

The implementation of the Intergovernmental Relations Framework Act

AN INAUGURAL REPORT

2005/06 – 2006/07



the dplg

Department:
Provincial and Local Government
REPUBLIC OF SOUTH AFRICA

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GLOSSARY

AsgiSA	The Accelerated and Shared Growth Initiative for South Africa
DBSA	Development Bank of South Africa
DORA	Annual Division of Revenue Act
DLG	Department of Local Government
DPLG	Department of Provincial and Local Government
DWAF	Department of Water Affairs and Forestry
EXCO	Executive Committee
FFC	Financial and Fiscal Commission
FOSAD	Forum of South African Directors-General
GFS	Government Financial Statistics
GWM&E	Government-wide Monitoring and Evaluation
IDP	Integrated Development Plan
IG	Intergovernmental
IGR	Intergovernmental Relations
IGRF Act	Intergovernmental Relations Framework Act
IPSAS	International Public sector accounting
ISRDP	Integrated Sustainable Rural Development Programme
JIPSA	The Joint Initiative on Priority Skills Acquisition
KPA	Key Performance Areas
LED	Local Economic Development
LGSA	Local Government Strategic Agenda
LGTA	Local Government Transition Act
MANCO	Management Committee of FOSAD
M&E	Monitoring and Evaluation
MEC	Member of the Executive Council
MFMA	Municipal Finance Management Act
MinMEC	Ministerial Forum (of national ministers and provincial MECs)
MIG	Municipal Infrastructure Grant
MR&E	Monitoring, Reporting and Evaluation
MSA	Municipal Systems Act
MTEF	Medium Term Expenditure Framework
MTREF	Medium Term Revenue Expenditure Framework
MTBPS	Medium Term Budget Policy Statement
MTSF	Medium Term Strategic Framework

NCOP	National Council of Provinces
NSDP	National Spatial Development Perspective
OtP	Office of the Premier
PoA	Programme of Action
PC	Project Consolidate
PCF	Provincial Coordinating Forum
PCC	President's Coordinating Council
PGDS	Provincial Growth and Development Strategy
PFMA	Public Finance Management Act
PRC	Presidential Review Commission
PSDP	Provincial Spatial Development Perspective
RSC	Regional Services Council
SALGA	South African Local Government Association
SARS	South African Revenue Services
SDBIP	Service Delivery and Budget Implementation Plan
URP	Urban Renewal Programme



FOREWORD BY THE MINISTER

Mr FS Mufamadi

We are moving towards the end of the current term of government, and it is a fitting time to be assessing the level of progress achieved in the nation-building endeavours of the second decade of democracy.

This decade has been marked by a shift of gear to achieve Vision 2014, as articulated through the Programme of Action and through the Medium Term Strategic Priorities of government. The government elected in 2004 adopted this vision for the second decade, the key focus of which was the central role identified for local government in achieving the goals and targets for universal access to basic services as outlined in Vision 2014. Indeed, the Presidency's Towards A Ten Year Review had demonstrated the growing concern about the capacity and organisation of the state to reach these development goals, resulting in the immediate national government response to strengthen local government during the second term (2006-2011).

When one considers the socio-economic conditions in our municipalities, prevalent for many decades, the transformation challenges may seem insurmountable at times. But our municipalities have achieved significant progress as a result of the sustained and dynamic build up of institutional capabilities across government, finding most recent expression in firstly Project Consolidate and then the 5-year-Local Government Strategic Agenda, which was endorsed by the Extended Cabinet Lekgotla in 2006 as a national plan of action to improve municipal governance in the country.

Such a response would however, succeed or fail depending on the level of intergovernmental cooperation between the other two spheres and local government and the degree to which the capacity-building and support required would enable each sphere to successfully discharge its constitutional responsibilities. A milestone in this regard was reached with the introduction of the Intergovernmental Relations Framework Act in 2005. It is a testament to the principles and values of the Act in practice that cooperative government is now seen to be the foundation for the coordination across the three spheres of all of government's service delivery, development and policy initiatives.

One of the Medium Term Strategic Priorities is to ensure that the other two spheres have the appropriate capacity and organisation to play their part in cooperative government and to discharge their responsibilities to monitor, support and regulate local government. The current **dplg** Policy Review Process on Provincial and Local Government will assist us to penetrate the successes and failures of each sphere from such a governance perspective. It will take stock of the last 13 years and derive lessons and insights that can inform specific approaches to make the system of government more efficient, accountable, equitable and able to provide a better quality of service to South Africa.

Supporting this period of investigative analysis is this Inaugural Report on Intergovernmental Relations in the Republic, 2005/06 – 2006/07. Whilst the Act was only introduced in 2005, the theory and practice of intergovernmental relations is embedded in the Constitution and served to underlie the development of a complex decentralised fiscal and policy environment. The unitary state is in large part dependent for success on the efficient practice of intergovernmental cooperation. This Report is the first government assessment of this premise – that through the good conduct of intergovernmental relations, we inculcate the constitutional principles of interrelatedness and bring policy and practice into the realms of certainty and stability.

I would therefore encourage a studied response to the findings in this Report. The discharge of our constitutional responsibilities at each sphere of government is reliant upon the practitioner, the politician and the official fully conversant with his or her role in the management of intergovernmental relations. Where pressure points and challenges have emerged, it is incumbent upon us to find joint solutions, and where there are areas of success we must build on these.

I am heartened by the findings of this Report. Our fiscal, governance, policy and regulatory environments are evolving and maturing over time, and bringing us steadily towards the common goals we aspire to in our Vision for 2014. It is therefore up to each and every one of us to commit to that Vision.

Mr FS Mufamadi

A DEVELOPMENTAL ENVIRONMENT FOR INTER-GOVERNMENTAL RELATIONS

Deputy Minister
Ms Nomatyala Hangana



This Inaugural Report to Parliament on the conduct of intergovernmental relations in the Republic is to be welcomed. It is an important milestone in determining the extent to which the constitutional principles of cooperative government are finding expression in the national development agenda.

The preamble to the Intergovernmental Relations Framework Act provides the context for the purpose of the Act: 'and whereas one of the most pervasive challenges facing our country as a developmental state is the need for government to redress poverty, underdevelopment, marginalisation of people and communities and other legacies of apartheid and discrimination.'

The institutional response of the state to these challenges is rooted in the understanding that target setting and objectives for growth and development require a stable and predictable governance system to support implementation of service delivery targets, policy and legislation across the three spheres. Mid-way through the current government's term of office local government could register progress in accelerating service delivery, including a reduction of infrastructure backlogs, increased access to basic services and a growing contribution by municipalities to job creation and economic growth in the country as a whole.

Whilst this is significant progress, Business Unusual in 2008 demands an accelerated rate of service provision with the appropriate levels of institutionalised support to municipalities to meet the outstanding challenges. Whilst shifting gear across the state means prioritising support and the necessary range of skills and capacity to deliver accelerated services, it is also critical to adopt a holistic approach to national development. Lessons learned and observations from practice are moving beyond the existing policy and legislative frameworks for local government to an increasing awareness of the need for new forms of dialogue and inter-sphere engagement.

This increasing responsiveness to a rapidly changing environment can be demonstrated through the new Apex Priorities of government, and through the emerging influence of regional and spatial analysis to encourage socially inclusive, integrated and economically connected local spaces. The focus on the second economy, job creation, the Accelerated and Shared Growth Initiative for South Africa (AsgiSA) and the war on poverty further demonstrate that the institutional mechanisms to promote social cohesion and sustainable development must not be compromised by an inability of any structure to discharge its mandate.

The critical importance of intergovernmental relations in ensuring that national government and provinces are properly positioned to support local development in a time of rapid transformation is an outstanding feature of this Inaugural Report. Covering both content based, policy and institutional performance assessments of the role of intergovernmental relations in development, the Report reveals the powerful links between the structure of the state, functionality and policy outcomes.

I believe this Report prepares the road ahead for the conduct of Intergovernmental Relations in the Republic, showing us the decisions we may need to take in terms of refining and strengthening the system, and demonstrating where there is evidence of innovation and good practice in an evolving system.

Ms Nomatyala Hangana

IMPLEMENTING INTERGOVERNMENTAL RELATIONS (IGR) – PROCESS AND CHALLENGES



Director-General Ms Lindiwe Msengana-Ndlela

One of the greatest success stories of government to date must be its ability to adapt to changing circumstances and learn from the lessons of practice regarding the implementation of the various social and economic programmes designed to reconstruct and transform the state.

National and provincial government are in the second decade of practice, whilst local government is only in its second term, following inauguration in 2000. This short space of time has seen profound changes in South Africa, underpinned by a constitutional framework defining our multi-sphere model of government with distinct, interrelated and interdependent competencies. Each sphere is bound to perform their powers and functions in a system of cooperative governance with each other and with national government.

It is the performance of this multi-sphere system that is being assessed in this the first, Inaugural Report to Parliament on the conduct of IGR in the Republic. At the heart of the review lie the lessons learned from practice, building on the knowledge that we acquire through the implementation of government policies and programmes within the framework of intergovernmental cooperation, support and collaboration.

As the Report notes 'ultimately, the effectiveness of the IGR system may be gauged by the extent to which it adds value in effective service delivery, development and good governance across the three spheres of government.' This shift in thinking, from a technical to a developmental understanding of IGR has opened up a central role for a 'whole of government' (coordination and joint programming) approach that currently informs service delivery support programmes.

This shift may be discerned as intergovernmental alignment strengthened between the 5-year Local Government Strategic Agenda, Project Consolidate, Siyenza Manje, and the implementation of the national planning cycle at local level. The impetus for the 5-year LGSA was a review of local government up to 2006, wherein key structural, systemic, fiscal, and institutional design factors were identified that impacted negatively on local government performance. Since then, rapid and joint interventions in each of the five Key Performance Areas (KPA's) have seen not only improvements in these functional areas, but also in intergovernmental coordination by the provincial offices of the premiers and departments of local government.

Whilst Project Consolidate is now mainstreamed into the 5-year LGSA, its impact has been to both build and sustain local government capability and to foster partnerships between government, the private sector and the Service Delivery Facilitators (SDFs). The potential of these partnerships, including labour, business and civil society, to contribute to growth and skills development in disadvantaged municipalities is strengthened if the role-players are aware of the potential IGR practitioners have to negotiate and coordinate joint outcomes.

This Inaugural Report is honest in its preliminary findings on the conduct and practice of IGR in the Republic. There are challenges at every level and between every sphere, but there are many successes too. The current Policy Review Process on Provincial and Local Government is also an exploration of the systemic strengths and weaknesses in our system of government. The purpose of these evaluations is to deepen our understanding, provide lessons from practice, and to inform government debate on possible reforms and interventions.

I hope you will enjoy reading the Report. I also hope you will continuously engage with the evolution of IGR in the Republic by promoting good practice and good example in your own particular sphere of government.

Ms Lindiwe Msengana-Ndlela

OVERVIEW

This Inaugural Report on Intergovernmental Relations (IGR) reviews the important policy, legislative and programmatic measures that have been implemented by government since the promulgation of the Intergovernmental Relations Framework Act (the IGRF Act) in August 2005. The intention of the Act is to bring structure and form to the constitutional principles of cooperative government, the basis of which is a multi-sphere system of government within which each sphere exercises distinctive powers and functions operating within principles of interdependence and interrelatedness. The Act provides therefore a framework for the functional integration of IGR in the Republic. It is the degree to which this system is institutionalised within government that informs the approach of this Report.

The effective application of the principles and values of IGR should promote a more coherent intergovernmental (IG) response to the policy and governance challenge of achieving sustainable and equitable development. Early indicators of progress assessed since 2005 indeed demonstrate that there are a number of success areas, and these are highlighted in the Report. Such areas include effective interpretation of policy and legislative frameworks, the increasingly strategic use of IGR fora to govern regional concerns, improved credibility in local development planning, expanded programmes of support and the IG focus of the government-wide monitoring and evaluation (GWM&E) system. These initiatives give effect to constitutional and legislative mandates across government.

However, as in all evolving systems, certain formative challenges have been identified. The Report reviews the lessons from practice in respect to the process of institutionalisation of IGR. The linkages between the structures of the state, institutionalised systems and development outcomes are the value chain in our system of IGR. The test of effective IGR lies in demonstrable improvements in socio-economic development and the quality of life of citizens arising from the programme of action (PoA) of a responsive state.

The record of government in overcoming the legacy of decades of skewed and uneven development is significant, but will become more so when our evolving systems reach a more stable level of maturity. This reality informs the state as it scrutinises its own capability in order to identify and improve weaknesses in the system. The Report seeks to extrapolate those key indications that suggest where there have been lessons learned and where, due to generational evolution, pressure points have emerged and supportive interventions may be necessary.

Many of the identified pressure points in the system refer to the functionality of the system and not the system itself, which is understood to be evolving. Systemic performance based assessment by government has identified the capability of the state as a source of disjuncture between the attainment of development targets and the capacity of different agencies to manage the complexities inherent in the system. Structural tensions arise, such as in the management of concurrency, as evidenced by fragmentation and duplication in some key areas of service delivery compounded by a lack of a single point of accountability.

When IG tensions do prevail, and disputes arise, the IGRF Act offers a set of principles for the parties to follow to avoid litigation, as the section on Conflict Resolution and Disputes demonstrates. It is acknowledged by the Constitution that disputes are inevitable in a cooperative system of government where contestation over functions and resources will inevitably emerge. The key challenge in such a situation is to avoid adversarial litigation, and to seek resolution at a political level. Political settlement through compromise and accommodation lies at the heart of non-judicial dispute resolution, and reflects the letter and spirit of cooperative government. The strengthening of adherence to section 45 of the IGRF Act is an area of improvement identified in this section.

Considerable emphasis is given in the Report to the scope of the IG forum to act as the lynchpin of coordination and strategic direction within each sphere. Nevertheless, research to assess the functionality of the IGR forums in 2007, refers consistently to the evidence that it is not only policy, legislation and structures that influence successful outcomes in service delivery. Good relationships are fundamental to effective functioning of forums. Where relationships between members are strained, functionality may be compromised. The IGR forums are now emerging from the establishment phase, and it is hoped that studies going forward will be able to identify the impact of the forum's strategic processes on service delivery, as the structures consolidate and build on becoming effective forums for dialogue and engagement.

As some of the case studies in the Report demonstrate, the balance required between formal compliance and innovation and relationship building is evolving. It is observable in the multi-sphere preparations for 2010, and has been key to the success of the urban renewal programme (URP) in bringing multiple stakeholders together in new approaches to sector engagement and partnerships with the private sector and civil society. Conversely, other case studies demonstrate the need for strengthened IG and fiscal support for the implementation of the policy and programmatic decisions taken that have vertical level impact.

When considering the effectiveness of implementation, it is necessary to consider the balance between prescription and cooperative behaviours as envisaged by the Constitution, as well as the legislative principles enacted to support IGR. Analysis of the performance of IGR structures, of the planning and budgeting and the fiscal 'trouble-spots' point to a need to review the relationship of national and provincial support and oversight mandates in the development of the conduct of IGR. For this reason, the monitoring and evaluation (M&E) benchmarking process recommends that increased emphasis is put on the links between outputs and joint programme and project outcomes, thereby further institutionalising IG roles and responsibilities within the governance framework.

As part of this Inaugural Report, a specific series of indicators have been designed to enable evaluation and measurement of the evolving system of IGR in the Republic. These are included in this Report as Appendix B. It is hoped that the qualitative nature of many of these indicators will result in a 'whole of government' assessment of the evolution of the system of cooperative government.

In presenting this first report, it will be seen that the functionality of IGR had been assessed within a more fundamental scope than just the formal assessment of IGR compliance with legislative prescripts. Many of the issues covered bring to the fore related and intrinsic structural and systemic pressure points. But we also know that South Africa's IG system is still in its formative stages, and that we are entering a period of consolidation and development in implementation of the principles of the Act.

Looking ahead to a medium term focus on the implementation of the Act, the **dplg** will be informed by the lessons learned to date. The Department will take cognisance of the findings and recommendations of the Policy Review Process on Provincial and Local Government, as well as the IG lessons learned from other key programme areas undertaken by the Department. These include the 5-year Local Government Strategic Agenda (LGSA) the integrated planning and local economic development (LED) frameworks, free basic services and infrastructure, institutional support, urban and rural development, and measures to enhance good governance and public participation in development interventions.

1. INTRODUCTION

The Constitution (1996) states that *'government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated'* (section 40(1)). The *'distinctive'* element refers to the autonomy enjoyed by the spheres; that is, the degree to which each sphere is the final decision-maker on a particular matter that falls within its area of competence.

The creation by the Constitution of this decentralised governance system, which comprised the three distinct but inter-related spheres of government, also gave rise to the need for a systematic system of IGR to give effect to the principles of cooperative government.

To realise these principles, the IGRF Act was promulgated on 15 August 2005. The Act provides for an institutional framework for the three spheres of government to facilitate coherent government, effective provision of service, monitoring implementation of policy and legislation, and realisation of developmental goals of government as a whole.

In spelling out the principles of cooperative government and IGR, the Constitution binds all spheres of government and organs of state in each sphere of government to three basic principles:

1. **A common loyalty to the Republic as a whole.** This means that all spheres are committed to the secure the well-being of the people of the Republic and, to that end, must provide effective, transparent, accountable and coherent government for the Republic as a whole. This is the object of cooperative government.
2. **The distinctiveness of the spheres should be respected.** A sphere must remain within its constitutional mandate, and when exercising those powers, must not do so in a manner that encroaches on the geographical, functional or institutional integrity of another sphere, except where specifically directed otherwise.
3. The spheres of government must take concrete steps to **realise cooperative government** by –
 - a) Fostering friendly relations;
 - b) Assisting and supporting one another;
 - c) Informing one another of, and consulting one another on, matters of common interest;
 - d) Coordinating their actions and legislation with one another;
 - e) Adhering to agreed procedures; and
 - f) Avoiding legal proceedings against one another.

Role of the National Assembly and the National Council of Provinces (NCOP)

The Constitution provides for a bicameral parliament comprising a National Assembly of 400 members, a NCOP of 90 members (ten members from each of the nine provinces). Functions and responsibilities are legislative authority and oversight roles, and providing a forum for issues for public consideration.

The NCOP represents the interests of the country's nine provinces on issues of shared national and provincial legislative powers and also oversees the programmes and activities of national government relating to provincial and local government matters. For this reason the South African Local Government Association (SALGA) is permitted ten representatives, but holds no voting powers. In terms of the separation of powers, executive authority is then vested in the government, or Cabinet, which is responsible for executing the laws of parliament. In May 2007 the **dpplg** launched the IGR Toolkit at the 10th Anniversary celebrations at the invitation of the NCOP, thereby broadening the reach of IGR into the realm of provincial representation and oversight.

In an IG system, based on the principles of cooperative government, the social dialogue, oversight and mediation role of both parliament and the NCOP becomes relevant. The role of parliament in relation to IGR, may also, in future, encompass an expansion of the role of constituency liaison and citizen inputs into policy processes and decision-making. This may be through broader facilitation through IG bodies such as the Financial and Fiscal Commission (FFC) and even the Ministerial Forums (of national ministers and provincial members of executive councils) (MinMECs), in the effort to deepen local and participatory democracy.

In legal terms, the Constitutional Court has, since the enactment of the Constitution in 1996, expanded the jurisprudence surrounding IGR in South Africa – a process that is still continuing. Constitutional Court provisions give clarity on the following:

1. That as far as possible all disputes between spheres of government should be resolved at a political level through negotiation, rather than through adversarial litigation. (*Ex parte Chairperson of the Constitutional Assembly: in re Certification of the Republic of South Africa, 1996, 06/09/1996*).
2. That Parliament must legislate for structures and institutions to 'promote and facilitate' IGR. (*Van Wyk vs Uys No 2002 (5) SA 92, Cape Provincial Division, 11/09/2001*).
3. That 'Government in the Republic of South Africa is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated. Municipalities established throughout the territory of the Republic constitute the local sphere of government,' (*Van Wyk vs Uys, (ibid)*).
4. That the Constitution requires the three spheres 'to cooperate with each other in mutual trust and good faith...to assist each other and support each other, to consult on matters of national interest and to coordinate the actions of the three spheres of government,' (*Van Wyk vs Uys, (ibid)*).
5. The concurrent and exclusive powers of each of the three spheres have been tested before the Constitutional Court, which has defended exclusive powers (for instance, of the provinces, in terms of section 6 (*Ex Parte President of the RSA: In re Constitutionality of the Liquor Bill, 2000 (1) BCLR 1; 2000 (1) SA 732*)).
6. The Constitution makes it clear that all spheres of government and all organs of state are guided by the concept of cooperative government and the principles of Chapter 3 of the Constitution. This means that the system of IGR applies to:
 - a) the National Parliament and departments and institutions falling within the national sphere of government;
 - b) provincial legislatures and departments and institutions falling within the provincial sphere of government;
 - c) municipal councils, departments and other organs falling in the local sphere of government (such as municipal entities).

Excluded are:

- a) the courts and judicial officers; and
- b) the institutions, established in terms of Chapter 9 of the Constitution, such as the Independent Electoral Commission (IEC).

Over the past decade, the three spheres of government have met the challenge of cooperative government by:

- Developing IGR institutions at national and provincial level dealing with issues of alignment, integration and coherence;
- Developing IGR systems, processes and procedures, particularly planning processes, in terms of which national, provincial and local governments pursue common objectives; and
- Engaging in joint work and projects to realise integrated service delivery.

Although the Constitution set the tone for 'cooperative government' to be the pervasive spirit for the conduct of effective IGR, it also acknowledged that conflict may arise between spheres as a result of different priorities, aims and objectives. As such it required conflict resolution and oversight and support mechanisms to be set in place.

With the parliamentary and legal frameworks in place, the dynamic has shifted to the instruments and the conduct of IGR itself.

2. THE EVOLUTION OF THE IGR SYSTEM

IGR refers to ‘the complex and interdependent relations amongst three spheres of government as well as the coordination of public policies amongst the national, provincial and local government’¹

The term ‘intergovernmental relations system system’ is used in this paper to refer to the various components of the governance, administrative and fiscal arrangements operating at the interface between national, provincial and local governments. The components that contribute to the effective functioning of IGR include:

1. Legislation and regulation related to IGR which, inter alia, describe the distribution of powers and functions between and within spheres of government;
2. IGR structures (such as forums and other bodies);
3. IG processes such as planning and budgeting;
4. IGR instruments (such as implementation protocols, guidelines and mechanisms for monitoring, communication, support and supervision); and
5. IG dispute resolution procedures.

The development of the nascent IGR system in South Africa may be categorised into three main phases:

1. **Transforming the macro-organisation of the state and creating an IGR system (1994-2000):** This phase centred around the creation of a single public service incorporating the ex-homeland administrations, establishment of the nine provincial governments, Cabinet reforms such as the introduction of the cluster system and an end to the transitional phase of local government transformation, culminating in the demarcation of 284 municipalities. The primary focus was initially on the creation of specialist IG forums and processes, especially in regard to concurrent functions. Where legislation dealt with the settlement of IG disputes, these were confined to particular contexts.
2. **Operationalising the IGR System (2001-2004):** During this phase the IGR system unfolded rapidly with only minimal regulation. To give operational substance to the concept of cooperative government, many non-statutory national and provincial IG forums emerged (such as the President’s Coordinating Council (PCC), the Forum of South African Directors-General (FOSAD) and provincial IG forums). This period also saw increased organised local government engagement in IGR as well as increased collaborative joint work, programmes and projects across the three spheres.
3. **Consolidating the IGR system (2005 to date):** The introduction of the IGRF Act of 2005 sketched out a broad statutory framework for the practice of IGR, provided for the establishment of IG forums and provided a basic framework for the settlement of IG disputes. With the increased formalisation in the regulatory environment came a shift of emphasis to IG instruments facilitating the effective practice of IGR.

¹ Dplg, 2007a.

Table 1 outlines the key milestones in the development of the South African systems on IGR.

Table 1: Key milestones in the evolution of South Africa's IGR system

YEAR	IGR MILESTONES
1993	Interim Constitution adopted. Local Government Transition Act (LGTA) set out a three-phase transition process for local government. The first pre-interim phase commenced. Metropolitan transitional councils, local transitional councils, transitional representative councils, transitional rural and district councils were created to replace apartheid structures.
1994	First democratic national and provincial government elections. Integration of old provincial administrations and homelands into the nine newly created provincial governments. Public Service Act of 1994 created a single civil service for national and provincial governments: 35 national departments, offices and services, and nine new provincial governments were created. First IG forum established in August 1994.
1995	First local government elections. Establishment of two-tier transitional local government arrangements in the cities. The second interim phase of transition commenced.
1996	Final Constitution adopted. NCOP established. MinMECs begin operating as informal IG forums. The Borrowing Powers of Provincial Government Act, 48 of 1996, promulgated.
1997	The Intergovernmental Fiscal Relations Act, 97 of 1997, formally established the Budget Council and Budget Forum and outlined the process for sharing nationally collected revenues across the three spheres. Organised Local Government Act, 52 of 1997, provided for the recognition of national and provincial organisations to represent the various categories of municipalities. FFC Act, 99 of 1997, passed. Introduction of the Medium Term Budget Policy Statement (MTBPS).
1998	White Paper on Local Government sketched a vision of developmental local government. Municipal Demarcation Act set forth criteria and procedures for the redefinition of municipal boundaries, creating wall-to-wall local government. Municipal Structures Act, 117 of 1989, establishes three categories of municipalities (metros, local and district municipalities) and the structures within them. Medium Term Expenditure Framework (MTEF) introduced.
1999	Introduction of the Cabinet Cluster system. PCC emerged as the successor to the IG forum. Public Finance Management Act (PFMA), 1 of 1999, promulgated. Publication of the first annual National Treasury Intergovernmental Fiscal Review.
2000	First Annual Division of Revenue Act (DORA) promulgated. Second local government elections. Final phase of local government transition begins. The number of municipalities is reduced from 843 to 284. The Municipal Systems Act (MSA), 32 of 2000, outlined the powers and functions, planning processes, delegations, performance management and raising of revenue within the municipalities.

YEAR	IGR MILESTONES
2001	Municipal Planning and Performance Management Regulations, 2001. Provincial Tax Regulation Process Act, 53 of 2001.
2003	Gazetting of powers and functions between category B and C municipalities with effect 1 July 2003. The Municipal Finance Management Act (MFMA), 56 of 2003, promulgated, aiming to modernise local government budgeting and financial management, thereby promoting consultative and cooperative government.
2004	Municipal Property Rates Act, 6 of 2004, guiding the imposition of a new property rates system. A new budget and reporting format for provincial governments, aligned with both GFS and IPSAS was introduced, based on a new standard chart of accounts (SCOA).
2005	The Intergovernmental Framework Relations Act, 13 of 2005, sets out in greater detail the purpose and basic legal framework for IGR across the three spheres of government and provides procedures for the settlement of disputes.
2006	IGR Practitioners Manual and Toolkit published by the Department of Provincial and Local Government (the dplg). Third local government elections. Abolition of Regional Services Council (RSC) levies.
2007	Municipal Fiscal Powers and Functions Act, No. 12 of 2007. The dplg commences its policy process on the system of provincial and local government, expected to culminate in a White Paper on Provincial and Local Government in 2009.

In addition to the formal IGR system components outlined above, there are also other less tangible, but still potent, qualitative factors which condition the practice of IGR (such as politics, trust, leadership, quality of relationships). Taken together, both the formal and informal components of the IGR system shape the incentives for good governance and integrated service delivery to be practised by participants in the IGR system.

The impact of IGR practice on service delivery arises from the interplay between the formal design elements of the system delineated above, and operational factors that impinge on the implementation of that system (e.g. capacity issues, the budget, the political context, community dynamics etc). These operational risks are managed by the vertical and horizontal dimensions of IGR (i.e. coordination and supervision duties between different spheres of government, e.g. in relation to concurrency in powers and functions across three spheres, or the oversight and integration roles within particular spheres of government, e.g. national cluster committees, established by the President in 1999, to enhance cross-sectoral coordination).

Ultimately, the effectiveness of the IGR system may be gauged by the extent to which it adds value in effective service delivery, development and good governance across the three spheres of government. This is recognised in the preamble to the IGRF Act which acknowledges that challenges of poverty, inequality and marginalisation of vulnerable groups and communities are best addressed through 'concerted effort by government in all spheres to work together and to integrate as far as possible their actions in the provision of services, the alleviation of poverty and the development of our people and our country'.

These principles place a great responsibility on IGR. But concerns were raised about the difficulties of effective functioning of the IGR system virtually at its inception: 'Weaknesses in the structures and practices of IGR led to poor coordination within and between different departments and spheres of government, creating incapacity to implement national programmes and a consequent failure to delivery basic services.'²

² Presidential Review Commission, 1998.

Issues raised by the Presidential Review Commission (PRC) included the need to establish a balance between the natural evolution of IGR and the need for prescription. IGR should:

- Facilitate information flows between and within sectors in all three spheres of government
- Improve the weak IGR between local government and the other two spheres of government
- Achieve greater clarity on the obligations of different spheres of government where there are concurrent responsibilities
- Give greater attention to the lack of capacity in all three spheres of government.

The PRC report in February 1998 recommended that a detailed IGR Audit be undertaken. This resulted in a comprehensive IGR Audit³ The IGR Audit Report findings aimed to assess the strengths and weaknesses of IGR structures at the time, to enhance mechanisms for IG cooperation and to mediate IG tensions effectively.

In particular, the IGR Audit noted the failure of provincial governments to establish a cooperative government framework for provincial-municipal IGR engagement. Crucially, the IGR Audit Report noted that 'reform or regulation in itself might not lead to dramatic improvements in performance as poor IGR coordination is frequently a problem of capacity and management rather than a problem of inappropriate IGR.'

An IGR study commissioned in 2003, as part of the 'Towards A Ten Year Review' (TYR) by the Presidency focused mainly on IG service delivery: successes, failures, good practices and blockages. Over the last five years as the IGR system has matured, a number of key trends were discerned:

1. An increasing shift in focus from legislative/conceptual/ policy relating to the design of the IGR system to IGR implementation and actual practice.
2. A shift from process to content/substance-based IGR: The early focus of IGR was often on creating structures, procedures and processes, almost seeing IGR as an end in itself. Recently there has been greater emphasis on the actual conduct in support of coordinated sectoral service delivery priorities.
3. A shift from national and provincial IGR structures and processes to greater local government emphasis and engagement (e.g. the creation and support of municipal IGR forums to facilitate IG dialogue and collaboration).
4. A movement from a primarily 'silo' based sectoral focus to integrated development planning for the whole of government, impacting on policy interpretation, IG budgeting, joint implementation of programmes and other cross-cutting issues such as M&E.

³ The **dplg**, 1999.

3. EVOLVING PRACTICES IN IG POLICY AND PLANNING

3.1 Legislation and Context

One salient feature of the constitutional dispensation is the injunction that spheres of government exercise their powers and perform their functions in a spirit of cooperative government rather than competitive federalism. But typically, policy is set at national level and sub-national governments, through the assigned functional framework as set out in Schedules 4 and 5 of the Constitution, carry out budgeting and policy implementation.

In concurrent functions however, there tends to be considerable overlapping of roles, sometimes giving rise to confusion over responsibilities between national and provincial sectors, such as the level of authority over health, transport or education, for example. This reality can create policy tensions between the spheres, which in turn may give rise to IG contestation and disputes.

Furthermore, the complexity of concurrent functions tends to blur lines of accountability. Managing the structural tensions inherent in concurrency and the aspirations to cooperative government lies at the heart of the evolution of South Africa's IG system. These structural tensions need examination for their impact on the alignment of policy and planning. On one hand, progressive realisation of socio-economic rights demands integrated service delivery. On the other hand, sub-national governments (provincial and local) are given a degree of autonomy in crafting their own legislation, policies and budgets within the broad parameters of national legislative and policy frameworks. These complexities were summed up in 2004⁴:

'Whatever the nature of the lesson we are learning, we must be capable of feeding it back to policy, so we can improve the policy for better implementation. This should be simple and straightforward! But in reality we know it is not so simple and straightforward. Because different organisations are responsible for different parts of this process, what should have been a simple process becomes a complex system of inter-governmental relations...'

To assist with the coordination of concurrent functions, the National Treasury, in 2004, together with the relevant national department introduced uniform statutory formats for their provincial counterparts' strategic plans. These were issued in terms of the PFMA of 1999 and covered sectors such as education, health and roads.

With regard to planning however, some provincial governments have promulgated their own planning legislation in respect to their municipalities. KwaZulu-Natal enacted a Planning and Development Act, 6 of 1998, and proposed a new Bill in 2007, which would devolve the power to make certain planning and development decisions to municipalities. The Western Cape Planning and Development Act, 7 of 1999, and the Gauteng Planning and Development Act, 3 of 2003, have also been passed. This is because provincial planning is an exclusive provincial competence, and to date no national legislation has been enacted.

IG planning legislation initially focused mainly on local government. Sections 24 and 26 of the MSA of 2000 required the alignment of Integrated Development Plans (IDPs) to national and provincial development programmes, and outlined the statutory components of IDPs. The planning cycle was formulated to build alignment between the 2003 National Spatial Development Perspective (NSDP), the provincial growth and development strategies (PGDS), and the IDP (including the LED and infrastructure plans).

The underlying principle of integrated developing planning across spheres is that it must be the result of a dialogue between spheres. National priorities are influenced and shaped by the articulation by communities of their needs through the municipal integrated planning process. This approach focuses on growing sustainable economies, building partnerships and addressing poverty. However it has been evidenced that many of the integration challenges which have constrained IG planning refer back to the lack of clarity about the functional competences in Schedules 4 and 5 of the Constitution, as well as the assignment of powers and functions both across provincial and local spheres and also to the functions assigned to district and local 'tiers' within the local government sphere.

⁴ Discussions at FOSAD workshop, 2004.

An example of lack of clarity would be that 'health services' is listed in schedule 4 as a provincial competence, and 'municipal health services' as a local government function without a clear distinction. Similarly Schedule 4A categorises 'tourism' as a provincial matter and Schedule 5B makes 'local tourism' a municipal competence.

Some of these definitions have been clarified to some extent through legislation. For example, the National Health Act, 61 of 2003, defined municipal health services narrowly to refer to environmental health services such as water quality monitoring, food control, waste management etc. In practice, functional responsibilities between district and local municipalities in this respect still lack clarity. Whilst administrative definitions of local government powers and functions, such as those issued by the Municipal Demarcation Board (MDB) in 2003 and 2005, have helped to crystallise areas of functional competence the capacity of municipalities to undertake their assigned functions varies significantly. At the heart of the question of assignment and accountability is the principle of subsidiary, the principle of which locates decentralised powers to their most appropriate location, given capacity and needs assessments. The appropriate location of powers and functions needs to take into account spatial differences in municipal physical, social and economic environments and the emerging role of cities in a rapidly urbanising environment. The consultative review of powers and functions currently being undertaken by the **dplg** as part of the Policy Review Process is intended to assess the specific roles of the three spheres in this respect.

The two-tier system of local government originated when district councils were established during the interim phase of the local government transformation process (1995-2000), arising from the old apartheid RSCs and Joint Services Boards (JSBs) established in the 1980s. The allocation of functions to them was not clearly defined by the Interim Constitution or the LGT Act, leaving their regulation to provincial governments (Municipal Demarcation Board, 2005). The boundaries of district municipalities were determined by the Municipal Demarcation Board, culminating in the establishment of 47 district municipalities⁵ in December 2000, including new districts with little or no capacity at the time.

The Municipal Structures Act of 1998 (as amended in 2000⁶) set out a standard division of powers which allocated to district municipalities key areas such as water, sanitation, bulk electricity, municipal health services and other functions servicing the entire district (such as fire-fighting, passenger transport, markets, promotion of tourism etc). The remaining functions were assigned to local municipalities.

This legislative schedule may be re-assigned by the national Minister of Provincial and Local Government, following recommendations based upon the yearly assessment and review process undertaken by the provinces and the MDB⁷. The Minister, following consultation with members of the executive council (MECs) for local government may then adjust and authorise certain capacitated local municipalities to perform district functions. These functions may include potable water supply systems, bulk supply and distribution of electricity, domestic waste-water and sewage disposal systems, and municipal health.⁸ This approach allows for incremental change based upon the growth of sufficient capacity to manage the asymmetrical devolution of powers and functions.

The question of the degree of municipal capacity to deliver services and promote development has been identified through a number of government reviews (e.g. The Ten Year Review, 2003) (The Review of Local Government, 2006) and reports based on the evaluation of the implementation of various policy based programmes to support service delivery (e.g. the Municipal Infrastructure Grant (MIG), sustainable human settlements, the Integrated Sustainable Rural Development Programme (ISRDP), Urban Renewal Programme (URP), as well as LED, IDP, FBS and the strategies of sector departments).

With the key challenge for some municipalities identified as skills and capacity to implement development programmes, Project Consolidate (PC), the 5-year LGSA and Siyenza Manje are successive government initiatives that have identified targeted areas for IG 'hands-on' support. The implementation of these programmes is monitored through the PoA. Siyenza Manje also works within the strategic context of AsgiSA and the Joint Initiative on Priority Skills Acquisition (Jipsa), building on a cohesive state response to skills requirements for economic growth. The

⁵ Up from 42 district municipalities in the interim period.

⁶ Local Government Municipal Structures Amendment Act, 33 of 2000.

⁷ In terms of section 85 of the Municipal Structures Act, of 1998, (as amended) the MDB is required to advise the MEC's for local government on the capacity of district and local municipalities to perform their functions. Recommendations for adjustments are provided in District Reports that are submitted to the MECs for local government.

⁸ District functions are listed in section 84 of the MSA.

impact of these support interventions is apparent in the increasing technical and institutional capacity of certain municipalities to respond to their governance and operational challenges. Improvement in performance at local, provincial and sector levels also demonstrates there is increasing efficiency in managing partnerships, joint work and IG coordination to support effective interventions.

However, the Municipal Demarcation Board reported in 2008⁹ that the identification of those district and local municipalities still identified as 'poorly performing' (e.g. some of the LMs and DMs in Free State, Mpumalanga, Limpopo and KwaZulu-Natal) is compounded by many other complex factors, such as historical and socio-economic legacies, and the spatial conditions of the local area and the prevalence of traditional authority areas, some of which 'almost operate as a separate sphere of the state'¹⁰. These areas bring challenges in respect to municipal control or authority and their financial viability; such areas require specific IG and legislative frameworks to guide their development.

REACHING DEVELOPMENT TARGETS

Recent **dplg** research¹¹ analysed the impact on service delivery of the two-tier system of local government, as well as locating such studies within a broader review of the appropriate location of powers and functions for accelerated service delivery and the realisation of the national vision for 2014 through improved IG predictability and stability.

In addition to the government's PoA to reach basic service delivery targets, the government's Vision 2014 emphasises new jobs, skills development, economic development, a focus on the poor and eradication of major health problems. More specifically, by 2014 the aim is to:

- Reduce unemployment by half
- Reduce poverty by half
- Provide the skills required by the economy
- Ensure that all South Africans are able to fully exercise their constitutional rights and enjoy the full dignity of freedom; and
- Provide a compassionate government service to the people.

In order to assess the capability of the state to realise these targets, a comprehensive review of the first term of local government was submitted to Cabinet in 2006¹². The review identified problems within the local sphere of government and within the IG system, and proposed interventions, which Cabinet adopted as a 5-year LGSA. There were three priorities in the strategic framework: institutionalising support to distressed municipalities, improving IGR, and assessing policy. As the current Policy Review Process report notes:

'During this period, a national process to support municipal integrated development planning was introduced, which amongst other things revealed a generally weak relationship between local government and the other two spheres of government. These lessons informed a further review of local government as part of a mid-term review of national government. The mid-term review made a case for re-assessing the current governance model for provincial and local government. This led to the extended Cabinet in January 2007 mandating the Ministry and Department of Provincial and Local Government to initiate a process to develop a White Paper on Provincial Government and to review the existing White Paper on Local Government'.

At the launch of the Policy Review Process in July 2007, a publication entitled 'Policy process on the system of provincial and local government: Background: Policy Questions, process and participation' was widely circulated to government and stakeholders¹³. This publication, issued by the Ministry and the **dplg**, contained 65 policy questions, covering the role and functions of national, provincial and local government. It was compiled to assist the public debate and engagement on the critical policy and governance issues under review.

⁹ National Report on Local Government Capacity: District and Local Municipalities, MDB Capacity Assessment 2007/2008, Municipal Demarcation Board.

¹⁰ Ibid, p141.

¹¹ The Review of the two-tier system of local municipalities – **dplg** Discussion Paper, 2006.

¹² Local Government Review, 1994 – 2006, the **dplg**, January 2007.

¹³ Available from the **dplg**.

The issues under consideration in the policy review are clustered into thematic areas, one of which is strengthening the system to ensure developmental outcomes in service provision, planning and LED. This area is discussed below.

3.2 IGR Processes: Policy and Planning

Central to national and provincial government's approach to coherence in service delivery and development from the planning perspective is the Medium Term Strategic Framework (MTSF). This aims at the integration of policy on a horizontal level through the clustering of sectoral line ministries around shared objectives.

MTEF (and the accompanying MTBS) is used as a tool to encourage cooperation across ministries and departments as well as planning in three year cycles. These are supplemented by medium-term Cabinet Cluster priorities. Progress is monitored through the government's PoA.

In order to promote aligned policy implementation between the spheres, the NSDP was drafted in 1998 and has been updated on a regular basis since then, most recently in 2006. In January 2003 it was approved as an indicative planning tool to promote IG alignment and harmonisation. The NSDP is not a national plan, but articulates the normative principles and methodologies to underpin investment, infrastructure investment and development planning decisions of all three spheres. The NSDP forms a nexus with the PGDS, the IDP and LED planning.

What also makes alignment of planning complex is that it occurs between spheres as well as between and within the three spheres. The national planning framework was introduced as a mechanism to facilitate improved IG planning: it focuses on:

- The need for more substantive IG engagement on strategies and plans;
- The need to build a greater understanding of the developmental role of local government across all spheres of government;
- Giving effect to the role of the District or Metro IDP as a platform for a shared understanding and agreement on strategies to unlock development potential and overcome challenges;
- Greater involvement of national and provincial sector departments in the development of IDPs through involving more senior representatives of sector departments in IDP processes; enhancing the understanding of the IDP process in sector departments; and increasing the involvement of parastatals and government agencies in the IDP processes; and
- Finding effective mechanisms for the voice of local government in provincial and national planning processes.

Table 2 provides a summary of how the various components of the IGR system relate to IG policy formulation and planning.

Table 2: IG policy and planning

IGR SYSTEM COMPONENT	NATIONAL	PROVINCIAL	LOCAL
IGR legislation	IGRF Act of 2005	IGRF Act of 2005	IGRF Act of 2005. Municipal Structures Act on powers and functions between district and local municipalities. MSA on IG planning (s24) and IDPs (s26).
IGR forums/bodies	Cabinet Cluster PCC FOSAD NCOP	Provincial Cluster MinMECs Premiers Coordinating Forums	SALGA District IG forums

IGR SYSTEM COMPONENT	NATIONAL	PROVINCIAL	LOCAL
IGR processes	Government's PoA NSDP MTSF	PGDS PSDP Standardised strategic planning formats for concurrent departments	5-year LGSA IDP LED Spatial Development Frameworks URP/ISRDP
IGR instruments	NSDP Implementation Protocols, toolkits and guidelines Communication Support	PGDS guidelines Implementation Protocols, toolkits and guidelines Communication Support	Implementation Protocols, toolkits and guidelines LG Communication System
Conflict resolution and disputes		Court case e.g. Liquor Licensing Dispute	Systems Act on disputes related to IDPs and powers and functions MFMA – disputes with public entities

3.3 Lessons from practice

As noted above, the development of a whole of government planning framework encompassing all three spheres of government is a relatively new milestone in the evolution of the IGR system, and initially, some municipalities faced considerable capacity challenges in formulating their IDPs¹⁴.

In July 2001 Cabinet decided that IDPs should form the basis for aligning policies, plans and budgets in all three spheres. At this stage most municipalities had completed their IDPs, but most were still of poor quality. IDPs remained largely unrelated to budgets and the IDPs of district and local municipalities were often misaligned¹⁵.

A report on IGR and service delivery which was part of the Presidency's Ten Year Review in 2003, observed that in practice there was little alignment between plans in the three spheres of government, resulting in national government priorities not filtering down to provincial and local governments, or sub-national input influencing national planning and resource allocation. Some of the reasons included:

- National and provincial strategic planning, unlike municipal IDP, does not have a spatial dimension. The result is that plans are seen as statements of intent in that they do not have a spatial and geographic impact.
- Provincial growth and development strategies either do not exist, are dated, or do not speak to municipal and national plans.
- National and provincial sector departments have, in general, not engaged municipalities on the content of the latter's IDPs.

The challenge was to create convergence in the parallel planning processes operating in the various spheres of government, and to improve the quality of plans across government.

In May 2004, the President, in his State of the Nation Address, called for the harmonisation of the NSDP, PGDS and IDPs. A report on Harmonising and Aligning the NSDP, PGDS and IDPs by the Policy Coordination and Advisory Services Unit in the Presidency (2004) did not propose any new IG processes, structures or harmonisation mechanisms but concentrated on how the existing instruments, frameworks and procedures could be used more optimally.

By 2005 all of the provinces had finalised their PGDSs. Some of them such as KwaZulu-Natal and the Western Cape also had detailed Provincial Spatial Development Plans to support alignment.

¹⁴ IDPs are required by the Municipal Structures Act of 1998 and the Development Facilitation Act of 1995 and the MSA of 2000.

¹⁵ Comments of Portfolio Committee on Provincial and Local Government, 2003.

While quality of some IDPs remains a challenge, the adoption rate of IDPs now stands at 100% for the 2006/07 financial year¹⁶. IDP review hearings processes under the auspices of the **dplg** have recently placed increasing emphasis on whether provincial and national sector departments align their plans with IDPs. This has also helped to ensure they are more strategic and not just compliance-oriented and to promote alignment. Nevertheless this is still some concern about the extent to which IDPs filter upwards to influence provincial and national planning.¹⁷

The President, in his State of Nation Address in February 2006, noted that 'Integration of planning and implementation across the government spheres is one of the prime areas of focus in our programme for the next term of local government, and in this we will be guided by the IGR Framework Act.'

Thereafter the July 2006 Cabinet Lekgotla reconfirmed the need for improving planning, implementation and IG coordination in all the three spheres of government. The Cabinet Lekgotla agreed that the next phase of IDP engagement will be managed through provincial and district IGR forums.

The underlying challenge for government currently is ensuring that IGR structures are able to strategically foster consultative and integrated planning. In line with the conceptual framework for IGR, IGR forums have a key role to play in bringing predictability and certainty in how the three spheres transact on key developmental priorities of the country as a whole. This gives such forums the opportunity to also position a 'whole of government' approach to local and community-focused development.

3.4 Areas of success: policy and planning

The vision for development articulated through the national PoA and Vision 2014 sets a benchmark for all three spheres to coordinate around. The strategic planning cycle the MTSF, the MTEF and the MTBS gives cohesive direction to the developmental goals of each sphere. This is apparent in the harmonisation objectives communicated by the Presidency and the department, and the means by which they have found expression in local areas.

Interpretation of these overarching goals is demonstrable through improved performance in integrated planning and IG alignment. These improvements have been supported by the work of Project Consolidate (PC) and the 5-year LGSA, both in terms of skills development and providing for provincial and sector support and engagement in planning.¹⁸ The Offices of the Premier have taken the lead in reporting on progress, whilst the Premiers' Coordinating Forums discuss the reports and develop the mechanisms for improved coordination.

There are lessons learned too in the management of concurrency and the implementation of policy that impacts on effective planning. The attention government has given to the judicial interpretation of powers and functions – through statutory definitions, administrative definitions and negotiated definitions, have contributed significantly to a deeper understanding of the challenges of concurrency and overlap. Possible revisions of the assignment framework subsequent to the Policy Review Process will have been informed by these extensive studies and interpretations.

We can see too how the success of collaborative work is supported by key state responses to implementation challenges. Examples of this are the formats provided by National Treasury to encourage greater alignment between sector departments' strategic plans at national and provincial level. This initiative provided a platform for alignment of planning and engagement at the local level. The progressive successes in the improvement, credibility, and adoption rate of municipal IDPs demonstrates the growing capability of all three spheres of government in convergence of planning.

Lastly, the significant role to be played by the IGR Fora in the strategic management of integrated planning has been emphasised by the President in his yearly address to the nation. This is an endorsement of the value of these new structures, and the valuable role they are building for themselves in guiding a coherent response to the challenges of coordination and joint decision-making in government.

16 The **dplg**, 2007/8 Budget Speech.

17 IDP Hearings Report, 2006.

18 Feedback on the 5-year LGSA (April – September 2007), the **dplg**, 2008.

3.5 IG pressure points: planning and powers and functions

1. The definitions of schedule 4 and 5 functions: There are a number of concerns relating to the definition of various schedule 4 and 5 functions, and questions relating to whether the current distribution of powers and functions across the three spheres is optimal. For instance, provinces are expected to regulate municipalities in concurrent functions, yet local government does not appear as a provincial competence.
2. The current Policy Review Process on Provincial and Local Government has highlighted the problems arising from the system of concurrency. It states that concurrency of functions makes the alignment of policy, implementation and financing very complicated. There are situations when Provinces feel inundated with service delivery responsibilities without the requisite funding.
3. In its submission to the Policy Review Process, National Treasury highlights the fact that national departments in concurrent functions do not exercise adequate oversight of their provincial counterparts. This raises the issue of the insufficiency of budget and capacity levels in the provincial Departments of Local Government (DLGs) and Offices of the Premiers (OtPs), as highlighted by **dplg** research in 2006/07. It also raises the question of the powers of the NCOP, and if these are sufficient to hold provinces to account.
4. Given that central elements of IGR are the duty of support, and regulation and oversight, weaknesses in the practice of these functions are contributing to the challenges in the management of concurrency.
5. Insufficiently coordinated sectoral impacts on local government: National sector departments initiate policy or programmatic changes with municipal impact individually, without assessing the cumulative impact of these sectoral policies on the local government sphere and on various types of municipalities.
6. Quality of planning within spheres (e.g. PGDS, IDP) needs to be improved. Only then can these become credible platforms for IG engagement.
7. Insufficient empirical evidence on the degree of alignment between NSDP, sectoral policies, PGDS, and IDPs: the need for alignment has been a policy intention of the various planning frameworks, but there is little systematic analysis to date on the extent to which actual plans are aligned and their impact on the spatial dimensions of actual infrastructure investment and development spending decision-making.

4. IG INSTRUMENTS: FORUMS AND BODIES

4.1 Legislation and Context

A number of executive IG instruments, most of which are non-statutory, have developed, at national and provincial level. The Presidents Coordinating Council (PCC) comprises the President, the Deputy President, the Minister in the Presidency, the Minister of Provincial and Local Government, the Ministers of Finance and of Public Administration and Provincial Premiers. SALGA has also attended on invitation.

The PCC is the senior consultative body that deals with cross-sectoral issues and presents an opportunity for provinces to impact on national policy and to ensure the coordinated and integrated implementation of national policies and programmes at provincial level. The PCC is enabled to explore the impact of national policies on other spheres and for monitoring service delivery performance with a view to taking corrective action where necessary.

Since 1996 informal IGR forums have been formed along sectoral lines consisting of national ministers and their provincial counterparts in MinMECs. Only the financial and educational sectors have formalised their structure into statutory bodies. Where local government interests have been involved, SALGA has represented organised local government.

Tracking the political IGR structures are the technical committees of bureaucrats, the most important of these being FOSAD, consisting of the national and provincial directors-general. FOSAD is chaired by the director-general in the Presidency, and is organised along the lines of Cabinet Committee Clusters. The chairpersons of the FOSAD Clusters together with the directors-general in the Presidency, the National Treasury, Public Service Commission, the South African Management Development Institute and a representative of the provincial directors-general, constitute the Management Committee of FOSAD (Manco). Coordinating ministers are appointed in order to facilitate coordination between the Cabinet committees and directors-generals clusters and to ensure oversight of the work of directors-generals clusters.

At national level the Cabinet Cluster system, 'clusters' the work of ministries and departments in related functional areas. This system, introduced in 1999/2000 also provides for provincial participation by including provincial directors-general as members of clusters. In some provinces the cluster system has also been replicated.

The IGRF Act revitalised provincial-municipal IGR by prompting the creation of new provincial IGR forums called Provincial Coordinating Forums (PCFs), which must report at least annually to the PCC. The Act stipulated that all statutory intergovernmental bodies not established in terms of the IGRF Act must comply, within one year of the Act coming into operation, with the Act's framework for the internal procedures, unless their establishing legislation specifically regulates the rules of such bodies. Section 36 of the IGRF Act requires that provincial policies and legislation take into account both national priorities as well as local interests.

Since promulgation of the 2005 Act, fifteen national sector departments with concurrent competencies have established IG forums (MinMECs), All provincial governments have established their Premier Coordinating Forums and all of the 46 district IGR forums. Some of these structures are established by sector legislations, and others were established before the promulgation of the IGRF Act.

The Act envisages that district IGR forums be used as a vehicle for consultation on the financial and institutional impact of proposed provincial policies and legislation. The key elements that require further strengthening are clarity on the strategic agenda for inter-sphere engagement and improvement of the functionality of these IGR structures.

The manner of local government participation varies. First, local government politicians are represented through the provincial associations of local government on the basis that they represent the voice of municipalities in IG forums. Second, municipalities are directly represented through their respective mayors.

District-Mayoral Forums, or the DIGFs, constitute themselves as an entry point for any inter-sphere and sectoral support to the District Municipalities. District Mayors assume more responsibility in ensuring that there is a district-wide development vision informed by IDPs of local municipalities. District mayors utilise the IGR forums, monitor

national and provincial sector commitments to supporting their credible IDPs, and lastly, District Mayors should ensure rationalisation of coordinative structures at district level.

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 SALGA as an additional member.

4.2 IGR Processes, forums and bodies

Currently all provinces have established PCFs¹⁹ Each PCF adopts its own internal rules. While attendance can be extended beyond what is prescribed in the IGRF Act, the forum should remain high level and focused. Ideally, municipalities should participate in agenda setting for these forums 'lest the PCF becomes an array of provincial presentations to the municipalities.'²⁰

A more recent study has indicated that the new PCFs comply with the IGRF Act in terms of composition, but have generally not gone beyond this to ensure extensive representation both from provincial government and municipalities²¹. Also, the size of provincial IG forums has increased markedly, with research indicating that in some of the largest provincial structures more than 100 and 70 officials and politicians attend meetings. These specific IG structures are 'an all-in forum' that are much closer to a conference style gathering rather than to a focused IGR forum contemplated by the Act.

However in 2006, only a few provincial IG structures had adopted protocols for internal procedures as also required by the Act, but the operation of PCF's has, reportedly, improved in terms of IG engagement. For example the Northern Cape²² has an IG team led by the department of health reporting to the forum on infant mortality, which then adopted a spatially referenced plan for reduction strategies. The province was equally successful in its IG liaison with the National Treasury for funding to eradicate the Bucket System, and this funding proposal was coordinated by the Department of Water Affairs and Forestry (DWAF), the DoH/LG, consulted with municipalities and presented at the forum for sign-off by the Premier.

Developmental goals in the IDPs and PGDS have become a dominant feature in the agenda of most Premier's Coordinating Forums. Some provincial forums (i.e. the Provincial IG forums in Limpopo, the NWPPC in North West and the PCFs in Eastern Cape and KwaZulu-Natal) have introduced procedures with regard to the adoption of resolutions and their implementation.

The degree of success in engaging municipalities in agenda setting has been varied, with research demonstrating significant variances, thus this competency requires further development. However all the PCF's have technical support committees since this is required by the IGRF Act.

Unlike the provincial IG structures before the Act, which encompassed members from both the executive and legislature and even from traditional leadership, the new PCF's are exclusively executive structures. But elected politicians and civil servants continue to sit together in provincial IG forums, which may blur the distinction between political and technical forums.

While the IGRF Act provided for metros and district municipalities to be represented on PCF's, most provinces include local municipalities as members as well. District IG forums which are supposed to 'feed up' inputs from the local municipalities may not, however be functioning effectively and there may be a communication breakdown re objectives and resolutions taken. Where the local municipality may be dominant and more capacitated relative to the district, this may cause a breakdown in relations.

Although it is too early to pronounce on the impact of institutionalising IGR forums, there have already been some benefits. The IGR Forums Progress Report from the Eastern Cape (2006) demonstrated the level of developmental involvement of the PCF with the district forums. Where technical and institutional challenges are being experienced, the obligation of national government for oversight and support is heightened.

¹⁹ The **dplg** 2007/08 Budget Speech.

²⁰ the **dplg**, 2007.

²¹ Van Reyneveld, 2007

²² Provincial IGR Progress Reports to the **dplg**, 2006.

4.3 Lessons from Practice

DISTRICT FORUMS

The District IGR Forum is intended to be exclusively a political structure, but there have been examples of a combination of elected and appointed officials. Other IG structures have invited municipal managers as technical support. Membership of some forums may then be seen as too broad, without adequate distinction drawn between members and invitees, and blurred boundaries between the district IG forum itself and support bodies.

It is too early to gauge the impact of the IGRF Act on district level service delivery, but district IG forums surveyed in a recent study²³ have varying performance levels. One study found that many did not focus on the integration of IDPs.

‘The key issues were neglected in most DIFs. For example, not many forums discussed the integration of IDPs, matters arising from the Premier’s Intergovernmental Forums or the integration of local municipalities’ policies and projects in a district (horizontal alignment).’

Alternatively, there has been some evidence that the functioning of the district IG forums *has* contributed to improved planning and in deepening the understanding of strategic processes and in enhancing communication. For example, in the Eastern Cape, the Cacadu DM meets regularly and has focused on a comprehensive development agenda. The forum is supported by its own district IGR policy framework.

Thus the important insight which emerges overall is that broader plans and development frameworks are a critical pre-condition to effective functioning of district IG forums. Standing items relating to these planning and development frameworks provide focus to the forums through guiding the agenda. Without these planning and developmental frameworks, intergovernmental engagement could degenerate into process and procedure rather than substance/content based IGR.

In the District IGR Forum Review, it was noted that all of the district IG Forums have dispute resolution procedures, though none have actually used them to date. One problem experienced was that the representatives of local municipalities were often not mandated to take decisions, resulting in delays while they reverted to their executives.

In 2006 research described and evaluated the status quo of provincial and local government relations and district and local municipality IGR structures prior to the IGRF Act.²⁴ The effectiveness of these provincial IG forums was then reported as extremely variable. Some reportedly never met beyond their inaugural meeting and in other cases where meetings were convened attendance was low due to lack of commitment by the officials involved.

The research also indicated that some provinces had taken the lead in establishing district-municipal forums (e.g. Western Cape, and KwaZulu-Natal, where it was necessary to promote cooperation across IFP and ANC party lines). Despite good practice examples such as the Cacadu IG Forum, many district IG forums had existed in name only. But many of the districts without established forums had used informal communication and meetings between district and local officials to align their policy, planning and implementation, in some cases quite effectively. The research thus noted that the establishment of IG forums is a necessary, but not a sufficient condition, for effective district-local relations:

‘More important factors include the frequency and detail of communication between municipalities and the intangible element of trust. Unless a municipality believes its district/local partner is truly committed to helping it achieve its goals, even the most rigidly legislated forums will do little to improve their effective cooperation.’

The following case studies depict opportunities for IG Forums and senior public servants to coordinate required outcomes.

23 The **dplg** study: District IGR Forum and Shared Services Review.

24 Steytler, Fessha and Kirby, 2006

Mini case study 1: Funding no fee schools

The newspaper article reflected below indicates that agreements taken at MinMEC level often do not translate into provincial action and financing. In this case, the national 'no fee schools' policy exempted poor schools from charging school fees. Not all provincial departments provided financing to schools in order to compensate for loss of school fee income as agreed.

Billions to upgrade universities and schools – Cape Times 13.2.2008

Pandor also has warned that 'we can't have schools held hostage to the inefficiency of education administrators.'

.... She said even though the department wanted to increase no-fees school to 60% as per the ANC conferences resolution this was hampered by some provinces' incompetence.

'One of the things that has really worried me is that I have said to all the MECs: "ensure that those schools ...even though they (have) got a very low income (base) because the parents are obviously poor, make sure there is a cash flow so they can buy chalk, buy a duster, even buy exercise books if the stationery is not delivered".

'Sadly, that directive has not been followed by all the provinces, and therefore many schools have found

themselves in difficulties because the little cash flow they had through school fees is no longer coming through,' she said yesterday.

She said if schools did not get money from provinces, 'I don't have any power to intervene.

'My department must be able, if necessary, to retrieve money from provinces and direct it from the national department to schools that haven't received their funding,' she said.

'We don't have any lever at the national level to hold provinces to account on pre-approved programmes. There is a need for rethought of the arrangements, but devolution of powers is important, I wouldn't support a centralised system,' she said.

Mini case study 2: Gauteng provincial-municipal relations

In Gauteng, there have been several stumbling blocks limiting effective integrated planning and IGR. Some of these include:

- Uncoordinated actions between province and municipalities, between provincial sector departments operating in the same municipality, as well as amongst neighbouring municipalities themselves;
- A lack of common understanding between provinces and municipalities regarding problems and issues faced at the respective levels;
- A lack of clarity regarding the requirements of the respective provincial sector departments, the level of detail required, as well as the relevance of that specific requirement for the respective municipal IDPs;
- Limited strategic guidance on key provincial directions to municipalities;
- Difficulty for municipalities in gaining access to and information on provincial plans, policies, budget allocations and strategies;
- Different information bases and standards used in planning has a negative impact on the ability of municipalities to draw up realistic and sensible IDPs;
- Different approaches to IDP by respective municipalities and a perceived feeling of mutual mistrust and a lack of empathy on local specific circumstances;
- Capacity and competency gaps at municipal and provincial level;
- IDP assessment through checklists of provincial requirements that did not necessarily correspond with local priorities nor the spirit of IDP; and
- A lack of formalised structures or processes to ensure a meaningful provincial engagement in the preparation of IDPs. (*Gauteng Provincial Government, 2004*)

The IDP review process raised the following challenges for cooperative governance in Gauteng Province:

- A perpetuation of previous hierarchical relations between spheres;

- Insufficient sharing of information;
- An absence of a focus on specific or crosscutting issues;
- A lack of institutional and human capacity;
- Erratic and unfocused participation in coordination structures; and
- Inadequate enforcement and performance management.

In addition, the existing tools and instruments of government are not used and utilised as intended, functions are not performed as intended and there is a general absence of a shared spatial area of focus in terms of development. It is therefore proposed that greater emphasis be placed on engagement and alignment in an effort to ensure cooperative governance, which would ultimately result in sustainable development.” (*Gauteng Provincial Government, 2004*)

4.4 Areas of success: The establishment and functionality of intergovernmental forums

The successful establishment of all provincial and district IG forums over the last two years has laid the foundation for the principles and prescripts of the IGRF Act to be translated into tangible outcomes. Since the promulgation of the Act there has been a renewed focus on the work of the national, provincial and local forums and bodies and the valuable potential they have to direct and coordinate whole of government action.

Reports from Provinces for 2006/07 showed that in certain instances, great innovation has been displayed, as in Gauteng province where the IG management of the global city region was discussed and adopted by the PCF, with broad IG political agreement that the City Region can facilitate the growth and governance as envisaged. The harmonisation of the plans of districts and metros helps to avoid competition – and allows for innovation as the concept of a functional and integrated region is developed and explored, together with a number of role-players from all sectors.

Similarly, the Western Cape model of regional development has drawn upon IG political structures, notably the PCF, to drive an integrated approach to practical implementation between the province and municipalities through the forum driven alignment of budgets and planning. Both these cases are illustrated in the 2007 Provincial Reports²⁵ to the **dplg** on the functionality of their IGR structures.

Another significant demonstration of drawing upon IG structures to drive cohesion is illustrated by the URP programme, which creating new technical IG structures, and drew upon the use of IG structures both before and after the Act to drive the objectives of the urban nodal programmes. This approach saw the Alexandra Renewal Project become a flagship programme for government²⁶.

In terms of reaching service delivery targets, the IG machinery proved essential in coordinating a rapid programme to eliminate the Bucket System by December 2007. MinMEC adopted the approach, directing the development of concrete action plans with affected municipalities, DWAF, and other relevant sector departments in a best practice demonstration of inter-sphere planning to reach accelerated delivery targets.

4.5 Pressure Points: IGR forums and bodies

1. Moving beyond establishment to strategic IG coordination: whilst formal monitoring and measurement systems have yet to be instituted, research to date shows that both provincial and districts forums would benefit from improved coordination skills and support from national government for capacity building and oversight and support.

²⁵ Provincial Reports on the Functionality of IGR Structures in Terms of the IGRF Act, 5-year LGSA Reporting, 2007.

²⁶ Report on an Audit of Urban Renewal Programme Structures (URP), **dplg** commissioned report, 2008.

2. Decision-making in IGR forums: there is uncertainty over whether recommendations of MinMEC's are binding. A practice has developed where the decisions of a MinMEC are taken to be binding decisions on the executive of provinces. The MECs do not always table important MinMEC decisions to their executive for approval (or even noting). This practice may undermine the executive authority of the Executive Council and create uncertainty about whether a policy has really been adopted by a government. The rejection in 2007 of housing accreditation for the City of Cape Town was a decision adopted by a MinMEC meeting, the result of which was a declared dispute between the city and the province. It can also open national government to claims of unfunded mandates. Mechanisms at provincial level are needed to follow up MinMEC recommendations.
3. There is still overly sectoral rather than multi-sectoral integrated development planning. While some MinMEC's such as the local government MinMEC and the Budget Council are seen as effective, research indicates that others are perceived as less so. Joint local government MinMEC's may need to be held (on the lines of the 10x10 model²⁷) to provide for a 'clearing house' for all national policy affecting local government to be created at a technical level that can support the joint MinMEC's on local government.
4. The absence of clear reporting lines between MinMEC's and the PCC, and between a provincial IG Forum and MinMEC's can undermine effective coordination. This was legislatively addressed by the IGRF Act (section 12) which dealt with referrals to MinMEC's by the PCC and MinMEC reporting to the PCC, and needs to be monitored for effectiveness.
5. The role of 'secondary cities' or 'aspirant metros' in districts is a source of district-local tension.²⁸ Where districts have lacked the capacity to provide effective leadership, more capacitated local municipalities have tended to ignore district forums thus potentially fragmenting coordinated regional development planning.

²⁷ In a 10 x10 the relevant concurrent function national department and its nine provincial departments meet with the National Treasury and the nine provincial Treasuries.

²⁸ An example of the disparity in capacity would be the modest district municipality of Motheo vis-à-vis Manguang Local Municipality.

5. IG FISCAL RELATIONS AND BUDGETING

5.1 Legislation and context

Intergovernmental Fiscal Relations (IGFR) concerns the structure of public finance in a state with more than one level or sphere of government. This includes the allocation of expenditure responsibilities and authority to tax amongst the spheres of government, how the system of IG grants works to alleviate any shortfall between taxes raised and expenditures required, how borrowing and regulatory functions are distributed among spheres of government, and finally the institutional mechanisms for coordination, monitoring, support, supervision and intervention. Decisions in each of these areas shape the configuration of the IG fiscal system, its evolution and its functioning.

The stability and predictability of an IG fiscal system is inextricably linked to the stability of the overall fiscal framework in which it operates. The establishment of the South African Revenue Services (SARS) which expanded the country's fiscal base and reaped considerable efficiencies in collection, created a stable backdrop for the evolution of the IG system. Instability at national level would have negated attempts to create certainty at sub-national level. The gazetting of indicative allocations three years in advance over the MTEF period is one example of predictability in the fiscal system.

The budget reforms precipitated by sections 215 and 216 of the Constitution were critical in supporting the evolution of the IG system by creating transparency, coordination and predictability of financial arrangements within, and between, the three spheres of government. A MTBPS was introduced in December 1997. It outlines government's broad fiscal intentions for the following year's budget, and improved debt and cash management strategies. The link between budget reform and the rollout of the intergovernmental fiscal system was clearly articulated:

'The introduction of three year budgets and their consolidation into resource envelopes is an important step in the evolution of the institutional framework for intergovernmental policy-making and budget planning. The intergovernmental forums of the spending departments will, for the first time, have expenditure projections within which to develop and refine the norms and standards for service delivery.'²⁹

LEGISLATION, BUDGETING AND FINANCIAL MANAGEMENT

There is a solid basis for IG budgeting and financial management. The PFMA of 1999 (and its associated regulations) deals with the modernisation of financial management of national and provincial government departments and public entities. The MFMA of 2003, the Municipal Property Rates Act of 2004 and the Municipal Fiscal Powers and Functions Act of 2007 (and their associated regulations) perform a similar function within the local sphere. Each of them, however, deal – to some extent – with fiscal and financial interfaces with other spheres.

IG fiscal relations proper is regulated by the Intergovernmental Fiscal Relations Act of 1999, and the DORA which gives effect to the revenue sharing provisions in the Constitution.

A provision on the financial implications of assignments and prevention of unfunded mandates is outlined in section 35 of the PFMA. Draft legislation which assigns an additional power, function or any other obligation, on a provincial government, must be accompanied by a memorandum giving a projection of the financial implications of that function, power or obligation to the province. This memorandum must be introduced in Parliament with the proposed legislation.

Sections 9 and 10 of the MSA contains similar provisions requiring the financial and human resource implications of any assignment by an Act of Parliament or a provincial Act be spelt out over the medium term, including how additional expenditure by municipalities would be funded. Similar arrangements apply to executive assignment or agreement. Section 10A requires national or provincial government, or any other organ of state, contemplating

²⁹ The Department of Finance, 1997b.

assignment to provide the requisite funding if 'duty falls outside the functional areas listed in Part B of Schedule 4 or Part B of Schedule 5 to the Constitution or is not incidental to any of those functional areas.'

Section 100 and section 139 (5) of the Constitution relate to financial interventions by national government in regard to provinces and municipalities respectively. These are discussed in greater detail in Section 7 of this paper.

The two major IG fiscal institutions are the Budget Council (the MinMEC for finance) and the Budget Forum, both established in terms of the Intergovernmental Fiscal Relations Act of 1999, among the first IGR bodies to be established by statute. Also important are joint meetings of other sectoral MinMECs with the Budget Council to assess the financial implications of sectoral policy.

The PFMA gave effect to section 216 of the Constitution, and began the move from a highly centralised input-oriented expenditure control system towards a more performance-oriented system that would 'allow managers to manage but hold them accountable.' The PFMA also formally established the National Treasury, as envisaged by the Constitution, amalgamating the former departments of Finance and State Expenditure. In 2003, the MFMA was passed to extend budget reforms to municipalities. In 2004 a new budget and reporting format for provincial governments, aligned with both Government Financial Statistics (GFS) and International Public Sector Accounting (IPSAS), was introduced, based on a new standard chart of accounts.

5.2 IGR Processes: budgeting and financial management

One of the main shortcomings of the early MTEFs was that there was inadequate integration between planned and actual service delivery outputs and the MTEF budgets and actual expenditure outcomes. But over time, the South African budget system has moved closer to a performance budgeting approach which aims to link budgeted funds to service delivery outputs. Since 2004, uniform strategic plans, budget structures and a core set of performance measures and indicators over a three-year period has been introduced for provincial concurrent functions. This facilitates cross-province benchmarking over the MTEF period and budgetary alignment.

National government departments have also recently, in Estimates of National Expenditure (ENE) 2007, developed trendable and quantifiable output measures and indicators over the MTEF period. Much work remains, however, to tighten the articulation between planning and budgeting within individual organs of state (e.g. in relation to departmental, sectoral and provincial strategic plans and IDPs for municipalities).

There is no doubt that the practice of IG fiscal relations in South Africa provides in certain areas a model of good practice, e.g. transparent, formula-based, equitable share grants for which indicative allocations are gazetted in advance for each province and municipality in the division of revenue bill, and published in the MTBPS five months before the division of revenue is enacted.

But perhaps the most deeply rooted issues relate to the structural tensions derived from the concurrent assignment of functions embedded in the Constitution itself. These have been apparent since the embryonic stages of the system itself and still persist. These problems include:

1. **The disjuncture between policy objectives, plans, budgets and implementation:** Sometimes policies agreed upon nationally at sector level may not be funded or funded adequately by sub-national governments. As a result of this fragmentation, these policies are not effectively implemented and the intended policy outcomes not realised (see Mini case study 1: Funding no fee schools on page 25).
2. **Overlapping nature of concurrent functions obscures lines of accountability of spheres or office bearers:** Unrealistic national policies which do not take the operational context and human resources, capacity and other constraints that sub-national governments face may undermine implementation. If policy is poorly designed, then clearly the implementation agent is not responsible. Conversely, well-designed policy may be undermined by poor implementation and decisions at provincial or local level which lead to inadequate funding. Under these circumstances, the policymakers are not at fault.
3. **Joint responsibility for concurrent function planning and implementation, but single point budget authority and accountability:** While concurrency of functions is often predicated on the premise of joint planning and implementation of project, budget accountability is single-focused and organisation specific. Joint work thus requires finding new and efficient ways of getting entities to work together while retaining single-point accountability for public expenditure. Furthermore, while there are consequences following from

non-execution of budgets or non-compliance with financial regulation, there are none in respect of strategic and long-term development plans. This creates incentives for organs of state to promise in plans what they may not be able to afford in their budgets. Budget accountability has, due to limitations on M&E system, focused to date mainly on outputs rather than impact.

Table 3 gives a brief summary of the components of the IGR system as they relate to IG fiscal relations and budgeting.

Table 3: Intergovernmental fiscal relations and budgeting

IGR SYSTEM COMPONENT	NATIONAL	PROVINCIAL	LOCAL
IGR legislation	Intergovernmental Fiscal Relations Act of 1999 (IGFRA) DORA PFMA	PFMA DORA PFMA Interventions	IGFRA DORA MFMA Municipal Fiscal Powers and Functions Act Property Rates Act Financial interventions
IGR forums/bodies	Cabinet NCOP FFC	Budget Council FFC Provincial EXCOs	Budget Forum FFC
IGR Processes	MTEF process	MTEF process	MTREF process and SDBIP
IGR instruments	MIG and other conditional grants	Conditional grants Financial sanctions Monthly financial reporting	MIG and other conditional grants Financial sanctions Monthly financial reporting
Conflict resolution and disputes			MFMA; disputes with public entities Court cases (e.g. Uthukhela) (Case study 7)

While the IG budget process has worked fairly well in recent years, it has been suggested by some role-players that the role of coordinating departments at the centre of government (such as the Presidency, DPSA and the **dpig**) be reviewed with a view to enhancing their leadership role.

5.3 Lessons from Practice: Budgeting, Financial Management and Fiscal Relations

The IG budget process has to accommodate the financial years of national and provincial government and of municipalities. While there were problems initially with harmonising these different budget cycles these have abated in recent years partially as a result of provincial and local IG transfers being gazetted three years in advance and five year planning horizons at provincial and municipal level.

At present there are two diametrically opposing philosophies on provincial fiscal powers. The one is that provincial governments have fiscal powers which are too limited. The other view is that their fiscal discretion is too extensive and needs to be curtailed to ensure the achievement of national policy objectives.

One perspective is that provincial own revenues have always been very marginal, in that conditional grants have tended to increase over time, and that the equitable share has shown a declining tendency (as a proportion of the vertical division of nationally collected resources, (see *Table 4 below*). There are also rigidities in provincial personnel budgets as a result of central bargaining. Thus it may be argued that provincial discretion over provincial expenditure has declined over time and is therefore limited.

Table 4: Actual and budgeted revenues of provincial government (Rm)

R million	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
Total provincial grants	138,511	154,368	178,871	205,224	238,076	268,158	293,640
Equitable share	120,885	135,292	150,753	172,862	199,377	225,466	246,306
Conditional grants	17,627	19,076	28,118	32,362	38,699	42,692	47,334
Provincial own receipts	6,239	7,378	8,003	8,822	8,921	9,394	9,911
Total provincial revenue	144,750	161,746	186,874	214,046	246,997	277,552	303,551
Equitable share %	84%	84%	81%	81%	81%	81%	81%
Conditional grants %	12%	12%	15%	15%	16%	15%	16%
Prov. own receipts %	4%	5%	4%	4%	4%	3%	3%

Source: National Treasury (2008)

At a political level, the limited fiscal discretion of provinces has drawn criticism from various quarters. The lack of fiscal discretion is perceived by some provincial governments as hindering their response to unique regional challenges and opportunities for development.

In 2004, one Premier noted that, in his view, “provinces were being reduced to agencies for poverty alleviation and “purveyors” of social grants and health services, as opposed to being catalysts for economic growth”.

The economic rationale for fiscal decentralisation to provincial and local governments rests on the allocative efficiency gains where sub-national governments tailor their programme delivery and service delivery mix to regional and local priorities and economic circumstances.

A central government perspective however holds that provinces often have too much latitude in resource allocation decisions, which undermines national policy outcomes. National line ministries have experienced frustration that provincial governments may opt to deviate from national funding guidelines, creating a disjuncture between national sector policy and provincial financing and implementation. This sense of frustration has resulted in increased regulations from national departments regarding norms and standards, as well as an increased tendency to make use of national grants. For example, section 34 of the Amended School Funding Norms³⁰ states that: ‘It follows that national norms for funding schools cannot prescribe actual minimum amounts in Rands to be spent per learner, however desirable that might be.’

Mini case study 3: School funding norms

While the school funding norms as promulgated in 2000 went some way in mitigating intra-provincial inequalities, they did not resolve inter-provincial variations. School funding norms and standards for non-personnel recurrent expenditure were introduced in the 2000 school year. While the norms did not prescribe per learner minima, they did make explicit which schools should be targeted. All provincial schools were evaluated in terms of their physical condition and the poverty levels of the community within which they were located.

The individual schools were then ranked from the most to the least poor, and then divided into five quintiles, based on learner profiles, community location and infrastructure backlog.

³⁰ Amended National Norms and Standards for School Funding, 31 August 2006, Government Gazette 29179.

Resources for both current and capital expenditure were then targeted to these schools on the basis of these provincial resource targeting lists.

The school funding norms and standards were amended in 2007 to replace provincially based quintiles with nationally determined quintiles.

The rationale for this was that poverty is not equally distributed across provinces, and therefore equally poor learners could have differential access to funding depending on their schools relative ranking within their respective provinces.

The amendments also allowed the national department of education to set per learner funding norms and minimum standards.

While the amended norms and standards do not cover personnel costs in detail, the Minister of Education has set a ratio of personnel to non-personnel expenditure of 80:20 as a policy target. Within the personnel category, the Minister recommends that 85% of compensation of employees be directed at teaching personnel. More detailed guidelines were given on what should be financed by the school funding allocations (e.g. learner support materials, consumables of a non-educational nature etc).

These guidelines are not however binding on provincial governments. Further national funding norms for Further Education and Training and Adult Basic Education are being finalised.

Differences in per capital expenditures may be due to explicit funding decisions of the provincial executive councils. Provinces like the Western Cape and Gauteng which have some own revenue sources (though small in absolute terms) have more leeway to supplement their equitable share allocation at the margin. In addition, in the poorer provinces, education spending in the past has often been crowded out by social security spending before this was taken up to the national social security agency in 2004/5. There is thus a tension between decentralised fiscal powers and the enforcement of national norms and standards.

The FFC acknowledged that the insufficient data, the absence of clearly defined national norms and standards and limitations on costing capabilities would hinder the implementation of this approach in the short term, but believed it could be viable in the longer term given ongoing budget and other public sector reforms. As noted in the section on budgeting and financial management, Section 35 of the PFMA does require a costing of new national legislation which has financial implications for provincial government.

One of the notable best practice elements of the provincial revenue sharing process is its reliance on formula-based allocations for the equitable share grants which are deemed to be more objective, less prone to manipulation and more transparent. The equitable share formula depends heavily on demographic information and allocates to each provincial government their proportion of the pool of funds available to the provinces after the vertical division of revenue. This rand value of this proportion may or may not, however, match the cost of delivering the services which provinces are required to deliver.

This was illustrated perhaps most clearly in the case of social grants where rapid take-up rates of new grants and the impact of HIV/AIDS resulted in what is conventionally termed provincial overspending, but could also be viewed as national under-budgeting. In May 2000, the FFC proposed its 'costed norms' approach. This was also a formula-based approach, but depended on estimated costing of national sector norms and standards for basic social services. It tried to create a clear link between any tentative proposal for the provincial equitable share and what that amount will buy in basic social services in each province.

The White Paper Policy Review Process has to date examined the challenge of the possible redefinition of the role and powers of provinces, taking into account the many perspectives and experiences of the role-players and the overall performance of the provinces themselves. Emerging research on provincial spatial inequalities and the evolution of new provincial approaches to regional development may also have structural implications. Persisting disparities between provinces are tied to a series of uniform functional concurrencies, that, as, have seen, may not be the best governance arrangement for accelerated growth and development.

NATIONAL-PROVINCIAL-LOCAL BUDGET PROCESSES

Two factors have recently impacted on municipalities' fiscal capacity. The first is the abolition, since 1 April 2006, of the Regional Service Council Levy and its temporary replacement by a grant of roughly R8 billion in 2008/09. A permanent local revenue source is under investigation. National Treasury has already laid a few options on the table, including a local business tax. The second is the fiscal impact on municipalities of the restructuring of the electricity industry. Each of these ultimately impact on the division of revenue.

The local government equitable share has increased from R7.7 billion in 2004/05 to R24.9 billion in 2008/09, an increase from 4.3% to 7.6% of nationally collected revenues after the top-slice. Here the discussion on adequacy has revolved around whether services such as municipal health and fire fighting should be included in the formula in addition to services already included in the formula (electricity, water supply, sanitation and refuse services).

Municipalities which provide library and primary health care services are concerned about unfunded mandates. The estimated annual cost of unfunded mandates has been estimated for selected cities in the table below.

Table 5: Estimated annual cost of unfunded mandates for selected cities

R millions	Housing and hostels	Health	Museums	Libraries	Total
eThekweni	R152	R244	R29	R121	R547
Johannesburg		R135			R135
Ekhuruleni	R113	R215		R63	R391
Cape Town		R170	R9	R145	R324
Nelson Mandela Bay		R3			R3

Source: SA Cities Network, (2000)

Another practice of concern is fiscal dumping. The term "fiscal dumping" refers to the practice of government departments transferring unspent funds to lower spheres of government, external service-delivery contractors or public entities without due consideration for their capacity to spend these funds effectively.

The National Treasury had begun detecting tendencies towards fiscal dumping by provincial departments since the 2004/05 fiscal year and subsequently included new requirements in the Division of Revenue Act which required that all transfers first be published. Furthermore, the Accounting Officers Guide published by the National Treasury (2002), prohibits accounting officers from transferring funds to a province, municipality or NGO in order to conceal under spending in their own departments. Fiscal dumping is identified as a form of financial misconduct. Tendencies towards fiscal dumping continue to be closely monitored and investigated by the National Treasury and its provincial counterparts.

BUDGETING AND FINANCIAL MANAGEMENT

One of the crucial instruments of IG fiscal relations is to ensure that national priorities receive due emphasis at sub-national level is conditional grants. The reform of the MIG is regarded as an IGR good practice.

Mini case study 4: MIG

The MIG was initiated in 2004 and amounted to R8.9 billion in 2007/08. Previously a number of conditional grants were made available by national departments to municipalities for infrastructural investment: the Consolidated Municipal Infrastructure Programme, the LED Fund (both managed by the **dplg**), the Water Service Capital Grant (managed by DWAF), the Community Based Public Works Programme (managed by Public Works), the Building for Sports & Recreation Programme (Sport and Recreation SA) and the Urban Transport Grant (Department of Transport).

MIG aimed to streamline these into a single channel in order to reduce the administrative burden on municipalities, introduce consistency in allocation criteria and give municipalities flexibility to determine their own capital expenditure priorities, rather than have these dictated by national departments. More capacitated municipalities are given more independence in how they spend their money. Allocations are transparently outlined in the DORA.

The South African Cities Network noted in 2007³¹ that while the management of conditional grants from national government has conformed with international good practice in terms of predictability and transparency,

'This is not generally the case with grants received from the provinces which are quite often unclear, unpredictable and capricious. This makes it extremely difficult to plan properly, or to spend the funds timeously when they are received. The number of small grants exacerbates the problem and increases administrative burdens.'

Conditional grants unlikely to be spent in the particular financial year may be rescinded by the National Treasury for reallocation (sections 26(1) and 27(1) of the 2008 Division of Revenue Act). In terms of section 27(2) (a), if there is an intervention in terms of section 100 or section 139, the National Treasury may authorise the relevant national department or provincial department to spend unspent transfers which have been stopped. In the 2005/06 financial year, R746.6 million of the total R3.73 billion provincial grant allocations to Gauteng (R277.3 million), Limpopo (R318.8 million), Free State (R51.3 million), Mpumalanga (R57.1 million) and the Northern Cape (R41.9) million were stopped by the National Treasury mainly for slow spending rates, but also for non-submission of infrastructure plans and quarterly reports. The stopping of funds should only be used as a last resort since it can have a deleterious effect on the departmental or municipality's budget.

Mini case study 5: Eastern Cape Department of Housing conditional grant in 2007

The Herald Online: R500m grant reclaim over lack of staff

The drastic decision by national government to reclaim R500-million in conditional grants - money ring-fenced for building homes for the poor in the Eastern Cape - comes after over a decade of failure by the provincial housing department to hire the necessary engineers, managers, town planners and building inspectors to build houses for the masses.

So says Public Service Accountability Monitor (PSAM) housing researcher Chantelle de Nobrega after the unit's latest research showed the department has almost no engineers, town planners and skilled staff to build the 800 000 homes needed in one of the poorest provinces. In 13 years of democratic rule, the PSAM says just over 260 000 government homes have been built in the Eastern Cape at a wildly varying rate of between 10 000 and 60 000 a year. The figure, which is declining, includes homes stalled mid-construction after 2000. This means the province is barely a quarter of the way to finishing the job. But, no-one is quite sure exactly how many houses are needed.

De Nobrega believes the department's inability to fill a massive 80 per cent shortfall of critical staff, and 65% (2 429) shortage of general staff, has led to a scepticism from both national and provincial treasuries and a reluctance to release money.

While the researcher pointed out a string of provincial housing errors of judgment, financial mismanagement, maintaining a silence amid chaos or stagnation, and housing subsidy fraud, she says the expenditure of the budget for existing personnel has improved tremendously from underspending of up to 50% prior to 2003, to 14%, 4%, and 1% and 13% in the years since.

De Nobrega said by March 31 this year, the department had only nine chief and deputy-chief engineers and needed another 46, and needed 106 town planners to join

only two currently in the department. It had only 19 control technicians (building inspectors) but needed 60 more.

There was also a shortage of executive, general and senior managers, as well as chief industrial technicians.

This was according to the 2006/7 annual report released in October. 'How do you service a budget of over R1-billion if you don't have the staff?' she said.

She says the chief directorate of housing development, headed by general manager Ngwadi Mzamo, is proposing to appoint senior managers to the provinces district municipalities. 'These district-based managers will start hiring people with technical expertise, who will be based at district-level, but will work in the municipalities under them.' She wondered if the department's so-called 'turn-around strategy' would be put on hold if the department lost a third of its budget.

The department has already set up its first-ever project management and quality assurance directorate, which will comprise mainly technical staff, engineers, project managers, town planners and inspectors. The department also received a qualified audit last year, compared to the previous four years when the Auditor General issued audit disclaimers stating financial records were so poor no opinion could be rendered as to whether the money was spent as intended.

He particularly noted that the department was not monitoring payments to municipalities and developers and therefore he had no way of establishing the extent of 'fruitless and wasteful expenditure' on sub-standard housing.

De Nobrega said National Housing Minister Lindiwe Sisulu could not only blame municipalities and the provincial housing departments for poor performance. 'The Housing Act makes it a national responsibility for the housing department to intervene if a province is unable to fulfil its mandate or task, and the Eastern Cape is clearly struggling.'

³¹ South African Cities Network: State of City Finances Report, 2007.

Stopping of funds may serve a punitive function but seldom addresses the underlying issues of non-performance in spending which requires capacity building and support (these are discussed in more detail in the following sub-section). A complex decentralised fiscal system with multiple decision-makers across several spheres of government within a particular sector and fragmented budgets requires systems for coordination, reporting and monitoring in order to be effective.

One of the major reforms at national and provincial level has been the improvement in the quality and comprehensiveness of financial data since 1994. These data are regularly published in the *Budget Review*, the *Provincial Budget and Expenditure Reviews* and the *Local Government Budget Expenditure Reviews*.³² Credible and consistent service delivery data, however, remains a challenge for all three spheres, especially in relation to outcomes and impact.

In addition to year-end monitoring, regulations in terms of the PFMA and the MFMA have made monthly financial reporting and quarterly performance reporting against standardised formats mandatory. This has improved the quality of in-year financial monitoring and may act as an early warning system.

CONFLICT RESOLUTION AND DISPUTES IN BUDGETING AND FINANCIAL MANAGEMENT

The division of government's limited resources among the three spheres of government is inherently conflictual due to competing claims being made on limited resources.

The MFMA³³ deals with disputes between a municipality and other municipalities or organs of state. Before resorting to litigation, the parties must attempt to resolve the issue themselves and report it to the National Treasury (unless the Treasury is also party to the dispute). They can either mediate the dispute themselves or have the National Treasury nominate a mediator.

There has however been a court case in respect of revenue sharing, revolving around whether district municipalities are eligible for equitable share IG grants.

Mini case study 6: Uthukhela Constitutional Court case

'One intergovernmental dispute, possibly with underlying ANC-IFP antipathy, came to a head in the 2002 Constitutional Court case of *Uthukela and Others v President of the Republic of South Africa and Others*.

The dispute was over whether the national government was obliged to provide district municipalities directly with an equitable share of national revenue. Three IFP-controlled district municipalities – *Amajuba*, *Uthukela* and *Zululand* – claimed that "many [district] projects that relied on the equitable share to function had ceased to operate or had run into large deficits", and as many as "seventeen projects concerned with the provision of essential services of water and sanitation had been ceased [sic] due to the lack of finances.'

Thus the district municipalities argued they had a constitutional right to an equitable share of revenue to their constitutional duties as a body of local government.

The case cited a total of 67 respondents, including the President, national Minister of Finance, national Minister of Provincial and Local Government. The other respondents were the Premier, MECs for Finance and Traditional and Local Affairs, KwaNaloga, and the remaining district and local municipalities in the province.

As a legal issue, the High Court resolved the question in favour of an equitable share for districts.

Three respondents opposed the application to the Constitutional Court to confirm the order: the President, national Minister of Finance, national Minister of Provincial and Local Government. Three local municipalities filed affidavits opposing the applicants, while two districts supported the relief sought.

The Constitutional Court focused on whether the parties to the dispute had exhausted the demands of cooperative government in Chapter 3 of the Constitution. Section 41(3) in particular demands government organs to only resort to the courts as a last resort.

³² Available on the National Treasury website

³³ See section 44

No evidence came forth of any attempts to resolve the dispute through any meaningful negotiation or arbitration before resorting to the courts. Thus a unanimous Court declined to confirm the ruling, and then sent the dispute back for the parties to resolve themselves.

Disputes may also arise over the financing of joint projects. The financing arrangements of Green Point Stadium as part of the 2010 FIFA World Cup is a case in point:

Mini case study 7: Green Point Stadium, Cape Town, and Moses Mabhida Stadium, eThekweni

Concerns about IG fiscal relations threatened to disrupt the building of the new Green Point Stadium in Cape Town which has been earmarked as a venue for one of the semi-final matches in 2010. Mayor Helen Zille refused to sign the contracts with construction companies until greater clarity was obtained about the funding arrangements for the new stadium. This led to tensions between the City and the Provincial Government as it was seen as a lack of support for the Western Cape's hosting of the tournament. The City of Cape Town was concerned about a possible shortfall in the funding of the stadium and the implications for the City's other capital expenditure plans should it need to make up any funding shortfall.

After further consultations and discussions involving the three spheres of government, as well as the Local Organising Committee, an agreement was reached on the funding of the stadium and construction has commenced.

The breakdown of funding is as follows:

- National Government Grant: R1,93bn
- DBSA Planning Grant: R30m
- Provincial Government of the Western Cape: R212m
- City of Cape Town: R400m

In eThekweni, concerns arose when National Treasury offered the city R1,8bn for the new stadium but an escalation in building costs pushed the costs up to R2,6bn. The City insisted that the shortfall could not be funded by the City. Nevertheless, fears arose that the City would implement significant increases in rates to cover the shortfall.

The municipality and the KwaZulu-Natal Provincial Government participated in a mediation process which resulted in an agreement between both parties to contribute to the shortfall. The Provincial Government agreed to contribute R300m towards the construction costs.

5.4 Areas of success: IG fiscal relations and budgeting

There is a solid foundation for intergovernmental budgeting, and this system has also examples of good practice. It is transparent, formula-based, applies the principles of the equitable share and provides indicative allocations in advance through DORA which gives certainty to local government in its budgeting processes. The comprehensive intergovernmental fiscal system provides for innovation through supporting legislation (the PFMA, the MSA), and these have given effect to sections of the Constitution that allow for a degree of discretion and flexibility in the management of expenditure.

The comprehensive information on national, provincial and municipal spending provided by National Treasury Expenditure Reviews has enabled informed fiscal debate and allowed for assessments of both financial and non-financial performance to guide policy and legislative frameworks.

This sound institutional framework has brought predictability and certainty into a complex decentralised governance system. Whilst many challenges remain as to the most appropriate funding models for our spatially diverse urban and rural governance areas, the opportunity for a pragmatic fiscal response is clear. Government at the highest level is exploring issues of functional asymmetry, the complex interrelationships between municipal financial viability, infrastructure investment, and revenue collection and budgeting, as well as assessing appropriate responses to the growing trend of urbanisation.

One practical example of programme innovation in financing is the multi-sectoral and multi-partnership approach adopted for the Intergovernmental Financing Protocol crafted by the URP / ISRDP nodal programmes.

5.5 Pressure Points: IG fiscal relations and budgeting

1. There is a need for a mechanism that systematically links the policy-making process to the budgetary process. While structures, such as Cabinet Committees, Cabinet Clusters, FOSAD, and the Cabinet Office and the Policy Unit within the Presidency, exist, their role may need further definition in Treasury and other budgeting processes.
2. There is a concern that national policy agreed to in forums like MinMEC's and extended Cabinet with IG representation may not be adequately funded at provincial level. There are also policies adopted at national sector level which may have fiscal and budgetary implications for the local government sphere as a whole. Thus there is a potential disjuncture between policy objectives, plans, budgets and implementation, if funding for national policy objectives is inadequately funded at sub-national level. Assessment of the cumulative effect of such policy and programmatic decisions may identify possible fiscal pressures for local government.
3. The problem of coordination in budgeting: in practice most coordination activity concerns either the determination of policy, programs and the division of revenue by national government or the implementation of national policy by provinces and municipalities. This is because most service functions are shared between the spheres but regulated by national legislation. Education, health, housing, social development, in the case of provinces, and water, sanitation and electricity in the case of municipalities are coordination intensive sectors. National government is generally in the policy-making and oversight role, and provinces and municipalities are responsible for expenditure and implementation. The implications for joint work, coordinating services and adopting implementation protocols are significant. Whilst there is joint responsibility for concurrent function planning and implementation, there is single point budgeting authority and accountability.
4. Closer links still need to be forged between PGDS's at provincial level and provincial budget allocations, and between IDPs and budgets at local government level.

6. INTEGRATED SERVICE DELIVERY

6.1 Legislation and Context

Integrated service delivery requires joint work across specific functional areas and organisations, as well as overall operational coordination and alignment. Integrated policy making and planning should be supported by complementary harmonised implementation strategies. Ideally this should result in a seamless web of services that cuts across jurisdictional boundaries.

The IGRF Act provides a general legal framework for written Implementation Protocols as a mechanism by which two or more organs of state must cooperate in order to exercise a statutory power, perform a function, implement a policy or deliver a service. The implementation protocol sets forth the anticipated outcomes of the joint work, details roles and responsibilities, the sources of funding and other resources and their envisaged use, performance targets and oversight mechanisms to ensure that the intended outcomes materialise.

The IGRF Act envisages that IG forums be used to coordinate implementation protocols. Monitoring the implementation of those protocols should also therefore ideally be standing items on their meeting agendas.

Section 40(2) of the Act requires that all implementation protocols and agency agreements for service delivery should include a dispute resolution protocol.

Joint work may vary widely in scale, scope, content and the spheres of government involved. There are numerous challenges associated with successful joint work. These include: the definition of clear mandates to IG and inter-departmental task teams, the need to map IG programmes and projects on to individual public institutions' budgets, effective decision-making when the number of relevant stakeholders is large and authority and accountability is diffused and the need to create a culture of joint work rather than a fixation on individual institutional achievement.

The concept of integrated service delivery was further complicated when provincial department service delivery areas (e.g. health or education districts) were not contiguous with municipal boundaries. Re-defining provincial department service delivery areas to make them co-terminous with municipal boundaries has helped somewhat. But the key challenge still remains of 'overcoming a level of incoherence' in the execution of national development priorities. The management of service delivery programmes 'often founders on questions of jurisdiction between departments, organs of state or spheres when policy priorities cut across ministerial mandates and traditional policy fields... the result is a general inability to forge collaborative partnerships or to find common ground for action.'³⁴

³⁴ A National Framework for IGR in South Africa, p4, the **dplg** and the Governance and Administration Cluster, 2004.

The table below summarise some of the interactions between the IGR system and implementation processes across the three spheres of government, each of which is dealt with in greater detail below.

Table 6: Integrated service delivery

IGR SYSTEM COMPONENT	NATIONAL	PROVINCIAL	LOCAL
IGR legislation	IGRF Act	IGRF Act	IGRF Act
IGR forums/bodies	Programme and project governance structures, e.g. MIG	Programme and project governance structures, e.g. MIG	Programme and project governance structures, e.g. MIG
IGR processes			
IGR instruments	Implementation Protocols	Implementation Protocols Multi-purpose community centres Harmonising service delivery boundaries	Implementation Protocols and MoUs, e.g. former cross-boundary municipalities ISRDP and URP nodes FIFA 2010 Human Settlements Alexandra Renewal Project
Conflict resolution and disputes			Contractual disputes on agency agreements

6.2 IGR Processes

A former Premier observed in 2004, that while the introduction of the PCC and other IG forums have improved communication among the executive arms across spheres, the challenge of coordination of activities and projects implementation among the three spheres of government remains:

'An example that comes to mind is the implementation of the urban and rural development projects. While these projects are by design and conceptualisation joint projects involving all three spheres of government, the practical reality has been that provinces and municipalities often find themselves carrying the financial burden for implementation of the projects. In some areas, no work has been done since local and provincial governments rely heavily on the initiatives of national government. This problem could be attributed in part to lack of protocols governing joint planning, funding and implementation of integrated development projects and services that involves all three spheres of government.'

THE ISRDP AND THE URP PROGRAMMES

The ISRDP and the URP were conceived in 2001, and are operative in their current form of targeted interventions in 21 rural and urban municipalities for ten years. The purpose of these programmes is to manage, coordinate, monitor and measure the effectiveness of the integrated implementation of the ISRDP and URP programmes across government, and involves, therefore, an IG approach.

In 2007 the URP programme management commissioned two audits of IGR structures within the context of the URP nodes in the five provinces where they are located³⁵. The analytical framework focused on the structures, plans, budgets and implementation support provided through the URP and sought to assess how these related to the broader context of general government structures, plans, budgets and implementation support. Through such inputs, activities and outputs it is envisaged that outcomes will be achieved in the institutional environment through crowding-in of public investment, effective IG planning and improved area-based planning.

The Audit findings concurred with the main thrust of this Report, that it is the broader IGR which are key to successful outcomes, including:

- The assignment of powers and functions between provinces and local government
- The structures which are set up to coordinate areas of common responsibility
- The system of IG planning
- The centrality of the IG budgeting system

The URP has made significant inroads into the establishment of coordinating structures, thereby promoting joint programming and agreements between spheres. Whilst formal implementation protocols are not yet evidenced, the power of more informal joint planning and cooperative institutionalised arrangements is demonstrated through the successes of the URP in the establishment of coordinating structures in such nodes as Alexandra and the Mitchell's Plain and Khayelitsha areas.

In many instances, the URP coordinating structures are interlinked but separate to existing IGR structures, such as in the Northern Cape, where the governance objectives of the Galeshwe nodal programme are met through a broad 'all three spheres of government' IG forum to address the multi-sectoral policy issues arising from programme implementation. Local area structures are also convened that accommodate community and councillor engagement, as in Motherwell and Mdantsane.

The URP has also initiated renewed focus on area-based spatial development frameworks which provide a basis for synchronisation of planning in the larger city and metro areas. One example of how this can be translated into an intergovernmental focus area would be in the areas of coordination of transport, employment, housing and services for an integrated urban development approach.

However the need to integrate spatially conceived nodal implementation plans with the PGDS and IDP plans has, the Audit Report notes, caused some institutional tensions. These are compounded by an observed lack of official promotion and recognition for the nodal programmes in for example the Eastern Cape, where neither the PDGS or the provincial speeches of MECs, the strategic plans of sectors or the State of the Province address featured the URP programmes – although steps are currently being taken to address these challenges by the Technical Support Facility (TSF).

An Audit Report on the IG interface with the ISRDP sub-programme was also commissioned by the **dplg**.³⁶ One of the key motivations for the audit was to identify how the ISRDP programme could be mainstreamed in government in the context of effective IGR, thus promoting the structural and systematic alignment of government action. The audit noted the functionality of the majority of the IGR structures in the nodal areas, which together with specialist forums such as Provincial Interdepartmental Task Teams, were well-placed to absorb earlier coordinating structures established for the programme.

The emerging URP emphasis on efficiency in planning and budgeting for urban and city development, in preference to coordination through multiple IG structures, is indicative of the need to now streamline how planning is reviewed and approved in IGR forums. The multiple forum response of some provinces and municipalities to the demands of joint planning may now be refined into a more singular, mainstreamed formulation with the statutory IGR structures.

³⁵ Report on Audit of Urban Renewal Programmes, **dplg** commissioned report, March 2008

³⁶ ISRDP Audit Report on Provincial and Municipal IGR structures, the **dplg**, 2008

Viewpoint from the URP

Integrated service delivery and the case for area level planning and budgeting across government

The URP, focusing on 8 urban townships, was intended to facilitate the targeting of the resources of the whole of government on poverty pockets such as townships, based on the principle that a coordinated and visible presence of the whole of government would bring about a turn-around in the fortunes of previously neglected communities.

This required of the multiple government sectors and agencies to plan, budget and support the nodes. It is not the norm for national sector department, provinces and even local municipalities to act together to implement a coherent vision for townships – area based planning and budgeting being a relatively new concept. But, because of the status of the nodes, success stories of the impact of IG cooperation can be seen on the ground.

The approach followed was to cluster public sector investment in the nodes into well-designed precincts. This resulted in the creation of government public services nodes in these townships with different sector departments investing together in new facilities close to communities, as well as resulting in attracting the first new private sector investment in these townships. Examples of these can be found in Khayelitsha CBD; public services, retail, public transport interchange, recreation facilities in KwaMashu town centre; the Bridge City – Inanda, which is currently under construction; the Pan Africa Square development in Alexandra township – also currently under construction.

This IG collaboration for the ambitious redevelopments of precincts, if planned and executed carefully, has proved to transform neglected urban spaces.

In all cases, significant private sector investment was attracted on the basis of the obvious viability of the plan.

Facts about the Khayelitsha CBD development

- The R350m development is a mixed-use business district located next to key train station through which thousands of people travel every day
- It includes a 17,500m² retail centre, a service station, public sector offices and facilities, offices for the private sector, sports facilities, residential units, a bus and a taxi terminal, landscaping, public spaces and greening
- Public services are also being located in the CBD, including a Home Affairs office, a hospital and offices for the Department of Social Development
- The KBD development is a joint venture between the city and the private sector; it also directly involves the community of Khayelitsha represented through the Khayelitsha Community Trust

Source: Shared Learnings From the City of Cape Town's URP (MCA Planners, 2006); Monitor Interviews

The nodal economic profiling project has highlighted the fact that the quality of spatial planning is probably the single most important differentiator between successful developments in South Africa's cities and unsuccessful ones.

One reason for this is that the link between development policy and strategy, on the one hand, and implementation, on the other, is established when plans get translated into spatial forms. Reducing grand strategies and plans to their spatial implications, we believe, is one of the most important steps in the development of urban areas, and a good SDF is a way of linking the ideas and theory of economic development with the concrete reality of the community / locality which is to be developed. But, the experiences of the URP is that local government largely bears the costs of striving for coordination in planning and resource mobilisation. Negotiating support from a broad range of provincial and national sectors add to the costs and time for projects. (E.g. it took 5-years of planning and negotiation before sufficient commitments were in place from all government sectors to proceed with the Khayelitsha CBD project).

So although there are now many successes in the nodes as a result of IG collaboration, the transaction costs of convincing each sector department at national and provincial level to intervene in the nodes based on strategically identified needs are extremely high.

BUILDING GOOD PRACTICE IN INTEGRATED SERVICE DELIVERY

In order to promote good practice in integrated service delivery, the **dplg** published an *Implementation Protocol Guide* in 2007 as part of its IGR Toolkit – a comprehensive guide to the management and practice of IGR. The adoption of Implementation Protocols is a foundation for joint work and planning.

A recent example where implementation protocols have been used as instruments of IG coordination has been in the case of the former cross-border municipalities. In the original demarcation process, 284 municipalities were established including 16 municipalities which straddled the boundaries of two provinces.

Provinces could exercise joint executive authority over the municipality in terms of the Municipal Structures Act. Sector departments (such as health, education, roads etc) from each provincial government would work separately in the municipality, and the provincial legislation of each province would apply to its geographic area of the municipality.

Alternatively, provinces could agree that one provincial government would be delegated full executive responsibility for the entire area, with the other province ceding its power and authority over its portion of the municipality. Not surprisingly this led to problems relating to compliance with differing sets of provincial legislation, regulation and policies, duplicated accounting systems in order to ring-fence funds from the two provincial governments, service delivery coordination problems and duplication of reporting lines. The following case studies illustrate provincial coordination in relation to the integration of former cross-border municipalities.

Mini case study 8: North West – Northern Cape Implementation Protocol

An example of a successful Implementation Protocol implemented in a former CBM was the arrangement made between the North West and Northern Cape Provinces in the area of transport, roads and community safety. According to the Implementation Protocol between the North West and Northern Cape Provinces signed on 28 February 2006 by the Premiers of North West and Northern Cape Premiers:

‘All staff associated or connected with the delivery of services within the affected areas shall be transferred from Northwest to Northern Cape with effect April 01, 2007. The new demarcation of the provincial boundaries of Northern Cape and North West has affected personnel and assets of the Department of Transport, Roads and Community Safety, which will be transferred to two different departments in Northern Cape.’

Mini case study 9: North West – Gauteng – Mpumalanga

These provinces established a task team to manage the transition. Gauteng agreed to manage all housing projects until the financial year end (2007/8). Remaining challenges included the lack of optimal coordination among sector departments to resolve issues within timeframes; the need for some Service Level Agreements to be amended and updated to allow for the completion of housing projects that were delayed; and the transfer of assets belonging to provincial state-owned entities.

Mini case study 10: Mpumalanga – Limpopo

Joint collaboration by the respective Premiers allowed for progress to be made with respect to roles and responsibilities in the provision of education including staff transfers, budgets, and the reallocation of funds. Outstanding issues included the transfer of teachers to Limpopo, contractual obligations in respect of building of schools in Limpopo, and infrastructure in Greater Groblersdal and Marble Hall Municipalities.

While there are areas where Implementation Protocols have already been implemented successfully, their adoption will need to be much more widespread. One area where this has already been recognised is in the area of land reform.

Mini case study 11: Settlement and Implementation Support (SIS) Strategy for Land and Agrarian Reform

The Department of Land Affairs (DLA) has accepted the necessity of reframing land reform as a joint programme of government, coordinated by DLA in partnership with the Department of Agriculture, the private sector and civil society.

The SIS strategy will aim to ensure that land reform is integrated into municipal IDPs and supported through processes of area-based planning and settlement and implementation support. This will promote the alignment of the functions, budgets and performance criteria of all relevant departments. This will embody the Department of Public Service and Administration guidelines for joint programme management. Mandatory provincial and district forums established in terms of the IGRF Act will be used as IG institutional vehicles for securing coordination:

'If properly pursued, the Act should allow for the negotiation of province-municipality - area-wide enforceable implementation protocols that specify departmental and municipal legislative mandates, responsibilities, human resources and budget commitments in the provision of SIS services.

This will require the **dplg**, the Department responsible for the IGRF Act, to play an active role in building understanding of the Act and the drafting and monitoring of implementation protocols in terms of the Act.

Clearly, making IGR work involves much more than just getting the parties around the table. DLA and its partners will need to undertake a provincial-level institutional analysis to identify the relevant national and provincial departments and parastatal agencies that have legislative mandates to support land and agrarian reform.

It will need to profile their current staff, skills and budgets, and identify capacity gaps. Together with the relevant departments, and using the PIF and DIF forums, it will need to develop strategies to address identified shortcomings.' (*Sustainable Development Consortium, 2007*)

Another of the challenges relating to integrated service delivery is a lack of understanding of operational definitions around IGR. (See *Mini case study 15: Working definitions of core IGR concepts, page 55*). Building capacity in the understanding and implementation of IG good practice is necessary across all three spheres of government as it underpins the Constitutional imperative of cooperation.

SECTOR ENGAGEMENT WITH LOCAL GOVERNMENT

Integrated service delivery relies upon implementation of a 'whole of government' vision, with shared objectives, intentions and plans by multiple role-players. The complexities of this coordination have been outlined in respect to the alignment challenges in development planning, with improved sector engagement in local spaces being a key challenge acknowledged across government³⁷.

The **dplg** has for the last 3-4 years attempted to facilitate coordination and integration across the three spheres of government, through its various programmes:

- Integrated planning and LED process (IDP-LED)
- ISRDP and URP
- Free Basic Services
- Izimbizo Programme

A key target group that all of these programmes have focused on for its success are national sector departments and state-owned enterprises. Key lessons have emerged regarding the coordination and integration required by the **dplg** to orchestrate a sophisticated process of successful sector engagement for better local implementation and directed investment in municipal spaces.

Table 7 illustrates the range of sector engagements undertaken by the **dplg** during 2006/07 in the implementation of its programmes.

³⁷ Review of Local Government 1996-2006, the **dplg**, 2006

Table: 7: Sector Engagement: the dplg

dplg programme	Current sector engagements	Area of focus	Mechanism
IDP-LED	DWAF, DEAT, Housing, Presidency, dti	• Mobilisation • Planning • Reporting	• IDP Steering Committee • LED Forum • Economic Cluster • G & A Cluster
ISRDP-URP	DWAF, DEAT, Housing, Land Affairs, Agriculture, Public Works, Education, Health	• Planning • Investment • Reporting	• ISRDP Task Team • URP Task Team • Social Cluster (mainly)
Free Basic Services	DWAF, Housing, Public Works, Eskom, Sports & Recreation, Treasury	• Project management • Investment • Reporting	• MIG Working Group • RIDS Working Group • Social Cluster • Economic Cluster • G & A Cluster
Izimbizo programme	Presidency, DWAF, Housing, Transport, Eskom.	• Mobilisation • Reporting	• G & A Cluster

Critical to building the facility for inter-departmental cooperation is the appropriate interpretation of powers and functions at both national and provincial level, with sector master plans informed by the top level strategic priorities of government at each sphere, for example the MTSE, Apex projects, the PoA and the LGSA, and how these 'cascade' to the local sphere.

At national level the Cabinet Cluster system was instituted in 1999 to improve IG sector coordination, and finds most obvious expression in project monitoring of the PoA and policy development. However the devolution of intent to local level has no institutional channels outside of the IG structures. The role therefore, of the sector based IG forums, is critical if decisions are to be communicated to provinces and municipalities and incorporated into planning frameworks

There are 17 national IGR structures in place, (established since 1994). Four are established by their own statute, namely, the Council of Education Ministers (National Education Policy Act, of 1996); Executive Coordinating Committee (South African Police Service Act, of 1995); and the Budget Council and the Local Government Budget Forum (Intergovernmental Fiscal Relations Act, of 1997). All others are now constituted in terms of the IGRF Act. The following are the fifteen lead sector departments administering such 17 IGR structures:

- Department of Agriculture
- Department of Arts and Culture
- Department of Education
- Department of Health
- Department of Provincial and Local Government
- Department of Social Development
- Department of Housing
- Department of Sports and Recreation
- Department of Transport
- Department of Water Affairs and Forestry

- Department of Trade and Industry
- Department of Safety and Security
- Department of Public Works
- National Treasury (2 MinMECs: Budget Council and Budget Forum)
- Department of Environment and Tourism (2 MinMECs, one for environment, and one for tourism).

One purpose of these IG structures is oversight of the implementation of national and provincial policies at municipal level. A starting point for sector policy frameworks and their sub-national implementation should be scrutiny of the competencies in the schedules and the emphasis for service delivery priorities in the PGDS and the IDP, followed by appropriate consultation with the municipality.

However, different departments may envisage different types of roles for municipalities, and this can cause ambiguity about the perceived role of municipalities (e.g. housing accreditation, libraries, health). Assignments to municipalities require clear assessment of financial and capacity issues (e.g. transport planning, land reform, environmental management), and an understanding of how to manage integrated planning when there may be a lack of synergy between competencies, e.g. development planning is decentralised, but road maintenance and the provision of housing subsidies are very still centralised.

An example of simplifying governance arrangements through appropriate location of powers and functions would be in respect to housing, where there is policy space for delegation of this function to urban areas, thus reducing the complexities of coordinating decentralised and concurrent functions.

IG COORDINATION AND LEGISLATION

One example of the level of collaboration required by sector departments to efficiently manage inter-sectoral coordination is in the field of land-use management. The White Paper on Spatial Planning and Land-Use Management³⁸ proposed a new unifying law on land use management, which is still under consideration. However, it relates explicitly to laws under the authority of the **dplg**; the Municipal Systems and Municipal Structures Acts, and not to laws under the authority of the Department of Land Affairs (DLA).

In terms of an agreement between the **dplg** and the DLA, the former Land Development Objectives (LDOs) promoted by the Development Facilitation Act (DFA) were subsumed as Spatial Development Frameworks within IDPs legislated in the MSA. It would appear therefore that the 'spatial planning' elements present in the MSA via IDPs (which include Spatial Development Frameworks) which are the 'forward planning tools' have become somewhat split off from the DLA's oversight and policy role on 'land use management', which is what in the past was referred to as 'development control'.³⁹

The DLA has pointed out that the MSA deals with the governance aspect of spatial planning, and not with systems for land use planning and management, for example, there is a need for geographic location - plans that provide the detail absent in broader strategic vision of the IDP. However, governance of spatial planning and design of systems for land use management are so closely linked that it poses a key IG challenge on how the DLA and the **dplg** will manage the essential coordination of this function.

6.3 Lessons from practice: Integrated Service Delivery

The preparation for the 2010 FIFA World Cup is a good illustration of joint work which requires far-ranging inter-sectoral and inter-sphere collaboration. These range from ensuring the broadcasting of the event to a global audience (Department of Communication), unconditional visas for FIFA role-players and special immigration procedures for participants (Department of Home Affairs), comprehensive medical and disaster management services in the host cities (national and provincial Departments of Health), sports facilities (national and provincial Departments of Sports and Recreation), passenger transport and roads (national and provincial Departments of Transport), protection of FIFA trademarks and merchandising (Dept of Trade and Industry) – to name but a few stakeholders.

³⁸ Ministry of Agriculture and Land Affairs, 2001, White Paper on Spatial Planning and Land Use Management

³⁹ Review of Schedules 4 and 5 of the Constitution, **dplg** commissioned research, 2003.

Dedicated institutional coordinating structures include: the Local Organising Committee (LOC), the Inter-ministerial committee chaired by the Deputy President, the (National) Technical Coordinating Committee, the Host Cities Forum which is the primary IG structure, the Provincial Coordinating Committees and the Integrated Project Office.

Various departments and municipalities have also set up internal units to discharge their 2010 related responsibilities, inter alia, the **dplg**, National Treasury, Department of Sports and Recreation, Department of Transport and the City of Tshwane. Host Agreements were entered into by the LOC with each of the host cities to provide support requested for the conduct of the tournament, and the operation of stadiums and training grounds, especially on match days.

Host cities have also entered into agreements with their provincial governments to set in place governance structures to oversee the preparations and to delineate roles and responsibilities.

Mini case study 12: Clarifying Mangaung and Free State Provincial Government FIFA 2010 Roles and Responsibilities

In February 2006, the Mangaung Host City and the Free State Provincial Government launched its governance structure for its 2010 preparations at a stakeholder workshop. The governance structure defined how the two spheres of government would work together with the sole purpose of preparing for the 2010 FIFA World Cup.

Role Clarification between Mangaung Host City and Free State Province

It was concluded that the roles of Mangaung Host City and the Province would be broadly defined as follows:

- The Mangaung Host City is responsible for the development, implementation and hands-on management of all the activities necessary to ensure a successful 2010 FIFA World Cup tournament.
- The Free State Province is responsible for providing a facilitating, supporting and monitoring role to ensure that the Free State Province in general benefits from the hosting of the 2010 FIFA World Cup tournament in Mangaung, in accordance with the broader objectives of the Free State PGDS and National Government priorities.

Institutional Arrangements

The committee structure adopted by Mangaung and Free State province comprises of three levels:

- Political Committee
- Technical Committee
- Sub-committees (e.g. Transport, Safety and Security)

Key Drivers for Functioning of the Committees

The functioning of the committees will be informed by the following key drivers:

- Focus to be placed on cooperative government
- The preparation plan to address objectives of the Free State, specifically IDP priorities and Free State PGDS
- The plan should facilitate the active participation of the private sector and neighbouring municipalities, for instance resources from other Cities could be utilised
- The hosting of 2010 in Mangaung should also benefit other areas within the Free State Province

Administration

The committees and sub-committees operate through the 2010 Mangaung World Cup Office to ensure that a secretariat function is adequately provided and that alignment of processes and proper coordination of activities is facilitated.

While there have been some improvements in integrated service delivery across the three spheres, this is clearly an area that will require intensive focus over the medium term.

6.4 Areas of success: integrated service delivery

This section of the Report has highlighted many of the growing success stories in the management of integrated service delivery, which is the practical application of the sound policy and planning frameworks referred to in Section Three.

It is clear that the 5-year LGSA has contributed significantly to the advancement of coordinated and integrated service delivery. The **dplg**'s 2006 Implementation Plan for the 5-year LGSA has as its foundation, the imperative on national and provincial government to prioritise support for municipalities, and how national sector departments and the Office of the Premier (OtP) must coordinate this support. The range of activities, from crosscutting, through all of the 5 KPAs, demands that there is a concerted IG response to supporting municipal transformation.

The 2008 5-year LGSA Feedback Report⁴⁰ confirms that all provinces reported that the OtPs have taken the lead in coordinating and clarifying roles and responsibilities within their sectors, and that the 5-year LGSA is a standing item on the PCF Agenda in all provinces. Whilst the report acknowledges some prevailing coordination challenges between the DLGs and the OtPs, the fact that there is demonstrable improvement of performance across all KPA's is proof that a collaborative and well-managed IG response to coordinated service delivery is having impact. This is occurring despite the numerous practical challenges arising from the concept to integration, as will be seen below.

6.5 Pressure points: integrated service delivery

1. Clear mandates are needed for IG and inter-departmental task teams, as there is currently a lack of process or regulatory guidance in managing integration. Mechanisms to 'incentivise' joint planning and programme delivery from national government (National Treasury) may assist in the institutionalisation of coordination.
2. Government may benefit from instigating a regulatory framework that allows for the sharing of responsibilities amongst different tiers or spheres of government. Responsibilities should be clearly defined. It is particularly important to distinguish between functions which local governments perform on behalf of national government, and those which they perform as principals.
3. Budgeting for integrated service delivery presents logistical and accountability challenges for municipalities, and more systemic approaches may need to be investigated. Sub-national government needs resources commensurate with their service delivery responsibilities, and also with the requirements for integration.

⁴⁰ Feedback on the 5-year LGSA: A Progress Report, the **dplg**, April 2008.

7. IGR CONFLICT RESOLUTION, DISPUTES AND INTERVENTIONS

7.1 Constitutional and Legislative context

The Constitution requires that all spheres of government and all organs of state within each sphere must avoid instigating legal proceedings against one another. The Constitution further enjoins all organs of state involved in an IG dispute to make every reasonable effort to settle the dispute and must exhaust all other remedies before it approaches a court to resolve the dispute.

The Constitutional Court held that a failure to comply with the obligations of Chapter 3 [of the Constitution] is a sufficient ground for the Constitutional Court to refuse an application for direct access by parties in an IG dispute. The dictum is in line with a constitutional injunction that if a court is not satisfied that the organs of state did not make every reasonable effort to settle the dispute and have not exhausted all remedies to resolve the dispute, nor did not use mechanisms and procedures provided for the purpose of resolving the dispute, the Court may refer a dispute back to the organs of state. In the *Uthukela* case, the Constitutional Court pointed out that the essence of Chapter 3 of the Constitution is that 'disputes should, where possible, be resolved at a political level rather than through adversarial litigation'.⁴¹

Section 41(2)(b) of the Constitution requires that an Act of Parliament must provide for appropriate mechanisms and procedures to facilitate settlement of IG disputes. As per this constitutional injunction, the IGRF Act contains a chapter that is dedicated to IG dispute resolution. Section 45 of the Act prevents the parties from resorting to judicial proceedings during the informal stages of the dispute resolution process unless the dispute has been declared a formal IG dispute in terms of section 41(1) of the Act.

7.2 IGR processes: conflict resolution and disputes

Since the advent of Chapter 3 of the Constitution on 'Cooperative Government', but prior to the enactment of the IGRF Act, the Constitutional Court has heard not less than 12 IG disputes, all registered with the Court to resolve. The IG disputes brought before the Constitutional Court can be averaged at one IG dispute per year. Only the Constitutional Court may settle IG disputes between organs of state in the national and provincial sphere in relation to their constitutional status, powers and functions (section 167(4)a).

In order to build IG capacity in respect to the procedures outlined in Chapter 4 of the Act, on 27 April 2007, the Minister for Provincial and Local Government promulgated the 'Intergovernmental Dispute Prevention and Settlement: Guidelines for Effective Conflict Management' in the Government Gazette, issued out in terms of the Act⁴².

These guidelines give impetus to the constitutional and legislative provisions regarding IG disputes. They deal with a number of procedural steps to be undertaken by disputing organs of state that include:

- Determining the nature of the dispute
- Negotiating
- Declaring a dispute
- Convening a meeting
- Defining the dispute and identifying an existing dispute resolution mechanisms
- Appointing a facilitator
- Participating in good faith in the dispute resolution process

⁴¹ *Ex Parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) para 291.

⁴² These Guidelines form part of the IGR Toolkit, available on the **dplg** website.

- Asking for the assistance of the MEC or Minister
- Implementing and monitoring the agreement reached, or
- (As a last instance) going to court.

The provisions of Chapter 4 of the IGRF Act do not apply to the settlement of specific IG disputes in respect of which other national legislation provides resolution mechanisms or procedures. For instance, section 31 of the 2002 version of Division of Revenue Act (and similar provisions in subsequent Division of Revenue Acts) provide that 'an organ of state involved in an IG dispute regarding an allocation provided for in this Act must, before approaching a court to resolve such dispute, make every effort to settle the dispute with the other organ of state concerned, including making use of the structures established in terms of the Intergovernmental Fiscal Relations Act.'

It should be noted further that the Constitutional Court held that 'in the circumstances and in the interest of cooperative government, this Court should not exercise its discretion to decide the confirmation issue. It must first be left to the organs of state to endeavour to resolve at a political level such issues as there may still be'.⁴³ In the Uthukela case, the Constitutional Court referred the matter back to the parties given the DORA provisions. The Court can also enforce this duty by referring a dispute back to the parties if the requirements of section 41(3) have not been met. While the lack of incidence to litigation has been limited, and the IGR system has resolved most disputes, the Constitutional Court has in a number of cases refused to hear a matter because parties failed in their basic obligation to pursue alternative dispute resolution methods.

INTERVENTIONS BY ONE SPHERE INTO ANOTHER

Section 154 (1) of the Constitution requires both the National and the Provincial Governments by legislation or other means to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions. The Constitution provides for principles of cooperative government and IGR. All things being equal, the principles enjoins all spheres of government and all organs of state within each sphere to cooperate with one another in mutual trust and good faith by fostering friendly relations and assisting and supporting one another. At the same time, the Constitution has provided for instances where a national sphere of government can intervene in a provincial sphere; and provincial sphere intervening in a municipality within its jurisdiction in terms of section 100 and 139 respectively.

The principle for the application of sections 100 and 139 has always been to invoke them as a last resort. Since 1996, four instances of the invocation of section 100 (national to provincial) were experienced, with the intention of assisting provinces involved in financial crises. The provinces involved were Eastern Cape, Free State, KwaZulu-Natal and Mpumalanga. A Memorandum of Understanding was signed with each province in terms of which, provinces committed to improving their fiscal management.

Between 1998 and 2008 there were 24 interventions in municipalities by provinces as outlined in section 139 of the Constitution. These were distributed over five provinces⁴⁴, an average of two interventions per annum. The failures which triggered the interventions fell into three broad categories:

- (1) Governance: political infighting, conflict between senior management and councillors, human resource management issues.
- (2) Financial: Inadequate revenue collection, ineffective financial systems, fraud, misuse of municipal assets and funds.
- (3) Service delivery: Breach of sections 152 and 153 of the Constitution which outline service delivery obligations of municipalities.

Table 8 outlines the details of these disputes.

⁴³ Uthukela District Municipality and Others v The President of the Republic of South Africa and Others 2003 (1) SA 678 (CC)

⁴⁴ North West, Free State, Northern Cape, Eastern Cape, Mpumalanga and KwaZulu-Natal

Table: 8 Location of interventions

Name of municipality	Year of Intervention	Type of Intervention	Nature of Problem
1. Mafikeng (B2)	September 2003	Section 139(1)(b)	Constitutional obligation – service delivery, Administration, Financial and HR management and political.
2. Wedela /Merafong LM (B2)	August 1999	Section 139(1)(b)	Financial and Administrative
3. Lekwa Teemane (B3)	January 2004	Section 139(1)(b)(c)	Governance and admin, political conflict
4. Stilfontein/City of Klerksdorp (B1)	July 1999	Section 139(1)(b)	Governance, financial and HR management
5. Mamusa (B3)	June 2004	Section 139(1)(a)(b) (c)	
6. Moqhaka (B2)	Dec 2004	SI 39(1)(b)	Admin, financial and HR management and leadership conflict
7. Viljoenskroon /Moqhaka (B2)	Sep 1999	Section 139 (1)(b)	Financial
8. Tweeling	July 1999	Section 139(1)(b)	Governance
9. Phumelela (B3)	Dec 2004	SI 39(1)(b)	Governance Financial, HR administration and administrative management
10. Noupoot/Umsobomvu (B3)	August 1999	Section 139(1)(b)	Financial and administrative
11. Warrenton/Magareng (B3)	Jan 1998	Section 139(1)(b)	Financial and administrative
12. Qaukeni (B4)	Dec 2003	Section 139(1)(b)	Governance: political conflict
13. Butterworth-Mnquma (B4)	March 1998	Section 139(2)(d)	Governance
14. King Sabata Dalindyebo (B2)	July 2004	Section 139(1)(a) and (b)	Political (dysfunctionality of the Council) administrative, Financial and HR management
15. Elundini (B4)	November 2004	(SI 39(1)(b)	Leadership conflict, admin, financial and HR management
16. Ogies/Emalahleni (B1)	May 1999	Section 139(2)(a) and (b)	Governance and administration
17. Thaba Chweu (B3)	Jan 2005	Section 139(2)(b)	Financial, Administrative and HR Management
18. Mbombela	Feb 2008	Section 139(1)b	Governance and administration
19. Abaqulusi (B3)	May 2005	Section 139 (1)(b)	Governance and financial difficulties
20. Amajuba	Dec 2007	Section 139(2)	Service delivery Non-delivery of water services
21. Umzinyathi	Dec 2007	Section 139(2)	Service delivery Non-delivery of water services

22. Newcastle	Dec 2007	Section 139(2)	Service delivery Non-delivery of water services
23. Utrecht	August 2007	Section 139(1)(b)	Financial Administration
24. Oudtshoorn	March 2007	Section 139(1)	Governance

Chapter 13 of the MFMA outlines the role of the MEC for local government when financial problems in a municipality are detected. The first, preliminary steps are investigating the seriousness of the problems, determining whether the problems could be remedied by a financial recovery plan, and consulting with the municipality to obtain its cooperation in solving the problem.

It is possible that a dispute may arise from an intervention (in sections 100 and 139 of the Constitution). Section 125(4) of the Constitution requires that any dispute relating to the administrative capacity of a province to perform any function be referred to the NCOP for resolution within 30 days of referral. This may be regarded as a non-judicial form of dispute resolution, but does not detract from a province's right to litigate.

When a province intervenes to assume executive responsibility in terms of section 139(2)(a), this has to be approved by the Minister of Provincial and Local Government. Should a dispute between the province and the municipality arise, the Minister is in the position to act as an independent arbiter.

Disputes could also conceivably arise around whether national government is adequately fulfilling its support role to provinces or whether national and provincial government are adequately supporting municipalities.

7.3 Lessons from Practice: conflict resolution and disputes

Section 86 of the Municipal Structures Act deals with the resolution of disputes concerning performance of functions or exercise of powers. If a dispute arises between a district and a local municipality concerning the performance of a function or the exercise of a power, the MEC for local government in the province, after consulting them, may, by notice in the Provincial Gazette, resolve the dispute by defining their respective roles in the performance of that function or in the exercise of that power. The less precise the definition of the scope of a power or function, the more room for conflicting interpretations and thus for potential conflict.

The Gauteng Monorail link case study below highlights competition between provincial government and the metro on built-environment issues. Fortunately, a political resolution rather than litigation ensued.

Mini case study 13: Gauteng Monorail link

In early December 2006, the Council of the City of Johannesburg approved a system of a Bus Rapid Transit System called Rea Vaya, which has been successful in South America and other developing countries.

On the 16 May 2007 the MEC for Finance and Economic Affairs in the Gauteng Province announced to the media the launch of a 45 kilometre Monorail to run between Soweto and Johannesburg. He indicated that the project was approved by the Gauteng Province through a Memorandum of Understanding, that the feasibility study had been concluded and that the project implementation would commence in September 2007 and become operational during 2009. The Gauteng Economic Development Agency had signed an agreement with a Malaysian consortium, Newcyc Visions, who were to implement the project, which represented a private sector investment of R12 billion.

An independent assessment of the monorail proposal by an international transport organisation indicated that the proposal was seriously flawed.

While no public response was forthcoming from the City of Johannesburg, a statement was issued by the national Minister of Transport on 23 May 2007 emphasizing that he had had no knowledge at all of the proposal prior to the announcement by the Gauteng Province and that the province had not consulted with, discussed or sought approval from his Ministry for the project.

He re-iterated that the lead project for the area was the Rea Vaya project and added that on 7 May he had met the Mayor of Johannesburg together with members of his Mayoral Committee and there was no discussion of the monorail proposal.

The Minister stressed that the National Land Transport Transition Act specified rail as a national responsibility that the monorail was a version of rail transport, and thus any project of this kind had to fall under the national department.

A meeting appears to have been held subsequently between the Minister and the Gauteng MECs for Transport and Finance, where it was agreed that the MECs were welcome to try to do further work to build a case for the monorail.

During this time significant pressure appeared to have been placed on the City of Johannesburg to go along with the Monorail proposal. A press statement was then issued by national Cabinet after its meeting on 8th August 2007.

The statement said that Cabinet had received a report on the Soweto Monorail Project and that the meeting noted that there were major shortcomings in the process leading to the announcement of the project.

These included lack of consultation with key stakeholders such as the Minister of Transport, the City of Johannesburg; the taxi industry and the South African Rail and Commuter Corporation and the fact that no thorough financial viability study had been conducted. Cabinet decided that the Soweto Monorail project would not proceed at this stage, and advised the Gauteng Provincial Government accordingly.

Mini case study 14: The Liquor Bill

In *Ex parte President of the Republic of South Africa In re: Constitutionality of the Liquor Bill*, the Constitutional Court had to decide whether national Parliament could promulgate a law on the manufacturing, wholesale distribution and retail sales of liquor.

Trade and promotion of industry is a concurrent function between national and provincial government reflected in Schedule 4 of the Constitution. Liquor Licences, however, are an exclusive provincial competency listed in Schedule 5.

The Court found that the Bill was partly unconstitutional. Licensing of production and distribution belonged at national level since it extended beyond a single province and crossed provinces. Retail sales, however, were a provincial power and therefore could not be regulated by the national government.

GENERAL CONCLUSIONS TO BE DRAWN FROM INTERVENTIONS

- In most cases of intervention, the provinces themselves faced challenges to provide the necessary capacity and support required by a municipality. This is because they also lack the capacity to deal with their mandate of monitoring and supporting local government in terms of personnel, funds, institutional knowledge and expertise.
- An effective early warning system and strengthened support could assist as preventative measures. It is established that in most instances, monitoring mechanisms like the Project Viability process administered by the **dplg**, triggers financial viability of a municipality.

In terms of support, Section 139 interventions and Project Consolidate (PC) are two different processes that both seek to provide programme of support to local government aimed at reaching the common objective of assisting weaker municipalities to fulfil their constitutional and legislative mandate. The introduction of PC has had the far-reaching effect of assisting municipalities in dealing with their respective technical, financial and governance issues over a long-term period of support. It also acts a preventative measure to constrain further destabilisation in a vulnerable municipality.

PC and programmes of support for interventions can be instituted simultaneously as both are distinct in terms of the targeted functional area of support. But together, they can form an effective strengthening intervention. In the Qaukeni case, PC was aimed at assisting the municipality with integration in the rural nodes and with Performance Management, whereas the section 139 intervention focused on Governance, Financial and Service delivery issues.

7.4 Key success areas: conflict resolution and disputes

Since the promulgation of the IGRF Act, there has been a reduction in resorting to litigation. There have been fewer constitutional court cases and this attests to the view that the Act, particularly in relation to IG disputes, is effective and functional.

PC and the 5-year LGSA have supported local government to a point where interventions in terms of section 139 are less frequently needed or undertaken, and this trend is still being consolidated as capacity challenges receive negotiated settlements and positive intervention based on support.

Both national and provincial government have the constitutional obligation to support sub-national spheres. The strengthening of this obligation is being forged to some extent through systemic means, and a degree of regulation has impacted positively to the relative stability of the system. The improved level of compliance with procedures and principles demonstrates too the importance of monitoring and benchmarking of good practice in the management of interventions and disputes.

7.5 Pressure Points

1. There are national and provincial support programmes for municipalities (Project Consolidate, the 5-year LGSA), as well as legislative obligations of support. Whilst reporting an overall reduction, the number of section 139 interventions still being declared raises the questions as to why existing support mechanisms are being under-utilised and why procedural principles are not being followed before disputes are declared.
2. There is a need to bring stability and regulation into the system, suggesting that a legislative intervention may be necessary to enforce IG cooperation and the practice of compliance with the principles of section 139.
3. One of the intentions of the IGRF Act is to use IG forums as institutional mechanisms for reviewing performance, detecting failures and ensuring corrective action. However monitoring systems are still embryonic at District Forum level and indicate the urgency of national and provincial support mechanisms for monitoring the work of the district forums.
4. There is a need for dedicated technical, legal and administrative support systems for the management of IG disputes. Such systems need staff who understand the judicial framework for disputes, and understand too the key principles for mediated and conciliatory dispute settlement.

8. EVOLVING PRACTICES IN IG MONITORING, EVALUATION, SUPPORT AND SUPERVISION

8.1 Legislation and Context

The IG system is predicated on the principle that provincial government and municipalities exercise their powers and functions within a regulatory framework that is supervised by one or more spheres. In a decentralised system with overlapping powers and functions, effective monitoring is essential to good government, the achievement of policy objectives and integrated service delivery.

Section 125(3) of the Constitution imposes a duty on national government to support provincial governments and build their capacity to exercise their powers and perform their functions effectively. As we have seen, if a provincial government fails to fulfil its executive responsibilities, the national government may, as a last resort, intervene in terms of section 100 of the Constitution. If a municipality fails to fulfil its executive obligations, the provincial government may choose to intervene in terms of section 139 of the Constitution. Provinces are also monitored by the national government in terms of sectoral legislation (e.g. health, education, roads) as well as by the PFMA.

The MSA⁴⁵ requires that the MEC for local government in a province establish mechanisms to monitor municipalities and their capacity development, and assess their support needs. The MECs are empowered to request information from municipalities, and where they suspect non-performance or misadministration, initiate an enquiry.

The MEC may issue standard draft bylaws, model delegations, standing orders, guidelines and policy directives which a municipality may choose to adopt. Section 108 of the Systems Act, in particular, empowers the Minister of Provincial and Local Government to establish essential standards and minimum standards for any matter assigned to municipalities.

The Systems Act requires that municipalities establish a performance management system⁴⁶, report on a set of key performance indicators to the Minister of Provincial and Local Government⁴⁷, and produce annual performance reports⁴⁸ to be audited by the Auditor General⁴⁹. The Minister then submits to Parliament and the MECs a general report on the performance of municipalities⁵⁰.

The MEC for local government must annually compile and submit to the provincial legislatures and the Minister a consolidated report on the performance of municipalities in each province which identifies underperformance and remedial action taken. Monitoring of municipalities also takes place terms of the MFMA and sector legislation (such as water, transport etc).

8.2 IGR Processes

Table 9 illustrates the range of instruments applicable to each sphere of government in respect to monitoring, support and intervention.

⁴⁵ Sections 105 and 106.

⁴⁶ Section 43.

⁴⁷ Section 43.

⁴⁸ Section 46.

⁴⁹ Section 45.

⁵⁰ Section 48.

Table 9: Monitoring, support and intervention in a decentralised system

IGR SYSTEM COMPONENT	NATIONAL	PROVINCIAL	LOCAL
The Constitution IGR legislation	GWM&E Framework	PFMA Intervention	The MSA: Performance management MFMA Intervention
IGR forums/bodies			
IGR processes		Interventions in terms of section 100 of the Constitution	Interventions in terms of section 139 of the Constitution
IGR instruments	Sectoral M&E IT innovations, e.g. DWAF GIS IGR system indicators: outcome and process	Quarterly performance reporting, GIS Disaster Management	Quarterly reporting on the SDBIP PC GIS Disaster Management

National and provincial supervision comprises a number of potential actions which range from less to more intrusive monitoring and support. Monitoring, in the context of IGR, refers both to the monitoring of the overall system and its performance, as well as to the measurement of legal compliance and performance of one sphere by another.

In monitoring the evolution of the IG system, the *IGR Audit* recommended the formulation of key performance indicators, both outcome and process-based, for the measuring of the status of the IGR system. Indicators would serve to measure the implementation of the IGRF Act, relating to formal compliance and the achievement of IGRF Act goals. Appropriate indicators have been developed by the **dpig** in this regard (see Appendix B).

Lack of formal monitoring systems exacerbate the difficulty of getting information on IGR practice, especially in relation to perceptions, levels and quality of participation and ownership of the institution. A lack of a common 'language' and clear understanding of IGR concepts such as coordination, integration, consultation and alignment also hamper monitoring of the IG system.

For provincial municipal development planning, the Gauteng Departments of Local Government and Economic Affairs defined for themselves key operational definitions for IGR. These are outlined in the textbox below.

Mini case study 15: Working definitions of core IGR concepts

Engagement:

- A process by which outcomes, policy directions and/or strategies in various plans are aligned with those in other plans.
- A process of ironing out possible differences between plans, strategies and frameworks, preferably in a constructive way, by seeking to ensure synergy in priorities, the sharing of information and focusing on the same geographic areas of focus.

Alignment:

- The result of coordination and collaboration in planning processes.
- Not a mechanistic process of trying to ensure that every action in every plan is linked or 'lined up' with every action in every other plan in the area.

Integration:

- A process of bringing together different policies, projects, ideas, etc to ensure the achievement of shared objectives.

Coordination:

- A process of bringing together different plans, ideas, etc. that can collectively ensure the achievement of key developmental outcomes.

Collaboration:

- A process of constructively working together in planning processes around shared development objectives.

Prioritisation:

- A process of ensuring that different actors in government (spheres and sectors) reach consensus on what it is that they seek to achieve in order of importance.

Focus:

- A process of directing attention on the same geographic or sectoral area(s) of concern.
(Gauteng Provincial Government, 2004)

MONITORING OF PROVINCIAL GOVERNMENTS

Since 2003, the National Treasury has engaged extensively with the provincial government departments to put in place a system of standardised five year strategic plans, annual performance plans and quarterly performance reports which monitor progress of actual service delivery achievement and spending against plans.

In May 2007, the Treasury published its Framework for Managing Programme Performance Information as part of the GWM&E System. It aims to clarify the standards and definitions for performance information in support of audits of non-financial information. While, initially, National Treasury systematised the process of defining non-financial information requirements, national concurrent departments, like the Departments of Education, Social Development and Health, have however also taken the initiative. In conjunction with their provincial counterparts, they have developed extensive indicators for service delivery monitoring.

There is an ongoing convergence between the initiative of these concurrent national departments and the National Treasury processes, which has resulted in streamlining reporting requirements of provincial government departments.

MONITORING OF LOCAL GOVERNMENTS – NATIONAL MONITORING OF MUNICIPALITIES

At national level, the **dplg** plays a major role in the monitoring of local government, along with other key national sector departments (such as the Departments of Agriculture and Water Affairs and Forestry).

The 5-year LGSA was developed with application for each sphere of government, to ensure that municipalities deliver on their mandate. It focuses on three main strategic priorities:

- **Strategic priority 1:** Mainstreaming hands-on support to local government to improve municipal governance, performance and accountability, which is further subdivided into the following KPAs:
 - o Cross cutting interventions
 - o Cross cutting communications
 - o KPA 1: Municipal Transformation and Organisational Development
 - o KPA 2: Basic Service Delivery
 - o KPA 3: LED
 - o KPA 4: Municipal Financial Viability and Management
 - o KPA 5: Good Governance and Public Participation
- **Strategic Priority 2:** Addressing the structure and governance arrangements of the State in order to better strengthen, support and monitor local government
- **Strategic Priority 3:** Refining and strengthening the policy, regulatory and fiscal environment for Local Government and giving greater attention to the enforcement measures

Data for the reporting against the 5-year LGSA are obtained from various national sector departments, all provinces and municipalities (coordinated by the Offices of the Premier and Provincial Departments of Local Government).

In terms of the GWM&E Policy Framework as well as the Framework for Managing Programme Performance Information developed by the Presidency and the National Treasury respectively, **dplg** is expected to develop an integrated Monitoring, Reporting and Evaluation (MR&E) system to monitor and report performance of local government. A MR&E Business Process and Indicator Mapping exercise was undertaken within **dplg** and with key sector departments focusing on monitoring and reporting of local government performance. This exercise was conducted to enable the alignment and integration of reporting processes. Approximately 495 indicators were found to be in existence for monitoring and reporting local government performance.

These approximately 495 indicators were reviewed, aligned to the 5-year LGSA and rationalised to 114. The process of consulting on the 114 proposed set of performance indicators for LG with sector departments, provinces and municipalities is continuing and will be concluded in March 2009. The development of a set of core performance indicators will contribute to the development of an M&E Framework that will standardise monitoring, reporting and evaluation across the three spheres of government.

National Treasury's approach to planning, budget and M&E reform within the local sphere will broadly mirror that of the national and provincial reform packages. Since local government finance reform is in its early stages with variable progress being achieved across municipalities (e.g. in terms of the implementation of Medium Term Revenue Expenditure Framework (MTREF)⁵¹ budgeting and accounting standards, alignment of IDPs and budgets etc), the first thrust will be to ensure that the financial management basics are in place. This will provide a platform for increased emphasis on non-financial reporting. The **dplg** will continue to play an important role in respect of municipal non-financial reporting (service delivery outputs and outcomes).

The Programme Performance Information Framework will be applicable to all spheres of government, including municipalities. National Treasury and the provincial Treasuries will assess Service Delivery and Budget Implementation Plans (SDBIPs)⁵² in order to check consistency with the IDP, budget and monthly and quarterly reports. National Treasury will continue to enhance the scope and quality of the data published annually in the Local Government Budget and Expenditure Review. Increased emphasis will be on the accurate reporting of actual expenditures, as well as budgets over a three-year period.

PROVINCIAL MONITORING OF MUNICIPALITIES

Provincial treasuries have local government monitoring and support responsibilities in terms of the MFMA.

Some provinces have only recently established formal M&E capability, whereas others are more advanced. Most of the OtPs monitor IDPs and their relation to the PGDS's. DLG's are also engaged in monitoring and support activities to municipalities.

The Minister of Provincial and Local Government noted in his 2007/08 budget speech that 6 provinces have established M&E units in their departments that deal with local government. Effective municipal monitoring by provinces depends crucially on cooperation between all the relevant role players, in particular, a clear and practical division of labour between provincial treasuries and provincial departments of local government.

SUPPORT MECHANISMS AND SYSTEMS

Most concurrent national departments (such as Transport, Agriculture and Health) have programmes which are meant to support their provincial counterparts. To support these efforts, the National Treasury's Infrastructure Delivery Implementation Programme (IDIP) has deployed technical assistance teams in the nine provinces to build capacity for project management in provincial Departments of Health, Education and Public Works.

Unfortunately, inability to spend conditional grants at provincial level (see *Case Study 5: Eastern Cape Housing Grant*) suggests that there is need to intensify support efforts in certain sectors and areas. The Eastern Cape Department of Housing has now received some technical support from the Development Bank of South Africa's (DBSA's) Siyenza Manje programme, but an early warning system would have detected the problem more timeously and helped to prevent a system breakdown.

⁵¹ Medium Term Revenue and Expenditure Framework

⁵² Service Delivery Budget Improvement Plans

The **dplg** has run several support programmes for local government for many years. These include PC, the Extended Public Works Programme, the ISRDP, the Free Basic Services Programme, the National Disaster Management Centre, Integrated Development Planning Support, the Local Government Leadership Academy, the Municipal Service Partnerships and LED. Many national departments also offer support services to local government (e.g. Department of Water Affairs, Department of Agriculture).

The **dplg** is also supporting provinces to establish the appropriate forums to implement institutional and operational systems to monitor, evaluate and report on the 5-year LGSA. Consultation on competency frameworks for local government is underway and the skills audit of local government is being undertaken in a phased manner. The Department will also provide targeted IGR capacity building and systems support to 4 provinces and 23 district municipalities in 2008/09.

8.3 Lessons from Practice

In respect to the challenge of developing capacity in all technical fields of government, the programme *Siyenza Manje* was initiated.

Mini case study 16: The *Siyenza Manje* Programme

This programme, which was initiated in June 2006, is funded by the National Treasury and managed by the Development Bank of South Africa. The programme is seen as a complement to PC. It is a response to severe skills constraints in under-performing municipalities, especially in relation to engineers, project managers, financial experts and development planners. The DBSA was allocated R741-million by the National Treasury over a three-year period and has been tasked with using these funds to develop capacity in troubled municipalities.

Since its launch, it has allocated 158 experts and 79 graduates to municipalities, and government departments such as the Department of Water Affairs and Forestry and the Eastern Cape Department of Housing and Local Government (*National Treasury, 2008b*).

PROVINCIAL SUPPORT OF LOCAL GOVERNMENT

An identified constraint to effective support is that currently monitoring and oversight functions are fragmented between national and provincial departments and, at provincial level, thinly resourced. This impacts on timeous detection of service delivery failures for the purposes of corrective action.

In 2006/07 the **dplg** reported on its Capacity Assessment of the Provincial Departments of Local Government and the Offices of the Premiers. In addition to challenges faced in adequate monitoring and reporting systems for local government, the findings demonstrated that in both departments, the lack of a 'blue-print' standard model for these departments has resulted in observable weaknesses in their support and oversight roles, with a lack of clarity on IG roles and responsibilities creating tensions and pressures within the system.

Comprehensive programme support to strengthen the institutional and operational capacity of these lead provincial departments was recommended, particularly in view of their key oversight and support responsibilities.

THE GWM&E SYSTEM

The GWM&E system was proposed in order to address the challenge of increasing effectiveness of government, through the concentration on monitoring, reporting and evaluation. The GWM&E policy framework is aimed at ensuring that government departments:

- Focus on the essential elements of results-oriented M&E that responds to the requirements of government's programmes, policies and projects for decision making, accountability and learning;
- Strengthen the role of monitoring function within the three spheres of government;
- Present a more integrated approach to M&E;
- Introduce simplified, streamlined and harmonised procedures in line with government's results-oriented framework for monitoring and evaluation combined with practical guidance for the development of selected instruments;

- Create greater attention to monitoring than in the past, to stress that both M&E are important management functions aimed at ensuring the quality of interventions and supporting decision-making, accountability, learning and capacity development.

The focus of National Treasury's *Framework for Managing Programme Performance information* is on information that is collected by government institutions in the course of fulfilling their mandates and implementing the policies of government. These would include output and outcome information collected at provincial level for strategic and annual performance plans and budgets, and at local level for IDPs and SDBIPs.

8.4 Areas of success: evolving practices in IG M&E, support and supervision

The function of M&E is to provide targeted information as to where in the system one can identify the strengths, weaknesses and failures and craft a state response accordingly. Thus the development of appropriate and systemic measures of support to build certainty in the system as a complex system of government evolves, has seen a concerted national effort to implement the principles of supervision in a decentralised system.

There have been significant measures adopted by all of government in response to challenges identified over the last decade of practice. These are well-known and include primary LG legislation, as well sectoral M&E systems, National Treasury quarterly performance reporting, disaster management, PC, Siyenza Manje, the 5-year LGSA, the GWM&E system and the evolving LG Performance Indicators.

The key impact of these various support measures is that the state is building the institutional capacity to enable each sphere of government to implement its own constitutional responsibilities

8.5 Pressure Points: support, monitoring and supervision

1. The functional scope of provincial oversight: provincial governments do not have water services or electricity services functions, but they do have the authority, in terms of Schedule 4B, read with section 155(7) of the Constitution, to oversee municipal performance on these issues. The functional evolution in these sectors has been that provincial governments are not involved in these functions, even though constitutionally they are permitted to be involved.
2. Provincial support to local government: an identified constraint to effective support is that currently monitoring and oversight functions are fragmented between national and provincial departments and, at provincial level, thinly resourced.
3. Measurement of the conduct of IGR: A formalised programme and capacity is required to measure the effectiveness of implementation and impact on service delivery, of the IGFR Act.
4. Duplication and fragmentation in legislation: each piece of legislation relating to a municipal competence contains its own monitoring mechanism. This, together with numerous reporting requirements may cause institutional stress on municipalities and may impact negatively on coordination of basic service delivery.
5. GWM&E system: Municipal monitoring needs to extend beyond the monitoring of inputs to encompass the logic model (results-based management) approach, which begins to measure the outcomes and impact of government programmes on communities. The linkages of how the outputs from various government departments contribute to the achievement of the desired outcomes and impact needs to be emphasised for improved service delivery. Therefore integrated planning, implementation, monitoring and reporting is critical for this process.

9. AREAS FOR IMPROVEMENT IN THE CONDUCT OF IGR

The final discursive section of this report seeks to draw together the identified pressures and challenges in the system and provides some perspective on the most appropriate IG approaches going forward.

Continued implementation support efforts will have to be made to ensure that both the letter and the spirit of the IGRF Act are realised over time. At the same time, the limitations of legislation *per se* should be recognised. A clear legislative framework is a necessary but not sufficient condition for a well functioning IGR system, as the system is also inherently political. Legislation alone cannot substitute for political maturity, effective executive and administrative management and leadership skills in the field.

The improvements suggested below arise from the range of IG focus areas explored in the main body of this report. Whilst many suggested areas for improvement have a technical focus, there is a need for the development of soft skills in IGR too, such as leadership, communication and a commitment to public service.

Whilst it is clear that the system is still evolving and it is difficult at this stage to assess its impact, there are still examples of good practice which must be acknowledged and built upon. The conduct of IGR will be measured from 2009 through the IGR indicators, a monitoring tool that will form part of a measurement programme for the conduct of IGR. The indicators are applicable to each sphere of government. It is hoped the system under development will provide a sound basis for the measurement of the conduct of IGR going forward.

SUMMARY OF AREAS FOR IMPROVEMENT

a) Distribution of powers and functions across the three spheres

Responses to a number of the fundamental issues raised above will emerge from the **dplg** Policy Review Process on Provincial and Local Government. The following issues are being raised:

1. Clarification of functional competencies in schedules 4 and 5 in order to optimise their distribution across the three spheres. This would require constitutional amendment so great care has to be exercised to ensure that the revised schedules are robust over time, and not subject to continual adjustment.
2. Finding effective ways of managing concurrency between National and Provincial government. Even the IGR Fora with decision-making powers have not managed to effectively manage problems resulting in misalignment between national priorities and provincial discretion to budget allocation for nationally set priorities.
3. Structural tension within the two-tier system of local government: these pressures are caused by a number of factors, which includes the need for clarity and direction on district municipality statutory responsibilities in the field of development facilitation and coordination. There are also challenges arising from levels of institutional performance compounded by low levels of socio-economic development in provinces with high levels of poverty and underdevelopment. Further, districts lack own revenue and have few standard norms for budget, performance and functional efficiency. This is compounded by IG tensions in the assignment and review processes of delegated powers and functions between locals and districts.

b) IG planning

4. All three spheres should continue to work to improve the quality of intergovernmental planning. Methods for public sector collaboration are needed that can foster both formal and informal coordination and decision-making mechanisms. Continued study and shared focus is needed for the interpretation of the NSDP, the PGDS, the IDP, the LED plan and the growth and development strategies for the development of local spaces.
5. There needs to be a stronger move away from sector-by-sector regulation of local government, to a multi-sector engagement approach which facilitates the cumulative impact of sector strategies - e.g. for integrated human settlements, on local municipalities and their constituencies.

6. Roles and responsibilities for managing the sectoral interface with local government at national and provincial level needs to be clarified e.g. coordinating departments at national level (Presidency, the **dplg**, National Treasury) and at provincial level (Premiers Office, Provincial Departments of Local Government and Provincial Treasuries).

c) IG bodies

7. MinMECs and individual MECs need to engage in greater follow-up of their decisions which have been approved by extended Cabinet and for which funds have been allocated in the division of revenue process to ensure that they are implemented by provincial EXCOs.
8. At both provincial and district level, there should be a clear distinction between political and technical support forums. Cognisance should be taken of the political leadership, strategic and advisory role of IGR Forums, and the critical operational role of the various technical forums to have planned, coordinated, consulted and prepared for these Forums.
9. Closer linkages should be encouraged between the provincial IG Forums and their district-level counterparts, and greater coordination of policies and projects across local municipalities in the district.
10. Consideration should be given to inclusion of metropolitan municipalities in national IGR bodies. Urban representation could be reviewed in the light of the urban development agenda.
11. At provincial and district level the URP/ISRDP, the PGDSs, the IDPs and LED plans should be given greater emphasis on the strategic agendas of IGR forums.

d) IG budgeting

12. The PFMA of 1999 is currently being reviewed. It is recommended that the Act and treasury regulations in terms of the Act be reviewed to ensure that they facilitate inter-sphere and multi-sectoral joint work. 'Incentivising' joint programmes through preferential National Treasury funding for collaboration in service delivery has also been mooted.
13. Appropriate forms of fiscal intervention may be needed to leverage greater alignment of provincial resource allocation with national priorities. These could include greater use of conditional grants, binding input and service delivery output norms and possibly more sophisticated forms of grant mechanisms (such as matching grants) to create incentives for co-funding.
14. There is a need to create certainty in relation to local government fiscal capacity through finalising the impact of the electricity energy restructuring on municipalities and providing local government with a suitable own revenue substitute for the RSC levy.

e) IG programme implementation

15. The use of implementation protocols (as outlined in the IGFR Act) needs to be further promoted, especially in areas like land reform and the environment where there may not be dedicated IGR forums.
16. There is a need to create a common understanding of operational definitions around IGR in integrated service delivery.
17. Overcoming the apartheid spatial planning legacies require spatially targeted state interventions in a differentiated manner across municipalities, with particular reference to the socio-economic characteristics of rural and urban areas and appropriate governance responses.
18. Governance should include an IGR dimension. IGR implementation must begin with operational mechanisms to achieve the development outcomes envisaged in the IGRF Act. Governance must be informed by the spatial realities/legacies that must be managed in terms of planning for development.

f) Monitoring, evaluation, support and intervention

19. Process and outcomes indicators for the monitoring of the effectiveness of the IGR system will be finalised. These indicators will inform the **dplg's** oversight and support of the IGR system. Capacity will be built at provincial level to employ and analyse these indicators.

20. Implementation of the *Government-wide Monitoring and Evaluation Policy Framework* under the leadership of the Presidency, National Treasury, the **dplg**, Statistics SA and other relevant departments should be supported.
21. The congruity between policy, budgets and implementation needs to be monitored by the relevant national sector department and the National Treasury in order to detect any possible areas of disjuncture as soon as possible.
22. National and provincial governments should continue to build their own capacity for monitoring, oversight, support for municipalities and budgeting for interventions. Interventions should not be invoked arbitrarily, but really as a last resort with sufficient IG consultation. The IGRF Act delineates the process and necessary consultation. M&E systems need to assess contributions of individual role-players in joint work to promoting accountability for collective outcomes. A clearer understanding of how coordination can be measured needs to be developed.
23. The structure and capacity of the DLG's and the OtPs has been found by the **dplg** to be inadequate for the degree of IG responsibility shouldered by the two departments. Supportive intervention and a comprehensive policy discussion for the long-term is required.
24. Local government may be over-regulated. Existing regulations emanating from the national coordinating departments, and sectors should be reviewed with a view to streamlining them. Simplification of reporting is another area of investigation.

g) Capacity building

25. Given that capacity is likely to be a long-term challenge rather than a transient issue, there may be a need for national sector departments to re-assess their role in their provincial and municipal service delivery support programmes.
26. The **dplg** should assist the improved functioning of provincial and local forums through the dissemination of good practice e.g. standing agenda items linked to components of the IG planning system, IDP-PGDS-NSDP etc.
27. The **dplg** and provincial Departments of Local Government need mechanisms to build the capacity of local municipalities to participate effectively in District IG forums (inter alia, stressing the importance of properly mandating the representatives, influencing the agenda) and of the district municipalities to provide the requisite leadership.

10. CONCLUSION

The key challenge for IGR in South Africa is to provide the platform from which to drive the goals of a developing state. Central to this objective is overcoming the conditions that characterise the second economy, those of poverty and underdevelopment. Overcoming this socio-economic legacy requires a capable and effective state, structured to deliver social and infrastructure services and economic growth. The 'Towards a Ten Year Review' report from the Presidency in 2003 highlighted this challenge – that the central priority for government in the next decade is to 'improve the performance of the democratic state.'

This report has highlighted the significant 'all of government' developments arising from this injunction. The report has reviewed the evolution of the IGR system from the perspective of the role that the system plays in supporting the strategic and structural arrangements of the state to achieve its national development goals.

Central to these arrangements are the provisions of the Constitution that provide for cooperative government. In assessing the conduct of IGR based upon this premise, many pressure points and improvement areas have been highlighted which are in accordance with emerging recommendations from the Policy Review Process on Provincial and Local Government to strengthen the system of IGR.

Key amongst these is an identified need to facilitate greater engagement between the three spheres in order to promote a stable and responsive system of governance. The key challenge may be summarised as follows: all spheres must comply with and align to priority development goals, policies, standards and programmes. At the same time the constitutional principles of spheres of government that are 'distinctive, interdependent and interrelated' must be recognised and respected. Thus each sphere has its own unique role to play in managing vertical and horizontal structural tensions, and yet must therein define its role in providing for IG mutual interest and support.

APPENDIX A

Table 10: Table of Improvement Areas - summarised

IG focus area	Pressure points	Improvement area
Constitutional principles of cooperative government	Interpretation of principles of cooperation into IGR and government business processes.	Enhanced IG dialogue and cooperation between the three spheres and use of structures of the state (NCOP; Parliament) to promote this.
System institutionalisation	Insufficient systemic, organisational and evaluative processes for IGR can create uncertainty and instability in the system.	Facilitate and encourage conditions of mutual trust and cooperation; Consider if need for further legislative measures to consolidate the IGR system.
Policy and Planning	Management of concurrency, overlap, duplication; impact on implementation of national policy priorities across government. Structural tensions for sector departments to engage with municipalities for integrated planning.	Robust process for clarification and possible adjustments of functional responsibilities in Schedules 4 and 5. Improved mechanisms for oversight and accountability in exercise of functions and in fiscal and policy alignment.
IG instruments	IGR forums to move beyond compliance to drive strategic purpose of IGR. Status of decisions taken at IGR forums; systemic pressures in the communication, reporting and accountability networks of forums. Representivity in IGR forums: There are many different categories and perspectives within the local government sphere on issues of representivity at a national level.	Capacity building to support priority agenda setting and purpose of coordination. Review and if appropriate revise understanding of decision-making and reporting processes within government. Review and if appropriate, revise representivity criteria for IGR bodies. Encourage formation of technical support bodies to foster collaboration.
IG fiscal relations and budgeting	Alignment and assignment of provincial resource allocation to national priorities. Complexity of budgeting for joint programmes across government.	Fiscal and incentive based mechanisms to allow for degree of fiscal discretion without compromising primary development focus. Review of the PFMA facilitates inter-sphere and inter-sectoral joint work and links to National Treasury financial performance management systems.
Integrated service delivery	Question of whether a 'rules' based, regulatory framework, or enhanced consultation and interaction is more successful in promoting sharing of responsibilities amongst different spheres of government. Pressures on IG and inter-sectoral task teams to manage coordination but bureaucratic systems and structures can impede accelerated outcomes. The use of implementation protocols (as outlined in the IGRF Act) should be promoted, especially in areas like land reform and the environment where there are no dedicated IGR forums.	Review systemic issues and investigate process of regulatory guidance to manage integration. Consider mechanisms by National Treasury to 'incentivise' joint planning and coordinated service delivery. Build capacity at every level in coordinated planning, budgeting and use of implementation protocols.

The Implementation of the Intergovernmental Relations Framework Act

An Inaugural Report: 2005/06 – 2006/07

Conflict resolution and disputes	There is often a lack of reasonable evidence to justify an intervention. Increasing numbers of SI 39 interventions applied instead of use of existing support mechanisms. Constitutional and legislative procedural principles not being followed before disputes are declared; fosters lack of stability in the system. Lack of monitoring of the provisions of the IGRF Act in respect of dispute resolution.	A process is needed to track and review adherence to the obligation of support by provinces to municipalities before interventions are initiated. Consider legislative intervention to enforce IG cooperation and the practice of compliance with the principles of section 139. Dispute monitoring to be institutionalised into District and provincial IGR Forum own monitoring systems and through the application of the IGR Indicators.
Monitoring, evaluation, oversight and support	Poor planning and delivery relationship between policy, budgets and implementation. Pressure of over-regulation and numerous reporting obligations on local government.	M&E systems to establish sufficient oversight to assess different role-players in joint work; promote accountability and recognition for collective outcomes. Build capacity where oversight mandates exist – Offices of the Premiers and the provincial Departments of Local Government. Current initiatives to streamline and mainstream reporting requirements to have an IG focus.

APPENDIX B

IGR AND COOPERATIVE GOVERNANCE PERFORMANCE INDICATORS

KEY PERFORMANCE AREAS FOR IGR AND COOPERATIVE GOVERNANCE

POLICY, LEGISLATIVE AND REGULATORY FRAMEWORKS

A review of IGR since 1994 shows the importance of a clear policy, legislative and regulatory framework for the achievement of cooperative governance in practice. This framework includes the Constitution of the Republic of South Africa as well as the IGRF Act.

How has the department/ province/ municipality implemented the IGRF Act?

Briefly describe the initial impact of the introduction of this Act

Please indicate which of the following areas have been impacted on:

- Formalisation of IGR structures
- Introduction of Implementation Protocols
- Clarity on dispute resolution procedures
- Increased consultation and information-sharing between the three spheres of government
- More effective IGR meetings

Has the department/ province/ municipality concluded any Implementation Protocols with another sphere of government since the introduction of the IGRF Act?

If yes, please provide the following details:

- Parties to the protocol
- Focus of the protocol
- Whether or not the Implementation Protocol guidelines were helpful
- Monitoring arrangements

Has the department/ province/ municipality declared any formal intergovernmental disputes with another sphere of government since the introduction of the IGRF Act?

If yes, please provide the following details:

- Parties to the dispute
- Issues in dispute
- How the dispute is being/ was resolved

Please provide information on the assignment or delegation of powers and functions to another sphere of government by your department or province. Kindly include the following details:

- Use of the dplg's assignment guidelines
- Monitoring of the assigned/ delegated functions

In practicing good IGR and working towards integrated service delivery has the department/ province/ municipality experienced any policy, legislative or regulatory obstacles?

- If yes, please provide an example as well as possible solutions to overcome these obstacles

INSTITUTIONAL ARRANGEMENTS

Institutional arrangements are a key ingredient in the day-to-day conduct of IGR. The effective functioning of these institutional arrangements is essential. Institutional arrangements for IGR include organisational structures, IGR forums, regional offices.

Please provide information on the participation of your department/province/municipality in MinMECs and other sector-based IGR forums.

Please include information on the following:

- Number of MinMECs/sector-based IGR forums
- Frequency of the meetings

Please provide information on the participation of your department/province/municipality in Premiers Coordinating Forums and District Intergovernmental forums.

Please include information on the following:

- Number of forums
- Frequency of meetings

Please provide information on the participation of your department/province. Municipality in Technical IGR forums.

Please include information on the following:

- Number of forums
- Focus of the forums
- Frequency of the meetings

Please comment on the following aspects of the IGR Forums:

- Strategic focus of the agendas
- Attendance of meetings by mandated representatives

Please comment on the value of IGR meetings in respect of the following:

- Relationship building across the spheres of government
- Information sharing across the spheres of government
- Aligning planning
- Coordinating delivery
- Joint decision making
- Cascading decisions to other spheres
- Problem-solving
- Resolving intergovernmental disputes

Please provide information on how your department/ province/ municipality manages IGR.

Please provide details on the following:

- Number of staff members dedicated to IGR
- Organisational location of the IGR Unit
- IGR business plan or work programme
- Monitoring of IGR activities

Please comment on the linkages between different IGR forums. Please include any suggestions on how the linkages between different IGR forums can be strengthened.

- My comments are...

Please comment on the ideal roles and responsibilities of the following structures for IGR:

- The dplg
- Sector departments with concurrent powers and functions
- Sector departments without concurrent powers and functions
- Offices of Premiers
- Provincial Departments of Local Government
- District Municipalities
- Salga

Please provide information on any provincial, regional or district offices of your department and how these offices participate in local IGR forums and planning processes

INTERGOVERNMENTAL PLANNING AND BUDGETING

Intergovernmental planning and budgeting sits at the heart of integrated delivery and the achievement of shared developmental outcomes. Much has to be achieved in promoting greater coordination, integration and alignment of plans and budgets within and between the three spheres of government.

Please comment on the state of sector-wide planning in your sector. Please refer to the following:

- Status of a sector-wide plan/ Sector Master Plan
- Use of IGR forums for sector-wide planning
- Participation in the planning processes of other spheres of government
- Information about relevant plans in other spheres of government
- Use of the NSDP in sector planning

Integrated development planning is designed to produce a plan that integrates the plans and projects of all government departments and agencies within a specific geographic space.

Please comment on the following:

- Involvement of national sector departments in IDP processes
- Involvement of provincial sector departments in IDP processes
- Involvement of parastatals and agencies in IDP processes

Intergovernmental implementation is required to ensure seamless delivery of services to communities and residents within a specific geographic space.

Please comment on the following:

- Implementation Protocols
- Shared Understandings

Use of IGR forums for intergovernmental planning and budgeting:

- The agenda of our IGR forum...

Please provide information on the reporting that your department/ province/ municipality requires from another sphere of government.

Please comment on:

- What is the frequency of the reporting
- Is a standardised template provided

- How are the reports used by the department/ province/ municipality
- Does this reporting requirement arise from any legislation, regulation, or agreement
- Submission of the reports
- Quality of the reports

Please provide information on the reporting that your department/ province/ municipality must provide to another sphere of government.

Please comment on:

- What is the frequency of the reporting
- Is a standardised template provided
- How are the reports used by the department/ province/ municipality
- Does this reporting requirement arise from any legislation, regulation, or agreement
- Submission of the reports
- Quality of the reports

Please provide information about the disbursement of funds to another sphere of government. Please include details on:

- Purpose/use of the funding
- If the funding is conditional
- Monitoring
- Is this discussed in any IGR forums? Please provide details.

SUPPORT, GUIDANCE AND CAPACITY

Please comment on the comment on the capacity required in your department/ province/ municipality to effectively manage IGR (including number of staff members, financial resources, time)

Please comment on the core competencies needed for managing IGR.

Please indicate which of the following are important competencies for all managers involved in IGR:

- Understanding of IGR legislation
- Meeting management
- Coordination capabilities
- Interpersonal skills
- Knowledge management
- Using ICT
- Stakeholder analysis
- Strategic management
- Experience in managing IGR

Please indicate what kind of support, guidance or capacity-building is needed for effective IGR. Who do you believe should be responsible for providing this? Would a formal IGR qualification be valuable?

- My views on this are...

Please provide information on any support, guidance or capacity-building that your department/ province/ municipality provides to another other sphere of government.

Should knowledge of the theory and practice of IGR be a core competency of all senior managers in the public service?

COMMUNICATION AND STAKEHOLDER ENGAGEMENT

Please comment on the communication of decisions and outcomes of IGR forums within your department/province/municipality

Kindly indicate which of the information channels are mainly utilised for intergovernmental communication and information-sharing

- IGR forums
- GCIS and Government Communicators Forums
- Informal channels
- Media
- Government websites
- Official correspondence
- Other

Does the department/ province/ municipality have a database or Knowledge Centre that includes information on any of the following:

- Contact details of officials in other spheres of government
- Agendas, minutes and reports from IGR meetings
- Statistics for use in intergovernmental planning
- Planning documents

Please comment on whether or not a web-based IGR Information Portal would be of use to your department/ province/ municipality

- My views are...

Are joint, intergovernmental communications or marketing campaigns conducted in your sector/ province/ municipality? Please provide details.

Please provide information on how your department/ province/ municipality manages its stakeholder engagement activities. Kindly include information on engagement mechanisms, focus of engagements, and priority stakeholders.

Please comment on the extent to which a culture of cooperative governance is prevalent within government and how it may be further strengthened?

- I believe cooperation can be strengthened in the following ways...

APPENDIX C

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