

South Africa

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Introduction

The Constitution of the Republic of South Africa, which was enacted in 1996 and came into force the following year, provides for a system of government that is notionally highly decentralised. There are three levels or spheres of government: national, provincial and local. The existence, structures, powers and functions of the sub-national spheres are guaranteed by the constitution. Local government in particular has a developmental role, one of its primary functions being to provide basic services. Legislation enacted to give effect to the local government provisions of the constitution include the Municipal Systems Act, the Municipal Structures Act, and the Municipal Finance Management Act.

South Africa has a ‘best practice’ local government framework, and this may be considered perhaps the greatest asset for enabling local democracy to flourish in the country; on the other hand, the country is beset, particularly at local level, with problems of lack of capacity, weak political leadership, corruption and mismanagement (Siddle and Koelble 2012), which constitute serious threats to local democracy. The national government has itself acknowledged that one third of municipalities are dysfunctional.

About ICLD

The Swedish International Centre for Local Democracy (ICLD) is part of the Swedish development cooperation. The mandate of the organization is to contribute to poverty alleviation by strengthening local governments.

This report is part of a publication series that investigates local democracy in the 19 countries where the ICLD municipal partnership programme operates.

This report covers events up to 31 May 2019. Events occurring after this period are not considered.

General country analysis

Section 1 of the Constitution of the Republic of South Africa describes it as ‘one, sovereign and democratic state’. Yet, section 40 (1) of the Constitution states that ‘government is constituted as national, provincial and local spheres of government that are distinctive, interdependent and interrelated’. The local sphere at present consists of 257 municipalities, consisting of three categories: metropolitan municipalities, which are established for the large urban centres, and which perform the full range of functions provided for in the constitution; and local municipalities and district municipalities, which have complementary functional jurisdiction.

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Section 151 (3) states that ‘a municipality has the right to govern, on its own initiative, the local government affairs of its community’; however, this provision goes on to state that a municipality’s right to govern its affairs is ‘subject to national and provincial legislation, as provided in the Constitution,’ which somewhat tempers the decentralised aspect. Section 151 (4) states that ‘the national or a provincial government may not compromise or impede a municipality’s ability or right to exercise its powers or perform its functions’.

Fiscal decentralisation

Local government powers and functions or spending responsibilities are set out in the constitution. They cover a wide range of activities, including water supply, electricity reticulation, refuse disposal, roads, planning, and the like.

Municipalities may raise their own funding in the form of user charges (for example, for the supply of electricity and water to consumers) and property taxes (or ‘rates’). They may not impose other taxes without the consent of the national government. South Africa also has a complex system of intergovernmental finance, which is guaranteed by the constitution, whereby revenues raised by the national government are shared with other spheres of government. Transfers may be unconditional or conditional. The most important unconditional transfer (called the ‘equitable share’) is determined on an ad hoc basis for the vertical division between spheres, and on a formula basis for horizontal division between governments within the sub-national spheres. The extent to which individual municipalities depend on grants from the national government varies greatly, with the

larger metropolitan municipalities providing the bulk of their financial needs from local sources, while many smaller, rural municipalities are almost entirely dependent on intergovernmental transfers.

Municipalities prepare and approve their own budgets, subject to procedural and format guidelines laid down by national legislation and regulations, and have the power to allocate revenue as they see fit (subject again to financial management standards imposed by the national government), except for conditional grants, which must be used for the specified purpose. Municipalities may also borrow without the consent of the national government, their ability to borrow being determined mostly by their creditworthiness.

Political decentralisation

Section 151 (2) of the Constitution states that ‘the executive and legislative authority of a municipality is vested in is Municipal Council’. Municipal councils are democratically elected every five years. South Africa has a combined electoral system at local level: approximately half of the councillors in any municipal council are elected according to a proportional representation / party list system, while the remainder are elected on a ward system, as individuals representing a particular voting district, or ward, without necessarily having a party affiliation. Each voter will therefore vote twice in a local election – once for the party list, and once for a candidate to represent the ward. Independent candidates may stand for election on the ward ballot, but obviously not for the proportional representation ballot.

South Africa has a very comprehensive range of accountability mechanisms in local government.

These include public participation processes, internal council processes, intergovernmental accountability structures and institutional mechanisms (such as the Auditor-General and the Public Protector). However, in many cases, these mechanisms are not effective.

As we have seen, local government has clearly defined and constitutionally underpinned powers and functions, and on the face of it, enjoys considerable degree of autonomy in governing its own affairs. The national and provincial governments have no power to interfere politically, except in cases of failure on the part of a municipality to carry out an executive obligation. However, national government is able to and does interfere quite considerably at an administrative level, in that municipalities are subject to a battery of regulations and compliance demands imposed by national government.

Conclusion: possibilities and barriers for municipal partnerships

South Africa has a complex and sophisticated local government framework, with all types of decentralisation being provided for. This

framework provides a useful basis for establishing partnerships. In many municipalities, however, governance has collapsed, giving rise to dysfunctionality, which constitutes a serious barrier to meaningful partnerships. Care should therefore be taken in selecting municipalities for partnerships.

References

- Siddle, A. and Koelble, T., 2012. *The Failure of Decentralisation in South African Local Government*. Cape Town: UCT Press

Legislation

- The Constitution of the Republic of South Africa 1996
- The Local Government: Municipal Structures Act 1998
- The Local Government: Municipal Systems Act 2000
- The Local Government: Municipal Finance Management Act 2003