



Department of Arts and Culture

Legal and accountability framework

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June 2007

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DAC - Public library funding model - Phase 2 (Report 1 of 3)

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1 Executive summary

This report is the first of three deliverables for Phase 2¹, being the development of a legal and accountability framework for public library services in South Africa.

Section 104(1)(b)(ii) and Schedule 5 Part A of the Constitution currently places the legal mandate and responsibility for the provision of public library services with the provincial governments.

However, a discussion in Chapter 3 of the historic overview and the current challenges faced by the public library sector in South Africa reveals the need for change of aspects of the present legal and accountability framework for public libraries in our country.

After a thorough analysis of the legal roles and responsibilities that the three spheres of government currently have in terms of both the Constitution and library-specific legislation, and having considered the role these governments play elsewhere in the world, we believe that the future of library services could fit into six different scenario options:

- Option 1: To render the service in terms of the current status quo
- Option 2: Library services made a concurrent function
- Option 3: National government renders the service
- Option 4: Provincial government renders the service
- Option 5: Local government renders the service
- Option 6: Library services allocated to municipalities

The advantages and challenges of each of the above options are analysed in Chapter 5 of this report. Chapter 6 recommends that the preferred option to follow would be option 6.

Option 6 would entail the following:

The responsibility for library services would still remain with provincial governments but they would have the opportunity to allocate aspects of this function to their municipalities (should they wish to do so) provided that these municipalities:

- Are able to render this service more effectively; and
- Have the capacity to do so².

In the event of a province choosing to allocate this function to its municipalities, we believe it would be best to choose the executive assignment option, as this option would allow a province

¹ This project consists of three Phases.

² See section 156(4)(a) and (b) of the Constitution.

to follow the “specific assignment” route, i.e. the province could select the municipalities to which it would assign the function to.³ The executive assignment option would allow provinces to evaluate the capacities of the different municipalities in their area, and only assign the function to those municipalities who have the capacity to administer this function. This would cater for the diversity in capacity that is currently being experienced by the public library sector.

The reasons for choosing option 6 would be the following:

- The current legal framework allows for the assignment of functions to municipalities. Therefore, it would not be necessary to amend existing legislation, or pass new legislation, to achieve this, which would make the implementation of this option much easier.
- Allocating this function by way of executive assignment⁴ would give each province some degree of flexibility. They could assign it only to municipalities that have the infrastructure in place and the capacity to render the service, and in areas where municipalities do not have the capacity or the infrastructure the provinces could render the service themselves. (This option would also cater for the current scenario where a number of municipalities already render the service, in which case assignment would merely formalise the roles and responsibilities of the two spheres of government in this regard.)
- Municipalities are “closer to the people”. Assigning public libraries to municipalities will be providing a service in line with the requirements of the particular community which the municipality serves⁵.
- Provinces could establish, or enhance, a shared services concept: the responsibility for selecting, ordering, processing, cataloguing and enhancing municipalities’ stocks of book could rest with the provinces. Provinces could also manage the online cataloguing, inter-library lending and the internet services to be offered in their regions. The municipalities, in turn, could be responsible for rendering the service to the communities and have the opportunity to tap into this shared service centre for resources at any point in time. Such an arrangement would, to some extent, address the diversity of capacity that is currently being experienced in the library sector.

³ Should the Department consider advising provinces to allocate this function to municipalities, provinces would legally have the following options of allocating the function by way of the following arrangements:

- Legislative assignment;
- Executive assignment;
- Delegation; and
- Agency agreement.

Each option has a corresponding legal implication. The reasons for choosing the option of executive assignment have been discussed in detail in paragraph 6.2 of this report.

⁴ Refer to paragraph 6.2 below where the reasons for allocating this function by way of executive assignment specifically have been set out.

⁵ Such a process would be in line with the principle of subsidiarity, which means that service delivery should happen at that sphere of government, closest to the people.

- Assignment agreements could be adapted to suit each municipality's capacity and be drafted to reflect the specific needs of a particular situation. For example, metros (i.e. Category A municipalities) would perhaps not need certain shared service centre offerings from a province (e.g. ordering, processing, cataloguing, etc.), whereas a Category B or C municipality would want to have access to such infrastructure. Likewise a Category A municipality might be willing to contribute more "base funding" to the service than a Category B or C municipality.
- Most municipalities already have in place the basic infrastructure necessary for rendering library services. Assigning this function to them would be to make use of this infrastructure in an efficient manner and allow them to retain assets which are currently on their financial statements. The implications of a process of transferring the assets from local government to provincial government would not be an issue that these municipalities would have to consider.
- A number of municipalities currently have library staff on their payrolls. Assigning public library services to them would eliminate the debate as to whether or not these members of staff need to be transferred to the provinces.
- This option makes it possible to arrange a funding model in terms of which all three spheres of government would contribute to funding the service.
- Provinces would monitor the library services that municipalities are rendering. (Therefore, this option would also be in line with the draft Implementation Protocol, which, at this stage, is expected to be entered into between the Department and the provincial departments. In terms of the protocol, the Technical Task Team, consisting of the executive managers and heads of libraries in the national and provincial departments, will be charged with monitoring the delivery of services performed in terms of service delivery/agency agreements.)
- This option would allow either a province or a municipality (depending on whether the function has been assigned or not) to enter into a PPP agreement with a private party to render the service.

Chapter 6 concludes with a set of associated legal roles and responsibilities for each sphere of government.

2 Introduction to the project

2.1 Background

Since 1994, Government has placed pressure on public libraries⁶ to provide added information and services to local communities whilst maintaining and improving existing services. This has placed an increased emphasis on funding. In the budget speech of 21 February 2007, the Minister of Finance, Mr. Trevor Manuel, confirmed this stance by stating that "...this year, we introduce a new conditional grant, called the Community Library Services grant, to develop the infrastructure and stock of books in local libraries. To spread the joy of books to millions more children and to provide access to information to teachers and parents, the grant starts off with an initial allocation of just under R1 billion over three years."

2.2 Reason for this assignment

The Department of Arts and Culture ("DAC" or "the Department") appointed KPMG Services (Pty) Ltd ("KPMG") and Jacaranda Intellectual Property Business Consultants ("Jacaranda"), collectively referred to as the "project team", to develop a funding model for public library services in South Africa.

2.3 Scope of the assignment

This assignment is to be conducted in three phases:

- **Phase 1:** To conduct an impact assessment study in order to recommend the best way to distribute an allocation of R200 million to the provincial governments of all nine provinces for the expansion of public libraries and to address the most pressing needs that would have a high impact on the level of service that is provided. This sum has been set aside by the National Treasury for this task and will be made available for the 2007/08 financial year. (This phase was completed in September 2006);
- **Phase 2:** To report on the status quo, and to develop a funding model for library services. This phase has four main objectives. The project team is required to:
 - Conduct an analysis of the current state of public library services throughout South Africa;
 - Provide clarification of the legal and accountability framework for public library services;

⁶ With public libraries we mean libraries open to the public and established and maintained by public funds, through local, provincial or national government, or a government agency. These libraries have the mandate to provide information services and access to knowledge through a range of means, resources and services. In this report, the term "public library" is used to include community libraries and community resource centres that serve the same purpose, but excludes school libraries.

- Develop a funding model (which needs to take into account the analysis of the current state of library services and legal and accountability framework); and
- Provide recommendations for a standard reporting format for accounting and statistical information.
- **Phase 3:** To develop a plan of action that prioritises needs, sets a framework within which to monitor implementation, and proposes measures by which to evaluate the effectiveness of the funding model.

It is intended that from the 2007/08 financial year the Department will utilise the model to distribute the earmarked allocation to provincial and local governments in order to expand and transform the public and community library service sector with the view to improving service delivery and achieving national policy objectives.

2.4 Progress to date

Phase 1 has been completed. The Department has accepted the deliverable for Phase 1. Phase 2 has been split into three deliverables:

- A report which clarifies the legal framework within which library services are being rendered: “DAC – Public library funding model – Phase 2 (Report 1 of 3)”, referred to as the “Legal and accountability framework report”.
- A report detailing the analysis of the current state of library and information services through-out South Africa: “DAC – Public library funding model – Phase 2 (Report 2 of 3)”, referred to as the “Status quo report”. This report will also provide recommendations for a standard reporting format for accounting and statistical information purposes.
- A report which sets out the funding model which is to be used for funding library services from now and onwards: “DAC – Public library funding model – Phase 2 (Report 3 of 3)”, referred to as the “Funding model report”.

For these deliverables the project team consulted with provincial and municipal library service representatives, the National Treasury, the Department of Provincial and Local Government (DPLG), the Financial and Fiscal Commission (FFC) and representatives from the Department respectively.

2.5 Scope and purpose of this report

As explained above, this report is the first of three reports, which are the final deliverables for Phase 2. It contains an analysis of the legal framework within which library services are being provided, as well as recommendations on possible options on how to better deliver the service going forward. The findings and recommendations contained in the report have been made based on our understanding of the sector thus far and after having:

- Analysed the applicable legislation.
- Conducted the desktop study and sourced benchmark information regarding the international experience. Countries included in our study were:
 - Australia.
 - Botswana.
 - Britain.
 - Canada.
 - Cuba.
 - Finland.
 - India.
 - Kenya.
- Given due consideration to the findings obtained from the detailed status quo review (please refer to the Status quo report, which sets out the detailed findings in this regard).
- Considered the funding model options available (please refer to the Funding model report, which sets out the various funding model options).

2.6 Reliance and limitations

Data for this report have been obtained from various stakeholders. The procedures which the project team used throughout the assignment do not constitute an audit or a review conducted in accordance with International Standards on Auditing. Therefore we have not attempted to verify this information, and accordingly we cannot guarantee its accuracy. However, where possible, the information has been checked for reasonableness and consistency. Findings and statements included in this report have been based on responses and data received from stakeholders.

As this assignment is not an audit or a review conducted in accordance with International Standards on Auditing, we do not express any assurance on the state of library functions or on the quality of the information that was provided for this study, or on any other facet related to this project.

If additional procedures were performed, possibly including the performance of an audit or review of the Department or libraries in accordance with International Standards on Auditing, different matters might have been identified.

This report has been drafted as a standalone report. However, in order to obtain a clear picture of the objectives set for Phase 2, it is advisable to read this report together with the other two reports:

- The Status quo report.
- The Funding model report.

2.7 Distribution of the report

The reports for Phase 2 have been distributed as follows:

- Department of Arts and Culture;
- National Treasury;
- DPLG; and
- FFC.

This list is not intended to be exhaustive. However, it includes all the stakeholders that have been identified as key for Phase 2, and some of them have contributed towards this report.

2.8 Disclaimer

This report has been compiled by KPMG for the sole and exclusive use of the Department and should not be quoted in whole or in part without our prior written consent. KPMG's findings in connection with this report are intended solely and exclusively for the benefit, information, and use by the Department. No party, other than the Department, may rely on the findings, either in whole or in part. KPMG (including its directors or employees or any body or entity controlled, owned or associated with KPMG) accepts no liability or responsibility whatsoever, resulting directly or indirectly from the disclosure of our findings to any third party and/or the reliance of any third party on the findings, either in whole or in part. KPMG's findings related to prevailing conditions and information available at the time of issuing our report.

2.9 Acknowledgements

We record our appreciation for the time and cooperation provided to the project team by management and staff of:

- the Department;
- the provincial departments;
- relevant representatives of the National Treasury;

- DPLG;
- FFC;
- Managers within municipalities responsible for library services; and
- The librarians interviewed.

2.10 Structure of the report

The report starts with Chapter 3, which sets out a brief historic overview of public library services in South Africa and sketches the challenges that this sector is currently facing.

Chapter 4 provides an analysis of the current legal framework within which libraries presently function. The current legal role and responsibility that each sphere of government is required to play with regard to rendering public library services is analysed against the backdrop of the Constitution and current library-specific legislation. It concludes with a number of findings resulting from our investigation of various governance and funding arrangements internationally.

Taking into account the legal roles and responsibilities of each sphere of government, Chapter 5 then sets out various legal framework options which could be considered going forward. The advantages and challenges of each option are discussed in detail. Chapter 6 then recommends a preferred option and the reasons for it, and concludes with a set of associated legal roles and responsibilities for each sphere of government.

Appendix A discusses the advantages and disadvantages of the various options for allocating functions to municipalities. Appendix B provides more detail about the governance frameworks and funding responsibilities of the various countries surveyed. Appendix C sets out a list of abbreviations, acronyms and definitions used in this report.

3 Problem statement

3.1 Historic overview

3.1.1 Before 1994

In the past, library services were provided in terms of provincial ordinances in the then provinces of Natal, Transvaal and Cape Province. There was no ordinance in the Orange Free State, where the service was rendered through Provincial Government Executive Committee decisions and resolutions. In all provinces, library services were provided in cooperation with municipalities. The functions that each sphere of government then rendered varied from province to province, and depended on the detail of the respective agreements between the provinces and municipalities on the one hand, and the detail of the ordinances or Executive Committee decisions and resolutions on the other. In most instances, however, the municipalities provided library services and funded library infrastructure, staff and library assets.

According to the relevant library ordinances mentioned above, the provincial administrator oversaw the control and management of the library services. Some provinces even provided financial assistance, whilst others only provided an oversight and advisory role.

At the time, the task was easy to manage as these services were focused mainly on the small white population and were concentrated in urban centres and large cities. However, the townships, informal settlements and homelands were poorly catered for⁷. With the fundamental political change that occurred in 1994, it became imperative to address this situation. Not only was the number of provinces to increase to nine, but it was clear that library services had to be provided more equitably.

3.1.2 The 1993 Constitution

In terms of section 175 of the 1993 Constitution, local government was to be established and administered in terms of national legislation. This legislation was to make provision for categories of metropolitan, urban and rural local governments with differentiated powers, functions and structures according to demography, economy, physical and environmental conditions and other factors which necessitated such categories.

The legislation was enacted in the form of the Local Government Transition Act. Section 10C and Schedule 2 of this Act dealt with the powers and duties of metropolitan councils. Item 19 of Schedule 2 provided that metropolitan councils would be responsible for the establishment, management and control of libraries serving the metropolitan area. (Other local government structures were not mentioned.) It is also important to note that the provision of library services was not included within the list of provincial competencies contained in Schedule 6 of the 1993 Constitution.

⁷ Refer to the “*Impact Assessment Study, 29 September 2006*”, which sets out our findings in more detail.

3.1.3 The current Constitution

The current Constitution of 1996 brought with it further changes. The powers and duties of metropolitan councils (including district and local councils) were no longer determined in terms of the Local Government Transition Act, as that Act derived its authority from the 1993 Constitution.

In terms of the current Constitution, local government is established and administered in terms of the Municipal Structures Act, Section 84 of which lists the powers and duties of municipalities. The provision of library services is not included in this list. In fact, Schedule 5, Part A now defined public libraries as a functional area of exclusive provincial competence. We interpret this to mean that the legal mandate and responsibility to provide public library services has been placed with the respective provinces.

3.2 The current challenge

However, when drafting the Constitution and assigning this responsibility, which previously to a certain extent rested with both the provincial and municipal spheres, exclusively to the provinces, the legislature did not spell out how issues such as the ownership and responsibility for existing infrastructure, staff and other library assets (which previously belonged to municipalities) should be addressed.

This resulted in a situation where, most municipalities continued providing these services (and their funding) based on “goodwill” and the agreements that existed between themselves and the former provinces. However, during the impact assessment interviews conducted during Phase 1 of this project, several provincial officials told the project team that some municipalities were questioning this. According to these officials, many of the municipalities were of the view that they did not have the legal mandate to provide these services and consequently have started to reduce their library budgets.

Our impact assessment further revealed that not all provinces actively budgeted for library services (refer to Chapter 5 of the “*Impact Assessment Study, 29 September 2006*”, which sets out our findings in more detail).

The fact that neither the provincial nor the local government sphere currently assumes full responsibility for the provision of public and community library services⁸ has resulted in the deterioration of these services to a level where a drastic intervention is necessary. As such, the key objective for this project is to identify a mechanism by which the three spheres of government could co-fund public libraries. But this raises the following questions:

- Which sphere of government should ultimately take responsibility for public libraries in order to better meet the educational, reading and information needs of all sectors of the South African society?
- Are municipalities not strategically better placed to render this service, particularly seeing that they currently own most of the library assets and have the professional staff on their

⁸ Refer to the “*Impact Assessment Study, 29 September 2006*”.

payrolls? Also, as municipalities are closer to the communities, would they not be better able to understand the needs of their communities?

- Would a partnership between provincial and local government, or even among all three spheres of government, be possible, and if so, to what extent could this be considered?

Before considering what would be the best way to resolve the current situation of public library services in South Africa, it is necessary to study the current legal and accountability framework governing it. Questions need to be clarified, such as what “exclusive competency” means in terms of the Constitution, whether the current legal framework allows for clear roles and responsibilities, and whether a partnership between the three spheres of government would be possible.

Once the current legal and accountability framework in terms of library services is clear, it will be possible to contemplate the way forward on possible better ways to render the service, and to contemplate a funding model which would correspond with the service delivery plans identified.

4 Legal framework analysis

This section of the report deals with an investigation into the current legal framework that governs the public library sector, in order to determine the current roles and responsibilities of national, provincial and local government with regard to this service.

4.1 Roles and responsibilities in terms of the Constitution

When dealing with the question as to what role each sphere of government should play in terms of rendering public library services, it is important to start the analysis with the Constitution. This section of the report deals with the roles that national, provincial and local government have in rendering public library services in terms of the Constitution.

4.1.1 The role of national government

The current Constitution (section 104(1)(b)(ii) and in Schedule 5 Part A) places the legal mandate and responsibility for the provision of public library services with the provincial sphere of government. We emphasise that, because these services are specifically listed in Schedule 5 of the Constitution, which deals with functional areas of exclusive provincial legislative competence, only provincial governments can actually provide this service. Therefore, national government cannot effect legislation that would enable the Department to render the service nationally.

The only time national government can render public library services is when a province cannot or does not fulfill an executive obligation in terms of the Constitution or other relevant legislation. In terms of section 100 of the Constitution, the national executive (i.e. the Department) may then intervene by taking any appropriate steps to ensure that the obligation to render library services is fulfilled. This type of intervention is, however, only ad-hoc in nature.

Nevertheless, even though it cannot render the service, the Department can set standards in terms of which provinces have to provide library services. Section 44(2) of the Constitution allows the national executive to “intervene” by passing legislation when it is necessary to “maintain essential national standards”, or to “establish minimum standards required for the rendering of services”.⁹ Therefore, as the Constitution currently stands, the Department may not provide library services but it can pass legislation that sets national standards pertaining to library services, which would then allow it to monitor the provincial departments’ performance in this regard.

⁹ Section 44(2) of the Constitution states that “Parliament may intervene by passing legislation in accordance with section 76(1), with regard to a matter falling within a functional area listed in Schedule 5, when it is necessary –

- (a) to maintain national security;
- (b) maintain economic unity;
- (c) to maintain essential national standards;
- (d) to establish minimum standards required for the rendering of services; or
- (e) to prevent unreasonable action taken by a province which is prejudiced to the interests of another province or to the country as a whole.”

4.1.2 The role of provincial government

Section 104(1)(b)(ii) and Schedule 5 Part A of the Constitution places the legal mandate and responsibility for the provision of public library services with the provincial governments. This makes them responsible for planning, budgeting, funding and providing capacity for rendering this service. In short: provinces are responsible, constitutionally, for everything with regard to rendering the service.

4.1.3 The role of local government

It is clear from the previous paragraph that, constitutionally speaking, local government does not currently play any role in providing library services. However, the Constitution allows for exceptions in this regard.

In general, it is possible for an organ of state at the provincial or national sphere of government to allocate additional powers and functions to the local sphere of government, provided that the function will be administered more effectively by local government and that the municipality has the capacity to administer it. Sections 156(4), 99 and 126 allow for the assignment of functions to another sphere of government, whereas section 238 (a) and (b) allows an executive organ of state to delegate a function to another organ of state either by way of delegation or by way of an agency agreement.

Therefore, it is possible for a province to allocate the library function to a municipality in its jurisdiction. Legally, the following options could be considered:

- Legislative assignment;
- Executive assignments;
- Delegation; and
- Agency agreement.

Refer to Annexure A where these options and their corresponding legal implications are discussed in more detail.¹⁰

4.2 Roles and responsibilities in terms of other legislation

It is also necessary to understand the role that each sphere of government currently plays in terms of other legislation. In conducting this analysis, we reviewed:

- Library-specific legislation:

¹⁰ During the research for Phase 2, we consulted representatives from DPLG who guided the project team extensively on the question of allocating additional powers and functions to municipalities. The source reference for this section, the “Guidelines on Allocation of Additional Powers and functions to Municipalities”, was provided by the DPLG.

- The Legal Deposit Act;
- The National Council for Library and Information Services Act;
- The National Library of South Africa Act;
- The South African Library for the Blind Act; and
- Provincial legislation:
 - (Free State) The Library and Information Services Act;
 - (Limpopo) The Library and Information Services Act; and
 - (Eastern Cape) The Libraries and Information Services Act.
- Financial or finance related legislation:
 - The Division of Revenue Act (2006);
 - The Financial and Fiscal Commission Act;
 - The Intergovernmental Relations Framework Act;
 - The Intergovernmental Fiscal Relations Act; and
 - The Public Finance Management Act.
- Local government legislation:
 - The Municipal Structures Act;
 - The Municipal Systems Act; and
 - The Municipal Finance Management Act.
- Other general legislation:
 - The Promotion of Access to Information Services Act; and
 - The Copy Right Act.

Following our analysis of the legislation specified above, we have compiled a matrix which sets out the current roles and responsibilities with regard to the provision of library services for each sphere of government.

4.2.1 The role of national government

As we pointed out previously, although the function of library services has been placed with provincial government, national government can still play an oversight role. In terms of section 44(2) of the Constitution, national government can set standards for rendering public library services. It can also monitor the performance of the provinces, and if the provinces cannot or do not fulfill the functions, national government can intervene by taking appropriate steps to ensure that they fulfill the obligation.¹¹

In addition to the Constitution, library-specific legislation also contains provisions which, amongst others, place an oversight and coordination duty with the national executive. The table below sets out national government’s legal roles and responsibilities in this regard.

Table 1: Legal roles and responsibilities of national government

<i>Role and responsibility</i>	<i>Institution</i>	<i>Legal mandate reference</i>	<i>Notes</i>
National government			
<ul style="list-style-type: none"> Determines national policy, including norms and standards in respect of library services 	Department	Section 44(2) of the Constitution	Section 44(2)(d) of the Constitution allows for the national department to pass legislation which will establish the “minimum standards” required for rendering of services.
	National Council for Library and Information Services	Section 4(1)(d) of the National Council for Library and Information Services Act	
<ul style="list-style-type: none"> Planning and coordinating library services 	National Council for Library and Information Services	Sections 4(1)(a), (b), (f) and (4)(2)(a), (b) of the National Council for Library and Information Services Act	One of the duties of the Council is to advise the Minister of Arts and Culture, and the Minister of Education on the development and coordination of library services. This suggests that NCLIS also plays a coordination role between the departments of Arts and Culture and Education.

¹¹ See section 100 of the Constitution.

<i>Role and responsibility</i>	<i>Institution</i>	<i>Legal mandate reference</i>	<i>Notes</i>
National government			
<ul style="list-style-type: none"> Develop principles and criteria that should govern the allocation of public funds 	National Council for Library and Information Services	Section 4(1)(d) of the National Council for Library and Information Services Act	<p>This implies that the Council should coordinate the budgeting processes of the provincial departments rendering the library services.</p> <p>It also implies that the Council should monitor the performance of the provincial departments' service delivery against the standards and policy criteria initially set for the sector.</p>
<ul style="list-style-type: none"> Coordinate the strategic planning and budgeting process for library services 	National Council for Library and Information Services	Implied by section 4(1)(d) of the National Council for Library and Information Services Act	
	Department	Implied by section 39 of the PFMA, read together with paragraph 5 and 6 of the Treasury Regulations	
<ul style="list-style-type: none"> Performance monitoring 	Department	Section 100 of the Constitution	In the event that provincial departments do not perform their obligations, the Department may "intervene" on an ad-hoc basis and render to the service.
<ul style="list-style-type: none"> Capacity support 	<i>Not currently addressed in legislation</i>	<i>Not currently addressed in legislation</i>	

<i>Role and responsibility</i>	<i>Institution</i>	<i>Legal mandate reference</i>	<i>Notes</i>
National government			
<ul style="list-style-type: none"> • Consultation Promotes consultation on matters regarding public library services between national, provincial and local government (where relevant) and any other stakeholders.	National Council for Library and Information Services	Sections 4(1)(a), (b), (f) and (4)(2)(a), (b) of the National Council for Library and Information Services Act	
	National Library of South Africa	Sections 4(2)(b), (c) and (f) of the National Library of South Africa Act	These sections require the National Library to provide leadership, guidance and advice to libraries. Also to undertake planning and coordination in cooperation with libraries.

4.2.2 The role of provincial government

Given that the Constitution places the responsibility for providing library services with provincial government, provinces must do everything in their power to promote and facilitate this. In this regard, the functions of provincial government could include the following:

- **Multi-year planning:** prepare and maintain strategic plans for the execution of library service objectives within the province. Ideally these plans should be in line with the national library policy, norms and standards and possible delivery goals which national government may determine. In turn, provinces' strategic plans should link into the national Department's strategic plan.
- **Provincial policy:** formulate provincial policy with regard to library services.
- **Provincial legislation:** implement provincial legislation to ensure effective provision of library services.
- **Development of library services:** to co-ordinate library services in the province.
- **Capacity support for municipalities:** where a province has assigned the function of providing library services to a municipality, it should take all reasonable and necessary steps to support and strengthen the municipality's capacity to provide the services.

The table below summarises the responsibilities, together with their legal mandate reference, in more detail.

Table 2: Legal roles and responsibilities of provincial government

<i>Role and responsibility</i>	<i>Institution</i>	<i>Legal mandate reference</i>	<i>Notes</i>
Provincial government			
<ul style="list-style-type: none"> Provincial strategy with regard to library services 	Provincial department	Schedule 5 Part A of the Constitution	
		Implied by section 39 of the PFMA, read together with paragraph 5 and 6 of the Treasury Regulations	The provincial strategic plans and budgets should link in with the National Department's plan and budget.
<ul style="list-style-type: none"> Develop legislation regarding library services 		Schedule 5 Part A of the Constitution	Free State, Limpopo and Eastern Cape have already developed legislation in this regard.
<ul style="list-style-type: none"> Providing library services 		Schedule 5 Part A of the Constitution	
<ul style="list-style-type: none"> Budget for, and provide funding for library services 		Schedule 5 Part A of the Constitution	
<ul style="list-style-type: none"> Planning and coordination of library services 	Provincial department	Schedule 5 Part A of the Constitution	A province would have to plan where libraries are placed and therefore should liaise closely with the municipalities in its jurisdiction already providing library services. Planning should also be done taking into account the standards that national government might have developed for this sector.

<i>Role and responsibility</i>	<i>Institution</i>	<i>Legal mandate reference</i>	<i>Notes</i>
Provincial government			
		Implied by section 39 of the PFMA, read together with paragraph 5 and 6 of the Treasury Regulations	The provincial strategic plans and budgets should link in with the National Department's plan and budget.
<ul style="list-style-type: none"> Performance monitoring Monitors the performance of the municipalities in rendering library services		Section 139 of the Constitution	Only relevant if a province has assigned the function to a municipality.
<ul style="list-style-type: none"> Taking care of all operational aspects of rendering the service 		Schedule 5 Part A of the Constitution	Especially relevant if province opts not to assign function to municipalities in its jurisdiction.

4.2.3 The role of local government

Every municipality to which the function of rendering library services has been formally assigned should take all reasonable steps to provide adequate library services within its jurisdiction, as part of its integrated development planning and budgeting processes, and within the framework of the assignment agreement and the national standards which government may set.

Local government's specific roles and responsibilities will depend on each assignment agreement. Although it is not possible to plot the roles and responsibilities in a table that reflects the legal basis for the responsibility, it is possible to anticipate that most assignment agreements would place the following duties on municipalities:

- With an assignment it is assumed that the province will fund the services, whilst the municipality will take care of the operational aspects, e.g.:
 - Manage the funds allocated by the province in accordance with the assignment agreement;
 - Provide professional and supporting library staff;
 - Provide the necessary infrastructure;
 - Maintain the infrastructure necessary for rendering the library service; and
 - Render the day-to-day service.

4.3 International study of roles and responsibilities

One of the objectives of this assignment was to also obtain information showing how library services are rendered elsewhere in the world. This information was to be compared to the current scenario in South Africa and to be taken into account when developing the legal and accountability framework and the funding model. The research focused on the following questions:

- The governance structure in terms of library services:
 - Has the particular country issued legislation that regulates the provision of public library services?
 - Does the legislation clearly spell out the roles and responsibilities of each government level?
 - Which level of government sets the library standards?
 - Which level of government renders the service?
 - What are the reporting lines between the spheres of government (from a governance perspective), if any?
- The funding of library services:
 - How is the funding responsibility allocated between the levels of government?

The list of countries researched, together with the reason for choosing the particular country, appears below.

- **Australia** is a developed country in which its states (equivalent to provinces) appear to play a major role in rendering public library services. As this is similar to the constitutional position in South Africa, it was useful to compare the two countries' legal frameworks.
- **Botswana** is a fellow African country with a favourable economic rating and which is widely regarded as having good governance structures.¹² The purpose for its inclusion was to find out how it provides library services particularly in its rural areas.
- In **Britain** the national government funds and sets the policy for library services, while local government actually delivers the services. It was useful to investigate the respective roles of the two levels of government in more detail.
- **Canada's** government structure is similar to South Africa's, i.e. three levels of government, with national government setting overall policy, norms and standards; provinces overseeing the implementation of policy; and local communities (municipalities) providing the service.

¹² Refer to "African Governance Report 2005", United Nations Economic Commission for Africa, (<http://www.uneca.org/agr2005/chap2.pdf>)

We wanted to explore this country's arrangements regarding public library services in more detail.

- **Cuba** is a centralised developing state. In view of the high level of illiteracy in the country, the national government embarked upon a serious initiative to improve literacy. Public libraries were used as vehicles to achieve this. This soon placed Cuba among the countries with the highest literacy rate in the world.¹³ South Africa faces a similar challenge so we deemed it necessary to investigate how Cuba turned around illiteracy in a relatively short period of time.
- **Finland** has a reputation for having an excellent public library network. Its public libraries are regarded as world leaders in terms of providing Internet access, and information services for independent study as well as for school pupils.¹⁴
- **India**, like South Africa, is a developing economy with a number of social, economic and political challenges. It has a diverse population with unique needs, and it was deemed important to understand what structures India has put in place to meet its challenges in providing library services.
- Although **Kenya** is still a developing country, it seems to have created a strong reading culture among its citizens in which libraries appear to have played a role. We set out to investigate what governance the Kenyan government had put in place to accomplish this.

The list of countries has been discussed and agreed with the steering committee of this project.

4.3.1 Findings

We have summarised key points of the information elicited in the table below.

¹³ The development of public libraries in Cuba since 1959, Cuban Libraries Support Group 2000

¹⁴ Overview to library decree 1078/1998, issued at Helsinki on the 18th of December, 1998

Country	Interesting information obtained	Has legislation been issued	Who sets library standards	Who renders the service	Reporting lines – governance	Funding responsibility
Australia	The states (equivalent to provinces) play a major role in coordinating public library services and providing technical assistance, whereas municipalities are tasked with operational matters.	We are not aware of any legislation that has been issued.	The Department of Culture and the Arts sets library standards. The Joint Advisory Committees in each individual state set standards for the respective states, within the framework provided by the Department ¹⁵ .	Municipalities	The board of a library reports to the municipality. The municipality reports to the Joint Advisory Committee of the state (formed between each state and its municipalities), who in turn report to the Library Boards established in each state. The Minister of Culture and the Arts is a board member on each one of the Library Boards.	National, provincial and local government.
Botswana	National government renders the service through the Botswana National Library Service (BNLS).	Yes. BNLS was established by the National Library Service Act of 1967.	No standards have been set as yet.	National government, though different divisions of BNLS.	Senior librarian reports to Board of BNLS, who report to a Director within the Department of Labour and Home Affairs	National government.
Britain	Libraries generate a considerable amount of income through own services rendered.	Yes.	National government	Local government, through library authorities.	The library authority within the municipality reports to the Secretary of State for Culture, Media and Sport	National government.

¹⁵ See as example the “*Framework Agreement between State and Local Government for the provision of Public Library Services: Western Australia (2004)*”

<i>Country</i>	<i>Interesting information obtained</i>	<i>Has legislation been issued</i>	<i>Who sets library standards</i>	<i>Who renders the service</i>	<i>Reporting lines – governance</i>	<i>Funding responsibility</i>
Canada	Municipalities have the primary responsibility for rendering public library services. However, in those areas where there are no municipalities, provinces are responsible for the service. Normally these provinces enter into agreements with communities in terms of which the communities then render this service.	Yes.	Canada has expressly and formally adopted the UNESCO library standards.	In those areas where there are municipalities, they are responsible for rendering the service. In those areas where there are no municipalities, the provinces and communities provide the service.	Community District Board reports to the provincial librarian, who in turn reports to the provincial Minister of Community and Cultural Affairs	National, provincial and local governments.
Cuba		No.	National government.	Municipalities (render public library services). Provinces (render regional library services.)	Librarians report to the Director of the National Library, who reports to the Minister of Culture	National government.
Finland	Municipalities provide the service, and are supported by provincial and national government.	Yes.	National government.	Municipalities.	The municipalities report to provincial government, who report to Minister of Community and Cultural Affairs.	National government.
India	National government co-ordinates rendering of the service through the Raja Rammohun Roy Library Foundation (RRRLF).	Some states have developed library legislation.	No standards have been set as yet.	States and municipalities.	RRRLF reports to the National Government. States and municipalities are fairly autonomous.	National government, state governments and municipalities.
Kenya		Yes.	No standards have yet been set.	National government through KNLS, in partnership with communities	Librarian reports to the Board of Directors of KNLS, who report to the Minister of Social Services	National government and communities.

For a more detailed discussion on how library services are rendered in these countries, refer to Annexure B

4.3.2 Lessons learnt

Our finding with regard to most of the countries researched is that the provision of library services is legislated and regulated by library-specific legislation (Finland, Britain, Canada, Kenya, Botswana). The legislation sets roles and responsibilities for the institutions entrusted with the provision of library services. The legislation also sets out the consequences of failure to abide with such provisions.

A number of countries have, beside the legislation, policies, guidelines and standards in terms of which the libraries are run (Australia, Britain, Finland, Canada¹⁶).

National government appears to play a key role in funding library services. In four of the eight of the countries surveyed, funding was provided by national government (Britain, Botswana, Cuba, Finland). In Australia, Canada and India funding was shared among national, provincial and local government. In Kenya the funding of this service is provided by national government and the local communities.

In most instances municipalities (or the equivalents of municipalities) are tasked with the operational aspects of providing library services (Australia, Britain, Finland, Kenya, Cuba and Canada¹⁷). In Botswana the national governments is responsible for the operational aspects of the service, whereas in India this task is shared among all three levels of government.

We have compared the above findings to the situation in South Africa. Our conclusions are set out in the paragraph below.

4.3.3 South Africa in comparison

A clear finding from our research is that most of the countries researched have a functional and sustainable public library service. The reasons for this could include:

- The function is the responsibility of a specific body/institution or level of government. Furthermore, there is legislation specifically dealing with the roles and responsibilities of the different institutions government in this regard. This result in the fact that the responsible body/institution or level of government assumes ownership for the responsibility to render the service.

Although in South Africa the function of public library services has constitutionally been conferred upon provincial government, there are still uncertainties in the sector as to the practical application of this principle. After 1996 a number of municipalities continued providing the services (and the funding), based on the agreements that existed between themselves and the former provinces. Although provinces have taken up the Constitutional mandate, our impact assessment revealed that the current budgets of the provinces cannot

¹⁶ Although not developing its own, Canada has adopted the UNESCO Library Standards and Guidelines, “*the Public Library Service, IFLA/UNESCO Guidelines for Development*”.

¹⁷ In Canada the service is shared between provinces and municipalities

sustain the service.¹⁸ Therefore, in practice, there is not a consistent, clear indication as to who is actually responsible for this service.

- Definite sources of budgeted funds are allocated to this function. This enables the responsible institution or level of government to execute its responsibility.

Apart from the provincial and municipal budgets for public library service made available to the project team, there is no definite source of funding allocated to this function. Going forward, government should consider injecting funds in a constant manner to ultimately reach its objective of providing functional public library services to the public.

- There is a specific set of guidelines or norms and standards dealing with the rendering of public library services. As such, the responsible institution or level of government knows what is expected in terms of the level of service that needs to be delivered, and delivers the service according to these specifications.

In South Africa, there is no set of norms and standards which the sector can follow. South Africa should, like other countries, set clear norms and standards to guide the provision of library services. (As pointed out earlier in this paragraph, it is however also important to indicate clearly who is responsible for this service, as norms and standards would be of little value if one would not know clearly who would assume the responsibility of delivering the service according to the norms and standards.)

- Internationally there appears to be some form of coordination between public library services and school libraries.

There is currently limited coordination between the Department and the Department of Education on the question as to how public libraries could enhance or add on to the services currently offered by school libraries, and vice versa.

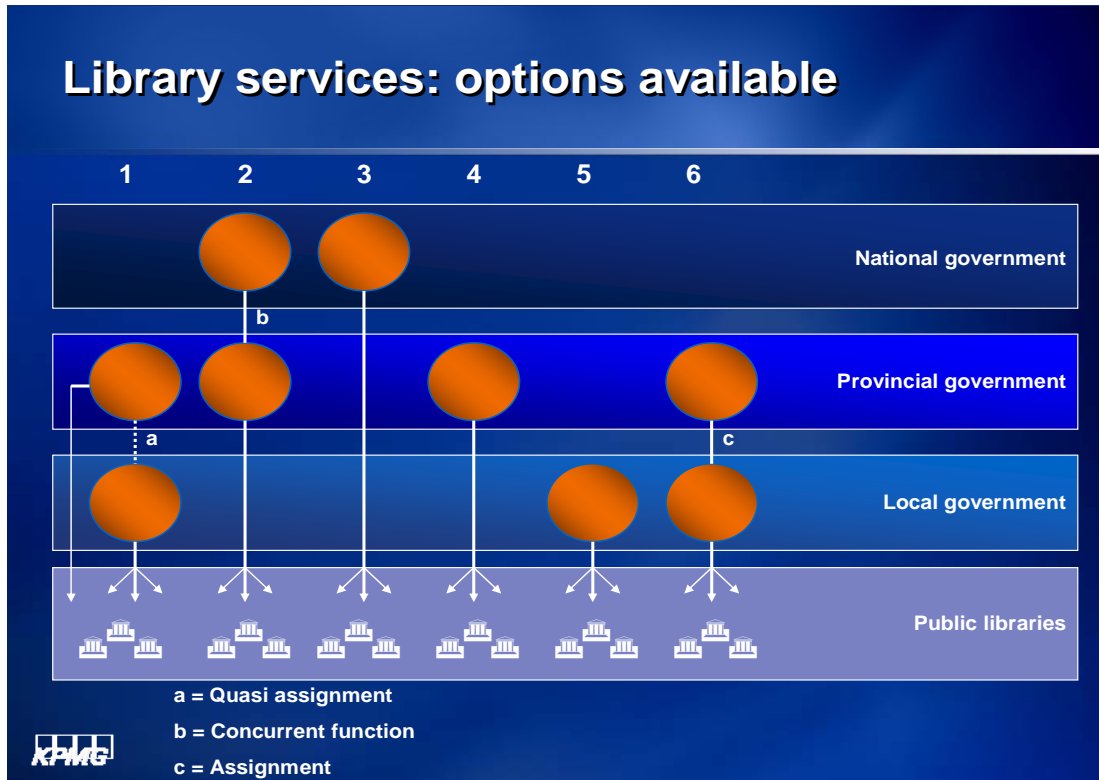
4.3.4 Conclusion

Going forward, the Department should take into account the lessons learnt (referred to in more detail in paragraph 4.3.2 above) when formulating a legal and accountability framework and funding model for the public library sector in this country.

¹⁸ Refer to Chapter 5 of the “*Impact Assessment Study, 29 September 2006*”, which sets out our findings in more detail.

5 The way forward: analysis of available options

Taking into account the current legal framework applicable to public library services in South Africa, the future of library services could fit into six different scenario options. These options are sketched in the diagram below.



5.1 Option 1: The current status

5.1.1 Scenario description

Although the function of public library services constitutionally rests exclusively with the provinces, many municipalities still provide this service. In some instances formal assignment agreements have not been entered into between the provinces and the municipalities, but municipalities render the service in terms of service level agreements. (The current service level agreements do not constitute the formal assignment arrangement as allowed for in the Constitution, hence they are depicted as *quasi assignment* arrangements in the diagram above. Although it could be argued that the *quasi assignment* arrangements are not legally invalid *per se*, it can be argued that these arrangements do not satisfy the specific requirements of the Constitution.)

In terms of section 44(2) of the Constitution, national government could not render the service, but could set standards by passing legislation that would “establish minimum standards required for the rendering of services”.

5.1.2 Advantages

- Historically the provinces of Natal, Transvaal, Cape Province and the Orange Free State were involved in coordinating public library services. Therefore, at least in the Western Cape, KwaZulu Natal, Free State and Gauteng there is some basic infrastructure in place to provide support services to public libraries
- The provincial departments responsible for public library services could liaise closely with the provincial Departments of Education and leverage off existing school libraries, since some provinces do have school infrastructure with libraries in place.

5.1.3 Challenges

- Some provinces (especially those established after 1994) have limited capacity (staff and infrastructure) to render the service. Examples of provinces with limited capacity include the Limpopo province, the Northern Cape and the Eastern Cape.¹⁹
- Library officials have told us that the budgets for this service have to compete with other provincial objectives. Therefore, the current provincial budgets for public library services are inadequate. (Increasing the provincial budget would require assistance from either the private sector or other spheres of government.)

5.2 Option 2: Library services made a concurrent function

5.2.1 Scenario description

Public library services would be shared between national and provincial government. Under this scenario, national government would set the standards for rendering the service, and both governments would share the funding and the rendering of the service.

Current practical example: Education, Housing

5.2.2 Advantages

- National government would have a much more “hands-on” approach in that it would be able to control how library services are rendered.
- National government would be able to pass legislation that would enable the Department to render the service from a national perspective.

¹⁹ Refer to “*Status Quo Report*”, - Phase 2 (Report 2 of 3)

5.2.3 Challenges

- The Constitution would have to be changed to allow for library services to be a concurrent function.
- The transfer of assets (which mostly belong to municipalities at this time) to the national and provincial governments may prove to be very challenging from an accounting, and political perspective.
- The transfer of library staff (currently mostly on the payrolls of municipalities) to national and provincial government may be challenging from a legal and political perspective. (The service conditions between provincial and local government are different, as such officials currently employed by local government might be opposed to a transfer, as the transfer would result in a change of service conditions.)

5.3 Option 3: National government renders the service

5.3.1 Scenario description

Library services would be provided by national government. In such a scenario, the Department, NCLIS or the National Library would control:

- Policy and the setting of library standards.
- Strategic planning and budgeting.
- Funding.
- Operating public libraries.

Funds would be paid over directly to the libraries, which would operate as “stations”. The heads of the libraries would report directly to national government regarding the library’s performance against predetermined objectives and in terms of all operational matters, including staff-related issues, capital and operational expenditure, etc.

Current practical example: South African Police Services

5.3.2 Advantages

- Once implemented, the reporting lines in terms of both governance and accounting matters would be simplified.
- Coordination and cooperation would be enhanced due to less “red tape”.
- The Department would have more control over the actual delivery of services by the libraries.

- The Department would be able to monitor performance more closely, as there would be no other sphere of government between the Department and the libraries.

5.3.3 Challenges

- The Constitution would have to be amended to give effect to this option.
- There would be accounting difficulties, as most assets currently lie with municipalities and provinces. Issues, such as transfer of assets may prove to be challenging from both an administrative and an accounting perspective.
- The Department, NCLIS or the National Library may not have the capacity to manage the task of rendering library services, and would have to invest substantially in capacity in this regard.
- The transfer of library staff (currently mostly on the payrolls of municipalities) to national government may prove to be very challenging from a legal and political perspective.

5.4 Option 4: Provincial government renders the service

5.4.1 Scenario description

The provinces would provide the library services directly to the public. In this scenario, national government would set the standards for the service, but the provinces would provide the service without the involvement of national or local government.

Current practical example: Liquor Licensing, State Veterinary Services

5.4.2 Advantages

- In line with the current Constitutional position.
- Clear accountability.

5.4.3 Challenges

- Capacity within provinces may be limited.
- Most of the operational expertise with regard to rendering library services currently lies with the municipalities.
- Most assets currently reside with municipalities. The transfer of assets may prove to be challenging from both an administrative and an accounting perspective.

- Most library professionals are currently employed by municipalities. Therefore, the transfer of library staff would be necessary, which may prove to be challenging from both a legal and a political perspective.

5.5 Option 5: Local government renders the service

5.5.1 Scenario description

Municipalities would constitutionally be solely responsible for providing public library services. In this scenario they would be responsible to fund and render the service.

Current practical example: Refuse removal

5.5.2 Advantages

- To a large extent the current operations expertise with regard to, and experience with, rendering the service lies with the municipalities.
- Most assets currently are owned by municipalities.
- Most library professionals are currently employed by municipalities.

5.5.3 Challenges

- In order to place the legal mandate solely with local government, the current Constitution would have to be changed to place the responsibility for library services with local government.
- Most municipalities already struggle to deliver the basic services they are responsible for due to limited capacity and funding. Therefore, adding library services to this list may increase their current burden.
- Due to the current diversity in capacity within municipalities experienced throughout South Africa, this option may lead to further inequalities in terms of the levels of service provided, e.g. a public library in an affluent municipality will be able to render a better service to the community than a library in a municipality with underprivileged households.

5.6 Option 6: Library services allocated to municipalities

5.6.1 Scenario description

Library services would remain the function of provinces. Provinces, however, would have the option to allocate the function to municipalities, should they wish to do so. In our view, it would

be best to select the executive assignment option²⁰, as this option would allow a province to follow the specific assignment route (i.e. they could select the municipalities to which they would assign the function to). They do not have to assign the function to all the municipalities in their jurisdiction. This option would cater for the diversity of capacity that is currently being experienced in the public library service sector.

In this scenario provinces would be responsible for the strategic planning, budgeting, and the funding of library services in their jurisdiction. Where provinces have assigned the function to their municipalities, they would:

- Transfer the budgeted funds to the municipalities, who would use these funds to operate libraries. (A portion of the budget would, however, remain with the provinces in order to enable them to take care of all duties relating to the coordination and monitoring of this service.)
- See that the strategic plans and budgets of the municipalities rendering the service were consistent with their own.
- Monitor the municipalities' performance in terms of rendering the service, using the assignment agreements as a performance measure.

The librarians within the municipalities would ultimately report to the Municipal Manager, who in turn would report to the provincial department²¹ regarding the library's performance against predetermined objectives.

In the event where the province wants to retain this function, it can do so. In this instance, the province would be responsible for all aspects of rendering the service.

Current practical example: Gauteng Provincial Department of Health assigned the rendering of emergency ambulance services to the municipalities in its jurisdiction.

5.6.2 Advantages

- The existing legal framework (i.e. the Constitution) allows for this option.
- This option allows the province a degree of flexibility: the province can choose whether to assign or not. Where a province has decided to follow the assignment route, executive assignment allows the province the option to assign to specific municipalities.

²⁰ Refer to Annexure A, where the various options of allocations functions to municipalities have been discussed. The feasibility of applying the specific options have also been investigated and concluded upon.

²¹ This arrangement would fit into the *draft* "Implementation protocol for the management of conditional grants for public/community libraries" (the Implementation Protocol") which is at this stage envisaged to be entered into between the Department and the provincial departments. In terms of the protocol the Technical Task Team (consisting of the executive managers and heads of libraries in the national and provincial departments) will be charged with the responsibility of monitoring the delivery of services performed in terms of service delivery/agency agreements.

- As most service point infrastructure already resides with municipalities, provinces would optimise efficiencies by assigning these services to them.²²
- A number of municipalities are currently rendering library services, but do not have adequate funds to maintain an acceptable level of delivery. Assignment agreements could be drafted in such a way that municipalities still provide the “basic funding” (i.e. for library staff, maintenance of the infrastructure and other expenditure currently provided by the municipality), whilst provinces could provide the funding for upgrading services to an acceptable level.²³
- Provinces could focus more on the strategic planning of library services. This would allow staff to concentrate on those municipalities where library services are drastically below standard, or even non-existent.
- Provinces could consider a shared services concept. The responsibility for selecting, ordering, processing, cataloguing and enhancing the book stock levels of the municipalities could rest with provinces. They could also manage online cataloguing, inter-library lending and managing the internet services to be offered in the province.
- Using the monitoring and financial reporting arrangements, provincial departments will be able to obtain information on the level of capacity within their municipalities.
- Executive assignment would allow provinces to provide library services in areas where municipalities do not have the capacity, infrastructure or the financial means to do so.
- This option would not exclude either a province or a municipality (depending on whether the function has been assigned or not) to enter into a PPP or other service level agreement with a private party to render the service.

5.6.3 Challenges

- A successful assignment arrangement would entail a lengthy process of relationship building and negotiation with the municipalities concerned. The processes of sections 10 and 10A, as well as sections 3(2A to 2D) of the Financial and Fiscal Commission Act and section 6(b) of the Intergovernmental Fiscal Relations Act would also have to be followed.
- The provincial departments may not have the capacity to effectively oversee and monitor the level of the service that the municipalities are providing on behalf of provincial government.
- The provincial departments would have to monitor whether municipalities spend the funds on library services.

²² Refer to “*Status Quo Report*”, - Phase 2 (Report 2 of 3)

²³ The library standards which the Department contemplates to have developed during Phase 3 of this assignment could provide a guideline as to what expenditure would be needed to render an acceptable level of library services.

6 Recommendation

The Department should, in our view, consider all the abovementioned options carefully and make a decision as to the most suitable way forward before the commencement of Phase 3 of this project. This decision will critically influence the implementation plan that needs to be designed in order to give effect to whichever option is chosen.

Having studied the roles that national, provincial and local governments need to play in terms of the Constitution and other library-specific legislation, and having taken into account the international experience in this regard, we would recommend the following:

6.1 Setting norms and standards

National government should set norms and standards for the public library sector. This will ensure that all relevant role players have a certain benchmark to work towards. This can be done in terms of section 44(2) of the Constitution, which states that national government can establish norms and standards by way of issuing legislation.

6.2 Possibility of allocating library services to local government

We would further recommend that the Department choose option 6 as the way forward. Should the Department choose option 6, the responsibility for library services would still remain with provincial governments but they would have the opportunity to allocate aspects of this function to their municipalities (should they wish to do so) provided that these municipalities:

- Are able to render this service more effectively; and
- Have the capacity to do so²⁴.

There are a number of reasons for choosing this option:

- The current legal framework allows for the assignment of functions to municipalities. Therefore, it would not be necessary to amend existing legislation, or pass new legislation, to achieve this, which would make the implementation of this option much easier.
- Allocating this function by way of executive assignment²⁵ would give each province some degree of flexibility. They could assign it only to municipalities that have the infrastructure in place and the capacity to render the service, and in areas where municipalities do not have the capacity or the infrastructure the provinces could render the service themselves. (This option would also cater for the current scenario where a number of municipalities already render the service, in which case assignment would merely formalise the roles and responsibilities of the two spheres of government.)

²⁴ See section 156(4)(a) and (b) of the Constitution.

²⁵ Refer to paragraph 6.2 below where the reasons for allocating this function by way of executive assignment specifically have been set out.

- Municipalities are “closer to the people”. Assigning public libraries to municipalities will be providing a service in line with the requirements of the particular community which the municipality serves²⁶.
- Provinces could establish, or enhance, a shared services concept: the responsibility for selecting, ordering, processing, cataloguing and enhancing municipalities’ stocks of book could rest with the provinces. Provinces could also manage the online cataloguing, inter-library lending and the internet services to be offered in their regions. The municipalities, in turn, could be responsible for rendering the service to the communities and have the opportunity to tap into this shared service centre for resources at any point in time. Such an arrangement would, to some extent, address the diversity of capacity that is currently being experienced in the library sector.
- Assignment agreements could be adapted to suit each municipality’s capacity and be drafted to reflect the specific needs of a particular situation. For example, metros (i.e. Category A municipalities) would perhaps not need certain shared service centre offerings from a province (e.g. ordering, processing, cataloguing, etc.), whereas a Category B or C municipality would want to have access to such infrastructure. Likewise a Category A municipality might be willing to contribute more “base funding” to the service than a Category B or C municipality.
- Most municipalities already have in place the basic infrastructure necessary for rendering library services. Assigning this function to them would be to make use of this infrastructure in an efficient manner and allow them to retain assets which are currently on their financial statements. The implications of a process of transfer of assets would not be an issue that these municipalities would have to consider.
- A number of municipalities currently have library staff on their payrolls. Assigning public library services to them would eliminate the debate as to whether or not these members of staff need to be transferred to the provinces.
- This option makes it possible to arrange a funding model in terms of which all three spheres of government would contribute to funding the service.
- Provinces would monitor the library services that municipalities are rendering. (Therefore, this option would also be in line with the draft Implementation Protocol, which, at this stage, is expected to be entered into between the Department and the provincial departments. In terms of the protocol, the Technical Task Team, consisting of the executive managers and heads of libraries in the national and provincial departments, will be charged with monitoring the delivery of services performed in terms of service delivery/agency agreements.)

²⁶ Such a process would be in line with the principle of subsidiarity, which means that service delivery should happen at that sphere of government, closest to the people.

- This option would allow either a province or a municipality (depending on whether the function has been assigned or not) to enter into a PPP agreement with a private party to render the service.

6.3 The option of executive assignment

Should the Department consider advising some of its provincial departments to allocate library services to particular municipalities, the Department has the following options:

- Legislative assignment;
- Executive assignment;
- Delegation; and
- Agency agreement.

Each option, together with its corresponding legal implications, has been discussed in detail in Annexure A of this report.²⁷ A short summary of the legal implications of each option has been provided below.

Table 3: Options of allocation functions to local government

Legend:	
	= Ideal option
	= Option not ideal, but could be considered
	= Option not ideal and should not be considered

	<i>Legal implication</i>	<i>Feasibility</i>	<i>Reason</i>
Legislative assignment	Possible only if the assigning organ of state can effect the assignment to all the municipalities in its jurisdiction.		Our impact assessment study revealed municipalities' current capacity to render library services differed. Whilst some municipalities within a province had the capacity to render the library services, others had not, making a general assignment by the province to all the municipalities in its jurisdiction impractical.

²⁷ During research for Phase 2 we consulted representatives from DPLG in this regard, which guided the project team extensively on the question of allocating additional powers and functions to municipalities. The source reference for this section and Annexure A of the report, the "Guidelines on Allocation of Additional Powers and functions to Municipalities", were provided by the DPLG.

	<i>Legal implication</i>	<i>Feasibility</i>	<i>Reason</i>
Executive assignment	Permits assignment to specific municipalities on a case-by-case basis. This option is subject to the stringent regulatory requirements of the Municipal Systems Act and the Financial and Fiscal Commission Act.		<p>It would not be necessary to pass legislation to give effect to this option. It would cater for the diversity in capacity to render library services currently experienced by municipalities.</p> <p>Although subject to stringent regulatory requirements this arrangement would be construed in a secure, regulated environment. In practice, this option could be regarded as a “permanent” arrangement.</p>
Delegation	Permits delegation of a function to specific municipalities on a case-by-case basis. It would not be subject to the stringent regulatory requirements of the Municipal Systems Act and the Financial and Fiscal Commission Act. Therefore this option appears less cumbersome than, for example, the executive assignment option.		This option would cater for the diversity in capacity to render library services currently experienced by municipalities. It would not be subject to the stringent requirements regulating executive assignment. A delegation agreement can easily be revoked by either party. Therefore, this option may not be regarded as “permanent” and “stable” as for example the executive assignment option.
Agency	Permits delegation of a function by way of an agency agreement to specific municipalities on a case-by-case basis. The principle of an agency is not subject to the stringent regulatory requirements of the Municipal Systems Act and the Financial and Fiscal Commission Act. Therefore this option appears less cumbersome than, for example, the executive assignment option.		This option would cater for the diversity in capacity to render library services currently experienced by municipalities. As with the option of delegation, this option would not be subject to the stringent requirements regulating executive assignment. An agency agreement can to a certain extent be easily revoked by either party. Therefore, this option may not be regarded as “permanent” and “stable” as for example the executive assignment option.

Taking into account the legal implications attached to each one of these options, we believe that the option of executive assignment would be best. Our reasons for this view are the following:

- Provincial departments would not have to enact new legislation to enable the assignment, as section 156(4) of the Constitution does not require specific legislation to be passed to provide for the executive assignment.
- Provided the conditions of sections 10A of the Municipal Systems Act, sections 3(2A) to 2(D) of the Financial and Fiscal Commission Act, and section 6(b) of the Intergovernmental Fiscal Relations Act have been met, the assignment can happen by agreement (therefore a faster process).
- It is possible that the provinces can assign to specific municipalities only, i.e. those that have the capacity to accept the assignment.

- Executive assignment would happen in an environment that is regulated and controllable. Step-by-step guidelines have been set, which provide procedures to the provinces for the practical implementation of the constitutional and statutory provisions.²⁸
- Executive assignment could be regarded as a fairly permanent option. It would not be possible for either one of the parties to terminate such an arrangement (which, taking into account the regulatory requirements discussed in Annexure A, took a certain amount of effort to conclude) easily. This in turn would provide a stable environment for the function to achieve its objectives.

6.4 Corresponding roles and responsibility of the three spheres of government

In the event that the Department elects to recommend that provinces allocate the function of public libraries to municipalities by way of executive assignment, the role and responsibility of the three spheres of government would be²⁹:

6.4.1 National government

- Determines national policy, including norms and standards by way of legislation, in respect of the service.
- Plans and coordinates the rendering of the service.
- Develops principles and criteria that govern the allocation of public funds.
- Coordinates the strategic planning and budgeting process for public library services.
- Conducts performance monitoring.
- Promotes consultation on matters regarding the service between the three spheres of government.
- In terms of the conditional grant that is to be released in April 2007:
 - Mobilises resources to give effect to the objectives of the draft Implementation Protocol.

²⁸ Refer to “Part 2: Guidelines for executive assignments” in the “Guidelines on Allocation of Additional Powers and Functions to Municipalities” document, issued by DPLG.

²⁹ When defining these roles and responsibilities, the project team took into account:

- The Constitution and other legislation reviewed and as discussed in paragraphs 4.1 and 4.2 of this report.
- The “Conditional Grant Framework: Community Library Services” – final input into the Division of Revenue Bill, 2007.
- The draft “Implementation Protocol”, provided to the project team by the Department.

- Facilitates strategic relations between the provinces.
- Identifies risks and challenges linked to the implementation of the conditional grant.
- Monitors implementation and provides support where necessary.
- Evaluates reports for 2007/08 for submission to National Treasury.
- Submits monthly and quarterly performance reports to National Treasury.
- Determines outputs and targets for 2008/09 with provincial departments.
- Develops guidelines and criteria for the provincial business plans.

6.4.2 Provincial government

- Develops a provincial strategy and business plan with regards to public library services.
- Develops legislation regarding the library services.
- Budgets and provides funding for the service.
- Renders the service:
 - Where the function has been assigned, this could entail that the province provides certain centralised services such as the selecting, ordering and cataloguing of books on behalf of municipalities;
 - Where the function has not been assigned, the province would also be responsible for providing the service to the public.
- Plans and coordinates the provision of the service in the province.
- Monitors the performance of the municipalities rendering the service.
- In terms of the conditional grant that is to be released in April, 2007:
 - Mobilises resources to give effect to the objectives of the draft Implementation Protocol.
 - Seeks strategic relations between the provinces.
 - Concludes necessary agreements to ensure continued service delivery as required.
 - Focuses on technical preparations.
 - Provides infrastructure support.

6.4.3 Local government

In those instances where the function has been assigned to a municipality, that municipality would:

- Manage the funds allocated by the province for library services in accordance with the assignment agreement;
- Provide professional library staff;
- Provide the necessary infrastructure;
- Maintain the infrastructure necessary for rendering the library service; and
- Render the day-to-day service.

6.5 Conclusion

Having analysed the role which national, provincial and local government has to play in terms of the Constitution and library-specific legislation, and having carefully considered the reasons for recommending option 6 as the way forward, we do believe that the questions posed in paragraph 3.2 of this report have been answered.

We believe that the ultimate responsibility for rendering public library services should be with provincial government. However, by recommending option 6 as the way forward, we also believe that this service would have to be provided in terms of a “partnership” between the three spheres of government. In terms of option 6, each sphere of government would have a role to play (see paragraph 6.3 above). In the event of these roles and responsibilities being considered and executed, we believe that the current ambiguities in terms of roles and responsibilities will be addressed. This should have a positive impact on the level of service delivery, going forward.

A Allocating functions to municipalities: available options

In cases where a province decides to allocate the rendering of library services to a municipality in its jurisdiction, the following legal options could be considered:

- Legislative assignment;
- Executive assignment;
- Delegation; and
- Agency agreement.

Each one of these options and their corresponding legal implications are discussed in more detail below.

A.1 Legislative assignment

<i>Type:</i>	<i>Legislative assignment</i>
<i>Legal reference:</i>	<ul style="list-style-type: none"> • Section 156(1)(b) of the Constitution provides for national and provincial legislation to assign additional powers and functions to municipalities. • Section 44(1)(a)(iii) of the Constitution empowers the National Assembly to assign to municipal councils legislative powers in addition to their original Constitutional power to make by-laws. • Likewise, section 104(1)(c) of the Constitution empowers provincial legislators to assign legislative powers to municipal councils in addition to their original powers to make by-laws. • Section 9 of the Municipal Systems Act regulates the financial implications of legislative assignment.
<i>Legal instrument:</i>	National or provincial legislation.
<i>Legal characteristic:</i>	<ul style="list-style-type: none"> • The municipality is responsible and accountable for exercising the assigned power or function in accordance with the legislation in terms of which that function is assigned. • The municipality acts in its own name when exercising the assigned function. • The assigning organ of state is not accountable and does not attract liability when the municipality exercises the assigned function. • Municipalities have additional executive and legislative powers in terms of the function assigned to them.

Type:	Legislative assignment
	<ul style="list-style-type: none"> • This will be a general assignment, i.e. a province will have to assign the function to <i>all</i> the municipalities in its jurisdiction. • Parliament or the provincial legislator can revoke the assignment by passing an Act repealing the assignment.
Funding implication:	<ul style="list-style-type: none"> • In terms of section 10A of the Municipal Systems Act the assigning organ of state must take steps to ensure that sufficient funding and capacity building initiatives are in place for the performance of the assigned function. • The assigning organ of state must within reasonable time before introducing the legislation inform the FFC of the possible impact on: <ul style="list-style-type: none"> - The future revenue split among the three spheres of government; - The fiscal power, fiscal capacity and efficiency of the municipalities or the category of municipalities to which the assignment applies; and - The transfer (if any) of employees, assets and liabilities. • The assigning organ of state must then request the FFC to make an assessment of the financial and fiscal implications of the draft legislation.
Feasibility on this project:	Not ideal.
Reasons:	Legislative assignment is possible only if the assigning organ of state can effect the assignment to all the municipalities in its jurisdiction. Our impact assessment study revealed municipalities' current capacity to render library services differed. Whilst some municipalities within a province had the capacity to render the library services, others had not, making a general assignment by the province to all the municipalities in its jurisdiction impractical.

A.2 Executive assignment

Type:	Assignment by executive action
Legal reference:	<ul style="list-style-type: none"> • Section 156(4) of the Constitution provides that national and provincial government must assign, by agreement and subject to any conditions, the administration of any matters listed in Part A of Schedule 4 and Part A of Schedule 5 to a municipality, provided that the function would be administered more effectively locally and that the municipality has the capacity to administer the function. • Section 99 of the Constitution authorises a cabinet member to assign by agreement any power or function to a municipal council that is to be exercised or performed in terms of an Act of Parliament.

Type:	Assignment by executive action
	<ul style="list-style-type: none"> • Likewise, section 126 of the Constitution authorises a member of the executive council (MEC) to assign by agreement any power or function to a municipal council that is to be exercised or performed in terms of an Act of Parliament or a provincial Act. • Sections 10 and 10A of the Municipal Systems Act regulate the financial implications of executive assignment.
Legal instrument:	Agreement.
Legal characteristic:	<ul style="list-style-type: none"> • The municipality is responsible and accountable for exercising the assigned power or function in accordance with agreement in terms of which that function is assigned. • The municipality acts in its own name when exercising the assigned function. • The assigning organ of state is not accountable and does not incur liability when the municipality exercises the assigned function. • Municipalities do not have additional legislative powers in terms of the function assigned to them.³⁰ • Can be both a general and specific assignment. A province can therefore either assign the function to <i>all</i> the municipalities in its jurisdiction, or, where it is not practical to do so, assign the function to specific municipalities. • Agreement with the municipality is a constitutional requirement. Therefore, as implied with all agreements, a municipality is not compelled to accept the assignment. • The agreement can be cancelled by either the assigning organ of state or the municipality (in terms of the cancellation requirements stipulated in the agreement).
Funding implication:	<ul style="list-style-type: none"> • In terms of section 10A of the Municipal Systems Act the assigning organ of state must take steps to ensure sufficient funding and capacity building initiatives are in place for the performance of the assigned power or function. • Section 10 of the Municipal Systems Act requires: <ul style="list-style-type: none"> - A proper assessment of the financial implications for the assignment to the specific municipalities.

³⁰ An executive assignment in terms of section 156(4) cannot include the allocation of legislative powers to a municipality, as the assignment of **legislative** powers to municipalities can only be done through parliamentary or provincial legislation. As such, a municipality which has received the function by way of executive assignment would not have received the power to make by-laws in respect of this service. However, section 104(1)(c) of the Constitution allows for the assignment of additional legislative powers to municipalities. We would therefore recommend that, in those instances where the function will be assigned to a municipality by way of executive assignment, and where that municipality would prefer having the power to make by-laws in terms of the service, the province considers assigning this power in terms of section 104(1)(c) of the Constitution, in addition to the executive assignment agreement.

Type:	Assignment by executive action
	<ul style="list-style-type: none"> - The submission of information on those financial implications to interested organs of state. • Sections 3(2A) to 2(D) of the Financial and Fiscal Commission Act requires additional procedures to be followed before the function is assigned: <ul style="list-style-type: none"> - The organ of state (i.e. the provincial department of library information services) must notify the FFC of the fiscal and financial implications of: <ul style="list-style-type: none"> - The future revenue split among the three spheres of government. - The fiscal power, fiscal capacity and efficiency of the particular municipality. - Any transfer of employees, assets and liabilities. - Request the FFC's advice regarding the assignment. - Consider the FFC's recommendations or advice. - Consult National Treasury on the intention to assign the function to another organ of state. • In terms of section 6(b) of the Intergovernmental Fiscal Relations Act, the assigning organ of state is required to inform the Local Government Budget Forum if proposed assignment has financial implications for the municipality concerned.
Feasibility on this project:	Ideal.
Reasons:	<p>This option permits assignment to specific municipalities on a case-by-case basis.</p> <p>Although executive assignment would be subject to the stringent regulatory requirements of the Municipal Systems Act and the Financial and Fiscal Commission Act, such an arrangement would be construed in a secure, regulated environment.</p>

A.3 Delegation

Type:	Delegation
Legal reference:	<ul style="list-style-type: none"> • Section 238(a) and (b) of the Constitution authorises executive organs of state to delegate to municipalities functions that are to be exercised or performed in terms of legislation, provided the delegation is consistent with that legislation.
Legal instrument:	Delegation of power document.
Legal characteristic:	<ul style="list-style-type: none"> • The executive organ of state remains responsible and accountable for the exercise

Type:	Delegation
	<p>of the function by the municipality.</p> <ul style="list-style-type: none"> • The municipality acts in the name of the delegating organ of state. • The municipality binds the delegating organ of state in the decisions it takes on behalf of the delegating organ of state. • The municipality must act in accordance with whatever directions, conditions and limitations as the delegating organ of state may decree. • Municipalities do not have additional legislative powers in terms of the function being delegated to them. • The delegating organ of state must delegate to each municipality specifically. • Section 238(a) does not formally require agreement among parties as a formal requirement for delegation, but in the spirit of cooperative government it is recommended that agreement is sought from the municipalities before the function is delegated to them. • The delegation any at any time be revoked or amended by the delegating organ of state.
Funding implication:	<p>Apart from section 238 of the Constitution, which requires consent among the parties and consistency with any applicable legislation in terms of which the function is performed, there appear to be no general statutory provisions regulating delegating procedures. It would, however, be reasonable to assume that municipalities would not accept additional functions unless the delegating organ of state also provided additional funding for this.</p>
Feasibility on this project:	<p>Could be considered.</p>
Reasons:	<p>This option permits delegation of a function to specific municipalities on a case-by-case basis.</p> <p>The delegation would not be subject to the stringent regulatory requirements of the Municipal Systems Act and the Financial and Fiscal Commission Act. Therefore this option of allocating a function the municipalities appears less cumbersome than, for example, the executive assignment option.</p>

A.4 Agency agreement

Type:	<i>Agency agreement</i>
Legal reference:	<ul style="list-style-type: none"> Section 238(b) of the Constitution authorises a municipality to perform a function or exercise a power for and on behalf of a member of Cabinet, member of the executive council or other executive organ of state in terms of an agency agreement.
Legal instrument:	Agency agreement.
Legal characteristic:	<ul style="list-style-type: none"> The executive organ of state remains ultimately responsible and accountable for the exercise of the function by the municipality. The municipality acts in name of its principal. The municipality binds the principal. Municipalities do not have additional legislative powers in terms of the agency agreement. An agency agreement will have to be entered into with each specific municipality. As the principle of agency is by way of agreement, municipalities cannot be compelled to accept an agency agreement as envisaged in section 238(b) of the Constitution. The agency agreement can at any time be terminated (within the terms and conditions stipulated in the agreement), or amended by any one of the parties, with the consent of the other party.
Funding implication:	Apart from section 238 of the Constitution, which implies consent between the parties, there appear to be no other general statutory provisions regulating an agency agreement. As with the delegation example, it would be reasonable to assume that a municipality would not consent to an agency agreement unless the executive organ of state agreed to provide additional funding for this. Furthermore any specific procedures with regard to funding arrangements could be stipulated in the agency agreement.
Feasibility on this project:	Could be considered.
Reasons:	<p>This option permits delegation of a function by way of an agency agreement to specific municipalities on a case-by-case basis.</p> <p>The principle of an agency is not subject to the stringent regulatory requirements of the Municipal Systems Act and the Financial and Fiscal Commission Act. Therefore this option of allocating a function the municipalities appears less cumbersome than, for example, the executive assignment option.</p>

B International study of roles and responsibilities

The objective of the international study was to compare the current state of public library services in South Africa with that of other countries. It focussed specifically on the various countries' governance structures (i.e. the legal and accountability frameworks) and where the responsibility lay for funding library services.

General note to the reader: In this report we have focussed on comparing the governance structures and responsibility for the funding the service. We do, however, also list interesting information obtained during our research, e.g. the number of libraries that the country has, and, where we could obtain such information, the expenditure on library services in that country. This report does not aim to do a comparative analysis of the interesting key information we obtained. Should the reader however wish to obtain more detail such comparative analysis, please refer to section 12.3 of the Status quo report.

B.1 Countries surveyed

The list of countries surveyed, together with reasons why these countries were chosen, are set out in paragraph 4.3 above.

B.2 Observations

B.2.1 Australia

B.2.1.1 Interesting observations

According to its 2003/2004 statistics, Australia had 532 public libraries operating in 1 716 locations in different provinces.³¹ Library services are rendered by municipalities across the country. Public libraries have 10 606 permanent employees and 6 315 volunteers. They received 99 622 000 visits from local communities in 2004 and the numbers continue to rise. In 2004 public libraries in Australia had 41 496 300 books in stock. (Refer to paragraph 12.3 of the Status quo report, where these figures have been compared to those of the other countries surveyed, as well as South Africa.)

B.2.1.2 Governance framework

The Department of Culture and the Arts sets the national standard for public library services in consultation with the Australian Library Information Association³². In terms of these standards, the states (equivalent to provinces) are responsible for rendering library services. Therefore,

³¹ These figures have been quoted directly from the "Australian Bureau of Statistics 2003-04". We assume that a number of public library organisation have different satellite locations, hence the difference in the number of libraries quoted versus the number of locations quoted.

³² "Standards, guidelines and benchmarks for public library services in Australia"

each state develops its own legislation and standards for its jurisdiction in line with the national standards.

However, across Australia, the states have entered into “framework agreements” with local government in terms of which the day-to-day running of libraries has been devolved to local government. This makes local governments responsible for all operational aspects of this service. The framework agreements currently define the respective roles and responsibilities for the state and local governments. Generally, they stipulate that state governments will:

- Provide resources, training, and advice to public libraries.
- Provide adequate selection and acquisition processes of library materials.
- Maintain adequate levels of annual capital funding for public libraries.
- Provide training for staff.

In general, local governments will agree to:

- Provide physical infrastructure, information and communications technology, staff and meet other operational requirements in terms of the agreed standards.
- Develop policies which are aligned with community needs.
- Ensure that state property is well managed.

To ensure constant liaison between the states and local government, and to oversee the implementation and continuation of the framework agreement, each state has established a Joined Advisory Committee (JAC), whose memberships consist of representatives of the respective state and local governments. Their responsibilities are to:

- Develop policies for public libraries.
- Establish standards, regulations, reporting and operating guidelines.
- Review state-wide performance.
- Develop strategy directions and forward plan.
- Provide state, local government and library practitioners with advice pertaining to framework agreements.
- Make recommendations to the Library Board at least once in every financial year.

Each state also has a Library Board to which the JACs report. The Library Boards consist of the Minister for Culture and the Arts and other stakeholders in the library sector.

To further coordinate the activities of public libraries in Australia from a national perspective, the Public Libraries Australia (PLA) was established, which is a company governed by a board of directors. Members consist of representatives from the states, the Australian Local Government Association, the Australian Library and Information Association and the Council of Australian State Libraries. The main objective of the PLA is to advocate and advance public libraries as an information dissemination network for all people across Australia.³³

B.2.1.3 Funding responsibility

The state and local governments' responsibilities in terms of the funding are set out in the framework agreements. The agreements that the project team perused showed that state governments are responsible for the capital funding of library services, and local governments for operational funding.

During the 2003/04 financial year, national government spent Aus\$521.9m on public libraries. Public libraries generated an income of Aus\$18.3m from services that they render to the public i.e. photocopying, lending fees, fines, etc. Public libraries also received an amount of Aus\$5m from other sources. Municipalities have spent Aus\$340.8m on staff wages and Aus\$204.4m on operational costs.³⁴ (Also refer to paragraph 12.3.6 of the Status quo report, where the team has done a comparative analysis on the annual expenditure on libraries on certain countries surveyed. The expenditure in that report is reflected as annual expenditure on libraries per capita, and is shown in USD.)

B.2.2 Botswana

B.2.2.1 Interesting observations

Botswana has 36 public library service points, as well as 20 reading rooms for a population of 1,64 million. It is estimated that 80% of Botswana's population is literate.

B.2.2.2 Governance structure

Botswana effectively has two levels of government: national and local. In 1967 the Department of Labour and Home Affairs established the Botswana National Library Service (BNLS) as an agency responsible for library services in general.³⁵ Since 1990 the BNLS has developed five divisions which provide library service:³⁶

- The Administrative Support Services Division, responsible for the planning, funding, training, provision of personnel as well as liaison with other ministries on library-related matters.

³³ Public Library Australia Ltd ABN 89 102 934 565, Blake, Dawson and Waldron, 2004.

³⁴ Australian Bureau of Statistics 2003/04.

³⁵ *Botswana Depository*, by OHIO University Libraries

³⁶ BNLS updated report 23 August 2006.

- The Bibliographic Research Services Division controls the budget, the purchasing of library materials for public and school libraries, and their processing and distribution. It also manages inter-library loans.
- The National Reference and Special Library Division collects books submitted for legal deposit and publishes the Botswana National Bibliography. It also oversees the development of special libraries in government.
- The Public Library Service Division is responsible for rendering public library services. It is accountable for 22 branch libraries, 14 mobile library service points, 20 village reading rooms, and the postal library service.
- The Education Library Division is responsible for school libraries under the supervision of the Minister of Education.

The BNLS has a Board which reports to a Director who in turn reports to the Minister of Labour and Home Affairs. Members of the Board comprise:

- A member of Parliament;
- A top civil servant;
- An academic; and
- Outstanding members of the public.³⁷

Given the fact that the BNLS is an agency formed within national government, public library services in Botswana are rendered by national government.

B.2.2.3 Funding responsibility

Therefore, the responsibility for funding public library services in Botswana lies with national government. National government is committed in supporting library services but finds it difficult to meet current demands. It also currently experiences a shortage of qualified staff, insufficient physical space in the libraries, inappropriate opening hours and limited modern technology equipment.³⁸

³⁷ We assume that this mix of representation on the Board will ensure that the BNLS is able to secure political buy-in to its strategic plans, meets certain academic standards and is able to address community needs.

³⁸ “*Public libraries in Africa*”, a report and annotated bibliography compiled by Aissa Isaak, 2000. (www.inasp.org.uk)

B.2.3 Britain

6.5.1.1 Interesting observations

Britain has a population of 59.88m people. It has 4 715 libraries, with a staff component of 6 335 librarians and 19 356 support staff. During 2005 public libraries received as many as 339m visits.³⁹

B.2.3.1 Governance framework

Two pieces of legislation regulate the rendering of public library services in Britain:

- the Public Libraries and Museums Act 1964; and
- the Best Value provisions of the Local Government Act 1999.

The Public Libraries and Museums Act charges local governments (county councils, unitary authorities, London boroughs and metropolitan districts) with the duty to render comprehensive and efficient public library services.⁴⁰

National government, through the Secretary of State for Culture, Media, and Sport, has the duty to supervise and promote the improvement of library services provided by local authorities and to see that they properly discharge this function.

In the event that a local authority fails to render this service, the Secretary of State can transfer the library function to himself⁴¹.

National government sets the standards for library services and local authorities are required to use these standards in developing their planning and budgeting processes in order to provide efficient library services. Some of the standards include:

- A library must be located where it will be convenient and accessible to users.
- The library's opening hours should be adequate to users.
- The library authorities must develop electronic access for users.
- The library authorities must encourage and promote the use of the libraries.
- The library authorities must provide choice in books and materials available to users.

³⁹ LISU Annual Library Statistics 2006.

⁴⁰ *Comprehensive, Efficient and Modern Public Libraries*, Standards and Assessment, Department for Culture, Media and Sport, legislative framework www.culture.gov.uk

⁴¹ *Comprehensive, Efficient and Modern Public Libraries*, Standards and Assessment, Department for Culture, Media and Sport, legislative framework. www.culture.gov.uk

- The library authorities must provide qualified staff (with an information management qualification and Information and communication technology qualification).⁴²

B.2.3.2 Funding responsibility

National government funds public library services. During 2005, public libraries across Britain spent over £95 200 000 on books, £602 300 000 on staff, and a consolidated total expenditure of £1 096 700 000. However, libraries also generated an income of £109 055 000 from membership fees, fines, audio visual hire, etc.⁴³ (Also refer to paragraph 12.3.6 of the Status quo report, where the team has done a comparative analysis on the annual expenditure on libraries on certain countries surveyed. The expenditure in that report is reflected as annual expenditure on libraries per capita, and is shown in US Dollars.)

B.2.4 Canada

B.2.4.1 Interesting observations

Canada has a population of 32 623 490. There are 3 600 public libraries in Canada.⁴⁴ During September 2006, a survey was conducted, 68 public libraries throughout Canada responded to the survey. According to the response, the 68 libraries received 103m visitors on an annual basis. Staff in these libraries consists of 1 970 librarians and 8 047 non librarian staff.⁴⁵

B.2.4.2 Governance framework

Public library services in Canada are regulated in terms of the national Public Libraries Act 1990, which assigns the overall responsibility for rendering them to local government. Each municipality has established a Public Library Board, which, in terms of the Public Libraries Act 1990, is a corporation that is charged with all the operational aspects of rendering this service.⁴⁶

However, for those areas within Canada where there are no municipalities, provincial government is responsible for public library services.⁴⁷ Provinces may enter into agreements with the communities in those areas. In terms of these agreements, the communities will provide the service with the support of the provincial government. In each province, the Minister⁴⁸ of Community and Cultural Affairs must establish a Provincial Library Service, which acts like an agency. In general, the responsibilities of these agencies are:

- To purchase books and other materials for public libraries.

⁴² Refer to footnote 36 above.

⁴³ Public library statistics, LISU Annual Statistics, 2006

⁴⁴ *Canadian Libraries and Librarianship*, by Wendy Newman, 2004.

⁴⁵ Canadian public library Statistics, 2006.

⁴⁶ See section 9(1) of the Public Libraries Act, 1990.

⁴⁷ See sections 29(1), 34(2) and 40(1) of the Public Libraries Act, 1990.

⁴⁸ The terms “minister” here is the equivalent of a Member of the Executive Council, which we have in South Africa.

- To supervise public libraries supported under this Act.
- To cooperate with community authorities within municipalities regarding the management and development of library services.
- To operate a centralised cataloguing service for public libraries and schools.
- To coordinate and facilitate inter-library cooperation with the National Library of Canada and the library agencies of other provinces.
- To cooperate with any library, cultural or educational organisation, library board, or librarian board.
- To maintain and administer public libraries.⁴⁹

On the provincial level, the minister supervises and administers library services, and appoints a provincial librarian within the Provincial Library Service as well as staff for administering the services. The provincial librarian is in charge of library services and must direct other appointed staff.

Where the province has, through the minister, entered into an agreement with a community in terms of which the community will render the service, the minister will provide library material and staff for the public libraries⁵⁰. The community, on the other hand, will provide and maintain the premises for the library. The community is also expected to establish a district library board, which is responsible for:

- The acquisition, leasing, building, renting and maintenance of library buildings.
- Selling, exchanging, leasing or otherwise disposing of any of its land or buildings not required for the operation of the library.
- Acquiring all equipment that may be required for the operation of a library.
- Promoting the use of library materials.
- Establishing and maintaining a capital fund to be used for the acquisition or leasing buildings and equipment.
- Acquiring, circulating and maintaining books, periodicals, records, films and other articles and objects of informational and educational, cultural, artistic or recreational value.⁵¹

⁴⁹ The exact detail of the responsibilities will differ from province to province, and is legislated in provincial legislation.

⁵⁰ Section 7(1) and 8(1) of Public Library Act, 1992.

⁵¹ See section 9 of the Public Library Act, 1992.

Apart from the above arrangements, Canada has also provincial and territorial agencies, which are represented in the Provincial and Territorial Library Directors Council (PTLDC). The responsibilities of PTLDC generally are:

- policy advice,
- coordination of funding,
- coordination of services,
- development and monitoring of legislation,
- administration of grants,
- interpreting the provincial/territorial interest in public library service,
- Monitoring government accountability requirements,

In some jurisdictions, the provincial/territorial agency actually provides public library service.⁵²

B.2.4.3 Funding responsibility

The funding of public library services is shared between municipal, provincial and national government. During September 2006, a survey was conducted on 68 public libraries throughout Canada. It showed that municipal governments spent Canadian \$632 409 873, provincial governments spent \$63 266 631 and national government spent \$4 348 988. However, public libraries also generated a considerable income of Canadian \$35 498 000 from the services they render, e.g. member and lending fees, penalties for late returns.⁵³

B.2.5 Cuba

B.2.5.1 Interesting observations

Cuba has a population of 11.4m with a literacy rate of 97%.⁵⁴ The National Library has a network of 385 public libraries and each province has a provincial library giving Cuba a total of 401 public libraries. In order to serve communities in remote areas, there is also a network of librarians who deliver books by bicycle.

The functions of the Cuban public libraries are to:

- Promote Cuban culture.

⁵² *Canadian Libraries and Librarianship*, Wendy Newman, 2004.

⁵³ 2005 Canadian library statistics, a project of the Canadian Urban Libraries Council last revised September 2006.

⁵⁴ www.nationmaster.com

- Promote literacy and reading programmes for children.
- Provide library services to people with special needs.

Cuban public libraries serve as academic centres to support local university programs especially for distance learners, non-traditional courses, and the new “Universalisation of Education” campaign which seeks to bring high-school and university drop-outs back into the academic field. The Minister of Education supplies public libraries with computers and prescribed books.

B.2.5.2 Governance framework

Cuba is a one-party state that is governed by the Communist Party through provincial and national assemblies. Following the recent revolution, government has focused a great deal of energy on education. Public libraries are used to assist it drive education to the people. To give effect to its library strategy and policies the government has merged local, regional and national public library infrastructures⁵⁵ As such, Cuba’s public library service functions under the Ministry of Culture.

National government, through the National Library in Havana sets the norms and procedures for public libraries. Provincial government is responsible for the establishment of regional libraries (i.e. provincial libraries). The daily management and operational policy decisions are, as far as possible, left with the municipalities. Municipalities are also responsible for the development of public libraries (building new and upgrading existing libraries) in the areas that they serve.

B.2.5.3 Funding responsibility

The Minister of Culture provides the nation's library budget that focuses first and foremost on the maintenance of the library buildings, the National Reading Program and the provision of books.⁵⁶

B.2.6 Finland

B.2.6.1 Interesting observations

Finland has 939 public libraries⁵⁷ and 182 mobile libraries for its population of 5.2m. Public libraries open for 1 459 033 hours in a year. There are approximately 3 500 professional members of staff and 600 non-professionals.⁵⁸ Professional librarians and other personnel must have an information science degree to work in the library (the Minister of Education may grant exemption from formal qualification requirements)⁵⁹. The use of public libraries is generally

⁵⁵ Cuban library support group “*Development of public libraries in Cuba since 1959*”

⁵⁶ Refer to footnote 51.

⁵⁷ These public libraries include hospital and branch libraries. Finland has 659 other services points and 1 Boat library service.

⁵⁸ Finnish Public Library Statistics 2005, Basic statistics.

⁵⁹ Chapter 7 Section 8 of Public Library Act 904 of 1998.

free of charge in Finland, but libraries may charge fees when reserving books, making copies, etc. The fees vary from municipality to municipality.

B.2.6.2 Governance structure

Public library services in Finland are governed and regulated by the Library Act of 1998 in terms of which municipalities must render public library services. In order to discharge their duty in this regard, the Act provides the following:

- The municipality may provide the library and information services independently, or partly or totally in cooperation with other municipalities, or in any other way.
- The municipality is responsible for the services being in accordance with this Act.
- Municipalities will be responsible to provide library and information professionals, and to renew library material and equipment.
- Municipalities in bilingual jurisdictions shall ensure that the needs of both language groups shall be taken into consideration on equal grounds.⁶⁰ (Finland has citizens that speak Finnish and Saami.)

The Library Act however puts duties on the national government as well. In terms of the Act, the Minister of Education under the Department of Culture, Sports and Youth Policy must:

- Set policy guidelines for public libraries.
- Draw up legislation for public libraries.
- Determine the national budget for libraries.
- Decide on the amount of discretionary subsidies payable directly to public libraries.
- Evaluate the performance of public libraries on a national basis.

In terms of the Library Decree 1078/1998 provincial government obtained certain roles and responsibilities with regard to public library services. Provinces are responsible for:

- The information and interlibrary lending services of the libraries within its region.
- The development of information services relating to the province.
- Providing the personnel within the province with training in new forms and development projects of library works.
- Performing other duties assigned by competent ministry⁶¹

⁶⁰ Chapter 2(3) of the Library Act 904/19998

From the above, it seems that whilst municipalities are primarily charged with the duty to render public library services, national and provincial government have to support municipalities in this role.

The Minister of Education is also currently implementing the Finish Library Strategy 2010.⁶²

The strategy has, amongst others, the following objectives:

- Library resources must respond to the information technology needs of the broader society: This includes availing general library and information services by means of IT, as well as online access to public services, etc.;
- Libraries should be a vital civilising and cultural service, satisfying the needs of individuals, subsequently having an extensive influence on learning, teaching and active citizenship;
- And library services should also be focused to the specific needs of the different age groups.

B.2.6.3 Funding responsibility

National government provides municipalities with financial aid for:

- rendering library services;
- maintenance and renovations to existing libraries;
- construction of new libraries; and
- purchasing mobile libraries.

Although national government provides this funding, municipalities have the authority to decide how much to spend on each item.⁶³

In 2005 Finland's national government spent 142 604 435 Finnish Mark (FIM) on staff, FIM 35 944 205 on library material, FIM 23 170 079 on books and FIM 69 925 087 on other expenditure relating to library services⁶⁴. (Also refer to paragraph 12.3.6 of the Status quo report, where the team has done a comparative analysis on the annual expenditure on libraries on certain countries surveyed. The expenditure in that report is reflected as annual expenditure on libraries per capita, and is shown in USD.)

⁶¹ Section 2 of the library decree 1078/1998

⁶² <http://www.minedu.fi/minedu/publications/2003/kseng.pdf>

⁶³ *Public libraries in Finland, Gateways to Knowledge and Culture*. www.minedu.fi. Also see Chapter 7, paragraph 8 and 9 of the Library Act, 1992.

⁶⁴ Finnish Public Library Statistics 2005.

B.2.7 India

B.2.7.1 Interesting observations

India has 60 000 public libraries for its population of over 1bn. The literacy level in India is 59.5%.

B.2.7.2 Governance framework

In terms of India's Constitution, the development of public libraries is the responsibility of the states (equivalent to provinces), which may execute this responsibility in co-operation with Territory Administrations (assumed to be municipalities) and other voluntary organisations.

The Department of Culture has formulated library standards for library development and software, inter-library networking and bibliographic description. Apart from these, there are no other library standards in India. As a result, the various states have established public libraries, and rendered the service in terms of their own policies. Some states have developed library legislation whereas others have not. Furthermore, some states provide public library services themselves, whereas others have agreements whereby Territory Administrations render the service.

This diversity in approach has resulted in there being no consistency in delivery of the service. Because of this, the Department of Culture in 1972 created a national agency, the Raja Rammohum Roy Library Foundation (RRRLF), which is responsible for the development and standardisation of public library services across India⁶⁵. In the last 28 years the RRRLF has assisted 31 000 libraries with financial aid.

The RRRLF is currently in the process of drafting a Public Library Bill. The content of this Bill could not be verified for this report, but it is believed that in general it aims to encompass all facets needed for the development of public libraries in India.⁶⁶

B.2.7.3 Funding responsibility

In practice, the funding of public libraries is a shared by the three levels of government. National government funds a small portion of total expenditure whereas the states provide the bulk of the funding. Where relevant, the Territory Authorities also provide funding. Some of the Territory Authorities also raise levies (similar to that of a rates and tax levy) for public library services.⁶⁷

⁶⁵ Public Libraries Section, Country Report: India, 2002

⁶⁶ 66th IFLA Council and General Conference, *Libraries and librarians in India on the threshold of the third millennium, Challenges and Risks* by Kalpana, Dasgupta

⁶⁷ Public Libraries Section, Country Report: India, 2002

B.2.8 Kenya

B.2.8.1 Interesting observations

Kenya has 24 libraries for its population of 34.7m. It has a literacy rate of 85.1%.

B.2.8.2 Governance structure

In 1965, national government, through the Minister of Social Services, established via an Act of Parliament⁶⁸ a state-owned corporation called the Kenya National Library Service (KNLS). The Minister appoints members to the KNLS board. The board comprises a representative from each province, the Vice-Chancellor of the University of Nairobi, the Town Clerk of the Nairobi City Council, as well as Secretaries from Minister of Social Services, Finance, Local Government, Economic Planning and Education.

Public library services are rendered by KNLS in partnership with communities (assumed to be municipalities). In this service model the communities are responsible for the library infrastructure, which includes the acquisition of land, buildings, furniture and equipment. In turn, KNLS provides initial book stock, staff and meets recurrent expenditure.

Amongst others, the functions of KNLS are to:

- Promote, establish, equip, manage, maintain and develop libraries.
- Plan and coordinate library documentation and related services.
- Advise the government, local authorities and other public bodies on all matters relating to library documentation and related services.
- Provide facilities for study and training in the principles, procedures and techniques of librarianship and other related subjects.
- Advise the government on library education and training needs.
- Carry out research in the development of library and related services.
- Participate and assist in the campaign for the eradication of illiteracy.
- Stimulate public interest in books and promote reading for knowledge, information and enjoyment.
- Acquire books and other library materials produced in and outside Kenya.

⁶⁸ Kenya National Library Service Act, Cap 225, Act of 1965

- Publish the National Bibliography of Kenya.⁶⁹

B.2.8.3 Funding responsibility

KNLS is funded by government and donor agencies. Municipalities are responsible for funding library infrastructure, furniture and equipment from their own budgets.⁷⁰

⁶⁹ Kenya National Library Service, Historical Background

⁷⁰ Kenya National Library Service, Historical Background

C List of abbreviations, acronyms and definitions

C.1 Institutions

BNLS – Botswana National Library Service (Botswana)

Department – The Department of Arts and Culture

DPLG – The Department of Provincial and Local Government

FFC – The Financial and Fiscal Commission

JAC – Joint Advisory Committee (Australia)

KNLS – Kenya National Library Service (Kenya)

MEC – Member of the Executive Council

NCLIS – National Council of Library Services

RRRLF – Raja Rammohum Roy Library Foundation (India)

C.2 Definitions

“Public library” – A library open to the public and established and maintained by public funds, through local, provincial or national government, or a government agency. These libraries have the mandate to provide information services and access to knowledge through a range of means, resources and services. In this report, the term “public library” is used to include community libraries and community resource centres that serve the same purpose.

C.3 Legislation

C.3.1 Library specific legislation

The Legal Deposit Act - The Legal Deposit Act, 1997 (Act No.54 of 1997)

The National Council for Library and Information Services Act - The National Council for Library and Information Services Act, 2001 (Act No. 6 of 2001)

The National Library of South Africa Act – The National Library of South Africa Act, 1998 (Act No. 92 of 1998)

The South African Library for the Blind Act - The South African Library for the Blind Act, 1998 (Act No. 91 of 1998)

C.3.2 Provincial legislation pertaining to provincial library services

(Free State) The Library and Information Services Act;

(Limpopo Province) The Library and Information Services Act; and

(Eastern Cape) The Libraries and Information Services Act;

C.3.3 Financial or finance related legislation

The Division of Revenue Act – The Division of Revenue Act, 2006 (Act No. 2 and 2006)

The Financial and Fiscal Commission Act - The Financial and Fiscal Commission Act, 1997 (Act No. 99 of 1997)

The Intergovernmental Relations Framework Act - The Intergovernmental Relations Framework Act (Act No. 13 of 2005)

The Intergovernmental Fiscal Relations Act - The Intergovernmental Fiscal Relations Act, 1997 (Act No. 97 of 1997)

The PFMA - The Public Finance Management Act, 1999 (Act No. 1 of 1999)

C.3.4 Local government legislation

The Municipal Structures Act - The Municipal Structures Act, 1998 (Act No. 117 of 1998)

The Municipal Systems Act - The Municipal Systems Act, 2002 (Act No. 32 of 2002)

The MFMA - The Municipal Finance Management Act, 2003 (Act No. 56 of 2003)

C.3.5 Other general legislation

The Current Constitution or the Constitution – The Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996)

The 1993 Constitution – The Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993)

The Copy Right Act - The Copy Right Act, 1978 (Act No. 98 of 1978)

PAIA - The Promotion of Access to Information Services Act, 2002 (Act No. 2 of 2002)