CHAPTER 1

1.   NATURE OF THE STUDY

1.1   INTRODUCTION

The South African Constitution obligates government "to establish or provide for structures and institutions to promote and facilitate intergovernmental relations (IGR), and, provide mechanisms and procedures to facilitate the settlement of inter-governmental disputes" (Constitution Act 108, 1996:s41). The Constitution serves in this instance as a driver of change in the intergovernmental relations domain of governance. The reform challenges set by the 1996 Constitution Act clearly dictate that a balance should be sought between co-operation and competition in IGR. The Reconstruction and Development Programme (RDP), a development policy framework adopted in 1994 by the South African government, identified IGR as a key facilitator of developmental service delivery. The above challenges, acutely, have put the creation of a new system of interrelationships between the various spheres of government on the agenda of the executive arm of government, hence an interest in this study of IGR.

This chapter, therefore, will focus on providing an overview of the study, its academic relevance, and limitations of the research, concepts and definitions and the organisation of the thesis.

1.2   THE PURPOSE OF THE STUDY

The debate on the administrative reform of the South African government has gained unprecedented momentum in the recent past. A few years ago, there was little mention of government-wide administrative reform and whenever the issue was raised, it was perceived with hostility and antagonism because of historically and politically charged definitional issues (Mathebula, 1992:7). From 1994 through to 2000, this debate shifted, in real terms, from an ideologically dogmatic approach to a more solution-generating approach, thereby initiating a review of pre-1994 party political positions on IGR.

The definition of reform, over a period of time, has been subjected to rigorous scientific study, the aim of which was to set the scene for a collective, collaborative and integrative approach to administrative reform. The study will claim that whilst the administrative reform process of government is underway there is an equally important need, to reform the IGR landscape.

The challenge to reform intergovernmental relations was complicated by the inherent dynamism of South African politics whereby party political positions, in most instances, have been relegated to ancestral reference points. The African National Congress (ANC) election victory and the inauguration of a black majority government in South Africa has strengthened the call for IGR reform for a number of reasons, some of which are listed below.

- Firstly the ANC, as a party, is centrist in form, organization and culture. The impact of its organizational structure will influence governance in the key areas of decision-making, administrative autonomy of levels of government and the inculcation of a dialectic application of policies as per the local demographic dictates.

- Also, the ANC has a historic mandate to reverse both the culture and design of apartheid government structures - a critical driver for any South African reform initiative and, therefore, IGR.

- Thirdly, the detribalisation of regionalism as a governance option has been the cornerstone of the ANC's political mobilization and therefore brings with it obligatory mandates that may blur its IGR approach (ANC Regional Policy, March 1993:1).

- Next, the non-racialisation of South Africa would require from the ANC a decentralised system of government that would meet the subsidiarity and asymmetry principle as a requirement for its IGR design. IGR reform thus becomes central to the attainment of such objectives.

Based on the above, a quasi-federal Constitution was adopted in 1996 at a Constituent Assembly (CA) clearly divided along federalist and unitarist lines, though it was later found to have been placed on a cooperative federalist to competitive federalist continuum of constitutional positions. The resultant outcome of the continuum discourse was as follows: representatives at the CA adopted a quasi-federal Constitution with the belief that this would enhance national cohesion and uniformity across the country and thereby would ensure maximum co-operation amongst historically and deliberately divided communities; to ensure that government was as close to the people as possible; and also to ensure effective provincial governance that would impact on communities and ensure good governance (Ghordan, 1999:2).

In the process of drafting the Constitution, the CA sought to decentralise in centrist terms the dispensing of government functions. The result of the exercise and those debates - though pioneering in nature - was a compromise system of intergovernmental relations comprising traditional sub-national governments as spheres of government. The compromise brought about a political system with a new dimension to intergovernmental relations in South Africa based on co-operation with concomitant complexities and constraints, some of which had to be resolved by the Constitutional Court (Barlé, 2002:3). This was found to have been an outcome of a combination of the colonial Westminster style of government and an already matured federal system of government as was practiced through the tri-cameral parliament and separate development governing systems of the erstwhile apartheid government.

The interrelationships of the various spheres of government, particularly the National/Provincial executive relations, form the cornerstone of this study. The focus will be to relate this to the need for administrative reform as a stated thrust of the post-apartheid government of national unity.

> *To this end, the RESEARCH QUESTION IS:*
>
> *To what extent can a central agency such as The Presidency be involved in the administration and management structures of intergovernmental relations in South Africa?*

The investigation is triggered by a growing and almost accepted perception that intergovernmental relations reform requires a direct, synergising and strategic involvement of the highest political office in South Africa, and in this case, The Presidency.

1.3   SIGNIFICANCE OF THE STUDY

The general South African reform landscape presents opportunities for a study of all aspects of administrative reform.   Furthermore, and perhaps most significantly, the introduction and establishment of a revised socio-political order in South Africa has placed the need for the fundamental and all encompassing socio-economic development of the country on the centre stage and IGR has become a key component of that debate. By introducing a sphered IGR system, the 1993 and 1996 Constitutions created a broad bandwidth for intellectual as well as academic discourse on definitional issues around policy development, policy management and, most significantly, patterns and loci of IGR as an executive activity of government.

The existence and proliferation of IGR structures at inter- and intra-sphere domains of governance has elevated the need to study intergovernmental relations.   Consequent to this elevation, to date, government has initiated several endeavours to grapple with IGR. President Nelson Mandela established a Review Commission that identified the need for an enquiry into the functions, needs and relations between the three spheres of government. Part of the commission's mandate was to investigate the IGR landscape as it was unfolding in the new dispensation (Presidential Review Commission (PRC) Report, 1998:44).

The Department of Public Service and Administration followed up with an audit on Provincial Government aimed at improving the relationship of Provincial governments and National agencies. This was popularly referred to as the Ncholo Report (Titus, 2000:17). The Department of Provincial and Local Government (DPLG) commissioned an IGR audit with a mandate to provide a fieldwork study of the processes and mechanisms of

cooperation across all three spheres of government. Shortly after assuming office, President Mbeki established the Presidents Coordinating Committee with Premiers to facilitate IGR at an executive level. Mentzel (2000:11) points out that DPLG has identified more than 30 such IGR structures and has started a process to audit their effectiveness.

This study will add to the existing and South Africa specific theory on IGR, notwithstanding the fact that, the still dominant pre-1994 partisan Public Administration writing has influenced these theories. A specific contribution will be made to the body of literature dominant in the Public Administration and Management domain of academic, intellectual, socio-political as well as public discourses. In recognition of the fact that the transition to democracy in South Africa took place in the context of a dynamic political process characterised by the end of the Cold War, the collapse of the socialist community of states, the demise of central and commandist government planning systems as well as the socio-economic governance realities of globalisation (Umrabulo-Journal of the ANC, 1997:Section 8), this study, will contextualise the growth of decentralisation and IGR within a developing and a transitional economy perspective.

The study, therefore, has the following objectives:

- To clarify the need for intergovernmental reform in South Africa and to postulate a guiding definition of intergovernmental relations;

- To describe the current intergovernmental relations in South Africa from a historical perspective;

- To describe the nature, content and form of intergovernmental relations;

- To postulate on the concepts of intergovernmental relations as they relate to systems and forms of government both ideologically and structurally;

- To identify and to assess the motivation for intergovernmental relations by governments;

- To identify factors that influence and normatively guide intergovernmental relations systems and assess such; and

- To suggest guidelines for South Africa.

The aim of the study therefore, is to develop a framework for IGR reform. The framework will include the growing importance of central and/or co-ordinating departments, particularly The Presidency, in managing IGR.

1.4   LIMITATIONS OF THE STUDY

Public Administration research and practice occurs in environments that are context-laden and politically charged. Changes in political administrations and therefore realigning ideological frameworks adopted by political incumbents, make research in this field sensitised to limiting variables generated by time and space within observed contexts. The most common limitations to public administration research are those of the historical period being studied, the theoretical confines that the researcher selects, the availability of source material related to the subject under review, as well as the socio-politico and ideological constraints as may be imposed by the research environment and by audiences.

Myrdal (1969:35) submits that the State (which the author regards as the primary unit of analysis as far as Public Administration research is concerned) is collectively made up of and controlled by people, most of them heavily prejudiced, under the influence of competition for job, social status and "ideological hegemony and all sorts of interests and inhibitions that form causative factors for the general behaviour of society. Inherent in

States, and therefore Public Administrations, will be a tendency to propagandize certain ideologies through a battery of decisions, regulations, declarations and legislations" (Myrdal, 1969:37). If we accept that social science research, seeks not only information about phenomena, but has a focus on the deciphering of reality from perception, then Public Administration research should do likewise.

The State-Public Administration link established above, therefore, dictates that Public Administration research should be viewed from vintage points sensitive to the need for researchers to liberate themselves from the powerful heritage of earlier writings in their field of inquiry, ordinarily containing normative and teleological notions inherited from post generations and founded upon the ideological and moral philosophies, from which societies' socio-economic dictates branched off (Myrdal, 1969:4). Researchers should also liberate themselves from the socio-cultural, political and economic milieu of the society in which they live and earn social status as well as the influence stemming from their own personalities, as moulded not only by traditions but also by their individual histories, constitutions and inclinations (Myrdal, 1969:4). The researcher liberation process draws attention to the importance of placing limitations on any Public Administration research.

Shipman (1988:161) attributes limitations of Public Administration research to conceptual, technical, organisational and policy issues.

> *Conceptually*, limits are imposed by difficulties in modelling human behaviour and organization - these include issues such as the historical period and ideological dictates informing the development and practice of phenomena under review (Shipman, 1988:162). Included in the conceptual limitation realm is the reality of

shifting interpretations of the grip of scientism on social inquiry and Public Administration research (McGrath *et al.,* 1982:69-70).

Technically limits are imposed by the difficulties in the research process. This includes technical issues of research tools, the schedules followed, the statistical and quantitative axioms utilized, and the degree to which the researcher pursued data within defined research 'norms' (Shipman, 1988:164).

Organisationally, limits are imposed firstly by the inherent hopes of the researcher, particularly in the choice of supporting text and observations, and secondly by the established traditions of the scientific community within which the researcher works (Shipman, 1988:164).

The *policy* limitation is imposed by the difficulties of wanting to discern policy challenges, generating information to change the course of policy, interacting and arguing with policy choices to generate change, tactically delaying decision-making, engaging in a policy enlightenment process that will permeate established policy doctrines, and engaging in an intellectual exercise that may influence the policy course (Shipman, 1988:164-5).

Limitations of this study are those imposed by the historical period under review (conceptual), the confinement of the IGR actors (conceptual and organizational), the availability of source material (technical and policy), and the ideological issues prevalent during the period under review which also permeate all other limitations. The limitations will not be put under any specific heading, since they are interrelated and therefore

integrated as narrative in the text. Hereunder is an exposition of the limitations imposed on this study.

Whilst the South African constitutional history has as its 'formal' starting point the year 1910 (Marais, 1980:5), the study will focus on the IGR historical period that commenced in 1961, when the Republic of South Africa Constitution Act (Act No 32 of 1961) was adopted, through to the adoption of the 1996 Constitution, as well as the years preceding 2000. This particular historical limitation is informed by the fact that 1961 marked a decisive break with traditional colonial government as well as ushering in a "constitutional democracy" of South African origin. This is referred to as a "democracy" because of the dispensation subscribed to basic principles of constitutional democracy, such as, regular elections, respect for the rule of law, and the judicial case law system of dispute resolution and arbitration.

The 1961 Government of South Africa was the first to seriously consider questions of IGR between their tiers of government. This was especially so because the design of government would perpetuate both the socio-political and economic ideology of that government. This was notwithstanding the fact that, in the process, indigenous communities were being relegated to sub-human constitutional status (Bunting, 1964:143). It was during this period that South Africa faced rigorous constitutional reform and transformation often characterised by two distinct approaches to political change.

Firstly, the need to remove any traces of chauvinistic discriminatory tendencies, practices and ideologies in the governance of South Africa. This approach was aimed at realising a long held aspiration by the people of South Africa represented in various political formations to the left of that sixties government, that: "South

Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of all people…all people shall be entitled to take part in the administration of the country" (Freedom Charter, 1955:1). Parallel to this was a need to maintain white privilege through the might of the state. This was aimed at sustaining the long held political will of apartheid architects, the Nationalist Party, when they declared at their 1941 Union Congress that: "Every coloured group of races, Coloureds, Natives, Asiatics, Indians, and so on, will be segregated, not only regarding their place of dwelling or the neighbourhoods dwelt in by them, but also with regard to the spheres at work. The members of such groups, however, can be allowed to enter White territories under proper lawful control for the increase of working power and also for the necessary increase of their own income. To each of such segregated race groups of coloured subjects of the Republic, self-government will be granted with in their own territory under the central management of the general government of the country, in accordance with the fitness of the group for the carrying out of such self-government for which they will have to be systematically trained" (Bunting, 1964:4).

Secondly, it was also during this period that five Constitutions were adopted, and in all instances the question of intergovernmental relations featured as a cornerstone for effective 'native' control, effectual service delivery and governance. The 1961 Constitution made provision for the government of 'natives' in their native reserves as self governing territories (Constitution Act No 32, 1961:s108-111), and this provision was to become a prelude to the granting of a South African type independence to the tribal governments of Transkei, Bophutatswana, Venda and Ciskei (the TBVC states). The African National Congress aptly classified this state of affairs as 'colonialism of a special type', where the coloniser creates "colonies"

within a technically decolonised state (Umrabulo Journal of the ANC, 2002:Section 18).

The 1983 Constitution, in addition to the Whites only parliament, created two new houses of parliament (House of Delegates and House of Representatives) for the administration of Coloured and Indian communities (Constitution Act 110, 1983:s37). Subsequently, this led to the creation of other IGR challenges since service delivery departments were created for all population groups. The 1983 Constitution also provided for the three "virtual homelands" for Indian, Coloured and Urban Black peoples with the latter being denied access to any form of franchise that could bring them closer to a legislative and executive competence.

The 1993 and 1996 Constitutions amalgamated the previous apartheid creations into yet another nine-province dispensation, clearly following established ethnic patterns and Apartheid conceptualised spatial development planning and patterning as well as the authoritative economic development nodal zones report of the Development Bank of South Africa (Constitution Act 200, 1993:Schedule 1). It was during this period that South Africa underwent a massive regionalisation phase that was to be crowned by a constitutionalised co-operative government system of IGR. The last ten years of this period presented critical reform and transformation challenges that will continue to plague the theory and practice of IGR both in South Africa and the rest of the world. Like all social science, professional and policy studies, the implication of historical recall and the subsequent removal of perceived biases which the writer may or may not bring into this study can lead to further limitations.

Institutionally, the study is confined to national/provincial IGR, whilst not demoting to a lower status the importance of local government relations with the other spheres. The importance of the local government is not negated, particularly because it completes the binary relations structure within the taxonomy of IGR. The acknowledgement by the Constitution that local government is a distinct sphere of government confirms its service delivery importance and therefore cannot be ignored in an IGR study. The year 2000's re-demarcation of wards and districts in terms of the Local Government Municipal Demarcation Act (Act 27 of 1998) has elevated the critical importance of local government in service delivery. The sub-ordinate status of local government has been removed by the 1996 Constitution's recognition of local government as a first contact point with government by the citizenry. This, however, would require an independent study. The significance of local government in IGR is further institutionalised by a statutory recognition of organised local government formations as a factor. Thus, this study has been confined to national provincial relations.

The limited availability of existing theory and therefore specific text material on IGR in South Africa created a reliance on primary information available at and from the South African government. Except for the limit imposed on government information , access to information was, and still is, governed by the National Archives of South Africa Act (Act 43 of 1996). The essence of the Act is generally to limit the access to information generated by executive institutions of government for a period of 20 years from the date the information was generated (National Archives of South Africa Act 43 of 1996:s12). The release of such information relies, in the main, on the discretion of the state archivist, notwithstanding the spirit of the Freedom of Information Act. The equally important need for balancing national security coherence and transparency as envisaged in the Freedom of Information Act has been one of the defining limitations experienced during this study.

The administrative transition by state departments which was characterized, in some instances, by a hysteric need to destroy information that may have incriminated the previous civil service, coupled with the recruitment of a relatively new and inexperienced corps of public service personnel, has, as one of its information management disasters, the mismanagement of information storing divisions in terms of the Archives Act. This has resulted in the loss and disappearance of valuable information that may have enriched aspects of this research. These information gaps were overcome through the practice of triangulation as a research method.   Therein the author went about validating the remaining archival records by using sources prepared by visitors from other cultures, biographies, historical accounts and interpretations of the time that included participants' remembrances of events. The public nature of media reports and availability of audio-recorded and electronically stored information, limited the impact of the Archives Act.

Another limitation imposed on this study was the perspective adopted. Although the study took into account other views along the theoretical analysis, represented by the unitary-federal continuum, the main perspective from which conclusions were drawn have been that of the author. The resultant conclusions as well as the limitations of this study also brought forth fruitful avenues for future research. The most important of these avenues is in the elaboration of aspects of IGR as they pertain to the local government spheres.

Notwithstanding the above, the existence of primary sources (in the form of acts, green and white papers, Constitutions, quoted media reports and speeches of political and administrative office bearers) neutralised most institutional limitations that may have constrained the conclusions.

1.5 DEFINITION OF TERMS AND EXPLANATIONS OF CONCEPTS

1.5.1 <u>Intergovernmental relations</u>

The concept of IGR, that is "intergovernmental relations", has many applications in the body of Public Administration and Policy knowledge. The concept has two key words 'intergovernmental' and 'relations' where 'intergovernmental' is an adjective meaning that which concerns or is conducted between two or more governments (Tulloch *et al.*, 1993:796); 'relations' is a noun meaning "the way in which a person, thing or entity is associated, connected and linked to another" (Tulloch *et al.,* 1993:1293). IGR are necessary interactions occurring between government institutions of all types. From the above dictionary explanation, intergovernmental relations may be regarded as the interaction of the different spheres (in case of South Africa), tiers and/or levels of government. The use of the term 'interaction', however, does not do justice to the good governance imperatives of governments, as it only refers to some reciprocal action or influence.

The narrow view of IGR as an interaction, in most instances, yields a system of administration so marked by its officialdom, red tape and fixed, almost arbitrary rules and procedures, that it sometimes seems to exist to for perpetuation of the bureaucracy's or bureaucrat's own sake (Hanekom and Thornhill, 1982:149-151). In the South African context, the definition of IGR has been expanded by the constitutional imperative placed on its practice. The Constitution declares that: "in the Republic, government is constituted as national, provincial and local spheres of government that are distinctive, interdependent and interrelated" (Constitution Act 108, 1996:s40).

In these key IGR concepts below the Constitution identifies what requires attention in order to clarify the meaning of "intergovernmental relations" and its meaning in the context of this study.

Distinctive: Malan and Mathebula (2002:1) argue that the distinctiveness of the various spheres of government refers to the degree to which each sphere is autonomous in a legislative and executive sense. A government audit report explains *distinctive* as the degree of legislative and executive autonomy entrenched by the Constitution. Here, spheres are distinguished by the power to make and to execute laws, though the assumption is always that there are particular public interests best served by respective spheres (IGR Audit Report, 1999:7). The *distinctiveness* referred to herein also denotes governance's uniqueness that defines the three spheres of government. *Distinctiveness* also translates into the assumed equality of the spheres albeit in their hierarchical organisation in fiscal and revenue-raising capacity terms (Abedian and Biggs, 1998:56-59). In the South African context the *distinctiveness* of a sphere, by design, was intent on ensuring that National government did not have unlimited power over sub-national governments. Reminiscent of federal systems, *distinctiveness* would provide constitutional safeguards to prevent pre-dominance by powerful coalitions based on economic, political, ethnic strength or any other chauvinistic tendency.

Interdependent: the *interdependence* of spheres refers to the degree to which one sphere depends upon another for the proper fulfilment of its constitutional obligations. The dependency however defines in a salient manner, the hierarchical relationship between the supposedly equal spheres of government; that is, the provincial and local spheres are entitled to assistance from the national and

provincial spheres respectively, and this is institutionalised through constitutional provisions (Constitution Act 108, 1996: s100, 139, 155). The converse of that entitlement may be seen in the monitoring and intervening by the sphere that assists the entitled (IGR Audit Report, 1999:7). *Interdependence* of spheres emphasises the co-relationship between national, provincial and local governments and may include aspects such as the duty of the spheres to empower one another as well as monitoring or intervention in the activities of the dependent sphere (Malan and Mathebula, 2000:1).

Interrelated: refers to the duty of each sphere to co-operate with one another in mutual trust and faith for the greater good of the country (IGR Audit Report, 1999:7). The Constitution imposes a responsibility on each sphere of government to disassociate itself from what Adie and Thomas, (1982:226) refer to as "competitive federalism" which is a system of governments where federal states/provinces compete for resources to the detriment, in most cases, of weaker states/provinces. In a manner that guarantees the unity of the South African state, the constitution declares upfront that "…the Republic of South Africa is one, sovereign, democratic state" (Constitution Act 108,1996:s1). *Interrelatedness,* in fundamental terms, refers to the responsibility of each sphere to co-operatively support each other and avoid litigation against one another (Malan and Mathebula, 2001:1). The *interrelatedness* of spheres of government, therefore, grows into significant governance value, particularly as it relates to coordination of government activity.

From the above clarification, it may be deduced that IGR are simply the reality and regularity of interactions between governments in a country. This would include interactions between organs of state in the purview of one government with another within

its purview. (Supplement to Discussion Paper, Strategic Initiatives to Enhance the effectiveness of IGR, 2000:13-16). Anderson (1960:6) defines IGR as an important body of activities or interactions occurring between governmental units of all types and levels within a federal system. Fox and Meyer, (1995:66) further explain IGR as encompassing the complex and interdependent interactions among various spheres of government, and this includes the co-ordination of public policies among national, provincial and local governments through programme reporting requirements, grants in aid, the planning and budgetary process and informal communication among officials.

The distinction between the terminological meaning of IGR and the philosophical traces of federalism, particularly in relation to the pursuit of common goals by sub-national jurisdictions, creates a grey area between IGR and federalism. Notwithstanding, federalism is the generic term for what may be referred to as shared rule relationships, and IGR has to do with particular ways and means of operationalising a system of government and ways and means that involve extensive and continuing relations among spheres of government (Elazar, 1987:16).

The White Paper on Local Government (1998:38) emphasises the formal and the informal character of processes within which IGR occur. Opeskin (2001:1) further defines the notion of OGR as relations between central, regional and local government including those that occur within a sphere of government, and how these relate for the facilitation of common goal attainment. Cameron (1994:23) takes the view that IGR are the geographical division of powers amongst the various spheres of government in the nation-state, wherein the division of powers relates to the distinct and independent role each sphere has to play in the intergovernmental domain. Malan and Mathebula (2002:1) suggest that the character,

number and form of government institutions best demonstrate the jurisdictional diversity of IGR.

Besdziek (2001:191) describes IGR as entailing the conduct of the affairs between different public sector institutions where such relations occur both vertically and horizontally. The combinations of interdependencies and influences amongst public officials (elected and appointed) in a functional intergovernmental relations setting, will have a particular emphasis on financial, policy and political issues (Agrannoff, 1996:4).

Mentzel, suggests that IGR are interactions and mechanisms for multi- and bi-lateral, formal and informal, multi-sectoral and sectoral, legislative, executive and administrative interactions entailing joint decision making, consultation, co-ordination, implementation and advice between spheres of government at vertical as well as horizontal levels and, touching on every sphere of governmental activity (Mentzel, 2000:3). In broad terms, IGR constitute a negotiation and consultation process between governments, aimed at harmonising government's actions and decision-making. It is a process of interaction that cannot and should not be confined to mere structures as it operates at the interface between what the Constitution provides and what the country requires (Discussion Paper - Strategic Initiatives to enhance the Effectiveness of IGR, 1999:vii).

The IGR approach is not only an effective method of governance. This is also an apprenticeship in negotiation, the art of conflict resolution, which is an inevitable dimension of life in society (Dion, 2000:3). In adopting IGR as a method, governments demonstrate to citizens the value of working together for the common good of the country. This is particularly important in societies like South Africa where people have a history of purposefully structured regional, linguistic, ethnic, cultural and racial divisions. The notion

of IGR, being regarded as an operating platform for governmental interaction and transaction, lionises this view. Elazar (1987:16) further submits that IGR are universal phenomena to be found wherever two or more governments (national or sub national) and/or jurisdictions, interact in the development and in the execution of public policies and programs.

This study will argue that IGR occur between various units of government and therefore a definition of the various forms of IGR is necessary. The relations between spheres of government in a vertical manner, in this instance, will be referred to as IGR. However, the horizontal relations between units of government or jurisdictions within a sphere will in this instance be referred to as intra-governmental relations. The relations between a sphere of government or a defined jurisdiction within a sphere with its equivalent across national borders, in this instance, will be referred to as trans-frontier IGR, whereas if this occurs within national borders but across jurisdictional borders it will be referred to as cross-border IGR. Other relations between governments falling outside those that are defined here shall form part of the IGR definitional scope in its strata.

For the purposes of this study intergovernmental relations are the various combinations (vertical and horizontal) of interactions, interdependencies, influences and transactions conducted by government officials (elected or appointed) between and amongst spheres of governments (as well as organs of state) in a country. The framework for such relations and their accompanying hierarchic order is defined in constitutions and national legislation. It is operationalised through agreements, contracts, legislated mandates, cross-border agreements and other legally binding instruments. It occurs through the flow of information as generated and exchanged in government by both elected and appointed officials.

1.5.2 <u>Co-operative Government</u>

The dictionary meaning of "co-operative" includes, in a list of many, some of the following: collaboration, teamwork, interaction, co-ordination, assistance, and sponsorship. It is an adjective of the word "co-operation" meaning a willingness to co-operate (Tulloch *et al.*, 1993:316). Within the co-operative government approach Government is intuitively understood as executives (in the constitutional rather than the management sense) and to a lesser extent legislatures (Supplement to Discussion Paper on Strategic Initiatives to Enhance the Effectiveness of IGR, May 2000:13).

Co-operative government, in the South African context, has as its history the constitutional negotiations that were divided along federalist and unitarist lines; there prevailed a sterile 'for' and 'against' federal debate (Mathebula, 1992:7). The ensuing debates at the Kempton Park negotiations yielded to positive indicators, a departure point that clearly identified that the nation can best be served if an intergovernmental partnership is established between the various spheres of government that recognize the importance of co-operating and co-coordinating as equals, without eroding the right of the respective sub-national governments to serve their inhabitants in a manner that suits their particular requirements (De Villiers, 1995:3).

The influence of the German constitutional dispensation on South African IGR design is best reflected in the adoption of co-operative government as an IGR framework. The origins of co-operative government are traced in the German Bundestreue concept, which entails a set of unwritten principles upon which relationships between national and regional government is based (De Villiers, 1995:4). The fundamental thrusts of Bundestreue are

trust, partnership and respect for each other, and in the case of sub-national and national jurisdictions it would mean recognition of each other's defined constitutional responsibilities (De Villiers, 1995:4). The Bundestreue concept places sub-national and national jurisdictions under a political and legal obligation to do the following: to assist and support each other; to inform and consult on matters of common concern; to co-operate and co-ordinate joint projects; and to maintain friendly relations (De Villiers, 1995:4).

The Bundestreue concept can be likened to its South African equivalent, referred to as Ubuntu. Ubuntu is a Zulu word meaning humaneness. Its general application would cover elements such as equal treatment of persons, communal sharing of amenities, respect and love for one another, partnership, mutual trust and sharing. Whilst Ubuntu is a Zulu word it has equivalent translations into the other 11 South African official languages such as "botho", (Sotho) "byi munu" (Xitsonga) and therefore a traditionally grounded philosophy that, in practical terms, can guide the South African IGR system. The concept of co-operative government acknowledges through its Ubuntu principles that levels of government do not divide into watertight compartments, especially if their jurisdictions dovetail (Sindane, 1997:3).

In a developmental government paradigm that characterised the South African government since 1994, co-operative government would, by design, recognize the complementary manner in which the various levels of government should be galvanized for purposes of good governance. This would be to derail and/or curtail any notion of national power aggrandizement. Venter (2001:192) describes co-operative government as referring to the constitutional prescriptions on the conduct of IGR. The legislation towards co-operative government reconciles the notions of distinctiveness, autonomy and

independence with the interdependence between these spheres necessary to ensure the success of a national development project.

Malan and Mathebula (2002:3) identify the following as points of departure in a co-operative government system:

- national, provincial and local governments share responsibility for virtually all functions;

- the division of functions between spheres of government cannot be achieved without lowering the almost "sacred" importance of National government;

- national, provincial and local governments are not adversaries but have a co-operative, competitive and collegial relationship; and

- (within the context of the South African government's philosophy based on the notion that "South Africa belongs to all who live in it") the government is conceived as one and serving one people.

Co-operative government, therefore, is about partnership governance characterised by national unity, peace, co-operation and co-ordination, effective communication and an infinite conflict avoidance attitude (Malan and Mathebula, 2002:3).

Co-operative government, for the purpose of this study, will mean a fundamental philosophy of government based on a reciprocal obligation of spheres of government to trust, to support and to assist one another in co-coordinating service delivery to the community. This would include a legal, political and moral obligation to inform and to consult one another as well as co-operating with and co-ordinating efforts on matters of common concern and joint projects, thus patterning intergovernmental collaboration and co-operation to ensure the success of national development projects.

1.5.3 Spheres of Government

A "sphere" is a field of action, influence or existence (Oxford Wordfinder, 1993). The word "sphere", as is used in the South African Public Administration and public administration sense, denotes a degree of equality between levels of government. Public Administration is the scientific study of public administration (Wessels and Pauw, 1999:9).   In the Constitution, the equality inferred with regard to "spheres" implies that the national, provincial and local governments have so-called areas where they can exercise almost exclusive autonomy but within the confines of the Constitution. In a sphered type of Constitution, organs of state are not subject to each other in any way, and any relationship can only be a product of their endeavours, where joint action must be characterized by consensus, (IGR Audit Report, 1999:7-8). This is an area of concern for effectual IGR.

For the Constitution, the spheres of government are modelled as circles of influence by national, provincial and local government pivoting around a fulcrum of binding principles where each sphere has a relational obligation to co-operate <u>unless</u> expressly directed to do otherwise by legislative, party political dictates or any other exogenous factor.

Besdziek in Venter (2001:171) defines spheres of government as a South African system where each sphere of government is autonomous but interlocked with the other sphere and where each must operate in unison in the delivery of services.   The nation of interlocking spheres is further clarified as implying equality between these spheres. This is in contrast with the more explicit hierarchical conception implied by "tiers" and "levels".

The notion of spheres of government, however, assumes the existence of an extremely decentralist state governance philosophy. Whilst the South African state is decentralist by

constitutional design, the operation of the state machinery and particularly the management of the fiscus, indicates a growing bias and a certain gravitation towards a centrist state.

Spheres of government, in this study, will mean an interlocking system of spheres operating in unison in character, field of action and influence of a national, provincial and local government where interaction is governed by the principle of equality before the Constitution and diversity within constitutionally protected autonomies and the sub-national status.

1.5.4 <u>Federalism</u>

The need for people and polities to unite for common purposes and yet to remain separate to preserve their respective integrities is often referred to as federalism. The application and use of federalism has often generated ambiguities related to the balance between political power diffusion, in the name of liberty, and the concentration of the same power in the name of unity and/or the indivisibility of political power (Elazar, 1987:33).

Elazar (1987) distinguishes between a federal character of a state and a structured federal state. The former refers to a condition where sub-national jurisdictions with some form of political representation determined through quasi-independent franchise mechanisms exist. The latter refers to clearly defined powers for governments within a federation. In federal systems of government, the defining characteristic is the non-centralization of polities whereby powers of government within them are diffused among many centres, and whose existence and authority is guaranteed by the constitution (Elazar, 1987:34).

Federalism is loosely defined as the principle according to which levels of government, general and regional exist side by side in the state, each possessing certain powers and functions (Goode, 1983:7). Livingstone, cited in The Encyclopaedia Americana, argues that each of the levels in a federation is limited to its own sphere, and within that sphere, it is autonomous and independent; he cautions that neither of the spheres may arrogate to itself powers assigned to the other. In a federation each sphere operates directly upon the people and no sphere is wholly dependent upon the other for its legislation, taxes and administration. The emerging intellectual consensus on the meaning of federalism is that it generically refers to an association of governing entities (often referred to as either states, provinces and/or regions) that has been formed (mostly through a constitution) for certain common purposes, but in which member entities retain a large measure of their independence (Wheare, 1963:1). Critical to the sustaining of a federation, both in character and structure, is its ability to establish and maintain a polity where government by the people produces at one and the same time a strong self-conscious national organisation whilst keeping intact the rights and cultures of the units as enshrined in the Constitution (Hicks, 1978:4).

The western discourse on federalism, traditionally, has been formulated within the framework of centre-state relations, focusing on centralization and decentralization. Federalism has also been traditionally viewed as both a territorial and a non-territorial project. This addresses the fragile equilibrium to be maintained between the indestructible union and indestructible units. As a non-territorial project, it is directed to the issues of cultural representation and identity in a multi-cultural society (Heun, 1990:183).

Such a traditional viewpoint has a tension sustaining effect on the practice of federalism since it stresses distinct identities. The historical emergence of polities founded on public

choice, has always yielded states that are federal in character, regardless of whether or not they are federal in structure (Elazar, 1987:4). Philosophically a federal arrangement is one of a partnership established and regulated by a covenant, the internal relationships of which reflect the special kind of sharing that must prevail among the partners, based on the mutual integrity of each partner (Elazar, 1987:5).

In state terms federalism may also be understood as the principle of the union of states in a federation that links the states together creating an acting unit, which still allows them certain independence (Heun, 1990:168). Federalism can also be said to be an IGR system based on the differentiated allocation of powers to sub-national units. The degree of autonomy in exercising the power - *vis-à-vis* the powers of the national authority - distinguishes federations from one another.

A federation, therefore, exists when in a state there are clearly defined powers of sub-national jurisdictions with a separate politically determined infrastructure. The reference to levels, spheres and/or sub-national jurisdictions, has a distinct and operational meaning, namely, the range or territorial extension of power and authority. These levels are never sharply divided, because they constantly interact, as the persons operating within them argue, fight, compete, co-operate and compromise with one another (Freidrich, 1968:3). In the author's opinion the communities involved in the various levels of government, shape the contemporary world through their interactions and transactions.

Dion (2000:3) argues that no other system allows us to reconcile common action and diversity of experience as effectively as does federalism. Elazar (1987:5) submits that in its broadest sense federalism involves the linking (structurally or otherwise) of individuals, groups and polities in lasting but limited unions to provide for the pursuit of common ends

while maintaining the integrities of all parties. Dion (2003:3) further submits that unitarism can lead more easily to policy choices as such changes may be interwoven into a central government and, usually, in accordance with a single fixed plan.

The degree of autonomy debate and the evidence emerging from actual practice of government, over time, has created a continuum of federal types. In most instances the various federal types define the manner in which sub-national jurisdictions of a federation choose to relate to one another. The reference therefore to competitive, co-operative, and hostile federalism reflects an intellectual resolve to characterize the manner in which sub-national units relate. Federalism, as an operational concept, has increased ways with which the political issues resulting from competitive, co-operative and hostile interactions, could be dealt (Freidrich, 1968:4).

Canadian federalism, for instance, has developed through a number of phases, and in each instance reflected particular historical dictates and constructs. In its evolution, that is remarkably similar to the growth of the present South African government) Canadian federalism started off as a quasi-federal state with national government showing little to no respect for the supposedly independent and autonomous State (namely, Provincial) Governments (Adie and Thomas, 1982:226). This was encouraged and given credence by a number of constitutionally granted controls over provincial actions. This is similar to the monitoring and intervention sections provided for in the South African Constitution. The current form of Canadian federalism gradually evolved from the power to provinces phase, to emergency federalism, then the 'father knows best' federalism, to the more acceptable co-operative and double vision federalism (Adie and Thomas, 1982:226).

Co-operative and double vision federalism, like the South African co-operative government system, includes a process of negotiation and bargaining among governments of relatively "equal" political status, the author argues. Freidrich (1968:4) maintains that from a strictly administrative standpoint, the idea of federalism or a Federation assumes the center as given and primary. The striking feature of these evolutionary phases is the ability of federalism to be flexible, thereby allowing variations when centralizing, decentralizing, distributing (non- centralizing) and devolving national and provincial powers. In the Canadian setting, the various world wars, and both the accompanying economic depressions as well as the native policies, determined the form of federalism that Canada had to follow.

Adie and Thomas (1982:229), as examples, cite the manner in which the federal government began to levy corporate taxes, apply wage controls and prohibit strikes in wartime industries as a dictate for centralization of power. The South African setting (though the government prefers not to refer to South Africa as a federation) exhibits similarities albeit with historical gaps and differences. It is the submission of the author that the development and restitution agenda of the post-1994 South African government constitutes an "emergency" that can be likened to the wartime emergencies in other parts of the world. This emergency is further exacerbated by a historical tendency, both during and after peacetime, for liberation leaders to emphasize the nation-building objective, thereby giving emphasis to centrist and to commandist paradigms of governance and government.

The understanding of so-called South African federalism should therefore be contextualised in a phased approach, and in certain instances, fused with phases similar to those undergone by it's Canadian counterpart. The quasi-federal nature of the South

African Constitution, coupled with the "emergencies" that the present government has to address, also defines the epicentre of its IGR system. Political distrust, for instance, that prevailed during South African Constitutional negotiations (interestingly, both in the 1909 and 1992 conventions), demonstrates how issues such as regional, ethnic, racial and economic strength can determine definitions of governance systems from being unitary to being federal. Canadian federalism, for instance, developed through a number of phases, and in each instance, reflected particular historical dictates and constructs.

Therefore, there is pressure for scholars to avoid seeing federalism as a static pattern or design, characterized by a particular and precisely fixed division of power between governmental levels (Freidrich, 1968:7). Federalism can be expressed in various forms, with the social, territorial and cultural expressions being the most fundamental and within which any emergent expression could be contextualised (Nemni in De Villiers, 1994:143-4).

Socially federalism has been conceptualised as being concerned with people as individuals and in their capacity as citizens, whereby they relate to each other federally and respectful of each others' integrities whilst cooperating in every aspect of life (Elazar, 1987:71). The social expression of federalism also emphasises the permanent religious, ethnic, cultural or social groups around which political life is organised (Elazar, 1987:71). The distinguishing factors are seen as pillars in the structuring of polities formally and/or otherwise. Heterogeneous societies have over their entire histories always preferred to establish respective governments and governance systems that are federal in form and in character. The author observes that the risk of expressing federalism within a social paradigm is that it tends to degenerate into a mechanism of social engineering. A defining feature would be

the glaring disparities in access to resources. The degree to which the political resolve of a society is cohesive has been found to be a neutralising antidote in socially structured federations.

Territorially expressed, federalism creates a favourable atmosphere in shaping the geographical basis of social and political organisations in federal systems. The demographic settling of people as characterized by the past politics of conquest, dispossession, forced removals, and urbanisation and modernisation, has created settlement territories. The established territories vary in terms of population, economic activity, socio-political and cultural concentrations, that tend to define power and dominant nodal points (Barbasi, 2000:25-30). The boundaries (both virtual and physical) created by these nodal points served as strong bulwarks for the diffusion of power, hence territory has consistently been a growth point for political action (Freidrich, 1968:48-49). The definition of socio-political, or for that matter any access-related interest, is located in some form of defined political territory, and may be expressed through the use of the country's defined political mechanisms (Elazar, 1987:73).

Federalism, with its noble intention of preserving the integrity of sub-national units' identity, culture and tradition, logically, should be based on fundamental territorial divisions of power, so that territory becomes the primary unit of political action (Hicks, 1978:4; Elazar, 1987:73).

The geo-political portrait of the South African polity reflects settlement patterns that have been shaped by a process of social engineering, namely, Apartheid, using race and ethnicity as the basis for selective human dislocation and placement.

Whilst some settlements were engineered others are historical and therefore originated as a result of deep traditional and cultural criteria defined by history. The settlement concentrations referred to, tend to create a minority-majority dichotomy as far as the design of government is concerned.

Territorial divisions of power, as an expression of federalism, can be used to protect minority and/or vulnerable communities, by allowing them greater autonomy within their 'own' political jurisdictions (Elazar, 1987:73). Federal polities by design, are not accepting of the dominance of a single concentration or nodal center, irrespective of its strength and/or role in societal development (Hicks, 1978:4).

The *cultural* expression of federalism recognizes that societies are made up of a series of interrelated covenants and compacts, which allow parties within them to unite for common purposes whilst retaining their integrities (Elazar, 1987:78). The innate basic human concerns with own religion, own language, own ideology, and so on, serves to create sub-communities within a larger, more comprehensive community (Freidrich, 1968:53). It will require many centuries to make cultural differences homogenous, as it is difficult, if not impossible, to create a country out of distinct territories without any community of states which have been peopled by different stocks and are living on varied soils (Freidrich, 1968:54).

In such instances above, Elazar, (1987:78) argues that federalism implies an attitude toward socio-political relationships which leads to human interactions that emphasize co-ordinate rather that superior-subordinate relationships, negotiated co-operation and sharing amongst parties. The degree of political socialization a society undergoes, particularly in the context of communicating the content of

federalizing society, shapes the validity of federal systems (Hague *et al.,* 1992:147). The growing traditional loyalties, particularly ethnic and ideological affiliation in South Africa, as manifest in the established political mobilization nodes and emerging urban support networks (based on ethnic origin and party political affiliation), provide a currency with which the South African federal experiment can use to promote political integration appropriate to indigenous cultural conditions (Hague *et al.*, 1992:147; Elazar, 1987:79).

For the purposes of this study federalism means a system of government organized into national, regional (provincial) and local spheres acting together for the common good of society, where the power of government between the spheres is diffused amongst them. The purpose of such diffusion is to maintain a self-conscious nation state whilst keeping intact the relatively arrogated autonomy of spheres, and where such arrangements are Constitutionally guaranteed.

Strict adherence to territorial distinction and the relative recognition that sub-national units act together for the common good of society, therefore, create a continuum along which various federal modes may be plotted. The continuum is interchangeably referred to in the study as the federalist-unitarist continuum or as the confederal to unitary continuum.

1.5.5 Decentralisation

Decentralization is understood in the science of public law as the establishment of legally autonomous administrative institutions that fulfil their functions autonomously and free from outside directives and are subject only to oversight regarding the legality of their actions. The World Bank defines decentralization as a process of devolving political, fiscal

and administrative powers to sub-national units of government (Burki *et al.,* 1999:3). Decentralization is differentiated from deconcentration in the sense that the latter refers to the manner in which central governments increase the autonomy of regional offices whilst preserving the right to give directives and full oversight. Decentralisation, on the other hand, is further understood by Manhood, cited in Barlé (2002:3), to be the sharing of part of government power by a central ruling coalition with other non-central coalitions, each having a defined authority within a specified area or state. Decentralisation is the transfer or delegation of legal and political responsibility for planning, resource use and allocation, and management from national jurisdictions and agencies to sub-national jurisdictions, field decision centres, semi-autonomous bodies of government and governance, regional and/or functional authorities and voluntary non-governmental bodies (Barlé, 2002:3).

Decentralization originates as an IGR management technique, from the need to address the limitations of central and/or command types of government. In a centralized government system the vulnerabilities inherent in the top-down dissemination of government and governing information, are perpetually hidden in the topology of the existing communication network (Barabasi, 2002:144). The challenge of governments, along the representative to absolute monarch systems of government, has always been to create systems that seek to neutralise the risk associated with a possible destruction of the central node of control and therefore destroy communication with regional jurisdictions (Barabasi, 2002:144). The resultant outcome of this challenge has been the design of command systems and structures that relate to the centre but has sub-jurisdictional centres with which command, management and control are enhanced. This did not, however, reduce the relative hold of the centre on the peripheries; hence the growing importance of distributed power as opposed to decentralized power (Barbasi, 2002:144).

The arguments against decentralization have not deviated an inch from those advanced when the decentralization movement evolved. Distributed power as a governing system advocates a cellular link of the governing nodal points (Barbasi, 2002:145). The distributed power movement advocates wall to wall political jurisdictions that are interwoven, designed in mesh-like architecture and capable of creating organic IGR (adapted from the Paul Baran's theory of Network, cited in Barbasi, 2002:145). The distributed power system creates multiple links between sub-national jurisdictions. The emergence in IGR practice of techniques such as cross-border jurisdictions and virtual service authorities can be traced back to this movement.

For the purposes of this study *the author categorizes decentralization as a process of devolving central governmental authority and power to sub-national units of government, and deconcentration as the delegation of functions in an autonomy expanding manner that does not compromise central government's right to give directives and have full oversight. Centralization and concentration would be the reversal of the above processes.*

The next chapter addresses critical historical developments of IGR in South Africa*.*

1.6   ORGANISATION OF THE STUDY

As a means of providing an overview of the organisation of the entire thesis, the following summary is provided.

Chapter One provides an overview of the study to be investigated wherein the purpose of the study, its significance, its limitations, definitions and explanation of concepts and the organisation of the thesis will be outlined.

Chapter Two outlines the research methodology. A rationale for the choice of a qualitative approach in designing the study will be provided. The various qualitative research strategies and/or methods will be explained and supported by expanding on the various qualitative analysis tools. The role of ethics in research will also be explained. The author will conclude by arguing for the combination of the outline of research methods, techniques and tools.

Chapter Three will examine a historical overview of the South African intergovernmental relations (IGR) system that outlines IGR developments in terms of the 1961 Constitution, 1983 Constitution, the 1993 Interim Constitution as well as the current Constitution, namely, Act 108 of 1996. This Chapter will offer a historical perspective and will indicate the environment within which IGR development occurred in South Africa.

Chapter Four will address the literature review on intergovernmental relations (IGR). In this chapter the origins of IGR will be investigated and the various authority models defining it will be described. The distinctive features of IGR, the normative guidelines and factors that influence it, including types of IGR will be outlined in theoretical perspective.

Chapter Five will provide a critical review of the executive intergovernmental relations (IGR) structures of the National/Provincial spheres of government. In this chapter flaws in the different structures will be described with the intent of reconstruction in the following chapter.

Chapter Six will explore alternative approaches to evaluating the current status quo based on the literature study in Chapters Three and Four as well as drawing lessons from them

for the design and the implementation of intergovernmental relations (IGR) reform in South Africa. In this chapter, proposals on the nature and form of IGR structures in South Africa will be made. Theoretical conclusions by the author will also be provided in this chapter.

Chapter Seven provides a final evaluative overview of the study as a whole. Recommendations for reconstruction and reform will be provided.