The Impact of Intergovernmental Relations and Co-operative Government on Good Governance in South Africa

I P Malan

School of Public Management and Administration University of Pretoria, Pretoria

ABSTRACT

Since post Apartheid in 1994, the system of intergovernmental relations and co-operative government in South Africa had evolved, not only because of the constitutional/legal framework thereof but also because of the statutory commitment of the various spheres of government to the implementation of the principles of co-operative government and intergovernmental relations. The institutions of government in South Africa have, existed as a series of interlocking devices, pervasive throughout society, and all aimed at promoting the objectives of the national development and poverty alleviation policy. The attainment of development goals is heavily dependent on an effective system of intergovernmental relations and also upon the degree to which the machinery of government can operate in a state of inter-institutional harmony. Through the establishment of various institutional arrangements for intergovernmental relations – and the successful operation of these structures – it is expected that all three spheres of government will continually strive to co-operate with one another in mutual trust and good faith. Without the effective operation of intergovernmental relations in South Africa, projects and programmes aimed at furthering and promoting the principles of public administration cannot succeed.

Whereas intergovernmental relations consist of the sum total of relationships among and within the spheres of government, be they hierarchical or based on equality, the principles of co-operative government lock these relations into a particular normative framework. The core of this framework is that the decentralization of state power in terms of the Constitution of the Republic of South Africa, 1996 is not based on "competitive federalism" but on the norms of cooperative government.

In this article, the intergovernmental relations system in South Africa, its milestones and challenges over the past years of democracy will be reviewed. Reference will be made to the successes and failures of the current system of intergovernmental relations and possible solutions to remedy the mentioned failures will be suggested.



INTRODUCTION

Since the redefinition of the centralized governmental structure of the Apartheid era in South Africa, focus has been on enhancing the capacity of government to achieve reconstruction and development. The focus of government was directed at promoting a common understanding that the new democratic South Africa would have to be a developmental one and that policy need to redress past imbalances through integrated, participatory and partnership-orientated governance, planning and management. The constitutional conception of co-operative government and intergovernmental relations in South Africa is premised on the interdependence of the three spheres of government (namely national, provincial and local), while recognizing that the government, in order to function effectively, needs to function as a coherent whole. The principles of intergovernmental relations and cooperative government in South Africa are set out in Chapter three of the Constitution of the Republic of South Africa, 1996 and apart from recognising the interdependence of the three spheres, also highlights their distinctiveness and interrelatedness. The spheres of government must, while co-operating with each other, foster friendly relations; assist and support one another, inform and consult on matters of common interest, co-ordinate their actions and legislation; adhere to agreed procedures; and avoid legal proceedings against one another. Co-operative government and intergovernmental relations accept the integrity of each sphere of government, but it also recognises the complex nature of government in modern society.

South Africa cannot adequately function as a cohesive whole unless certain requirements for co-operative government and intergovernmental relations are met. Some requirements may include the following: co-ordinating activities to avoid harmful competition and duplication; setting a framework for co-operation and mutual intervention; rationally and clearly dividing roles and responsibilities among various government bodies to minimise confusion and maximise effectiveness as well as settling disputes constructively.

DEFINITION OF CONCEPTS

For the purpose of conceptual clarity, it is necessary to define the concepts: intergovernmental relations and co-operative government.

Intergovernmental relations

William Anderson (1960:3), one of the intellectual parents of the intergovernmental relations field, claimed that intergovernmental relations is a concept intended to "designate an important body of activities or interactions occurring among governmental units of all types and levels". He further states that the distinctive features of intergovernmental relations suggest the increased complexity and interdependency of political systems (Anderson, 1960:3). The characteristics of these more complex and interdependent systems are: the number and growth of governmental institutions; the number and variety of public officials involved in intergovernmental relations; the intensity and regularity of contacts among those officials; the importance of officials' actions and attitudes; and the preoccupation with financial policy issues.

The concepts of intergovernmental relations can also largely be formulated in terms of human relations and human behaviour. There can be no intergovernmental relations if the importance of the relations amongst officials is not recognised. Individual interactions among public officials are at the core of intergovernmental relations (Wright, 1978:2).

Wright (1978:2) further emphasises that intergovernmental relations are not onetime, occasional occurrences that are formally set out in agreements or rigidly framed by statutes or court decisions, but that it is the continuous day-to-day pattern of contacts, knowledge sharing by public official and the exchange of information. Intergovernmental relations recognize multiple unit relationships and focuses on public officials acting in an inter-jurisdictional context while it is also concerned with informal working relationships in institutional contexts.

Intergovernmental relations is intended to promote and facilitate co-operative decision-making and ensure that policies and activities across all spheres encourage service delivery and meet the needs of the citizens in an effective way (DPLG, 1997:3)

Co-operative government

Co-operative government is based on the belief that all three spheres of government are able to work together by co-operating and providing the citizens of South Africa the services that would benefit all. It represents the basic values of the government as stipulated in Section 41(1) of the Constitution, 1996, as well as the implementation of these values through the establishment of structures and institutions. Co-operative government is a partnership among the three spheres of government requiring each government to fulfil a specific role and gives greater legitimacy to democratic regimes, their policies and outcomes which are products of accommodation, compromise and at times consensus rather than those based on the exclusion of key sectors of society, which in turn fosters conflict (Mhone and Edigheji, 2003:75). Because co-operative government is based on relationships among institutions in terms of certain policy areas (therefore structured- and rule-based relationships), it may enhance the capacity of the collective, while imposing constraints on individuals in the design and implementation of policy and legislation. The aforementioned may minimise corruption and enhance transformation. Co-operative government is therefore not an end in itself, but a means to an end, enhancing development and improving the standard of living of people (Mhone and Edigheji, 2003:74).

There is a conceptual difference between co-operative government and intergovernmental relations. Co-operative government is a fundamental philosophy of government (constitutional norm) that governs all aspects and activities of government and include the deconcentration of power to other spheres of government and encompasses the structures of government as well as the organisation and exercising of political power (Discussion document, 1999:21). It is specifically concerned with the institutional, political and financial arrangements for interaction among the different spheres of government. Co-operative government is thus about partnership government as well as the values associated with it – which may include national unity, peace, proper co-operation and co-ordination, effective communication and avoiding conflict. Intergovernmental relations is one of the means through which the values of co-operative government may be given both institutional and statutory expression and may include executive or legislative functions of government (Audit Report, 1999:12).



Chapter Three of the *Constitution, 1996,* states that co-operative government should be the conceptual framework through which the aim of promoting a development-oriented state is achieved.

EVOLUTION OF INTERGOVERNMENTAL RELATIONS IN SOUTH AFRICA

The reality of the development of South Africa is that it is shaped by the coexistence of two economies. The first economy is highly developed, wealthy and internationally competitive as well as resilient and sustainable. The second economy is characterized by underdevelopment where people struggle on a daily basis to survive and are domestically and globally marginalized. This pattern of economic life is the result of the apartheid economy, which also influenced the evolution of intergovernmental relations in South Africa.

Before 1994: Apartheid

Before 1994, South Africa had fragmented administrations where the spending of public resources and the delivery of services were done along racial lines. Budgets were highly centralized.

In 1990, the liberation movements were unbanned and negotiations between the Apartheid government and representatives of these movements (such as the African National Congress) commenced. One of the key issues of the negotiations was the nature of the South African state. The liberation movements were initially opposed to a "federal" model of government and advocated a unitary state that would be able to transform South Africa after three centuries of racial discrimination and domination. The African National Congress believed that "only a centralized, unitary state could have the strength and resources to engage in the massive process of social and economic transformation that lay ahead. Fragmenting and dispersing authority would make decision-making more difficult and undermine the capacity to achieve reconstruction and development" (Murry and Simeon, 2000:5). Some ANC leaders came to see the advantage of having effective provincial governments, both for the delivery of services and empowering of the people, and they became convinced that provincial governments could be combined with strong leadership from the national government. During the negotiations the different parties embarked on an enquiry into an appropriate system of constitutional government that would promote the principles of a good and effective government (Haysom, 2001:47 as in Mhone and Edigheji, 2003:158). A form of regionalism with concurrent powers was agreed upon, along with a set of overriding powers by the national government (when in national interest and if necessary) which formed the basis of the intergovernmental system in South Africa during that time. A compromise was therefore reached which was reflected in the interim Constitution of 1993. The following was the result of the eventual compromise (DPLG, 2007:3):

- a decentralized state with a strong national government;
- nine provinces with elected legislatures with executives having jurisdiction over a number of functional areas:
- local government was given relative autonomy with regard to service delivery matters;

- provinces and local government were to exercise their authority within a framework and direction set out by the national government;
- the national government played the major role in terms of fiscal matters.

The then South African model for intergovernmental relations was described by Levy and Tapscott (2001:11) as a political approach towards managing tensions in government.

1994 - 2008: Democratic rule

After the elections in 1994, the South African government had to face the challenges of progressively eliminating poverty and to mobilize resources and effort of all sectors to achieve that goal. The aforementioned would only be possible through the establishment of an effective system of intergovernmental relations. The intergovernmental relations system evolved rapidly from 1996-2003 with only moderate legal regulation. Some pieces of legislation established specialist intergovernmental forums, while others catered for intergovernmental dispute settlement in a specific context, but intergovernmental relations were largely unregulated and practices evolved pragmatically as governments in the three spheres sought to give effect to the founding principles of co-operative government (Layman, 2003:12).

In the 1996 Constitution the concept of concurrent powers was developed with the addition of co-operative government. Chapter three of the Constitution, 1996, however, sets out only broad guidelines and principles for intergovernmental relations and co-operative government but states that an act of Parliament must establish or provide for structures and institutions to promote and facilitate intergovernmental relations and provide for appropriate mechanisms and procedures for the settlement of intergovernmental disputes. This resulted in the drafting various legislation and policy documents to promote intergovernmental relations and co-operative government in South Africa.

Table 1 highlights some of the legislation and policies promoting intergovernmental relations in South Africa.

Intergovernmental relations take place through a variety of processes (such as informationsharing, consultation, monitoring, intervention and dispute settlement), institutions and practices in South Africa. The aforementioned are the main points of communication; dialogue and interaction among the spheres of government and the interaction can be informal or formally structured in legislation. Over time, particular institutions have become recognized and are the customary channels through which government transacts, co-ordinates and executes its mandate. Currently the Department of Provincial and Local Government (DPLG) plays a key role in guiding the evolution of intergovernmental relations together with the Cabinet Governance and Administration Cluster. The DPLG takes the responsibility for the implementation of legislation dealing with intergovernmental relations and to develop appropriate policies and legislation to promote co-operation among the institutions in the various spheres of government. The DPLG also provides support, strategic intervention and partnerships to facilitate policy implementation in the provinces and local government (DPLG, 2007:9). The vision of the DPLG highlights its mandate of establishing and promoting "a well co-ordinated system of government consisting of national, provincial and local spheres working together to achieve sustainable development and service delivery".



Table 1 Policy environment for intergovernmental relations

Policy	Intergovernmental relations implications
White Paper on Reconstruction and Development, 1994	Policy document that stipulated the importance of a participatory local government system to encourage provincial-local intergovernmental relations
Development Facilitation Act, 1995 (Act 67 of 1995)	The Act provides a basis for a coherent framework for land development according to a set of binding principles – promotion of intergovernmental relations among all spheres of government and stakeholders in the process of land development
South African Qualifications Framework; Housing Act, 1997 (Act 107 of 1997); National Water Services Act, 1997 (Act 108 of 1997); Rural Development Strategy, White Paper on Transforming Public Service Delivery, 1997; National Environmental Management Act, 1998 (Act 107 of 1998); Skills Development Act, 1998 (Act 97 of 1998); White Paper of Municipal Service Partnerships, 2000 – and others	Reflect some principles of co-operation, integration and the promotion of governmental relations pertaining to development, planning and service delivery issues
Constitution of the Republic of South Africa, 1996	Chapter three – principles of co-operation and intergovernmental relations
Organised Local Government Act, 1997 (Act 52 of 1997)	Relationship between provinces and municipalities was formalised – monitoring, supervision and intervention
Financial Fiscal Commission Act, 1997 (Act 99 of 1997) and Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997)	Makes provision for the establishment and determination of fiscal intergovernmental relations among the three spheres of government
Division of Revenue Act – for each financial year	Provides for the equitable division of funds to all three spheres of government – promotes transparency during the budget allocation process
White Paper on Local Government, 1998	Encourages provincial governments to support the promotion and maintenance of intergovernmental relations
Municipal Demarcation Act, 1998 (Act 27 of 1998); Local Government Municipal Structures Act, 1998 (Act 117 of 1998) and Municipal Systems Act, 2000 (Act 32 of 2000)	Formalisation of the various roles of provincial governments in terms of provincial-local intergovernmental relations
Municipal Finance Management Act, 2003 (Act 56 if 2003) and Public Finance Management Act, 1999 (Act 1 of 1999)	Modernise the financial management system and ensure accountability. Define the relationship between spheres of government in terms of local government financial management as well as the supervisory and monitoring roles of provincial governments
Intergovernmental Relations Framework Act, 2005	Seeks to provide focus, clarity and certainty regarding core aspects of intergovernmental relations at the executive level of government. Provides for the establishment of intergovernmental structures (President's Co-ordinating Council, National intergovernmental forums, provincial intergovernmental forums, municipal intergovernmental forums) as well as the conduct of intergovernmental relations and the resolution of intergovernmental relations disputes.

Adapted from Thornhill, C., Odendaal, M.J., Malan, L., Smith, F.H., Van Dijk, H.G., Holtzhausen, N., Crous, M. and Mello, D.M. 2003. *Provincial Supervision of Municipalities*. Pretoria: PAIR Institute. p 13 – 20.

The establishment of legislation and policy promoting intergovernmental relations in South Africa can be regarded as milestones in promoting co-operative and partnership government. The mere existence of structures, institutions and policy for the promotion of intergovernmental relations, does however not guarantee an effective system. Officials and politicians serving on the various forums and responsible for intergovernmental relations should develop a "mindset" of co-operation and information-sharing and show true commitment towards implementing the principles of co-operative government.

CHALLENGES

The system of intergovernmental relations and co-operative government in South Africa still face numerous challenges. These challenges are often the result of the "tension" between national direction (national government defining how to secure the well-being of the people) and locally defined preferences (provincial and local governments determining their preferred choices within their area of jurisdiction) built in by the Constitution, 1996 (Layman, 2003:10). The 1996 Constitution allocates government functions on either an exclusive of shared (concurrent) basis. The national government is exclusively responsible for national defense, foreign affairs, the criminal justice system, higher education, water and energy affairs and administrative functions such as home affairs and tax collection. The bulk of social services are shared (concurrent) competencies between national and provincial governments (such as school education, health services, social security and welfare services, housing and agriculture). In the aforementioned areas, the national government is responsible for policy formulation, determining regulatory frameworks and overseeing the implementation of these functions. The provinces largely focus on the implementation within the national framework. The purpose of intergovernmental relations should be to manage this tension and to establish a coherent government that delivers service through the three spheres of government.

Even though legislation exists to guide and promote intergovernmental relations, complex problems of interdepartmental and intergovernmental co-ordination arise as the three spheres of government seek to integrate and give effect to co-operative government by establishing institutions and practices. Many of these institutions and practices unwittingly hamper performance with little overall improvement in co-ordination. According to the DPLG (2004:8) integration is a strong, goal directed attempt to find common ground for joint action and a variety of mechanisms to integrate the operations of the state were introduced in the last decade. The aforementioned was done to realize four objectives, namely:

- To close the gap between policy intent, budgetary commitments and implementation effort where priorities of functions affected more than one department (horizontal integration) or more than one sphere (vertical integration). A Cabinet cluster system was introduced to ensure that departments that had previously worked independently of each other, would work together to pursue government priorities.
- To consolidate and streamline disparate and fragmented revenue streams in order to enhance efficiency in the allocation of funds, improve grant administration and to foster better policy coherence (for example (e.g. the consolidation of several municipal infrastructural grants into a consolidated Municipal Infrastructure Grant).



- To achieve integrated service delivery through various means, for example through the uniform extension of basic service to the poor (Free Basic Services program); targeting poverty relief to concentrations of urban and rural poor (Integrated Sustainable Rural Development and Urban Renewal Programs); and enhancing the sustainability and viability of programs as well as the accessibility of social services to the poor (social grants); boosting economic activity and employment (extended public works program).
- To achieve the integrated and sustainable development of communities where integrated development planning came to prominence with the introduction of municipal integrated development plans. A single planning and budgeting process within a municipality was preferable to the alternative of municipalities preparing several plans under different legislative directives (DPLG, 2004:9).

Integration has, however, raised numerous questions about policy management, budgeting and implementation that are still not resolved. Some of these questions are:

- How should policies and programs be managed when functions are shared between spheres without undermining individual performance and accountability?
- What is the most efficient way of co-ordinating shared functions if a cycle of endless and unproductive co-ordination is to be prevented?
- Are current institutional practices adequate to meet these goals and to address concerns?

Practice shows that the intergovernmental relations system in South Africa is hampered by two main deficiencies. Firstly, the determination and execution of key national development priorities involving all three spheres of government is an unpredictable and incoherent process at most (if not all) spheres of government, with the clear exception of the budget process. A variety of processes and structures exist whose status, role and interrelationships remain uncertain. Secondly, the management of service delivery programs is based on questions of jurisdiction between departments, organs of state or spheres of government when policy priorities cut across ministerial mandates and traditional policy fields (Malan, 2005:16). The mechanisms for managing service delivery through intergovernmental relations are ad hoc and lack institutional definition. The result is a poor integration of services at community level, duplication, real or perceived unfunded mandates, and a general inability to forge collaborative partnerships or to find common ground for joint action.

An effective system of intergovernmental relations and co-operative government is predicated on appropriate and effective institutions and structures. These structures and forums are provided for in legislation but the need for and clarity on the status and roles of forums need to be understood by all. The various role-players need to be well connected and integrated and clear channels of communication between the various forums should exist.

The basis of co-ordinating legislation, policies, programs and budgets is integrated strategic planning. In some instances, joint work and common programs are not always possible because the strategic plans of participating sphere are not compatible with each other (DPLG, 2004:23 and Layman, 2003:23). The alignment of strategic planning between spheres of government is weak and it becomes difficult to recognize national priorities into provincial and municipal strategic planning and to match local development opportunities of

municipal integrated development plans with the resource allocation decisions of national and provincial governments.

According to the DPLG (2004:20) most of the time, effort and resources that government invests in intergovernmental relations go into priority-setting, policy formulation, implementation and service delivery as well as dispute resolution and intervention. These areas are the critical points in the system where poor performance and co-ordination pose the greatest risk of intergovernmental failure to the state. Co-ordination should be linked to performance because co-ordination is not possible when just one player fails to perform on a function or responsibility. Co-ordination requires that all parties deliver on their functions and held accountable for failures if they do not perform. Reasons for failures and weaknesses may arise when co-ordination initiatives:

- do not take account of performance
- water down accountability processes (to executive and legislative authority or users of services)
- focus in-year and are not forward looking, or
- focus on the implementation process only, and do not close the gap between the policy, budgeting, planning, implementation processes, and the actual delivery/ outputs and outcomes (DPLG, 2004:12).

The values and principles upon which the *Constitution*, 1996 were built and the broader goal of extending social services to the poor, should be the indicators for effective intergovernmental relations in South Africa. Institutional practices should be assessed against the ten main objectives of intergovernmental relations that co-operative government requires all state institutions to aspire to, namely:

- achieving key national policy goals, whose objectives are clear to all state agencies and whose design parameters are informed by provincial and local circumstances;
- cost effective and sustainable service provision that is responsive to the needs of communities and accessible to people;
- areas of responsibility and accountability for achieving national objectives should be clearly demarcated for every state institution;
- carefully, deliberately and cautiously managing further devolution to provincial and local government and exploring asymmetrical options for devolution when poor capacity is a factor;
- unlocking the creativity and energy of collaboration and partnership while strengthening the performance and accountability of distinctive institutions;
- eliminating unnecessary and wasteful role duplication and equally unnecessary jurisdiction contest;
- constituting performance-based practices and institutions that can, in a flexible but predictable manner, accommodate sector-specific and crosscutting concerns and issues, and promote consultation and information-sharing among the spheres of government;
- empowering communities to participate in processes of governance DPLG, 2004:13).

A study on co-operative practices by the Institute on Governance in Canada (1996:1) provided the following useful insights that are worth bearing in mind when assessing intergovernmental relations practice:



"The goal is not collaboration for its own sake, or at the expense of important policy interests. The goal is co-operation and collaboration as a means to achieve more coherent public policy and more effective service delivery. An ideal public sector environment could be described as one in which opposing views or interests are debated openly and vigorously, but debated in the underlying context of seeking the public interest, rather than pursuing organizational or personal ends. The debate should be undertaken in a spirit of achieving a solution, and once that solution is achieved, there should be co-operation and collaboration, across whatever lines are required, to implement it. All of the attitudes, structures and processes which prevent this positive type of co-operation and collaboration are what contribute to the phenomenon known as 'turf'"

CONCLUSION

The system of intergovernmental relations in South Africa requires the three spheres of government to forge strong, flexible goal-directed partnerships that can promote collaboration without weakening performance and accountability. This could only happen if political office-bearers and officials in the public sector change their mindset to embrace co-operation. To ensure sustainable development (whether it is economic-social- or environmental sustainability), government and government institutions should be committed to promoting intergovernmental relations and co-operative government by focussing on capacity building as well as institutional strengthening. Capacity defines the potential for development. In most instances, the national and provincial spheres of government in South Africa create the institutional structures to facilitate sustainable development, whereas local government is seen as the delivery agency for development programmes and projects.

It is important that the devolution of functions to provincial and local governments should be in line with their capacity to implement these functions in order to prevent unfunded mandates being devolved to provincial and local government.

The system of intergovernmental relations should assist government to set, execute and monitor key development priorities regarding the creation of work, fighting poverty and reenforcing national pride, given the relative autonomy of provincial and local government in key areas of social service delivery. Good governance (based on the principles for cooperative government and intergovernmental relations) is necessary, to strategically manage and administer the developmental needs and priorities of the citizens of South Africa. The following basic principles should be followed namely; common loyalty as well as effective, transparent, accountable and coherent government where the distinctiveness of each sphere is respected. Government should not just manage sectors, but co-ordinate and integrate the functions in order to promote development. Numerous policy documents have been formulated in the past decade to create a platform and policy context for the promotion of intergovernmental relations and co-operative government. The challenge is to what extent government will be able to practically give effect to these policy documents and whether they would be able to confront key issues during the process of fulfilling their mandates. Although the intergovernmental relations system and institutions in South Africa have shortcomings, it still provides a co-operative model of developmental governance.

SOURCES

- Anderson, W. 1960. Intergovernmental Relations in Review. Minneapolis: University of Minnesota Press.
- Canadian Institute on Governance. 1996. Study of cooperative practices.
- Department of Provincial and Local Government. Discussion document on Strategic Issues and Options for Policy on Co-operative Government and Intergovernmental Relations. March 1999.
- Department of Provincial and Local Government. *The Intergovernmental Relations Audit: Towards a Culture of Co-operative Government*. December 1999.
- Department of Provincial and Local Government. 2004. A National Framework for Intergovernmental Relations in South Africa. Unpublished Report.
- Department of Provincial and Local Government. 2007. Working together for Development: Understanding Intergovernmental Relations. Pretoria.
- Haysom, N. 2001. The origins of co-operative government: the federal debates in the constitution making process. In Levy, N and Tapscott, C. Intergovernmental relations in South Africa: The challenges of cooperative government. Cape Town: Idasa.
- Levy, N. and Tapscott, C. 2001. Intergovernmental relations in South Africa: The challenges of co-operative government. Cape Town: Idasa.
- Mhone, G. and Edigheji, O. 2003. *Governance in the new South Africa: the challenges of globalisation*. Cape Town: University of Cape Town Press.
- Malan, L.P. Intergovernmental Relations and Co-operative governance: the ten year review. *Politeia*, 2nd edition. Vol. 24:2005. ISSN 0256-8845.
- Murry, C. and Simeon, R. 2000. Multilevel Governance in South Africa: An Interim Report. Unpublished paper.
- South Africa (Republic). Constitution of the Republic of South Africa, 1996. Pretoria: Government Printer.
- South Africa (Republic). *Intergovernmental Relations Framework Act,* 2005 (Act 13 of 2005). Pretoria: Government Printer.
- Thornhill, C., Odendaal, M.J., Malan, L., Smith, F.H., Van Dijk, H.G., Holtzhausen, N., Crous, M. and Mello, D.M. 2003. *Provincial Supervision of Municipalities*. Pretoria: PAIR Institute.
- Wright, D.S. 1978. Understanding Intergovernmental Relations. Massachusetts: Duxbury Press.

