

Department of Cooperative Governance and Traditional Affairs

EFFECTIVE COOPERATIVE GOVERNMENT & IGR

NCOP WORKSHOP

02 FEBRUARY 2022



GAUTENG
PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

Growing Gauteng Together

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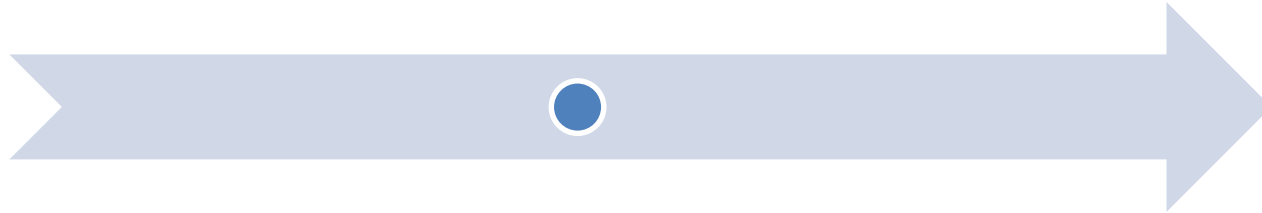
1. IGR COORDINATION

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AN OVERVIEW OF PROVINCE WIDE IGR COORDINATION



Purpose

The purpose of this presentation is, amongst others to;

- Underscore the importance of an Integrated Approach in the fulfillment of the obligation placed on both national and provincial governments in supporting municipalities in line with Section 154 of the Constitution, Act No 108 of 1996 (the Constitution

LEGISLATIVE FRAMEWORK

- **CONSTITUTION RSA, 1996**
 - Section 139: provides that the Provincial Executive may intervene if a municipality fails to fulfil an executive obligation.
 - Section 152: provides for democratic and accountable government for local communities
 - Section 154: provides for support and strengthening the capacity of municipalities to manage their own affairs, exercise their powers, and perform their functions.
 - Chapter 12: provides for the recognition of the institution of traditional leadership
- **IGR Framework Act, No. 13 of 2005:**
 - Establishes a framework for the promotion and facilitation of intergovernmental relations.
 - Provides for mechanisms and procedures to facilitate the settlement of intergovernmental disputes.
 - Enables government to work coherently; to enhance service provision through consultation with other organs of state in.
 - Monitors the implementation of policy and legislation; to avoid duplication; and to ensure that government's national priorities are achieved.
- **National Development Plan:**
 - advocates for a proactive approach in improving the coordination between the three spheres of government through a two-pronged method that distinguishes between routine and strategic coordination.
 - It suggests that coordination problems be broken down into specific issues which can be dealt with through horizontal coordination which would make it easier to build constructive working relationships at the level of where they are needed.

DEPARTMENTAL MANDATE

- The Department's mandate is further articulated in other pieces of secondary legislation and policy documents, which include the following:

White Paper on Local Government, 1998

Municipal Systems Act 32 of 2000

Local Government Structures Act 117 of 1998

Municipal Finance Management Act, 2003

Intergovernmental Relations Framework Act 13 of 2005

Traditional Leadership and Governance Framework Act No. 41 of 2003

Municipal Property Rates Act (No. 6 of 2004)

Disaster Management Act (No. 57 of 2002)

Municipal Demarcation Act (No. 27 of 1998)

CONSTITUTIONAL MANDATE

Context:

- Municipalities are supported by a CoGTA led Inter-Departmental Multi-Disciplinary Regional Teams established in terms of Section 154 of the RSA Constitution, Act No 108 of 1996, which states that “...***national government and provincial governments MUST support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions...***”

IGR CO-ORDINATION

- IGR as a mechanism to enhance co-ordination and integrated planning, budgeting and implementation vertically and horizontally.
- IGR's role is to anchor the centrality of the NDP, GGT-2030, DDM and Municipal IDPs in achieving the strategic goal of building a united, non-racial, non-sexist, prosperous democratic society.
- To achieve integration, the whole of government develop and implement a common programme of action in line with Co-operative Governance and IGR principles as enshrined in both the RSA Constitution and the IGR Framework Act.

**THE ROLE OF SECTOR
DEPARTMENTS IN
STRENGTHENING THE
CAPACITY OF
MUNICIPALITIES**

ROLE OF SECTOR DEPARTMENTS

- Role of Sector Departments across all three (3) spheres of government is informed by S154 of the RSA Constitution
- CoGTA adopted a Local Government Support Model (LGSM) in response to the S154 Obligations and the Roll-out of the District Development Model (DDM)
- Central to the LGSM is a strong and functional IGR that facilitates the Multi-Sectoral Regional Approach (which operates on the basis of functional Regional Support Teams)
- Integrated (Multi-Sectoral Approach) Regional/District Support Plans are key to the success of the Regional Approach
- The Multi-Sectoral Regional Support Teams (should) reflect the whole of government – and serve as the cornerstone for the success of the DDM
- The Multi-Sectoral Regional Support Teams are central to the work of the municipalities
- The Regional presence of Sector Departments should go beyond the geographic office location to the adoption of the LGSM

DEPARTMENTAL GENERIC CROSS-CUTTING ISSUES

1. **Integrated Development Planning (IDP)**

- High level representation and participation at IDP engagements to ensure strategic alignment in programmes and projects as envisaged in the District Delivery Model (DDM).
- Sustainable Development Goals (SDGs) are to be programitised into the IDPs

2. Sector Departments should develop a mechanism of processing matters escalated by the CDWs

3. **Utilizing the existing IGR Forums to facilitate seamless service-delivery**

- District Forums, HoD/MM's Forum, MEC/MMC/Mayors, PCF
- Reciprocal strategic participation in Departmental IGR Forums

DEPARTMENTAL GENERIC CROSS-CUTTING ISSUES

4. Grants and Subsidies

- Allocation, spending and monitoring of Municipal Grants.
- Management of underfunded and unfunded mandates.
- Monitoring by Sector departments on grant spending.
- Delayed payment of grants and subsidies to Municipalities by Sector Departments

5. Payment of Government Debt

- Sector Departments have a responsibility to ensure that they pay their Municipal debts.
- *Revenue enhancement* for municipalities: Agency Agreements for management and collection fees

6. Sector Departments should ensure that relevant Officials attend both the Debt and Grants Management Committees meetings convened by CoGTA and Treasury.

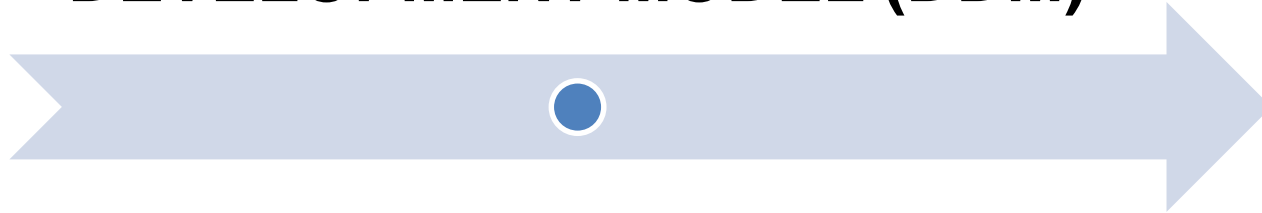
COOPERATIVE GOVERNMENT & IGR

Legal Support

- CoGTA and Sector Departments to collaborate in areas requiring By-Laws and the issuing of Provincial Directives.
- CoGTA to work together with Sector Departments and municipalities to develop legally and financially sound Service Level Agreements (SLAs) to ensure sustainable delivery of basic services across the GCR.



AN OVERVIEW OF THE PROVINCE WIDE DISTRICT DEVELOPMENT MODEL (DDM)



DDM- PROBLEM STATEMENT

1 **Poor** integration, coordination of programmes/projects

2 Unclear on **the rationale** of the projects

3 Sector departments do not **collaborate**

4 Most projects not **spatially mapped**

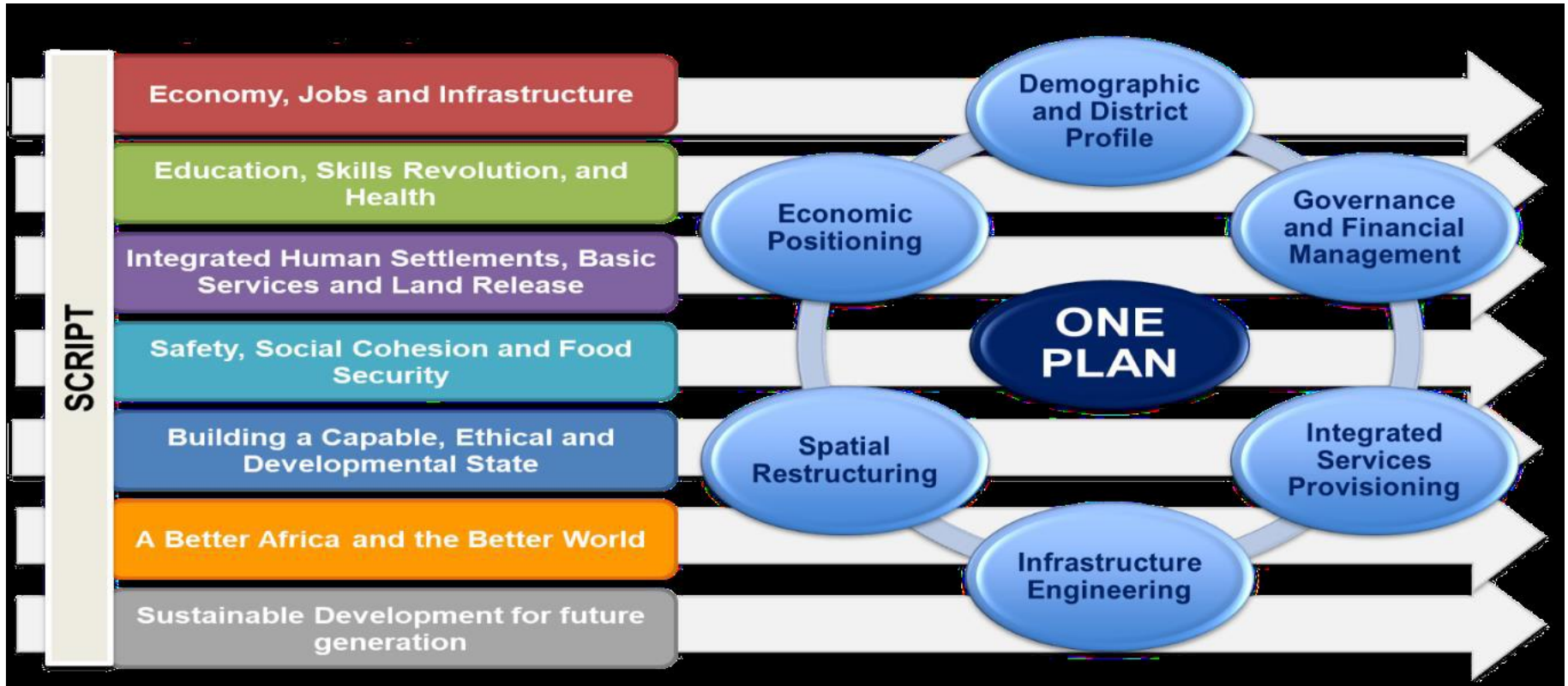
5 Weakness in **data gathering** and research capabilities

6 There are **skills gaps** in specific areas of expertise

One Plan Guiding Principles

1. The formulation of the One Plan has to happen through a series of **collaborative and deep Intergovernmental planning sessions** reflecting on research, evidence, solution and innovation-oriented dialogues based on each **district/metro's own dynamics, challenges and opportunities**.
2. It is not about ticking boxes and being driven by compliance but rather **re-imagining a preferred future** and identifying the strategies and interventions that will enable change and impact.
3. The development of the One Plans should **follow all the stages outlined in the One Plan process and content guidelines** as this is critical in ensuring credibility of the final One Plan.

Alignment of seven priorities with the One Plans



COOPERATIVE GOVERNMENT, IGR & COALITIONS

- The MEC designated a person in terms of Section 29(2) of the Amended Municipal Structures Act 2021 to convene meetings in the following municipalities where contracts of Accounting Officers had expired or were not compliant with applicable legislation;
 - Emfuleni
 - Sedibeng District
 - West Rand District
- Ten (10) out of the eleven (11) municipalities in the Province are classified as Hung Councils and are governed through Coalitions. Midvaal is the only municipality governed by a majority party.
- Not all municipalities have finalised the establishment of Council Committees due to ongoing multi-party negotiations in the election of members and chairpersons. The establishment processes are underway – we are hopeful that the processes will be concluded by the end of February 2022 in all municipalities
- MEC convened a meeting (25 January 2022) with the Speaker and political party leaders represented in CoJ Council to address the chaos that characterized the last two (2) Council Meetings in the City of Jo’burg (CoJ) (13 & 18 January 2022) . This initiative resulted in a much less chaotic Council Sitting held on the 27th January 2022
- MEC has planned engagements with Executive Mayors and Speakers during the month of February 2022 in the spirit of IGR to explore sustainable ways of managing coalitions to ensure uninterrupted service delivery across all municipalities

SUPPORT TO ENHANCE COOPERATIVE GOVERNMENT & IGR

Immediate tasks – November 2021 – 31 March 2022 and Beyond

- Strengthening Regional Support Teams (capacity to monitor the functionality of Councils)
- Tabling of Draft Regional Support Plans for consideration and approval by MayCos and Councils to give meaning and expression to Section 154 of the RSA Constitution
- Develop a Framework to facilitate the monitoring of the Functionality of Council and its Committees
- Finalisation of Governance Framework for Multiparty Coalition Governments at Local level
- Support IDP-DDM & Budgeting Processes for the 2022/23 – 2026/27 to foster integration

Interventions

- The Gauteng COGTA believes in the Cooperative Governance Approach. Municipalities should be run by their elected Councillors.
- The Legislative and Executive Authority of the Municipality remains Council and all the responsibilities allocated to municipalities by the Constitution, the Municipal Systems Act and the Municipal Structures Act are the responsibility of Council Led by the Speaker and the Executive led by the Executive Mayor.
- When they fail to execute their Duties then the Provincial Government can give directives and when the directives are not implemented then Intervention may ensue.

CITY OF TSHWANE

- ❑ In March 2020, EXCO took a decision to dissolve the Municipal Council of the City of Tshwane in terms of section 139(1)(c) of the Constitution because it was, over many months, dysfunctional and paralysed to the point that Council was unable to fulfil its executive obligations in terms of the Constitution and legislation.
- ❑ The DA successfully challenged the dissolution decision in the North Gauteng High Court. EXCO then lodged a direct appeal with the Con Court. The Con Court handed down three (3) judgments on 4 October 2021.

CITY OF TSHWANE CONT.....

- The first judgment penned by Mathopo AJ (with Khampepe J, Majiedt J, Theron J and Victor AJ concurring), found that the Council failed to fulfil its executive obligations, that EXCO took appropriate steps and that exceptional circumstances existed, the dissolution was nevertheless not warranted in the circumstances. Thus, the dissolution decision was found to be unlawful. The first judgment was of the view that the Province should have invoked or explored less intrusive means (such as providing support to the municipality in terms of section 154(1) of the Constitution or taken active steps by engaging the municipality in accordance with relevant provisions of cooperative governance as embedded in Chapter 3 of the Constitution, other than dissolving the municipal council.

CITY OF TSHWANE.....

- ❑ The **second judgment** penned by Jafta J (with Mhlantla J and Tshiqi J concurring) identified that the collapse of Council meetings revealed a deep-rooted inability to address political issues within the Council, leading to its dysfunctionality. As from November 2019, the Council was unable to take any decision for months, including those necessary for the fulfilment of executive obligations.

- ❑ The second judgment therefore disagreed with the finding made by the High Court and the first judgment that the dissolution was not appropriate because there were other steps which the Province could have taken to address the issue of non-fulfilment of executive obligations. The second judgment held that once the conditions for dissolution were met, there can be no sound basis to hold that the exercise of the power to dissolve the Council was unlawful or inappropriate.

CITY OF TSHWANE.....

- ❑ The **third judgment**, penned by Mogoeng CJ (with Madlanga J concurring) said that while he agrees that a failure to fulfil an executive obligation and the existence of exceptional circumstance are preconditions for a proper or appropriate dissolution in terms of section 139(1)(c), he disagrees that section 139(1)(a) and (b) are indispensable preconditions to dissolution. He held that there are cases where (a) and (b) must first be explored and section 139(1)(c) resorted to only if (a) and (b) fail to yield the desired result. The correct approach is in his view the adoption of an option that would realistically result in the executive obligation being fulfilled.

CITY OF TSHWANE CONT.....

- ❑ The CJ agrees that the dissolution of the municipal council was extraordinary but contends that it was the only appropriate and effective remedial step to take in view of the municipality's undisputed dysfunctionality. He held that time simply does not permit the luxury of overly protracted litigation that could otherwise have been effectively ended by the Court's just and equitable order. In his view, both the High Court order and that proposed by the first judgment constitute a constitutionally impermissible encroachment into the terrain exclusively reserved for the Executive.

- ❑ It is very clear that the Court was not unanimous in its Judgments, but the Court was in agreement that the Municipal Council was dysfunctional, that it failed to execute its executive obligations and that exceptional circumstances existed.

EMFULENI

- ❑ On 13 June 2018, the EXCO invoked the provisions of section 139(1)(b)(i) and 5(a) of the Constitution

- ❑ Whilst this intervention made some progress, it did not produce the desired outcomes. The situation imposed that EXCO review its intervention and subsequently appoint a new Administrator with effect from the 1st July 2020 to focus specifically on the following three areas below.
 - Supply chain management;
 - Finance, and
 - Infrastructure / Service Delivery.

Emfuleni

- The refocused intervention came into effect on 1 July 2020. The Administrator prepared a Programme of Action (POA) identifying all areas of intervention. Further to the POA, the Administrator jointly with the Municipality developed a weekly workplan with deliverables that are monitored and tracked by the Office of the MEC on a weekly basis.

- The intervention in Emfuleni is continuing

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