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South African local government – New roles and challenges evaluated
– The uneasy fit.**

Abstract

Since the early 1990s South African local government has undergone fundamental reform both constitutionally and functionally. Local government has assumed a new identity and additional functions such as economic development are being pursued. A shift has been made away from regulation to community governance by the establishment of ward committees as a new decision making structures. Accompanying this formal change, South African local government has become more politicised, most local governments have become less viable financially and have been subjected to sporadic service delivery protests. The purpose of the paper is to evaluate the uneasy fit between the different structures and functional areas of local government resulting from the reform process which has in turn hampered service delivery. Specific reference will be made to the Tshwane Municipality as a case study illustrative of the new roles and challenges faced by local government.

Introduction

Since the early 1990s South African local government has undergone a process of far reaching reform in terms of new governing structures created, the functioning of these structures, the administrative reach of these structures and the functions performed by them. The reform process has included the integration of previously racially based municipalities and the establishment of municipalities for the entire geographic area of the country. In the process municipalities have become larger in terms of geographic extent and fewer in number and have assumed new functions. Municipalities were also brought under the control of new uniform legislation regulating their structures and functioning.

The main argument presented in this paper is that although reform has taken place and is still taking place at the local sphere of government, an uneasy fit exists between the structures and the functioning of municipalities – or to put it another way – one size does not fit all. This uneasy fit often results in poor service delivery performance and sporadic outbursts of service delivery protests in various parts of the country. The argument is that although reform was necessary to move away from racially based municipalities and to spread service delivery more evenly across the entire population, the guiding ideology and strong desire to obliterate racial structures has in fact impaired service delivery.

The relevant legislation and socio economic diversity

Chapter 7 of *The Constitution of the Republic of South Africa, 1996* sets out the status, objects, duties, establishment and powers and functions of municipalities in the country. It sets the parameters under which local government in the country is structured and operates. According

to section 156(1) of *The Constitution* 1996 and *Schedule 5*, provinces and municipalities have executive, legislative and administrative authority in thirty-five functional areas assigned to them. A province in turn may assign certain of its areas of competence to a municipality. Some of these functions for example include the administration and regulation of building regulations, local tourism, municipal planning, noise pollution, municipal roads and economic development.

In terms of *The Constitution*, 1996 section 155(1), three categories of municipality were established: a Category A municipality that has exclusive municipal executive and legislative authority in an area. Six metropolitan municipalities were initially created in terms of this category with populations over one million and in 2009 accounted for 56 percent of all municipal expenditure in the country. Since 18 May 2011, municipalities which fall into this category have been increased to eight. Category B municipalities share municipal executive and legislative authority in its area with a category C municipality. This category of municipality may include those with large budgets and contain secondary cities, or a large town as a core, or municipalities which are mainly rural with communal tenure and with at most one or two small towns in their area. Two hundred and thirty-one municipalities were created in terms of this category.

Category C municipalities could exercise executive and legislative authority in an area that includes more than one municipality. These municipalities are termed district municipalities of which some operated as water service authorities and others not. Forty-six municipalities were created in terms of this category (State of Local Government in South Africa, 2009:7). The legislative environment has created uncertainties concerning the co-operation between spheres of government, the allocation of functions and wasteful bureaucratic layering which absorbs resources – issues which will be referred to again below.

Chapter 3 of *The Constitution* 1996, makes provision for Co-operative Government. Section 41(1) provides for the respect for the constitutional status, institutions and powers and functions of government in the other spheres – that is provincial and local and further in terms of section 41 (h), requires that the different spheres assist and support one another and co-ordinate their actions and legislation with one another. The implementation of these provisions has resulted in an uneasy fit between the spheres of government as referred to below.

Some of the relevant legislative enactments include the *Local Government: Municipal Demarcation Act* 1998, *Local Government Municipal Structures Act* 1998, *Local Government Municipal Systems Act* 2000, and the *Local Government Municipal Finance Management Act*, 2003. In terms of this legislation, initially 284 municipalities are created and regulated for the entire country although this number has dropped recently (State of Local Government in South Africa 2009:22).

Besides the general legislative environment in which South African municipalities function – large differences exist between and within municipalities. According to the South African

Institute of Race Relations poverty rates for example ranged from a low of 23 percent in the Western Cape District municipality to a high of 76 percent in the Alfred Nzo District Municipality in the Eastern Cape Province. In terms of population growth rates, between 1999 and 2009, the population of Polokwane grew by 29 percent and that of Mangaung by 8 percent with both municipalities having similar sized populations (Fast Facts no 2/2010). The implication of this is that funding and skills requirements must differ enormously.

The ideological environment Political party dominance

The African National Congress (ANC) which dominates the central government, eight of the nine provincial governments and eight of the nine metropolitan municipalities and most local governments is driven by what is referred to as the National Democratic Revolution (NDR) which has a huge impact on the performance of local government both at the metropolitan and local levels. The NDR embodies the idea of cadre deployment – that is the deployment of political party sympathizers to all levels of state power. The idea is not only to address the wrongs of the past but to ensure demographic representivity (Fast Facts No 4/2010). This approach to staffing, it is argued has impacted upon service delivery performance. As an adjunct to this approach to staffing, certain establishment local government officials have been denied upward movement in their respective organizations leading to court intervention in which the applicants have won their appeals.

Another impulse behind the NDR is the drive to centralize authority and power at the central government level in particular and then within local authorities themselves. Accompanying this centralisation of power is the tendency to create larger local municipalities incorporating vast geographic areas administered from central points with very little recognition of diversity and the need to keep government close to the people. The emphasis is on big is beautiful rather than small is beautiful. The belief in the decentralization of power to assist in service delivery is down played. Existing socio-economic differences are generally ignored in creating larger political and administrative entities in which all residents are compelled to identify with dominant norms as promoted by the governing party which in most cases is the ANC.

Decision making within the various structures of government tends to be relegated largely to elites in the governing party with ordinary members of legislatures side-lined and in particular members of opposition parties. Accountability to the electors is weak with citizens only being able to call government to account once in five years during election times or through intermittent service delivery protests or court action.

Political Party dominance

Since the early 1980s, local government in most of the country in the formerly 'white' areas has been run along party political lines although there were exceptions before that time. This practice has been extended to the entire country with the reform of local government beginning in the mid 1990s. Political parties therefore drive local government agendas through their election manifestos, caucuses and other party structures. Representatives in local government councils are therefore elected on a party political basis with insistence upon party

discipline including the adherence to directions from party leaders as to how to respond to and to vote on certain issues. Majority parties therefore dominate in councils and determine to a large extent the outcome of decisions made.

At the 2006 local government election, 9299 ward (individuals elected in geographic areas) and Proportional representation (PR) councillors (individuals elected on political party lists) were elected. The African National Congress (ANC) obtained a total of 5718 seats and the main opposition Democratic Alliance (DA) 1107 seats. The balance were distributed between the Inkatha Freedom Party (IFP) 738; the Independent Democrats (ID)157;Pan African Congress (PAC) 98; United Democratic Movement 96; Independents 34; and 1419 seats unaccounted for or distributed amongst other smaller political parties. Following the 2006 election, the ANC controlled 229 councils followed by the IFP with 30 and the DA – 6. Some 19 councils could not be accounted for in terms of party alignment (South Africa Survey2008/09:710).

From 2000 to 2011 the number of ward and Proportional Representation (PR) councillors increased from 8951 to 10055 (Politicsweb. <http://.politicsweb.co.za> Accessed 17 November 2011). In the 2011, eight metropolitan councils were established providing for 1415 seats both ward and proportional. The ANC won a total of 794 of these seats followed by the Democratic Alliance with 507, Cope 22, IFP 15, NFP 10 and 67 allocated to other smaller parties.(Fast Facts, July 2011) Seven of the eight metropolitan councils were dominated by the ANC, and the eighth- the City of Cape Town by the DA.

From the above it is clear that political parties and in particular the ANC dominates in a majority of elected local government structures in South Africa. Non aligned independent representatives not bound by political party discipline and do not feature very prominently leaving little room for initiatives not accountable to the political party.

The identity crisis

Local government in South Africa faces an identity crisis on several levels. At a structural level new local governments have been created – initially 284 in total with new names, office bearers and geographic boundaries. All are still attempting to find identities of their own in the eyes of their respective communities. In the Case of the Tshwane municipality, the issue of the name has still not been settled with Tshwane superseding the City of Pretoria municipality and a number of other smaller municipalities. Many still identify with the previous municipalities. Internally, identities are still being formed following the integration of disparate local authorities. The re-demarcation of local authority boundaries continues with the Municipal Demarcation Board calling for new boundary submissions which in turn are likely to alter the identity of a number of municipalities.

Co-operative Government

As referred to above, *The Constitution* 1996 provides for Co-operative government. In practice co-operation between provincial and local government exists in certain areas, but in other areas it does not function very well- an uneasy fit exists. Part of the problem arises from overlapping legislation and outdated legislation, the ambiguity with regard to the allocation of

functions in terms of Schedule 5 of *The Constitution* 1996, the desire on the part of officials to protect their areas of responsibility, gaps in personnel appointments at certain levels, and then the impact of cadre deployment and general administrative inefficiencies. In many instances, provincial and local government intrude upon one another's areas of responsibility without consultation leading to disagreements and paralysis with regard to service delivery.

Economic development – new function

Local government before the transformation process began performed largely a regulatory function with a minor developmental component. More recently local authorities have been given a developmental function - the meaning of which is contested - through which they are required to provide the environment for investment and economic development. This function places an additional burden on local authorities which are required to engage the necessary skills to perform this function.

Welfare

In view of the large poverty and unemployment problem in South Africa, local governments have taken on a social welfare function by giving what are termed indigent persons – those below a certain earnings threshold, tax breaks on their properties and also a certain amount of free services including water and electricity. This is contributing to a ballooning social welfare budget in the country which many commentators say is unsustainable. In the case of the Tshwane municipality some R450 million is allocated to indigent persons to obtain rebates on property rates and a certain amount of free water, electricity and sanitation services.

Public Participation

With the transformation of local government in South Africa the idea of public participation in decision-making has gained ground in the belief that if the public are involved in decision making. Public participation generally involves a two-way exchange of information between councilors, the public, community, interest and sectoral groups and local government structures. The idea of public participation has taken hold since the early 1990s and since the 2000 local government elections has been promoted through the newly established ward committee structure, the subjecting of legislation and policy to public scrutiny, the calling upon the public to participate in an Integrated Development Plan (IDP) process - a process in the past the responsibility of elected public representatives but now extended to the public. This is somewhat alien to many members of the public who have not been acquainted with such processes in the past. Attendance at such public participation processes tends to be limited.

Ward committees are one of the most visible structures implemented to facilitate public participation. In the Tshwane municipality, ten person ward committees were established in all of the 76 ward which existed in 2001 and were re-elected in successive elections up until the present. One of the impetuses for the establishment of ward committees was a government White Paper published in 1998 which introduced the concept of "developmental local government" allocating the central responsibility of municipalities to work together with local communities to find sustainable ways to meet their needs and to improve the quality of their

lives.(Napier 2008:168) Utility of ward committees are still being questioned in many quarters. The national government is generally being seen as the sphere where the real decisions are made. Local government is seen where small or parochial issues are decided upon and therefore attracts less attention from ordinary citizens.

Local government and sporadic service delivery protests

South African local authorities in recent years have experienced an upsurge in residents protesting in groups over service delivery issues. Some of the protests have resulted in violence and have resulted in meetings between residents, council officials and high level political representatives to address the issues of concern. Such protests have elicited responses from various spheres of government including municipalities although it is not always clear as to the extent that grievance issues are addressed but they certainly are in this way dramatized sometimes resulting in new political appointments in decision making structures.

Public participation processes

In terms of Chapter 7 Section 152(2) (e) of The Constitution 1996, a municipality must strive within its financial and administrative capacity, to encourage the involvement of communities and community organisations in the matters of local government.

A strong emphasis is being placed on public participation as a component of the democratic processes at the local government level. However, the goals of public participation are not always clearly spelled out nor are the channels for communication through these structures clearly set out. The assumption made by the proponents of public participation is that one should aim for reaching the highest rung – citizen control. The others ranging from greater control to lesser control include delegated power, partnership, placation, consultation, informing, therapy and manipulation (Napier 2008:166-167).

There are several opportunities for the public or advocacy and interest groups to influence decisions made at the local government level. Four of the most important are as follows: the budgetary process for the municipality. Medium term revenue and expenditure for three year periods are drafted every three years and revised annually. Such drafts are presented to the public for comment. Further, Integrated Development Plans (IDPs) are drafted and revised annually during which the public and ward committee members may make inputs. By-laws and policy documents are also circulated for comment by the public. There is a great gap in assessing the extent to which comment and inputs made by the public are actually taken note of and incorporated in municipality decision-making processes.

Protest action

The Tshwane municipality is no stranger to protest action like in many other municipalities across the country. According to the State of Local government in South Africa, overview report, of the nine provinces over the period January to July 2009, 30 percent of the service delivery protests occurred in the Gauteng province into to which the Tshwane municipality falls; 17 percent in North West; 15 percent in Free State; 12 percent in Western Cape; 8 percent

in KwaZulu-Natal and Mpumalanga; 5 percent in Eastern Cape; 3 percent in Limpopo; and 2 percent in Northern Cape (Local Government in South Africa 2009:11). These rough statistics indicate that public protest in all provinces and in particular in Gauteng was a prevalent phenomenon suggesting a lack of confidence in the formal structures available to residents to express their grievances.

Meetings with residents in the Tshwane municipality are held as more formal 'imbizos' (meetings called by the executive leadership) to address community issues. Some of these meetings sometimes develop into fairly vociferous protest meetings. One such protest meeting for example, took place in Mamelodi (a Tshwane suburb also referred to as a township) attended by the Executive Mayor and Gauteng Provincial Premier at which angry residents accused the Mayor and her Mayoral Committee in particular of failing the people. Issues raised by attendees at the meeting included issues relating to drugs selling, safety and housing. Several concessions were made at the meeting in which title deeds to old houses would be granted and the construction of new schools and early childhood centres would be embarked upon (Pretoria News 22 October 2009). The latter projects were likely to have already been in the planning stage and were not influenced by the protest meeting. Such protest meetings re-emphasise and refocus the minds of the decision-makers on the need for service delivery in the respective areas in which they take place.

Five yearly local government candidate nomination processes and elections are seen as a distant event and not effective in achieving service delivery. Councillors so elected are seen as being co-opted into the political party establishment and not effective as agents of change. Like-wise the use of ward committees as channels to voice grievances are seen equally as being ineffective.

The protests in the Tshwane municipality should also be seen in the context of the deprivation index and poverty rate. In 2005 the deprivation rate in the Tshwane municipality was 1.7 and increased to 1.9 in 2007(5.0 is the highest level of deprivation) and a poverty rate in 2007 of 27.9 percent. The deprivation index is a composite measure derived from various socio-economic variables which includes households without water, electricity and other services. The poverty rate refers to the proportion of households with a monthly income below R800,00 (Local Government and the Poverty Challenge 2009:25-26). The increase in the deprivation index over a two year period underscores the public protests referred to above.

THE TSHWANE MUNICIPALITY – AN UNEASY FIT

The Tshwane Municipality (TM)(Referred also to the City of Tshwane Metropolitan Municipality, or the City of Tshwane) came into being on 5 December 2000 as one of 284 new municipalities at the time following a country wide reform process. The TM brought together some thirteen municipalities largely racially based and at vastly different stages of socio economic development under the logo 'We are the same' thus forcing together what was previously separate and diverse local authorities into one new large municipality.

Over the years the Tshwane municipality has had to apply different sets of legislation, some provincial often dating back many years, others originating from the constituent local authorities and then new legislation formulated by the new municipality. The new legislation was largely formulated by elites with little public input and the values of the more established municipalities and their residents. The guiding principle in the formulation of such legislation was the need for uniformity – formulating legislation which would apply to the entire and diverse population resident in the municipal area. Similarly many policy positions were formulated by the same process.

A disjuncture arises in the implementation and enforcement of such legislation. The vastly different socio-economic communities view the implementation of this legislation in different ways. Where the legislation might impact upon certain economic freedoms for example, certain communities might resist its implementation whereas other communities might insist upon its full implementation. Also the officials involved might resist or implement it piece meal when pressures were brought to bear on them by community members.

In view of the large geographic expanse of the municipality, in the early years of the decade, five geographic regions were created for administrative purposes with a view to decentralizing administrative control to those regions. The decentralization of administration has only been implemented half heartedly with on occasions functions being centralized and then decentralized and again centralized. This is suggestive of a wish to continue controlling from the centre in line with the NDR.

A further illustration of a centralizing tendency - following the third post 2011 local government election, two smaller municipalities and a district municipality were incorporated into the Tshwane Municipality making it one of the largest municipalities in the world in terms of geographic extent but managed and administered largely from a central locality. The public justification for this merger was the chaotic state of the finances of those municipalities.

With regard to internal decision making, processes have become more elite driven. Many decisions are made during the first decade of existence by a Mayoral Committee and what were termed Section 80 portfolio committees comprising members of political parties proportionally elected on the basis of their strength of representation in the council. More recently, the Tshwane municipality converted Section 80 portfolio committees into section 79 oversight Committees supposedly to 'enhance efficiency, accountability and responsiveness' (Agenda section 79 oversight committee: City of Tshwane, 14 July 2011). What this in fact meant is that in only certain cases reports submitted for decisions by the political leadership in the municipality would be subjected to a committee for close scrutiny before being submitted to a full council for approval. The detail of such reports would not be subjected to detailed political scrutiny thus removing decision making power from ordinary councillors to a political elite – that is a dominant political party. A further problem area is that of co-operative government where provincial authorities initiate projects without the knowledge of local officials leading to

budgetary issues and service delivery issues where the local authority may not be able to deliver on services required. (Interview with Tshwane official, 1 November 2011)

AN EVALUATION – THE UNEASY FIT

Reform was necessary to move from an ‘Apartheid’ and segregated past to a democratic constitutional state. The uneasy fit dilemma can perhaps be explained as an organic state trapped within a constitutional state. Labuschagne (2011:4-24) argues that the constitutional state created during a process of negotiation in the early 1990s, ‘implies that the government should operate strictly within a set of (fabricated) legal and institutional constraints that both limits power and protects individual liberty.’ Labuschagne continues that the focus of the constitutional state is atomistic: in other words, the constituent parts are independent and autonomous, interacting within an institutionalized relationship to make rules (legislative), execute (executive) and adjudicate rules (judiciary) (2011:9).

The organic state by contrast, is ‘one where individuals’ main goals are to lead lives which contribute to the total life of the state... [I]n an organic state no reservation is made for the realm of privacy and the personal rights of freedom, because the good of the individual is inseparable from the good of society...there was no recognition of individualism... .’ (Labuschagne 2011:8) With the dominant political party – the ANC as an adherent to the NDR as an all encompassing belief – the notion of the separation of state and society is not strongly supported. The belief in the organic whole permeates decisions made resulting in an uneasy fit between the public and the public and the public and the private.

CONCLUSION

Local government in South Africa can be characterized as an uneasy fit between decision making structures and disparate socio economic groupings. Local government in South Africa as pointed out above, has in the past decade and a half undergone major structural and functional changes. It is fairly certain that the process of change is not complete. A debate particularly in the ranks of the governing ANC continues as to the future of the nine provincial structures, whether their legislative and executive powers should be increased or diminished or whether they should be abolished in their entirety and increased powers allocated to local government. In addition the geographic scope of local government has increased in many instances with some of them rivaling the largest globally. With the increase in geographic extent, change needs to be brought about in decision making structures both vertically and horizontally. Questions arise as to where decisions should be made in committees comprising non elected public officials, or elected persons comprising the ruling party or committees of representatives from governing and opposition political parties. Local government is largely driven by ideology rather than practical considerations. Local government in the South African context remains in a state of flux.

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