

# The Policy Review Process on Provincial and Local Government

## The Role of Intergovernmental Relations in Improving Service Delivery with Specific Reference to Local Government

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### ABSTRACT

*The policy review process on the system of provincial and local government presents the opportunity for the state and the public at large, given the experiences since 1994, to create a better configuration of the system of government among the three spheres of government in order to enhance the service delivery capacity of the state. Given the supremacy of the Constitution in South Africa, the outcomes of the policy review process, the article contends must be guided by the constitutional framework on intergovernmental relations and intergovernmental fiscal relations as the key determinants for service delivery success.*

### INTRODUCTION

On 31<sup>st</sup> July 2007 the Minister for Provincial and Local Government launched the start of the policy review process on the system of provincial and local government in which sixty five questions about provincial and local government were published and the public invited to submit responses by the 31<sup>st</sup> of October 2007. This was the start of two interrelated processes which entails: the revision of the current white paper on local government of 1998 and the formulation of a white paper on provincial government. The policy review process follows a Cabinet decision taken in early 2007 to assess whether the central objective of government to serve the people is being advanced by the current provincial and local government arrangements. This cabinet decision is in response to the expectation of all South Africans to have the right to a more responsive, accountable, efficient, equitable and affordable government and a better quality of service. (Department of Provincial and Local Government Press Statement, 31<sup>st</sup> July 2007).

At a media briefing by the Minister for Provincial and Local Government (12 December 2007), it was announced that a wide range of responses were received from individuals, government departments, public enterprises, universities and research institutions, municipalities, provinces, organised local government, non-governmental organisations, and political parties. At the same media briefing it was also stated that the next phase of the policy review will lead to the release of the white paper in mid 2008 which will cover the following themes: the roles of provincial government and two-tier local government; deepening local democracy, accountability and participation; strengthening capacity to meet basic needs and enable sustainable development; refining the intergovernmental roles, functions and fiscal frameworks of spheres; and making co-operative governance work more effectively and improving oversight, performance management, monitoring and evaluation system.

As stated above there is a need to continuously review policies of government and their impact on service delivery. The policy review process on the system of provincial and local government to ensure that the service delivery policies and programmes of the three spheres of government are coordinated is one of these processes. This is a requirement of the *Constitution of the Republic of South Africa*, 1996 which acknowledges the distinctiveness of each sphere of government, whilst at the same time requiring the three spheres of government to execute their service delivery mandate in an interrelated and interdependent manner. In that context the purpose of this article is therefore to give input into this policy development process from an intergovernmental relations perspective, with a specific bias to local government as a sphere.

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).

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. Local government in this regard refers to that level (or sphere) of government which is commonly defined as a decentralised, representative institution with general and specific powers devolved to it by a higher tier (sphere) of government within a geographically defined area (Ismail *et al.*, 1997:2-3). It is thus concluded that the local government as a sphere will have to be protected in regard to the final outcome of the policy review process.

## THE NATURE OF INTERGOVERNMENTAL RELATIONS IN SOUTH AFRICA

Intergovernmental relations in South Africa are currently evolving. The *Constitution of the Republic of South Africa*, 1996 that took effect in February 1997, opens a new approach



to the relations between the three distinctive, interdependent and interrelated spheres of government. In certifying the Constitution, the Constitutional Court of the Republic of South Africa (First Judgement of the Constitutional Court on the Certification of the *Constitution of the Republic of South Africa*, 1996: Paragraph 287) emphasised the importance of the notions of intergovernmental relations and co-operative government by *inter alia* stressing as follows:

*“The constitutional system chosen by the Constitutional Assembly is one of co-operative government in which the powers of important functional areas are allocated concurrently to the national and provincial levels of government. This choice, instead of one of competitive federalism which some political parties may have favoured, was a choice which the Constitutional Assembly was entitled to make in terms of the Constitutional Principles.”*

In view of the above, it is clear that co-operative government can be regarded as one of the cornerstones of the new constitutional dispensation in South Africa and that the intergovernmental relations in both the legislative and executive areas of government can be regarded as a practical instrument for ensuring co-operative government. Chapter 3 of the *Constitution of the Republic of South Africa*, 1996 also concludes by stating that an Act of Parliament must:

- establish or provide for structures or institutions to promote and facilitate intergovernmental relations.
- provide for appropriate mechanisms and procedures to facilitate intergovernmental relations.

The aforesaid Act of Parliament became an Act in August 2005 which is known as the *Intergovernmental Relations Framework Act*, 2005 (Act 13 of 2005). Although the relevant Act on intergovernmental relations was passed at the end of 2005, the actual implementation of some sections of the Act will, as per section 33(4) of the *Intergovernmental Relations Framework Act*, 2005, take a year. It is evident therefore that the desired state of affairs is still evolving. Hence the essence of this article is to provide a conceptual input on the subject that is critical in the continuing policy formulation process at the different spheres of government. In order to make a contribution to the development and improvement of an effective and unique system of intergovernmental relations in South Africa, this article was selected.

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 Minmechs 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. In regard to the policy review process it is difficult to form an opinion on the contribution of this Act in facilitating intergovernmental relations and service delivery at the local sphere of government, as the Act only became effective in August 2005. And some sections of the Act only became effective in 2006. The policy review process will therefore have to take this into account in reviewing the effectiveness of the Act.

In view of the above, the outcome of the policy process will thus have to come up with a better configuration of the intergovernmental relations system as envisaged by the Constitution as part of the process of ensuring that the system of provincial and local government enables the state to achieve its developmental outcomes.

In this respect, intergovernmental relations may be defined as a set of multiple formal and informal processes, channels, structures and institutional arrangements for bilateral and multilateral interaction within and between spheres of government (*White Paper on Local Government*, 1998:38). In line with this definition of intergovernmental relations this article proposes that the new system of provincial and local government will have to come up with the intergovernmental relations arrangement that enhances the state's capacity to execute its developmental mandate. Such an intergovernmental relations arrangement will have to be guided by the key normative guidelines of intergovernmental relations as outlined in paragraph 4 below.

## **THE NATURE OF INTERGOVERNMENTAL FISCAL RELATIONS IN SOUTH AFRICA WITH SPECIFIC REFERENCE TO THE LOCAL GOVERNMENT SPHERE**

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.

The significance and dominance of fiscal relations among the three spheres of government 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.

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.

It is evident from above 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 the equitable division of the nationally raised revenue. The author therefore contends that the intergovernmental fiscal relations form a significant component in the study of intergovernmental relations in South Africa which is primarily driven by the importance of finance as a resource.

These are the issues that the policy review process will have to deal with to ensure that the delivery machinery of the state is enhanced as a key delivery instrument in a developmental state.

## **NORMATIVE GUIDELINES IN 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).

### **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 relations 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 make 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*).

This normative guideline also means that the Constitution is now the yardstick against which to assess the appropriateness of any law or conduct by organs of state or individuals. In this regard the recommendations emanating from the policy review process will have to pass the constitutional test, especially as it pertains to how the spheres of government are required to work together in the execution of their mandates. 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. It is therefore submitted that any review of the impact of the current system of government must take this reality as a point of departure and any final configuration of the system of government emanating from the policy review process must also be guided by this reality. Hence the importance of intergovernmental relations in facilitating service delivery.

Another key aspect of intergovernmental relations relates to the fiscal autonomy of local government. Fiscal autonomy refers to the degree to which a sphere of government can take its own decisions and determine its own priorities with regard to taxation and municipal expenditure (*White Paper on Local Government, 1998:164*). In terms of Section 227(1) of the *Constitution of the Republic of South Africa, 1996*, local government is entitled to a share of the income which is raised by the national government.

The proportion of nationally generated revenue which goes to local government must be equitable. In other words, nationally generated revenue must be shared fairly between national, provincial and local government, based on the functions that each has to fulfil, and the amount of revenue they are able to generate on their own (*White Paper on Local Government, 1998:158*). It is thus concluded that the policy review process has to come up with an intergovernmental relations arrangement that enhances the fiscal autonomy and fiscal relations for local government as a key determinant for improving service delivery.

## **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. The outcome of the policy review process will therefore have to take this normative guideline into account.

## 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 to 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 article, 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 whose improvement is ultimately the key objective of the policy review process.

## 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. The extent to which the outcome of the policy review process takes this guideline into account, the author submits, will determine the success of the government relations and implementation of government policies.





## 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). This is the challenge that the policy review process will have to take into account as the previous service delivery protests by communities have demonstrated the importance of this guideline.

## 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 regard 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. This value, the author submits, calls for a new type of a cadre in government and local government in particular – a type of a special cadre whose dedication to serve communities is beyond reproach.

## 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.

## CONCLUSION

In conclusion, the policy review process on the system of provincial and local government presents the opportunity for the state and the public at large, given the experiences since 2004, to create a better configuration of the system of government among the three spheres of government which will enhance the service delivery capacity of the state to achieve a better life for all. Given the supremacy of the Constitution in South Africa, the policy review process solutions, this article contends, must be guided by the constitutional framework on the intergovernmental relations and intergovernmental fiscal relations as key the key determinants for service delivery success.

The normative guidelines on intergovernmental relations, it is submitted, should serve as reference point in guiding the development of the policy on provincial and local government in order to ensure the outcomes that are compatible with the Constitution and will lead to a better life for all.

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