



LOCAL GOVERNMENT AND SUBSIDIARITY

"[I]t is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do."

Quadragesimo Anno, Pope Pius XI, 1931, 79.

1. Introduction

Subsidiarity is the principle that governance decisions should be made as close as possible to the people who are affected by them. It is also known as 'decentralization' or low-level governance. Whenever a matter (such as the construction of a new city hall or a proposal to ban heavy trucks in a residential area) can be handled effectively at a local level, it should be. Decision making should only be devolved upwards when it is absolutely necessary.

This briefing paper will discuss subsidiarity's historical links to Catholic Social Teaching. Following from that it will address some of the current institutional arrangements in South African local government, the extent to which subsidiarity is expressed within these arrangements, and the question of whether power in South Africa is adequately decentralized.

Subsidiarity has strong Catholic roots and was famously called one of the 'three cornerstones' of Catholic Social Teaching by Pope John Paul II. Notably, it was referred to in the papal encyclical *Quadragesimo Anno* of 1931, where Pope Pius XI, in his follow-up to Pope Leo XIII's *Rerum Novarum*, noted that the state had become overburdened with responsibilities arising from class conflict, and that wherever possible such responsibilities ought to be devolved downwards.

The relevant section reads:

"79. [T]hat most weighty principle, which cannot be set aside or changed, remains

fixed and unshaken in social philosophy: Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them.

80. The supreme authority of the State ought, therefore, to let subordinate groups handle matters and concerns of lesser importance, which would otherwise dissipate its efforts greatly. Thereby the State will more freely, powerfully, and effectively do all those things that belong to it alone because it alone can do them: directing, watching, urging, restraining, as occasion requires and necessity demands. Therefore, those in power should be sure that the more perfectly a graduated order is kept among the various associations, in observance of the principle of "subsidiary function," the stronger social authority and effectiveness will be the happier and more prosperous the condition of the State." (*Quadragesimo Anno*, 79 – 80)

Implementing subsidiarity requires careful attention to issues of solidarity¹ as well as subsidiarity. It is not simply a matter of sending power down to the lowest level possible, but of

building communities that are able to respond effectively to the needs of the poorest and weakest community members.

2. Subsidiarity in the South African Constitution

The South African Constitution does not refer to subsidiarity by name. However, section 151 does explicitly devolve power to municipalities, stating that:

“(3) 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.

(4) 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.”²

This clearly expresses an idea similar to subsidiarity. The Constitution contemplates local government as having broad autonomy to govern its own affairs, subject only to the Constitution and the Bill of Rights.

In South Africa local governments, or municipalities, are given several extremely important functions, chief among these being service delivery. The Constitution states that, *inter alia*,

“The objects of local government are –

- a. to provide democratic and accountable government for local communities;
- b. to ensure the provision of services to communities in a sustainable manner;
- c. to promote social and economic development;”³

It is clear that local government in South Africa is not only fairly autonomous within its sphere, but that it has very serious responsibilities. Service delivery (including roads, housing, water-supply and electricity distribution) is a major issue in South Africa, and while national government is tasked with leading and supporting this process, the implementation of these projects is supposed to take place at the local level. Many issues, such as transport and housing, are concurrent, which

means that responsibility for them is shared between national, provincial and local levels of government.

3. Local Government Arrangements in South Africa

Government in South Africa is arranged into three tiers: national, provincial and local. Local government is further subdivided into districts and municipalities, with the exception of metros, which unify both district and municipal functions. *Provincial* government is tasked with supporting all of the lower levels of government, namely, municipalities, districts and metros.

District municipalities are situated above local municipalities, but below provincial government. They are parallel with metropolitan municipalities, and their territories do not overlap with those of the metros. All of South Africa is divided into 52 districts. The majority (44) are district municipalities, while the remaining eight are metropolitan municipalities.⁴

Local municipalities are situated within district municipalities. A district municipality may contain one or more local municipality. Responsibility for issues like water provision may fall to a district municipality or to a local municipality, depending on which option is most cost-effective or best suits local circumstances.

Finally, *metropolitan* municipalities have exclusive control of local government issues within their territory, so they effectively combine district and local municipality functions and powers. These municipalities were put in place in order to unify planning and development for built up areas, or conurbations.

In total, there are 278 municipalities in South Africa, including district, metropolitan and local.

4. Practice and Theory

Unfortunately, local government in South Africa has struggled to deliver services. In principle local government is responsible for a great deal of service delivery, and has significant autonomy in this area. Consequently, it makes sense to briefly examine the question of whether local government has enough resources and power in order to ‘do its part’, as contemplated in the Constitution.

It should be kept in mind that when discussing the performance of different municipalities it is essential to be sensitive to the different contexts within which they operate. For example, the City of Cape Town has a completely different tax base, skills base and financial profile than the rural and impoverished Ndwedwe Municipality in northern KwaZulu-Natal⁵. The real question is how a municipality is doing compared to its peers who face similar challenges within a similar context.

Unfortunately, even with these caveats, local government performance can only be described as extremely uneven, at best. This can be seen from the high levels of service delivery protests, and from numerous issues of 'delivery failure', such as the lack of water delivery in Grahamstown; the faecal contamination of rivers in the Boland; the poor state of roads and pavements in numerous towns and villages; the long-term non-functioning of traffic lights in many Johannesburg suburbs; and the multiple examples of municipalities that fail, year after year, to obtain clean audits from the Auditor General.

Much of this is unsurprising, given the long list of problems that municipalities face. Many rural, impoverished municipalities do not have the skills base to address service delivery adequately. Shockingly, nearly half of South Africa's municipalities do not have any qualified engineers on their staff, despite service delivery being a key task, for which engineers are essential.⁶ This is obviously a major problem. Difficulties in developing human resources are a major issue, with rural municipalities struggling to attract and retain talented staff. The best people often exit municipalities at the earliest opportunity, attracted to either metros or higher levels of government, such as provincial or national, by increased salary packages and the greater prestige of these sectors of government. Stemming this continuous haemorrhage has been a losing battle.

This skills shortage can be attributed to both general skills shortages in South Africa, and to a 'deskilling' process that took place following the transition from apartheid. Mr Phindile Ntliziywana, a doctoral researcher at the University of the Western Cape, argues that affirmative action lead to large numbers of skilled personnel leaving the local government system in favour of new black appointees. However, these new appointees were not adequately trained, and weak training systems (including the abolition of qualifications frameworks that specifically

supported local government) exacerbated the problem.

In effect, he sees the post-apartheid local government situation as being one of 'devolution without capacity', as local government was given increased power by the Constitution, without a commensurate increase in capacity – and in the case of skills, an actual decay and loss of skilled personnel.

Linked to these issues is the question of funding. Currently, 41% of funding goes to national government, while 35% goes to provincial and 24% goes to local government⁷. Admittedly, national government has significant responsibilities, such as national defence and co-ordinating national policy, but service delivery should clearly be a top priority. While inverting this 'upside-down triangle' may not be feasible, some level of reallocation may be necessary in order to enable local government to deliver in the way it is meant to. If service delivery is the responsibility of local government, then it is essential that local government be supported and given access to the funds and skills needed to carry out this mandate.

It is also worth noting that some local municipalities – typically the metropolitan municipalities – often take on unfunded mandates, such as providing some social welfare schemes to assist poor people within their areas. This is to be applauded, since it is clear that national government alone cannot adequately address the enormous sea of poverty and unemployment that South Africa faces. However, questions have to be asked about the sources of funding for these projects. If national government is to pass on such programmes to local governments, it surely ought to consider funding them as well.

5. Too Many Laws?

Another issue hampering local government is the amount of legislation that complicates and governs local government. The motivation behind these pieces of legislation appears to be to manage corruption and to encourage competence in local government, which is a laudable objective. However, as Mr Ntliziywana has pointed out, the amount of legislation in this area may in fact undermine local government's ability to carry out its mandate.

Both the National Treasury and the Department of Co-operative Governance and Traditional Authorities have implemented extensive legislation over local government practices, relating especially to financial management and hiring practises. These pieces of legislation include the Performance Management Regulations of 2006, the Systems Amendment Act of 2011, and the 2014 Financial Misconduct Regulations Act.

However, Mr Ntliziywana argues that this plethora of legislation has harmed rather than helped local government, by setting up contradictory and conflicting regulations, as well as by creating a huge compliance burden for municipalities. This slows local government in delivering services, reduces government responsiveness, and undermines the autonomy of local government. Every hiring or procurement decision is subjected to a long line of 'tripwires' which municipalities have to navigate.

The frustration felt by national government is entirely understandable. Local government often fails to perform, but ever-increasing amounts of legislation will not deal with the fundamental failures at this level, which are driven by a lack of skills, inadequate political will and poor leadership. More legislation is not the answer – effective support and more accountability are essential to solving this problem.

6. Local Problems, Local Involvement

For most people, most of the time, local government is the most important and immediately relevant form of government. Few people interact with national government structures very often – perhaps when they file their taxes, or when they encounter the police. However, the municipalities, which supply water and garbage removal and electricity, are relevant every single day. Acknowledging the relevance of this type of government and empowering it to perform its duties adequately is crucial to reforming South Africa's political structures so that they serve the interests of everyday people. It is tempting to overlook local government. It lacks the glamour and high stakes of national politics. However, it is a very impactful, incredibly important part of the political dispensation of this country. Indeed, it is arguably the place where democracy is most directly and effectively realized.

Subsidiarity sounds simple enough, but simply devolving power without concomitant resources and local support will not do. A shift in mentality is needed – local government needs to be seen as the first, most important site of democratic action, rather than an afterthought. This mental shift is not just needed for civil servants or political analysts, however. Ordinary people must also get more involved in their local government structures. Many people may follow national issues such as Nkandla and Marikana closely, or indulge in rabidly partisan debates on these topics, yet when pressed will confess to having no idea who their local councillor is, or won't bother to turn out for local government elections. Admittedly, there is a 'chicken and egg' type problem here. Local government will not matter until people insist that it does matter, but because local government does not seem to matter, people don't put as much energy into it. However, the cycle of bad results, increased legislation from on high, and decreasing independence needs to be broken somewhere. Local governments will not reform until they come under meaningful pressure to do so, and grassroots, citizen-led participation is one of the best bets for long term, sustained improvements in local government. Accountability needs to come from below, not just from above.

7. Conclusion

Adopting subsidiarity as a principle requires a leap of faith. It requires a belief that people can govern themselves, make good decisions collectively, and hold their leaders accountable for their work. However, this is not a radical departure from the fundamental tenet of a constitutional democracy, which holds that the people, subject to a fair legal framework and the rule of law, are capable of ruling themselves as a nation by electing representatives and holding them accountable. If we accept this very common idea – which was seen as dangerous radicalism merely a few hundred years ago – then the next step is to apply it consistently at the local government level.

For this project to succeed, both national government and citizens on the ground need to be involved. Citizens need to get involved in their local government structures, and they need to demand better from their local councillors, mayors and city officials. National and provincial government need to reorganise their focus towards supporting local governments as

effectively as possible. Municipalities, metros and district municipalities need to be given the space and the tools to work, while receiving appropriate support and interventions where necessary.

Catholic Social Teaching has provided us with a compelling wellspring of thought on how to organize our societies. The Constitution has put in place an excellent legal framework to work with. What is needed now is hard work, organization

and accountability from everyone involved. The remaining time in the run-up to the 2016 local government elections provides an excellent opportunity for everyone to bend to the task of building responsive and effective local government, “by the people, for the people”⁸.

Mayibuye Magwaza
Researcher

¹ Pope John Paul referenced solidarity as another of the cornerstones of Catholic Social Teaching. At a recent CPLO roundtable discussion on Subsidiarity and Local Government, Father Anthony Egan SJ alerted participants to the importance of solidarity within discussions around subsidiarity.

² Constitution of the Republic of South Africa, 1996, Chapter 7.

³ Constitution of the Republic of South Africa, 1996, Chapter 7, Section 152, 1.

⁴ Currently South Africa has eight metros, based around East London, Cape Town, Johannesburg, Germiston, Pretoria, Durban, Bloemfontein and Port Elizabeth.

⁵ Ndwedwe Municipality is in Kwazulu-Natal, north of Durban and inland from the Dolphin Coast. According to figures presented at the roundtable by Mr Nishendra Moodley of PMG, less than 3% of households in Ndwedwe Municipality can be categorised as ‘high earner’, while nearly 35% of taxpayers in Cape Town are in this category.

⁶ Mr Moodley presented these statistics during his presentation at the CPLO roundtable on Local Government on the 3 June 2015.

⁷ Mr Moodley, *ibid*.

⁸ *Gettysburg Address*, Abraham Lincoln, 19 November 1863.