



# Sub-national policy influences

SOUTH AFRICA

*These are the first elections where investors and markets really care about the sub-national level. With its intensified pursuit of the devolution of powers, the DA-led Western Cape has provided a preview of what the loss of power in more provinces and municipalities by the governing ANC may mean for policy making and the sharing of powers and functions between different levels of government after this election. The dominance of the ANC at all levels of government has minimised confrontations and struggles for power between national, provincial and local government. This state of harmony is being eroded (positively one would argue). As such, we foresee provinces and municipalities tussling in public and under the constitutional framework or such conflicts, with national government for more powers, especially to influence and make policy decisions that will serve the specific areas they govern. While this may not happen immediately after the 2024 elections, it is likely to intensify after the municipal elections in 2026 and beyond.*

*That said, post-2024 elections we foresee the Western Cape province, which is in sync with municipalities in the province due to being governed largely by the same party, continue to pursue more powers as the Western Cape Provincial Powers Bill symbolises. Should Gauteng fall to an ANC-led coalition, we expect much more noise and for it to pursue policies that will lead to the attempted establishment of provincial banks, the strengthening of the township economy, and employment programmes and will be a focus given the FDI in the province. Importantly, Mpumalanga will be focusing on the just energy transition (JET).*

## Policy making powers of provinces

Generally, provinces have a limited practical role in the service delivery value chain. Important players in this value chain are provincial legislatures which are empowered to pass legislation concerning matters within a functional area listed in Schedules 4 or 5 of the Constitution of the Republic. Schedule 4 lists functional areas of concurrent national and provincial legislative competence while Schedule 5 lists functional areas of exclusive provincial legislative competence. The list of areas under schedule 5 is quite small, demonstrating the limited role of provinces even in legislating. The only notable areas in this list are perhaps provincial roads and traffic and provincial planning. That said, a provincial legislature can also pass legislation regarding matters outside these functional areas but are explicitly assigned to that province by national legislation; and matters for which a provision of the Constitution envisages the enactment of provincial legislation.

Among the duties of the premier of a province are developing and implementing provincial policy and preparing and initiating provincial legislation. This means that the position of premier may be very important, especially in a coalition setting.

Scrapping provinces has been suggested by several parties in the past. The arguments in favour of this idea have hinged on the limited role that provinces play in service delivery. Thembisa Godi's African People's

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Convention (APC) is one of the parties which have called for the abolition of provinces and district municipalities.<sup>1</sup> In 2017, the APC tabled a motion in the National Assembly to debate whether South Africa should abolish provinces and district municipalities and allocate more resources to local government.<sup>2</sup> The United Democratic Movement and the Economic Freedom Fighters (EFF) supported the motion. Earlier this year, the Azanian People's Organisation reiterated its call for provinces to be replaced by administrators that will report to national government. For obvious reasons, the African National Congress (ANC) and the Democratic Alliance (DA) have defended the existence of provinces.

In 2021, the National Treasury reported that "more than 43 per cent of nationally raised government revenue is spent in the nine provincial governments of the country".<sup>3</sup> Together with limited National Treasury oversight, this makes provinces susceptible to the practice of dispensing patronage.

It is worth noting that we expect the ANC to get 50% (with a downward risk) of the seats in the National Council of Provinces, which is lower than the 60% the party currently has. This is likely to slightly improve parliament's oversight function (holding the executive accountable), especially when coupled with a National Assembly where the ANC occupies less than 50% of the seats.

## Possible coalitions

It has become clear that it is going to be extremely difficult for parties to form coalitions that exclude the ANC at national level and in KZN and Gauteng, two provinces that are most likely to have no outright winner. At national level, it seemed highly probable last year that the ANC was going fall to the upper 40s in the 2024 elections and therefore form a coalition with smaller parties or the Inkatha Freedom Party (IFP). However, purely ANC-IFP or ANC-smaller parties coalitions are now less probable. This is largely a result of the emergence of the uMkhonto WeSizwe Party (MKP) which will take votes from both the ANC and IFP.

An ANC-DA coalition is the most feasible (numbers wise) option at national level and in Gauteng but would need the support of other parties (potentially the IFP) to achieve an outright majority in KZN. We say this because it is likely that parties will opt for club deals rather than a province-by-province approach, which would be less practicable. However, an ANC-IFP coalition in KZN may just be able to take power. Nonetheless, considering club deals, there is an increased possibility of an ANC, DA and IFP coalition government at national level, and in KZN and Gauteng (or a government of national unity, with other parties possibly added). The other option is the ANC-IFP-smaller parties. While this may work at national level, it may not be feasible at provincial level (particularly in Gauteng) as some of these parties would be too small.

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<sup>1</sup> APC. 2019. "African People's Convention 2019 Manifesto". *African People's Convention*. <https://socialsurveys.co.za/wp-content/uploads/2019/04/APC-2019-Election-Manifesto-3.pdf>

<sup>2</sup> Parliament of RSA. 2017. "Provinces and district municipalities must be scrapped – Themba Godi". <https://www.parliament.gov.za/news/provinces-and-district-municipalities-must-be-scrapped-themba-godi>

<sup>3</sup> National Treasury. 2021. "Publication of the Provincial Budgets and Expenditure Review – 2015/16 To 2022/23 and Supplementary Book". *National Treasury*. [https://www.treasury.gov.za/comm\\_media/press/2021/2021122101%20Media%20Statement%20-%202021%20Provincial%20Budgets%20and%20Expenditure%20Review.pdf](https://www.treasury.gov.za/comm_media/press/2021/2021122101%20Media%20Statement%20-%202021%20Provincial%20Budgets%20and%20Expenditure%20Review.pdf)

We are however mindful of certain risks. In Gauteng, an ANC-EFF coalition remains probable due to the relationship between the ANC Gauteng leadership (in particular Panyaza Lesufi) and the EFF. That said, we expect the will of the ANC national leadership, which has already expressed its opposition to the current relationship between the ANC and EFF in Gauteng, to prevail given that after a poor showing the provincial leadership will be weakened. Additionally, an ANC-EFF coalition in Gauteng may also be made impossible by the numbers if the ANC falls to the lower 30s.

In the Western Cape, we expect the DA to retain the province with a very narrow margin. As such, there will be no need for a coalition government. We however expect the DA to bring its experience from running the Western Cape into the coalitions in Gauteng and KZN, which could be very important if the two provinces are to chart a path that is not dependent on the national government. We must recall that the DA is openly pro-federalism.

[A reminder that we will be publishing our full elections forecast which will also delve into coalition scenarios.]

## Areas of concern for provinces

Parties have become increasingly vocal about the devolution of powers from national to provincial and local governments. The DA has been the most vocal on the issue, given that it already runs a province. The party has been joined by the IFP as evidenced by the KwaZulu-Natal (KZN) Service Delivery Pact between the two parties, ActionSA, and the Freedom Front Plus which has called for the devolution of policing powers to the provincial and regional level. Below, we discuss some issues which we believe will be at the centre of struggles for power between different levels of government. In particular, we focus on areas where signs of contestation are already showing and especially areas in which provincial powers are limited. This is why we do not devote much attention to areas such as healthcare, roads and education, which although important, are already the responsibility of provinces. We also discuss the Western Cape as a case study of a province that is governed by a party that is not in the national government.

### Policing

The DA and its Western Cape government have for some time now argued for the devolution of policing to provinces, especially those that can demonstrate that they can improve it.<sup>4</sup> The party has argued that the minister of police can rely on section 99 of the constitution (which governs how a cabinet member may assign functions or powers to a member of the executive council or municipal council), read with section 206 (political responsibility over policing). The IFP takes this a step further and promises to promote the establishment of municipal police services and channel the South African Police Service (SAPS) budget towards functions such as public order and visible policing. The party also wants more specialised law enforcement units and resources for (community) policing forums to tackle gangs and criminal syndicates.

While the constitution indeed provides for some form of devolution of policing to provinces, it is difficult to foresee this happening given post-election political dynamics. The ANC has so far resisted calls for the devolution of policing powers, with police minister, Bheki Cele, citing section

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<sup>4</sup> DA. 2022. "Western Cape government believes devolution of policing to provinces is a no-brainer". *Democratic Alliance*. <https://www.da.org.za/2022/07/western-cape-government-believes-devolution-of-policing-to-provinces-is-a-no-brainer>

205(1) of the constitution which states that "the national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government". Reliance on section 99 – which empowers a member of the cabinet (in this case the minister of police) to "assign any power or function that is to be exercised or performed in terms of an Act of Parliament to a member of a provincial Executive Council or to a Municipal Council" – would depend on political dynamics.<sup>5</sup> Such an assignment requires a proclamation by the president. Post the election, devolution would therefore be heavily dependent on the composition of the national government (cabinet in particular).

All the parties agitating for devolution are highly unlikely to win the national election outright. They are also unlikely to win that majority as the Multi-Party Charter (MPC) collective. The best chance of achieving devolution for these parties lies in them being part of another governing coalition, which will likely include the ANC. Of these parties, the DA and IFP are the most likely to be part of a governing coalition. However, we would not expect the ANC to hand the police ministry to these parties.

The IFP will be in a good position to promote the establishment of municipal police services in KZN. The SAPS Amendment Act of 1998 provides for the establishment of municipal police services. The Act prescribes that a municipality can apply to the Member of the Executive Council (MEC) responsible for safety and security to establish a municipal police service for its area of jurisdiction. The responsible MEC may only approve the application if it meets certain conditions, after consultation with the National Commissioner of Police and after the approval of the MECs responsible for local government, finance, transport and traffic matters.<sup>6</sup> In addition to governing several municipalities, we expect the IFP to win a sizeable vote share in KZN, and possibly form part of a governing coalition. As such, it may record some success in establishing municipal police services. However, the party has a weak lobbying machinery, and we would not be surprised if even with such power, it is unable to actualise this policy.

It is therefore difficult to foresee the devolution of policing powers especially to provinces, at least during the term of the next administration. However, the DA will continue to advocate this across all provinces it may govern (most likely through coalitions).

## JET and energy

At a sub-national level, energy is becoming an increasingly important policy issue, largely because of load shedding and JET. Energy-related policies which affect sub-national levels, are largely made at a national level. Regarding load shedding, the DA promises to incentivise municipalities in good financial standing through an enabling regulatory environment to generate and buy their own electricity.<sup>7</sup> The ANC has in the past recommended that regulations be put in place to enable municipalities to partner with independent power producers so that they can deliver electricity to local communities. This resolution found expression in 2020 when the government gazetted changes to the Electricity Regulation Act relating

<sup>55</sup> Section 99 of the Constitution of RSA, 1996.

<sup>6</sup> South African Police Service Amendment Act 83 of 1998.

<sup>7</sup> DA. The DA's Rescue Plan for South Africa: 2024 Elections Manifesto. *Democratic Alliance*. <https://cdn.da.org.za/wp-content/uploads/2024/02/16143750/DA-Election-Manifesto-2024.pdf>

to new generation capacity to enable municipalities in good financial standing to procure or generate their own electricity.

The DA also promises to promote prosumers, which would see electricity users who generate more than they use, sell it to the grid. The party states that it would incentivise this through a standard payment wherever it governs. Accordingly, in February the City of Cape Town announced that the first round of applications for its "Cash for Power" programme would be open until 8 March 2024. The programme enables residential households to earn cash by selling excess power from their solar PV generation systems to the city.<sup>8</sup> The City of Johannesburg's City Power announced its solar feed-in tariff scheme in mid-2023 but is yet to implement it.<sup>9</sup> This is to mention just a few municipalities that already enable residents to sell excess power back to the grid. Parties make several promises about energy. For instance, the ANC promises to install solar water geysers in working-class and poor households to support job creation and local manufacturing.<sup>10</sup> The IFP promises to install solar panels in all the new government houses it builds. We must mention that housing falls under Schedule 4.<sup>11</sup> The EFF promises a municipal conditional grant to assist municipalities implement hybrid and off-grid energy solutions where practical and necessary to promote local energy resilience and sustainability.<sup>12</sup> These promises would not result in any significant policy shifts.

Ultimately, at a sub-national level, the most important developments will relate to the JET. Mpumalanga is one sub-national actor that will be a prominent feature in transition-related conversations due to the central role coal mining and related activities play in its economy. As a result of the transition, the province will likely face disproportionately high job losses. To protect the livelihoods of these workers, the province will need more short-term compensation in the form of retraining and social protection measures such as temporary cash transfers and early retirement, as well as the creation of a new, labour-absorbing green economy in the province and the coal-mining municipalities in particular.<sup>13</sup> Provinces such as the Free State and Limpopo will be affected by the transition (transitioning out) but to a lesser extent compared to Mpumalanga. The transitioning in process will affect the whole country and thus be handled at the national level.

Mpumalanga is likely to remain under the leadership of the ANC after the elections. As such, we expect more effort to be directed at managing the concerns of the coal lobby and labour and delaying the transition rather than devising sub-national (especially provincial) plans. As such, much of the

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<sup>8</sup> City of Cape Town. 2024. "Cape Town opens Cash for Power residential applications". *City of Cape Town*. <https://www.capetown.gov.za/Media-and-news/Cape%20Town%20opens%20Cash%20for%20Power%20residential%20applications>

<sup>9</sup> Hanno Labuschagne. 2024. "Best cities in South Africa for selling extra solar power". *MyBroadband*. <https://mybroadband.co.za/news/energy/530933-best-cities-in-south-africa-for-selling-extra-solar-power.html>

<sup>10</sup> ANC. 2024. "ANC 2024 Elections Manifesto. *African National Congress*. <https://www.anc1912.org.za/wp-content/uploads/2024/02/ANC-2024-Elections-Manifesto.pdf>

<sup>11</sup> IFP. 2024. "13-Point Manifesto Plan. *Inkatha Freedom Party*. <https://www.ifp.org.za/wp-content/uploads/2024/03/Inkatha-Freedom-Party-2024-Manifesto.pdf>

<sup>12</sup> EFF. 2024. "2024 Election Manifesto. *Economic Freedom Fighters*. <https://effonline.org/wp-content/uploads/2024/02/A5-EFF-2024-Manifesto-full-version.pdf>

<sup>13</sup> Intellidex. 2023. "Funding social justice in the energy transition: A role for private sector financing at scale?". *Intellidex*. <https://www.krutham.com/reports/funding-social-justice-in-the-energy-transition/#>

policies aimed at cushioning workers in the coal mining value chain will come from the national government.

## Water

Water has become one of the biggest challenges for the country in recent years and some communities have been without access to piped water for months. Municipalities are primarily responsible for water provision but “water and sanitation services limited to potable water supply systems and domestic wastewater and sewage disposal systems” fall under part B of Schedule 4. This means that water is indeed a local government matter but the national and provincial governments have a monitoring and oversight role to play. As municipalities have been battling to provide water, the ANC is proposing giving more powers to national and provincial governments to intervene where municipalities are struggling. This would be the reverse of the general devolution advocacy. On the other hand, the DA in KZN has promised to establish a provincial infrastructure agency dedicated to solving the water and sanitation crisis if it is elected to power.<sup>14</sup> The agency would be responsible for facilitating water infrastructure projects and pooling finances through public-private partnerships.

The water issue is quite contentious as multiple actors are involved (municipalities, water boards, and national and provincial governments). As a result, when there are prolonged water outages, it is common for any of these actors to shift responsibility for the challenges to the other. For example, we have witnessed the Cities of Ekurhuleni and Johannesburg blaming some recent outages in certain areas on Rand Water. However, water supply challenges are undoubtedly caused by several factors, which is perhaps why it is not easy to hold a single actor responsible. These include outdated and dilapidated infrastructure which is struggling to cope with increased water demand; sabotage by water tanker operators (water mafia), including infrastructure vandalism; demand exceeding supply; the delay in the completion of phase two of the Lesotho Highlands Water Project (for Gauteng in particular) and many others.

It has become more difficult for provinces to play a facilitative role between municipalities to ensure a coordinated response to water challenges. As municipalities and provinces are now often governed by different parties, these challenges are sometimes used for politicking, especially in rural areas. With national and provincial governments set for coalitions, a coordinated response to these challenges is unlikely. We thus expect to see isolated and fragmented responses by municipalities which will likely be frustrated at other government levels.

## Infrastructure

While the Department of Public Works and Infrastructure is responsible for infrastructure coordination - which means it has to integrate and accelerate all public infrastructure development and determine a long-term vision for infrastructure delivery across the sector<sup>15</sup> – municipalities and provincial governments are responsible for the construction and maintenance of much of the infrastructure that is decaying. For example, the roads for which

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<sup>14</sup> Willem Phungula. 2024. “DA to set up KZN water agency to beat taps running dry”. IOL. <https://www.iol.co.za/dailynews/news/da-to-set-up-kzn-water-agency-to-beat-taps-running-dry-39e0e2ec-380f-4bce-993b-620cde1ab218>

<sup>15</sup> Parliament of RSA. 2020. “Overview of the Infrastructure Development Act and the Role Of Public Works And Infrastructure”. *Parliament of RSA*. [https://static.pmg.org.za/200902PCPW1\\_-\\_Overview\\_of\\_the\\_Infrastructure\\_Development\\_Act\\_August2020\\_Final.pdf](https://static.pmg.org.za/200902PCPW1_-_Overview_of_the_Infrastructure_Development_Act_August2020_Final.pdf)

national government is responsible (mainly through the South African National Roads Agency Limited) tend to be in a generally better condition compared to roads that are the responsibility of municipalities and provincial governments. The concerning state of the provincial road network has been acknowledged by both National Treasury and the Department of Transport.

Challenges in the infrastructure space at the sub-national level (especially in municipalities) include capacity and skills constraints, funding constraints, specifically inadequate budget allocation to the maintenance of municipal infrastructure assets.<sup>16</sup> While Gauteng has stressed the need for alternative funding models to conditional grants, especially the municipal infrastructure grant, we have recently witnessed municipalities, including metros in Gauteng and KZN, forfeiting portions of conditional grants to the National Treasury due to inadequate spending. Considering the infrastructure backlog that eThekweni for instance faces, partly due to the 2022 floods, forfeiting funds to the National Treasury or applying for rollovers signals a lack of proper planning. Therefore, apart from increased infrastructure vandalism and theft, the construction mafia and genuine cases of funding constraints, the decay of municipal infrastructure is largely a product of municipal-level dynamics rather than a policy issue.

## Western Cape

The Western Cape province, led by the DA, is vigorously spearheading the devolution agenda and pursuing powers for itself through the Western Cape Provincial Powers Bill. According to the bill, its goal is to “create an overarching framework within which subjects for specific provincial legislation, regulations and policies, proposed national legislation and requests for the delegation of national competencies will be considered.”<sup>17</sup> This includes identifying and remedying the failures of the national government; promoting the assertion of existing provincial powers; actively seeking the assignment or delegation of additional powers; mandating the Western Cape government to prepare reports and draft bills to fulfil those objects; and creating a mechanism for the Western Cape Provincial Parliament to introduce national legislation in the National Council of Provinces through its delegates. Clause 3 of the bill lists policing, public transport, energy, trade and harbours as the five areas where the province should “assert existing powers or seek additional powers”.<sup>17</sup>

The bill has received mixed reactions. The GOOD party for instance argued that the bill is unnecessary because the Constitution already provides for the assignment of functions from the national sphere to the provincial sphere, including via section 99. The party also argued that the Bill is unconstitutional because it transgresses Section 41(1)(f) and (g) of the Constitution which stipulate that all spheres of government must “not assume any power or function except those conferred on them in terms of the Constitution” and “exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere”.<sup>18</sup> It is worth noting that policing (with specific

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<sup>16</sup> Gauteng. 2023. “State of Municipal Infrastructure”. *Gauteng Provincial Government*. [https://www.parliament.gov.za/storage/app/media/Pages/2023/05-09-2023\\_Provincial\\_week/gauteng/State\\_of\\_Provincial\\_and\\_Municipal\\_Infrastructure\\_Sep\\_tember\\_2023\\_Prov\\_week.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2023/05-09-2023_Provincial_week/gauteng/State_of_Provincial_and_Municipal_Infrastructure_Sep_tember_2023_Prov_week.pdf)

<sup>17</sup> Province of the Western Cape. 2023. “Western Cape Provincial Powers Bill”. [https://www.wcpp.gov.za/sites/default/files/WC-Bill5-2023-GJ\\_WC-Bill05-2023-GJ.pdf](https://www.wcpp.gov.za/sites/default/files/WC-Bill5-2023-GJ_WC-Bill05-2023-GJ.pdf)

<sup>18</sup> GOOD. 2024. “DA’s Western Cape Provincial Powers Bill Is A Political Manifesto Masquerading As Legislation”. *GOOD*. <https://forgood.org.za/das-western-cape-provincial-powers-bill-is-a-political-manifesto-masquerading-as-legislation/>

requirements), public transport and trade appear in Schedule 4 of the Constitution which specifies functional areas of concurrent national and provincial legislative competence. Energy and harbours do not appear on either Schedules 4 or 5 which lists functional areas of exclusive provincial legislative competence.

Ultimately, whether the bill is passed or not, the success of the devolution agenda is largely dependent on the usage of section 99. As such, an important consideration will be who the national ministers responsible for areas in which the Western Cape wants to assert existing powers or seek additional powers are. It would also be interesting to see whether the DA would pursue devolution with as much vigour if it were to form part of the national government after May 29. We say this because the party has based its argument for devolution (at least in the bill) on the national government's failure to provide certain services.

The one area the DA has been pushing hard for is the devolution of passenger rail services. The City of Cape Town has been at the forefront of efforts to ensure that national government eventually devolves rail services. In particular, the city has been pushing for government to develop and implement a national rail devolution strategy (particularly passenger rail), as per the White Paper on National Rail Policy, which committed to have this completed by 2024. The issue has become a cause of tension between the City of Cape Town and the national government. Cape Town Mayor Geordin Hill-Lewis recently asked President Cyril Ramaphosa to commit to a deadline for a national devolution strategy, given that his (Ramaphosa's) term will end soon. Meanwhile, the DA recently stated that the national devolution strategy will not be completed in 2024 despite Ramaphosa's assurance.<sup>19</sup> The party reiterated that the City of Cape Town's preliminary financial analysis and impact assessment report showed that a functioning rail service could sustain 51,493 direct and indirect jobs and add R11bn to the local economy each year.<sup>19</sup>

## Conclusion

We are approaching an era in South African politics where sub-national government actors will seek a louder voice in policy issues in order to deliver upon their promises, which may be different from those of the national government. However, at provincial level only the Western Cape, Gauteng and to a lesser extent KZN possess the expertise to embark on a province-specific policy agenda even if it differs from national government plans. Out of these three provinces, only the Western Cape is likely to remain with a government that does not include the ANC. As such, we are not expecting a sudden surge in sub-national policy influence. We should however expect Mpumalanga to become a more involved policy actor as the energy transition intensifies. Moreover, we expect the DA to continue to propose ideas both in the Western Cape and elsewhere especially where the role of the private sector and the importance of funding and bankability are concerned. This is because to fulfil ambitious policy commitments, additional funding for certain projects implemented by sub-national government actors may be required. The EFF will of course insist on a statist approach, including insourcing of workers, while the IFP's intra-coalition influence will be limited. However, the party (IFP) is not known for good governance at a local level.

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<sup>19</sup> DA. 2024. "Derailed: How the DA will save trains in the Western Cape". *Democratic Alliance*. <https://www.da.org.za/2024/03/derailed-how-the-da-will-save-trains-in-the-western-cape>



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