

An Analysis of the Governance Constraints and Opportunities in a Federally-Structured Democracy: Perspectives from South Africa

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1. Introduction

South Africa is recognised as one of the most unequal societies on earth. According to a 2010 World Bank Report, the Gini coefficient for South Africa in 2009 was 63.14. According to the National Development Plan for 2030, South Africa hopes to reduce the level of inequality, as measured by the Gini coefficient, from the current rate of 0.69 to 0.6 by 2030.

South Africa is a constitutional democracy with executive powers vested in a President, a federally-structured, three-tier system of government and an independent judiciary. This decentralised system provides for governance structures at national, provincial and local levels, each with its own legislature and executive, but based on a system of interdependent, interrelated and co-operative government. The national, provincial and local levels of government have legislative and executive authority in their own spheres of influence. The 'federating units' are the provinces. Each province has its own provincial government, with legislative power vested in a provincial legislature and executive power vested in a provincial premier and exercised together with the other members of the provincial executive council. However, the powers of provinces are circumscribed by the South African Constitution which specifies their "functional areas" or competences in the spirit of "co-operative government".

This article poses the question: Does this federally-structured system contribute to both democracy and equity by promoting political participation and the equitable distribution of resources? In other words, does the system promote democratic processes and support social (racial, ethnic) cohesion and economic prosperity and equity between the various spheres of government?

2. Materials and Methods

This article is a result of an extensive literature study on federalism and federally-structured democracy with a focus on South Africa. Experiences of other federal states such as Nigeria are used to draw lessons and weigh the merits and demerits of federalism. Wehner (2000) observes that South Africa's Constitution describes the country as 'one sovereign democratic state' (section 1) with 'national, provincial and local spheres of government which are distinctive, interdependent and interrelated' (section 40). The national government is responsible for trade, finance, industry and labor, police, justice, defense, prisons, housing, and general administration. Provinces are responsible for redistributive services such as health and welfare (old-age, child-support, and disability grants); primary and secondary education; provincial roads and local economic development. Municipalities are responsible for providing water, electricity and refuse removal. In Africa, Botswana and Mauritius have been described as developmental states. South Africa aspires to be a developmental state; indeed policy-makers have already proclaimed the country as such (Edigheji, 2010:4 in Dassah, 2011: 598). The characteristics of a developmental state include a development-oriented leadership, autonomous and effective leadership, a production-oriented private sector and performance-oriented governance (Dassah, 2011: 593).

Heller (2009: 5) observes that:

deficits of representative democracy [manifest] in formal political equality and factual social inequality in developing democracies. As a result of both these deficits, democracies are marked by both participatory failures (who participates

and how they participate) and substantive failures (translating popular inputs into concrete outputs).

This has spawned a new literature on the 'quality of democracy and the question of democratic deepening' (Heller, 2009: 5).

Mosotho (2012) argues that public participation is still problematic in South Africa. He adds that while public participation is important to bridge the gap between communities and municipalities by promoting greater community involvement in the planning and implementation of services for the benefit of the community, this has been impaired by poor communication between citizens and municipalities; low literacy levels in poor communities, high unemployment rates and so on. Due to the lack of feedback from municipalities on service delivery to communities, local community members are reluctant to participate. Mosotho (2012) recommends that initiatives should be developed to build community capacity to engage with municipalities as well as strengthen current public participation mechanisms (such as the Integrated Development Planning consultation process, ward committee structures, public hearings and outreach programmes). Inman & Rubinfeld (2008) are of the view that federal governance in South Africa created a "hostage" game which pitted the majority-controlled central government and the elite-run provinces (such as the Western Cape) against one another. Inman *et al.*, (2008) argue that South Africa's peaceful transition from autocracy to democracy is the most significant political event of the last century and that the majority as well as the elite have reaped a significant economic dividend characterized by higher economic growth.

Dickovick (2012) argues that African federalism is characterised by *dominant parties* and *state bureaucracies*, as is the case in South Africa and Ethiopia; this has reduced the autonomy of provinces. He contends that this differs from the federalism practiced in other parts of the world such as Nigeria, where sub-national governments/provinces have substantial autonomy (semi-sovereignty) and there is a vertical separation of power. The federalism which South Africa and Ethiopia practice is a "holding together" type (Stepan, 1999) in which stability was the guiding principle and central state power was more important than local authority for the purposes of governance (Dickovick, 2012). In both cases, strong political parties have gained hegemony. Africa's federations are characterised by centralised administrative, political and fiscal power. This implies that provinces and local government have little room to maneuver.

Dickovick (2011) maintains that the African National Congress (ANC) of South Africa is a disciplined, top-down party; this was evident during the administration of Presidents Nelson Mandela (1994-1999) and Thabo Mbeki (1999-2008). Brancati (2009, in Dickovick 2012), observes that the opposition in South Africa is generally weak at the provincial and national level implying that the ANC has free reign to do as it wishes. Dickovick (2012) further contends that top-down limitations on federalism in Africa operate through:

- *Dominant party governance (political centralism)*
- *State control over expenditure (administrative centralism)*
- *Limited own-source revenues (fiscal centralism)*

These centralisms characterise South Africa. The ANC has been the majority ruling party since the demise of apartheid. The state controls revenue and expenditure to a large extent. Provinces in South Africa have limited fiscal muscle primarily because of their fragile and weak tax bases. Dickovick (2012) observes that provinces rely heavily on intergovernmental transfers from central government for survival.

The South African Constitution provides for transfers within the context of its "equitable share" for provinces in the annual Division of Revenue Act (Dickovick, 2012). The criteria used to determine these shares in terms of Section 214 include: the national debt, national obligations (the national interest); the fiscal capacity and efficiency of provinces, their developmental needs; economic disparities within and among the provinces (equity); the constitutional mandates of subnational governments (adequacy), the need for predictable revenue shares (predictability); and the need to be able to respond to emergencies (objectivity), etc (Wehner, 2000). According to Section 230 of the Constitution of South Africa, there are no restrictions on national government's borrowings; provinces are permitted to borrow for capital and recurrent expenditure in line with National Treasury regulations.

Revenues accruing to municipalities are limited to vehicle taxes, some user fees and property taxes. This has resulted in provinces having very limited resources of their own, heavy top-down party control, and strict control over expenditure by the centre to 'create an appearance of unitarism within formal federalism' (Dickovick, 2012). As a result, there has been 'consolidation of a federation with a strong center and a "missing middle" of weak provinces' (Ahmad, 2003 in Dickovick, 2012). Dickovick (2012) further argues that due to political centralism and party dominance, central government leaders have substantial influence over fiscal and administrative matters at the provincial level. Dickovick (2012) adds that this control is exercised through the Medium Term Expenditure Framework which imposes multi-year

budgeting across all spheres of government such that National Treasury approves provincial budgets in light of nationally approved priorities, for example, in education and health. Since the demise of apartheid, an estimated 95% of provincial spending has come from intergovernmental transfers ("equitable share" provisions) and conditional grants (National Treasury, 2010 cited in Dickovick, 2012). The center provides both conditional and non-conditional grants. Revenue sharing via the "equitable share" concept is entrenched in the Constitution (section 214) which requires national legislation to determine the equitable distribution of revenue which has been raised nationally. These funds have to be distributed to national, provincial, and local governments. The legislation establishes each province's equitable share and any other allocations to provinces so that they can fulfill their constitutional mandates and provide basic services to the citizenry (Wehner, 2000). Dickovick (2012) argues that in such a situation, provinces cannot experiment with policy, and are generally hamstrung in initiating policies that are responsive to local conditions. He also observes that there are no signs of fractures which may lead to political dissolution.

2.1 *Municipal dilemmas in federalism*

Kanyane (2011) argues that rural municipalities of South Africa are financially hamstrung because of structural imbalances between available local revenue sources and expenditure needs due to high levels of poverty within their jurisdiction. The capacity of rural municipalities to collect payment for services rendered is compromised by these levels of poverty and these municipalities are highly dependent on grants from the national or provincial government. If the grants were to be withdrawn, the municipalities would collapse because debtors' ledgers are in a shambles, accounts receivable and payable are not timeously cleared, and there are insufficient details about debtors to enable follow up. This reflects weaknesses in both revenue and expenditure management (Ababio *et al.*, cited in Kanyane, 2011). De Wet (2004: 8, cited in Kanyane, 2011) observes that the greatest challenges facing local municipalities are poor recording keeping; large indigent populations; boycotts by ratepayers aggravated by a culture of non-payment and consumers not being willing to pay for services. The Development Bank of Southern Africa (2004: 5 in Kanyane 2011), cited poor metering systems, tampering with meters, unreliable customer information, political opportunism and the lack of incentives and sanctions to encourage payment as factors hampering the efficient operation of municipalities. Bernstein (1998, in Kanyane, 2011) contended that about two-thirds of all municipalities in South Africa were highly stressed, with a third being financially non-viable. Furthermore, Lubbe and Rossouw (2005, in Kanyane, 2011) noted that the amounts owed to municipalities have reached alarming levels with serious consequences for provincial and national governments and the citizens of South Africa.

According to Wehner (2000), the proportion of provincial budgets allocated to social expenditure, namely, health, education and welfare rose from an average 78 percent in 1996-1997 to 85 percent in 1999-2000. Since expenditure on personnel and social security payments are determined by the national government, the provinces only control about 20 percent of their expenditure (Wehner, 2000). In terms of the Constitution (Section 100), the center has the power to issue a directive or take full responsibility should the province fail to fulfill its constitutional mandate. Five departments in Limpopo Province were placed under national administration in the 2011/2012 financial year because the province was in deep financial crisis. The province had made a request for a R700 million bailout as banks were reported to be refusing to grant it additional overdraft facilities. The departments affected included the provincial Treasury, the Education Department, Roads and Transport Department, and the Public Works Department, as well as the Department of Health and Social Development. Ironically, Limpopo Province is home to the world's largest reserves of platinum group metals. It also has rich deposits of chrome, vanadium, nickel and titanium and coal, gold, diamonds, copper, emeralds, scheelite, magnetite, vermiculite, silicon and mica reserves.

Wehner (2000) notes that, section 228 of the Constitution does not allow provinces to collect income tax, Value Added Tax, general sales tax or customs duties. They can only levy rates on property and surcharges on fees for services (section 229). Own-revenue collection declined from 4.2 percent of total provincial revenue in 1996-1997 to 3.8 percent in 1999-2000 due to poor billing and accounting systems in hospitals (Wehner, 2000). Wehner (2000) argues that the center has sufficient legislative power to put provinces on a leash and that resistance to the devolution of tax powers undermines the fiscal accountability of the provinces to citizens.

Wehner (2000) adds that there are benefits in maintaining central control, such as enforcing fiscal discipline. However, he notes that the costs outweigh the benefits in that the scarcity of resources is undermining the developmental capacity of provinces; low investment in critical social services has been compounded by corruption and poor delivery capacity. Wehner (2000) suggests that either the provincial system should be scrapped and replaced with an administrative tier under the direct control of the center, or full effect should be given to the constitutional role of the

provinces. He argues that these approaches would realign policymaking with budgetary and expenditure responsibilities with access to revenue.

3. Results and Discussion

Politics matters in understanding the dynamics of inequality in South Africa to the extent that the country is trying to undo the legacy of centuries of apartheid. South Africa reflects what I shall call a **unifederal state**, with centralised systems of revenue collection and the centre having significant control over expenditure at the local level. This may stifle provinces' creativity in terms of revenue collection and rolling out public services. The advantage of this system is the imposition of fiscal discipline from the centre.

Because service delivery backlogs manifest at the local level, protests against such backlogs tend to target local, rather than central government. All unspent money reverts to National Treasury. This limits the provinces' discretion in terms of how else they could deploy these resources, especially those that are constrained by performance capacity. It also suggests that context-specific interventions could be limited.

In South Africa there does not seem to be serious bifurcation of the party and state across the three tiers of government. In order to deepen South Africa's democracy, there is need to allow provinces greater leeway in financial, administrative and fiscal matters in order to promote citizen participation. This will allow provincial governments to focus on issues that address the economic and social needs of their immediate constituencies. As others have argued, South Africa is benefitting the elite. Such benefits should also cascade to the poor and previously marginalised communities and groups.

The setting of national performance standards and norms by the center has hamstrung provinces. Some have argued that the National Council of Provinces has not been effective in articulating the challenges which the provinces are facing. All borrowing falls under the scrutiny of central government.

One of the many challenges facing provinces in South Africa is the lack of institutional capacity. This also applies to many rural municipalities. Accounting and billing systems are very weak, with adverse implications for revenue collection. It could be argued that given their weak financial base, provinces could be exonerated from having to account for service delivery at the local level. This is not possible because the party (government) has a strong stranglehold on provinces' functions and mandates. Premiers have to tow the line prescribed by the center especially, given that the majority are employees of the ruling party.

What if these conditions which have created a Stepan framework in South Africa were to be removed, namely:

- *Dominant party governance (political centralism)*
- *State control over expenditure (administrative centralism)*
- *Limited own-source revenues (fiscal centralism)?*

In the absence of political centralism, the union may not hold. In the absence of administrative centralism, resources may not be used judiciously. In the absence of fiscal centralism, provinces may be able to compete and do more. However, the union may also not be able to hold. Budget constraints may fuel unrest, especially when municipalities fail to deliver on their mandates. The enormity of the challenges which the country is facing, including high rates of unemployment and inequality and poor access to health, sanitation, education and energy in poor provinces, requires re-thinking the current models of governance and leadership.

Ideally what is needed are fiscally independent provinces, with independent policy making authority, their own revenue sources and borrowing powers and leeway to exercise discretion for the good of the province. Once these ingredients are in place, a real developmental state, developmental provinces and developmental municipalities would emerge. A developmental state recognises and promotes merit, upholds the legitimacy of policy-makers at all levels by giving them the necessary support and discretion to make policies, marshalls resources, directs interventions and forges partnerships and collaborations with the private sector while instilling discipline across all sectors. One of the advantages of federalism is increased autonomy (semi-sovereignty). However, this should be weighed against the greater common good of the South African citizenry. The disadvantages of greater autonomy include threats of secession, actual secession, ethnic conflict and disintegration.

4. Conclusion

While federal politics aim to address poverty and inequality, the stranglehold on power and politics can be a disincentive for creativity and context-specific interventions to solve these problems at provincial level. Provinces have very little

discretion in terms of how resources are deployed by themselves as well as other tiers of government.

Intergovernmental relations as currently constituted have the potential to alleviate poverty and inequality provided there is less centralisation of administrative and fiscal powers. South African federalism has the potential to exacerbate or sustain current inequalities unless greater fiscal and administrative autonomy is granted to provinces.

South Africa needs political and economic stability to sustain growth. This should be undergirded by robust administrative, institutional, technical and political capacity at all levels of governance.

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