

CHAPTER 5

5. THE NATIONAL-PROVINCIAL INTERGOVERNMENTAL RELATIONS INSTITUTIONS IN SOUTH AFRICA: A CRITICAL REVIEW

5.1 INTRODUCTION

In Chapter Three the author argued for and presented a framework within which intergovernmental relations (IGR) can be analysed. The discourse addresses the South African quasi-federal system, which cites a number of cases for substantive analysis. The national-provincial executive IGR structures are a demarcated area of this study. The IGR faculty relates mostly to the relationship of executive institutions, particularly within the submission of this study, where IGR is an operating platform within which government decisions must integrate services for effectual delivery. The focus on executive IGR structures does not discount the equally important interacting mechanisms such as conditional grant mechanisms, intergovernmental agreements, joint administrative bodies and referrals from one level of government to another.

This chapter will examine the executive IGR structures at the national-provincial spheres of government. The following will be described: The Intergovernmental Forum established after the 1994 democratic breakthrough in South Africa; The President's Co-ordinating Council established first as The Premier Forum by President Mandela's Government and revived as the PCC by President Mbeki's Government; the intergovernmental relations committees of Ministers and Members of Provincial Executive Committees (MINMECS); the Forum of South African Directors-General (FOSAD) including the Forum of Provincial Directors-General; and the Cabinet Committees/clusters in The Presidency. The

description will be in the mode of analysis of the IGR structures that will raise questions for the construction of an IGR reform framework. Whilst the study focuses on national-provincial executive (in the constitutional sense) IGR, the unique role of the National Council of Provinces warrants attention, particularly because of the manner in which provincial representatives are appointed into the NCOP. The provincially derived mandate and the “appointment” element surrounding their selection as well as the special delegate status of 40 percent of NCOP members, creates a legislature-executive grey area in their intergovernmental role (Constitution Act 108, 1996:s62).

5.2 THE NATIONAL COUNCIL OF PROVINCES (NCOP)

The National Council of Provinces (NCOP) is one of the bicameral structures established in the South African 1996 Constitution. The Constitution defines the task of the NCOP as that of representing the provinces to ensure that provincial interests are taken into account in the national sphere of government (Mathebula *et al.*, 2002:17). The NCOP is, by design, supposed to be the melting pot of provincial interests including those of local government despite its distinct status as a sphere of government. The representative nature of the NCOP reflects a compromise-influenced shift from the previous Senate, which was, by design, not directly representative of Provincial interests. The provincial representation function is executed by the NCOP through its participation in the following structures: the legislative process; oversight over the executive; scrutiny of national and provincial executive actions affecting the distinctiveness of another sphere with an overriding power; and, participation in the activities of the Judicial Service Commission (Mathebula *et al.*, 2002:17). The NCOP’s participation in the legislative process is limited to its role in constitutional amendments, matters that fall within the provincial sphere or both the Section 76 and the Section 75 legislation. In terms of the Constitution the NCOP requires

the vote of at least six provinces for a constitutional amendment that affects its operations, provincial boundaries, powers, functions or institutions or a specific provincial matter (Constitution Act 108, 1996:s65). In matters that fall within the concurrent legislative competency of national and provincial spheres (the schedule four functions) the NCOP has a veto power over a national bill that could not fetch a two-thirds majority in the National Assembly. The NCOP's views can influence the court system in matters dealing with the overriding powers of the national legislature over provincial legislation (IGR Audit, 1999:114). The NCOP has, on those matters not specified in the Constitution with regard to jurisdictional competency, a "sober and second" role on national legislation (Thornhill *et al.*, 2002:5).

The NCOP's executive oversight function is a derived function in the sense that the Constitution is not specific about the NCOP's oversight role. As an accepted public administration norm, the oversight function of a legislature is in the main that of calling the executive to account on their actions in terms of policy implementation and associated expenditure patterns. By virtue of the NCOP being part of Parliament and therefore also of the national legislative process, it has a derived power to call the executive to account, in all spheres of government on sub-national government matters. The ability to focus on provincial matters makes the NCOP a policy-integrating centre particularly in that its right of existence is based on ensuring that provincial interests are taken into account in the national sphere of government.

The review function of the NCOP includes the approval and/or disapproval of certain national and provincial executive functions. This function includes the review of delegated legislation since it is dependent on the NCOP's approval in cases of conflict between delegated legislation and a national or provincial Act (Constitution Act 108, 1996:s146). It

also includes the review of national intervention in a province in terms of Section 100(2) of the South African Constitution, which empowers national government to assume responsibility for an executive obligation of a province, should it demonstrate an inability to do so (Constitution Act 108, 1996:s100). The NCOP, therefore, is charged with the function of approving such intervention. The review of the supra-sphere intervention function is also applicable when a provincial executive assumes responsibility for an executive obligation that a municipality cannot or does not fulfil (Constitution Act 108, 1996:s139).

The NCOP also reviews the halting of transfer of funds to provinces by treasury in terms of Section 216(3) of the South African Constitution, which relates to absence and/or breach of sound financial management (Constitution Act 108, 1996:s216). The decision of the NCOP, however, may be overridden by a two-thirds majority of the National Assembly. The existence of sub-national jurisdictions of government, as a traditional feature, deals with the management of conflicts. As part of the NCOP's functions, the South African Constitution obligates, in terms of Section 125 (4), national and provincial governments to submit for resolution, within 30 days, any matter where there is disagreement over the province's capacity to administer national legislation effectively Constitution Act 108, 1996:s125 (4)).

In its participation in the Judicial Service Commission, the NCOP has a representative function, which is designed to ensure that provincial interests are included in the appointment of the judiciary and in dispensing the country's jurisprudence (Constitution Act 108, 1996:s178(i)). The NCOP as a "legislative" institution, charged with IGR, has a number of limiting factors, thus restricting its IGR decision-making abilities. During the

period of this study, the NCOP encountered an array of challenges impacting on its ability to convincingly tackle the South African IGR challenge.

The work of the NCOP is designed to ensure that all provincial interests are taken on board at the national sphere. This primary function is based on a number of assumptions. The *first assumption* is that the South African provincial system has matured to the extent that certain provincial matters can be handled outside political party allegiances and handled according to the need to put matters of the province first. This assumption implies that appointed delegates to the NCOP have a thorough understanding of the provincialism embedded in the second chamber provincial representation system. It is the submission of the author that the circumstances that prevailed in South Africa before the adoption of the 1994 Constitution equated the idea of provincial identity with the secessionist and separate development tendencies that characterised party political positions of the then “rightwing” parties. That ideological aura, accompanied by a growing denial by the traditionally communist-type commandist party positions of the African National Congress to accept the demise of central planning, as demonstrated by the collapse of the eastern European countries, made the provincialist work of the NCOP difficult, as far as IGR is concerned.

The growth of provincialism started to take root immediately after 1994 when South African Provincial Premiers, including those from the ANC, demanded more powers from the center. This push for devolution and provincial identity-in-government within the ruling party and coalition has appeared more muted since the inauguration of the President Mbeki government. The silence should however not be construed to be in compliance with the growing centrist tendencies, but could be perceived as a function of President Mbeki’s style of keeping dissent behind closed doors. The perceived slow maturation pace of

provincialism within the NCOP should also be seen within this context. There is however, certainty in the fact that as provinces grow in capacity and confidence (particularly because they perform the key step between the policy of central government and its implementation) they will begin to impact on the provincialism requisite in NCOP activities. The reality however, is that an acceptance of the peculiar and material conditions defining the South African provinces dictate the embrace of provincialism as a guiding principle for NCOP functioning. These conditions manifest themselves in the form of ethnic, racial, industrial and cultural concentrations that define the demographic landscape of the country.

The *second assumption* is that the NCOP has political clout that can override, overrule and, in some cases, completely block a policy emanating from the National Assembly. The reality is that delegates sent to the NCOP enjoy a relatively low political status in comparison to other political representatives in legislative bodies. The permanent delegates sent to the NCOP are in most instances, politicians of a lower rank on the party electoral lists, thereby devaluing the institution to the level of a political depository, with the exception of the chairperson of the NCOP. The interesting development is the growth in requests by NCOP politicians to be re-deployed to local councils by the party deployment committees. Further to this problem is the fact that in the current NCOP there are few members who are serving on the ruling party's National Executive Committee and this translates into a particular measurement of the political influence and stature of the NCOP.

The author further argues that the devaluing of the NCOP could further exacerbate the turnover rate of permanent and special delegates, thereby reducing the level of political confidence required of NCOP delegates. The fact that NCOP delegates are not directly elected, which would boost their political credibility and standing, does not only liquidate

the political courage of individuals therein, but also the political might of the NCOP. Rapoo, cited in Opeskin (2001:1), notes that since most NCOP appointees are from provinces controlled by the ruling coalition, the political ineffectiveness of the NCOP is therefore guaranteed. Signs of dissent from the NCOP started growing when a relatively senior party member, Patrick Lekota, elevated the importance of the NCOP (Opeskin, 2001:1). This was however, curtailed by his appointment as Defence Minister under the President Mbeki government, thereby, causing the NCOP to revert to its former position. A review of party delegates who should be in line with promoting and encouraging in-party provincialism and provincial co-options, will have to be embarked upon. The review should target the raising of the political stature of the NCOP and its delegates.

The *third assumption* is that the NCOP has a well-maintained relationship with provincial legislatures. The relationship between the NCOP and provincial legislatures should be characterised, in the main, by regular feedback, legislated and/or proclaimed provincial mandates and joint hearings. The existence of a communications infrastructure should transcend the geographical limitations imposed by the location of the NCOP and provincial legislatures and present an opportunity for NCOP hearings to be synchronized on-line with those of provincial legislatures, thereby enabling the NCOP to tap into the relatively dormant political capacity, abundant in Provincial legislatures. The apparent non-involvement of provincial-executive structures (unless summoned) as a result of the attitude of the national executive toward the NCOP, does not only weaken the efficiency of the NCOP but also diminishes the collective positive attitude of Provincial executives towards the NCOP. The ineffectual functioning of the NCOP as an IGR legislative institution validates a need for an effectual provincial legislative and administrative process.

The pace at which provincial governments dispense of their responsibilities will be reflected in the NCOP's ability to have "teeth". The overlapped distinctiveness of spheres of government, political ambivalence about the future of provinces and an undefined form of state, undermines the NCOP as an IGR instrument. The work of provincial legislatures, therefore, should be synchronised with that of the NCOP thus ensuring that all provincial legislation that does not emanate from a nationally legislated mandate, has recognition within the national parliamentary system. The integration of activities of other executive intergovernmental structures to inform the provincial legislative process simultaneously with the national process will increase NCOP relevance and protect provincial interests in Parliament.

The *fourth assumption* is that the NCOP delegates possess above their advanced political sense, the technical and diplomatic skills required of an integrating institution. The political advancement of most NCOP delegates was a result of the historically defined challenges that faced South Africa as a nation and, the pre-career socialization of most delegates and hence, it can be deduced by implication that few delegates chose to be in the NCOP. The reality that most politicians in South Africa chose their current career paths as their ongoing responsibility to liberation or to "the struggle" has had an impact on the efficiency and functioning of government: the NCOP in one example. The growing political careerism and its competing party deployment system that characterises the SA political landscape exacerbates this anomaly. The requirement for real time information for NCOP delegates is dependent on their ability to access such information and that requires more than just political advancement, it also requires technical skills. The skills level of some of the permanent delegates is still undergoing constant development; given the reality that some of them had little to no formal education (IGR Audit Report, 1999:116). Ideally, the

introduction of relevant and more formal training for NCOP delegates should become a priority for NCOP.

The *fifth assumption* is that the national and provincial legislative programmes are synchronized in those matters categorized as Section 76 legislation. The South African budget cycle which gives provinces and state departments an opportunity, well in advance, to send their estimates to treasury, is a good (though not perfect) example of how the legislative programme of legislatures can be synchronized (Treasury Regulations, 2000:8). The present state of affairs is that most legislation is considered by the NCOP after it has been negotiated at an “executive” level with provincial executive committees, relevant provincial standing committees, the national executive as well as committees of the National Assembly. The process before NCOP consideration can extend to more than one parliamentary session whereas the NCOP is limited to consider such legislations within four weeks. This process does not preclude the NCOP from seeking recourse to become involved in the intergovernmental forums that precede the tabling of such legislation at the NCOP. These may include deploying its research contingent to those forums albeit dependent on the availability of a set programme.

The *sixth assumption* is that the NCOP has the capacity and resources to handle the IGR function. The intervention review function of the NCOP, at present, is made possible by the relatively low cases of supra-national intervention to sub-national units. The research and study-intensive nature of the intervention review function of the NCOP operates within a sub-minimal research culture prevalent in both national and provincial legislatures. To illustrate the incapacities, the NCOP by law, is composed of 90 members of whom 54 are permanent and 36 are special delegates. The delegates have to operate in 11 joint committees of the National Assembly in addition to the NCOP standing committees.

These result in NCOP functions being both non- and human resource as well as time intensive.

Relief would be possible if provincial legislatures would consider the activities of the NCOP and send them to the NCOP for ratification. Despite the fact that this is a resource management issue, the reality is that some legislatures have 30 members of provincial legislatures, including the speaker and other presiding officers. This state of affairs renders the NCOP unable to cope with the exacting demands of legislative scrutiny and analysis (IGR Audit Report 1999:116). The establishment of an NCOP specialised bureaucracy headed by a functionary above the position of chief-director and accountable to the NCOP chairperson should be considered as an NCOP capacitation programme. The functions of this functionary should include the co-ordination of the provincial legislative process with the National legislative process and with the National legislative timetable. NCOP delegates should be provided with adequate research and follow-through capacity by such an office.

The *seventh assumption* is that the party political system is friendly to a decentralised view of provincial matters, thereby allowing conscientious opinion making. The design of the NCOP is such that its members are selected by and are accountable to provincial legislatures and by default, to the provincial ruling party. The origin of the NCOP as a second chamber is traced to the German model that is composed of representatives of the executives of member states of the federation, who are usually ministers in the member state cabinet (De Villiers, 1993:8). Whilst the German system is as asymmetrical as the South African one, it is based on the will of the member state executives and, therefore, is multiparty in nature. Reminiscent of majority governments, the South African government, with an overwhelming two-thirds majority African National Congress (ANC) – Inkatha

Freedom Party (IFP) coalition government of national unity, makes the NCOP a rubber stamp of some national positions. This is compounded by its constant participation in joint standing committee matters thereby creating a national representative identity as opposed to being a provincial interest custodian.

The central dominance of the executive structures of the two parties as well as the centrist tendencies visible in the leadership style of the ANC and IFP presidents, further creates a rubber-stamping environment that conditions the NCOP. Lorimer (2001:1) notes that South Africa's ruling party has a powerful majority in Parliament, controls seven of the nine provinces and is in a coalition government in an eighth. The central party discipline of the dominant political party in the NCOP, the African National Congress, also promotes the brokering of legitimate provincial/national disputes within party political lines. As these are often subjective in nature they tend to limit any vibrant debate within and among provinces that should characterize the NCOP. The key tension however, is the inherent centralist value system amongst delegates of the ruling party, contrary to what the Constitution advocates. The combination of a federal framework with a ruling coalition with centrist tendencies has, according to Lorimer, undermined the elaborately written constitutional measures aimed at protecting the rights of provinces and accordingly the provincialism that should underpin the NCOP (Lorimer, 2001:2).

The above assumptions have attempted to define some of the perceived or real issues, which plague the legislative branch of IGR. In the analysis of the NCOP through the mentioned assumptions, it becomes clear that IGR between the national and provincial sphere occurs, in the main, at the executive level of government. The executive structure of IGR is a critical part of this thesis. This thesis will further address critical issues for

reform and reconstruction of IGR for a comparative analytical overview. We will, therefore, examine other national provincial IGR structures.

5.3 THE INTERGOVERNMENTAL FORUM (IGF)

The 1994 democratic breakthrough, as confirmed by the swearing in of President Nelson Mandela as the first Black President of South Africa, marked a new era in the operation of an intergovernmental system. The electoral provincial victories of the Inkatha Freedom Party and the National Party in KwaZulu Natal and the Western Cape, determined the necessity to align national policy pronouncements with provincial priorities of non-ANC governed provinces. The demographic make-up of the South African settlement patterns characterised by gross underdevelopment in historically Black areas and a seemingly first world development in historically White areas also identified a need to integrate government efforts in a multi-sphered approach. The election manifestos of the three major political formations propagated a governing system that had to find a compromise position on a highly centralised but re-distributive government to an extremely decentralised re-distributive government continuum.

The Mandela government, therefore, was faced with the immediate challenge of establishing an IGR system that had to ensure each sphere of government respected the constitutional status, institutions, powers and functions of the other sphere. The anti-unitarist political emotion that characterised some of the working groups, which was still alive at the inauguration of the new government, pointed to the generic approach that the executive followed in designing an IGR system. The reconciliation approach and style of President Mandela created a reconciliatory administrative aura that was characterised by unlimited transparency, sufficient consensus, inclusivity, consultation and political

compromise. The constitutional principles as enshrined in the 1993 interim Constitution were at this historical stage beginning to permeate into the deeply held views about government across the political spectrum. The rainbowist approach to nation building accompanied by the “sunset clause” compromise philosophy began to dictate the milieu within which the various spheres of government had to operate. The above atmosphere was to guide and determine the form and structure of the intergovernmental forum (IGF).

The establishment of the IGF was based on the need to promote co-operation on matters of mutual concern to all spheres of government. Its membership was limited to include, on a permanent basis, the entire national and provincial executive, including directors-general and provincial heads of departments (IGR Audit Report, 1999:17). The Chairpersons of the NCOP and Portfolio Committee on Constitutional Affairs represented the legislative arm of government as evident in the IGF. The Chairpersons of the Financial and Fiscal Commission, Public Service Commission and a representative of the Independent Electoral Commission were also members. The IGF’s composition reflected the multi-sectoral nature of IGR and was thus inadequate considering the service delivery institutions that were outside government. The IGF’s terms of reference include the following: discussion of important line function matters and issues that were potentially conflict-laden; consideration of functions that could not be discussed by MINMECS; formulation of an integrated and co-ordinated intergovernmental policy and development framework; addressing of multi-sectoral policy and constitutional issues; and discussion of matters pertaining to effectual governance and governmental resource matters, including those financial and fiscal (IGR Audit Report, 1999:16).

The main function of the IGF was to implement Chapter 3 of the Constitution, although the exclusionary elements in its composition affected its original mandate to succeed (IGR

Audit Report, 1999:16). Politically speaking, the IGF was supposed to work because of its intentions but this did not materialize. However, precedents from countries like Canada have shown that different provinces still attempt to co-operate whether based on a federal structure or that of a confederation. The establishment of the Canadian federation necessitated closer IGR and institutions to facilitate co-operation. The federal-provincial conferences that can be likened to South Africa's IGF grew in stature and purpose despite their non-statutory and non-constitutional nature (De Villiers, 1993:7). The Nigerian Council on IGR, is a neutral technical body charged with the objectives of representing a Nigerian equivalent of the South African IGF, namely, monitoring the functioning of the federal system and making recommendations on the improvement of intergovernmental relations; undertaking research on the federal relationship; and providing a platform for co-operative discourse, interaction and research and governance (Kuye in Konrad Adenauer Stiftung Seminar Report No7, 2001:21).

Reminiscent of the political need and aura of the time, the IGF was expected to accomplish the following: to promote consensus between spheres of government; to ensure implementation of identified programmes; to provide a multi-lateral, intergovernmental, policy planning and implementation directive platform; to provide a strategic political platform for policy dialogue, intergovernmental consultation, co-operation, consultation and joint decision making between political executive office bearers and the bureaucracy across the three spheres of government; and to facilitate interaction at the highest political level (IGR Audit Report, 1999:17). The structure of the IGF in terms of composition, functions and terms of reference, implied by design that the agenda for the IGF would be amorphous. The core activities of the IGF relegated and/or upgraded it to become an un-elected parliament for there would practically be no issue that it could not discuss, a matter chiefly responsible for its demise. The sheer size of the forum could not

encourage and accommodate meaningful dialogue. The IGF's institutional location was the Department of Provincial Affairs and Local Government (formerly known as Department of Constitutional Development) that determined through a "consultative" process the agendas and facilitated the meetings (IGR Audit Report, 1999:17). The IGF was South Africa's attempt at an inclusive forum of government officials and politicians to meet and consider line functions and strategic matters of governance.

The size and nature of IGF's function grew commensurate with the development challenges facing the country, thereby necessitating an almost continuous review of its agenda length, frequency of meetings, composition and the extent of technical support required. As an intergovernmental structure, the IGF provided an operating platform for the evolution of an IGR system. However, since evolution targets, as its first casualty, large structures and entities, the IGF also succumbed. The important role that it played in the early stages of the Government of National Unity was that it afforded the country's elected and appointed leadership an opportunity for growth in terms of an all-inclusive-governance path. As mentioned in the IGR audit report the IGF failed as a multi-lateral, intergovernmental and policy planning body upon which government could rely for support, advice and implementation of its reconstruction and development plan (IGR Audit Report, 1999:20).

The failure of the IGF to become an effectual IGR mechanism, however, does not imply the demise of the concept of getting the highest political and administrative leadership of the country together for co-ordination. The proper functioning of the IGF would be dependent on a number of prerequisites. These will be proposed as recommendations of the study in Chapter Six.

The IGF provided South Africa with an opportunity to experiment with its consultative and consensus driven government approach to IGR. The IGF was created at a time of chaos and political confusion in South Africa. Based on its intent at that time of SA's post-apartheid history, it temporarily served a viable function. However, now is the time for reform, reconstruction and re-visiting. It is the author's observation that, the apparent lack of decision-making that characterised the IGF alerted the ultimate decision-making centre of the Executive which is The Presidency, to reconsider the Intergovernmental mechanisms which could be appropriate to the new South African situation. The potential of the IGF as an IGR mechanism should neither be underrated nor overestimated as an evolutionary approach that recognises the history, currency and strategic future of the country. Some of these propositions, calling for a strengthened approach of The Presidency in the activities of the IGF, draw support from the erstwhile Presidential Review Commission which noted that "concerns about weaknesses at the centre of government were a recurring theme during public hearings" and that the Office of The Presidency (now reconfigured as The Presidency) ought to be "the core and apex of the whole system of governance in South Africa" (Presidential Review Commission, 1998:29). This will be covered in the analysis and recommendation part of this study.

5.4 THE PRESIDENT'S COORDINATING COUNCIL (PCC)

The functioning of the Intergovernmental Forum and its associated dysfunctionalities triggered a review of the IGR system between the national and provincial spheres of government. The Intergovernmental Forum (IGF), by establishing a Premiers' forum as a structure between its meetings, recognised the central role of Premiers in the inter-sphere governance interface. It was during the 1999 Intergovernmental conference that Provincial premiers began to question their actual role in IGR, a primary concern being the absence

of a national-provincial forum at the highest executive level (IGR Audit Report, 1999:28). The idea of a Presidential Co-ordinating Forum (PCC) arose from those concerns, and was established as a first IGR policy directive of the Mbeki government in October 1999. The terms of reference for the PCC were derived from the constitutional, positional and political role of Premiers as executive heads of Provinces.

The 1996 Constitution prescribes, other than directives for management, the following as functions of Premiers: implementing and monitoring policy and the application of legislation in accordance with the Constitution, including consulting and reporting on the fulfilment of executive obligations to national government and various intergovernmental structures; and, developing and implementing provincial policy (Constitution Act 108, 1996:127). The Premiers have the additional roles of: championing urban and rural development; promoting good governance in the provinces, including sound financial administration, accountability, transparency, constitutionalism and civic responsibility; intergovernmental co-ordination with local government and the integration of service delivery in local government; administration of key national functions assigned to the provinces or shared with national government, where a high political profile is required; and promoting effective intergovernmental co-operation and relations with other provinces, national government, the NCOP and local government (DPLG PCC Discussion Document, 1999:5-6). The Premier as a *de facto* political chief executive of the Provincial government, has the following duties: overall management and co-ordination of the functions of the provincial administration and its departments; human resource development; championing the transformation of the public service within the province; strategic planning; and the outreach function of strategic liaison and communication with communities and the public (DPLG PCC Discussion Document, 1999:6).

The distinct feature of the PCC compared to the IGF is that it hopes to have an IGR focused strategic agenda that deals with the substantive issues of provincial governance. The PCC will provide Provincial Premiers with an opportunity to act jointly within the chapter 3 constitutionalised principles of co-operative governance giving impetus (together with National government) to their oversight, monitoring and evaluation of sub-national government services (IGR Audit Report 1999:28). The PCC is designed to ensure that all matters of concurrent concern amongst spheres are dealt with in the best manner possible. The composition of the PCC, which includes the DPLG will ring-fence local government transformation and delivery at the highest possible political executive level of government.

The PCC, during its 1999 inception, identified the following as its key functional areas:

- Avoiding of supra-national intervention in terms of Sections 100 and 139 of the South African Constitution;
- Containing the harmful consequences of the local government municipal demarcation process that would potentially nationalise South Africa's local government structures from over 800 municipalities to 284 municipalities;
- Managing, collaboratively, the newly created cross-border municipalities with their socio-political jurisdictional intricacies;
- Oversight of a single planning process that integrates planning with all three spheres of government;
- Establishing a co-operative model for communication and consultation with the institutions of traditional leadership; and

- Facilitating the use of information technology and sound management systems including financial management and the one-stop shop concept of concentrating service delivery at accessible locations for the citizenry (DPLG PCC Discussion Document, 1999:6).

The PCC is a current structure and therefore subject to scrutiny as it evolves. The PCC represents a critical stage in the evolution of South African IGR because it integrates the Executive. Elsewhere in this study, the author has submitted that IGR should be seen as the software behind the reconciliation of competing interests in the public policy market place. The PCC's design positions itself as an institution that can perform such functions because it enhances the political status of IGR; it provides an integration approach towards service delivery; it increases its decision-making capability relative to the IGF and Premier's forum; and it removes the adhocism reminiscent of the previous forums, provides for a secretariat and meets as frequently as it can afford.

The institutional location of the PCC makes its operations vulnerable to competition with other central co-ordinating departments. Questions of cost within the PCC will continue to be thorny issues on the South African IGR evolutionary landscape and include: the prioritisation of service delivery areas; the executive nature of the PCC's decision vis-à-vis those of national and provincial cabinets; the position and role of sectoral executive IGR structures such as MINMECS and the budget council; and the role of constitutionalised bodies such as the NCOP. The growth in importance and the strategic position of the PCC, make the above questions and issues develop into areas of contestation and political discourse. This study will provide guidelines for review, reform and restructuring.

5.5 THE INTERGOVERNMENTAL RELATIONS COMMITTEES OF MINISTERS AND MEMBERS OF PROVINCIAL COUNCILS [MINMECS]

South African constitutional history is characterised by a maturation process that is inextricably linked to its socio-political and economic growth. The concentration and deconcentration of industrial growth instructed past governments to incrementally centralise the commanding heights of the South African economy and thus increase the scope of concurrent functions. The growth of concurrent functions meant the growth of national Cabinet portfolios as well as Provincial executive committee positions of the erstwhile four-province Republic of South Africa. The introduction of the tri-cameral parliament with its legislative and executive institutions created yet additional own affairs executive centres that required co-ordination and integration. This was to be compounded by the parallel existence of black self-governing territories, the nominally independent TBVC states as well as the Department of Bantu Affairs in its evolutionary name changing states. The existence of these structures during the period that preceded the 1993 Constitution also represented an IGR intensive state and therefore, had to have IGR committees for the national and sub-national executive.

The similarities in the evolution of decentralization, IGR and federalism in South Africa, Canada and Australia as a result of their relative reliance on Westminster “guidance” reflect the conventional nature of MINMECS. In Canada these are referred to as Ministers Meetings and enjoy the technical support of the Federal Provincial Relations Office, which informs deliberations in most ministerial meetings (De Villiers, 1993:8) The Australian equivalent is the Ministers Council that formulates coherent national policy, undertakes planning and implement policy (De Villiers, 1993:6). This is done through the exchange of information, negotiation of financial grants, the formulation of uniform legislation and the

administration of joint administration agencies similar to cross-border municipalities in South Africa (De Villiers, 1993:8). The notion of MINMECS therefore, is a product of the constitutional history of South Africa and evolved as a result of past practice and convention.

The purpose of MINMECS is to provide for a platform for National Ministers, Provincial members of executive councils and organised local government to transact and interact at an executive level on matters of mutual concern. The critical drivers for this interaction and transaction are the encouragement of a common understanding of goals, the provision of strategic direction, the utilisation of the forum as a means for co-operation, alignment and policy co-ordination, and putting into practice the principles of co-operative government as espoused in Chapter Three of the South African Constitution (Levy and Tapscott, 2001:91). The generic terms of reference for MINMECS are identified as the following: the provision of mutual advice on sectoral issues; anticipating potential areas of intergovernmental conflict; co-ordinating the policy and legislative development process; determining within a national framework's long- and short-term priorities; discussion of fiscal and budgetary matters affecting the provincial sphere of government; and exchanging information and discussing any matter referred to it by participating executives (IGR Audit Report 1999:36). MINMECS are by design limited to sector-specific issues and, therefore, require an intersecting mechanism to co-ordinate their activities.

The generic composition of MINMECS includes the National Minister on a permanent basis, nine Members of provincial councils representing each province in that sector and Organised Local government recognised in terms of the Organised Local Government Act, Act 52 of 1997 on the proviso that the particular MINMECS deals with issues affecting local government in an executive sense (Thornhill *et al.*, 2002:27-59). The technical

management of MINMECS is left to Directors-General and heads of provincial departments, and the Minister chairs all meetings (Thornhill *et al.*, 2002:27-59). Except for those MINMECS that are established in terms of an Act of Parliament, MINMECS are non-statutory bodies patterned within a consensus-driven architecture. Their decisions are not binding upon constituent role players, but can be treated as priority recommendations for relevant executive and legislative centres.

The manner in which MINMECS reports to Provincial government remains questionable, since there is insufficient evidence to suggest that its matters are given appropriate executive attention in Cabinet or Provincial Councils. The status of MINMECS decisions also affects the efficacy of the system, hence the growing debate on the desirability of legislating and/or formalising MINMECS. The experience of the Budget Council and the Committee of Education Ministers as statutory bodies will provide an interesting case study regarding the legislative effectiveness of ministerial committees (Thornhill *et al.*, 2002:27-59).

The operation of the MINMEC system, particularly because most of them are non-statutory and therefore not legally binding, triggers a number of process questions. These questions range from the reliability of feedback mandates to and from the MINMECS, the time-lapse to be allowed in the consultation and consensus seeking process, the nature and scope of agenda items particularly as they relate to costing, the binding strength of their decision and/or recommendations to constituents, their position within the policy making and implementation process, and the reconciliation of politically driven dominance by the party in debates versus the need to create a consultative ambience within MINMECS (IGR Audit Report, 1999:39-40).

There is a further need to question the position-influence and role of the bureaucracy *vis-à-vis* that of the articulation of political mandates derived from the electoral process, the synchronization of MINMECS forums with the critical stages of the national budgeting cycle including that of local government, the intensity of meetings required as well as the level of representation on certain agenda items, to how statutory and integrated MINMECS should be (IGR Audit Report, 1999:39-40). As national-provincial IGR structures, MINMECS would require co-ordination with other intergovernmental forums, thus enhancing decision-making and, therefore, service delivery. The how-to of integrating such structures is a target point for parts of this study as will be discussed in subsequent sections.

5.6 FORUM FOR SOUTH AFRICAN DIRECTORS-GENERAL (FOSAD)

The submission that IGR is a human activity and therefore subject to the value systems of the persons involved, provides a good reason why a structure for Directors-General is a necessity for IGR. The appointment of a person into a position of Director-General assumes the person's managerial capabilities required for such a position. Master, as cited in Adie and Thomas, (1982:296), submits that truly meritorious performance in public administration will depend at least equally upon the values, the objectives and the moral standards which the administrator brings to his decisions and upon his/her ability to weigh the relevant premises judiciously in his/her approach. The position of Directors-General in the government's administrative and service delivery machinery triggers the traditional bureaucracy-politician debate.

The common view of the bureaucracy, which is not different from the generic view in most commonwealth countries, is that elected representatives should control a bureaucracy

(Adie and Thomas, 1982:262). There is a growing acceptance for the commonwealth view that bureaucracies (namely, appointed officials) must be loyal and responsive when new parties (namely, governments) come into office. This view, however, is conscious of and sensitive to the politico-administrative dichotomy that often characterizes the bureaucratic dilemmas of obedience and independence; stability and adaptability; administrative power and restraints on power; and co-operation and resistance (Adie and Thomas, 1982:262). These dilemmas define the daily challenges of Directors-General in South Africa, as they often have to strike a balance between these competing realities. Directors-General are collectively responsible for the biggest public budget and are therefore critical catalysts of the consumption of commodities and services in the South African economy. The collective purchasing power of the departments they are heading can potentially build and/or break down the pace and direction of economic growth, and where there is no economic growth, the accompanying social problems could destroy the legitimacy of the political system.

The strategic “position” of South African Directors-General to promote the co-ordination of socio-economic growth and government, and balance the politician-bureaucrat co-option therefore, dictates a need to establish a forum that enables Directors-General to interact both as persons, colleagues and administrative office-bearers. The South African Cabinet, in recognition of the professional and positional status of Directors-General (DGs) established a non-statutory forum with a mandate to help in policy co-ordination and the facilitation of vertical and horizontal intergovernmental co-operation (IGR Audit Report, 1999:40). The design, form and nature of the Forum of South African DGs is such that it could only co-ordinate and implement national policy, advise elected government officials, as well as actioning Chapter 3 principles of the South African Constitution, Act 108 of 1996.

The above functions form part of the interacting and transacting arm of governance, which the study refers to as IGR. FOSAD has the following IGR roles: fostering a dynamic interaction between political structures and those of appointed persons at national and provincial levels of government; horizontally and vertically co-ordinating government activities; brokering sound relations between DGs and Members of the National Cabinet; directing public sector management and transformation; providing technical service to the national-provincial intergovernmental forum; and facilitating the establishment and sharing of best practices in public management (Thornhill *et al.*, 2002:21). The assumed, expertise in FOSAD is one of the critical assets justifying its existence since cabinet is expected to benefit from its collective application.

The 1994 democratic breakthrough, apart from triggering South Africa's re-distributive development agenda, also unleashed a need for "suitably qualified" human resources to occupy senior public sector positions within a demography-reflecting equity system. The dominant human resource deployment paradigm after the 1994 elections was to resource public sector bodies with the "best" available Black brainpower. Public sector bodies refer here to both the political and administrative sections of government activity. The result of this deployment was that persons in the public service, who were politicians in their own right, and as a result of pre-career socialization, ended up occupying senior administrative positions ranging from of Director to Director-General. The consequence of this deployment became a public service corps composed of 'generals' and 'commanders' at the management echelon.

The historical reality about most DGs created a perception that they viewed themselves as the ultimate authorities to the extent that some national DGs perceived themselves to be

politically above Provincial Premiers and Members of Provincial Executive Councils. The historical political position of some DGs caused them to be viewed within the realm of political competition. The growth and development of governance politics, therefore, dictated to members of the executive to assume that DGs would, if allowed to operate in a forum like FOSAD, sequester Cabinet's ability to direct public policy and service delivery priorities. The most important gripe of this assumption is that DGs, with accounting officer powers bestowed upon them by various finance legislations, would be "politically" more powerful than Ministers. The validity of this situation is aptly captured in this study when it declares in Chapter Three that IGR will always be held to ransom regarding attitudes, perceptions, affiliations and egotistic whims of elected and appointed officials.

Despite the above "political" position of DGs, there are still strategic functionalities in the completion and resolution of the South African IGR impasse. FOSAD provides the highest institutional platform for public management and policy "think-tanking" in a semi-statutory setting. However, the challenge for DGs in the current politico-historical milieu, is to strike a balance between the degree to which they would be responsible for and/or accountable to the Constitution (and therefore, the SA citizenry) for their collective performance, and the degree to which they would be responsible to individuals (through established dominant coalitions such as political parties and ideological communities) for their performance. Encoded into the process of appointing DGs in South Africa are various subjective processes that are in the main, characterized by political party loyalty, ethnic origin, struggle history, political exile status, racial status within the affirmative action programme as well as identification and loyalty to dominant individuals within the ruling elite. The public policy service delivery, including of course the IGR implications of the above characteristics, are chief ingredients for a controlled migration of a state from a multi-party democracy to a pure multi-partied one party democracy, a democracy with a

parliament consisting of different parties but locked into the will of the dominant majority party. The accompanying resourcefulness of FOSAD members makes it one of the few taxpayer-financed think tanks in South Africa.

The role of FOSAD, according to its founding document, is to assist in good governance and best practice within the public service and to promote the basic co-operative governance and public administration principles as set out in Chapters 3 and 10 of the constitution (Thornhill *et al.*, 2002:22). The atmosphere within which FOSAD was founded was not that of creating a Technical Intergovernmental Committee to support the IGF, but rather as an institution that would incorporate other existing structures and meetings by Directors-General (IGR Audit Report, 1999:58). Different from the IGF technical committee(s) FOSAD would craft the unique role of assessing the adequacy of existing and proposed legislation, addressing matters of professional management, and dealing with matters beyond conferences and meetings (IGR Audit Report, 1999:58).

The defined roles and terms of reference of FOSAD, to casual public management analysts and inexperienced politicians, mirrors a bureaucrat's trade union and/or a Cabinet of DGs. According to Vil-Nkomo when closing an IGR school programme of the PAIR Institute (August, 2001), FOSAD should have the capacity to attract to some of its meetings DGs from the previous regime, resigned DGs, DGs from other countries particularly those that resemble the unique transitional features that South Africa has, accomplished corporate leaders from parastatals and private sector bodies, and members of the science and intellectual community. The professionalism assumed within FOSAD should reflect at its core a capacity to build bridges between abstract, historic and comparative knowledge and concrete policy issues, so as to arrive at recommendations for

action based on the best possible data, theories, creativity, analysis and contemplation (Dror, 1997:8).

The position and role of FOSAD in the South African IGR setting is unquestionable – the issue is how other IGR structures relate to FOSAD thereby eliminating, in operational terms, a duplication of resources. The assumed intellectual repository inherent in FOSAD should be viewed as having sufficient capacity to be able to provide a review service on the strategic direction of cross-cutting issues and the monitoring of policy alignment. The existence of un-co-ordinated IGR structures creates a culture of duplication within the South African IGR system. This study will propose guidelines for consideration, which could address this issue.

5.7 CABINET CLUSTERS (COMMITTEES) SYSTEM IN THE PRESIDENCY

The Executive Authority of the Republic of South Africa is vested in the President who exercises it together with members of the Cabinet (Constitution Act 108, 1996:s85). Cabinet is defined in the Constitution as being composed of the President (as its head), the Deputy President and Ministers. Cabinet exercises its authority by implementing national legislation unless otherwise stated by law, developing and implementing national policy, co-ordinating functions of state departments and administrations, preparing and initiating legislation, and performing all such duties as may be assigned to it by the Constitution and national legislation (Constitution Act 108, 1996:s91). The horizontal and vertical intergovernmental nature of Cabinet makes it the highest constitutional executive intergovernmental relation structure.

The South African Cabinet has historically operated on the basis of Cabinet committees (Cloete, 1988:143) that facilitated solidarity and confidentiality. The doctrine of collective ministerial responsibility is primarily a convention, rather than a legal requirement, albeit the critical need for democratic control over the use of political power (Adie and Thomas, 1982:263). The function of these committees was to support the Cabinet decision making process by facilitating the integration of sectoral policy decisions towards a nationally coordinated policy (Cloete, 1988:143). Three years into the government of President Mandela, he appointed a Presidential Review Commission (PRC) with the mandate to evaluate government's performance. The Commission identified the need to strengthen the Cabinet and recommended the establishment of a Cabinet Office comprising a Cabinet Secretariat and Cabinet Operations; this was effected in 1999 (Cabinet Working Document on Cabinet Structures, Functions and Systems, January 2000:3). The PRC identified the period preceding the Cabinet Office era during which twelve inter-ministerial committees performed the functions of a Cabinet committee, as being a meeting- and a time-intensive process that delayed decision making (PRC Report, 1988:19). The overall recommendation of the PRC was for the Cabinet Office to cluster service delivery areas into manageable entities capable of having their performance appraised and managed (PRC Report, 1998:33). In pursuit of this rationalisation process the President Mbeki government, after a study of various Cabinet systems in the world adopted a Cabinet clustering system similar to the British super ministerial cabinet committee system introduced during the Margaret Thatcher government (Carstens, 2000:103-105).

The President Mbeki Cabinet established six Cabinet committees to facilitate creative, cross-sectoral thinking on policy issues and to move away from agendas driven by narrow departmental interests to an integrated approach to governance (Cabinet Working Document on Cabinet Structures, Functions and Systems, January 2000:4). The President

or the Deputy President chairs the Cabinet committees. Inter-ministerial committees would be collapsed into the new committees. The management and administration of the new system would be undertaken by the Cabinet Office located in The Presidency under the administrative leadership of a “National Director-General” (Cabinet Working Document on Cabinet Structures, Functions and Systems, January 2000:3). According to the Cabinet Working Document, the functions of the Cabinet office are as follows: to support Cabinet in providing basic services of a Secretariat, ensuring consistency between Cabinet decisions and its strategic framework and priorities; ensuring co-ordination among departments in the introduction and implementation of policies in order to discourage the pursuit of sectoral interests to the detriment of national objectives; the screening and quality control of integrated memoranda before they are put before Cabinet; and to provide a follow-up service on outstanding Cabinet matters (Cabinet Working Document on Cabinet Structures, Functions and Systems, January 2000:3).

The Cabinet committees would receive support from DGs of the corresponding state departments in a cluster (Cabinet Working Document on Cabinet Structures, Functions and Systems, January 2000:3). The day-to-day administration of the committees would be concentrated in the Policy and Advisory Services Unit in office of The Presidency. The unit would create positions at the Chief-Director level, which would be linked to a corresponding DGs cluster (Cabinet Working Document on Cabinet Structures, Functions and Systems, January 2000:3). The frequency of the Cabinet committees meeting would be set for at least once a month and, at most twice a month. The Policy Unit in The Presidency would implement a monitoring function. The Cabinet cluster system, to date, has increased the collective control of Ministers and The Presidency over the general policy direction, but it has also compromised and/or qualified the extent to which individual

ministers can be held responsible for the policies in their domains (Adie and Thomas, 1982:289).

The outcome-output dichotomy, as it relates to government, illustrates the individual ministerial responsibility issue succinctly. The author defines outcomes as describing the results that government as a service delivery entity ultimately wants but has no total control over, while output represents a set of activities and deliverables that an entity produces and has total control over in the production process. Cabinet Clusters, therefore, by design are concerned with broad government outcomes that are dependent upon the contributions of individual ministries and other defined executive centres of the state. The focus of these clusters on outcomes, positions them as the ultimate strategic decision integrating centres before Cabinet within the broader IGR system. Like other executive IGR structures, the Cabinet cluster system assumes in its design that matters under consideration in the clusters represent the collective decisions of “sub-ordinate” and “sub-national” IGR structures. The views of Provinces and local government are taken on board in the clusters through DGs and Ministers who interface with the different MINMECS. The truth, however, is that decisions of other IGF structures are considered indirectly, and through cabinet cluster role players. The ensuing chapter will explore this in detail.

5.8 CONCLUSION

The national-provincial IGR assessed in this chapter reflects a critical need to review these structures in order to encourage synergy and co-ordination. The composition of these structures has the representation of DGs as a common feature in all of them, thereby indicating the central role public officials play in IGR. The political role of the executive is

the second common feature of these intergovernmental structures, their role here serving to interface electoral mandates based on party political manifestos and administrative challenges. The reconciliation of the competing interests of sub-national jurisdictions lends further credence to the continued involvement of legislatures in IGR. The factual co-ordinates around the South African IGR system at national and provincial level, as critically reviewed in this chapter, triggers a number of analyses and raises a number of questions.

Questions raised are as follows: how IGR structures should be integrated to provide an IGR system based on the flow of decisions; what are the executive challenges facing national and provincial IGR; what should be the key functions of the different national IGR structures; and whether an IGR structure should be legislated or not? These questions will remain issues for research for many generations. The reform focus of this study will provide a proposal for the construction of the national-provincial IGR system required to produce a framework for reform, in the next chapter. The framework will be submitted as a rationalisation proposal with a leadership-driven approach to achieve the aims of government within a functional governance-restructuring proposition. The concentration of co-ordinating functions in the office of the DGs in the office of The Presidency, lends further credence to the desirability to have a central co-ordinating centre for the entire IGR system.