

# Decentralisation of Powers and Functions: the impact of uncertainty on the local sphere

## FFC Conference

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# Problem Statement

- 4<sup>th</sup> year of the new system of local government and many matters pertaining to powers and functions between the spheres of government have yet to be resolved
  - This has resulted in:
    - So-called ‘unfunded mandates’ functions are delegated without requisite resources e.g. libraries, housing, sports, museums
    - Shared functions without clear delineations of responsibility – components that each sphere should finance e.g. roads, health, planning, tourism
    - Additional responsibilities for municipalities without concomitant legal authority & financing arrangements
    - National or provincial departments creating assignments without serious considerations of the impact on municipalities
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# Problem Statement

- Uncertainty about the nature of the transfer of a function, i.e whether it is an assignment, delegation or agency, making municipal planning, governing & budgeting difficult
- Increased financial accounting & reporting responsibilities for municipalities dealing with a number of agency and delegation functions
- Misalignment between municipal powers and functions and municipal fiscal powers
- President's 2004 State of the Nation Address committed government to building the capacity of the local sphere
- Resolving the issue of powers and functions and alignment with fiscal powers and functions is key to achieving this objective & stabilising local government finances



# Current Framework for Powers & Functions: National

- Schedule 4A of the Constitution, e.g.
  - criminal justice system & defence
  - education
  - transport & public works
  - revenue services
  - trade & industry
  - national health (policy making primarily)
  - national welfare (policy making primarily)
  - housing



# Provincial

- Schedule 4A & 5A of the Constitution
  - social services, including school education, health, welfare grants & services
  - housing
  - provincial roads
  - libraries, museums
  - tourism
- Note that national and provincial government are concurrently responsible for functions like school education, health, welfare and housing



# Local Government

- Schedules 4B and 5B of the Constitution
  - Includes public goods: municipal infrastructure e.g. access roads, streets, streetlights, refuse removal, sanitation & cemeteries, municipal health etc
  - Key trading services: water, sanitation & electricity



# Fiscal system

- SA's fiscal system is based on a revenue sharing model:
  - Largest proportion of SA's revenue 56,8%<sub>1</sub> is transferred to provinces.
  - About 4,3% to municipalities
- Provincial Revenue:
  - Own revenue only approx 3% of total revenue raised from motor car license fees, casino & horse racing taxes & hospital fees
  - Other revenue – provincial Equitable Share & grant funding
- Local Government Revenue:
  - Own revenue: property taxes & RSC levies; and trading surpluses
  - Other revenue: local government equitable share (3,6% - 4,3%) and grants e.g. capacity building & infrastructure grants
- Local government has relatively greater fiscal capacity than provinces
- Key intergovernmental fora – Budget Council, Budget Forum and the Presidential Coordinating Council

# Characteristics: Local Government

- Great variance in fiscal capacity between municipalities
- Demarcation of 284 municipal boundaries in 2000 attempted to deal with unviable entities
- Most municipalities have budgets under R 100 million
- 20 biggest municipalities make up 80% of aggregated Local Government budget & the 6 metros alone make up 50% of the budget
- On average approx 2/3 of income is generated from user fees for trading functions such as electricity, water & sanitation, solid waste, etc.
- Remaining 1/3 is generated from grants and Property Rates for provision of public goods such as municipal infrastructure, streets, streetlights, subsidies and free basic services
- Municipalities without functions generating user fees are more on their Equitable Share allocation & grants

# Western Cape : Budgeted Income

<b>Regional Levies</b>	<b>1,004,319,462</b>	<b>6.68%</b>
<b>Property Rates</b>	<b>2,987,122,504</b>	<b>19.86%</b>
<b>Electricity</b>	<b>3,457,059,282</b>	<b>22.98%</b>
<b>Water</b>	<b>1,231,850,286</b>	<b>8.19%</b>
<b>Sanitation</b>	<b>775,657,531</b>	<b>5.16%</b>
<b>Refuse Removal</b>	<b>624,963,966</b>	<b>4.15%</b>
<b>Grants</b>	<b>1,617,622,769</b>	<b>10.75%</b>
<b>Traffic, public fac.</b>	<b>3,342,657,754</b>	<b>22.22%</b>
	<b>15,041,253,554</b>	<b>100.00%</b>

# Decentralisation

- The lack of clarity regarding powers and functions is related to the uncertainty in level of decentralisation.
  - Some of the factors that contribute to the uncertainty include:
    - Some functions e.g. defence, foreign affairs, justice are clearly National
    - Education, health, social welfare are shared between national and provincial
    - Housing, roads, primary health, energy, water, environmental planning, etc. are located at National/Provincial level and is primarily delivered at local levels.
  - Disaggregating elements of functions to the appropriate levels is often a challenge.
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# Decentralisation

- Fiscal decentralisation framework: LES, MIG, & Consolidated Capacity Grant.
- The process of fiscal decentralisation is even more difficult for local government where:
  - Functional assignments are unclear;
  - Costs are shared – “shared function”;
  - Revenue capacity cannot be easily estimated;
  - Standards and norms are not uniform; and
  - Degree of specificity varies considerably among localities.
- Treasury sets guidelines for expansion that does not often correspond with increases in labour costs, additional assignments, and changes in accounting protocols.



# Constitutional Mechanisms

- Constitution offers 3 lawful methods to decentralise
  - (a) *Assignment (transfer of authority and provider function)*
  - (b) *Delegation (transfer of provider function only)*
  - (c) *Agency (transfer of provider function only)*
- In terms of Section 156(4) of the Constitution, national & provincial governments
  - Must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily related to local government, if:*
    - (a) *The matter relates to local government*
    - (b) *The matter would most effectively be administered locally*
    - (c) *The municipality has the capacity to administer it.*

# Relevant Legislation

- Section 105 to 108 of the Municipal Systems Act
  - Regulates national & provincial monitoring & standard setting of powers and functions
- Sections 9 & 10 of the Municipal Systems Act
  - deals with assignment of powers and functions
- Section 106 of the Systems Act & Section 139 of the Constitution
  - deals with national & provincial intervention



# Capacity Implications for Decentralisation

- Section 10A of the Systems Act obliges the assigning body to take appropriate steps to ensure sufficient capacity as may be required for the performance of the function by the municipality/s
  - Personnel will move across spheres of government – municipal staff are not covered by the Public Service Act, 1994; and have different conditions of service.
  - Consultation required in terms of legislation with bodies such as the FFC.
  - When assigning functions one has to take account of current and future financing: to include operating and capital costs, & implications for providing a basic & higher level service.
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# Case-Study: Housing

- Schedule 4A of the Constitution lists 'housing' as a concurrent competency of national & provincial government
- Many of the matters related to housing such as building regulations, planning, potable water, sanitation, infrastructure, electricity & waste disposal are the competencies of local government.
- National Housing Act lists the responsibilities for all 3 spheres of government.

# Case-Study: Housing

- Sections 9 & 10 of the Act list municipal responsibilities with regard to housing – make land available, provide services, ensure access to housing, set housing delivery goals, plan & manage land use development, solve housing disputes, initiate, plan & co-ordinate housing developments, administrate national housing programmes etc
- Western Cape Housing Development Act supports national legislation



# Case-Study: Housing

- Legal opinion:
  - Housing is not an original competency of Local Government, but LG has ancillary housing functions.
  - National and Provincial Housing Acts have assigned functions to LG – the validity of which can be questioned.
  - Accreditation is necessary in terms of Section 10 of the Housing Act for municipalities to participate in national and provincial housing programmes & accreditation is not always given.
  - Grootboom Case judgement indicated all spheres of government are equally responsible for ensuring basic rights but national still overall responsible for financing and policy.
  - Section 26 Constitution: Local Government – emergency shelter.

# Case-Study: Housing

- Housing financed through a capital subsidy programme (max R25800 per house (+ R5400)).
- Bulk-services through a infrastructure grant – CMIP.
- Financing GAP between actual and subsidy:
  - Internal connections of water and electricity, high value land, planning costs, above threshold construction costs (related to geotechnical terrain), institutional and transaction costs.
- LES augment finance gap, but is inadequate to cover these costs particularly in poor municipalities.



# Case-Study Health: Western Cape

- Minister's Mufamadi's decision re the division of the health function between C & B municipalities required a definition of Municipal Health Services (MHS)
- Decision that MHS = some Environmental Health Services
- Personal Primary Health Care remain provincial responsibility
- Implications:
  - From 1 July 2004 province 100% responsible for financing of PPHC
  - Province must decide on its service delivery mechanisms
  - Currently, PPHC is being performed on an agency basis by C municipalities for province & as a shared function at local level Municipalities have been part funding (about 22%) PPHC through Property Taxes
- Funding gap for province as a result of Minister's decision

# Case-Study Health

- Province to make decision on PPHC service delivery
- Existing policies support decentralised health service delivery
  - District Health System
  - Health Bill (Section 32 (2)) refers to assignment (via SLA) & SLAs between province and municipalities
  - Health Minmec decision on delivery mechanisms supports delivery by category A and C municipalities – 13 February 2001.



# Case-Study Health

- Western Cape provincial position found in the *Motivation and Recommended Resolutions for the Western Cape Co-operative Government Summit, 07 November 2003 Report'*
- Propose that:
  - delivery of PPHC *provincialised (i.e. provided directly by province) from 1 July 2007*
  - From 1 July 2004 a 3-year transitional period. During this period municipalities will downscale services to make them affordable for provincial government to deliver



# Case-Study Health

- Current delivery of PPHC function by municipalities, and in terms of Section 156(4) of the Constitution can retain function.
  - PPHC relates directly to local government: link between MHS & PPHC & horizontal integration
  - Effectively administered locally (e.g. preventive services historically provided by LG, accountability to, and involvement of, the community, direct link between administration and political representatives, quality & innovation etc)
  - LG has the capacity to deliver (LG in province currently employ almost 50% of PPHC staff & deliver majority of community based and facility based services in mobiles, satellites & clinics)



# Case-Study Health

- Inadequate legislation to facilitate shifting of staff between spheres e.g. negative ambulance service experience – risk shifted to local government.
- The impact on communities of service delivery cuts, as a result of losing municipal co-funding.
- First time that Local Government is requesting an assignment to be considered of a function assigned to another sphere. While there is a legislative basis for this the framework for this type of subsidiarity assignment is not clear.



# Concluding Comments

- The current intergovernmental fiscal arrangement is a significant achievement in the transformation of local government.
- The Minister's authorisations and MEC's adjustments of powers and functions between category local and district municipalities in 2002 and 2003 clarified to a large extent the division of municipal powers and functions.
- The financial impact of certain national/provincial functions on local government has not been fully assessed.
- The alignment between functional assignments and fiscal transfers should be addressed.



# Recommendations

- Draft framework for the decentralisation of powers and functions by DPLG – needs to be finalised urgently
- Need to monitor & regulate the decentralisation of powers and functions across national & provincial departments
- A fiscal decentralisation framework needs to be developed – revision of the LES
- An extensive study of the fiscal and financial capacity of municipalities should be completed to inform such a framework
- The required data be generated and collected to inform this framework.



# Recommendations

- Data should include realistic costing of functions and components of functions.
- In the absence of such frameworks, uncertainty will continue.
- In the interim attention should be given to:
  - Municipal Health Services
  - Disaster Management
  - Service for the poor – municipalities without adequate fiscal capacity
  - Functions – where costs are shared



# Constitutional Imperative

- In conclusion, creating frameworks for the decentralisation of powers and functions & the decentralisation of fiscal powers and functions is critical if we are to address:
  - A capacitated sphere of local government
  - A financially stable sphere of local government
  - An effective delivery sphere of government

