



Cooperative Governance Traditional Affairs

NATIONAL COUNCIL OF PROVINCES VIRTUAL WORKSHOP
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***Advancing the fundamental Precepts of Cooperative Governance &
Intergovernmental Relations for Effective Service Delivery to
Communities***
1 FEBRUARY 2022

Honourable Chairperson of the National Council of Provinces.

Deputy Chairperson for the NCOP.

Honourable Premiers present.

The Acting President of SALGA.

Chairperson and members of the Select Committee on Cooperative Governance and Traditional Affairs, as well as other oversight Committees.

Deputy Ministers for Cooperative Governance and Traditional Affairs, as well as other DMs in attendance.

Honourable Provincial Whips.

Delegates from the Provinces.

Members of Provincial Executives.

The Chairperson of the Municipal Demarcation Board.

The Acting Secretary to Parliament.

The Secretary to the NCOP.

The Auditor-General.

Directors General for the Departments of Cooperative Governance and Traditional Affairs as well as CEOs and Heads of Institutions in our sector.

Distinguished guests.

Thank you for the opportunity to participate in this workshop on cooperative governance and intergovernmental relations for effective service delivery to our communities. Having just emerged from our sixth peaceful democratic local government elections, this type of session also offers us an opportunity to provide a frank and honest reflection on the state of governance and intergovernmental relations in our country.

In considering the performance of the state, and its constraints, we must not be oblivious of the objective and subjective global realities. The realities confronting both South Africa and the developing world confirm to us that our nations have not been entirely freed from the bondages and consequences of colonialism, apartheid, racism, sexism, and inequality. As we reflect on those realities let us recall the words of President Mandela at his inaugural Summit as Head of State at the OAU when he said:

“If freedom was the crown which fighters of liberation sought to place on the head of mother Africa, let the upliftment, the happiness, prosperity and comfort of her children be the jewel of the crown...”

Two years later, the constitution was adopted. The South African Constitution is established as the supreme law and ‘cornerstone of democracy’ of the land.

Thus, the Constitution contains fundamental precepts which include enshrined rights that affirm democratic values such as equality, and freedom. It also elaborates on the obligations that citizens themselves must uphold in allegiance to our country and the Constitution. These obligations we, as public representatives, have had to reaffirm at the beginning of each term of office. Like all citizens we are expected to live

by them, as we discharge our various mandates and tasks. Overall, these obligations reaffirm that we shall be good, ethical, accountable, loyal, and patriotic citizens and representatives. Therefore, we are obliged to obey the laws of our country whilst ensuring that others do so. We must also contribute in every possible way to making South Africa a liveable, prosperous, and peaceful country.

That's not to say our Constitution is perfect, in fact with implementation many flaws or short comings are identifiable. However, it does establish the basis and architecture by which our nation can pursue the superordinate objectives to "*improve the quality of life... and free the potential of each person*". Through its carefully crafted and complex cooperative governance framework it recognises that these objectives will require collective and individual actions by multiple actors. These actors include the three arms of the state, that is the executive, legislatures, and judiciary and the three spheres which are national, provincial, and local, government. It also pays tribute to our cultural heritage and recognises the institutions of traditional leadership and our customary law as important contributors to a vibrant democracy.

Consequently, the executive arm of the republic is constituted as national, provincial and local spheres of government, which the constitution recognises as *distinctive, interdependent, and interrelated*. Chapter three of the constitution, which deals with Cooperative Government, guides us in terms of how government should cooperate. Section 41.1 outlines these principles of cooperation which says that each sphere shall:

- (a) reserve the peace, national unity and the indivisibility of the Republic;

- (b) secure the well-being of the people of the Republic;
- (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
- (d) be loyal to the Constitution, the Republic and its people;
- (e) respect the constitutional status, institutions, powers and functions of government in the other spheres;
- (f) not assume any power or function except those conferred on them in terms of the Constitution;
- (g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
- (h) co-operate with one another in mutual trust and good faith by—
 - (i) fostering friendly relations;
 - (ii) assisting and supporting one another;
 - (iii) informing one another of, and consulting one another on, matters of common interest;
 - (iv) co-ordinating their actions and legislation with one another;
 - (v) adhering to agreed procedures; and
 - (vi) avoiding legal proceedings against one another.

We make this point because there is confusion about what national government can do in a municipality. In reality, national government has to follow the prescripts of the constitution. Therefore, our Constitution and legislative framework is very clear on the specific types of actions and instances that intervention can be undertaken should a local sphere not fulfil its obligations.

During our 2019 Budget Vote speech we did allude to the fact that it is the provinces and legislatures that have the greater constitutional responsibilities under section 139 to support and proactively intervene at local government, and *“in undertaking this task the provincial administration is called upon to consult with the Minister responsible for local government affairs as well as the provincial legislature and the National Council of Provinces”*.

I want to talk a bit about local government itself. Section 152 in the constitution clearly state the duties and objectives of local government, which are:

- (a) to provide democratic and accountable government for local communities;
 - (b) to ensure the provision of services to communities in a sustainable manner;
 - (c) to promote social and economic development;
 - (d) to promote a safe and healthy environment; and
 - (e) to encourage the involvement of communities and community organisations
- in the matters of local government.
- (2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).

These are very serious responsibilities because all communities in the republic are local, there is no community that is provincial or nation. Communities therefore experience government

It is for this reason that section 154 mandates provincial and national governments to support the local sphere. It calls on “*the national government and provincial governments, by legislative and other measures, [to] support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and perform their functions.*”

Clearly all of exists in part to ensure that the local sphere operates and functions efficiently.

What we must therefore ask ourselves and resolve during this strategic session of the NCOP, is whether we have adequately capacitated the legislatures for them to effectively undertake this oversight function? Do we have the verification, monitoring and evaluation systems and capacities which also can act as an early warning mechanism? We can no longer wait until the wheels come off only to react, we must develop proactive systems which must positively impact on service delivery and governance. We must also ask ourselves whether the local government is financially capacitated adequately. We must ask ourselves whether the equitable share gives local government a fair share of the resources to carry out these important functions.

Honourable members, allow me then to elaborate on the allocated roles and functions between the spheres of government in the system of cooperative governance. All of which require the oversight of the NCOP and the various legislatures. The Constitution delineates public functions into two categories: those that are concurrent and those that are exclusive.

Concurrent functions are those that are shared among the three spheres. Thus, each sphere has responsibilities in developing policy, legislation, administering and monitoring performance. Schedule 4 of the Constitution lists the 'functional areas of concurrent national and provincial legislative competence', some of which includes education, health services, social welfare services, housing, and agriculture.

In relation to these functions, national government generally takes the lead in formulating policy, determining regulatory frameworks, setting norms and standards, and monitoring overall implementation. Provinces, on the other hand, are mainly responsible for implementation in line with the nationally determined frameworks. All local government functions listed in Part B of Schedules 4 and 5 of the Constitution are concurrent functions. In all instances, either national or provincial government may regulate how municipalities exercise their executive authority in relation to these functions.

Exclusive functions are those functions that a single sphere has absolute responsibilities for developing policy, legislation, administering and monitoring performance. The Constitution does not define the exclusive functions of national government since it is responsible for all government functions that have not been specifically assigned to either provincial or local government.

National government is therefore exclusively responsible for national defence, national fiscal policy, foreign affairs, home affairs, the criminal justice system, higher education, and certain administrative functions.

In turn, provinces have exclusive legislative competence over the functions listed in Part A of Schedule 5 of the Constitution, which include provincial roads, ambulance services and provincial planning. Part B of that section also elaborates on the functions related to local government which should be read together with section 155 of the Constitution. However, national government may legislate in these 'exclusive' provincial and local functions if it is necessary to maintain essential national standards or for reasons of national security.

As I said, section 154 calls on national and provincial government not to compromise or impede a municipality's ability or right to exercise its powers or to perform its functions. The status of municipalities, therefore, is constitutionally entrenched and the powers and functions, including matters such as municipal planning are constitutionally protected. This means municipalities have the right to govern the affairs of their communities, subject to national and provincial legislation as provided for in the Constitution.¹

The Municipal Systems Act of 2000 states in section 3 that municipalities must exercise their executive and legislative authority within the constitutional system of cooperative government as envisaged by section 41 of the Constitution. The Act further states that for the purpose of

¹ see s151(1) & (3) of the Constitution

effective cooperative government, organised local government must seek to:

- a) develop common approaches for local government as a distinct sphere of government;
- b) enhance co-operation, mutual assistance and sharing of resources among municipalities;
- c) find solutions for problems relating to local government generally; and
- d) facilitate compliance with the principles of co-operative government and intergovernmental relations.

Honourable members, it goes without saying that the local sphere will require the inputs of the other spheres and sectors to achieve these. Consequently, section 41 of the Constitution introduces principles of intergovernmental relations, which acknowledges integrity as a core for each sphere of government. Consequently, it calls on us to collectively ensure that the three spheres of government cooperate with one another. These complex and interdependent relations among various spheres of government include the coordination of public policies, sustainable development, and resources among national, provincial, and local governments.

The Constitution therefore envisages, a set of formal and informal processes as well as institutional arrangements and structures for bilateral and multilateral co-operation within and amongst the three spheres of government. Section 3 of the Municipal Systems Act of 2000 further reemphasises that the national and provincial sphere of government must not compromise or impede a municipality's ability or right to exercise their executive and legislative authority. Simply put, honourable members,

intergovernmental relations are intended to promote and facilitate cooperative governance and decision making. The intergovernmental system depends on sets of well-coordinated policies, plans, budgets, implementation, and reporting.

The Intergovernmental Relations Framework Act of 2005 seeks to formalise this cooperation in the three-sphere system of government. The Act aims to provide a framework for the national, provincial, and local governments, as well as all organs of state to facilitate coordination, towards coherency and the provision of quality services and development. This is to be enhanced through, monitoring implementation of policy and legislation, and the realisation of national priorities.

However, the truth is that despite this complex framework, coordination, cooperative governance, and intergovernmental relations have not fully delivered the intended outcomes. This has often led to substandard service delivery and the non-fulfilment of the aspirations of the people.

There are some discernible lessons of universal application which we have gathered, which I will share with this workshop.

Firstly, some of the problems are political and have manifested themselves in the political and administration interface that becomes inappropriate. This means political parties across the benches have the responsibility to educate members of executives and legislators in the ethics of governance and where they falter we must act and act fast. We also have the obligation to urgently professionalise our public services. Such a public service requires that we change the attitude and behaviour

of public servants whilst ensuring that they are in possession of the necessary education, and skills. They must be responsive and have a caring attitude towards the public.

In this regard, we are working closely with the Department of Public Services and Administration, the Public Services Commission and the National School of Government, so that we may have a capable, capacitated and ethical state. With the Commission we have also recognised the important role of the institutions of traditional leadership, thus we are exploring a targeted skills enhancement programme for them.

We have also learned that even the provincial and national spheres do not always possess the necessary skills to accelerate and sustain development in those areas. For instance, although we know that corruption and maladministration have much to do with a dearth of economic opportunities in the local areas, the national response teams, provinces, and local governments have no economic and development planning capacities and experiences. Going forward, and to sustain our interventions we must have economic and development planning expertise. To ramp this up, we are working with the National School of Government to explore partnerships that can favour us with such expertise as we intend to centre Local Economic Development in the future strategies for local government.

Another lesson we have drawn is that we believe the entire state and its organs not to be in possession of the appropriate tools and systems to evaluate, monitor and provide the necessary oversight. Such system would be predictive and thus would serve as a real-time early warning

system so that our responses can be appropriate and proactive which none of us possess. This means that even the teams we put together for responses would be appropriately skilled and capacitated to maximise on the effects of the interventions.

So far, some of our responses have been knee jerk, with insufficient scientific analysis and inappropriate skills. Often our responses can be likened to responding to a mosquito with a hammer and at times to a flood with a bucket. We must therefore strengthen our tools, systems and capacities for monitoring and evaluation and ensure we intervene appropriately and decisively. In this regard, we have begun discussions with the National Treasury and the Department of Planning, Monitoring and Evaluation. However, we believe that we must mobilise other sectors including the academia, business, and others in non-governmental organisations.

Honourable members, our observations have also led us to review the strategies and organisational structures of our departments. This was prompted by our overall observation that the COGTA departments are small and not adequately capacitated to fulfil their support and oversight role. They are often reactive without any proactive measures and programmes. As the national department we tend not to have people in the provinces near the local sphere. That is why we are intending our structure in order to become more decentralised.

We have noted that, despite the instrumental intergovernmental and coordination functions our departments are expected to undertake, they have been hugely under resourced. Our staff complement does not match, in skills and quantum, the expected mandate.

We have also noted the overlapping mandate, functions, and expectations with regards the COGTA departments and the Offices of the Premiers, especially as it relates to municipalities. This is a matter we intend to pay greater attention to as we undertake the 21 Year Review of Local Government, in which we hope Parliament will be an active participant.

We hope that this work will also be supported by the ongoing work we are undertaking in implementing the Municipal Structures Amendment Act (MSA), which was concluded during the last session of Parliament. Members will recall that the Amendment Act, amongst others contains a revised Code of Conduct for Councillors which includes the regulation of the political/administration interface.

In building a capacitated and capable state the MSA will be complemented by the Intergovernmental Monitoring, Support, and Intervention (IMSI) Bill. The Bill will facilitate for multi sphere support to the municipalities whilst regulating interventions in vulnerable or underperforming municipalities.

Extensive stakeholder consultations were undertaken including Joint Interventions Roadshows led by the Deputy Ministers of Finance and COGTA with the Premier's Offices and MECs for Provincial COGTAs and Treasuries. The Bill also received the attention of several Intergovernmental forums, including the Transport MINMEC; Environmental Affairs MINMEC; Human Settlements, Water & Sanitation technical MINMEC; and the National Economic Development and Labour Council (NEDLAC). The Bill has also been consulted with the local government unions. In December we submitted the Bill to the Department

of Planning Monitoring and Evaluation for a Socio-Economic Impact Assessment Certificate as well as the State Law Advisors for a Constitutional Compliance Certificate. It is our sincere hope that this house will assist with finalising this important Bill, for it will strengthen our intergovernmental and monitoring capacities.

Honourable Members, a third lesson we have gathered from our work in local government is that the decay of municipalities and governance in some of the provinces and municipalities has built up over the years, if not decades. We have also learned that the internal workings in some municipalities do not apply consequence management and some workers are victimised for either being diligent or blowing the whistle. In fact, recent research by the Public Services Commission and the Human Sciences Research Council comes to the startling conclusion that the public service is not bloated but that there is a lack of full utilisation of the human resource capacity within the public services due to the misalignment of skills, long suspensions and victimisation.

This therefore brings to the fore the urgent need to implement the long outstanding decision on the Single Public Service. In this regard, the Minister for Public Services and Administration, intends to bring before parliament amendments to the Public Administration Management Act (PAMA) which we hope will receive your support. These amendments intend to facilitate for the transfer of skills across spheres of government and institutions if operationally justified to improve operational efficiencies, state capacity and service delivery.

This redeployment and realignment of skills ought to be complemented by a well-coordinated and integrated implementation model. Unfortunately, the current planning and implementation silos, have resulted in substandard service delivery. When this occurs it is the councils and councillors who bear the brunt, even if it is in areas, they are not responsible for.

It is the house of the councillor which gets burnt when the houses are not built, even though the housing budgets are administered by the national and provincial governments. It is the municipal offices that people march to when the taps have no water, and the electricity is cut off. Thus, even though cut offs are mainly Eskom and water services authority driven and dams are to be built by national government. It is the mayor who is harassed when the roads have potholes, this despite that fact that most paved and tarred roads are under national and provincial governments.

This happens because we have been planning, implementing, monitoring, and evaluating in silos. Even though collectively we have spent huge amounts of reserves we have not made the necessary impact on the ground. We want to ensure that we plan, implement, monitor and evaluate together.

It is therefore imperative that we accelerate the implementation of the DDM which we launched in 2019. Although we will report on progress in this regard, during the Budget Vote Speech, we would urge the House to play a more proactive role in its implementation. Already we have consulted virtually every sector, including traditional leaders and potential investors in some areas. What is becoming clearer as we interact with our

communities is that our state is not agile enough to be able to respond to needs and aspirations with speed. The red tape, regulations and policies are stringent and constraining. Thus, expenditure of key enabling grants such as the Municipal Infrastructure Grant hover between 50% and 71% in those municipalities that are in most desperate need for services and infrastructure. We will therefore reevaluate the pertaining policy and implementation environment, as part of the 21 Year Review of Local Government.

In the meantime, we have received approvals from the National Treasury to directly implement the grant related projects in the municipalities which do not have a good implementation track record.

Through our Municipal Support Agency, we will also assist the municipalities with developing their infrastructure asset management plans and 10% of the MIG grants have been ringfenced for urgent repair and maintenance of water waste infrastructure.

Honourable Members, for us the DDM and long-term planning cannot work unless we ensure that no one is left behind. Unfortunately, the recent outcomes of the local government elections confirm to us women are continuously being left behind. The number of female mayors has gradually declined since our last local government elections, wherein the total numbers edged towards 40%. Today just under 31% of Executive Metro and District Mayors are female, with them at the helm in two of the eight Metros. However, we seem to be doing better when it comes to the Speakers wherein there are 53,8% of female speakers in the districts and metros, with the metros having a 50/50 representation.

The DDM will also not succeed unless we improve service delivery and restore the confidence and trust of our communities in government in general and local government in particular.

We shall explore mechanisms by which we can urgently address service delivery particularly in the 163 municipalities our 2021 review of local government highlighted as under financial distress. Our actions will be premised on addressing the political, governance, administrative, finance and service delivery challenges with a view of igniting and sustaining those local economies. In so doing, we shall not rest until we ensure good governance, transparency, and accountability, whilst building institutional resilience and administrative capability in those localities.

As we undertake this task we will also explore and assess the state of all infrastructure in the targeted municipalities. We believe that our responses from henceforth ought to be integrated, so that they can be comprehensively responsive to the needs and aspirations of our people. Our inputs also ought to be forward looking addressing key areas such as food security, water security and environmental sustainability. We will also ensure that our contributions consider growing sectors which are critical to development, this includes the promotion of wall-to-wall ICT coverage in local governments. In these ventures we hope to solicit your support and that of the South African Local Government Association (SALGA).

We must develop local economies in order to facilitate sustainable local government. Swell the ranks of the urban poor, it is important that we all ensure there is development at local government.

By recognising the fundamentals of our a whole of society and government approach premised on the principles of participatory democracy, we believe that the crown jewel President Mandela spoke of will be realised. Without you we cannot ensure that, that Jewel shines into the distant future and brings about sustainable, connected, cohesive, vibrant, and climate smart communities, which is what the people the South Africa want and yearn for.

I thank you