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KAMPALA INTERNATIONAL UNIVERSITY LAW JOURNAL is the official journal of the School of Law, Kampala International University. It is a peer-reviewed journal providing distinctive and insightful analysis of legal concepts, operation of legal institutions and relationships between law and other concepts. It is guided in the true academic spirit of objectivity and critical investigation of topical and contemporary issues resulting from the interface between law and society. The result is a high-quality account of in-depth assessment of the strengths and weaknesses of particular legal regimes with the view to introducing reforms. In furtherance of the requirements of advanced academic scholarship, the Journal places high premium on originality and contribution to knowledge, plain and conventional language, and full acknowledgment of sources of information among other things. It is superintended by a Board of respected academics, lawyers, and other legal professionals.

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All correspondences are addressed to:

The Editor-in-Chief

Kampala International University Law Journal,
School of Law,
Kampala International University,
P.O. Box 20000 Kampala,
Uganda.

valentine.mbeli@kiu.ac.ug

Tel: (+256) 0706970595

Website: www.kiulj.kiu.ac.ug

Scope

Kampala International University Law Journal (KIULJ) is the official Journal of the School of Law, Kampala International University, Uganda. It is a peer-reviewed Journal providing an objective and industry focused analysis of national and international legal, policy and ethical issues. The Journal publishes well researched articles that are in sync with sound academic interrogation and professional experience on topical, legal, business, financial, investment, economic and policy issues and other sectors.

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The primary objective of the **KAMPALA INTERNATIONAL UNIVERSITY LAW JOURNAL (KIULJ)** is to provide a platform for a robust intellectual discourse, through the publication of incisive and insightful articles and other contributions from a variety of scholars, jurists and practitioners across jurisdictions. The desire to accomplish this objective guides the choice of the materials being presented to the reading public in every edition. The peer review and editing processes of the papers that are finally selected for publication are equally influenced largely by the pursuit of this goal.

To this end, articles from seasoned scholars and practitioners in each edition address a wide spectrum of issues from different branches of the law, such as, International Criminal Law, Law of International Institutions, Environmental Law, Human Rights Law, Medical Law, Oil and Gas Law, Constitutional Law, Corporate Governance to mention but a few. You will, no doubt, find these scholarly works a worthy contribution to knowledge in their respective fields.

On behalf of the Editorial Board, I wish to appreciate all our reviewers, internal and external, for their constructive criticisms, comments and suggestions. These go a long way to enrich the quality of the papers published in this Journal. The various contributors who painstakingly addressed the observations and suggestions of the reviewers, thus facilitating the achievement of the purpose of the review process also deserve our commendation.

We also, with a grateful heart, acknowledge the interest our teeming readers have continued to show in the succeeding editions of the journal just as we assure them of our readiness to give them the best always. We equally thank our editorial consultants for their useful advice and comments that have contributed to the continuous improvement of the quality of the journal. Legal practitioners and scholars are hereby informed that contributions to our journal are received on a rolling basis. They should feel free to send in their manuscripts and ensure they comply with the submission guidelines as spelt out in the Call for Papers obtainable from the journal's website (www.kiulj.kiu.ac.ug). All contributions should be addressed to the Editor-in-Chief and forwarded to the email addresses supplied in this edition.

VALENTINE T. MBELI (Ph.D)

Editor-in-Chief.

e-mail:valentine.mbeli@kiu.ac.ug

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OLADIRAN AYODELE, Ph.D.*

Abstract

The local government system is simply described as the government at the grassroots. The local government is closer to the people and it understands the yearnings and aspirations of the local people compared with governments at any other levels above it. For these and other reasons this paper will therefore examine the provisions of law allocating powers and functions to the local municipalities with a view to determining the extent of intergovernmental fiscal relationships between this level of government and others above it with specific focus on the Municipalities in North West Province in South Africa. In doing this, the paper employs qualitative research method and content analysis of relevant literature on the subject matter. This paper recommends an improved service delivery by the municipal/local government and an increased funding for better performance of the local government to ensure social cohesion and to foster national unity in South Africa.

Keywords: Nation-building, intergovernmental, fiscal relations, municipalities

Introduction

South Africa is a republic with a national government, nine provinces and 284 municipalities. The provinces are: Eastern Cape; Free State; Gauteng; KwaZulu-Natal; Mpumalanga; Northern Cape; Limpopo; North West and Western Cape.¹ By 1999, the otherwise fragmented local governments² had been merged and reconstituted as democratic and unified municipal governments across the country and an enabling legislation such as the Municipal Systems and Municipal Finance Management Acts (MSA and MFMA) was in place.³ In year 2000, the first municipal election was held and this paved way for the transition to an intergovernmental fiscal framework based on principles of adequacy, predictability, and transparency.⁴ After year 2000, there was an expansion and increased predictability of the new municipal grants, which were supported by tighter regulation over fiscal flows to local governments under the Division of Revenue Act

* LLD (NWU, South Africa), Senior Lecturer and Ag Dean, Faculty of Law, Osun State University, Osogbo, Nigeria. Email: oladiran.ayodele@uniosun.edu.ng Mobile line: +23480353399396

¹ Constitution of the Republic of South Africa, 1996, section 103 (1).

² Local governments and municipalities will be used interchangeably in this paper.

³ Navin Girishankar, et al, 'Measuring Intergovernmental Fiscal Performance in South Africa: Issues in Municipal Grant Monitoring' (2006) Africa Region Working Paper Series No. 98, 1

⁴ Girishankar, et al (n 4) 1.

(DORA) and accompanying public financial regulations, notably the Municipal Finance Management Act 2003.

In May 2004, the Republic of South Africa democracy was a decade old. Between 1994 and 2004, the primary focus of policymakers, citizens, and civil society was on wholesale restructuring of basic institutions responsible for promoting economic development and poverty reduction. As part of this process, there was the design and implementation of intergovernmental reforms across the national, provincial and municipal or local government levels. These municipalities or local governments perform key roles in providing basic infrastructure and social services, and promoting local economic development. Significant progress was made in developing the legal, administrative and fiscal framework for empowering the local government sphere. It is important to also note that the Local governments are also empowered to restructure their systems to encourage community and private sector participation in service provision.

The Constitution encourages interactions and interrelationships among the three levels of government. South Africa's intergovernmental fiscal framework has developed significantly in order to ensure that municipalities (otherwise referred as to local governments) are adequately empowered to carry out their authorized functions. The Government sought to preserve and strengthen municipal tax bases (rates and levies), while clarifying municipal authority to change tax rates and implement user-charges. Also, the ad-hoc intergovernmental grants of the apartheid era were replaced with a more efficient, equitable, and predictable system comprising three sets of transfers defined under the Division of Revenue Act (DORA). These include unconditional grants to meet recurrent needs, conditional grants to meet recurrent needs, and conditional grants to service delivery investment needs. Through these transfers, on the 2003-2004 financial year, approximately 61% of national revenue or R200 billion was channelled to sub-national authorities. By this, the share of revenues going to the provinces and municipalities grew systematically, with a 10% increase in national-provincial transfers, and a nearly 30% increase in municipal transfers over the 2002/3 and 2003/4 period.⁵

The Government has undertaken far-reaching public financial management reforms, including the implementation of a Medium Term Expenditure Framework featuring a transparent division of revenues over a medium term horizon; roll-out of medium-term planning and budgeting in the context of Integrated Development Plans (IDPs) at the local level; reform of the municipal accounting system as per the 2003. Municipal Finance Management Act and the development of a policy and regulatory framework on municipal borrowing that among others would structure access to debt finance. In addition, specific purpose capacity building grants to municipalities such as the Financial Management Grant (FMG) supports capacity

⁵ Girishankar, et al (n 4) 1.

building, including an internship program, in accounting, financial reporting, cash management, and other aspects of budget execution at the local level. The simultaneous implementation of fiscal decentralization and financial management reforms was designed to enable provinces and municipalities to manage the growth of transfers and own-source revenues in an efficient, effective, and transparent manner.⁶

Statement of the Problem

The past ten years of South African experience at promoting local self-governance and decentralized service delivery, has shown an array of implementation challenges related to the ability of municipalities to effectively deliver services and empower citizens. The ability of municipalities to manage service provision (including attracting private sector participation) and empower citizens in local decision-making is increasingly nose-diving. The provincial and local governments are not functioning in accordance with their original founding objectives, which is resulting in inefficiencies in service delivery. These inefficiencies take on the form of gaps, duplications, lack of capacity, waste of fiscal resources and general non-delivery.⁷ Efforts should be geared towards ensuring an ideal system where provincial and local governments function in accordance with their original founding objectives, for efficient service delivery.

It is on this note that this paper aims at identifying the sources of Municipal or local government funding as enshrined in the Constitution of the Republic of South Africa, the constitutional provisions relating to funding and how these have been implemented for fiscally viable local government.

Limitation of Work

This paper will be limited to the consideration of the funding, intergovernmental (fiscal) relations and evaluation of the provisions of social and economic services, as stipulated by the Constitution, at the municipal levels under South Africa post-apartheid period. It is also limited to qualitative research only due to the financial implications associated with quantitative research activities.

Research Question

Against the above background, the paper is initiated to respond to the query: What are the constitutional provisions for fiscal interactions and relationships between the national, provincial and the municipalities including the performances

⁶ Girishankar, et al (n 4) 2.

⁷ African National Congress Summit on Provincial and Local Government (2010): Advancing the attributes of a developmental state: towards 100 years of selfless struggle, *Legislature & Governance NEC Subcommittee Provincial & Local Government Review discussion paper*, p. 2
<http://www.anc.org.za/docs/discus/2010/summitz.pdf> accessed on 30 September, 2019. ANC Summit, 2010: 2,
<https://media.africaportal.org> accessed March, 2021.

and the challenges faced by the municipalities in North West province in particular and South Africa in general?

Research Objectives

The objectives of the paper are to examine the constitutional provisions for fiscal interactions and relationships between the national, provincial and the municipalities and also to assess the performances and the challenges faced by the municipalities in North West province in particular and South Africa in general.

Methodology

The paper relies on qualitative research method and content analysis of relevant literature on the subject matter and gives recommendations for improving service delivery responsibility of municipal/local government.

Significance of the work

The effective and efficient performance of the local administration is *sine-qua-non* to good governance. Thus, performance and deliverance of social and economic services to the people at the grassroots is of particular interest to policy makers, legislators, regulators, and the citizens. This paper will afford the policy makers, legislators and regulators the opportunity of understanding more the functioning of government at the local level and what the challenges are. It will also help in enhancing the promotion of good governance and development at the grassroots levels. The paper makes recommendations that will assist the government and its regulatory agencies in the sphere of intergovernmental fiscal relations to find lasting solutions to the problems of service delivery at the local level.

History of South Africa's Nation-Building Initiatives

The colonization and Balkanisation of African countries by the imperial powers have left African countries disillusioned, having been tied to the apron string of their former masters for too long.⁸ Even after independence they still share most things in common with their former colonial masters. Unfortunately, South African suffered under both colonial and apartheid regimes. The country, though was liberated from apartheid enclave in 1994; it is still struggling with nation-building, trying to empower black South Africans and mending the already shattered political system.

Before 1994, the apartheid regime racialised the administration of local government. By 1992, the African National Congress (ANC) came up with the document, entitled ANC Regional Policy, a compilation of the ANC's Constitutional Committee and Department of Local and Regional Government and Housing, and based on a number of meetings and workshops.⁹ It placed the notion of metropolitan

⁸ H K Bhabha, *The Location of Culture* (London, New York: Routledge, 1994) 70.

⁹ Girishankar, et al (n 4) 42.

governments firmly on the agenda, stating that: ‘The ANC views the creation of metropolitan governments in certain parts of the country as essential to the cause of unifying, de-racializing and democratizing cities, in addition to the more efficient and effective provision of affordable services.’¹⁰ The discussions led to the final draft of the constitution that was adopted in 1996, which came to effect in 1997. The constitution adopted a decentralized system of government. For instance, Section 40(1) states that ‘in the Republic, the government is constituted as national, provincial and local spheres of government, which are distinctive, interdependent and interrelated.’ The Constitution puts in place a revenue-sharing system, which takes into account fiscal capacity and the functions assigned to each sphere. The constitution ensures the power to collect revenue and spend funds; that each government is expected to maximize its fiscal effort and collect all revenue due; that each sub-national government must avoid running an operating deficit, and limit its expenditure to the sum of its own revenue collected, together with any equitable share and conditional and unconditional grants it has received; and that the system of intergovernmental grants must be simple and comprehensive.

A Review of Relevant Literature

The term intergovernmental relation (IGR) began in the USA in the 19th century, when there were many problems among the various levels of government. These problems necessitated cooperation between the various levels of government and ways to resolve the problems within the political system. Although there is no universally accepted definition of this concept, it has nevertheless attracted attention of scholars both in politics and law.

Various scholars define it in accordance with their varying perceptions and existing political systems in their countries. For example, Ogunna¹¹ cited in Lawson, 2011, defined IGR as ‘the complex pattern of interactions, cooperation and interdependence between two/or more levels of government.’ It can be deduced from this definition that IGR is the form of activities and interactions which take place among the different levels of government in a state. It has been contended by that no matter the type of the government there is a degree of decentralization in all economics.¹² He also noted that the degree of decentralization is the extent of independent decision-making by the various levels of the government in the provision of social and economic services. It means the degree of autonomy of the

¹⁰ Girishankar, et al (n 4) 42.

¹¹ AEC Ogunna, Local government as an Agent of Transformation in Nation Building, *A Handbook on Local Government in Nigeria* (Versatile Publishers, 1996) 350; P.S. Lawson, Nigeria’s 1999 Constitution and Intergovernmental Relations (IGR): Need for Improvement (2011), *Ozean Journal of Social Sciences* 4(3).

¹² EO Apkan, ‘Fiscal Decentralization and Social Outcomes in Nigeria’ (2011) *European Journal of Business and Management* vol. 3 (4), 167-183.

state and local governments (the provinces and municipalities in South Africa) in carrying out various economic tasks.¹³

Flowing from Akpan's argument, it can be deduced that decentralization (fiscal) enhances optimum social service delivery among the component segments of the polity and that the state and local governments were more important. Akindele and Olaopa¹⁴ also argued that the operation of fiscal federalism is done to enhance government effective provision of public goods and services. Two principal questions are addressed. First, why did central governments opt for municipalisation in these countries? Second, how did the municipalisation processes proceed? In these cases, the strategic calculus behind municipalisation is eminently political: central government incentives to counter the power of the intermediate level of government trigger these processes.¹⁵

A considerable literature on decentralization already exists on a wide range of issues including the macro-fiscal implications of intergovernmental design; the incentive impact of various types of grant instruments on (direct and indirect) revenue mobilization and service delivery performance; the allocative, distributional, and targeting implications of transfers; staff redeployment and administrative decentralization; prospects for improved expenditure tracking; as well as the institutional impact of grant systems on local government budget processes.¹⁶

Practitioners and scholars are equally only now beginning to focus on settings where the decentralization process is intimately connected with constitutional and institutional reforms following civil conflict, introduction of representative governance, or other exigencies that lead to rapid change.¹⁷ It has been observed that the degree of decentralization is the extent of independent decision-making by the various arms of the government in the provision of social and economic services.¹⁸

In South Africa, Ethiopia and Uganda, decentralization have sought to achieve multiple, sometimes, competing objectives. On the one hand, devolution led transformation in these African countries is intended to fashion democratic institutions that allow for greater decision-making authority over how public resources are spent. On the other hand, these newly created democratic local governments are to effectively and efficiently deliver a range of services to the poor (for example, primary education, primary health care, local infrastructure, water and

¹³ Ibid.

¹⁴ ST Akindele *et al*, 'Fiscal Federalism and Local Government finance in Nigeria: An Examination of the rights and fiscal jurisdiction' (2012) *International Review of Administrative Sciences* vol. 68 (4) 557-577.

¹⁵ JT Dickovick, 'Municipalization as Central Strategy: Central-Regional-Local Politics in Peru, Brazil, and South Africa' (2007) *Africa Journal of Federalism* vol. 37 (1) 1-25.

¹⁶ Girishankar, *et al* (n 4) 4.

¹⁷ Girishankar, *et al* (n 4) 4.

¹⁸ Akpan (n 13), 167.

sanitation), often at a level that was unprecedented. On the margin, balancing empowerment and service delivery objectives has meant that governments have had to make careful decisions about the phasing of administrative decentralization, the design of fiscal transfers, as well as the implementation of monitoring and evaluation systems.¹⁹

The system was not only intended to promote responsive service delivery in priority sectors, but also promote local autonomy, or the ability of local communities within racially amalgamated jurisdictions to have a greater voice in how municipal resources would be spent across sectors (for example, water, sanitation, public amenities, roads and local economic development).²⁰

Fatile and Adejuwon, in their article titled “the place of local government in intergovernmental relations: South Africa and Nigeria in comparative perspective”²¹ stated that intergovernmental relations have become an integral part of the South African constitutional, political and administrative theory and practice. The Constitution created three spheres of government at national, provincial and local municipalities. South Africa, though a unitary state, the executive is kept in check by watchdogs such as the Public Protector and the Constitutional Court, hence placing the constitution at the forefront of the democracy since the constitution is used as a reference.²² They opined that South Africa has an intergovernmental system that is based on the principle of cooperation between the three spheres of government—local, provincial and national. While responsibility for certain functions is allocated to a specific sphere, many other functions are shared among the three spheres.²³

Fatile and Adejuwon stated that in Nigeria, intergovernmental relations entails formal allocation of powers among various levels of government that is, the Federal, State and Local Governments. They contended that the relationship between tiers and arms of government is problematic. Since the return to civil rule in 1999, Nigeria has witnessed several intergovernmental conflicts over jurisdictional power, while the federal structure has come under attack in these conflicts.²⁴ Most especially, the overbearing nature of the central government, particularly the executive which had over the years heightened inter and intra governmental relations conflict in the country. The local government is the third tier of government in Nigeria but unfortunately one of the nagging problems of Nigeria’s federalism is the persistent failure to grant fiscal autonomy to local

¹⁹ Akpan (n 13), 168.

²⁰ Girishankar, et al (n 4) 9.

²¹ JO Fatile and KD Adejuwon, The place of local government in intergovernmental relations: South Africa and Nigeria in comparative perspective’ (2017) *14 US-China L. Rev.* 781.

²² Fatile and Adejuwon (n 18) 785.

²³ Fatile and Adejuwon (n 18) 787.

²⁴ Fatile and Adejuwon (n 18) 789.

government as a third tier of government.²⁵ They opined that if Nigeria will get it right, it must give both political and fiscal autonomy to all tiers of government. They stated further that intergovernmental relations have been the pillar of the efforts to ensure a coordinated response to the challenges facing people especially at the grassroots. They concluded that for an efficient and effective service to the people, there is a need for collaboration, cooperation and coordinated effort among different levels of government.²⁶

According to Malan in his article titled intergovernmental relations and cooperative government in South Africa: the ten -year review opined that the system of intergovernmental relations is crucial if policies drafted, projects and programmes planned are to be successfully implemented.²⁷ He argued further that all the three spheres of government should continually strive to cooperate with one another in mutual trust and good faith. He supported his argument with the constitutional provision wherein it is stated in 41 (1) (e-h) that:

- (e) respect the constitutional status, institutions, powers and functions of government in the other spheres;*
- (f) not assume any power of function except those conferred on them in terms of the Constitution;*
- (g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and*
- (h) co-operate with one another in mutual trust and good faith by-*
 - (i) fostering friendly relations;*
 - (ii) assisting and supporting one another;*
 - (iii) informing one another of, and consulting one another on, matters of common interest;*
 - (iv) co-ordinating their actions and legislation with one another;*
 - (v) adhering to agreed procedures; and*
 - (vi) avoiding legal proceedings against one another. (Act 108 of 1996, section 41(1) (e-h))*

He argued that the Constitution envisages a principle that supports interaction and co-operation among the three spheres of government on a continuous basis and therefore provides a set of principles to direct the manner and quality of those interactions.²⁸ This principle recognizes the interdependence of the three spheres of government in South Africa (namely the national, provincial and local spheres) which are distinctive and interrelated and place a duty on the spheres of government

²⁵ Fatile and Adejuwon (n 18) 790.

²⁶ Fatile and Adejuwon (n 18) 794.

²⁷ L Malan, 'Intergovernmental relations and co-operative government in South Africa: the ten-year review' Politeia, vol. 24 (2) 226-243 at 227.

²⁸ Malan (n 24) 227.

to respect each other's powers, functions and institutions and to inform each other of new policies. To underscore the importance of cooperative government and the promotion of intergovernmental relations the Constitution in section 41 (2) stipulates that an Act of Parliament must establish or provide for processes, structures and institutions to promote and facilitate intergovernmental relations and provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes.²⁹

Malan however, identified major deficiencies that hampered intergovernmental relations system like an unpredictable and incoherent process involved in determination and execution of key national development priorities; there exist a variety of processes and structures whose status, role and interrelationships remain uncertain. The mechanisms for managing service delivery through intergovernmental relations are ad hoc and lack institutional definition. The result is a poor integration of services at community level, duplication, real or perceived unfunded mandates, and a general inability to forge collaborative partnerships or to find common ground for joint action.³⁰

In order to ensure sustainable development (whether it is economic, social, or environmental sustainability), Malan argued that government and government institutions should be committed to promoting intergovernmental relations and co-operative government by focusing on capacity building as well as institutional strengthening.³¹ He therefore submitted that without the effective operation of intergovernmental relations in South Africa, projects and programmes cannot succeed.

Unique Features of the South African Intergovernmental And Fiscal Relations

South Africa became a Democratic Republic in 1994. The erstwhile apartheid regime was repressive, thus, the post-apartheid regime aims at redressing the inequality perpetrated by the apartheid administration. The transition to democracy brought fundamental changes to the form and functions of the State. It redefines intergovernmental relations and the responsibilities of the different spheres of government.³² The democratic regime among other things has the following important features:

- a. National parliament comprising of two houses of a national assembly and a national council of provinces, representing provincial legislatures and local government.

²⁹ Malan (n 24) 227.

³⁰ Malan (n 24) 241.

³¹ Malan (n 24) 240.

³² ME Mdliva, 'Co-operative governance and intergovernmental relation in South Africa: a case study of the Eastern Cape' *Research space University of KwaZulu-Natal* (2012) 129. <https://researchspace.ukzn.ac.za/xmlui>, accessed March, 28 2021.

- b. A unitary system of government with three distinctive, interrelated and interdependent sphere, with significant decentralisation of powers, functions and budgeting.
- c. There were 284 municipalities, categorised as metropolitan, district wide or local structures, which comprises of political and administrative components.
- d. The constitution entrenches ‘co-operative governance’, thus obligating the three spheres of Government to co-operate and negotiate political and budgeting issues between them.
- e. Numerous intergovernmental forum (e.g. the Budget Council and Budget Forum) facilitate the co-operation and consultation in the budget process.³³

Municipalities/Local Government and Intergovernmental Relations

By necessary implication section 40 (1) laid the foundation for three different levels of governments and S. 40 (2) specifies that ‘all spheres of government must observe and adhere to the principles in this Chapter and must conduct their activities within the parameters that the Chapter provides.’³⁴ The constitution spelt out the principles of co-operative government and intergovernmental relations in S. 41 (1). Section 41 (1) provides that all spheres of government and all organs of state within each sphere must:

- ... (g) *Exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and*
- (h) *co-operate with one another in mutual trust and good faith by*
- (i) *fostering friendly relations;*
 - (ii) *assisting and supporting one another;*
 - (iii) *informing one another of, and consulting one another on, matters of common interest;*
 - (iv) *co-ordinating their actions and legislation with one another;*
 - (v) *adhering to agreed procedures; and*
 - (vi) *avoiding legal proceedings against one another.*

The parliament is also enjoined to ‘establish or provide for structures and institutions to promote and facilitate intergovernmental relations; and provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes’ (Section 41(2)). The provision of the constitution states further that an organ of state involved in an intergovernmental dispute must make

³³ A. Schick, The Role of Fiscal Rules in Budgeting (2003) *OECD Journal on Budgeting* – Volume 3 – No. 3, 1-32; J. Visser and Z. Ayele, Intergovernmental Fiscal Relations in South Africa and the Role of the Financial and Fiscal Commission A 20 Year Review, (2014) *Community Law Centre* 1-32.

³⁴ The Constitution of the Republic of South Africa, 1996.

every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute and that if a court is not satisfied that the requirements of subsection (3) have been met, it may refer a dispute back to the organs of state involved' (Section 41(3) and (4)).³⁵

However, the constitution in Section 139 gives the provincial government power to intervene in local government administration upon the happening of some events. For example, where the local government or municipalities cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation. The provincial government can take the following steps:

- (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations;
- (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to —
 - (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or
 - (iii) maintain economic unity; or
- (c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.

In order to forestall the arbitrary use of this power the constitution qualifies the invocation of that that provision by stating unequivocally that a provincial executive intervention in a municipality in terms of subsection (1) (b) must submit a written notice of the intervention to 'the Cabinet member responsible for local government affairs; and the relevant provincial legislature and the National Council of Provinces, within 14 days after the intervention began (S. 139 (2) (a)). Section 139 (2) (b) and (c) further acts as a check on the provincial government power over the local government when it provides that the intervention of provincial executive must stop if:

- b (i) the Cabinet member responsible for local government affairs disapproves the intervention within 28 days after the intervention

³⁵ The Constitution of the Republic of South Africa, 1996.

- began or by the end of that period has not approved the intervention; or
- (ii) the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention; and
- (c) the Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the provincial executive.

Above all, the national legislature may regulate the implementation of this section, including the processes established by the constitution.³⁶

Local Government/Municipal Funding

The 1996 Constitution enhanced the status of local government as a distinctive sphere of government, alongside national and provincial governments; it was no longer subject to their absolute control.³⁷ Section 214 of the constitution provides for equitable shares and allocation of revenue raised at the national level between the national, provincial and the municipalities. The constitution enjoins the parliament to enact an Act of parliament to give effect to the provision of section 214 of the constitution only after due consultation with relevant bodies that is the provincial governments, organised local government and the Financial and Fiscal Commission. One of the sources of the local government revenue is an equitable share of revenue raised nationally. This is to enable it to provide basic services and perform the functions allocated to it but may receive other allocations from national government revenue, either conditionally or unconditionally (S. 227 (1) (a) and (b)). Internally generated revenue (IGR) is another source of revenue to the local government. Section 227 (2) in this respect provides as follows:

Additional revenue raised by provinces or municipalities may not be deducted from their share of revenue raised nationally, or from other allocations made to them out of national government revenue. Equally, there is no obligation on the national government to compensate provinces or municipalities that do not raise revenue commensurate with their fiscal capacity and tax base.

To raise money a local government is empowered to impose rates on property and surcharges on fees for services provided by or on behalf of the municipality; and if authorised by national legislation, other taxes, levies and duties appropriate for local government or to the category of local government into which that municipality falls, but no municipality may impose an income tax, value-added tax, general sales

³⁶ The Constitution of the Republic of South Africa, 1996.

³⁷ Fatile and Adejuwon (n 18) 788

tax or customs duty (S. 229 (1) (a) and (b)). This power to raise revenue is, however restricted because it has to be within the confines of the national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour and this may also be regulated by the national legislation (S. 229 (2)(a) and (b)). The local government may also raise money through loans, for example section 230A (1) states: ‘a province may raise loans for capital or current expenditure in accordance with national legislation, but loans for current expenditure may be raised only when necessary for bridging purposes during a fiscal year and bind itself and a future Council in the exercise of its legislative and executive authority to secure loans or investments for the municipality. But with a proviso in sub-section 2 that the national legislation referred to may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

Consolidation of Unconditional Grants

Unconditional grants that are formula-driven primarily on the basis of poverty and own resource indicators (the formula is updated periodically and is explained in each year’s Budget Review). In 1998, NT embarked on a major initiative in grant consolidation with the introduction of the equitable share of nationally raised revenue for local government, an unconditional constitutional entitlement from national tax revenues distributed by formula to municipalities. The Equitable Share grant was formed through a consolidation of over 20 operating grants paid by provinces and national departments to municipalities. An ongoing programme to consolidate other operating grants into the equitable share has been pursued, with R293m grants, which facilitated the transfer of municipalities, being fully incorporated in the 2001/02 financial year. The water operating grant was also ring-fenced and prepared for consolidation into the equitable share of that year. The latter was a grant-in-kind, funded by an augmentation to the Water Trading Account on the DWAF vote, which pays for the operation of water services schemes inherited by the department. These schemes are scheduled for transfer to municipalities, with a phased consolidation occurring after these transfers have occurred.³⁸

Consolidation of Conditional Transfers—Capital Financing and Capacity Building

The Government’s grant consolidation strategy has also been applied to capital funding mechanisms (for example, CMIP (Consolidated Municipal Infrastructure Programme)). In March 2003 the government took a policy decision to consolidate all municipal infrastructure grants into a single, decentralized and formula driven capital allocation to municipalities, known as the Municipal Infrastructure Grant

³⁸ Girishankar, et al (n 4) 10.

(MIG). Seven existing sectoral grant programs are being phased into the MIG over three years, from 2003/2004. This initiative builds on the limited consolidation, first achieved in the formation of the Consolidated Municipal Infrastructure Programme (CMIP) in 1998, and provided non-sector based, multi-year funding to municipalities for the installation of basic municipal infrastructure for poor households. A similar approach is planned for capacity building.³⁹

An Examination of Performance of the Municipalities

Constitutionally the provinces have limited powers. More than 95% of the provincial revenue accrues from the national government and the provincially own revenue declined progressively.⁴⁰ The key role of the provincial government is delivery of social services, however, the social service delivery is less effective than it ought to be. The role of the provinces is not clear and it has been argued that their role is better performed at the national and at the local government levels.⁴¹ The provincial governments have also been criticised for not giving the necessary support and monitoring to the local governments.⁴²

The local governments have recorded some achievements. The Constitutional and legislative framework of local government in South Africa is recognised internationally as progressive in providing for local governance, democracy and development. It has also been argued that the municipalities have recorded some successes in extending service delivery to the people at the grassroots levels.⁴³

However the local governments are also facing a number of challenges like intra-political tensions affecting municipalities, municipal capacity and skill deficiencies and fundamental imbalances with the current local government funding model.⁴⁴ There was service delivery related protests from the people and the trends have shown increased from 10 in 2004 to 105 in 2009 and in June 2010, 83 protests were recorded across the country.⁴⁵ These trends of dwindling performance of the local governments are reflected in the just concluded local government elections where the ANC (ruling party) lost to an opposition party in Johannesburg, one of the major cities in South Africa.

As at 2010, the overall national level of access to a basic level of service for all four core municipal services (water, sanitation, electricity and roads) stands at 54%.⁴⁶ Mpumalanga, North West, Eastern Cape and Limpopo remain the lowest levels of

³⁹ Girishankar, et al (n 4) 12

⁴⁰ ANC Summit, 2010: 9; S. Booyesen, "State institutions as site of struggle in ANC wars" in *The African National Congress and the Regeneration of Political Power* Wits University Press. <https://www.jstor.org/stable>, accessed March, 2021.

⁴¹ ANC Summit (8): 11.

⁴² ANC Summit (8): 11.

⁴³ ANC Summit (8): 13.

⁴⁴ ANC Summit (8): 13.

⁴⁵ ANC Summit, 2010: 14.

⁴⁶ ANC Summit, 2010: 14.

access to basic services (they provide basic services and people have to travel long distances from one place to another to access government services.⁴⁷ The low performances of the local governments suggested that many municipalities are neither viable nor sustainable. This problem has been attributed to problems relating to the inter-governmental fiscal system. It has been observed that the local governments get a very small share of the total nationally collected revenue compared to the provincial and national spheres of government. For instance, in 2010/2011 the percentage shares of nationally raised revenues between the 3 spheres of government were 48.5%, 43.6% and 7.9% for national, provincial and local government respectively.⁴⁸ Studies have confirmed that the nature and distribution of the Equitable Share is in a state of flux.⁴⁹ The local governmental equitable share formula does not take care topography and distance, especially in sparsely populated areas. It costs more to provide basic services and people have to travel long distances from one place to another to access government services.

The Performance of the Local Municipalities in North West Province

The North West province of South Africa is divided, for local government purposes, into four district municipalities which are in turn divided into nineteen local municipalities. Mahikeng (previously Mafikeng) is the capital of the province. The city lies near the Botswana border and forms a single urban area with its neighbouring town, Mmabatho. Potchefstroom and Klerksdorp are the biggest cities in the province. Other main towns are Brits, Rustenburg, Klerksdorp and Lichtenburg.⁵⁰

The four district municipalities are: Bojanala Platinum, Dr Kenneth Kaunda, Dr Ruth Segomotsi Mompati and Ngaka Modiri Molema. The local municipalities are: City of Matlosana, Ditsobotla, Greater Taung, Kagisano-Molopo, Kgetlengrivier, Lekwa-Teemane, Madibeng, Mahikeng, Mamusa, Maquassi Hills, Moretele, Moses Kotane, Naledi, Ramotshere, Ratlou, Rustenburg, Tlokwe, Tswaing, and Ventersdorp.⁵¹

The mainstay of the economy of North West Province is mining, which generates more than half of the province's gross domestic product and provides jobs for a quarter of its workforce. The chief minerals are gold, mined at Orkney and Klerksdorp; uranium, mined at Klerksdorp; platinum, mined at Rustenburg and Brits; and diamonds, mined at Lichtenburg, Christiana, and Bloemhof. The northern and western parts of the province have many sheep farms and cattle and game

⁴⁷ ANC Summit, 2010: 14.

⁴⁸ ANC Summit, 2010: 18.

⁴⁹ Girishankar, et al (n 4) 48.

⁵⁰ Local Government Handbook, South Africa 2021.

https://issuu.com/yesmedia/docs/localgovernmenthandbook_southafrica2021, accessed March 28, 2021.

⁵¹ Ibid.

ranches. The eastern and southern parts are crop-growing regions that produce maize (corn), sunflowers, tobacco, cotton, and citrus fruits. The entertainment and casino complex at Sun City and Lost City also contributes to the provincial economy (Wikipedia, the free encyclopaedia).

The municipalities operate on a budget of R15, 9 billion (operating expenditure: R 12, 2 billion and capital expenditure: R 3, 7 billion) MFMA 2013-2014 North West Auditor reports (General report on the local government audit outcomes of the North West for 2013-2014: 26). In consonance with the provision of Section 151 of the Constitution of the Republic of South Africa, establishing municipalities with the executive and legislative authority vested in its municipal council, the North West established municipalities with the executive and legislative authorities.

The municipalities are to provide *inter alia* the following services– provide democratic and accountable government for local communities, ensure the provision of services to communities in a sustainable manner, promote social and economic development, promote a safe and healthy environment, and encourage the involvement of communities and community organisations in the matters of the municipalities.⁵² However the state of performance of the municipalities is of concern. As of last year, 15 municipalities were under intensive care as reported by the auditor-general. It was reported that through dedicated intervention and leadership, seven municipalities have been rescued and eight still required ongoing attention.⁵³

Overall waste management –This includes management of solid waste, including the storage and disposal thereof. We also audited the permitting and operation of the landfill sites at the local municipalities. All local municipalities had material findings in this area. Little progress has been made over the last three financial periods, including a limited increase in waste landfill site permitting (and closure) at some local municipalities. Overall sewer management –This included management of wastewater treatment and disposal facilities and the permitting thereof. It also included an analysis of the assessment made in this area by the Department of Water Affairs, i.e. green drop status. Eighteen (95%) local municipalities had material findings in this area.

However, improper and ineffective wastewater infrastructure, treatment and disposal are an ever-increasing risk, polluting the water sources in the province and ultimately the quality of portable drinking water. Water quality management –This included an analysis of the assessment made in this area by the Department of Water Affairs, that is a blue drop status that reflects the quality of drinking water.

⁵² Section 152 Constitution of RSA.

⁵³ General report on the local government audit outcomes of the North West for 2013-2014: 10

Seventeen (89%) local municipalities had material findings in this area. In the 2013-2014 financial periods the environmental audit involvement included.

Conditional grants

Government's vision and priorities are articulated in the Medium-Term Strategic Framework (MTSF), where the focus is placed on providing sustainable and reliable access to basic services including electricity, refuse removal, water and sanitation. In support of these goals, the government provides grants to municipalities to upgrade their infrastructure and build their institutional capacity. A municipal infrastructure grant (MIG) is provided to municipalities to upgrade their infrastructure, while the MSIG and the financial management grant (FMG) are provided to enhance municipal capacity. This is to enable municipalities to improve coordination, accountability and performance management. These grants are conditional and can only be used for the purposes stipulated. However, (86%) of the provincial MIG allocation of R1691 million was spent, yet only 50% of the planned targets relating to this grant were achieved. This raised the risks that municipalities spent the MIG without due regard to value for money and economical delivery of services, or there was fiscal dumping, whereby municipalities had paid suppliers without the services having been delivered.⁵⁴

Furthermore, municipalities owed bulk service providers like Eskom in excess of R667 million to the province. Municipalities also owed other government entities and departments more than R703 million, which included amounts to bulk water providers, Department of Water Affairs and long-outstanding DBSA loans. Spending patterns Municipal spending, which is mainly made up of capital and operational spending, should be aligned to service delivery priorities. A capital budget is part of the approved annual budget set aside for developing and improving infrastructure, such as roads as well as water and sanitation systems, or to purchase assets, such as ambulances and refuse removal trucks. As many municipalities cannot raise enough revenue through rates and taxes to fund infrastructure projects and improvement programmes, national government contributes through conditional grants.⁵⁵

Department of Local Government

The department's action plan to address weakness at municipalities did not address all problem areas identified per municipality. The action plans developed by the municipalities to address the AGSA's findings were not assessed, and the non-implementation thereof was also not tracked by the department.

⁵⁴ General report on the local government audit outcomes of the North West for 2013-2014: p. 47.

⁵⁵ General report on the local government audit outcomes of the North West for 2013-2014: 50.

The department is also responsible for identifying maladministration, fraud, corruption or other serious malpractices at municipalities. This was not always done and in cases where actions were taken, interventions were not reviewed timeously and progress was not reported to the relevant authorities. In addition, no formal agreements had been entered into with municipalities to build the capacity for efficient, effective and transparent financial management. The department did not monitor the MIG and MSIG allocations to municipalities to ensure that the allocations were only used for the purposes intended in the grant framework.⁵⁶

On pipe borne water supply, the Green Drop results indicated that municipal wastewater management in North West is not in a satisfactory state. The majority of wastewater systems reside in a high risk state, compared to 2009. Furthermore, the average Green Drop score decreased from 33 to 29%.⁵⁷

Conclusion

At the onset of democratic governance in South Africa in 1994, government functions were decentralised between the central, provincial and local governments each with exclusive functions allotted to it by the Constitution. Section 214 of the Constitution provides for equitable shares and allocation of revenue raised at the national level between the national, provincial and the local governments. The paper has examined the fiscal relationships between the different spheres of government and how these relationships have impacted on the development. It further reviewed the challenges of development at the local government level in general with specific focus on Local Municipalities in North West Province. The paper concludes that although there are challenges of development, there is room for improvement if the following recommendations are implemented:

- a. **Leadership:** Political and administrative leadership must take full ownership of the internal control environment and implement processes to ensure the credibility of all the municipalities' reports.
- b. **Resources:** To fulfil the responsibilities, appropriate resources need to be allocated, which include the appointment of skilled and competent staff in all key positions and finance sections at auditees.
- c. **Roles and responsibilities:** Roles and responsibilities of all staff should be clearly determined and communicated. This includes performance agreements of senior management. Governance—Appropriate oversight needs to be in place which includes internal audit units, audit committees and MPACs. They need to ensure that all their activities are coordinated and contribute to the credibility of reported information.

⁵⁶ General report on the local government audit outcomes of the North West for 2013-2014: 58

⁵⁷ The Green Drop results for 2010.

- d. Consequences: Those responsible for poor performance should be held accountable and there should be clear and decisive consequences for continued transgressions.
- e. Resources: Available resources should be geographically and sectorially targeted to meet service delivery priorities of the municipalities, as identified by both government and the users of services themselves. The private sector participation must be explored to enhance productive efficiencies, and thereby to release resources for investment in core priorities and areas of great need.
- f. Funding: There should be an increase in funding for better performance of the local government to ensure social cohesion and also foster national unity in South Africa.

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