

CHAPTER 3

LITERATURE REVIEW

1. INTRODUCTION

This chapter focuses on the literature that is relevant to the study. It provides a context by providing the purpose and relevance of literature. The constitutional framework on intergovernmental structures, both formal and informal, is also discussed and reviewed as well as the distinctive features of intergovernmental relations and co-operative government. The norms which are applicable to a system of intergovernmental fiscal relations are also outlined and discussed as well as the extent to which they assist local government and the City of Tshwane in particular in the fulfilment of its service delivery mandate.

2. PURPOSE AND RELEVANCE OF LITERATURE REVIEW

Successful research depends on a well-planned and thorough review of the relevant literature available and such a review usually entails obtaining useful references or sources (Brynard & Hanekom, 1997:31). Literature is reviewed for the following reasons (De Wet et al., 1981 in Brynard & Hanekom, 1997:31): to obtain perspective on the most recent research findings related to the topic of the search; to obtain an indication of the best methods, instruments for measurement, and static, which can be used; to improve the interpretation of one's own research results; and to help determine the actuality of research on a particular topic.

3. APPROACHES TO INTERGOVERNMENTAL RELATIONS

There are various approaches to intergovernmental relations. These approaches to

intergovernmental relations in particular include: the constitutional/legal approach, democratic, financial and normative-operational approaches (Hattingh, 1998:10). Roux, Brynard, Botes, & Fourie (1997:171–172) also distinguish the following approaches to intergovernmental relations: the democratic approach, the constitutional approach, the legal approach, the financial approach, and the normative-operational approach. Before discussing each of these approaches to intergovernmental relations, it is necessary to define what an approach means. An approach may be defined as the valid criteria for analysing a phenomenon which in this case is intergovernmental relations (Hattingh, 1998:14).

3.1 The Democratic Approach

The democratic approach to the study of intergovernmental relations emphasises provincial and local government's right to self determination to the extent of regarding such governmental bodies as autonomous institutions. As a result, supporters of this approach are opposed to the centralisation of authority and strongly favour greater devolution to subordinate authorities (Hattingh, 1998:11-12). Supporters of the democratic approach to intergovernmental relations are inclined to hold separatist views and to emphasise the "autonomous" right of existence of every sphere of government *per se*. They then emphasise a regional uniqueness, even at the expense of community values and institutional requirements. The emphasising of one value (democratic principles) at the expense of other values negates the basis of participation within a total governmental hierarchy (Roux, Brynard, Botes, & Fourie, 1997:171).

Followed through to its logical conclusion in South Africa, the autonomous and independent existence of governmental bodies would entail that each sphere of government would have the power to act independently of any higher authority. The author argues that this approach would not be appropriate for the South African context, as the three spheres of government are constitutionally founded on the

principle of co-operative government. The principle of co-operative government means that the three spheres of government have a reciprocal obligation to trust, to support and to assist one another in co-ordinating service delivery to the community (Mathebula, 2004:23).

3.2 The Constitutional Approach / Legal Approach

This approach suggests that the constitution and other legislative provisions may be used as a point of departure in the study of intergovernmental relations. According to Roux, Brynard, Botes, & Fourie (1997:171), in the eighteenth and nineteenth centuries, the federalist movement in the United States advocated the constitutional approach and accepted the existing hierarchy of governments as a constitutional fact and the constitution which was considered to be the instrument for achieving harmony, was seen to be the basis for the determination of intergovernmental relations. Hattingh (1998:11) concurs by stating that this approach accepts the factual information contained in legislation as a constant (until amended by subsequent legislation) and also accepts that relations between governmental bodies exist exclusively within the framework of clauses permitting such relations.

The Constitution of the Republic of South Africa, 1996 is the supreme law of the Republic and it guides all the actions of the politicians and the officials. Thus the supremacy of the constitution dictates the South African approach to the study and practice of intergovernmental relations. Section 41(2) of the Constitution in particular requires an Act of Parliament to establish or provide for structures and institutions to promote and facilitate intergovernmental relations; and provide for appropriate mechanisms and procedures to facilitate the settlement of intergovernmental disputes. This constitutional requirement has led to the passing of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005). The passing of the aforesaid Act no doubt signifies the constitutional/legal approach as the South African approach to the study of intergovernmental relations as espoused in the Constitution.

The Constitutional/legal approach was also evident in the role played by the Constitutional Court of South Africa in a dispute between the National Minister for Provincial and Local Government and the Executive Council of the Province of Western Cape (which was later joined by the Province of KwaZulu-Natal). It is important to note that at the time both Provinces were under the political control of the opposition parties, namely the Inkatha Freedom Party and the former New National Party respectively. The dispute referred to above concerned the two Provinces who alleged that the Municipal Structures Act, 1998 (Act 117 of 1998) as a whole and certain sections of the Act in particular, violated Chapter 7 of the Constitution which deals with local government. As a result of the Constitutional Court challenge, sections 4, 5, 6(2), 13 and 24(1) of the Municipal Structures Act, 1998 were found to be inconsistent with the Constitution and invalid.

(Constitutional Court Judgement dated 15 October 1999, Case CCT 15/99)

3.3 The Financial Approach

Section 214(1) of the Constitution of the Republic of South Africa, 1996 states that an Act of Parliament must provide for: the equitable division of revenue raised nationally among the national, provincial and local spheres of government; the determination of each province's equitable share of the provincial share of that revenue; and any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations may be made. The Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997) has as its purpose *inter alia* to: promote co-operation between national, provincial and local spheres of government on fiscal, budgetary and financial matters; prescribe a process for the determination of an equitable sharing of revenue raised nationally; and provide for matters in connection therewith. The said Act also provides for the establishment of the Budget Council and the Budget Forum.

Although it was submitted above that the constitutional/legal approach is the South African approach to the study of intergovernmental relations; it is evident that fiscal,

budgetary and financial matters are constitutionally regarded as significant matters in the South African intergovernmental relations. Hence the Constitution of the Republic of South Africa, 1996 requires that a specific Act be passed to regulate these matters among the three spheres of government especially with equitable division of the nationally raised revenue. The author therefore contends that intergovernmental fiscal relations form a significant component of the constitutional approach to the study of intergovernmental relations in South Africa which is primarily driven by the importance of finance as a resource.

The author also submits that the dominance of the intergovernmental fiscal relations has a historical dimension - as the financial approach to the study of intergovernmental relations has, prior to the passing of the Constitution of the Republic of South Africa, 1996, been regarded as the popular South African approach. Since the Unification of South Africa in 1910, the South African government appointed numerous commissions and committees to investigate financial relations among the national, provincial and local government (Hattingh, 1998:12). The then State President's Committee on National Priorities Act, 1984 (Act 119 of 1984) represented an attempt to regulate financial relations between the national, provincial and local government.

3.4 Normative-Operational Approach

The normative-operational approach examines the importance of considering all pertinent norms to analyse the total operational reality of governmental relations without one aspect of governmental relations being overemphasised at the expense of another (Hattingh, 1998:14). Group norms or value objectives are important since the normative-operational approach entails an investigation of what is or should be desirable (Hattingh, 1998:14). Since intergovernmental relations is practised within a public administration environment, it means that there are norms and values to which it should subscribe (Mathebula, 2004:131). These norms and values should guide the

the behaviour of public officials in the performance of their duties.

Since each of the foregoing approaches, seen in isolation, is rejected for various reasons, a unique approach that can give meaning to all the possible facts of the issue must be followed. It is prudent to follow a normative-operational approach. Normative is that which ought to be, operational is that which must be able to work. One aspect, such as finance, cannot be overemphasised in this approach at the expense of another aspect, for example, values (Roux, Brynard, Botes, Fourie, 1997:172). Since section 195 of the Constitution of the Republic of South Africa, 1996 provides for values and principles that must govern public administration, the author submits that the normative-operational approach can be also be regarded as significant component of the constitutional/legal approach to the study of intergovernmental relations in South Africa.

In light of the preceding discussion of various scholars on the different approaches to intergovernmental relations, another factor that has an influence on the study of intergovernmental relations is the form of government. Although a number of forms of government is found in different countries, the focus of this study will be on the unitary and the federal forms of government because of their relevance to the South African situation.

4. THE INFLUENCE OF FORMS OF GOVERNMENT ON INTERGOVERNMENTAL RELATIONS

Forms of government vary from dictatorships with sovereign power vested in the head of state to forms which in various ways uphold the principles of democracy. Irrespective of the features of these systems, the underlying source of all forms of government is either unitary or a federal form of government (Hattingh, 1998:110). Traditionally, constitutions may be classified according to the methods by which powers are distributed between the country's national government and the local

governments that exercise authority over its parts; and may therefore choose between a unitary government and a federal one (Asmal, 1994:47). Although the issue under discussion is intergovernmental relations; to understand relations among the different spheres of government in a state we need to consider the main characteristics of a federal and a unitary state, because South Africa exhibits attributes of both, and these characteristics have direct effects on intergovernmental relations (Thornhill: 2002:28). The unitary and federal governments are now discussed below.

4.1 Unitary Form of Government

According to the doctrine of sovereignty, a unitary form of government recognises a supreme authority in a state, which is not subordinate to anything or any person. This is the premise of the principles whereby a unitary form of government may be identified and forms the basis of relations between governmental bodies in a unitary state (Hattingh, 1998:115). According to Roux *et al.*, (1997:174), in unitary states the central legislative authority is sovereign and can pass, repeal or amend laws that regulate the internal and external affairs of the state; and that in theory there is no limit to the powers of the central legislative authority, except that it can place limitations on its own procedures. In a unitary state, the parliament of the whole country is the supreme lawmaking body and final authority vests with the national government (Asmal, 1994:47).

In a unitary state, the constitution can recognise limitations on the power of national parliament to pass laws through devices such as the bill of rights such as in Italy, Portugal and Spain (Asmal, 1994:47). However, the constitution in a unitary state is often not the highest authority as in the case of the Great Britain where there is no single law which could be defined as a constitution (Thornhill, 2002:29). The essential qualities of a unitary state are the supremacy of the national parliament and the absence of subsidiary sovereign bodies which exercise supreme legislative authority (Strong, 1963:80). The Constitution of the Republic of South Africa, 1961

exemplified the unitary form of government for the Republic of South Africa as described above. Sections 1-3 of the Constitution of the Republic of South Africa Act, 1961 declared South Africa as a Republic under a State President and an Executive comprising a Prime Minister and Cabinet. Parliament with legislative powers over the Republic was established in terms of section 24 of the Constitution of the Republic of South Africa Act, 1961 and it consisted of the State President, a Senate, and a House of Assembly. Section 59 of the 1961 Constitution conferred legislative authority on Parliament in and over the Republic and had the power to make laws whose validity could not be questioned by any organ of state, including the judiciary.

The 1983 Constitution of the Republic of South Africa brought about far reaching changes in government administration. One of the main features of the 1983 Constitution was the introduction of a tri-cameral Parliament for Whites, Indians and Coloureds. In terms of section 37(1) of the 1983 Constitution, Parliament shall consist of three Houses, namely: a House of Assembly (for White persons), a House of Representatives (for Coloured persons), and a House of Delegates (for Indian persons). Black people were still excluded from participation in Parliament. The 1983 Constitution retained the supremacy of Parliament as a legislative authority of the Republic of South Africa. The 1983 Constitution also negated the principle of the separation of powers among the executive, the legislature and the judiciary by strengthening the role of the State President in legislation-making and by limiting the role of the judiciary to review legislation and decisions of the executive.

Section 30 of the 1983 Constitution of the Republic of South Africa vested the legislative power of the Republic in the State President and the Parliament of the Republic, which, as the sovereign legislative authority in and over the Republic, had the full power to make laws. The State President however had the power, in terms of section 31(1) of the Constitution, 1983, to decide that a Bill introduced in a House concerned matters of a particular population group and had to be dealt with by that House for a particular population group; and shall not be required to be dealt with by any other House. The said arrangement ensured that Bills concerning White persons

could be disposed of by a House of Assembly for White persons to the exclusion of the other Houses for Coloured persons and Indian persons.

The judiciary had limited power to review the decisions of the State President as provided for in section 18(1) of the Constitution, 1983 where the Supreme Court of Appeal had the competence to enquire into and pronounce upon the question as to whether the State President had consulted the Speaker of Parliament and the Chairpersons of the three Houses of Parliament before issuing a certificate directing which House of Parliament had to consider a Bill. Save as provided in section 18(1) above, no court of law had the competence to enquire into or pronounce upon the validity of a decision of the State President that matters mentioned in the decisions are own affairs of a population group, or are not own affairs of a population group, as the case may be. In terms of section 34(3) of the Constitution, 1983, save for matters provided in section 34(2) of the 1983 Constitution, no court of law had the competence to inquire into or to pronounce upon the validity of an Act of Parliament. The features of the 1983 Constitution described above, the author submits, illustrate the supremacy of the legislative authority in the South African setup prior to the passing of the 1993 Interim Constitution.

A number of principles describing a unitary form of government are also identified by Hattingh (1998:115) as the following: supreme power is indivisible and unlimited, the national legislative authority is empowered to promulgate, approve and amend laws concerning any aspect affecting the state, and the constitution of a unitary form of government would not limit the authority of the national legislative authority unless the aforementioned authority agrees to such limitations. Further principles are that the legislative authority may: create financial resources and establish executive institutions for the rendering of its functions; incorporate separate governmental units into hierarchical structures (if such structures have been recognised and approved by it); assign powers, authority and financial resources to spheres of government and determine and regulate intergovernmental relations (Hattingh, 1998:116).

With regards to the devolution and delegation of legislative and executive authority within the unitary state, Roux *et al.*, (1997:174) state that since the central governmental organ which has the necessary legislative and executive authority devolves some of this authority to a subordinate governmental organ, this process is referred to as the devolution of authority; and delegation and devolution can be compared as follows:

1. In the case of *delegation*, regional offices are an extension of central head office and *devolution* entails the creation of autonomous governmental units with executive authority.
2. With *delegation* accountability is centralised in the head office whereas with *devolution* accountability is demanded and each governmental organ enjoys the status as a legal entity.
3. *Delegation* occurs by means of administrative arrangements whereas *devolution* occurs by means of legal provisions.

4.2 Federal Form of Government

According to Strong (1963:105) there are two extreme forms of federal states namely: where the federal authority's powers may be prescribed (such as in the United States of America), leaving the remainder to the constituent political entities; and where the powers of the constituent bodies could be prescribed in the constitution (such as in Canada), leaving the remainder to the federal authority. Such a categorisation of federalism brings a clear spectrum within which to contextualise the study of federalism. Federalism involves the questions of national, state and local government relations. It includes the ways in which levels of government interact and how the levels are interrelated. The federal relationship in the United States, for example, was created by the American Constitution. The federal system involves

more than the mere creation of separate spheres of government. It involves constitutional principles, laws, and court interpretations that settle issues of allocation of authority between national and state governments (Garson & Williams, 1982:32).

Dent (1989:169) describes federalism as a somewhat elusive concept which refers to both a constitutional dispensation and to a means of exercising power; it applies to the decentralised ordering of an existing state where various geographical parts are inhabited by people with a separate ethos and identity which they wish to preserve within a single federal nation; and as process of government, federalism is essentially a form of power sharing. Whereas Elazar (1994:83) states that federalism is a rich and complex thing, a matter of formal constitutional divisions, appropriate institutions, patterns of political behaviour, and ultimately political culture.

The federal form of government, it is evident from the above definitions, arises in the context of the desire for power sharing between a national government and constituent state governments and as such the constitution plays a major role in the conduct of intergovernmental relations and how services are delivered to communities. As Barton and Chappell (1985:354) say, federalism is a system of government in which there is a constitutional division of power between a national government and state or constituent governments. What distinguishes a federal constitution from a unitary one, in relation to the competence of government, is that the allocation of power between a federal and a provincial government is delineated in a federal constitution (Asmal, 1994:48).

4.3 The Unitary and Federal Debate in South Africa

A pure form of a unitary or federal form of government seldom exists as many variations of each form are found. For example, Schulz (1961:179) presents differences in relations between the unitary and federal states and concludes that in respect of the arrangement and establishment of governmental relations, basic and

deep differences may be identified between the unitary and federal states, although these differences may not be regarded as absolute. One may regard the Constitution, 1996 as having both the unitary and federal government features. The federal elements of the Constitution, 1996 are, for example, that all spheres of government are established by the Constitution and therefore have original powers (section 40(1) of the Constitution, 1996). Because of the constitutional autonomy of each sphere of government, section 41 of the Constitution, 1996 provides for the principles of co-operative government and intergovernmental relations to govern the conduct of the three spheres of government.

Despite the example given above of the federal features of the Constitution, there are also unitary features as well. For example, section 155(7) of the Constitution, 1996 states that national government (subject to the participation of the National Council of Provinces) and provincial government have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1) of the Constitution. In essence, this constitutional provision, the author argues, relegates municipalities into a tier of government under the control of provincial and national governments rather than as a sphere of government as per section 40 of the Constitution, 1996.

Given the above, the author submits that one may regard the inclusion of the concept of cooperative government in the South African Constitution as historical, in the sense that the history of apartheid had created a situation whereby provincial identities played a role during the negotiations for a new dispensation. This meant that although the South African Constitution is essentially a unitary state Constitution, it had to have some federal features in order to get a broader consensus among the role players. As Mathebula (2004:29-30) argues, the understanding of the so-called South Africa federalism should be contextualised in a phased approach; and the quasi-federal nature of the South Africa Constitution, coupled with the emergencies

that the present government has to address, also defines the epicentre of its intergovernmental relations system.

5. CLASSIFICATION OF GOVERNMENTAL RELATIONS

The relations between governmental bodies can be classified into three basic categories: namely, intergovernmental, intragovernmental and extragovernmental relations (Adlem & Pisani, 1982 in Hattingh, 1998:19). Although this study is aimed at the study of the role of the intergovernmental relations in South Africa, with specific reference to the City of Tshwane Metropolitan Municipality, it is deemed necessary to define intragovernmental and extragovernmental relations in order to provide the context and better understanding of the facilitation role of intergovernmental relations in service delivery.

Intragovernmental relations refer to the relations within governmental bodies, both vertical and horizontal. In the national sphere of government, examples of vertical structures of authority are that of Parliament; Cabinet Ministers and departments (governmental bodies in the same sphere of government but on different hierarchical levels) or the relations between a Cabinet Minister and the head of his or her department (individuals in the same sphere of government but on different hierarchical levels). Vertical intragovernmental relations are important for the establishment of lines of authority and maintaining accountability and responsibility as well as facilitating control. Horizontal intragovernmental relations occur in governmental bodies between individuals and institutions in the same hierarchical level, for example between ministers and cabinet in the national sphere of government.

(Hattingh: 1998:27-29)

Extragovernmental relations occur between governmental bodies and external institutions such as social, political organisations and economic organisations. Social extragovernmental relations, for example, come into play when governmental bodies

are involved in welfare matters affecting the community in general, notably in respect of problems engendered by urbanisation. Besides relations with various associations such as welfare organisations, relations may also be formed with individuals and also in terms of legislation (Thompson, 1963:422). In South Africa, political parties represent a diversity of opinions and values and it should at all times be assumed that Parliament represents the community and will thus behave as a community would have (Calvert, 1982:68). With regards to economic extragovernmental relations, these relations come into play when the government institute measures to serve as a framework in which the community and organised trade and industry can operate (Hattingh, 1998:33).

Intergovernmental relations among the various governmental bodies occur at the horizontal and vertical levels. The manner in which these governmental bodies conduct their relations will have an impact on the delivery of services to the communities and it is therefore critical that these governmental bodies conduct themselves with the framework of the Constitution. If these governmental bodies do not conduct themselves within the spirit of the Constitution, such behaviour would inevitably impact negatively on the welfare of citizen and the delivery of services to communities.

6. NORMATIVE GUIDELINES IN THE STUDY OF INTERGOVERNMENTAL RELATIONS

The fact that intergovernmental relations are practised within a public administration environment means that there are norms and values to which they should subscribe (Mathebula, 2004:131). According to Hattingh (1998:80) the normative requirements in the field of public administration were developed in the course of many years and are applicable to virtually all circumstances in the administrative process. Since the normative guidelines that determine the nature and the extent of the administrative practices have such an important influence on public management, it is essential to

determine to what extent these guidelines are exacerbated or destroyed by intergovernmental relations (Roux *et al.*, 1997:177). The normative guidelines that follow below may be described as norms and values to which a society aspire to and which serve as a yardstick for public conduct (Botes *et al.*, 1997:285).

6.1 Acknowledgement of the Supremacy of the Constitution

With the passing of the Constitution of the Republic of South Africa, 1996, South Africa moved from a parliamentary supremacy to constitutional supremacy, and as such, the Constitution is acknowledged as the supreme law of the Republic of South Africa. Section 2 of the Constitution, 1996 states that it is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled. The importance of this guideline means that all actions of the intergovernmental forums should be guided and be consistent with the Constitution. Linked to this guideline is the political authority of the President as the Head of State and the head of the national executive in terms of section 83(a) of the Constitution, 1996. The powers and functions of the President in terms of section 84 of the Constitution makes the President's position critical in the driving of the government programmes and as such will be expected to provide guidelines in the conduct of intergovernmental relations.

As Mathebula (2004:132) states, the influence of the Presidency on intergovernmental relations will be an unavoidable feature in the South African intergovernmental relations landscape. The author submits that this is particularly so given the passing of the Intergovernmental Relations Framework Act, 2005 which establishes the President's Co-ordinating Council at the apex of all intergovernmental structures who have to formally report to it on the implementation of national policy and programmes (sections 7 & 8 of the Intergovernmental Relations Framework Act, 2005).

6.2 Maintenance of Public Accountability

One of the cornerstones of democracy is that each political representative and public official is subject to public accountability and this means that each of them should give account in public for his or her activities – it is generally accepted that they should display a sense of responsibility when performing their official duties (Gildenhuys & Knipe, 2000:129). Hattingh (1998:84-85) concurs by stating that public accountability refers to a system of representative government where the elected authority should in all respects be accountable to society for the manner in which it discharges the function of government. One may therefore define accountability as an obligation that a public official or political representative has in being publicly responsible for their actions. Or as Cloete (1988:17) states that every political office bearer and public official should display a sense of responsibility and be able to give account of their action in public.

According to *Roux et al.* (1997:178), where a subordinate governmental organ fulfils an agency function on behalf of a higher authority, the higher authority must accept that it is accountable for the policy and results, whereas the subordinate organ will be responsible for the operational activities. In view of the democratic nature of the South African system (as embodied in the Constitution), the normative guideline of public accountability is applicable to South Africa. And the manner in which intergovernmental relations are conducted has to be subject to public scrutiny as it impacts on the delivery of services to communities.

6.3 Maintenance of Public Efficiency

Public efficiency is concerned with the effectiveness of activities in relation to the frugal use of funds, human resources and material, and governmental activities on any sphere are not financed from an inexhaustible source of funds; therefore the

execution of work programmes must be justified and be completed in a particular order of priority (Roux *et al.*, 1997:179). According Hattingh (1998:89) efficiency is an important guideline in government, and it is regrettable that a diversity of opinions abound in the public sector as to the true significance of this concept. Although there are varying opinions as to the meaning of efficiency, for the purpose of this discussion, Cloete's (1995:82) definition of efficiency in the public sector as the greatest possible quantitative and qualitative satisfaction of essential needs with the limited resources available, will be accepted. It could thus be concluded that intergovernmental relations should, in line with efficiency, be conducted in a manner that ensures that minimal resources are used, as inefficiency will negatively impact on service delivery.

6.4 Adherence to South African Administrative Law

The intensity of the intergovernmental relations process, unintentionally, tends to galvanise government decision-makers into the *ultra-vires* mode; thereby undermining constitutionalism and the rule of law - the execution of public service functions must be within the legal rules of the state and administrative law (Mathebula: 2004:135). Administrative law encompasses the authoritative rules governing the organisation of the public sector, interactions between government and citizens and between the public authorities together (Kickert, 1997:199). This implies *inter alia* that the actions of public officials conducting intergovernmental relations should be legal and lawful, implying that laws, ordinances and regulations should be obeyed.

The criteria guiding the behaviour and actions of government institutions and organs of state within the framework of the judicial-administrative functions are as follows (Griffith & Street, 1963 in Hattingh, 1998:104): actions should be authorised; behaviour should be lawful and subject to relevant legal requirements; actions should comply with required legal procedures; the misinterpretation of justice should be avoided; discretion should not be used unfairly or unjustly; actions should only take

place after all relevant information and facts have been considered; the behaviour of officials should be reasonable and unimpeachable.

6.5 Acknowledgement of Current Community Values

Values are deep down beliefs governing the daily lives of people living in a specific geographical community – they reflect attitudes pertaining to the acceptable and non-acceptable manners of behaviour (Tshikwatamba, 2004:257). Values refer to the human being's idea of what is acceptable or unacceptable (Coetzee, 1988:66). Obviously, the public officials should know the communities they serve better. In that regard, the actions and behaviours of communities are influenced by their values, and therefore public officials should acknowledge and be conversant with the current community values, because the satisfaction of communities with the facilitation role of intergovernmental relations in service delivery will be guided by the values of those communities concerned.

In this regard, Tshikwatamba (2004:255-257) states that the South African public administration advocates the guidelines emanating from community values without contextualising them into the values of specific communities, be it Western, African or otherwise – and therefore contends that the formulation and application of guidelines should be informed by the cultural values of the communities in question. The author concurs with the aforesaid contention in that the generic understanding and application of the guidelines by public officials without contextualising them into the values of the communities they serve, may inevitably lead to unintended consequences in the delivery of services. This is especially critical in the case of African values such as *ubuntu*, *collectivism*, *traditionalism*, *oral tradition* and *spiritualism*, since they were placed in the periphery by colonialism and now need to be placed into the mainstream (Tshikwatamba, 2004:268).

6.6 Maintenance of High Ethical Norms by Political Office-Bearers and Officials

Since the principles governing public administration apply to all spheres of government, organs of state and public enterprises, it is expected of political office-bearers and officials to maintain high ethical norms in the execution of their duties, i.e. to be honest and fair in their dealings, to be helpful, not be guilty of corruption, not discriminate against people on the grounds of personal consideration (Roux *et al.*, 2000:179). In order to legalise the norms and standards required, the different spheres of government pass laws and regulations that regulate the conduct of staff members within their spheres of constitutional competency. Section 195 of the Constitution of the Republic of South Africa, 1996 specifically states that public administration must be governed by the democratic values and principles enshrined in the Constitution, which include the principle that a high standard of professional ethics must be promoted and maintained, and national legislation must ensure the promotion of these values and principles. With regards to ethical standards, Vocino and Rabin (1981:399) concur by stating that ethical standards assume that there are acceptable and unacceptable practices in the conduct of public officials.

6.7 Social Equality and Social Justice

The contemporary emphasis of social equity pertains to: equality in government services; responsiveness to the needs of the citizens rather than the needs of public institutions; responsibility for decisions and programme implementation by public managers; change in the management and administration of public institutions; an approach to the study of and education for public administration that is interdisciplinary (Denhardt & Hammond, 1992:177). This means that public officials should not unfairly discriminate among people on any of the following grounds i.e. race, religion, culture or gender when engaging in relations with other governmental bodies. The current situation in South Africa, according to Roux *et al.* (1997:180), demands that particular attention be given to the social equality actions as well as the actions aimed at the achievement of social justice. The Bill of Rights, as part of the Constitution of the Republic of South Africa, 1996 guarantees equality by stating *inter alia* that: everyone is equal before the law and has the right to equal protection and

protection of the law; equality includes the full and equal enjoyment of all rights and freedoms, and to promote the achievement of equality, legislative and other measures may be taken designed to protect or advance persons, or categories of persons disadvantaged by unfair discrimination; the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

7. INTERGOVERNMENTAL RELATIONS IN PUBLIC ADMINISTRATION

According to Hattingh (1998:54), while much has been written about the nature of administrative processes, the factors that influence intergovernmental relations may follow the following broad classification namely: policy-making, financing, organising, personnel utilisation, procedures and control. The factors that influence intergovernmental relations will now be discussed below.

7.1 Policy and Policy Making as an Intergovernmental Relations Issue

According to Thornhill & Hanekom (1995:54), a policy refers to the desired course of action and interaction which is to serve as a guideline in the allocation of resources necessary to realise societal goals and objectives, decided upon by the legislator and made known either in writing or verbally. Policy-making begins with public recognition that a problem exists, proceeds to define the problem, formulates policy demands and finally, follows with a policy agenda with alternative proposals (Kanyane, 2004:141). Policies as well as laws emanating from policies are borne out of a need of the community or government to regulate the conduct of persons either within public institutions or outside or both (Department of Public Service and Administration, 2003:39). The policy making for South African local government and administration is directed by legislation passed by Parliament and provincial legislatures as informed by the Constitution of the Republic of South Africa, 1996.

With regards to the Constitution as the source for regulating intergovernmental relations, section 41(2) of the Constitution of the Republic of South Africa, 1996 provides 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 to facilitate settlement of intergovernmental disputes. This Act had been passed as the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005). The purpose of this Act is to establish a framework for the national government, provincial governments and local governments to promote and facilitate intergovernmental relations; to provide for mechanisms and procedures to facilitate the settlement of intergovernmental disputes; and to provide for matters connected therewith.

In this regard, a clear policy (as envisaged) for an appropriate system of intergovernmental relations adds credibility to promoting the system of cooperative government and should also support social and economic growth as well as development in South Africa. According to the White Paper on Local Government (1998:33), municipalities should develop mechanisms to ensure citizen participation in policy initiation and formulation, and the monitoring and evaluation of decision making and implementation. Legislation on intergovernmental relations as passed above helps in giving directions to municipalities on how to go about establishing these participation structures. The Presidential Review Commission (1998), identified current policy concerns relating to governmental relations in South Africa as including the following issues: the timing of policy and legislation; scope, goals, and objectives of policy; policy instruments required to fulfil responsibility; content of policy; the manner in which national departments should be responsible for the implementation of co-operative government and reaching a balance between the natural evolution of intergovernmental relations and the need for prescription. The passing of the Intergovernmental Relations Framework Act is therefore a significant step in addressing these concerns.

With regards to efforts to better understand the determination and the realisation of

public policy, Dror (1968, in Simmons and Dvorin, 1977:401), identifies seven decision making models as follows: Firstly, the *pure rationality* – This approach centres upon developing a universally ideal pattern for decision making which should be approximated as closely as possible. Secondly, the *economically rational model* – This approach is the same as the pure rational approach except that efficiency and economy would be maximised. Thirdly, the *sequential decision model* – This approach focuses upon experimentation among a variety of alternatives in order to determine and adopt the most effective policy. Fourthly, the *incremental model* – This is known as the muddling-through explanation as to how policy is made. That is, there is no planning. You just, “come hell or high water,” somehow muddle through.

Fifthly, the *satisficing model* – This model focuses upon choosing the first satisfactory alternative without exhaustively examining all possibilities. Sixthly, the *extra rational model* - This approach is based upon extra-rational processes for arriving at the most optimal methods of decision making and policy making. Seventhly, the *optimal model* – This is an integrative approach which focuses on identifying values, practicalities and problems. These are integrated into the resolution of the problems and then focus is put upon resource allocation, goal setting, programme alternatives, predictability of results and the evaluation of best alternatives. Then the decision is made as to which are acceptable alternatives. Irrespective of the model (or combination of models) used, society does not measure the success of government by how many policies were developed but by policy outputs and outcomes, which derive community satisfaction and thereby uplift the standard of society (Kanyane, 2004:141).

7.2 Finance as an Intergovernmental Relations Issue

To understand the management of the local government finance, one must understand the purpose for which the local sphere of government needs money and to understand why municipalities need money, one should know what the general

goal and objectives of local government are (Gildenhuys, 1997:1). In this regard, section 152 (1) of the Constitution of the Republic of South Africa, 1996 lists the objectives of local government as the following: to provide democratic and accountable government for local communities; to ensure the provision of services to communities in a sustainable manner; to promote social and economic development; to promote a safe and healthy environment; and to encourage the involvement of communities and community organisations in the matters of local government. Section 152(2) of the Constitution, 1996 states that a municipality must strive, within its financial and administrative capacity, to achieve the objectives as stated above. Given the constitutional objectives of local government, the question is how intergovernmental fiscal relations take place in the context of the local government constitutional objectives.

To understand the financial relations between the three spheres of government, it is imperative to understand the constitutional system within which local government operates (Gildenhuys, 1997:197). In this regard, chapter 13 of the Constitution of the Republic of South Africa, 1996 provides a framework for financial supervision of local government by the National Treasury and provincial treasuries. This supervisory role is actualised by the Municipal Finance Management Act, 2003 (Act 56 of 2003) whose purpose is to: secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government; to establish treasury norms and standards for the local sphere of government; and to provide for matters connected therewith. However, the supervisory role of national treasury and provincial treasuries must take place within the framework of co-operative government as set out in chapter 3 of the Constitution, 1996 (Section 5(1)(b)(i) of the Municipal Finance Management Act, 2003). The National Treasury also has a responsibility to promote the objectives of the Municipal Finance Management Act, 2003 when coordinating intergovernmental financial and fiscal relations in terms of the Intergovernmental Fiscal Relations Act, 1997; the annual Division of Revenue Act; and Public Finance Management Act, 1999 (Section 5(1)(b)(ii) of the Municipal Finance Management Act, 2003 (Act 56 of 2003).

The constitutional and legislative frameworks on intergovernmental fiscal relations *per se* do not necessarily guarantee effective and efficient financial relations at local government sphere. In order to ensure an equilibrium in financial relations among the three spheres of government, there should be an acceptable set of normative guidelines according to which these relations can be organised and these guidelines are (Gildenhuys, 1997:203-208): national framework; financial accountability; right of existence of each sphere of government; integration of functions; co-ordination of functions; adequate revenue; equal adjudication in devising a formula for revenue sharing; adequate increase in revenue; security and certainty; and adaptability.

7.3 Human Resources as an Intergovernmental Relations Issue

A common characteristic of different government departments on all the three spheres of government is that there will continue to be a need for an adequately trained body of staff. In almost all branches of governmental institutions, concern is currently being expressed about a staff shortage, and for this reason, provision shall have to be made for the application of the theories and practices that have been established in the public sector over many years (Roux *et al.*, 1997:182). Section 195 (1)(h) of the Constitution of the Republic of South Africa, 1996 states that public administration must be governed by good human resources management and career development practices. Section 195(1)(i) of the Constitution, 1996 also states that public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation. These human resources principles apply to administration in every sphere of government, all organs of state, and public enterprises (Section 195(2) of the Constitution, 1996).

The challenge for South Africa as a country is to ensure that values and principles

as espoused in the Constitution are cultivated in public administration. However, there are serious challenges in the promotion of these values and principles. Section 196 of the Constitution establishes the Public Service Commission whose powers and functions are, *inter alia*, in terms of section 196(4)(a) to promote the values and principles in the public service as set out in section 195 of the Constitution. In other words, the values and principles of public administration are applicable to all spheres of government, organs of state, and public enterprises; but the Public Service Commission is established to promote these values and principles only to the Public Service which in essence consists of the national and the provincial spheres of government. This leaves the local sphere of government, other organs of state, and public enterprises outside the mandate of the Public Service Commission.

This state of affairs creates a problem of fragmentation and lack of consistency in the promotion of values and principles of public administration; and can be rectified by extending the mandate of the Public Service Commission to include local government, organs of state, and public enterprises to ensure consistency in the promotion of values and principles of public administration as espoused in section 195 of the Constitution. This would, no doubt, help eliminate inconsistencies among three spheres of government and organs of state in, *inter alia*, the recruitment of personnel and thereby enhance the quality of intergovernmental relations.

7.4 Organisation of Government Institutions

Organisation refers to the grouping of people in an orderly pattern so that everything they do will be aimed at achieving predetermined objectives (Cloete, 1988:78). According to Hanekom (1986:87) a number of authors have endeavoured to define the term “organisation” and from these attempts one can conclude that organisation as a process consists of several activities based on work division; and as a structure an organisation consists of people who accept co-ordinated direction to achieve certain goals, and provides a communication system of interrelated behaviours.

Regarding the process of organising, two basic principles of organising come to the fore: the principle of specialisation and, or the way the task is broken up into smaller units (the so-called division of work) to utilise the abilities of the members of staff with a view to improving productivity; and the principle of departmentalisation, which entails a grouping together of activities that are basically similar, or which should logically be grouped together, to form departments (or divisions, or sections, or posts) (Cronje *et al*, 1990:96-99).

Furthermore, Roux *et al.* (1997:183–184), maintain that the interrelatedness of organisational arrangements can have many effects, such as the following: Firstly, as a result of uncertainty about fields of action and often conflicting functional policies, development in separate governmental areas is retarded. Secondly, the overlapping of activities concerning thought processes and actions leads to inefficient use of human resources. Thirdly, the inhabitants become frustrated in their attempts to identify the correct institution to satisfy their needs. Fourthly, historical and geographical boundaries applied slavishly to demarcate operational areas and fields of authority, while needs and requirements in respect of service delivery cannot be demarcated in accordance with historical values and geographical characteristics.

According to Thornhill & Hanekom (1995:163) organisation (formal) refers to the explicit organisational pattern designed by the decision maker and utilised as the basis for the division of work; the delegation (and decentralisation) of authority; co-ordination and control; and the arrangement of matters such as remuneration, quality control and the determination of communication channels. And the said concepts which may influence intergovernmental relations are defined as follows: With regards to delegation and decentralisation, these terms have to do with the distribution of authority at both the individual level (referred to as delegation) and the organisational level (called decentralisation). Delegation involves the establishment of a pattern of authority between a superior and one or more subordinates and more specifically, delegation is the process by which the manager assigns a portion of his or her total work load to others (Griffin, 1987:275). In this regard, Luthans (1985:74) states that

the classical definition of delegation states that decisions should be made at as low an organisational level as possible.

Just as the authority can be delegated from one individual to another, organisations (spheres of government) also develop patterns of authority across a wide variety of positions and departments – decentralisation therefore may be defined as the extent to which power and authority are systematically delegated throughout the organisation (spheres of government) to the middle and lower managers (or provincial and local government) (Griffin, 1987:277). In the context of intergovernmental relations this means the systematic delegation of power and authority from the national government to the provincial and local governments, and through procedures and legislation which regulate the decentralisation of authority between the different spheres of government, intergovernmental relations are maintained between the national, provincial and local spheres of government.

Section 40(1) of the Constitution of the Republic of South Africa, 1996 constitutes government as national, provincial and the local spheres of government which are distinctive, interdependent and interrelated. *Distinctive* meaning that each sphere has its own unique area of operation; *interdependent* meaning that the three spheres are required to co-operate and acknowledge each other's area of jurisdiction; *interrelated* meaning that there should be a system of co-operative governance and intergovernmental relations among the three spheres (Department of Public Service and Administration, 2003:15). Although the government consists of three spheres of government, the government has to function and deliver services to communities as one. Thus, this system of co-operative government ensures the decentralisation of service delivery and that the different spheres of government acknowledge each other's area of jurisdiction whilst co-operating towards serving the same communities.

With regards to communication and intergovernmental relations, a primary strategy that may raise the quality of intergovernmental relations is the creation of formal

communication structures. This would *inter alia* enable the introduction of the appropriate protocol among the role players in the conduct of intergovernmental relations. By communication we mean the flow of material, information, perceptions and understandings between various parts and members of the organisation... all the methods, means, and media of communication, all the channels, networks, and systems of communication, all the person interchange...(Vardaman & Haltherman, 1968:3-4). According to Webster's (1968:277) communication may be defined as the sharing with others, imparting, passing on, transmitting thoughts, ideas and opinions.

With regards to co-ordination and intergovernmental relations, Waldo (1953:86) defines co-ordination as the orderly arrangement of group effort in order to provide unity of action in pursuit of a common purpose. This definition means that activities and functions of the three spheres of government should not overlap and that no duplication of functions should occur. Currently, the President's Co-ordinating Council plays a major role in promoting co-operation between the national executive authority and the provincial executive authority on national development priorities and provincial development programmes, and other matters of a high level policy nature common to both spheres of government (Department for Provincial and Local Government's Report on the Intergovernmental System in South Africa, 2002:5-6). The passing of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005) further enhances the framework within which the intergovernmental relations take place in compliance with section 41(2) of the Constitution, 1996. In particular, the Intergovernmental Relations Framework Act, 2005 deals with issues of co-ordination and communication among the three spheres of government as discussed above. It (the Act) also formalises what was previously referred to as the non-statutory intergovernmental relations structures such as the President's Co-ordinating Council and Minmeecs. This arrangement ensures that there is a co-ordinated implementation of government programmes at the local sphere of government.

8. PEOPLE IN INTERGOVERNMENTAL RELATIONS

The three spheres of government and governmental institutions are nothing without its workforce because without people institutions can only exist on paper. People in governmental institutions are divided into elected representatives or politicians and appointed employees or public officials, and both the elected representatives and the appointed employees are involved in intergovernmental relations and their actions are guided by basic values and principles as espoused in section 195(1) of the Constitution of the Republic of South Africa, 1996. In view of the above, the subject of people in intergovernmental relations will be discussed under the following headings: basic values and principles, and the fundamental rules of conduct.

8.1 Basic Values and Principles

As stated above, basic values and principles should guide the actions of politicians and public officials. According to section 195(1) of the Constitution of the Republic of South Africa, 1996 public administration must be governed by the democratic values and principles. The principles include the requirement that a high standard of professional ethics must be promoted and maintained; the efficient, economic and the effective use of resources must be promoted; public administration must be development oriented; peoples needs must be responded to, and the public must be encouraged to participate in policy making; good human resources management and career development practices must be cultivated; and public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to address the imbalances of the past to achieve broad representation.

Although much has been done in the three spheres of government to promote the values and principles through a variety of legislation such as the Employment Equity Act, 1998 (Act 55 of 1998), there remains a gap in that the Public Service Commission mandate is restricted to the Public Service as opposed to the public sector which would include local government, public enterprises and other organs of state as stated above.

8.2 Fundamentals Rules of Conduct

The establishment of the code of conduct to guide the ethical behaviour of human beings is as old as mankind itself. An example of the set of rules or guidelines of prescribed or acceptable conduct, originally of a specific society and today associated with the adherents of the Christian religion, are Ten Commandments in the Old Testament of the Bible (Hanekom, 1986:162). The South African government officials and politicians are also expected to behave in accordance with certain rules of conduct in the performance of their duties and in the conduct of intergovernmental relations. Any deviation from the expected behaviour by officials and politicians would inevitably put the government into disrepute. A code of conduct may be defined as a guideline for acceptable conduct by officials and politicians in the performance of their duties (Department of Public Service and Administration, 2003:83). Progress has been made by the national and provincial spheres of government with regards to the publication of the Codes of Conduct. A Code of Conduct for the Public Service (national and provincial government public officials) was published in 1997 and among other things, the Code of Conduct deals with (Department of Public Service and Administration, 2003:83):

- an employee's relationship with the public;
- an employee's relationship with other employees;
- the required performance of duties;
- personal conduct and private interest.

In the case of public officials at the local sphere of government, their Code of Conduct is contained in Schedule 2 of the Municipal Systems Act, 2000 (Act 32 of 2000). In the case of local government councillors, their Code of Conduct is contained in Schedule 1 of the Municipal Systems Act, 2000 (Act 32 of 2000).

Members of the Cabinet, Deputy Ministers, and members of the provincial Executive Councils are regulated by the Executive Members' Ethics Act, 1998 (Act 82 of 1998). Members of Parliament also have their own Code of Ethics as developed by Parliament which is administered by the Joint Committee on Ethics and Members' Interests (section 89(1) of the Joint Rules of Parliament). In the case of provincial legislatures, they each have their Codes of Conduct as adopted by their respective legislatures.

Lack of uniformity regarding the Codes of Conduct for the public officials who work in municipalities and those who work in the provincial and national spheres of government evidently create an anomaly in the conduct of intergovernmental relations. It is the author's submission that the standardisation of the different Codes of Conduct is warranted in view of common principles and values that all public officials have to adhere to in terms of section 195(1) of the Constitution. It is also the author's submission that Codes of Conduct for the full time politicians at national, provincial and local spheres of government should be standardised so as to ensure uniformity in the expected behaviours of politicians. In that way when these politicians serve and interact with the public, the public can expect the same conduct. The Executive Members' Code of Ethics Act, 1998 could, for instance, be extended to include full time councillors at the local sphere of government. The Code of Ethics for members of Parliament (with some adjustments) could be also extended to include part-time members of the provincial legislatures and municipal councils. In this manner there could be uniformity of Codes of Conduct for full-time politicians at three spheres of government and part-time politicians at municipal councils, provincial legislatures, and Parliament.

9. CONSTITUTIONAL FRAMEWORK ON INTERGOVERNMENTAL RELATIONS AND CO-OPERATIVE GOVERNMENT.

9.1 Introduction and Perspective

According to Ismail, Bayat & Meyer (1997:137), any form of government, whether central, provincial or local, has as its objective the achievement of the general welfare of the community by satisfying its identified needs through rendering effective services. Intergovernmental relations between central, provincial and local spheres require, among other things, clear guidelines, effective communication and closer co-operation to achieve objectives that are stipulated in the Constitution of South Africa (Ismail, Bayat & Meyer, 1997:137). It has been the experience in most contemporary states that national government possesses have neither the knowledge nor the capacity to devote sufficient attention to the different sections of society; therefore spheres of government have been established to provide services which are best provided by the appropriate spheres of government (Cloete and Thornhill, 2004:57).

Ismail, Bayat & Meyer (1997:138) state that intergovernmental relations are an important means through which co-ordination and co-operation among the different spheres of government can be developed and that intergovernmental relations further implies that each sphere of government has its own functions and responsibilities, but interacts with the other spheres to ensure effective and efficient implementation of policies and programs. With regards to the concept of cooperative government, Ismail, Bayat & Meyer (1997:139) also state that since this term is closely related to intergovernmental relations, it is necessary to clarify what 'co-operative government' is as it relates to local government.

With regards to the distinctive features of intergovernmental relations, Wright (1978:8-13) identifies all five of them as follows:

- 1) Whereas federalism emphasises national/state relationships with occasional attention to interstate relations, the concept of intergovernmental relations recognises not only national/state relations and interstate relations, but also national/local, state/local, national/state/local and inter-local relations. In short, intergovernmental relations encompass all the permutations and combinations of relations among the units of government.

2) The second feature of intergovernmental relations is the human dimension – the activities and attitudes of the persons occupying official positions in the units of government under consideration. Consequently, the concept of intergovernmental relations necessarily has to be formulated largely in terms of human relations and human behaviour.

3) The third feature implicit in intergovernmental relations is that relations among officials are not one-time or occasional occurrences, formally ratified in agreements or rigidly fixed by statutes or court decisions. Rather, intergovernmental relations include officials' continuous day to day patterns of contact and exchanges of information and views.

4) The fourth distinguishing feature of intergovernmental relations is that all public officials (including politicians) participate.

5) The fifth and last distinguishing feature of intergovernmental relations is its policy component. In this context, policy is generated by interactions among all public officials.

9.2 Co-operative Government in relation to Intergovernmental Relations

In this regard the White Paper on Local Government (1998:37) states that local government is a sphere in its own right, and is no longer a function of national or provincial government and as a result, co-operative government assumes the integrity of each sphere of government but also recognizes the complex nature of government in a modern society. Section 40(1) of the Constitution of the Republic of South Africa, 1996 in particular provides that government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated. This means that the three spheres of government have original powers which are derived from the Constitution and no sphere of government is subordinate to the other sphere.

Co-operative government is an innovative concept to resolve problems related to intergovernmental relations and it attempts to address the difficulties experienced by most large bureaucracies in co-ordinating their government functions and streamlining their administrative activities (Ismail, Bayat & Meyer, 1997:139). It is therefore evident from the above that Ismail *et al.* see the concept of co-operative government as a tool to resolve issues relating to intergovernmental relations whereas the White Paper on Local Government, 1998 tends to use the same concept interchangeably with the term “intergovernmental relations”.

Chapter 3 of the Constitution of the Republic of South Africa, 1996 that deals with intergovernmental relations is in fact actually titled: “Co-operative Government” and Section 41 is titled: “Principles of co-operative government and intergovernmental relations”. It is clear therefore that the two concepts are inseparable and that they are closely associated. The author, therefore, contends that one concept cannot survive to the exclusion of the other concept, and that co-operative government leads to intergovernmental relations and that intergovernmental relations lead to co-operative government. As a result, the author will use these two terms interchangeably.

9.3 Constitutional Framework on Co-operative Government

Constitutional arrangements are central to any democratic system of intergovernmental relations. The South African Constitution, 1996 is generally marked by a centralist tendency based on notions of a unitary state and supremacy power relative to sub-national spheres; and at the same time, it provides a specific set of principles for intergovernmental co-operation (Presidential Review Commission Report, 1998:4). The Department of Public Service and Administration (2003:27) characterises the Constitution, 1996 based on its concepts of distinctiveness, interrelatedness and interdependence as a reflection of a decentralised South African State. In this regard, Section 41(1) of the Constitution of the Republic of South Africa, 1996 deals with the principles of co-operative government and intergovernmental

relations and state that all spheres of government and all organs of state within each sphere must:

- Preserve the peace, national unity and indivisibility of the Republic.
- Secure the well being of the people of the Republic.
- Provide effective, transparent, accountable and coherent government for the Republic as a whole.
- Be loyal to the Constitution, the Republic and its people.
- Respect the constitutional status, institutions, powers and functions of government in the other spheres.
- Not assume any power or function except those conferred on them in terms of the Constitution.
- Exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of the government in another sphere, and co-operate with one another in mutual trust and good faith by: fostering friendly relations; assisting and supporting one another; informing one another of, and consulting one another on, matters of common interest; co-ordinating their actions and legislation with one another; adhering to agreed procedures; and avoiding legal proceedings against one another.

Section 41(2) of the Constitution of the Republic of South Africa, 1996 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 to facilitate settlement of intergovernmental disputes.

Section 41(3) of the Constitution of the Republic of South Africa, 1996 states that an organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve a dispute.

Section 41(4) of the Constitution of the Republic of South Africa, 1996 further states in this regard that if a court is not satisfied that the requirements of subsection 3 have been met, it may refer a dispute back to the organs of state involved. In dealing with the subject of intergovernmental relations, Ismail, Bayat & Meyer (1997:141-142) also emphasise the importance of re-stating the principles on which co-operative government and intergovernmental relations are based against the background of the new Constitution.

The Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005) was only passed in August 2005. Prior to the passing of this Act (as envisaged in terms of section 41(2) of the Constitution), there was no framework for the resolution of disputes as per section 41(3) of the Constitution. Disputes that have arisen prior to the passing of the Intergovernmental Relations Framework Act, 2005 have been resolved through the courts of law. An example of intergovernmental dispute that was resolved by courts was the Constitutional Court challenge of 1999 by the provinces of Western Cape and KwaZulu-Natal against the national government regarding the validity of certain sections of the Municipal Structures Act, 1998 which resulted in some sections of the Municipal Structures Act, 1998 being declared unconstitutional (Constitutional Court Case, CCT 15/99). As the contested matters were of a constitutional nature, the provisions of the Intergovernmental Relations Framework Act, 2005 would not have helped, even if the Act had been passed at the time.

Another dispute between the organs of state was the Constitutional Court case of 1995 brought by the Executive Council of the Western Cape against the national government challenging the validity of amendments to the Local Government

Transition Act, 1993 (Act 209 of 1993) made by the President of the Republic of South Africa through the issuing of Proclamations. On the whole the Constitutional Court found the provisions of section 16 A of the Local Government Transition Act, 1993, under which the Proclamations were issued, to be inconsistent with the Constitution and therefore declared the Proclamations invalid (Constitutional Court Case, CCT 27/95). In view of the Constitutional Court cases and the fact that our constitutional order is in its development phase, the author contends that it is a positive development that matters of a constitutional nature are brought before the Constitutional Court, as some of the laws were passed before the adoption of the Constitution in 1996. And the judgements of the Constitutional Court reinforce the supremacy of the Constitution as per section 2 of the Constitution, 1996.

9.4 Constitutional Framework on Local Government

The constitutional framework on local government is covered by chapter 7 of the Constitution of the Republic of South Africa, 1996 which deals *inter alia* with the status of municipalities, objects of local government, developmental duties of local government and municipalities in co-operative government. The new Constitution provides for the establishment of local government throughout the country and their legislative and executive authority is vested in Municipal Councils (section 151(1) & 2 of the Constitution, 1996). Municipalities have the right, on their own initiative, to manage the affairs of their own constituents, subject to national and provincial legislation and in this respect, the ability or right to exercise their powers or to perform their functions shall neither be impeded nor compromised by national or provincial government (section 151(3) & (4) of the Constitution, 1996).

The status of municipalities in terms of the new Constitution, in essence, means that municipalities are now creatures of the Constitution, which is unlike in the past when municipalities could be established or disbanded by a 'competent authority' which

could have been the national government (Ismail & Mphaisha, 1997 in Ismail, Bayat & Meyer, 1997:66). Municipalities should therefore strive to achieve, within their financial and administrative capacity, the following (Ismail, Bayat & Meyer, 1997:66): the promotion of democratic and accountable government for local communities; the provision of services to citizens in a sustainable manner; the promotion of social and economic development; the encouragement of a safe and healthy environment; and the encouragement of citizen participation in local government affairs.

In terms of the new Constitution, municipalities have been given development tasks in terms of two issues. Firstly, they are expected to organize and manage their administrations, and to adopt budgeting and planning strategies that will give priority to the basic needs of the citizens and promote their socio-economic development. Secondly, municipalities are obliged to participate in both national and provincial development programs in the spirit of co-operative governance. In turn, national and provincial governments should support and develop the capacities of municipalities so that they can manage their own affairs (Ismail, Bayat & Meyer, 1997:66).

Also, according to section 154(2) of the Constitution of the Republic of South Africa, 1996, draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organized local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation. Such inputs are intended to protect the status, powers and functions of local government, as well as to ensure effective functioning of democratic institutions (Ismail, Bayat & Meyer, 1997:66-67). With regards to the constitutional roles and responsibilities of national and provincial government toward local government, the White Paper on Local Government (1998:39-40) states that national government has a number of roles and responsibilities including a strategic role, co-ordination role, providing a legislative

framework, capacity building for local government, management of fiscal and financial matters, monitoring and oversight.

With respect to the national government's provision of the legislative framework, the White Paper on Local Government (1998:39-40) states that the national government's role is to provide a framework for intergovernmental relations, including the structures, procedures and mechanisms to promote and facilitate positive intergovernmental relations and the resolution of intergovernmental disputes within and between the spheres of government. And also to manage the system of intergovernmental fiscal relations, situating local government's fiscal powers within the national tax structure and passing legislation to determine local government's equitable share.

With regards to the provincial government's role and responsibilities towards local government, the White Paper on Local Government (1998:41) states that these roles and responsibilities include a strategic role, a developmental role, an intergovernmental role, a regulatory role and a fiscal role. With regard to its intergovernmental relations role, the provincial government should establish forums and processes for the purpose of including local government in decision-making processes that affect it and also promote horizontal co-operation and co-ordination between municipalities in the province.

To honour the founding principles of the Constitution, 1996 to maintain unity of the state and to promote the well being of its inhabitants, specific provisions are included in the Constitution to assist the co-ordination of public sector activities (Cloete and Thornhill, 2004:59). In this regard, section 100 of the Constitution, 1996 provides for national government intervention in provincial administration if a province cannot fulfil an executive obligation in terms of the Constitution, 1996 or legislation. Likewise, section 139 of the Constitution provides for provincial government intervention in local government in the same way that national government could intervene in

provincial government. This intervention could be one of the reasons why other commentators regard the Constitution as having centralist tendencies because on the one hand it provides for the autonomy of local government with original powers, whilst on the other hand it provides for the national and provincial government intervention in local government matters. The author submits that intervention, as provided for in the Constitution, by national and provincial governments in local government is justified and the reasons for the possible intervention are clearly spelt out in sections 44(2) & 139 of the Constitution, namely: to maintain national security; to maintain economic unity; to maintain essential national standards; and to prevent a municipality from taking unreasonable action that could be prejudicial to the interests of the other province or municipality.

However, the author argues that a clear detailed criteria needs to be developed collectively by the three spheres of government as to when the constitutional provisions, as stated in sections 44(2) and 139 of the Constitution, became applicable. These clear criteria would prevent an unjustified intervention from occurring for reasons other than those provided for in the Constitution. An unjustified intervention could, for instance, occur where a province or a municipality is government by a different political party than the one that governs at the national sphere of government; and a political party that governs at the national sphere may want to gain political advantage from the intervention.

9.4.1 Powers and Functions of Local Government

The new Constitution of the Republic of South Africa, 1996 stipulates a number of direct delivery and regulatory functions. Schedule 4, Part B of the Constitution, lists the following as local government matters:

Air pollution, building regulations, child care facilities, electricity and gas reticulation, fire fighting services, local tourism, municipal airports, municipal planning, municipal health services, municipal public transport, municipal public works, pontoons, ferries,

jetties, piers and harbours, storm water management systems in built up areas, trade regulations, and water and sanitation services. Schedule 5, Part B of the Constitution of the Republic of South Africa, 1996, list the following as further local government matters:

- Beaches and amusement facilities, billboards and the display of the advertisements in public places, cemeteries, funeral parlours and crematoria, cleansing, control of public nuisances, control of undertakings that sell liquor to the public, facilities for the accommodation, car licensing and control of undertaking which sell food to the public, local amenities, local sport, roads, noise pollution pounds, public places, refuse removal, refuse dumps and solid waste disposal, street lighting, and traffic and parking.

9.4.2 Establishment of Municipalities

This matter is dealt with in Section 155 of the Constitution of the Republic of South Africa, 1996 which makes provision for the three categories of municipalities. Firstly, there is a category A municipalities. This is a municipality that has exclusive municipal executive and legislative authority in its area. The City of Tshwane Metropolitan Municipality falls into this category. Other municipalities that fall into this category are *inter alia* the City of Johannesburg, City of Cape Town and the City of Ethekwini. Secondly, there is category B municipalities. This type of a municipality shares the municipal executive and legislative authority in its area with a category C municipality within whose area it falls. Thirdly, there is a category C municipalities. This is a municipality that has municipal executive and legislative authority in an area that includes more than one municipality.

10. OTHER POLICY AND LEGISLATIVE FRAMEWORK ON LOCAL GOVERNMENT AND INTERGOVERNMENTAL RELATIONS

10.1 Local Government and the Reconstruction and Development Programme

The government believes that it can unlock the political and creative energies of the people and bring the concept of government closer to the people and that local government is of critical importance to the Reconstruction and Development Programme as it is the sphere of government that is closest to the people (Reddy, 1996:103). The new roles envisaged by the Reconstruction and Development Programme for local government can be summarised as follows (African National Congress, 1994:129-131):

- Local government is of critical importance to the Reconstruction and Development Programme and it is the sphere of representative democracy closest to the people. As a result, local government should be involved in the allocation of resources that directly affect the communities.
- Local government should assist in the integration and co-ordination of urban economies.
- Local government should embark on programmes to restore, maintain, upgrade and extend networks of services and they should be assisted to deal with backlogs of municipal services through intergovernmental transfers from provincial and central government, according to the criteria established by the Financial and Fiscal Commission.
- A women's portfolio should be established at the local government sphere with powers to scrutinise local authority programmes and budgets for gender sensitivity.
- Local governments can play a role in the implementation of affirmative action with the private sector through special criteria for local government contracts.
- A developmental culture among local governmental administrations should be encouraged and the actions of public representatives and officials should be transparent.

- Local government administrations should be structured in such a way as to ensure that maximum participation of civil society and communities in decision-making and developmental initiatives of local authorities.

With regards to the challenges facing local government, Reddy (1996:104) argues that local government will have to adopt a strategic focus to their management and performance, adopt a responsive approach to community needs and have a reconstruction focus. Therefore Reddy [*supra*] proposes the strategic management model to be an appropriate tool for local government to adopt in dealing with its challenges where strategic management is generally defined as a planning process that emphasises the importance of environmental scanning and organisational assessment for the purpose of formulating, implementing and evaluating strategies to enhance organisational effectiveness and efficiency.

Although local government has not adopted strategic management as a policy *per se*, the practice of intergovernmental relations and co-operative governance is in line with the principles of strategic management. The author therefore concurs with Reddy [*supra*] on the usefulness of strategic management in that its intention is already encompassed by the concepts of intergovernmental relations and co-operative governance and the manner in which the structures work.

10.2 White Paper on Local Government

The White Paper on Local Government (1998:17) defines the new type of local government as the local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives. This definition of developmental local government is in line with what the Reconstruction and Programme envisaged in terms of local government that involved the communities in decision-making. This suggests that working together with communities is at the core of the success of local

government as a sphere, and co-operative governance as defined in this study is precisely about involving communities and other spheres of government in decision-making and the execution of its activities. One can, as a result, conclude that intergovernmental relations and co-operative governance certainly are key to the performance of local government in the delivery of services.

The White Paper on Local Government (1998:18) further states that developmental local government has four inter-related characteristics namely: maximising social development and economic development, integrating and co-ordinating, democratising development, and leading and learning. One of the most important methods for achieving greater co-ordination and integration is integrated development planning and the integrated development plans provide powerful tools for municipalities to facilitate integrated and co-ordinated delivery within their locality (White Paper on Local Government, 1998:19). The author therefore argues that the integrated development plans which integrate service delivery at local government are the product of a well functioning intergovernmental relations and co-operative governance, and lack of civil society participation may hinder the development of the integrated development plans.

10.3 Financial Implications for Intergovernmental Relations

All spheres of government require finances to carry out their duties. In the public sector, the demands or needs usually exceed the means (e.g. financial resources) to satisfy these needs. Section 214(1) of the new Constitution of the Republic of South Africa, 1996 stipulates that there shall be an equitable division of revenue, raised nationally, among the three spheres of government. Since South Africa is classified as a unitary state, fiscal relations will reflect the dominance of national government, as stipulated in the new Constitution (Ismail, Bayat & Meyer: 1997:144-145). The role of national and provincial spheres of government is primarily expressed in the Municipal Finance Management Act, 2003 (Act 56 of 2003). Sections 5 & 6 of the Act

provide for the general functions of the National Treasury and provincial treasuries regarding their role in local government financial management. The importance of the finances in intergovernmental relations cannot be emphasised, hence Section 220(1) of the Constitution of the Republic of South Africa, 1996 establishes the Financial and Fiscal Commission whose role is discussed below.

10.4 Financial and Fiscal Commission

The Financial and Fiscal Commission is a statutory institution which functions in terms of Financial and Fiscal Commission Act, 1997 (Act 99 of 1997). It is a permanent expert Commission with a constitutional defined structure and a set of generic responsibilities and institutional processes, dealing with intergovernmental fiscal innovations of the multiparty constitutional negotiations which took place in South Africa between 1992 and 1994 (Ismail, Bayat & Meyer, 1997:94). Ismail, Bayat & Meyer (1997:94) also state that the negotiating parties proposed the establishment of the Financial and Fiscal Commission after having taken into consideration factors such as the socio-political history of South Africa, the form and the manner in which economic development has occurred, world-wide experience of countries with similar constitutional structures, and a vision of how such an institution could promote the key founding ideals of South Africa. The Commission is responsible for making recommendations to parliament, provincial legislatures, and any other authority determined by national legislation (Section 220(2) of the Constitution of the Republic of South Africa, 1996).

The Commission is also required, as part of its responsibilities, to render advice and make recommendations to all relevant legislative authorities regarding their financial and fiscal requirements and the said advice and recommendations, according to Ismail, Bayat & Meyer (1997:94), concern issues such as: fiscal policies (of government in all spheres); fiscal allocations to all governments; taxes which provinces intend to impose; borrowing by local and provincial governments; and criteria to be considered in fiscal allocations. Thus it could be concluded that the

Commission is a key institution for facilitating the fiscal side of intergovernmental relations among the three spheres of government to enable local government in particular to deliver the required services to communities.

10.4.1 Framework Document for Intergovernmental Fiscal Relations in South Africa

As part of its constitutional mandate, the Commission published a framework document for Intergovernmental Fiscal Relations in South Africa in 1995. As part of the said framework, the Commission introduced the norms applicable to a system of intergovernmental fiscal relations which are: the effective use of resources, accountability, nation building and fiscal autonomy, transparency, certainty of revenue, equity, development, administration, macro economic management, loan financing, transition and resolving competing norms (Financial and Fiscal Commission's Framework Document for Intergovernmental Fiscal Relations in South Africa, 1995:4-9).

These principles, the author contends, are important in determining the success or failure of the system of intergovernmental fiscal relations. It is essential that a more detailed description of each of them is given as stated by the Financial and Fiscal Commission. The first principle is *effective resource* use which simply states that economic resources are a scarce commodity and their allocation must be done in the best possible way in order to acquire maximum benefit for the community. The second principle is *accountability* which is an obligation on the government to justify its expenditure and to explain why the revenue necessary to sustain expenditure is raised in the way it is. The third principle is *nation building and fiscal autonomy*. Nation building means that given the history of segregation in South Africa, fiscal resources should be handled in a way that enhances unity and nation building. Fiscal autonomy refers to the degree to which other spheres of government can take their own decisions and determine their own priorities consistent with the expenditure,

taxation and borrowing powers that are assigned to them. (Financial and Fiscal Commission's Framework Document for intergovernmental Fiscal Relations in South Africa, 1995:4-5)

The fourth principle is *transparency* which means that the method of calculating revenue sharing should promote credibility and stability and therefore has to be understandable and open. The fifth principle is *certainty of revenue* which means that in order for the provincial and local spheres of government to be financially sustainable, it is important that revenue they receive from the national government be certain and not be subject to arbitrary decision. The sixth principle is *equity* which is characterised by spirit of fairness, justice and impartiality. The first element of intergovernmental fiscal fairness aims to ensure fiscal fairness in the provision of public services to all household, and the second element of intergovernmental fiscal fairness requires that, beyond the equal provision of basic human services, households should receive equal or similar public services for equal contributions of tax or fiscal effort (Financial and Fiscal Commission's Framework Document for Intergovernmental Fiscal Relations in South African, 1995:6-7).

The seventh principle is *development* which refers to the multi-dimensional process that improves the quality of life of all. This may be reflected, in for example, improvements in the levels nutrition, housing, education, the use of electricity, the availability of water and refuse removal services. The eighth principle is *administration* which means that the ease and efficiency with which the fiscal system can be administered is crucial for the evaluation of the system. For example, the devolution of all taxes to provincial and local government would clearly enhance their fiscal autonomy, but can lead to large-scale administrative confusion. The ninth principle is *macroeconomic management* which suggests that certain goals have certain macro-economic dimensions which may make them impossible to decentralize, such as the stimulation of economic activity and the sound management of the economy and therefore such functions are better performed

centrally by the national government.

(Financial and Fiscal Commission's Framework Document for Intergovernmental Fiscal Relations in South Africa, 1995:8)

The tenth principle is that of *loan financing* which suggests that the system of intergovernmental grants should not impede province's reasonable access to other sources of finances. For example, a province may wish to acquire additional funds from the capital market to implement long-term infra-structural projects. The eleventh principle is *transition* that suggests that stability in the delivery of essential services must be maintained during the transition from the old order to the new order and that the responsibilities of the Financial and Fiscal Commission in facilitating adequate cash flows to finance essential services are as important as the fiscal ones. (Financial and Fiscal Commission's Framework Document for Intergovernmental Fiscal Relations in South Africa, 1995:8-9)

Given the above, it could thus be concluded that application of these principles is critical to the equitable sharing of the national raised revenue among the three spheres of government and thereby contribute to the effectiveness of the intergovernmental fiscal relations in facilitating the delivery of services at the local government in particular.

10.5 Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997).

Section 220(3) of the Constitution of the Republic of South Africa, 1996 states that the Financial and Fiscal Commission has to function in terms of an Act of Parliament. This Act seeks to institutionalise the functioning of the said section in particular, and chapter 13 (finance chapter) of the Constitution in general. It came into operation in January 1998 and it seeks to promote co-operation between the national, provincial and local spheres government on fiscal, budgetary and financial matters; to prescribe a process for the determination of an equitable sharing and allocation of revenue

raised nationally; and to provide for other related matters. This Act is crucial in the sense that it establishes two important formal structures for intergovernmental fiscal relations. Firstly, it establishes the Budget Council which is chaired by the Minister of Finance and comprises of the Member of the Executive Council for finance of each province. Secondly, it establishes the Budget Forum which is also chaired by the Minister of Finance and comprises of the member of the Executive Council for finance of each province, five members nominated by SALGA nationally and one member nominated by the provincial associations of SALGA. This Act also outlines the process for revenue sharing among the spheres of government and clarifies the time frames within which the Financial and Fiscal Commission has to submit its recommendations to both Houses of Parliament, provincial legislatures, and to the Minister of Finance. In other words, this Act defines the process (including the time-frames) of interaction between the Commission and other statutory structures.

10.5.1 The Functions of the Budget Council

The Budget Council is a body in which the national government and the provincial governments consult on any fiscal, budgetary or financial matter affecting the provincial sphere of government; any proposed legislation or policy which has a financial implication for the provinces, or for any specific province or provinces; any matter concerning the financial management, or the monitoring of the finances, of the provinces, or any specific province or provinces; or any other matter which the Minister has referred to the Council. With regards to the meetings of the Budget Council, it is also the responsibility of the Minister of Finance to convene its meetings at least twice in each financial year. The Chairperson of the Financial and Fiscal Commission or delegation of the Commission designated by him or her, may attend the meetings of the Budget Council as well as any other persons invited by the Minister of Finance.

(Section 3 & 4 of the Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997))

10.5.2 Functions of the Local Government Budget Forum (Currently Inoperational)

The Budget Forum is a body in which the national government, provincial governments and organized local government consult on any fiscal, budgetary or financial matter affecting the local sphere of government; any proposed legislation or policy which has a financial implication for local government; any matter concerning the financial management, or monitoring of the finances of local government; or any matter which the Minister of Finance has referred to the Budget Forum. With regards to meetings of the Budget Forum, the Minister of Finance convenes its meetings at least once in each financial year and such meetings may be attended by the chairperson of the Financial and Fiscal Commission or delegation of the Commission assigned by him or her as well as any other persons invited by the Minister of Finance (Sections 6 & 7 of the Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997)). This Forum is currently inoperational (Cloete & Thornhill, 2004:61).

10.5.3 Process for Revenue Sharing Among the Spheres of Government

In line with Section 214 of the Constitution of the Republic of South Africa, 1996 at least ten months before the start of each financial year, the Financial and Fiscal Commission must submit to both Houses of Parliament and the provincial legislatures, for tabling in the Houses and the provincial legislatures, also to the Minister of Finance, recommendations for that financial year regarding (section 8 & 9 of the Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997):

- An equitable division of revenue raised nationally, among the national, provincial and the local spheres of government;
- The determination of each province's equitable share in the provincial share of that revenue;
- Any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations should be made.

10.5.4 Division of Revenue Bill

When the Minister of Finance introduces the annual budget, the Minister must introduce in the National Assembly a Division of Revenue Bill for the financial year to which the budget relates. The Division of Revenue Bill must specify the share of each sphere of government of the revenue raised nationally for the relevant financial year; each province's share of the provincial share of that revenue; and any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any other conditions on which those allocations must be made. Before the Division of Revenue Bill is introduced in the National Assembly, the Minister of Finance must consult with provincial governments, organized local government, and the Financial and Fiscal Commission.

(Section 10 of the Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997))

Thus it could be concluded that the Intergovernmental Fiscal Relations Framework Act, 1997 and the structures that it creates significantly facilitate the performance of the local sphere of government in the delivery of services.

10.6 National Council of Provinces (NCOP)

The National Council of Provinces is an important formal structure for the promotion of intergovernmental relations that is established in terms of section 60 of the Constitution of the Republic of South Africa, 1996. The role of local government in the activities of the National Council of Provinces is to ensure *inter alia* that local government development issues are correctly presented at national level by persons who represent local communities (Ismail, Bayat & Meyer, 1997:142). The powers of the National Council of Provinces are contained in Section 68 of the Constitution of the Republic of South Africa, 1996. In this regard, the National Council of Provinces can initiate or prepare legislation which falls within a functional area listed in

Schedule 4 or any other legislation referred to in section 76(3) of the Constitution of the Republic of South Africa, 1996. As stated above, the role of local government in the activities of the National Council of Provinces is to ensure that local government development issues are correctly presented at national level by persons representing local communities. These representatives are designated by organized local government to represent different categories of municipalities and have no voting powers.

(Ismail, Bayat & Meyer, 1997:144)

In addition to the role and the representation of local government in the National Council of Provinces, section 72 of the Constitution of the Republic of South Africa, 1996 makes provision for public access to and involvement in the National Council of Provinces by requiring the Council to facilitate public involvement in its processes and those of its committees, and to conduct its business in an open manner. The Council is further required not to exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society. These requirements are in keeping with principles of co-operative governance which advocate the participation of civil society in the decision making processes of government.

The significance of the National Council of Provinces as a structure that facilitates intergovernmental relations for local government is that it also allows and advocates for the direct public involvement in its activities. This further ensures that all the relevant inputs are taken into account before decisions that affect local government are taken, and this further helps local government performance in the delivery of services. Given the importance of the role of the National Council of Provinces in intergovernmental relations, a further detailed discussion of its role will be given in the next chapter.

10.7 South African Local Government Association (SALGA)

The South African Local Government Association (SALGA) and its nine provincial associations has been established in line with section 163 of the Constitution of the Republic of South Africa, 1996. In this regard, the Organised Local Government Act, 1997, (Act 52 of 1997) provides for: the recognition of national and provincial organisations representing the different categories of municipalities; the determination of procedures by which local government may designate representatives to participate in the National Council of Provinces; the determination of procedures by which local government may consult with provincial and national government; the determination of procedures by which local government may nominate persons to the Financial and Fiscal Commission. For historical reasons the voice of local government has been weak in the development of national and provincial policies, even where these affect local government directly. Thus the introduction of this Act ensures that local government has the representation in the development of national policies that affect local government.

SALGA's key role is effective representation of local government in the legislative processes of all the spheres of government, and in the intergovernmental executive processes. SALGA represents local government interests in forums such as the National Council of Provinces (as discussed above), the Financial and Fiscal Commission, the Budget Forum dealing with intergovernmental transfers, Ministerial Forums (Minmeecs), and in the drafting of legislation that affects the status, institutions, powers and functions of municipalities.

(White Paper on Local Government, 1998:54)

Organised local government in South Africa as represented by SALGA also plays a role as an employer's organization, and constitutes the employer component in the South African Local Government Bargaining Council where substantive issues are negotiated between the employer and labour representatives. In addition to this role, SALGA also plays a role in creating capacity in the area of labour relations among its membership, and maintaining open and constructive relationships with organized labour. This relationship is important in ensuring the successful transformation of

local government by ensuring that relations between employer bodies and municipal trade unions are supportive of the developmental role of local government.

(White Paper on Local Government, 1998:54)

The White Paper on Local Government (1998:55) further states that SALGA has a role in the development of municipalities through, for example, the provision of specialized services to supplement and strengthen the capacity of municipalities, research and the dissemination of information, facilitating shared learning between municipalities, human resource development and councillor training. It is evident from above that SALGA is the voice of local government and therefore plays a significant role in intergovernmental relations to ensure that the interests of local government are represented. As a result, a further discussion on SALGA will be done in the next chapter.

10.8 Framework for Restructuring of Municipal Service Provision

As discussed above, part of the role played by SALGA is to represent local authorities in discussions with trade unions and other spheres of government. In that capacity, SALGA signed an agreement with national government (as represented by the Minister for Provincial and Local Government), and the Congress of South African Trade Unions (COSATU) which puts in place the necessary framework to ensure that the municipal service partnerships take place in a structured way. This agreement puts emphasis on building the capacity of municipalities as the preferred providers of services and allows for private sector participation in municipal service delivery if the municipality lacks the capacity to provide the services on its own. The agreement further establishes basic guidelines on private sector involvement in municipal service provision.

(Framework for Restructuring of Municipal Service Provision, 1998:3)

10.9 Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005)

The Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005) has been passed. The object of the Act is to (section 4 of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005): provide, within the principle of co-operative government set out in chapter 3 of the Constitution, a framework for the national government, provincial governments and local governments, and all organs of state within those governments; facilitate co-ordination in the implementation of policy and legislation, including: coherent government, effective provision of services, monitoring implementation of policy and legislation, and realisation of national policies.

The Intergovernmental Relations Framework Act, 2005 establishes a general framework that is applicable to all spheres and all sectors of government, since some sectors already have their own legislation such as the Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997) which deals with the financial, budgetary and fiscal aspects of intergovernmental relations. The Intergovernmental Relations Framework Act, 2005 does not seek to replace existing intergovernmental relations structures established in terms of Acts of Parliament dealing with sectoral intergovernmental relations such as the Intergovernmental Fiscal Relations Act, 1997 and its structures such as the Budget Forum and the Budget Council (section 3(1) of the Intergovernmental Relations Framework Act, 2005). Instead, the Act seeks to formalise all the previously non-statutory (or informal) intergovernmental relations forums such as Minmeccs which were not established in terms of any Act of Parliament (section 9 of the Intergovernmental Relations Framework Act, 2005).

This Act is therefore essential in providing a framework on intergovernmental relations as required by the Constitution of the Republic of South Africa, 1996 which ensures, *inter alia*, that local government has access to intergovernmental dispute resolution structures in order to resolve their disputes without hindrances to service delivery.

11. INFORMAL INTERGOVERNMENTAL RELATIONS STRUCTURE

The political intergovernmental relations structures referred to here were, prior to the passing of the Intergovernmental Relations Framework Act, 2005 regarded as informal political intergovernmental relations structures. The passing of the Intergovernmental Relations Framework Act, 2005 has recognised and formalised the structures to be discussed (section 33(4) of the Intergovernmental Relations Framework Act, 2005). Since the intergovernmental body that is not established in terms of the Act has one year to comply with the internal procedures of the intergovernmental structures, reference will be to the functioning of informal political intergovernmental structures as they existed prior to the passing of the Act in August 2005.

Informal intergovernmental structures in South Africa were established shortly after the elections in April 1994, when it became clear that the establishment of the three spheres of government brought about changes to the governmental process, especially as far as the need for consultation and co-ordination is concerned. These structures were established to promote regular interaction between the executive branches of government. The exception to the rule being the Speakers' Forum as was established between the Speakers of the National Assembly and nine provincial legislatures. The first intergovernmental meeting took place in May 1994. This meeting was arranged by the Department of Provincial and Local Government and was attended by the Premiers of the nine provinces and was also attended by the President and the Deputy President. Further meetings of this nature were subsequently held and lead to the establishment of the now defunct Intergovernmental Forum comprising the premiers of the nine provinces and political representatives of the national government.

(Report of the Department of Provincial and Local Government, 1997:10)

Botha (1996, in Reddy, 1996:74) concurs with the above by stating that where it was found that the formal intergovernmental institutional arrangements were inadequate

to address policy issues, and to ensure policy coordination between the spheres of government, informal structures were established. For example, in a meeting between the national government and the provincial premiers held at Tuynhuis on 12 August 1994, a set of resolutions was adopted after delays were noted in the assignment of powers from national to provincial government. Botha [*supra*] further states that more importantly, the premiers and national ministers at this meeting noted the importance of intergovernmental relations to ensure and encourage the development of a cooperative relationship and spirit between the provinces and the national government and resolved to establish:

- The Intergovernmental Forum (IGF) comprising of the nine provinces and the national government.
- Ministerial Forums (Minmeecs) - between line function ministers at national government level and their respective counterparts in provincial government.

11.1 Intergovernmental Forum (IGF) – Now Defunct

It is not the purpose of this study to evaluate the Intergovernmental Forum. It was only introduced for information purposes only regarding the nature of its inception and its subsequent replacement. The Intergovernmental Forum was established to encourage and ensure development and maintenance of co-operative relationships between the national and the provincial spheres of government. In more practical terms, the Intergovernmental Forum was to provide an opportunity for consultation and joint-decision making between ministers representing the national government and the premiers of the respective provinces on matters of mutual interest falling within the terms of reference of the Forum. On the one hand, the Forum served as a mechanism for policy dialogue at the policy level regarding a number of strategic and important issues requiring intergovernmental consultation, cooperation and co-ordination. On the other hand, the Forum oversaw the process of implementation of

policies and strategies which had been identified. The Forum therefore acted as a multilateral, intergovernmental, policy planning and implementation body.

(Report of the Department of Provincial and Local Government, 1997:11)

Furthermore, the Forum had an important role to play in integrating and co-ordinating the policy activities of the various Ministerial Forums (Minmeecs). The integration of policy activities of the respective Ministerial Forums by the Intergovernmental Forum was necessitated by the responsibility of the Forum to establish an integrated intergovernmental policy framework which could serve as a guideline for policy formulation purposes to the respective departments. The Intergovernmental Forum also attended to lateral policy and strategic issues, which could not be attended to sectorally and for which multi-sectoral intergovernmental inputs were required. The Intergovernmental Forum was also responsible for the facilitation of the efficient and effective functioning of the system of government as a whole.

(Report of the Department of Provincial and Local Government, 1997:12)

The Intergovernmental Forum was the most prominent of the intergovernmental institutions established in late 1994 to promote co-operation on matters of mutual concern to all three spheres of government. As an inclusive body, the Intergovernmental Forum was initially seen to be important for consultation between national and provincial government. It basically served as a briefing session for government and was a forum for ministers, directors-general and national and provincial governments to meet. However, the weaknesses of the Intergovernmental Forum were: firstly, that its decisions were not binding. Secondly, it consisted of too many members which made it unmanageable and thirdly, its agenda was not strategic and it had no linkages with other intergovernmental relations institutions. The Intergovernmental Forum was consequently replaced by the President's Co-ordinating Council (PCC) in 1999.

(Department for Provincial and Local Government Research Report on the Intergovernmental System in South Africa, 2002:5)

11.2 The President's Co-ordinating Council

The President's Co-ordinating Council (PCC) was formed in October 1999 and is responsible for promoting co-operation between the national executive authority and the provincial executive authority on national development priorities and provincial development programmes, and other matters of a high level policy nature that are common to both spheres of government. Other responsibilities of the President's Co-ordinating Council (PCC) include: enhancing the ability of the provincial executive councils to make an impact on national policies; strengthening the capacity of provincial government to implement government policies and programmes; improving co-operation between the national and the provincial spheres of government with regard to the strengthening of local government; improving co-operation with regards to fiscal issues; and ensuring that there are co-ordinated programmes of implementation and the necessary structures with regard to such issues as rural development, urban renewal, and safety and security (Department for Provincial and Local Government's Research Report on Intergovernmental System in South Africa, 2002:6).

The President's Co-ordinating Council (PCC) consists of the President, the Deputy President, the Minister for Provincial and Local Government and the nine Provincial Premiers. As part of its role in intergovernmental relations, the President's Co-ordinating Council (PCC) held a special meeting focusing on local government in December 2001 and adopted a set of resolutions under five strategic themes namely: building of a strong local government sphere and enhancing its status within a stable co-operative governance framework; building a stable institutional and administrative systems in local government; deepening local democracy and accountability; improving and accelerating service delivery and economic development; and building a financially viable local government (Media Briefing by the Minister for Provincial and Local Government, 12 August 2002).

As part of the action plan to implement the abovementioned themes, the Minister for Provincial and Local Government initiated a working group consisting of the Municipal Managers, Chief Financial Officers and representatives from his department to review credit control measures in those municipalities with a large service related debt, the majority of which are in Gauteng Province. The recommendations of this working group will be used to enhance municipal credit control policy.

(South African Yearbook, 2002/2003:321)

Section 1 of the Intergovernmental Relations Framework Act, 2005 defines intergovernmental forums as the President's Co-ordinating Council; a national intergovernmental forum established or regarded as having been re-established in terms of section 9 of the Act; a Premier's intergovernmental forum established by section 16 of the Act; any other provincial intergovernmental forum established in terms of section 21 of the Act; an inter-provincial forum established in terms of section 22 of the Act; a district inter-provincial forum established by section 24 of the Act; and an inter-municipality forum established in terms of section 28 of the Act. Section 1 of the Intergovernmental Relations Framework Act, 2005 also defines an intergovernmental structure as an intergovernmental forum (as defined above) or an intergovernmental technical support structure.

The President's Co-ordinating Council is formally established by section 6 of the Intergovernmental Relations Framework Act, 2005 as consisting of: the President; the Deputy President; the Minister in the Presidency; the Minister for Provincial and Local Government; the Cabinet member responsible for finance; the Cabinet member responsible for the public service; the Premiers of the nine provinces; and a municipal councillor designated by the national organisation representing organised local government. The President chairs the Council and may invite any person who is not a member of the Council.

The composition of the President's Co-ordinating Council as provided for in the Intergovernmental Relations Framework Act, 2005 has introduced, *inter alia*, a direct representation of SALGA on the Council compared to the composition of the Council prior to the passing of the Act. The direct representation of SALGA in the Council, the author submits, should be regarded as a significant development since it gives SALGA a direct voice in an intergovernmental structure chaired by the President which augurs well for communication and co-ordination of service delivery matters that need the attention at the highest level. The membership of Minister for Finance at the Council is also an important development for cross functional co-ordination as the minister of finance chairs both the Budget Forum and the Budget Council which deal with intergovernmental fiscal matters in terms of Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997). If there are issues to be referred from the President's Co-ordinating Council to the Budget Council in terms of section 13 of the Intergovernmental Relations Framework Act, 2005, the Minister of Finance would have been better informed when those matters are discussed in the Budget Council.

11.3 Ministerial Forums (Minmeecs)

Ministerial Forums deal with sectoral line function responsibilities with specific reference to the harmonization of the legislation, the division and employment of financial resources, the harmonization of programmes on a national basis, consultation and negotiation with regards to national norms and standards applicable to a specific function, the harmonization of policies and the drafting of the intergovernmental sectoral policy which should serve as a guideline to the respective governments in their own policy formulation process, the transfer of information, the undertaking of joint programmes and projects, the formulation and implementation of strategies, and the allocation of roles and responsibilities of the respective spheres of government with regard to a specific line function.

(Report of the Department for Provincial and Local Government, 1997:16)

The establishment of the Minmecs is provided for in section 9 of the Intergovernmental Relations Framework Act, 2005 which states that any Cabinet member may establish a national intergovernmental forum to promote and facilitate intergovernmental relations in the functional area for which that Cabinet member is responsible; and any Minmec that existed when this Act took effect must for the purposes of this Act be regarded as having been established in terms of this Act, except if such a Minmec was established by another Act of Parliament. This provision of the Act, the author submits, is clear indication that the new Act on intergovernmental relations recognises and formalises the non statutory Minmecs that existed prior to the passing of the Act in August 2005. The Act also acknowledges those statutory Minmecs that existed, in terms of an Act of Parliament, prior to the passing of the Intergovernmental Relations Framework Act, 2005. An example of a statutory Minmec that existed prior to the passing of the Act is the Budget Council and Budget Forum on financial and fiscal matters as established in terms of the Intergovernmental Fiscal Relations Act, 1997.

Minmecs that existed prior to the passing of the Act had no uniform membership composition; they were established according to the manner in which a particular ministry and state department wished to co-ordinate the policies and actions within their areas of operation (Cloete & Thornhill, 2004:68). Although the non statutory Minmecs (prior to the passing of the Act) existed and played a critical role in co-ordinating various functional areas, the author submits that the passing of the Intergovernmental Relations Framework, 2005 brings about consistency in terms of their composition and the manner in which they operate especially with regard to internal procedures they have to adopt in terms of section 33 of the Act. The effectiveness of Minmecs could therefore be evaluated using the standard criteria.

One of the important features on the composition of the Minmecs is the provision that national organised local government (SALGA) has representation on all Minmecs if a functional area for which a Minmec is established includes a matter assigned to local

government in terms of the Constitution or national legislation (section 10(1)(d) of the Intergovernmental Relations Framework Act, 2005). The author submits that this provision creates opportunities for SALGA to influence policy and consult on issues in all functional areas where SALGA is represented; this provision also creates capacity challenges for SALGA to ensure that it has the skills capacity to effectively deploy competent councillors and to formulate policy positions in all MinmeCs in which it has representation. The author recommends that SALGA re-evaluate its capacity to deliver with a view to restructuring itself so that it can maximise opportunities that are presented by section 10(1)(d) of Intergovernmental Relations Framework Act, 2005 and thereby improving its performance on service delivery.

11.4 The Premiers' Forum

The Premiers' Forum was established for two reasons. Firstly, its establishment could be seen as a reaction to what was perceived to be the dominance of the national government over intergovernmental relations and secondly, the need for Premiers to co-ordinate their activities. The Premiers' Forum is probably the most unstructured of all the informal intergovernmental relations structures. It can be seen as a general point of liaison that offers an opportunity to discuss matters of common concern in preparation for the meetings of the President's Co-ordinating Council. Meetings of the Premiers' Forum are therefore generally co-ordinated with those of the President's Co-ordinating Council and the Premiers' Forum is supported by a technical committee that comprises of provincial directors-general who provide the Forum with technical inputs.

(Report of the Department for Provincial and Local Government, 1997:17)

Section 16 of the Intergovernmental Relations Framework Act, 2005 establishes the Premier's intergovernmental forum to promote and facilitate intergovernmental relations between the province and local governments in the province. The Premier's forum is chaired by the Premier of the province and it consists of: the Premier of the

province; the member of the Executive Council of the province who is responsible for local government in the province; any other member of the Executive Council of the province nominated by the Premier; the mayors of district and metropolitan municipalities in the province; the administrator of any municipality under intervention in terms of section 139 of the Constitution; and a municipal councillor designated by organised local government in the province (section 17 of the Intergovernmental Relations Framework Act, 2005).

Regarding the composition of the Premier's forum, it is the author's submission that the direct representation of organised local government in the province is a new development which enhances the status of organised local government in the province and that it also poses new challenges for organised local government since it is expected of them to make a valuable contribution. This new development also enhances the facilitation role of intergovernmental relations in service delivery.

11.5 Other Provincial Intergovernmental Forums

In addition to the Premier's forum discussed above, section 21 of the Intergovernmental Relations Framework Act, 2005 states that the Premier may establish other provincial intergovernmental forums for any specific functional area and for any specific part in the province to promote and facilitate efficient and effective intergovernmental relations in the province. In essence, this means that the Premiers have the discretion to establish provincial Minmecs for any specific functional area and may also establish a forum per area in the province. The Premiers of two or more provinces may also establish an interprovincial intergovernmental forum to promote and facilitate intergovernmental relations between those provinces; and the role and functioning of an interprovincial forum must be determined by agreement among the participating provinces.

The provision for the establishment of the interprovincial forum is, the author submits,

a necessary development as no statutory mechanisms existed prior to the passing of the Act to facilitate dialogue and consultation between the provinces especially those provinces that had cross-boundary municipalities. When legislation (Constitution Twelfth Amendment Act of 2005) on the disestablishment of cross-boundary municipalities which affected areas such as Khutsong was initiated in 2005 for instance, there was no effective provincial government structure between Gauteng government and North West government to facilitate discussion and consultation. Instead, discussions were primarily driven by the national government and political parties. The author therefore argues that if such a forum existed at the time, it could have made a valuable contribution in communicating with the communities involved.

11.6 Municipal Intergovernmental Forums

Section 24 of the Intergovernmental Relations Framework Act, 2005 establishes a district intergovernmental forum to promote and facilitate intergovernmental relations between the district municipality and the local municipalities in the district. The district intergovernmental forum is chaired by the mayor of the district municipality and consists of mayors of local municipalities in the district; and the role of the forum is to serve as a consultative forum for the district municipality and the local municipalities in the district to discuss and consult each other on matters of common interest (sections 25 & 26 of the Intergovernmental Relations Framework Act, 2005). Two or more municipalities may, by agreement, establish an intermunicipality forum to promote and facilitate intergovernmental relations among them; and the role of the intermunicipality forum is to serve as a consultative forum for the participating municipalities to discuss and consult each other on matters of mutual interest (sections 28 & 29 of the Intergovernmental Relations Framework Act, 2005).

A striking feature of the Act regarding the municipal intergovernmental forums is that, whilst section 24 of the Act explicitly establishes a district intergovernmental forum for a district municipality and its local municipalities; the Act does not explicitly establish

municipal intergovernmental forum for metropolitan municipalities such as Tshwane, Johannesburg and Ekurhuleni. Yet, section 28 of the Intergovernmental Relations Framework Act, 2005 provides that two or more municipalities may, by agreement, establish an intermunicipality forum to promote and facilitate intergovernmental relations between them. The author argues that this state of affairs creates an anomaly in the creation of municipal intergovernmental forums in the sense that the Act does not *per se* establish an intergovernmental forum for metropolitan municipalities such as Tshwane. Tshwane could for example, because of being the host of the national government departments, need a specific municipal forum to facilitate consultation with national government departments whose rates and taxes accounts are in arrears. The author therefore submits that none of the intergovernmental forums established by the Act would be properly positioned to address such a specific need. The author therefore suggests that provision be made in the Act for a metropolitan municipality such as Tshwane to establish a municipal intergovernmental forum with other spheres of government to address its peculiar matters (within its municipal boundaries) such as outstanding rates and tax accounts; as these relations are currently conducted on an ad-hoc basis.

11.7 Administrative Intergovernmental Structures

Prior to the passing of the Intergovernmental Relations Framework Act, 2005, political intergovernmental structures were supported by technical committees which generally consisted of the director-general, or head of the national department and the respective provincial heads of departments. The purpose of these technical committees was to provide the political structures with technical support and to promote intergovernmental co-operation and consultation at the administrative level. Meetings of these structures normally preceded meetings of the political structures and were used as preparatory meetings for political meetings. The terms of reference of the technical committees corresponded to a large extent to those of the political meetings.

The Forum for South African Directors-General (FOSAD) is a typical example of an informal intergovernmental structure which is a body of heads of department whose membership is confined to national and provincial directors-general. While its foremost activity is co-ordination and implementation of national policy, FOSAD (which is chaired by the Director-General in the Presidency) provides a regular opportunity to Director-General to share experiences around policy and implementation, exchange ideas and assist each other in the professional development and management of their departments (Department of Public Service and Administration, 2003:33). Formally, the role of FOSAD in intergovernmental relations includes fostering a dynamic interface between political structures and the administration at national and provincial spheres; improving horizontal and vertical co-ordination of national policies; and sharing information on best practices on public management (Department of Public Service and Administration, 2003:33).

With the passing of the Intergovernmental Relations Framework Act, 2005 in August 2005, the administrative intergovernmental structures such as FOSAD are recognised as an intergovernmental structure in terms of section 1 of the Act and they are referred to as intergovernmental technical support structures. Section 30 of the Intergovernmental Relations Framework Act, 2005 specifically provides that an intergovernmental forum may establish an intergovernmental technical support structure if there is a need for formal technical support to the forum; and the intergovernmental technical support structure must consist of officials representing the governments or organs of state participating in the intergovernmental forum which established the technical support structure, and may also include any other persons who may assist in supporting the intergovernmental forum.

12. CONCLUSION

This chapter focused on the literature review that is relevant to the study of intergovernmental relations. It provided a context by providing the purpose and the

relevance of literature review from various authors as well as the constitutional framework on intergovernmental relations and co-operative governance. The definitions and the relationship between intergovernmental relations and co-operative governance were discussed. Key formal and informal intergovernmental relations structures were also discussed with respect to their composition and roles in the facilitation of intergovernmental relations among the three spheres of government. Beside the Constitution, other policy documents and legislation on intergovernmental relations and co-operative governance were also reviewed and discussed.

The passing of the new Intergovernmental Relations Framework, 2005 was briefly discussed with specific reference to the intergovernmental forums it establishes namely, the President's Co-ordinating Council, the national intergovernmental forums, the Premiers' forums, the provincial intergovernmental forums, the inter-provincial forums, the municipal intergovernmental forums, and the intergovernmental technical support structures. The status of intergovernmental relations structures which existed prior to the passing of the Intergovernmental Relations Framework Act, 2005 is also discussed. In particular, it was stated that section 33(4) of the Intergovernmental Relations Framework Act, 2005 provides that any intergovernmental body not established in terms of the Act must comply with internal procedures of intergovernmental structures within one year of the passing of the Act, unless an Act of Parliament in terms of which it was established specifically regulates the rules of such an intergovernmental body.

The chapter that follows looks in detail at the role that is played by the National Council of Provinces (NCOP) and the South African Local Government Association (SALGA) in facilitating intergovernmental relations and service delivery for the local sphere of government which ultimately helps improve the performance of the local sphere of government in service delivery.