

Intergovernmental relations in South Africa

A revised policy approach to co-operative government

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ABSTRACT

The attainment of development goals in South Africa is heavily dependent on an effective system of intergovernmental relations (IGR) and also upon the degree to which the institutions of government can operate in mutual trust and good faith and in a state of institutional harmony. Where government institutions and organs of state, in the three spheres of government, have to exercise a statutory power or implement a policy that requires the undertaking of joint work or implementing concurrent functions, those organs of state must co-ordinate their actions and participate in an appropriate manner.

Whereas intergovernmental relations consist of the horizontal and vertical relationships among institutions and individuals in the three spheres of government, the principles of co-operative government lock these relations into a particular normative framework. The core of this framework is that the decentralization of state power in terms of the Constitution of the Republic of South Africa, 1996 is not based on competitive federalism but on the norms of co-operative government.

In this article, the practice of intergovernmental relations and co-operative government in South Africa will be analysed. The suggestion of a new policy framework for co-operative government by the South African government will be scrutinized. Proposals will be made on how to develop a whole-of-government policy coherence, as well as to support an organisational form to promote co-operative government priorities.

INTRODUCTION

In South Africa, the *Constitution of the Republic of South Africa, 1996* is the supreme law and provides the fundamental framework for the structures and processes of government. It serves as the ultimate resource on how institutions of government should operate, as well as co-operate with one another. In co-operating, the three spheres of government should co-ordinate their actions, avoid turf battles and participate in the intergovernmental relations structures as well as follow the intergovernmental relations processes. Intergovernmental relations and co-operation are crucial in any system where powers have been allocated concurrently to different spheres of government. The process of co-operation takes place within a legislative and institutional framework and therefore the founders of the South African Constitution included the most detailed provisions about intergovernmental relations and co-operative government of any constitution at the time, and since then (De Villiers and Sindane 2011:3). The aforementioned constitutional provisions are also supported by further legislation, such as the *Intergovernmental Relations Framework Act, 13 of 2005* among others, which solidifies former informal institutions and structures and provides the minimum forums and procedures for co-operation.

The Department of Cooperative Government (CoG) is the South African custodian of intergovernmental relations. The establishment of the National Planning Commission is also crucial to co-operative government as it could play a big role in national strategic planning by assessing, at the macro-level, the country's position in relation to its policy coherence and co-ordination as well as objectives and priorities.

Over the past 17 years, the intergovernmental relations system in South Africa has shifted from being mostly nonformal, to a statutory system that includes the establishment of mechanisms and forums to deal with issues of policy alignment, integration and coherence. Various intergovernmental relations processes have also been developed in terms of which the three spheres of government can pursue their common objectives and programmes as well as engage in joint work. It is the aforementioned policies, processes and mechanisms, which will be scrutinised in the following paragraphs. Possible future policy approaches will also be debated. Even though intergovernmental fiscal relations are a critical aspect of the intergovernmental relations system in South Africa, they are not part of the focus of this article.

SOUTH AFRICAN INTERGOVERNMENTAL RELATIONS SYSTEM

As is clear from the South African scenario, intergovernmental relations are not limited to federations only, but to all multi-tiered or multi-sphered dispensations – be it by way of provisions in the Constitution or through supporting legislation. It has been argued that South Africa demonstrates some elements of federalism, even though it is considered a unitary state. The framework for the system and operation of intergovernmental relations in South Africa is determined by the text of the Constitution, 1996 "... and not whether it is classified as *federal* or *decentralised unitary*, by academics or political parties as the classification of the Constitution as federal, unitary or quasi-federal is not material or conclusive, albeit interesting from an academic perspective" (De Villiers and Sindane 2011:8).



According to Anderson in Wright (1978:8) "intergovernmental relations are important interactions occurring among governmental institutions in all spheres. The distinctive features of intergovernmental relations suggest the increased complexity and interdependency of political systems. The characteristics of these more complex and interdependent systems are: the number and growth of governmental institutions; the number and variety of public officials involved in intergovernmental relations; the intensity and regularity of contacts among those officials; the importance of officials' actions and attitudes; and the preoccupation with financial policy issues". The *Intergovernmental Relations Framework Act*, 13 of 2005 defines intergovernmental relations as "... relationships that arise among different governments or among organs of state from different governments in the conduct of their affairs". Intergovernmental relations recognize relationships among various units and sectors within the three spheres of government and focuses on public officials acting in an inter-jurisdictional context, while they are also concerned with informal working relationships in institutional contexts. "Intergovernmental relations are intended to promote and facilitate co-operative decision-making and ensure that policies and activities across all spheres encourage service delivery and meet the needs of the citizens in an effective way (DPLG 1997:3)."

Co-operative government represents the basic values of the government as stipulated in Section 41(1) of the Constitution, 1996, as well as the implementation of these values through the establishment of structures and institutions. Co-operative government is a partnership among the three spheres of government requiring each government to fulfil a specific role. Co-operative government does not ignore differences of approach and viewpoint among the spheres, but encourages debate to address the needs of the people they represent by making use of the resources available to government.

There is a conceptual difference between co-operative government and intergovernmental relations. Co-operative government is about partnership government as well as the values associated with it – which may include national unity, peace, proper co-operation and co-ordination, effective communication and avoiding conflict. Intergovernmental relations are the means through which the values of co-operative government may be given both institutional and statutory expression and may include executive or legislative functions of government (Audit Report 1999:12). Chapter 3 of the Constitution, 1996, states that co-operative government is the conceptual framework through which the aim of promoting a development-oriented state is achieved.

The current government of South Africa is expanding the meaning of the word *government* as it relates to co-operation (where co-operative government refers strictly to the organs of state in the three spheres and the intergovernmental relationship among them) – and emphasizes the use of the concept co-operative *governance* – as it adds another active dimension where social partnerships are forged with society to be able to deliver on national priorities (Draft Green Paper on Cooperative Governance 2011:5). Governance is defined by Lowe and Sako (2002:37) as "...a system of values, policies and institutions by which a society manages its economic, political and social affairs through interaction within and among the state, civil society and private sector". This article will focus on intergovernmental relations challenges facing the co-operation among institutions and organs of state in the three spheres of government only – and therefore the reference to co-operative *government*.

INTERGOVERNMENTAL RELATIONS AND CO-OPERATIVE GOVERNMENT CHALLENGES IN SOUTH AFRICA

Numerous authors have written about the challenges facing the intergovernmental relations system in South Africa. Some of these challenges are highlighted in the paragraphs to follow.

Challenges facing intergovernmental relations policy and planning were highlighted as the whole-of-government planning framework was a relatively new development in the intergovernmental relations system. "The challenge was to create synergy in the planning processes operating in the various spheres of government (Inaugural Report on the Implementation of the *Intergovernmental Relations Framework Act*, 2008:19)." Integrated planning and policy-making should be supported by implementation strategies that are harmonised to promote the successful undertaking of joint work.

The Inaugural Report (2008:32) mentions the following pertaining to the numerous challenges associated with the successful undertaking of joint work which include "... the definition of clear mandates to intergovernmental and inter-departmental task teams, the need to map intergovernmental programmes and projects 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 management of service delivery programmes also touches on the question of jurisdiction between institutions when policy priorities cut across ministerial mandates.

The abovementioned challenge is closely related to the concerns expressed relating to the definition of the various schedule 4 and schedule 5 functions (the current distribution of powers and functions across the three spheres of government) which makes the alignment of policy, implementation and financing very complicated (Layman 2003:22; Malan 2005:232 and the Department of Cooperative Governance 2009). Weaknesses in the practices of monitoring, support and intervention in intergovernmental relations, are also contributing to the management of concurrent competencies in the spheres of government. According to the *Draft Green Paper on Cooperative Governance* (2011:8) "... this lack of supervision includes inadequate national and provincial government support for municipalities as well as a lack of coordination among national departments dealing with municipalities".

National and provincial supervision comprise a number of actions which range from less intrusive (monitoring and support) to more intrusive interventions. In the context of intergovernmental relations in South Africa, monitoring "... refers to both 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" (Inaugural Report on the Implementation of the *Intergovernmental Relations Framework Act* 2008:55; Malan 2005:233). Intervention, the more intrusive form of supervision, should be avoided at all cost. Some challenges were identified which undermine the effectiveness of supervision and may be summarised, among others, as the following: non-compliance with statutory requirements for nation and province-wide reports on the state of local government; no obligation on provinces to provide a state of the province report to national government; no national intervention power if provinces fail to intervene in municipalities; disjuncture between mandatory financial and discretionary interventions; no national barometer for monitoring of all local municipal functions; no clear delineation of monitoring roles between national and provincial spheres

and no systematic early warning and response systems for provincial/local failure (Draft Green Paper in Cooperative Governance 2011:28).

The role of intergovernmental relations structures and forums in promoting policy alignment cannot be ignored. The purpose of this article is not to evaluate the importance of the role played by all the statutory structures but to support De Villiers and Sindane (2011:31) cautioning that effective intergovernmental relations structures do not necessarily mean that services are delivered and setting up structures does not mean that co-operation among institutions in the spheres of government is successful.

Another intergovernmental relations challenge identified is the clarification on the role of provincial government in South Africa (Malherbe 2008:46). The provincial system of government has difficulty in overcoming the controversy surrounding their initial establishment as their existence had been the result of a compromise reached during the early stages of the constitutional negotiating process. There is, according to Malherbe (2008:46) “... a marked discrepancy between the *de jure* and *de facto* position of provincial government in South Africa” and despite the concurrent competencies as well as conferring sufficient autonomy and initiative on the provinces, provinces have become the delivery agents of the national government. The status, mandate and functions of the provincial governments in South Africa need to be reviewed and various options need to be considered to build the capacity of the provinces to the level their constitutional powers require. The aforementioned is also relevant for the local sphere of government in South Africa.

The complex local government model in South Africa is regarded as an intergovernmental relations challenge. It is argued *firstly* that the lack of clarity on the respective powers and functions of district and local municipalities, as well as the tensions between the two categories of municipalities is a cause for concern (Policy Review on Provincial and Local Government 2009). The original purpose of the two-tier system of local government was to ensure a more equitable distribution of services and resources across local and district municipalities – that should enable local municipalities to be in charge of service delivery while districts would perform four specific mandates in support of the drive to redress the apartheid’s spatial inequalities (Draft Green Paper on Cooperative Governance 2011:38). Policy shifts, however, altered the role of districts in, amongst others, the following ways, namely: the *Municipal Structures Act, 2000* was amended to make districts responsible for key municipal services and the *Intergovernmental Relations Framework Act, 2005* allowed for the establishment of district intergovernmental forums to promote co-operation between the districts and its local municipalities – the forum has statutory responsibilities which include coherent planning in the district. It has, however, been mentioned that district governments have been found to be costly, largely ineffective and structurally redundant despite the policy shifts mentioned above – and therefore the existence of a two-tiered system of local government in South Africa is currently being debated.

Secondly establishing and/or identifying a relevant body or institution to initiate major policy and institutional reforms in areas of shared responsibility among departments in South Africa are crucial. The current Department of Cooperative Government is regarded as the custodian department for intergovernmental relations and co-operative government in South Africa – even though its mandate extends beyond just promoting intergovernmental relations. The Department is currently debating the necessity for an organisational structure to support co-operative government and to scrutinise both policy and related legislation

having an impact on provincial and local government before they submit their proposals to Cabinet (Draft Green Paper in Cooperative Governance 2011:62).

A third intergovernmental challenge identified for the purpose of this article, is the human factor in intergovernmental relations. According to De Villiers and Sindane (2011:29) the people dimension in intergovernmental relations and co-operative government should not be underestimated as intergovernmental relations activities do not only take place in a formal or statutory manner, but also informally. Intergovernmental relations are complicated by the fact that different people and personalities are involved, who may present real barriers to effective cooperation. Strong leadership is required to promote the principles of co-operative government and to ensure effective teamwork and collaboration for successful implementation of interdepartmental programmes and undertaking of joint work. Linked to the human element, is the management of the political/administrative interface in South Africa – that may pose a major challenge to the intergovernmental relations system if the appropriate areas of responsibility as well as lines of communication and reporting are not clearly defined and adhered to.

POLICY PROPOSALS

The Department of Cooperative Governance is currently considering various policy proposals to improve the current intergovernmental relations and co-operative government system in South Africa (Draft Green Paper in Cooperative Governance 2011:64). To ensure that the complex system of intergovernmental relations and co-operative government functions effectively and coherently, a new policy framework needs to be debated. Some of the challenges and policy proposals are summarised in table 1:

According to the Midterm Review of the Priorities of Government (2012:58) the government of South Africa is committed to address co-ordination challenges e.g. the lack of strategic focus as well as the lack of focus on results by committing themselves to the introduction of an outcomes approach. This aforementioned approach would involve the identification of a number of strategic priorities or outcomes and the development of cross-cutting plans or delivery agreements for these outcomes. The delivery agreements should be negotiated among all the key stakeholders involved in the undertaking of joint work in order for the outcome to be achieved. The government aims to introduce measurable indicators of progress in achieving the outputs and outcomes. Intergovernmental forums should provide a platform for these stakeholders to negotiate the delivery agreements and to collectively monitor their implementation.

Numerous policy proposals are being considered in terms of clarifying the functional responsibilities between the three spheres of government in South Africa. A process, reviewing the functional responsibilities in the areas where there is uncertainty, is underway to enable national government to propose clarification. A new governance model for powers and functions is being considered after a comprehensive review of assignment provisions in local government legislation.

Not much evidence exists to show progress pertaining to the strengthening of cross-departmental and provincial support and intervention initiatives impacting on local government. It is suggested by government that there should be more emphasis on guiding



Table 1 Summary of challenges and policy proposal relating to cooperative government in South Africa

| Challenges | Policy proposals |
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| <p>Policy and planning</p> <ul style="list-style-type: none"> • How to create synergy in the planning process. • How to support integrated policy-making and planning with harmonised implementation strategies. • Definition of clear mandates to IGR task teams. • IGR programmes and projects should be included in individual departments' or institutions' budgets. • Effective decision-making when a large number of stakeholders are involved and authority as well as accountability are diffused. | <ul style="list-style-type: none"> • Greater clarity about the respective planning powers and functions of the three spheres. • Coherent strategy across all three spheres for the national development plan. • Strengthen the role of IGR structures (President's Coordinating Council and the Committees of Ministers and Members of the Executive Council of Provinces) in giving direction to the planning strategy. • The development of a long term national strategic plan – to act as a central force in IGR planning and cooperative government system. |
| <p>Distribution of powers and functions</p> <ul style="list-style-type: none"> • Powers and functions listed in Constitution are not clearly defined to precise meaning and related obligation. • Some functions are not adequately defined in relevant sectors, for example land use planning, primary health care. • Some provincial exclusive functions are performed by municipalities for example libraries, museums and primary health care • Functions can be transferred with no implications for municipalities. • Municipalities are required to include integrated transport, housing, spatial plans in integrated development plans, but authority and financial incentives reside with the provinces. | <ul style="list-style-type: none"> • National government (under the leadership of CoGTA and Treasury) to embark on a systematic process of reviewing functions and making proposals for clarification. • To construct a governance model to enable control, management and monitoring of how functions are distributed and assigned • The system for functional assignment to become integrated into supervision procedures and protocols to enhance accountability. |
| <p>Monitoring, support and intervention</p> <ul style="list-style-type: none"> • Non compliance with statutory requirements for nation and province-wide reports on the status of local government. • No obligation on provinces to provide a state of the province report to national government. • No national intervention power if provinces fail to intervene in municipalities. • No national barometer for monitoring of all local government functions • No clear delineation of monitoring roles between national and provincial spheres. • No early warning and response systems for provincial/ local failure. | <ul style="list-style-type: none"> • Publication of a bi-annual state of local government report to Parliament. • Introduction of a state of the province report to national government. • National government to define provincial monitoring responsibilities with regard to local government. • CoG to develop national performance barometer for provincial and local government – to serve as a template for reporting and supervision of local government. • Service-delivery watch system to be established – linked to standard indicators for municipal failure. |
| <p>Clarifying the role of provinces</p> <ul style="list-style-type: none"> • Effectiveness of provincial government in current form. • Effectiveness of provincial legislatures and quality of provincial accountability. • Questions about which functions should be performed by provinces as opposed to other spheres. • Provinces are seen as governments in name only – absence of fiscal discretion. • Role of the provinces is uncertain with respect to the practice of concurrency (housing, transport, roads). • Large variation in expenditure between provinces – mixed progress on outcomes (education). | <ul style="list-style-type: none"> • Retaining the provincial system as it is – fixing problems by less intrusive means. • Abolishing provincial legislatures • Retaining provincial governments with a number of reforms – fewer provinces. • Retaining provinces – but not a wall-to-wall provincial system (specialised provinces for specific regions). • Consolidate the role, demarcation and functions of provinces through national legislation. • Constitute provincial legislatures differently – super districts – ward representation? |

| Challenges | Policy proposals |
|---|--|
| <p>Complex local government system</p> <ul style="list-style-type: none"> • System creates four layers of government that have to be funded. • Almost half of districts are entirely funded by national government – re-distributive role no longer valid. • “Shared” functions are confusing and lead to cost and productivity inefficiencies. • Inconsistencies in functional arrangements as system are applied differently in every province. • Regional planning has not tangibly improved – vertical coordination with national and provincial plans remain weak. | <ul style="list-style-type: none"> • Re-demarcate local municipal boundaries and assign functions to local municipalities or provinces. • Retain and restructure districts as shared admin and service centres for locals – managed externally or by national government. • Break down dysfunctional municipalities into smaller, simplified administrations – with national government support. • Least risk would be to maintain the status quo and strengthen institutional arrangements for support and oversight. |
| <p>Relevant body to initiate major policy and institutional reforms</p> <ul style="list-style-type: none"> • No single national political clearing house for policy and legislation having an impact on provincial and local government before they go to Cabinet. • Departments responsible for sphere-wide regulation (CoG, national Treasury and DPSA) have little influence over sector policies. • Unclear how structural change is coordinated between departments with shared, sphere-wide responsibility. • Coordination of co-leadership arrangements and reconciliation of competing policy objectives. • Who should lead the constitutional imperatives for coherent policy and legislation across government? | <ul style="list-style-type: none"> • Special Cabinet Committee to be established to scrutinize all policy and legislation impacting on provincial and local spheres before they go to Cabinet. • Coordinating departments to review and institutionalise the forms required to improve core national government functions. • A coordinating department to have a clear mandate to mediate, guide, oversee and supervise the conduct and performance of the system of government – supported by the Cabinet Committee. |

Source: Adapted from the Draft Green Paper on Cooperative Governance: 2011

provincial government to fulfil their constitutional and legislative mandate to support, monitor and intervene where necessary (Midterm Review of the Priorities of Government 2012:45). It is suggested that supervision protocols acknowledge the system for functional assignments to enhance the accountability of each sphere. It is crucial that national government introduces a *state of the province report* to national government and promote the publication thereof in a report to Parliament. Provincial monitoring responsibilities in respect of local government should be defined and the publication of a bi-annual state of local government report to Parliament is suggested. The establishment of a Standing Interdepartmental Committee of the Department of Cooperative Governance, National Treasury and the Department of Public Service and Administration is being considered, to enable the sharing of knowledge and information to ensure that their respective guidelines and regulations are consistent. To enforce the formal nature of this Committee, it should be established by a Cabinet decision and therefore report to Cabinet. A suggestion for the establishment of a special Cabinet Committee on provincial and local government, to analyse and discuss all policy and related legislation impacting on the aforementioned spheres, is made (Draft Green Paper on Cooperative Governance 2011:32). The special Cabinet Committee should then report to Cabinet on matters pertaining to the sub-national governments.

Options for the review of district municipalities in the two-tier system as well as the review of provincial government range from abolishing the systems to retaining the current system, but with the introduction of major reforms. Policy proposals also include a complete re-demarcation of the local sphere and the amalgamation of some of the existing provinces.

A proposal to support an organisational structure to promote co-operative government as well as co-operative government priorities is the establishment of a co-ordinating department with a clear mandate to mediate, guide, oversee and supervise the conduct and performance of the system of government. It is suggested that this co-ordinating department be supported by a ministerial committee (Draft Green Paper on Cooperative Governance 2011:69). It is evident that improving the intergovernmental relations and co-operative government system in South Africa, not only requires a leading institution to initiate and implement reforms, but also individual leadership to drive the process of promoting a coherent government system.

CONCLUSION

The aim of a formal and nonformal intergovernmental relations and cooperative government system in South Africa is to facilitate greater engagement among the three spheres of government in order to promote a stable and responsive system of governance which enhances the values and principles of public administration. Even though a formal intergovernmental relations framework as well as key intergovernmental relations structures exists in the three spheres of government, the numerous challenges that had been experienced still need to be addressed. Aligned to the abovementioned listed challenges, related challenges in the implementation of intergovernmental relations such as the inadequately defined roles and positioning of intergovernmental relations units in provinces; unco-ordinated activities among the provincial departments and municipalities as well as among adjacent municipalities (as a result of the complex local government system in South Africa) and hands-on support to municipalities in reviewing intergovernmental relations policies, should be attended to. Capacity development of intergovernmental relations practitioners and the development of an intergovernmental relations implementation plan and monitoring framework should also be considered. Each sphere of government has its unique role to play in managing the tensions of having to perform concurrent functions and competencies, while engaging with other spheres with a mindset of promoting the principles of co-operative government. As outlined in chapter 3 of the Constitution, 1996, “... the spheres of government must, while co-operating with each other, foster friendly relations; assist and support one another, inform and consult on matters of common interest, co-ordinate their actions and legislation; adhere to agreed procedures; and avoid legal proceedings against one another”. Even though the intergovernmental relations system in South Africa has had numerous successes in the past, a review of government’s policy objective for co-operative government is important, to aim for much higher levels of performance, effectiveness and accountability.

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