Spheres of Government

Contributions to Sustainable Service Delivery

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ABSTRACT

The** Constitution of the Republic of South Africa, **1996**, **provides for the establishment of three spheres of government, constituted as national, provincial and local. These spheres are distinctive, interdependent and interrelated. The three spheres have to exercise their powers and functions in such a manner that their policies and executive actions can be effectively co-ordinated to facilitate efficient service delivery. Although various intergovernmental forums have been established, some services appear to be fragmented and communities do not receive the services as promised in manifestos and defined in policy statements.

The issue requiring attention is whether the composition of the three spheres and the allocation of functions as contained in schedules 4 and 5 of the Constitution, 1996, promote effective service delivery by especially the provincial and local spheres of government. The policy statements in legislation and white papers only represent the intentions of government regarding the services to be provided. However, considering the annual** Division of Revenue Act **and the reports of the Auditor-General, the** raison d'être **and the operational actions of the three spheres need to be reconsidered. The justification of the devolution of governmental powers and functions to regional and subregional units is not questioned. However, the implementation of the policy as contained in the Constitution needs to be revisited.

In the article arguments will focus on the challenges facing the provincial and local spheres of government to delineate their individual competencies; obtain sufficient funds to finance the functions allocate to them; and whether the policies they are required to give effect to are clearly defined. The interpretation of schedules 4 and 5 of the Constitution, 1996, as well as related policy documents regarding e.g. housing, health and social welfare have to be reconsidered to eliminate possible uncertainties. Specific attention will also be paid to the challenges faced as a result of an apparent tendency to centralise decision making and nationally controlling policies and executive actions. These tendencies are exemplified by the proposed

17th Amendment to the Constitution, 1996, concerning section 156 executive powers of municipalities and the proposed *Public Administration Management Bill* ***(the so-called single public service bill) Both of which seems to have been put on hold, but still poses a latent threat. It is argued that the continuation of provincial sphere of government in its current form should be re-evaluated and that the local sphere's powers and functions as entrenched in the Constitution should be honoured, but that the funding formula of municipalities must be revised.***

INTRODUCTION

The creation of the democratic Republic of South Africa in 1994 was hailed as a major constitutional achievement. It was also announced with flair that the Republic could neither be classified as a federal nor as a unitary state. It was created to be uniquely organised to "(L)ay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by the law". This implies that the structures as defined in the Constitution, 1996 should not be forced into one of the traditional forms of government. Considering the contents of the Constitution it is apparent that some sections appear to entrench federalism, but there are more unitary characteristics as will be indicated in the paper.

As in most contemporary states, South Africa is divided into national, regional (provincial) and local spheres (levels) of government. In South Africa those spheres are described as distinctive, interdependent and interrelated. The unified character of the state is thus clearly entrenched in the Constitution as the supreme law of the country. However, over the past ± 16 years the practical implication of the current system has proven that the interrelationship among the spheres needs attention if service delivery is to be improved. The discussion focuses on the consequences of the constitutional provisions and the administrative and managerial realities in the provincial and local spheres of government.

CONSTITUTIONAL STRUCTURE

The contents of the *Constitution of the Republic of South Africa,* 1996, are not repeated. However, it is considered imperative to refer to the relevant sections to be able to comprehend the framework within which public services are delivered. Chapter 3, section 40(1) of the Constitution, 1996 provides for three spheres of government which are distinctive, interdependent and interrelated. The relevant chapter (section 41(1)) also requires the three spheres to co-operate with one another in mutual trust and good faith by *inter alia:*

- assisting and supporting one another;
- informing one another of, and consulting one another on, matters of common interest;
- co-ordinating their actions and legislation with one another;
- adhering to agreed procedures; and
- avoiding legal proceedings against one another.

Thus, it should be clear that the interrelationships are clearly identified. It could be argued that each sphere is thus assured of its constitutional status. However, considering other provisions in the Constitution it becomes obvious that other factors may impinge on the distinctiveness of the spheres and thus to their respective capacities to fulfil their constitutional obligations as envisaged during the drafting of the framework. *Firstly,* section 44(2) of the Constitution, 1996, empowers Parliament as the legislative authority to intervene in a provincial functional activity classified as in the exclusive jurisdiction of the latter (Schedule 5). The caveat is that it should be in the national interest; that is reasonably necessary for, or incidental to, the effective exercise of a power concerning a matter falling within the area of concurrent functional legislative competence of the provincial and national spheres of government (schedule 4). Although it may be argued that Schedule 5 assigns exclusive functions to provinces, Parliament may, subject to the Constitution, make laws affecting any *exclusive* functional area. The *Constitution Eighteenth Amendment Bill, 2011 (B8-2011)* published 21 January 2011 provides for an amendment to Schedule 4 of the Constitution concerning the concurrent functional competence of further education and training and adult training. Thus Parliament remains the supreme legislative authority in South Africa.

Secondly, section 100 of the Constitution, 1996 provides for the national executive to intervene in provincial administration when a province cannot or does not fulfil an executive obligation in terms of the Constitution (as is currently the case with education in the Eastern Cape Province) or legislation to ensure that provinces comply with national policies and standards for service delivery. This provision implies that the authority of the provincial executive is subject to national scrutiny and that its performance is monitored by the national executive. Thus provinces could not claim to be an independent unit within a federalistic state although they are assigned legislative and executive powers. In this regard the argument could be forwarded that the conditions are applied to guarantee the unity of the state, but it also holds the danger of centralism.

Thirdly, Schedules 4 and 5 identify concurrent and exclusive functions, but lack a clear identification of the functions thus assigned, preventing a clear assignment of responsibilities to the respective spheres.

- Schedule 4 part A identifies health as a concurrent function of national and provincial competence, but does not specify which aspects of health are assigned to the two spheres. In a similar manner, part B of this schedule assigns municipal health services to municipalities without specifying what municipal health services entails.
- Schedule 4 identifies housing as a concurrent function of the national and provincial spheres of government. No reference is made to the responsibilities of local government. However, in several cases municipalities (currently only three metropolitan municipalities) are in practice involved in the provision of houses. The sanitation function has recently been transferred to the Department of Health.
- Part A of schedule 4 identifies environmental matters as well as nature conservation as concurrent responsibilities of the national and the provincial spheres. However, although various municipalities possess nature conservation areas such as Tshwane, Greater Cape Town and Nelson Mandela Metropolitan Municipality, no provision is made in the relevant schedule to their specific authority in this regard.
- Animal control and diseases are classified under schedule 4 as a concurrent function of the national and provincial spheres of government. However veterinary services

(excluding regulation of the profession) are assigned to the exclusive power of the province under schedule 5. In this regard it is difficult to follow why veterinary services should be classified under schedule 5 while the control of animal diseases should be classified as a concurrent function.

In its annual report on local government, the Department of Cooperative Governance and Traditional Affairs acknowledged that "(t)he expectations of intergovernmental cooperation have not been met. The result is that it is still not clear how the various IGR structures function and the extent to which they foster meaningful cooperation between sectors and outcomes focussed deliverables" (COGTA 2009:51). This is a clear indication that the system of intergovernmental relations have to be reconsidered and the capacity of the respective supervisory structures have to be enhanced to enable them to perform their functions as envisaged in the constitutional structures.

FINANCIAL CAPACITY

One of the most significant requirements for "independence" is probably financial self sufficiency. If a national state strives for independence it is advisable to prove that it could meet the demands of its society from funds it can generate from its own resources. In a similar manner a state should decentralise its functions to subordinate spheres only if those spheres could provide services, albeit basic services, which could be financed from its own resources. Unfortunately in most African states the regional and local governments that are created cannot operate without significant support from the national government.

In most countries local government is considered as the third or even the fourth level of government, i.e. subordinate to the national and regional and in some cases to sub regional structures. In Uganda with a highly centralised system of government (Nyirinkindi 2007:iv) the district is the highest level of local government. Below the district, city divisions, town councils (for urban areas) and sub counties (for rural areas) have been created since the reforms of 1995 (Kakumba 2008:92). Although extensive reforms were legislated through the *Local Government (Resistance Councils) Statute,* 1993, the system had not been accepted country wide and thus remains highly centralised. In the Ugandan system, the district local council is the highest political organ with a district chairperson as the political head, elected by universal adult suffrage. The lower levels of local government in the form of municipalities, city divisions and sub counties supplement the system of local government through administrative units.

Municipalities, city divisions and town councils are largely autonomous from the districts as far as financial and planning matters are concerned, unlike sub counties in rural areas (Kakumba 2008:92). However, the functions and powers of local government structures are still largely centrally defined. No clear policy or legal framework defines the delegated functions to be performed (Kakumba 2008:92). The central government unilaterally determines the general policy and the financial capacity of local governments through grants to the tune of 90% of their total budgets (Kakumba 2008:92). Funding provided by national government is mostly specifically earmarked, thus raising the question of local autonomy in policy making (Nyirinkindi 2007:v). Uganda's Constitution, 1995, endorses the concept

of decentralisation to promote democracy (Nyirinkindi 2007:11). The Local Government Act referred to, provides local government structures with a framework to implement the strategies required to act as service delivery agents, but due to the constraints alluded to, they may not have the capacity attain the stated goals.

Nigeria has been organised as a federal state since 1954 and consists of 774 local government areas (Afrobaromenter 2008:1). Services are supposed to be provided concurrently between the federal and the state governments (Khemani 2004:np). A study undertaken in 2002 in Nigeria confirmed that local government is in dire straits. Salaries are not paid regularly by the national state to e.g. health staff and to primary school teachers. Although local government has been granted full jurisdiction for the provision of these services they lack the funding to perform these duties. Local government is increasingly dependent on the federal government's revenue transfers (Khemani 2004.np).

The *Constitution of the Federal Republic of Nigeria, 1999,* establishes a system of local government consisting of democratically elected local government councils (Afrobarometer 2008:1). Local government is, in accordance with the Constitution, an important structure for economic development. It is required to promote rural development, reduce poverty and inequality, but major problems are encountered in local government administration (Afrobarometer 2008:6). The provision or lack of funding by the Federal Government is just one of the challenges facing local government (Olanipekun 1988:7). Thus local government could find it impossible to achieve the lofty goals regarding development in their respective areas, forfeiting the opportunity to act as developmental agencies.

Ghana, which was the first African state to gain independence from a colonial power (Great Britain) in 1957, is divided into 10 regions, each with its own capital (AISA 2007:186). Although Ghana is well endowed with natural resources, the political realities inhibit the development of local government as a sustainable sphere of government. Chapters 2 and 20 of the Ghanaian Constitution *inter alia* state: "Ghana shall have a system of local government and administration which shall, as far as is practicable, be decentralised" (Ferrazzi 2006:3). Local government issues are dealt with rather extensively in the above mentioned Constitution.

Nigeria is a federal state consisting of at least 250 distinct ethnic groups, speaking about 400 languages (AISA 2007:269). The federation was first developed into 12 regions in 1968; then 19 in 1976; in 1987 they were increased to 21; 30 in 1991 and currently there are 36 (AISA 2007:272). It should also be borne in mind that since its independence, Nigeria had been under military regimes for 29 of its nearly 39 years of existence as a state. It could therefore be concluded that decentralisation would not be high on the administrative calendar. The regions operate under an elected governor, but their legislative powers are subject to federal legislation. The regions are divided into 768 local government areas governed by elected councils. Local governments are not financially self sustainable as is the case in other African countries.

In South Africa, nine regional authorities have been created by the Constitution, 1996. They are responsible for ensuring that the 278 municipalities operate effectively and efficiently (*cf.* section 139, Constitution, 1996). The viability of the provinces and municipalities are examined in more detail in the following paragraphs.

The Constitution, 1996 does not assign significant revenue sources to provinces. Section 114(1)(b) authorises a provincial legislature to initiate and prepare legislation (on a matter

within its jurisdiction) except money bills. Only a member of the executive council may introduce a money bill in the legislature (Section 119). Such bill may not deal with any other matter except a subordinate matter incidental to the appropriation of money or the imposition of taxes, levies or duties (Section 120(1)). Section 213 of the Constitution, 1996 provides for the establishment of a National Revenue Fund, while section 214(1) requires an act of Parliament to provide for an equitable division of revenue raised nationally among the three spheres of government. Subsection (2) adds the requirement that the equitable share so assigned is done to ensure that the provinces and municipalities are able to provide basic services and perform the functions allocated to them. The factors to be considered in this regard are enumerated in subsections (2)(e-j). The *Division of Revenue Act* is passed annually to promote better co-ordination among policy, planning, budget preparation and execution between and within the different spheres of government; provide certainty to provinces and municipalities in order for them to plan their budgets; and to promote accountability by ensuring that allocations are reflected on their budgets and reported on by the receiving structures. The division is made from revenue raised nationally as follows:

- an equitable division of a provincial share among provinces raised nationally in respect of the relevant financial year and paid to each province in accordance with the expected monthly commitments of a province;
- an equitable division of a local government share among municipalities and paid into the primary bank account of the receiving municipality in three instalments after consultation with the accounting officer of the Department of Cooperative Governance and Traditional Affairs .

A number of provisos are set in the allocation of the equitable shares e.g. conditional allocations are made to provinces regarding functions assigned to provinces such as for the votes Health; Higher Education and Training; Agriculture, Forestry and Fisheries; Infrastructure; and Transport. Provision is also made for specific purpose allocations to provinces for *inter alia* assisting vulnerable farming communities to achieve an increase in agricultural production; land care grants to enhance a sustainable conservation of natural resources; to transform libraries in rural communities; and to improve basic education. Allocations are also made to provinces to serve as incentives to participate in the expanded public works programmes to increase labour intensive employment (DoRA sec 7 & schedules 4, 5 & 8). In a similar manner conditional allocations are made to municipalities in terms of the same schedules to *inter alia* improve infrastructures in cities; to improve municipal systems; to promote reforms in financial management; to eradicate infrastructure backlogs; to implement the Integrated Electrification Programme; and to support neighbourhood development projects.

For the financial year 2010/2011 the allocations made through the *Division of Revenue Act*, 2010 were as follows:

Sphere of Government	R'000
National	527 001 492
Provincial	260 973 745
Local	30 167 706
Total	818 142 943

From the above statement it is obvious that national government receives 64%, the provinces derive ± 32% and municipalities receive only 4% of the amount made available. In its report entitled: *State of Local government in South Africa,* the Department of Cooperative Governance and Traditional Affairs reported extensively on the financial and governing challenges facing local government. In the 13 interventions by provinces in municipalities in terms of section 139 of the Constitution, 1996, eight were ascribed to financial or financial and governance or financial and human resource problems. Only three of the interventions have been ascribed to lack of service delivery (COGTA 2009:18).

The financial problems experienced by municipalities include e.g. inadequate revenue collection, ineffective financial systems, fraud, and misuse of municipal assets and funds (COGTA 2009:18). The Report also stated that municipalities could be considered as under resourced as they only received a median of 3,5% of the provincial budget allocations to local government programmes for the year under review (2005/6) (COGTA 2009: 20). According to the classification by COGTA of category B municipalities into four groups according to their composition (B1 local municipalities with large budgets and secondary cities; B2 local municipalities with a large town as core; B3 local municipalities with small towns, relatively small population and no large town as core; and B4 local municipalities which are mainly rural with communal tenure and at most one or two small towns) of which B3 and B4 municipalities were classified as particularly vulnerable from a revenue generation and institutional development perspective. (COGTA 2009:22).

The intention is not to repeat the contents of the COGTA report. However, some additional information is required to confirm the plight of local government as a so-called distinct sphere of government. Findings on an assessment of municipalities in the Mpumalanga Province indicated that insufficient funds were available to enable municipalities to eradicate infrastructure backlogs or complete infrastructure projects; and an inability to provide services to the booming informal settlements (COGTA 2009:40). It was also reported that municipalities were not receiving the appropriate amount informed by a formula which could result in a poor selection of projects (COGTA 2009:41).

The Report paints a rather bleak picture regarding financial management. In the year under review (2009) more than a third of the municipalities obtained either disclaimers or adverse opinions from the Auditor-General. A further 57 obtained a qualified audit, bringing the total to 54,4% of the 283 (at the date of the Report) municipalities. The number of outstanding reports by municipalities has also increased dramatically (COGTA 2009:55-56). In the same year 64 municipalities were reported to be on the financial distress list of National Treasury (COGTA 2009:87-88). In a recent newspaper report it was stated that 61% of the municipalities could not provide 50% of the basic functions assigned to that sphere of government.

HUMAN RESOURCES

One of the most important resources any institution utilises is its employees. Currently the expenditure represents between 30% and 36% of the operating budget of a municipality (COGTA 2009:68). Municipalities currently employ ±203 734 officials. The six metropolitan municipalities (since the 18 May 2011 municipal elections there are eight metros with the

addition of Mangaung and Buffalo City) employ nearly 50% of the total, 45% are employed by local municipalities (category B) and only 5% by district municipalities (category C). Of the ±1,17 million employees appointed in accordance with the *Public Service Act,* 1994 (Proclamation 103 of 1994), ±301 127 were employed in national departments and 869 765 in provincial departments i.e. ±74% of the total public sector work force. The Report identified the high rate of staff turnover as a major concern. Mobility in national departments amounted to 68% in the managerial level and 4% in the professional cadre. In the provincial sphere the mobility amounted to 13% in the managerial level and 49% in the professional level (PSC 2010: 18). The average vacancy rate in the public service (taking into account the differences between the PERSAL and vacancy rate reported by departments) is estimated at 23% (PSC 2010: 19).

The figures were quoted to highlight the fact that the public sector employs nearly 1,5 million officials. They can make a major contribution to the success or failure of government policies. With regard to intergovernmental relations the national and in particular the provincial sphere of government should give guidance to and supervise the operations of municipalities. With the high mobility of employees in the provincial sphere it would be difficult to develop the required knowledge and expertise to assist municipalities, who also find it difficult to administer and manage their municipalities. Thus it could be argued that the lack of properly trained and knowledgeable employees in all spheres of government severely affects the endeavour to improve the general living conditions of citizens. In this regard it should also be emphasised that all South African citizens live in municipalities as the whole country has been demarcated into one of the three categories of municipality.

REVISITING INTERGOVERNMENTAL RELATIONS

Intergovernmental Relations Framework

The *Intergovernmental Relations Framework Act,* 2005 (Act 13 of 2005) was assented to on 10 August 2005 to give effect to section 41(2) of the Constitution, 1996. The Act stated as its objectives the promotion of coherent government; effective provision of services; the monitoring and implementation of policy and legislation; and the realisation of national priorities. However, no provision is made in the Act for the enforcement of the conditions set. It simply legislated for the existing co-ordinating structures which existed at that point in time. The Act does not make any significant contribution to the integration of the services provided by the three spheres of government. In fact, the Act does not set out a clear policy on intergovernmental relations.

Revising intergovernmental policy

During 2007 the former Department of Provincial and Local Government published a general notice (Notice 936, *Government Gazette* 30137 of 1 Aug 2007) introducing a policy review process on the system of provincial and local government which should result in a White Paper on Provinces and a revised White Paper on Local Government.

The reasons put forward for the review included *inter alia* the practical experience gained after 13 years of democracy; the expectations of society for accountable government; the pursuit of national targets and elimination of missed opportunities; the need for the incorporation of municipalities which only came into being ±five years after the establishment of the democratic state; and the absence of a definite policy on provincial government.

The Notice poses some questions requiring attention in the review process. These included *inter alia* the challenges facing municipalities in managing environmental challenges and balancing competing developmental demands and environmental concerns. Thus the issue clearly acknowledges the reference alluded to earlier concerning the lack of clarity on the administration of the environmental function as stated in the Constitution, 1996. In the same vein it is stated that municipalities are dependant on a strong revenue base to sustain their viability and need strategies to support their environmental functions. The Notice raises concerns regarding provincial matters in connection with the lack of provincial revenue sources; insufficient measures to obtain accountability; lack of a policy framework that sets out their roles and functions; the need for national government to play a leading role in ensuring effective intergovernmental relations; inability to enforce co-operative government through the *Intergovernmental Relations Framework Act*, 2005; and the lack of operational definitions to guide the current allocation of powers and functions among the three spheres; and the inability to monitor the progress with service delivery among the three spheres.

Although the Notice required feedback before 31 October 2007, the investigation was not concluded. The successor to the Department, the Department of Cooperative Governance and Traditional Affairs apparently identified other priorities. The result is that the lack of clarity on the division of functional responsibilities has not been resolved. The general municipal elections of 18 May 2011 also resulted in new councils being constituted and new political office bearers being inaugurated. The result is that some time will elapse before this matter will receive attention.

Effectiveness of Intergovernmental Relations

In December 2009 the Public Service Commission (PSC) published a well researched report entitled: *Report on the Effectiveness of Leadership in the Promotion of Intergovernmental Relations.* In the Report the PSC found that the Implementation Protocols (IPs) established in terms of the *Intergovernmental Relations Framework Act,* 2005 were not always developed as required and also not adequately co-ordinated (PSC 2009:ix). Regarding the public transport infrastructure (required for the 2010 FIFA World Cup) the PSC stated that the Public Service leadership was hamstrung by the absence of appropriate accountability regimes among the national, provincial and local spheres of government (PSC 2009:x). The Report found that the challenges confronting the effective implementation of IGR in South Africa stem "largely from a need to manage tensions created by the distinct status the three spheres of government share, and the unbalanced authority which differentiates them" (PSC 2009:7). To this scenario it added that the challenges in managing the tensions included issues such as ensuring that the allocation of budgets and resources should be aligned with planning agreements, decisions about who co-ordinates and where accountability resides amongst

the spheres of government and whether sufficient human resource capacity was available among all the spheres (*Loc. cit).*

In its remarks on the general effectiveness of the intergovernmental relations the PSC observed the following from a report on worldwide experience regarding IGR challenges (PSC 2009:10)

- "Lack of clear accountability (i.e. single point accountability) in view of multipoint / sphere expenditure;
- The challenge of efficient decision-making whilst working across spheres;
- Accommodating joint-work within traditional line function and hierarchical government structures remain a challenge; and
- Alignment of interdepartmental and intergovernmental planning and budgeting has been problematic"

It could be argued that the current system of intergovernmental relations face serious challenges. This can partly be ascribed to lack of clearer policy guidelines on the division of functions, responsibilities and in particular accountability for performance. Alternatively it could be argued that the lack of accountability could result in inefficient and ineffective service rendering without recourse.

Challenges to reform

It had been argued that intergovernmental relations are under stress. Services are not provided effectively and efficiently. Government, thus have commenced with new policy guidelines to improve service delivery. One such proposal entails an amendment to the Constitution, 1996. The 17th amendment (it seems as though this amendment has been put on the back burner as the most recent Seventeenth Amendment to the Constitution Bill refers to judicial matters) published in the *Government Gazette* of 17 June 2009, contains an important proposed amendment to section 156 of the Constitution, 1996. This particular amendment was apparently aimed at improving municipal service delivery by enabling national government to pass legislation to achieve regional efficiencies and economies of scale in respect of a specific municipal function. Such legislation could further regulate municipal executive authority in order to:

- facilitate appropriate institutional arrangements and municipal participation in these arrangements, including the transfer of assets;
- facilitate appropriate planning and expenditure in respect of infrastructure and maintenance;
- facilitate equitable tariffs, user charges, fees and service levels;
- ensure equitable access and universal coverage;
- maintain, regulate and enforce essential minimum national standards; and
- prevent unreasonable actions by a municipality which is prejudicial to the interests of another municipality or the country as a whole.

The general trend of the proposed amendment seems acceptable. However, the first part of the proposed amendment contains a reference that should be a cause for concern, if the amendment is adopted as it stands. The amendment read: "Notwithstanding any

other provision of the Constitution, national legislation may further regulate the executive authority of municipalities in respect of matters listed in Part B of Schedule 4 and Part B of Schedule 5 when it is necessary to achieve regional efficiencies and economies of scale…". This proposed amendment as originally published on 21 May 2010 implied that the Constitution is no longer the supreme law and that national legislation may be passed *in spite of* constitutional provisions. In the reaction to this proposed amendment, Brian Young, a Municipal Finance Practioner, IMFO, argues *inter alia* that the amendment basically affects the municipality's powers and functions and more particularly the right to govern on its own initiative (Young 2009: 35). IMFO commented in the article that the proposed amendment is in direct conflict with section 151 of the Constitution, 1996 and is an attempt to impede on the municipality's ability to perform its constitutional mandate. The Institute also argues that the national legislation thus provided for could empower national government to unilaterally deprive a municipality of its assets and transfer it to e.g. a public entity. Such legislation could also deprive a municipality of control over its revenue and expenditure. (Young 2009:36). The Centre for Constitutional Rights concurs with the IMFO. It argues that it ignores section 151(1) of the guarantee in the Constitution that national and provincial government should not compromise or impede a municipality's right to exercise its powers and perform its functions. It also negates the principle of subsidiarity and violates one of the primary characteristics of the Constitution, *viz.* its supremacy in legislation (Newsletter 2009).

A second important challenge to the maintenance of a system of intergovernmental relations guaranteeing interdependence, interrelatedness yet distinctiveness was the proposed *Public Administration Management Bill* (Although it had probably been withdrawn it is still mentioned due to its latent effects on decentralisation). Various versions have been published to improve the contents. However, basically the Bill provides for the establishment of a single public service for South Africa. The objects of the Bill are stated as follows: "To provide for organisation, management, functioning and personnel related matters in the three spheres of government and for related matters". It is also stated in the Bill (Clause 3) that the proposed structure aims to ensure efficient, quality, collaborative and accountable service delivery by the institutions of government; to set standards for service delivery; to provide for the transfer of functions within and between the national and provincial spheres of government *other than functions conferred by the Constitution or any other legislation;* and to provide for the transfer of employees. Clause 8(1)(a) requires a municipality to obtain ministerial approval to establish or abolish a government component i.e. a municipal organisational structure. Clauses 24 and 25 provide for the transfer or secondment of individuals from one institution to another institution in the manner prescribed in the proposed legislation. This implies also the local government sphere.

This implies that national, provincial and local government employees will be subject to the same public service legislation as national and provincial governmental officials. The significance of the proposed legislation is that municipalities will no longer be in full control of their own personnel component or organisational structure. It could therefore, be argued that the concept of three interdependent spheres are compromised. The Bill further emphasises the unitary character of the state. However, a great danger could be identified and that is the tendency towards the centralisation of power in national government. This centralising approach is a trend in most African states after independence and it seems as though South Africa is following the trend.

CONCLUSION

The intention with this discussion was to draw attention to the prevailing state of intergovernmental relations in South Africa. Reference was made to some African countries to indicate that the lack of resources at the regional and local levels/spheres of government is an African phenomenon. Thus, should local government be promoted as a sphere closest to the people, it will have to be assigned sufficient resources to fulfil its democratic duty of governing, i.e. ruling and being able to take enforceable decisions; having final control over its own employees appointed and managed according to its unique needs. Regional authorities i.e. the provinces in South Africa should be able to operate as regional governments with control over their own resources. The fact that provinces are dependent on the fiscus for ± 94% of its revenue prevents accountable government and places an additional burden on national government to ensure that funds allocated in the national budget are utilised efficiently and effectively by another sphere which is supposed to operate as a distinctive unit of the state.

It is therefore suggested that the proposed amendments to the Constitution through the 17th amendment should be reconsidered. This amendment will affect the supremacy of the Constitution which has made South Africa a leader in the world. Furthermore, it is suggested that the Public Administration Management Bill be reconsidered. Enabling legislation covering all public employees will not obtain a committed workforce. However, it may be more appropriate to enforce existing legislation concerning the requirements for appointments in municipalities. An effective, committed knowledgeable municipal personnel corps is probably the most significant bulwark against ineffective service delivery. This could contribute to a satisfied municipal community and result in the development of a governmental system enjoying the support of all its inhabitants.

REFERENCES

Afrobarometer. Briefing paper, No 53. 2008. **www.afrobarometer.org**.

Africa Institute of South Africa. 2008. *Africa A-Z Continental and Country Profiles.* Pretoria: AI of SA.

Bill amending the Constitution: Constitution Seventeenth Amendment Bill of 2009.

ConsAlert: Newsletter of the Centre for Constitutional Rights 3(18) 17 July 2009.

Department of Cooperative Governance & Traditional Affairs. 2009. *State of Local Government in South Africa: overview report. National, State of Local Government Assessments.* Pretoria: The Department.

Department of Economic and Social Affairs. Division for Public Economics and Public Administration. 2000. *African Public Service: new challenges, professionalism and ethics.* New York: United Nations/CAFRAD.

Department of Provincial and Local Government. 2007. *Policy Process on the System of Provincial and Local Government.* Pretoria: The Department.

Division of Revenue Act, 2010 (Act 1 of 2010).

Ferrazzi, G. 2006. *Ghana Local Government Act* 1993*: a comparative analysis in the context of the review of the Act. Ghana:* Ministry of Local Government, Rural Development and Environment/Deutsche Gesellschaft Für Technische Zuammenarbeit (GTZ).

Kakumba, U. 2008. External control systems in the enhancement of accountability in local government: the case of Uganda. University of Pretoria: Unpublished PhD thesis.

Khemani, S. 2004. *Local government accountability for service delivery in Nigeria*. Washington, DC: World Bank Development Research Group.

Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998).

Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003).

Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

Local Government: Municipal Systems Amendment Bill, 2010.

Local Government: Municipal Structures Act, 1998 (Act 117 of 1998).

Municipal Demarcation Board. 2008 *National Report on Local Government Capacity: district and local municipalities*. Pretoria: The Municipal Demarcation Board.

Nyirinkindi, L. 2007. *Economic and social rights, service delivery and local government in Uganda; Working Paper No 13.* Human Rights and Peace Centre.

Public *Administration Management Bill,* 2008.

Public Service Commission. 2009. *Report on the Effectiveness of Leadership in the Promotion of Intergovernmental Relations* (RP 30/2010). Pretoria: The Commission.

Public Service Commission. 2010. *State of the Public Service Report 2010: integration, Coordination and effective public service delivery* (RP 262/2010). Pretoria: The Commission.

Republic of South Africa; Municipal Demarcation Board. 2008. *National Report on the Capacity: district and local municipalities; MDB capacity assessment 2007/2008.* Pretoria: The MDB.

Republic of South Africa. 1996. *Constitution of the Republic of South Africa.*

Republic of South Africa; the Presidency. 2008. *Development Indicators.* Pretoria: The Presidency.

Republic of South Africa. 1998. *White Paper on Local Government.* Pretoria: Ministry of Provincial and Local Government.

Young, B. 2009. Comment on the Seventeenth Draft Amendment Bill (General Notice 869 of 2009). *IMFO: Official Journal of the Institute of Municipal Finance Officers.* 10(1) Spring.