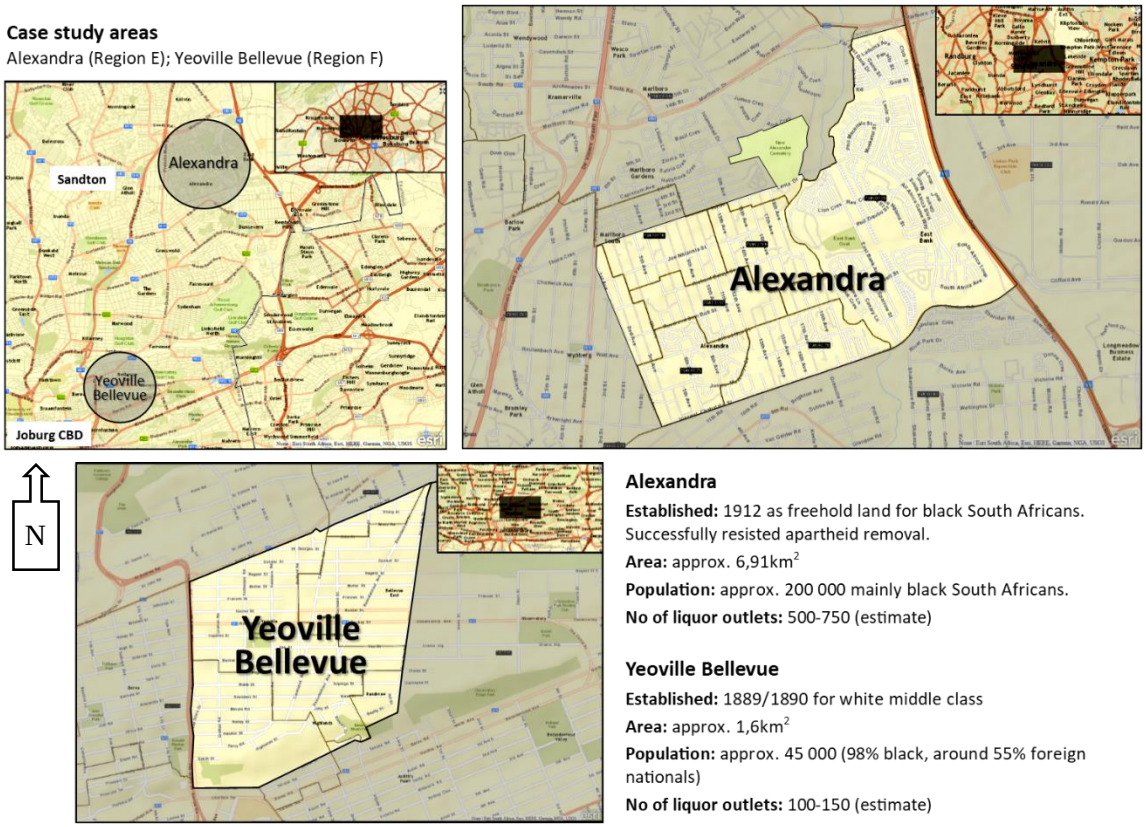


Figure 4: Case study area maps and basic demographic indicators

e. Doing things right – observing ethics protocols

A key element of the data collection involved face-to-face interviews with a number of stakeholders. This required securing ethics clearance for the research which was done (the clearance certificate is included in the appendices at the end of the report). To satisfy ethical requirements, the procedures set out below were adopted in the data collection process.

Most of the respondents were interviewed in their official capacities as representatives of government, liquor trader associations or civil society organisations. Even individuals such as liquor lawyers were interviewed in relation to the specific role they play in the liquor licensing process, not as individuals. Respondents were advised that their names would not be used in the report, but that they would referenced only in relation to the organisation they represented and to the position that they held within that organisation, in a way that would make it very difficult, if not impossible, to identify them. Most respondents had no problem with being identified and would have been happy even if their names were included. The one or two who preferred to be anonymous (eg the SAPS representatives) are referred to in the report simply as people serving in a particular organisation or structure.[22]

Before the start of each interview, respondents were told what the research was about; why they in particular were being interviewed; how the interview would be conducted; how they would be referenced in the report; and what would be done with the information that they shared. They were reminded of their rights to refuse to answer a question; to challenge the interviewer if they had a problem with how the interview was being conducted; and to terminate the interview process at any time. They were advised that confidentiality would be respected and that they may be contacted to verify the record of the conversation. If they agreed to continue with the interview on that basis, they would also be asked if the interview could be audially recorded with a cellphone. Written notes would be taken anyway and recordings would be used to confirm accuracy of the notes. They were then asked to sign the Consent Form, indicating in a tick box whether the recording could be done.

Special ethics clearance to interview 'vulnerable' people was not needed. No photographs or videos were taken of respondents, and audio recordings were only made with permission. All respondents were advised that they would be given a copy of the final research report for their information.

[22] References to people in the text may not be gender-accurate – respondents will be randomly allocated a gender identity to make it even more difficult to identify them. Gender is not considered to be significant in this research. They do not have *noms de plume* as giving them names would not add particular value. Their positions will be used to identify them when reporting on their testimony. Individual ethnic origin has also not been referenced (for the record, though, almost all were black South Africans).

Chapter 4.
Then and now, here and there – history and the present: SA and the world

In 1881, then Zulu King Cetshwayo appeared before the Native Laws and Customs Commission, in which the following exchange took place:

> "Have you any law preventing people from drinking or selling beer made in your country?"
> "No, that is the food of the Zulus; they drink it as the English drink coffee"
> "Does it not make them drunk?"
> "Some get drunk when they drink too much."|
> "Are they punished?"
> "No, unless a man does something wrong when he is drunk."
> – *(La Hausse, 1988, p. 7)*

a. Introduction

The global history of liquor probably goes back to around 9 000 BCE during the Neolithic Period. Research published in 2004 revealed that pot shards from that era containing the first firm evidence of the deliberate production of a fermented beverage had been discovered in China (Curry, 2017). However, it's likely that human exposure to the effects of alcohol happened long before that through the eating of fruit that had fermented after dropping to the ground from trees (ibid) (Phillips, 2014). The first record of attempts to impose any form of control over liquor seems to be the Hammurabi Code, an ancient set of Babylonian rules of behaviour from around 1770 BCE (ibid).

Since then, key themes in the history of liquor have been "its contested status and the struggle to find a way to realize its benefits while minimizing its dangers" and "its regulation, for there are few societies where alcohol has not been restricted in some way" (Phillips, 2014, pp. 2-3 (Kindle edition)).

This chapter looks briefly at that history in South Africa and the current regulatory environment for liquor. It then does a global scan to determine international trends in the regulation of alcohol, particularly with respect to which terrain of government is generally responsible for licensing and regulating retail liquor outlets.

b. Liquor licensing in South Africa, then and now and why

The regulation of the production, distribution and consumption of liquor has long been a matter of concern in South Africa, as it has in most of the world. Legislation to enable such regulation before 1994 was racially-determined, with one set of rules for white consumers and another for black consumers. In fact, liquor legislation restricted access to 'white' liquor (clear beer, wine and spirits) for black citizens partially or completely for hundreds of years (Mager, 2010). This was not unusual

practice in countries that were colonised by Europe. It was informed by a narrative that said that indigenous people in colonised territories did not have the same capacity to handle liquor as the white colonisers (Phillips, 2014) (Mager, 2010). As a result, "[t]he issue was taken up at the 1889–90 Brussels conference convened to deal with the slave trade and the commerce in arms and alcohol.[23] The conference banned the extension of trafficking in alcohol and the local distilling of alcohol in regions [in Africa] where they did not already exist, between latitudes 20 degrees north and 22 degrees south" (Phillips, 2014, p. 218).

This agreement was further ratified in Saint-Germain-en-Laye in France in 1919 by the United States of America, Belgium, the British Empire, France, Italy, Japan and Portugal (Germany had lost its colonies in the Great War of 1914-1918) – on this occasion, the exempted countries were named, viz. Algiers, Tunis, Morocco, Libya, Egypt, and the Union of South Africa.[24] The agreement, as before, targetted distilled liquors and included a clause which said that "The above prohibition can be suspended only in the case of limited quantities destined for the consumption of *non-native persons* (my italics), and imported under the system and conditions determined by each Government" (High Contracting Parties, 1919).

It is one of the many ironies of colonialism that the colonisers had themselves introduced various types of liquor into indigenous communities, sometimes for trade (for slaves, land and commodities), sometimes for control. Not all of these communities produced their own indigenous alcohol products so, for some, alcohol was a new experience. The same colonial 'authorities' then decided that the locals were not able to drink such liquor 'responsibly' and restricted their access to it (Phillips, 2014). The attitude of many of the colonial invaders is summed up in the words of "Paul Le Jeune, a Jesuit missionary in the St. Lawrence Valley [Canada] in the 1630s, who commented, 'The savages have always been gluttons, but since the coming of the Europeans they have become such drunkards that …they cannot abstain from drinking, taking pride in getting drunk, and making others drunk" (Phillips, 2014, p. 149). Paternalistic groups such as the United Committee for the Prevention of the Demoralization of the Native Races by the Liquor Traffic were set up in Europe by concerned citizens who shared the view of many that indigenous people lacked self-discipline and willpower (Phillips, 2014).

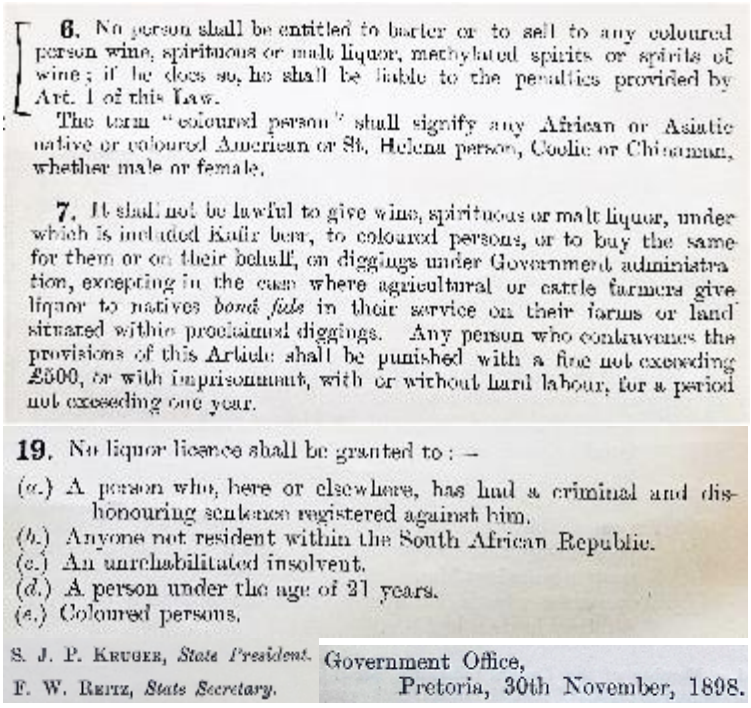
Much research has been done into how liquor was used to control indigenous workers, including in the Cape of Good Hope using the 'dop' system and initially on the mines in the Transvaal and elsewhere (Singer, 2003) (Shărf, 1984) (La Hausse, 1988) (van Onselen, 2001) (Mager, 2010).[25] This was

[23] Full title: Convention Relative to the Slave Trade and Importation into Africa of Firearms, Ammunition, and Spirituous Liquors. The ban excluded North African countries like Algeria where France was producing liquor while it tried to deal with the outbreak of phylloxera which has devastated French vineyards, and South Africa where the liquor industry was being managed by the white settler authorities.

[24] The 'white' territories in the British Empire were also signatories – Canada, Australia, New Zealand and South Africa. India was also invited to sign and did so.

[25] Under the 'dop' system, indigenous workers received part of their 'remuneration' in liquor.

followed by concerted efforts to impose a complete ban on access to 'white' liquor, partly to improve productivity on the mines (van Onselen, 2001). By 1898, such a ban was in place in the South African Republic (i.e. the Transvaal) under Paul Kruger (South African Republic, 1898).



6. No person shall be entitled to barter or to sell to any coloured person wine, spirituous or malt liquor, methylated spirits or spirits of wine; if he does so, he shall be liable to the penalties provided by Art. 1 of this Law.

The term "coloured person" shall signify any African or Asiatic native or coloured American or St. Helena person, Coolie or Chinaman, whether male or female.

7. It shall not be lawful to give wine, spirituous or malt liquor, under which is included Kaffir beer, to coloured persons, or to buy the same for them or on their behalf, on diggings under Government administration, excepting in the case where agricultural or cattle farmers give liquor to natives *bonâ fide* in their service on their farms or land situated within proclaimed diggings. Any person who contravenes the provisions of this Article shall be punished with a fine not exceeding £500, or with imprisonment, with or without hard labour, for a period not exceeding one year.

19. No liquor licence shall be granted to: –

(*a.*) A person who, here or elsewhere, has had a criminal and dishonouring sentence registered against him.
(*b.*) Anyone not resident within the South African Republic.
(*c.*) An unrehabilitated insolvent.
(*d.*) A person under the age of 21 years.
(*e.*) Coloured persons.

S. J. P. Kruger, *State President.*
F. W. Reitz, *State Secretary.*

Government Office,
Pretoria, 30th November, 1898.

Figure 5: Extracts from the South African Republic (i.e. the Transvaal) Liquor Act, 19 of 1898 banning the sale of alcohol to people of colour and barring people of colour from holding a liquor license. Elsewhere in the Act, however, there is provision for the 'dop' system (South African Republic, 1898).

The formation of the Union of South Africa in 1910 consolidated existing racially-based prohibitions across the newly-proclaimed country. A Schedule in the Union of South Africa Act, 1909, drawn up in terms of section 151 of that Act, specifically forbade the sale of intoxicating liquor to 'natives' from the 'native territories' which were not part of the four 'white' colonies (which already had their own restricting Acts), but still 'enjoyed' the 'protection' of the (British) king (United Kingdom, 1909). These restrictions were entrenched and strengthened in the first liquor legislation of the new Union, Liquor Act, 30 of 1928 (Union of South Africa, 1928).

That the ban on the sale of liquor was restricted to black drinkers and not to those of European descent was not unusual – this appeared to be common in most colonised countries, where it was assumed that the more 'civilised' white drinkers knew how to manage their liqour or, more probably, that a blind eye was turned to their excessive consumption and unruly behaviour (Phillips, 2014). That would explain the provision in the 1919 colonial agreement that liquor could be imported into Africa for *non-native* persons (High Contracting Parties, 1919). Nevertheless, the South African colonies in the 19th century and the new Union in the 20th century clearly didn't think white people could be allowed to drink without restriction at all – the point of the various pieces of liquor legislation was not only to cut off access to black drinkers, it was also to control those who were allowed to drink.

The 19th century saw the rise of the temperance movement in many countries of the world. Members initially called for moderation in consumption but soon progressed to calling for a total ban on liquor in Europe and North America, thereby confirming that it was not just indigenous people and people of colour that had problematic drinking habits. Their advocacy work, boosted by a general frustration with crime, corruption and other social problems, eventually led to the prohibition period in the United States (1920-1933) during which the manufacture and sale of liquor was strictly forbidden (Phillips, 2014).

In South Africa, prohibitionists wanted to see the restrictions on black drinkers extended to the general population, but were not successful in their efforts (McCutcheon, 2019). However, 'local option' had been used prior to the Liquor Act of 1928. "'Local option,' the power of municipalities or regions to impose prohibition or restrictive rules on alcohol production and distribution, was often a compromise when a national government was unable or unwilling to apply such policies to its entire population". (Phillips, 2014). Existing 'local option' arrangements in place at the time of the drafting of the 1928 Act were granted continuance by the Act (Union of South Africa, 1928).

This same 'local option' solution was adopted in up to 30 American states after prohibition was lifted and continues to date – in 2014, for example, 10% of counties across the US had a partial or full ban on alcohol. (Billings, 2014) 'Local option' has also been considered – and used in some instances – in other countries such as Sweden, Germany and India (Phillips, 2014).

The total ban on the sale of 'white' liquor to black drinkers in South Africa continued until 1961 when it was lifted following the Malan Commission of Enquiry into its sustainability. The Commission said, *inter alia*, that:

> 'A million Natives … who have virtually no legal access to the alcoholic beverages of the white man, (they) are an excellent profitable and protected source of income to the illicit trader.' (La Hausse, 1988, p. 64)

While the Liquor Amendment Act of 1961 allowed black drinkers to buy and consume 'white liquor' legally, they were still only able to get it through state-owned entities (bottle stores and beerhalls) (Shărf, 1984). Where they could buy from white privately-owned liquor outlets, they had to use a separate entrance and buy over a counter rather than have the option, as whites did in their section of the liquor store, of walking along aisles making their own selections. At that stage, there was no option for black businesspeople to sell liquor themselves.

During the Soweto uprising of 1976, beerhalls were burnt down and shebeens shut down by school students who saw liquor outlets as a major problem in the lives of their parents and of township dwellers in general:

> "All (that our parents) do is drink and try to forget the problems facing Blacks. That is why we burned down the bottle stores and told the shebeens to close down. Most have and we will deal with

> those still operating … shebeens [are] … [a] cause of unhappiness in the Black man's life. A number of lives have been lost because of the operation of these shebeens. Salaries have been lost because they were first opened in shebeens. Futures have been wrecked by the operation of these shebeens . . . . . nothing good has ever come out of them. Hundreds of our colleagues have become delinquents, beggars or orphans as shebeen kings and queens have become capitalists. We can no longer tolerate seeing our father's pay packets emptied in shebeens (Shărf, 1984, pp. 58-59).

This led to a change of strategy by government who sought to regularise the situation by allowing black entrepreneurs to enter the liquor market and by taking steps to allow for the legalisation of (some) of the many existing shebeens in townships across the country (ibid). Although section 23(1)(a) of the Liquor Act, 87 of 1977, allowed for special authority to be given to a 'Bantu' to acquire an on- or off-consumption liquor licence, there were still draconian restrictions contained in the Act, setting out different rules for different ethnic groups (RSA, 1977) until the Liquor Act, 59 of 1989 which, unlike the 1977 version, made no mention of race (RSA, 1989). Of course, this was the time of the *bantustans*, where black South Africans were supposedly to enjoy 'independent' political rights. There would, therefore have been liquor laws specific to those territories (these were repealed in 1995 when the 1989 Liquor Act was amended to cover those territories as well (RSA, 1995)). Nevertheless, the 1989 Act did not exclude black South Africans with the administrative 'right' to live in 'white' South Africa from the liquor economy, meaning that it was probably the first piece of liquor legislation in the history of South Africa that was not based on race.

Critical to this report is the history of liquor boards. The liquor acts of 1898 and of 1928 both make provision for the establishment of liquor boards *in each district* – of the South African Republic (Transvaal) in 1898 (South African Republic, 1898) and of the Union of South Africa in 1928. In these acts, districts are associated with magisterial jurisdictions. Neither Act gives a definition of a 'district'. However, Johannesburg was, before 1994, a 'magisterial district' and s13(2)(b) of the 1928 Act talks about districts that might have more than one "urban local authority" (Union of South Africa, 1928). It is reasonable, therefore, to suggest that the equivalent of a district in 2019 South Africa could be a Metro, a local municipality or a district municipality.

In contract, s2 of the Liquor Act of 1977 says: "The National Liquor Board shall … continue to exist under the name the Liquor Board" (RSA, 1977). This is an indication that, subsequent to the 1928 Liquor Act and by means of one of the many amendments to it enacted between 1928 and 1977, the authority for liquor licensing was moved from districts to national. In terms of s5 of the 1989 Liquor Act, "[t]he Liquor Board shall, notwithstanding the repeal by this Act of the Liquor Act, 1977 (Act No. 87 of 1977), continue to exist" (RSA, 1989). License applications would be submitted to the magistrate of the district in which the licence was required and then sent to the Secretary of the Board once the police had made their recommendations and the public had had the opportunity to object. Magistrates also had the authority to issue temporary licences without referring them to the Board.

In 1995, the Liquor Act of 1989 underwent the latest in a series of amendments. In terms of the amendment, s5 now made provision for the establishment of *provincial* liquor boards (RSA, 1995). As will be seen, the constitutional decision to give provinces the exclusive competency for liquor licensing was only made sometime in April or May 1996, towards the end of the constitutional process. Research has not thus far uncovered written evidence of why the power to establish provincial liquor boards was given to provinces in 1995, many months before the Constitutional allocation. There is also no recorded evidence of why such authority was finally given to provinces in May 1996 in the constitutional proposals submitted to the Constitutional Court (Constitutional Assembly, 1996).

What is known is that the Interim Constitution of 1993 contains no reference to liquor or any form of licensing at all. Certain competencies are allocated to provinces, but these do not include liquor licensing. One such competency is that of local government, subject to Chapter 10 of the Interim Constitution. The Interim Constitution does not set out in great detail what role local authorities will play and, as will be seen, the Constitution of 1996 takes away local government as a competence of provinces and accords to local government autonomy as a separate sphere of government. What the Interim Constitution does say in section 175(2) is that "[a] local government shall be assigned such powers and functions as may be necessary to provide services for the maintenance and promotion of the well-being of all persons within its area of jurisdiction" (RSA, 1993).

During deliberations on the drafting of a new constitution for South Africa, members of the Constitutional Assembly proposed a range of institutional options for post-apartheid government. Some argued for a centralised state with provinces playing a merely administrative role, as was the case historically, while others pushed for a federal state with strong provinces, with various other configurations in between (Constitutional Assembly Theme Committee 3, 1995). The final decision was to have a central state with three distinct sites of authority: a strong national government, provinces with concurrent and exclusive mandates, and significant, autonomous powers delegated to local government, the immediate point of delivery of services to the people (RSA, 1996).

During the proceedings of the Constitutional Assembly, various submissions were made by different interest groups, including political parties. Some of these included proposals for where liquor licensing and the control of liquor outlets should be located. For example, on 28 September 1994, the Democratic Party (DP) made a submission which includes 'Liquor licensing/controls' as a provincial function (DP, 1994).

On 12 October 1994, the National Party (NP) proposed 'Liquor licensing' as a (concurrent) provincial competency, though it is unclear from the list of functions and the rest of the document whether these functions were to be shared concurrently with national or local government (NP, 1994).

In a 1,719-page document from the following year (1995) that incorporates the constitutional submissions of a large number of diverse stakeholders, the South African Chamber of Business

(SACOB) puts forward the view that liquor legislation, along with other matters they considered to be of national interest, should be uniform across the country. In the same document, the Free Market Foundation (FMF) points out that liquor laws in the United States of America (USA) vary from state to state and that regional and local government in South Africa should be able to make their own liquor laws (Various, 1995).

The DP position becomes ambiguous in 1995. In a report from Theme Committee 3 of the Constitutional Assembly dated 15 June 1995, there is a table marked *Part II: Detailed analysis of party proposals*. It is a compilation of the positions of various parties on a number of issues. In a column headed *Contention*, the DP is recorded as having proposed that *provinces* have responsibility for 'liquor controls' – this is the only mention of liquor in the entire document, with the word 'licence' or 'licensing' not appearing at all (Constitutional Assembly Theme Committee 3, 1995). In two other documents, both undated, from the same period, the DP is recorded as having proposed that 'liquor licensing' be a *local government* responsibility. The one document must have been printed after 12 June 1995 and the other after 17 July 1995.[26] They are both Theme Committee 3 documents, very similar in content, though the DP proposal regarding liquor licensing appears in a column headed *Divergent propositions* in the earlier one (Constitutional Assembly Theme Committee 3, Undated) and in a column headed *Further clarity required* in the later one (Constitutional Assembly Theme Committee 3, Undated).

The 5th Working Draft of the proposed new constitution released by the Constitutional Committee on 15 April 1996 does not mention liquor at all. However, a catch-all 'Licensing' is included in the list of local government competencies (Constitutional Committee, 1996).

It is in the so-called New Text of the Constitution of South Africa, adopted by the Constitutional Assembly on 8 May 1996 as a Bill, that a firm proposal to give liquor licensing to provinces first appears. In the same document, local government – now recognised as a separate, autonomous sphere of government – is accorded no direct role in relation to liquor. In fact, there is no list of specific local government functions at all. S150(2)(a) says that local government can legislate on "any matter pertaining to the objects of local government … that falls within Schedule 4", schedule 4 being a list of provincial responsibilities (Constitutional Assembly, 1996).

The New Text was submitted to the Constitutional Court to get a ruling on whether there were any constitutional shortcomings in the New Text version, specifically whether the New Text complied fully with the 34 Constitutional Principles set out in the Interim Constitution. The Court found, on 6 September 1996, that the New Text version adopted by the Constitutional Assembly did not comply completely with

[26] This assumption arises from a series of dates in the (undated) cover pages of the two referenced documents. It lists a number of dated activities, the last of which is executed by 12 June 1995 in the one and 17 July 1995 in the other.

the Constitutional Principles. Changes were made to address this and the final version of the Constitution was adopted on 18 December 1996, coming into effect on 4 February 1997. Notably, the 1996 Constitution retains *Liquor licences* as a provincial responsibility and adds *Control of undertakings that sell liquor to the public* to the list of municipal functions (both in the new Schedule 5). In the new Schedule 4, *Municipal planning* is designated a local government responsibility (RSA, 1996).

So why was liquor licensing given to provinces? In the absence of other written evidence, efforts were made to contact people who had been involved in the Constitutional Assembly process.[27] These included the general manager of the Constitutional Assembly, Hassen Ebrahim; politicians such as Sydney Mufamadi, Valli Moosa, Pravin Gordhan, Barbara Hogan and Alec Erwin; lawyers Fink Haysom, Peter Harris, Albie Sachs, Gilbert Marcus and Rudolf Maastenbrook; academics Derek Powell, Sibusiso Vil-Nkomo and Jaap de Visser; and public officials Andrew Boraine, Janet Love, Jenny Schreiner and Alistair Ruiters.

It would seem that the issue of liquor licensing did not loom large on the horizon of the negotiating process. Most respondents weren't able to offer any opinion as to why liquor licensing was given to provinces. There was, however, a suggestion that it was nothing more than an outcome of the horse-trading between different stakeholders that was taking place at the time. In a telephone interview on 7 December 2018, one respondent said the following:

> "There were big changes between the interim and the final constitution. The outcome is that provinces are more administrative, while local and national have more powers. So we had to find something for provinces to be in charge of, something that could not be over-ridden by national. Some of those things that were given were harmless, and would not be a crisis, even if a province were to go AWOL. We had to ensure that there was a limit to the harm that could be caused by these new entities. No-one knew what they would do and how it would work.
>
> The Constitution created a unitary country, a unified SA. The right wing wanted to dismember the country, to balkanize it. And it wasn't the extreme right-wing we were worried about. It was the likes of the NP and the DP and the IFP who were pushing for fiscal federalism. But that didn't happen. We are a united country, with one economy, one tax base. Ultimately national decides how to spend the country's money. A good example is that, through national, pensions are the same across the country.

[27] It seems that the University of Cape Town established an online database which included a comprehensive record of the Constitutional Assembly process. Unfortunately, the database crashed in 2000, wiping out much of the material. A proposal to reinstate it does not appear to have been accepted (Hofman, 2007). This section of the report therefore relies on documents sourced from Hassen Ebrahim, the manager of the Constitutional Assembly process, the Department of Justice website, the archives of the Constitutional Court, and the internet.

So we had to give them something to do and liquor licensing was one of those harmless functions. It's not of strategic importance, requiring national to make major decisions. Other such were abattoirs, provincial sport etc.

So giving liquor licensing to provinces was not a profound decision, not a philosophical decision (my italics).

And control of liquor outlets was given to municipalities because such control is typically a local government function. It makes spatial decisions on a range of similar things, e.g. liquor, sex shops etc. Maybe they will decide for themselves or they will ask the community. It's the kind of planning that a good local government must do. (my italics)

It could also have been influenced by the liquor industry and their sophisticated lobbying strategies. They would have been worried about what government would do. It could well be that they lobbied for it to be provincial because they were worried about decisions that municipalities might have taken at local level. It was also going to be easier for them to influence provinces rather than national, so they probably supported the devolution to provinces.

Even ANC provincial leaders wanted more authority post-1994, not just the NP and the IFP which controlled two provinces after the first elections. They even wanted the Senate to have more power. But that was changed to the NCOP as more of an advisory body." (CA, 2018)

This is a useful overview, particularly the comment that giving liquor licensing to provinces was 'not a profound decision, not a philosophical decision'. According to the CA respondent, liquor licensing was 'one of those harmless functions', echoing a comment in an online article called Researching South African Law, which stated that '[e]xclusive provincial legislative competence is reserved for *less important* matters such as abattoirs and liquor licences (my italics)' (Barratt, 2010). Barbara Holtmann is more critical: "Alcohol is treated like a prodigal son in South Africa by most cultural and socio-economic groups, despite its potential to harm and its negative social, psychological and material impacts on society" (Holtmann, 2011, p. 44).

c. Liquor licensing in other parts of the world …

As noted in the introduction to this chapter, archaeological and written evidence indicates the deliberate production of intoxicating liquor as far back as 9 000 years ago in China. The limitations of this report don't allow for a detailed exploration of this history nor of the ways in which liquor was used in different societies. In summary, it can be said that the relationship between humanity and liquor is a long, rich and complex one.

That complexity was simplified by Rod Phillips who said that the challenge has been how to "[a]llow people to drink because it makes them happy and is a gift from the gods, but prevent them from drinking too much" (Curry, 2017).

Phillips also quotes Eubulus, a Greek poet from the 4th century BCE, who described in a play the cumulative effects of alcohol. He suggested a limit of three servings because "One is for good health, which they drink first. The second is for love and pleasure. The third is for sleep, and when they have drunk it, the wise wander homewards. The fourth is no longer ours, but belongs to arrogance. The fifth leads to shouting. The sixth to a drunken revel. The seventh to black eyes. The eighth to a summons. The ninth to bile. The tenth to madness, in that it makes people throw things." (Phillips, 2014)

Religious texts like the Bible have also endorsed the use of liquor, but encouraged moderation. Islam is widely understood to require complete abstention from the consumption of liquor although some argue that the Quran is not totally prescriptive on the issue. According to Phillips, "[i]nitially, the Prophet Muhammad was no more hostile to alcohol than Jews and Christians were, but after a short time he forbade his followers to drink wine and any other fermented beverages. The reason was not because these drinks were evil in themselves—a position adopted by later advocates of abstinence—but because the weakness of humans led to excessive drinking and then to blasphemy, sin, immorality, and antisocial behavior." (Phillips, 2014, pp. 58-59).

The 'evil' inherent in liquor itself that Phillips references might be the public health problems associated with the consumption of alcohol. This is the predominant focus of most campaigns for more regulation of alcohol currently – in stark contrast to periods in the past when, far from being challenged on health grounds, it was seen as being nutritionally beneficial.[28] There was a period, too, when it was considered to be safer to drink than water, a perception that only changed with the introduction of safe water and sanitation solutions, especially in cities (Phillips, 2014).

The Hammurabi code cited in the introduction to this chapter was a set of 282 rules drawn up by Hammurabi, ruler of Babylon in Mesopotamia in the 18th century BCE. Three of these rules concerned liquor – they threatened punishment for wine-shop owners who cheated a customer, wine-shop owners who allowed 'conspirators' to meet and plan in their establishment, and for priestesses who opened a wine-shop or drank in a wine-shop (King, 2008). Earlier evidence of attempts to regulate liquor have not been found to date (Phillips, 2014). Efforts to manage the production, distribution and consumption

[28] Minister of Health in South Africa, Dr Aaron Motsoaledi, is on record as saying that "there is an explosion of non-communicable diseases that the world is facing … these increasingly costly health problems have four main risk factors: alcohol, tobacco, poor nutrition and lack of exercise" (Green, 2018). See also https://www.who.int/topics/alcohol_drinking/en/; https://globalgapa.org/; www.saapa.net; https://www.soulcity.org.za/campaigns/phuza-wize (alcohol, violence and its impact on public health impact especially on women and children); http://www.mrc.ac.za/research/intramural-research-units; http://www.publichealth.uct.ac.za/phfm_public-health-medicine; and many others.

of liquor have persisted throughout history across the world since then, ranging from the extreme of complete prohibition to punishment only for behaving badly while drunk (see the testimony of Zulu King Cetshwayo at the beginning of this chapter). This is particularly the case in cities and other large conurbations, where the peer pressure of a small, tightly-knit community is no longer possible as a means of regulating social behaviour (ibid).

Common regulatory objectives would have been to moderate consumption; discourage drunkenness; reduce access through limiting the number of outlets and the hours of operation of outlets; impose age restrictions; ban drinking by women; set quality standards for production of alcoholic beverages; introduce licensing systems etc. The difference between regulation today and earlier times is that, over the centuries, such regulation was often piecemeal and localised. Today, most countries in the world have some form of national regulation, though there is still no uniform approach. Regulatory responses still range between prohibition and mild measures aimed at limiting the most excessive behaviour but, through agencies like the World Health Organisation (WHO), there is a developing consensus about what needs to be done and why. Of course, interest groups such as the producers and distributors of liquor products are fiercely opposed to any form of regulation, as are extreme libertarians and dedicated drinkers who resent societally-imposed restrictions on what they can and can't do (ibid).

With this overview in mind, the report will now present a partial overview of the regulatory environment for liquor in other countries with a specific focus on which arm of government in each country is responsible for liquor licensing. The overview is necessarily limited as constraints made it difficult to get information on each of the 195 countries recognised by the United Nations (233 if one includes territories that are not recognised as 'independent' countries). (Worldometers, 2018)

However, it is possible to make some general comments about liquor legislation before moving on to liquor licensing in particular. The World Health Organisation (WHO) Global Status Report on Alcohol and Health (2018) contains some useful global statistics[29]. These include that:

- 173 countries out of a total of 194 contacted responded to the call by the WHO for information
- 10 countries have a total ban on alcohol
- 80 countries have national alcohol policies and eight have subnational policies
- 134 countries have blood-alcohol concentration limits (for drunk driving tests).
- Most countries set an age limit for the drinking of alcohol (the majority set the limit at 18) with a handful that have no age restrictions at all.
- Almost 95% of countries have an excise tax on alcohol
- 141 countries have licensing requirements for the production and/or distribution and/or sale of alcohol

[29] The information for this report was collected in 2016.

- While more than half have laws governing the hours that liquor outlets can operate, around a quarter have restrictions on the days on which liquor can be sold and around a quarter have geographic or demographic limitations on the number of liquor outlets allowed.
- Most countries require the alcohol content of a beverage to be reflected on a label on the container, with around one third also needed a warning of the dangers of alcohol consumption. (WHO, 2018)

This short summary of the findings of the WHO Report is included to demonstrate that most countries in the world have some form of liquor regulation, with a handful of countries banning the production and sale of alcohol altogether, though sometimes allowing alcohol to be available for non-citizens. Some regulations are influenced by planning considerations, impacting on the geographic distribution of outlets as well as the spatial density. The findings are a reflection of the seriousness with which alcohol-related problems are viewed globally and of the degree of uniformity of response.

It's worth noting here, too, that the WHO Report discusses the global response to alcohol-related problems in the context of the Sustainable Development Goals (SDGs) adopted by United Nations member nations in 2015. The report writers focus primarily on SDG 3, which is concerned with the good health and well-being for all citizens, though they are of the view that alcohol impacts on a number of other SDGs as well[30] (WHO, 2018).

Having established that most countries have one or other form of licensing of the production and/or distribution and/or sale of liquor, the report now looks specifically at which sphere of government is responsible for the licensing of the retail sale of liquor to the public in a selection of countries. The selection of countries was random, dependent on the availability of accessible online data. An intensive global search of the internet provided a limited summary of the licensing practices of a handful of countries (Wikipedia) and specific information related to individual countries. It would have required many more hours of potentially fruitless searching to find information on a significantly greater number of countries. The available information does provide useful insight into global trends, hopefully sufficient to contribute to the analysis and conclusions of the report. To put the results into perspective, it is useful to see what Rosiers and Möbius (2008) have to say with respect to what they see as the 'typical' local authority relationship to liquor regulation (what they term [legal] drugs):

> "There are several areas where local authorities typically have less influence than do regional or national domains. These include pricing of legal drugs, advertising, sponsorship and promotion, and minimum legal purchasing age, although commitment and related resources for enforcement tend to be local matter. In contrast, local authorities have considerable influence on other types of access to

[30] Other SDGs are 1. No Poverty 2. Zero Hunger 4. Quality Education 5. Gender Equality 6. Clean Water and Sanitation 7. Affordable and Clean Energy 8. Decent Work and Economic Growth 9. Industry, Innovation and Infrastructure 10. Reduced Inequalities 11. Sustainable Cities and Communities 12. Responsible Consumption and Production 13. Climate Action 14. Life Below Water 15. Life On Land 16. Peace, Justice and Strong Institutions 17. Partnerships for the Goals

drugs, such as *concentration of outlets, number of licenses issued, hours and days of sale, selling venues, selling and serving practices* and *on-site advertising*" (Rosiers & Möbius, 2008, p. 68).

In the table below, the sphere of government responsible for liquor licensing in each country is aligned with one of the three spheres of government we have in South Africa. Not all fit 'comfortably' into one of the three SA categories, but have been placed in the one that seems the most appropriate.

	AREA	COUNTRY	RESPONSIBLE AUTHORITY	SA GOVT SPHERES	NOTES
1.	Africa	Botswana	District, sub districts, towns & cities	1 - Local	
2.	Africa	Kenya	Counties (local & district councils)	1 - Local	Provinces until they were done away with.
3.	Africa	Namibia	Regions	1 - Local	Regions co-exist with local authorities and are deemed to be local authorities where local authorities don't exist.
4.	Africa	Tanzania	Village/town/city councils	1 - Local	
5.	Africa	Uganda	Local Authority	1 - Local	
6.	Africa	Zambia	Local Authority	1 - Local	
7.	Asia	Singapore	Municipal	1 - Local	Singapore is a city-state, so it is effectively both national and municipal. For this report, it is taken as municipal.
8.	Australasia	New Zealand	Territories (local & district councils)	1 - Local	
9.	Europe	Finland	Regional States	1 - Local	These are defined as 'forums of cooperation' for local authorities.
10.	Europe	France	Municipality/Region	1 - Local	
11.	Europe	Northern Ireland	Local Authority	1 - Local	Used to be magistrates
12.	Europe	Poland	Local Authority	1 - Local	
13.	Europe	Republic of Ireland	Magisterial Districts	1 - Local	
14.	Europe	Spain	Municipalities	1 - Local	Neighbourhoods can have their own policies.
15.	Europe	The Netherlands	Municipalities	1 - Local	
16.	Europe	UK	Local Authority	1 - Local	Used to be magistrates
17.	Middle East	Dubai (UAE)	Dubai Police General HQ	1 - Local	For foreigners only.
18.	N America	Mexico	Municipality	1 - Local	
19.	S America	Chile	Local Authority	1 - Local	
20.	S America	Costa Rica	Municipalities	1 - Local	
21.	S America	Dominica	Magisterial Districts	1 - Local	
22.	S America	Trinidad & Tobago	Magisterial Districts	1 - Local	
23.	Australasia	Australia	States/Cities	2 - Prov/Local	
24.	N America	US	Mainly states. Some counties (eg in Nevada and Hawaii)	2 - Prov/Local	There is a 'local option' in around 30 states through which communities can decide on licensing policy in their own neighbourhoods.
25.	Africa	South Africa	Provinces	3 - Provincial	
26.	Asia	India	State	3 - Provincial	
27.	Australasia	Solomon Islands	Provinces	3 - Provincial	
28.	N America	Canada	States	3 - Provincial	
29.	Africa	Morocco	Local representatives of the King	4 - National	Councils can give input into decisions.
30.	Africa	Zimbabwe	National	4 - National	In association with local issuing authorities
31.	Asia	Thailand	National	4 - National	
32.	Europe	Latvia	National	4 - National	
33.	Europe	Russia	National	4 - National	
34.	Europe	Turkey	National	4 - National	

Table 1: Location of liquor licensing responsibility in 34 countries globally

The 34 countries or entities listed in Table 1 were included because they were the ones that had pertinent information about them available on the internet. All of those that were found to have useful information were included – i.e. none were left out. For the purposes of this report, therefore, the table is considered to be a legitimately representative sample of the 195 countries in the world and a useful indicator of global tendencies with respect to which sphere of government is most often given the responsibility for liquor licensing.

The table shows that, of the 34 countries listed, 22 can be characterised as local, two as provincial and local, four as provincial, and six as national. Even if there are quibbles about the categorisation (e.g. whether regions in some countries are more like provinces), the overwhelming tendency in the sample is towards decentralising responsibility of liquor licensing to local authorities. In some countries, this was directly linked to making the licensing process more responsive and accessible to all affected stakeholders (NIA RaISe, 2009).

d. End notes

This chapter can be concluded with a very brief indicative summary. The investigation into why liquor licensing is a provincial responsibility in South Africa revealed that there was no technical or 'philosophical' reason underpinning the decision to allocate *Liquor licences* to provinces. This lack of an ideological or functional justification for making liquor licensing a provincial competency opens the way to a conversation about whether it would be more usefully located elsewhere. The outcome of the global survey into which level of government is more commonly given the responsibility for liquor licenses will be useful to South African deliberations on the issue. Information from 34 countries world-wide indicates a clear tendency to allocate the responsibility to local authorities.

Chapter 5.
Voices

"A story brings to life a way of seeing the world, and reveals the significance of complex relations and action dilemmas"
– *(Healey, 2007)*

a. Introduction

The most important source of information for this research report is the stories told by 18 people who are somehow entangled in the web that links municipal planning and liquor regulation. It is a case study employing a series of semi-structured interviews with a range of stakeholders and role-players, some of whom could be described as coming from 'opposing camps'. The broader focus area of this research was the province of Gauteng. Within the province, the focus was on the City of Johannesburg, one of five municipal areas in Gauteng. The five municipal areas comprise three Metros (of which Johannesburg is one) and two district municipalities (each comprising three local municipalities). Within Region E and Region F respectively of the City of Johannesburg are the neighbourhoods of Alexandra and Yeoville Bellevue. These two neighbourhoods were chosen as the primary case study areas for the research. Both areas have a history almost as long as Johannesburg itself. Eight of the interviews – almost half – took place within the primary case study areas.

Alexandra is an historically black suburb originally established as a freehold area in 1912, far removed from the white suburbs of the time. But, as Johannesburg expanded towards Alexandra, there was a push to relocate the black residents of Alexandra to an area more 'comfortably' distant from the encroaching white neighbourhoods. However, the residents resisted and, despite renewed efforts to remove them over the years, they managed to hold on and survive into the post-apartheid period, unlike people from other black, Indian and coloured areas in Johannesburg and elsewhere in the country who were forcibly moved to further the separatist objectives of the National Party government (Bonner, 2008).

Bellevue and Yeoville, proclaimed in 1889 and 1890 respectively, were practically white from the outset, designated 'white' in terms of the Group Areas Act of 1950 (RSA, 1950), and remained almost pure white until the late 1970s/early 1980s when the informal 'greying' of the inner city began. In 1991, Yeoville Bellevue was just under 80% white and largely middle class. By 1998, it was over 90% black and multi-class, with a significant percentage of working class, self-employed and unemployed people living there. This was a dramatic transformation matched only by that which took place in the CBD, Joubert Park, Hillbrow and Berea, all part of the greater Johannesburg inner city (Smithers, 2013).

These two case study areas were chosen because of their history and the variety of spatial challenges confronting them, some linked to the proliferation of liquor outlets, licensed and unlicensed, in both neighbourhoods. Alexandra has a head start in this regard, having been home to hundreds of shebeens

(informal liquor outlets) for decades as a consequence of the ban on the sale of 'white' alcohol to black citizens from 1897 to 1961, and the legislated exclusion of most black South Africans from the mainstream economy (except in their capacity as workers and servants for whites) until well into the 1980s (Bonner, 2008). Yeoville Bellevue was a 'quiet (white) urban village' until the late 1970s. It then underwent a dramatic change, with its main street becoming a night-time destination for an increasingly multi-racial, multi-cultural subculture in Johannesburg, setting the scene for the dramatic demographic changes which were to occur in the 1990s (Smithers, 2013).

The most significant aspect of the interview process is the emergence of two key themes. The one is that there is general agreement that there are structural challenges to the separation of *Liquor licences* (under provinces) from *Municipal planning* and *Control of undertakings that sell liquor to the public* (municipalities) (RSA, 1996). The other is that there is (surprising) consensus that communities need more of a say in the liquor licensing process; that community participation is currently inadequate; and that province is 'too far' from communities to allow for meaningful engagement with and by affected people who would like more of a say in what happens with liquor licensing and regulation in neighbourhoods in which they live and work.

b. What was said and not said – listening for the truth

Eight interviews were conducted in the two case study areas, four in each. The four included a ward councillor and a representative each from the South African Police Service, the local Community Police Forum and a community-based organisation. Three respondents were from the City of Johannesburg and two from the Gauteng Provincial Government's liquor authority[31]. Additional interviews were held with two liquor lawyers/consultants, two liquor association representatives, and a representative of the South African Local Government Association (SALGA), a national body established in terms of the Organised Local Government Act 52 of 1997 to represent the interests of all municipalities in the country.

The interviews were semi-structured in that each respondent was asked a series of written questions, but there was a lot of latitude in the interview process itself, allowing the conversation to develop its own momentum and reveal unsolicited information. For example, in one of the interviews with a representative of a liquor traders' association, it emerged that frustration with the application process for liquor licensing has resulted in a work-around solution which, while legal, is not strictly honest. This practice was confirmed in later interviews and provided unexpected confirmation of the challenges inherent in the current interface between liquor licensing and municipal planning.

[31] The Gauteng Liquor Board currently works with five Local Committees, one for each Metro and one for each District Municipality. Liquor licence applications are directed to the Local Committees, processed and then forwarded, with recommendations, to the Liquor Board. The Board then makes the final decision on whether an applicant will be awarded a licence or not, irrespective of the recommendation of the Local Committee.

Respondents can be broadly categorised into three groups: government, business and community. Government was made up of officials from provincial and local government and the SA Police Service. The business sector was represented by liquor trader associations and liquor lawyers. The community respondents came from statutory and non-statutory organisations. Ward councillors are elected local government officials, but (usually) come from the communities they represent, so they don't fit neatly into one category. Respondents were not all presented with exactly the same set of questions. However, the range of questions can be distilled into five broad themes presented to all those interviewed:

1. How they understood the roles of province and local government set out in Schedules 4 and 5 of the Constitution in respect of municipal planning and the licensing and regulation of liquor
2. What their experience was of the relationship between province and local government in the exercise of their respective responsibilities
3. What they perceived to be the roles of state and civil society structures in respect of municipal planning and the licensing and regulation of liquor
4. Their views on the role of communities with respect to municipal planning and the licensing and regulation of liquor
5. What they thought of the current functional arrangements and of the proposition that s156(4) of the Constitution be used to devolve responsibility for liquor licensing to local government in order to more effectively align the licensing and regulation of liquor with municipal planning

The rest of the chapter will present the data broadly in terms of these five themes, although it must be understood there are not clear lines separating one from the other.

1. How respondents understood the roles of province and local government set out in Schedules 4 and 5 of the Constitution in respect of liquor licensing and regulation and municipal planning

Most respondents were aware of the fact that provinces are responsible for liquor licensing and local government for municipal planning. This knowledge was not necessarily derived from an intimate knowledge of Schedules 4 and 5 of the Constitution. Rather it appeared to be assimilated as a result of practice. However, most did not know that Schedule 5B gave local government the mandate of *Control of undertakings that sell liquor to the public*. As a result, there is a degree of confusion as to how control of liquor outlets should be effected.

Municipal Planning

City officials, ward councillors and the SALGA representative were, as is to be expected, reasonably familiar with the responsibilities and activities contemplated in the Schedule 4B local government mandate of *Municipal planning*. Others were not as acquainted with all that municipal planning entails. There was common consensus that it involved spatial planning, though some were not able to explain

quite what spatial planning meant – there was an uneven sense that it was to do with zoning, land use management and township development. Some spoke specifically about the relationship between liquor licensing and planning, that municipal planning involved "land use rights issues for those who want to sell liquor" (CoJ town planner), that "in relation to liquor applications … it's problematic" (liquor trader rep), and that "the municipality … can allow so many [liquor outlets], at such distances, depending on the population of that area ... a quota system" (CBO rep).

One liquor lawyer wanted to see the removal of s23(4) of the Gauteng Liquor Act

> "Applications for tavern, pool club, pub, liquor store and night club liquor licences shall also be accompanied by unequivocal approval by the relevant department of the relevant metropolitan or district council, in addition to any zoning or planning or environmental laws requirements" (GDFEA, 2003).

because he said it effectively gave the local authority the right to decide, based purely on planning criteria, whether a licence (at least in respect of five out of the then 18 licence categories) should be awarded or not – it "gives them the power to frustrate applicants and province".

A former member of the Johannesburg Local Committee of the Gauteng Liquor Board thought that "the problems with liquor licensing related to a lack of town planning – it does not matter where the licensing is happening, but town planning must play a greater role". This is similar to the observation in the Gauteng Draft Liquor Policy of 2011 that there is a "lack of Liquor Policies at municipal level that are integrated with other planning instruments; and (a lack of) pro-active spatial planning to identify appropriate sites for liquor sales". (GDED, 2011, p. 21)

Liquor licences

Respondents were all clear that province was responsible for liquor licences (although the CBO representative from Alexandra did momentarily wonder whether the Liquor Board was a national body). However, their way of describing the function differed, with not all seeing provinces having a broader regulatory responsibility.

One liquor lawyer was very concise in her response, saying simply that the Board was responsible for "retail liquor licensing". The other lawyer said much the same thing more elaborately, describing the process as being one of "receiving applications for liquor licences and deciding whether to issue one or not". In contrast, the representative from the GLB was very clear that the "… function is to regulate the liquor industry, not just to issue liquor licences".

One of the ward councillors was quite terse in her response, expressing her view that the process of licensing is random and arbitrary – they "give out liquor licences and check compliance with licences". Her planning colleague in the CoJ had a more measured response, characterising the function as "the

processing of liquor licence applications, guided by the Gauteng Liquor Act". The former SALGA person saw it as the "permission one gets to trade in liquor onsite or offsite".

One representative of a liquor traders' association said it was to "issue and regulate liquor licenses". The other saw a more extended role for the Liquor Board beyond imply "considering license applications". She included the job of "helping some liquor traders to understand the regulations".

A CPF representative described the role as being to "issue licences and set conditions of licences", although she was not explicit about which conditions were the responsibility of the Liquor Board. There is some confusion in this regard, as indicated in the first chapter, with some tension arising over who is the final arbiter over the opening and closing hours of retail liquor outlets.

There was general consensus about the liquor licensing function. It was acknowledged as a provincial function although, at other points in the interviews, there was a feeling expressed that municipal bylaws and s23(4) of the Gauteng Liquor Act seem to give municipalities the power to 'decide' if a license should be granted. The one thing that was common to all responses was that they are narrowly defined, with no-one talking about alignment with municipal planning. On the other hand, at least three spoke about regulation and compliance as being an integral part of the mandate.

Control of undertakings that sell liquor to the public

The third function under consideration was the *Control of undertakings that sell liquor to the public*, allocated to local government in Schedule 5B of the Constitution. Here the common factor was that most people had no idea this mandate existed, a number of respondents confessing that they were hearing it from the first time from me, with one person (a ward councillor) admitting that he had never read the Constitution at all ("it's a little embarrassing to say so").

When pressed further, most respondents said that there *was* control exercised by the CoJ over 'undertakings that sold liquor to the public', but this was not done in terms of a specific liquor-related bylaw or by a dedicated unit in the CoJ responsible specifically for this work. Where such control was exercised, it was carried out by sectoral units in the CoJ responsible for, *inter alia*, land use management, public health, environmental health, traffic control and public safety. However, the officials doing this work did so in terms of their own sectoral mandates, not in specific pursuance of the *Control of undertakings that sell liquor to the public*.

This was true of the City of Johannesburg and other municipalities in Gauteng, according to the responses of most of those interviewed. However, it is not the same everywhere nationally, as will be seen in the next chapter. Once again, one is reminded of the concern raised in the Gauteng Draft Liquor Policy of 2011 that municipalities in Gauteng all lacked a liquor policy, making it more difficult to align liquor licensing with municipal planning. (GDED, 2011)

The other complicating factor in respect of this particular mandate is that, in part because people were not aware of the control mandate and in part because of their direct experience, many respondents believe that the first port of call when wishing to complain about a liquor outlet is the Liquor Inspectors employed by the Gauteng Liquor Board. While most understood that specific complaints could be directed to, for example, the SAPS, the JMPD or environmental health inspectors in the CoJ, especially if immediate relief was needed, there was no-one who thought that the CoJ should be approached to consider whether a licence should be suspended or withdrawn for non-compliance. In other words, ultimate 'control' over a liquor outlet, in the sense of the power to determine whether non-compliance should result in a penalty, suspension or deregistering, was seen by all respondents as residing with provinces, not local governments.

Respondents were asked to consider what they thought *Control of undertakings that sell liquor to the public* meant, even if they were not previously aware that it was a specific function. The Liquor Board representative saw it as the municipality looking "at spatial plans and determin[ing] where liquor outlets could be, possibly to limit the number of liquor outlets in [an] area … can say to province whether someone should have a licence or not". A CoJ planner said it was checking, once a place is licensed, "to see if it adheres to the conditions of the licence … attend to complaints re operating hours, noise etc". The CoJ Environmental Health representative thought it was "what we are doing anyway with noise control, food safety, toilets etc … but it's not specifically about liquor, we do those things for a number of different places, not just liquor outlets".

For the Gauteng Liquor Forum representative, control means "enforcement of liquor regulations and bylaws", i.e. the functions of both Liquor Inspectors, the SAPS and sectoral units in the CoJ. He also said that he thought that control was given to local government because "local authorities know better where we live, the culture of the townships etc". Interestingly, the SA Liquor Traders' Association (SALTA) member thought primary responsibility for control rested with the SAPS, under the guidance of a senior provincial police officer.

One of the ward councillors expressed a frustration that seemed, to some degree, to underpin the responses of most of those interviewed.

> "I never knew the council is supposed to have control over these liquor issues. Ironically enough, we try to fight these battles, we go to CPFs, everybody puts their arms up in the air, everybody says you can't do this, you can't do that. SAPS can't do this, they can't do that. And there's so much in there (in the Constitution etc) that can be taken up. I don't even think the council is aware of it. How many marches did we have and what was the result? Everybody says, our hands are tied … as far as I know, there is no unit within the CoJ that is responsible for dealing with this issue. The only involvement I know that council might have is to do with the liquor outlet premises."

The community representative from Alexandra was clear: "Complaints go nowhere. Nothing happens … not aware of CoJ involvement. Never seen [them]. Would be better for them to come. Most places aren't up to standard. I drink around and I have seen good and bad. Toilets [is a] common problem … there is often no tissue when you want to sit down".

An activist in Yeoville Bellevue expressed similar concerns: "Even in our case, we have never gone to the municipality …we always understood it be a provincial thing, you go to the Liquor Board and complain and you say so-and-so is responsible, a liquor inspector, they come and maybe we list all the things that are happening, they come and they don't really attend to all these those things …"

2. How respondents experienced the relationship between province and local government in the exercise of their responsibilities

To the extent that respondents had considered the relationship between provincial and local government in relation to the three mandates of liquor licences, municipal planning and control of liquor outlets, the overwhelming view was that it was dysfunctional. Positionality had an influence on responses – people in the CoJ are cynical about the role of province; liquor traders' associations and liquor lawyers see local government as a stumbling block; the experience of community members is one of disempowerment; and ward councillors, CPFs and the SAPS feel excluded.

The Gauteng Liquor Board representative was very sympathetic to the challenges facing local government in respect of liquor licensing, saying that they [municipalities] have "a very important role … [that] it is not certain that we get to optimally achieve the goals of local government's consent use processes".

When asked to comment on the Dongo court case that was referenced in Chapter 1, he said: "It's understandable that the … [accused person] would tell local government to go and talk to their sister government body that gave her the permit [without checking if the premises complied with city bylaws]".[32] He also acknowledged that the province had made a mistake in issuing permits to shebeens without consulting with municipalities first and that the "reality [was] that there are so many challenges with the shebeen permit and licence process that we really need to start afresh".

Other respondents were, however, not generous in their comments about the province. Some felt that province simply issues licences without question, without taking the views of communities or objectors into account, and without taking the requirements and processes of local government into account. This included the SAPS, CPFs, community members and local government representatives. Even a former

[32] Ms Dongo had a shebeen permit from the Gauteng Department of Economic Development which was supposed to protect her from being closed down or charged for the unauthorised selling of liquor. However, the CoJ charged her with selling from unauthorised premises. Ms Dongo, in her court papers, suggested the CoJ approach the GDED to ask them why they had issued her with a Shebeen Permit without requiring her to get municipal planning approval.

member of one of the Gauteng Liquor Board Local Committees complained about the poor communication between the Local Committee and the Board itself, saying that "the committee was seldom informed of the decisions taken [or] reasons … why a particular recommendation [made by us] was not accepted".[33]

According to a planner in the CoJ, "it doesn't matter what we do here, the Gauteng Liquor Board has the final say". She went further to say:

> "I don't think the GLB feels they are bound by the CoJ's inputs. They will even say that it doesn't matter what the Local Committee says – they will make their own decisions. We should be listening to public interest on the ground. Sometimes you give someone a right, and then they infringe on the rights of others. Maybe we need to consider the question of whether getting a licence is a right or a privilege. Applicants seem to believe that it is a right. If you ask me if the GLB listens, if the authorities listen [to the people] on the ground, I'd say no."

Her colleague in Environmental Health shared the same sentiment:

> "The one problem I experienced with the Liquor Board is that they will listen to you, but then they will take their own decisions anyway. I think the same happens with the city planners who go there. And they [province] shouldn't be able to approve licences without planning approvals".

The former SALGA official put it this way:

> "Province seems to focus more on the applicant, their history, their conduct, their criminal record etc. Municipality looks at use more, not the person, dealing with the land use rights attached to the land. Province doesn't really consider the spatial. It would appear as if the emphasis is on the person [applicant], not on the impact of granting the licence on the immediate environment. Then the enforcement challenges that come from the unintended consequences [of the granting of the licence] fall to the municipality [to address]".

One of the SAPS officers said much the same thing: "the main focus of the Liquor Board is outlets, not the community". It is this apparent 'bias' towards traders that led a trader to question the presence of community members at a public hearing into the draft Gauteng Shebeen Licence Regulations in 2012 – he was adamant that such meetings (initiated by the GDED and the Liquor Board) are for traders only (Smithers, 2013).

[33] The Gauteng Liquor Board has a Local Committee for each of the Metros, District Councils and stand-alone Local Municipalities. They receive liquor applications, process them and recommend to the Liquor Board whether they should be approved or not. The Liquor Board does not simply rubber-stamp the recommendations of a Local Committee – it can and does make its own decisions, sometimes against the advice of the Local Committee.

While one of the liquor traders' association leaders was unhappy with the 'first line of defence' role that municipalities play in preventing some applicants from getting licences, she and her association were also not happy with province. According to her, the president of her association complains that "we are in a forced marriage with the Gauteng Liquor Board. They're doing nothing to address the issues. We don't know who is going to listen to us as traders". One of the liquor lawyers suggested that "getting a licence through province is not a problem … but [more broadly] the problems lie with both local government and provinces". A fellow lawyer was more blunt: "Incompetent. Lack of interest in what they are paid to do".[34]

Community representatives and councillors in the two case study areas were not well-informed of their rights in relation to liquor licensing – e.g. that they can find out about liquor licence applications from the Government Gazette, the classified section of newspapers and notices pasted on premises for which licence applications have been lodged. Some of them are not even aware that they have the right to lodge objections to liquor licence applications. The dominant view of the SAPS, the CPFs, ward councillors and community representatives is that province simply doesn't communicate. No-one is informed of licence applications – "we used to be told about liquor licence applications, but no longer; we just see liquor outlets coming up" (SAPS) – so the ability of these stakeholders and role-players to influence the licensing process is very limited. Many of them believe that the SAPS, ward councillors and proportional representation councillors, ward committees, CPFs, ratepayer associations, business associations and other community-based structures should be told directly about a liquor license application to enable them to exercise their right to comment on that application. With such information, they would also be in a position to inform their constituencies about the application so that they, in turn, could comment on or object to the application.

As noted in the previous section, it also became very apparent that most respondents were unaware of Schedule 4 and 5 in the Constitution which allocate responsibilities to provinces and local government. They were confused about who to turn to if they had a problem with a liquor outlet, many believing that their first port of call should be the provincial Liquor Inspectors who work for the Gauteng Liquor

[34] Tricks of the trade: During the interviews, representatives of liquor trader associations and liquor lawyers admitted that they use tricks to make it easier to get licences. The one trick tries to sabotage the objection process. Regulations require applicants to advertise in a newspaper circulating in the neighbourhood of the liquor outlet. It is very common for applicants or their consultants/lawyers to advertise in a newspaper in a different province. No-one from the neighbourhood in which they want to get a licence is likely to see the ad, but the applicant can submit it as proof that he or she did advertise. The fact that they can get away with this scam is an indication that the liquor authorities don't check properly and there aren't easier, more certain ways for the public to hear about a licence application.
The other trick is to get council consent by subterfuge. An applicant will apply to council for consent to run a business on their property, a business that the council is likely to approve. A couple of months after getting the consent, they will apply for a liquor licence and produce the consent form, claiming that they have the 'unequivocal' council approval that the Liquor Act calls for. Once again, it seems that there are not proper checks and balances to ensure that this 'back-door' method is not used.
What this points to is the need for municipal planning and liquor licensing to be aligned so that such tricks won't work but, more importantly, so that integrated policies are developed that allow the two processes to work together successfully rather than in apparent opposition to each other.

Board. Even then, many believed the Liquor Inspectors to be invisible and ineffectual. It is unlikely that they would know that Liquor Inspectors have to have a qualification in law and are expected to be ethical in their way of working, as was explained by the GLB representative. But even he said that "post-licensing, they are not so effective". That is, their record in dealing with compliance issues is not good. The former GLB Local Committee representative was very disillusioned, with an experience of Liquor Inspectors as contradictory, corrupt, poorly trained, not clear as to their powers and unreliable in following up on complaints. Some stakeholders are not even aware of Liquor Inspectors.[35]

This doesn't mean that respondents had no expectations of the local authority, even if they were unaware that it is responsible for *Control of undertakings that sell liquor to the public*. Some were aware that it was possible to call the Metro Police, others had contact with environmental inspectors who are responsible for dealing with complaints about noise. But overall, there was confusion about who had primary responsibility for following up compliance issues, who to turn to for help. This confusion is not helped by the responses of the authorities. As indicated in Chapter 1, the authorities themselves appear to be confused or use the confusion to avoid taking responsibility, sometimes claiming that 'we don't have the power to do anything' and saying another agency must do it.

3. What respondents perceived to be the roles of state and civil society organisations in respect of municipal planning and the licensing and regulation of liquor

There is a range of stakeholders and role-players in the liquor licensing and regulation regime and equally in municipal planning. These include provincial government (Gauteng Department of Economic Development and the Gauteng Liquor Board), local government (planners, building control officers, health officers, Metro Police, ward councillors and others), the SA Police Service, 'invited' structures (Ward Committees and Community Police Forums) and 'invented' structures (ratepayer and civic associations). During the interviews, respondents were asked about their understanding of these role-players and where they fit into the complex interlocking processes associated with liquor licensing and regulation and with municipal planning.

Most respondents are concerned about the role that the Liquor Board plays. They believe the Board has to take into account the views and needs of all but doesn't. While many stakeholders say that the Liquor Board does its own thing issuing licences and appearing to favour traders, trader associations complain

[35] At a Liquor Board hearing I attended some years ago, I pointed out that the advertisement placed by the applicant was inaccurate as it did not list the name of a church that was clearly visible less than 100m from the premises. The applicant's consultant said they hadn't listed it because, 'they didn't observe the terrain from that side of the premises'. This rather farcical excuse could not have been made had the Liquor Inspector gone out to check the premises as required and ensured that all faith-based institutions in the area were included when she made her recommendations to the Local Committee.

that Liquor Board excludes them when they would like to work with them to address the many challenges associated with licensing.

Some respondents had a reasonably clear understanding of the role of many of the stakeholders. But one CPF representative said that he wasn't "aware of liquor inspectors" while another said that he had "heard of them". An SAPS officer said that Inspectors "deal with infringements, assist with licensing". He thought they should also "keep databases" of all licensees. One ward councillor has a reasonable understanding of the role of Inspectors but, strangely, had never had any engagement with them. The other had and was not complimentary about their efforts. A community member said she had "never seen a Liquor Inspector", followed by the disturbing comment: "anyway, it's dangerous to complain". The other community member's overall opinion was a reflection of the general consensus: that Liquor Inspectors were not particularly useful.

Most respondents believe that ward councillors and the SAPS have an important to play in the liquor licensing process. However, councillors and the SAPS complain that it is hard for them to do so because they are not kept informed of applications. In fact, they are not even informed when a licence has been awarded. One councillor said that, anyway, she cannot personally object – she believes that it is frowned upon for councillors to do so. She thinks the same applies to planning applications (consent use, rezonings etc) because she is not "directly affected". What she says she can do is encourage community members to comment or object, e.g. by means of a petition, and then support them in doing so. But it is easier for councillors to do that with planning applications because they are automatically informed by the council when such applications are made. There was a time in the past when ward councillors were advised of all new liquor applications in their wards but, according to both, this is no longer happening.[36]

The other councillor complained that:

> "As a councillor, I feel I have no power or authority over these things. For example, when the JPC leases or alienates a property, we are consulted. When consent use or zoning is applied for, we are consulted. But we are not consulted around liquor. We just see that they [outlets] are there after the fact. It discourages us as councillors because [it means that] we can't inform the public."

The SAPS claim they too were informed in the past and that they were able to go to hearings and give their views on what the likely impact of a new licence might be on neighbourhoods in their policing precinct, e.g. with respect to crime levels, violence, public disturbance etc. However, both SAPS respondents report that this no longer happens.

[36] Access to information about licence applicants differs from province to province. The Gauteng Liquor Act, 3 of 2014 (which appears to have been passed but never implemented) seeks to improve access to information by obliging applicants (where applicable) to tell educational institutions, places of worship and local police stations that they are applying for a licence (GDED, 2014), a requirement that wasn't in the Gauteng Liquor Act, 2 of 2003.

Nevertheless, expectations by the community that the SAPS and ward councillors *should* play an active role in this regard leads some citizens to believe that "we are busy issuing licences!" (SAPS officer) or to ask "is corruption involved?" (CPF representative).

CPFs, where they exist and are working (in both case study areas, the SAPS representatives believe that the CPFs there are dysfunctional) are also expected to play a role by being "eyes and ears to check where places are being opened" (SAPS), to "submit objections to liquor licence applications" (SAPS), and "to monitor liquor outlets and report problems" (CoJ Environmental Health). CPFs themselves are disillusioned, with one representative lamenting:

> "There is no CPF or SAPS strategy for dealing with alcohol. [We are all] reactive, not proactive, e.g. [to] noise, traffic etc".

Although Ward Committee members were not interviewed, it is deemed likely that their responses would be similar to those of ward councillors, CPFs and the SAPS. Ward Councillors chair Ward Committees, so if Ward Committees were somehow enjoying privileged access to information that others were not getting, Ward Councillors would know – indeed, Ward Councillors would have access to the information through the Ward Committees.

The situation for non-statutory community-based organisations is even more problematic. Firstly, there is some hostility towards them from structures such as Ward Committees who feel it is their role to represent the community and that there is therefore no need for other CBOs. Secondly, if statutory structures are not getting information from state entities such as the Gauteng Liquor Board, it is even less likely that non-statutory CBOs would. Nevertheless, given that there is consensus that communities must be involved (as will be seen in the next section), there is recognition from at least some stakeholders that all CBOs are important and that they too should be getting more information to allow them to actively participate in decision-making about the awarding of licences and the regulation of liquor. The GLB representative in particular believes there *should* be more involvement of civil society in liquor licensing and regulation, but is honest about the fact that this doesn't happen, largely because of a lack of communication, primarily by the Liquor Board itself.

4. Their views on the role of communities with respect to municipal planning and the licensing and regulation of liquor

The context for this question was a comment made by a shebeen owner at a public hearing in 2012. He objected to the presence of community members at the meeting even though it had been advertised as a public hearing. When pressed on the issue, he said:

> "community members should not have the right to get involved in liquor-related issues because, if they did, then 80% of us would have to shut down" (Smithers, 2013, p. 54)

There is consensus on this issue across the board. Every respondent disagreed with the shebeen owner and said that communities have to have a say in issues affecting them in their neighbourhoods, liquor-related issues included, and that the current mechanisms enabling them to do so are not adequate. The former GLB Joburg Local Committee member felt strongly that "… the process of advertising the applications in the newspaper is inadequate – often the community is not aware of the application".

Representatives from the CoJ agreed. One of the planners said: "Actually, it would be much better if a system could be put in place of community structures considering applications right at the beginning so that they can even go to the applicant and talk about their possible concerns, so from the outset the applicant would be warned that the community is aware of the application and will be commenting and also monitoring them if they get a licence to see that they behave appropriately, respecting community around them." The Environmental Health representative believed that "… [community structures] should be involved. They know the community the best. I don't know if it's happening, if they are involved. I don't think communication is good. They should also be part of the approval. Many of them would oppose applications because they know the problems that liquor outlets can cause".

The SALGA official was affronted by the shebeen owner's comment about community involvement.

> "[It's the] [m]ost outrageous comment in my history as a planner. Communities have the right to comment on all land use issues. It's a constitutional issue, an intrinsic right to participate. If communities don't want them, it's their choice how they want their communities to look. It's their right to participate in decisions that affect them. That kind of approach of his is against the Promotion of Administrative Justice Act (PAJA). People have the right to be consulted in a meaningful manner. PAJA would say that liquor licence application advertising [as it currently stands] doesn't comply with the requirements for meaningful participation. They should at least inform the neighbours [of the application]."

The two ward councillors had similar views.

> "People have a right to object. If they know there is something happening that will be negative to them, they will raise their voices. So outlets cut corners to avoid people hearing about their applications. And the community has to deal with the outcome. The ads for liquor licence applications should be in community newspapers, not in commercial papers. Then someone will see it and talk to other people and organisations. And the community newspapers must carry the information as a public service, not for money."

> "My view is that liquor licences are being forced on the community unwillingly. The community don't want them and yet the Liquor Act as it stands forces licences on them. There's not enough opportunity for people to comment on liquor outlets, it's difficult, they make it very difficult for people to play a role in it. Let me tell you, people complain about the liquor outlets across the social

classes, everyone wants liquor outlets away from their area because it exposes their kids to it and to problems that go with it. Even drinkers don't want liquor outlets next to them."

Even the representatives of the liquor trader's associations supported the right of communities to participate. Even though the shebeen owner quoted above was a member of the constituency that they were set up to represent, they did not defend him.

"He [the shebeen owner] was irresponsible. Neighbours give consent to the operation, can object. So they must be there. [But] through consent [for land use changes] they are involved, not for liquor. There should be holding of neighbourhood meetings. Street committees used to know [about liquor applications]. In East Rand, we have meetings with the CPF and the SAPS. They know everything about liquor operations, including applications."

"They should have a say, because it impacts on them. They don't currently. Few people will see an advert, they will just walk past. So people don't really have rights."

The two liquor lawyers concurred, with the one saying: "He [the shebeen owner] is talking from experience. They are honest. They know some are a problem, are unlicensed, promote lawlessness, close the streets, make noise, sell unlawful substances. Council must get consent of neighbours for a premises to run a business and they have to state what kind of business it is going to be." His colleague said much the same thing: "He's right [the shebeen owner]. Because liquor impacts the community. Decisions should be taken by local government in terms of the town planning scheme, including input from the community."

Both SAPS members reiterated that it was right and necessary for community members to be fully involved in liquor-related policy and regulatory decisions. One of them even admitted that they themselves contribute to the problem by not ensuring that community members are invited to all forums where liquor issues are discussed.

[It is] proper for community to participate in all liquor-related processes because they are affecting them. Rape, murder, domestic violence, noise pollution. Less outlets, more controllable and people can live in peace. As SAPS, we fail to engage with the community. For example, we only invite shebeen owners etc to meetings, not the community. The challenge is getting information to the people."

"It is important for the community to have a voice. They are citizens of the area. They have the responsibility of raising kids. If they have no voice, they have no say. Liquor outlets attract criminals, create problems for the community. They must have a say in how they are managed. The shebeen owner was right and wrong: right about the 80% but wrong about the community – they must attend such meetings."

The Community Police Forum representatives expressed the frustration and sense of disempowerment that is reflected in the responses of all community representatives, including the Ward Councillors.

> "The shebeen owner knows the power of the people. So move it (liquor licensing) down closer to the community and it will be more effective. Why [is] the community not more involved? [There are problems of] trust between the SAPS and the community. People [are] targeted for complaining because sometimes the SAPS tell the outlet owner who has complained about them. Shebeen owners aren't happy [about the community being involved] because they benefit from the wrong-doing."

> "People do want to influence processes. [But they] don't participate, because they don't know. Most people don't read government gazettes, newspapers. The state uses loopholes [like this] to deny people access. The current situation of notification of liquor licences doesn't work. Should inform the CPF. Make sure Ward Committees represent people properly, avoid corruption. Communication is currently 'up there'. At municipal level, it's easier to get information to affected communities."

Predictably, the respondents from the independent community-based organisations felt strongly about the issue, expressing deep feelings of frustration and resentment about their exclusion. The representative from Alex complained, not just about exclusion, but also about equity, wondering why it was that other parts of the city seemed to get better treatment.

> "Community not involved, not part of hearings. Not known to people. Not impressed. We should all know how it works when a licence is applied for etc. Because we are affected. People within Alex also have feelings. We are also affected by noise, urination etc. People take us for a ride. Why is it different in other areas? Why aren't we protected? The attitude seems to be: these are pigs, let them live in that mud! Ask the community: what do you want? The community will give direction. But 'leaders' think they are better than us. Full involvement leads to full ownership.
>
> I think communities don't have enough participation, especially because it happens at provincial level. I don't think there's much understanding within the community of their role in the issuing of these licences. So I can look at it from two levels. The educating of the community and the feasibility of that participation being properly implemented. I think that statement (by the shebeen owner) was made because they know there's a lot of loopholes which helps their licences to go through. If it can go through proper structures where the community is given proper opportunity to have their opinions heard, it would not be as rampant as it is now."

The most striking thing about the responses to the issue is the unanimous endorsement of the right of, and need for, ordinary citizens to have a meaningful say in issues pertaining to planning and liquor regulation. This section is rich and detailed, reflecting a deep commitment across the board to the idea

of community participation. It does beg the question: why, if participation is seen as so important, is it not happening? Addressing the same issue, Innes & Booher (2004) comment on the situation in the USA, but they could be writing about South Africa:

> "It is time to face facts we know, but prefer to ignore. Legally required methods of public participation in government decision making … public hearings, review and comment procedures, in particular, do not work. They do not achieve genuine participation in planning or other decisions; they do not satisfy members of the public that they are being heard; they seldom can be said to improve the decisions that agencies and public officials make; and they do not incorporate a broad spectrum of the public. Worse yet, these methods often antagonize the members of the public who do try to work with them. The methods often pit citizens against each other, as they feel compelled to speak of the issues in polarizing terms to get their points across. This pattern makes it even more difficult for decision makers to sort through what they hear, much less to make a choice using public input. Most often these methods discourage busy and thoughtful individuals from wasting their time going through what appear to be nothing more than rituals designed to satisfy legal requirements. They also increase the ambivalence of planners and other public officials about hearing from the public at all. Nonetheless, these methods have an almost sacred quality to them, and they stay in place despite all that everyone knows is wrong with them" (Innes & Booher, 2004).

This is a sobering description of most public participation in South Africa, as reflected in the comments above from the respondents in the case study. And yet, as Innes and Booher point out, these failing methods 'stay in place despite all that everyone knows is wrong with them'. This poses a major challenge for anyone working in planning or in liquor regulation.

There is no doubt that there is at least a nominal commitment to participation in South Africa. This is evidenced in policy, legislation and institutional arrangements such as CPFs, School Governing Bodies, Ward Committees and the like. But there is a yawning gap between the stated intention and reality, with sometimes serious consequences for society, for example, with respect to liquor legislation.

5. What respondents thought of the current functional arrangements and of the proposition that s156(4) of the Constitution be used to devolve responsibility for liquor licensing to local government in order to more effectively align the licensing and regulation of liquor with municipal planning

The complexities of liquor licensing and its entanglement with municipal planning are compounded by the fact that *Liquor licences* is a provincial responsibility, while *Municipal Planning* and the *Control of undertakings that sell liquor to the public* are local government mandates. Would it be easier to respond to these complexities if all three functions were the responsibility of one sphere of government? Furthermore, would the other key focus of this research – the ability or otherwise of citizens to have a meaningful say in municipal planning, liquor licensing and liquor regulation – be facilitated if the three

functions were the responsibility of one sphere of government? Finally, which sphere of government offers the best opportunity for the active participation of citizens in these areas of governance?

As with the previous question, there was a remarkable consensus on this issue. Almost all respondents believed that giving provinces the responsibility of liquor licensing is a problem because province is 'too far' from the people, that provincial government is not in touch with reality on the ground, and that it is easier for communities to have a say through local government than through provincial. They believed that liquor licensing and municipal planning are not aligned and that it is a problem that liquor licensing and liquor control are in two separate spheres of government. Finally, the majority believe that the three mandates should all be at municipal level because that has the greatest potential for addressing the identified challenges

Somewhat surprisingly, the most unequivocal support for the invoking of s156(4) was the Gauteng Liquor Board representative who said:

> "It makes perfect sense to transfer this responsibility to local government … it would have been easier if local government had had both responsibilities (licensing and control of liquor outlets). They could then align liquor licensing with spatial planning. The Gauteng Draft Liquor Policy of 2011 is correct in saying that it's a problem that municipalities don't have liquor policies. They should have policies which are aligned with their spatial planning objectives."

This begs the question: what role, if any, should provinces play in respect of liquor? The GLB representative suggested that provinces could focus on 'enterprise development', using the 'carrot' approach to licence holders by only sponsoring the upgrading of liquor businesses "if they are fully compliant with the law".

The former member of the GLB Local Committee was a little more circumspect about which sphere of government should do liquor licensing, saying that "the problems with liquor licensing are more related to a lack of involvement of town planning ... that it does not matter where licensing is happening, but town planning should play a bigger role."

In contrast, one of the CoJ planners said the function should stay with province, but for reasons that reveal the complex dynamics associated with liquor licensing and regulation. In the end, it seems she is not so much opposed to the *principle* of transferring the function to local government as she is concerned about some of the practical implications of doing so.

> "I think it should be one set of requirements, one process. But don't give liquor licensing to the CoJ because we have too much on our plate … I think it should stay with province, but they must align with us. I see three problems with shifting licensing to local government.

> The first is that they (province) won't want to lose their power, especially at the moment when different political parties are running the province and the CoJ. Also they will say it's going to become more difficult for people get licences under the CoJ than under them. Secondly, we don't have the capacity to take it on at the moment. But I suppose if we had to take it on, then we would make the capacity. Finally, I don't want to feel "unsafe" every time I leave the building because if we are responsible for liquor licensing and [we] align the licensing with our planning priorities, then we will refuse many applications. And these guys can get angry.
>
> If it was something other than alcohol, then yes, we could take it on. But I know the history of alcohol and how people feel about it."

The CoJ Environment Health official had a different view. First of all, she asked:

> "I also wonder how it is possible to control a licence that has been issued by someone else? So province gives people licences, but we sit with the problems when they don't comply. And province gets all the revenue from the licensing system, but they don't have to pay for dealing with the problems."

Her views on the use of s156(4) to re-allocate liquor licensing to local government are more positive, with some very considered reasoning:

> "I wasn't aware of s156(4), but I think maybe it would be a good idea if the responsibility for licensing was given to local government – although some of them don't have the capacity. We could then set up a committee in the CoJ to decide on the issues related to liquor. We could work with all affected departments to make a bylaw, drawing on other bylaws to make it consistent. This would help to do away with some of the problems that come from liquor licensing. Did you know that sometimes it is cities themselves that are complainants in respect of some licences that have been issued where there is no compliance?
>
> If we do licensing ourselves, then it would be a closed loop. Applicants would apply, all departments would consider the application from different perspectives (especially in terms of overall planning) and decide whether to issue the licence or not. Then we could monitor compliance and, if after warnings, they do not comply, then we can cancel that licence. This would allow for proper alignment of liquor licensing with the requirements of the municipality. This would also make it easy to improve communication between different stakeholders in the CoJ and between the CoJ and other stakeholders. It would also be a chance to improve participation of the public because we as local government are on the ground. We know what's going on, more than provincial government."

The former SALGA staffer was in no doubt that the mandate should be moved to local government:

> "I think it would make perfect sense. Currently it fails at an administrative level. What's the logic when the externalities experienced at a local level are such a problem? So ideally it should be a municipal function. Principal benefits would be that it would streamline the process, with applicants speaking to one authority, a one-stop shop. It will be easy for municipalities to align land use and other factors related to SPLUMA with liquor licensing. It would be a win-win solution for all parties involved. It would be another revenue stream for cash-strapped municipalities to hire more people to do the law enforcement. They will more easily be able to make sure that liquor outlets operate in a manner that doesn't cause problems. The only obstacle I can see is under-capacitated municipalities. I don't think the potential for more corruption is a valid concern."

Comment by the representative of the Gauteng Liquor Forum was short and to the point: "It's a good idea. It might just work." His colleague from SALTA was equally brief: "Local government is the first line of defence. They 'decide'. It would be good to have only one sphere of government to talk to."

The two lawyers are cautious about the proposition. For the one, it's not a good idea at all.

> "I don't think it's a good idea to take liquor licensing, based on capacity and competence of local government. From the status quo, there are systems in place to manage liquor. It would be good for province and town planning to work collectively to make decisions. Shouldn't have s23(4) which seems to give the final authority to local government. Have province asking local government – would it work to have licence there? But licensing should remain in province and they should make the final decision."

The other lawyer is more equivocal:

> "I agree with how it is, it's the municipality's job to decide if there should be consent for a restaurant etc. GLB knows nothing about town planning, local government knows nothing about liquor. In Mpumalanga, people lodge their applications with the municipality and they pass it on to the Liquor Board. If the municipality says no, then the Liquor Board must agree. The Liquor Board is like a moderator. [But] it could make sense [for it all to be local government]. Ideal. In New York, liquor is run by the city[37]. It can ensure compliance at every level. The Gauteng Liquor Board is inaccessible. Local government is more accessible."

Of the eight area-based respondents, only one – an SAPS member – felt that the status quo should continue, saying: "[the current system] works as long as there is communication." The rest agreed that all three mandates should be with local government, because otherwise "the left arm doesn't know what

[37] According to my research, this is not true. As in most of the USA, liquor licensing in New York City is the responsibility of New York State.

the right arm is doing" (ward councillor). The overall consensus is reflected in the comprehensive comments of one of the CPF representatives:

> "Do the schedules need a constitutional amendment? Globally, how are these things done? Licensing should fall under Local Government. The goal should be to give it to all municipalities. (Each municipality should have a) directorate to deal with licensing and control. Province can play a policy and support role. Which department? Economic/Social Development/Community Safety? (In providing that support, they would) include other departments and municipalities.
>
> [Everyone is] constantly calling on councils to respond (to liquor-related problems) without giving them specific resources. Licence fees would help. I think the benefits (of devolving the responsibility to municipalities) would be job creation in municipalities; a balance of the social and economic (aspects of liquor); it would be managed better at local level because they are more affected; there would be better data collection on amount of alcohol consumed in an area, allowing the council to make interventions; it could localise licensing, control and interventions even further to sub-council mechanisms, e.g. regional or neighbourhood level; and it would allow for more effective community participation. Communication (is) currently 'up there'. If it was at municipal level, it would be easier to get information to affected communities"

c. End note

The overall message from respondents is that they are not happy and the system isn't working. There is confusion, frustration, resignation, and disempowerment – even officials spoke about feeling there was nothing they could do to influence decisions or improve the situation. There is a clear sense that policies and practices are not aligned or integrated and that 'no-one is listening'. Once again, the issues raised in the Draft Gauteng Liquor Policy resonate – province doesn't communicate with municipalities (or the community) and municipalities don't have liquor policies that could help to provide clarity, structure and direction (GDED, 2011).

Responses by the interviewees point to a clear need to raise awareness about the existence and purpose of the three functions. It is also important to clarify, in respect of each function, areas of exclusive competence, areas of overlap, and areas which require coordination and cooperation. This information should be disseminated within government and also to stakeholders outside of government. Confusion can only lead to inefficient and ineffective implementation of the three functions. Developing their own liquor strategies, as suggested in the Gauteng Draft Liquor Policy (GDED, 2011), would force municipalities to provide the clarity in respect of the three functions that is currently lacking. Developing a liquor strategy should, in terms of the principles of participatory governance, necessarily involve all stakeholders. Municipalities would have to engage with all affected departments within their administration; their relevant province; the SAPS; local retail liquor traders and a range of civil society

representatives. Intensive and extensive deliberation over the development of such a policy would necessarily lead to effective mechanisms for communication and cooperation between all stakeholders.

The constitutional commitment to cooperative governance is being tested by the current situation. It is unclear whether tensions will escalate to the point where one or other party chooses litigation to resolve them, as happened in the case of the DFA (van Wyk, 2010). The dilemma for both province and local government that was created by the Shebeen Permit system and the Shebeen Licence Regulations (2013) had a temporary respite with the scrapping of the Licence Regulations by the courts at the end of 2017 (Tlhobelo, 2018). The wholescale permanent regularising of over 15 000 shebeens, most of which operate from premises not zoned for business, may very well have caused an intergovernmental crisis, given that it would have meant authorising licences for premises not approved by municipalities.

As it is, the GDED is obliged in terms of the court order to craft a new solution by November 2019. There is little evidence that they will succeed in doing so – it seems, from comments made during the case study interviews, that the department will be asking the courts for an extension. But what is needed, as the GLB representative said, is "to start afresh". The best way to do this would be to engage all stakeholders in the process to find a (re)solution to this 'wicked' problem (Lavery, 2018) (Tlhobelo, 2018). Whether such a (re)solution can be found within the current constitutional configuration of functional responsibilities, or whether the participatory process will lead to proposals for an adjustment, is an open question. Whatever the outcome, it is likely to be more workable and more sustainable than if the GDED attempt to do it on their own – their track record to date bears testimony to that.[38]

Although the respondents were asked to comment on the roles of state and non-state actors, they did not 'allocate' responsibilities to them. This is as it should be. A true participatory process is an open one, in which all stakeholders engage as equals, all tasked with the same objective. For this to happen, there is a need to facilitate involvement, especially of the more marginalised and disadvantaged within a neighbourhood. An inclusive participatory process must consciously ensure the presence of all stakeholders by, for example, resourcing those who would otherwise not attend to enable them to do so (Fung, 2005) (Innes, 2004) (Davidoff, 1965).

The case study revealed a significant failure to create and implement mechanisms for effective and inclusive public participation in liquor licensing and the control of retail liquor outlets, as well as in municipal planning, particularly where it interfaces with liquor. Though this is a cause for concern, the fact that each of the respondents recognises the need for participation and criticises its current weaknesses, is very positive. It means that there is a desire inside and outside government for an

[38] The GDED has indeed asked for an extension. They have decided to scrap the Shebeen Licence Regulations and start afresh. Their solution (details of which have been communicated privately, but not yet made public) is likely to be controversial and could result in legal action against the Gauteng Provincial Government. It remains to be seen if the department will engage in meaningful consultation with stakeholders on the matter.

effective sustainable participatory solution and that its importance and significance in the planning and liquor regulation terrain is acknowledged.

At the beginning of the case study interviews, most respondents were not aware of Schedules 4 and 5 of the Constitution; they didn't know that local government was responsible for *Control of undertakings that sell liquor to the public*; and they hadn't seen s156(4) of the Constitution which allows for the transfer of mandates from national and provincial governments to municipalities. Nevertheless, once they had been given this information and had considered the implications for municipal planning and liquor regulation, they were almost unanimous in agreeing that s156(4) should be invoked to transfer *Liquor licenses* to municipalities. For those who didn't support the idea, it didn't seem to be a matter of principle – their concern was whether local government would be able to cope with the responsibility. They also felt that if the problems of confusion, communication, lines of authority, alignment and intergovernmental cooperation could be sorted out, the system would work.

Those who said the mandate should be transferred believed that having all three functions under one sphere of government would make it much easier to align them and integrate them into one holistic strategy. That strategy would aim to ensure that the objectives of all three functions were achieved in a coordinated way. Furthermore, having all three at municipal level would make their policy and implementation processes more accessible to the citizens of the municipality, making it more possible for them to participate in those processes. But it would be wise to be cautious and remember that these are 'wicked' problems. There are no simple solutions to 'wicked' problems. The challenges posed by the current situation are not going to be easy to address – history bears witness to that. Adjusting the current situation – e.g. by moving liquor licensing to the municipality – will come with its own set of problems. But it may well open the door to a whole new way of managing things.

Chapter 6.
Reflecting on the outcomes – conclusions and recommendations

"There's always a new way, a better way that's not been tried before"
– *(Okri, 2015)*

a. Introduction

The reason for discussing liquor regulation at all in a report on planning is that, as outlined in Chapters 1 & 2, the awarding of a liquor licence and the consumption of liquor have *spatial* implications. This means that decisions in respect of liquor licencing and control will impact on urban policy, spatial planning, land use regulations and urban management, just as urban policy, spatial planning, land use regulations and urban management decisions will have consequences for the selling and consumption of liquor. These decisions also materially affect the citizens who live, work and play in the spaces that are implicated in those decisions.

The research for this report explored two key issues. The first is the interface between municipal planning, especially land use planning and management, and the licensing and control of liquor outlets – what is happening at that interface at the moment, and what institutional arrangements would most effectively ensure alignment between the three functions in the interest of good governance and of the public health, safety and well-being of the citizenry. The second is how best to achieve the national goal of promoting public participation in the context of liquor regulation and related planning issues. Or, put differently, how can citizens play an active, meaningful and inclusive role in shaping the policies and practices of liquor regulation and its spatial planning implications?

b. Summary of case study findings

In exploring whether the research provided answers to the questions posed by the research proposal, the approach will be to begin with answering the sub-questions and then assessing whether the main question has been answered.

Sub-question 1: What (and why) are the roles played by the three spheres of government in respect of liquor licensing and what institutional and other challenges, if any, result from the allocation of these separate but related responsibilities to these different spheres?

> The role of national government was mentioned in passing – it is responsible for setting national liquor policy and for regulating macro producers and distributors. All respondents knew that liquor licensing was the responsibility of provincial government, but not why. All respondents expressed concern that there was misalignment between provincial government local government on the issue of liquor, suggesting that municipalities make it difficult for applicants to get licenses and that province makes decisions which do not take into account land use regulations and procedures. As is

often the case in such interview processes, some respondents expressed their opinions very bluntly (e.g. “province just hands licenses out”) when in reality the situation is much more nuanced. Both province and municipalities are making genuine efforts to deal with very difficult issues as best they can and it would be unfair to characterise their actions in a one-dimensional way.

Most respondents were completely unaware of the Schedule 5B mandate for *Control of undertakings that sell liquor to the public* which has been allocated to municipalities. Those that were aware of the existence of the GLB Liquor Inspectors thought that primary responsibility for monitoring compliance of liquor outlets lay with them and with the SAPS. There was a vague awareness that the CoJ could intervene on certain issues (e.g. noise and public health), but no-one saw control of liquor outlets as a primary responsibility for local government. Even in Cape Town, where bylaws have been drafted in line with the mandate, it is not clear that the function is viewed holistically as covering all aspects of control of liquor outlets.

There was a general understanding that municipal planning is a local government function with a reasonable understanding of what it entailed. Only the people working in the CoJ, the GLB and SALGA had thought about the challenges of the relationship between liquor licensing and municipal planning in any depth.

Sub-question 2: What would be the implications, especially for the integrity of the municipality’s planning function, of invoking section 156(4) of the Constitution to devolve responsibility for liquor licensing from provincial government to municipalities?

Respondents were generally unaware of section 156(4) of the Constitution and its potential implications for liquor licensing. Even those who were aware of the provision had not considered whether it might be used to devolve liquor licensing to local government. The section is not easily invoked. Its use is currently under discussion in respect of housing and public transport.

The majority of respondents thought it would be a good idea to move liquor licensing to local government in the interests of aligning it with municipal planning and control of liquor. There were some who had misgivings based on their concerns about the capacity of local government to take on the responsibility. There were some who thought the function should stay with provinces and be better coordinated with planning, but they did not appear to be implacably opposed to a change.

Having heard about s156(4) for the first time, respondents could not think the issue through in detail. However, their desire for a solution meant that the idea intrigued them and gave them some hope that their concerns might be met by invoking it. They might have given more nuanced responses had they had an opportunity to engage in a deeper deliberative process about the issue.

Sub-question 3: What are respondent's perceptions of the socio-economic challenges arising from the consumption of alcohol in South Africa and how do they think municipal planning, land use planning in particular, could mitigate these challenges, if at all?

All respondents recognised the problems with the harmful use of liquor and the consequences for society, even the representatives from the liquor traders' associations and the liquor lawyers. They differed on the issue of how municipal planning might address the problem. In fact, the traders and the lawyers tended to see planning as a problem, e.g. land use regulations which restrict where businesses can be run and liquor sold. However, there was a general awareness of the socio-economic challenges associated with liquor and the need to address them. A well-managed process of engaging all stakeholders in a deliberative process aimed at finding a way of allowing liquor trading to happen while mitigating the harmful use of liquor seemed, therefore, to have a reasonable chance of success.

Sub-question 4: What are the implications, from a participatory democracy perspective, of the allocation of liquor licensing to provincial government as opposed to local government?

Once again, there was general consensus that community involvement in liquor regulation was necessary and important. Everyone agreed such involvement was currently inadequate and there was a strong view that this was a consequence of poor communication from government, province in particular, and that there weren't effective institutional mechanisms in place to ensure that communities were empowered with information. This made it difficult for them to exercise their right to participate and to influence the liquor licensing and regulatory process. All respondents believed the situation should be improved, but didn't offer concrete suggestions on how that should happen.

Main research question: What are the implications for effective liquor management, efficient spatial planning and meaningful public participation, of the Constitution allocating responsibility for liquor licensing to provincial government and municipal planning and control of retail liquor outlets to local government?

Based on the responses to the sub questions, it is clear that the majority of respondents believe that the current constitutional allocation of *Liquor licenses* to provinces is a problem. The separation of functions creates confusion for officials and the public alike, contributing to a mildly conflictual atmosphere between the CoJ and the GLB, and between government and the citizenry. The situation compromises the ability of municipalities to carry out its spatial planning and land use management functions and it creates uncertainty and insecurity for liquor traders.

The general consensus, with some exceptions, is that liquor licensing should be devolved to local government as this will allow for alignment and integration of municipal planning, liquor licensing

and liquor control. In addition, in line with Zack and Silverman (2007), respondents believed that moving liquor licensing to local government, and therefore closer to the community, will make it easier for citizens to participate in liquor licensing processes and decisions. This is informed, in part, by a belief that local government has a better understanding of what is going on in the community than provincial authorities. It is also based on a very strongly-held conviction that the community should have a meaningful say in what happens with planning and liquor regulation.

c. Investigation into why liquor licensing was given to provinces

In the absence of clear documentary evidence to the contrary, the report concludes that the testimony of the main respondent from the Constitutional Assembly process, supported by others, is a reasonable explanation of how the decision was made to allocate liquor licensing to provinces. That is, it was part of the 'horse-trading' around powers for the different spheres of government, not based on a functional assessment of where it would best be located. What documentary evidence was found shows that the issue was never given great prominence in the constitutional deliberations and that the decision to give provinces responsibility for liquor licensing was made less than a month before the final draft of the proposed Constitution was handed to the Constitutional Court. The allocation of control of liquor outlets to local government was made after the Constitutional Court gave its ruling on the draft document.

In the absence of a considered, rational motivation for giving liquor licensing to provinces, the task of the report is not to build an argument challenging the reasoning of the Constitutional Assembly. Instead, it will make a recommendation based on the findings of the various elements of the research process.

d. Internet survey of global trends

Part of the research process was to investigate global trends with respect to the level of government that has been allocated the responsibility for liquor licensing in different countries. The survey, reported on in Chapter 4, gathered information from a total of 34 countries. Of these, 22 mandated local governments to carry out this task. In some cases, the decision to allocate this responsibility to local government was specifically to bring the function closer to the people. In others, there was a recognition that the impact of liquor was experienced most at local government level. Most significantly for this report, the decision in New Zealand was taken to ensure "integration of local government policies and practices in regard to planning and liquor licensing" (Hill, 2004, p. 4).

e. Conclusion

On the basis of the findings of the research, the report concludes that the location of liquor licensing at provincial level cannot be justified. It contributes to the current challenges experienced by provinces and local government with respect to aligning the functions of liquor licensing, liquor control and municipal planning. Moving liquor licensing to local government also means a greater potential for

citizen involvement in decisions related to liquor regulation. However, it must be noted that this is not an automatic outcome and that conscious efforts will have to be made to put appropriate public participation mechanisms in place.

Alignment between the functions of liquor licensing, liquor control and municipal planning can be achieved through employing an integrated planning approach.

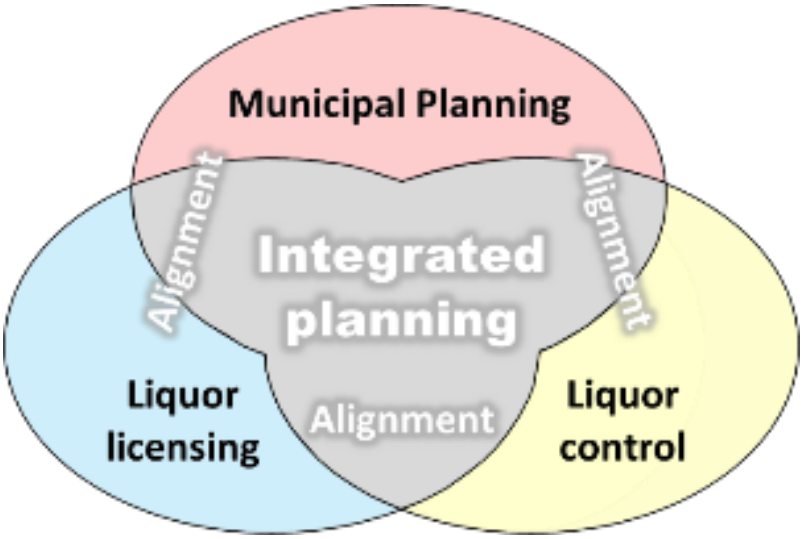


Figure 6: Aligning and integrating municipal planning, liquor licensing and control of liquor outlets

It is suggested that, though this could conceivably be achieved through an improvement in intergovernmental cooperation, the optimum solution is to devolve liquor licensing to local government, thereby allocating to one sphere of government the task of ensuring that such integration takes place. On that basis, the following recommendations are made.

f. Recommendations

i. Devolvement of liquor licensing to local government

The main recommendation is that government should embark on an inclusive, participatory process to determine whether making liquor licencing a local government responsibility offers a workable solution to the identified problems. Although responsibility for retail liquor licensing is assigned to provincial governments in Schedule 5A of the Constitution, re-allocating this function to local government would not require a constitutional amendment. S156(4) of the Constitution anticipates the potential need to re-allocate functions to local government and provides a means to do so without having to propose an amendment. It says that a national or provincial function listed in Schedules 4A or 5A of the Constitution *must*, by agreement, be assigned to local government if it necessarily relates to local government. This provision applies only if the matter would most effectively be administered locally and if a municipality has the capacity to administer it.

The following extract from a National Treasury Local Government Budgets and Expenditure Review (2011) provides a useful overview of s156(4) and other options for devolving national or provincial responsibilities to local government:

> The legislative authority remains with national and provincial government, while the administration of the function is assigned to the municipality. This means that the municipality is fully responsible for deciding how to carry out the function, the allocation of resources to the function and the actual execution of the function. The municipality is not simply being contracted to do things on behalf of national or provincial government as in the case of a delegation.
>
> To date, few functions have been assigned to municipalities, largely because there has been a perception that assignments have to be done uniformly to all municipalities at once, instead of adopting a differentiated approach as specific municipalities develop the necessary capacity. In addition, national and provincial departments prefer to delegate functions through agency arrangements because this enables them to retain control of the budget, while devolving responsibility for implementation to the municipality. The problem is that this separation of funding and implementation responsibilities often results in unfunded mandates being imposed on municipalities.
>
> It also means that the advantages of coordinating implementation at the local level are not being fully realised. For example, municipalities are responsible for developing integrated public transport systems while provinces are responsible for licensing public transport operators and subsidising buses, and national government is responsible for passenger rail services. This makes municipalities' task of planning and developing integrated public transport systems exceptionally difficult. Another example is the housing function. Provinces use municipalities as developers for housing projects, but have not assigned the housing function to them. This is despite the fact that well-capacitated municipalities are best placed to plan for the integrated delivery of housing, basic services and transport within the broader spatial development plan of the municipality.
>
> Going forward, there is a need to give proper effect to section 156(4) of the Constitution and ensure that functions are assigned to municipalities that have the capacity to administer them effectively. In this regard, government has already indicated that the public transport and housing functions will be assigned to municipalities that have the necessary capacity. (RSA, 2011, p. 35)

In the case of liquor licensing, government would have to decide, in line with s156(4) and in consultation with relevant stakeholders, whether the function necessarily relates to local government and whether it would be most effectively administered locally. If there was agreement on both counts, an in-principle decision would be taken that liquor licensing should be administered locally, i.e. not as a delegation or as an agency arrangement. Local government would, therefore, also receive the licence fees and other related financial inputs currently accruing to provincial government.

The third requirement, that a municipality should have the capacity to take on the function, is dealt with in section f(ii) below.

Should a decision be taken to devolve the function, the process would have to include an investigation into where best to locate the liquor licensing function in local government. The report has previously cautioned against classifying liquor licensing as primarily or exclusively an economic or policing function. Given its spatial and socio-economic implications, it is entangled with all city departments, although it is suggested that liquor licensing has particular and significant implications for planning, particularly with respect to land use management.

The rest of the report will present ideas on how to proceed should a decision be taken to devolve the function of liquor licensing to local government. This is not to pre-empt the deliberative process that should be undertaken to develop an implementation plan, but rather to offer one possible approach. There will no doubt be variations that will also need to be considered.

The current generic structure of local government is captured in the graphic below. There may be variations from municipality to municipality, but they would all more or less conform to the structure in the graphic. There is a mayor (usually an Executive Mayor) who is the political head of the municipality. Operationally, the various departments in the municipality report to the Municipal Manager who accounts to the Mayor. Politically, the Members of the Mayoral Committee (MMCs) at the head of each department report to the Mayor through the Mayoral Committee.

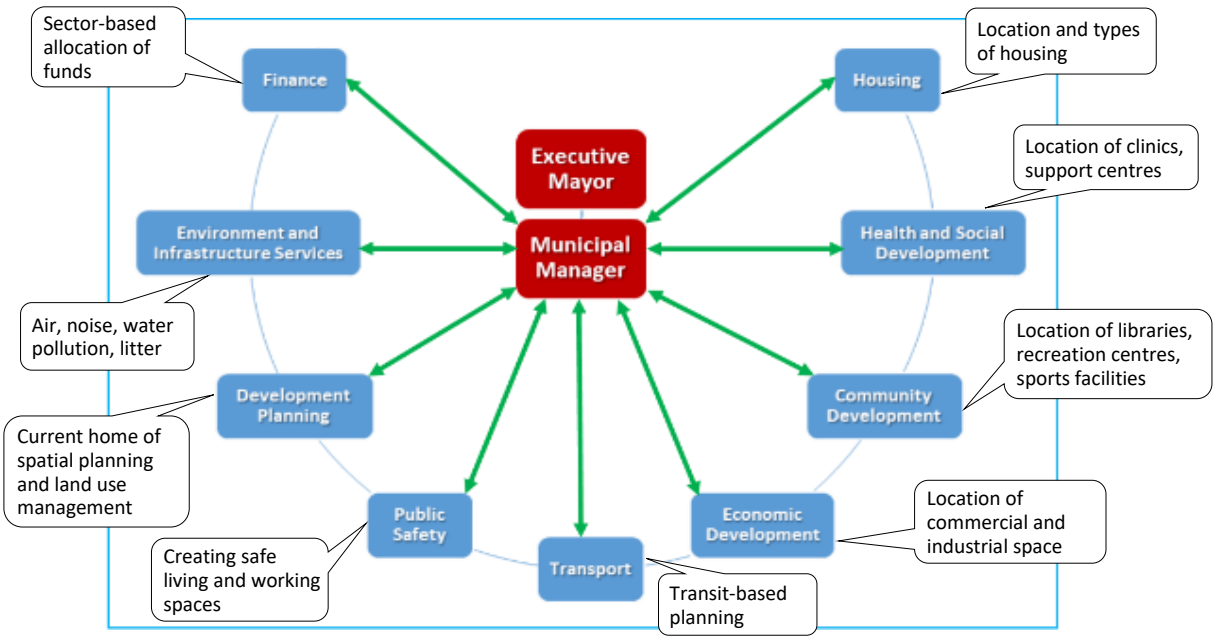


Figure 7: A simple depiction of the current way most municipalities are structured

The first observation is that Development Planning is usually treated as a department with the same status as all other departments. It is suggested that there may be a 'better way', premised on the reality that, while Development Planning does have regulatory responsibilities, it is primarily a strategic

function, not a technical one (Davidoff, 1965). This strategic function is transversal, impacting on, and being impacted on by, all other departments (see text balloons on graphic which indicate planning aspects of all departments, except for finance). Planning is concerned with the way the city works as an entity and how all the functions of the city work together to create a liveable environment for its citizens or, as Davidoff puts it, it is necessary that "the scope of planning be broadened to include all areas of interest to the public." (Davidoff, 1965, p. 331)

Therefore, real Development Planning, or "City Planning" as Davidoff calls it, would occur in an integrated way across all departments, ensuring alignment of all functions with the planning objectives of the municipality. This is already happening to an extent – for example, a housing project will be aligned to a transportation plan and a rollout of infrastructure for water, sewage and electricity. It should also factor in other elements such as schools, recreation facilities and a clinic.

A way to ensure that this happens in a coordinated, seamless way would be to create a City (or Town) Spatial Planning department in the office of the Municipal Manager which would be driven by a Spatial Planning Committee representing all municipal departments. The technical and regulatory functions that currently reside in Development Planning could be consolidated into a separate department, perhaps called Spatial Management, which would also be represented on the Spatial Planning Committee. The new structure might look as follows:

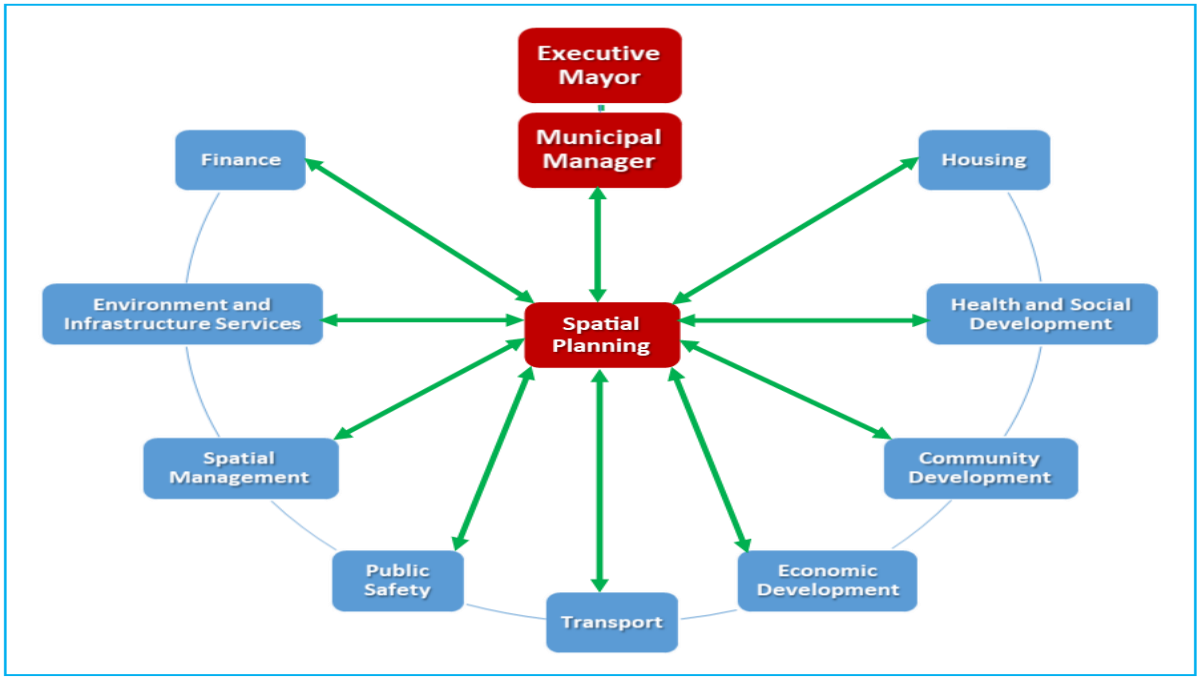


Figure 8: Municipal structure with Spatial Planning separated from Land Use Management and located in the office of the City Manager as City Planning, and all other departments participating in fully integrated spatial planning processes

Just as planning is a function which implicates, and is implicated by, all other departments in a municipality, so too is liquor regulation. It is associated with some departments more than with others, including spatial planning (planning policy, urban planning etc); spatial management (land use

management, zoning etc.); public safety (liquor-related crime, GBV etc); transport (parking, drinking and driving); health and social development (public health, poverty, welfare); community development (provision of social facilities, sport, recreation as alternative activities to drinking); economic development (job creation, entrepreneur development etc to offer alternatives to the selling of liquor); housing (impact of liquor outlets on residential space); environment (noise, pollution, littering); and finance (cost to the city of liquor regulation).

It is therefore suggested that the departmental structure of the city should be structured to take account of this reality. Given that, like spatial planning, liquor is a cross-cutting issue, it would be logical to place liquor management, like spatial planning, in the Municipal Manager's office in the form of a Strategic Liquor Policy Unit (SLPU). It can be positioned as a sub-set of Spatial Planning and located as a separate office within that function. This does not mean that this defines liquor as 'purely' a planning function. Its location in the Spatial Planning terrain is primarily to enable liquor regulation to be fully integrated with spatial planning, but it is also to facilitate engagement, through spatial planning, with all other departments in the municipality as well. The graphic below reflects such a structure.

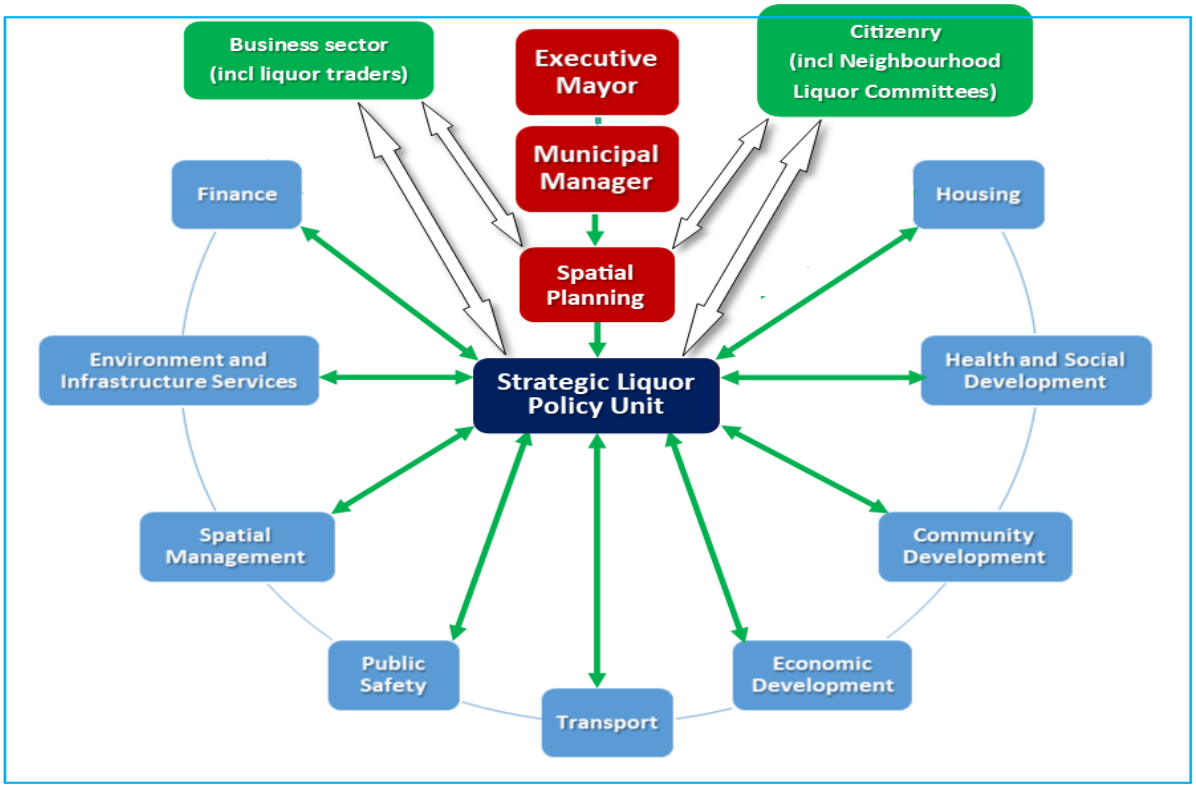


Figure 9: How liquor management could work if liquor licensing was devolved to municipalities and a Strategic Liquor Policy Unit (SLPU), responsible for all aspects of liquor regulation, including integration with Spatial Planning and Spatial Management, was established as a substructure of the Spatial Planning unit in the Municipal Manager's office

As can be seen in Figure 9, the new structure would also need to include effective mechanisms through which citizens are able to play a meaningful role in both spatial planning and the regulation of liquor, in line with constitutional and legislated commitments to public participation. To ensure meaningful public involvement in the formulation and implementation of liquor policy, including liquor licensing

and the control of liquor outlets, it is suggested that collaborative, deliberative and participatory mechanisms involving government, the community and retail liquor traders be established, at municipal level and at neighbourhood level. Figure 2 presents this proposed approach in graphic form.

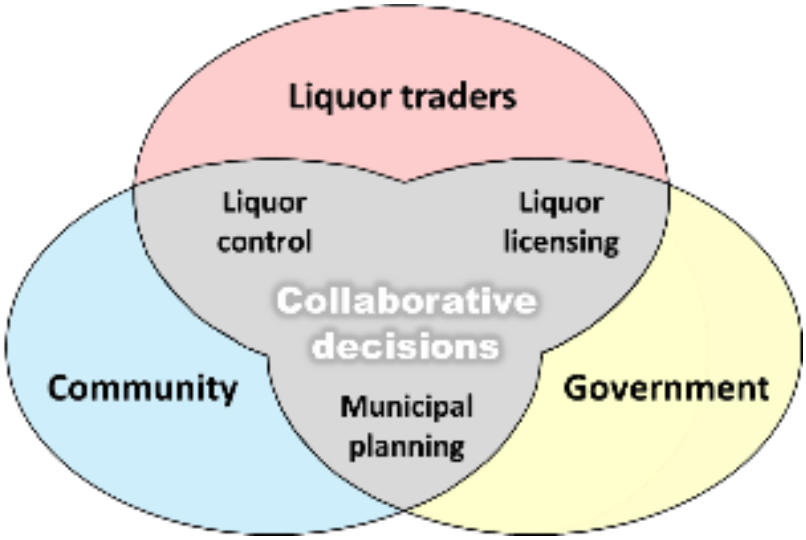


Figure 10: Involving all stakeholders in decision-making

Once the decision has been taken to devolve liquor licensing to a municipality and an SLPU has been established in that municipality, an intensive and extensive process would ensue to institutionalise a fully inclusive, meaningful participatory process involving all stakeholders in the municipality. This process would specifically *exclude* all national liquor companies and provincial and national government departments. This is to ensure that, while local liquor policy would need to be aligned with national and provincial liquor policy (where it existed), decisions taken by an SLPU would not be influenced by stakeholders who were not part of the municipality and whose priorities were not necessarily aligned with those of the municipality. The provincial department representing COGTA would be able to attend in an observer capacity (see below for the role of provincial and national government in this proposed arrangement).

The first task of the SLPU would be to draft a Strategic Liquor Policy (SLP) for the municipality with the participation of all departments and other stakeholders. The Policy would detail the way in which the municipality intended managing liquor and would delineate the role of each stakeholder.[39] It would include a set of policies and processes to allow for full, sustainable and meaningful public participation in all liquor-related issues.

[39] This would address a shortcoming highlighted in the Draft Gauteng Liquor Policy of 2011 – that municipalities in Gauteng don't have their own liquor strategies.

A proposed mechanism for achieving effective public participation is a Neighbourhood Liquor Committees (NLCs) for each designated neighbourhood[40] – each NLC would: decide on its own Neighbourhood Liquor Strategy (NLS); assess and comment on all liquor licence applications for the neighbourhood; monitor licensed outlets for compliance with the conditions of their licences and with municipal bylaws; intervene to prevent a proliferation of unlicensed outlets; and continually monitor and evaluate the impact of alcohol on the lived experience of the people of the neighbourhood.

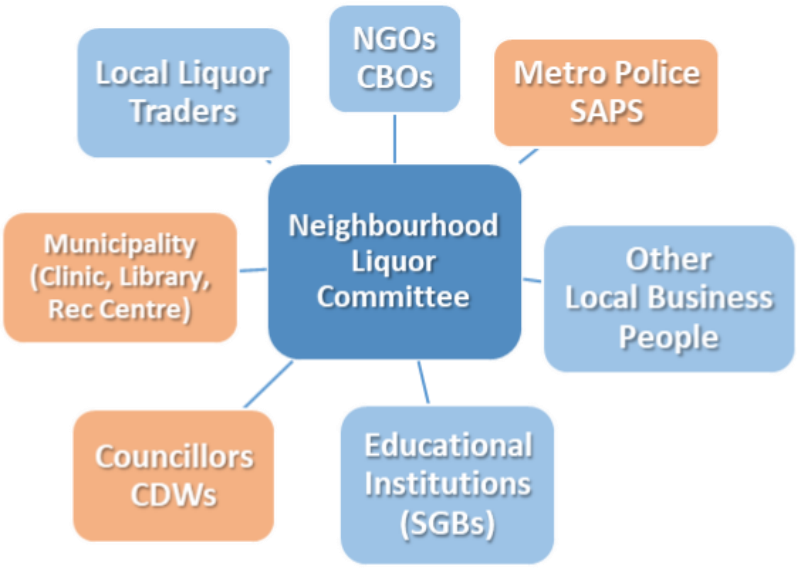


Figure 11: Structure of a Neighbourhood Liquor Committee (NLC). Police, municipal employees, councillors and Community Development Workers (CDWS) can participate, but not vote.

Decisions of an NLC, e.g. the adoption of an NLS for their area, would be binding as long as they were in line with their municipality's Strategic Liquor Policy and national and provincial liquor policies, where they existed. Each NLC would aim to have its NLS recognised and respected by the municipality and by the Liquor Board. So, for example, if the NLC decided to have an Alcohol Outlet Density (AOD) quota – e.g. only one liquor licence for every 1 000 neighbourhood members, the Liquor Board would respect that and not award new liquor licenses if they were going to take the number of licences above the agreed-upon quota.

[40] A neighbourhood is a geographic space determined more or less organically by social relations, unlike a ward or a suburb which are legally defined. An area is a neighbourhood if those living and working within its boundaries, and others not living and working in the area, consider it to be a neighbourhood.
For example, there is an area in Johannesburg that is bounded by Joe Slovo Drive to the west and de la Rey St to the east, Louis Botha/Peter Rd to the north and the top of Yeoville ridge to the south. It comprises four complete suburbs (Bellevue, Bellevue East, Randview and Highlands), most of Yeoville and a small part of Lorentzville, and parts of four different wards – wards 64, 66, 67 and 73. Despite the fact that it comprises six suburbs and four wards, it is regarded as one 'neighbourhood' called Yeoville. Each ward might be split across a number of neighbourhoods (Ward 67 also covers parts of Berea and Parktown), while some suburbs might even straddle more than one neighbourhood (the rest of Lorentzville and Yeoville might be part of a different neighbourhood, together with Bertrams and Judiths Paarl). It therefore is more logical and functional to have a neighbourhood liquor strategy, rather than one for each ward or suburb (except where the boundaries of a ward or a suburb happen to coincide with the boundaries of what is considered to be a neighbourhood), given that there is usually greater socio-economic and demographic homogeneity in a neighbourhood than in a ward or a suburb.

The NLC would comprise all stakeholders in the neighbourhood, including liquor traders, other business interests, NGOs and CBOs. All member structures would need to be local – there should be no representatives from outside the neighbourhood. Statutory and other structures representing a larger constituency that includes the neighbourhood, eg a Community Police Forum, a Ward Committee, a School Governing Body, a resident/ratepayer association etc, would be able to be part of the NLC.[41] Political parties would be excluded in order to ensure that local interests take priority. As a matter of principle, liquor trader representation on the NLC would not be allowed to exceed 25%. Public bodies and institutions working in the area, such as libraries, clinics, Metro Police and SAPS, would be non-voting participants.

Engagement would be participatory and deliberative, with the aim of reaching a consensus that accommodates all stakeholders. The NLC would choose its own chair who would undertake to be objective and not use the position to promote the interests of the group he or she represents. However, if the NLC decided this would not be a reasonable expectation, it could decide to employ the services of a facilitator to run meetings, someone who would be acceptable to all and who would not represent any of the interest groups. A facilitator would also not have links to the liquor industry.

All NLCs would be represented at municipal level. The municipal SLPU would establish a forum whose members would comprise all NLCs. The work of the SLPU would be guided by the NLCs.

ii. Role of provincial governments

As indicated above, s156(4) of the Constitution says that, when appropriate, a national or provincial function can be devolved to municipalities. However, while a decision to do so may be agreed-upon in principle, it is contingent on each municipality having the capacity to take on the function. It is suggested, therefore, that where a municipality is not yet in a position to take on the responsibility of liquor licensing, the relevant provincial government would continue to play that role until the municipality is able to do so.

The Constitution also requires national and provincial governments to support local government and provinces to have oversight over the municipalities within their provincial boundaries. National Treasury (2011) summarises the relevant sections in the Constitution:

> An integral part of the intergovernmental system is the responsibility that section 154 of the Constitution places on national and provincial government to support and strengthen the capacity of

[41] The Neighbourhood Liquor Committee would be a stand-alone entity and not a substructure of existing bodies such as Ward Committees or Community Police Forums, in part because both the afore-mentioned structures and others will share a collective interest in the liquor issue and should themselves become part of the Neighbourhood Liquor Committee (NLC), in part because Ward Committees and CPFs have a poor track record in many areas and, in some instances, have been hijacked to serve narrow party-political interests.

> municipalities to manage their own affairs … In addition, section 139 of the Constitution provides that the provincial executive can intervene in a municipality when it fails to fulfil an executive obligation. The same section provides that the provincial executive, or the national executive, must intervene in a municipality when it fails to approve a budget or any revenue raising measures necessary to give effect to the budget, or when there is a crisis in its financial affairs. Interventions may include instructing the municipal council to take certain actions, taking over responsibility for particular functions and dissolving the municipal council and appointing an administrator. (RSA, 2011, pp. 35-36)

Provinces would, therefore, be tasked with the responsibility of assisting municipalities to develop the capacity to take on liquor licensing as soon as is reasonably possible. Furthermore, they would have to monitor municipalities to ensure that, once they have taken on the liquor licensing function, they establish SLPUs, adopt SLPs that are consistent with national liquor and provincial liquor policy, where it exists, and that they carry out their functions in respect of liquor regulation in an efficient and effective way. Provinces would also be responsible for ensuring that municipalities fully implement meaningful public participation processes in respect of liquor licensing and regulation.

iii. Role of national government

National government would continue to play its current role in respect of setting national liquor policy and regulating large manufacturers and distributors. It would confirm the use of s156(4) of the Constitution to, in principle, devolve liquor licensing from provinces to local government. It would also set out the roles of national, provincial and municipal governments in respect of retail liquor regulation. It would include in the national liquor policy a requirement that there be a full and inclusive participatory mechanism to facilitate public participation in all aspects of retail liquor regulation. It would also ensure that mechanisms are in place to facilitate public participation in national liquor policy processes.

References

Adams, K., 2012. Ethnographic Methods. In: L. Dwyer, A. Gill & N. Seertaram, eds. *Handbook of Research Methods in Tourism: Qualitative and Quantitative Methods.* Cheltenham: Edward Elgar, pp. 339-351.

Alford, J. & Head, B., 2017. Wicked and less wicked problems: a typology and a contingency framework. *Policy and Society,* 36(3), pp. 397-413.

Ansell, C. & Gash, A., 2008. Collaborative Governance in Theory and Practice. *Journal of Public Administration Research and Theory,* 18(4), pp. 543-571.

Arnstein, S., 1969. A Ladder of Citizen Participation. *Journal of the American Planning Association,* 35(4), pp. 216-224.

Babor, T. & Caetano, R., 2003. *Alcohol: No Ordinary Commodity - Research and Public Policy.* Oxford: Oxford University Press.

Ballard, R., 2008. Between the community hall and the city hall: five research questions on participation. *Transformation,* Issue 66/67, pp. 168-188.

Barratt, A. a. S. P., 2010. *Hauser Global Law School Program.* [Online]
Available at: http://www.nyulawglobal.org/globalex/South_Africa1.html
[Accessed 2 December 2018].

Bell, D., 2007. The hospitable city: social relations in commercial spaces. *Progress in Human Geography,* 31(1), pp. 7-22.

Billings, S., 2014. Local Option, Alcohol and Crime. *B.E. Journal of Economic Analysis & Policy,* 14(3), pp. 791-816.

Bonner, P. a. N. N., 2008. *ALEXandra A History.* 1st ed. Johannesburg: Wits University Press.

CA, 2018. *Discussion on the Constitutional Assembly decision to give liquor licensing to provinces* [Interview] (7 December 2018).

Chambers, T. et al., 2017. Alcohol sponsorship of a summer of sport: a frequency analysis of alcohol marketing during major sports events on New Zealand television. *New Zealand medical journal,* 130(1448).

Charlton, S., 2008. *The State of Land Use Management in South Africa (Second Economy Strategy: Addressing Inequality and Economic Marginalisation),* Johannesburg: TIPS.

Charman, A. & Petersen, L., 2010. Case study: understanding the local economic impact of the closure of shebeens in the Western Cape as a consequence of the new Western Cape Liquor Act, 2008. *The Small Business Monitor,* 6(1), pp. 102-109.

City Council of Johannesburg, 1979. *Johannesburg Town Planning Scheme.* Johannesburg: City of Johannesburg.

CoCT, 2013. *Control of Undertakings that Sell Liquor to the Public Bylaw.* Cape Town: City of Cape Town.

COGTA, 2018. *Department of Cooperation and Development.* [Online]
Available at: http://www.cogta.gov.za/?p=3447
[Accessed 20 March 2018].

CoJ, 2018. *City of Johannesburg Land Use Scheme.* Johannesburg: City of Johannesburg.

Conklin, J., 2005. *Dialogue mapping: Building shared understanding of wicked problems.* San Francisco: John Wiley & Sons.

Constitutional Assembly Theme Committee 3, 1995. *Relationship between Levels of Government.* Johannesburg, Constitutional Assembly.

Constitutional Assembly Theme Committee 3, Undated. *Discussion paper for the development by Theme Committee 3 of a report on Local Government to the Constitutional Committee,* Johannesburg: Constitutional Assembly.

Constitutional Assembly Theme Committee 3, Undated. *Theme Committee 3 Report on Local Government to the Constitutional Committee Draft 3,* Johannesburg: Constitutional Assembly.

Constitutional Assembly, 1996. *Constitution of the Republic of South Africa Bill.* Pretoria: Government Printer.

Constitutional Committee, 1996. *5th Edition Refined Working Draft.* Johannesburg, Constitutional Assembly.

Cornwall, A., 2002. Locating Citizen Participation. *IDS Bulletin,* 33(2), pp. 49-58.

Cornwall, A., 2008. Unpacking 'Participation': Models, Meanings and Practises. *Community Development Journal,* 46(3), pp. 269-283.

Cornwall, A. & Brock, K., 2005. What do buzzwords do for development policy: A crtical look at 'participation', 'empowerment' and 'poverty reduction'.. *Third World Quarterly,* 26(7), pp. 1043-1060.

Cornwall, A. & Gaventa, J., 2001. Bridging the gap: citizenship, participation and accountability. *PLA Notes,* Volume 40, pp. 32-35.

Curry, A., 2017. Our 9 000-Year Love Affair with Booze. *National Geographic,* February, pp. 30-53.

Davidoff, P., 1965. Advocacy and pluralism in planning. *Journal of the American Planning Association,* 31(4), pp. 331-338.

Daviter, F., 2017. Coping, taming or solving: alternative approaches to the governance of wicked problems. *Policy Studies,* 38(6), pp. 571-588.

de Visser, J., 2004. Demarcating provincial and local powers regarding liquor retail. *SA Public Law,* Issue 365-377, p. 19.

Devas, N., 2004. *Urban Governance, Voice and Poverty in the Developing World.* London; Sterling, VA: Earthscan.

Dewey, J., 1937. Democracy and Educational Administration. *School and Society,* 3 April, Volume 45, pp. 457-67.

DP, 1994. *The process of drafting a new constitution,* Johannesburg: Democratic Party.

DTI, 2015. *National Liquor Policy.* Tshwane: Government Printing Works.

Eglin, R. & Ngamlana, N., 2015. Responsive Planning and Responsible Implementation: Improving Good Local Governance in the Integrated Development Planning Process. In: *In Pursuit of Responsive and Responsible Local Government.* Cape Town: Good Governance Learning Network, pp. 34-45.

Fung, A., 2004. Deliberation's dark side: Six questions for Iris Marion Young and Jane Mansbridge. *National Civic Review,* Issue Winter, pp. 47-54.

Fung, A., 2005. Deliberation before the revolution Towards an ethics of deliberative democracy in an unjust world. *Political Theory, Vol. 33 No. 2, June 2005 397-419,* 33(2), pp. 397-419.

Fung, A. & Wright, E., 2001. Deepening Democracy: Innovations in Empowered Participatory Governance. *Politics & Society,* 29(1), pp. 5-41.

Gaventa, 2003. *Towards Participatory Local Governance: Assessing the Transformative Possibilities.* Manchester, Institute of Development Studies.

Gaventa, J., 2002. Exploring citizenship, participation and accountability. *IDS Bulletin,* 33(2), pp. 1-14.

Gaventa, J., 2004. *Representation, Community Leadership and Participation: Citizen Involvement in Neighbourhood Renewal and Local Governance,* Brighton: Institute of Development Studies.

Gaventa, J., 2006. Triumph, Deficit or Contestation? Deepening the ‘Deepening Democracy’ Debate. *IDS Working Paper*, Issue 264, pp. 1-32.

GDED, 2011. *Draft Gauteng Liquor Policy*. Johannesburg: Gauteng Department of Economic Development.

GDED, 2013. *Gauteng Shebeen License Regulations.* Johannesburg: Government Printer.

GDED, 2014. *Gauteng Liquor Act, 3 of 2014.* Johannesburg: Government Printing Works.

GDFEA, 2003. *Gauteng Liquor Act, 2 of 2003.* Johannesburg: Government Printer.

GLISC, 2007. *Grey Literature International Steering Committee.* [Online]
Available at: https://web.archive.org/web/20090918235208/http://www.glisc.info/
[Accessed 17 August 2018].

Green, A., 2018. *Daily Maverick.* [Online]
Available at: https://www.dailymaverick.co.za/article/2018-03-04-health-e-news-motsoaledi-energised-by-ramaphosas-public-fitness-campaign/
[Accessed 3 January 2019].

Gruenewald, P., 2017. *Prevention Research Center.* [Online]
Available at: https://www.prev.org/RESEARCH-Direct,-Indirect-and-Total-Spatial-Impacts-of-Alcohol-Outlets-on--Related-Problems.html
[Accessed 6 January 2019].

Healey, P., 1998. Collaborative planning in a stakeholder society. *The Town Planning Review*, 69(1), pp. 1-21.

Healey, P., 2004. Creativty and urban governance. *Policy Studies*, 25(2).

Healey, P., 2007. *Urban complexity and spatial strategies: Towards a relational planning for our times.* First ed. Abingdon: Routledge.

Healey, P., 2009. The Pragmatic Tradition in Planning Thought. *Journal of Planning Education and Research*, Volume 28, pp. 277-292.

Hendriks, F., 2014. Understanding Good Urban Governance: Essentials, Shifts and Values. *Urban Affairs Review*, 50(4), pp. 553-576.

Herrick, C., 2014. Stakeholder narratives on alcohol governance in the Western Cape: the socio-spatial 'nuisance' of drink. *South African Geographical Journal*, 96(1), pp. 81-96.

Herrick, C. & Parnell, S., 2014. Alcohol, Poverty and the South African City. *South African Geographical Journal*, 96(1), pp. 1-14.

High Contracting Parties, 1919. *Liquor Traffic in Africa.* [Online]
Available at: http://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0255.pdf
[Accessed 3 January 2019].

Hildreth, R., 2012. Word and Deed: A Deweyan Integration of Deliberative and Participatory Democracy. *New Political Science*, 34(3), pp. 295-320.

Hill, L., 2004. *Planning for the sale of alcohol*, Wellington: Ministry of Health.

Hofman, J., 2007. The Constitutional Assembly Database Project - Resurrecting a Database Ten Years On. *International Journal of Legal Information*, 35(1), pp. 79-92.

Holtmann, B., 2011. *What it looks like when it's fixed.* First ed. Johannesburg: Barbara Holtmann.

Innes, J., 2004. Consensus Building: Clarifications for the critics. *Planning Theory*, 3(1), pp. 5-20.

Innes, J. & Booher, D., 2003. *The Impact of Collaborative Planning on Governance Capacity.* [Online]
Available at: https://escholarship.org/uc/item/98k72547
[Accessed 16 March 2019].

Innes, J. & Booher, D., 2004. Reframing Public Participation: Strategies for the 21st century. *Planning Theory and Practice,* 5(4), pp. 419-436.

Jara, V., 1973. *History is a Weapon - Three chapters from Victor: An unfinished song.* [Online]
Available at: https://www.historyisaweapon.com/defcon1/jaraunfinsong.html
[Accessed 04 11 2019].

Jayne, M., Holloway, S. & Valentine, G., 2006. Drunk and disorderly: alcohol, urban life and public space. *Progress in Human Geography,* 30(4), pp. 451-468.

Jernigan, D. & Obot, I., 2006. Thirsting for the African market. *African Journal of Drug and Alcohol Studies,* 5(1), pp. 57-70.

King, L. (., 2008. *The Avalon Project.* [Online]
Available at: http://avalon.law.yale.edu/ancient/hamframe.asp
[Accessed 26 December 2018].

La Hausse, P., 1988. *Brewers, beerhalls and boycotts: a history of liquor in South Africa.* Johannesburg: Ravan Press.

Lavery, J., 2018. 'Wicked problems', community engagement and the need for an implementation science for research ethics. *J Med Ethics,* 44(3), pp. 163-164.

Liepetz, B., 2008. Building a Vision for the Post-Apartheid City: What Role for Participation in Johannesburg's City Development Strategy? International. *Journal of Urban and Regional Research,* 32(1), p. 135–163.

Mager, A., 2010. *Beer, Sociability, and Masculinity in South Africa.* Cape Town: UCT Press.

Martineau, E., Graff, H., Mitchell, C. & Lock, K., 2013. Responsibility without legal authority> Tacklong aclohol-related health harms through licensing and planning policy in local government. *Journal of Public Health,* 36(3), pp. 435-442.

McCarney, P., 2003. Confronting Critical Disjunctures in the Governance of Cities. In: P. McCarney & R. Stren, eds. *Governance on the Ground: Innovations and Discontinuities in Cities of the Developing World.* Washington DC: Woodrow Wilson Center Press, pp. 31-55.

McCutcheon, A., 2019. *The Rev. A. J. Cook and Temperance.* Hermanus: Unpublished history.

Meyer, W., 2015. *IOL.* [Online]
Available at: https://www.iol.co.za/news/politics/strategy-to-tighten-liquor-law-1911831
[Accessed 10 03 2019].

Michels, A., 2011. Innovations in democratic governance: how does citizen participation contribute to a better democracy?. *International Review of Administrative Sciences,* 77(2), p. 275–293.

Miraftab, F., 2004. Making Neo-liberal Governance: The Disempowering Work of Empowerment. *International Planning Studies,* 9(4), pp. 239-259.

Miraftab, F., 2009. Insurgent Planning: Situating radical planning in the global South. *Planning Theory,* 8(1), pp. 32-50.

Miraftab, F., Silver, C. & and Beard, V., 2008. Introduction: Situating Contested Notions of Decentralized Planning in the Global South. In: F. Miraftab, C. Silver & V. and Beard, eds. *Planning and Decentralization: Contested Spaces for Public Action in the Global South.* New York: Routledge, pp. 1-18.

Nadeem, M., 2016. Analyzing Good Governance and Decentralization in Developing Countries. *Journal of Political Sciences and Public Affairs ,* 4(3).

NIA RaISe, 2009. *Liquor Licensing Reform in Northern Ireland,* Belfast: Northern Ireland Assembly Research and Library Service.

NP, 1994. *National Party proposals for the adoption of a new constitutional text (main points),* Johannesburg: National Party.

NPC, 2012. *National Development Plan.* Tshwane: Government Printing Works.

Okri, B., 2015. *Pulse.ng.* [Online]
Available at: https://www.pulse.ng/nigerian-poetry-a-new-dream-of-politics-by-ben-okri/bt500e4
[Accessed 04 11 19].

Pateman, C., 1970. *Participation and Democratic Theory.* Cambridge: Cambridge University Press.

Pateman, C., 2012. Participatory Democracy revisited. *Perspectives on Politics,* 10(1), pp. 7-19.

Pavlychko, B. & Krawchenko, T., 2011. Alcohol Abuse and Dependency in Ukraine: The Policy Challenge of a "Wicked" Problem. *NISPAcee Journal of Public Administration and Policy, Vol. IV, No. 1, Summer 2011,* IV(1), pp. 59-78.

Pennay, A., 2012. 'Wicked problems': The social conundrum presented by public drinking laws. *Drugs: education, prevention and policy,* 19(3), pp. 185-191.

Petticrew, M. T. P. W. V. et al., 2009. Better evidence about wicked issues in tackling health inequities. *Journal of Public Health,* 31(3), pp. 453-456.

Phillips, R., 2014. *Alcohol: A History.* Kindle ed. Chapel Hill: University of North Carolina Press.

Pierre, J., 1999. Models of Urban Governance: The Institutional Dimension of Urban Politics. *Urban Affairs Review 1999; 34; 372,* 34(3), pp. 372-396.

Pieterse, E., 2007. *South African Local Governance: Ambitions, Experiences and Challenges,* Bonn: Isandla Institute.

Piper, L. & von Lieres, B., 2006. The Limits of Participatory Democracy and the Rise of the Informal Politics of Mediated Representation in South Africa. *Journal of Civil Society.*

Purcell, M., 2013. Possible Worlds: Henri Lefebvre and the Right to the City. *Journal of Urban Affairs,* 36(1), pp. 141-154.

Quick, K. & Bryson, J., 2016. Theories of public participation in governance. In: J. Torbing & C. Ansell, eds. *Handbook in Theories of Governance (forthcoming).* s.l.:Edward Elgar Press.

Qwabe, B. & Mdaka, P., 2011. Are Ward Committees the 'voice' of communities?. In: GGLN, ed. *Recognising community voice and dissatisfaction.* Cape Town: Good Governance Learning Network, pp. 62-73.

Rittel, H. & Webber, M., 1973. Dilemmas in a General Theory of Planning. *Policy Sciences,* Issue 4, pp. 155-169.

Rosiers, J. & Möbius, D., 2008. *To empower the community in response to alcohol threats (ECAT) Scientific evidence for the ECAT methodology.* Brussels: Vereniging voor Alcohol en andere Drugproblemen vzw.

RSA, 1950. *Group Areas Act, 41 of 1950.* Pretoria: Government Printer.

RSA, 1977. *Liquor Act, 87 of 1977.* Pretoria: Government Printer.

RSA, 1989. *Liquor Act, 27 of 1989.* Pretoria: Government Printer.

RSA, 1993. *Constitution of the Republic of South Africa, 200 of 1993.* Pretoria: Government Printer.

RSA, 1995. *Liquor Act, 17 of 1989, as amended.* Pretoria: Government Printer.

RSA, 1995. *Liquor Amendment Act 57 of 1995.* Tshwane: Government Printer.

RSA, 1996. *Constitution of the Republic of South Africa.* Pretoria: Government Printers.

RSA, 1998. *Municipal Structures Act 117 of 1998.* Pretoria: Government Printing Works.

RSA, 2000. *Municipal Systems Act, 32 of 2000.* Tshwane: Government Printing Works.

RSA, 2003. *Liquor Act, 59 of 2003.* Pretoria: Government Printer.

RSA, 2005. *Intergovernmental Relations Framework Act, 13 of 2005.* Tshwane: Government Printing Works.

RSA, 2011. *Local Government Budgets and Expenditure Review 2006/07 – 2012/13,* Tshwane: National Treasury.

SALS, 2013. *Public Partricipation Framework for the South African Legislative Sector,* Cape Town: South African Legislative Sector.

Sandercock, L., 2000. When Strangers Become Neighbours: Managing Cities of Difference. *Planning Theory and Practice,* 1(1), pp. 13-30.

Shărf, W., 1984. *The impact of liquor on the working class (with particular focus on the Western Cape). The implications of the structure of the liquor industry and the role of the state in this regard.* Cape Town: s.n.

Sihlongonyane, M., 2009. 'Community development' as a buzz-word. *Development in Practice,* 19(2), pp. 136-147.

Sihlongonyane, M., 2015. Empty Signifiers of Transformation in Participatory Planning and the Marginalization of Black People in South Africa. *Planning, Practice & Research,* 30(1), pp. 83-100.

Singer, G., 2003. *An Examination of South African Alcohol Policy,* Cape Town: South African Catholic Bishops' Conference.

Smithers, M., 2013. *Re-imagining Post-apartheid Yeoville Bellevue: The Journey and Reflections of a Resident Activist/Activist Resident,* Johannesburg: South African Research Chair in Development Planning and Modelling, School of Architecture and Planning, University of the Witwatersrand.

Smith, T. & de Visser, J., 2009. *Are Ward Committees working? Insights from six case studies.* Cape Town: University of the Western Cape.

Smit, W., 2014. Discourses of alcohol: reflections on key issues influencing the regulation of shebeens in Cape Town. *South African Geographical Journal,* 96(1), pp. 60-80.

South African Republic, 1898. *Liquor Act, 19 of 1898.* Pretoria: Government Printer.

Sprain, L., 2016. Paradoxes of Public Participation in Climate Change Governance. *The Good Society,* 25(1), pp. 62-80.

Steytler, N. & Fessha, Y., 2007. Defining local government powers and functions. *South African Law Journal,* 124(2), p. 320 – 338.

Tedlock, B., 1991. From Participant Observation to the Observation of Participation: The Emergence of Narrative Ethnography. *Journal of Anthropological Research,* 47(1), pp. 69-94.

Tetnowski, J. & Damico, S., 2014. Auto-ethnography. In: C. Forsyth & H. Copes, eds. *Encyclopaedia of Social Deviance Vol 2.* Thousand Oaks, CA: Sage, pp. 49-50.

Thlobelo, T., 2018. Shebeen owners must also enjoy the right to trade. *Spotong,* 16 May, pp. 12-13.

Tlhobelo, T., 2018. *Spotong - The Yeoville judgement.* [Online]
Available at: https://www.spotongmag.co.za/articles/analysis-on-the-yeoville-judgement-on-shebeen-permits-7022.html
[Accessed 15 March 2019].

Union of South Africa, 1928. *Liquor Act, 30 of 1928.* Pretoria: Government Printer.

United Kingdom, 1909. *The Union of South Africa Act.* London: United Kingdom.

van der Waldt, G., 2004. Citizen participation in developmental local government: statutory obligations. *Administratio Publica, 12(2)],* 21(2), pp. 1-18.

van Onselen, C., 2001. *New Babylon New Nineveh.* 1st ed. Johannesburg: Jonathan Ball Publishers.

van Wyk, J., 2010. Parallel Planning Mechanisms as a "Recipe for Disaster". *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad,* Volume 13, pp. 214-234.

van Wyk, J., 2012. Planning in all its (dis)guises: Spheres of government, functional areas and authority. *Potchefstroom Electronic Law Journal,* 15(5), pp. 288-318.

Various, 1995. *Submissions to the constitutional process,* Johannesburg: Constitutional Assembly.

Vitale, D., 2006. Between deliberative and participatory democracy: A contribution on Habermas. *Philosophy and Social Criticism,* 32(6), pp. 739-766.

Watson, V., 2014. Co-production and collaboration in planning – The difference. *Planning Theory & Practice,* 15(1), pp. 62-76.

Watson, V., 2016. Shifting Approaches to Planning Theory: Global North and South. *Urban Planning,* 1(4), pp. 32-41.

WHO, 2018. *Global Status Report on Alcohol and Health,* Geneva: World Health Organisation.

Wilkinson, C., 2013. Ethnographic Methods. In: L. Shepherd, ed. *Critical Approaches to security: an introduction to theories and methods.* Oxon: Routledge, pp. 129-145.

Williams, J., 2008. The politics of social change and the transition to democratic governance: Community participation in post-apartheid South Africa.. In: J. Pretorius, ed. *African politics: beyond the third wave of democratisation.* Cape Town: Juta, pp. 172-197.

Willis, P. & Trondman, M., 2002. Manifesto for Ethnography. *Cultural Studies <-> Critical Methodologies,* 2(3), pp. 394-402.

Work, 2002. *Overview of Decentralisation Worldwide: A Stepping Stone to Improved Governance and Human Development,* New York: UNDP.

Worldometers, 2018. *Worldometers.* [Online]
Available at: http://www.worldometers.info/geography/how-many-countries-are-there-in-the-world/
[Accessed 27 December 2018].

Zack, T. & Silverman, M., 2007. *Using Regulation as a tool for better urban management,* Tshwane: DPLG.

Appendix 1: Extracts from Constitution – Sch 4 &5 & s156(4)[42]

a. Sch 4 Part A: Concurrent national & provincial legislative competence

- Administration of indigenous forests
- Agriculture
- Airports other than international and national airports
- Animal control and diseases
- Casinos, racing, gambling and wagering, excluding lotteries and sports pools
- Consumer protection
- Cultural matters
- Disaster management
- Education at all levels, excl tertiary education
- Environment
- Health services
- Housing
- Indigenous law and customary law, subject to Chapter 12 of the Constitution
- Industrial promotion
- Language policy and the regulation of official languages to the extent that the provisions of section 6 of the Constitution expressly confer upon the provincial legislatures legislative competence
- Media services directly controlled or provided by the provincial government, subject to section 192
- Nature conservation, excl national parks, national botanical gardens and marine resources
- Police to extent that provisions of Chapter 11 of the Constitution confer upon the provincial legislatures legislative competence
- Pollution control
- Population development
- Property transfer fees
- Provincial public enterprises in respect of functional areas in this Schedule and Sch. 5
- Public transport
- Public works only in respect of the needs of provincial government depts in the discharge of their responsibilities to administer functions specifically assigned to them in terms of the Constitution or any other law
- Regional planning and development
- Road traffic regulation
- Soil conservation
- Tourism
- Trade
- Traditional leadership, subject to Chapter 12 of the Constitution
- Urban and rural development
- Vehicle licensing
- Welfare service

b. Sch 4 Part B: Local government matters to extent set out in s155(6)(a)&(7):

- Air pollution
- Building regulations
- Child care facilities
- Electricity and gas reticulation
- Firefighting services
- Local tourism
- Municipal airports
- Municipal planning
- Municipal health services
- Municipal public transport
- Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law
- Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto
- Storm water management systems in built-up areas
- Trading regulations
- Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems

[42] These documents were given to the interviewees during the interview to facilitate discussion. They were also invited to keep them for future reference.

c. Sch 5 Part A: Functional areas of exclusive provincial legislative competence

- Abattoirs
- Ambulance services
- Archives other than national archives
- Libraries other than national libraries
- Liquor licences
- Museums other than national museums
- Provincial planning
- Provincial cultural matters
- Provincial recreation and amenities
- Provincial sport
- Provincial roads and traffic
- Veterinary services, excluding regulation of the profession

d. Sch 5 Part B: Local government matters to extent set out in s155(6)(a)&(7):

- Beaches and amusement facilities
- Billboards and the display of advertisements in public places
- Cemeteries, funeral parlours and crematoria
- Cleansing
- Control of public nuisances
- Control of undertakings that sell liquor to the public
- Facilities for the accommodation, care and burial of animals
- Fencing and fences
- Licensing of dogs
- Licensing and control of undertakings that sell food to the public
- Local amenities
- Local sport facilities
- Markets
- Municipal abattoirs
- Municipal parks and recreation
- Municipal roads
- Noise pollution
- Pounds
- Public places
- Refuse removal, refuse dumps and solid waste disposal
- Street trading
- Street lighting
- Traffic and parking

e. s156 Power and functions of municipalities

(1) A municipality has executive authority in respect of, and has the right to administer -

(a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and

(b) any other matter assigned to it by national or provincial legislation.

(2) A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.

(3) Subject to section 151 (4), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a by-law and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative.

(4) The national government and provincial governments ***must*** assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if-

(a) that matter would most effectively be administered locally; and

(b) the municipality has the capacity to administer it.

(5) A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.

Appendix 2: Sample research questionnaire

General questions for all respondents

1.1.	Date	
1.2.	Surname	
1.3.	Names	
1.4.	Position/Post	
1.5.	Inst/Org	
1.6.	Contact Number	
1.7.	Email Address	
1.8.	Anonymity (Y/N)	
1.9.	Nom de Plume	
1.10.	Where are you originally from?	
1.11.	Where did you school?	
1.12.	What is your highest educational qualification?	
1.13.	When did you join the CoJ?	
1.14.	What was the reason you chose to be a planner?	
1.15.	How long have you been in your current position?	
1.16.	Do you work directly on the issue of liquor licensing in any way? If yes, how long have you been doing it and what exactly are your responsibilities?	
1.17.	Did you choose to work with liquor licensing? If so, why?	
1.18.	Do you drink liquor yourself?	

Questions for rep(s) from City of Johannesburg

1.19. I would like to start off by drawing your attention specifically to Schedules 4 and 5 of the Constitution. As you know, the Constitution creates three spheres of government – national, provincial and local – and sets out the duties and responsibilities of each. Schedules 4 and 5, which appear at the end of the Constitution, contain lists of some of those responsibilities.

- Schedule 4A lists duties shared by national and province such as housing, health, policing.
- Schedule 4B lists local government duties related to national and provincial duties in 4A.
- Schedule 5A lists duties that are the responsibility only of provincial governments.
- Schedule 5B lists local government duties related to provincial responsibilities in 5A.

The specific duties I want to draw your attention to are:

- Schedule 4B – Municipal Planning (local)
- Schedule 5A – Liquor Licensing (provincial)
- Schedule 5B – Control of Undertakings that Sell Alcohol to the Public (local)

What is your understanding of these three areas of responsibility?

1.20. Why do you think the responsibility for Liquor Licensing was given to province, while Control of Undertakings that Sell Liquor to the Public (licensed by province) was given to local government?

1.21. From a planning perspective, what would be the CoJ's chief concerns in respect of liquor outlets? That is, what is your understanding of the CoJ's position on the relationship of liquor outlets to broader planning issues such as the following? Which department(s) in the CoJ would be involved with each of these particular issues?

1.21.1. Land use management

1.21.2. Spatial planning

1.21.3. Economic development

1.21.4. Nuisance issues such as noise, littering, traffic problems

1.21.5. Health and safety of citizens

1.21.6. Other

1.22. From a planning perspective, s23(4) of the Gauteng Liquor Act, 2 of 2003, appears to take into account the responsibility of municipalities for zoning, planning and environmental issues. It says "[a]pplications for tavern, pool club, pub, liquor store and night club liquor licences shall also be accompanied by unequivocal approval by the relevant department of the relevant metropolitan or district council, in addition to any zoning or planning or environmental laws requirements". What criteria does the CoJ apply when deciding whether to give consent for a liquor licence, especially in relation to planning, zoning and environmental laws? What other CoJ concerns besides zoning, planning and environment do you think the Act envisages?

1.23. How would you describe the relationship between the CoJ and the Gauteng Liquor Board with respect to liquor licensing, especially taking into account s23(4) of the Gauteng Liquor Act mentioned above? To what extent is this section in the Act honoured by the Liquor Board in its deliberations, in your experience and/or opinion? To what extent and how, if at all, are the CoJ's planning objectives impacted on by the proliferation of liquor outlets?

1.24. In your understanding, what is the role, in relation to liquor licensing and liquor management, of:

1.24.1. Gauteng Provincial Government

1.24.2. The SAPS

1.24.3. Community Police Forums

1.24.4. Local Committees of the Gauteng Liquor Board

1.24.5. Liquor Inspectors (provincial)

1.24.6. (Ward) Councillors

1.24.7. Ward Committees

1.24.8. Other community structures

1.24.9. Individuals

What do you see as some of the challenges facing the CoJ, other government structures and community organisations in dealing with the challenges related to liquor? What factors do you think might make the situation more difficult – liquor policy, inter-governmental relations, overlap of responsibilities and/or confusion of delegations, resources and capacity, the liquor companies, politics, a combination of these?

1.25. I would like to talk about the CoJ's planning requirements in relation to the decision by the Gauteng Department of Economic Development (GDED) in 2004 to allow all existing shebeens (unlicensed) to apply for a 'shebeen permit'. The only criteria for getting the permit was that the shebeen existed at the time of the dispensation. There doesn't appear to have been any requirement to comply with CoJ planning requirements for applicants to apply for consent use on properties that were not zoned for business and/or the selling of alcohol.

The permits were to be valid for 18 months and protected shebeens from legal action for selling without a licence. The validity of the permits was rolled over regularly for the next eight years while the GDED tried to find a way to get the shebeens properly licensed. Then they introduced their Shebeen Licence Regulations, 2013, in terms of which all permit holders could apply for a shebeen licence. Once again, the applicants were not specifically required to have approval from municipalities.

What consultation, if any, took place between the GDED and the CoJ in respect of the decision to introduce the permit system and the subsequent shebeen licence regulations. We understand there is a case the CoJ has brought against a shebeen owner for not having consent and her argument is that the permit was granted by the GDED and therefore the case should be taken up with them. Please comment on that too. (Note: the shebeen licensing process is on hold as the 2013 regulations were, in 2017, found to be *ultra vires* in a case successfully brought against the GDED et al by the Yeoville Bellevue Ratepayers Association and one other).

1.26. What is your view on the allocation of responsibilities as set out in Schedules 4 and 5 of the Constitution – that is, the responsibilities mentioned above related to liquor and municipal planning? I am especially interested in the impact of liquor licensing on the various aspects

of municipal planning (land use planning, zoning, spatial development planning, precinct planning et al) and whether the current allocation of responsibilities makes it easier or more difficult for the CoJ to carry out its mandate. If there is a need for a change to the current system, what sort of change do you think would be appropriate?

1.27. I would now like to draw your attention to section 156(4) of the Constitution. National and provincial governments have responsibilities that relate to local government. This section of the Constitution says that national and province must devolve such responsibilities to municipalities if it would be more efficient and if a municipality has the capacity to do it. What is your view, and why, on the suggestion that section 156(4) be used to transfer responsibility for Liquor Licensing from provincial government to local government?

1.28. In 2012, at a shebeen licence regulations hearing in Alexandra, a shebeen owner said to community members from Yeoville Bellevue that 'community members should not have a say in the liquor licensing process because, if they do, 80% of us will have to close down'. What is your view on this?

The CoJ has committed itself to community-based planning and participation of communities in planning, as envisaged in s152(e): "(The objectives of local government are) to encourage the involvement of communities and community organisations in matters of local government". Please tell me about your understanding of the ways in which community members are able to influence planning decisions, especially insofar as the liquor licensing process is concerned? How do you think the situation could be improved?

Appendix 3: Approval of research proposal and title

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

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Reference: Ms Olga Ndlovu
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04 January 2019
Person No: 0397865
PAG

Mr MP Smithers
51 Somerset Rd
Kensington
2094
South Africa

Dear Mr Maurice Smithers

Master of Science in Development Planning: Approval of Title

We have pleasure in advising that your proposal entitled *The complexities of liquor licensing in South Africa and its impact on land use planning and urban management: The case of Johannesburg and Gauteng, using Yeoville Bellevue and Alexandra as case studies.* has been approved. Please note that any amendments to this title have to be endorsed by the Faculty's higher degrees committee and formally approved.

Yours sincerely



Professor Ian Jandrell
Dean
Faculty of Engineering and the Built Environment

Appendix 4: Ethics Clearance

[redacted]

SCHOOL OF ARCHITECTURE AND PLANNING
HUMAN RESERCH ETHICS COMMITTEE

SCHOOL OF ARCHITECTURE PLANNING

CLEARANCE CERTIFICATE
PROTOCOL NUMBER: SOAP075/08/2018

PROJECT TITLE:	Investigating the overlap of responsibility for liquor management in South Africa between provincial and local government and its impact on land use planning
INVESTIGATOR/S:	Maurice Peter Smithers (Student No: 0397865)
SCHOOL:	Architecture and Planning
DEGREE PROGRAMME:	Masters of Science in Development Planning (MScDP)
DATE CONSIDERED:	09 October 2018
EXPIRY DATE:	09 October 2019
DECISION OF THE COMMITTEE:	Approved

CHAIRPERSON
(Professor Daniel Irurah)

DATE: 11 – 10 – 2018

cc: Supervisor/s: Mfaniseni Sihlongonyane

DECLARATION OF INVESTIGATORS

I/We fully understand the conditions under which I am/we are authorized to carry out the abovementioned research and I/we guarantee to ensure compliance with these conditions. Should any departure to be contemplated from the research procedure as approved I/we undertake to resubmit the protocol to the Committee.

Signature **Date**

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