



Status quo report on intergovernmental relations regarding local government

Professor Nicolas Steytler
Yonatan Fesha
Coel Kirkby

Local Government Project
Community Law Centre
University of the Western Cape



CAGE Project

The Local Government Project at the Community Law Centre is conducting research on the key areas of conflict that arise between district and local municipalities. This research is part of a project on Managing Concurrency of Powers and Functions through Cooperative Government. Funding was contributed by the Conflict and Governance Facility (CAGE), a project of National Treasury, which is funded by the European Union under the European Programme for Reconstruction and Development.

Table of Contents

1. INTRODUCTION.....	4
1.1 PROBLEM STATEMENT.....	4
1.2 METHODOLOGY	4
1.3 STRUCTURE.....	5
2. PART A: THE IRFA	5
2.1 CONSTITUTIONAL FRAMEWORK.....	5
2.2 IRFA: POLICY GOALS.....	6
2.3 IRFA: STRUCTURE AND PURPOSE.....	7
3. PART B: PROVINCES	8
3.1 INTERGOVERNMENTAL RELATIONS BY PROVINCE.....	8
3.1.1 <i>Eastern Cape</i>	8
3.1.2 <i>Free State</i>	10
3.1.3 <i>Gauteng</i>	12
3.1.4 <i>KwaZulu-Natal</i>	14
3.1.5 <i>Mpumalanga</i>	15
3.1.6 <i>Northern Cape</i>	16
3.1.7 <i>Limpopo</i>	17
3.1.8 <i>North West</i>	17
3.1.9 <i>Western Cape</i>	19
3.2 ANALYSIS OF PROVINCIAL INTERGOVERNMENTAL RELATIONS	20
3.2.1 <i>Statutory or informal?</i>	21
3.2.2 <i>Composition</i>	22
3.2.3 <i>Relations as equals?</i>	22
3.2.4 <i>Structural linkages</i>	22
3.2.5 <i>Technical Structures</i>	23
3.2.6 <i>Functioning</i>	23
4. PART C: MUNICIPALITIES	25
4.1 INTERGOVERNMENTAL RELATIONS BETWEEN DISTRICT AND LOCAL MUNICIPALITIES	25
4.1.1 <i>Eastern Cape</i>	25
4.1.2 <i>Free State</i>	29
4.1.3 <i>Gauteng</i>	31
4.1.4 <i>KwaZulu-Natal</i>	31
4.1.5 <i>Mpumalanga</i>	34
4.1.6 <i>Northern Cape</i>	35
4.1.7 <i>Limpopo</i>	35
4.1.8 <i>North West</i>	36
4.1.9 <i>Western Cape</i>	38
4.2 ANALYSIS OF DISTRICT INTERGOVERNMENTAL RELATIONS	41
4.2.1 <i>Statutory or informal?</i>	41
4.2.2 <i>Composition</i>	42
4.2.3 <i>District-Local Relationship</i>	43

4.2.4	<i>Structural Linkages</i>	44
4.2.5	<i>Technical Structures</i>	44
4.2.6	<i>Functioning</i>	44
5.	PART D: RECENT DEVELOPMENTS	46
5.1	PROVINCIAL DEVELOPMENTS.....	46
5.1.1	<i>KwaZulu-Natal</i>	46
5.1.2	<i>Western Cape</i>	46
5.1.3	<i>Mpumalanga</i>	47
5.2	DISTRICT DEVELOPMENTS	47
5.2.1	<i>Cacadu (Eastern Cape)</i>	47
5.2.2	<i>Amajuba (KwaZulu-Natal)</i>	48
5.2.3	<i>Cape Winelands (Western Cape)</i>	49
6.	PART E: EVALUATING IRFA – BENCHMARKS.....	49
6.1	FORMAL COMPLIANCE	49
6.2	PROGRESS ON IRFA GOALS.....	50
7.	BIBLIOGRAPHY	52

1. INTRODUCTION

1.1 Problem statement

Local government in South Africa is a unique experiment in intergovernmental relations. Guided by the constitutional principle of co-operative government, the provinces, and district and local municipalities must work together to achieve their, often overlapping, goals. Key for local government is the delivery of basic services, such as water and housing, enshrined in the Bill of Rights. These government actors must coordinate common policies, programmes and delivery with each other. Since municipalities were created in 2000, a myriad of informal channels and forums have developed to align and inform each actor of the others' desires and needs. Five years later, the current state of intergovernmental relations is fraught with confusion and misunderstanding.

The Intergovernmental Relation Framework Act (IRFA) came into effect on 15 August 2005.¹ This Act formalizes the relations between (and within) the three spheres of government. Many of the proposed forums already exist in name or practice, or both. The IRFA's ultimate goal is to enhance intergovernmental co-operation, which is a necessary precondition of realizing the goals of the Constitution: especially the effective delivery of basic human rights.

The object of this study is to canvas the evolution of intergovernmental structures, both provincial-local and intra-local, up to the date the IRFA was enacted. By analyzing the powers and function of these forums and how they have worked in practice, we will create a comprehensive picture of intergovernmental relations in South Africa. This study will serve as a benchmark against which to measure the success of the IRFA, in particular its nascent forums and their legislated activities. The report further establishes a set of criteria to evaluate the success (or failure) of IRFA forums in achieving the goals of cooperative governance.

1.2 Methodology

This report relies on a number of sources to evaluate the current state of intergovernmental relations in South Africa's local government sphere. The main source of information on the main provincial and district level forums was detailed minutes and/or agenda. Unfortunately, few provinces or districts responded to this request. Useful case studies of district forums highlight the general state of relations.

The lack of information is more apparent than real for two reasons. First, non-responsiveness correlates strongly to those less functional provinces and municipalities. Some provinces did not provide minutes or agenda simply because no such forums exist. With nearly half of South Africa's municipalities classified as Project Consolidate priorities, it is unsurprising that intergovernmental relations are ignored by such a municipal council. Second, many provinces and district municipalities rely exclusively on informal communication channels. For example, *Motheo*² had no formal

¹ Act 13 of 2005.

² For ease of reading, the names of all district municipalities are italicized.

intergovernmental relations structures in place, instead using various informal channels between district and local representatives (eg, phone calls, *ad hoc* meetings) for information sharing and policy coordinating. Thus this report assumes that in some provinces and most, if not all, district municipalities that did not supply intergovernmental information either exist in name only or not at all.

The lack of agenda/minute response was supplemented by a number of primary and secondary sources. First, personal communications with provincial and municipal representatives have helped fill-in missing details. Second, a number of previous reports by other organizations, like the National Council of Provinces questionnaire and the Department of Provincial and Local government, provided valuable analysis of intergovernmental relations in practice at the level of Provinces and district municipalities. This included types of forums, their membership and role, and perspectives on their effectiveness.

1.3 Structure

This report focuses on describing and evaluating the status quo of provincial and local government relations and district and local municipality intergovernmental relations structures prior to the Act. The report first describes the new IRFA; its constitutional basis, policy goals and substantive provisions. Next, the current provincial and local intergovernmental relations structures are described. The forums are then analysed against a set of intergovernmental criteria to assess their success in achieving the constitutional goal of cooperative governance. The final section looks at recent developments in intergovernmental relations since the IRFA became law. Finally, the report suggests “benchmarks” to evaluate whether the IRFA improves intergovernmental relations across South Africa’s local government sphere.

0. PART A: THE IRFA

2.1 Constitutional Framework

In Chapter Three of the Constitution, on “Co-operative Government”, section 40(1) provides that government in South Africa is “constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.” The distinctive element refers to the final decision making power that each sphere of government enjoy over a defined range of functions. It refers to the fact that each sphere of government, in so far as those defined range of functions are concerned, is accountable to its own legislature. It generally refers to the autonomy that each sphere of government enjoys. The interrelated element refers to the relationship of regulation and oversight between spheres of government. The Constitution gives national and provincial governments the specific powers to monitor, support and ensure the effective performance of municipalities, and, in extreme cases, to intervene when constitutional or

statutory obligations are not fulfilled.³ These elements of governance underlie the need to develop an effective system of intergovernmental relation.⁴

The interdependent nature of these governments suggests that all spheres must exercise their powers to ‘the common good of the country as a whole’. It underlines the belief that it is only when all spheres of government act collectively and work in cooperation with one another that they can provide coherent government that meets the needs of the nation.

These three elements of each sphere of government set the framework for intergovernmental relations. Cooperative governance, moreover, implies that the autonomy or distinctiveness of each sphere of government is colored by the other two elements that explicitly call for cooperative government. The interrelated element suggests that the exercise of autonomy by a municipality is supervised by provincial government, while the interdependent element stresses that autonomy must be exercised to the common good of the country.

Within the constitution framework of cooperative government, national government has a duty under section 41(2) to enact legislation to “establish or provide for structures and institutions to promote and facilitate intergovernmental relations,” and create dispute resolution mechanisms and procedures. In 2005 the national government fulfilled this duty after nearly a decade of informal intergovernmental relations by enacting the IRFA. The Act came into effect on 15 August 2005.

2.2 IRFA: Policy Goals

The IRFA seeks to address two key failures of the existing intergovernmental system. First, implementing key national priorities requiring the cooperation of all three spheres of government has been an unpredictable and incoherent process (with the clear exception of the budget process). This confusion regarding the status, role and interrelationship of these processes results in little coherence between the spheres’ policies and priorities. Second, most instruments of intergovernmental relations are *ad hoc* as they lack institutional definition. This is despite the fact that service delivery programmes often fail due to the perplexing jurisdictional boundaries between state departments, organs or spheres for policy priorities that cut across traditional competencies. Thus the *ad hoc* nature of the intergovernmental relations has resulted in poor service delivery at community level, including problems of duplication, real or perceived unfunded mandates, and a general inability to forge collaborative partnerships or find common ground for joint action.

The IRFA attempts to address these shortcomings by providing a general framework applicable to all spheres and sectors of government guided by the principle of co-operative government. It does so primarily by formalizing the intergovernmental institutions and processes between the spheres of government. The Act recognizes the

³ The Constitution of the Republic of South Africa, 108 of 1996, ss 139, 155 & 157.

⁴ The ‘distinctive’ element is also affected by these two other elements, especially the ‘interrelated’ element since it emphasises that each sphere of government must exercise its autonomy for the good of the country as a whole.

fact that other Acts of the Parliament have created specific forums contemplated in section 41(2), and limits its role to establishing a general legislative framework. Thus the IRFA gives concrete form to the principles of co-operative government by establishing the structures of intergovernmental relations and providing mechanisms for settling disputes between the three spheres. The overarching purpose of the Act is to create the intergovernmental structures necessary to coordinate the development and monitoring of policy and legislation across the spheres of government.

Under this broad framework, the IRFA contains four distinct objectives.⁵ First, the Act aims at coherent government so that each sphere functions without encroaching on the others' territorial, functional or institutional integrity. Second, it promotes better coordination to improve the effective provision of services that require the combined actions of each sphere. Third, the forums created by the Act facilitate monitoring of how policy and legislation is implemented to ensure that legislative intention translates into tangible, measurable results. Last, the IRFA focuses the spheres on achieving national priorities to alleviate the most pressing concerns facing all South Africans.

2.3 IRFA: Structure and Purpose

The IRFA contemplates four types of distinct intergovernmental structures. The first two structures are the President's Coordinating Council (PCC), which brings all three spheres of government together, and the national intergovernmental forums, sector-specific bodies similar in membership to the PCC and headed by the relevant Cabinet member (eg, a transport forum is headed by the national minister of transport). These two structures fall outside the scope of this report, however, since their focus is on national affairs.

The Premier's intergovernmental forum is the third structure created by the IRFA. Its members include:

- the provincial Premier (chairperson);
- the MEC responsible for local government;
- other MECs named by the Premier;
- district and metro mayors;
- administrators of metro or district municipalities subject to a section 139 intervention; and
- a municipal councillor appointed by provincial organized local government.

The forum consults and discusses on matters of mutual interest, for example: implementing national and provincial policy at local level; developing related legislation; coordinating coherent provincial and municipal development plans; and other matters of strategic interest to provincial and local government. The forum meets at the Premier's convenience and must report to the PCC at least once a year. The IRFA also provides for the establishment of sector-specific forums.

⁵ S 4 IRFA.

The final structure is the district intergovernmental forum. The body is a consultative forum to address issues such as national and provincial policy and legislation affecting local government, implementing this policy and legislation, questions arising from other intergovernmental forums, and coordinating service delivery and development in the district. Its members include the district mayor, the local mayors (or designated councillor) and the administrators of municipalities subject to a section 139 intervention. As chairperson, the district mayor convenes meetings and sets the agenda. However, a majority of local mayors can request a meeting and, individually, submit requests for the agenda. The forum must meet once a year with service providers. The district is responsible for providing administrative and other support to the forum.

0. PART B: PROVINCES

3.1 Intergovernmental relations by province

Almost every province has established some form of intergovernmental relation structure. In most cases, more than one such forum exists in a province. First, we will explain these structures by describing their objectives, composition and function in each province. We then provide a brief comment on how they function in practice. Second, we will highlight the main features of these structures and critically examine if they have contributed to the development of viable and effective intergovernmental relations.

3.1.1 Eastern Cape

A Memorandum of Understanding on the establishment of intergovernmental relations was concluded between the Eastern Cape Local Government Association (ECLOGA) and the Eastern Cape Provincial Legislature on 15 April 1999.⁶ This signified the first step towards formalizing the intergovernmental relation between the two spheres of government since its major purpose was to concretize and institutionalise cooperative governance. Its other stated purpose was to create mechanisms for resolving intergovernmental conflicts. The general objective of the memorandum was thus to give effect to the basic constitutional principles of cooperative governance and intergovernmental relations. It was also hoped that the Memorandum would serve as “the best way forward to obtain the best practical experiences to include in legislation.”⁷ As a result, a number of intergovernmental relation structures were established in the province.

The principal mechanism is the Provincial Intergovernmental Relations Conference (the Conference). The Conference was meant to be convened annually. The members of this Conference were the Executive Council of the province, the Executive Committee of SALGA Eastern Cape and the Speaker or Deputy Speaker of the Legislature, who also served as the chairperson. The main functions of the Conference are to provide policy and guidelines for the establishment of cooperation between provincial and local government in the province, provincial intergovernmental relations, and the support and

⁶ Steytler 1999.

⁷ Ibid.

strengthening of municipal capacity. This forum met only once, when the Memorandum of Understanding was adopted in December 1999.

The Provincial Intergovernmental Relations Committee, another intergovernmental relations forum, was tasked with identifying, developing and implementing programmes in accordance with the policy and guidelines set by the Conference. The Committee exists in name only, however, as it has never met. While a policies workshop was held on 5 July 2002 to investigate proposals for such a forum, at present there is no political forum.

The Committee was composed of the:

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

The Committee was chaired by the Speaker of the provincial legislature. The Committee was to make decisions by consensus in its monthly meetings; if consensus could not be reached, it must agree upon a mechanism for making decisions. The Committee must submit an annual activity report to the Conference.

The Committee was to be assisted in its tasks by the Provincial Intergovernmental Relations Technical Committee. In fact, this Committee was the only structure that meets regularly in the Eastern Cape.⁸ It is tasked with implementing the decisions of the Conference and the Provincial Intergovernmental Relations Committee. Members of this forum include:

- the Director-General of the Eastern Cape,
- all heads of departments;
- all municipal managers in the province;
- the CEO of SALGA Eastern Cape; and
- various parastatal organizations.

Chaired by the Director-General, the Committee aims to meet bi-monthly to look at the implementation of provincial cabinet policies. It ensures that these forums, as well as the various cluster committees, provide the necessary co-ordination to government structures in service delivery and in the implementation of the Integrated Sustainable Rural Development Strategy (ISRDS). The Committee also serves as a forum where members exchange ideas and share the capacity-related problems they experience at municipal level.

⁸ Steytler, de Visser & Smith 2002, 123.

Most of the Eastern Cape intergovernmental relation structures have not even met and only the Provincial Intergovernmental Relations Technical Committee functions properly. No premier's coordinating forum has been established in the province, but the Premier's policy speech March 2005 declared a plan to establish such a forum by 2006.⁹

3.1.2 Free State

The Free State is a leading province in terms of establishing intergovernmental relation structures to facilitate and promote provincial-local relations.¹⁰ A number of intergovernmental forums have been established in the province: PROVLOC, MECLOG, the Premier's Mayoral Forum and the Premier's Traditional Forum.¹¹ The primary objectives of these forums are to monitor and support local government in the province, and to promote the development of municipal capacity.

The main intergovernmental relation forum in the province is the Province and Local Government Forum (PROVLOC). The stated objectives of this forum are:

- integrating government activities;
- giving support to local government;
- improving co-operation and co-ordination between local and provincial government; and
- enhancing the institutional capacity of municipalities.

Members of this forum are the Premier, the provincial cabinet and members of the Executive committee of Salga Free State. The latter consists of councillors from each municipality in the province. In most cases, this councillor is either the mayor or speaker. Chairs of legislative committees are also present in the meetings of this forum. Two representatives from the House of Traditional leaders are also allowed to attend these meetings. Organized labour, organized business, NGO/CBO and territory institutions may as well, upon invitation, attend the meetings of this forum. The forum has nearly 40 members and is meant to meet quarterly. Chairpersonship rotates between the Premier and the chairperson of Salga Free State, while the Premier's Office provides for the forum's secretariat.

PROVOLG is assisted by a technical committee. The committee provides both technical and administrative assistance. Members of this technical forum include the Director-General of the province, Salga Free State's CEO Deputy CEO, municipal managers of all municipalities in the province and all heads of departments in the province. Upon invitation, major service providers may also attend the meetings of this technical forum. The Director General of the province acts as the chairperson of the Committee. The committee is meant to meet at least a month before the political forum to prepare the agendas that need to be discussed by the latter in its next meeting. The Director-General's Office provides for the secretariat of this forum.

⁹ Premier, Eastern Cape 2005.

¹⁰ Tweedie 2004.

¹¹ Department of Provincial and Local Government 2004.

The stated functions of PROVLOC are to provide an overall province-wide coordination, coordinating MINMEC mandates with NCOP mandates, assessing and following up on intergovernmental reports (eg, NCOP, MINMECS, etc), and providing appropriate input of technical expertise into single-purpose/sectoral structures. The forum must also ensure support by departments for the intergovernmental system.

PROVLOC does not meet regularly and a number of its meetings were cancelled.¹² Some municipalities have even downplayed the value of PROVLOC. This is reflected on the attendance rate of the meetings as municipalities, and particularly the larger councils, continue to absent themselves from its meetings. The strategic and coordinating value of PROVLOC is also undermined by its large size. Though such a large gathering of representatives have the potential to serve as “a successful vehicle for communication and to lesser extent, consultation”, this remains elusive.¹³

The Forum for the MEC and Local Government (MECLOG) is the second intergovernmental relations forum in the Free State. This forum has a political and technical component. Members of the political forum are the MEC for Local Government and Traditional Affairs and the Executive Committee of Salga Free State. The MEC for Local Government and Traditional Affairs acts as the chairperson of this forum while the Department of Local Government and Traditional Affairs (DLGTA) provides the secretariat. A technical forum supports MECLOG, whose membership comprises of the head of the DLGTA and all its directors, and Salga Free State’s CEO and Deputy CEO.

Members of this forum are meant to meet quarterly. In practice, meetings are very informal and it involves bi-lateral communication between Salga Free State and the Department. The MECLOG has not, however, been convening regularly; for example, it never met in the year 2002 because the MEC was unavailable leading some to suggest that it be merged with PROVLOC.¹⁴

The Premier’s Mayoral Forum is the third intergovernmental relations structure that all mayors in the province attend. The Forum is meant to convene quarterly. The chair rotates between the Premier and the chairperson of Salga Free State. The Premier’s Office provides the secretariat for this forum. Issues of mutual concern are discussed in these meetings. This forum has not met since the new Premier took office in 2004.

Unique to the Free State is the establishment of the Premier’s Traditional Leaders Forum. Members of this forum include:

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

¹² Tweedie 2004, 10.

¹³ Tweedie 2004, 10.

¹⁴ Steytler, de Visser & Smith 2002.

The forum started in March 2001. Developmental issues, the appointment of traditional leaders and budgeting are the most common issues discussed. The chair of this forum rotates between the Premier and the Chairperson of the House of Traditional Leaders while the secretariat is provided by the Premier's Office. The forum is convened quarterly.

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

Although the province has taken the lead in establishing a plethora of intergovernmental relation structures, they have not improved integration and alignment of policies and developmental works.¹⁵ As Tweedie indicated, the province, not hesitant to establish intergovernmental relation structures as an instrument to improve and foster relations, has, however, failed to note the important elements that make such structure function well.¹⁶ Most of these structures are informal and rarely meet. As indicated above, it has been quite a while since these forums had their last meetings. The province has also failed to "assess the opportunities for other elements especially better communication and consultation as well as engagements between provincial and local government on strategic objectives for the province as a whole and for the delivery of individual services."¹⁷ Moreover, the proliferation of intergovernmental institutions within the province "has resulted in the lack of substantive agendas for each."¹⁸ Thus both the province and municipalities remain dissatisfied with these structures.

3.1.3 Gauteng

The province of Gauteng has two formal intergovernmental structures that facilitate the relations between the provincial and local government.¹⁹ These are the Gauteng Intergovernmental Forum and the Gauteng Premier's Coordinating Forum.

The guiding principle of the Gauteng Intergovernmental Forum (GIGF) is to facilitate the effective cooperation of the provincial and local governments. Enhancing integrated development and considering priorities for the province are the main objectives of this forum. The goal of the GIGF is to ensure that a decision of each sphere is enriched by:

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

¹⁵ Tweedie 2004, 10.

¹⁶ Tweedie 2004, 10.

¹⁷ Tweedie 2004, 10.

¹⁸ Steytler, de Visser & Smith 2002.

¹⁹ Mavuso 2001.

The forum is composed of the Premier, MECs, chairpersons of standing committees in the provincial legislature, heads of provincial government departments, mayors and municipal managers of all municipal structures in the province.

The forum, chaired by the Premier, convenes twice a year to coincide with key strategic events such as the tabling of the budget, or the opening of the legislature. A range of issues relating to co-operation between provincial and local government, including service delivery, implementing the policy of providing minimum free basic services, accurate billing systems and credit control, and the institutional capacity of municipalities are discussed.²⁰

The other intergovernmental body in the province is the Gauteng Premier's Coordinating Forum (GPCF). The purpose of this forum is to facilitate the coordination of service delivery, consultation and collaboration between local and provincial spheres and the establishment of synergy between their programmes. Members of the forum include the Premier, as chairperson, the provincial Director-General, the MEC responsible for local government, the head of the provincial Department of Local Government, the three mayors of the metropolitan municipalities, the three mayors of the district municipalities, and the municipal managers of the represented municipalities. The forum meets quarterly.

The intergovernmental structures in Gauteng are used as a forum to extend support to local government. This has been done by using these forums to equip officials of local government with knowledge and information that assist them in discharging their responsibilities, especially service delivery at the municipal level. The GIGF has especially been used for that purpose.²¹ In past meetings, agenda items included an information presentation on Blue IQ, an information technology, and its linkages to Gauteng IDP's economic growth strategy, and the relationships between the local and provincial spheres of government in respect of service delivery.²² Other agenda matters were presentations on specific concerns of the province to allow both spheres of government to engage in matters of mutual concern, such as cross-boundary challenges, and the water and sanitation backlog in Gauteng. One GIGF meeting adopted a proposal by the province to establish a Municipal Institutional Support Centre.²³

The key challenges faced by municipalities in the context of developmental local government were also featured in the meetings of the GPCF.²⁴ One such meeting saw the province present views and plans regarding the IDP process, as well as a presentation on provincial and local integrated development plans.

Although most of the presentations are made by provincial officials, especially MECs, thus suggesting a top-down approach to intergovernmental relations, representatives of local government are also given the chance to provide input on some of the subject

²⁰ See also Premier's Office, Gauteng 2001.

²¹ Agenda of Gauteng Intergovernmental Forum meeting (17 April & 15 Nov 2001, & 25 Oct 2002).

²² Agenda for Gauteng Intergovernmental Forum meeting (17 April & 15 November 2001).

²³ Premier's Office, Gauteng 2001.

²⁴ Agenda for Premier's Coordinating Forum meeting (25 October 2002).

matters. The presentation on the relationship between the local and provincial spheres of government in respect of service delivery was, for instance, made by Salga Gauteng chairperson.

It should be noted that Gauteng is the only province that includes senior officials in the political intergovernmental relation structures. The GIGF is also the only structure that provides for direct representation of metros and district municipalities. This has helped the forum avoid the criticism in other provinces that municipal interests are not well protected in these forums since organised local government, the municipalities' representative, had failed to advocate their interests. This suggests that the province has preferred to deal directly with municipalities rather than use an intermediary.

3.1.4 KwaZulu-Natal

Until February 2005, sectoral structures dominated the intergovernmental relation system of this province as no inclusive intergovernmental relation structures existed. Rather a number of formal and informal sector specific forums facilitated intergovernmental relations in the province. Most of these structures are not statutory, with the few exceptions of those structures that created to advise the province.²⁵

One such sectoral structure is the Multi-Sectoral Provincial Integrated Development Plan Forum.²⁶ This forum was primarily established to help the MEC for Local Government assess adopted IDPs within 30 days of their submission to the provincial Department of Local government since the Municipal Systems Act (Systems Act) requires no delays and that all documents are thoroughly perused.²⁷ But this forum was also expected to continue to play a facilitator role during the implementation and the review process by working with the relevant district municipalities to ensure effective and efficient service delivery.

The provincial department, national departments, district municipalities, organizations and service providers are members of this forum. The secretariat of this forum is provided by the Department of Local Government and Traditional Affairs. The functions of this forum are:

- Coordinating and monitoring sector departments and service providers in the IDP process in KwaZulu-Natal;
- Assessing submitted IDPs; and
- Compiling recommendations to be submitted to the MEC, as part of the IDP assessment process.

There is also the Provincial Inter-Departmental Task Team (PIDTT), another sectoral structure established by the KwaZulu-Natal cabinet to oversee the implementation of the Integrated Rural Development Policy (IRD) and the Integrated Sustainable Rural

²⁵ The Municipal Transformation Committee was gazetted in terms of section 12 of the Municipal Structures Act to advise the MEC on the establishment of municipalities: see Steytler, de Visser & Smith 2002, 95.

²⁶ Terms of Reference for the Multi-Sectoral Provincial IDP Forum.

²⁷ Act 32 of 2000.

Development Program (ISRDP).²⁸ Members of this task team are provincial departments, national departments, district and metro municipalities, organized local government and service providers.

The municipal managers meetings are another sectoral forum where municipal managers meet with the Director of the Provincial Department for Local Government Department.²⁹ A range of issues are discussed in this informal forum.

Most of these structures are established by the province to serve as a consultation forum for a department on how to exercise its Schedule 4A/5A powers of the Constitution.³⁰ This comes out clearly, for example, in the case of the Municipal Transformation Committee, created to assist the MEC for local government with his statutory duties to establish the new local government dispensation in 2000. The same is true with the Rural Road Transport Forums. The primary function of these bodies is to advise the Minister of Transport on the prioritisation of road-build programme. In fact, it is this advisory role of the forums that explain why the forum goes beyond local governments and traditional leaders to include interest groups as its members.

Some of these structures are used to provide support for local government. The Department of Traditional and Local government Affairs, in some of its quarterly meeting with municipal managers, included as agenda of meetings, information presentation on some aspects of the Municipal System Act and specifically on the Performance Management System; a presentation on the Land Use management was also made in this same forum.³¹ Issues of division of power have also appeared in these forums and information on the matter is conveyed to local government.

Most of these structures appear to be dominated by technocrats. The IDP Forums are aptly mentioned as a good example of this fact as these forums are dominated by officials with technical concern. The forum hardly serves its purpose for political alignment of policies. Only few of these structures have as their objective the achievement of “political dialogue between the two spheres aimed at the coordination of policies and programmes.”³²

The role of KwaNaloga, provincial organised local government in KwaZulu-Natal, in sectoral structures has also been problematic. The fact that KwaNaloga has not always earned the full support of all municipalities has brought the question whether KwaNaloga should still claim to represent municipal interests in the province.³³ Linkages are also poor between the various intergovernmental relations structures in the province.

3.1.5. Mpumalanga

²⁸ ‘Progress Report on the implementation of the ISRDP in Kwazulu-Natal’ (18 March 2002).

²⁹ Minutes of Municipal Managers (Inland Region) meeting (26 March 2002); Minutes of Municipal Managers (Northern region) meeting (26 February 2002).

³⁰ Steytler, de Visser & Smith 2002, 93.

³¹ Minutes of Municipal Managers (Northern region) meeting (26 February 2002).

³² Steytler, de Visser & Smith 2002, 94.

³³ Steytler, de Visser & Smith 2002, 102.

Little information could be obtained regarding the Mpumalanga's Intergovernmental Relations Forum. Its membership includes only members of the executive – the Premier, the MEC for local government and the mayors. Its aims are the usual objectives of better cooperative relationships. No further information regarding the frequency of meetings or its functioning was available.

3.1.6 Northern Cape

The province has established a number of intergovernmental structures including the Intergovernmental Forum (IGF), a broad consultative intergovernmental structure. Other structures with a more narrow focus include MEC COMS and the MEC-Mayors' Forum.

As the term of reference of the IGF indicates, it is supposed to address multi-sectoral policy and constitutional issues.³⁴ Promoting consensus between the respective spheres of government is the main function of this forum. What is also unique to this specific provincial body is that it is meant to serve not as provincial – local intergovernmental forum, but as a forum for all the three spheres of government. The forum is meant to serve as a mechanism for policy dialogue at the provincial level regarding a number of strategic and important issues requiring intergovernmental consultation, cooperation, co-ordination and joint decision making between the three spheres of government.

The composition of this forum reflects the fact that it is meant to serve as a consultation forum between the three spheres of government. It is composed of the Premier, MECs, NCOP delegates, Chairperson of Standing Committee on Local Government, Chairperson and CEO of SALGA Northern Cape, heads of national departments in the Province, mayors and director-general. It is convened by the MEC for Local Government and Housing whose department provides support to the IGF with regard to technical, policy and strategy matters falling within its terms of reference.

The forum is meant to meet twice a year. The first meeting should be used by the Premier to set out the priorities of government, while the second meeting reviews progress of objectives set out in the first.

The MEC COM is the other intergovernmental relations structure established by the province. These sectoral structures co-ordinate and align policies and programmes. Membership includes the MEC, as chairperson, the councillor responsible for relevant portfolio, Salga Northern Cape Executive Committee member responsible for a portfolio, municipal managers and/or relevant departmental heads. The provincial department concerned provide secretarial services to the committee. Each MEC COM should meet four times a year, with a provision of extraordinary meetings.

One other structure that the province has established is the MEC-Mayor Forum. The stated purpose of this forum is to enable the MEC for Local Government and Housing to consult and exchange information on local government processes with mayors and organised local government. The Department of Local Government and Housing provides secretariat services.

³⁴ Minutes of MEC-Mayor's Forum meeting (18 January 2001).

The MEC-Mayor Forum is assisted by a technical committee, which processes issues before the Forum. This technical committee is chaired by the deputy director general for Department of Local Government and Housing, and includes the CEO of Salga Northern Cape, municipal managers, and senior officials of provincial and national department of invitation.

A close look at the practice of the MEC-Mayor Forum reveals that the structure is used to support municipalities. As it is the case in other provincial intergovernmental structures, this support often takes the form of information presentation. In one of the meetings, the MEC The frequency of meetings and made a presentation on issues related to municipal funding.³⁵ The aim of the presentation was to inform the mayors about funding of municipalities, funding problems associated with the new structure and possible solutions. Presentations on IDPs and PIMs and local economic development, were also made in one of the meetings. A progress report on the implementation of the Management Support programme was also made.

The MEC-Mayor Forum has, however, not been functioning, which prompted calls to reform the structure.³⁶ It was indicated that the forum is poorly coordinated both at a political and technical level. These observations included the absence of technical support and a lack of focus on policy issues. The forum also did not include other strategic role players in local government. Neither is the role of organised local government clear in the forum. More importantly, there is no clear coordinated mechanism for implementing resolutions.

It was suggested in the Resolution that there is a need for a broad forum that should be inclusive of all strategic role players in local government to create synergy and interface in terms of coordinating local government transformation. It was then decided to first change the name of the forum to Local Government Transformation Forum in line with the principle of inclusivity and then to redefine the terms of reference to allow organised local government to play its leadership role by representing member municipalities. A broad forum that extends invitations to trade unions, professional institutes and other strategic role players in local government was suggested

3.1.7 Limpopo

Limpopo has not yet established an intergovernmental structure. However, the Premier is in meeting to consult with all the mayors in the province on establishing an intergovernmental forum as required by the IRFA.³⁷

3.1.8 North West

³⁵ Report by MEC's strategic team to MEC-Mayors Forum (18 January 2001).

³⁶ Resolutions for the 4th Annual General Meeting (20-21 October 2004).

³⁷ Mrs M Tebogo, deputy manager of Intergovernmental and International Relations, Premier's Office, personal communication.

The North West Province Intergovernmental Forum (NWPIGF) was officially launched in July 1997.³⁸ As it is clear from its mission statement, the objective of this forum is to coordinate, through political interaction, the actions of all local government and provincial bodies, provincial departments and other role players.

Enhancing and promoting cooperative governance, ensuring policy synergy between the two spheres of government on the horizontal and vertical levels, creating a platform for the co-ordination of legislation and actions of provincial and local governments are some of this forum's goals. Other goals include: providing for a channel of communication between the province and local governments, encouraging an integrated approach to service delivery, promoting the principle of integrated development in the province and to monitor the implementation of national programmes and policies and, finally, providing a general supportive role.

The Forum is composed of the Premier, the Chairperson of the provincial House of Traditional Leaders, chairperson of the Chairperson's Forum in the North West legislature, members of Salga North West management working committee (councillors) and all members of the provincial Executive Committee. The Premier chairs this forum, which meets quarterly.

The Forum receives technical and administrative assistance from a technical forum, which should meet every month and is chaired by the director-general. Included in the membership of this committee are members of the Provincial Management Committee, representatives from service providers such as the water boards, Telkom and Eskom, representatives of the National Planning Commission, the Salga North West technical team and representatives from local government professional bodies (eg, ILGM and IMASA).

This technical forum acts as the management of the NWPIGF. Its aim is to design integrated programmes on policy implementation with clear time frames and directives to the sectoral forums. It further monitors progress on the implementation of national programmes. Other functions of the technical forum include providing technical support and advice to the political forum, ensuring the implementation of national policy, acting as a forum to give continuous support to the quest for integrated development within the province and performing such other duties as may be delegated by the political forum.

With the view to manage effective and efficient operation, the technical forum established an inter-sectoral forum with four components, namely the institutional, infrastructure, social welfare, and safety and security development forums. These intersectional forums discuss matters such as:

- public servants holding local political office;
- integrated sustainable rural development strategy;
- integrated development planning for municipalities;
- provision of basic water services;
- cross boundary municipality management;

³⁸ Layman, 2003.

- municipal cost recovery;
- municipal policing;
- financial assistance to provincial organised local government; and
- restructuring and re-alignment of the technical forum structure with the provincial government cluster committees.

The forums discussed above hardly function though. The main difficulty lies in the failure of the different members to regularly attend meetings.³⁹ It has been difficult to organize meeting in which every role player is present. This has led to the suggestion that the secretariat of these meetings come up with predetermined roster for meetings which can then be distributed to members at the beginning of each year. Limiting contacts to fewer meetings has also been suggested as another alternative to lessen attendance problem. An important experience of the provincial intergovernmental relations structure has been the role played by traditional leaders in intergovernmental relation and decision making.⁴⁰ It was later decided, at a meeting in July 2002, that municipalities and provincial departments should consult the traditional leaders on matters that affect rural communities.

3.1.9 Western Cape

Unlike most of the other provinces, the province of the Western Cape has not as such established an overarching political intergovernmental structure. Neither had it established a Premier's Coordinating Forum until July 2005. This does not, however, mean that there were no structures that, in one way or another, facilitate coordination between the two spheres of government.

The Provincial Advisory Forum (PAF), unlike other provincial intergovernmental relations structures, was established in 2000 by regulation.⁴¹ Its objectives were to coordinate policies between local government and provincial government, and help the province fulfil its constitutional obligations to support local government. It also serves as an early warning system of looming crises in local government. This forum was also introduced as part of the measures put in place to provide for the monitoring and support of local government in the province and to promote the development of local government capacity so that municipalities could perform their functions and manage their own affairs. The forum also advises the MEC on the mechanisms, process and procedures relating to integrated development planning, service delivery and financial arrangements and coordinating interface between provincial and local functions.

PAF is composed of the mayor and municipal manager of each municipality within the province and the MEC responsible for local government, who is also its chairperson. The forum aims to meet at least once every three month. It takes all decisions based on consensus. Where consensus cannot be reached within a specified time, the various

³⁹ Steytler, de Visser & Smith 2002, 115.

⁴⁰ Steytler, de Visser & Smith 2002, 115.

⁴¹ Provincial notice 7/2000, section 3. See Smith 2001.

positions adopted by the members of the forum regarding the particular issue are recorded in the minutes.

The Forum may establish committees to assist and advise it in the performance of its functions or exercise its powers, and may dissolve them at any time. The Forum appoints –and may remove and replace– the members of these committees. The members of these committees do not have to be members of the forums but they must either be councillors or employees of a municipality within the area of forum. The PAF determines the term of reference for any committee that it establishes. It may not, however, delegate any decision making powers to them.

The provincial department responsible for local government provides for the secretariat of the PAF. The responsibility of the secretariat includes, among other things, ensuring that monthly written reports of the Forum’s activities are given to each of the relevant municipal councils and the provincial minister. The forum may also decide to pool resources in order to cover operating expenses.

PAF is supported by a technical committee, the Provincial Advisory Forum Technical Committee (PAFTEC). PAFTEC is composed of officials from the province and its municipalities. The committee is chaired by a member of the Department of Local government and Development Planning, who is in turn appointed by the provincial minister. The municipalities are mostly represented by the municipal managers. This forum discusses issues and problems that arise at PAF meetings.

These forums have done a good job in terms of facilitating relationships between the two spheres of government. Meetings of PAF were well attended.⁴² Provincial ministers have used the forum as a good opportunity to bring essential information to the municipalities’ attention. The use of this forum is not, however, confined to serving as a network opportunity. Each member has also been able to learn how the other member of the forum has dealt with a problem which in most cases also happen to be a concern shared by other members of the forum.⁴³

The presence of all political role-players in this forum was also instrumental in that it has enabled the passing of policy decisions based upon which officials can take actions. Equally important was the coordination between PAF and PAFTEC. In one of its meetings PAF identified the need for standardization of bylaws.⁴⁴ This was later taken up by PAFTEC, which then established a sub-committee to deal with standardising bylaws. Its large size has however limited its effectiveness; between 80 and 100 participants attend these meetings.

3.2 Analysis of Provincial Intergovernmental Relations

⁴² Smith 2001, 20-21.

⁴³ Smith 2001, 20-21.

⁴⁴ Smith 2001, 20-21.

As it is clear from the foregoing discussion, almost all provinces have some form of intergovernmental relations structures. As noted by Steytler et al, this seems to have taken more or less two complementary forms.⁴⁵ First, most of the provinces have a broad intergovernmental structure that involves the Premier, the provincial cabinet, organised local government, mayors and municipal managers of all municipalities within the province. Falling under this category are, among others, the Gauteng Intergovernmental Forum, the Eastern Cape Intergovernmental Relation Conference and the Free State's PROVLOC. Second, one also finds in almost all provinces a structure which is commonly referred as the Premier's Coordinating Forum where the Premier, without including the provincial cabinet, sits with the mayors of all municipalities within the province. This specific structure may also include the MEC for Local Government as a member. The Gauteng Premier's Co-ordinating Forum, the Eastern Cape Intergovernmental Committee and the Free State's Mayoral Forum represent this other type of structure.

In terms of focus, the 'broad and all inclusive' intergovernmental structure deals with broad policy issues while the other structure, which is 'mean and lean', deals with the coordination of service delivery.⁴⁶ The frequency of meeting also varies among these structures. The first structure with a broad membership meets once or twice a year while the other one meets on a regular basis.

These intergovernmental structures are complemented by a number of other sectoral structures that more or less have components of intergovernmental relations. This is the case, for example, with the MECLOG in Free State, the Municipal Managers Meeting, the Municipal – sector provincial Integrated Development (IDP) forum and the Provincial Inter- Department Task Team (PIDTT) of KwaZulu-Natal.

In the following pages, we shall assess whether these structures have facilitated a viable and effective intergovernmental relations.

3.2.1 Statutory or informal?

Most of the provincial intergovernmental structures are informal, rather than statutory. They are often the result of initiatives taken by the provincial government. In some case, as in the Eastern Cape, they are a product of a Memorandum of Understanding concluded between the provincial government and organised local government. The only exception is the Western Cape's Provincial Advisory Forum, which is established by a gazetted Provincial Notice.

The fact that most of these structures are not established by legislation did not necessarily represent weakness. Most decentralised countries only provide some basic intergovernmental institutions and processes without defining much detail; the fear is that regulating intergovernmental relations through legislation will introduce rigidity, denying the system its 'pragmatic evolutionary development'.⁴⁷

⁴⁵ Steytler, de Visser & Smith 2002.

⁴⁶ Steytler, de Visser & Smith 2002.

⁴⁷ Watts 2001.

3.2.2 Composition

Most intergovernmental forums have as members officials both from provincial and local government. In some cases, membership is extended to include institutions that do not properly fall within either sphere of government. There does not seem to be also a clear separation between an executive and legislative intergovernmental structures.

Representation of municipalities has been varied. In some of these forums, municipalities are indirectly represented by organised local government. This is, for instance, the case in the North West Intergovernmental Forum and the Free State's PROVLOC. It is only in the intergovernmental structures of Gauteng that municipalities are represented directly through their respective mayors. In some instances, the membership is extended to include members of the provincial legislature and specifically the chairpersons of the Legislature's standing committees. This is, for example, the case with provincial intergovernmental relation forums in Eastern Cape and Gauteng. The North West Intergovernmental Forum includes, in addition to the chairpersons of the Legislature's standing committee, the Speaker and deputy Speaker.

Traditional leaders are sometimes included as members in a number of intergovernmental structures, such as the North West IGF.

3.2.3 Relations as equals?

Most of these intergovernmental relation mechanisms are the creations of provincial governments. The majority are also chaired by either the Premier or the MEC for local government. The offices of these same officials usually provide the secretariat of these forums. The equal status of provincial and municipal members is in doubt if the provinces dominate the chairperson and administrative positions.

A similar observation can be made of the Provincial Advisory Forum in the Western Cape. According to the notice that established this structure, the function of this forum is to 'advise the MEC'. Smith notes that this brings into fore the question whether this forum is "truly an intergovernmental structure" or simply the MEC's advisory committee.⁴⁸ In contrast, the Free State promotes equality among members by rotating the chairpersonship of PROVLOC and the Premier's Mayoral forum between the Premier and the chair of Salga Free State.

3.2.4 Structural linkages

With the exception of intergovernmental relations structures in the Free State and KwaZulu-Natal, most of these structures do not have institutional linkages with other similar intergovernmental relations structures at provincial level. Equally important linkages between the different sectoral structures in a province rarely exist to align or monitor policy between the different levels of government.

⁴⁸ Smith 2002.

3.2.5 Technical Structures

Almost all provincial intergovernmental relations systems have technical structures that assist the political structure. Representatives from the province and municipalities attend these meetings. The municipalities are directly represented in these forums. Most often, it is the municipal managers that represent the municipalities within the province. Organised local government is also included as additional member and the province is represented by provincial heads of departments. What makes this structure different from the political structure as far as membership is concerned is that parastatal service providers are also included as members. Telkom and Eskom, for example, are included as members both in the Eastern Cape and the North West Technical Forum. In the Free State, these service providers participate in the technical forum by invitation only.

3.2.6 Functioning

As the discussion on the structures and functioning of provincial intergovernmental relation forums reveals, some of the forums have proved to be functioning reasonably well while many others simply exist on paper. Some have never been convened after the inaugural meeting. A case in point is the Eastern Cape intergovernmental relations structures, which have never met. The same is more or less true with the intergovernmental relations in the Free State. Despite the fact that the province has established quite a number of intergovernmental relations structures, none of them seem to be functioning properly. While the intergovernmental relations structures in other provinces cannot as such present us with a success story, one can still draw on the experiences of these provinces as they offer us best practices in some regard.

Frequency and convening of meetings

A failure to convene meetings on a regular basis is common in most provinces. In the North West Intergovernmental Forums, many different players simply do not attend meetings. The same is true with the forums in Eastern Cape and the Free State.

A related problem is impact of one forum's failure to convene meetings on another structure which might otherwise function well. In the Eastern Cape, for example, the political forums exist in name only, which has negatively affected the only functioning forum in the province, the Provincial Intergovernmental Relations Technical Committee. Decisions made by the technical committee need to be endorsed and taken further by a political forum. As there is no such political forum functioning in the province, decisions made by the technical committee are not implemented.⁴⁹

Complexity of intergovernmental relations structures

The number of intergovernmental relations structures available in a province and their size has also its own share in determining the effectiveness of these forums. The experience of the Free State is a good example why the proliferation of structures does

⁴⁹ Steytler, de Visser & Smith 2002, 123.

not help much in terms of facilitating intergovernmental relations. In fact, the reason why intergovernmental structures in that province are not functioning well is because of the very fact that they are too many. The fact that there are too many institutions has resulted in the lack of substantive agenda for each.⁵⁰

In other cases, the size of the structures has also its own effect in the effectiveness of intergovernmental relations forums. Large sized structures, as the case of the PAF in the Western Cape illustrates, have found it difficult to have enough time to sufficiently address all identified problems.⁵¹

Participants' perceptions of intergovernmental relations

How the municipalities regard the intergovernmental relation structure has also its own effect on the success or failure of the intergovernmental forum. If the municipal or provincial officials consider the value of the intergovernmental relations structure as limited, it is likely that they will not participate in the process wholeheartedly. They may also then fail to appear on meetings. That exactly seems to be the case in the Free State. The district and local municipalities, regarding the value of PROVLOC as limited, have absented themselves from the meetings of this specific intergovernmental relations structure.⁵²

Commitment or the lack of it on the part of officials involved in these structures plays an important role in the functioning of an intergovernmental forum. In fact, lack of commitment seems to explain why MECLOG's political forum is hampered in the Free State. The lack of commitment on the part of the MEC, who is also the chairperson of the forum, has made it impossible for the forum to convene a meeting.⁵³ One meeting was cancelled after it has been arranged with the MEC's office as the MEC failed to show up for the meeting. The failure of the different role players to attend the meetings of the intergovernmental relations forums in the North West can also be attributed to this same problem of lack of commitment.⁵⁴

Focus of activities

Most well-functioning forums focus on exchanging information and consultation. However, no provincial intergovernmental relations structures goes beyond information sharing to align policy and determine priorities shared by provinces and municipalities. Only in Gauteng did a forum's meeting have a discussion of the provincial development strategy. In terms of the IRFA functions, the current province-municipal intergovernmental structures have a very narrow scope of activities.

⁵⁰ Steytler, de Visser & Smith 2002.

⁵¹ Smith 2001, 21.

⁵² Tweedie 2004, 10.

⁵³ Steytler, de Visser & Smith 2002, 120.

⁵⁴ Steytler, de Visser & Smith 2002, 115.

0. PART C: MUNICIPALITIES

4.1 Intergovernmental relations between district and local municipalities

There are conflicting views about the current state of intergovernmental relations between district and local municipalities. A recent survey commissioned by the NCOP revealed that 84 and 86 per cent of local and district municipalities, respectively, believed relations were good.⁵⁵ Yet an earlier report by the Portfolio Committee on Provincial and Local Government in 2003 revealed that, “relations between district and local municipalities vary from cordial and co-operative to conflictual and unproductive.”⁵⁶ Less than half of South Africa’s municipalities even responded to the 2004 NCOP survey and those that did generally represent the better run, higher capacity municipalities. As Part 5 of our second paper “District-Local Municipal Relations: the challenges to cooperative government” revealed, a number of serious problems arise in the current state of intergovernmental relations on closer analysis.⁵⁷

The NCOP survey found that nearly all (98 per cent!) of respondents claimed their greatest challenge was misunderstandings of the nature of the two-tiered district and local municipal system.⁵⁸ Related problems plaguing intergovernmental relations included indistinct role clarification (43%), dissatisfaction with demarcation (24%) and infrequent interaction between districts and locals (22%). These problems are critical, as 28 per cent of responding municipalities believed service delivery was hampered by communication failures.⁵⁹ Interestingly, over half the municipalities surveyed by the NCOP did not have dispute resolution processes in place.⁶⁰ The remaining municipalities relied on a mixture of negotiations, consultations and policies.

This overview suggests that intergovernmental relations are failing to facilitate the co-operation of district and local municipalities to coordinate their constitutional mandates and achieve efficient service delivery. The aim of this section is to examine how, by province, district-local relations have been managed prior to the coming into force of the IRFA. Specific attention is thus given to whether relations have been structured in any manner and, if so, whether they have achieved tangible results.

Part 3 establishes status quo report that will enable an assessment of the impact that the IRFA may have on district-local relations.

4.1.1 Eastern Cape

The capacity of Eastern Cape’s local municipalities is roughly divided between the province’s east and west. Of the 38 local municipalities, the 17 eastern-most are priorities of Project Consolidate, a national initiative to intervene in municipalities that

⁵⁵ Nkoko, Dudeni & Budlender 2005, 14.

⁵⁶ National Assembly: Portfolio Committee for Provincial and Local Government 2003, 9.

⁵⁷ Steytler & Jordan 2005.

⁵⁸ Nkoko, Dudeni & Budlender 2005, 15.

⁵⁹ Nkoko, Dudeni & Budlender 2005, 16.

⁶⁰ Nkoko, Dudeni & Budlender 2005, 19.

cannot provide even basic services,⁶¹ while none of the 19 western-most are priorities.⁶² The intergovernmental relations information received by a 2004 survey was also exclusively from the western most district and local municipalities. Thus, the analysis to follow applies only to the more functional western half of the Eastern Cape local government.

Eastern Cape municipalities experienced confusion over the respective powers and role of district and local municipalities.⁶³ While most (western) municipalities report a cooperative relationship with each other, they believe intergovernmental relations could be improved by district forums which would meet frequently, hold skills workshops and promote interaction.⁶⁴ Despite these coordinating shortcomings, the municipalities do not believe this affected service delivery. Most municipalities surveyed do not have alternative dispute mechanisms established.

Both *Cacadu* and *Amatole* established District Mayors Forums in late 2003 (November, for *Cacadu*), which closely resemble the new District Intergovernmental Forum envisioned in the IRFA.⁶⁵ The members in *Cacadu* include mayors and municipal managers as well as two councillors appointed by each district and local municipality, other officials with expertise in a given agenda matter, and the provincial Director of Local Government and Housing. The district executive mayor is also the chairperson. The Forum facilitates discussion on implementing provincial and national policy priorities, and service delivery coordination. Meetings have taken place every four or five months.

Cacadu has a number of other district-local bodies, though not necessarily intergovernmental in function.⁶⁶ The District HIV/Aids Council has a large and diverse membership: representatives from district and local municipalities, provincial departments of Health, Social Development, and Education; youth groups; NGOs; churches; businesses; and other HIV/Aids groups. The Council advises the district municipality on HIV/Aids-, and STI-related matters. Its also coordinates various bodies, like Local HIV/Aids Councils, NGOs and CBOs, and evaluates and monitors the progress of their various projects. The Council is active in fundraising, lobbying and capacity building on this issue.

The District Wide Infrastructure Forum includes the district and local heads of the Technical Services, other officials responsible for this sector and chairpersons of the Local Forum (mainly portfolio councillors). This body focuses on technical issues shared by municipalities. Some of Forum's activities include sharing information on infrastructure services, discussion and resolution of technical issues, and introducing new

⁶¹ Ministry for Provincial and Local Government 2005.

⁶² All Project Consolidate information in this report was taken from the national Department of Provincial and Local Government. Available online at <http://www.projectconsolidate.gov.za>.

⁶³ McKay 2004, 13.

⁶⁴ McKay 2004, 13.

⁶⁵ *Cacadu* (emailed 30 September 2005); Department of Provincial and Local Government 2004; 'New Forum for District Mayors' Dispatch Online. Available at <http://www.dispatch.co.za/2003/02/06/easterncape/emayors.html>.

⁶⁶ *Cacadu* (emailed 30 September 2005); Department of Provincial and Local Government 2004.

products or services. While the Forum has many more responsibilities, its basic purpose is to provide and enhance the technical infrastructure for other intergovernmental forums.

The Chief Financial Officers Forum (in *Cacadu* and *Amatole*) has numerous members, such as: district and local chief financial officers, municipal managers and finance portfolio councillors; the auditor general; representatives from SALGA and provincial departments responsible for local government, housing and traditional affairs; and the Institute of Municipal Finance Officers. This district body looks at financial management for municipalities. The Forum promotes best practices, provides financial training, disseminates information and assists with implementing the MFMA.

The District Health Authority includes health portfolio councillors, and other district and local health officials. Trade unions, representative groups of the health profession and the provincial health department are also invited. The forum's purpose is to establish and promote the Primary Health Care service in the district area.

Other intergovernmental forums exist, but no information is available on their membership or functions. *Amatole* and *Cacadu* both have a Local Economic Development Forum to coordinate this programme between municipalities. *Amatole's* other district-wide bodies include the District Communicators Forum, District Speakers Forum and various *ad hoc* organs (such as an interim forum assisting food parcel delivery in Buffalo City).

The success of intergovernmental relations in the Eastern Cape is mixed. The *Cacadu* and *Amatole* districts appear to have strong forums that effectively coordinate and debate matters of intra-municipal concern. The case study, below, of the *Cacadu* Intergovernmental Forum indicates a vibrant body that covers many issues of common concern to district and locals. The debate was characterized by local mayors who actively questioned the capacity of the district to perform functions discussed, like housing administration. This indicates the local municipalities are not intimidated by the district, which in turn enabled a critical debate on service delivery.

While these two municipalities have an impressive range of forums in addition to their principal intergovernmental body, the other Eastern Cape districts provided insufficient information for a meaningful evaluation. The easternmost district municipalities did not provide any information on intergovernmental forums, nor was any available in secondary sources. The fact that nearly all these municipalities are Project Consolidate priorities indicates that their forums, if they exist and function, are less effective in improving service delivery than those analyzed above.

*Case Study 1 – Cacadu District Municipality*⁶⁷

The *Cacadu* Intergovernmental Forum was modified in mid-2005 from the District Mayors Forum (DMF) to comply with the Intergovernmental Relations Framework Bill of 2004 (now the IRFA). In an August 2005 meeting, the Forum rescinded to old DMF

⁶⁷ Minutes of *Cacadu* Intergovernmental Forum meeting (22 April and 10 August 2005).

constitution and adopted the new “Rules to Govern the Internal Procedures of the *Cacadu* District and Local Intergovernmental Forum”.

The Forum meets every four to six months. In its April and August 2005 meetings, the following people attended:

- District executive mayor and one/four (April/August) councillors;
- six/seven local mayors;
- the district municipal manager and 16/11 other district civil servants (eg, the manager of corporate services, the director of development facilitation, and the town planner);
- representatives from the provincial Department of Housing, Local Government and Traditional Affairs in April; and
- a councillor from the Nelson Mandela Metropolitan Municipality.

The agendas covered an impressive range of topics. The chairperson began each meeting by noting a number of common concerns, including primary health care, small municipalities’ difficulty in raising revenue to sustain free basic services, continuity problems for training ward committee members and urged local municipalities to submit items to future agendas to ensure meaningful meetings.

In April, the attendees discussed two issues arising from the chairperson’s comments. First, various mayors and municipal managers debated a proposal for free basic electricity for farm workers. The Forum then recommended the proposal be investigated with a report created for the next Forum meeting. Second, a local mayor noted that hospital services suffered since budget funds allocated were not transferred promptly. Other mayors agreed, adding that local clinics provided better service than district clinics, while the chairperson was concerned that the MEC for Health sometimes dealt with locals without notifying the district municipality.

Presentations then followed in both meetings. The April talks included generic by-laws, the spatial database and the provincial Learnerships Programmes. One interesting presentation was for fund-raising consultation by a private consulting company. After answering questions the party left, then the mayors had a candid discussion of the proposal’s merits. The first August presentation was on the municipalities’ roles and powers under the new Liquor Act in the Eastern Cape. The presentation was useful as it stated clearly and in detail the responsibilities of the ward chairperson, local municipality and private businesses. The two presentations that followed were by private companies proposing communication and municipal “image branding” partnerships.

In April 2005, *Cacadu* anticipated section 30 of the IRFA by aligning its District Technical Support Groups with provincial technical support structures to avoid duplication. This meeting also saw reports on the tourism institutional framework, coordinating housing issues, urging locals to implement the MFMA (and request help if they are incapable of doing so) and MIG projects.

In the August meeting, the first report to the forum led to a lengthy debate on the question of accrediting municipalities to administer national housing programmes. Argument

centred on whether the district should be the accredited municipality for housing delivery in the district area. Some local mayors argued that the district may not have the necessary capacity and competent locals should also be accredited. The majority, however, agreed that the district is best suited to direct housing programmes since the necessary skill set can be centred there and will help less capable local municipalities.

The Forum also aligned its old structures to the new IRFA requirements in August; this included establishing an Intergovernmental Technical Support Structure, thus completing the task begun in April. Various other issues discussed were the LED Learnership Programme, integrating the District Wide Infrastructure Forum and a progress report on Community Development Workers.

4.1.2 Free State

District and local municipalities surveyed by the NCOP, representing *Thabo Mofutsanyane* and *Northern Free State* districts, believed relations were generally good, consultative and not dominated by the district.⁶⁸ Problems do exist, however, in policy development relating to powers and functions confusion. There was little-to- no policy coordination among district and locals in *Northern Free State*. In effect, each municipality created its own policy regarding its powers and functions in isolation, thus disregarding others' overlapping roles.⁶⁹ This has resulted in the district infringing on local powers, often without even any consultation. In early 2004, for example, the district Council decided to appoint service providers for local projects funded by district grants without informing affected local municipalities.⁷⁰ In another case, a local municipality provided a service that was clearly a district function. The local would rather act without legal authority than see the service cut off to its community since the district lacked delivery capacity.⁷¹ While relations between district and local municipalities –at least in *Thabo Mofutsanyane* and *Northern Free State*– are not antagonistic, there is much room for enhancing cooperation and dialogue.

The principle forum for district-local relations, existing in nearly all districts, is the Mayors/Speakers Forum.⁷² This body consists of the mayors and speakers of all municipalities within a district's borders. This forum's effectiveness is suspect, as little information is available on its positive outcomes. In fact *Motheo* does not even have a Mayors/Speakers Forum, but merely informal interaction when an issue of common district-local concern arises.⁷³ Although it has a forum, *Northern Free State* seems to have no members from local municipalities: the local municipalities do not seem to know the forum exists, while the district claims local representatives don't attend when invited.⁷⁴ Regardless of who is to blame, forums that exist only in name are of little use in facilitating district-local coordination and cooperation.

⁶⁸ McKay 2004, 17.

⁶⁹ de Clercq & Selesho 2004, 20-21.

⁷⁰ de Clercq & Selesho 2004, 21.

⁷¹ Mr K Mathlatsi, municipal manager, *Metsimaholo* local municipality (8 September 2005).

⁷² Department of Provincial and Local Government 2004.

⁷³ Ms L Tsotetsi, chief operating officer, *Motheo* district municipality (31 October 2005).

⁷⁴ de Clercq & Selesho 2004, 23.

Another forum of note is the Municipal Managers Forum, linked to the Mayors/Speakers Forum. No more information is available, which may indicate a quiet or non-existent role. *Northern Free State* has an additional forum: the Consultative and Skills Development Facilitator Forum (SDF Forum). This body meets about quarterly to discuss and review programmes to develop the skills of councillors and other municipal officials. Its members include mayors, as well as councillors, municipal managers, and sometimes representative from service providers or consultants. The Forum has met quite often and has accomplished a number of training programmes. The current state of intergovernmental relations in the Free State, other than the two districts discussed above, is informal or unknown. *Motheo* is the district with perhaps the most positive relations and no Project Consolidate priority local municipalities. It is the home of the province's largest urban centre, Bloemfontein. *Motheo* is also notable in having no formal intergovernmental forums. Yet even this municipality has seen confusion over roles and functions, such as fire-fighting.⁷⁵ In contrast, many less functional districts have forums similar to those discussed above. These forums –if and when they meet– are plagued with problems of unilateral policy making, and unclear division of powers and functions between district and locals. Local complaints regarding the failure of districts to coordinate municipal actions regarding provincial and national policy remain a problem.

Case Study 2 – Northern Free State District Municipality

The Consultative and Skills Development Facilitator Forum focused on skills development for municipal councillors and workers. Meetings were held in August 2004, and January, May and August 2005.

The forum's attendance was quite consistent. Its members included mayors (or councillor alternates) and municipal managers. At times other municipal representatives attended, as well as various service providers and organized local government (ie, SALGA). The final meeting was the only one where a local municipality, *Mafube*, did not send even a single representative (and this was due to an alleged transport problem).

The progress of skills development programmes are reported by each local municipality in the meetings. This continual reporting was important to encourage lagging municipalities to implement the programmes. Moreover, the “peer-pressure” of the forum reinforces the effect of mandatory progress reporting. There is a notable disparity between the success rates in different locals. The representatives have discussed these problems, as noted in the minutes, and made concrete suggestions for improvement. Other discussions address particular skills that municipal councillors lack, such as computer literacy and human resource management.

In addition to skills development, various consultants and service providers give presentations to the forum members from time to time. After a presentation by a water and sewage service provider, it was decided that the chairperson should recommend the provider for consideration in future water learnerships (also noting that local municipalities were free to appoint by their specific procurement policies).

⁷⁵ Ms T F Kgosidintsi, municipal manager, *Motheo* district municipality (7 September 2005).

The *Northern Free State's* Consultative and Skills Development Facilitator Forum shows that intergovernmental forums can be effective in coordinating and facilitating both district and local interests. This forum's success can be attributed, in part, to steady attendance by municipal decision makers, and constant supervision and reporting on programmes relating to the forum.

4.1.3 Gauteng

No information could be obtained from the two district municipalities.

4.1.4 KwaZulu-Natal

The political landscape of local government in KwaZulu-Natal has a disproportionate influence on intergovernmental relations. The history of relations between the ANC and IFP, the two principle parties, is one of antagonism. This rivalry often overshadows political infighting within each party and relations with smaller, unsympathetic parties (eg, the Democratic Alliance).⁷⁶ This combines for a restive political base on which to build solid intergovernmental structures. Numerous other problems discussed below further undermine effective inter-municipal cooperation.

Prior to early 2004, a number of intergovernmental initiatives were underway in KwaZulu-Natal.⁷⁷ *Uthungulu* district and local municipalities had already drafted and signed two protocols. The province had consulted with *Amajuba* and *Umkhanyakude*, but progress was slowed by internal division and unacceptable provisions in the draft. No initiatives existed in *Sisonke*.

Three districts –*Amajuba*, *Sisonke* and *Umkhanyakude*– partnered with ASALGP to develop and implement an intergovernmental protocol in 2004.⁷⁸ The protocol's purpose was to “formalize communications and interaction between the two categories of municipalities.”⁷⁹ Thus better relations would reduce conflict and duplication of services between district and local municipalities. Notably, the protocol, even when signed, was not legally binding on a municipality, unlike the new IRFA provisions. After much political wrangling, the district and local municipalities of *Amajuba* and *Umkhanyakude* signed on to the protocol. The *Sisonke* district mayor, however, refused to sign since he believed it would reduce his authority over local municipalities.

The protocol's preamble sets out the constitutional principles of local government, notably cooperation and equality, guiding relations in this sphere.⁸⁰ The roles of municipal political representatives are outlined in article 2 and stress equitable standing in the forums. Article 3 creates a Mayors Forum and Municipal Managers Forum meeting at least once every three and two months, respectively. Municipal managers

⁷⁶ de Clercq & Selesho 2004, 10.

⁷⁷ de Clercq & Selesho 2004, 8-9.

⁷⁸ de Clercq & Selesho 2004, 9-12.

⁷⁹ de Clercq & Selesho 2004, 6.

⁸⁰ ASALGP 2004.

administrate the forums: they must keep all recorded agendas and minutes from meetings, and distribute relevant information to ward councillors. The protocol envisions ward councillors as the link between the interests of local communities and the administrative decisions reached by district and local municipalities. Proposed district and local infrastructure projects must adhere to a procedure that ensures that the affected communities are consulted before being implemented.

The protocol also set out steps to resolve disputes until relevant national legislation was passed. In short, the dispute process is as follows:

- One or both parties must report the dispute to the MEC for local government;
- The MEC may appoint a mediator/facilitator to help parties reach an acceptable solution;
- If the issue is still not resolved, then it is referred to arbitration;
- The parties agree on an arbitrator, otherwise the State Attorney, KwaZulu-Natal, nominates one that the MEC then appoints; and finally
- The alternative dispute resolution costs are shared by both parties, unless the arbitrator decides otherwise.

This dispute resolution procedure closely resembles that found in Chapter 5 of the IRFA. At present, it is unclear if any municipality has used this procedure.

Some district mayors believe they have a “big brother” role over local municipalities. The mayor of *Sisonke*, mentioned above, refused to accept an equal relationship with locals. Even after a few meetings facilitated by ASALGP to work out an intergovernmental relations protocol, the mayor insisted that his view was supported by section 155 of the Constitution and, especially, control over distributing the equitable share received from national government to locals.⁸¹ Interestingly, *Sisonke* and four of its five local municipalities were ANC-controlled (the IFP controls the other). Thus not all (or even most) intergovernmental conflict in KwaZulu-Natal is attributable to inter-party antagonism.

Even municipalities with good intentions have difficulty in keeping the momentum of intergovernmental relations. The district and local mayors of *Amajuba* overcame “big brother” confusion and political tension to sign the ASALGP initiated intergovernmental protocol in early 2004. The protocols outcomes, however, have been disappointing. The mayors only met a few times informally to discuss specific matters without keeping minutes.⁸² The Municipal Manager Forum was more successful with some meeting at irregular intervals and records kept (though unavailable). Neither forum quite lived up to its expectations. Without records to evaluate the meetings, it is impossible to explain why this promising initiative failed. *Amajuba* has recently compiled a new protocol to be approved by municipalities and the first meeting was scheduled for 28 October 2005.⁸³

⁸¹ de Clercq & Selesho 2004, 11-12.

⁸² Ivan Shultz, PIMS Centre manager *Amajuba* district municipality, personal communication (4 October 2004).

⁸³ Ivan Shultz, PIMS Centre manager *Amajuba* district municipality, personal communication (4 October 2004).

Despite a concerted push in three districts, the ASALGP project reveals the difficulty in laying an intergovernmental relations framework over an unresponsive political base. A simple conclusion would find the principal ANC-IFP enmity as the root of failures in cooperation. While this is an important factor, it is not a complete answer. The Western Cape, as seen below, faces similar problems of district and local councils divided on party lines. Yet intergovernmental relations are at least consultative and at times even functional. At least three other factors exacerbated poor municipal relations in many KwaZulu-Natal districts. First, not all mayors and relevant officials accept the principles of cooperation and equality between district and locals. Second, municipalities cannot simply adopt protocols: they must implement them. *Amajuba* is the case in point of a municipality that let a cross-party political coup, the unanimous adoption of an intergovernmental protocol, slip away in unattended and ineffective forums. Third, the *Uthukela v The President* case analyzed below illustrates the waste in time, money and possibly goodwill of not having effective and mandatory dispute resolution schemes in place.

Case Study 3 – Amajuba, Uthukela and Zululand District Municipalities

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*.⁸⁴ 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.”⁸⁵ 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.⁸⁶

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 easily resolved the question in favour of an equitable share for districts.⁸⁷ Only 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.⁸⁸ Three local municipalities filed affidavits opposing the applicants, while two districts supported the relief sought.⁸⁹ The

⁸⁴ 2003 (1) SA 678 (CC) [*Uthukela v The President*].

⁸⁵ Perspectives on KwaZulu-Natal (2002) ‘District municipalities in court battle with national government’ Available at <http://www.profilekzn.co.za/archive/vol2-no2-march2002/latest.asp>.

⁸⁶ Perspectives on KwaZulu-Natal (2002) ‘District municipalities in court battle with national government’ Available at <http://www.profilekzn.co.za/archive/vol2-no2-march2002/latest.asp>.

⁸⁷ *Uthukela v The President* at para 6.

⁸⁸ *Uthukela v The President* at para 7.

⁸⁹ *Uthukela v The President* at para 9.

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. No evidence came forth of any attempts to resolve the dispute through any meaningful negotiation or arbitration before resorting to the courts.⁹⁰ Thus a unanimous Court declined to confirm the ruling, and then sent back for the parties to resolve themselves.⁹¹

In an informal meeting in August 2001 between KwaNaloga and the provincial Department of Traditional and Local Affairs, the minutes noted that there was no dialogue at all between the disputing parties.⁹² Moreover, the Constitutional Court could find no evidence presented of any intergovernmental interaction to resolve the dispute. The fact that the three applicants were IFP-controlled and the three opposing respondents were ANC-controlled implies a political stalemate sent to the courts. While this illustrates an intransigent political climate, it is more notable for the failure of intergovernmental dispute resolution procedures. Not only did the district municipalities resort straight to legal proceedings, but local municipalities were not even given a forum to express their views until a few belated affidavits in court.

4.1.5 Mpumalanga

All but three of Mpumalanga's 16 local municipalities are Project Consolidate priorities. Municipal failures to provide adequate service delivery have also prompted recent riots.⁹³ The dire situation was also the focus of a recent *imbizo* with President Mbeki at *Gert Sibande* district municipality.⁹⁴ In this context, effective intergovernmental relations are crucial to coordinate district and local policy and actions regarding service delivery.

Only one municipality, *Gert Sibande*, supplied information on its intergovernmental forums. The other two municipalities responded to the NCOP survey and replied that relations between districts and locals were quite negative.⁹⁵ The poor relations centre on confusion about the respective roles, powers and function of district and locals. The municipalities believed that this negative relationship has hurt service delivery.

In *Gert Sibande*, at least two intergovernmental forums exist at present. First, the Executive Mayor Forum brings together the mayors of the district and locals. Its focus is on strategic planning in the district area, specifically service delivery, budget reforms and capacity building. In a May 2005 meeting, the forum covered a range of issues.⁹⁶ The chairperson, the district executive mayor, reported on so-called "scaled down projects" in

⁹⁰ In another important case between the national and KwaZulu-Natal provincial governments, the Constitutional Court refused to decide a valid constitutional issue because the parties had not engaged in negotiations required by cooperative government in ss 40-41 of the Constitution: *National Gambling Board v Premier KwaZulu-Natal and Others* 2002 (2) SA 715 at paras 29 to 39.

⁹¹ *Uthukela v The President* at para 24.

⁹² Minutes of KwaNaloga meeting (27 August 2001).

⁹³ 'A winter of discontent' Mail & Guardian (27 May 2005).

⁹⁴ "Mbeki gets tough in troubled municipality" Mail & Guardian (31 October 2005).

⁹⁵ McKay 2004, 33.

⁹⁶ Minutes of *Gert Sibande* Executive Mayors Forum meeting (8 March 2005).

local municipalities but funded by the district. The municipalities next agreed to create a district-wide revenue management mechanism. This recognized the financial management problems of local municipalities. The meeting ended with a discussion on funding allocation for infrastructure projects.

The second body in *Gert Sibande* is the Municipal Management Forum. The municipal managers meet to discuss issues of common concern regarding strategic planning for regional service delivery. A meeting in June 2005 began with a DPLG presentation on Capacity Assessment Tool.⁹⁷ The agenda included a number of updates on matters like job evaluations for local municipal workers, MFMA training, recent IT support systems and local municipality projects with district funding. The forum then briefly mentioned the IDP process and a forum established for a local municipality to consult with farmers. The sustained discussion that followed debated the role and purpose of the Municipal Management Forum. Finally, there was a request for the district to help train officials for the EPWP before local municipalities were encouraged to attend a Spatial Development and Transport training session.

Poor intergovernmental relations are both symptom and cause of Mpumalanga's mostly dysfunctional municipalities. Chapter 3 of the Constitution compels governments, including district and local municipalities, to cooperate to define the, admittedly confusing, division of their roles and powers. While *Gert Sibande*, for instance, has held forums to resolve these issues, the presidential *imbizo* in October 2005 highlights the extent to which problems persist in the municipality.⁹⁸ However, many problems rooted in political problems, especially corruption. In *Gert Sibande*, for example, former district and local mayors resigned in 2003 and 2004, respectively, over corruption allegations.⁹⁹ It is doubtful whether the formal requirements of the IRFA will solve the turmoil, political or otherwise, which subverts any forum necessary for a successful and coordinated district-local service delivery plan.

4.1.6 Northern Cape

Municipalities in four of the Northern Cape's five districts responded to the NCOP survey.¹⁰⁰ Most respondents believed district-local relations were positive. However, municipalities faced considerable misunderstanding about the division of powers and functions. Most municipalities did not have dispute resolution measures in place. Of the respondents, only one reported a Mayors Forum and Municipal Managers Forum.

No further information is available.

4.1.7 Limpopo

⁹⁷ Minutes of *Gert Sibande* Municipal Managers Forum meeting (10 June 2005).

⁹⁸ 'Mbeki gets tough in troubled municipality' Mail & Guardian (30 October 2005).

⁹⁹ 'Ex-mayor 'blew' R150,000' News24.com.

¹⁰⁰ McKay 2004, 44.

Municipalities from four of the six districts responded to the NCOP survey.¹⁰¹ The survey indicates a positive and cooperative district-local relationship. There is little interaction, however, between district and local bodies. Most municipalities did not have a dispute resolution mechanism in place.

Various intergovernmental forums exist in Limpopo. *Capricorn* has a Mayor's Forum, District Managers Forum and District Energy Forum.¹⁰² *Sekhukhune* has a Municipal Managers Forum that meets monthly to discuss implementing district and local IDPs and related issues.¹⁰³ This district also has a Joint Development Forum which meets regularly to discuss issues of economic development and alignment of social development plans with other development partners within the district, such as with the Producers Forum and Municipal Managers Forum.

No further information is available.

4.1.8 North West

District and local municipalities in two of four North West districts generally saw their relationship as positive in the NCOP survey; some even consider it co-operative and consultative.¹⁰⁴ Yet problems still plague this province where 15 of 20 districts are Project Consolidate priorities. The division of powers between district and local municipalities continues to pose problems. Without a clear distinction, some municipalities have difficulty in knowing their role in service delivery. Interactions between district and local bodies were also rare.

The sheer variety of intergovernmental forums in the North West province is impressive. Common forums include:

- Mayors forum
- Municipal managers forum
- IDP forum
- District speakers forum

The Mayors Forum brings together all mayors and other stakeholders to address coordinating and other issues.¹⁰⁵ In the *Southern* district, the members include mayors, as well as municipal managers, of the district and all local municipalities. Its purpose is the strategic coordination of municipalities in development, planning, service delivery, capacity building, and sharing information and skills. The Forum has also created three "technical teams" for support the Forum, focusing on (i) PIMS coordination, (ii) Disaster Management Centre for the district, and (iii) powers and functions.

¹⁰¹ McKay 2004, 29.

¹⁰² *Capricorn* district municipality website. Available at <http://www.bloubergmunicipality.com/Committees.htm>.

¹⁰³ *Polokwane* district municipality website. Available at http://www.polokwane.org.za/SITA/sekhukhune/legs_docs/reports/lekgotla-nov2003-ver3.htm.

¹⁰⁴ McKay 2004, 39.

¹⁰⁵ Department of Provincial and Local Government 2004.

The Municipal Managers Forum addresses service delivery problems of concern to managers.¹⁰⁶ A District Speakers Forum exists for speakers to discuss issues of cross-border development. *Bojanala Platinum* district has two additional forums for speakers: the Speakers Local Forum focusing on governance and policy formulation, and the Speakers and Traditional Leaders Forum addressing service delivery as it relates to land issues. A final forum common to most districts is the District Facilitation Committee. Comprised mainly of municipal managers, it focuses on service delivery of water and sanitation. In *Bophirima*, it is called the “District Facilitation Committee on Powers and Functions” and topics considered include sector departments, water services, fire-fighting, and emergency services. *Southern* has a number of forums to coordinate water and sanitation issues, including: the Sanitation Forum, Integrated Waste Strategy Committee, Water Service Development Forum, and Basic Water Sanitation Steering Committee. The members of these bodies are relevant municipal official and the various consultants they employ.

Southern district has a few other forums and committees tailored to specific tasks. Its District Development Forum includes councillors and officials from its municipalities who together work on economic development in the district, with an emphasis on tourism. The Joint Development Forum deals with the district’s declining mining industry, future development for job creation. Its members include municipal officials and stakeholders from business, especially mining and agriculture. There is also a dedicated Tourism Committee.

Many municipalities have suggested a clarified role for district and local levels.¹⁰⁷ As the preceding case study shows, the use of intergovernmental forums can succeed in its role to resolve uncertainty or disputes over powers and functions. Moreover, *Southern* is the only district municipality in North West province where a majority of local municipalities (three of four) are not Project Consolidate priority municipalities. This indicates that functioning municipalities are capable of resolving conflict or confusion over powers and functions through dedicated intergovernmental forums.

Southern also illustrates the role of a general mayoral or municipal manager forum as a coordinating body. The numerous specialized forums and committees each include municipal representatives and relevant stakeholders. By delegating intergovernmental roles, such as water and sanitation provision, to a dedicated forum, issue is addressed by specialists with minimum bureaucratic hindrance. The principle forum, meanwhile, can exercise a supervisory role without becoming bogged down in detail.

Case Study 4 – Southern District Municipality

Four meetings of the Mayoral Forum were held on March, October and November 2004, and July 2005.¹⁰⁸ While the meetings in 2004 had full agendas and strong attendance, only one meeting was held in 2005 and the only item was a presentation on surveillance equipment.

¹⁰⁶ Department of Provincial and Local Government 2004.

¹⁰⁷ McKay 2004, 39.

¹⁰⁸ Minutes of *Southern* Mayors Forum meetings (March, October November 2004, & July 2005).

Most mayors and municipal managers from the district and local municipalities attended the first two meetings. However the third meeting was not official since insufficient local representatives attended. No attendance information is available for the fourth meeting.

Early meetings focus on discussing intergovernmental relations between municipalities and coordinating their respective powers and functions. For example, the first meeting discussed the transfer of environmental health services to the district and water services to the locals. Other coordinating issues discussed were intergovernmental relations clusters, a district imbizo and sector-specific planning.

The forum discussed establishing Disaster Management and PIMS Centres in the first meeting. For the PIMS Centre, the forum also delegated oversight to the district municipal manager. By the second meeting, seven months later, a coordinating committee for the PIMS Centre was created and the Disaster Management Centre was being established. Subsequent meeting minutes do not mention either Centre.

Information was also shared between municipalities, such as updates on the LED programme and Project Consolidate. In the November 2004 meeting, municipal managers submitted status quo reports on Project Consolidate. The local municipalities were then encouraged to complete a free basic energy survey. The forum clarified the role of Community Development Workers and transferred them to district to local level.

Three technical teams were established to implement the PIMS Centre, the Disaster Management Centre, and powers and functions divisions. Their success indicates the positive impact a forum can have in achieving municipal objectives, especially through supervised and dedicated sub-committees. The danger with this forum, however, is a declining attendance and less ambitious agendas.

4.1.9 Western Cape

In the NCOP survey, three of five districts that responded believed district-local relations were consultative and cooperative.¹⁰⁹ Common problems were misunderstanding of two-tier local government and lack of clear distinction for district-local powers and functions. This issue was worsened by poor communication and coordination. However the responding municipalities believed help from the Department of Provincial and Local Government could improve relations.

Many district-local municipality forums have existed in the Western Cape. A number of forums were created to effect transformation in the newly established municipalities. The most important was the District Advisory Forum (“DAF”), established in March 2001 by ministerial proclamation to (i) establish provincial monitoring and support for municipalities and (ii) enhance capacity of local government to achieve their functions.¹¹⁰ Membership included the mayors and municipal managers of the district

¹⁰⁹ McKay 2004, 50-51.

¹¹⁰ Department of Local Government and Development Planning, Western Cape ‘Advisory Forums’ Notice GG WC 5684 of 9 March 2001.

and all local municipalities. Its guiding purpose was to aid the provincial minister responsible for local government as a consultative and advisory forum. The DAF chairperson was elected from the mayors in the district, thus the district mayor is not necessarily the chair. Alternatively, a district could choose to rotate the chair amongst its member mayors.

While meetings were to take place at least once a month, this has not always occurred.¹¹¹ The chairperson or the provincial minister could also convene extraordinary meetings of the DAF. All decisions were by consensus, if possible, and the meetings were open to the provincial minister. Administrative matters were the responsibility of a municipal manager chosen as the Forum's secretary. The DAF's functions, sometimes delegated to specialized committees, included:

- Advising the provincial minister on district activities;
- Ensuring new local government is established in coordinated manner;
- Coordinating joint integrated development planning;
- Coordinating continuity in service delivery, new financial arrangements, and budget preparation;
- Sharing best-practices; and
- Advising provincial department for local government on district-level issues, including transferring staff, assets, liabilities and records when new municipalities were created.

The Forum had no established dispute resolution mechanism.

Many other forums exist to deal with specific issues of intergovernmental concern. *Eden*, for example, has specialized forums other than the DAF. The Speakers Regional Forum brings together the speakers of the district and all local municipalities for quarterly meetings to discuss common problems with their role. The Chief Financial Officers Forum is a quarterly meeting of district and local CFOs. Its members discuss issues of common concern, as well as those arising from the Institute of Municipal Financial Officers. Other relevant forums coordinating district and local municipal activities include the District Assessment Committee, District Youth Forum, Public Transport Technical and Steering Committee and Disaster Management Forum.

Cape Winelands and *Eden* are planning an HIV/Aids Forum to coordinate programmes at district and local level.¹¹²

The success of the various forums in realizing their goals differs widely by district. Overall, most districts report positive relations with their local municipalities.¹¹³ However, good relations have not always translated into effective coordination. Many district municipalities met rarely and those they did have were poorly attended. In a

¹¹¹ Atkinson, Fourie & van der Watt 2003, 36.

¹¹² *Cape Winelands* district municipality 'Draft IDP Review 2005/6'. Available at http://www.capecapegateway.gov.za/Text/2005/8/draft_idp_jan_2005_2.pdf; *Eden* district municipality 'Draft Revised IDP 2005/6'. Available at http://www.capecapegateway.gov.za/Text/2005/8/eden_idp_draft_optimised.pdf.

¹¹³ McKay 2004, 50.

meeting on 10 February 2005, for example, the MEC of local government noted the poor attendance at the *Cape Winelands* DAF and encouraged greater participation. This indifference or incapacity undermines attempts to address the most important issue between district and local municipalities: confusion over the two-tiered local government structure and its implications for powers and functions.

Various municipalities have expressed a desire for better intergovernmental coordination help from the DPLG, including clarifying definitions of powers and functions.¹¹⁴ As clarifying the roles of district and local municipalities is the purpose of DAFs, one would expect to find powers and functions discussions on the agenda. As the *Cape Winelands* DAF illustrates, however, not once in 2005 did its members discuss a powers and functions question. Some municipalities believe this confusion has had a negative impact on service delivery, resulting in higher costs, reduced revenue sources, and decreased service quality (eg, worsening personal health care).¹¹⁵

Case Study 5 – Cape Winelands District Municipality

The District Intergovernmental Forum (old District Advisory Forum) was convened four times to date in 2005.¹¹⁶ The final meeting was as the new DIF, reflecting the criteria set out in the IRFA.

Poor attendance was a problem throughout the year. Attendees usually included councillors, municipal managers and other municipal administrative staff. Even fewer people attended later meetings, despite the MEC for local government's plea for greater participation. Some local municipalities did not even have a single representative for some meetings.

The agenda was varied, ranging from updates on travel plans to coordinating national government-sponsored projects.

The first meeting discussed restructuring the DAF to conform to the (then) IRFA Bill. This was accomplished seven months later when the first DIF meeting was held. Another achievement concerned "Project Consolidate". A report to the forum on 8 June 2005 suggested improving local government relations to promote the initiative. The next meeting two months later noted that progress had been made and charged a district councillor with monitoring progress.

The forum kept its members updated on new and existing projects, such as the MIG (unused funds by locals), upcoming local government elections (locals reporting on their efforts to improve democratic participation), Provincial Spatial Development Framework (coordinating process), and Service Delivery Budget Implementation Plan (district to discuss it with locals)

¹¹⁴ McKay 2004, 50.

¹¹⁵ McKay 2004, 50.

¹¹⁶ Minutes of *Cape Winelands* District Advisory Forum (10 February, 8 June & 10 August 2005) and District Intergovernmental Forum meetings (30 September 2005).

While attendance waned, the substantive issues dealt increased during 2005. The new DIF formalizes the forum further and promotes more two-way discussion rather than a top-down approach dominated by the district municipality.

4.2 Analysis of District Intergovernmental Relations

Municipalities themselves have suggested a number of solutions to the problems of poor intergovernmental relations. Two popular suggestions were to facilitate better communication and hold regular meetings between municipalities, and to develop clear guidelines distinguishing district-local functions and powers.¹¹⁷

4.2.1 Statutory or informal?

While no statute required a provincial role in district-local intergovernmental relations, it is a constitutional duty implied by their “interdependent relationship” in Chapter 3 of the Constitution. In particular, section 41(1)(h) requires the spheres of government to assist and support each other, consult, coordinate actions and legislation, adhere to agreed intergovernmental protocols, and avoid resorting to courts. Provinces also have an ongoing duty to “provide for monitoring and support of local government” in sections 155(6)(a) and 154(1). Moreover, when a municipality fails to fulfil their constitutional or legislated duties, provinces may intervene subject to, and limited by, section 139 procedures.

Provinces have taken the initiative to create or facilitate district-local forums. In the Western Cape, the District Advisory Forums were established by proclamation in the provincial gazette. The provincial government in KwaZulu-Natal has also facilitated establishing district forums by smoothing over political divisions between ANC and IFP councillors at district and local levels. The importance of active provincial support becomes clear when de Clercq compared KwaZulu-Natal to the Free State, noting that “the success in [KwaZulu-Natal] demonstrates how much more can be achieved when the province takes an active interest.”¹¹⁸ Thus provincial government has a constitutional (and now statutory) duty to support district-local relations and some provinces have proven successful catalysts to district forums.

While no specialized intergovernmental forum for district and local municipal relations were demanded by statute, this does not mean that the forums are necessarily *ad hoc*. The *Cacadu* District and Local Intergovernmental Forum, for example, was created on 7 November 2003 with a constitution that bound all its member municipalities. It appears, however, that many districts have intergovernmental forums that exist in name, if not in reality. Most municipalities which did not provide information on intergovernmental relations would, in fact, have established forums. Yet these forums would not meet due to factors like district-local tension, lack of capacity or simply apathy. This is perhaps the greatest challenge for district-local cooperation. Forums are only as useful as the outcomes they achieve. If a district has a forum for mayors and municipal managers but

¹¹⁷ McKay 2004, 16.

¹¹⁸ de Clercq & Selesho 2004, 5.

many local representatives do not show or the forum meets only once a year, then it might as well not exist.

This leads to the finding that many districts without actual forums have instead coordinated their policy and actions through informal communication and meetings between district and local officials. Some districts, like *Motheo* in the Free State, have no forums at all. Yet *Motheo* is more successful than its Project Consolidate priority neighbouring municipalities. Thus the mere existence of intergovernmental bodies does not necessarily imply effective district-local cooperation. 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.

4.2.2 Composition

The members of district intergovernmental forums are incredibly diverse, ranging from municipal officials to private corporations to nongovernmental organizations. However, the core membership of the principle forums usually include the district and local mayors (and councillor alternates) and municipal managers. Thus the legislative, executive and public administration functions are all included in a single forum. Combining legislative and executive power in a forum is not a problem, unlike in national or provincial forums, since municipal councils (and councillors) are vested with both powers.

The real problem is when elected officials and public servants meet in a forum together. In essence, combining distinct “mayor” and “municipal manager” forums is tantamount to combining political and bureaucratic forums. Many existing municipal forums include elected officials and bureaucrats. Without more information, however, it is difficult to evaluate the influence of politicians on administrators. The danger is that the forum will permit elected officials to interfere, or even politicize, issues best left to municipal administrators. For example, a mayors’ forum should coordinate policy on, say, water delivery, while the municipal managers’ forum should develop a plan to implement this policy. When the forums are merged, politicians may exert pressure on municipal managers to modify their plans to cater to short-term political needs (at the expense of policy itself) or hinder cross-party coordination by hindering cooperation with managers from municipalities controlled by other parties. Many existing district intergovernmental forums fail to safeguard against this danger.

Private corporations and nongovernmental organizations often attend district forums. This is not only acceptable, it is often desirable. Since municipalities are encouraged to outsource some service delivery, intergovernmental bodies are an ideal place to hear service provider proposals, and have district and local municipalities debate their merits. In the *Northern Free State Consultative and Skills Development Facilitator Forum*, for example, service providers and consultants gave presentations on their services and then the municipal representatives gave their comments. There is a danger, however, that service providers could dominate meetings in districts with little capacity to provide services themselves. In short, municipalities need a forum where they can candidly discuss the merits of service providers, in particular those relating to services shared by

district and locals. Many forums have recognized this and either invite the service provider for a fixed time slot during the meeting or have separate meetings (or even forums, as in the *Northern Free State*) devoted to service provider presentations and discussion.

4.2.3 District-Local Relationship

Considerable confusion surrounds the district-local relationship: 98 per cent of municipalities cited misunderstandings of the two-tiered local government system as a major challenge.¹¹⁹ Many municipal officials assume that the district, by virtue of its greater territorial mandate and the parallel political party hierarchy, is the “big brother” of local municipalities in its region. The *Sisonke* mayor is an extreme example of this confusion. The South African political context may reinforce this view if more senior party members are consistently appointed to run for district, rather than local, positions. Thus the constitutional and statutory principle of equality between municipalities will remain an ideal until it is adopted by the political parties themselves. Furthermore, if the party hierarchy is mirrored in district-local appointments, then it is unlikely that local councillors, as the more junior party members, will assert themselves as equals when in conflict with district officials, their party seniors. The *Cacadu* District Mayors Forum meetings, however, indicate that local (ANC) mayors are not shy of criticizing the district (ANC) mayor.

The outcome of a district dominating intergovernmental relations is nearly always negative. First, in the political context just discussed, a local mayor may acquiesce to a strong district mayor even if it goes against the interests of his or her community.

Second, most forums are chaired by the district mayor (or municipal manager). This permits the district municipality to set the agenda and, in effect, dictate the focus of intergovernmental efforts. In well-functioning forums, the principle of district-local equality ensures that local municipalities help set the agenda and can have their concerns addressed during meetings. The *Cacadu* District Mayors Forum, chaired by the district mayor, saw a local municipality criticize the district’s ability to lead a housing initiative. The ensuing debate was important to assess the district-local division of responsibilities and the district representatives did not force their leading role on their locals. In contrast, the *Cape Winelands* District Intergovernmental Forum seemed little more than the district briefing locals on on-going municipal projects. The increasingly poor attendance indicates that local municipalities found little use for the forum. The most successful district intergovernmental forums are those where the district chairpersons include concerns of their local municipalities on the agenda, and permit and even encourage debate on these issues.

Finally, many local municipalities have questioned their district’s ability or capacity to provide leadership, in policy or action. In some districts, one or more strong local municipalities are wealthier and have more capacity than their districts. The strong local is then in the paradoxical position of helping the district to fulfil its duties, particularly in relation to other, less capable local municipalities. In this case, intergovernmental forums

¹¹⁹ de Clercq & Selesho 2004, 5.

should recognize the actual capacity of municipalities and let the most capable municipalities have a bigger role to benefit all municipalities in the district. In cases where a district insists on taking a leadership role it is unequipped to play, more competent local municipalities have simply ignored the intergovernmental forums.

4.2.4 Structural Linkages

Most municipal forums are informal or suffer from a lack of administrative capacity. Thus strong linkages with national or provincial intergovernmental structures are weak. Some forums compensate for this by inviting national and/or provincial representative to attend and sometimes participate in meetings. For example, the *Amatole* Chief Financial Officers Forum includes representatives from the Eastern Cape provincial departments responsible for local government, housing and traditional affairs. Thus the Forum is able to coordinate municipal with provincial policies guiding financial and budgetary issues. The *Cape Winelands* District Advisory Forum is a different case where the MEC responsible for local government addressed a meeting to encourage local municipalities to ensure the forum's success by attending future meetings. In both cases, provincial officials promoted cooperative government by trying to strengthen municipal capacity and align government policies across different spheres.

4.2.5 Technical Structures

In general, there are two types of technical structures supporting district intergovernmental relations. The first are technical committees that provide the administration and information technology support for political forums, like the Mayors Forum. *Cacadu's* District Wide Infrastructure Forum provides technical support to other intergovernmental forums and deals with common technical issues of its member municipalities. The *Southern District* has also created a number of technical teams to support its Mayors Forum. These examples indicate the importance of technical support for largely political forums.

The second type is illustrated by the Integrated Development Planning (IDP) Forum. This specialized forum brings together all three spheres of government to create a five-year development aligned with national priorities for a municipality. Although not discussed in this report, these forums are largely autonomous and work closely with the IDP Nerve Centre and other cross-sphere institutions.

4.2.6 Functioning

Little information was available on the actual functioning of municipal forums. While some of this was due to difficulty in collecting information, various sources, such as the 2004 NCOP survey and 2003 PCPLG report, indicate that many forums simply do not function at all. As this report shows, however, some forums are meeting and interacting productively.

Frequency of meetings

Meetings of various forums differ considerably, though most meet infrequently and certainly not a regular monthly or even quarterly basis. Of the districts that supplied meeting minutes, most forums met three times a year. The *Cape Winelands* district, for example, held regular meetings separated by at most four months in 2005. Other forums held meetings sporadically throughout the last two years. *Southern* district illustrates this trend: its Forum met in March 2004, held two meetings in October and November 2004, and then did not convene until July 2005. Yet some forums never even met. In KwaZulu-Natal, district and local municipal representatives in *Amajuba* met informally despite signing an intergovernmental relations protocol and *Sikonke* did not even reach the formal level of a signed protocol.

Complexity of structures

The main district-local intergovernmental forums are similar, a simple meeting of mayors and possibly municipal managers. The number of members does not seem to hinder a forum's effectiveness, as the Consultative and Skills Development Facilitator Forum in *Northern Free State* has a large membership yet appears to be an effective coordinating and decision-making body. Thus district-local forums do not seem to suffer the problem of too many members facing other intergovernmental bodies.

Another problem is the proliferation of intergovernmental and other specialized bodies at district level. In *Cacadu*, for example, a whole range of forums exist for many purposes. This report did not evaluate their effectiveness, in part because minutes and/or agendas were not available. The danger is that these bodies exist in name and not in practice. Therefore many forums in a district may in fact indicate inaction regarding substantive intergovernmental issues.

Perception of intergovernmental structures

As discussed above, the success of intergovernmental bodies depends in large part on the perceptions of their participants. If mayors or municipal managers see these forums as little more than "talk-shops", then it's unlikely anything will be achieved. This appears to have happened with the *Amajuba* protocol of 2004, which never advanced into regularized meetings. *Sisonke* is the extreme example of a potential forum never even starting since one party, the district mayor, refused to accept the principle of equality in South African intergovernmental relations.

Composition and Representation

The powers of the member mayors of a forum are important. District and local municipalities with mayoral executive systems can elect executive mayors. Executive mayors differ from ordinary mayors since they have significant powers, such as determining and recommending courses of action to the Municipal Council.¹⁴⁹ If a forum's members are all executive mayors, then their decisions will largely influence their municipalities' actions. Ordinary mayors, in contrast, are mainly ceremonial and have few additional powers to other councillors. Thus their agreements carry less weight in intergovernmental bodies. So not only is the percentage of executive mayors important, but also the frequency that executive mayors, not their stand-ins, attend the

meetings. With the passing of IRFA, membership is limited to mayors – executive and otherwise. Thus there is no means to resolve the limitation of non-executive mayors without changing the entire council structures of many district and local municipalities.

0. PART D: RECENT DEVELOPMENTS

5.1 Provincial Developments

Following the introduction of IRFA, a number of provinces have established intergovernmental structures. What follows is a brief introduction to these structures.

5.1.1 KwaZulu-Natal

KwaZulu-Natal introduced intergovernmental relations structures in anticipation of the implemented IFRA. The province established the Premier's Coordinating Forum in March 2005 in line with the (then) Bill. Members of this forum are the Premier, Executive Council of the Province, mayors of the district municipalities, mayor of metro municipality, and chairperson of KwaNaloga. The Premier chairs this forum, which meets at least four times a year.

The functions of this forum are discussing intergovernmental relation issues regarding local government, implementing national policy/legislation affecting local government in provinces, consulting on coordinating coherent provincial and municipal development planning in province, strategic and performance plans/priorities, objectives/strategies of provincial and municipal governments, and other relevant matters. The forum generally focuses on the coordination and unlocking of service delivery problems. It also considers reports from provincial sectoral forums and district intergovernmental forums.

The activities of the forum are aided by a technical committee, the Premier's Technical Coordinating Committee. Members of this technical committee are the Director General of the Provincial Administration, heads of provincial departments, municipal managers of district municipalities and metro, as well as the CEO of KwaNaloga. The Committee assists in the implementation of the decision of the Forum.

5.1.2 Western Cape

In anticipation of the intergovernmental relations bill becoming a law, the Premier of Western Cape convened the first Premier's Intergovernmental Forum (PIF) in April 2005. The purpose of this forum is to realize the objectives of finding the synergy between the NSDP, the province's development plan (called "IKAPA Elihlumayo") and the various IDPs of municipalities in the Western Cape.

The Premier considered the forum to be the ideal forum to bring greater coherence and decisiveness to the operations and delivery of municipalities making it possible to address the governance and capacity challenges that still hinder some municipalities in the province.

The forum's first meeting was attended by the Premier, provincial cabinet, the metro, district and local mayors, the mayoral committee from the City of Cape Town, and senior government officials from both provincial and local government. A second meeting in June was attended by the Premier, the provincial cabinet, metro and district mayors, and representatives from Salga Western Cape, and the Department of Provincial and Local Government.¹²⁰ It discussed the (then) Intergovernmental Relations Framework Bill, and how to align the three spheres of government.

Established in the wake of service delivery protests, the forum discussed this matter on its first meeting. It was, however, underlined that the Forum's focus will be on the long term solutions needed to ensure that both the provincial and local governments are "a caring government, responsive to the needs of people". According to the Premier, the PIF will help expedite development in the Presidential nodes, strengthen Project Consolidate, housing delivery and the implementation of free basic services.

5.1.3 Mpumalanga

The Premier's Coordinating Forum, chaired by the Premier, also includes all district and local mayors in the province.¹²¹ The forum's deliberations are focused on resolving both the subjective and objective consideration that may either hamper or delay provisions of services. It works on strengthening the performance of municipalities. In this forum, it is reported, both the province and the municipalities work together to address the problems of inflexible bureaucracy, poor planning, slow service delivery and underdevelopment. It, of course, serves also as a political network opportunity.

In some of its meetings, the following important matters were discussed: developing a provincial plan to deal with water shortages and sanitation, eradication of bucket systems, provision of free basic electricity, Project Consolidate and the Municipal Infrastructure Grants. Integrated planning and seamless service delivery by all three spheres of government are the underlying purposes of the Forum.

Interestingly, the Premier has linked the activities of the Forum with the Millennium Development Goals to emphasize the Forum's role in improving underdevelopment.

5.2 District Developments

Many municipalities have responded to and even anticipated the passing of the IRFA. The following outlines the new forums created by some district municipalities and, where available, their founding protocols and minutes from recent meetings.

5.2.1 Cacadu (Eastern Cape)

¹²⁰ Department of Local Government, Western Cape 'PIF Preparatory Meeting' (1 June 2005) available at <http://www.capegateway.gov.za/eng/pubs/news/2005/jun/106207>.

¹²¹ Premier's Office, Mpumalaga 2005.

The District Mayors Forum, renamed the District and Local Municipal Forum, recently adopted new rules to comply with the IRFA. The members are now exclusively the district and local mayors, thus excluding the municipal managers and provincial Director of Local Government and Housing. The rules adopt, almost verbatim, the membership, functions, powers, administrative provisions and dispute resolution mechanism found in the IRFA. The rules go further, describing how the (at least) quarterly meetings are arranged and outlining procedures to amend the rules.

The *Cacadu* municipalities also set up an Intergovernmental Technical Support Structure (ITSS) of district and local municipal managers on 10 August 2005. Relevant officials from member municipalities and representatives may attend meetings when necessary. The ITSS supports the Forum by:

- Deciding items to include in the Forum's meeting agenda;
- Providing the Forum with technical support and advice;
- Ensuring Forum decisions are implemented; and
- Creating reports on the implementation progress of district priorities and programmes decided by the Forum.

5.2.2 Amajuba (KwaZulu-Natal)

In mid-2005 the district and local mayors of *Amajuba* created a new Protocol, responding to the IRFA. The Protocol formalizes communication channels, in particular the distribution of local executive council meeting minutes to district municipal managers and visa versa. The district municipal manager must also inform his or her local equivalent of any planned service delivery or other activity in that local municipality. Interactions between the district and local communities are the responsibility of ward councillors. The problems of powers and functions common to nearly all municipalities is addressed by requiring the district to assist local municipalities incapable of carrying out their functions and, interestingly, requiring capable local municipalities to help out the district if it faces similar problems. The ward councillor/committee system will identify infrastructure projects and then the district, consulting locals, prioritizes funding for the projects. Finally, the Protocol sets out the principle of impartiality that councillors representing a local council in the district council must follow.

Chapter 7 of the new Protocol establishes the *Amajuba* District Intergovernmental Forum. The provisions copy sections of IRFA word for word. The Forum must meet at least four times a year. The Protocol also sets out detailed provisions on Forum resolutions, including a requirement that an executive authority give reasons if they don't ratify a resolution. The Forum's first meeting was held on 28 October 2005.¹²²

The Protocol established two other intergovernmental forums. The first is the District Speakers Forum for speakers and party whips, which meets at least twice a year. The Forum's purpose is to promote council discipline, harmonize rules and orders, and discuss other matters of mutual concern. The District Technical Coordinating Committee

¹²² *Amajuba* district municipality, personal communication (4 October 2005).

is the other body, including district and local municipal managers. The Committee provides technical help to the other two forums and implements their decisions.

5.2.3 Cape Winelands (Western Cape)

The new District Intergovernmental Forums are now replacing the DAFs, which did not always comply with the IRFA. Agendas are now limited to the Forum's role and responsibilities prescribed by IRFA. In the *Cape Winelands*, the first DIF meeting was held on 30 September 2005.¹²³ In the meeting, the new Forum was explained and then municipal representatives discussed establishing economic, social, and governance and administration clusters. No more information is available, but poor attendance indicates that intergovernmental relations remain a less important priority for *Cape Winelands* district and local mayors.

0. PART E: EVALUATING IRFA – BENCHMARKS

The success of IRFA depends on its ability to improve intergovernmental relations in the local government sphere. This report suggests a set of benchmarks to measure the progress made by IRFA a year after its implementation. The benchmarks are divided into two categories. The first measures evaluate the formal compliance of district and local municipalities to the provisions of IRFA. The second measures analyse the progress made in adhering to the goals of IRFA discussed in section 2.2 above.

6.1 Formal Compliance

1. Forums exist

Have each province, and district and local municipalities established the required Premier's and district intergovernmental forums? If a province or municipality did not have a provincial-district or district-local forum before, there must be such a body consistent with the IRFA. If such a forum did exist, the body's constitution and rules must have been amended to comply with the IRFA.

2. Membership

Do the official members of the forums conform to the limited membership demanded by IRFA? For example, district intergovernmental forums must only include district and local mayors. All existing forums that had municipal managers and others as members are now inconsistent with the IRFA. The same is true with provincial intergovernmental forums that include members of the provincial legislature and traditional leaders. Any analysis must distinguish between formal members of a forum (limited) and persons invited to attend by its chairperson (unlimited).

3. Meetings

¹²³ Minutes of *Cape Winelands* District Intergovernmental Forum meeting (30 September 2005).

Has the Premier or district mayor convened a meeting? If so, did they include issues put forward by other members on the agenda? Has the forum meet at least once in the year? For district intergovernmental forums, have they met at least once that year with service providers and other development agents to coordinate effective district services and planning?¹²⁴ While the IRFA makes no provisions for a minimum or maximum number of meetings a year, the forums must have met at least once to pass its rules of procedure and discuss its duties to comply with the Act.

4. Technical support structures

Has the intergovernmental forum established a technical support structure? While this is not necessary, if the forum has created this structure it must comply with the Act.

5. Internal procedures

Have the forums adopted rules to govern its internal procedures? Some of these rules outlined in IRFA are the functions of the chairperson, procedures for adopting resolutions and procedures to amend the rules themselves.¹²⁵

6.2 Progress on IRFA goals

1. Membership

Who, other than persons required by the Act, attended the meetings? If municipal managers attended, what role did they play in the forum (eg, observing, reporting/updating, active participation)? Did private service providers attend and, if so, did they stay the entire meeting, or present and leave?

2. Attendance

Did the members regularly attend meetings? Did the Premier or district mayor attend, or did he/she send a substitute? As discussed above, attendance by executive mayors is especially important to determine whether municipalities will act on non-binding intergovernmental resolutions.

3. Setting of agenda

Did the chairperson (Premier or district mayor) include agenda items requested by other members? The chairperson has the power to dominate the agenda and other members must assert themselves to deter this possibility. If not, the other members may become apathetic or even hostile to the forums.

¹²⁴ IRFA, art 27(5).

¹²⁵ IRFA, art 33.

4. Focus of agenda

Did the agenda reflect the role of the forum described in the IRFA? While a particular meeting's agenda need not consider each of the many responsibilities found in the IRFA, it should consider the most pressing intergovernmental issues facing districts. Not only must the agenda include these items, but the participants must discuss and hopefully resolve the issues in the meetings. Over time, the forums should track progress on major issues of concern.

5. Equality

Do forum members participate as equals, or does the Premier or district mayor dominate the meeting?

6. Inter-forums relations

What are the institutional linkages between the Premier's and district intergovernmental forums and other intergovernmental bodies? For example, is there a technical support committee and does it in fact support the main forum? If other forums exist, like a municipal managers forum, the IRFA forums should remain the principle body for province-district and district-local intergovernmental relations.

7. Dispute resolution

Has the province or district implemented a dispute resolution protocol? Has the protocol been invoked? If yes, did it resolve the intergovernmental dispute?

8. Improved service delivery

Ultimately, improving intergovernmental relations is meant to improve service delivery of basic constitutional rights. If relations have been improved by a forum, is there a corresponding improvement in service delivery?

7. BIBLIOGRAPHY

Legislation

Intergovernmental Relations Framework Act 13 of 2005.

Local Government: Municipal Structures Amendment Act 33 of 2000.

Local Government: Municipal Systems Act 32 of 2000.

Local Government: Municipal Structures Act 117 of 1999.

Constitution of the Republic of South Africa Act 108 of 1996.

Government Documents

Department of Provincial and Local Government (2004) 'A Guideline Document on Provincial-Local Intergovernmental Relations' Available at <http://www.dplg.gov.za/documents/generaldocument/Prov-loca%20guide.pdf>.

Department of Provincial and Local Government and the Governance and Administration cluster (2004) 'A National framework for intergovernmental relations in South Africa' Unpublished.

Ministry for Provincial and Local Government (2005) 'Government rolls out Project Consolidate in Municipalities' Available at <http://www.projectconsolidate.gov.za/docs/23June2005PR.doc>.

National Assembly: Portfolio Committee for Provincial and Local Government (2003) 'Report on Study Tour of Municipalities'.

Premier, Eastern Cape (2005) 'Policy speech for 2005/6' Speech delivered in the provincial Legislature (16 March 2005) available at <http://www.ecyc.gov.za/news/speeches>.

Premier's Office, Mpumalanga (2005) 'Mpumalanga Premier's Coordinating forum tackles millennium goals' Available at <http://www.mpumalanga.gov.za/news27.htm>.

Premier's Office, KwaZulu-Natal (2004) 'Kwazulu Natal, Budget Speech for vote 1' Available at <http://www.info.gov.za/speeches/2004>.

Premier's Office, Gauteng (2001) 'Gauteng Intergovernmental Forum meets' Available at <http://www.info.gov.za/speeches/2001>.

Articles, Chapters in Books and Research Papers

ASALGP (2004) 'KZN Protocols: Relations between district and local municipalities' Available at

http://devplan.kzntl.gov.za/ASALGP/Resources/Activity_Reports/Activity%20Completion%20Report%201.5_annex2.pdf.

Atkinson, D., Van der Watt, T. & Fourie, W. (2003) 'Hologram project: role of district municipalities' (Human Sciences Research Council).

de Clercq, Louis, & Selesho, Sledge (2004) 'Activity 1.5: Cooperative Governance in between District and Local Municipalities in KwaZulu-Natal and Free State' ASALGP. Available at <http://www.asalgp.co.za>.

Layman, Timothy (2003) 'Intergovernmental relations and service delivery in South Africa' Commissioned by the Presidency. Available at <http://www.sarpn.org.za/documents>.

Levy, Norman (2001) 'Instruments of intergovernmental relations: the political, administrative interface' in Norman Levy and Chris Tapscott (eds) *Intergovernmental Relations in South Africa: the challenges of co-operative government* (Cape Town: IDASA/UWC).

McKay, Lynn (2004) 'Draft Report on a Sample of Questionnaires Sent Out to All Municipalities in South Africa' (Cape Town: Research Unit of the Parliament of the Republic of South Africa).

Mavuso, Vusumuzi (2001) 'Executive Council system and Intergovernmental relations in the Province: Institutional arrangements and procedures' Unpublished paper.

Nkoko, Matsobane, Dudeni, Nontembeko, & Budlender, Debbie (2005) 'Analysis of Findings of Questionnaires Submitted to the National Council of Provinces' (Braamfontein: Community Agency for Social Change).

Olivier, Nic (2002) 'Strengthening intergovernmental relations in the province of KwaZulu-Natal: a discussion document' Prepared for the office of the Premier of KwaZulu-Natal.

Smith, Geraldine (2001) 'The role of a province in the new local government dispensation: a Western Cape case study' (LLM dissertation, University of the Western Cape).

Smith, Geraldine (2002) 'Intergovernmental relations in the Western Cape' 2 *Local Government Law Bulletin* 13.

Steytler, N. and Jordan, J. (2005) 'District-Local Municipal Relations: the challenges to cooperative government' forthcoming.

Steytler, N., De Visser, J. and Smith, G. (2002) 'Towards intergovernmental relation in KwaZulu-Natal' Unpublished, prepared for the Premier's Office.

Steytler, Nicolas (1999) 'From the Provinces: implementing intergovernmental relations in the Eastern Cape' 1 *Local Government Law Bulletin*.

Tweedie, Steven (2004) 'Activity 1.7: Intergovernmental Relations in the Free State' ASALGP. Available at http://www.asalgp.co.za/resources/activity_report.

Watts, Ronald L (2001) 'Intergovernmental Relations: conceptual issues' in Norman Levy and Chris Tapscott (eds) *Intergovernmental Relations in South Africa: the challenges of co-operative government* (Cape Town: IDASA/UWC).