



Delineating the role of the NCOP in Cooperative
Governance and Intergovernmental Relations:
Lessons and future applications



Virtual Workshop on Cooperative Governance and
Intergovernmental Relations

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NCOP: an IGR institution

- Typically of constitutional arrangements in federal and hybrid-federations, second house presents subnational governments in national parliament.
- In a cooperative system of governance, the NCOP presents and asserts provincial interests in Parliament.
- This is done through the principles of cooperative governance and intergovernmental relations in respect of all the roles allocated to NCOP in the Constitution:
 - Law-making / constitutional amendments
 - Co-decision-making with NA on key decisions – treaty ratification, states of emergency
 - Review of provincial and executive decisions – section 100 and 139 interventions
 - Appointments – 4 delegates to JSC
 - Oversight

Chapter 3: Cooperative Government

Principles – s 41(1) – “distinctiveness of spheres of government”

- **Constitution-defined autonomy.** Powers defined by Constitution - s 41(1)(f)
- **Respecting others' autonomy.** All spheres must respect constitutionally-defined autonomy of another sphere of government - s 41(1)(e),(g)
- **Non-centrifugal autonomy.** Autonomy is exercised on basis of preservation of peace, national unity and indivisibility of Republic, loyalty to Republic - s 41(1)(a),(b),(d)
- **Responsible exercise of autonomy.** All spheres of government must provide effective, transparent and accountable government – s 41(1)(c)

Co-operative government – s 41(1)(h)

“Interdependent and interrelated spheres of government”

Duty to co-operate in mutual trust and good faith by -

- fostering of friendly relations,
- assisting and supporting one another,
- informing on another of, and consulting on another on, matters of common interest,
- coordinating actions and legislation,
- adhering to agreed procedures;
- avoiding legal proceedings against one another

NCOP's oversight role

- NCOP has a clear oversight role over the **national executive**:
 - S 92(2): Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions.
 - Powers of oversight: S 69(a) The NCOP or any of its committee may summon any person to appear before it to give evidence on oath or affirmation or to produce documents.
 - Sanctioning power?
 - Different from NA. Ministers / executive cannot be removed by NCOP
 - Soft sanctions: censure, political pressure
- **Provincial executives: Premiers** are not accountable to NCOP – no dismissal (Provincial legislatures can dismiss NCOP delegates)
- **Municipal councils: Mayors** – no accountability relationship
- Can be summonsed to provide evidence

NCOP's oversight focus: Executive conduct relating to Cooperative Government and IGR

- NCOP is the paramount IGR institution in the legislative sphere.
- Being composed of provinces and organized local government, it is best placed to oversee how executive IGR and Cooperative Government are conducted, and hold the National Government to account.
- Focus on key players and institutions engaged in IGR:
 - Presidency – President's Coordinating Council
 - Department of Cooperative Governance
 - S 46: The Minister may, from time to time when necessary, table a report in both Houses of Parliament with regard to–
 - (a) The general conduct of intergovernmental relations in the Republic;
 - (b) The incidence and settlement of intergovernmental disputes; and
 - (c) Any other relevant matter.
 - National Treasury
 - Departments in the functional areas of concurrent national and provincial (and local) government powers.

IGR and Cooperative Government focal areas: (1)

Covid-19 pandemic

- Concurrent national and provincial functional areas (Schedule 4A): ‘Health services’ and ‘disaster management’, ‘education at all levels, excluding tertiary education’.
- Local government responsibilities (Schedules 4B and 5B): ‘municipal health services’, ‘trading regulations’, ‘water and sanitation services’, cemeteries, ‘public places’, refuse removal and solid waste disposal
- Pre-existing IGR tools:
 - PCC, MinMECs, Council of Education Ministers (CEM), Intergovernmental Committee on Disaster Management
- National Coronavirus Command Council (NCCC)
 - Consultation through the PCC before or after NCCC decisions
- CEM commendable example of cooperation to save school year
- Intergovernmental Committee on Disaster Management never featured
- Did NCOP play oversight role of cooperation and coordination needed?

IGR and Cooperative Government focal areas:

(2) Electricity supply to municipalities

- Intergovernmental matter:
 - **Eskom, national organ of state**
 - uses various payment mechanisms to enforce payment: suspending supply, attaching central banking account, contempt of court
 - **Municipalities**, bankrupt, get interdicts against Eskom from disrupting flow of electricity to communities
 - **Provinces** watch on while bankrupt municipalities call for interventions
 - **National government** watches as provinces fail to intervene
- **Citizens and communities** seek court action to vindicate their rights (basic municipal services, healthy environment, survival) through s 139 interventions
- **Courts** refuse to entertain this mess: regard it as an intergovernmental dispute, which have been referred back to the parties.
- Who oversees / holds accountable how this IGR dispute is settled? Who should pay up?
- **NCOP** gets notification of s 139(5) interventions. But NCOP's IGR oversight role is much more extensive.

Closing remarks

- NCOP must clearly identify its roles
 - Focus on key issues confronting South Africa
 - Strong oversight function relating to IGR and Cooperative Government
- NCOP may become a major institution 2026
 - Should ruling party not get a majority in NA, it is likely that it may still control 6 of 9 provinces
 - NCOP's different roles will come to the fore:
 - Law-making
 - Constitutional amendments
 - International relations (co-determining treaties)
 - Reviewing provincial and national executive actions of intervention