THE LOCAL GOVERNMENT SYSTEM IN SOUTH AFRICA

1. DECENTRALISATION IN SOUTH AFRICA

The municipal system forming the local government sphere in South Africa has been restructured since the end of apartheid and the first free general election in 1994. New legislations changing the provisions for the determining boundaries, functions and powers, and other governance issues of municipalities have been passed, and many processes are still on-going. In 1993 South Africa launched a comprehensive local government reform by drafting the Local Government Transition Act (Act 209), which defined a three-stage process for the restructuring of the local government. Firstly, elections for transitional councils were held, allowing for some continuity in delivery until the second phase of the local government reform was in place. The second phase of the reform included the establishment of the Municipal Demarcation Board, of which task it was to redraw the municipal boundaries in the country. The third stage followed the local elections of 2000. At this time it was decided to drastically reduce the total number of local authorities – from 843 to 284 – and to cut down the number of the elected members. Although the number of local authorities declined as a result of the restructuring, their role did not as they now became responsible for much of the socioeconomic delivery. Indeed, the 1998 Government White Paper advanced a concept of a Developmental Local Government, determining that from that point onwards the local governments would pursue integrated development planning. This would take place in the context of intersectional partnerships, requiring active involvement of the communities, along side other vested interests groups. Developmental local government was now viewed as a vehicle for South Africa’s development; even to the extent that some observers have been anticipating a decline in the power of provincial government relative to the local government structures.

2. LOCAL GOVERNMENT: POSITION AND STRUCTURE
2.1 Legal Basis of Local Government

The legislation in South Africa provides quite comprehensive a framework for local self-government. The concept of a municipal council and the authority of the municipal council are recognised in the Constitution of 1996 and in national legislation.
The Constitution of the Republic of South Africa provides that the local sphere of government consists of municipalities, and that the municipalities have a right to govern, on their own initiative, the local government affairs of their communities, subject to national and provincial legislation. The Constitution provides that the municipalities have exclusive municipal executive and legislative authority in their area, but the local municipalities have to share their authority with the district municipality within whose area they fall. As provided by the Constitution, the provisions on the composition and authority of the municipalities in the Constitution are defined further in national legislation.\(^8\)

The Constitution assigns a number of functions of to the exclusive authority of the municipalities. For example, The Constitution requires the municipalities to give priority to the basic needs of the communities and to promote their social and economic development. The municipalities also must participate in national and provincial development programmes and to promote a safe and healthy environment for the local communities, among other objectives.\(^9\)

The Constitution and national legislation provide quite strict restrictions to provincial intervention in functions and powers prescribed to municipal executive authority. The Constitution provides that the three spheres of government in South Africa, the national, provincial and local spheres, engage in cooperative government.\(^10\)

The Constitution provides on the status of the municipalities that a municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution. The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.\(^11\)

The principle of subsidiary is not clearly stated in the legislation as such, but the policies concerning local government stress the strengthening of the role of the municipalities in service provision. In addition, the Constitution provides that the national government and the provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a certain number of functions. These functions consist of functional areas of concurrent national and provincial legislative competence (e.g. agriculture and health services), and functional areas of exclusive provincial legislative competence (e.g. ambulance services and libraries).\(^12\)

Other laws that affect the management of local authorities and their revenue base include:

- Organised Local Government Act No. 52 of 1997
- Municipal Demarcation Act No. 27 1998
- Municipal Structures Act No. 117 of 1999
- Municipal Systems Act 2000
- Disaster Management Act No. 57 of 2002
- Traditional Leadership and Governance Framework Act No. 41 of 2003
- Municipal Finance Management Act No. 13 of 2005
- Intergovernmental Relations Framework Act No. 13 of 2005
- Local Government Municipal Performance Regulations of 2006

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\(^{10}\) Kuusi 2009, 2.
\(^{11}\) Kuusi 2009, 13.
2.2 Organisational Structure of Local Government
South Africa has a unitary, but decentralised system of government. The government is constituted of national, provincial and local spheres of government. The Constitution provides that the three spheres of government are distinctive, interdependent and interrelated. Guiding the relations of the three spheres of government is an important and unique principle of cooperative governance. The principles for this kind of cooperation are prescribed in the Constitution. Cooperative governance obliges the national, provincial and local spheres of government to cooperate, legally enforcing negotiation, rather than litigation, in resolving any political disputes that might arise between them.

The national sphere of government consists of a Parliament, which is the legislative authority of South Africa. The Parliament consists of the National Assembly and the National Council of Provinces (NCOP). The National Council of Provinces consists of 54 permanent members and 36 special delegates, and aims to represent provincial interests in the national sphere of government. Delegations consist of 10 representatives from each province. The National Council of Provinces must have a mandate from the provinces before it can make certain decisions.

The provincial sphere of government consists of provinces. There are currently nine provinces in South Africa. Each province has its own legislature, which consists of between 30 to 80 members. The executive council of a province consists of a premier and a number of Members of the Executive Council (MECs). The premiers are appointed by the President of the Republic of South Africa.

Each of the nine provinces hosts a number of local authorities, subdivided into three categories:

1) Metropolitan
2) District
3) Local councils

Division of the municipalities into these three categories arises from the Constitution. The provincial legislation must determine for each category of municipality (A, B and C) the different types of municipality that may be established in that category in the province. The municipalities make up for the local sphere of government.

The division of the local government into the tree categories of municipalities means that the local government in South Africa is a mix of unitary and two tiered structures. There are currently in total 284 municipalities in South Africa.

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15 Momontiat (sine anno); Kuusi 2009, 7.
17 The provinces are: Eastern Cape, Free State, Gauteng, KwaZulu Natal, Mpumalanga, Northern Cape, Northern Province, North West Province and the Western Cape.
The Local Government: Municipal Structures Act of 1998 provides that the metropolitan municipalities (category A municipalities), which have exclusive executive and legislative authority in their area, can only be established in metropolitan areas. At the moment there are nine metropolitan municipalities.

The Act provides that the areas which are not eligible for a metropolitan municipality status must have district municipalities (category C municipalities) and local municipalities (category B municipalities) within their area. Therefore the non-metropolitan areas consist of district municipalities, which contain several local municipalities within their area. At the moment there are in total 46 district municipalities in South Africa.

The metropolitan councils – governing the major metropolitan areas – are responsible for delivering all municipal services. The task of the district and local councils is to negotiate appropriate distribution of services according to local circumstances.

Figure of the government system in South Africa
Adapted from Peltola 2008

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<tr>
<th>Central Government</th>
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<tr>
<td>President</td>
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<td>- National Assembly</td>
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<td>- National Council of Province</td>
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<th>Provinces</th>
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<tr>
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<td>Provincial executive council consists of provincial ministers, which are called The Member of the Executive Council, MEC.</td>
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<td>Provincial premier</td>
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<tr>
<th>Local Government</th>
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<td>284 municipalities</td>
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23 These nine metros are: Buffalo City (East London), City of Cape Town, Ekurhuleni Metropolitan Municipality (East Rand), City of eThekwini (Durban), City of Johannesburg, Mangaung Municipality (Bloemfontein), Msunduzi Municipality (Pietermaritzburg), Nelson Mandela Metropolitan Municipality (Port Elizabeth), City of Tshwane (Pretoria). Government Communication and Information System 2008, 303.
26 CLGF Local Government System in South Africa: (sine anno).
27 Ibid.
2.3 Local Government Elections
The electoral procedures and governing arrangements are prescribed in the Constitution and in the national legislation.\textsuperscript{28} The electoral system for metro and local councils with wards consists of a combination of first-past-the-post elections in the wards, and proportional representation elections where the voter votes for a party list and not a specific person. Half of the councillors are elected according to proportional representation, and the other half of the councillors are elected as ward councillors by the residents in each ward.\textsuperscript{29} Each voter votes for a ward councillor and a party list.

In addition to voting for the representation in the local councils, the voters also participate in electing the representatives of the district councils. District councils share powers with local councils within their borders. There are usually approximately four to six local councils within the area of one district council. Each local council is allocated a certain number of seats in the district council. A district council consists of representatives that have been elected in the local government elections by voters voting a party list, and representatives elected by the parties elected to the local councils in proportion to the parties’ representation in the local council in question.\textsuperscript{30}

The last local government elections were held in March 2006 and the next are predicted to be held in 2011.\textsuperscript{31}

2.4 Staff in Local Government

Local government staff is recruited by the local authority. It is also the local authority, which has the powers to discipline and dismiss staff. The only officers local authorities are required to have, by law, are the municipal manager, the chief accounting officer and the chief financial officer. The head of the paid service is normally called the chief executive or municipal manager.\textsuperscript{32}

\textsuperscript{28} Kuusi 2009, 27-28.
\textsuperscript{29} Local Government: Municipal Structures Act No. 117 of 1998, Section 22, Schedule 1.
\textsuperscript{30} Local Government: Municipal Structures Act No. 117 of 1998, Section 23, Schedule 2; EISA 2006, 10; CLGF The Local Government System in South Africa: (sine anno).
\textsuperscript{31} CLGF Local Government System in South Africa: (sine anno); EISA Country Profile South Africa (sine anno).
\textsuperscript{32} CLGF Local Government System in South Africa: (sine anno).
The local authorities are free to determine their own staffing structure. The general model followed by the majority of the local authorities has at its apex the municipal manager, then the heads of departments supported by superintendents. The municipalities may have full-time and part-time councillors. The municipality has the power to designate councillors as full-time councillors. The full-time councillors may not undertake any other paid work unless they have the consent of the municipal council. In most municipalities the mayor and the speaker are full-time councillors. Sometimes members of the executive committees and mayoral committees are full-time councillors.

2.5 Independent Scrutiny
In South Africa the conduct of public administration in any sphere of government can be investigated by the Public Protector. Apart from investigating the conduct of public administration, the public protector has the power to take any remedial action if deemed necessary. Thus, in many ways the public protector resembles an official whom we better know as the ombudsman.

On the financial side, the Auditor General is required to audit and report on the accounts and financial management of all local authorities. Also the Constitution and other legislations concerning the local authorities, have regulations concerning the ethical conduct in local authorities. They introduce a code of conduct.

3. LOCAL GOVERNMENT: POWERS AND RESPONSIBILITIES

3.1 Basic Public Services
The basic powers and responsibilities of the municipalities are prescribed by the Constitution. According to it, the municipalities can also be assigned with other matters by national or provincial legislation. Also, the Municipal Systems Act states that the council has the right to govern on its own initiative the local government affairs of the local community.

In addition, municipalities exercise full legislative and executive power within their areas of jurisdiction subject to national and provincial legislation. The Constitution and the national legislation provide that national Cabinet members and Member of the Executive Council (MEC) may assign powers and functions to the municipal council, but the assignment must be made in terms of an agreement made with the municipal council. The municipalities must also be guaranteed necessary financial resources and capacity building initiatives necessary to fulfil their new functions and powers.

The Constitution prescribes the following functional areas to the local government:

- Air pollution
- Building regulations
- Child care facilities

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33 Ibid.
34 SALGA and GTZ South Africa 2006, 53.
35 CLGF Local Government System in South Africa: (sine anno).
36 Ibid.
38 CLGF Local Government System in South Africa: (sine anno).
• Electricity and gas reticulation
• Fire fighting services
• Local tourism
• Municipal airports
• Municipal planning
• Municipal health services
• Municipal public transport
• Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law
• Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto
• Storm water management systems in built-up areas
• Trading regulations
• Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems
• Beaches and amusement facilities
• Billboards and the display of advertisements in public places
• Cemeteries, funeral parlours and crematoria
• Cleansing
• Control of public nuisances
• Control of undertakings that sell liquor to the public
• Facilities for the accommodation, care and burial of animals
• Fencing and fences
• Licensing of dogs
• Licensing and control of undertakings that sell food to the public
• Local amenities
• Local sport facilities
• Markets
• Municipal abattoirs
• Municipal parks and recreation
• Municipal roads
• Noise pollution
• Pounds
• Public places
• Refuse removal, refuse dumps and solid waste disposal
• Street trading
• Street lighting
• Traffic and parking

4. FINANCE

4.1 Revenue

The municipalities in South Africa are largely self-financing, although there are differences in the ability of the richer and poorer municipalities to generate revenue. The legislation provides that the municipalities are entitled to resources commensurate to their responsibilities, but in many service sectors this is not realised in practice as poverty is pervasive especially in the rural areas.

Some of the problems facing local government in South Africa include variations in resources between the richer and poorer municipalities arise from this. With many services there is also confusion on the division of roles and responsibilities between the different categories of municipalities and the provincial government, which has led to inefficiencies in service provision.\(^{41}\)

The self-financing means that the bulk of their resources are raised from own revenue sources such as taxes and service charges (excluding income tax, value added tax, general sales tax or customs duty). This right to levy taxes and impose charges is provided by the Constitution.\(^{42}\)

In due course of the local government restructuring, the local government was given not just constitutional protection, but also fiscal capability, which meant that it became responsible for raising about 90% of its own revenue.\(^{43}\) This 90% is not the whole truth, however, as it masks the variations in locally raised revenue. The capacities of different local authorities vary considerably and therefore the amount of locally raised revenue can be anything between 67 per cent in the smaller authorities and 97 per cent in the metropolitan authorities.\(^{44}\)

In addition to the self-collected revenue, municipalities in South Africa receive allocations from the national government. The payments are made directly to the municipalities instead of provincial structures.\(^{45}\)

One of the most important developments in intergovernmental fiscal transfers to the municipalities in recent years has been the adoption of the conditional allocation called the Municipal Infrastructure Grant (MIG), which is allocated to supplement the capital finance for basic municipal infrastructure for poor households, micro enterprises and social institutions funded from municipal budgets.\(^{46}\)

The Constitution and the national legislation provide that when municipalities are assigned new functions and powers, the necessary financial resources and capacity building measures have to be provided to them as well for the exercising of those functions and powers.\(^{47}\)

To give general view, the major sources of revenue for local authorities in 2006/2007 were:

- Grants and subsidies \(50\%\)
- Own contribution \(24\%\)
- External loans \(18\%\)
- Other income and donations \(8\%\)\(^{48}\)

\(^{41}\) Kuusi 2009, 2 & 29.
\(^{43}\) Beall 2005, 11.
\(^{44}\) CLGF Local Government System in South Africa: (sine anno).
\(^{45}\) Ibid.
\(^{46}\) Kuusi 2009, 20.
\(^{47}\) Kuusi 2009, 19 & 20.
\(^{48}\) CLGF Local Government System in South Africa: (sine anno).
4.2 Expenditure
The aggregate size of local authorities budget has risen sharply. From 2006/2007 to 2008/2009 there has been an increase of 23%. To gain a more general view, in 2007/2008 the aggregate expenditure of local authorities was divided as follows:

- Salaries 35%
- Bulk services 24%
- Repairs and maintenance 7%
- Other 34%49

5. WOMEN IN LOCAL GOVERNMENT
Historically women have played a very important role in community-level politics but they did not have a large representation in local government negotiations after apartheid during the transition period. Largely as a consequence of lobbying of different women’s organisations the Municipal Structures Act of 1998 included guidelines stating that political parties need to ensure that 50% of the candidates on the list were women and that women and men candidates are evenly distributed through the list. The latter means a “zebra style list”, which ensures that women candidates are not at the end of the list.50 The legislation also provided that there should be equal representation of women and men on the ward committees.51 South Africa has also committed itself to the SADC Gender and Development Protocol, ensuring that women occupy at least 30% of the positions in political and decision-making structures by the year 2015.52

In South Africa parties have also adopted quotas for women candidates; African National Congress (ANC) was the first before the local government elections of 2000 one to support 50% quota for women on proportional representation lists for local elections. This example has had impact on other parties as well. Three parties Azanian People’s Organisation (AZAPO), the Inkatha Freedom Party and the United Christian Democratic Party had over 30% of women on their lists.53

Also the South African Local Government Association (SALGA) has campaigned for 50/50 representation in councils. In June 2005 at the Women in Local Government Summit hosted by SALGA adopted the Benoni Declaration promoting 50/50 women representation for the next year’s elections.54 Since the legislation, mainly the Municipal Structures Act, has been in place, the number of female councillors has raised steadily in every local government elections. After the 2006 local government elections about 40 % of elected councillors were women.55

49 Ibid.
50 CLGF Local Government System in South Africa: (sine anno); Beall 2005, 10.
51 Ibid.
52 Beall 2005, 10.
54 Press Statement SALGA.
55 Electoral Institute of Southern Africa, Country Profile: South Africa.
Female councillors in South Africa
According to Simonen 2009

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<tr>
<th>Year</th>
<th>Women</th>
<th>Men</th>
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<tr>
<td>2000</td>
<td>29.6%</td>
<td>70.4%</td>
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<td>2006</td>
<td>40%</td>
<td>60%</td>
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6. THE SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION (SALGA)
The South African Local Government Association (SALGA) is an organisation mandated by the South African Constitution to assist in the comprehensive transformation of local government in South Africa from the pre-1994 regime to the new dispensation under the country's first democratically elected government. It was established in 1996.\(^5\)
In addition to this, SALGA acts as the voice of local government in provincial, national, regional and international matters; supports and strengthens the capacity of municipalities and serves as the centre for knowledge and information management.\(^6\)
SALGA also sits on intergovernmental committees and is consulted on all legislation affecting the local sphere of government. Besides SALGA the Constitution also recognises nine provincial local government associations as representatives’ of local governments.\(^7\)

7. THE ROLE OF TRADITIONAL AUTHORITIES IN LOCAL GOVERNANCE
One of the major issues to be tackled by the central government of South Africa, while pursuing decentralisation, was the position of the traditional leadership in the future governance of the country. In Constitution traditional leaders are recognised as having a role to play in municipal councils.\(^8\)
It also recognises the institution, status and role of traditional leadership according to customary law, and a traditional authority that observes a system of customary law.\(^9\)

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\(^6\) Mission of SALGA, website.
\(^7\) CLGF Local Government System in South Africa: (sine anno).
\(^8\) CLGF Local Government System in South Africa: (sine anno); Local Government: Municipal Structures Act No. 117 of 1998, Section 81.
of traditional leadership and authority is defined further in the Traditional Leadership and Governance Framework of 2003. The Act defines how traditional leaders and authorities have to organise and conduct their affairs.\textsuperscript{61}

Each traditional authority must establish a traditional council. The functions of the traditional councils include, among other things, to administer the affairs of the traditional community in accordance with customs and tradition, to support traditional leaders in the performance of their functions, and to participate in the development policy and legislation at local level as well as promote the ideals of co-operative governance and integrated development planning.\textsuperscript{62}

With regard to service provision, a traditional council may enter into a service delivery agreement with a municipality\textsuperscript{63}.

According to the Constitution the number of traditional leaders permitted to take part in municipal councils is limited to 20\% of the total number of councillors, but if the council has fewer than ten councillors, only one traditional leader may participate. When, however, a decision of the council will have direct impact on the traditional authority, the council must give the traditional leaders of that area the right to express their views on the matter.\textsuperscript{64}

\begin{center}
\textbf{SOUTH-AFRICA: COUNTRY FACTS}
\end{center}

\textbf{Independence:} 1910

\textbf{Capital:} Pretoria (population est. 1 million); note - Cape Town is the legislative and Bloemfontein the judicial center

\textbf{Administrative divisions:} 9 provinces; Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, North-West, Northern Cape, Western Cape

\textbf{Population:} 49 052 489 (2009 est.)

\textbf{Infant mortality rate:} 44 deaths/1,000 live births (2009 est.)

\textbf{Literacy:} 86.4\% (2003 est.)

\textbf{Languages:} IsiZulu 23.8\%, IsiXhosa 17.6\%, Afrikaans 13.3\%, Sepedi 9.4\%, English 8.2\%, Setswana 8.2\%, Sesotho 7.9\%, Xitsonga 4.4\%, other 7.2\% (2001 census)

\textbf{Religions:} Zion Christian 11.1\%, Pentecostal/Charismatic 8.2\%, Catholic 7.1\%, Methodist 6.8\%, Dutch Reformed 6.7\%, Anglican 3.8\%, other Christian 36\%, Islam 1.5\%, other 2.3\%, unspecified 1.4\%, none 15.1\% (2001 census)

\textbf{Last local government elections held:} in March 2006. The councillors were elected for a five-year-term.

\textsuperscript{61}Traditional Leadership and Governance Framework Act No. 41 of 2003, Preamble.
\textsuperscript{62}Traditional Leadership and Governance Framework Act No. 41 of 2003, Section 4.
\textsuperscript{63}Traditional Leadership and Governance Framework Act No. 41 of 2003, Section 5 (3).
\textsuperscript{64}CLGF Local Government System in South Africa: (sine anno); Local Government: Municipal Structures Act No. 117 of 1998, Section 81.
GDP: $489.7 billion (2008 est.)

GDP real growth rate: 2.8% (2008 est.)

GDP per capita: $10 000 (2008 est.)

Export commodities: gold, diamonds, platinum, other metals and minerals, machinery and equipment

Population without sustainable access to an improved water source: 12% (2004 est.)

People living under 1 $ per day: 10.7% (2005 est.)

Sources:
CIA World Fact Book
UNDP Human Development Report 2009
Adopted from CLGF’s The Local Government System in South Africa
(x) = discretionary services by the local authority

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<th>Trade &amp; industry</th>
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