

Constitutionalism as a Precondition for the Effective Implementation of Decentralisation in Africa: Lessons from South African Democracy

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Abstract

This article explores the foundational role of constitutionalism in facilitating effective decentralisation within African states, with South Africa serving as a case study. Using doctrinal legal research methodology, the study critically examines the constitutional frameworks that underpin decentralised governance, focusing on the principles of constitutional supremacy, the rule of law, and the separation of powers. It argues that decentralisation, while widely promoted as a mechanism for enhancing democratic governance, improving service delivery, and fostering local participation, cannot succeed without a robust constitutional order that clearly delineates the powers and responsibilities of various levels of government. South Africa's constitutional architecture, particularly its entrenched provisions on co-operative governance and the autonomy of provincial and local governments, demonstrates how constitutionalism can serve as a safeguard against centralised overreach and institutional instability. However, the robust constitutional design in South Africa is marred by bad governance outcomes, showing that constitutionalism alone cannot guarantee success. Africa has made enormous strides in embedding decentralisation in its text. Yet the lived reality of constitutionalism often lags behind. The article concludes that for decentralisation to be meaningful and sustainable across Africa, it must be anchored in a culture of constitutionalism that promotes legal certainty, institutional integrity, and respect for the rule of law. Additionally, factors such as political culture, elite incentives, fiscal revenue, and administrative capacity significantly influence outcomes.



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Introduction

Upon gaining independence, African nations typically adopted governance systems that embraced various forms of decentralisation.¹ However, due to multiple factors, these systems were progressively centralised to strengthen national authority.² Additionally, the constitutions of many African countries that achieved independence in the 1960s incorporated principles of constitutionalism.³ Yet, within a short period, these constitutions were often repealed, nullified, or revised.⁴ Citing goals such as fostering national unity, nation-building, and economic progress, many African leaders pushed for centralised governance.⁵ This shift, coupled with the rise of authoritarian regimes, single-party systems, and military rule, significantly impeded political progress in post-colonial Africa.⁶ The drive to strengthen the synergy between decentralisation and constitutionalism seeks to curb the unchecked power of authoritarian rulers, often referred to as the Leviathan.⁷

Since the early 1990s, some African constitutions have explicitly and implicitly emphasised decentralisation, while others did not incorporate it at all.⁸ Countries that

1 CM Fombad, 'Constitutional Entrenchment of Decentralisation in Africa: An Overview of Trends and Tendencies' (2018) 62(2) *Journal for African Law* 175.

2 *ibid.*

3 Nigeria (1960 Constitution), Somalia (1960 Constitution), Sierra Leone (1961 Independence Constitution), Tanganyika/Tanzania (1961 Independence Constitution, later Union Constitution), Uganda (1962 Constitution), Kenya (1963 Independence Constitution), Malawi (1964 Constitution), Zambia (1964 Constitution), Botswana (1966 Constitution), Lesotho (1966 Constitution), Gambia (1965 Independence Constitution), and Mauritius (1968 Constitution). The elements included provisions for the protection of human rights, separation of powers, and an independent judiciary, see O Akiba, *Constitutionalism and Society in Africa* (2004 Ashgate) 2.

4 Fombad (n 1).

5 *ibid.* 176.

6 N Steytler, 'Domesticating the Leviathan: Constitutionalism and Federalism in Africa' (2016) 24(2) *African Journal of International and Comparative Law* 272.

7 *ibid.* The concept of the Leviathan originates in Thomas Hobbes's 1651 work of political philosophy, *Leviathan*, which presents a foundational view of the state and sovereignty in early modern political thought. In Hobbes's view, the Leviathan is a metaphor for a powerful, unified state created through a social contract. Hobbes believed that in the 'state of nature', a hypothetical condition without government, humans would live in constant fear and conflict, famously describing life as 'solitary, poor, nasty, brutish, and short.' To escape this chaos, individuals collectively agree to surrender their natural freedoms to a sovereign authority (the Leviathan), which maintains peace and order through absolute power. This sovereign is not bound by the contract but is its enforcer, ensuring stability and preventing a return to anarchy. Hobbes's Leviathan thus symbolises the necessity of a strong central authority to uphold civil society, law, and governance. See T Hobbes, *Leviathan, or the Matter, Form, and Power of a Common-Wealth Ecclesiastical and Civil* (printed for Andrew Croke 1651) 114; G Negretto, 'Hobbes' Leviathan. The Irresistible Power of a Mortal God' (2001) 1 *Analisi E Diritto* 179.

8 Fombad (n 1).

pursue significant decentralisation initiatives undertake essential constitutional reforms.⁹ The long-overdue inclusion of decentralisation in African constitutions was driven by widespread public dissatisfaction with leaders who monopolised power and concentrated it in elite groups in capital cities.¹⁰ However, weak enforcement of constitutions, lack of political commitment, and entrenched centralised power structures frequently obstruct decentralisation efforts.¹¹ Corruption, insufficient funding, and vague legal frameworks further impede effective decentralisation, particularly in countries where local governments lack genuine autonomy. A constitution upholds the rule of law, ensures separation of powers, and safeguards local government independence, fostering an environment conducive to decentralisation. In the process, it is embedded as a legally protected system and reduces the risk of re-centralisation by dominant central authorities.¹² Hence, a discussion on the distinction between constitutionalism and a constitution follows in the third part of the article.

Although there are no precise objectives for constitutionally entrenching decentralisation, its adoption varies from one country to another.¹³ The specific aims of decentralisation vary across nations, but the overarching purpose is to bring governance closer to citizens, promoting peace, democracy, effective governance, and development.¹⁴ A decentralised state rooted in constitutionalism reflects the evolution of modern African constitutional frameworks in the post-Cold War era, aiming to create a paradigm shift that constitutionally limits the unchecked authority of dictators and kleptocrats.¹⁵ Constitutionalism goes beyond merely outlining a constitution's functions; it prescribes how constitutional law should work to curb arbitrary autocratic rule.¹⁶

Against this backdrop, this article addresses the challenges of authoritarianism and centralised power by exploring the revitalised connection between decentralisation and constitutionalism in Africa. Drawing on international scholarship and state practices, particularly in South Africa, the article examines the mutually reinforcing relationship between modern constitutionalism and decentralisation as complementary concepts. Employing a doctrinal legal research methodology, the article is organised into six

9 South Africa (1996 Constitution), Kenya (2010 Constitution), Ethiopia (1995 Constitution), Nigeria (Federal Constitutions, especially 1979 and 1999), Uganda (1995 Constitution), Ghana (1992 Constitution), Rwanda (constitutional and governance reforms after 2003). E Ahmad and G Brosio, *Does Decentralisation Enhance Service Delivery and Poverty Reduction?* (2009 Edward Elgar) 1.

10 Fombad (n 1).

11 P Mudau and H 'Nyane, 'A Critical Analysis of Zimbabwe's Non-Implementation of Constitutional Injunctions on Devolution' (2022) 37(2) SAPL 5.

12 *ibid* 12.

13 Fombad (n 1) 176.

14 *ibid*.

15 N Steytler, 'The Relationship Between Decentralisation and Constitutionalism in Africa: Concepts, Conflicts and Hypothesis' in CM Fombad and N Steytler (eds), *Decentralization and Constitutionalism in Africa* (Oxford University Press 2019a) 26.

16 I Currie and J De Waal, *The Bill of Rights Handbook* (Juta 2016) 8.

sections. Following an introductory background, it provides an overview and conceptualisation of decentralisation. The third section explores the conceptual and theoretical dimensions of constitutionalism. The fourth section highlights that, compared with other African multi-level states, South Africa is an exemplary constitutional design with mixed outcomes in the implementation of decentralisation and constitutionalism. The article's conclusion section is followed by recommendations by the author. This article argues that where constitutions entrench sub-national powers, provide justiciable protections, and harden fiscal rules and amendment procedures, decentralisation is more likely to be implemented sustainably.

Conceptual Framework for Decentralisation

Decentralisation is a complex, multi-faceted, and widely debated term encompassing a broad spectrum of meanings.¹⁷ It is interpreted and categorised differently across disciplines, both in theory and practice, making it challenging to pinpoint its exact definition, scope, and nature.¹⁸ The term is used in both narrow and expansive senses,¹⁹ often interchangeably, which can lead to confusion.²⁰ In its narrow sense, decentralisation refers to the temporary transfer of authority from the central government to local entities.²¹ Normatively, it implies a hierarchical structure where power cascades downward from the central authority.²² De Visser notes that without a central authority, decentralisation would not exist; instead, there would be distinct, independent entities.²³ Thus, the normative understanding involves transferring authority from the national government to sub-national entities or institutions outside its direct control.

Article 1 of the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development²⁴ defines decentralisation as the transfer of authority, responsibilities, capacities, and resources from the national government to sub-national levels to enhance public participation and improve service delivery. The Charter's reference to 'all sub-national levels' includes both regional (provincial) and local governments.²⁵ However, it does not guarantee these entities constitutionally protected powers, stipulating instead that their authority be devolved through national

17 Mudau and 'Nyane (n 11) 3–4.

18 Fombad (n 1) 181.

19 Steytler (n 15) 31.

20 J de Visser, *Developmental Local Government: A Case Study of South Africa* (Intersentia 2005) 13.

21 DJ Elazar, 'Federalism vs. Decentralization: The Drift from Authenticity' (1976) 6(4) *Publius* 9.

22 *ibid.*

23 De Visser (n 20) 14.

24 African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development (2014) <<https://au.int/en/treaties/african-charter-values-and-principles-decentralisation-local-governance-and-local>> accessed 29 March 2026.

25 *ibid* Arts 5(4), 6(2), 7(5), 11(a), 16(4)(a) and 18(1)(a)(ii).

laws.²⁶ The broad sense of the definition above can also be interpreted in a federal context, where decentralisation refers to both federal units and local governments.²⁷ Thus, instead of centralising powers, the process includes extending the autonomy of the constituent units.²⁸ In a similar vein, this study uses the term ‘decentralisation’ inclusively to refer to both federal units and local governments.

Rondinelli and others offer a broader definition, describing decentralisation as the transfer of responsibilities for planning, management, and resource allocation from the central government to its field units, subordinate government levels, semi-autonomous public entities, regional or functional authorities, or non-governmental organisations.²⁹ Rather than consolidating power, this process enhances the autonomy of sub-national units.³⁰ This article adopts an inclusive definition of decentralisation, encompassing both provincial and local governments, in which authority is transferred through constitutional provisions or national legislation, enabling sub-national entities to make binding decisions within designated areas.³¹

Decentralisation manifests in three primary forms: devolution, delegation, and deconcentration. Devolution, the most extensive form, involves the full transfer of political, financial, and administrative authority to elected sub-national governments, which operate largely independently of central control.³² An example hereof is South Africa’s 1996 Constitution, which established provincial and local governments with constitutionally protected powers and resources.³³ These entities wield significant legislative and executive powers, typically granted by the constitution or national laws.

Delegation grants broader authority to semi-autonomous sub-national units that are indirectly controlled by the central government.³⁴ Delegation is the transfer of specific managerial responsibilities to sub-national entities outside the central bureaucratic structure, while the central government retains the authority to withdraw this delegation.³⁵ This creates a principal-agent relationship, where the central government serves as the principal and sub-national units act as agents accountable to it.³⁶ An

26 *ibid* Arts 5(1)–(2) and 7(1)–(2). TC Chigwata and M Ziswa, ‘Entrenching Decentralisation in Africa: A Review of the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development’ (2018) 10 *Hague Journal on the Rule of Law* 295.

27 Steytler (n 15) 31.

28 *ibid*.

29 AD Rondinelli and others, *Decentralisation in Developing Countries: A Review of Recent Experiences* (World Bank 1984) 13.

30 *ibid*.

31 *ibid*.

32 TC Chigwata, *Provincial and Local Government Reform in Zimbabwe: An Analysis of the Law, Policy and Practice* (Juta 2018) 11.

33 P Mudau, ‘A Legal Analysis of Local Government’s Housing Roles, Powers, Functions, and Responsibilities in South Africa’ (2025) 12(1) *Journal of Comparative Law in Africa* 5–8.

34 Fombad (n 1) 182.

35 Rondinelli (n 29) 19.

36 Chigwata (n 32).

example of this is Ghana's district assemblies, which are empowered to implement local development projects and enact bylaws, but remain ultimately accountable to and under the supervision of the Ministry of Local Government and Rural Development.³⁷

Deconcentration, the least extensive form, is often termed administrative decentralisation.³⁸ It involves transferring limited administrative responsibilities to local offices, such as departmental ministries or agencies, without relinquishing substantive authority.³⁹ While regional offices may have some discretion, they remain directly accountable to the central government, rather than to the local populace. Administrative authority stays centralised, though field agents may have limited flexibility to adapt central directives to local contexts within prescribed guidelines.⁴⁰ An example hereof is France's prefect system, in which centrally appointed prefects represent the national government in regions and departments, implement state policies, and supervise local administrations while remaining accountable to the Ministry of the Interior.⁴¹ Next, the different types of decentralisation are discussed.

Decentralisation is further classified into political, administrative, and fiscal types.⁴² Political decentralisation occurs when the central government permits elected sub-national entities, such as regional or local authorities, to exercise political authority, transferring significant decision-making, resource, and revenue-raising powers.⁴³ Administrative decentralisation involves transferring authority, resources, and responsibilities for specific public services to sub-national governments, agencies, or field offices, including the power to manage personnel.⁴⁴ Fiscal decentralisation entails granting sub-national governments authority to generate and manage revenue, control expenditures, and adjust budgets.⁴⁵ Fombad emphasises that effective fiscal decentralisation depends on three factors: clear allocation of expenditure responsibilities; assignment of revenue-raising powers; and a framework for intergovernmental fiscal transfers to address revenue imbalances.⁴⁶

Globally, most countries employ multi-level governance systems, whether unitary or federal, with decentralisation serving diverse governmental and developmental goals, such as curbing centralised power, fostering development, strengthening democracy,

37 EP Ababio and K Asmah-Andoh, 'Decentralisation or Devolution: An Analysis of Local Government Effectiveness' (2013) 6(3) *African Journal of Public Affairs* 46.

38 Chigwata (n 32) 12.

39 Deconcentration merely relocates the execution of certain services to the local level, while decision-making authority still resides with central government, Rondinelli (n 29) 14.

40 *ibid* 14–15.

41 Fombad (n 1) 181.

42 *ibid*.

43 *ibid*.

44 *ibid*.

45 K Beer-Tóth, 'Financial Autonomy in Theory and Practice: The Impact of Fiscal Decentralisation in Hungary' (PhD thesis, University of Fribourg 2009) 4.

46 Fombad (n 1) 183.

and promoting peace. A primary aim is to limit centralised authority by dispersing power to sub-national levels, particularly in contexts where authoritarian leaders dominate.⁴⁷ International scholarship highlights that successful democracies enforce institutional rules to limit abuses of power and protect citizens' rights, a concept Faguet terms the 'limit condition'.⁴⁸ In mature or established democracies, curbing the misuse of power is possible through the rigorous application of institutional regulations.⁴⁹ This primarily involves strict compliance with legal frameworks that constitutionally limit state authority to safeguard citizens' rights.

In developing nations, decentralisation addresses inequalities and uneven development by devolving power to sub-national governments, aligning development initiatives with local needs and ensuring equitable resource distribution.⁵⁰ This enhances service delivery, public participation, and accountability among local officials.⁵¹ Decentralisation also deepens democracy by institutionalising democratic governance at sub-national levels, fostering participatory democracy and accountability to citizens.⁵² In fragile, diverse states, decentralisation serves as a tool for peacebuilding and state-building by accommodating minorities and marginalised groups within inclusive governance structures.⁵³ This allows such groups to protect their interests through formal sub-national institutions rather than resorting to conflict or secession. However, its effectiveness may be limited in regions where ethnic groups are not geographically concentrated.

Having set out the forms and types of decentralisations, the next section clarifies constitutionalism, the normative and institutional lens through which the feasibility of decentralisation is judged.

Conceptual Framework of Constitutionalism

Understanding the Constitution and Constitutionalism

To ensure clarity in presenting arguments, it is essential to establish a shared understanding of the terms: 'constitution' and its related concept, 'constitutionalism'. A

47 *ibid* 184.

48 JP Faguet, 'Decentralization and Governance. Economic Organisation and Public Policy' (2011) London School of Economics and Political Science
<[https://researchonline.lse.ac.uk/id/eprint/37346/1/Decentralization_and_governance\(lsero\).pdf](https://researchonline.lse.ac.uk/id/eprint/37346/1/Decentralization_and_governance(lsero).pdf)>
accessed 22 March 2026.

49 *ibid*.

50 C Bosire, 'Devolution for Development, Conflict Resolution, and Limiting Central Power: An Analysis of the Constitution of Kenya 2010' (PhD thesis, University of the Western Cape 2013) 20–21.

51 BC Smith, 'The Decentralization of Political Power' in BC Smith (ed), *Good Governance and Development* (Palgrave MacMillan 2004) 102.

52 Chigwata (n 32) 4; R Work, 'Overview of Decentralisation Worldwide: A Stepping Stone to Improved Governance and Human' (2002) 48(1–4) *Philippine Journal of Public Administration* 1.

53 Fombad (n 1) 183.

‘constitution’ is the foundational and organic law of a state, outlining the core principles that define the state’s establishment, the framework and operations of its government, and the rights of its citizens.⁵⁴ Typically, a ‘constitution’ is understood as a written document that sets out fundamental legal and political rules governing both societal and institutional interactions.⁵⁵ However, in practice, not all constitutions are written.⁵⁶ Constitutions create state institutions, assign powers to them, and, crucially, set boundaries on their authority.⁵⁷

In its contemporary form, constitutionalism represents a set of theoretical principles. At its core, it is a doctrine advocating for a government constrained by law. According to Fombad, constitutionalism embodies the notion that a government should be sufficiently restricted to shield citizens from arbitrary rule while also functioning effectively within its constitutional limits.⁵⁸ For a constitution to gain legitimacy and protect against arbitrary governance, it must be widely accepted by the populace.⁵⁹

Like other ‘isms’, constitutionalism embodies a set of values and aspirations.⁶⁰ Steytler eloquently explains that, in its liberal democratic form, constitutionalism entails that, under a constitution, state power is constrained, exercised democratically and accountably, and implemented non-arbitrarily through a framework of enforceable rules.⁶¹ Fundamentally, constitutionalism demands that state authority be defined and restricted by law to safeguard societal interests.⁶² This principle of limitation operates in two key ways: first, it delineates the scope of actions that state institutions may undertake within their designated authority; secondly, it mandates specific procedures for carrying out those actions.⁶³ Thus, only certain state bodies may exercise predefined powers, and they must adhere to prescribed procedures.

Fombad outlines that modern constitutionalism is rooted in six core elements, including provisions for: (a) protecting fundamental rights and freedoms; (b) ensuring separation of powers; (c) maintaining an independent judiciary; (d) enabling judicial review of laws’ constitutionality; (e) regulating constitutional amendments; and (f) establishing

54 E Bulmer, *What is a Constitution? Principles and Concepts* (International Institute for Democracy and Electoral Assistance 2012) 2.

55 AA Awolich, ‘The Challenge of Constitutionalism and Separation of Powers Doctrine in South Sudan’ (The SUDD Institute 2016) <<https://www.jstor.org/stable/resrep11018?seq=1>> accessed 20 March 2026.

56 *ibid.*

57 B Nwabueze, *Constitutional Democracy in Africa* (Spectrum Books 2003) 36.

58 Fombad (n 1) 1013–1014.

59 LC Backer, ‘From Constitution to Constitutionalism: A Global Framework for Legitimate Public Power Systems’ (2009) 113(3) *Penn State Law Review* 675–676.

60 Steytler (n 15) 26.

61 *ibid.*

62 Currie (n 16) 8.

63 *ibid.*

institutions that uphold and promote constitutional democracy.⁶⁴ However, the mere inclusion of these elements in a constitution does not guarantee the implementation of constitutionalism.⁶⁵ Okoth-Ogendo cautions that it is possible to have ‘constitutions without constitutionalism’.⁶⁶ Consequently, constitutionalism requires a genuine commitment from political elites to respect and uphold constitutional boundaries.⁶⁷ The lack of constitutionalism in post-colonial Africa has prompted many African scholars to lament that the region generally suffers from a state of ‘constitutions without constitutionalism’.⁶⁸

Constitutional Expressions of Constitutionalism

In its descriptive sense, constitutionalism is a doctrine that outlines the institutions, structures, and processes that form a state’s constitutional framework.⁶⁹ This perspective is formalistic, focusing on how state power is allocated and constrained, as well as on the interactions among branches of government and the relationships between different levels of government, as outlined in the constitution. As a descriptive doctrine, constitutionalism examines whether state power is exercised in alignment with or in violation of democratic principles or human rights standards, without passing judgement on whether the state adheres to its own constitutional boundaries or rules.⁷⁰ A critical component of constitutionalism is a robust and effective mechanism to ensure compliance with the letter and spirit of the constitution.⁷¹

Implementation of Constitutionalism

A constitution provides a legal framework that outlines the powers and responsibilities of different levels of government, ensuring clarity and predictability. It safeguards citizens’ rights, including those related to decentralisation, such as participation, local autonomy, and access to resources. The constitution establishes accountability mechanisms, ensuring that decentralised entities are responsible to citizens and the central government. In addition, the constitution provides stability and predictability, attracting investment and promoting development in decentralised regions. Thus, constitutionalism facilitates the devolution of power from the centre to sub-national governments, ensuring genuine decentralisation. Constitutionalism ensures the

64 Fombad (n 1) 1014.

65 *ibid.*

66 HWO Okoth-Ogendo, ‘Constitutions Without Constitutionalism: An African Political Paradox’ in D Greenberg, SN Katz, B Oliviero and SC Wheatley (eds), *Constitutionalism and Democracy: Transitions in the Contemporary World* (Oxford University Press 2003) 65.

67 *ibid.*

68 *ibid.*

69 P de Vos and W Freedman (eds), *South African Constitutional Law in Context* (Oxford University Press 2014) 40.

70 *ibid.*

71 CM Fombad, ‘Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa’ (2007) 55 *The American Journal of Comparative Law* 18.

separation of powers, preventing the concentration of power and promoting checks and balances, essential for decentralised governance.

In its prescriptive sense, constitutionalism aims to broadly outline how state power is distributed and wielded. Under this perspective, constitutionalism carries prescriptive weight by setting forth the norms and principles that characterise a constitutional government.⁷² As previously noted, the prescriptive nature of constitutionalism goes beyond simply describing a constitution's functions; it dictates how a constitution works to curb arbitrary rule.⁷³ Key constitutional principles such as constitutional supremacy, justiciability, and entrenchment promote limited government and prevent arbitrary governance.⁷⁴ The following sections briefly explore how certain core elements of constitutionalism, as identified by Fombad, can advance decentralisation in Africa. Fombad notes that these core elements are derived from recent constitutional amendments in countries including Angola, Botswana, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Zambia, and Zimbabwe.⁷⁵

Supremacy of the Constitution and rule of law

Before exploring the core elements of constitutionalism outlined by Fombad, it is essential to examine the related legal principles that constrain state power: constitutional supremacy and the rule of law.⁷⁶ The principle of constitutional supremacy establishes that constitutional rules and principles bind all branches and levels of government and take precedence over other governmental regulations. Any law that conflicts with the constitution, whether in procedure or substance, is deemed invalid and lacks legal effect.⁷⁷

Constitutionalism is further reinforced by the rule of law, which, at its core, safeguards fundamental individual rights by requiring the government to operate within the law and to follow fair legal procedures.⁷⁸ The origins of the rule of law can be traced to ancient Greek philosophy, particularly Aristotle, who argued that 'the law should govern' rather than individual rulers.⁷⁹ The concept was further developed in England through constitutional developments, which limited the monarch's powers and established that the king was subject to the law. The modern understanding of the rule of law is largely

72 Akiba (n 3) 5–6.

73 Currie (n 16) 8.

74 *ibid* 8–9.

75 Fombad's research draws on the revised Constitutions of Angola (25 August 1992), Botswana (30 September 1966), Lesotho (25 March 1993), Madagascar (19 August 1992), Malawi (18 May 1994), Mauritius (12 March 1968), Mozambique (2 November 1990), Namibia (9 February 1990), South Africa (8 May 1996), Swaziland (24 August 1991), Zambia (24 August 1991), and Zimbabwe (21 December 1979), Fombad (n 71) 11.

76 Currie (n 16) 8–9.

77 *Executive Council of the Western Cape Legislature and Others v President of the Republic of South Africa and Others* (CCT 27/95) [1995] ZACC 8; 1995 (10) BCLR 1289; 1995 (4) SA 877 para 62.

78 Currie (n 16) 9.

79 T Bingham, *The Rule of Law* (Penguin Books 2011).

associated with the English jurist AV Dicey, who in 1885 identified three key elements: (a) supremacy of the law over arbitrary power; (b) equality before the law, meaning all persons are subject to the same laws and courts; (c) protection of individual rights through ordinary legal processes and courts.⁸⁰ This principle has two dimensions: first, all state institutions must comply with the law.⁸¹ Secondly, the state may exercise authority over individuals only when explicitly authorised by law.⁸² In essence, all state actions must be legally authorised. Without the rule of law, constitutionalism cannot exist.⁸³

The recognition and protection of fundamental rights and freedoms

The recognition and safeguarding of fundamental human rights and freedoms are cornerstones of constitutionalism, embedded in the constitutions of most African nations.⁸⁴ In a multi-party democracy, citizens in decentralised political systems have the right to elect their representatives at sub-national levels of government.⁸⁵ It is posited that the proximity of government to the populace enhances constitutionalism by fostering greater public participation in democratic processes and improving accountability, thereby curbing abuses of power.

However, the theory and practice of multi-party democracy often reveal resistance to opposition parties governing at sub-national levels.⁸⁶ For instance, Zimbabwe has ‘an obstinate centralist and hegemonic political culture which breeds impunity and is intolerant of both the devolved political structures and the corresponding multi-party system of democratic government.’⁸⁷ In scenarios where different political parties control national and sub-national governments, this multi-level governance structure frequently leads to political rivalry and a lack of co-operation.⁸⁸ More significantly, central governments often undermine the institutional integrity and autonomy of sub-national governments, thereby violating citizens’ civil and political rights to democratically choose their sub-national leaders and to govern.

The separation of powers and checks and balances

A key element of modern constitutionalism is the doctrine of separation of powers and checks and balances, designed to prevent the consolidation of power.⁸⁹ At its core, this

80 AV Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).

81 *ibid* 10.

82 *Minister for Justice and Constitutional Development v Chonco and Others* (CCT 42/09) [2009] ZACC 25; 2010 (1) SACR 325 (CC); 2010 (2) BCLR 140 (CC); 2010 (4) SA 82 (CC) para 27.

83 Fombad (n 71) 8.

84 *ibid* 11.

85 African Charter on Democracy, Elections and Governance, Art 4(1).

86 S Toubeau and M Wagner, ‘Explaining Party Positions on Decentralization’ (2015) 45(1) *British Journal of Political Science* 98.

87 Mudau and ‘Nyane (n 11) 3.

88 Toubeau and Wagner (n 86).

89 Fombad (n 71) 12–13.

doctrine mandates dividing government functions into legislative, executive, and judicial branches, with each assigned to a distinct branch.⁹⁰ By distributing and sharing power both horizontally among these branches and vertically across different levels of government, this approach counters the concentration of authority in the hands of the executive president or prime minister in African contexts.

The executive, legislative, and judicial branches are thus kept independent, with checks and balances ensuring that no single branch abuses its power.⁹¹ In the South African context, section 151 of the Constitution states that the executive and legislative authority of a municipality is vested in its municipal council. This means that, unlike at national and provincial levels, where legislatures and executives are separate institutions, municipal councils exercise both powers. Although there is no full separation of powers, there is a functional distinction between the municipal council, which adopts bylaws and policies, and the mayor, executive committee, and municipal administration, which implement council decisions.⁹² Decentralisation can be seen as an extension of this doctrine, as it limits the power of the national legislature and executive by allocating state authority across multiple levels of government. Ultimately, with effective checks and balances between these levels, the doctrine supports decentralisation's goal of preventing the centralisation and misuse of power by any state entity or organ of state or entity.

An independent judiciary

An independent judiciary serves as a critical and logical complement to the doctrine of separation of powers.⁹³ Judicial independence is the principle that judges and courts must be free from interference, influence, or control by the executive, legislature, private individuals, or any other external force when performing their judicial functions.⁹⁴ It means that judges decide cases impartially, according to the law and the facts, without fear, favour, bias, or political pressure. Judicial independence ensures that courts can protect constitutional rights, uphold the rule of law, and hold government accountable.⁹⁵

Constitutional entrenchment of judicial independence is vital, as it is a prerequisite for effective court functioning.⁹⁶ Any legislation that undermines or jeopardises the autonomy and authority of sub-national governments must be subject to constitutional

90 Currie (n 16) 18.

91 CM Fombad, 'The Separation of Powers and Constitutionalism in Africa: The Case of Botswana' (2005) 25(2) Boston College Third World Law Journal 301.

92 Constitution, ch 7; Local Government: Municipal Structures Act 117 of 1998, ch 4.

93 Fombad (n 71) 15. An independent judiciary is 'foundational to and indispensable for the discharge of the judicial function in a constitutional democracy based on the rule of law,' *Justice Alliance of South Africa v President of the Republic of South Africa and Others* 2011 (5) SA 388 (CC) para 36.

94 Fombad (n 71).

95 *ibid.*

96 *ibid.*

review by an independent judiciary.⁹⁷ A judiciary can uphold the legal safeguards of sub-national governments' powers, allowing them to approach the courts to secure the unimpeded exercise of their constitutionally or legally granted authority.⁹⁸ Without the ability of sub-national governments to seek judicial recourse to protect their powers, a constitution lacks true constitutionalism. Furthermore, to address constitutional violations and enforce constitutional duties, citizens must have access to a legal mechanism for redress through the courts, ensuring constitutional justice.

The review of the constitutionality of laws

A key feature of constitutionalism is the presence of a robust and effective mechanism to ensure compliance with the constitution.⁹⁹ Without such a mechanism, the constitution risks becoming ineffective. De Visser and November argue that sub-national governments can assert their autonomy under the constitution or statutes, whereas higher levels of government must exercise legislative or executive oversight within the same legal framework.¹⁰⁰ In both cases, claims of autonomy may arise despite opposition from higher levels of government. Consequently, it is essential for the law to establish boundaries on power by reviewing the constitutionality of legislation affecting sub-national governments.

The control of the amendment of the constitution

The introductory section of this article noted that the constitutions of many African governments, established during the 1960s following independence, incorporated elements of constitutionalism.¹⁰¹ Yet, within a few years, these constitutions were often repealed, invalidated, or revised.¹⁰² Fombad asserts that a constitution is, or ought to be, a lasting document.¹⁰³ As the supreme law of the land, a constitution's legitimacy stems from the sovereign will of the people, distinguishing it from other laws.¹⁰⁴ If a constitution can be altered 'easily, casually, or carelessly' through deception or the actions of a powerful few, it forfeits its status as the nation's supreme law.¹⁰⁵

Constitutionalism, therefore, prohibits arbitrary suspension, evasion, or disregard of the constitution by governmental bodies. When amendments are necessary, the process must adhere to a predefined procedure that upholds the will of the people. Chigwata

97 European Charter of Local Self-Government (1985) CETS No 122, Art 11 <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/122>> accessed 30 March 2026.

98 Fombad (n 71) 18.

99 *ibid.*

100 J de Visser and J November, 'Overseeing the Overseers Assessing Compliance with Municipal Intervention Rules in South Africa' (2017) 9 *Hague Journal on the Rule of Law* 110.

101 Akiba (n 3) 2.

102 *ibid.*

103 Fombad (n 1) 21.

104 *ibid.*

105 *ibid.*

contends that the effectiveness of constitutional protections for sub-national governments depends on the rigorousness of procedures governing amendments to provisions safeguarding their autonomy.¹⁰⁶ Furthermore, these protections hinge on the rule of law. Without it, both the constitution and judicial rulings upholding sub-national autonomy risk being disregarded.¹⁰⁷

Interdependence between constitutionalism and decentralisation

The fall of communist and authoritarian regimes in the 1990s, followed by a surge in constitution drafting, spurred significant scholarly interest in comparing constitutional systems and principles.¹⁰⁸ In this context, the theory and practice of decentralisation and constitutionalism should inform each nation's constitutional decisions and, where appropriate, draw on the successful practices of other multi-level states. This approach underscores the profound influence of comparative constitutionalism in evaluating effective decentralised governance structures. Nonetheless, the extent to which decentralisation is constitutionally enshrined in multi-level states naturally depends on the specific provisions outlined in the constitution.¹⁰⁹ Both international scholarship and practice consistently emphasise that the success of any decentralisation system relies not only on its structural design but also on the government's political commitment, the willingness of its political and administrative officials to implement it, and the culture that protects their freedom. Romeo further asserts that constitutions reflect the notion that societal realities can be shaped through deliberate, reasoned political decisions.¹¹⁰

This highlights two critical and interconnected factors. When a constitution clearly and adequately outlines the decentralisation of powers, it can positively influence the government's commitment to implementing decentralisation. While a well-crafted, constitutionally entrenched decentralisation system does not automatically ensure successful implementation, it significantly improves the chances of successful implementation, fosters greater prospects for strengthening democracy, and promotes adherence to the rule of law.¹¹¹ Thus, a constitution that explicitly establishes a decentralisation framework enhances the effectiveness of transferring powers to sub-national levels of government.

106 TC Chigwata, 'Devolution Demystified: Emerging Debates and Prospects for Devolution in Zimbabwe' (2019) Zim Citizens Watch <https://www.researchgate.net/publication/332971143_Emerging_debates_about_and_prospects_for_devolution_in_Zimbabwe> accessed 23 March 2026.

107 *ibid.*

108 N Dorsen and others, *Comparative Constitutionalism: Cases and Materials* (Thomson West 2003) iii.

109 Fombad (n 1) 195.

110 G Romeo, 'The Conceptualization of Constitutional Supremacy: Global Discourse and Legal Tradition' (2020) 21 German Law Journal 904.

111 *ibid.*

Fombad argues that, while embedding a well-structured decentralisation system in the constitution does not guarantee its successful implementation, it significantly boosts its potential.¹¹² Furthermore, it creates greater opportunities to strengthen democracy, constitutionalism, and adherence to the rule of law. However, the effectiveness of devolving powers to sub-national governments is most pronounced when the constitution explicitly delineates these powers and is rigorously applied. Although the constitutional entrenchment of decentralisation is a constructive step towards enhancing public participation in governance, the lack of a clear, well-designed decentralisation framework can hinder the government's ability to implement it effectively. De Visser emphasises that ambitious rhetoric and progressive ideas about devolving power to sub-national governments must be matched by genuine political will at the central level to cede meaningful authority to these entities.¹¹³ Nevertheless, the success of decentralisation reforms hinges not only on political commitment or legal and technical measures but also on the design and execution of the decentralisation process itself. When bemoaning the lack of constitutionalism in Africa, Fombad states as follows:

Many of the continent's problems have been caused, not by the absence of constitutions *per se*, but rather by the ease with which constitutional provisions were abrogated, subverted, suspended or brazenly ignored. In short, an absence of constitutionalism and little respect for the rule of law.¹¹⁴

In contexts where constitutionalism is weak or absent, the interplay between decentralisation and constitutionalism grows complex. For example, in post-conflict states such as Ethiopia and South Sudan, adopting federal structures to foster peace, the absence of critical 'federal conditions', 'the lack of trust, willingness to compromise, and respect for constitutionality, has made it difficult to obtain accommodation or to operate a federal institution effectively.'¹¹⁵

Decentralisation seeks to curb centralised authority,¹¹⁶ while constitutionalism demands that state power be constitutionally organised to prevent its centralisation and misuse. Thus, modern constitutionalism and decentralisation share a mutually supportive relationship, as both aim to prevent abuses of state power. In post-colonial Africa, many states pursued bold decentralisation initiatives, recognising local government as vital for self-governance and efficiency.¹¹⁷ Yet these efforts often faltered due to a lack of political commitment, resulting in persistent centralisation and the weakening of local government authority.

112 Fombad (n 1) 195.

113 De Visser (n 20) 30.

114 Fombad (n 71) 3.

115 RL Watts, 'Comparing Federal Political Systems' in A Gagnon, S Keil and S Muller (eds), *Understanding Federalism and Federation* (Ashgate 2015) 27.

116 Steytler (n 15) 26.

117 De Visser (n 20) 30.

De Visser and November define decentralisation as a rules-based system, where adherence to these rules is crucial for assessing the integrity of decentralised governance.¹¹⁸ In mature democracies, institutional rules help curb the abuse of power.¹¹⁹ Steytler emphasises that ‘if the rule of law is the praxis, then decentralisation as a rule-driven system of division of powers should thrive.’¹²⁰ The law shapes decentralised systems, defining sub-national autonomy and the extent to which higher governments can restrict it, making it a key factor in limiting power.¹²¹ Sub-national governments assert autonomy, and senior governments exercise oversight, both guided by constitutional or statutory rules, even if this conflicts with the other’s intentions.¹²²

Constitutionalism involves adherence to a constitution that limits government power, protects rights, and establishes clear governance structures. Decentralisation is critical, as it involves transferring power from central to local governments. A strong constitutional framework ensures that decentralisation is legally enshrined, preventing arbitrary central government interference and fostering accountability.¹²³ Decentralisation aims to enhance local governance, improve service delivery, and promote democratic participation. However, its success in African countries often hinges on constitutional provisions that define the roles, powers, and resources of local governments. Importantly, the society and political class’s adherence to these roles, powers, and limitations, enhances respect for constitutionalism.

Constitutionalism can indeed serve as a catalyst for implementing decentralisation by establishing a legal framework that distributes power, protects local autonomy, and ensures accountability.¹²⁴ A constitution can clearly define the division of authority between central and local governments, outlining roles, responsibilities, and jurisdictions. This legal backing prevents central overreach and empowers sub-national units. Constitutional provisions safeguard local governments’ rights to make decisions, manage resources, and address local needs, fostering self-governance and reducing dependency on the central authority.¹²⁵ Constitutionalism promotes adherence to the rule of law, ensuring that decentralisation processes are transparent, participatory, and accountable. It provides mechanisms, such as judicial review, to resolve disputes between central and local entities. A constitution can establish or mandate institutions

118 De Visser and November (n 100) 110.

119 Faguet (n 48) 17.

120 Steytler (n 15) 26.

121 De Visser and November (n 100) 110.

122 *ibid.*

123 EC Houlihan and SP Hickey, ‘Constitutional Approaches to Decentralization: Elements, Challenges and Implications. Fourth Women Constitution-Makers’ (International IDEA 2022) <<https://www.idea.int/publications/catalogue/constitutional-approaches-to-decentralization>> accessed 30 March 2026.

124 PS Reddy and J Govender, ‘Democratic Decentralisation, Citizen Engagement and Service Delivery in South Africa: A Critique of Legislative and Policy Considerations’ (2013) 43(1) *Africanus* 82–83.

125 M Wittenberg, in P Bardhan and D Mookherjee (eds), *Decentralization and Local Governance in Developing Countries: A Comparative Perspective* (The MIT Press 2006).

such as local councils and regional assemblies that operationalise decentralisation, giving it structural legitimacy and permanence.¹²⁶ By embedding principles of democratic governance and constitutionalism, decentralisation aligns with communities' needs and aspirations.

South Africa's Constitutional Framework Pertinent to Decentralisation and Constitutionalism

Constitutional Framework of Multi-Level Governance and Devolution

Structure of the multi-level system of government

The 1996 Constitution established a multi-level governance system in South Africa, comprising national, provincial, and local government spheres that are distinct, interdependent, and interrelated.¹²⁷ 'The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.'¹²⁸ Section 155(1) of the Constitution established three categories of municipalities: category A (metropolitan), B (local), and C (district). At present, the country has one national government, nine provincial governments, and 257 municipalities, comprising eight metropolitan, forty-four district, and 205 local municipalities.¹²⁹

The 'distinctive' aspect highlights the autonomy of provincial and local governments, which wield constitutionally protected powers and access to revenue.¹³⁰ Fessha notes that the term 'sphere', rather than 'level' or 'tier', was intentionally chosen to signify a non-hierarchical relationship among these spheres of government.¹³¹ South Africa's decentralised system is often described as a 'quasi-federal system' due to its constitutional and institutional framework,¹³² and Watts labels it a 'quasi-federation'.¹³³ This is because South Africa's 1996 Constitution enshrines a classical federal system, premised on a 'federal checklist' comprising six constituent elements. First, a supreme written constitution must acknowledge at least two levels of government: federal and

126 C Saunders, 'Constitutional Design: Options for Decentralizing Power' (2018) Melbourne Law School <https://law.unimelb.edu.au/__data/assets/pdf_file/0006/2698854/CTN-Policy-Paper-2-Decentralisation-Approaches-Feb-18.pdf> accessed 20 March 2026.

127 Constitution, s 40(1).

128 Constitution, s 151(1).

129 South African Government, 'Local Government' <<https://www.gov.za/af/about-government/government-system/local-government>> accessed 20 March 2026.

130 *City of Johannesburg Metropolitan Municipality v Zibi* [2021] ZASCA 97.

131 Y Fessha, 'Devolved Political Structures in South Africa: A Void Waiting to be Filled by Subnational Politics' in N Steytler and YP Ghai (eds), *Kenyan-South African Dialogue on Devolution* (Juta 2015) 119.

132 N Steytler and J de Visser, 'Fragile Federations and the Dynamics of Devolution' in F Parlemo and E Albar (eds), *Federalism as Decision-Making* (Brill 2015) 79.

133 RL Watts, 'Typologies of Federalism' in J Loughlin, J Kincaid and W Swenden (eds), *Routledge Handbook of Regionalism and Federalism* (Routledge 2013) 22.

regional, each directly accountable to its respective citizens.¹³⁴ Secondly, both levels exercise significant exclusive powers, including legislative, executive, and fiscal autonomy (self-rule).¹³⁵ Thirdly, the constitution prevents either level from unilaterally changing its own powers or the other's powers.¹³⁶ Fourthly, a second chamber in the national legislature, composed of regional representatives, protects sub-national interests (shared rule).¹³⁷ Fifth, the constitution includes a dispute-resolution mechanism, such as a judicial or referendum process.¹³⁸ Lastly, the constitution establishes structures, principles, and mechanisms to promote co-operation between federal and regional governments in the exercise of shared or overlapping responsibilities.¹³⁹

Principles of co-operative government

All spheres of government—national, provincial, and local—exercise legislative and executive authority within the areas outlined in Parts B of Schedules 4 and 5 of the Constitution. These spheres must collaborate to promote community development and deliver services in distinct ways. To fund their responsibilities and provide essential services, the Constitution establishes a fiscal decentralisation system that allocates financial resources and revenue-generating powers through an intergovernmental fiscal framework.¹⁴⁰

Section 41(1) of the Constitution outlines principles of co-operative government, setting standards for intergovernmental conduct that require the three spheres of government: national, provincial, and local, to collaborate for the nation's benefit. This provision supports an integrated federal approach, characterised by structures, principles, and mechanisms that foster co-operation between the federal government and its constituent units on shared responsibilities. Unlike competitive governance, these principles encourage collaboration rather than imposing restrictive obligations. To implement these constitutional principles of co-operative government, various pieces of legislation have been enacted. The national government is tasked with establishing consistent policy objectives, norms, and standards.¹⁴¹ Provincial governments oversee local governments, which are directly responsible for delivering services and achieving

134 Bosire (n 50) 15; Constitution, ss 2 and 40(1).

135 Fombad (n 1) 179–180; Constitution, s 44(1)(a)(ii).

136 Fombad (n 1) 180; Constitution, ss 41(1)(e) and (f).

137 Steytler and Ghai (n 131) 7; Constitution, ss 42(1), (2) and (3).

138 Bosire (n 50) 16; Fombad (n 1) 180; Constitution, s 41(3).

139 M van Staden, 'The Potential for Constitutional Devolution in South Africa' (2021) 41(3) *Cato Journal* 691; RL Watts, 'Federal Idea and Its Contemporary Relevance' (2007) <https://www.queensu.ca/iigr/sites/iirwww/files/uploaded_files/TheFederalIdaWatts2007.pdf> accessed 10 March 2026; Constitution, ss 41(2)(a) and (b).

140 B Khumalo and others, 'South Africa's Intergovernmental Fiscal Relations System' in N Steytler and Y Ghai (eds), *Kenya-South Africa Dialogue on Devolution* (Juta 2015) 203.

141 Constitution, s 146(2)(b).

development goals.¹⁴² From a legal, policy, and practical perspective, the multi-level government system is notably advanced and effective.

Provincial government

South Africa is divided into nine provinces: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Mpumalanga, Northern Cape, Limpopo, North West, and Western Cape.¹⁴³ Chapter 6 of the Constitution outlines the governance framework for these provinces, detailing the structures, powers, and functions of their legislatures,¹⁴⁴ and executive authorities.¹⁴⁵ As a result, provinces operate as autonomous governments with significant legislative and executive powers granted by the Constitution or national laws. According to De Vos and Freedman, the Constitution assigns provinces three key, interconnected yet distinct roles based on their structure and authority.¹⁴⁶ First, provinces create a direct connection between citizens and their government, ensuring that the specific concerns, challenges, and needs of distinct geographic regions are addressed. Secondly, provinces are responsible for implementing national policies and programmes in key service areas, including housing, healthcare, policing, and education. Thirdly, provinces are responsible for supervising the effective operation of local government within their boundaries.¹⁴⁷

The nine provinces of South Africa generally share similar structures and powers.¹⁴⁸ Each is constitutionally permitted to adopt its own provincial constitution, but only the Western Cape has done so to date.¹⁴⁹ However, such provincial constitutions cannot grant greater powers or deviate from the governance framework established by the national Constitution.¹⁵⁰ Provinces are bound by the national Constitution and cannot use their constitution-making authority to change their nature or their relationship with other government levels.¹⁵¹ In contrast to the Western Cape's successful provincial constitution, the KwaZulu-Natal constitution was rejected by the Constitutional Court for multiple deficiencies, the most significant being its attempt to encroach on national powers.¹⁵² Each province's legislative power resides in its provincial legislature,¹⁵³

142 Constitution, s 155(7).

143 Constitution, s 103(1).

144 Constitution, ss 104–124.

145 Constitution, ss 125–141.

146 De Vos and Freedman (n 69) 278.

147 *ibid.*

148 Constitution, ss 104(1)(a) and 142.

149 Fessha (n 131).

150 Certification of the KwaZulu-Natal Constitution (CCT 15/96) [1996] ZACC 17, 1996 (11) BCLR 141 (CC), 1996 (4) SA 1098 (CC).

151 Certification of the KwaZulu-Natal Constitution para 8. See also Certification of the Constitution of the Western Cape, 1997 (CCT 6/97) [1997] ZACC 8, 1997 (12) BCLR 1653 (CC), 1998 (1) SA 655 (CC) para 8.

152 Certification of the KwaZulu-Natal Constitution para 14.

153 Constitution, s 104(1).

which can pass laws on matters listed in Schedules 4 and 5 of the Constitution,¹⁵⁴ matters explicitly assigned to the province by national legislation,¹⁵⁵ or any matter envisaged by constitutional provision under the enactment of provincial legislation.¹⁵⁶ Additionally, the Constitution also stipulates that ‘provincial legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4, is for all purposes legislation with regards to a matter listed in Schedule 4.’¹⁵⁷ Provincial legislatures, comprising thirty to eighty members,¹⁵⁸ are elected through a proportional representation system¹⁵⁹ by the citizens or constituencies of each province.¹⁶⁰ To foster limited, democratic, and accountable governance, provinces answer directly to their citizens. The Constitution permits each province to set the size of its legislature, as outlined in its provincial constitution. A provincial legislature serves a five-year term but may be dissolved earlier, before the term expires.¹⁶¹ The Premier must dissolve the legislature if a majority of its members vote in favour of dissolution and at least three years have passed since the legislature was elected.¹⁶² The legislature must also be dissolved if the office of Premier becomes vacant and the legislature fails to elect a new Premier within thirty days. In that event, the Acting Premier must dissolve the legislature.¹⁶³

The executive authority of a province lies with its Premier,¹⁶⁴ elected by the members of the provincial legislature.¹⁶⁵ Beyond its explicit powers, the provincial executive may exercise additional powers delegated by the national executive under section 99 of the Constitution. Provinces hold executive authority over Schedule 4 and 5 matters, contingent on sufficient administrative capacity.¹⁶⁶ The Constitution mandates that the national government assist provinces in developing the administrative capacity required for the effective exercise of their powers and the performance of their functions through legislative and other measures.¹⁶⁷ The Premier, chosen by the majority party in the legislature, leads the provincial government.¹⁶⁸ The Premier and Executive Council are individually and collectively accountable to the legislature.¹⁶⁹ A Premier may serve up

154 Constitution, s 104(1)(b)(i) and (ii).

155 Constitution, s 104(1)(b)(iii).

156 Constitution, s 104(1)(b)(iv).

157 Constitution, s 104(4).

158 Constitution, s 105.

159 Constitution, s 105(1)(d).

160 Constitution, s 105(1)(b).

161 Constitution, s 108(2).

162 Constitution, s 109.

163 *ibid.*

164 Constitution, s 125(1).

165 Constitution, s 128(1).

166 These powers may be conferred ‘only to the extent that the province has the administrative capacity to assist in assuming effective responsibility,’ Constitution, s 125(3).

167 Constitution, s 125(3).

168 Fessha (n 137) 120.

169 Constitution, s 133(2).

to two five-year terms.¹⁷⁰ Regular elections in a multi-party democracy enhance service delivery, as competitive politics allow citizens to change governments through free and fair elections. A Premier may be removed before their term ends via impeachment under section 130(3) of the Constitution for serious constitutional or legal violations, misconduct, or inability to perform duties; or by a vote of no confidence under section 141, which De Vos and Freedman note is often politically motivated.¹⁷¹

Fiscal decentralisation involves allocating financial resources and revenue-generating powers to sub-national units.¹⁷² Under the current intergovernmental fiscal relations framework, provinces have restricted taxation powers,¹⁷³ which are limited to taxes, levies, and duties.¹⁷⁴ They have restricted borrowing powers for capital or current expenditure, with loans for current expenditure allowed only for bridging purposes within a fiscal year. Due to limited revenue sources, provinces rely heavily on intergovernmental transfers under section 214 of the Constitution, focusing on expenditure management rather than revenue generation. As a result, provinces largely focus on managing expenditure rather than expanding their revenue sources.¹⁷⁵ The Constitution does not grant provinces administrative authority directly. Sections 195(2) and 195(4) require national legislation, such as the Public Service Act,¹⁷⁶ to regulate public service appointments across government spheres. This Act governs provincial administration structures but allows provinces to manage their own staff appointments, remuneration, discipline, and dismissals.

Local government

The 1994 transition from apartheid to democracy introduced a new constitutional framework that transformed local government. Before 1994, local governments were statutory entities without constitutional protections.¹⁷⁷ Post-1994, it became a fully autonomous government with constitutionally guaranteed powers, no longer merely an administrative extension of national or provincial governments.¹⁷⁸ In the *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others*,¹⁷⁹ the Constitutional Court confirmed this change, ruling that local government no longer exercises delegated powers but holds original powers under the 1993 Constitution, which were further expanded in the 1996 Constitution.

170 Constitution, s 130(2).

171 De Vos and Freedman (n 69) 280.

172 Beer-Tóth (n 45).

173 Khumalo (n 140) 203.

174 Constitution, s 228.

175 Khumalo (n 140) 208.

176 Public Service Act 103 of 1994, ss 9 and 11.

177 N Steytler and J de Visser, *Local Government Law of South Africa* (LexisNexis 2007) 1.

178 P Ntliziwana, 'Professionalisation of Local Government: Legal Avenues for Enforcing Compliance with Competency Requirements' (LLM dissertation, University of the Western Cape 2009) 8.

179 *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BCLR 1458 (CC).

A municipality's governance authority is vested in its municipal council.¹⁸⁰ Municipal councils include members elected through proportional and ward-based representation (where wards exist).¹⁸¹ The Constitution grants municipalities the right to govern local affairs independently, subject to national and provincial legislation,¹⁸² and prohibits other spheres of government from interfering with their powers or functions.¹⁸³ This strong constitutional protection ensures that municipalities' autonomy is meaningful. Local autonomy refers to the right and capacity of local authorities to independently manage public affairs at the local level, with discretion in fulfilling their responsibilities and duties.¹⁸⁴ Municipal councils hold both legislative and executive authority,¹⁸⁵ including the power to administer bylaws and local government matters listed in Schedules 4B and 5B of the Constitution, as reinforced by section 156(2) of the Constitution. These constitutionally granted powers, known as 'original' powers, are a municipality's core authority but must comply with regulatory limits set by sections 155(6)(a) and 7 of the Constitution.

Through political decentralisation, South Africa's local governments have extensive, constitutionally protected powers that cannot be altered by ordinary statutes or provincial acts, only by amending the Constitution. This framework reflects an advanced system of devolution of powers to sub-national government levels. Beyond Schedule 4B and 5B powers, municipalities may exercise 'assigned powers' transferred by national or provincial governments for matters in Schedules 4A and 5A,¹⁸⁶ through a legislative¹⁸⁷ or executive assignment.¹⁸⁸ The Constitution mandates that such matters be assigned to municipalities if they can be effectively administered locally and the municipality has the capacity to manage them.¹⁸⁹ Municipalities also have original fiscal powers,¹⁹⁰ including the ability to impose property rates and surcharges on service fees, such as electricity surcharges.¹⁹¹ National legislation may allow additional taxes or duties suitable for the municipality's category.¹⁹² But income tax, value-added tax, general sales tax, or customs duties are prohibited.¹⁹³ To support basic services and functions, municipalities are entitled to an equitable share of national revenue¹⁹⁴ and

180 Constitution, s 151(2).

181 Constitution, s 157.

182 Constitution, s 151(1); Local Government: Municipal Systems Act 32 of 2000, s 4(1)(a).

183 Constitution, s 151(4).

184 I Bilouseac and P Zaharia, 'Clarifications on the Principle of the Autonomy in Local Public Administration Management' (2014) 16 *Annales Universitatis Apulensis Series Oeconomica* 17.

185 Constitution, s 151(2).

186 Constitution, s 156(4).

187 Constitution, ss 44(1)(a)(iii) and 104(1)(c).

188 Constitution, ss 99 and 126.

189 Constitution, s 156(4).

190 Steytler and De Visser (n 177) 6.

191 Constitution, s 229(1)(a); *City of Cape Town v Robertson* 2005 (3) BCLR 199 (CC) para 61.

192 Constitution, s 229(1)(b).

193 *ibid.*

194 Constitution, s 227(1)(a).

may receive conditional or unconditional allocations from the national government.¹⁹⁵ Finally, municipal councils can employ staff to perform their functions effectively.¹⁹⁶ Within their administrative and financial capacity, municipalities must strive to achieve the objectives of local government and prioritise community needs in their administration, budgeting, and planning processes.¹⁹⁷

The Practice of Constitutionalism

The Constitution's adoption marked a pivotal shift from apartheid to constitutional democracy, establishing a new constitutional order grounded in modern constitutionalism. This includes fundamental human rights and freedoms enshrined in the Bill of Rights,¹⁹⁸ which, according to Currie and De Waal, serves as the primary limit on public power, preventing the state from violating these rights.¹⁹⁹ The Constitution upholds values such as the supremacy of the Constitution, the rule of law, multi-party democracy, and accountable governance.²⁰⁰ It promotes limited government to prevent the abuse of power. Key features of modern constitutionalism include the separation of powers and checks and balances to avoid concentration of powers, an independent judiciary to curb politicisation, and mechanisms for reviewing the constitutionality of laws²⁰¹ and controlling constitutional amendments.²⁰² These elements confirm that the Constitution aligns with the principles of modern constitutionalism.

The Constitution establishes the supremacy of the Constitution and the rule of law as core values of South Africa's democratic state, making the Constitution the supreme law with all its obligations binding.²⁰³ Steytler emphasises the independent judiciary's critical role in interpreting and enforcing the Constitution.²⁰⁴ Within a federal system that includes provincial and local governments and an independent judiciary led by the Constitutional Court, the courts are tasked with shaping and strengthening this system.²⁰⁵ Since 1995, the Constitutional Court, the Supreme Court of Appeal, and the High Court have significantly shaped jurisprudence to uphold the principle of limited

195 Constitution, s 227(1)(b).

196 Constitution, s 160(1)(d).

197 Constitution, s 153(a).

198 Constitution, s 1(a). See also P Mudau, 'Judicial Enforcement of the Right to Adequate Housing Against Local Government Through the Lens of General Comment 4 of the Committee on Economic, Social and Cultural Rights: A South African Perspective' (2025) 25(1) *African Human Rights Law Journal* 25(1) 358.

199 Currie (n 16) 23.

200 Constitution, ss 1(c) and 1(d).

201 Constitution, s 79(4)–(5).

202 Constitution, s 74.

203 Constitution, ss 1(c) and 2.

204 N Steytler, 'The Constitutional Court of South Africa: Reinforcing an Hourglass System of Multi-Level Government' in N Aroney and J Kincaid (eds), *Courts in Federal Countries: Federalists or Unitarists?* (University of Toronto Press 2017) 328.

205 *ibid.*

government. The courts have consistently sought to reinforce fundamental constitutional values, including the supremacy of the Constitution, the rule of law, and the separation of powers, which are essential to modern constitutionalism.²⁰⁶

The *Constitutional Court in City of Cape Town v Independent Outdoor Media (Pty) Ltd and Others*²⁰⁷ confirmed that municipal bylaws do not require national or provincial approval, affirming that municipalities have exclusive legislative authority over matters listed in Schedule 4B and 5B of the Constitution. The Court declared that section 29(8) of the National Building Regulations and Building Standards Act 103 of 1977 is unconstitutional for requiring ministerial approval of municipal bylaws. The judgement reinforces the institutional independence of municipalities and their right to govern local affairs without interference. Similarly, in *Minister of Local Government, Environmental Affairs and Development Planning of the Western Cape v Lagoonbay Lifestyle Estate (Pty) Ltd and Others*,²⁰⁸ the Court upheld the municipality's planning authority, ruling that provincial interference must respect the constitutional allocation of powers. This strengthens the functional autonomy of municipalities in spatial planning and land use management.

However, in interpreting federal provisions, the Constitutional Court has not fully advanced provincial governments' self-rule. Instead, it has consistently prioritised enforcing the local government's constitutional right to independently govern its community's local affairs.²⁰⁹ In *My Vote Counts NPC v Speaker of the National Assembly and Others*,²¹⁰ the Court held that the principle of constitutional subsidiarity, which requires that where legislation exists to give effect to a constitutional right, a litigant must challenge that legislation directly rather than relying solely on the constitutional provision. In this case, the Promotion of Access to Information Act 2 of 2002 was enacted to give effect to section 32 of the Constitution (right of access to information). Therefore, the applicant should have challenged the constitutionality or adequacy of the Act, rather than seeking a direct constitutional remedy that would compel Parliament to enact new legislation. Furthermore, Malan argues here that the Constitutional Court's findings have also been superficial and ideological.²¹¹

While not focusing on the substantive aspects of provincial self-rule, the Constitutional Court has diligently scrutinised compliance with procedural rules governing

206 *ibid.*

207 *City of Cape Town v Independent Outdoor Media (Pty) Ltd and Others* (CCT 36/22) [2023] ZACC 17, 2024 (1) SA 301 (WCC), 2024 (4) BCLR 483 (CC) (23 June 2023).

208 *Minister of Local Government, Environmental Affairs and Development Planning of the Western Cape v Lagoonbay Lifestyle Estate (Pty) Ltd and Others* (CCT 41/13) [2013] ZACC 39, 2014 (1) SA 521 (CC), 2014 (2) BCLR 182 (CC) (20 November 2013).

209 Constitution, s 151(3).

210 *My Vote Counts NPC v Speaker of the National Assembly and Others* (CCT121/14) [2015] ZACC 31 paras 49 and 161.

211 K Malan, *There Is No Supreme Constitution: A Critique of Statist-Individualist Constitutionalism* (African Sun Media 2019) 65.

intergovernmental relations.²¹² For example, in *Premier: Limpopo Province v Speaker, Limpopo Provincial Legislature and Others*,²¹³ the Court ruled that a provincial law regulating the financial affairs of the provincial legislature was unconstitutional, as it exceeded the legislature's competence. Similar laws in five other provinces were also struck down. The national executive and Parliament have consistently respected these judicial rulings,²¹⁴ reflecting a strong commitment to the rule of law, a cornerstone of South Africa's constitutional democracy. Former president Nelson Mandela exemplified this respect by complying with a subpoena to testify in open court, justifying his decision to appoint a commission of inquiry.²¹⁵

The end of apartheid in 1994, accompanied by Mandela's presidency, saw the replacement of the racist, authoritarian regime with a constitutional democracy.²¹⁶ The African National Congress (ANC) government adopted a constitutional framework by implementing the 1996 Constitution, which established provinces and municipalities as autonomous sub-national governments.²¹⁷ A multi-party democratic system has ensured regular, free, and fair national, provincial, and local elections every five years.²¹⁸ The ANC has demonstrated a commitment to devolution and constitutionalism by ceding power to opposition parties when it fails to retain control at the sub-national level.²¹⁹

In the 1994 elections, the Inkatha Freedom Party (IFP) won KwaZulu-Natal, and the New National Party (NNP) won the Western Cape. By 2004, the ANC controlled all nine provinces, including the Western Cape via an ANC–NNP coalition, but later lost the Western Cape to the Democratic Alliance (DA) in 2009. The ANC also lost the City of Cape Town to a DA-led coalition in 2006 and, in 2016, ceded control of Nelson Mandela Bay, Tshwane, and Johannesburg to DA-led coalitions.²²⁰ Following a disappointing performance in the 2024 elections, in which it secured only 40.18 per cent, the ANC acknowledged its inability to form a majority government, initiated talks on a Government of National Unity, and conceded defeat in the Western Cape and

212 Steytler (n 204) 151–152.

213 *Premier: Limpopo Province v Speaker, Limpopo Provincial Legislature and Others* (CCT 94/10) [2011] ZACC 25, 2011 (11) BCLR 1181 (CC), 2011 (6) SA 396 (CC) para 68.

214 N Steytler, 'The Dynamic Relationship between Devolution and Constitutionalism in South Africa' in CM Fombad and N Steytler (eds), *Decentralization and Constitutionalism in Africa* (Oxford University Press 2019b) 155.

215 Commission of Inquiry into Certain Financial and Administrative Aspects of the South African Rugby Football Union (SARFU) and Related Matters (the Browde Commission), *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* (CCT 16/98) [1999] ZACC 11, 2000 (1) SA 1.

216 Steytler (n 204).

217 *ibid* 151.

218 *ibid* 154.

219 *ibid*.

220 H Mkhabela, 'South African Local Elections 2016: From One Party Dominance to Effective Plural Democracy' (2016) *Études de l'Ifri* <<http://www.ifri.org/en/studies/south-african-local-elections-2016-one-party-dominance-effective-plural-democracy>> accessed 19 March 2026.

KwaZulu-Natal. These actions reflect the ANC's adherence to devolved governance, multi-party democracy, and the constitutional framework of multi-level governance.

However, widespread non-compliance with the rule of law plagues state-owned enterprises, national departments, and provincial and local governments. Most provinces suffer from corruption and maladministration, while a third of municipalities are officially labelled 'frankly dysfunctional', with another third at risk of dysfunction.²²¹ For instance, following the 2021 local government elections until the by-elections held in November 2024, the Thabazimbi Local Municipality was left paralysed with two municipal councils and management teams, one led by the ANC and the other by the DA. This period was marked by debts exceeding R300 million owed to Eskom and R180 million to Magalies Water; employees unpaid for more than three months; sewage leaks, uncollected garbage, and interrupted water and electricity services; over R15 million spent on legal battles over no-confidence motions and council legitimacy; and frequent managerial changes, with thirteen municipal managers in twelve years.²²² These issues highlight a lack of good governance, particularly at sub-national levels.

In *Afriforum NPC v Ngwathe Local Municipality and 14 Others*,²²³ the Free State High Court declared the municipality dysfunctional and in breach of its constitutional obligations under sections 152(1) and 153(a) of the Constitution, which mandate sustainable service delivery and sound municipal management. The court ordered the dissolution of the municipal council and compelled the Free State provincial government to intervene under section 139 of the Constitution, which provides for provincial oversight when a municipality fails to fulfil its executive obligations. The *Ngwathe* judgement reflects a broader judicial trend of stepping in when municipalities fail to function effectively. A similar intervention occurred in 2020 when the High Court ordered the dissolution of the Makana Local Municipality in the Eastern Cape and mandated a financial recovery plan due to ongoing service delivery failures.²²⁴ This instance demonstrates the judiciary's readiness to intervene when provincial governments neglect their constitutional duty under section 139. Thus, this ruling

221 Steytler (n 12) 151–152; J February, 'Local Government in South Africa—Mostly Corrupt, Largely Dysfunctional' (*Daily Maverick*, 26 April 2018) <<https://www.dailymaverick.co.za/opinionista/2018-04-26-local-government-in-south-africa-mostly-corrupt-largely-dysfunctional/>> accessed 29 March 2026.

222 P Mudau, 'Parallel Councils and Duplicate Management Teams: The Crisis in Thabazimbi Local Municipality' (2025) 20(2) *Local Government Bulletin* <<https://dullahomarinate.org.za/multilevel-govt/local-government-bulletin/archives/volume-20-issue-2-june-2025/parallel-councils-and-duplicate-management-teams-the-crisis-in-thabazimbi-local-municipality-2>>

223 *Afriforum NPC v Ngwathe Local Municipality and 14 Others* (2264/2024) [2025] ZAFSHC 184 para 94.

224 *Unemployed Peoples Movement v Premier, Province of the Eastern Cape and Others* (553/2019) [2020] ZAECHGHC 1, 2020 (5) BCLR 573 (ECG), 2020 (3) SA 562 (ECG).

reinforces the idea that courts can compel provincial action, ensuring accountability and safeguarding residents' constitutional rights.

Despite the establishment of autonomous provincial and local governments, a key challenge remains: transforming these entities into efficient, effective institutions that advance South Africa's development goals, such as eradicating poverty, reducing regional inequalities, and fostering economic growth.²²⁵ Local government is prone to 'elite capture', a scenario in which it lacks sufficient financial and authoritative power, allowing local elites to dominate the democratic process and control state resources.²²⁶ Non-compliance with the rule of law by provinces and municipalities reflects a deficit of constitutionalism at the sub-national level.

Despite the formal entrenchment of constitutionalism, decentralisation often falters in dominant-party systems where political power is heavily centralised.²²⁷ The ANC has maintained prolonged dominance, which has occasionally led to the marginalisation of provincial and local governments. When political loyalty overrides institutional autonomy, decentralised entities may become mere extensions of the central executive, undermining their constitutional mandate. Weak judicial enforcement exacerbates this problem; if courts lack independence or are reluctant to challenge executive overreach, constitutional safeguards become symbolic rather than functional. This erosion of checks and balances compromises the ability of decentralised institutions to operate effectively, even when the Constitution provides for their autonomy.

Furthermore, decentralisation is undermined in contexts where strongman politics and the overuse of emergency powers prevail. In South Africa, while emergency powers are constitutionally regulated, their misuse, especially during crises such as the COVID-19 pandemic, has revealed how central authorities can bypass ordinary governance structures.²²⁸ When executive actors invoke emergency powers to suspend or override local decision-making, decentralisation becomes vulnerable.²²⁹ This is compounded by a political culture that valorises central leadership over local responsiveness. In such environments, constitutionalism may exist in form but not in substance, as decentralised

225 P Pillay, 'Decentralisation and Service Delivery' in A Mc Lenna and B Munslow (eds), *The Politics of Service Delivery* (Wits University Press 2009) 139.

226 MK Musgrave and S Wong, 'Towards a More Nuanced Theory of Elite Capture in Development Projects. The Importance of Context and Theories of Power' (2016) 9(3) *Journal of Sustainable Development* 88–89.

227 Mudau and 'Nyane (n 11) 5.

228 N Steytler, J de Visser and T Chigwata, 'South Africa: Surfing Towards Centralisation on the Covid-19 Wave' in Steytler N (ed), *Comparative Federalism and Covid-19* (Routledge 2021) 336.

229 J de Visser and T Chigwata, 'Municipalities and Covid-19: What the National Disaster Management Directions Mean for Municipal Governance' (2020) *Local Government Bulletin* 15(1) <<https://dullahomarininstitute.org.za/multilevel-govt/local-government-bulletin/archives/volume-15-issue-1-march-2020/municipalities-and-covid-19-what-the-national-disaster-management-directions-mean-for-municipal-governance>>

governance is subordinated to centralised control, weakening democratic participation and service delivery at the grassroots level.

Conclusion

Constitutionalism lays the groundwork for effective decentralisation in Africa by providing a legal framework, safeguarding rights, ensuring separation of powers, promoting accountability, fostering stability, enabling power devolution, protecting local autonomy, and advancing good governance. Drawing on international literature and African state practices, with a case study on South Africa, the article thoroughly explored the symbiotic relationship between modern constitutionalism and decentralisation, highlighting their complementarity. The article's primary aim was to validate the central argument that constitutionalism is a critical prerequisite for successful decentralisation in Africa. It concluded that the success of decentralisation in Africa depends significantly on the degree of political will and commitment to constitutionalism and the rule of law at the national level. Strong political will, coupled with practical adherence to constitutionalism and the rule of law, ensures that the constitutional framework for decentralisation is effectively realised.

Regular, free, and fair elections at all levels of governance legitimise devolved political structures. The allocation of powers to sub-national governments is reinforced by an independent judiciary, which consistently protects their authority and institutions. In cases challenging the constitutionality of national executive actions, both Parliament and the courts have ensured that the executive complies with constitutional duties. Crucially, the government has consistently respected court rulings that uphold the autonomy and powers of sub-national governments within the framework of the supreme Constitution. Constitutionalism, as both a politico-legal philosophy and practice, has been pivotal to the successful implementation of decentralisation in South Africa. Since the advent of democracy in 1994, the ANC's political commitment at the national level to uphold the rule of law, combined with a sophisticated legal and policy framework for multi-level governance, has driven the effective realisation of decentralisation and constitutionalism.

South Africa faces significant challenges in service delivery, development, equality, capacity, and competence, particularly due to weaknesses at the local government level.²³⁰ Local government failures stem from a lack of commitment to constitutionalism and persistent non-compliance with the rule of law, driven by widespread corruption and poor governance. The article contends that South Africa's established decentralisation framework must be reinforced by robust constitutionalism,

230 J de Visser and N Steytler, 'Multilevel Government in South Africa, Ethiopia and Kenya: Observations from the Practice of Designing and Implementing Multilevel Government Systems' (2018) Occasional Paper Series No 20, Forum of Federations <https://www.forumfed.org/wp-content/uploads/2018/01/OPS_20_Multilevel_Government1.pdf> accessed 21 March 2026.

and adherence to the rule of law across all government levels is essential to advance decentralisation goals, including equitable development.

Recommendations

African governments should constitutionally entrench decentralisation frameworks to ensure they are not subject to the whims of central authorities. This involves embedding clear provisions for devolved powers, fiscal autonomy, and administrative authority in national constitutions, as seen in South Africa's 1996 Constitution. Such entrenchment protects sub-national governments from arbitrary interference and ensures stability. Constitutional amendments should require a broad consensus to prevent unilateral changes by central governments. Effective decentralisation hinges on strong political will at the national level to uphold constitutionalism and the rule of law. Governments must demonstrate practical adherence to constitutional mandates by promptly respecting judicial rulings and devolving powers, as exemplified by South Africa's compliance with court decisions affirming local government autonomy. National leaders should foster a culture of accountability, ensuring that decentralisation is not undermined by centralised control or elite capture. An independent judiciary is crucial for enforcing constitutional provisions and safeguarding sub-national autonomy. African states should establish accessible constitutional courts with the authority to review the constitutionality of national and provincial actions, as seen in the Constitutional Court's rulings on provincial legislative competence in South Africa. Countries should decentralise constitutional justice systems to enhance access to justice by reducing costs and backlogs.

Corruption and elite capture at sub-national levels, as seen in South Africa's dysfunctional municipalities, undermine decentralisation. Governments should implement robust accountability mechanisms, such as participatory budgeting and citizen oversight committees, to ensure transparency in resource allocation. Decentralisation fails without adequate administrative and financial capacity. National governments must invest in capacity-building programmes for sub-national governments, as mandated in South Africa's Constitution, to ensure effective service delivery. Fiscal decentralisation should grant municipalities and provinces greater revenue-generating powers, such as expanded taxation authority, while reducing reliance on intergovernmental transfers. Policies should also strengthen local government personnel management, as seen in South Africa's Public Service Act, to ensure competent administration. Decentralisation should foster inclusive governance by involving local communities in decision-making. Policies should enhance the role of civil society in monitoring local governance. The African Charter on Values and Principles of Public Service and Administration emphasises participatory governance, which African states should implement to ensure marginalised groups, such as those with special needs, are included. South Africa's ward-based representation system offers a model for local participation, though it requires stronger enforcement to prevent elite capture.

Many African countries, despite their constitutional provisions, implement deconcentration (centralised control) rather than genuine devolution. Governments should revise legislation to grant sub-national units genuine political, financial, and administrative autonomy. South Africa's intergovernmental fiscal relations framework, though limited in provincial taxation powers, offers a starting point for balancing national oversight with local autonomy. To ensure decentralisation achieves development goals like poverty reduction and equality, governments should establish monitoring and evaluation mechanisms. Regular assessments can identify gaps in implementation and capacity. South Africa's challenges with local service delivery underscore the need for data-driven evaluations to address dysfunction and improve governance.

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