



**dplg**

Department of Provincial and Local Government

**A GUIDELINE DOCUMENT  
ON PROVINCIAL-LOCAL  
INTERGOVERNMENTAL  
RELATIONS**

## FOREWORD

The experience of governing over the past few years has confirmed government's view that the only way to facilitate and expedite integration in service delivery is by engendering a sound co-operative ethic in the practice of government. Whilst the Constitution provides for the distinctiveness of the respective spheres, it by no means connotes exclusivity in the delivery of services. Co-operative government binds all spheres to put the collective national interest above parochial geographic/spherical interest, and places an obligation for an efficient intergovernmental collaboration on all three spheres.

The constitution also emphasises the notion of interdependence of government. Thus far, we are excited with the emerging realisation that national, provincial or local goals, especially in respect of improving the lives of our people, cannot be achieved by any one sphere acting alone, but by all spheres acting in unison. Accordingly, we must collectively strive to ensure that intergovernmental processes are geared towards policy implementation for the betterment of the lives of our people.

The proliferation of intergovernmental institutions over the past few years has provided us with important lessons and experiences. We have been empowered to reflect creatively on the weaknesses and strengths of our intergovernmental systems and the challenges that we collectively have to overcome. As government we concern ourselves with substantive policies and outcomes. Needless to say, we consider the success of our intergovernmental system to reside on whether its processes enhance or impede achievements of the policy objectives government sets for itself.

The important determination we have made with regard to the local government sphere, as the fulcrum of our three-sphere system of government cannot be lost in the intergovernmental regime we seek to establish. We must at all time assist local government by providing it with the environment within which to contribute meaningfully to the governance and development trajectory. More importantly, we must make sure that the intergovernmental institutions we establish are focussed and address the pressing developmental needs of our communities as expressed, inter alia, through the Integrated Development Plans of municipalities, thereby inculcating a people-centred intergovernmental system.

This Guideline Document contributes to the sharing of experiences, to assist in clarifying obligations between provincial and local governments, and further to supporting the creation and functioning of provincial-local intergovernmental relationships. The Ministry and Department of Provincial and Local Government hopes that this Guideline Document on Provincial-Local Intergovernmental Relations provides the basis for much needed focus and sustenance to the initiatives taking place in the respective provinces.

I wish to express our sincere appreciation for the contributions made by the different provinces to make this document possible. Without those comments this document could not have been of the quality that it is in at present. But more importantly, such inputs were a clear demonstration of the collective sense of ownership we attach to our work.

MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT  
FS MUFAMADI

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# GUIDELINE DOCUMENT ON PROVINCIAL-LOCAL INTERGOVERNMENTAL RELATIONS

## 1 INTRODUCTION

Chapter 3 of the Constitution of South Africa provides that the three spheres of government are distinctive, interdependent and interrelated. The principles that underlie the relations between the spheres are that of co-operative government and intergovernmental relations (IGR). In terms hereof, each sphere must, among other things:

- respect the constitutional status, institutions, and powers and functions of government in the other spheres;
- 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;
- co-operate with one another in mutual trust and good faith by:
  - assisting and supporting one another;
  - consulting one another on matters of common interest;
  - co-ordinating their actions and legislation with one another; and
  - adhering to agreed procedures.

The purpose of this guideline document is to support the creation and operation of provincial-local intergovernmental structures. It does this by outlining the basis of the provincial-local relationship and by referring to provincial best practice in the area of IGR. It then puts forward some critical issues that need to be considered in deciding on a provincial IGR structure.

## 2 LEGAL FRAMEWORK FOR PROVINCIAL – LOCAL INTERGOVERNMENTAL RELATIONS

### 2.1 Constitutional framework<sup>1</sup>

The decentralised system of government established by the Constitution has three basic elements. These elements make the three spheres distinctive, interdependent and interrelated. In the context of provincial-local relations, the following meaning can be given to these elements:

First, the distinctive element refers to the *autonomy* that both the province and local governments enjoy — the degree to which each sphere is the final decision-maker on a particular matter that falls within its area of competence with regard to legislation, administration and finances. Financial autonomy means that access to revenue is not subject to the sole discretion of another sphere of government.

Second, local government and provinces are interdependent in the sense that the exercise of autonomy by a municipality is *supervised* by provincial and national government; the national and provincial governments make final binding decisions affecting local government. Supervision includes four types of activities:

- regulation;
- monitoring;
- support; and
- intervention.

*Regulation* sets the framework within which *autonomy* must be exercised. *Monitoring* is necessary to ensure that legislative frameworks are complied with and to indicate when *support* is required to enable local government to exercise its autonomy effectively. *Intervention* means that the province makes decisions for and, on occasion, acts in the place of, a municipality.

Third, provincial and local governments are interrelated in the sense that each must exercise its autonomy to the common good of the province and the country as a whole by *co-operating* with one another.

Intergovernmental relations are the sets of relationships established by the three elements of decentralisation. However, the relationships are far from settled and key issues are being debated and contested that have a direct bearing on intergovernmental relations in the province.

<sup>1</sup>This section is drawn from the Discussion Document: Towards A National Policy On Intergovernmental Relations, unpublished paper, prepared for the Department of Provincial and Local Government, April 2002 p 2-3.



In general, the absence of a structured relationship between local and provincial governments has resulted in programmes and policies in the provinces not being well co-ordinated or aligned. A critical shortcoming in the current IGR system is the lack of properly co-ordinated and structured information systems to facilitate provincial monitoring. Some of the most important consequences of these deficiencies are:

- non-alignment of policies between local and provincial governments;
- absence of early warning systems for looming crises in local government; and
- duplication of services.

What follows is an outline of some of the legal instruments that the Municipal Systems Act (the Systems Act), Municipal Structures Act (the Structures Act) and the forthcoming Municipal Finance Management Bill (the MFMB) place at the disposal of provincial governments to enter into these kinds of relationships with local government. This outline structures the legal instruments along the three elements of autonomy, supervision and co-operation that make up the system of IGR.

## 2.2 Focal point of local government policy

It must be noted at the outset that the legal framework for IGR in the Systems Act and the Structures Act emphasise the role of the Member of the Executive Committee (MEC) for local government. However, this should not be interpreted to mean that the role of the Premier's Office and of the Director-General is underestimated. The Public Service Act<sup>2</sup> specifically mentions IGR as one of the Director-General's tasks. In fact, any envisaged IGR structure must be driven from a level higher than a line department, that is, from the Office of the Premier. Insofar as it appears as if the role of the MEC for Local Government is being overemphasised, one must recognise that the MEC has certain very definite roles in respect of local government. The MEC has to perform this task within a wider provincial-local IGR framework, which is overseen by the Premier's Office.

## 3 AUTONOMY

The national and provincial governments must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions (s 154(1) of the Constitution). In other words, they must support local government in exercising their constitutional powers, their *autonomy*. Provinces have a further constitutional mandate in section 155(6)(a), which says that they must provide for the monitoring and support of local government.

Local government has two sources of power, namely original powers and assigned powers.

### 3.1 Original powers

Section 156(1)(a) of the Constitution says a municipality has authority over the local government matters listed in Schedules 4B and 5B. Municipalities get these powers from the Constitution itself, and they cannot be removed by ordinary statutes or by provincial acts. Provincial legislation can add to the Schedule 4B and 5B matters but cannot remove local government's powers. These powers only be removed by an amendment to the Constitution. Importantly, these powers are not listed in a detailed way but they are plenary powers: powers to regulate and administer particular functional areas. Provincial governments also have powers over Schedule 4B and 5B matters, but only to the extent set out in sections 155(6)(a) and 155(7) of the Constitution<sup>3</sup>.

### 3.2 Assigned powers

Assignment is the second source of power for local government. Section 156(1)(b) says that a municipality has authority over any other matter assigned to it by national or provincial legislation.<sup>4</sup>

The Constitution does not treat local government as a static sphere of government, whose functions and powers are regulated for once and for all by a rigid set of rules. Rather, the Constitution expects local government to develop and, as it does so, to assume greater responsibility in government. The Constitution and local government legislation provide for a number of mechanisms that inject asymmetry in the division of power between local government and other spheres of government and also between local municipalities and district municipalities. The term *asymmetry* refers to the idea that the functions and powers of one municipality need not be exactly the same as the functions and powers of another municipality, but that there is room for differentiation, according to different municipalities' capacity.

<sup>2</sup>S 7(3)(c) Act 103 of 1994, as amended by the Public Service Law Amendment Act 86 of 1998.

<sup>3</sup>See Chapter 3 of Steytler, De Visser and Mettler Making Law — A Guide for Councillors (Community Law Centre 2000).

<sup>4</sup>See De Visser Assignment to local government: Protection with a hollow ring? Local Government Law Bulletin 2002(2) p 12.



Provincial governments play a pivotal role in this profoundly important element of institutional development. Their task is to monitor the institutional development of municipalities, review their capacity and make changes to the allocation of functions and powers where necessary.

The legal instruments in this respect are:

- assignments (devolution of functions from provincial level to local level);
- authorisations (between district and local municipalities); and
- adjustments (between district and local municipalities).

### 3.3 Legal regime for assignments

The legal regime for assignments is further elaborated in Chapter 3 of the Municipal Systems Act. In sections 9 and 10, the Act also distinguishes between assignments to municipalities *generally* and assignments to *specific* municipalities.

#### *General assignments*

The Systems Act includes provisions for the requirements for *general* assignments by provincial legislation. Prior to the introduction of the Bill in the provincial legislature, the MEC who initiates the assignment must:

1. consult the MEC for Local Government, the MEC for Finance and organised local government in the province (s 9(2)(a) Systems Act); and
2. request an assessment of the financial implications from the Financial and Fiscal Commission, and consider that assessment (s 9(2)(b) Systems Act).

Further, the MEC must assess:

1. whether or not the assignment imposes a duty on the municipalities concerned;
2. whether the duty falls outside Schedule 4B and 5B to the Constitution; and
3. whether the performance of the duty has financial implications for the municipalities concerned (s 9(3) Systems Act).

If all three conditions are met, the MEC must take appropriate steps to ensure sufficient funding, and capacity building initiatives as may be needed, for the performance of the assigned function or power by the municipalities concerned (s 9(3) Systems Act).

#### *Individual assignments*

A provincial legislature can assign any of its legislative powers to a *particular* municipal council (s 104(1)(c) of the Constitution). An MEC can assign a matter that is to be exercised in terms of national or provincial legislation to a particular municipal council (s 126 of the Constitution) by agreement. Further, section 156(4) of the Constitution says that assignment by agreement is compulsory if the matter would be most effectively administered locally and the municipality has the capacity to administer it.

Section 10 of the Systems Act makes these individual assignments subject to consultation. An MEC initiating an assignment by way of provincial legislation must consult the MEC for Local Government in the province, before introducing the Bill (s 10(2)(a) Systems Act). An MEC initiating an assignment by way of an agreement must consult the national minister responsible for local government before concluding the agreement (s 10(2)(b) Systems Act).

An MEC who initiates an individual assignment must assess:

1. whether or not the assignment imposes a duty on the municipalities concerned;
2. whether the duty falls outside Schedule 4B and 5B to the Constitution; and
3. whether the performance of the duty has financial implications for the municipality concerned (s 10(3) Systems Act).

If all three conditions are met, the MEC must take appropriate steps to ensure sufficient funding, and capacity building initiatives as may be needed, for the performance of the assigned function or power by the municipality concerned (s 10(3) Systems Act).

#### *Preventing the assignment of unfunded mandates*

The problem of unfunded mandates is a key issue in the debate around the viability of local authorities. The rationale behind the procedures and requirements in sections 9 and 10 of the Systems Act is to protect local government against responsibilities being assigned without the concomitant allocation of resources, and to ensure that there are initiatives to build capacity at local level to perform the assigned tasks. The inclusion of these requirements is important. However, the requirements must be examined more closely to assess their capacity to protect against unfunded mandates.



The requirements can be broken up into procedural and substantial requirements. The *procedural requirements* relate to the mandatory consultation with the MECs for Finance and Local Government, organised local government and the Financial and Fiscal Commission. Procedural requirements are no absolute guarantee of adequate protection against unfunded mandates. The effectiveness of this protection will depend on the degree to which the department that initiates the assignment takes the consultation seriously, along with the arguments of the agencies consulted. It will also depend on the degree to which those consulted are able and willing to bring forward coherent and convincing arguments to protect local government against unfunded mandates.

The *substantial requirements* relate to the appropriate steps that the MEC must take to ensure sufficient funding and capacity building initiatives at local level to perform the assigned function. This appears to be a stronger and more direct protection against unfunded mandates because the MEC who initiates the assignment must do these things. National and provincial executives can be taken to task when these provisions are not adhered to.

This requires co-ordination among provincial line departments around the assignment of functions and powers to local government.

Section 156(4) of the Constitution adds a significant dimension to the issue of assignments. It entrenches the principle of subsidiary, which means that responsibilities should be allocated to the lowest possible level of government. Section 156(4) makes it compulsory for national or provincial government to assign the administration of a Schedule 4A or 5A matter to a municipality, by agreement, if:

- the matter would be most effectively administered locally; and
- the municipality has the capacity to administer it.

**Key issues:**

- Consultation requirements between MECs of line departments and the MEC for Local Government prior to assignment of a function.
- Assessment of implications for local government.
- Subsequent capacity building initiatives and provision of adequate resources — the MEC for Local Government must assist the relevant line department in this.
- Budgetary allocations for institutional capacity building and support programmes.
- Consultation with organised local government in the province.

### 3.4 Authorisations

There could be a mismatch between the functions and powers of district and local municipalities and their ability to perform functions and exercise powers. This mismatch may vary from one municipality to the next within the same district.

*Temporary authorisations*

Section 84 sets out the division of functions and powers between district and local municipalities. If a district or a local municipality is not able to fulfil a specific function allocated to it in terms of section 84, the MEC may temporarily authorise either the district or the local municipality to perform that function (s 18 Municipal Structures Amendment Act 2000). This does not apply to water, electricity, sewage and health services, which are reserved for the national Minister to deal with. The MEC may issue such an authorisation if the following requirements are met:

- the district or local municipality cannot or does not perform a function, or if, for any other reason, it is necessary to ensure the continued performance of the function in that area; and
- the Demarcation Board has recommended the authorisation.

The effect of authorisations is not that the district or local municipality loses the function; the authorisation merely allows it to also be performed by the other municipality.

### 3.5 Adjustments

Section 85 of the Structures Act provides that the MEC may adjust the section 84 division between a district and local municipality, on the following condition: where either the district or the local municipality does not have the capacity to perform a specific function, the other municipality may be allocated that function. The MEC can only make such an adjustment on the recommendation of the Municipal Demarcation Board.





The MEC cannot adjust functions relating to water, electricity, waste, water and sewage, and health; only the national Minister may deal with these functions.

**Key issues:**

- Co-ordination between line departments and department for local government around authorisations.
- Provincial framework on the determination of capacity in municipalities.
- Consultation with (organised) local government around authorisations.

### 3.6 Dispute resolution

The division of functions and powers between district and local municipalities (see below) can be cause for conflict. In the event of a dispute between a district and a local municipality on this issue, section 86 of the Structures Act charges the MEC with dispute resolution. Essentially, the MEC has the role of adjudicator : he or she determines the matter by clarifying the responsibilities of the two disputing municipalities by notice in the *Provincial Gazette*.

More importantly, provincial governments have an overall responsibility to facilitate the resolution of disputes in local government. Provincial governments must thus be equipped to deal with disputes between and within municipalities.

### 3.7 Participation by local government in provincial legislatures

An important mechanism to promote IGR between provincial and local government is to afford the latter observer status in the provincial legislatures. The Gauteng Legislature's rules, for example, allow for such a system. The aim is to enhance the transparency of provincial decision-making, as well as for provincial legislatures to be informed about local government concerns. Participation by local government at this level will also assist in aligning programmes, plans and policies between the two spheres.

It is submitted that provinces would have to decide whether to afford this observer status to:

- organised local government;
- municipalities; or
- both.

## 4 SUPERVISION

In the constitutional scheme, municipalities do not exercise their autonomy independently: they perform their functions and exercise their powers under the supervision of both national and provincial governments. Supervision includes four distinct, but interrelated activities: regulation, monitoring, support and intervention.

### 4.1 Regulation

Regulation refers to a set of frameworks within which local autonomy can be exercised responsibly. In terms of section 155(7) of the Constitution the provinces have the power to regulate, through legislative and executive measures, municipalities exercise of their executive authority. However, regulation should not extend to the core of Schedule 4B and 5B matters, but should rather provide a framework within which local government is to legislate on them. It cannot determine specific outcomes of municipal legislation on these matters. The limits of provincial regulation is also emphasised in section 151(4) of the Constitution, which provides that a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions. This provision is concerned with the way provincial power is exercised, not with whether or not a power exists. Provincial legislation that over-regulates, or establishes monitoring provisions that place unreasonable strain on municipalities, are examples of legislation that compromises or impedes a municipality's ability or right to exercise its powers or perform its functions. Another example is regulation that effectively deprives local government of the ability to make any policy choices on Schedules 4B and 5B matters.

**Key issues:**

- Provincial line departments need to co-ordinate and align the legislative regulatory frameworks that affect local government.



## 4.2 Monitoring

### 4.2.1 General monitoring

Legislation in terms of section 155(6) of the Constitution can entail a monitoring framework, or rules governing the way municipalities administer these matters. A monitoring framework can include certain measures or tests at intervals to see whether municipalities are complying with national or provincial legislation or with the Constitution. The Systems Act provides for a broad monitoring framework. It also mandates provinces to establish a monitoring system.

#### *Annual report*

Municipalities must prepare an annual report after each financial year (s 46 Systems Act). It must contain, as a minimum:

- a performance report, which indicates how the municipality and the municipal service providers performed and contains the priorities and targets set for the following financial year;
- the audited financial statements;
- measures that were taken to improve performance; and
- other reporting requirements in terms of other legislation (s 46(1)(a) Systems Act).

The MEC can interrogate a municipality's annual report because representatives of the MEC can attend the council meeting at which the report is discussed, and ask questions (s 46(3)(b) Systems Act).

#### *Consolidated provincial report*

Each year, the MEC must compile and publish in the Provincial Gazette a consolidated report on the performance of municipalities in the province. This report must identify those that have under-performed and must propose remedial action. The report must be submitted to the provincial legislature, the national Minister and the National Council of Provinces (NCOP) (s 47 Systems Act).

#### *General key performance areas*

The national Minister has prescribed, in terms of section 43 of the Systems Act, general key performance indicators (KPIs). Every municipality must include these indicators in their integrated development plans (IDPs). The general KPIs are:

- percentage of households with access to all basic household services;
- percentage of households earning less than R1 100 per month that have access to all free basic services;
- percentage of capital budget spent on projects identified in terms of the IDP;
- number of jobs created through local economic development initiatives;
- number of people from employment equity target groups employed in three highest levels of management;
- percentage of the budget spent on implementing the workplace skills plan; and
- financial viability.

All municipalities must report on these KPIs. Each year, the national Minister produces a consolidated report on general KPIs across all municipalities, which is published in the *Government Gazette* and submitted to all the MECs (s 48 Systems Act).

#### *Sections 105 and 106 of the Systems Act*

Section 105(1) mandates the MEC for Local Government to establish mechanisms, processes and procedures to:

- monitor municipalities in managing their own affairs;
- monitor the development of local government capacity; and
- assess the support needed by municipalities to strengthen their capacity to manage their own affairs.

Section 105(2) authorises the MEC to require municipalities to send information of any kind to any specific provincial organ of state. The MEC must rely, for as far as possible, on existing information channels, such as annual reports, and must minimise the administrative burden on municipalities.

In addition, section 106 imposes a duty on the MEC to request information when he or she has reason to believe that a municipality cannot or does not fulfil a statutory obligation, or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring. If necessary, the MEC must designate a person to investigate the matter, with the same powers as a judicial commission.



**Key issues:**

- Receive and scrutinise annual reports.
- Interrogate annual reports.
- Compile consolidated report for the province.
- Identify municipalities that have under-performed.
- Propose remedial action.
- Receive the national Minister's consolidated report on the performance around general KPIs.
- Consult with (organised) local government on the general outcomes of the annual reports.
- Develop a provincial monitoring regime in line with the dictates of the System Act.

**4.2.2 Financial monitoring**

Provincial governments must monitor municipalities' financial status. Currently, an elaborate scheme of municipal reporting and provincial monitoring systems is being devised in the Local Government: Municipal Finance Management Bill of 2001. What follows is a short overview of the Bill's most important provisions relating to monitoring.

*NB: These provisions are subject to change since the Bill is still under consideration by Parliament.*

*Municipal budgets*

Municipalities will have to submit draft budgets to the provincial Treasury (s 17(3)(b) MFMB), which can then make comments on them.

Another important provincial task is monitoring the adoption of budgets. The MEC for Local Government must direct a municipal council to adopt a budget if the council fails to do so prior to the start of the financial year (s 18(4)). If a council fails to adopt a budget and the financial year has already started, funds may be used from the municipality revenue fund. In this case, one of the requirements is the approval of the MEC for Local Government (s 19(1) MFMB).

If a council wishes to amend its budget after the start of the financial year, it can adopt an adjustments budget. The first adjustments budget is for free, while a second adjustments budget within the same year can only be tabled with the MEC's approval (s 20 MFMB). It appears as if the MEC does not approve the adjustments budget itself, but rather *the tabling of it* (after which it is Council's prerogative to determine its content).

Further, monthly reports on the state of the budget will have to be prepared by the municipal manager and submitted to the provincial Treasury.

*Internal financial management*

The MEC for Local Government also plays a role in monitoring municipalities' internal financial management. For example, the municipal manager must inform the MEC if councillors interfere in staffing and financial management issues (s 35(l) MFMB).

The provincial treasury must be informed of any unauthorised or irregular expenditure incurred and of the steps that were taken to rectify the matter. The MEC must also be informed (by the Auditor-General) of unauthorised expenditure if a political structure within the municipality is responsible (s 22(4) MFMB).

*Municipal entities*

The provincial treasury must be informed of a municipality's intention to establish or acquire an interest in a municipal entity (s 35(b) MFMB). Municipalities must compile an annual list of their municipal entities and submit them to the provincial treasury. In general, the provincial Treasury can require information straight from the municipal entity (s 59 MFMB). If a municipality is the sole owner of a municipal entity, the annual report (see below) must deal with the municipal entity's performance (s 71(1) MFMB).

*Reporting*

The Bill contains further requirements for the annual report and assignments to municipalities (s 67 and s 23 MFMB; see under Monitoring role and Institutional development and capacity building)

The provincial legislature receives the audited financial statements of all municipalities from the Auditor-General and may discuss them and raise queries with the provincial executive, or recommend action to the executive.



Importantly, the MEC for Local Government must assess the audited financial statements and ask whether the municipality has addressed the Auditor-General's queries. If a municipality appears not to have done so, the provincial legislature must be notified of this failure (s 76 MFMB).

#### *Financial emergencies*

*(NB, This chapter is still provisional and subject to constitutional amendments)*

The Bill currently provides for the declaration, by a court, of a financial emergency in a municipality if that municipality is in severe financial difficulties. The MEC for Local Government as well as the MEC for Finance are among the institutions that can apply for such a declaration (s 95(1) MFMB) if the conditions in section 95(2) are met. If the court declares a financial emergency, the issue will be dealt with by the national Emergency Authority, which will appoint one or more administrators to restore the situation in the municipality.

#### *General*

Concerns have been raised about provincial treasuries' new role of monitoring municipal budgets, as they are already overburdened by having to monitor provincial line departments' budgets. It must be said that provincial governments have a constitutional duty to monitor and support local government (s 155(6)(a) of the Constitution). To exclude financial monitoring from the provincial monitoring function would not be in keeping with that section and would also render many of the provincial monitoring exercises difficult. If financial monitoring were done by the National Treasury only, it would deprive provincial governments of a vast amount of information that is critical to measuring their municipalities' performance. Doubts have also been raised about the functionality of such monitoring requirements, in the absence of clear enforcement mechanisms for provincial treasuries. It is clear, however, that, depending on the outcome of the parliamentary process around the MFMB, provincial treasuries will be faced with responsibilities with regard to local government that might necessitate an increase in capacity to deal with local government finances.

The MFMB presupposes a strong link between provincial treasuries and provincial departments of local government. A critical challenge is for a proper division of labour between provincial treasuries and the MECs for Local Government. Many of the provisions affect both or propose a division of responsibilities between them (e.g. when it comes to unauthorised expenditure that was politically authorised, the MEC for Local Government plays a more prominent role than in the case of unauthorised expenditure without political input — see s 22 MFMB).

#### **Key issues:**

- Scrutinise draft budgets and make comments.
- Monitor timely adoption of municipal budgets.
- Monitor state of municipal budgets.
- (Dis)approve tabling of adjustment budgets.
- Monitor internal financial management issues such as unauthorised expenditures.
- Scrutinise annual reports, financial statements and follow-up on Auditor-General's comments.
- If necessary, apply for declaration of a financial emergency.

### **4.3 Support**

#### *Strengthening districts*

Chapter 5 of the Structures Act establishes reciprocal support duties between district and local municipalities. The role of district municipalities is emphasised in section 88(3), which says that the province must support district municipalities in providing support services to local municipalities.

#### *Standard by-laws*

An important supporting tool for provincial government is the promulgation of standard by-laws by the MEC, in terms of section 14 of the Systems Act. Municipalities can adopt these standard by-laws (and amend them) as their own by-laws after following the normal legislative process.

#### **Key issues:**

- ✘ Explicit duty on provincial government to support district municipalities in their support efforts for local municipalities.
- ✘ Development of a provincial framework for support in consultation with (organised) local government.
- ✘ Line departments to assist/advise on (requirements for) standard by-laws.
- ✘ Consultation with (organised) local government during the drafting process.



#### 4.4 Intervention

The provincial government has executive authority to intervene in municipalities only insofar as the latter fail to comply with their statutory executive obligations. In terms of section 139 of the Constitution a province may intervene in a municipality by issuing directives and, on prescribed grounds, by acting in the place of the municipal council to execute unfulfilled obligations. Where there is an assumption of responsibilities by a province, the approval of the national minister responsible for local government and the National Council of Provinces must be obtained. If an intervention in terms of section 139 has not resulted in the municipal council being able to fulfil its obligations in terms of legislation, the MEC for Local Government may, in terms of the Structures Act, dissolve that council with the concurrence of the national minister responsible for local government and with the approval of the NCOP.

Most interventions carried out in the past were not properly co-ordinated and there was a lack of consultation with local government structures and organised local government prior to and during the interventions. There appears to be little incentive for provinces to intervene, due to the fact that provincial governments do not specifically include support and intervention in their budgets. By and large, there has been dissatisfaction with, and a high level of misunderstanding around, the *intervention process* and its *legalities*. The intervention process is not transparent and it is difficult for organised local government to play any meaningful role as a result. In this regard, reference must be made to the Department of Provincial and Local Government's *Manual for the application of section 139 of the Constitution* (2000 Pretoria).

Clearly, a platform is needed for consultation with provincial organised local government, at an early stage, on intended interventions in municipalities.

##### Key issues:

- A province must follow a proper, clear and recognisable process when it intervenes.
- Budgetary allocations for interventions.
- Early consultation with organised local government.

## 5 CO-OPERATION

The Constitution established a system of IGR that is no longer premised on hierarchy but on a co-operative venture by spheres of government that deserve equal respect for their constitutional status.<sup>5</sup> That does not mean that a province or municipalities in that province have a free hand to exercise their autonomy at will; it must be exercised in a manner that has the well-being of all the people of the province as its objective. Autonomy is exercised in this inclusive manner through a system of co-operative government that entails co-ordination and co-operation between a province and municipalities as equal partners.

The concept of integrated development planning (IDP) is one of the most important instruments of co-ordination between provincial and local government. Service delivery by all spheres of government comes together in a focal point of co-ordination and alignment at local government level. The White Paper on Local Government stated that local government is increasingly being seen as a point of integration and co-ordination for the programmes of other spheres of government and one of the most important methods for achieving greater co-ordination and integration is integrated development planning (pp 66 and 39). The Systems Act says that municipal planning must take place within the framework of co-operative government (s 24). It cannot take place in isolation but must be aligned with the plans and strategies of national and provincial government, as well as with those of other municipalities. It is clear that the legal framework for local government envisages a great role for integrated development planning in facilitating co-operation, co-ordination and vertical integration of plans and policies.

Section 31(1) of the Systems Act provides the general framework for the MEC's role in the IDPs. It says that the MEC may monitor the drafting process and assist municipalities in drafting, adopting and reviewing their IDPs. The MEC may also facilitate the alignment of the IDPs of different municipalities with one another, and their alignment with national and provincial programmes (s 31(c) Systems Act).

The legal framework for a provincial role in IDP locates the monitoring and supporting of IDPs in the provincial department responsible for local government. A key challenge for provinces is not to allow this to influence the integrative potential of IDPs that is envisaged by the White Paper. The real and actual content of IDPs should arise from interaction with line departments.

<sup>5</sup>See Strengthening Intergovernmental Relations in the Province of KwaZulu-Natal: A Discussion Document, Office of the Premier, KwaZulu-Natal, August 2002.



## 5.1 IDP district framework

District municipalities must adopt district frameworks. The district framework must, among other things, identify provincial planning requirements (s 27(2)(a) Systems Act). Provincial governments should compile all district frameworks and scrutinise them for the inclusion of all provincial planning requirements. If certain planning requirements are not included, provincial governments should inform the district municipality concerned of the omission and urge it to amend its district framework accordingly.

Co-ordination between line departments is a key element in improving communication systems between local and provincial level. In the exercise of this function, it is critical for provincial departments responsible for local government to co-ordinate communication of all the provincial line departments relevant planning requirements to local government.

## 5.2 IDP Process plan

Each municipality must adopt a process plan outlining how the municipality will go about drafting its IDP. These process plans must be checked to ensure there are sufficient mechanisms for consultation by the municipality with provincial government in formulating the IDP (s 29(1)(b) Systems Act).

Similarly to the district frameworks, process plans must identify provincial planning requirements (s 29(1)(c) Systems Act). Provincial governments should compile all process plans and scrutinise them for the inclusion of all provincial planning requirements. If a municipality does not include certain planning requirements, provincial government should inform the relevant municipality of the omission and urge it to amend its process plan accordingly.

### Key issues for provincial government:

- Examine IDP process plans for consultation with province.
- Scrutinise process plans and district frameworks for provincial and national planning requirements.
- Assist in drafting, adopting and reviewing IDPs.
- Facilitate alignment with national and provincial programmes.

## 5.3 Submission of IDPs to MEC

Section 32 of the Systems Act outlines the process applying to the submission of IDPs to the MEC. Within ten days after the IDP has been approved, a copy must be submitted to the MEC. A summary of the process plan, a statement explaining that the process has been complied with, and a copy of the relevant district framework, must accompany the submission.

The MEC must review the IDPs. Examples of the questions that need to be answered are:

1. Does the IDP adhere to the Act?
  - Does the IDP contain all the core components that are listed in section 26 of the Systems Act and the Local Government: Municipal Planning and Performance Management Regulations, 2001?
  - Did the municipality, in drafting its IDP, consult the local community meaningfully on development needs and priorities (s 29(1)(b)(i))?
  - Did the drafting process allow for local communities to participate in the drafting of the IDP (s 29(1)(b)(ii))?
  - Were organs of state, in particular traditional authorities, consulted (s 29(1)(b)(iii))?
2. Did the municipality follow its process plan?
3. Is the IDP aligned with the strategies of other municipalities or organs of state?

### Key issues:

- Review the IDPs that were submitted by the municipalities to the province.

## 5.4 Request to adjust IDP

If an IDP does not comply with the Systems Act or is contrary to any of the plans of other municipalities, or the provincial or national government, the MEC can request a municipality to change its IDP in accordance with the MEC's proposals. If there is something wrong with the *process* that the municipality followed in drafting its IDP, the MEC can request the municipality to comply with its own process plan or with a provision in the Systems Act concerning IDP process. If necessary, the municipality must change the content of the IDP after it has followed the correct process (s 32(2)(b) Systems Act).



**Key issues:**

- Request changes to the IDP, negotiate around the changes to be made.

**5.5 Dispute resolution mechanism**

The municipality must respond to the MEC's request within 30 days. If it disagrees, it must object to the request and give its reasons. If necessary, the MEC must appoint a special committee to decide on the municipality's objection (s 33(1)), including representatives of local government, provincial government and national government as members. If the special committee rejects the municipality's objection, the municipality must comply with the MEC's request within 30 days. The rule within the committee is that if at least two spheres of government agree on a matter, it will be decided accordingly (s 32(4) Systems Act).

**Key issues:**

- Resolve disputes around requests to change the IDP prior to the appointment of an *ad hoc* committee.
- Appoint a special committee if necessary.

**5.6 Communication with the province**

The Organised Local Government Act 59 of 1997 provides in section 4(7) for consultation between provincial organised local government and the province, at the instance of the former. In this instance, organised local government is not restricted to consultation with the MEC responsible for local government but may approach any MEC in the province. It is clear, therefore, that consultation at provincial level is not purely at the instance of the province but can also happen at the instance of organised local government. This could form the basis for a communication channel initiated by organised local government.

**Key issues:**

- Resolve disputes around division of functions and powers between district and local municipalities.
- Participation of (organised) local government in provincial legislative processes.
- General dispute resolution.
- Establishment of communication channels between members of the provincial executive and organised local government.

**6 PROVINCIAL BEST PRACTICE IN THE AREA OF PROVINCIAL- LOCAL RELATIONS****6.1 Introduction**

Provincial governments have established intergovernmental forums that, to a greater or lesser extent, take into account some of the aspects of provincial-local relations described above. From the examples set out below it is evident that, at this stage of the development of the IGR system, the emphasis is on communication, consultation, joint planning and broad co-ordination. What appears to be lacking, in most cases, is a clear identification of the goals and objectives of the established intergovernmental forums. This is because there has not been a thorough investigation of the very particular purposes and functions that such forums must fulfil, as required by legislation, in the area of provincial-local intergovernmental relations. The few case studies that follow show how the provincial-local intergovernmental structures have adapted to the new and changing local government dispensation.

**6.2 Western Cape<sup>6</sup>**

The provincial Minister for Local Government and Development Planning wanted to facilitate the process of putting the new local government dispensation into operation. Measures were thus put in place to provide for the monitoring and support of local government in the province and to promote the development of local government capacity so that municipalities could perform their functions and manage their own affairs. The measures included the establishment of a Provincial Advisory Forum (PAF) and five District Advisory Forums (DAFs), by proclamation in the *Provincial Gazette* in March 2001.

<sup>6</sup> See Smith Intergovernmental relations in the Western Cape Local Government Law Bulletin 2002(2) p 11.





## Provincial Advisory Forum

The PAF is made up of:

- a. the mayor of each municipality;
- b. the municipal manager of each municipality; and
- c. the provincial Minister, who is also the Chairperson.

The PAF must advise the provincial Minister on:

- a. any matter that relates to the process of putting the new local government dispensation into operation;
- b. the monitoring and support of local government, particularly with regard to mechanisms, processes and procedures to:
  1. monitor municipalities in managing their own affairs, exercising their powers and performing their functions;
  2. monitor the development of local government capacity;
  3. assess the support needed by municipalities to strengthen their capacity to manage their own affairs, exercise their powers and perform their functions;
  4. monitor and support local government with regard to:
    - aa. integrated development planning;
    - bb. infrastructural development;
    - cc. local government legislation;
    - dd. performance management;
    - ee. service delivery; and
    - ff. financial arrangements
- c. co-ordinating the interface between provincial and local functions.

The PAF is supported by a technical committee consisting of provincial and municipal officials under the chairpersonship of a member of the Department of Local Government and Development Planning, appointed by the provincial Minister.

## District Advisory Forums

DAFs have been established for each district municipality, made up of:

- a. the mayor of each municipality within the area; and
- b. the municipal manager of each municipality within the area.

Each municipality appoints an alternate member for each member of the forum, who may only attend and participate in their absence. Members or alternate members may not be remunerated for services rendered for or on behalf of the forum but may be reimbursed by their municipality for out-of-pocket expenses.

The DAFs have the following functions and duties:

- a. advising the provincial minister on any matter relating to the process of putting the new system of local government into operation;
- b. ensuring that the process of putting the new local government system into operation is conducted in a co-ordinated manner;
- c. co-ordinating joint integrated development planning;
- d. considering matters arising from section 19 of the Western Cape municipal establishment notices;
- e. considering matters pertaining to the division of powers and functions between district and local municipalities;
- f. advising the provincial Minister on the transfer of staff, assets, liabilities and records in terms of the process of putting the new system of local government into operation;
- g. considering and co-ordinating service delivery continuity measures;
- h. co-ordinating financial arrangements to support the new local government system, among others in terms of section 18(3) of the Western Cape municipal establishment notices;
- i. co-ordinating the preparation of budgets;
- j. providing a forum for sharing best-practice experiences and learning;
- k. facilitating communication on, and formulating joint responses to, national and provincial policy and legislative processes;
- l. considering any other matters referred by the municipalities to the forums; and
- m. considering any matter on request of the provincial Minister.





The chairperson of the DAF is elected from among the mayors of the municipalities within its area. The forum may also decide to rotate the position of the chairperson among the mayors of the relevant municipalities.

#### *Meetings and decision-making*

The PAF meets at least once every three months and the DAF meets at least once a month. The forums endeavour to take all decisions on the basis of consensus. Where consensus cannot be reached within a specified time, the various positions adopted by the members of the forum regarding the particular issue are recorded and minuted and, in the case of a DAF, reported to the provincial Minister.

#### *Internal structures and proceedings*

Each forum may establish committees to assist and advise it in the performance of its functions or exercise of its powers, and may dissolve them at any time. The forums must appoint — and may remove and replace — the members of any committee. The members of committees do not have to be members of the forums but they must either be councillors or employees of a municipality within the area of the forum. The forums determine the terms of reference of any committee established by them, but may not delegate any decision-making powers to them.

#### *Employees and administration*

The provincial department responsible for local government provides the secretariat of the PAF. Each DAF appoints one of the municipal managers, or his or her nominee, to act as secretary. The secretariat may also be rotated among the municipalities within the area of the DAF. The secretariat of each forum must ensure, among other things, that monthly written reports of the forum's activities are given to each of the relevant municipal councils and to the provincial Minister. The municipality that houses the secretariat of the forum provides the budgetary provision for its operation. The forum may also resolve to pool resources to cover operating expenses.

#### *Termination of the forums*

The provincial Minister may terminate a forum on a particular date by notice in the *Provincial Gazette*.

### **6.3 Gauteng**

The province of Gauteng has two formal intergovernmental structures that facilitate the relations between the provincial government and local government. These are the Gauteng Intergovernmental Forum (GIGF) and the Gauteng Premier's Co-ordinating Forum (GPCF).

#### **Gauteng Intergovernmental Forum**

The guiding principle behind the existence of the GIGF is to facilitate effective co-operation between the provincial government and local government in the province. Its main aim is to enhance integrated development and to consider priorities for the province. The goal of the GIGF is that the decisions of each sphere is enriched by:

- information on and understanding of the respective programmes of the other sphere;
- a clearer understanding of mutual strategic priorities and how these compliment each other;
- a commitment to collaborate, engage continually, and co-ordinate activities where appropriate.

#### *Composition of the GIGF*

Participants in the GIGF include:

- a. the Premier, who is also the Chairperson;
- b. the Provincial Executive;
- c. heads of provincial departments;
- d. chairpersons of legislative standing committees;
- e. mayors; and
- f. municipal managers.

#### *Meetings of the GIGF*

The forum convenes twice a year and this coincides with key strategic events such as the tabling of the Budget, or the opening of the legislature.



### Gauteng Premier's Co-ordinating Forum

The GPCF is a new structure that meets quarterly, to co-ordinate service delivery, consultation, collaboration between local and provincial spheres and the establishment of synergy between programmes of provincial and local government.

#### *Composition of the GPCF*

Participants in this forum include:

- a. the Premier, who is also the Chairperson
- b. the provincial Director-General;
- c. the MEC responsible for local government;
- d. the head of the provincial Department of Local Government;
- e. the three mayors of the metropolitan municipalities;
- f. the three mayors of the district municipalities; and
- g. the municipal managers of the represented municipalities.

### 6.4 North West Province

The North West Provincial Intergovernmental Forum (NWPIGF) was officially launched in July 1997. Its mission statement reads that it exists to co-ordinate, through political interaction, the actions of all local government and provincial bodies, provincial departments and other role players. Thereby promoting interdepartmental co-operation and intergovernmental relations in order to ensure and facilitate efficient, cost-effective service delivery within an integrated development planning framework.

#### North West Provincial Intergovernmental Forum

##### *Objectives*

The stated objectives of the forum are to:

- a. enhance and promote co-operative governance;
- b. ensure policy synergy between the two spheres of government on the horizontal and vertical levels;
- c. create a platform for the co-ordination of legislation and actions of provincial and local governments;
- d. create a channel of communication between the province and local governments;
- e. encourage an integrated approach to service delivery;
- f. promote the principle of integrated development in the province and, in particular, consolidate the thrust towards a provincial Growth Strategy and Development Plan; and to
- g. monitor the implementation of national programmes and policies and providing a supportive role in respect thereof.

##### *Structure and role players of the NWPIGF*

The forum has two components, namely the political component and the technical component. Both collectively allow participation of the following role players:

- a. politicians from provincial and local spheres;
- b. organised local government in the province;
- c. representatives from the provincial House of Traditional Leaders;
- d. major service providers in the province; and
- e. provincial government officials.

##### *Political forum*

This component of the forum meets quarterly and comprises:

- a. the Premier, who is also the Chairperson;
- b. the Chairperson of the provincial House of Traditional Leaders;
- c. Chairperson of the Chairperson s Forum in the North West legislature;
- d. the members of NORWELOGA's management working committee (councillors); and
- e. all members of the provincial Executive Committee.

The political forum is the decision-making body of the NWPIGF and is led and driven by politicians. It receives technical and administrative assistance from the technical forum.



### *Technical forum*

This component of the forum meets monthly and comprises:

- a. the Director-General, who is also the Chairperson;
- b. members of the provincial Management Committee;
- c. representatives from service providers such as the water boards, Housing Corporation, Telkom and Eskom;
- d. representatives of the National Planning Commission;
- e. the NORWELOGA technical team; and
- f. representatives from local government professional bodies (ILGM, IMASA).

The functions of the technical forum are to:

- act as the management of the NWPIGF;
- design integrated programmes on policy implementation with clear time frames and directives to the sectoral forums;
- monitor progress on the implementation of national programmes;
- provide technical support and advice to the political forum;
- ensure the implementation of national policy;
- act as a forum to give continuous support to the quest for integrated development within the province; and to
- perform such other duties as may be delegated by the political forum.

In order to manage its operation effectively and efficiently, the technical forum established an intersectoral forum with four components, namely the

- Institutional development forum;
- Infrastructure development forum;
- Social Welfare development forum; and the
- Safety and Security development forum.

These intersectional forums discuss matters such as:

- public servants holding local political office;
- integrated sustainable rural development strategy;
- integrated development planning for municipalities;
- provision of basic water services;
- cross boundary municipality management;
- municipal cost recovery;
- municipal policing;
- financial assistance to provincial organised local government; and
- restructuring and re-alignment of the technical forum structure with the provincial government cluster committees.

## **6.5 Free State<sup>7</sup>**

The Free State has number of intergovernmental forums that came into existence around December 2000. They were put in place to monitor and support local government in the province and to promote the development of municipalities capacity. They include PROVLOG, MECLOG, the Premier s Mayoral Forum and the Premier s Traditional Leaders Forum.

### **PROVLOG**

The forum for the Province and Local Government (PROVLOG) has a political component and a technical component.

Members of the political forum are:

- the Premier;
- members of the Executive of Freloga; and
- Executive of the provincial Cabinet.

The political forum is the decision-making body of the forum and is led and driven by politicians. It receives technical and administrative assistance from the technical forum. It meets quarterly and the Premier s Office acts as its secretariat. The Freloga

<sup>7</sup>See Strengthening Intergovernmental Relations in the Province of KwaZulu-Natal: A Discussion Document, Office of the Premier, KwaZulu-Natal, August 2002.



executive consists of a councillor from each municipality in the province. (In 50% of the cases this councillor is also the mayor or speaker of the municipality). Chairpersonship rotates between the Premier and the chairperson of Freloga.

Members of the technical forum supporting PROVLOG are:

- Director-General of the province — Chairperson of the structure;
- Freloga CEO;
- Deputy Freloga CEO;
- municipal managers of all municipalities in the province; and
- all heads of departments in the province.

This forum meets at least a month before the political forum to finalise the agenda for the political forum, and the Director-General's Office also provides this forum's secretariat. Major service providers attend the technical forum on invitation only.

The objectives of the political and technical forum are to integrate government activities, give support to local government, improve the co-operation and co-ordination between local and provincial government, and enhance institutional capacity.

#### *Terms of reference*

The terms of reference for PROVLOG are:

- Overall co-ordination province-wide;
- Co-ordinate MINMEC mandates with NCOP mandates;
- Assess and follow-up on intergovernmental reports (e.g. NCOP, MINMECs, etc.);
- Appropriate input of technical expertise into single-purpose/sectoral structures;
- Ensure political accountability at the provincial level;
- Ensure support by departments for the intergovernmental system;
- Overall monitoring of programmes/projects and evaluation within province;
- Ex-officio representation in all provincial intergovernmental structures;
- Review and reporting to national government on progress of provincial intergovernmental structures; and
- Communication with communities and public.

## **MECLOG**

The Forum for the MEC and Local Government (MECLOG) has a political and a technical component.

Members of the political forum are:

- the MEC for Local Government and Traditional Affairs, who is also the Chairperson; and
- the Executive Committee of Freloga.

The Department of Local Government and Traditional Affairs provides the secretariat for this forum.

A technical forum supports MECLOG and its membership comprises:

- the Head of the Department of Local Government and Traditional Affairs,
- all the directors in the Department of Local Government and Traditional Affairs; and
- Freloga's CEO and Deputy CEO.

This Forum convenes quarterly and is very informal. Its work mostly takes the form of bi-lateral communication between Freloga and the Department.

## **Premier's Mayoral Forum**

This forum is political in nature and all mayors in the province attend its quarterly meetings. The chair rotates between the Premier and the Chairperson of Freloga. Issues of mutual concern are discussed at these meetings. The Mayoral Forum's secretariat is provided by the Premier's Office.



### Premier's Traditional Leaders Forum

Participants of in this Forum are:

- the Premier;
- the Chairperson of the House of Traditional Leaders;
- all 15 members of the House of Traditional Leaders; and
- the Speaker and Deputy Speaker of the Provincial Legislature.

The chair of this forum rotates between the Premier and the Chairperson of the House of Traditional Leaders. The forum meets quarterly to discuss issues of mutual concern. The secretariat is provided by the Premier's Office. The forum started in March 2001. Developmental issues, the appointment of traditional leaders and budgeting issues are the most common issues under discussion.

The administration of this forum was transferred to the Department of Local Government and Traditional Affairs on 22 July 2002. Two weeks before a meeting is to take place, a request for agenda items is sent out to all members and the agenda is compiled from their responses.

### 6.6 EASTERN CAPE<sup>6</sup>

Organised local government and the Eastern Cape Provincial Legislature concluded a Memorandum of Understanding on IGR on 15 April 1999. The parties saw this as a first step towards formalising co-operation and IGR between the provincial and local spheres of government. The purposes of the Memorandum were threefold:

- to concretise and institutionalise co-operative governance and IGR between the provincial and local spheres of government, according to the principles of Chapter 3 of the Constitution;
- to provide for interim mechanisms in terms of which the provincial government can discharge its constitutional duty to support and strengthen the capacity of municipalities to manage their own affairs, exercise their powers and perform their functions; and
- to provide for mechanisms for resolving intergovernmental conflicts in the absence of an Act of Parliament, as provided for in section 42(2)(b) of the Constitution.

The aim was thus to give effect to the basic principles of IGR and the Memorandum was regarded as the best way forward to obtain the best practical experiences to include in legislation.

### Provincial Intergovernmental Relations Conference

The principal IGR mechanism is an Intergovernmental Relations Conference, which must be held annually in August. It comprises:

- the Executive Council;
- members of the Provincial Legislature;
- the Executive Committee of SALGA Eastern Cape; and
- the Speaker or Deputy Speaker of the Legislature, who is the Conference chairperson.

The task of the Conference is to provide policy and guidelines for —

- co-operation between provincial and local government in the province;
- provincial IGR; and
- the support and strengthening of the capacity of municipalities.

This forum has met once thus far, in December 1999, when the Memorandum of Understanding was adopted.

<sup>6</sup>See Strengthening Intergovernmental Relations in the Province of KwaZulu-Natal: A Discussion Document, Office of the Premier, KwaZulu-Natal, August 2002.



### **Provincial Intergovernmental Relations Committee**

While the Conference sets the broad policy and guidelines, the Provincial Intergovernmental Relations Committee is tasked with its implementation. The Committee comprises:

- the MEC for Local Government;
- the Chairperson of the Standing Committee on Local Government of the Legislature;
- the Chairperson of SALGA Eastern Cape;
- the MEC responsible for intergovernmental relations in the Executive Council;
- the Chairperson of Committees of the Legislature;
- the SALGA Eastern Cape representative on the Local Government MINMEC; and
- the Chairperson of the Standing Committee on Constitutional Affairs in the Legislature.

The Speaker of the Legislature chairs this committee.

#### *Objectives and decision making*

Its objectives are to identify, develop and implement programmes in accordance with the policy and guidelines provided by the Conference. The Committee must meet monthly. It takes decisions by consensus, but, if consensus cannot be reached, it must agree upon a mechanism for making decisions. An annual report on its activities must be tabled at the Conference.

This committee exists in name only and has never met. At this stage there is no political forum but a policies workshop was held on the 5 July 2002 to investigate proposals for such a forum.

### **Provincial Intergovernmental Relations Technical Committee**

The task of implementing the decisions of the Conference and the Committee are the responsibility of the Provincial Intergovernmental Relations Technical Committee. It comprises the following officials:

- the Director-General of the Eastern Cape, who act as Chairperson;
- all heads of departments;
- all municipal managers in the province;
- the CEO of SALGA Eastern Cape; and
- parastatals.

This Committee meets bi-monthly and primarily looks at the implementation of provincial cabinet policies. The alignment of the IDPs and their integration with the provincial plan is one of its main objectives.

Furthermore, municipal managers share the capacity problems they experience at municipal level. In some instances the heads of departments release some of their staff to assist a municipality where capacity problems are experienced.

### **Participation in the Legislature, provincial and local government structures**

The three parties to the Memorandum explicitly accepted the principles of participation by organs of one sphere of government in structures of another sphere on matters of common interest, as well as consultation among these organs of government. To implement these principles, the parties undertook to investigate mechanisms to ensure participation in, and consultation with, their respective structures, including:

- participation by SALGA Eastern Cape in the Standing Committees of the Provincial Legislature;
- participation in SALGA Eastern Cape Committees by Members of the Provincial Legislature (MPLs); and
- participation by SALGA Eastern Cape in the intergovernmental forum and the Executive Council Committee on Intergovernmental Relations.

The parties committed themselves to formally adopt the Memorandum at their first respective meetings. So far SALGA Eastern Cape is a non-voting member of the Standing Committee on Local Government in the Provincial Legislature. There are also sectoral forums, such as the water and sanitation forum.



## 7 OPTIONS FOR A PROVINCIAL IGR STRUCTURE<sup>9</sup>

### 7.1 Establishing an all-inclusive IGR structure

In the majority of provinces an all-inclusive IGR structure that links the province with local government has been established. However, some exist in name only. In the Eastern Cape a Provincial Intergovernmental Relations Conference as well as an IGR Committee were agreed upon in 1999 but have never met. In the Free State a number of institutions have been established but they hardly function. This has been attributed to the fact that there are too many structures in the Free State, resulting in the lack of substantive agendas for each. Structures with a large membership also find it difficult to find a suitable meeting date and may fade into obscurity. The conclusion is inevitable: careful thought must go into the establishment of a structure that is to be viable and effective.

### 7.2 Purpose

The primary purpose of the overall IGR structure may be giving effect to the constitutional obligation of fostering friendly relations through communication. An equally important goal of such a structure is reaching common goals. A critical goal would be the cohesion within the province with respect to a common economic plan. Because the province is departmentalised, a lack of coherence between departments towards local government is usually the result. An inclusive forum is then helpful if issues regarding inconsistent departmental policies or practice can be raised.

Other aspects of decentralisation could also be on the agenda, such as consultation on monitoring policies and procedures. Local governments would also want to meet the province to discuss issues of autonomy, including the definition of powers. These objectives could be pursued by an all-inclusive IGR body, which in essence is a consultative and not a governing body.

### 7.3 Dual approach

In some provinces a dual approach to IGR structures is followed and two complementary institutions have been created. One is broad and all-inclusive, meets once or twice a year, and deals with broad policy issues. The other, drawn from the first, is mean and lean and deals on a more regular basis with the concrete questions of service delivery. Gauteng has created two such structures, The Gauteng Intergovernmental Forum has a broad membership (provincial political and administrative executives, chairpersons of the legislative standing committees, and all mayors and municipal managers) and meets twice a year to facilitate greater understanding among its members. The Gauteng Premier's Co-ordinating Forum, in contrast, comprises only the Premier, the MEC for Local Government, the Head of the Department of Local Government, three metro mayors and their managers, and the three district mayors and their managers. The focus is on the co-ordination of service delivery.

A similar policy underlies the moribund Eastern Cape Provincial Intergovernmental Relations Conference and Committee. The former includes the entire Provincial Legislature and the Executive Committee of the Provincial Association of Local Government and should meet once a year. The Provincial Intergovernmental Relations Committee, on the other hand, comprises only MECs, an MPL and a few local government representatives.

The Free State has also adopted this policy. Apart from the Provincial and Local Government Committee (PROVLOG) comprising the Cabinet and the executive of Freloga, there is also a Premier's Mayoral Forum where all the mayors meet with the Premier on a quarterly basis.

### 7.4 Membership

Membership varies considerably, revealing a number of options.

#### 7.4.1 Politicians/officials

The dominant pattern is that a clear distinction is made between political and technical structures. Apart from Gauteng, where the top bureaucrats sit with the politicians, the political structures sit as such and are supported by technical structures drawn from officialdom.

<sup>9</sup>This section is drawn from Strengthening Intergovernmental Relations in the Province of KwaZulu-Natal: A Discussion Document, Office of the Premier, KwaZulu-Natal, August 2002.





### 7.4.2 Provincial politicians

There is some variation in who is included in the provincial delegations. The Eastern Cape PIGR Conference includes MPLs, apart from the Premier and MECs. Even its smaller PIGR Committee includes the chairperson of the Standing Committee on Local Government. The same approach is followed in Gauteng, where the Intergovernmental Forum includes the chairpersons of the Legislature's Standing Committees. The North West Intergovernmental Forum also includes the speaker and the deputy speaker as well as chairpersons of Standing Committees. The Free State's Provincial and Local Government Committee (PROVLOG) and Mpumalanga's Intergovernmental Relations Forum are exceptions to the rule, only including members of the executive.

The value of including selected MPLs, in particular the chairperson of the Standing Committee on local government, would be to ensure that the understanding that the structure seeks to achieve is not restricted to the executive. The question is, however, whether provincial legislatures should be absorbed in what are essentially executive structures; it could be to the detriment of their oversight role, which includes a province's relations with local government.

### 7.4.3 Local government politicians

Three basic approaches are identifiable. First, local government politicians are represented through the provincial associations of local government. In the North West, intergovernmental forum (IGF) municipalities are represented only through organised local government. A similar principle is applied in the Free State's PROVLOG. The argument for including only provincial associations is that they represent the voice of municipalities in intergovernmental forums and that they are generally recognised by national and provincial governments as being the representative and consultative body in respect of local government.

Second, municipalities are directly represented through their respective mayors. Gauteng is the only example of this approach. Mayors represent their municipalities in both the IGF and the Premier's Co-ordination Forum. It should be further noted that for the smaller Premier's Co-ordinating Forum, only the mayors of the three metros and three district municipalities are represented. The argument of the provincial government is that all mayors are part of GALA, and as such GALA is thus indirectly represented.

The arguments articulated for direct representation of municipalities in IGR forums have been the following. First, as bodies of political office holders, issues are also subject to the prevailing political discourse. Where no consensus can be reached, no decisions are taken. Second, municipalities generally prefer to negotiate themselves as opposed to negotiating through provincial associations, as their needs may differ. Third, the existence of organised local government requires mandates and representativity, which are not always obtained in practice. Fourth, on issues of service delivery an IGR forum representative of the implementing authorities — provincial departments and municipalities — would be the best structure to ensure that decisions taken collectively are actually implemented in practice.

A third approach is a combination of the previous two, resulting in the direct representation of municipalities, with organised local government as an additional member.

### 7.4.4 Other members

Membership is extended beyond the governments of the two spheres on a few occasions. In the North West IGF, the chair of the House of Traditional Leaders is a member, as is the chairperson of the provincial Youth Commission.

## 7.5 Special structures

Apart from an all-inclusive IGR structure, special or sectoral structures are also prevalent.

### 7.5.1 Local Government

In lieu of a broad inclusive IGR instrument, the Western Cape has a Provincial Advisory Forum. This Forum, consisting of the Minister for Local Government and the mayors and managers of all municipalities, is, as the name suggests, not a true IGR structure as it was established to serve the Minister with advice on the exercise of his or her statutory duties. Despite being a statutory forum, in practice this body has served as a forum for dialogue between the Province and local government.





In addition to its all-inclusive PROVLOG the Free State also has a forum where the MEC for Local Government meets with the executive committee of Freloga, the so-called MECLOG. The suggestion has been made that MECLOG, which has not met this year because of the unavailability of the MEC, be merged with PROVLOG.

### 7.5.2 Sectoral structures

All-inclusive structures and focused local government structures do not exclude sectoral structures, which could include transport forums, IDP forums, health forums etc. As with the overall structure, the central question is the representation of local government. Three options present themselves:

- The relevant MEC meeting with district mayors;
- The relevant MEC meeting with the provincial association; or
- The relevant MEC meeting with district mayors and the provincial association.

Whatever the composition, the linkages between the sectoral structures and the overall IGR structure are important. An important issue is whose function it should be to ensure that the sectoral structures do not work at cross-purposes. If the sectoral structures were seen as integral parts of the all-inclusive structure, then co-ordination would ideally lie with the Premier's Office.

### 7.5.3 Traditional Leadership

Where traditional leaders were not included in the broad IGR instrument, special forums have been established for that purpose. In the Free State a special Premier's Traditional Leaders Forum was established in 2001, in terms of which the Premier meets with the House of Traditional Leaders of that province. The Premier serves as the link between this structure and PROVLOG if any issues need to be taken further.

### 7.6 Technical (support) structures

IGR instruments, composed of officials, are found in most provinces. In the Eastern Cape, the Provincial IGR Technical Committee is in fact the only functioning IGR structure. Technical structures serve the political structures, but may have a larger co-ordination role as their membership often embraces role players outside government, such as parastatal service providers.

Their membership usually mirrors the political structure, with some notable exceptions. First, in the Eastern Cape the technical committee comprises provincial heads of departments, all municipal managers, the CEO of the local government association and representatives of parastatals. It would appear that when it comes to the practice of IGR, the municipalities are directly represented. The same principle applies in the Free State. While Freloga represents local government in PROVLOG, on the Technical Forum all municipal managers are members alongside the CEO and deputy CEO of Freloga.

Second, because of the delivery side of IGR, service providers play an important role. As in the Eastern Cape, the North West Technical Forum, under the chairpersonship of the Director-General, includes representatives of services providers such as water boards, Telkom and Eskom, representatives from local government professional bodies such as trade unions, and national government officials. Because of the technical nature of its activities, the large Forum is split into several intersectoral forums. In the Free State service providers participate by invitation only.

### 7.7 Nature

All of the structures, but for the Western Cape's Provincial Advisory Forum, are non-statutory, established in terms of a Memorandum of Understanding or a protocol. They are aimed at managing intergovernmental relations between equal parties. This philosophy comes through clearly in the Free State, where the chairpersonship of PROVLOG and the Premier's Mayoral Forum rotate between the Premier and the Chair of Freloga.



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