



cooperative
governance

Department:
Cooperative Governance
REPUBLIC OF SOUTH AFRICA

**Address by the Director General of DCOG – Ms Avril Williamson
On the occasion of the NCOP Workshop**

**Policy Application of Cooperative Governance and Intergovernmental Relations:
Exploring the Policy Framework and Legal Jurisprudence in the meaning and
application of Cooperative Governance and Intergovernmental Relations in South
Africa**

Programme Director
Honourable Chairperson of the National Council of Provinces
Deputy Chairperson for the NCOP
Honourable Minister and DMs for Cooperative Governance and Traditional Affairs
Premiers present here today
The President of SALGA
Members of Parliament
Members of Provincial Executives
The Chairperson of the Municipal Demarcation Board
Auditor General
AND all protocol observed

I wish to commend the NCOP for convening this workshop which provides a platform for all of us to appreciate the role and importance of cooperative governance and intergovernmental relations in order to realize effective service delivery to our communities.

Following our transition into democracy, government set out on a difficult task, a task of ensuring the distribution of basic resources that citizens depend on like water, electricity, sanitation, infrastructure, land, and housing.

The foundation of this work is premised on redressing the injustices of our past, where prior to democracy, the provision of basic services excluded the majority of our South African population. With this enormous task at hand, we adopted the Constitution of the Republic of South Africa, 1996, which established that the three spheres of government cooperate with one another in mutual trust and good faith; and promote effective intergovernmental relations.

The principles of cooperative government and intergovernmental relations recognises the interdependence of the three spheres of government in South Africa (namely the national, provincial and local spheres) which are distinctive and interrelated and place a duty on the spheres of government to respect each other's powers, functions and institutions and to inform each other of new policies.

The Intergovernmental Relations Framework Act of 2005 (IGRFA) sought to formalise cooperation in the three sphere system of government, and in so doing to implement section 41 of the Constitution.

Section 4 of the Intergovernmental Relations Framework Act, 13 of 2005 states that the objective of the Act is to provide (within the principle of co-operative government set out in Chapter 3 of the Constitution) a framework for the national government, provincial governments and local governments, and all organs of state within those governments, to facilitate co-ordination in the implementation of policy and legislation, including –

- a. coherent government
- b. effective provision of services;
- c. monitoring implementation of policy and legislation; and
- d. realisation of national priorities

Although the Intergovernmental Relations Framework Act (Act 13 of 2005), makes provision for specific implementation protocols in conducting intergovernmental relations as well as the internal procedures of intergovernmental structures, the relationship between these structures and institutions is not always clear.

As we explore the Policy Framework and Legal Jurisprudence in the application of Cooperative Governance and Intergovernmental Relations in South Africa, allow me to reflect on various court rulings where the Constitution was used in judgments against the three sphere of Government.

It is also important to note from the onset that two very important Departmental projects, namely the State of Local Government Support and the 21 Year Review of Local Government currently underway, also seek to critically review the current system of Cooperative Governance and Intergovernmental Relations and its complexities. It is fair to suggest that the IGR is one of the most contested areas in the configuration of the three spheres as it directly questions the content element of powers and functions when accountability is sought for dysfunctionality in local government.

The District Development Model (DDM), which we will discuss later, is a vehicle that can help us drive the content understanding for all sectors and spheres.

Honourable members,

I would like to take this opportunity to outline the conceptual difference between co-operative government and intergovernmental relations which is evident in the reference

made to the principles of co-operative government and intergovernmental relations in Chapter 3 of the Constitution.

Cooperative government is a fundamental philosophy of government (constitutional norm) that governs all aspects and activities of government and includes the deconcentration of power to other spheres of government and encompasses the structures of government as well as the organisation and exercising of political power

Intergovernmental relations is specifically concerned with the institutional, political and financial arrangements for interaction between the different spheres of government and organs of state as stipulated in the Constitution. **Intergovernmental relations is one of the means through which the values of cooperative government may be given institutional expression and may include executive or legislative functions of government.**

Cooperative government represents the basic values of the government as stipulated in Chapter 3. Section 41 (2) and other provisions of the Constitution and the implementation of these values through the establishment of structures and institutions. Cooperative government is a partnership between the three spheres of government where each sphere is distinctive and has a specific role to fulfil and should promote constructive relations between them. Cooperative government does not ignore differences of approach and viewpoint between the different spheres but encourages healthy debate to address the needs of the people they represent by making use of the resources available to government. *This is probably one of the reasons why in Premier, Western Cape v President of the Republic of South Africa 1999 (3) SA 657 (CC), the Constitutional Court stated at paras 54-55 that the provisions of Chapter 3 are designed to ensure that in fields of common endeavour the different spheres of government co-operate with each other to secure the implementation of legislation in which they all have a common interest.*

Although the principles of cooperative government and intergovernmental relations recognise the distinctiveness, interdependence and interrelatedness of the three spheres of government, this was interpreted by the Constitutional Court in Independent Electoral Commission v Langeberg Municipality 2001 (3) SA 925 (CC), at para 26 of its judgment, to mean that these spheres are interdependent and interrelated in the sense that the *functional areas allocated to each sphere cannot be seen in isolation of each other, instead they are all interrelated.* This means that none of these spheres of government nor any of the governments within each sphere have any independence from each other. However, it is interesting to note that the High Court in its judgment in Metropolitan Council v Minister for Provincial Affairs and Constitutional Development & Others 1999 (11) BCLR 1229 (T) *stated at para 29 that the apparent autonomy and independence of the local government sphere is relative and limited by unequivocally expressed constitutional restraints. The court also stated that the status of local government is, to a large extent, that of a junior partner in the trilogy of spheres which make up the government of the country.*

Honourable members,

A relationship of interdependence and interaction between government institutions as well as civil society is, without a doubt, necessary. Section 41(2) of the Constitution stipulates that an Act of Parliament must establish or provide for processes, structures and institutions to promote and facilitate intergovernmental relations and provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes.

This is evident as we witness critical active citizenship through an increase in civil society and individual citizens challenging Government in South African Courts. This coupled with highly contested Local Government political and administrative space as we entered Coalition politics, will further necessitate robust Frameworks and Acts that will hold ground when legally challenged in Courts.

Section 42(1)(h)(vi) of the Constitution also provides that all spheres of government and all organs of state within each sphere must cooperate with one another in mutual trust and good faith by avoiding legal proceedings against one another. Therefore, it was in recognition of this provision that the Constitutional Court in the Uthukela District Municipality v President of the Republic of South Africa 2003 (1) SA 687 (CC) ruled in para 22 that organs of state are obliged to avoid litigation against one another irrespective of whether special structures exist or not. This means that all extra-judicial avenues for resolving a dispute must be exhausted first before the affected parties may resort to court litigation.

The jurisdictional diversity of intergovernmental relations is revealed by the number and types of governmental institutions, for example institutions and government departments on national and provincial level, while the concept of intergovernmental relations has to be formulated largely in terms of human relations and human behaviour. Intergovernmental relations includes the officials' continuous, day to day patterns of contact and exchanges of information and views, where policy is generated by interactions among all public officials in the different spheres of government.

Some examples of co-operation in South Africa can be grouped as **legislative cooperation**, which refers to the National Council of Provinces (NCOP) ensuring that provincial needs and interests are represented in the national legislative processes; **Judicial cooperation** which refers to where institutions and functionaries of the judicial authority meet to interpret the Constitution such as meetings of judges of the High Court and the Supreme Court of Appeal, as well as meeting of judges of the Constitutional Court; and **Administrative cooperation** which is the co-operation of public officials serving in the national and provincial spheres of government. **Officials rendering the same services on national and provincial departments could exchange information concerning mutual interests.**

Current IGR Experiences

COGTA research has shown that the environment within which IGR structures function is fairly broad. The NDP further reflects that one of the problems in the current intergovernmental system is that intergovernmental relations' structures are not strategic in that they are not fulfilling their intended objective of acting as a platform for co-ordination across the spheres. IGR is a political system and is a fluid process of interactions between spheres and the key role-players therein. **The effectiveness of the IGR system may really only be assessed by the extent to which it translates developmental policy intent into actual service delivery outcomes through cooperative government in policy and planning, budgeting, implementation and monitoring and evaluation processes across and within the three spheres of government.**

With respect to resolving identified problems, the NDP advocates improving coordination between spheres rather than resorting to creating new intergovernmental structures. In terms of improving coordination between the spheres the NDP proposes a two-pronged approach that distinguishes between routine and strategic coordination.

The NDP suggests that coordination problems be broken down into specific issues which can be dealt with through horizontal coordination which would make it easier to build constructive working relationships at the level where they are needed. Routine coordination is particularly relevant where the problems relate to implementation more than policy formulation. This requires that responsibility is delegated to officials at appropriate levels, together with the necessary guidance and moving away from a hierarchical system where it is expected that all coordination agreements will be formalised at the highest level. For those coordination problems that arise because of disagreements between departments or gaps that no department is dealing with, high level coordination needs to take place on strategic issues.

Currently there is no national legislation regulating interventions in provinces in terms of section 100. In the case of municipalities, Chapter 13 of the Local Government: Municipal Finance Management Act, 2003, regulates section 139 interventions in municipalities but only where the cause of the intervention is of a financial nature. There is no legislation to regulate interventions in municipalities arising from other causes. The Intergovernmental Monitoring, Support and Interventions (IMSI) Bill is therefore intended to fill this void and to regulate interventions in terms of both sections 100 and 139. However, in order not to encroach on the area already covered by the Municipal Finance Management Act, the Bill will apply to discretionary financial interventions and section 139(4) and (5) interventions only to the extent that the Bill's provisions are not inconsistent with the Municipal Finance Management Act.

The purpose of this Bill is to provide for the supervision of provinces and municipalities. Supervision entails not only intervening in a province or municipality when executive obligations are not fulfilled, but also their monitoring to identify provinces and municipalities that are experiencing difficulties with the fulfilment of their executive

obligations and, where necessary, the provision of targeted national or provincial support in order to avert defaults in service delivery. Targeted support is additional to the “normal” support given to provinces and municipalities to enable them to manage their affairs and exercise their powers and functions.

In moving Towards an improved inter-governmental relations and cooperative government

The District Development Model (DDM) is a necessary all of Government and all of Society reform and a practical Intergovernmental Relations (IGR) mechanism for all three spheres of government to work jointly and to plan and act in unison and solve silo’s, duplication and fragmentation. The model consists of a process by which joint and collaborative planning is undertaken at district and metropolitan level together by all three spheres of government resulting in a single strategically focused Joined-Up plan (One Plan) for each of the 44 districts and eight metropolitan geographic spaces in the country.

There is widespread acknowledgement that achieving integrated development through South Africa’s system of three spheres of government and a two-tier local government system is institutionally complex. This poses challenges in terms of intergovernmental relations and cooperation in realizing the DDM ideals especially since each sphere, sector or entity has its distinct constitutional powers, functions and responsibilities. It is for this reason that empowering provisions in the Intergovernmental Relations Framework Act of 2005 is sought to provide a legal framework for the implementation and institutionalization of the DDM.

One such empowering provision is section 47(1)(b) of the IGRFA that prescribes that the Minister responsible for COGTA promulgate regulations that would frame the coordination and alignment of development priorities and objectives across the three spheres of government. The gazetting of the regulations by end March 2022 would enable COGTA to strengthen its coordination of the Joined-Up plan (One Plan) vertically and horizontally across the three spheres of government through the identified DDM IGR platforms and structures in the regulations. The Model is firmly based on analysis of previous and current initiatives to improve developmental Local Government and IGR wherein developmental change is shaped and owned at local level in partnership with communities, citizens and social actors.

The successful functioning of Local Government is critical in this regard but insufficient on its own without more cohesive governance and overall government coordination and functioning. The Model is aimed at enhancing powers and functions of our institutions which includes the ability to work in a cooperative way so that there is greater cohesion and positive impact. IGR is part of the functions and responsibilities of each of the three spheres of government and is a necessary prerequisite in complementing the individual accountabilities of municipalities and departments in effective and efficient service delivery and development.

The DDM also seeks to address the Capacity and Capability challenges in Local Government to execute their core service delivery mandate and in some instances reverse the state of dysfunctionality. Previous and current capacity building and alignment initiatives have advanced the development of Local Government as an institution although there has been differentiated circumstances and results across different municipalities influenced by levels of economic base and various other viability factors. However, these initiatives were and are not able to address the root cause of the problem of “lack of alignment” in a comprehensive way.

The DDM aims to address the Service Delivery challenges in Local Government, litigation cases against municipalities may be on the incline as Municipalities have spend significant amounts of resources on litigation and have little capacity to deal with such matters internally. This also supports the need to improve capacity and empower legal components in all three spheres to be able to undertake this responsibility.

We look forward to working with all stakeholders, including members of this House as we give practical expression to integration, cooperation, coordination and effective service delivery which places the people at the centre of government.

I wish to again thank the House for allowing us this opportunity to engage this workshop and look forward to such future engagements.

I thank you.