

Democratic decentralisation, citizen engagement and service delivery in South Africa: A critique of legislative and policy considerations



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ABSTRACT

Negotiations to restructure and transform local government in South Africa commenced in 1993. Key roleplayers and stakeholders in local government were instrumental in adopting a negotiated local government model comprising three distinct phases during the constitutional development process. The Local Government Transition Act, 1993 (Act 209 of 1993) facilitated the process for the introduction of transitional local and metropolitan councils which constituted the first phase. Local government elections were held for the first time in November 1995 and May/June 1996 in seven provinces (and thereafter Western Cape and KwaZulu-Natal) constituted the second phase. Three fundamental legislative enactments, i.e. Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998); Local Government Municipal Structures Act, 1998 (Act 117 of 1998) and the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), were critical to the final phase. Elections held in December 2000 marked the end of the transition period resulting in a reduction of municipalities from 843 to 283. There were two successful local government elections held thereafter on 26 March 2006 and more recently on 18 May 2011. Regular elections and the plethora of legislation introduced to consolidate the new dispensation have resulted in local democracy and decentralisation being deeply rooted in the local governance system. The latter is an integral component of the local governance policy framework as the country has a diverse population of almost 50 million people. It is believed that a democratic and decentralised governance system will promote local development, address poverty reduction, facilitate civic engagement and ensure national integration. Local democracy, introduced seventeen years ago following the ushering in of the developmental state in 1994, has since been tried and tested. Despite 'world class' legislation and a 'best practice' local governance system, which has as its basis people centred development, engagement and decentralisation, several governance challenges has emerged. This includes inter alia, unfunded mandates; rampant corruption and nepotism; violent service delivery protests; capacity constraints; crime, lack of communication, transparency and accountability; limited civic engagement and a significant number of municipalities that are not

financially viable. These issues will have to be addressed if Chapter 7 of the Constitution has to become more meaningful to the majority of the populace in terms of discharging its developmental mandate.

1. INTRODUCTION

A multiparty democracy was introduced in South Africa in 1994 following the watershed first democratic elections in 1994. The country is a unitary state with a constitutional democracy divided into three spheres, central, provincial and local. There are nine provinces and 278 municipalities. Transitional metropolitan and local councils were introduced during the pre-interim phase following elections held in November 1995 and May/June 1996. Three distinct categories of municipalities were constitutionalised¹, namely metropolitan (A), which exercises all local government powers, local (B), sharing powers and functions and constituting a district (C). The December 2000 elections were based on the 1996 Constitution and ended the transition period, which commenced in 1995/1996. The elections held in March 2006 proved to be an important barometer to assess the impact, success and effectiveness of local democracy and more specifically the new local governance system. The May 2011 elections were based principally on service delivery and the performance of local government, and the voter turnout was 57.6% and was comparatively higher than previous elections. The White Paper on Local Government (1998) introduced the notion of a developmental local government system, where there was a policy commitment to the process of decentralisation. More specifically, the national and provincial governments are constitutionally permitted to devolve powers and functions to municipalities. The legislative and policy frameworks for democratic decentralisation in South Africa in the broader context of citizen engagement and more specifically service delivery will be critically analysed in this paper. The results of the May 2011 elections will be critiqued in the context of local democracy, thereby assessing the qualitative impact of decentralisation, civic engagement and service delivery on local governance.

2. CONCEPTUAL OVERVIEW AND REVIEW OF THE INTERNATIONAL EXPERIENCE

2.1. Conceptual Overview

Decentralisation seeks to achieve a more democratic and participatory approach to government as services are directed locally by empowering communities and including them in the policy process. It has of late been growing as an international governance strategy and trend. It can be defined ‘as the transfer of authority, and/or responsibility for decision making, planning, management or resource allocation from any level of government to its field units, district administrative units, other levels of government, regional or functional authorities, semi-autonomous public authorities, parastatals, private entities, and NGOs or voluntary organisations’ (DPLG 2003:27). It refers to the reallocation of responsibilities from national to subnational spheres of government and signifies the sharing of decision-making authority in the organisation with structures at the lower levels. It also denotes that power can be shared within the system, wherein new mechanisms can be created,

or alternatively with outside organisations or agencies (Meenakshisundaram in Reddy 2010:67). According to Bossuyt and Gould (in Reddy 2008:185), it is a political process in that ‘power and access to resources’ feature prominently. Effective decentralisation at the local government level ‘depends on the legitimacy derived from broad based participation, fairness and accountability’ (Bratton and Rothchild 2008:185). Shah and Thompson (2008:185) in developing the concept further adds that ‘democratic decentralisation implies directly elected local governments thereby making elected officials accountable to citizens’.

Decentralisation became part of the policy agenda in the 1980s. The rationale for decentralisation has to a large extent been motivated by political concerns; however, there is a considerable amount of literature reviewing the economic aspects. In this context, it can be viewed as one of the public sector strategies which requires a mixture of good politics and economics. There is a linkage between the political goal of increasing local participation and responsiveness relative to the economic goal of qualitative decisionmaking on utilisation of municipal resources and the increased willingness to pay for such services. In this context, decentralisation policy seeks to achieve certain distinct policy objectives, namely production efficiency (quality and cost of services delivered); allocative efficiency (services delivered has to reflect local demand) and ‘who delivers’ versus ‘who pays’ for services provided. (www.fao.org/DOCREP/005/Y2006E/y2006e05.htm).

There are some variations in the forms of decentralisation; however, the types identified internationally are summarised below (Meenakshisundaram in Reddy 2010:68; DPLG 2003:28).

1. Deconcentration: transfer of administrative authority and functions within the same organisation in terms of the same hierarchical level of accountability. The responsibility for performing a function is maintained within the same sphere, but the physical location where the function is performed is geographically dispersed (DPLG 2004:8). Very limited decision making without reverting to the centre and it is the least extensive form of decentralisation. Enhancing the production efficiency of the administration is a key consideration while an improvement on the impact of services delivered has also been prioritised (www.fao.org/DOCREP/005/Y2006E/y2006e05.htm);
2. Delegation: transfer of specific authority and decisionmaking powers from one executive organ of state to another (provincial to local). Similar objectives relative to production and allocative efficiency can be achieved by separating the production or delivery from the financing of a specific public service (www.fao.org/DOCREP/005/Y2006E/y2006e05.htm);
3. Devolution: granting of full decision-making powers (administrative, financial and political to lower authorities). The essence is discretionary authority and is the strongest form of decentralisation;
4. Privatisation/divestment: complete transfer of government services package to private, or not for profit organisations (www.ciesin.org/decentralisation/English/General_history_fao.html); and

5. Assignment: decentralisation formalised in terms of section 156 of the Constitution of the Republic of South Africa Act, 1996 (Act 108 of 1996) (DPLG 2003:28). The authority role implies statutory responsibility for administering and planning the function; determination of associated user fees and taxes and entitlement to grant funds from national fiscus; developing policy and Legislation; monitoring of service providers and ownership of fixed assets (DPLG 2004:8).

It should be noted that the issue of decentralisation and centralisation is not a question of choosing one and disregarding the other. The governance of the majority of countries internationally necessitates an appropriate balance of both for the efficient and effective functioning of government. The World Bank has pointed out that ‘even when national governments decentralise responsibilities, they often retain important policy and supervisory roles. They must create or maintain the “enabling conditions” that allow local units of administration or non - governmental organisations to take on more responsibilities’ (www.worldbank.org/publicsector/decentralization/what.htm).

2.2. Review of the International and African Experience

When local authorities were finally involved in the United Nations Habitat 11 Summit in Istanbul, a breakthrough was achieved in that local authorities were not only recognized as the ‘strongest partner close to the citizens’, but they were also treated as levels of government (Hoffschulte 2008:109). More importantly, all member states participating in the Istanbul Habitat 11 Conference adopted the Habitat Agenda and the Istanbul Declaration, in which they undertook to promote decentralisation by democratic governments and to work towards strengthening their institutional and financial capacities. Following that breakthrough, the promotion of efficient decentralisation has been a major issue in the UN debate and a key component of the good governance strategy over the years. More specifically, the UN Habitat Department (located in Nairobi) has worked in active partnership with ‘national and local governments’ to strengthen local authorities simply with the intention of implementing UN goals, and in particular the Habitat Agenda of 1996 (Hoffschulte 2008:109). There is a dedicated chapter on issues of ‘decentralisation and the strengthening of local authorities and their associations/networks’ detailed in a global plan of action highlighting goals, principles and commitments².

Decentralisation reforms globally have highlighted the relationships between three key sectors of governance, notably public, private and voluntary. The key focus in the public sector is on the structure, processes of decision making, resources and responsibility allocation among the different levels of government (www.fao.org/DOCREP/005/Y2006E/y2006e05.htm).

Internationally, political issues have provided the impetus for decentralisation for the majority of the countries in the last decade. In the case of Latin America, decentralisation has been critical to the democratisation process, following the removal of autocratic, discredited central regimes and the ushering in of elected governments and more specifically new constitutions. In the case of some countries, notably in east Asia, the need for service delivery improvement in extremely large populations and the acknowledgement of the limitations of central government proved to be the deciding factor (www.worldbank.org/publicsector/decentralization/what.htm).

African countries historically ‘experienced fused, personalized and at best highly centralized governance systems and practices’. Kings or traditional leaders represented basically all authority during the precolonial era (Kauzya 2007:3). Kauzya (2007:3) adds that during the colonial and immediate postcolonial periods, governance was structured and practised in a highly centralized manner and in some cases where there were military dictatorships, it was practically personalised. The quest for participatory and inclusive governance provided the impetus for decentralisation. Consequently, the necessity for strong decentralised local government was high on the political agenda from the late 1980s, as ‘African states became subject to external as well as internal “democratic” pressures’ (Tordoff and Young in Reddy and Maharaj 2008:185). Mahwood (1992:vii) some time ago pointed out the collapse of the ‘centralised party state’ in several African countries has placed considerable emphasis on ‘good government’ at the local level. The advent of multiparty political systems has necessitated a need for more grass-roots voices at the local government level. The emphasis placed on decentralisation and local government in an era of political and economic restructuring is important as ‘it tends to be an important manifestation of pluralist democracy’ (Mahwood in Reddy and Maharaj 2008:185). Kauza (2008:3) notes that decentralized governance is increasingly being favoured by African governments as the most appropriate governance model through which interventions can be conceived, planned, implemented, monitored and evaluated. He adds that many ‘hope that the process of decentralisation will facilitate greater participation of communities in problem analysis, project identification, planning implementation as well as oversight which in turn will increase ownership and the likelihood of sustainability of such initiatives’. The pressures from regional or ethnic groups for greater involvement and participation in the political process in Ethiopia provided the impetus for decentralisation. In the case of both Uganda and Mozambique, the ending of civil wars created space for political participation at the local level thereby enabling factions which were initially at war with each other to contribute to the governance of the country (www.worldbank.org/publicsector/decentralization/what.htm).

3. DEVELOPMENTAL, DEMOCRATIC DECENTRALISED LOCAL GOVERNANCE IN SOUTH AFRICA: REVIEW OF POLICY AND PRACTICE

The Reconstruction and Development Programme (RDP) was the policy manifesto for the African National Congress (ANC) in the 1994 elections. It provided the building blocks and foundations for developmental local government, which has been constitutionalised. There has been a radical shift in the local government mandate from mere administrators of services to the promotion of developmental goals. The Constitution has highlighted the developmental duties of municipalities as to (1). structure and manage its administration, budgeting and planning processes to give priority to basic needs of the community; (2). promote the socio-economic development of the community; and (3). participate in national and provincial development programmes (section 153(3)).

The *White Paper on Local Government* (1998:15) elaborated in great depth on the role of developmental local government, which committed municipalities to working with local communities and civic groupings in an holistic way to improve their quality of life. Given that

the national and provincial spheres have discretionary powers in terms of the Constitution to devolve powers and functions to municipalities, this can also be viewed as a firm commitment to decentralisation. Developmental local government has certain distinct outcomes, namely, the provision of basic infrastructure and services; the creation of integrated cities and liveable environments; facilitating local economic development; and empowerment of the community. The maximising of social development and economic growth (stimulating local economies and job creation); integrating and co-ordinating development (through integrated planning); democratising development (harnessing the input and energy of local communities) and leading and learning (building social capital to provide local solutions for development problems) are key to the process (Republic of South Africa 1998:18). The White Paper (1998:18) furthermore proposed three distinct interlinked approaches, namely integrated development planning and budgeting; performance management; and working together with local communities and partners to facilitate the process.

3.1. Civic Engagement and Democratic Decentralization

The objectives of local governments detailed in section 152 (1) provides the basis for decentralisation:

- provide democratic and accountable government;
- ensure the provision of services in a sustainable manner;
- promote social and economic development;
- promote a safe and healthy environment; and
- encourage the involvement of communities and organizations.

Of late, considerable importance has been placed on the importance of citizenship action and citizen engagement. ‘Civic engagement is not restricted or related to politics only. The reference to “civic” suggests any kind of involvement in the affairs of government, politics, administration, or organizations could be regarded as civic engagement’ (Hauptmann 2005). He adds that there are some basic prerequisites for civic engagement to be effective, namely :

- information and an understanding of current problems, i.e. complete data on the respective community or institution;
- an acknowledgement that the elites are unable to solve the varied problems of communities and organizations. They have endeavoured to provide solutions, but this has not produced the desired results;
- the involvement of as many groups and individuals as possible as not only the elites, but everyone assumes responsibility for the failing accomplishment of the goals;
- it includes all social and economic areas together with all organizations operating in them. There are interconnections which in some cases are global and any activity in one area will have an impact on others; and

- the responsibility for results and their consequences is critical in civic engagement. Institutions and individuals must assume responsibility within the existing frameworks as they relate goals and values.

According to Van der Waldt (2007:27), ‘this is where citizens actively engage in governance and politics for a broader social good’. He adds (2007:27) that in South Africa like other democracies, citizens enjoy a range of political rights including the right to vote and to be represented in governance. The citizen is an integral part of the state and has certain distinct rights and obligations, the most important being the right to participate in public policy making processes. Voting is a basic mechanism for participation in a democratic state.

3.2. The 2011 May Elections

Another major political milestone was achieved in local government of late when the fourth local government elections were successfully held with a record turnout. The final voter turnout was 57.6% and it was the largest ever for a municipal election. The African National Congress (ANC) won the highest number of seats and councils, 198 councils and 5 633 seats constituting 62 % of the vote. The final results for the elections are depicted below (Hetherington 2011:14):

PARTY	COUNCILS	SEATS	% SUPPORT
African National Congress	198	5633	62%
Democratic Alliance	18	1555	23.9%
Inkatha Freedom Party	5	352	3.6%
National Freedom Party	2	224	2.4%
Congress of the People	0	236	2.1%

Figure 1: Final Results for the 2011 Local Government Elections

Other parties that received less than 1% of the vote are UDM (65 seats); PAC (40 seats); ACDP (40 seats); VF Plus (38 seats); APC (28 seats); UCDP (25 seats); and AZAPO (15 seats). In addition, 45 independent councillors were elected (Hetherington 2011:14).

The voter turnout recorded an increase of almost 9% on the 2006 (48%) and 2000 (48.05%) elections. Four of the nine provinces exceeded the national average and in three of them, the turnout exceed 60 % (Powell and Ayele 2011:40). The ANC continues to remain the dominant party at the local sphere where it controls 62% of the council seats; however, its support has declined by 4% since 2006. The Democratic Alliance’s (DA) share of council seats has increased from 16% to 24% since the last election (Powell and Ayele 2011:4). In fact, prior to the elections, Ayele, May and Powell (2011:3) pointed out that this election was in fact the most important election since 1994 as the ANC and DA battled for control of the municipalities in the country. They add that the ANC has always been very popular and was consistently formidable at elections;

however, of late it has been steadily losing ground and recent public protests which in some cases has turned violent bears ample testimony to this. Improved service delivery and accountable local government are two key issues that are at the heart of the protests. Five themes dominated the elections, namely local economic development; improving access to municipal service delivery; community safety; community participation and involvement; curbing corruption and strengthening local governance. However, local issues were overshadowed by national issues as in the past. There was a great deal of political rhetoric which did not amount to much for local communities who experienced harsh realities on the ground (Ntliziywana and Bosire 2011:11). Quite a few issues raised in the manifestos of political parties was not directly related to local government. The ANC placed considerable emphasis on state – led development initiatives while the DA focused on the relationship between effective service delivery and development. Corruption and the responsiveness of councillors was also viewed as critical issues (Ntliziywana and Bosire 2011:11).

3.3. Legislative and policy considerations for citizen engagement and decentralisation

Civic engagement is a key component of decentralisation as it is a constitutional and legislative requirement for local communities to participate through distinct processes, namely integrated development planning, budgeting, partnerships and ward committees. Municipalities have to (section 16(1) of the Local Government: Municipal Systems Act, Act 32 of 2000) develop a ‘culture of municipal governance that complements formal representative government with participatory governance’. The commitment to civic engagement and more importantly decentralisation constitutionally, legislatively and institutionally has been a significant step in enhancing local governance. De Visser (in Reddy 2008:201) points out that although the notion of civic engagement is entrenched and participatory governance is encouraged, the council is the resultant effect of representative democracy and consequently, it has the legal and political right to govern, and participatory governance should not in any way impede this process.

There are distinct external consultation processes highlighted in the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) and Municipal Finance Management Act, 2003 (Act 56 of 2003). Consultation can be either formal or informal and can include inter alia, public meetings with residents, small businesses, provincial and national departments and entities. Clearly defined processes detailed in the legislative and policy framework have been introduced to facilitate citizen engagement and more importantly decentralisation.

3.3.1. Integrated development planning

Integrated developed planning (IDP) is a local development strategy to enable municipalities to coordinate a diversity of services and regulations, including land-use planning, household infrastructure, environmental management, transport, health and education, safety and security and housing (Government Gazette 13 March 1998 in Reddy and Maharaj 2008:202). Municipalities are obliged to, in terms of legislation, produce IDPs addressing distinct issues: assessing economic, social and environmental realities in the area; public consultation with a view to a local development vision; audit of existing resources, skills and capacities; developing

integrated frameworks and defining goals to local needs; and implementing local projects and assessing impact and performance (Government Gazette, 13 March 1998 in Reddy and Maharaj 2008:202).

There has been limited input by the national and provincial spheres in IDPs and furthermore provincial development strategies have been developed with no or limited municipal involvement (SACN 2006:4.63). However, it is hoped that the National and Provincial Planning Commissions recently set up will address that gap. It has been acknowledged that the IDP process has significantly improved strategic and business planning capacity, and more importantly the alignment of the budget with the IDP over the years (SACN in Reddy and Maharaj 2008:203). Kauzya (2008:13) points out that the structure and practice have ensured the effective use of scarce resources; speeded up service delivery; attracted additional funding; strengthened participatory democracy; promoted co-ordination between the three spheres. He adds that it has 'institutionalised participatory decisionmaking' and 'illustrates how communities can be empowered to participate in and influence the socio – politico – economic decisions that concern them'. Rauch in Theron (2009:149) also sounded positive, adding that it has gained broad support and credibility in local government and 'it has proven its potential to arrive at better delivery through a more democratic and inclusive decisionmaking process'.

3.3.2. Ward committees

Ward committees are advisory committees consisting of representatives of the community. These structures are viewed as being critical to the process of community participation and more importantly addressing the service delivery challenges at the local level. They are supposed to enhance communication between the municipality and local communities as they focus on prioritising local needs, taking cognisance of local circumstances. The effectiveness of these committees is varied with many structures becoming ineffective or dysfunctional (SACN in Reddy and Maharaj 2008:203). A survey conducted by Idasa showed that almost 80% of the respondents expressed dissatisfaction with the services their municipalities provided and they felt that 'the establishment of ward committees ... have not contributed to the improvement of governance in their areas' (Idasa April 2011:50). It would appear that these structures have several weaknesses: lack of clear focus and clarity around roles and responsibilities; no real power and are not taken seriously by the community and decision makers; they have become nothing more than extensions of political parties and are easily manipulated; are insufficiently trained to carry out mandated activities; lack administrative and infrastructural support; have displaced many vibrant community organizations (Naidu 2008:86–87). There is, however, a strong view that ward committees, if properly constituted, resourced and supported, can become an important vehicle for facilitating participatory development at the local level and enhancing decentralisation. Van der Waldt (2007:37) alludes to a major challenge and that is to 'ensure that the ward participatory system works in a way that brings out the diverse needs and interests that exists within a particular ward'. The Department of Co-operative Governance has been discussing the strengthening and empowering of ward committees as part of community participation initiatives. A 'refined ward committee model to deepen democracy' is output 5 of outcome 9 of the Delivery Agreement. It is anticipated that a new ward committee system will be discussed at the ANC Conference in December 2012 (Hetherington 2011:33).

3.3.3. Partnerships

Municipalities are grappling with service delivery challenges due to management, institutional, financial and technical capacity constraints and consequently the issue of privatisation has become very relevant. The privatisation debate has alluded to the fact that the 'market is more efficient than government at providing basic services' (Bakker and Hemson in Reddy and Maharaj 2008:204). The national government has been responsible for the shift to outsource basic services. According to Johnson (in Smith and Morris 2008:424), 'this drive has come from a need to develop alternative service delivery strategies to meet the significant infrastructure and service backlogs and lack of capacity at the municipal levels'. The White Paper on Municipal Service Partnerships (Republic of South Africa 2000:15) has highlighted the need for local partnership arrangements with NGOs and CBOs and this can promote economic development, strengthen democracy and empower civil society. In this context, Nealer (2007:161) more specifically points out that formal partnerships between two public sector institutions or between a public sector institution and a private enterprise or contractor could be created. This partnership could provide a mechanism whereby a municipality can take on board a partner with the required capital, expertise or technology that it does not have. This agreement is regulated by the Municipal Finance Management Act, 2003 (Act 56 of 3003), which explicitly states that it should provide value for money, and be affordable and transfer appropriate technical, operational and financial risk to the other (public or private) party. In addition, it is a legislative requirement (section 78 (3) of the Local Government: Municipal Systems Act, 2000) that the service delivery agreement be discussed with organized labour and communities. The development of capacities of the community-based/non-governmental organisations is critical to the process if empowerment objectives and decentralisation are to be achieved.

3.3.4. Budgeting

An integral part of the municipal budgetary process is public consultation, both formal and informal, which is a legislative requirement in terms of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) and Municipal Finance Management Act, 2003 (Act 56 of 2003). This includes public meetings with communities and the private sector to identify and prioritise local needs with the assistance of Ward Committees; meetings with key roleplayers and stakeholders to address municipal tariffs and charges; and meetings with other provincial and national departments and entities (Van der Westhuizen in Reddy 2010:75). The municipal manager is expected to lobby the national and provincial departments in the province for local services as municipalities are ideally placed to consult local communities on national and provincial functions.

There are defined constitutional and legislative provisions for enhancing civic engagement with the local communities. However, as pointed out by Bacus (2011:1), it does not mean that effective engagement will in fact take place. He adds that 'civil society and other stakeholders need to be mobilised to participate in enriching deliberations around policies that affect them. It is in the interests of government to improve participation, because it improves the quality of legislation, and strengthens accountability, transparency and trust in the government'.

4. ASSIGNMENT OF POWERS

Legislative powers to local government generally or to individual municipalities can be assigned³ by the national and provincial spheres. However, the powers are discretionary and relevant municipalities can regulate it, but there is no compulsion to legislate⁴. The Minister of Co-operative Government must (section 10(1) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)) be consulted by the national minister initiating the assignment. The Member of the Executive Committee (MEC) in the province must prior to introducing the bill consult the local government counterpart. The relevant Minister or MEC has to⁵ ensure sufficient funding and capacity development if the assignment falls beyond the scope of Schedule 4B and 5B of the Constitution and has financial implications. Section 27(1) of the Division of Revenue Act, 2003 (Act 7 of 2003) stipulates that transfers of functions with financial implications can only take place after obtaining written approval from the national treasury (section 27(2)). Provision for the required funding is a conditionality (DPLG 2004 and DPLG 2003 in Reddy 2010:76).

A national or a provincial Act can (sections 44 (1) (a) (111) and 104(1) (c) of the Constitution) assign a function to local government in general or to a particular province, respectively. The relevant Minister must (section 9(1) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) publish the bill for comment, consult with the Ministers of Co-operative Government and Finance and organize local government and request a financial assessment from the Financial and Fiscal Commission. The initiating Minister must (section 9(3)) assess whether the assignment is an imposition on the municipalities concerned or falls outside schedules 4, Part B and 5, Part B, or has financial implications. Capacity development and funding are a legislative requirement⁶. Sections 9(2), (3) and (4) of the same Act compel the initiating MEC to consult provincially with the MECs for local government and finance and organized local government.

The initiating Minister or MEC for the assignment must consult the Minister of Co-operative Governance prior concluding the agreement in terms of sections 10(1) and 10(2) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000). Funding and capacity building are a pre requisite in terms of sections 10(3) and 10(2) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), respectively, if the assignment is beyond Schedules 4B and 5B. Statutory enactments strengthen municipalities in their negotiations with other spheres particularly in relation to the assignment of duties (De Visser in Reddy 2010:76). Section 156(4) of the Constitution has entrenched the notion of subsidiarity⁷, which only applies to the functional areas of Schedules 4A and 5A. .

Some key principles impacting on assignments are (DPLG in Reddy 2010:76–77):

1. Spheres are required to co-operate and not compete and agreement is critical to the process (chapter 3 of the Constitution);
2. Subsidiarity : responsibilities are assigned downwards : however, local effectiveness and capacity is critical (section 156(4) of the Constitution);
3. Functions are indivisible with a single authority and cannot be split between spheres and municipalities;

4. General assignments made to all or a category of municipalities are preferable;
5. The exact definition (clear assignment of functions) must be finalised so that there is no confusion about roles and responsibilities (www.worldbank.org/publicsector/decentralization/what.htm);
6. The state organ rendering the service must be paid an equitable share allocation and allocated revenue raising powers (Section 27 (2) of the Division of Revenue Act, 2003);
7. Assignments are permanent: a province may exercise supervisory powers in terms of section 138 to correct non-performance, but may not revoke an assignment;
8. The Labour Relations Act, 1995 (Act 66 of 1995) facilitates staff transfer from national/provincial to the local sphere; and
9. Minimum consultation procedures have to be adhered to terms of sections 9 and 10 of the Local Government : Municipal Systems Act, 2000; section 27 of the Division of Revenue Act and section 6 of the Intergovernmental Relations Act, 1997 (Act 97 of 1997)

These principles will only impact positively on the process if they are taken seriously and adhered to when functions are assigned. Quite often, the issue of financing and capacity impacts negatively on the process and these basic principles are not adhered to.

5. DECENTRALISATION CHALLENGES

Decentralisation has been entrenched constitutionally and legislatively in local governance over a seventeen-year period. However, despite a very progressive and supportive policy framework being in place, there are distinct challenges as pointed out by Reddy and Maharaj (2008:205–206):

- unfunded mandates are increasing despite sections 9 and 10 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) providing protection in terms of the procedural requirements. Cloete (2008:101) believes that this happens because national and provincial government cannot fulfill their own mandates. They then take the easy option of delegating or devolving those functions they cannot execute to local government, without the required human and financial resources. De Visser (2003:144) points out that a critical issue is how seriously the state institution initiating the assignment views the policy and procedural requirements. In this regard, the World Bank adds that administrative responsibilities may be transferred to the local level without adequate financial resources and this would make equitable distribution or provision of services more difficult; (www.worldbank.org/publicsector/decentralization/what.htm);
- Some basic technical expertise and competence are required to implement local policies and programmes. The UNFPA (2000:5) points out that in some countries, ‘decentralisation of responsibilities has been overzealous and decentralized units are either too small or

too under-resourced to take on their obligations. This manifests in insufficient staff, inadequate training, and poor management as well as insufficient management systems and procedures. They add (2005:5) that the situation is exacerbated by the fact that 'decentralised jurisdictions are often totally dependant on the fiscal allocation from the central government'. A significant number of local and district municipalities are even experiencing problems discharging their basic functions. Tapscott (2008:219) adds that 'in some areas the municipality authority cannot be considered operationally functional, while only a small proportion of municipalities may be considered administratively effective'. 'Weak administrative or technical capacity at local levels may result in services being delivered less efficiently and effectively in some areas of the country' (www.worldbank.org/publicsector/decentralization/what.htm);

- Provinces depend on national government for their funding and furthermore lack technically skilled staff to carry out supervisory functions that require compliance from municipalities. In addition, provinces tend to divert funds that they have set aside for local government development. According to the World Bank, national departments have crucial roles in promoting and sustaining decentralisation by developing appropriate and effective national policies and regulations and strengthening local institutional capacity to assume responsibility for new functions (www.worldbank.org/publicsector/decentralization/what.htm). Provincial government and district municipalities are expected to play a supportive role supervising local governments. Africa (2011:46) points out 'that national and provincial governments respect their distinctiveness, but with regulated provisos that each tier has a supervising sphere to oversee its effectiveness and accountability and contribute to joint service delivery outcomes'. The national and provincial governments have to develop their strategic and monitoring capacity to ensure redistribution and oversight and provide strategic direction (DPLG in Reddy 2008:205);
- Civic engagement formalistically in terms of the constitution and legislation is well established. However, Tapscott (1998:226) believes that 'despite the best intentions of the legislators and policymakers, it is evident that the majority of the municipalities have, thus far, failed to give effect to the principles of participatory democracy'. De Visser (2005:106) believes that despite an elaborate legal framework for public participation being formalised, it has yet to achieve sustainable community participation; and
- decentralisation is an integral part of government policy; however, there has been some conflict between district and local municipalities as clarity is required on which of them are supposed to be the main beneficiaries in this regard (Cameron and Ismail 2006:75).

Capacity is critical to the success of decentralization. The World Bank points out that 'the success of decentralisation frequently depends heavily on training for both national and local officials in decentralised administration. Technical assistance is often required for local governments, private enterprises and local non-governmental groups in the planning, financing and management of decentralised functions (www.worldbank.org/publicsector/decentralization/what.htm). Consequently, national, provincial and local governance structures have to be

strengthened and capacitated to drive the process thereby ensuring that developmental objectives enshrined in the Constitution are reached.

The World Bank has stipulated five conditions for successful decentralisation, namely :

- a linkage between local financing and fiscal authority to the service provision responsibilities and functions of local government so that local politicians can bear the cost of their decisions and deliver on their promises;
- local communities must be informed about the costs of services and service delivery options so that they can make meaningful decisions. Participatory budgeting should be an integral part of the process;
- a mechanism for the community to express its preferences in a manner binding on the politicians – so that there is a credible incentive for people to participate;
- an accountable system that relies on public and transparent information to enable the community to effectively monitor local performance so that municipal functionaries have an incentive to be responsive; and
- the legal and institutional framework; the structure of service delivery responsibilities and the intergovernmental fiscal system are designed to support the political objectives (www.worldbank.org/publicsector/decentralization/what.htm).

6. MUNICIPAL SERVICE DELIVERY: QUO VADIS?

According to Fox and Meyer (in Nealer 2007:148), service delivery is ‘the provision of public activities, benefits or satisfactions. Services relate both to the provision of public goods and to tangible services themselves.’ Craythorne (2006:158–159) defines municipal service as a service that a municipality provides or may provide for its area of jurisdiction in terms of its powers and functions, and irrespective whether such a service is through an internal or external manner, and whether fees are levied. Developing this further, Nealer (2007:148) adds that a basic municipal service is necessary to ensure that an acceptable and reasonable quality of life and, in if not provided, would endanger public health or safety of the environment. On a global level, efficient and effective service delivery is seen as an outcome of good local governance.

Certain basic constitutional provisions place an obligation on the national and provincial spheres to develop administrative and management capacity to ensure that local government discharge their obligations about service delivery. In this context, Cloete (2008:100) believes that the current challenges being experienced relative to service delivery at all spheres of government ‘can be attributed to inadequate implementation of the current constitutional structure rather than to the inadequacy of the contents of these constitutional provisions and the current structure itself’.

The Institute for Democracy in Southern Africa (Idasa) conducted an extensive citizen satisfaction survey of 2 375 adults in 21 municipalities in KwaZulu-Natal, Mpumalanga, Limpopo and the North West prior the 18 May local government elections. The municipalities included ranged from small to medium in terms of size, were mostly rural and included poor and high performing

municipalities. The main conclusion drawn was that only one in ten citizens (11%) is satisfied with the quality of services provided. There has been a dramatic decrease when compared with 2006 when four in ten (39.5%) were still satisfied with service delivery (Van Hoof 2011:37). Of late, the government has endeavoured to address the issue of access to basic services. However, it would appear that the situation seems to have deteriorated. The main reasons cited for poor service delivery are corruption, the dysfunctionality of councils and ward committees, poor communication and mismanagement. Another survey conducted in the six metropolitan councils among urban residents revealed that service delivery perceptions have declined between November 2010 and February 2011. The survey, which was conducted among 2 000 residents of the six metropolitan councils, found that dissatisfaction with service delivery rose from 51% to 58%. It was pointed out that a negative proportion of 30% or more reflects a very serious problem (De Lange 2011:2). Cloete (2008:101) pointed out that poor service delivery can be attributed to several factors, namely the poor quality and weak municipal functionaries; party political turf battles and constant regime changes as political parties compete to take control of municipalities. This impacts negatively on good governance and ultimately on outcomes and outputs. The Department of Co-operative Governance has identified several challenges in responding to the crisis in local government, namely, capacity constraints, poor integration of planning and budgets and concurrent sector programmes, poor coordination of government service delivery and cooperative governance (Africa 2011:46). The results of the recent local government elections as well as the surveys cited above confirm the main conclusions reached in the 'State of Local Government in South Africa' report (Department of Co-operative Governance and Traditional Affairs 2009), which highlights the fact that 'much of local government is indeed in distress and this state of affairs has become deeply rooted within our system of governance'.

Cloete (2008:102) has pointed out that past interventions by the national and provincial government to improve the situation over the years through the better execution of its responsibilities, providing additional resources, training staff and developing in general the capacities of municipalities have been half hearted and largely unsuccessful and has not had the desired effect. He adds further that this state of affairs is certainly not due to the constitutional and legislative system in place, but rather poor implementation. Government for its part has acknowledged that poor service delivery has been a major stumbling block in discharging its developmental mandate. President J Zuma has urged the key structures in government 'to identify challenges that inhibit public service efficiency and to identify appropriate intervention' (Africa 2011:46). Practical assessments of the functionality of local government on the ground provided the impetus for the introduction of the 'Turnaround Strategy' and the joint signing of the Delivery Agreement for Outcome 9 on the 29 April 2010 by the President and Minister of Local Government and Traditional Affairs. The agreement seeks to achieve a responsive, accountable, effective and efficient local government system and furthermore identifies a progressive series of intergovernmental initiatives to turn the tide in local government. Seven outputs have been identified, namely a differentiated approach to municipal financing, planning and support; improved access to basic services; supporting job creation through the community work programme; support to achieve sustainable settlements; deepening of democracy through a refined ward committee model; improving financial and administrative management to enhance controls and accountability and greater coordination and cohesion (Africa 2011:46). In response to the service delivery challenges and reduced majority, the ANC secretary-general Gwede Mantashe pointed out that the party will 'force councillors

to go out on regular door-to-door campaigns’ and instruct them to ‘hold public meetings after council meetings’. It will also introduce measures to make mayors and municipal managers and other senior political functionaries more accountable, and introduce monitoring and evaluation in municipalities, and monitor the performance of individual councillors. In addition, a new funding model for local government is under consideration as well as the re-routing of unspent funds at the provincial and national level to municipalities (Masondo 2011:4).

7. CONCLUSION

A ‘best practice local governance model’ in terms of constitutional imperatives and ‘world class’ legislation was introduced in South Africa post 1994. The Constitution, the White Paper on Local Government and several key legislative enactments, namely the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) ;Local Government: Municipal Structures Act, 1998 (Act 32 of 1998) and Municipal Finance and Management Act, 2000 (Act of 2000) have entrenched the notion of civic engagement and decentralisation in the local governance system. A key component of the new local governance dispensation and more specifically developmental local government is civic engagement. However, given the large number of public protests against poor municipal service delivery, it is quite apparent that the consultation and civic engagement structures are not functioning optimally. The lack of a vision and the poor quality of local leadership have also impacted negatively on local governance. Key to the process is transparency, accountability, political will and commitment by the executive municipal functionaries in local government. There is a strong view that local government is concerned with political opportunism rather than advancing the interest of local communities. The findings of the Citizens’ Survey conducted by Idasa bears ample testimony to this, that is a ‘politician’s disdain for basic democratic governance principles and values, which are increasingly sacrificed for individual benefit and political power’. Developing this further, Van Hoof (2011:38) adds that the ‘distance between those who govern and those who are governed is increasing in South Africa and that local government is more and more governing the municipalities on behalf of its citizens and not with its citizens, which affects its legitimacy negatively and steers it away ... from its collective vision of establishing a developmental democracy’.

It is a given that enhanced local access to decentralised structures and institutions will facilitate robust and sustained civic engagement. Government can be brought closer to local communities, democratic accountability can be promoted and more importantly, it has considerable potential for enhancing efficiency and effectiveness of local service delivery. Local communities can be empowered through the transfer of power and resources thereby enabling them to resolve local issues and promoting local democratic participation in the process. Although decentralisation has been constitutionalised and entrenched in the local governance policy and legislative framework, there has to be political will for it to be taken more seriously by the national and provincial spheres of government. Several major challenges, namely, unfunded mandates, lack of technical competence and the skills deficit have been identified as not only impacting negatively on the local governance system, but also the process of decentralisation. It is incumbent on the national and provincial spheres, acting collaboratively with other key roleplayers and stakeholders to support and strengthen local government to deliver on its developmental mandate, which has been constitutionalised.

NOTES

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ENDNOTES

1. See Chapter 7 of the Constitution of the Republic of South Africa Act, 1996 (Act 108 of 1996).
2. See section 12 of the Istanbul Declaration
3. Full transfer of a national/provincial power or function to local government and is subject to supervision not revocation. A general assignment transfers power to a category or type of municipality nationally whilst a specific assignment involves a transfer to a specific municipality (DPLG 2004, in Reddy 2010:76)
4. See sections 44(1)(a)(111) and 104(1)(c) of the Constitution,
5. See section 10 (3) of the Local Government : Municipal Systems Act, 2000 (Act 32 of 2000).
6. See section 9(3) and (4) of the Local Government : Municipal Systems Act, 2000 (Act 32 of 2000).
7. It makes assignment by agreement of a Schedule 4 A or 5 A matter to a municipality by national or provincial government compulsory if it is more effectively managed locally (Reddy 2010:76).

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