IMPLICATIONS OF INTERGOVERNMENTAL RELATIONS FOR THE DEPARTMENT OF HUMAN SETTLEMENTS: AN EVALUATION OF THE INSTITUTIONAL ARRANGEMENTS AND FORUMS

By

Hlengiwe Precious Koopa

Student number: 11330733

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M Admin (Public Administration)

School of Public Management and Administration
Faculty of Economic and Management Sciences
UNIVERSITY OF PRETORIA

Supervisor
Prof. L.P. Malan

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DECLARATION

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ABSTRACT

The South African intergovernmental relations system is established and founded on the principles of cooperative government as set out in the Constitution of the Republic of South Africa, 1996. Due to the relations between intergovernmental bodies being dynamic, complex, interactive and interdependent, the Constitution provided the establishment of structures and institutions to promote and facilitate intergovernmental relations and provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes.

The core research objective of the study is the analysis of the intergovernmental relations environment within the Department of Human Settlements and the functionality of the Committee of Minister and the Members of the Executive Council and the Technical MinMec, the Committee of the Director-General and the Provincial Heads of Human Settlements, as the highest formal IGR structures for the objectives against which it was established. These objectives include raising matters of national interest related to human settlements with provincial governments and, if appropriate, organised local government, as well as to hear their views on those matters; to consult provincial governments and, if appropriate, organised local government on the development of national policy and legislation relating to matters affecting human settlements. The research methodology employed in the study is a qualitative approach and the method of data tool used is the interviews.

The study establishes that the Human Settlements MinMec and its supporting structure the Technical MinMec are yet to have in place and adopt rules to govern the Committee's proceedings as is required by the IGRF Act; in terms of the institutional arrangements the study establishes that the Department of Human Settlements is not properly structured to reap the anticipated benefits of coordination; and the voice of organised local government is missing in the MinMec forum partly because there is no appreciation of the statutory requirement of its presence at MinMec. The IGRF Act however, provides that organised local government is entitled to participate through a representative with full speaking rights where the relevant matter is discussed.

The study recommends that the MinMec and Technical MinMec Committees adopt rules to govern their proceedings and the rules be in accordance with the specifications of Section 33 of the IGRF Act. The study also recommends that the voice of organised local government is strengthened in line with IGRF Act and that in terms of the institutional arrangements; the Intergovernmental Relations Unit is capacitated on a progressive basis and that activities related to intergovernmental relations be coordinated more efficiently in order to reap the anticipated benefits of coordination.

DEDICATION

This study is dedicated to my parents. My late father, Mr Nhlanhla Lucky Khomo who, beyond the grave, continues to influence and inspire me to be the best I can be and my mother, Mrs Isabel Zanele Khomo, my source of strength and best friend who has always said not even the sky is the limit and that I should dream bigger.

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To God be the glory.

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ANC	African National Congress
BNG	Breaking New Ground
CODESA	Convention of a Democratic South Africa
CoGTA	Department of Cooperative Governance and Traditional Affairs
DG	Director-General
DHS	Department of Human Settlements
DPME	Department of Performance Monitoring and Evaluation
FLISP	Finance Linked Subsidy Programme
FOSAD	Forum of South African Directors-General
GLTP	Great Limpopo Transfontier Park
HoD	Head of Department
HSDG	Human Settlements Development Grant
HSIF	Human Settlements Implementation Forum
IDP	Integrated Development Plan
IGR	Intergovernmental Relations
IGRF Act	Intergovernmental Relations Framework Act
M&E	Monitoring and Evaluation
MAF	Municipal Accreditation Framework
MEC	Member of Executive Council
MinMec	Committee of Minister and Members of the Executive Council
MTSF	Medium Term Strategic Framework
MYHSDP	Multi-year Human Settlements Development Plan
NCOP	National Council of Provinces
NDP	National Development Plan
NHFC	National Housing Finance Corporation
NPC	National Planning Commission
PHP	People's Housing Process
PMG	Parliamentary Monitoring Group
PRC	Presidential Review Commission
RDP	Reconstruction Development Programme
SACN	South African Cities Network

SADC	Southern African Development Community
SALGA	South African Local Government Association
SAMDI	South African Management Development Institute
USDG	Urban Settlements Development Grant
WPTPS	White Paper on the Transformation of the Public Service

CHAPTER ONE: INTRODUCTION TO INTERGOVERNMENTAL RELATIONS IN THE DEPARTMENT OF HUMAN SETTLEMENTS

1.1 INTRODUCTION

The year 1994 marked the beginning of a new era for the citizens of South Africa. The country held its very first democratic elections and this marked the beginning of a new and democratic system of governance, dismantling the old apartheid system which was based on racial discrimination, (Kahn, Madue and Kalema 2011:1). The Constitution of the Republic of South Africa, 1996 (hereafter referred to as the Constitution) came into law in 1996 and it became the supreme law of the Republic. The Constitution outlined a new structure of government which was a decentralised state with a strong national government and defined the new government as one that is cooperative. The South African intergovernmental relations system was established based on the principles of cooperative government (Practitioners guide to IGR Systems in South Africa 2007:14).

Section 40(1) of the Constitution declared the spheres of government as being distinctive, interrelated and interdependent. According to Mello (2007:83), the spheres of government must be understood to be component parts of a larger single body, the government of the Republic of South Africa. Mello (2007:83) also specifies that the preference of the word "sphere" as opposed to "tier" was premised on a deliberate attempt to ensure that all levels of government are accorded equal status and treatment.

According to Malan (2005:227) the distinctiveness of the three spheres of government refers to the autonomy of each sphere in that each has its own elected government. Even though the Constitution provides for the distinctiveness of the three spheres of government, Kahn *et al.* (2011:65) argues that "the Constitution does not advocate for exclusivity in service delivery but that the principle of cooperative government obliges all spheres of government to put their collective national interest above parochial interest and to work together for the common good". Interrelatedness refers to the responsibility to cooperate with one another and that spheres of government are subject to the regulatory and supervisory authority of

national government, which sets the frameworks within which the spheres exercise their own powers; can monitor their activities and intervene in their affairs when circumstances permit. An example would be Section 100(1) of the Constitution which stipulates that "when a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation". The spheres of government are also interdependent because they share resources, must plan together, share the responsibility of service delivery and are bound by the principles of cooperative government. The principles of cooperative government as outlined in Section 41(1) of the Constitution state that:

- all organs of state within each sphere must be loyal to the Constitution, the Republic and its people;
- must provide effective, transparent, accountable and coherent government for the Republic as a whole;
- must cooperate with one another in mutual trust and good faith by:
  - o fostering friendly relations,
  - o assisting and supporting one another,
  - o informing one another of, and consulting one another on matters of common interest,
  - o coordinating their interest and legislations with one another,
  - o adhering to agreed procedures and avoiding legal proceedings against one another.

Malan (2005:227) argues that the principles of cooperative government cannot be separated from the Bill of Rights contained in Chapter Two of the Constitution which refers to the rights of the people of South Africa to have access to, among others, adequate housing. The responsibility for the provision of adequate shelter was allocated to the Department of Human Settlements, which was formerly the Department of Housing. Cloete and Thornhill (2012:176) define the role of the Department of Human Settlements as "to promote the achievement of a non-racial integrated society through developing sustainable human settlements and quality housing". Schedule 4(a) of the Constitution cites housing as a concurrent function of

national and provincial legislative competence which further necessitates the need for cooperation and coordination for effective service delivery.

The government's commitment to the promotion of intergovernmental relations and cooperative government is also outlined in Section 41(2) of the Constitution which 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. To this end the Intergovernmental Relations Framework Act 2005, (Act 13 of 2005) (hereafter referred to as IGRF Act) was promulgated with the purpose of establishing a framework for national, provincial 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.

According to Baatjies (2010:2) intergovernmental relations (IGR) are the set of informal and formal, processes, channels, structures and institutional arrangements for bilateral and multilateral interaction among spheres of government. Baatjies (2010:2) further conceptualises IGR as both a fluid and complex process through which political priorities are harmonised to flow in the same developmental direction. Citing the discussion document of the former Department of Constitutional Development, Malan (2005:229) argues that cooperative government represents the basic values of the government as stipulated in Section 41(1) of the Constitution as well as the implementation of these values through the establishment of structures and institutions. The conceptual difference between cooperative government and intergovernmental relations as argued by Malan (2005:230) is that "cooperative government is a fundamental philosophy of government that governs all aspects and activities of government and includes the de-concentration of power to other spheres of government and encompasses the structures of government as well as the organisation and exercising of political power while intergovernmental relations, is one of the means through which the values of cooperative government may be given both institutional and statutory expression and may include executive or legislative functions of government".

Due to the nature of the relations between intergovernmental bodies being dynamic, complex, interactive and interdependent, it became necessary to determine how these relations will be conducted (Kahn *et al.* 2011:73), meaning the instruments that can be made available to the public office bearer and public official to be used in intergovernmental relations. One of these instruments is the Committee of Ministers and Members of the Executive Councils of Provinces (MinMecs). The MinMecs functioned as informal, non-statutory bodies in the past (though they were not well attended and did not have real decision making power) but are now statutory with the promulgation of the IGRF Act (Kahn *et al.* 2011:76). The establishment of forums falls under the "interrelatedness" of the spheres.

This study focuses on intergovernmental relations (IGR) within the Department of Human Settlements and in particular the Committee of Ministers and Members of the Executive Councils of Provinces (MinMec) and Technical MinMec as the highest forum for IGR within the department. The MinMec is a forum of the Minister and the provincial Members of the Executive Council (MECs), in a functional area where they have concurrent responsibilities. The Technical MinMec is a forum of the Director-General (DG) and the provincial Heads of Department (HoDs) in a functional area where they have concurrent responsibilities. The purpose of this study is to evaluate the functionality of these IGR forums in the promotion of intergovernmental relations. De Villiers and Sindane (2011:81) state that providing for intergovernmental structures by way of legislation is important, but an even greater requirement is the way in which political leaders and public servants approach IGR. The other, less tangible but still potent factors that will be analysed include politics, trust, leadership, commitment and the quality of relationships within these structures in the Department of Human Settlements.

1.2 LITERATURE REVIEW

Booth, Papaioannou and Sutton (2012:1) cite Fink (2005) and argue that literature review is a "systematic, explicit and reproducible method of identifying, evaluating, and synthesising the existing body of completed and recorded work produced by researchers, scholars, and practitioners". The author placed emphasis on the word "systematic" because there is vast existing and recorded work on various subjects.

However it is critical that when doing a literature review the selection of work is systematic in that it is relevant and contributes to the study at hand.

Hart (1998:13) defines the survey of literature as the selection of available documents (both published and unpublished) on the topic, which contain information, ideas, data and evidence written from a particular standpoint to fulfil certain aims or express certain views on the nature of topic and how it is to be investigated, and the effective evaluation of these documents in relation to the research being proposed. Mathebula (2004:61) cites McNabb (2002: 394) and submits that the strategic purpose of a literature review is to trace the historical evaluation of the research; to schematically provide the different schools of thought around the research theme; to examine the research theme eclectically and to review the positions of different stakeholders as well as tracing the different schools of thought that have emerged over time.

This study is based on the literature reviewed starting from the adoption of the Constitution of the Republic of South Africa, 1996. In this regard the origins of IGR will be discussed including the review undertaken by the South African government through various publications on IGR and this will be followed by research that has been undertaken by scholars on this topic.

According to Kahn *et al.* (2011:4) the term 'intergovernmental relations' originated in the 1930's with regard to country and township government and came into official use in the United States. It was a term used by the former United States President Franklin Roosevelt to circumvent the Supreme Court over some of his social welfare programmes.

The South African government has developed a number of documents and publications on IGR and cooperative government. For the purposes of this study the focus will be on the report of the 1998 Presidential Review Commission (PRC), the 2008, fifteen year review on the state of intergovernmental relations, the Draft Green Paper on Cooperative Governance compiled by the Department of Cooperative Governance and Traditional Affairs (CoGTA), the National Development Plan (NDP)

which from 2012 forms the basis for government's planning, as well as a number of thesis/publications by scholars on the intergovernmental relations subject.

According to the Parliamentary Monitoring Group (PMG) report (2007), the need for the PRC was first highlighted in *The White Paper on the Transformation of the Public Service* (WPTPS), published in 1995. According to PMG (2007), paragraph 6.2 of the WPTPS proposed the creation of a number of new and additional structures to add impetus to the transformation process, and to ensure in particular that it was founded upon effective consultation with public service staff and unions, and civil society stakeholders. These structures according to the PMG (2007) included a Presidential Review Commission. The PRC found that "weaknesses in the structures and practices of intergovernmental relations led to poor coordination within and between different departments and spheres of government, creating incapacity to implement national programmes and a consequent failure to delivery basic services (Presidential Review Commission [PRC] 1998:35)".

In March 2008 the Presidency commissioned a fifteen year review into the state of intergovernmental relations in South Africa. The purpose was to review the policy, legislative and programmatic measures that have been implemented by government over a 15 year period of transition into a democratic state; with the aim to assess the impact of those measures in terms of the practice of intergovernmental relations. The report states that "the effectiveness of the IGR system may be gauged by the extent in which it promotes good governance and the translation of development policy intent into actual service delivery outcomes through cooperative government in policy and planning, budgeting, implementation and monitoring and evaluation (M&E) processes across and within the three spheres of government (Fifteen year review report of the State of Intergovernmental Relations in South Africa 2008:10)". The Fifteen Year Review Report (2008:10) also states that IGR is not an end in itself, but "adds value only to the extent to which it supports effective service delivery and good governance across the three spheres of government". The report found that the impact of intergovernmental relations practice on service delivery arises from the interplay between the formal design elements of the system and operational factors which impinge on the implementation of that system, such as capacity issues, the

political context and community dynamics (Fifteen year review report of the State of Intergovernmental Relations in South Africa 2008:10).

In addition, the report found that over and above the formal IGR system such as the structures, policies and programmes, there are also other less tangible, but still potent, qualitative factors which condition the practice of IGR (such as politics, trust, leadership, quality of relationships etcetera.). Both the formal and informal components of the IGR system shape the incentives for good governance and integrated service delivery faced by participants in the IGR system (Fifteen year review report of the State of Intergovernmental Relations in South Africa 2008:9). These qualitative factors can manifest themselves as extraneous variables in this research study.

In 2011, The President established a National Planning Commission (NPC), chaired by the Minister in The Presidency for National Planning. The NPC was responsible for developing a long term vision and strategic plan for South Africa, as well as to also advise on cross-cutting issues that impact on South Africa's long term development. The Commission first started with a diagnostic overview of the problems facing South Africa and thereafter drafted the National Development Plan. The National Development Plan (NDP) found that "the current government system does have its gaps because while the Constitution provides for high-level principles for how the government system should operate; there is no manual for turning those principles into reality (NDP 2011:386)". This gap is also highlighted by Hughes (2010:9) in the Draft Green Paper on Cooperative Governance wherein it states that the "current legislative and institutional arrangements focus on mainly intergovernmental relations, but the mechanisms are not sufficient to address the shortcomings of practice". Hughes (2010:9) also identifies the need to bring clarity and purpose to cooperative governance in South Africa through a new policy framework "because there currently is no overarching policy that talks to cooperative governance in the country". Hughes (2010:9) proposes that the new policy framework must address issues such as: alignment of planning, budgeting and implementation and by improving reporting, monitoring and support in order to eliminate the current "silo approach" and "voluntarism attitude".

The existing body of completed and recorded work produced by researchers, scholars, and practitioners will be outlined in the following paragraphs:

Mathebula (2004:20) discussed at length the intergovernmental relations reform in the newly emerging South African policy and argued that IGR occurs between various units of government and as such warrants a definition for the various forms. Mathebula (2004:20) therefore defines the relations between the spheres of government in a vertical manner as IGR and refers to the horizontal relations between government units within a sphere as intra-governmental relations. The purpose of the study was to examine the importance of the Presidency in the administration of intergovernmental relations in South Africa. The study placed the Presidency as central in regulating the IGR mechanisms.

In 2005, Malan conducted a ten year review of intergovernmental relations and cooperative government in South Africa, in particular its evolution between 1994 and 2004. This period was a critical period as it marked ten years since the dawn of democracy in South Africa. In this study Malan (2005:228) defines IGR as a set of formal and informal processes as well as institutional arrangements and structures for bilateral and multilateral cooperation within and among the three spheres of government. Malan (2005:228) quotes Anderson (1960:3) and also defines IGR as important interactions occurring among governmental institutions in all spheres and that coordination becomes an adversarial issue of governance whenever functions are formally shared between various spheres of government, or when exercising a function in one sphere has consequences for the functions of another.

With such strong linkages and interdependence, the lack of coordination therefore poses a risk for underperformance, lack of responsibility and accountability. The findings of this study were that the right balance between coordination, performance and accountability may be key to better IGR and to improving the capacity of government to deliver on key priorities. Malan (2005:240) concludes by stating that the system of intergovernmental relations should assist government to set, execute and monitor key development priorities. The limitations and weaknesses therefore in the system of IGR have the potential to lead to poor coordination vertically and horizontally within the different structures of government and therefore limit its

capacity to deliver the particular service, especially when the service is concurrent in nature.

In 2007 Sokhela undertook a study to establish if intergovernmental relations in South Africa, with specific reference to the City of Tshwane Metropolitan Municipality, facilitate the performance of the local sphere of government with a view to help improve the role of intergovernmental relations in enabling service delivery in municipalities. Sokhela (2007: ii) argues that "in certifying the Constitution of the Republic of South Africa, 1996 the Constitutional Court of the Republic of South Africa 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 cooperative government in which the powers of important functional areas are allocated concurrently to the national and provincial spheres 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".*

Sokhela (2007:1) found it evident that "cooperative government can be regarded as one of the cornerstones of the new constitutional dispensation in South Africa and that intergovernmental relations can be regarded as a practical instrument for ensuring cooperative government in the delivery of services by the three spheres of government". In his analyses of intergovernmental relations in the local sphere, Sokhela (2007:105) states that the IGRF Act amongst other things "assisted to formalise all the previously non-statutory (informal) intergovernmental relations such as the MinMec which were not established previously in terms of an Act of Parliament. The formalisation of these structures was done to ensure that there is coordinated implementation of government programmes. In practice, each government department has its own objectives which it must achieve but requires the support of other government departments, provincial departments and local municipalities in order to realise its own policy programmes and objectives.

In view of these arguments it is imperative that the discussions at the IGR forums addresses issues related to the delivery of services or rather contributes towards the

promotion of intergovernmental relations and effective implementation of government policy and programmes whose ultimate result is service delivery. Sokhela (2007:82) further argues that any form of government whether national, provincial or local, has as its objective the achievement of the general welfare of the community by satisfying its identified needs through rendering effective service. The findings of this study were that the statutory and non-statutory intergovernmental relations structures do facilitate the delivery of services in the City of Tshwane Municipality and that with improvements in change management and human resources, the benefits of service delivery would be even greater.

Ile (2010:56) suggests that in the promotion of strong intergovernmental relations, attempts must be made to move towards outcome oriented (purposeful) intergovernmental relations which seek to create opportunities for genuine negotiations and the development as well as sustainability of a shared vision. Without an integration of multi-sectorial, cooperation among the spheres of government and creating the right balance, the tensions that arise in these relationships will continue to create systemic blockages and weaken Government's delivery capacity further.

Mello (2007) undertook a study on intergovernmental relations in the management of the Great Limpopo Transfontier Park (GLTP) and focused on the different types of governmental relations necessary for its successful management. The study probed the role of various governmental institutions, parastatal institutions and non-state actors in the development and management of GLTP. Naturally, cooperation between the different spheres of government was very critical in the development of the GLTP. Mello (2007:85) states that cooperative government depends on consensus formation, thus it is through interaction among participants from different backgrounds, that the working group comes to construct a common understanding of the problems to be addressed, and therefore potential solutions.

In terms of the reviewed literature it is clear that poor coordination is an adversarial to intergovernmental relations. The surveyed literature found that without the effective operation of intergovernmental relations in South Africa, projects and programmes cannot succeed. Literature also suggests that the effectiveness of the

IGR system may be gauged by the extent in which it promotes good governance and the translation of development policy intent into actual service delivery outcomes through cooperative government in policy and planning, budgeting, implementation and monitoring and evaluation (M&E) processes across and within the three spheres of government.

This study adds to the existing knowledge by analysing the functionality of the IGR forums in human settlements through the assessment of their contribution towards promoting IGR and whether in fact the discussions are in line with the objectives of the MinMec, such as the setting of budget priorities, policy making and joint planning. This study also analyses the frequency of meetings, agenda setting, follow-ups on decisions and the level of response on the action list. The approach towards IGR by politicians and public servants, the commitment, dedication and trust are some of the tangible and potent factors in ensuring the effectiveness of these structures and are thus analysed in this study.

1.3 MOTIVATION FOR THE RESEARCH

According to De Villiers and Sindane (2011:49) the IGRF Act of 2005 solidified the informal institutions and structures that existed before 2005 to ensure that certain minimum standards for the conduct of IGR are adhered to by all spheres of government. The IGRF Act stipulates that a national IGR forum established in terms Section 9 of this Act is a consultative forum for the Cabinet member responsible for the area from which the forum is established. The role of the forum is as follows:

> "To raise matters of national interest within that functional area with provincial governments and, if appropriate, organised local government and to hear their views on those matters; to consult provincial governments and, if appropriate, organised local government on the development of national policy and legislation relating to matters affecting that functional area. It is also responsible for the implementation of national policy and legislation with respect to that functional area; the coordination and alignment within that functional area of strategic and performance plans; and priorities, objectives and strategies across national, provincial and any other matters of strategic

importance within the functional area that affect the interests of other governments; and to discuss performance in the provision of services in order to detect failures and to initiate preventive or corrective action when necessary" (Intergovernmental Relations Framework Act, 2005 [Act 13 of 2005, Part 2, Section 11:16]).

In the case of the Department of Human Settlements this forum is called a Human Settlements Committee of Minister and Members of Executive Councils of Provinces (MinMec). This forum is the highest IGR Forum within the department and as such plays a critical role in the realisation of the human settlement's national priorities. Amongst other responsibilities this forum must facilitate coordination in the implementation of policy and legislation and the effective provision of services as per Section 9 of the IGRF Act, 2005. The Technical MinMec is a technical supporting team led by the Director-General of the Department of Human Settlements and is a supporting structure for the MinMec.

According to Sisulu (Budget Vote 2014), housing delivery has dropped drastically across all provinces and some even reaching a 30% drop in delivery. The study conducted by the Institute of Race Relations in 2012 indicates that out of all protests experienced by South Africa over the last 5 years, 20% are attributed to protest over housing. To support this statement, Magubane (2013) wrote "residents of Mooiplaas informal settlement, near Centurion, staged a violent service-delivery protest on Monday morning, during which they demanded housing, water and electricity". The residents said they have spent years waiting for Reconstruction and Development Programme (RDP) housing units, which have never materialised. Further to this, the Department of Human Settlements was rated as one of the lowest performing departments by the Department of Performance Monitoring and Evaluation through the Monitoring and Performance Assessment Tool (MPAT). The MPAT is one of the means and initiatives through which government aims to improve service delivery of national and provincial spheres. One of the weakest areas of the department related to governance and accountability and this includes the functionality of management structures. The Department of Human Settlements was also among the 80% of national departments who were deemed noncompliant with service-delivery improvement requirements (Hartley 2013).

1.4 PROBLEM STATEMENT

Housing is a concurrent function and as such is a shared responsibility among spheres of government. The concurrency means that more than one sphere of government is responsible for policy making, administering a function or monitoring performance. The Comprehensive Plan for the development of integrated sustainable human settlements established a need for the adjustment of institutional arrangements within government as one of the methods that can be used to achieve the set vision of sustainable integrated human settlements. One of the proposed adjustments is expanding the role of institutions in the local government sphere through the accreditation of municipalities and the promotion of inter- and intra-governmental coordination and alignment. One of the ways in which these proposed adjustments can be achieved is through the established intergovernmental relations forums such the Committee of Ministers and Members of the Executive Council (MinMec) and the Committee of Directors-General and Provincial Heads of Department (Technical MinMec).

The MinMec is a forum of the Minister and the Members of the Executive Council holding the same portfolio. The forum is responsible for *inter-alia* policy making, consulting; coordinating implementation and alignment of programmes in the national and provincial spheres and the promotion of intergovernmental relations. However, the current Human Settlements MinMec is falling short in fulfilling these functions. According to Kahn et al. (2011:76-77) MinMecs are key IGR institutions for achieving collective decisions on policy, planning, budget priorities, progress reviews and interactions with parastatals and remain one of the most important instruments for the promotion of intergovernmental relations and therefore their functionality becomes very critical for any government department - especially those with concurrent functions such as human settlements. As a key IGR institution for achieving collective decisions on policy, planning, budget priorities, the Human Settlements MinMec delays decision making in terms of policy direction. Decisions are not binding to the MECs and there is no collective decision making. The lack of collective decision making makes it difficult for members of the committee to own the decisions of the committee and therefore implement them. The delay by the committee to make decisions has an impact on the delivery of housing while

provinces await a MinMec decision. These shortcomings therefore have a direct bearing on the functionality of this committee and they undermine and compromise the role of this committee. It can be argued therefore that falling short in meeting these renders the committee non-functional.

According to the IGR Fiscal Framework of 2011, intergovernmental relations is ideally about providing an environment for cooperation, consultation and coordination among the three spheres of government - geared towards a coordinated approach towards service delivery. The intergovernmental system depends on well-coordinated policy, planning, budgeting, implementation and reporting. This is necessary both within spheres and among spheres and is infused through technical, executive and legislative consultative forums (IGR and Local Government Fiscal Framework 2011:27).

This study evaluates the functionality of the intergovernmental relations forums in the Department of Human Settlements, namely the MinMec and Technical MinMec. The imminent risk is that without an integrated approach to IGR through functional IGR forums and good structural arrangements, the department's capacity to deliver will be affected.

1.5 RESEARCH OBJECTIVES

The objective of the research is to undertake the following:

- Contextualise intergovernmental relations within the Discipline of Public Administration.
- Describe the mandate of the Department of Human Settlements and the challenges with regards to the concurrency of the human settlements function.
- Analyse the practice of intergovernmental relations within the National Department of Human Settlements and the functionality of the MinMec and Technical MinMec forums.

- To make recommendations for the improvement of the functionality of the MinMec and Technical MinMec within the Department of Human Settlements in order to promote intergovernmental relations.

1.6 RESEARCH METHODOLOGY

Bryman (2012:187) defines research design as a framework for the collection of data and data analysis. Welman, Kruger and Mitchel (2005:52) define research design as the plan according to which we obtain research participants (subjects) and collect information from them. According to Kumar (2010:94) there are two main functions of a research design: the first relates to the development and or identification of procedures and logistical arrangements necessary to undertake a study, the second relates to the quality of those procedures to ensure validity, objectivity and accuracy.

Mathebula (2004:38) cites Johnson (2002:2) and states that Public Administration in its nature "is a dynamic process that requires a combination of research methods". In this section however, the researcher will discuss the rationale for the choice of a qualitative research method as well as the various research strategies. In selecting the study design it was important to eliminate the effects of a different set of variables influencing the independent variable. For example, in evaluating the functionality of Human Settlements IGR forums in the promotion of intergovernmental relations, there are other factors, also called extraneous variables, which may influence the research findings. This will be explained further in the limitations of the study.

1.6.1 Research approach

Kumar (2014:132) states that "differences in philosophical perspectives in each paradigm, combined with the aims of the study, to a large extent determine the focus, approach and mode of enquiry, which in turn determine the structural aspects of a study design". In this regard, Kumar (2010:94) states that a researcher can either choose the qualitative or the quantitative design. There are significant and obvious differences between the two research designs. The qualitative research design according to Kumar (2014:132) is focused on understanding, explaining,

exploring, discovering and clarifying situations, feelings, perceptions, attitudes, values, beliefs and experiences of a group of people. There are many study designs under the qualitative research design and mainly include the selection of a people from whom the information is to be gathered and explored in a flexible manner.

The measurement and classification requirements of the information that is to be gathered in the quantitative research design according to Kumar (2014:132) demands that study designs are more structured, rigid, fixed and pre-determined to ensure validity and reliability of the information and its classification.

This study follows a qualitative approach in order to gain as much information as possible on the functionality of the Human Settlements MinMec and Technical MinMec intergovernmental relations forums from the attendees of these Committees. The qualitative research approach is widely known for giving researchers too much information. Although too much information may also pose as a disadvantage when it has to be interpreted, it is highly valuable in arriving at the conclusion of the study. The option to utilise the quantitative approach is mainly due to the nature of the problem which is not in any way related to gathering of statistical information.

1.6.2 Data collection method

Kumar (2010:138) argues that "there are two main approaches to gathering information about a situation, person, problem or phenomenon. In many instances, when a study is undertaken you need to gather the required information; however, sometimes the required information is already available and need only to be extracted". Based on these approaches to gathering information; data is categorised as either primary or secondary. Primary sources of data include interviewing, observation and questionnaires which are referred to as first-hand information. Secondary sources include documents such as government publications, departmental records of MinMec and Technical MinMec meetings and earlier research. This study makes use of interviews which is one of the most commonly used methods of gathering information from people.

Kumar (2014:176) defines an interview as a person-to-person interaction, either face to face or otherwise, between two or more individuals with a specific purpose in mind. The questions comprise of both open-ended and closed questions. This method is called a structured interview and one of its main advantages is that it provides uniform information. The minutes of the MinMec and Technical MinMec meetings are also used to obtain more information on the discussions that transpire during the meeting in terms of their contribution towards promoting IGR and whether in fact the discussions are in line with the objectives on the MinMec, such as the setting of budget priorities, policy making and joint planning.

The interview questions were mailed to the prospective respondents and where possible other interviews were conducted face to face. Though e-mails are known to have a low response rate this was compensated for by the face to face interviews. This method has as its advantage cost-effectiveness.

1.6.3 Population sample

As a sampling method, the research uses non-probability sampling which is largely known for being less time consuming and less complicated. The reason for choosing this method is the comfort of accuracy it provides as well as confidence in the conclusion of the study. Welman, Kruger and Mitchel (2005:56) argue that in non-probability sampling the probability that any element will be included cannot be specified. Under this method the researcher shall focus on the purposive sampling. A minimum sample of 3 members of the MinMec and 3 Members of the Technical MinMec have been selected for participation in the study. In choosing the sample, the attendance register of MinMec was used to select the sample and to request for their participation in the study. The same principle applied to Technical MinMec members.

The population size of a MinMec consists of 27 core members and Technical MinMec consists of 26 members. The composition will be discussed in detail in Chapter Three to follow.

1.7 CLARIFICATION OF CONCEPTS AND TERMS

In no particular order the terms that shall be clarified for the purposes of this study are as follows:

1.7.1 Public administration

Various scholars agree that no one has yet produced a widely accepted definition of public administration. Stillman II (2005:1) associates the lack of the widely accepted definition to the rapid growth in the 20th century of public administration, which today seems to be all-encompassing. Heady (1991:2) argues that public administration is an aspect of a more generic concept-administration - the essence of which has been described as determined action taken in pursuit of conscious purpose. Even though administration may take place in the private sector, public administration may not. Heady (1991:2) goes on to define public administration as a sector of administration which takes place in a political environment and is concerned primarily with the carrying out of public policy decisions made by the authoritative decision makers in the political system.

1.7.2 Intergovernmental relations

Intergovernmental relations (IGR) features two critical elements and they are: structure/process and the human or driver of the process. Malan (2005:226) defines intergovernmental relations as a set of formal and informal processes as well as institutional arrangements and structures for bilateral and multilateral cooperation within and among the three spheres of government. For the purposes of this study, this shall be the definition of intergovernmental relations.

Mathebula (2011:835) argues that the term 'intergovernmental relations' is a combination of three words that denote a particular meaning. These words are inter, governmental and relations. Mathebula (2011:835) quotes the Webster New Collegiate Dictionary (1974:1030) which states that inter- is a prefix accruing in loan words and meaning between or among. Inter- as applied in intergovernmental would therefore refer, but is not limited to, that which is between, among and in the midst

of, during, mutually done by, and reciprocally accruing in, for and by government. In the same paragraph Mathebula (2011: 835) further states that Governmental refers to that which pertains to government. In defining 'relations', Mathebula (2011:836) quotes the Oxford Complete Word Finder (1993:1293) which defines relations as that condition, feature or attribute of things which is involved in considering them in contrast or comparison with each other.

Mathebula (2011:839) cites Mentzel (2000: 3) and suggests that "IGR is a mechanism for multi- and bi-lateral, formal and informal, multi-sectoral and sectoral, legislative, executive and administrative interactions entailing joint decision making, consultation, co-ordination, implementation and advice between spheres of government at vertical as well as horizontal levels and touching on every sphere of governmental activity. In broad terms, IGR constitutes a negotiation and consultation process between governments, aimed at harmonising government's actions and decision making".

Mathebula (2011:840) concludes by quoting Elazar in defining the term 'intergovernmental relations' as a universal phenomenon which is to be found wherever two or more governments (national or sub-national) and or jurisdictions, interact in the development and in the execution of public policies and programmes.

1.7.3 Cooperative government

Hughes (2010:6) argues that cooperative government is hinged on the word 'cooperation' and therefore involves sharing of goals towards the sharing of information, joint planning and budgeting and cooperation with regard to policy development and implementation.

Mathebula (2011:840) defines cooperative government as "a governance philosophy based on a reciprocal obligation of spheres of government to trust, support and assist one another in coordinating service delivery to the community. Cooperative government would include a legal, political and moral obligation to inform and consult one another as well as co-operating with and coordinating efforts on matters of

common concern and joint projects, thus patterning intergovernmental collaboration and cooperation to ensure the success of national development projects".

1.7.4 Human Settlements

The concept of human settlements was established in 1976 during the United Nations Conference in Vancouver, Canada named Habitat 1. The Vancouver Declaration defined human settlements as the totality of the human community - whether city, town or village - with all the social, material, organisational, spiritual and cultural elements that sustain it, according to the Virtual Statistical System; an organisation of the World Bank Group (https://www.virtualstatisticalsystem.org/themes/theme/17-human-settlements-housing/).

It is said however that over the years, "the concept of human settlements has been broadened to become a framework for an overall national socio-economic development in the context of formulating global shelter strategies and that it is now contended that human settlements are the spatial dimension as well as the physical expression of economic and social activity. The key concerns in the domain of human settlements are:

- Housing
- Infrastructure and urban services, including waste disposal, sanitation, drinking water, and energy supply etcetera.
- Urbanisation

(https://www.virtualstatisticalsystem.org/themes/theme/17-human-settlements-housing/) World Bank Group.

1.7.5 Minister and Members of the Executive Council (MinMec) Forum

According to Kahn *et al.* (2011:76) a MinMec is a statutory forum formalised with the enactment of the Intergovernmental Relations Framework Act in 2005 and consists of a Minister at national level with the equivalent member of the Executive Council at provincial level. This forum is pivotal in ensuring coordination of activities between the national and provincial governments. Kahn *et al.* (2011:76) assert that a MinMec

is a key IGR institution for achieving collective decisions on policy, planning, budget priorities, progress reviews and interaction with parastatals.

1.7.6 Technical Minister and Members of the Executive Council Forum

According to Mathebula (2004:169-170) a Technical MinMec is a forum consisting of the Director-General and the provincial Heads of Department. Its mandate is to provide technical support to the Minister and the members of the provincial executive council. This includes ensuring effective implementation of the resolutions taken by MinMec. This forum also considers matters of performance and policy within its sector.

1.7.7 Public Service

Farham and Horton (1996:XIV) define public services as those major public organisations whose current and capital expenditure are funded primarily by taxation, rather than by raising revenue through selling their services to either individual or corporate consumers in the market. The Department of Human Settlements is one of those organisations which is primarily funded through taxation and exists because housing is a basic need in the Republic of South Africa. A large number of people in South Africa are living in squalid, destitute conditions and therefore the Government has a department responsible for the accelerated delivery of housing opportunities in order to restore the dignity of our people.

1.7.8 Service delivery

Rakate (2006:30) cites Fox and Meyer (1995:118) and defines service delivery as the provision of activities, benefits or satisfactions to the citizens and relates to both tangible and intangible goods. Rakate (2006:30) further quotes a report by the former South African Management Development Institute ((SAMDI) 2003:5), (currently known as the National School of Government - an entity of the Department of Public Service and Administration) that service delivery in the public service comprises of systematic arrangements for satisfactorily fulfilling the various demands for services by undertaking purposeful activities with optimum use of resources to

deliver effective, efficient and economic service resulting in measurable and acceptable benefits to customers.

1.7.9 Organisational structure

An organisational structure is defined as a system of intentionally planned and formally executed relationships existing among the positions in an institution. This implies therefore that the objective for structuring is so that the organisation positions itself in a manner that can enable it to deliver a service or achieve its mandate (Kahn *et al.* 2011:13).

1.7.10 Coordination

Coordination refers to the process that ensures those activities and functions of the three spheres of government do not overlap and that no duplication of functions occurs. Coordination is also a major criterion for an effective system of government consisting of decentralised units (Malan 2005:238).

1.8 LIMITATIONS OF THE STUDY

Mathebula (2004:7) states that public administration research and practice occurs in environments that are context-laden and politically charged. Mathebula (2004:7) further puts forward that changes in political administrations and realigning ideological frameworks adopted by political incumbents makes research in this field to be sensitised to limiting variables generated by time and space within observed contexts. This means therefore that in evaluating the role of IGR forums in the promotion of intergovernmental relations in the human settlements environment, there are other factors, also referred to as extraneous variables, such as the change in leadership within the forum that may lead to a different outcome depending on the time at which the research was undertaken.

IGR forums in themselves do not promote intergovernmental relations but rather it is the individuals within the forum. Because the contributing factor to the findings may also be influenced by the political incumbent or cabinet member responsible for this

forum at the period under review; this research is therefore limited by space and time within which it is conducted.

External validity may also limit this study. Neuman (2011:300) describes external validity as the effectiveness of generalising experimental findings. The extent to which the findings based on the interviews can be considered fully reliable is limited by the sample of the population. Population generalisation may be a challenge; however the study does not intend to assert the views and opinions of the selected sample as those of the entire members of the Human Settlements MinMec and Technical MinMec. This study will provide relatively sufficient information from secondary sources, minutes as well as interviews for the reader to make their own assessment and draw their own conclusions.

1.9 FRAMEWORK OF THE CHAPTERS

Chapter one gives a detailed introduction to the study, the problem statement, the objectives of the study, the limitations of the study, ethical considerations, the methodology of research that the researcher will follow and the reviewed literature.

Chapter two explains the conceptualisation of intergovernmental relations within the Discipline of Public Administration. Topics to be covered include the definition of the differences between Public Administration as a discipline and public administration as a practice, the role of public administration as per the Constitution of South Africa of 1996, cooperative government versus cooperative governance and the relationship with intergovernmental relations.

Chapter three provides insight into and describes the establishment of the former Department of Housing, the transformation into the Department of Human Settlements, the mandate of the Department of Human Settlements, the challenges related to concurrent functions, composition of the Human Settlements MinMec and Technical MinMec.

Chapter four examines the functionality of the intergovernmental relations forums within the Department of Human Settlements and their possible contribution towards

the achievement of the priorities of the Department and promotion of intergovernmental relations. Issues that will be uncovered include the frequency of meetings, the level of attendance by core members or delegation to lower level managers, the extent to which the decisions are binding, and the agenda setting against the set objectives on the MinMec, such as the setting of budget priorities, policy making and joint planning.

Chapter five provides and contains the findings of the study based on the population sample; draws conclusions and make recommendations towards an improvement in the functionality of the human settlements IGR forums towards the promotion of intergovernmental relations.

1.10 CONCLUSION

Housing is a concurrent function and as such is a shared responsibility between spheres of government. This means that more than one sphere of government is responsible for its policy making, administering it or monitoring performance. A strong system therefore of intergovernmental relations is necessary.

Survey of literature has proven that poor service delivery is a challenge that can be better managed through a stronger intergovernmental relations system and forums and that ways must be sought to continually promote and sustain liaison with governmental stakeholders. Furthermore, literature suggests that one of the conditions for effective intergovernmental relations is mutual assistance and support, regular consultations, exchange of information, cooperation and coordination. In this regard, ways must be sought to continually promote and sustain liaison with governmental stakeholders.

This study therefore analyses the functionality of the MinMec and Technical MinMec forums in line with their objectives and the role they play in the promotion of intergovernmental relations. The other less tangible but still potent factors analysed include politics, trust, leadership and quality of relationships within these IGR structures.

The next chapter focuses on the context of intergovernmental relation within the discipline of Public Administration and public administration as a practice. The chapter will also outline the factors that influence intergovernmental relations and the various intergovernmental relations coordinating mechanisms available.

CHAPTER TWO: CONTEXTUALISATION OF INTERGOVERNMENTAL RELATIONS WITHIN THE DISCIPLINE OF PUBLIC ADMINISTRATION

2.1 INTRODUCTION

This chapter serves to provide an overview of Public Administration as an academic field of study and its challenges whether in fact it (Public Administration) can be defined as an independent academic field of study due to its multiplicity across various other disciplines. The historical background of Public Administration will also be discussed dating back to the times of Woodrow Wilson who is renowned as the father of Public Administration and the founder of American Public Administration through his essay *"The Study of Administration"* (1887). The development of Public Administration over the years will also be discussed through the various theories and the contributions made by various authors. This chapter also seeks to define the functions of government, to describe the various steps in the policy making process, to contextualise Public Administration in South Africa and the relationship with intergovernmental relations. Housing as a public administration and intergovernmental relations problem will also be discussed.

2.2 IDENTITY CRISIS OF PUBLIC ADMINISTRATION

According to Stillman II (2010:1) a definition of the parameters of a field of study, that is, the boundaries, landmarks and terrain that distinguishes it from other scientific and humanistic disciplines is normally considered a good place to begin and introduce any academic subject. However, Public Administration is so vast and cross-disciplinary that scholars have not agreed on a universal definition that is simplistic, all-encompassing and relevant to most. To date there is an on-going debate whether Public Administration is an art or a science and whether it is driven by values or facts. According to Thornhill (2010: 95), Public Administration has been widely accepted as a science by some of its sister disciplines in the Social Sciences due to its eclectic nature and its reliance on related disciplines to explain, direct and inform study and practice.

Thornhill (1999:281) states that Public Administration has experienced a crisis of identity since the end of the Second World War wherein other disciplinary perspectives entered the study. "Countries such as France, Germany, Italy and Scandinavia developed a conception of Public Administration with its intellectual roots in philosophy, law, sociology, economics, political science, and history", Thornhill (1999:286). The crisis was about its academic nature and its relevance to society. Academically, the question is whether Public Administration is a unified, coherent discipline that is sufficiently independent from other disciplines and to what extent its knowledge is scientific or interpretive (Thornhill 1999:286).

The rapid growth of Public Administration in the Twentieth Century according to Stillman II (2010:01) contributed to its identity crisis. Thornhill (1999:286) goes further and argues that the existential crisis in the practice of public administration is concerned with the moral authority of government.

In conclusion, Thornhill (1999:286) concurs with Rutgers that Public Administration cannot be anything but a differentiated study and that continuous crisis is, in fact, its identity.

2.3   EVOLUTION OF PUBLIC ADMINISTRATION

This study reflects on the major developments that shaped Public Administration and its practice over the years. According to Fry (1989:2) the beginning of a self-conscious study of Public Administration in the United States is traced to Woodrow Wilson's essay titled "The Study of Administration" published in the *Political Science Quarterly* in July 1887.

It was a century after the enactment of the American Constitution that an article by Woodrow Wilson advocated for its study. According to Wilson, in earlier times, the functions of government were simple because life itself was simple and government went about imperatively and compelled men, without the thought of consulting their wishes. Wilson (1887:199) states that "there was no complex system of public revenues, populations were of a manageable size, property was of simple sorts, and there were plenty of farms but no stocks and bonds". According to Wilson what

engrossed men's thoughts was the constitution of government and there was little thought about administration.

Fry (1989:2) states that in response to the widespread corruption within government and in the spirit of a reform movement, Woodrow Wilson proclaimed a major distinction between politics and administration. According to Shafritz, Russell and Borrick (2013:27) Wilson (1887) saw the field of administration as field of business that is far removed from politics and argued that Public Administration should be premised on the science of management. Wilson (1887) further argued against partisan politics and advocated for what became known as "politics-administration dichotomy". Wilson's critics viewed the separation of politics and administration as a normative ideal that cannot be achieved in the real world. They argued that to attain such neutrality from public administrators is very distant from reality and something that can hardly be attained.

The politics-administration dichotomy in essence meant that the development of public policy must reside solely with elected officials, courts and political appointees. The administrators were to be concerned only with the systematic implementation of the public policies. The politics-administration dichotomy also argued for public appointments to be based on fitness and merit rather than partisanship. According to Fry (1989:2) what Wilson called for was the development of a science of administration, the objective of which should be the discovery of general principles to guide administrators in the efficient performance of their duties.

Stillman II (2010:18) states that it was four decades later that a first American textbook, Leonard White's *"An introduction to the Study of Administration"* (1926) was published and this was in fact a century after the subject had been well established on the European continent. Also according to Stillman II (2010:18), it was issues such as massive migration from abroad, rapid technological, urbanised, industrial change, clashes between management and labour and the drive for international markets abroad that forced the Americans to build an administrative enterprise. It was only then that a professional civil service was developed and the military and diplomatic corps became urgent priorities.

As such, the duties of public administrators became more complex and cut across minor activities such as patching potholes or delivering mail and the major goals of government and the development of resources for achieving those goals within the context of a rapidly changing political environment that Wilson's 1887 essay became meaningful.

2.4 CLARIFICATION OF TERMS

In order to give context to the discussion in this chapter, the following terms will be clarified:

2.4.1 Administration

According to Webster's dictionary, administration is concerned with the activities that relate to running a company, school or organisations (http://www.merriam-webster.com/dictionary/administration).

Cedras (2013:90) cites Cayer (2003: 4) in arguing that all administration including Public Administration depends on the cooperative effort of the individuals who make up the administration. Administration therefore is affected by all the complexities of human nature.

According to Wilson (1887:198), "Administration is the most obvious part of government; it is government in action; it is the executive, the operative, the most visible side of government, and is of course as old as government itself". Similar to administration, intergovernmental relations is also affected by all the complexities of human nature. According to Baatjies (2010:3) IGR can be thought of as a particular mindset or attitude towards working cooperatively. While administration is the most obvious part of government, IGR is not as visible yet very crucial in ensuring delivery of government priorities or programmes. It has been referred to as the "oil of the engine" (De Villiers and Sindane 2011:3).

2.4.2 Democracy

Denhardt and Denhardt (2006:3) assert that the term democracy well reflects its roots: the Greek words *demos*, meaning people, and *kratis*, meaning authority. Denhardt and Denhardt (2006) thus argue that democracy refers to a political system in which the interests of the people at large prevail and that this is not limited to processes and procedures but the cultural values pursued in a democratic society. In South Africa, these values can be found in the Bill of Rights contained in Chapter two of the Constitution of the Republic of South Africa, 1996.

2.4.3 Governance

Thornhill, Van Dijk and Ile (2014:4) cite Mohiddin and define governance as the convergence of all the structures and processes, bringing together government, private sector and civil society in an efficient, effective and meaningful decision making framework. Thornhill (2015) defines governance as an interaction among the public sector's institutions and the public to achieve stated objectives as well as co-leadership, co-responsibility and co-accountability.

According to Frederickson (2004:7), there are as many definitions of the concept of governance as a synonym for public administration as there are applications. "Government refers to the structure and function of public institutions while governance is the way government gets its job done.

2.4.4 Public Administration

According to Shafritz *et al.* (2013:21), Public Administration is an academic field. It is the study of the art and science of management applied to the public sector. "As a field of study, it is inherently cross-disciplinary because it encompasses so much of political science, sociology, business administration, psychology, law, anthropology, and so on".

Cedras (2013:86) cites Kuye *et al.* (2002:5) and asserts that Public Administration can also be a term used to mean the study of selective practice of the tasks

associated with the behaviour, conduct and protocol of the affairs of the administrative state.

Thornhill *et al.* (2014:4) argue that Public Administration refers to the discipline that studies specific phenomena in the public sector.

2.4.5 Public administration

Stillman II (2010:1) argues that Public Administration does not operate in vacuum but is deeply intertwined with critical dilemmas confronting an entire society. The challenge therefore faced by theorists over time was how to reasonably and concisely define a field that is interrelated with all of society. Stillman II (2010:4) therefore describes Public Administration as a field in which every man is his own codifier and categoriser and the categories adopted must be looked on as relatively evanescent and that perhaps it is best that it not be defined.

Riccucci (2010:3) seems to be in support of this view through his assertion that Public Administration lacks a paradigmatic base because of its very nature, which is applied, and is thus characterised by experience and practice. Riccucci further argues that those practices and institutions that control and drive them are imbued with politics which further precludes the field from acquiring a paradigm. Riccucci (2010:4) thus defines Public Administration as a post normal science, one that is driven by multiple norms and traditions, and hence can be studied through a variety of epistemic and ontological lenses.

Henry (2001:1) states that Public Administration is the device used to reconcile bureaucracy with democracy. Henry goes further and argues that it is a broad ranging and amorphous combination of theory and practice; its purpose is to promote a superior understanding of government and its relationship with the society it governs, as well as to encourage public policies more responsive to social needs and to institute managerial practices attuned to effectiveness, efficiency and the deeper human requisites of the citizenry.

Due to its vastness, Shafritz *et al.* (2013:6) have classified public administration into four categories namely political, legal, managerial and occupational. These definitions are to be read with the understanding of the preceding comments regarding public administration.

2.4.5.1 Political

Public administration is implementing the public interest. "Public interest is the universal label in which political actors wrap the policies and programmes that they advocate" (Shafritz *et al.* 2013:9).

Democratically elected governments are elected into power by the citizens to implement their election promises. It is generally understood that it is often against its manifesto that a political party is elected into power by the electorate. Assuming that this is the case, the electorate can hold the government to account against these election promises. It could be against this background that Stillman II (2010:3) cites Starling (1998) and defines public administration as "comprising all activities involved in carrying out the policies of elected officials and some activities concerned with the development of those policies". Starling thus summarises public administration as all that comes after the last campaign promise and election-night cheer.

2.4.5.2 Legal

Public administration is law in action. "Public administration is inherently the execution of a public law. Every application of a general law is necessarily an act of administration" (Shafritz *et al.* 2013:11).

To support this definition, in South Africa, Public Administration is founded on section 195(1) of the 1996 Constitution. The Constitution in South Africa is the supreme law of the land. This will be discussed at length in paragraphs to follow.

2.4.5.3 Managerial

Public administration is the executive function of government, "In democratic states, Public Administration is defined as government agencies putting into practice legislative acts that represent the will of the people" (Shafritz *et al.* 2013:14). In South Africa, the Executive authority is vested in the President of South Africa who is head of state and head of government, as well as his Cabinet. The Cabinet comprises of Ministers who are appointed to lead various portfolios including human settlements, water and sanitation, energy, health and protective services to mention the most basic. It is the executive that is charged with the responsibility to develop and put into action the legislative acts that represent the will of the people that elected them into power.

2.4.5.3 Occupational

Public administration occupation is "whatever the public employees of the world do and ranges from brain surgery to street sweeping" (Shafritz *et al.* 2013:18).

2.4.6 Public management

As was the case in the definition of Public Administration and public administration, the use of capital letters (P & M) in Public Management refer to the discipline and small letters (p & m) are used to refer to the activities or practice.

According to Henry (2001:145) public management is the development or application of methodical and systematic techniques, often employing comparison, quantification, and measurement, that are designed to make the operations of public organisations more efficient, effective, and increasingly responsive.

2.4.7 Theory

Ijeoma (2013:6) cites Hanekom and Thornhill (1995) and argues that the word theory is derived from the Latin word, theoria and the Greek word, theora meaning contemplation, speculation and sight.

2.5 THE EMERGENCE OF PUBLIC MANAGEMENT

Briefly, it is important to just reflect that Public Administration went through many trials with critics challenging its relevance and identity over time. According to Henry (2001:145) Public Management as a scholarly emphasis surfaced in the mid-1970s as a mild effort by some academics to be more relevant and "hardnosed" than the larger enterprise of Public Administration. The rise of Public Management represented in part an attempt to upgrade that academic status of techniques for improving efficiency and effectiveness relative not only to Political Science but Public Administration which was thought to be lacking these aspects during the 1970s.

However, Henry (2001:41) found that management had some distinct and beneficial influences on public administration including putting pressure on public administrators to develop new methodologies of management that worked where traditional, private sector methods did not.

2.6 LEGISLATIVE FRAMEWORK FOR PUBLIC ADMINISTRATION IN SOUTH AFRICA

The purpose of this section is to explain the composition of the state and the allocation of functions to the three spheres of government. The purpose is also to describe the framework within which the Republic of South Africa is governed and administered and to put in context the environment under which intergovernmental relations occurs. The three branches of government described by Thornhill *et al.* (2014:63) as separate yet equally important to safe guard the interests of the South African society will also be discussed briefly.

The *Constitution of the Republic of South Africa, 1996* is the supreme law of the country. There is no law that supersedes the provisions of the Constitution. Any law that is inconsistent with the provisions of the Constitution is considered invalid. According to Kahn *et al.* (2011:26), the Constitution defines how a state is to be governed. It is also according to Kahn *et al.* (2011:26) "a framework for political society that establishes law and permanent institutions with recognised functions and

definite rights". Some of these institutions as they pertain to the South African government will be discussed later on in this chapter.

Public Administration is embedded in Section 195(1) of the Constitution and is in place to lawfully execute the functions of the state. Section 195(1) of the Constitution states that "Public administration must be governed by the democratic values and principles enshrined in the Constitution. The principles of public administration are as follows:

i.   A high standard of professional ethics must be promoted and maintained
ii.   Efficient, economic and effective use of resources must be promoted
iii.   Public administration must be development-oriented
iv.   Services must be provided impartially, fairly, equitably and without bias
v.   People's needs must be responded to, and the public must be encouraged to participate in policy making
vi.   Public administration must be accountable
vii.   Transparency must be fostered by providing the public with timely, accessible and accurate information
viii. Good human-resource management and career-development practices, to maximise human potential, must be cultivated
ix.   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.

In terms of Section 40 of the Constitution, 1996, the three spheres of government are constituted as national, provincial and local, which are distinctive, interdependent and interrelated. The branches of Government are made up of the legislative, the executive and judiciary.

2.6.1 Functioning of the legislative branch (Parliament)

According to Vyas-Doorgapersad, Tshombe and Ababio (2013:20) the term *legislature* refers to a body of elected representatives that makes laws. Thus the

primary function of a legislature is to formulate, debate, and pass legislation that is needed for the government and the country to function.

According to Botes, Brynard, Fourie and Roux (1992:28), one of the main characteristics of a democracy is that a legislative authority is responsible for the final say on national affairs. Cloete and Thornhill (2012:37) further argue that each legislative institution should represent the population in its area of jurisdiction and is bound to serve the interests of its people. This is further emphasised in Section 44, 104 and 151(2) of the Constitution (1996) which provides that the legislative authority in the national sphere of government in South Africa is vested in parliament; the provincial sphere of government is vested in all nine provincial legislature and the local sphere of government is vested in the municipal councils. This makes Parliament the supreme legislature in the country subject to the ultimate supremacy of the Constitution (Section 2 and 8, Constitution, 1996).

The prime function of the legislature according to Cloete and Thornhill (2012:39) is to pass legislation on matters entrusted to it and so the prime purpose of the state is to ensure it creates conditions under which its citizens can live in peace and can, as far as possible, satisfy their personal needs and expectations for themselves. To establish such conditions, Cloete and Thornhill (2012:39) state that the state must establish a hierarchy of legislatures with specific legislative powers. These legislatures must provide rules which can serve as standards to direct the conduct of individuals, groups and institutions so that the actions of one do not impinge on the other's sphere of jurisdiction.

The South African national legislature consists of the National Assembly and the National Council of Provinces (NCOP). The Parliamentary sittings are open to the public to motivate and facilitate public participation in the legislative process.

2.6.2 National Assembly

The National Assembly is elected to represent the people and to ensure democratic governance as required by the Constitution. It does this by electing the President, providing a national forum for public consideration of issues, passing legislation and

scrutinising and overseeing executive action. The National Assembly consists of no fewer than 350 and no more than 400 members elected through a system of proportional representation.

The National Assembly, which is elected for a term of five years, is presided over by the speaker, assisted by the deputy speaker (http://www.gov.za/about-government/government-system/national-legislature-parliament).

2.6.3 National Council of Provinces

The NCOP consists of 54 permanent members and 36 special delegates, and aims to represent provincial interests in the national sphere of government. Delegations consist of 10 representatives from each province. The NCOP must have a mandate from the provinces before it can make certain decisions (http://www.gov.za/about-government/government-system/national-legislature-parliament).

2.6.4 Functioning of the Executive Branch

According to Vyas-Doorgepersad *et al.* (2013:17) the primary responsibility of the executive is to govern the country through the execution of national legislation. The role of the executive is to develop new policies and laws and implement them, presumably to the benefit of the people that have elected it to power. In terms of Chapter Five of the Constitution (1996), the national executive in the national sphere of government consists of:

2.6.4.1 The President

The president is the head of state and leader of the national executive. Vyas-Doorgapersad *et al.* (2013:18) assert that the president is entrusted with maintaining the supremacy of the constitution as the guiding law of the country, and is also required to promote the unity and interests of the nation. The President is also the commander in chief of the defence force.

2.6.4.2 The Deputy President and Ministers

These office bearers according to Cloete and Thornhill (2012:57) are responsible for ensuring that the administrative executive institutions assigned to them by the president perform properly. The Deputy President assists the president in executing government functions. The president may also assign other functions to the Deputy President. As an example, after the May 2014 elections, the President of South Africa, Mr Jacob Zuma, tasked Deputy President, Cyril Ramaphosa to oversee the turnaround of the three (then) embattled parastatals: Eskom, SAA and the Post Office, in an addition to this, Mr Ramaphosa is also the President's envoy in the Southern African Development Community (SADC) facilitated peace talks in Lesotho.

2.6.4.3 Cabinet

The Cabinet consists of the President, as head, the Deputy President and Ministers. The President appoints the Deputy President, Ministers and Deputy Ministers, assigns to them powers and functions, and may dismiss them at his discretion (Vyas-Doorgapersad *et al.* 2013:18). The President may select any number of Ministers from the members of the National Assembly, and may select no more than two Ministers from outside the assembly (http://www.gov.za/about-government/government-system/executive-authority-president-cabinet-and-deputy-ministers).

2.6.4.4 Deputy Ministers

The Deputy Ministers are appointed by the President from among the National Assembly to assist the members of the Cabinet (Cloete and Thornhill 2012:56).

The above discussion has laid-out the framework within which the Republic of South Africa is governed and administered and it put in context the environment under which intergovernmental relations occurs. The functioning of the executive branch was particularly significant because it provides the clarity on role of the executive

which is primarily discoursed and implemented at the intergovernmental relations forums such as the MinMecs wherein the Cabinet members are the Chairpersons.

2.7 SIGNIFICANCE OF INTERGOVERNMENTAL RELATIONS

According to Baatjies (2010:3) intergovernmental relations "is the axle that connects the state machinery. It is based on the realisation that the achievement of a shared growth and integrated sustainable development requires collaboration and partnership among various actors, particularly between the spheres of government and its departments". Baatjies (2010:3) argues that intergovernmental relations contributes to service delivery in that just as good IGR can be a major factor in efficient and effective service delivery, so poor IGR can lead to inadequate or duplicated service delivery. Baatjies (2010:4) argues further that from the perspective of the communities, there is only one government and therefore IGR structures play a crucial role in forging a coherent government for the country, in that they establish platforms for engagement to take place between national policy direction for the country and the distinctive service preferences of provincial and local government. The primary objective on cooperative government is thus to provide an efficient and effective government.

De Villiers and Sindane (2011:81) argue that an even greater requirement is the way in which political leaders and public servants approach IGR because institutions and structures do not solely bring cooperative government or intergovernmental success. "It is the attitude, dedication, leadership, commitment, training and skills of people that bring success".

2.8 INTERFACE BETWEEN PUBLIC ADMINISTRATION AND INTERGOVERNMENTAL RELATIONS

Sokhela (2007:70) cites Hatting (1998:54) and asserts that while much has been written about the nature of the administrative processes, the factors that influence intergovernmental relations follow a broad classification namely: policy making, financing, organising, personnel utilisation, procedure and control. Intergovernmental relations occur and/or are practiced within a public administrations environment.

Citing Sokhela (2007:71-75), the factors that influence public administration are discussed below.

2.8.1 Policy making as an intergovernmental relations issue

Sokhela (2007:70) argues that policy making begins with the public acknowledgement that a problem exists, proceeds to define the nature of the problem, formulates policy demands and finally follows a policy agenda with alternative proposals. Sokhela (2007:70) further argues that policies or laws (emanating from policies) are borne out of a need of the government or community to regulate the conduct of persons either within public institutions or outside or both. Section 41(2) of the Constitution 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 intergovernmental disputes. Such an Act was passed as the Intergovernmental Relations Framework Act (IGRF Act), 2005 (Act 13 of 2005). The IGRF Act, 2005 formalised IGR structures such as MinMecs; which in the period before the enactment of this Act were non-statutory.

2.8.2 Finance as an intergovernmental relations issue

The Constitution of the Republic of South Africa, 1996 establishes national, provincial and local government as distinctive, interrelated and interdependent. The Constitution also identifies functional areas of concurrent and exclusive competence. It is accepted that in order for government to function or to be able to deliver services, financial resources must be made available.

The Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997 establishes a formal process for management of intergovernmental budgetary matters. It sets out the process for the division of nationally raised revenues between the three spheres of government; it establishes the Budget Forum, in which local government issues are discussed as part of the national budget process and it also requires that a Division of Revenue Bill is tabled annually, setting out (among other things) the amounts to be transferred to municipalities.

The Constitution establishes the National Treasury as the responsible institution for managing national government's finances. Chapter 13 of the Constitution mandates the National Treasury to ensure transparency, accountability and sound financial controls in the management of public finances. The Public Finance Management Act, 1999 (Act 1 of 1999 was thus passed to give effect to section 216(1) of the Constitution requires national legislation "to establish a national treasury and prescribes measures to ensure transparency and expenditure controls in each sphere of government". The latter legislation promotes the objectives of good financial management in order to maximise service delivery through effective and efficient use of limited resources.

Even though each sphere of government is autonomous, they are accountable to the National Treasury in terms of expenditure of public funds. The Constitution confers extensive powers on national government to determine the financial management framework over all organs of state, in all spheres of government. The national treasury not only implements the budget of national government but also plays a financial oversight role over organs of state in all spheres of government (http://www.treasury.gov.za/legislation/PFMA/default.aspx).

2.8.3 Human resources administration and management as an intergovernmental relations issue

Sokhela (2007:74) asserts that a common characteristic of different government departments on all three spheres of government is that there will continue to be a need for an adequately trained body of staff. Sokhela (2007:74) cites section 195(1)(h) of the constitution in further asserting that public administration must be governed by good human resources management and career development practices. Section 195(1)(i) states that public administration must be broadly representative of the south Africa people, with employment and personnel management practices based on ability, objectivity, fairness. These principles according to Sokhela (2007:74) are applicable to all the spheres of government, all organs of state and public enterprises.

Sokhela (2007:75) argues that the establishment of the Public Service Commission (PSC) to promote these values and principles leaves much to be desired. The PSC is mandated to promote public administration values and principles within the public service. The public service consists of provincial and local government which leaves out the local sphere of government from the scope of the PSC. Sokhela (2007:75) further argues that there should be consistency in the application of Section 195 of the Constitution on all spheres of government as this would ensure consistency in the recruitment of personnel, thus enhancing the quality of intergovernmental relations.

2.9   LEGISLATIVE FRAMEWORK FOR INTERGOVERNMENTAL RELATIONS IN SOUTH AFRICA

The Constitution of the Republic of South Africa, 1996, establishes the legislative framework for intergovernmental relations. The Constitution sets out the principles of cooperative government in Chapter Three, which seeks to outline how the three spheres of government ought to relate to one another. Kahn *et al.* (2011:64) argue that, although the constitution stipulates in Section 40(1) that South Africa is one sovereign, democratic state, it provides a broad framework within which IGR can operate. Thus it (the Constitution) provides for three spheres of government: national, provincial and local who are distinctive, interdependent and interrelated.

According to Malan (2005:227) the distinctiveness of the three spheres of government refers to the autonomy of each sphere in that each has its own elected government. Even though the constitution provides for the distinctiveness of the three spheres of government, Kahn *et al.* (2011:65) argue that "the constitution does not advocate for exclusivity in service delivery but that the principle of cooperative government obliges all spheres of government to put their collective national interest above parochial interest and to work together for the common good". The interrelatedness refers to the responsibility to cooperate with one another and that the spheres of government are subject to the regulatory, supervisory and intervention authority of national government, which sets the frameworks within which they exercise their own powers; can monitor their activities and intervene in their affairs when circumstances permit. The establishment of forums falls under the

"interrelatedness" of the spheres. The spheres of government are also interdependent because they share resources, must plan together, share the responsibility over service delivery and are bound by the principles of cooperative government.

Kuye, Thornhill and Fourie (2002:36) argued that a system of intergovernmental relations had to be developed to ensure that all services for which the three spheres of government are jointly or individually responsible are administered effectively and efficiently.

2.9.1 IGR coordinating mechanisms/instruments

Because of the complexity of the relations between the three spheres of government, a number of instruments were made available to guide relations between the spheres of government; those relevant to the study will be discussed below:

2.9.1.1 IGR Committee of Minister and Members of the Provincial Executive Council (MinMec) and the Technical MinMec

A MinMec is a forum that brings together a minister at national level with the equivalent member of the Executive Council at provincial level. A MinMec is a statutory forum that was formalised with the enactment of the Intergovernmental Relations Framework Act in 2005 (Kahn *et al*. 2011:76). This forum is pivotal in ensuring coordination of activities between the national and provincial governments. Kahn *et al*. (2011:76) assert that it is a key IGR institution for achieving collective decisions on policy, planning, budget priorities, progress reviews and interaction with parastatals. Kahn *et al*. (2011:76) further argues that the responsibilities of MinMec with regards to intergovernmental relations include:

- the harmonisation of legislation within a given sector
- the division and deployment of financial resources
- the harmonisation of programmes on a national basis
- consultation and negotiation on national norms and standards

- the integration of intergovernmental policies and strategy

- the formulation of joint programmes and projects

- the sharing of sectoral information

- the assignment of roles and functions between the spheres of government

A key aspect to note regarding this forum is that it (MinMec) does not have decision making powers or executive authority but they fill an essential role in coordinating the actions of the executives. This is very important because it forms the core of cooperative government which relies heavily on the spirit of cooperation as espoused in Chapter Three of the Constitution.

A Technical MinMec is a forum consisting of the Director-General and the provincial Heads of Department of a given sector. Its mandate is to provide technical support to the Minister and the members of the provincial executive council. This includes ensuring effective implementation of the resolutions taken by MinMec. This forum also considers matters of performance and policy within its sector (Kuye *et al.* 2002:122).

2.9.1.2 Cabinet Committees/Clusters and Forum of South African Directors-General (FOSAD)

A number of intergovernmental structures promote and facilitate cooperative government and intergovernmental relations between the three spheres of government. They include: Cabinet Committees and the Forum of South African Directors-General, which promotes programme integration at national and provincial level.

Since 2009, the scope and mandate of the Forum of South African Directors-General (FOSAD) Clusters has been modified for the outcomes implementation forum to administer the service delivery issues while the FOSAD clusters administer policy, legislation and all other matters for consideration at the cabinet committees. According to the Presidency's Guide to the Outcomes approach (2010), FOSAD

Clusters provide technical support to the Cabinet Committees where Ministers consider progress with regard to tasks relating to strategy, policy or legislation.

The FOSAD clusters were restructured in the year 2014 to align them with the cabinet committees for better coordination between them. The six clusters are structured as follows:

- Governance and Administration Cluster
- Social Protection, Community and Human Development Cluster
- Economic Sectors, Employment and Infrastructure Development Cluster
- International Cooperation, Trade and Security Cluster
- Justice, Crime Prevention and Security Cluster
- World Economic Forum

Directors-General are the most senior members of the administration in government. According to Kahn *et al.* (2011:80) this forum plays an important role in promoting greater inter-sectoral coordination.

2.9.1.3 South African Local Government Association

Kahn *et al.* (2011:80) cite the Constitution in asserting that local authorities are allowed to organise forms of municipal association. In this regard, the national organisation, the South African Local Government Association (SALGA) and nine provincial associations have been established. Its main role is to ensure effective representation of local government in the legislative processes of all the spheres of government and in intergovernmental executive processes.

2.10 HOUSING AS A CHALLENGE FACING PUBLIC ADMINISTRATION IN SOUTH AFRICA

Homelessness is one of the numerous challenges facing the government of South Africa. Without going too deeply into the history leading to the Group Areas Act of 1950, it is important to begin by the recognition that African, Indian and Coloured communities (in the words of Kahn *et al.*) were systematically discriminated against

in the allocation of state finance for housing purposes during the apartheid era. "It meant control over people; it was about excluding people from urban areas; it was about regimentation and the administration of deprivation" (Kahn *et al.* 2011:132).

The first Minister of Housing following the first democratic elections of 1994 in South Africa was Mr Joe Slovo. Mr Joe Slovo was a key negotiator in the Convention of a Democratic South Africa (CoDESA 1990-1993) and Kahn *et al.* (2011:132) saw this as an indication of housing as a key issue with regards to service delivery for the then newly elected government. The African National Congress' (ANC's) election manifesto with regards to housing was the delivery of 1 million houses within the first five years of election. There was massive pressure on government to hit the ground running and deliver. However, fourteen years later, only 1, 6 million houses had been built (Kahn *et al.* 2011:134). It may seem that there were no adequate systems in place to ensure realisation of this promise. Kahn *et al.* (2011) put it that if there was adequate coordination of activities between and amongst the three spheres of government, more could have been achieved.

According to statistics, the Department of Human Settlements has delivered three million eight hundred thousand seven hundred and sixty serviced sites and housing opportunities from 1994 to September 2014 (www.dhs.gov.za). The mandate of the Department of Human Settlements and the delivery statistics to date will be discussed in the following chapter. The focus of this section is merely to illustrate the housing challenge as a public administration and intergovernmental relations problem.

Kahn *et al.* (2011:133) assert that the Housing Act, 1997 (Act 107 of 1997) hereinafter referred to as the 'Housing Act' allows for the accreditation of municipalities to administer the national housing programmes. In terms of the constitution as cited previously, housing is a concurrent function involving all three spheres of government which according to Kahn *et al.* (2011) warrants betters coordination and integration of the activities within this sector. Kahn *et al.* (2011) further assert that municipalities have been underutilised in the delivery of housing programmes. Kahn *et al. (2011:133)* caution that for municipalities to play a more prominent role in development of integrated sustainable human settlements, the

planning of the housing function must occur at the local level. The issue of accreditation will also be discussed in detail in the following chapters, especially with regards to the decisions that have been taken at MinMec and Technical MinMec level on this subject.

2.11 STATUS OF BASIC SERVICE DELIVERY

According to Haruna and Vyas-Doorgapersad (2015:71), the concerns regarding the status of service delivery and that service delivery protests are becoming a more ubiquitous aspect of the current changing political landscape in South Africa, have been raised before. The performance-based approach according to Haruna and Vyas- Doorgapersad (2015:71) places the citizens of South Africa in a position to demand acceptable standards of services from government. Haruna and Doorgapersad (2015:71) assert that government is not absolutely successful in its performance of delivering basic services to most South Africans and this has resulted in the accumulation of backlogs of services and dissatisfaction among the citizenry. According to Statistics South Africa, in 2011, the housing backlog was estimated at more than two million three hundred thousand (http://www.dhs.gov.za/content/media-statements/media-statement-28-november-2011).

2.12 CONCLUSION

People on their own are not able to fulfil all their needs. Since the dawn of time, people have lived in communities and this led to the establishment of governments. The role of government has always been to fulfil the needs of societies, especially in democratic environments. However, not all needs of society can be fulfilled as public expectations always surpass the financial resources available. As described in this chapter, public administration is government in action. Most importantly, in De Villiers and Sindane's (2011) words, it is the unseen layer that allows various parts of government to reach their potential and to serve the interests of the whole.

The chapter provided an overview of Public Administration as an academic field of study. Although there is no universally accepted definition of Public Administration,

this study concurs with Thornhill (1999) when he cites Rutgers (1998) and asserts "Public Administration cannot be anything but a differentiated study and that continuous crisis is in fact, its identity". The study also concurs with Riccussi (2010) that as a practice, public administration lacks a paradigmatic base because of its very nature, which is applied, and is thus characterised by experience and practice.

The Constitution of the Republic of South Africa, 1996, which establishes the legislative framework for intergovernmental relations and sets out the principles of cooperative government in Chapter Three, was discussed. The fact that IGR can be a major factor in efficient and effective service delivery but poor IGR can lead to inadequate services was also discussed.

Service delivery protests occur regularly in South Africa and most of them are attributed to poor IGR. Baatjies (2010:4) made it clear that from the perspective of the communities, there is only one government and therefore IGR structures play a crucial role in forging a coherent government for the country.

CHAPTER THREE: LEGISLATIVE AND REGULATORY FRAMEWORK FOR THE PROVISION OF HOUSING IN SOUTH AFRICA

3.1 INTRODUCTION

This chapter seeks to provide the historical context that led to the establishment of the Department of Human Settlements, the legislative and regulatory frameworks for the provision of housing and the transition from housing provision to the provision of integrated and sustainable human settlements. This chapter will also introduce the MinMec as a formal IGR structure; provide an overview of the housing landscape in South Africa and some of the challenges relating to housing delivery since 1994 to date. In relation to the challenges, this chapter seeks to explore the accreditation of municipalities as a possible solution to a few of the challenges facing housing in South Africa.

The Department of Housing was established soon after the 1994 democratic elections but its roots or its founding base can be traced back to 1956 when the Freedom Charter was adopted in Kliptown, with particular reference to the Freedom Charter clause that says; "There shall be houses, security and comfort" (http://www.dhs.gov.za/content/overview).

The advent of the country's first democratic dispensation brought with it a high level of expectations from the previously marginalised groups and anticipation with regards to the promise of free housing and a 'better life for all'. The goal of government then was to increase housing's share in the total state budget to five per cent and to increase housing delivery on a sustainable basis. The target was to deliver 338 000 units per annum, within a five year period, to reach the one million houses in five years target of the Government of National Unity, according to the Department of Human Settlements (South Africa 1994). The appointment of the late Joe Slovo as the Minister of Housing was an indication of how seriously the African National Congress (ANC) took the issue of housing in relation to the promises made to the people in the election manifesto (Kahn *et al.* 2011:132). The one million houses target however, according to Rust (2006:7) was only achieved seven years later.

In 1994, there were many challenges facing the Department of Housing with an estimated 86% of households earning less than R3500 per month (Rust, 2006:6). Housing affordability was also seriously constrained and there was an obvious need of subsidy support, according to Rust (2006:6). The subsidies from the previous regime were designed to support the racially-defined framework of the Government's apartheid policy. The subsidies were also expensive and unable to support the breadth of the need defined by a post-democratic administration. The availability of end-user finance was also limited. Retail lenders lacked the capacity to extend downmarket, and there was an explicit reluctance on the part of some formal financial institutions to lend in certain areas and to certain groups of people (Rust, 2006:6). Despite these challenges, Kahn *et al.* (2011:132) submit that more could have been achieved in terms of the delivery of housing had there been adequate coordination of activities between and amongst the three spheres of government.

To date, housing remains at the forefront of the national agenda in terms of service delivery with the Government's renewed commitment to deliver an additional 1,5 million housing opportunities by 2019, according to the Social Contract for the Development of Sustainable Human Settlements (2014:10). The 1, 5 million housing opportunities target will be broken down later on in this chapter. As outlined above, the one million housing target set by the Government of National Unity was not achieved by the set date due to the lack of adequate coordination of activities between and among the spheres of government. It becomes very critical therefore to monitor how and what the Department of Human Settlements will do differently with regards to coordination and intergovernmental relations to achieve not only housing but the expanded mandate of the provision of human settlements. The human settlements concept will be discussed later in this chapter.

3.2 LEGISLATIVE PROVISION FOR THE DELIVERY OF HOUSING IN SOUTH AFRICA

There are a number of legislative and policy frameworks for the provision of housing in South Africa and a few of them will be discussed in this Chapter. These frameworks begin with the development of the new Housing Policy and Strategy for

South Africa in 1994, hereinafter referred to as the White Paper on Housing, the Constitution of the Republic of South Africa, 1996 which recognises housing as a basic human right, the Housing Act, 1997 (Act 107 of 1997), and lastly the Comprehensive Plan for Sustainable Human Settlements commonly referred to as the Breaking New Ground (BNG) policy.

3.2.1 The White Paper on Housing

The White Paper on Housing emerged from the National Housing Forum which was a multi-party, non-governmental negotiating forum comprising business, political, development, and civic organisations which met between 1992 and 1994 to discuss the post-apartheid housing situation and Housing Accord (Tissington 2011:58). It was on 27 October 1994, where the newly democratically elected government hosted the National Housing Summit in Botshabelo, where it was able to secure formal support from a broad range of key stakeholders for the new housing policy and strategy in what is known as the Botshabelo Housing Accord" (Tissington 2011:58).

The Housing White Paper was influenced by the broad principles and targets of the African National Congress' (ANC) Reconstruction Development Programme (RDP) in 1994. The RDP was "a programme which sought to transform South Africa by mobilising all the country's people and resources towards building a democratic, non-racial and non-sexist future" (RDP 1994).

The White Paper on Housing provided the framework for the country's ambitious housing development target of building one million state-funded houses in the first five years of office under the RDP. The National Housing Subsidy Scheme (NHSS) provided capital subsidies for housing to qualifying beneficiary households to take full ownership. Later referred to as "RDP housing", this was a developer-driven-process, meaning projects were initiated, planned and built by private construction companies for the national and provincial government (Tissington 2011:21).

3.2.2 The Constitution of the Republic of South Africa

Section 26(1) of the Constitution of the Republic of South Africa, 1996, states that access to housing is a basic human right and the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. The Constitution recognises housing as adequate shelter which fulfils a basic human need; as both a product and a process; as a product of human endeavour and enterprise; as a vital part of integrated developmental planning; as a key sector of the national economy and lastly as vital to the socio-economic well-being of the nation.

Each of the three spheres of government has constitutional legislative powers that are either exclusive or concurrent. In terms of Schedule 4 Part A of the Constitution, housing provision is a functional area of concurrent national and provincial legislative competence. Part B of Schedule A lists building regulations, electricity and gas reticulation, water and sanitation services, and municipal planning as local government matters. Section 156(4) states that national government and provincial governments must assign to a municipality the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if that matter would most effectively be administered locally and the municipality has the capacity to administer it. In respect of housing the latter would be the accreditation of municipalities to take on the housing function. The issue of accreditation of metropolitan municipalities will be discussed later in the chapter as well as the MinMec resolutions on this matter. The role of national government, provincial and local government with regards to housing delivery will be discussed and the implications or challenges on delivery brought about by the concurrency of the housing function.

3.2.3 The Housing Act

The proliferation of the Housing Act, 1997 (Act 107 of 1997) gave legal foundation to the implementation of government's Housing Programme. The Housing Act clarifies the roles and responsibilities of the three spheres of government. The Housing Act is the primary legislation for housing in South Africa. According to Tissington (2011:20)

the Housing Act "provides for a sustainable housing development process, laying down general principles for housing development in all spheres of government". In terms of Section 2(1) of the Housing Act, all spheres of government must give priority to the needs of the poor in respect of housing development, and consult meaningfully with individuals and communities affected by housing development. As required by the Housing Act, the Minister of Human Settlements published a Housing Code (2000, revised in 2009) which includes the national housing policy and procedural guidelines for the implementation of the policy.

3.2.4 A Comprehensive Plan for the Development of Sustainable Human Settlements

Tissington (2011:64) states that from 2002 to 2003, the Department of Housing undertook a comprehensive review of its housing programme after recognising a number of "unintended consequences" of the existing programme. "These unanticipated problems included peripheral residential development; poor quality products and settlements; the lack of community participation; the limited secondary low income housing market; corruption and maladministration; a slowdown in delivery; under spent budgets; limited or decreasing public sector participation; the increasing housing backlog; and the continued growth of informal settlements".

In 2004, Cabinet approved the Comprehensive Plan for the Development of Sustainable Human Settlements also known and herein after referred to as the Breaking New Ground (BNG) policy. The BNG policy sought to refocus policy attention on the development of sustainable human settlements, rather than just on the delivery of subsidised housing units. The drafting of the Comprehensive Plan was informed by a number of processes including the Millennium Development Goals, particularly target 11:"*Achieve significant improvement in lives of at least 100 million slum dwellers by 2020*" (Rust 2006:10).

Table 3.1 below provides for the key elements and the objectives of the BNG policy which are distinct from the previous RDP programme which as an unintended consequence, created pockets of poverty across the country while the BNG places more emphasis on ensuring that the RDP properties can be an asset for wealth

creation and accessing finance, thereby directly contributing towards poverty alleviation.

Table 3.1: Breaking new ground elements and objectives

BNG elements	BNG objectives
i. Supporting the entire residential property market ii. Moving from housing to sustainable human settlements iii. Using existing and new housing instruments iv. Adjusting institutional arrangements within government v. Building institutions and capacity vi. Defining financial arrangements vii. Creating jobs and housing viii. Building information, communication and awareness ix. Establishing systems for monitoring and evaluation	i. Accelerate the delivery of housing as a key strategy for poverty alleviation ii. Utilise the provision of housing as a major job creation strategy iii. Ensure that property can be accessed by all as an asset for wealth creation and empowerment iv. Leverage growth in the economy v. Combat crime, promote social cohesion and improve quality of life for the poor vi. Support the functioning of the entire single residential property market to reduce duality within the sector, by breaking the barriers between the first economy residential property boom and the second economy slump. vii. Utilise housing as an instrument for the development of sustainable human settlements, in support of spatial restructuring.

Source: Rust (2006:10)

Job creation, combating crime and the improvement of the quality of life for the poor through spatial restructuring as envisioned through the BNG policy remain an on-going concern and are yet to be realised in the ever changing environment, varying needs of the poor as well as the limited financial muscle to meet the demand.

Rust (2006:10) defines the BNG's four primary ends as follows:
  o **Sustainable human settlements**: "well-managed entities in which economic growth and social development are in balance with the carrying capacity of

the natural systems on which they depend for their existence and result in sustainable development, wealth creation, poverty alleviation and equity."

- o **Integration**: The shift from housing units to sustainable human settlements in BNG largely captures the integration end. Spatial restructuring is also critical and sustainable human settlements are seen to support spatial restructuring. There is also an institutional dimension as integration is both intergovernmental (within a sphere of government) and inter-governmental, requiring integrated planning and coordinated investment.

- o **Housing assets**: ensuring property can be accessed by all as an asset for wealth creation and empowerment.

- o **Upgraded informal settlements**: ensure progressive eradication of informal settlements and urban inclusion.

It is through the BNG policy that government started to respond to a variety of housing needs and the provision of rudimentary services to informal settlements while plans for the construction of top structures/housing units was underway. The BNG policy placed more emphasis on informal settlements upgrading through the National Upgrade Support Programme. It is also through the BNG policy that community participation in the construction of the government subsidised homes was reiterated and enforced through the Enhanced People's Housing Process (ePHP). The ePHP programme is one of the instruments used by the Department of Human Settlements to deliver housing. According to Tissington (2011:84), the housing beneficiary under the ePHP is actively involved in the decision making and the actual construction of their home and they are allowed to deviate from the normal/standard subsidy house. However, government funding remains the same as that of a standard subsidy house. As an example, from observation; a beneficiary in the rural areas may opt for a *rondavel* instead of the standard subsidy house as we have come to know them. This approach is significantly different to the 'RDP' houses built from 1994 to the early 2000's which were strictly a contractor driven process.

3.2.5 The National Development Plan

The National Development Plan (NDP) is the South African Government's plan to eliminate poverty and inequalities by 2030. The NDP was developed in consultation with South Africans, including government, unions, academics, industry bodies, non-profit organisations, religious associations and the general public.

The South African Cities Network (SACN) 2014: xiv) cites the NDP (2011) and states that the co-production of the human settlements environment is centred on the consensus of the social contract contained in the Constitution, about redressing the country's inheritance, deconstructing the socio-spatial economic incoherence, and reframing for more socially just outcomes. The NDP acknowledges that the sustainability of human settlements and that of the residential areas rely on good infrastructure such as public transport, water, energy sources, and public spaces and accessibility of essential community services such as schools, shops, healthcare, and facilities for families and children (DPME 2014:2). The NDP proposes a strategy for human settlements that should strive for the establishment of viable, socially and economically integrated communities, located in areas allowing convenient access to economic opportunities as well as health, educational and other social amenities.

It is quite clear that there has been quite a shift in thinking from the White Paper on Housing in 1994 to the Breaking New Ground Policy in 2004. The BNG policy and Chapter 8 of the National Development Plan are in sync in that they both preach the deconstruction of apartheid spatial planning in terms of marginalising the poor by locating them in the periphery but the creation of integrated and sustainable settlements that are closer to places of economic activity and have social amenities for the communities. These policies envisage settlements where people live, work, play and pray and this concept informed the transition from just housing provision to human settlements provision. The following section will discuss some of the challenges experience with the RDP housing as these challenges are what informed the transition from housing provision to the provision of human settlements.

3.3 CHALLENGES PERTAINING TO THE PROVISION OF THE RECONSTRUCTION AND DEVELOPMENT PROGRAMME HOUSES

By 2007, a total of 3 043 900 subsidies had been approved and 2 355 913 houses built, (Tissington 2011:61). While this achievement has been lauded, Tissington (2011:61) argues that there was a concern about the increasing housing backlog due to rapid urbanisation, amongst other factors. Another concern was that despite the efforts of the NHSS to deliver housing to all, there were problems with both the quantity and quality of housing delivered since 1994.

The state wanted rapid delivery to ensure broad access to housing but that resulted in construction short cuts being taken and poor quality houses being built. This according to Tissington (2011:60-61) resulted in the Minister of Human Settlements announcing that the government would be using R1.3 billion, or 10 % of the department's budget, to rectify badly constructed RDP houses.

The SACN (2014:5) report supports Tissington by stating amongst others that despite the considerable delivery of housing units between 1994 and 2003, the housing policy had to be reviewed following criticisms of the housing programme. The criticisms related to the lack of spatial transformation due to the high land costs in urban areas. The criticisms also included the cost of the housing product for both the state and the beneficiary, poor location of the houses, poor quality of the houses and poor integration with socio-economic opportunities.

Rust (2006:9) supports the statement above by arguing that the under supply of housing to meet demand led to the escalation of prices. The price escalation related to property price appreciation fell outside the affordability of many households. Also, the escalation of building material costs more than doubled, rising in advance of inflation and put the government housing programme in jeopardy. These factors may have contributed to the 'shoddy' workmanship by contractors who were no longer adhering to the norms and standards by bypassing them to save costs and make a profit.

In addition to the badly constructed houses, the beneficiaries of the RDP houses rented them out to those who can use the house as an asset, themselves choosing to live in an informal settlement or backyard shack in a township to be closer to jobs and livelihood opportunities according to Tissington (2011:61). Also, the former Department of Housing took note that housing delivery had a limited impact on poverty alleviation and houses have not become the financial, social and economic assets as envisioned in the early 1990s. The houses were isolated from economic activity, there were no social amenities and people did not have title deeds to their homes and therefore people could not use their homes as collateral for financial engagements/transactions with the banks. Furthermore, people spent more of their wages on transport to the town where they were working, hence the rise in the renting out of the RDP houses and the mushrooming of informal settlements and invasion of land in townships and areas closer to the cities. Tissington (2011:61) argues that the location of the poor in the periphery perpetuates their marginalisation and does not contribute to the "compaction, integration and restructuring of the apartheid city".

3.4 TRANSITION FROM HOUSING TO HUMAN SETTLEMENTS

The lack of access to housing remains one of the issues at the forefront of service delivery protests in South Africa, along with demands for economic access, inclusion and plans to address the growing inequality (SACN 2014:2). Furthermore, the housing provided has been on the periphery of cities and this reinforced the spatial planning legacy of apartheid. The key to transforming this spatial context is developing integrated and sustainable settlements that include adequate housing and shelter, as well as livelihood opportunities that build an active and engaged citizenry as prescribed in the BNG policy as well as the NDP.

Between 1994 and 2014, housing delivery has shifted from an emphasis on building houses to recognising the importance of providing access to resources and opportunities, which would facilitate active participation in the social and economic fabric of South Africa (SACN 2014:3). This shift is illustrated by the introduction of the BNG policy in 2004 and the renaming of the Department of Housing to the Department of Human Settlements (DHS) in 2009. Moving from this constricted

conceptualisation ('housing') to a more holistic framing ('human settlements') requires considerable conceptual, political, and practical adjustment.

According to the South African Cities Network (SACN) (2014:3) this adjustment first means reflecting on aspects such as the meanings, components, outcomes, and measures of having made this shift. Secondly, citizen expectations of a particular kind of public housing delivery programme, making housing political and fraught with complexity. Finally, the intricate financial flows and institutional arrangements necessary for delivery also have to be reflected on. The implications of moving from delivering houses to developing sustainable human settlements have to be properly addressed because of the profound impact on government planning regimes, programme development, fiscal and financial arrangements, project implementation, and institutional and personnel capacities.

The SACN (2014:62) Report suggests that some cross-sector planning discussions are taking place, but the view of some officials interviewed is that overall management and implementation of the human settlements concept is poor. The officials are of the view that although there has been some shift in thinking, from housing to human settlements, the strong (politically driven) focus remains on the delivery of housing units (top structures) rather than human settlements. The Report (2014:62) suggests that the perception exists among officials that the shift in thinking is coming from national government and is being imposed on the local government. One official in particular is quoted as having said, "the thinking is not emanating from within the city but rather from outside, so while we can go ahead with planning, implementation is misaligned thereto". While another official pointed out that "the City is still really only providing housing with internal services" (SACN 2014:62).

There is evidence that the government is making efforts to bring people closer to places of economic activity and heeded the call by the BNG policy and NDP on what integrated and sustainable human settlements should look like. This is evident in projects such as Cosmo City and most recently Savanna City, which will consist of more than 18 000 BNG houses, 16 educational facilities, malls, clinics, crèches and churches according to Minister Sisulu (2016). In terms of the national scale however, more still needs to be done to bring the human settlements concept to life. For now,

the human settlements concept is not legislated as the Housing Act of 1997 still provides for the provision of housing and not human settlements. There is therefore an immediate need for a Human Settlements Act in order to clarify the roles and responsibilities of all key players in the provision of human settlements.

3.5 ROLES AND RESPONSIBILITIES OF NATIONAL, PROVINCIAL AND LOCAL GOVERNMENT IN TERMS OF THE HOUSING ACT

Baatjies (2009:4) states that the role of national government in concurrent relations is primarily a regulatory role, that of setting policy norms to ensure equitable service provision throughout the country, dividing revenue between the three spheres of government through the budget process, monitor impact, provide information and support and exercising oversight. The Constitution, Section 40(1) declared the three spheres of government as interrelated. They are subject to the regulatory, supervisory and intervention authority of national government, which sets the frameworks within which they exercise their own powers; can monitor their activities and intervene in their affairs when circumstances permit.

Baatjies (2009:4) further outlines the role of the provincial government and local government municipalities as that of delivering basic services such as housing to the public within the policy framework set by the national government. "The provincial and local authorities are vested with the authority to determine their own budgets, to decide the appropriate mix of services for their regional or local area, to provide basic services and to be accountable for performance" (Baatjies 2009:4). The authority to determine their own budgets refers to the distinctiveness of each sphere of government. Both the provincial and local government receive funding/transfers from the national fiscus to fund basic service provision in the form of an unconditional equitable share of revenue and grant funding conditional to a specific purpose (Baatjies 2009:4). The spheres of government are also interdependent because they share resources, must plan together, share the responsibility over service delivery and are bound by the principles of cooperative government.

For housing delivery, the provincial and local government receive a conditional transfer in the form the Human Settlements Development Grant (HSDG) and the

Urban Settlements Development Grant (USDG) respectively. Conditional grants are monies transferred for a specific purpose and may not be used for any other purpose except what is stipulated in the HSDG and USDG frameworks.

3.5.1 Roles and functions of the National Government in terms of housing

Part 2, Subsection 3(1) of the Housing Act stipulates that the national government acting through the Minister must, after consultation with every MEC and the national organisation representing municipalities as contemplated in Section 163*(a)* of the Constitution, establish and facilitate a sustainable national housing development process.

In terms of Subsection 3(2) of the Housing Act, the Minister must determine national policy, including national norms and standards, in respect of housing development; set broad national housing delivery goals and facilitate the setting of provincial and, where appropriate, local government housing delivery goals in support thereof and monitor the performance of the national government and, in co-operation with every MEC, the performance of provincial and local governments against housing delivery goals and budgetary goals.

3.5.2 Roles and functions of Provincial Government in terms of housing

Part 3 Subsection 7(1) of the Housing Act states that every provincial government, through its MEC, must, after consultation with the provincial organisations representing municipalities as contemplated in Section 163*(a)* of the Constitution, do everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of national housing policy.

Subsection (2) (1) of the Housing Act states that every provincial government must, through its MEC:

(a) determine provincial policy in respect of housing development;
(b) promote the adoption of provincial legislation to ensure effective housing delivery;

(c) take all reasonable and necessary steps to support and strengthen the capacity of municipalities to effectively exercise their powers and perform their duties in respect of housing development;

(d) co-ordinate housing development in the province;

(e) take all reasonable and necessary steps to support municipalities in the exercise of their powers and the performance of their duties in respect of housing development; and

(f) when a municipality cannot or does not perform a duty imposed by this Act, intervene by taking any appropriate steps in accordance with Section 139 of the Constitution to ensure the performance of such duty.

In terms of Subsection (3) of the Housing Act an MEC must administer every national housing programme and every provincial housing programme which is consistent with national housing policy.

3.5.3 Roles and functions of municipalities in terms of housing

Part 4 Subsection 9(1) of the Housing Act states that every municipality must, as part of the municipality's process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to:

(a) ensure that the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis;

(b) set housing delivery goals in respect of its area of jurisdiction;

(c) identify and designate land for housing development;

(d) create and maintain a public environment conducive to housing development which is financially and socially viable;

(e) promote the resolution of conflicts arising in the housing development process;

(f) initiate plan, co-ordinate, facilitate, promote and enable appropriate housing development in its area of jurisdiction;

(g) provide bulk engineering services, and revenue generating services in so far as such services are not provided by specialist utility suppliers; and

(h) plan and manage land use and development.

The roles and responsibilities of the different spheres of government as outlined, in summation; indicate that the national department sets the policies and provides the budget; the provincial departments of human settlements facilitate the provision of housing in their respective provinces in line with the policies set by the national department and the municipalities must make land available and prepare that land for housing development through the provision of bulk engineering services. However, as housing is a concurrent function, it makes it prone to certain challenges posed by the mere concurrency of the function as indicated by Steytler and Fessha (2005).

3.6 CHALLENGES FACING HOUSING AS A CONCURRENT FUNCTION

Housing provision remains a key government obligation to society and forms an important component of the government's commitment (election promise) to the electorate. However, housing is a concurrent legislative competence and as such a clear allocation of functions is critical for service delivery as any ambiguity may result in the dereliction of duty by one sphere (party) thinking the other will take care of the service to be delivered; a duplication of services and a lack of accountability over functions as there is no certainty of responsibility (Steytler and Fessha, 2005:10).

Steytler and Fessha (2005:3-4) state that "concurrency of functions occurs where more than one level of government share authority (be it legislative or executive, or both) over the same functional area. The lack of clarity over functions may thus have serious implications for service delivery and may affect the relationships between spheres of government involved. The conflict may be over resources and authority". Steytler and Fessha (2005:1) also argue that there is a considerable overlap between provincial and local government functional areas. The overlap thus leads, in practice, to concurrency of powers and functions which has also added to the confusion about who does what. Steytler and Fessha (2005:10) give an example that while the national Department of Housing/Human Settlements remains responsible for the provision of houses through the provincial departments, the local municipalities remain responsible for providing reasons for the lack of delivery of houses.

According to Phago (2014:54-55) the provision of human settlements means that since the provision and administration of public services such as housing overlap to some functions of national state departments; for example, clinics are administered by the Department of Health, schools by the Department of Education, roads by the Department of Transport and police stations by the Department of Safety and Security, it goes without saying that it is necessary to establish and implement the principles of IGR to support the human settlements concept. Phago (2014:55) states that the realisation or achievement of an integrated and sustainable human settlement is heavily dependent on a number of stakeholders, such as key sector departments at various spheres responsible for land, roads, schools and clinics. Phago's argument therefore suggests that an intergovernmental housing forum or framework should be introduced to address matters affecting housing from other state departments.

Both horizontal and vertical relations are key for the Department of Human Settlements achieving its vision of a nation housed in sustainable human settlements and it requires therefore that there be clear roles and responsibilities allocated to each role player to avoid duplication and dereliction of duty, as well as accountability. The local sphere of government is closest to the people and when there is no delivery of rudimentary services such as housing, there is a possibility of citizens protesting and expressing their frustration at their local municipality. In the past, examples of this expression have included burning the house of a local councillor as the elected representative of the community at ward level or targeting other public infrastructure such as schools and libraries. It is evident from the protests targeted at municipalities that the people do not care or know who is responsible for what task in terms of housing provision but they are aware that it is the government who is responsible, and to the people the municipality is government and that is where they will protest. It is evident therefore that it might be necessary to strengthen the role of local government in the provision of housing. The role of local government will be discussed as a possible solution to some of the challenges facing housing in South Africa.

3.7 MUNICIPAL ACCREDITATION AS A TOOL FOR IMPROVING HOUSING DELIVERY

Municipal accreditation is defined as a progressive process of capacitation, evaluated against pre-agreed criteria, leading to the eventual assignment of all the functions related to the administration of national housing programmes (Municipal Accreditation Framework [MAF] 2012:8).

The MAF (2012:7) provides that the rationale for accreditation is to progressively enable municipalities to manage the full range of housing instruments to allow for better co-ordinated and accelerated human settlements delivery. The Housing Act provides for accreditation as a capacitation mechanism to allow for the administration of national housing programmes by municipalities. However, if the full responsibility for the administration of national housing programmes is to be transferred, then the Constitutional and legal framework for assignment of powers and functions needs to be followed, according to the MAF (2012:6). The objectives of the accreditation process as outlined in the MAF (2012:7) "is to ensure coordinated development by locating the decision making at local level and accelerated delivery by removing all the uncertainties around financial allocations".

The accreditation process is a phased approach with level one and level two and is based on the capacity of each municipality to manage the responsibilities allocated to each level. Level three, according to the MAF (2012: 6-7) is the actual assignment of the housing function. A municipality that gets allocated level one must have demonstrated its ability to do the budget planning and allocation, and priority programme management and administration which includes housing subsidy budgetary planning functions across national housing programmes and projects; subsidy/fund allocations, and project identification functions as prescribed by the MAF (2012:15). The priority programme management and administration may include programme and project evaluations and approvals; contract administration; subsidy registration; programme management including cash flow projection and management and technical (construction) quality assurance functions as cited by the MAF (2012:15).

The MAF (2012: 16) provides that level two accreditation is awarded to a municipality that has demonstrated an ability to do "Programme management and administration responsibilities for all national and provincial housing programmes: this includes project and programme approval and evaluation; contract administration; subsidy registration; programme management including cash flow projection; procure service providers; contract management and technical (construction) quality assurance functions".

To date, metropolitan municipalities that have been granted level one and two accreditation are as follows:

Table 3.2: List of accredited metropolitan municipalities

PROVINCE	METROS	DELEGATED	LEVEL	FUTURE ENVISAGED LEVEL	IMPLEMENTATION PROTOCOL
Eastern Cape	Buffalo City	Y	L1	Phase 1 assignment	Pending
	Nelson Mandela Bay	Y	L1&L2	Phase 1 assignment	Pending
Free State	Mangaung	Y	L1&L2		Pending
Gauteng	City of Tshwane	Y	L1&L2	Phase 1 assignment	Signed
	City of Johannesburg	Y	L1&L2	Phase 1 assignment	Signed
	Ekurhuleni	Y	L1&L2	Phase 1 assignment	Signed
Kwa-Zulu Natal	Ethekwini	Y	L1&L2	Phase 1 assignment	Signed
Western Cape	City of Cape Town	Y	L1&L2	Phase 1 assignment	Signed

Source: Department of Human Settlements (2016)

By definition, there is no doubt that municipal accreditation is a form of decentralisation. According to Mathebula (2011:849-850) decentralisation is "the transfer or delegation of legal and political responsibility for planning, resource use and allocation, and management from national jurisdictions and agencies to sub-national jurisdictions". The term originates as an IGR management technique from the need to address the limitations of central and/or command types of government. Decentralisation is therefore a process of devolving national governmental authority

and power to sub-national units of government, and dispersion as the delegation of functions in an autonomy-expanding manner that does not compromise national government's right to give directives and have full oversight (Mathebula 2011:850).

Local government is increasingly being seen as a point of integration and coordination for the delivery of national programmes according to Tau (2015:808). Baatjies (2009:11) also supports Tau's (2015) argument and asserts that the concept of wall-to-wall municipalities means that all national and provincial government spending and planning, in addition to that of municipalities, is realised in a particular municipal area. Local government is thus the focal point of delivery of all government services: there is no provincial 'area' or national 'area'. All development consequently takes place at local level.

This study will therefore, in relation to the delivery of housing and the provision of sustainable human settlements, explore the accreditation of municipalities as one of the delivery vehicles for accelerated delivery. Its advantages and disadvantages will also be explored. The substance of engagements in the MinMec with regards to planning should be concentrated on the contents of the Integrated Development Plans as the foundation/tool. Baatjies (2009:13) argues that "the municipal IDP space should be the central planning arena for both national and provincial functional departments and be utilised to shape sustainable human settlements.

Despite the plausible delivery of 4,3 million housing opportunities (Legodi 2016) which consists of both serviced sites and units (top structures) between 1994 to 2016, the delivery trend in terms of the number of units that gets delivered annually has been on a decline since the 2007/08 financial year. Table 3.3 provides the statistics in terms of housing delivery between 2004 and 2015.

Table 3.3: Housing delivery trend since 2004 - 2015
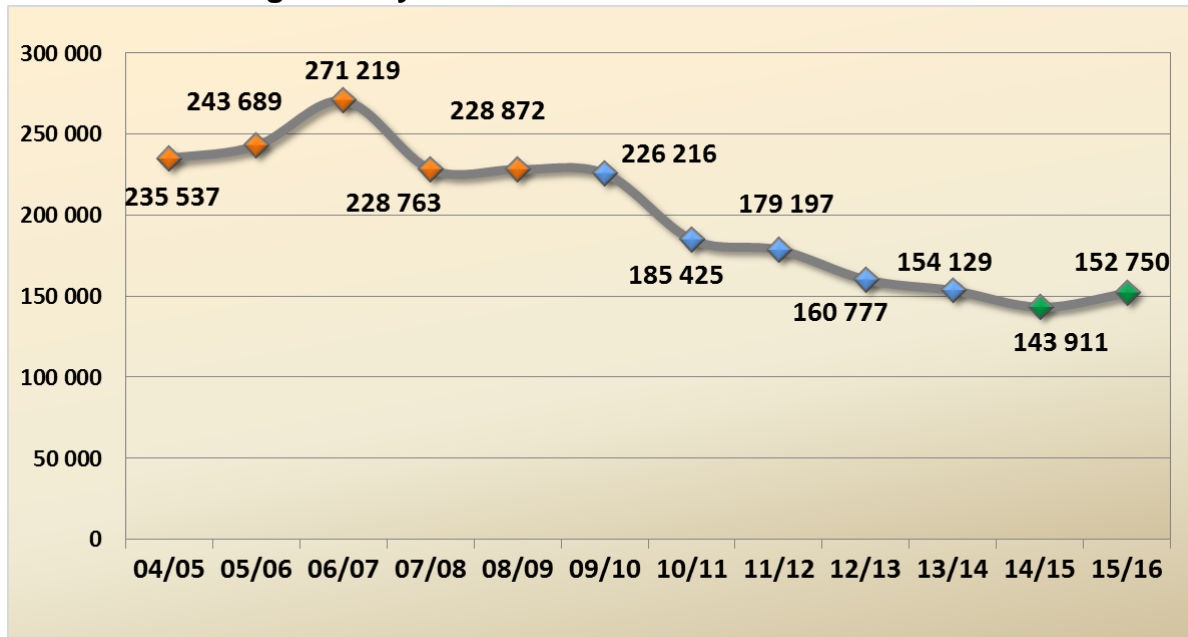
Source: Department of Human Settlements (2016)

The question therefore is: why has there been no assignment of the housing function to date to the metropolitan municipalities, at the very least to possibly remedy the situation of a decline in housing delivery? The following section seeks to introduce the MinMec as a formal structure for intergovernmental relations. This section will also outline the responsibilities/functions of a MinMec. These functions will be put to test in Chapter Four as the study analyses the Human Settlements MinMec as well as its supporting structure which is the Technical MinMec and its resolutions on municipal accreditation.

3.8 INTRODUCTION OF THE MINMEC AS A FORMAL STRUCTURE FOR INTERGOVERNMENTAL RELATIONS

Section 41(2) of the Constitution requires that an Act of Parliament must establish or provide structures and institutions to promote and facilitate intergovernmental relations and provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes. Since the promulgation of the Intergovernmental Relations Framework Act, the relations between spheres of government shifted from informal arrangements to formalised structures with specific focus areas and objectives as outlined in the policy and legislative framework

(Baatjies 2009:11). The IGRF Act is a framework, which means therefore that there is room and possibility for growth to make the conditions of engagement and environment suitable for each sector department or functional area with an intention to improve coordination, enhance planning and resource alignment for a coordinated delivery of services. Baatjies (2009:5) makes the assertion that "if IGR are the oil in the government machinery, then, just as good IGR can help make service delivery efficient and effective, so poor IGR can lead to duplication, inefficiency and competition".

The IGRF Act has set the parameters for the establishment and functioning of the intergovernmental relations forums (Baatjies 2010:01). According Tau (2015:806) effective functioning of intergovernmental relations largely relies on the following components:

- Legislation and regulations related to IGR which, inter alia, describe the distribution of powers and functions between and within spheres of government.
- IGR structures (such as forums and other bodies).
- Intergovernmental processes such as planning and budgeting.
- IGR instruments (such as implementation protocols and guidelines).
- Mechanisms for monitoring, communication, support and supervision.
- Intergovernmental dispute resolution procedures.

These components are critical in the practice of intergovernmental relations, a system created for the promotion of cooperative decision making, joint coordination of priorities aligned to the budget and the facilitation of intergovernmental disputes. An effective and functioning MinMec will thus provide for planning and budgeting processes, have in place and make use of IGR instruments, communicate with the provincial and local municipalities, monitor performance, provides support and supervision as well as facilitate IGR disputes.

Edwards (2008:71) argues that active participation at MinMecs has significant advantages, for instance provinces have greater influence if they engage at the

earliest stage of the legislative process. Some of the criticisms that have been pointed/ propelled against MinMecs, according to Edwards (2008:80) are that "they are too sectorally focused and tend to encourage the fragmentation of policy formulation; they are poorly attended (in particular by low-ranking officials who cannot make decisions at MinMec meetings). MinMec meetings are also dominated by national government and are not structured to accommodate decision making consensus". Despite these criticisms, Edwards (2008:80) sates that MinMecs remain one of the most important instruments for promoting intergovernmental relations.

As a basic requirement, it is expected that most if not all government departments especially ones that are at the forefront of service delivery will have an Intergovernmental Relations Unit, to, at the very least, facilitate a conducive environment for IGR or the relationships with the different spheres of government. The institutional arrangements of each department must also be conducive for effective intergovernmental relations. The following section will therefore discuss the institutional arrangements for IGR within the Human Settlements Department.

3.8.1 Composition of the Human Settlements MinMec

Because no formal procedures as may be laid out in section 9 and 10 of the IGRF Act restrict the establishment, composition and operation of the MinMec, they vary in structure and competence.

The Human Settlements MinMec comprises of the following members:

(a) The Minister of Human Settlements
(b) The Deputy Minister
(c) The nine provincial Members of Executive Council responsible for Human Settlements
(d) The Chairperson of the South African Local Government Association
(e) The Mayors of Metropolitan Municipalities
(f) The Chairperson of the Portfolio Committee on Human Settlements; and
(g) The Chairperson of the Select Committee on Social Services.

As stipulated above, the MinMec is clearly a political forum consisting of elected officials. The MinMec forum differs slightly to the Technical MinMec because the latter consists of appointed officials. Malan (2000:188-189) argues that in a democratic state there is a need for both the elected and the appointed officials to ensure effective governance as well as the implementation of legislation. The roles of the elected versus the appointed officials differ but also complement each other. These officials are also accountable to different constituencies and this is elaborated in the table to follow. Malan (2000:189) describes and differentiates the roles of the appointed and elected officials as follows:

Table 3.4: Role of elected versus appointed officials

Elected official	Appointed officials
Provides vision and policy direction;	Informs and advices elected officials accurately, completely and on time;
Oversees and monitors the implementation of policy;	Implements policy and ministerial decisions efficiently and effectively;
Secures support from colleagues in the form of necessary resources for their Ministries and departments to effectively carry out policy;	Be fully accountable to Ministers and Members of the Executive Council, where appropriate, Parliament;
Represent the Ministry in Cabinet and Parliament or the Members of the Executive Councils of provinces to represent the provincial department in the Provincial Legislature;	Utilise, in the carrying out of functions, all relevant sources of data and advice to give their Ministers/ Members of the Executive Council the broadest possible basis for policy consideration and determination;
Account publicly for the performance of the Ministry	Co-ordinate, control, manage and communicate within their departments
Take collective responsibility for Cabinet/Executive Council decisions and to be accountable to the legislature for their actions.	

Source: Malan (2000:89)

These roles must be understood in the context of the role of a MinMec and that of a Technical MinMec and that even though at face value they differ they still complement one another.

3.9   INSTITUTIONAL ARRANGEMENTS FOR THE COORDINATION OF INTERGOVERNMENTAL RELATIONS

In order to effectively institutionalise intergovernmental relations within any government department, the location of the Intergovernmental Relations Unit within the establishment becomes very critical. The observation is that there is currently no uniformity pertaining to the location of intergovernmental relations units within national departments. In most instances, the Intergovernmental Relations Unit is placed in the office of the Director-General who is an administrative head of the Department. The advantage of this institutional arrangement is the authority it provides to the IGR Unit and the influence it offers for clear decision making due to its proximity to authority.

According to Edwards (2008:69) Section 5 of the IGRF Act makes provision for the three spheres of government to take all reasonable steps to ensure that they have sufficient institutional capacity and effective procedures to consult, cooperate and share information with other organs of state, to respond promptly to requests by other organs of state for consultation, and to participate in intergovernmental structures of which they are members.

This study argues that the function of an IGR Unit is essentially to foster friendly relations between the spheres of government and creating a conducive and enabling environment for consultation, coordination, joint-planning, resource allocation and defusing tensions between the spheres of government through the formalised and informal IGR structures. The study further argues that, as one of the formal structures for intergovernmental relations, it is to be expected that the coordination of the MinMec forum should lie with the unit responsible for intergovernmental relations. Also, as one of the highest forums for the facilitation of intergovernmental relations and cooperative governance in terms of joint-planning and consultation with other spheres of government, the office of the Director-General remains relevant to

administer such a function. In addition to the IGR Unit location within the establishment of an institution, I is the argument of this study that the IGR Unit should be sufficiently capacitated to render the anticipated benefits of coordination.

3.10 CONCLUSION

It can be argued therefore that housing provision versus the creation of human settlements therefore remains just a concept without the legislation that provides for such. The Housing Act, 1997 (Act 107 of 1997) is yet to be amended to a Human Settlements Act and there is no evidence that suggests that key aspects related to planning alignment with regards to the setting of priorities between the sector departments, who have a key role in the creation of integrated and sustainable human settlements, is occurring. There is also no evidence of joint budgeting or alignment of budgets between the key sector departments that have a role to play in the provision of human settlements. This points to the lack of coordination between sector departments in the national sphere, yet it is expected of the provincial sphere of government to create settlements with water, electricity, roads, closer to clinics and schools when the Medium Term Strategic Framework (5 year targets) priorities at national level are misaligned in terms of prioritised projects.

It is evident that housing delivery has declined over the years and the solutions for accelerated delivery must be explored, including the accreditation of metropolitan municipalities as a first phase followed by all municipalities that have displayed capacity to be able to administer the housing function.

The MinMecs remain crucial forums for the promotion of intergovernmental relations. The Units responsible for intergovernmental relations within government establishments must be sufficiently capacitated and strategically located to administer the role of intergovernmental relations coordination within the sectors. Under capacitation, an IGR Unit deprives the institution of the anticipated benefits of coordination. The silo planning mentality which MinMecs have been criticised for can be eliminated and the promotion of consultation, joint targeting and resource sharing towards a common goal can be achieved with an environment that is conducive and enabling for effective intergovernmental relations coordination.

CHAPTER FOUR: AN EVALUATION OF THE FUNCTIONALITY OF THE HUMAN SETTLEMENTS COMMITTEE OF MINISTER AND THE MEMBERS OF THE EXECUTIVE COUNCIL (MINMEC) AND THE TECHNICAL MINMEC

4.1 INTRODUCTION

This chapter is based on the views of a sample of individuals who are intergovernmental relations practitioners and are participants and /or members of the Human Settlements MinMec and Technical MinMec. The opinions and views of the population sample are predominantly based on experience and observation.

The outcomes of the interviews are presented in this chapter starting with the Committee of Minister and Members of the Executive Council (MinMec), the Technical MinMec, the role of the South African Local Government Association in MinMec, strengthening the role of local government in human settlements delivery, findings with regards to the human settlements institutional arrangements for effective IGR and the emerging themes. The emerging themes consist of common matters of emphasis that arose out of the interviews.

4.2 THE ROLE OF THE HUMAN SETTLEMENTS MINMEC IN HUMAN SETTLEMENTS DELIVERY

The Committee of Minister and the Members of the Executive Council remains relevant and crucial for facilitating and providing a platform for coordination of activities, joint planning and collective decision making on line function matters between the spheres of government towards a common goal - human settlements delivery.

The MinMec is crucial in human settlements delivery because the Urban Settlements Development Grant (USDG) is managed by the Metropolitan Municipalities, who are members of the Committee of Minister and the Members of the Executive Council. The USDG is a supplementary grant allocated to the Metropolitan Municipalities and is accommodative to human settlements issues. It is intended to provide for bulk

infrastructure, acquisition of well-located land and public amenities. The forum therefore provides a platform for discussions on the linkage between the Human Settlements Development Grant, which delivers in the main housing/top structures, and the USDG for the delivery of integrated and sustainable human settlements.

4.3   CHALLENGES FACING THE COMMITTEE OF MINISTER AND MEMBERS OF THE EXECUTIVE COUNCIL

The respondents representing MinMec highlighted that there are a number of challenges concerning human settlements which ultimately must be resolved by the Committee of Minister and Members of the Executive Council. These challenges can be categorised as social and economic. The challenges relate to the increasing housing delivery backlog per province, the increase in the number of unemployed people who are dependent on the state to provide them with shelter. The economy of the country is also not doing well therefore the National Treasury has decreased budgets across government departments. According to the respondents the decrease in budget allocations indicates that the means to make inroads on the housing delivery backlog are reduced and the likelihood to meet the demand for housing cannot be met. The other challenge facing the MinMec is the limited capacity to respond to the variety of needs. In terms of policy, the R3500 income benchmark must also be adjusted and the programmes must be flexible to adapt and cater for the changing needs.

Another challenge cited by MinMec representatives is that, despite the plethora of meetings, the MinMec members proceed at cross purposes in some of the issues. This is evident in the performance of the provincial departments measured against the set Medium Term Strategic Framework priorities for human settlements. The provincial departments of human settlements disown the targets, they view them as national targets which have been imposed upon them to implement. There is also the sense by the Provincial Departments of Human Settlements (PDHS) officials that the targets set by the Department of Human Settlements have not been adequately funded and therefore not achievable while the Minister of Human Settlements has remained committed to the set targets as they have been publicly committed to do

so. The Department of Human Settlements (DHS) therefore tried to ensure compliance with the set targets through the provincial Annual Performance Plans.

As the Accounting Officer of the Human Settlements Development Grant (HSDG), the Director-General reserves the right not to approve the provincial business plans/Annual Performance Plans of the Provincial Departments of Human Settlements should he/she feel that they are not aligned with the set national priorities, according to one Technical MinMec representative. By implication, non-approval of the business plan implies that the province will not receive its allocation of the HSDG. However, the Provincial Departments of Human Settlements officials are aware of this and therefore submit business plans that are aligned to the set national priorities in order for the business plan to be approved (and most importantly, funded). Once the funding is received however, according to some respondents, the PDHS officials put the approved business plan away and implement another plan which is province specific and talks to the needs in the province. This is reportedly evident as early as the first quarter of the year and is picked up during reporting. The PDHS performance would be reported against targets unknown to the Department of Human Settlements. Also, the downward revision of the targets in the second quarter is almost certain across provinces during the budget adjustment period in September of every financial year, said one respondent. A challenge is that though the output is revised downward, the funding committed remains the same.

The PDHS also sometimes choose to ignore the decisions taken by the MinMec and are doing as they wish. An example provided by respondents is the prescribed size per housing unit which has been set at 40 m^2. There is also a prescribed subsidy quantum of R110 000 which has been set per housing unit, which provinces are ignoring and are spending over the set subsidy quantum and are also constructing 45 m^2 and 50 m^2 houses. This raises questions from beneficiaries as to why they are not being treated equally and provided with the same standard of housing. Some housing units have ceilings and others do not because some provinces build according to the prescribed norms and standards and others do not, said one respondent.

4.4 NATURE OF RELATIONSHIPS IN THE MINMEC

As intergovernmental relations has been defined and described as the relationships between the different spheres of government in the conduct of their affairs, these relationships find expression in the intergovernmental relations forums. The attitude, knowledge and attributes of the individuals in these forums play a crucial role in the operationalisation of intergovernmental relations.

In terms of the Human Settlements MinMec, these relations are seen to be amicable yet cooperation remains a challenge. The cooperation and coordination is not evident in the implementation of human settlements programmes.

In the Technical MinMec, the relationship between the Director-General and the Provincial Heads of Human Settlements has improved over time, according to some Technical MinMec representatives. The factors that influenced change are time and the change of leadership. The current Director-General is seen to be investing a lot of time and effort in building cooperative partnerships and is visible in the different provinces. However, the relationship of the national department and the provincial departments of human settlements with the metropolitan municipalities still requires investment, said one respondent. It is currently a report driven relationship and there is a lack of a common vision. This is evidenced by the prioritisation of projects in terms of the USDG allocation by metros. The prioritised Departments in terms of allocation are often not directly related to the delivery of sustainable integrated human settlements. It therefore points to different priorities and the lack of a shared vision between these spheres of government.

4.5 ADMINISTRATIVE ASPECTS OF THE ORGANISATION OF THE MINMEC

One respondent indicated that it should be understood that intergovernmental relations is voluntary in nature and its successes are largely based on the level of cooperation, coordination, the skills, knowledge, attributes and attitude of the individuals within the system. As with any form of a relationship, trust, great communication and willingness from all parties to see the relationship prosper, are

crucial ingredients for the relationship to be mutually beneficial, this too is the case with IGR forums.

4.5.1 Internal rules governing the MinMec

It is a requirement for every intergovernmental structure to adopt rules to govern its internal procedures. According to some respondents, the Human Settlements MinMec is yet to fulfil this requirement. It does however have the Terms of Reference of the Human Settlements Implementation Forum (HSIF). The HSIF is an extended MinMec, it consists of key sector departments that have a role in the Human Settlements MTSF priorities. There is also a concern that the MinMec forum and the Implementation Forum are used interchangeably and not properly distinguished. It needed to be emphasised that one does not replace the other.

The HSIF Terms of Reference according to the MinMec representative does not stipulate the functions of the chairperson, procedures for the designation of a person to preside at a meeting in the absence of a chairperson, procedures for the functioning of the intergovernmental structure or procedures for the amendment of internal rules as required in terms of Section 33 of the IGRF Act. The absence of the procedure for the functioning of the MinMec therefore allows the Chairperson to run the meeting at his or her discretion and members must comply. This is a great area of weakness for any intergovernmental structure.

4.5.2 Schedule of MinMec

According to the respondents, an annual schedule of MinMec meetings is drafted by the secretariat of the Committee in consultation with the office of the Minister. However, the dates as provided for in the schedule are often missed and not adhered to for various reasons. Because the dates of the meetings are not certain and often get changed it inhibits the Members of the Executive Council to plan their programmes. It also inhibits them to commit to something that is uncertain.

4.5.3 Setting of the agenda

The agenda of the MinMec is formulated by the secretariat after receiving requests for items to be placed on the agenda, said one respondent. Subsequent to that, the secretariat consults with the office of the Minister on which items are approved to serve on the agenda. It is not clear what instrument is used to determine which items take priority over others but ultimately it is the Minister's prerogative as the Chairperson of the forum.

It was a shared concern amongst the respondents that the challenge being after the agenda has been formulated and circulated to the members; it is likely to be changed on the day of the meeting at the behest of the Minister. While there is no certainty of the agenda, what has become certain is that the agenda will not be finished on the day and certain items will get deferred.

4.5.4 Attendance by the Members of the Executive Council

Attendance by the Members of the Executive Council according to respondents has improved over a period of time but it has proved a difficulty with all the other provincial commitments and an uncertain schedule of MinMec meetings. Also, one respondent indicated that MEC's often cite provincial commitments for non-attendance and this often relates to meetings called by the office of their respective Premiers. In terms of priority, it has been observed that the MEC's do put the Premier or their provincial commitments above the MinMec. As a result, MinMec meetings at times do not form a quorum.

4.5.5 Minutes of the MinMec

The respondents highlighted that the minutes of the Committee often do not reflect the discussion but merely contains the key decisions of the meeting. For any individual who was not part of the meeting, the minutes would not make sense due to the lack of context, said a few respondents. The challenge therefore becomes the implementation of the decisions because the members of the MinMec are not the implementers of the decisions themselves but rely on their support staff to action

them. The implementing staff therefore rely on well documented minutes in order to action the decisions and are currently challenged by the incomprehensive minutes. Another view was that members of the MinMec do not have time to go over a detailed set of minutes and therefore key decisions are preferable. A shared perspective with regards to the minutes is the good turnaround time in the distribution of minutes.

4.5.6 Efficiency in decision making

The efficiency in decision making is a challenge that has and continues to have an impact on the implementation of housing programmes. The delays are at times caused by the continuous postponement of the scheduled meetings, according to the respondents. Once a meeting is confirmed, there is also a risk of having the item taken off the agenda at the discretion of the Minister and is overtaken by emerging priorities. Once the hurdle of having an item withdrawn in the agenda is won, there is still one that lies ahead and that is of getting the Committee to make a decision. The deliberations do take a prolonged period of time and this has an impact on housing delivery. An example provided by one respondent is the Finance Linked Subsidy Programme (FLISP). According to the National Housing Finance Corporation (2016), the FLISP Programme is an instrument that is aimed at assisting households that earn above the income threshold of R3500. These households are ineligible for a subsidy house from government but yet earn too little to qualify for a mortgage or housing finance from the banks. This was identified by the Department of Human Settlements as a "gap market" according to the NHFC (2016) http://www.nhfc.co.za/FLISP/faq.html.

According to research, the beneficiaries of the subsidy housing were letting their houses to earn an income and went back to their shack. The people letting these properties are the gap market individuals who have found themselves stranded and neglected by the system. The FLISP programme was devised therefore to cater for this market to access housing through a government contribution that will make the applicants eligible for a home loan. The benefit is also that the government contribution also lowers the monthly repayment of the applicant.

Though there is a demand for the FLISP programme, most applicants did not qualify for housing finance as they were blacklisted and there are many other challenges that hindered the successful implementation of the programme, according to respondents. To date, delivery on this programme has been fairly poor. The National Housing Finance Corporation is an entity of the Department of Human Settlements and is mandated with the responsibility to administer the programme on behalf of the Department. The NHFC has had to revise the programme following the 2012 revision but has had difficulty and experienced delays in getting the item to serve at MinMec.

Another view on the delays in decision making is that they are caused by the lack of tools to make a decision, such as credible data to base the decision on. The delays are also attributed to the lack of courage to deal with the consequences of a decision. Others have argued that not making a decision is also a decision. It may very well be argued that MinMec has made a decision not to make a decision and to deliberate further on the matter. While the deliberations are continuing, the delivery on the FLISP programme will remain affected.

4.5.7 Decisions not binding

There are differing views on the abidingness of the decisions of the MinMec. There is a view that says decisions of the MinMec are not law and therefore can be ignored by those that are not in agreement with the decision. It is also argued that the MinMecs do not have decision making powers and for implementation to happen the Committee relies on the cooperation of the other spheres of government but ultimately each sphere of government is autonomous. No sphere of government is above the other but they are interdependent and interrelated.

There is also a view that MinMec decisions are binding because the spheres of government are bound by the principles of cooperative government contained in the Constitution and the provisions of the Constitution must be respected by all. The spheres of government are required to consult one another, negotiate in good faith and to coordinate their interest and legislations in line with Section 41(1) of the Constitution.

There has been an instance where the decisions of the MinMec have been adhered to by the members of the Committee, but there have also been instances where the decisions have been ignored according to respondents. This study found that sometimes non-adherence to the decisions is caused by the lack of clarity on the decision. The decisions are at times not clear or properly conceptualised and therefore not easy to understand. Also, the lack of incentives to implement the decisions is a factor.

4.6 POLICY FORMULATION

The understanding with regards to policy formulation by the respondents is that it is largely a function that has over a period of time been outsourced to consultants or the private sector. The units tasked with policy formulation or development within the Department of Human Settlements has outsourced the function to the private sector for various reasons - including the lack of capacity. The respondent indicated that the capacity they were referring to is twofold; it is the lack of personnel to formulate the policy and secondly the lack of capacity/ability by the available personnel to formulate the policies. The latter, directly relates to the correct placement of individuals within the structure of the organisation or department. The need to ensure that the department has the right person in the right job is very critical if it is to realise the goals and objectives it has set itself.

There was a general understanding that there is no policy formulation that transpires or takes place in a MinMec. What has been a practice is that MinMec is a forum for the consideration and ultimately the adoption of policies rather than a policy formulating forum. The impact of not being part of the policy formulation on the MinMec is the lack of a thorough understanding by the members of these Committees on what is permissible and not permissible within the policy frameworks. One respondent said that "often the politicians give out instructions that go against policy and often insist that these instructions be followed". Such incidences are reflective of the lack of understanding of the policies that get adopted in the MinMec forum.

4.7 SETTING OF THE BUDGET PRIORITIES AND UNFUNDED MANDATES

From the respondents comments, the setting of budget priorities of the human settlements sector seems to have been a top down approach wherein the national sphere of government sets the priorities for a five year term, which are to be implemented by provinces at the local sphere of government, since housing is not a local government function though it is implemented at that level. The view held by the respondents is that there is a misalignment between national and provincial/local priorities. The Department of Human Settlements also seems to have grasped and taken cognisance of this challenge as provinces essentially implement provincial priorities over the nationally set priorities and targets. What the Department of Human Settlements is currently doing, is to tighten the conditions of the Human Settlements Development Grant through the ring fencing of funding per priority programme in order to increase delivery and to begin to attempt to achieve the Medium Term Strategic Framework (MTSF) targets.

In terms of the unfunded targets, the Provincial Departments of Human Settlements have engaged with the National Department of Human Settlements with regards to the set targets, indicating that they are not aligned to the available budget and therefore are unachievable, said one senior official of the Department of Human Settlements. The Department of Human Settlements has however encouraged and insisted provinces do more with less as per the instructions from the National Treasury. Considering the current delivery however, the set targets might not be achieved according to some respondents. Though the Minister of Human Settlements, through the Social Contract, has mobilised the private sector, contractors and key stakeholders to come aboard and commit to the delivery of the set target, funding remains a challenge. The respondents highlighted that contractors are not in the built environment as non-profit making organisations, and therefore their commitment to delivery heavily relies on the availability of the budget for human settlements delivery.

4.8 JOINT PLANNING AND PLANNING ALIGNMENT

As a definition, planning has been described by the Business Dictionary (2016) as a process of identifying goals, formulating strategies of how to achieve them, arranging the means required in achieving the set goals, outlining tasks and timelines and also monitoring the implementation thereof (http://www.businessdictionary.com/definition/planning.html). Planning, therefore by its very nature, is an action-oriented process and is technical in nature. However, it is a term loosely used to refer to high level statements that are not action driven, said one technical MinMec representative.

There is a shared concern that joint planning is not transpiring between the spheres of government within the intergovernmental relations structures as provided for by the Constitution. Joint planning is also not transpiring within the spheres of government according to the comments from respondents. An even greater concern is that it not happening within municipalities, within provincial departments and also national departments. Each unit has its own objectives which are not aligned to the other department although they are all contributing to the overall vision of the organisation. An example was made that within the municipalities, the Housing Chapters within the Integrated Development Plans (IDP) are at times misaligned with the overall IDP of the Municipality. When escalating to the provincial sphere, the Municipal Housing Chapters in the IDPs are misaligned with the Provincial Multi-year Human Settlements Development Plans (MYHSDP) among others.

There is also a view that even within the municipalities; the left hand does not know what the right hand is doing. There is a perceived competition between the municipalities to outshine each other. An example used was with regards to the Human Settlements Unit which is divorced from the Engineering Services Unit within some municipalities. These units must work together in consultation for efficient and effective delivery of human settlements within communities. However, there are many known cases where the plans for these two units are misaligned and it is a contestation of who leads and who follows. The people factor once again is featuring strongly as an issue within the intergovernmental system.

From the respondents comments it was evident that the widely held opinion is that the planning instruments of the different spheres of government are not aligned and that at MinMec there is no detailed joint planning that takes place, only high level political statements related to joint planning. The how; who, and when are missing in the discussions and therefore preventing the planning from being regarded as credible.

4.9 ROLE OF THE TECHNICAL MINMEC IN THE PROMOTION OF INTERGOVERNMENTAL RELATIONS

The respondents indicated that the role of the Technical MinMec is that of providing a platform for consultation and discussions between the administrative leadership of human settlements on policy, service delivery, budget priorities, joint planning as well as to action the resolutions of the political principals, as would be adopted in MinMec.

4.10 CHALLENGES FACING THE TECHNICAL MINMEC

According to some senior officials within the Department of Human Settlements, the forum does not take its own resolutions seriously in terms of ensuring that they are actioned by the members of the Committee. As an example, a decision was taken by the Technical MinMec to meet after every MinMec meeting to discuss the resolutions of MinMec and assign responsibilities – something that has not happened.

The deliberations in the forum are not focused on matters of substance, such as service delivery, said one respondent. There is too much focus on issues of communication and it is not clear why communication is prioritised and what is communicated when there is no delivery. Also, some respondents share the view that some members are not sufficiently knowledgeable on the subject matter of their portfolios to be able to make substantive input. One representative of Technical MinMec indicated that as a Technical Committee responsible for assisting to action the decisions taken by the politicians at MinMec, the Committee should have members that are specialists in their own fields and well experienced. At a MinMec level, it is not mandatory for MECs to have academic qualifications in their respective

portfolios but rather to be an astute politician and have some standing in the political environment. It is therefore expected that what is lacking in terms of expertise in the MinMec, should be sufficiently covered for by Technical MinMec, said the respondent. There is a view that Technical MinMec members often forget that they are administrators/bureaucrats and not politicians and the confusion could be caused by the fact that the Directors-General, Heads of Departments and Deputy Directors-General are all appointed by Cabinet.

The agenda of the Technical MinMec is also not properly coordinated and focused. The agenda is often long and not completed resulting in items being deferred to the next meeting, a view shared by most respondents.

4.10.1 Attendance by the Provincial Heads of Human Settlements

There is also a view that although the attendance of the Provincial Heads of Human Settlements and senior officials has improved in the Technical MinMec, the quality of the engagements still has room for improvement. There is also a view that some provinces are more vocal than others. Others in the forum are of the opinion that talking too much weakens your impact.

4.11 ROLE OF THE SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION IN THE HUMAN SETTLEMENTS MINMEC IN MINMEC AND TECHNICAL MINMEC

It has been established that there is a contestation whether the South African Local Government Association, which is organised local government, should be participants or even members of the MinMec. Section 1 of the IGRF Act defines the MinMec as a standing intergovernmental body consisting of at least a Cabinet member and members of the provincial Executive Councils responsible for functional areas similar to those of the Cabinet member. In terms of this definition, it is important to note the word 'at least' because it signifies that the forum can consist of more members but at a bare minimum must comprise of the Cabinet member and members of the provincial Executive Councils. Another section to take note of is Section 10 of the IGRF Act which talks to the composition of a MinMec. Section 10

Subsection 1(d) stipulates that a municipal councillor designated by the national organisation representing organised local government (SALGA in this instance) must be a member of the MinMec but only if the functional area for which the forum is established includes a matter assigned to local government in terms of Part B of Schedule 4 and or Part B of Schedule 5 to the Constitution or in terms of national legislation. A municipal councillor has been designated by SALGA to represent organised local government in terms of Part B of Schedule 4 and Part B of Schedule 5. The Department of Human Settlements has been allocated the Urban Settlements Development Grant as a supplementary grant which talks to matters that have been assigned to local government. Section 10(3) also stipulates that the Cabinet member may invite any person not mentioned in Subsection 1.

In terms of consultation with organised local government, Section 31 (1) of the IGRF Act states that where there is an obligation under this (IGRF) Act or any other legislation to consult organised local government on any matter, such consultation must be conducted through an appropriate intergovernmental structure. If not, Subsection 2 provides that organised local government is entitled to participate through a representative with full speaking rights in such where the relevant matter is discussed.

The fact that there is some form of contestation about whether SALGA should be a member of a MinMec or not, points to the ambiguity of the sections of the IGRF Act quoted above. The challenge with ambiguity is that people can use it to advance their own positions on any given matter, said one respondent.

There is a view that says the Minister's first allegiance is with the MECs, the MinMec is after all a meeting of political principals. Though the representative of organised local government is also a councillor, a politician, they tend to be very junior in terms of political standing and have no confidence to speak in MinMec. SALGA also used to have a standing item at MinMec but no longer does. It is not clear what informed the removal of the item on the agenda of MinMec.

4.12 STRENTHENING THE ROLE OF LOCAL GOVERNMENT IN HUMAN SETTLEMENTS PROVISION

In terms of the court cases in relation to housing, one respondent indicated that the courts have placed the responsibility of housing in the hands of local government by stating that municipalities must make alternative options for shelter available while a permanent housing solution is awaited, for people who have found themselves destitute for various reasons and are in need of shelter. According to some respondents, as far as the courts are concerned, South Africa is a unitary state and therefore has a collective responsibility to provide shelter for destitute individuals or households. The media is also perceived to have located the housing function with municipalities. The people most importantly have located the responsibility for the provision of housing as the responsibility of local government. This is evidenced by the protest marches that are directed at municipalities; the burning of the councillors' and municipal managers' houses when there is no service delivery, including housing provision.

There is a proposal for the human settlements sector to adopt a project management approach towards housing delivery across all spheres of government and strengthen the role of local government in the provision of housing. It is believed that strengthening the role of local government is going to improve service delivery as the planning and execution of the housing function can easily be implemented closer to where services are needed. One City Manager indicated that it is difficult to strongly lobby for a human settlements budget in the municipal budget processes when human settlement is not a local government function.

4.13 FINDINGS WITH REGARDS TO THE INSTITUTIONAL ARRANGEMENT

The case with the Department of Human Settlements currently, in terms of the location of the Intergovernmental Relations Unit is neither ideal nor enabling for effective facilitation of intergovernmental relations, said one respondent. The IGR Unit falls outside the office of the Director-General and its capacity is not sufficient to respond to the IGR issues within the human settlements sector. The current capacity consists of a Director, one Deputy Director and two vacant positions of a secretary

and an Assistant Director. As one of its weaknesses, the Department of Human Settlements is thus under-resourced and unable to provide the anticipated benefits of coordination.

The study established that the Intergovernmental Relations Unit is also not responsible for the coordination of the statutory and strategic IGR forums such as the MinMec and Technical MinMec. The coordination of these forums is located with the Secretariat Unit whose responsibility in the forums is that of convening the meetings and noting of meeting resolutions. This arrangement demeans what intergovernmental relations coordination should be as highlighted by respondents. Additional responsibilities according to respondents such as to consult, cooperate and share information with other organs of state, to respond promptly to requests by other organs of state for consultation, and to participate in intergovernmental structures in which the Department of Human Settlements is a member are important components of intergovernmental relations. The facilitation of IGR disputes; following up on resolutions and playing a meaningful role in terms of resolving some of the challenges reported by provincial departments, metropolitan municipalities and the South African Local Government Association (SALGA) whether in terms of policy interpretation or policy implementation must be acted upon by the unit responsible for intergovernmental relations. The Department of Human Settlements is thus not properly structured to reap the anticipated benefits of coordination.

4.14 EMERGING THEMES

A number of themes have emerged from the process of interviewing the respondents and were critical in shaping the understanding and practice of intergovernmental relations. Baatjies (2009:3) referred to the lack of detail in the IGRF Act as deliberate because of the understanding that the details will have to be filled in by the practice of IGR. The practice of IGR manifests itself in both the statutory and non-statutory IGR forums and therefore the functioning of the IGR forums becomes crucial if the outcomes of cooperative government are to be achieved.

4.14.1 Legal status of the MinMec

A number of respondents raised the question of the legality of the MinMec forum. Some of the issues have been partly covered under the heading 'Decisions are not binding'. A clause that is in contestation is Section 32 of the IGRF Act which stipulates the status of intergovernmental structures. Section 32 (1) states that the MinMec is a structure for consultation and discussion and Section 32 (2) rules that the MinMec is not an executive decision making body but may adopt resolutions or make recommendations in terms of agreed procedures. This section therefore is viewed as stating that MinMec decisions are not legally or lawfully binding.

4.14.2 Intergovernmental relations conundrum

The intergovernmental relations framework has posed a number of challenges for the human settlements sector in particular. It has partly contributed to the inability of the sector to assert itself according to respondents. The intergovernmental relations framework inhibits acting on the chain of command, for instance: the Minister of Human Settlements is accountable to the Cabinet and Parliament in terms of human settlements delivery but has no powers to determine how budgets are spent in provinces and has no powers to dismiss MEC's that are not delivering against set targets. In relation to the budgets as an example; the Northern Cape, Gauteng and Free State departments of Human Settlements have spent millions of rands utilising the Human Settlements Development Grant on the assessment of asbestos without the approval of the Minister as the Executive Authority. The impact that this unauthorised expenditure has had on the number of subsidy housing units that could potentially have been delivered in these provinces is immense. As a result, the Minister did not achieve some of the targets in these provinces in the 2015/16 financial year but is unable to dismiss non performing MECs.

Another example provided by respondents in relation to the intergovernmental relations conundrum is that the provision of human settlements by the Department of Human Settlements remains a concept without the funding for the provision of human settlements. Others have argued that it is an unfunded mandate as the grants for the provision of roads, parks, libraries, water and sanitation, community

halls and other amenities that make a sustainable and integrated human settlement are in the control of other sector departments. To be allocated a function but not have authority over the budget, is a conundrum that is posed by the framework of intergovernmental relations which is largely voluntary and not prescriptive.

4.14.3 Good governance and transformational leadership

The concept of good governance and transformational leadership are terms that have come out strongly in this study in relation to the functionality of both the MinMec and Technical MinMec, with the suggestion that a lack thereof poses a threat to these Committees. Good governance is defined by Matshabapala (2014:2) as "a process of decision making, as it normally happens with the planning activities in any organisation and the implementation of the action plans for effective and efficient delivery of services". In order for good governance to prevail, it requires good leadership which is founded on good ethics.

This study found that good governance and ethical leadership have a strong ability to make any committee functional. Though it was not suggested that these are lacking in the Human Settlements MinMec and Technical MinMec, they were strongly emphasised as a basic requirement. It was suggested that the current leadership in both the MinMec and Technical MinMec have been very influential in the improvements seen in these Committees over a period of time.

4.14.4 Quality versus quantity in participation

There is a concern and a view that the presence of the politicians in the MinMec and sufficient attendance by provincial Heads of Human Settlements in the Technical MinMec is not necessarily directly translatable to the quality of the discussions in these forums.

The discussions are sometimes irrelevant and they deviate from the purpose of the meetings. It was suggested that the agenda of the meeting is not strictly adhered to and the discussions are often aimed at making a positive impact in resolving some of the challenges in the human settlements environment. There is difficulty in linking the

agenda of the IGR forums and the protests happening around the country almost daily. It is perceived that not all the views of the provincial departments as well as of local government are heard in the IGR forums. Collective decision making on policies, planning and the alignment of resources often does not dominate the discussions in the Committee of Minister and the Members of the Executive Council and the Committee of the Director-General and the provincial Heads of Human Settlements. The discussions are also not aimed at the close monitoring of performance, the identification and resolution of key challenges encountered by provinces through sharing of best practices.

4.14.5 Intergovernmental relations must be practical and less of a theory

There is a view that intergovernmental relations is a theoretical concept and often practitioners struggle with putting it into action. There is thus a strong call to put intergovernmental relations to practice so that the officials charged with its coordination can be held accountable over its failures and lauded for its successes. In order to do this, intergovernmental relations must not start and end in boardroom discussions but be operationalised through the identification of projects wherein the three spheres of government can work together and bring all the elements of joint planning and sharing of resources (financial and human) into practice through instruments such as implementation protocols.

4.14.6 A State in competition with itself

There is a concerning trend in the provinces according to some respondents wherein the norms and standards for the construction of housing units are ignored and provinces have tailor made them to suit their own description, apparently in an effort to outdo one another. The concern is that if the government subsidy houses are not standard across provinces, this might have unintended consequences. One such consequence might be the migration of many individuals/households currently awaiting their subsidy housing allocation to the province with the 'best' subsidy housing.

The respondents shared a concern that the government runs the risk of riots or protest action regarding the inequality and disparity of the product offered by government between provinces. The adjustments made by provinces relate to the provision of 45-50 m^2 houses instead of the prescribed 40 m^2 houses. Some RDP houses are plastered inside and outside; others not, other houses have ceilings and others do not etcetera. The disparities are allegedly many and it is concerning because regardless of an individual's geographical location in the country, government services and products are supposed to be the same. The picture provided by these disparities in the provision of housing is indicative of a state that is in competition with itself.

4.14.7 Difference between Ministerial directives versus the MinMec decision

The Minister is a Chairperson of a Committee that comprises of Members of the Executive Committee in the nine provinces. According to one respondent the MinMec decisions are therefore dependent on a quorum in order for a decision to be made and be recorded as a decision of MinMec.

There is also a Ministerial directive wherein the Minister, outside the MinMec issues a statement or a directive to provinces. One of the most recent directives was for provinces to prioritise the beneficiaries that are older than the age of forty, the child headed households and the physically challenged in the allocation of subsidy houses. One of the respondents indicated that, in instances where the Minister makes a decision at a MinMec that does not quorate, such decisions must be recorded as Ministerial directives until such time that the MinMec has the necessary number of members to form a quorum.

4.15 CONCLUSION

The sentiments shared by one senior official is that human settlements delivery is one of the core service delivery functions of government, if co-ordinated effectively, it will effectively improve the quality of life for many South Africans. It is imperative that the right skills and effective leadership are infiltrated across the system to ensure proper planning and implementation of integrated human settlements.

Intergovernmental relations is one of the keys to the achievement of coordinated delivery and a cooperative government though co-ordination of human settlements across the three spheres of government. In this regard the role of local government must be strengthened and its voice be heard in intergovernmental forums.

CHAPTER FIVE: SUMMARY OF CHAPTERS, FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 INTRODUCTION

The promulgation of the Intergovernmental Relations Framework Act in 2005 was a direct response and indication of the government's commitment to Section 41(2) of the Constitution which 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.

Because the relations between intergovernmental bodies are dynamic, complex, interactive and interdependent it became necessary to determine how these relations will be conducted according to Kahn *et al.* (2011:73), meaning the instruments that can be made available to the public office bearer and public official to be used in intergovernmental relations. One of these instruments is the Committee of Ministers and Members of the Executive Councils of Provinces (MinMec) and is core for the purposes of this study.

The report on the Fifteen year review report of the State of Intergovernmental Relations in South Africa (2008:10) found that over and above the formal IGR system such as the structures, policies and programmes, there are also other less tangible, but still potent, qualitative factors which condition the practice of IGR and they are: politics, trust, leadership and quality of relationships, amongst others. Both the formal and informal components of the IGR system shape the incentives for good governance and integrated service delivery.

This Chapter therefore contains the summary of chapters and the findings in relation to the functionality of the Human Settlements MinMec and Technical MinMec as the highest forums for intergovernmental relations coordination in the Department of Human Settlements. The Chapter further draws conclusions and makes recommendations towards an improvement in the functionality of the Committee of

Minister and members of the Executive Council and its support structure, the Technical MinMec towards the promotion of intergovernmental relations.

5.2 SUMMARY OF CHAPTERS

Chapter one provided an introduction to the study, the survey of literature, outlined the problem statement, the objectives of the study, the limitations of the study, ethical considerations and the methodology of research. Chapter one highlighted as a background that housing is a concurrent function and as such is a shared responsibility between the spheres of government. This means that more than one sphere of government is responsible for its policy making, administering it or monitoring performance and that it therefore requires a stronger system of intergovernmental relations.

The survey literature in chapter one has described the challenge of poor service delivery and how this challenge can be managed through a stronger intergovernmental relations system by continually promoting and sustaining liaison with governmental stakeholders. Furthermore, literature suggested that one of the conditions for effective intergovernmental relations is mutual assistance and support, regular consultations, exchange of information, cooperation and coordination. Literature also suggested that the effectiveness of the IGR system may be gauged by the extent in which it promotes good governance and the translation of development policy intent into actual service delivery outcomes through cooperative government in policy and planning, budgeting, implementation and monitoring and evaluation (M&E) processes across and within the three spheres of government.

The chapter further outlined that the structured interviews were the data collection method of the study and that the population sample which comprised of members and participants in the Human Settlements MinMec and Technical MinMec were selected through a non-probability sampling method.

The objective of chapter two was to explain the conceptualisation of intergovernmental relations within the Discipline of Public Administration. The Chapter covered the definition and the differences between Public Administration as

a discipline and public administration as a practice, the role of public administration in line with the Constitution of South Africa of 1996, cooperative government versus cooperative governance and the relationship with intergovernmental relations.

The chapter further outlined the interface between public administration and intergovernmental relations by highlighting that the factors that influence intergovernmental relations follow a broad classification, namely: policy making, financing, organising, personnel utilisation, procedure and control. It was indicated in this chapter that intergovernmental relations occurs and or is practiced within a public administration environment. The intergovernmental relations coordinating mechanisms or instruments made available to guide relations between the spheres of government were discussed in detail. Amongst them is the Committee of Minister and the members of the Executive Council.

Chapter three provided an insight into and described the establishment of the former Department of Housing, the transformation into the Department of Human Settlements, the mandate of the Department of Human Settlements, the challenges related to concurrent functions as well as the composition of the Human Settlements MinMec and Technical MinMec. The Chapter first outlined the challenges which were facing housing in 1994, with an estimated 86% of households earning less than R3500 per month according to Rust (2006:6). Rust (2006:6) also argued that housing affordability was also seriously constrained and there was an obvious need of subsidy support.

Chapter three also outlined the legislative provisions for housing in South Africa and concluded with the composition of the Human Settlements MinMec. One of its criticisms have been that meetings are dominated by national government and are not structured to accommodate decision making consensus. However, despite these criticisms, Edwards (2008:80) sates that MinMecs remain one of the most important instruments for promoting intergovernmental relations.

The objective of chapter four was to analyse the functionality of the intergovernmental relations forums within the Department of Human Settlements and their possible contribution towards the achievement of the priorities of the

Department and promotion of intergovernmental relations. Issues that were covered included the frequency of meetings, the level of attendance by core members or delegation to lower level managers, the extent to which the decisions are binding, the agenda setting against the set objectives on the MinMec such as the setting of budget priorities, policy making and joint planning.

5.3 SUMMARY OF KEY FINDINGS

The study presented findings with regards to the functionality of the Committee of Minister and members of the Executive Council and its supporting structure, the Technical MinMec. The summary of the key findings are presented in the following paragraphs.

5.3.1 Absence of internal procedural rules

The study found that the Human Settlements MinMec and its supporting structure the Technical MinMec are yet to have in place and adopt rules to govern the Committee's proceedings as is required by the IGRF Act. It also seems that the secretariat of these Committees is not aware of this statutory requirement and has not made efforts to have the rules in place.

The absence of the rules governing the proceedings of these high level IGR forums has had an adverse effect on their functionality. It has led to uncertainty among its members in relation to how the meetings ought to be carried out. There is no certainty regarding the powers and functions of the Chairpersons. The meetings are carried out in a manner that the Chairperson's of these Committees deem fit and proper. The lack of consensus with the members regarding the rules of these Committees however has given a perception that the meetings are a one man's or woman's show. This perception goes against the spirit of intergovernmental relations and what Mello (2007:83) specifies as reasons for the preference of the word "sphere" as opposed to "tier" which was essentially to ensure that all levels of government are accorded equal status and treatment.

The implications of the absence of an adopted set of rules to govern the proceedings also means that the Chairpersons may never be challenged because there are no rules that they would have violated and therefore no grounds for challenging any matter which the members may feel aggrieved on.

5.3.2 Identified gaps in agenda setting

The study established that there is a gap in the process of agenda formulation. The identified gap relates to the call for agenda items and the adoption processes of the agenda for the MinMec in particular. It was also established that there is a chorus of disapproval over the lack of certainty of the MinMec agenda and how it changes at the behest of the Minister, as the Chairperson.

There is consensus that the MinMec is a high level political forum for intergovernmental relations coordination within the human settlements environment, however, it is not clear that MinMec has an agenda (the agenda referred to in this instance being a coordinated and precise plan of action). This is evidenced by the varying agenda items in between meetings and the absence of standing agenda items which the Committee is collectively monitoring in terms of progress or performance. The lack of certainty of the agenda of MinMec also gives an indication that the Committee is reactive to issues and not proactive.

5.3.3 Need for practical joint planning, policy formulation and setting of budget priorities

It has been established by the study that there is no joint planning, policy formulation or joint setting of budget priorities among the spheres of government as it relates to human settlements development. In terms of planning, it was said that even within various departments within municipalities, provinces and national departments there are elements of disjointed planning. The budgets are not aligned and each department is pursuing its own goals and priorities. This therefore points to the lack of a shared vision. The misalignment in planning is also evidenced in the various planning instruments between the spheres of government and there is a strong call for the Municipal Integrated Development Plans (IDP) to be used to inform planning

and budgets. It has been argued that governments in most parts of the world are elected by the people and the people have given them a mandate. The people's mandate is expressed in the IDPs and therefore the calls for IDPs to be used as planning instruments may be justified.

In terms of policy formulation, the study found that a MinMec is a forum for the consideration and ultimately the adoption of policies rather than a policy formulating forum. The MinMec also does not share budget priorities because certain programmes that do not yield new housing opportunities such as Rectification have been put on hold but some provinces still persist to implement them. There is no collective commitment to the MTSF priorities and some provinces feel the targets were imposed by the national departments but are not funded. This points to misalignment in the planning as well as budgeting processes in the Committee.

5.3.4   Legality of the decisions of MinMec

The study found that the ambiguities in the IGRF Act subjects the Act to different interpretations. It was established therefore that in terms of Section 32 (2) of the IGRF Act the MinMec is not an executive decision making body but may adopt resolutions or make recommendations in terms of agreed procedures. This section therefore is viewed as stating that MinMec decisions are not legally or lawfully binding.

The spheres of government are, however, bound by the principles of cooperative government to cooperate with one another, negotiate in good faith, share resources and they also have a duty to avoid taking one another to court. This therefore provides the ambit within which the spheres of government ought to relate to one another. In terms of the decisions taken at the MinMec, though not legally binding, in the spirit of intergovernmental relations all members must abide by the decisions taken as a collective, in good faith.

5.3.5 Missing voice of local government at MinMec: the call to strengthening the role of local government

The study has found that the role of organised local government has been weakened at MinMec, partly because there is no appreciation of the statutory requirement of its presence at MinMec. It was established that there is a representative of organised local government at the Human Settlements MinMec. However, it has also been established that politics and party protocols in relation to seniority may hinder full and robust engagement by the representative of organised local government, if he or she is not very senior. The current Minister of Human Settlements is a very senior member of the African National Congress and it may be difficult for any councillor to speak against her.

The study also found that there is a call for the strengthening of the role of local government in intergovernmental forums such as MinMec. In terms of the IGRF Act spheres of government have an obligation to consult organised local government on any matter which has an effect on local government and such consultation must be conducted through an appropriate intergovernmental structure. The IGRF Act also provides that organised local government is entitled to participate through a representative with full speaking rights where the relevant matter is discussed.

5.3.6 Intergovernmental relations conundrum

The practice of intergovernmental relations has displayed a number of complexities with the coordination of the system. One such conundrum highlighted in the study is that the Minister of Human Settlements is the Executive Authority and is accountable for the Human Settlements Development Grant but has limited influence over how the budget is spent and budgeted for in the provinces. Should the HSDG budget not be spent in line with the MTSF priorities by the MEC's in the different provinces, the Minister has no powers or authority to dismiss the particular MEC. Should the MEC fail to achieve the set service delivery goals, the Minister also has no powers and authority to dismiss the non-performing MEC, despite being accountable for overall delivery and expenditure of the HSDG. At the core of this complex matter is that each sphere of government has the power and authority to determine its own budget

and the different services it will provide to its citizens with the available resources. The Minister's role is therefore limited to regulation against set policy norms and standards.

In addition, the study found that the MEC's give priority to Premiers rather than the Minister and often the reason for non-attendance of a MinMec by an MEC is provincial priorities. The provincial priorities are often meetings called for by the Premier.

5.3.7 Good governance and transformational leadership

The study established that a people factor does play a role in the functioning of the intergovernmental forums or committees. In this regard, there is a strong call for good governance and transformational leadership in these committees. The study also found that there is a call for an improved following up on resolutions within the set time lines. In relation to transformational leadership, the respondents indicated that there is a need for a stronger political leadership at MinMec, while at the Technical MinMec there needs to be a change and/or improvement in the attitudes, skills set and competencies of the members in order to provide the necessary support to MinMec.

The use of the word 'transformational' leadership signifies the call for a transformation in how consultations in the intergovernmental forums transpire, as well as transformation in how business has been conducted so that the results could be different.

5.3.8 Institutional arrangements

The critical question that arose, provoked by this question in the study is essentially who is or should be the driver of intergovernmental relations coordination in the Department of Human Settlements, hoping that the answer to the question will then provide guidance or clarity in terms of the location of the intergovernmental relations function within the establishment.

The study found that Department of Human Settlements is not suitably structured to reap the anticipated benefits of coordination. The findings were in relation to the current lack of capacity within the Intergovernmental Relations Unit, the fragmented coordination of intergovernmental relations within the Department of Human Settlements where one part of the IGR function is coordinated by a Secretariat Unit and another by the IGR Unit. The other finding was in relation to lack of appreciation of intergovernmental relations coordination such as consultation, cooperation and sharing of information with other organs of state, responding promptly to requests by other organs of state for consultation, and to participate in intergovernmental structures in which the Department of Human Settlements is a member, the facilitation of IGR disputes; following up on resolutions and playing a meaningful role in terms of resolving some of the challenges reported by provincial departments, metropolitan municipalities and the South African Local Government Association (SALGA), whether in terms of policy interpretation or policy implementation which must be acted upon by the unit responsible for intergovernmental relations.

5.4   RECOMMENDATIONS

The recommendations of this study are categorised for each intergovernmental forum and are outlined under sub headings.

5.4.1   Recommendations for MinMec

This study proposes the following recommendations for the Committee of Minister and the members of the Executive Council:

5.4.1.1 Adopt internal rules to govern the Committee's proceedings as is required by the IGRF Act

It is a statutory requirement for all intergovernmental forums to have in place a set of adopted rules to govern its proceedings. The adoption of the rules to govern the Committee's proceedings will provide the members of the committee with clarity in terms of procedures and will also create certainty and order in the manner in which the meetings ought to be conducted.

In accordance with Section 33 of the IGRF Act, the internal rules must specify the functions of the Chairperson, procedures for the designation of a person to preside at a meeting in the absence of a chairperson, procedures for the functioning of the intergovernmental structure or procedures for the amendment of internal rules.

5.4.1.2 Setting of the agenda

The MinMec must make the agenda setting process inclusive for all its members across the different spheres of government including organised local government as a possible standing item on the agenda of MinMec. The voice of local government has been too silent in this Committee and it must be strengthened.

As it has been established that there is a chorus of disapproval over the lack of certainty of the MinMec agenda, there should be more effort and strategic thought placed on the formulation of the agenda to avoid the last minute changes to the agenda. It is also recommended that the Committee considers formulating its strategic areas of priority which will be standing items on the agenda, to monitor the progress thereof. In conclusion, the agenda of MinMec should be precise and realistic in order to ensure that all items on the agenda are discussed and finalised.

5.4.1.3 Minutes and decisions of MinMec

It is recommended that MinMec minutes be concise but should also contain or provide context to resolutions in order to enable officials who do not necessarily sit on MinMec but should carry out the resolutions, to be able to understand those resolutions.

It has been established in this study that MinMec does not have decision making powers since it is not an executive body but may adopt resolutions and make recommendations in terms of agreed procedures. It is therefore recommended that the language be corrected to reflect either MinMec resolutions or recommendations instead of decisions.

5.4.1.4 Efficiency in decision making

It is the recommendation of this study for the Committee to consider different tools to enable it to make decisions sooner and eliminate unnecessary delays. One tool is the finalisation and adoption of internal procedures which should ideally stipulate timeframes for adoption of resolutions on matters that have served before the Committee.

5.4.1.5 Policy formulation, joint planning and setting of budget priorities

The Committee seems to be doing well in the policy formulation processes. The concern however is that more effort is still required from members of the Committee to fully comprehend the policies so that they comply with its parameters. The Committee should make every effort to improve coordination in relation to planning so that there is a collective ownership of the targets to be achieved. This includes the identification of goals, formulation of strategies of how to achieve them, arranging the means required in achieving the set goals, outlining tasks and timelines and also monitoring the implementation thereof. Once this is achieved, setting of budget priorities will happen almost naturally, though each sphere of government is vested with the powers to determine their own budgets.

5.4.2 Recommendations for Technical MinMec

The recommendations for MinMec as they relate to the adoption of rules for internal procedures, the agenda setting processes as well as the minutes of the Committee, also apply to the Technical MinMec. In addition, the other recommendations for Technical MinMec are as follows:

5.4.2.1 Implementation of resolutions

It is recommended that the forum improves on the implementation and reporting on its own resolutions and that of MinMec. The members of the Technical MinMec should demonstrate knowledge and expertise in their areas of work in order to be able to provide the necessary support to MinMec. Where there are gaps in the

required knowledge, the Chairperson should consider recommending capacity building measures to members who are falling short of the required expertise.

5.4.2.2 Improve linkages with the MinMec

Institutionally, there should be a linkage between the MinMec and Technical MinMec in order to ensure that the two Committees are not in cross purposes with each other. The recommendation therefore is that these Committees be managed in conjunction and not be treated as separate from each other in order to ensure communication flow and better management of the resolutions and recommendations.

5.4.3 Improvements required in the institutional arrangement

It is recommended that the Intergovernmental Relations Unit within the Department of Human Settlements be capacitated on a progressive basis and that activities related to intergovernmental relations be coordinated more efficiently in order to reap the anticipated benefits of coordination. This includes locating intergovernmental relations coordination function in the office of the Director-General and clearly distinguishing between horizontal and vertical relations. This study proposes that the horizontal relations focus on sectoral matters such as FoSAD Clusters and the Human Settlements Implementation Forum amongst others. Vertical relations therefore focuses on relations between the spheres of government within human settlements using intergovernmental instruments such as MinMec, Technical MinMec and other intergovernmental structures or forums that facilitate engagements with the Provincial Departments of Human settlements and the Metropolitan Municipalities.

5.5 CONCLUSION

People have always lived in communities and it ultimately led to the establishment of governments to represent the communities. The role of governments has always been to fulfil the needs of societies, especially in democratic environments. In this regard, it must be acknowledged that significant strides have been made towards

improvements in the intergovernmental system and that equally more remains to be done. Intergovernmental structures by way of legislation are important but an even greater requirement is the way in which political leaders and public servants approach and practice intergovernmental relations. This includes factors such as politics, trust, leadership, commitment and quality of relationships within the intergovernmental structures.

The study established that intergovernmental relations is ideally about providing an environment for cooperation, consultation and coordination among the three spheres of government - geared towards a coordinated approach for service delivery. It also established that the intergovernmental system depends on well-coordinated policy, planning, budgeting, implementation and reporting. The functionality of the Committee of Minister and members of the Technical MinMec was therefore analysed based on these factors.

It was a finding of this study that a number of deficiencies exist within the Committee of Minister and members of the Executive Council as well as in the Technical MinMec and recommendations were made to that effect. One of the key findings which the study argues renders the Human Settlements MinMec and Technical MinMec short of functional, is the absence of a set of rules governing these forums. It must also be qualified that this study is sensitised to limiting variables generated by time and space within observed contexts.

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ANNEXURE A
Interview schedule for MinMec

Research title: Introduction to intergovernmental relations in the Department of Human Settlements

Interviewer: Ms Hlengiwe Koopa

Date of interview: dd/mm/year

Approximate duration of interview: 30 mins

1. What is the mandate of the Department of Human Settlements?

2. What are the challenges facing human settlements in South Africa?

3. What impact does the concurrency of the human settlements function have on housing delivery?

4. Do you think some of the challenges can be managed through better coordination and intergovernmental relations?

5. In your view, how has the Department of Human Settlements structured itself to create an enabling environment for effective intergovernmental relations coordination?

6. What is a MinMec and what are its objectives?

7. How is the attendance by the Members of Executive Council in MinMec?

8. Describe the nature of the relationships among members of the Human Settlements MinMec?

9. What are the challenges facing this committee?

10. What strategies are used to ensure inclusive participation in the formulation/setting of the agenda?

11. Does the committee contribute to policy making for human settlements?

    If yes, please clarify

    _____
    _____
    _____
    _____

12. Do you perceive MinMec decisions as binding? Please provide an example

13. What is the level of adherence/ compliance with the decisions of MinMec among its members?

14. Are the decisions of MinMec contributing to the attainment of human settlements delivery goals?

15. How are the budget priorities for human settlements set?

16. Does this committee promote joint planning?

    a. If yes, please clarify

       _____
       _____
       _____
       _____

17. Is there a high level of efficiency within MinMec in decision making and following on implementation thereof?

18. What is your position on municipal accreditation and would you consider municipal accreditation as tool for improving housing delivery?

ANNEXURE B

Interview schedule for technical MinMec

Research title: **Introduction to intergovernmental relations in the Department of Human Settlements**

Interviewer: Ms Hlengiwe Koopa

Date of interview: dd/mm/year

Approximate duration of interview: 30 mins

1. What is the mandate of the Department of Human Settlements?

2. What are the challenges facing human settlements in South Africa?

3. What impact does the concurrency of the human settlements function have on housing delivery?

4. Do you think some of the challenges can be managed through better coordination and intergovernmental relations?

5. In your view, how has the Department of Human Settlements structured itself to create an enabling environment for effective intergovernmental relations coordination?

6. What is a Technical MinMec and what are its objectives?

7. How is the attendance by the provincial Heads of Human Settlements in Technical MinMec?

8. Describe the nature of the relationships among members of the Human Settlements Technical MinMec?

9. What are the challenges facing this committee?

10. What strategies are used to ensure inclusive participation in the formulation/setting of the agenda?

11. Does the committee contribute to policy making for human settlements?

   If yes, please clarify

   _____

   _____

   _____

   _____

12. Do you perceive MinMec decisions as binding? Please provide an example

13. What is the level of adherence/ compliance with the decisions of MinMec among members of Technical MinMec?

14. What is the contribution of Technical MinMec towards the attainment of human settlements delivery goals?

15. Does this committee participate in the setting of budget priorities for human settlements?

16. How does this committee promote joint planning?

17. Is there a high level of efficiency within Technical MinMec in decision making and following on implementation thereof?

18. What is your position on municipal accreditation and would you consider municipal accreditation as tool for improving housing delivery?

19. General remarks