

CHAPTER 1

INTERGOVERNMENTAL RELATIONS IN SOUTH AFRICA

1.1 INTRODUCTION

The *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) establishes a state that supports interaction and co-operation between the three spheres of government on a continuous basis and therefore provides a set of principles to direct the manner and quality of those interactions. With the promotion of the principles of co-operation and intergovernmental relations in Section 41 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996), governmental institutions and departments involved with conservation management are encouraged to interact and co-operate with one another in mutual trust and good faith and these interactions are called intergovernmental relations. The principles of co-operative government and intergovernmental relations recognise the interdependence of the three spheres of government in South Africa (namely the national, provincial and local spheres) which are distinctive and interrelated and place a duty on the spheres of government to respect each other's powers, functions and institutions and to inform each other of new policies.

Every governmental institution should make an indispensable contribution to the ultimate goal of the state, namely the advancement of general welfare. A relationship of interdependence and interaction between government institutions as well as civil society is therefore necessary. Section 41(2) of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) stipulates that an Act of Parliament must establish or provide for processes, structures and institutions to promote and facilitate intergovernmental relations and provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental

disputes. The study of intergovernmental relations is complex and problematic because of the responsibilities of government, increasing number of governmental institutions as well as the influence of human behaviour on intergovernmental relations.

A thorough analysis of the concepts relating to intergovernmental relations are therefore necessary in order to be able to study the impact of governmental relations on conservation management in South Africa. In the following paragraphs, intergovernmental relations, co-operative government, intergovernmental processes, roles and structures are defined and the approaches to and classification of intergovernmental relations; the influence of forms of government on intergovernmental relations; factors influencing intergovernmental relations; fundamental conditions for effective intergovernmental relations and institutions and structures for intergovernmental relations are focused upon.

1.2 DEFINING RELEVANT CONCEPTS PERTAINING TO INTERGOVERNMENTAL RELATIONS

For the purpose of this study it is necessary to clarify the following concepts: intergovernmental relations, co-operative government, intergovernmental processes, intergovernmental roles as well as intergovernmental structures and institutions.

1.2.1 Intergovernmental relations

Intergovernmental relations encompass all the complex and interdependent relations among various spheres of government as well as the co-ordination of public policies among national, provincial and local governments through programme reporting requirements, grants-in-aid, the planning and budgetary

process and informal communication among officials (Fox and Meyer, 1995:66). Intergovernmental relations also refer to the fiscal and administrative processes by which spheres of government share revenues and other resources generally accompanied by special conditions that must be satisfied as prerequisites to receiving assistance. The *White Paper on Local Government* (1998:38) defines intergovernmental relations as a set of formal and informal processes as well as institutional arrangements and structures for bilateral and multilateral co-operation within and between the three spheres of government.

According to Anderson (1960:3) intergovernmental relations are important interactions occurring between governmental institutions of all types and in all spheres. The distinctive features of intergovernmental relations suggest the increased complexity and interdependency in political systems. The characteristics of these more complex and interdependent systems are: the number and growth of governmental institutions; the number and variety of public officials involved in intergovernmental relations; the intensity and regularity of contacts among those officials; the importance of officials' actions and attitudes; and the preoccupation with financial policy issues (Wright,1978:8). The jurisdictional diversity of intergovernmental relations is revealed by the number and types of governmental institutions, for example institutions and government departments on national and provincial level, while the concept of intergovernmental relations has to be formulated largely in terms of human relations and human behaviour (Wright,1978:8). Intergovernmental relations include the officials' continuous, day to day patterns of contact and exchanges of information and views where policy is generated by interactions among all public officials in the different spheres of government.

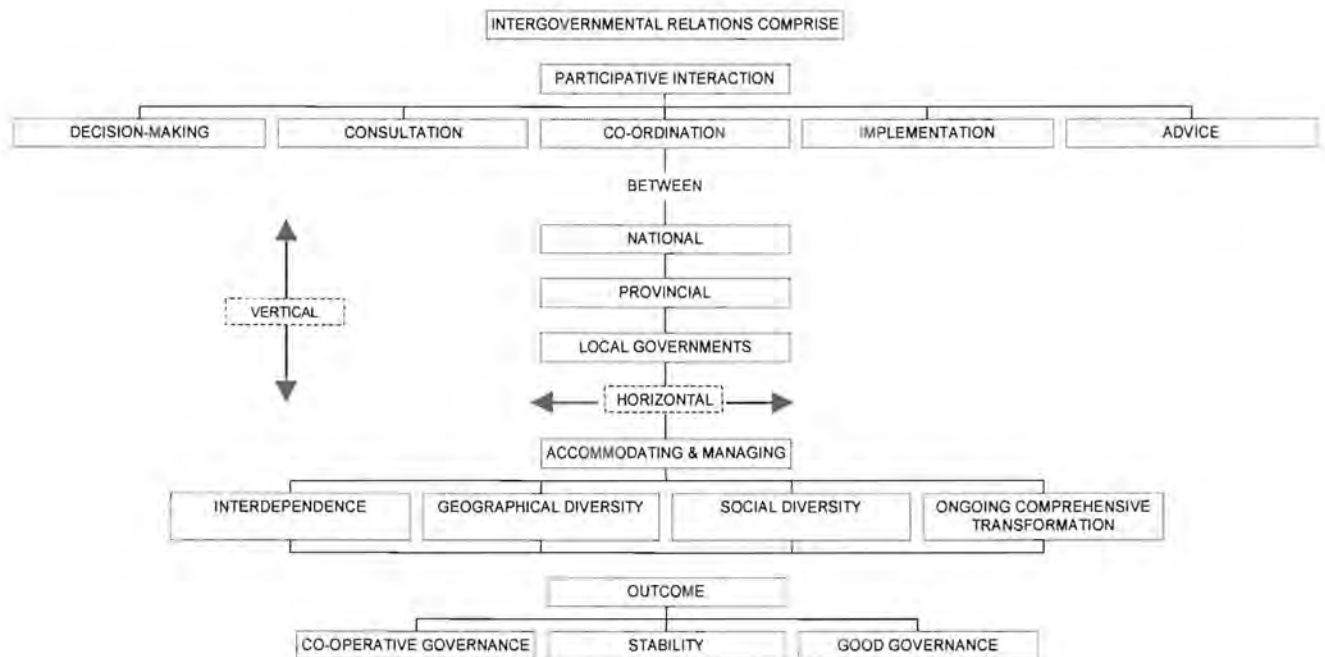
Mentzel and Fick (1996:101) define intergovernmental relations as follows:

"a mechanism for multi and bi-lateral, formal and informal, multi-sectoral

and sectoral, legislative, executive and administrative interaction 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 governmental activity”.

From the definitions of intergovernmental relations it becomes clear that the nature of the interaction between different spheres of government varies constantly in terms of the degree of co-operation, depending on the dynamics of the system and the role-players involved at any given time and in accommodating and managing interdependence, geographical and social diversity, as well as ongoing comprehensive transformation (See Figure 1/1).

Figure 1/1: **A synoptic illustration of the nature and content of intergovernmental relations**



Source: Mentzel, C. and Fick, J. 1996. Transformation perspectives on policy management: dynamics of intergovernmental relations with specific reference to the Eastern Cape. *Africanus*. Vol 26(2):p102.

Referring to Figure 1/1 it is important to note that the success of intergovernmental relations is a function of the level of participation by the key role-players in the system, and that the extent of participation, whether of a competitive or co-operative nature, finally determines the ontological state of the system of intergovernmental relations (Mentzel and Fick, 1996:101). It may therefore be evident that governmental institutions are dependent upon other governmental institutions and officials for resources required to enable the institutions to formulate policy, render services and promote general welfare through the actions, attitudes and behaviour of officials and office-bearers.

1.2.2 Co-operative government

According to the Discussion Document of the Department of Constitutional Development on Strategic Issues and Options for Policy on co-operative government and intergovernmental relations (1999:4) co-operative government represents the basic values of the government as stipulated in chapter three. Section 41(2) and other provisions of the *Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)* and the implementation of these values through the establishment of structures and institutions. Co-operative government is a partnership between the three spheres of government where each sphere is distinctive and has a specific role to fulfil and should promote constructive relations between them. Co-operative government does not ignore differences of approach and viewpoint between the different spheres but encourages healthy debate to address the needs of the people they represent by making use of the resources available to government.

Co-operation is circumstances in which people decide or are instructed to work together, also where citizens are given the feeling of involvement while exercising little real power (Fox and Meyer, 1995:28). No sphere of government

can function effectively without co-operation with the other spheres of government and therefore co-operation is required because of increased complexity of governmental activities; the increase in the number of concurrent legislative matters; the interdependency and interrelatedness of some government functions; spillovers in services; scarce resources and poor economic conditions and popular accountability and grassroots pressure (De Villiers, 1994:430).

De Villiers (1994:435) identifies the following examples of co-operation to be considered for South African purposes:

1.2.2.1 Legislative co-operation

The National Council of Provinces will ensure that provincial needs and interests are represented in the national legislative process and the following co-operative instruments are suggested: Presidential meetings with the Minister of Provincial and Local Government and Premiers (through the Presidents Co-ordinating Council) and the Committee of Ministers and Members of Executive Councils (MINMEC) which will involve the meeting of line functions Ministers in the national and provincial spheres of government.

1.2.2.2 Judicial co-operation

Where institutions and functionaries of the judicial authority meet to interpret the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996). Examples of judicial co-operation could be the meeting of judges as well as meeting of judges of the Constitutional Court.

1.2.2.3 Administrative co-operation

Administrative co-operation is the co-operation of public official serving

in the national and provincial spheres of government. Official rendering the same services on national and provincial departments could exchange information concerning mutual interests.

There is a conceptual difference between co-operative government and intergovernmental relations which is evident in the reference made to the principles of co-operative government and intergovernmental relations in Chapter three of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996). Co-operative government is a fundamental philosophy of government (constitutional norm) that governs all aspects and activities of government and includes the deconcentration of power to other spheres of government and encompasses the structures of government as well as the organisation and exercising of political power (Discussion Document, 1999:21). Intergovernmental relations are specifically concerned with the institutional, political and financial arrangements for interaction between the different spheres of government and organs of state as stipulated in the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996). Co-operative government is thus about partnership government as well as the values connected with it, namely national unity, peace, proper co-operation and co-ordination, effective communication and the avoiding of conflict. Intergovernmental relations is one of the means through which the values of co-operative government may be given institutional expression and may include executive or legislative functions of government (Audit Report, 1999:12).

1.2.3 The process of intergovernmental relations, intergovernmental roles, structures and institutions

Intergovernmental relations are the basic interactions within and between spheres of government with regard to exclusive and concurrent functional areas of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996). The

process of intergovernmental relations refers to a matrix of interactions between organs of state and institutions of government, with particular reference to the executive and legislative components of government. Intergovernmental processes are derived from the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996). Examples of processes of intergovernmental relations are: dispute settlement; capacity building and mutual support; intervention of one sphere of government in another; assignment of powers and functions; planning; intergovernmental financial relations; co-ordination and monitoring of actions as well as consultation and information-sharing (Discussion Document, 1999:46).

Intergovernmental roles are the roles allocated to the different spheres of government in a certain intergovernmental process while intergovernmental structures and institutions are the institutional arrangements for intergovernmental relations determined by the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) and other legislation and may include commissions, institutions, committees and forums (Discussion Document, 1999:4). The purpose of a system of intergovernmental relations is to promote co-operative decision-making; to ensure the execution of policies through the effective flow of communication; to co-ordinate priorities and budgets across different sectors and the prevention of disputes and conflicts between spheres of government (*White Paper on Local Government, 1998:38*).

In order to understand the complex nature of intergovernmental relations, it is necessary to analyse the three spheres of government. In the following paragraph the national, provincial and local spheres of government are described.

1.3 THE SOUTH AFRICAN SPHERES OF GOVERNMENT

South Africa is a sovereign, democratic state founded on the following values:

human dignity, the achievement of equality and the advancement of human rights and freedoms; non-racialism and non-sexism; supremacy of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) and the rule of law; universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government to ensure accountability, responsiveness and openness (Section one of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]). It is therefore important, for the purpose of this study, to place the three spheres of government in context in order to understand the nature and content of intergovernmental relations.

1.3.1 National government in context

The national legislative authority is vested in Parliament which consists of the President, National Assembly and the National Council of Provinces (Section 42 of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]). Parliament participates in the legislative process by following the guidelines as set out in the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996). The members of the National Assembly represent the people of South Africa and are therefore elected by registered voters (Craythorne, 1997:26). The National Assembly consists of no fewer than 350 and no more the 400 women and men elected in terms of an electoral system that is prescribed by national legislation (Section 46 of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]).

The National Council of Provinces is composed of a single delegation from the nine provinces (ten delegates each), namely: four special (floating) delegates, consisting of the Premier of a Province or any member of the provincial legislature if the Premier is not available; three other special delegates and six permanent delegates (Section 60 of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]). According to Mentzel and Fick (1996:107) the

National Council of Provinces will have 54 permanent delegates, six nominated by the Provincial Legislature of each province, and 36 seats for floating delegates, four from each province including the provincial Premier, who will lead their respective floating delegates. The floating delegates may however vary in terms of their compositions as decided by the Provincial Legislatures of each province (Section 61 of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]). The National Council of Provinces represents the different provinces to ensure that provincial interests are protected when making decisions in the national sphere of government through participating in the national legislative process and by providing a national forum for public consideration of issues affecting provinces. Legislative intergovernmental relations promotes the democratic values found in the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) because of an open and transparent legislative process, but it is important that legislative intergovernmental relations does not exclude executive intergovernmental relations.

The national executive authority is vested in the President, Executive Deputy President as well as members of the Cabinet. The President is the head of the state and also head of the national executive (Section 83 of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]). Members of the Cabinet are individually and collectively accountable to Parliament when exercising their powers and should always act in accordance with the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) (Craythorne, 1997:35). The executive powers of the national executive is outlined in Section 85(2) of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) as being the implementation of national legislation; development and implementation of national policy; the co-ordination of the functions of state departments and administrations; preparation and initiation of legislation and the performance of any other executive functions provided for in national legislation. Executive

intergovernmental relations refers to the interaction between the administrative units of government associated with the executive.

1.3.2 Provincial government in context

The legislative authority of the nine provinces is vested in the Provincial Legislature of each province. The Provincial Legislature consists of between 30 and 80 members but the number of members may vary and will be determined in term of a formula prescribed by national legislation (Craythorne, 1997:37). A Provincial Legislature may consider, pass or amend any bill before it and also initiate and prepare legislation (except money bills). The Provincial Legislature also supervises the provincial executive authority and provincial organs of state (Section 114 of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]).

The executive authority of a province is vested in the Premier of that province as well as an Executive Council according to Section 125 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996). The actions of provincial executive organs are regulated by mechanisms provided by the Provincial Legislature to ensure accountability to it (Craythorne, 1997:44). A set of powers for provincial executive authorities with respect to the different provinces is described in Section 123(1) of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) which includes the implementation of all national legislation within the functional areas of Schedules four (concurrent national and provincial competence) and Schedules five (exclusive provincial legislative competence), except where the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) or an Act of Parliament provides otherwise and administering non Schedule four or five legislation assigned to it.

1.3.3 Relations between national and provincial legislation

Regarding the relations between national and provincial legislation it is stated

that national legislation will prevail over provincial legislation if the provinces cannot effectively regulate a matter through legislation (Section 146 of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]). National legislation will deal with matters that require uniformity across the nation by establishing norms and standards, frameworks or national policies.

National legislation is, according to Section 146 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996), also necessary for the maintenance of national security; the maintenance of economic unity and the protection of the common market in respect of the mobility of goods, services, capital and labour. National legislation is further important for the promotion of economic activities across provincial boundaries; the promotion of equal opportunity or equal access to government services and for the protection of the environment (Section 146 of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]).

National legislation will also override provincial legislation to prevent unreasonable action by a province for example action of a province that is prejudicial to the economic, health or security interest of another province of the state or impedes the implementation of national economic policy (Van der Waldt and Du Toit, 1997:42).

The National Council of Provinces plays a major role in respect of intervention under Section 100 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) where national supervision of provincial administrations is described. Notice of national intervention should be tabled in the Provincial Legislature as well as in the National Council of Provinces. At present there is no intergovernmental structure at executive level that deals specifically with the intervention and supervision of national government of provincial administrations (Discussion Document, 1999:55).

1.3.4 Dispute settlement mechanisms in intergovernmental relations

Chapter three of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) stipulates that national government should establish dispute resolution mechanisms to reduce unnecessary litigation between organs of state because the principles of co-operative government determines that a negotiated rather than a conflict approach should be followed when dealing with disputes. A number of dispute resolution mechanisms for intergovernmental relations is proposed by the Department of Provincial and Local Government and it is suggested that provincial and local government implement their own dispute resolution procedures which are in line with national procedures (Discussion Document, 1999:56). The focus of the spheres of government should be on efficient and effective intergovernmental co-operation to ensure that dispute settlement procedures be the last resort. Court action should be avoided in the solving of disputes and a system of administrative courts may serve as an option.

Local government is the third sphere of government where the people living in a specific demarcated area elect their own representatives. The following section describes the legislative and executive authority in local government.

1.3.5 Local government in context

The legislative and executive authority of local government are outlined in Section 151 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996). The local sphere of government consists of municipalities, which should be established for the whole of the territory of the Republic of South Africa. The executive and legislative authority of a municipality is vested in its Municipal Council and a municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial

legislation, as provided for in the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996). The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its power or perform its function. Figure 1/2 summarises the preceding definition and illustrates the relationship between the different authorities of the three spheres of government.

Figure 1/2: **The national, provincial and local spheres of government**

THE SOUTH AFRICAN GOVERNMENT			
GOVERNMENT SPHERES AND TYPES OF INSTITUTIONS IN SOUTH AFRICA			
Types of institutions	National	Provincial	Local
Legislative authority	President and Parliament consisting of the National Assembly and National Council of Provinces	Premiers and Provincial Legislatures of nine Provinces	Municipal Councils Approx. 1000
Executive authority	President, Executive Deputy President and Cabinet (National public service)	Premier and Members of Executive Council (Provincial public services)	Local executive structures
Judicial authority	Constitutional Court Supreme Court	Provincial Division	Magistrate's Courts

Source: Adapted from Van der Waldt, G. and Du Toit, D.F.P. 1997. *Managing for excellence in the public sector*. Kenwyn: Juta. p.141.

1.3.6 Organs of the state

An organ of state is defined as any department of state or administration in the national, provincial or local spheres of government or any functionary or institution that exercises power or performs a function in terms of the national or provincial constitutions or in terms of any legislation (Section 239 of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]). The South African National Parks, KwaZulu-Natal Nature Conservation Service and KwaZulu-Natal Parks Board as well as the Mpumalanga Parks Board are included in the definition of an organ of state (*Infra* paragraph 3.3). A court and a judicial officer are not included in the above definition of an organ of state.

An explanation of the interdependence of governmental bodies is necessary in order to be able to analyse the different intergovernmental relations between the spheres of government. Interdependence of governmental bodies is important because the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) establishes a state and government that promotes interaction and interdependence.

1.4 THE INTERDEPENDENCE OF GOVERNMENTAL BODIES

Different spheres of government are not independent from one another and have to rely on the same basic resources of the state. According to Hattingh (1998:15) several resources could be common for the different spheres of government.

1.4.1 Constitutional and legal resources

Constitutional and legal resources are the discretionary authority delegated from a higher to a lower authority by means of the *Constitution of the Republic of*

South Africa, 1996 (Act 108 of 1996) as well as formal legal procedures and arrangements. The legislative authority in the Republic rests as follows: for the national level in Parliament, for the provincial level in Provincial Legislatures and for the local level in Municipal Councils (Section 43 of the *Constitution of the Republic of South Africa*, 1996 [Act 108 of 1996]).

Parliament has the power and authority to make legislation on any matter and is further allowed to delegate any of its legislative powers to any sphere of government (Section 44 of the *Constitution of the Republic of South Africa*, 1996 [Act 108 of 1996]). Provincial Legislatures have the power to make legislation on prescribed matters and are allowed to delegate any of their legislative powers to a Municipal Council (Section 104 of the *Constitution of the Republic of South Africa*, 1996 [Act 108 of 1996]). A municipality has the power to make legislation on matters prescribed in parts B of Schedules four and five as well as Section 156(1) of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996). The three spheres of government are always involved in constitutional negotiations and discussion in order to find lasting solutions to the problems in the state and are therefore interdependent on the various constitutional resources available.

1.4.2 Financial resources

Financial resources refer to all money received irrespective of its source (Hattingh, 1998:15). All governments need money to render services and perform their functions and therefore the allocation of financial resources between spheres of government is important. The allocation of money and general financial matters are regulated by Chapter 13 of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996).

A National Revenue Fund is provided for in Chapter 13 (Section 213 and 214 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) into which all money received by the national government must be paid and the share of provincial income raised at the national level must be paid out of the National Revenue Fund. An Act of Parliament also provides for the fair distribution of income between national, provincial and local governments while legislation dividing income can be passed by Parliament only if provincial and local government as well as the Financial and Fiscal Commission have been consulted (*Infra* paragraph 1.11.4). Legislation dividing income considers national interest for example national obligations; the objective needs of national government and the need to ensure that the provinces and local governments can provide basic services and perform their functions. Further aspects which are considered are the financial efficiency of provinces and local governments; the development needs of provinces and local government; economic inequalities among provinces; obligations of provinces and local governments; the need for stable allocations of money and for flexibility to tend to emergencies (Section 213 and 214 of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]).

National legislation relating to intergovernmental financial relations has been adopted, for example the *Intergovernmental Fiscal Relations Act, 1997* (Act 97 of 1997) which includes an intergovernmental process regulating intergovernmental consultation and budgeting and establishing intergovernmental structures such as the Budget Council and Budget Forum. These structures facilitate consultation with provincial and local government (*Infra* paragraph 1.11.2). The *Division of Revenue Act, 1998* (Act 28 of 1998) has also been adopted which deals with a monitoring system for the implementation of treasury norms and standards regarding the spending of public funds and the conditions for the allocation of funds to the various spheres of government respectively.

1.4.3 Political resources

Political resources refers to the right and ability of policy-makers, in the various spheres of government, to relate and interact with each other concerning the making of decisions and achieving of objectives and communicating with the public with a view of gaining support (Hattingh, 1998:15). Officials in governmental institutions should at all times adhere to principles contained in the *Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)*, including the principles of co-operative government and intergovernmental relations. Section 41(1) of the *Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)* states that all spheres of government and all organs of state, within each sphere, should preserve peace, national unity and the indivisibility of the Republic; secure the well-being of the people of the Republic; provide effective, transparent, accountable and coherent government for the Republic as a whole and be loyal to the *Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)*, the Republic and its people. Respect for the constitutional status, institutions, powers and functions of the other spheres of government; not assuming any power of function except those conferred in terms of the *Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)* and exercising powers and performing functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere are also principles that should be adhered to by the three spheres of government. The three spheres of government should also co-operate with one another and promote friendly relations by assisting and supporting one another; informing one another of and consulting one another on matters of common interest. National, provincial and local governments should co-ordinate their actions and legislation with one another as well as adhere to agreed procedures and avoiding legal proceedings against one another (Section 41 of the *Constitution of the Republic of South Africa, 1996 [Act 108 of 1996]*).

1.4.4 Resources for information-sharing and consultation

The three spheres of government are required to inform each other of and consult (create active dialogue) with one another when matters of common interest are at stake (Chapter three of the *Constitution of the Republic of South Africa*, 1996 [Act 108 of 1996]). Information-sharing resources refer to the exchanging of information between governmental institutions by for example attending conferences, congresses, seminars or making use of any other medium of communication (Hattingh, 1998:15). Information-sharing and consultation may be informal by telephone, e-mail and through informal meetings or be formal for example meeting in intergovernmental forums. Information is generated by all three spheres of government and there are therefore many opportunities for contact on matters of information-sharing and consultation.

Consultation may occur when joint decision-making takes place (in consultation with) or when non-binding recommendations need to be considered (after consultation with). Consultation between spheres of government and organs of state should occur timeously to enable the parties involved to make appropriate input by following the correct procedure (Discussion Document, 1999:67). Resources for time-sharing and consultation are generally not applied in isolation but are utilised to a greater or lesser degree in the normal course of interaction between governmental institutions and institutions responsible for conservation management in South Africa.

The sharing of information between spheres of government is mostly concerned with laws, executive orders, legislation and procedures pertaining to the controlling and accessing of information (Schwella *et al.*, 1996:183). According to Stevens and McGowan (1985:172), not enough attention is given to the intergovernmental implications of information systems. Computerised information systems and systems technology are not only important communication

mechanisms but may also promote intergovernmental relations between spheres of government if used effectively. The computerised information system may, according to Stevens and McGowan (1985:3) include the following: “*personal or microcomputers, intelligent terminals, work stations, networking, word processing, telecommunication and large mainframes*”. The computer may become the most important instrument of information-sharing and consultation and may assist formal structures for intergovernmental relations to function effectively.

Not only is the study of the interdependence of governmental bodies important but it is also necessary to explain the various approaches to intergovernmental relations. The four approaches to intergovernmental relations cover the extensive field of the study of intergovernmental relations pertaining to conservation management.

1.5 APPROACHES TO INTERGOVERNMENTAL RELATIONS

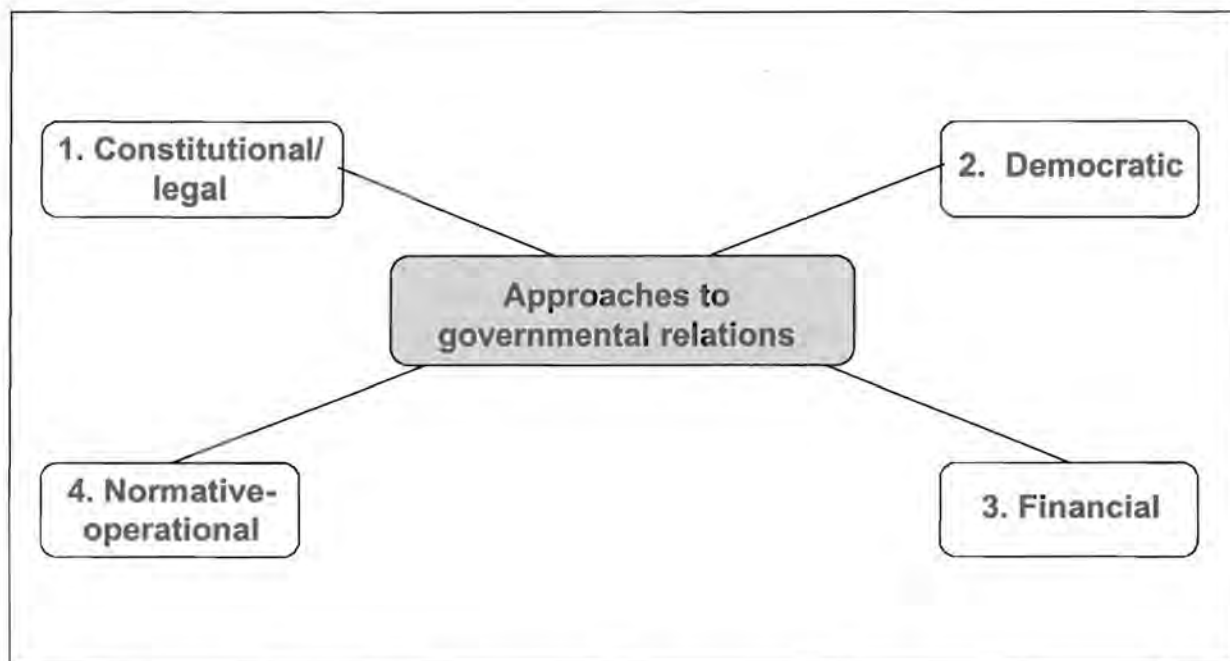
There are various approaches to governmental relations in general but approaches to intergovernmental relations in particular include: the constitutional/legal; democratic; financial and normative-operational approaches (Hattingh, 1998:10). Before analysing the different approaches to the study of intergovernmental relations, it is necessary to define what an *approach* is. An approach is according to Van Dyke (1960:4) the criteria employed in formulating the questions asked in any (political) enquiry. If an individual uses, for example, democratic criteria to enquire about or analyse a certain aspect, a democratic approach is followed.

1.5.1 Constitutional/legal approach

The *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) is the

supreme law of the Republic and guides all actions of political office-bearers and officials. Any law or conduct inconsistent with *the Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) is invalid, and the obligations imposed should be fulfilled. Van der Waldt and Du Toit (1997:162) emphasise the importance of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) and other legislative provisions in decision-making and policy-making and therefore the constitutional/ legal approach is based on the principle that all legal provisions and regulating measures, arising from the three spheres of government, are the overarching regulating forces. The above-mentioned provisions may include legislative provisions dealing with intergovernmental relations.

Figure 1/3: **Approaches to governmental relations**



Source: Van der Waldt, G. and Du Toit, D.F.P. 1997. *Managing for excellence in the public sector*. Kenwyn: Juta. p.162.

1.5.2 Democratic approach

The importance of having a democracy is highlighted by Section 181 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) which provides for the establishment of state institutions responsible for the strengthening of a constitutional democracy in the Republic, namely the Public Protector; Human Rights Commission; the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; the Commission for Gender Equality; the Auditor-General and the Electoral Commission.

Proponents of the democratic approach are opposed to the centralisation of authority and are supporters of the autonomy and independence of provincial and local governments in South Africa. However, independence would mean that relations between governmental bodies will exist by virtue of the power vested in each of these bodies by means of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) and other regulating laws (Hattingh, 1998:12).

1.5.3 Financial approach

The importance of financial relations between the different spheres of government should not be under-estimated because money is transferred from one sphere to the other by means of legislation. Financial- and therefore fiscal intergovernmental relations cannot be separated from the political system because the provincial and local spheres of government are to a large extent dependent on the national sphere of government for funds (Döckel and Somers, 1992:149).

1.5.3 Normative-operational approach

The normative-operational approach examines the importance of considering all pertinent norms to analyse the total operational reality of governmental relations without one aspect of governmental relations being overemphasised at the expense of another (Van der Waldt and Du Toit, 1997:163). Group norms or value objectives are important since the normative-operational approach entails an investigation of what is or should be desirable (Hattingh, 1998:14). In the public sector, the normative-operational approach indicates the action of administrators when making a choice between the various decision-making alternatives. Public administrators and managers should, if possible, take all the generic administrative functions (policy-making, organising, financing, staffing, controlling as well as procedures and methods) and normative guidelines into account when analysing intergovernmental relations (*Infra* paragraph 1.8).

Roux *et al.* (1997:172) prefers the normative-operational approach to the constitutional/legal, democratic and financial approaches because a single aspect (such as finances) can for example not dominate another aspect (such as values). The term *normative* indicates the actions of administrators, given their sequences of decision-making alternatives and *operational* is the basic activity that directly enables the institution to realise its objectives (Fox and Meyer, 1995:90). According to Roux *et al.* (1997:172) a normative-operational approach focuses on insight and identifies standards in terms of which particular operational realities are classified as good or bad.

Another factor that which has an influence on the study of intergovernmental relations and conservation management is the form of government. Although a large number of forms of government is found throughout the world, focus in this study is on the unitary and federal forms of government because of its relevance to South Africa.

1.6 THE INFLUENCE OF FORMS OF GOVERNMENT ON INTERGOVERNMENTAL RELATIONS

Because of the existence of the numerous forms of government, political leaders have at different times been faced with the choice of whether a unitary or federal form of government would be relevant to South Africa. Both forms of government would have an influence on intergovernmental relations between spheres of government. The unitary and federal forms of government and their relevance pertaining to intergovernmental relations in South Africa are now analysed.

1.6.1 Unitary form of government

A unitary state is, according to Fox and Meyer (1995:132), a state within which all authority is concentrated within the national government, and where the other spheres of government exercise only that authority allocated to them by the national government (where the final decision-making remains) although authority may be delegated to subordinate authorities. The primary characteristic of a unitary form of government is the fact that authority is centralised with the concentration of power and authority within a centralised unit, central organisation or single person (Döckel and Somers, 1992:141). A number of principles describing a unitary form of government are identified by Hattingh (1998:114) as the following: supreme power is indivisible and unlimited, the national legislative authority is empowered to promulgate, approve and amend laws concerning any aspect affecting the state and the constitution of a unitary form of government would not limit the authority of the national legislative authority unless aforementioned authority agrees to such limitations. Further principles are that the legislative authority may: create financial resources and establish executive institutions for the rendering of its functions; incorporate separate governmental units into hierarchical structures (if such structures have

been recognised and approved by it); assign powers, authority and financial resources to spheres of governmental and determine and regulate intergovernmental relations (Hattingh, 1998:114).

Should the legislative authority in a unitary form of state decide to assign certain powers to unitary regions (which are autonomous regions within a state which can exercise a specified degree of delegated powers as prescribed by the national government) two types of decentralised powers can be identified in unitary systems, namely deconcentrated administrative functions as well as devolved legislative, executive and administrative powers and functions (De Villiers and Sindane, 1993:108). The concepts decentralisation, delegation and devolution are explained in detail in further paragraphs (*Infra* paragraph 1.10.2).

1.6.2 Federal form of government

Federalism is a very sophisticated form of government because of its delicate balance of power between diversity and unity (De Villiers and Sindane, 1993:114). The federal government is responsible for matters of common interest to all the federal units while matters that are important for the establishment and preservation of a separate identity are usually left in the hands of the individual federal units, thus emphasising unity within diversity (Kotzé, 1995:66). Kotzé (1995:66) defines federalism as follows:

“ a political principle that has to do with the constitutional diffusion of power so that the constituting elements in a federal arrangement share in the processes of common policy-making and administration by right, while the activities of the common government are conducted in such a way as to maintain their respective integrities. Federal systems do this by constitutionally distributing power among general and constituent governing bodies in a manner designed to protect the existence and authority of all”.

The federal form of government may be a result of pressure for regional autonomy based on factors such as language, religion, ethnicity and the level of economic development. If so, it may be difficult to reconcile the needs of a federal unit of government with those of the federal government and may therefore have a negative influence on intergovernmental relations. The following reasons may contribute towards the complex nature of federal intergovernmental relations: a rigid constitution regulates relations between state; residual powers may be vague; no state is subordinate to another state and the supreme court is responsible for retaining the federal form of government (Roux *et al.*, 1997:175).

1.6.3 The unitary and federal debate in South Africa

Regarding the establishment of intergovernmental relations, fundamental differences exist between unitary and federal forms of government. A unitary form of government may be not as rigid as a federal form of government due to the supreme sovereign power determining the distribution of functions between governmental bodies and institutions. The legislative authority in a unitary form of government may change the number of geographical areas or amend the number of spheres of government while, in the case of a federal form of government, the federal government may not change functions and authority without the approval of constituent governments (Hattingh 1998:117).

In a unitary form of government, uniform policies are executed while the authority as well as the functions of a federal form of government is determined by the constitution. Centralisation is more likely to manifest itself in the unitary form of government than in a federal form of government.

A pure form of either a unitary or federal form of government seldom exists because many variants are found. The *Constitution of South Africa*, 1996 (Act

108 of 1996) is regarded as having both unitary as well as federal characteristics. Federal elements in the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) are according to Kotzé (1995:68) the following: three spheres of government with autonomous functions regarding members of the National Council of Provinces who can influence the decision-making function of the national government. In some provinces traditional leaders are found and the Provincial Legislatures may provide for the establishment of houses of traditional leaders (Section 212 of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]).

Provinces are granted exclusive rights which means that the provinces exercise authority over matters of which Parliament have no final authority (Schedule five of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]). National legislation will however prevail over provincial legislation in certain conditions (Section 146 of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]). The *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) is fairly rigid and may only be amended with a supporting vote of at least 75 percent of the members of the National Assembly and the support of at least six provinces in the National Council of Provinces (Section 74).

According to De Villiers (1997:28) the federal character of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) stops at the provincial boundaries where an essentially unitary form of state exists because the powers of local government are subject to provincial powers which will impact on the nature of governmental relations. The reason for the inclusion of co-operative government may also be a compromise between having a unitary state on the one hand and a federal state on the other. The South African system of government accommodates power-sharing and diversity but also preserves unity at the same time.

A classification of intergovernmental relations is necessary to be able to analyse the relations between the different spheres of government. The following paragraphs focus on vertical as well as horizontal intergovernmental relations and also refer to intra and extra governmental relations.

1.7 CLASSIFICATION OF GOVERNMENTAL RELATIONS

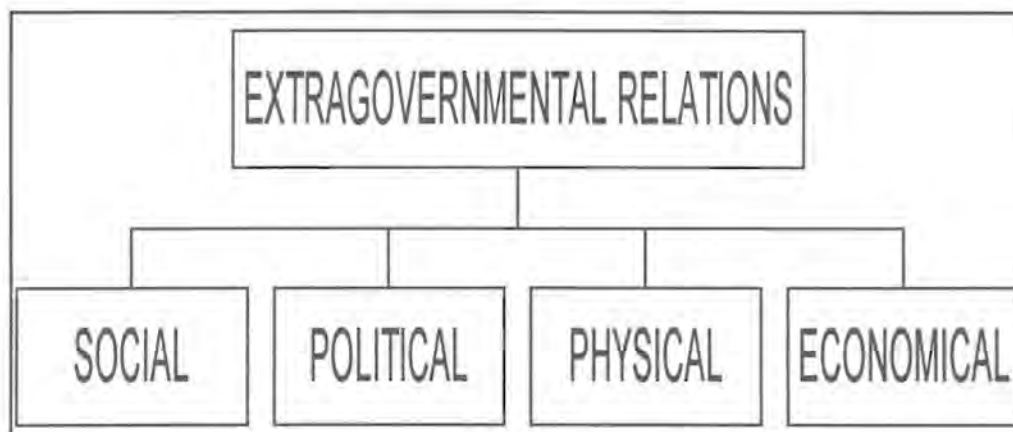
The relations between governmental bodies can be classified into three basic categories, namely intergovernmental, intragovernmental and extragovernmental relations (Hattingh, 1998:19). Although this study is aimed at analysing only intergovernmental relations, it is still necessary to define intragovernmental and extragovernmental relations in view of the complex nature of governmental relations in general.

Intragovernmental relations refer to the relations within governmental bodies and vertical and horizontal lines of authority are present. In the national sphere of government, examples of vertical structures of authority are that of Parliament; Cabinet ministers and departments (governmental bodies in the same sphere of government but on different hierarchic levels) or the relations between a Cabinet minister and the head of his/her department (individuals in the same sphere of government but on different hierarchic levels). Vertical intragovernmental relations are important for the establishment of lines of authority and maintaining accountability and responsibility as well as facilitating control. Horizontal intragovernmental relations occur in governmental bodies between individuals and institutions in the same hierarchic level, for example between Ministers in Cabinet in the national sphere of government (Hattingh, 1998:29).

Extragovernmental relations occur between governmental bodies and external institutions. Social extragovernmental relations occur to address issues such as health services or unemployment in a co-ordinated manner while political

extragovernmental relations may be relations between the different political parties and their electorate. Economic extragovernmental relations may ensure economic co-operation between governmental bodies and the private sector while institutional extragovernmental relations exist between related institutions (Van der Waldt and Du Toit, 1997:164).

Figure 1/4: **Extragovernmental relations**



Source: Adapted from Van der Waldt, G. and Du Toit, D.F.P. 1997. *Managing for excellence in the public sector*. Kenwyn: Juta.

Intergovernmental relations between the different governmental bodies can occur at both vertical and horizontal level. Vertical and horizontal intergovernmental relations will be regulated in terms of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996).

1.7.1 Vertical intergovernmental relations

Vertical intergovernmental relations exist between the national, provincial and local spheres of government with the level of power decreasing from national to provincial to local government. According to Van der Waldt and Du Toit (1997:164), the relations between the national and provincial governments are

aimed mainly at the control and co-ordination of provincial activities which means that the lower spheres of government are dependent on higher spheres of government (especially as far as the facilities discussed above are concerned). The very same dependence may also restrict the discretion of lower spheres of government.

1.7.1.1 Power relations

The National Assembly has more power than the National Council of Provinces because the National Assembly has legislative power on any matter (Section 44 of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]). The National Council of Provinces has power only in respect of those functions listed in Schedule four of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996).

Parliament has more legislative powers than Provincial Legislatures. Parliament can pass legislation on any matter whereas Provincial Legislatures can pass legislation on such matters prescribed only in Schedules four and five of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996). Functional areas of concurrent national and provincial legislative competence are also prescribed in Schedule four of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996).

Provincial Legislatures in turn have more legislative powers than local governments and this state of affairs is illustrated by a comparison of parts B of Schedules four and five of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) with the whole of the Schedules. Section 155(6) of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) further provides that Provincial Legislatures should monitor and support local governments while Section 155(7) provides that

national and provincial government have the legislative power to ensure that local governments perform their functions effectively. The assignment of powers and functions within government may lead to unfunded or unresourced mandates and therefore it is necessary to propose guidelines to rationally assign powers between the three spheres of government (Discussion Document, 1998:56).

1.7.1.2 Conflict relations

The importance of intergovernmental relations is emphasised by providing for the establishment of institutions to facilitate intergovernmental relations and for procedures and mechanisms to settle intergovernmental disputes (Section 41[2] of the *Constitution of South Africa*, 1996 [Act 108 of 1996]). Any public institution involved in intergovernmental conflict should make every effort to settle conflict through the mechanisms and procedures provided and try all other possibilities to settle conflict before it refers a dispute to a court of law (Craythorne, 1997:26). Mechanisms to settle conflict are provided for through the Mediation Committee, which consists of nine members of the National Assembly and nine members of the National Council of Provinces (Section 78 of the *Constitution of the Republic of South Africa*, 1996 [Act 108 of 1996]).

Five members from the National Assembly and five members of the National Council of Provinces should vote in favour of a point to settle a conflict. According to Mentzel and Fick (1996:108) intergovernmental relations are formalised into the structures of government with the National Council of Provinces becoming the major mediator in the case of conflict between and within the spheres of government. The Mediation Committee, which focuses on the informal dynamics of intergovernmental relations, is the mediator when party-political disputes are handled.

1.7.2 Horizontal intergovernmental relations

Relations between governmental institutions in the same sphere of government are referred to as horizontal intergovernmental relations (Van der Waldt and Du Toit, 1997:164). Examples of horizontal intergovernmental relations are those between the legislature, the executive and the judiciary; national government departments; legislative authorities of provinces; provincial executives; provincial departments; local governments and local government departments. Horizontal intergovernmental relations differ from vertical relations in three important ways: there are no formal power relations; negotiating power is more or less the same and interdependence is different (Hattingh, 1998:24).

The National Assembly should ensure that all executive institutions (Cabinet and state departments) at the national level of government are accountable to it (Section 55[2] of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]) while Section 114 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) stipulates that provincial executive institutions should be accountable to Provincial Legislatures and therefore horizontal intergovernmental relations are found. According to Van der Waldt and Du Toit (1997:164) horizontal intergovernmental relations occur mainly through municipal agreements and municipal associations and the co-operation in the above-mentioned sense is necessary to prevent the duplication and overlapping of activities.

The promotion and maintenance of intergovernmental relations are based on the normative guidelines of public administration. The duty of all political office-bearers and public officials is to follow these normative guidelines in order to render services and perform functions promoting the general welfare of the community.

1.8 NORMATIVE GUIDELINES IN THE STUDY OF INTERGOVERNMENTAL RELATIONS

The behaviour of officials in the public sector is always subjected to a high standard of public responsibility and accountability and the guidelines which emanate from the values of society as well as from the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996). Other laws should thus be the foundation for and set the boundaries for all administrative and management tasks that need to be performed. The normative guidelines of public administration are applicable to almost all circumstances in the management and administrative processes and were developed and adapted over time (Gortner, 1977:74). The concept *normative guidelines* refers to principles that may be idealistic and which form the basis for all public action and decision-making and have evolved from traditions and conventions within the domain of the public sector in South Africa (Botes, 1994:7).

1.8.1 Acknowledgement of the political supremacy of the Constitution

The *Constitution of the Republic of South Africa 1996* (Act 108 of 1996) is acknowledged as the supreme law of the Republic of South Africa. The national government has the authority to assign powers to the nine provinces (provincial sphere of government) while local government is subordinate to the provincial government (*Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]). Legislative institutions in each sphere of government are established through elections and face unique political issues, but the actions of institutions should always be guided by the supreme authority of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996). The various legislative institutions will formulate policy to improve the general welfare of the community in their jurisdictions and the relevant executive institutions should abide by these policies (Roux *et al.*, 1997:178).

1.8.2 Maintenance of public accountability

Accountability can be viewed as the responsibility of a government and its institutions towards the public to realise previously set objectives and to account for them in public (Fox and Meyer, 1995:1). Therefore accountability also refers to the obligation a public official has in being publicly responsible for his/her actions and the responsibility that a subordinate has to keep his/her superior informed of the execution of functions. When a subordinate government institution performs a function delegated by a higher authority, the latter should recognise and accept that it is still accountable for the result of the policy (Roux *et al.*, 1997:178). The normative guideline of public accountability is applicable in democratic states such as South Africa (where regular elections take place) to establish representative institutions in all three spheres of government.

1.8.3 Promotion and maintenance of public efficiency

All actions of officials and political office-bearers should be effective (of true value and viable) and objectives should be achieved as cost-effectively as possible thus with the cheapest means and at the lowest cost (Botes, 1994:8). Fox and Meyer (1995:42) are of the opinion that efficiency, in general, refers to a criteria according to which an alternative is recommended if that may lead to higher effectiveness to cost. In every sphere of government, governmental institutions should address the needs of the population through the management of scarce resources and therefore the promotion and maintenance of public efficiency are of utmost importance.

1.8.4 Adherence to South African administrative law

The importance of the principles of administrative law is emphasised by Botes (1994:8) and he stipulates that the actions of public officials should be legal and

lawful, implying that laws, ordinances and regulations should be obeyed. Administrative law is prominent in intergovernmental relations for example relations between Ministers and Directors-General or between members of the Executive Councils of provinces and departmental heads of provincial departments.

The criteria guiding the behaviour and actions of governmental institutions and organs of state within the framework of the judicial-administrative functions are as follows: actions should be authorised; behaviour should be lawful and subject to relevant legal requirements; actions should comply with required legal procedures; the misinterpretation of justice should be avoided; discretion should not be used unfairly or unjustly; actions should only take place after all relevant information and facts have been considered; the behaviour of officials should be reasonable and unimpeachable (Hattingh, 1998:106). The requirements of administrative law should be adhered to specifically to prevent manipulation, misleading statements, undue pressure and unjust actions in intergovernmental relations.

1.8.5 Acknowledgement of current community values

The actions of public officials will have an influence on the community they serve and therefore political office-bearers and public officials should be sensitive to the values of the community. Values refer to what is fundamentally good or desirable and may serve as a guide to individuals throughout their lives (Fox and Meyer, 1995:134). According to Roux *et al.* (1997:179) the national government and its institutions acknowledges *common values* while provincial and local governments may not necessarily emphasise the same values. Values and value choices in a community may change over time because of factors such as population composition, development, technological progress or changes in the political system and it is therefore important that public officials acknowledge

current common values (Hattingh, 1998:107). The following is according to Botes *et al.* (1992:186) relatively unchanged community values that should be acknowledged by public officials: material, cultural, social, political, institutional and spiritual values. Public officials should be aware of the core values which govern the establishment as well as implementation of intergovernmental structures and institutions and how these values could influence the operating procedure of every intergovernmental structure.

1.8.6 Maintenance of high ethical norms

The public service should function in terms of national legislation and should loyally execute the policies of the government of the day (Section 197 of the *Constitution of the Republic of South Africa, 1996 [Act 108 of 1996]*). It is the duty of all political office-bearers and public officials to act ethically and promote the general welfare of the community when implementing policy. According to Botes (1994:8) public officials should be trustworthy; respectful; friendly; diligent; act in a correct manner; helpful and dignified.

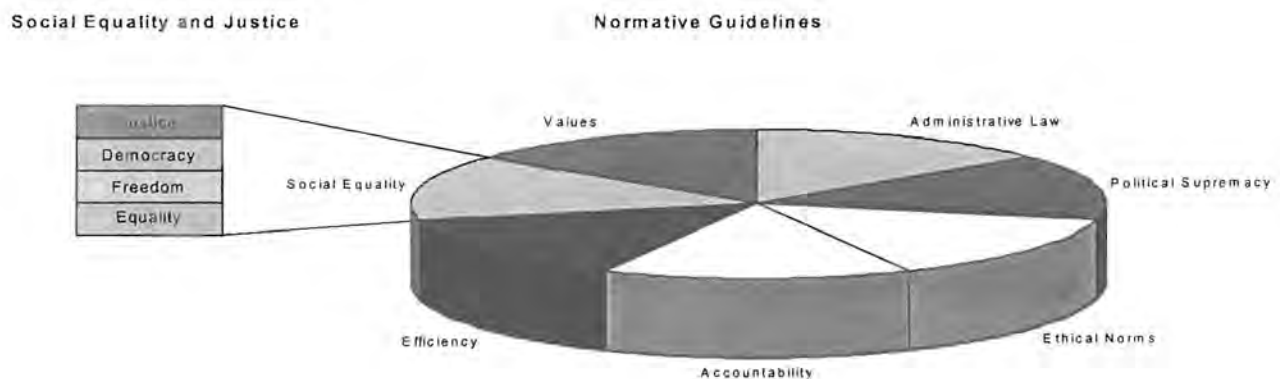
Public officials should also be fair, not be guilty of corruption and not discriminate against any person (Roux *et al.*, 1997:179). Maintaining high ethical norms and standards is of utmost importance in ensuring sound intergovernmental relations.

1.8.7 Social equality and social justice

According to Fox and Meyer (1995:120) social equity is a concept that deals with equitable and equal treatment of all concerned. Public officials should not discriminate between people on any ground for example race, religion, culture or gender when engaging in relations with other governmental bodies.

Social equity emphasises equality in the rendering and delivery of public goods and services, responsibility for implementation of decisions and responsiveness to the needs of society (Fox and Maas, 1997:51). The core elements of social equality and social justice are freedom, democracy, equality and justice. The normative guideline of social equality and its relation to the other normative guidelines are illustrated in Figure 1/5. To promote social equality and justice in South Africa, all institutions and structures for intergovernmental relations should be open to change by consulting the citizens in order to address their needs.

Figure 1/5: **Social equality and social justice**



Source: Adapted from Brynard, P.A. *Publieke Administrasie in 'n nuwe era - Hoe vertoon dit nou? Administratio Publica*. Vol 4 No 1; Junie 1992.

In the following paragraph the role of people in intergovernmental relations is explained as well as further guidelines that influence individuals' behaviour. The

focus is on rules of conduct and further basic values and principles.

1.9 PEOPLE IN INTERGOVERNMENTAL RELATIONS

The three spheres of government and governmental institutions are nothing without its workforce because without people institutions can only exist on paper. People in governmental institutions are divided into elected representatives or politicians and appointed employees or public officials. Both the elected representatives and the appointed employees are involved in intergovernmental relations. The actions of people in intergovernmental relations are guided by basic values and principles as well as rules of conduct.

1.9.1 Basic values and principles

Basic values and principles should guide the actions of politicians and public officials (*Supra* paragraph 1.8). A high standard of professional ethic should be promoted and maintained while efficient, economic and effective use of resources should be promoted (Section 195[1] of the *Constitution of the Republic of South Africa*, 1996 [Act 108 of 1996]). Public administration should be development-oriented to address the needs of the people of South Africa. Services should be provided impartially, fairly, equitably and unbiased and people's needs should be responded to. The public should also be encouraged to participate in policy-making.

Public administration should be accountable and transparency should be fostered when providing the public with timely, accessible and accurate information. Good human resources management and career development practices should be implemented to maximise human potential. It is also important that the public administration should be broadly representative of the South African public, 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.

1.9.2 Fundamental rules of conduct

The actions of politicians and public officials should be guided by the fundamental rules of conduct relating to public administration (Cheminais *et al.*, 1998:73). These rules of conduct are derived from three main categories: guidelines from the body politic, community values and from institutional guidelines (legal rules or prescribed guidelines).

Guidelines from the body politic will include political supremacy of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996); public accountability; tenets of democracy; statutory and prescribed guidelines; fundamental rights and a code of ethics (Cheminais *et al.*, 1998:68). Guidelines emanating from community values will include effectiveness and efficiency; religious doctrines and value systems; fairness and reasonableness; thoroughness; balanced decisions and honesty (Cheminais *et al.*, 1998:73). Institutional guidelines include all the rules and conduct with which managers and officials should comply with when performing their functions. These institutional guidelines are the following: internal policies and regulations, organisational culture, fair labour practices and the effective and efficient managing of resources (Cheminais *et al.*, 1998:74).

These values, principles and guidelines are the cornerstones that should guide all actions of politicians and public officials. Although governmental institutions are established by acts of law, elected and appointed functionaries will be responsible for the interpretation and application thereof. Actions of people will therefore play a decisive role in intergovernmental relations (Hanekom and Thornhill, 1983:57). It is not only values and principles that influence

intergovernmental relations but also other factors which are explained in the following paragraphs.

1.10 FACTORS THAT MAY INFLUENCE INTERGOVERNMENTAL RELATIONS

Factors that may influence intergovernmental relations are according to Van der Waldt and Du Toit (1997:165) the following: public policy; organisation of government institutions; fiscal and financial variables and human resources problems. Decentralisation, devolution, delegation, communication and co-ordination are components of organising and are also factors that influence relations between governmental institutions and functionaries.

1.10.1 Policy and intergovernmental relations

In every sphere of government policies are formulated to determine *what, how, who with what* and *when* functions should be performed or services rendered (Roux *et al.*, 1997:180). A policy indicates the goals and objectives within a given situation and the methods to realise it through the integration of objectives (Fox and Meyer, 1995:96). Subordinate spheres of government should attempt to achieve the objectives set and policies formulated by the national government and therefore intergovernmental relations are encouraged (Roux *et al.*, 1997:180).

Policy management from an inclusive perspective is, according to Mentzel and Fick (1996:100), a developmental and comprehensive process including policy initiation, design, analysis, formulation, decision-making, dialogue, implementation as well as monitoring and evaluation. Policy management manifests itself formally in the constitution of a state, which will also determine fundamental rules for intergovernmental relations by regulating relations between different spheres of government. Benton and Morgan (1986:6) state the

importance of a constitution as the source for regulating intergovernmental relations because it is under the terms of many constitutions that governmental functions are divided between the spheres of government. Section 41 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) requires that there be an Act of Parliament regulating intergovernmental relations by way of establishing structures, institutions, mechanisms and procedures. Policy for an appropriate system of intergovernmental relations will add credibility to promoting the system of co-operative government and should also support social and economic growth and development in South Africa. Formal policy-making processes will be necessary which will have to include the compilation of a Green Paper, interpreting the comments, the production of a White Paper and the formulation of legislation. Other informal policy measures concerning intergovernmental relations may be accords of co-operation between organs of state or state departments; agreements between national and provincial governments with regard to functions of concurrent national and provincial competence; formulating guidelines for consultation and co-operation between spheres of government as well as for public participation in intergovernmental processes (Discussion Document, 1998:34).

Current policy concerns, according to the Presidential Review Commission (1998:42), relating to governmental relations in South Africa include the following issues: the timing of policy and legislation; scope, goals and objectives of policy; policy instruments required to fulfil responsibility; content of policy; the manner in which national departments should be responsible for the implementation of co-operative government and reaching a balance between the natural evolution of intergovernmental relations and the need for prescription.

1.10.2 Organisation of governmental institutions

Organisation may be defined as an open, dynamic, purposeful social system of

co-operation designed to enhance individual effort aimed at goal accomplishment; consisting of the human element, the physical element, the work element and the co-ordination element, while transforming resources into outputs for users (Fox and Meyer, 1995:90). A distinction can be made between macro and micro-organising with macro-organising focusing on the division of government activities with the objective of reaching government's objectives and micro-organising referring to organising within public institutions and the dividing of functions between officials. The way in which institutions are organised into units and sub-units will have an influence on intergovernmental relations (Van der Waldt and Du Toit, 1997:165).

The objectives, functions and areas of authority or organisational arrangements may have the following impact on intergovernmental relations namely that development in the different government operational areas is hampered because of uncertainty about functional policies. The effective utilisation of human resources becomes difficult because of duplication and overlapping of activities. Attempts at identifying the correct institutions to fulfil the needs of the population may lead to frustration and the application of geographical and historical criteria to demarcate fields of authority cannot necessarily be used in the rendering of services (Roux *et al.*, 1996:184).

Organising comprises a number of components namely decentralisation and devolution, communication, co-ordination, division of work and control. For the purpose of this study the concepts decentralisation, devolution, delegation and communication will be explained in further detail.

1.10.2.1 Decentralisation and devolution

Decentralisation and devolution are also factors which may influence intergovernmental relations. Decentralisation is defined as the

dissemination of functions and authority from the national government to sub-national or sub-organisational units and is regarded as a necessary component of democracy (Fox and Meyer, 1995:32).

Hattingh (1998:69) identifies six contexts within which the concept of decentralisation is applied, namely when subordinate authorities are established by a national authority and functions are delegated to it; division of revenue takes place from a higher authority to a lower authority; provincial institutions are established to perform a single governmental function; powers are assigned to a subordinate government by a national government; discretionary powers are delegated to a specific political office-bearer by the legislative authority and regulatory measures exist in respect of capital expenditure by various governmental bodies.

Through procedures and legislation which regulate the decentralisation of authority between the different spheres of government, intergovernmental relations are maintained between the national, provincial and local governments.

A major argument in favour of a decentralised process is that of efficiency because efficiency reflects a situation where the general social welfare of the community is maximised which requires that individual needs and preference be expressed accurately (Dökel and Somers, 1992:143). The provision of public goods and services should reflect the preferences of the community and the argument is that the average divergence between individual preferences of services rendered and goods received will be less in small communities of like-minded individuals than in larger, more heterogeneous areas and therefore implies small decision-making units as opposed to large centralised ones (Dökel and Somers, 1992:142).

Decentralisation takes government closer to the people and may result in greater administrative efficiency because of greater correspondence between public preferences and public policies. Although decentralisation may lead to greater diversity, more involvement of the community in decision-making and therefore promoting democratic values, a decentralised system implies that the national government should be willing to accept regional and local actions even if it contradicts national interest.

In cases where the national government should maintain national interest to ensure the general welfare of society, the promotion of equality and a minimum level of service provision, a more centralised system might be appropriate (Dökel and Somers, 1992:143). There are positive and negative aspects to both centralisation and decentralisation and the challenge would be to provide means whereby co-operation can be introduced to ensure that provincial units do not act against national interest (thus promoting intergovernmental relations).

According to Cameron (1994:22) a number of concepts exist to describe the degrees of decentralisation among different spheres of government with devolution being the most extensive form. The national governmental authority devolves of its legislative and executive authority to subordinate local units of government which operate in a quasi-autonomous manner outside the direct administrative control structures of the national government. Devolution increases local citizen participation, commitment and involvement with development initiatives (Fox and Meyer, 1995:37).

Devolution takes place through the delegation of authority or responsibility. Delegation is therefore more than just the passing of

functions and duties to officials because it is also the receiving of an obligation and authority as well as the responsibility to enable the official to fulfil his/her task in a meaningful way (Botes 1994:89). The official should therefore receive the necessary training to know how to implement delegated functions. It is often helpful to involve subordinates in the process of delegation, encouraging them to make suggestions about the functions they will perform and therefore developing themselves (Roux *et al.*, 1996:185). With devolution, autonomous units with executive authority are established, and own accountability and status as a legal entity are demanded by means of legal provisions.

1.10.2.2 Communication and intergovernmental relations

A primary strategy that may raise the quality of intergovernmental relations is the creation of formal communication structures. In joint activities between spheres of government, where information and communication are passed along (for example in organisations with a liaison function such as councils, working groups, task forces and commissions) (Falcon and Lan, 1997:321). According to Fox and Meyer (1995:23) communication is the exchanging of thoughts, ideas, perceptions or information in a written, verbal or non-verbal way. It is through the communication process that the objectives of the legislative authority are conveyed to the executive authority or from the national government to the provincial governments. Efforts to improve the quality of intergovernmental relations may include improving communication between spheres of governments and therefore the selection of appropriate communication structures and technologies is very important (Falcone and Lan, 1997:321).

1.10.2.3 Co-ordination and intergovernmental relations

Co-ordination is the process which ensures that activities and functions of the three spheres of government do not overlap and that no duplication of functions occur (Van der Waldt and Du Toit, 1997:192). Co-ordination is a major criteria for an effective system of government consisting of decentralised units. Section 85(1) of the *Constitution of the Republic of South Africa, 1996* (108 of 1998) refers to the co-ordinating of functions of state departments and other administrations. National government should co-ordinate its functions and legislation with the other spheres of government while the national executive authority should co-ordinate the functions of state departments with provincial departments and administrations.

Two intergovernmental structures that have a co-ordinating role are the Intergovernmental Forum (that co-ordinates policy and development in all three spheres of government) and the Forum for Effective Planning and Development (who co-ordinates planning between spheres of government, departments and organs of state responsible for planning) (Discussion Document, 1998:66). The different state departments will have their own co-ordinating structures that will assist them in obtaining their respective objectives.

1.10.3 Fiscal and financial variables

The availability of money and the division of revenue are two of the most important criteria for obtaining government objectives and therefore the national government should create a fiscal relationship with the other two spheres of government by placing limitations on expenditure by means of the budget (Van der Waldt and Du Toit, 1997:167). Equitable shares and allocations of revenue,

that should take into account the national interest as well as the needs and interests of the national government and are determined by objective criteria, thereby emphasising the influence of fiscal and financial variables on intergovernmental relations, are provided for in Section 214(2) of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) . According to Roux *et al.*, (1996:181) matters of national importance should be financed on a national basis but when the rendering of certain functions is delegated to a subordinate authority, it is done with the understanding that the national authority will finance the subordinate authority (for example annual subsidies). There are however functional areas of exclusive provincial legislative competence (Schedule five of the *Constitution of the Republic of South Africa, 1996* [Act 108 of 1996]). According to Roux *et al.* (1997 :182) there are three possible methods of funding all governmental bodies which have an influence on intergovernmental relations. Firstly, the national government may levy all taxes, make loans and collect fees and thereafter a division of revenue takes place between the three spheres of government. Secondly, the horizontal groupings of governments may be allocated demarcated financial sources and be given the authority to levy taxes on the demarcated sources and, thirdly, the Committee for Interfiscal Relations may propose the sharing of sources of income.

1.10.4 Personnel and human resources problems

Specific personnel problems may occur because of a lack of uniformity, standardisation and co-ordination when recruiting human resources for the different spheres of government. This could result in the national and provincial spheres of government competing to obtain suitable members of staff (Roux *et al.*, 1997:183). The differences in training arrangements, promotion systems and methods determining salary levels in the three spheres of government, can cause conflict between governments and hamper effective governmental relations because no formal arrangements exist to address personnel issues

(Roux *et al.*, 1997:183). Public officials and political office-bearers cannot be separated from the environment in which they function. Environmental influences will include political trends and legislation; economic conditions; social conditions and technological advances (Schwella *et al.*, 1996:37).

The political environment may influence public officials in such a way that they will have their own political preferences that may be in conflict with the policies of the public institutions or organs of state that employ them (Van der Waldt and Du Toit, 1997:167). This conflict in political preferences may influence intergovernmental relations because human resources play a prominent role in the promotion and maintenance of sound relations.

The importance of institutions and structures for intergovernmental relations have been emphasised throughout this study. These institutions and structures are analysed in the following paragraphs.

1.11 STRUCTURES FOR INTERGOVERNMENTAL RELATIONS

Due to the complex nature of intergovernmental relations, structures are created to promote and ensure sound intergovernmental relations. It is important to clarify different intergovernmental institutional arrangements in order to motivate the necessity of structures for intergovernmental relations. The effectiveness of the following structures for intergovernmental relations and its relevance for conservation management are analysed in a later chapter (*Infra* chapter 5).

1.11.1 Legislative intergovernmental institutional arrangements

Legislative intergovernmental relations refer to the structures, functions and terms of reference which are regulated by the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996) or other legislation and therefore regulate

the relations between Parliament, especially the National Council of Provinces (NCOP), and the Provincial Legislatures (Mentzel and Fick, 1996:121). An institution created for legislative intergovernmental relations is the Mediation Committee with representatives from the National Assembly and National Council of Provinces (Section 78 of the *Constitution of the Republic of South Africa*, 1996 [Act 108 of 1996]). The Mediation Committee settles conflict between the two Houses of Parliament pertaining to legislation.

1.11.2 Executive intergovernmental institutional arrangements

Executive intergovernmental relations are relations aimed at bringing together executive heads (Premiers, members of Executive Councils of provinces and Ministers) to deal with governmental line functions and lateral issues (Mentzel and Fick, 1996:119). Institutions created to promote executive intergovernmental relations are the Committee of Ministers and Members of Executive Councils (MINMEC) and the Intergovernmental Forum (IGF).

The Committee of Ministers and Members of Executive Councils consists of the national line function Ministers and the provincial Members of the Executive Council of provinces (Setai, 1994:228). Mentzel and Fick (1996:120) regard the Committee of Ministers and Members of Executive Councils (MINMEC) as an informal, advisory and implementational executive structure. This structure deals with the drafting of intergovernmental line-function policies and strategies which may guide the spheres of government in the formulating of own policies; transfer of information; allocation and utilisation of financial resources; executing of policies and strategies; harmonisation of legislation and programmes and consultation and negotiation with regard to national minimum norms and standards in the undertaking of joint projects. Although the contributions of the Committee of Ministers and Members of Executive Councils to the development of efficient and effective intergovernmental relations have been substantial, the

Presidential Review Commission on the Reform and Transformation of the Public Service in South Africa (1998:38) found a number of shortcomings related to the Committee as a unit. The shortcomings may be summarised as follow: the large number of meetings of the Committee of Ministers and Members of the Executive Councils leads to poor attendance or attendance by low ranking officials; the management of meetings and the preparation of supporting documentation are poor; there is a lack of clarity over the decision-making authority of the Committee and meetings are dominated by the national government which may lead to consensual decision-making.

According to Mentzel and Fick (1996:123) the Intergovernmental Forum is regarded as the most important intergovernmental institution because of its role as intergovernmental policy planning body. The Intergovernmental Forum is also concerned with the formulation of intergovernmental policies and strategies; involved with multi-sectoral policy matters as well as financial, fiscal and other governmental resource matters; involved in concurrent line-function competencies because of its conflict potential as well as in the effective and efficient functioning of government systems and constitutional issues. The Intergovernmental Forum has no legal basis for decisions reached and no legal mechanisms are in place to ensure that the spheres of government adhere to decisions taken by the Intergovernmental Forum. Permanent members of the Intergovernmental Forum include the following: the President (*ex officio*); the Executive Deputy President; all Ministers and Deputy Ministers of the national Government; Members of the Provincial Executive Councils; Chairpersons of the National Council of Provinces, the Portfolio Committee on Provincial and Local Government, the Financial and Fiscal Commission, the Public Service Commission and the South African Local Government Association as well as Directors-General of all national government departments and respective provincial governments (Audit Report, 1999:113). Representatives of the Independent Electoral Commission may also be asked to attend meetings when election issues are discussed.

Criticism aimed at the Intergovernmental Forum are the following: agendas of the Intergovernmental Forum lack focus and contain a few matters of substance; meetings of the Intergovernmental Forum are of informative rather than deliberative nature; ministerial attendance of meetings has been poor perhaps because the Intergovernmental Forum appears to have little decision-making authority and the relationship between the Intergovernmental Forum and the Committees of Ministers and Members of Executive Councils is unclear (Presidential Review Commission, 1998:37).

Other examples of executive and legislative intergovernmental structures are: Provincial Intergovernmental Forums, Cabinet Clusters; the Budget Council and the Budget Forum as well as the President's Co-ordinating Council (Discussion Document, 1998:23).

The Provincial Intergovernmental Forums were established to provide assistance to provincial departments in co-ordinating their respective responsibilities and its membership includes the Premiers, Members of the Executive Council of the province, mayors, chairpersons of district councils, regional directors and organised local government representatives (Audit Report, 1999:125). Only a small number of the provinces however have operating Provincial Intergovernmental Forums and these Provincial Intergovernmental Forums do not have decision-making authority.

Six Cabinet Clusters were also formed. The Cabinet Clusters are grouped together in different sectors which bring together Ministers of Cabinet. Meetings take place to discuss issues of mutual interest (Audit Report, 1999:272). The six sectors concerned as well as the Ministers included in the various Cabinet Clusters are mentioned in Table 1/1.

Table 1/1: **Cabinet Clusters**

Social Sector	Education; Health; Welfare; Arts, Science, Culture and Technology; Water Affairs; Forestry; Housing; Sport and Recreation; Finance; Public Service and Administration
Economic Sector	Trade and Industry; Finance; Labour; Mineral and Energy; Public Works; Environment; Public Enterprise; Communication; Transport; Housing; Water and Forestry; Agriculture and Land Affairs; Foreign Affairs; Arts, Culture Science and Technology
Investment and Employment	Trade and Industry; Finance; Labour; Agriculture and Land Affairs; Public Works; Housing; Education; Arts, Science, Culture and Technology; Mineral and Energy; Provincial and Local Government; Transport; Public Service and Administration
International Relations and Security	Foreign Affairs; Defence; Intelligence; Safety and Security; Justice; Home Affairs; Finance; Trade and Industry
Criminal Justice	Safety and Security; Justice; Intelligence; Correctional Services; Foreign Affairs; Home Affairs; Welfare; Finance; Public Service and Administration
Governance and Administration	Public Service and Administration; Provincial and Local Government; Finance; Education; Health; Welfare; Housing; Trade and Industry; Transport; Safety and Security; Water and Forestry; Agriculture and Land Affairs

Source: Department of Provincial and Local Government. *The Intergovernmental Relations Audit*. December 1999. p. 273.

A Co-ordination and Implementation Unit (CIU) in the Office of the Deputy President is also provided for to supply the necessary support and co-ordination

for the various Cabinet Clusters. The role of the Co-ordination and Implementation Unit would be to co-ordinate policy and governance, monitor the implementation process and to reconcile different government activities (Presidential Review Commission, 1998:35). The further creation of the President's Co-ordinating Council should assist in improving relations and co-ordination between national and provincial government and should also help with the development of linkages between intergovernmental institutions and structures. The agenda of the President's Co-ordinating Council should be to address substantive issues pertaining to provincial government with the support of the national Department of Provincial and Local Government (Audit Report, 1999:190).

A new forum for Premiers (namely the President's Co-ordinating Council) was only established on 15 October 1999 to address the need for a forum at the highest executive level to promote national/provincial intergovernmental relations (Audit Report, 1999:102). The previous Forum for Premiers had no formal objective and matters discussed did not contribute towards promoting an efficient and effective executive authority. Items discussed in the previous Forum for Premiers ranged from discussing international twinning agreements, common problems and the co-ordination of economic policies to communication on policy alignment and the powers of the provinces. Criticisms against this Forum of Premiers were numerous and the Audit Report (1999:105) found that this Forum lacked co-ordination, persuasive power, technical capacity, decision-making power and a cross-cutting trust. The new President's Co-ordinating Council should have a clear strategic agenda and promote integrated action and co-operation between all three spheres of government.

Other executive intergovernmental relations structures of importance are the Budget Council and the Local Government Budget Forum. Because the focus of this study is on national-provincial intergovernmental relations, the functioning

of the Local Government Budget Forum is not addressed. The Budget Council is however, a very important intergovernmental structure because of its statutory nature. The Budget Council serves as a statutory financial Committee of Ministers and Members of Executive Councils (MINMEC) and was established in terms of the *Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997)*. The Budget Council consists of the Minister of Finance as well as the various Members of Executive Councils concerned with finance of each province. The Minister of Finance acts as chairperson of the Budget Council (Section 2 of the *Intergovernmental Fiscal Relations Act, 1997 [Act 97 of 1997]*). The functions of the Budget Council will include the consultation on any fiscal, budgetary of financial matters and the evaluation of proposed legislation or policy pertaining to finance. Issues concerning financial management or the monitoring of finances of the provinces may also be discussed in the meeting of the Budget Council twice every financial year (Section 3 and 4 of the *Intergovernmental Fiscal Relations Act, 1997 [Act 97 of 1997]*). The Budget Council, being a statutory body, may make binding decisions and differs from other Committees of Ministers and Members of Executive Councils because of its statutory nature.

1.11.3 Administrative intergovernmental institutional arrangements

Administrative intergovernmental relations are the relations between officials and structures which exist for administrative purposes. Examples of structures for informal intergovernmental relations are the Forum for South African Directors-General (FOSAD) and the Technical Intergovernmental Committee (TIC) (Mentzel and Fick, 1996:123). The Forum for South African Directors-General was created to discuss mutual problems, share experiences and learn from each other in terms of the administration of the different provinces and to promote co-ordination between national and provincial departments. The overarching objective of the Forum for South African Directors-General is to promote Section 41 of the *Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)*

pertaining to co-operative government. National Directors-General as well as Directors-General responsible for the provinces are represented in the Forum. According to the Audit Report (1999:92) the Forum of South African Directors-General should contribute towards promoting intergovernmental relations by encouraging communication as well as vertical and horizontal co-ordination between political and administrative structures in the national and provincial spheres of government. A management committee, comprising of a small number of Directors-General report to the Forum of South African Directors-General. The Department of Provincial and Local Government provides technical support to this Forum.

The Technical Intergovernmental Committee has been created to co-ordinate and debate functions falling outside the competence of the provinces (Mentzel and Fick, 1996:125). The role of this above-mentioned structure is to provide technical, administrative and advisory support to executive intergovernmental structures such as the Committee of Ministers and Members of the Executive Councils and the Intergovernmental Forum (Mentzel and Fick, 1996:123). The Technical Intergovernmental Committee has however been criticised for its failure to promote intergovernmental relations in the national sphere of government and the reason may be the failure of legislative intergovernmental structures leading to the poor functioning of technical support committees. Mechanisms are needed to promote consistency in policy formulation regarding intergovernmental relations to ensure compliance with decisions taken by intergovernmental structures and institutions.

1.11.4 Advisory intergovernmental institutional arrangements

The role of advisory intergovernmental structures is to give advice and make recommendations. Examples of advisory intergovernmental institutional structures are the Public Service Commission (PSC) and the Financial and

Fiscal Commission (FFC). According to Section 196 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) the functions of the Public Service Commission include the investigating, monitoring and evaluation of personnel practices in the public service; proposing measures to ensure effective and efficient performance in the public sector; giving directions on aspects such as personnel procedures relating to recruitment, transfers, promotions and dismissals and advising national and provincial organs of state regarding personnel practices.

The Financial and Fiscal Commission is established in accordance with Section 220 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) and makes recommendations regarding financial matters in every sphere of government. Financial intergovernmental relations will be guided by the contributions of the Financial and Fiscal Commission.

Relating to advisory intergovernmental structures for conservation management, a Committee for Environmental Co-ordination may also be established in terms of the *National Environmental Management Act, 1998* (Act 107 of 1998) to co-ordinate actions taken by departments which may have an influence on the protection of the environment (*Infra* paragraph 3.4.2). The Committee may also advise departments on matters affecting the environment; draw up reports and investigate the state of the environment; investigate and make recommendations regarding the assignment and delegation of functions between organs of state; make recommendations to co-ordinate the application of integrated environmental management and make recommendations regarding the harmonisation of the environmental functions of all relevant national departments and spheres of government. The Committee, as provided for, will consist of the Director-General of Environmental Affairs and Tourism (to act as chairperson), the directors-general of a number of national state departments, the provincial heads of departments appointed in concurrence with Members of Executive

Councils of the nine provinces and a representative of the national organisation for local government. The Committee may also divide into subcommittees or working groups (*National Environmental Management Act, 1998 [Act 107 of 1998]*). The Committee for Environmental Co-ordination and its subcommittees would therefore be one of the ideal structures to promote intergovernmental relations pertaining to conservation management because of the involvement of both the national and provincial administrations. The Committee for Environmental Co-ordination, as provided for in the *National Environmental Management Act, 1998 (Act 107 of 1998)* was, however, not established by the end of December 1999 (Director: Biodiversity and Heritage, 1999).

A National Environmental Advisory Forum, consisting of between 12 to 15 members appointed by the Minister of Environmental Affairs and Tourism, is provided for by the *National Environmental Management Act, 1998 (Act 107 of 1998)*. The purpose of this envisaged forum is to inform and advise the Minister of Environmental Affairs and Tourism about the views of interested parties on the application of national environmental management principles (*Infra* paragraph 3.4.1). Members are nominated by organised labour and business or any other community based organisation and appointed by the Minister of Environmental Affairs and Tourism after consultation with the Members of the Executive Councils of the different provinces as well as the Committees of the National Assembly and the National Council of Provinces that scrutinise environmental affairs. Members of the National Environmental Advisory Forum should have the necessary skill, experience and expertise to carry out the functions of the Forum. By the end of December 1999 a National Environmental Advisory Forum was not yet established.

The Department of Provincial and Local Government is in the process of formalising the systems of intergovernmental relations by drafting legislation on intergovernmental relations and is therefore playing an important role in the

facilitation and co-ordination of relations between different spheres of government. During 1999 an audit was conducted whereby all existing structures and processes for intergovernmental relations in South Africa were analysed. Various extensive interviews were conducted to determine the current reality of intergovernmental relations across the three spheres of government. The themes of the audit are explained in Table 1/2.

Table 1/2: Themes of the Intergovernmental Relations Audit

Operation and structure	This component of the audit seeks to obtain empirical data on existing intergovernmental institutions.
The strategic role of intergovernmental institutions	To record officials' understanding of the role, potential and efficacy of the key intergovernmental relations institutions.
Operational linkages	To explore the way the departments/sectors and spheres of government link up with the various intergovernmental structures.
Intersectoral co-operation	To determine how sectors across the various spheres of government are co-ordinated through intergovernmental institutions.
The policy formulation process	To describe the process of policy formulation in and across the various sectors and spheres of government and to discern the level and extent of participation in policy formulation.
Dispute resolution	To determine the nature of disputes that may have arisen since 1994 across spheres and sectors of government and to evaluate mechanisms for dispute resolution.
Information management and technology	To explore the use, capacity and potential of information technology for communication, storage of documents and the monitoring of performances of intergovernmental structures.

Source: Levy, N. and Tapscott, C. 1999. *Intergovernmental Relations - The case for an audit*. Paper delivered at the Conference on Intergovernmental Relations and Provincial Government. March 1999.

The recommendations and suggestions that will emanate from this audit will benefit the Department of Provincial and Local Government in the formulation of legislation regarding intergovernmental relations. The audit results will be published for consideration by various stakeholders.

All structures for intergovernmental relations need to be stable and durable to promote the principles of co-operation. The formalisation of intergovernmental structures will lead to national legislation concerning intergovernmental relations and subsequently to provincial legislation on such matters. The results of the audit concerned, may be a valuable source for the formulation of legislation pertaining to intergovernmental relations.

There are a number of challenges facing intergovernmental relations in South Africa. The following paragraphs focus on these challenges.

1.12 CHALLENGES FACING INTERGOVERNMENTAL RELATIONS

Conservation managers and public officials should be aware of the challenges facing intergovernmental relations in South Africa. Four challenges facing intergovernmental relations in South Africa are explained in the following section (Discussion Document, 1998:14).

1.12.1 Strengthening co-ordination

Planning, policy activities and budgets need to be co-ordinated in order to better intergovernmental relations between the three spheres of government. A number of national and provincial departments are not monitoring performance of service delivery and clear performance indicators are not set while the national government often set policy and

deadlines for implementation without considering the financial and organisational implications for the provinces. The strategic role and effectiveness of the Intergovernmental Forum (IGF) need consideration as well as the quality of the relationship between the Intergovernmental Forum and the Committee of Ministers and Members of Executive Councils (MINMEC). Co-ordination should also be strengthened in order to prevent the duplication and overlapping of functions between the three spheres of government and intergovernmental structures and institutions.

1.12.2 Operation principles regulating intergovernmental structures

Operational principles regulating intergovernmental structures need to be established because the relationship between intergovernmental structures and institutions is unclear. The relationship between executive intergovernmental structures and the National Council of Provinces is unclear particularly in terms of the co-ordinating role of the National Council of Provinces.

1.12.3 The reporting role of intergovernmental structures

The absence of reporting by intergovernmental structures, that were established informally, make it impossible to assess the performance of these structures as well as their effectiveness and efficiency. It is therefore necessary to formalise the reporting role of intergovernmental structures.

1.12.4 Institutional capacity of provincial and local government

The devolution of functions to provincial and local governments should be in line with their capacity to implement these functions in order to prevent

unfunded mandates being devolved to provincial and local government (Discussion Document, 1998:14). It is necessary that national government not only has policy on the intervention of national government, but also on the resumption of functions delegated to the other spheres.

1.13 CONCLUSION

Intergovernmental relations refer to the communication about and co-ordination of activities between governmental institutions and the sharing of resources such as constitutional/legal, financial, political and information resources. In order to understand the complex nature of intergovernmental relations, this study focus on the approaches as well as the classification of intergovernmental relations by referring to the *Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)* as well as by describing the composition of the three spheres of government. The dependence of the maintaining of basic values and principles and fundamental rules of conduct and the establishment of good governance on an effective and efficiently functioning system of intergovernmental relations as well as the influence of the behaviour and attitudes of people in intergovernmental relations are explained. For the purpose of this study, further focus will be on intergovernmental relations pertaining to conservation management between the national and provincial spheres of government.

The form of government in South Africa has a significant impact on the manner in which intergovernmental relations are conducted. The success of a compromise between unitary and federal forms of government are influenced by the value systems of the population as well as the will of political leaders and office-bearers. Furthermore, governmental relations are influenced by generic factors such as the organisational arrangements, financial and fiscal issues, personnel issues and policy-making. Aspects such as the influence of

decentralisation, communication and co-operation on intergovernmental relations cannot be ignored. The formalisation of intergovernmental relations into structures by means of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) and possible future legislation regarding intergovernmental relations, emphasise the need to alter the current informal system of intergovernmental relations to ensure the minimising of conflict between the spheres of government and the promotion of the general welfare of society. The current reality of intergovernmental relations in South Africa will inevitably form the scope, objectives and timing of an Act of Parliament regulating intergovernmental relations. The *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) however does not stipulate whether intergovernmental relations and dispute settlement should be dealt with in one act or whether non-legislative ways should be applied to formalise intergovernmental relations.

More efficient monitoring and assessment of the operation of current structures and institutions for intergovernmental relations is necessary to eliminate any shortcomings or limitations. Improved consultation and information sharing between and within sectors in all three spheres of government as well as the involvement of the community in the intergovernmental process require attention. Clarity on the obligations of different spheres of government concerning concurrent responsibilities, to avoid overlapping and duplication of functions, is necessary and serious consideration should be given to the asymmetrical devolution of functions and the lack of capacity of national, provincial and local governments to implement functions.

CHAPTER 2

A COMPARATIVE ANALYSIS OF INTERGOVERNMENTAL RELATIONS

2.1 INTRODUCTION

When analysing intergovernmental relations pertaining to conservation management, it is necessary to compare the nature and structures for intergovernmental relations in South Africa with the realities of intergovernmental relations in other states. The comparisons provide an opportunity to study similar or different trends pertaining to intergovernmental relations in other states and supply authorities responsible for the development of a policy for intergovernmental relations in South Africa, with information that may assist in the formalisation of future legislation for intergovernmental relations. In order to compare intergovernmental relations in South Africa with intergovernmental relations in other states, it is important to focus on the constitutional dispensations of the different states as well as the influence of forms of government on intergovernmental relations. Aspects such as the influence of centralisation or decentralisation as well as co-operation between different spheres of government should also be borne in mind.

Although every state has its own history and constitutional provisions, valuable lessons can be learnt from analysing key aspects of intergovernmental relations in states other than South Africa. An analysis of the successes and failures of intergovernmental relations in other developing states, such as Brazil and India, may provide valuable information on the study of intergovernmental relations and may also contribute towards promoting intergovernmental relations in South Africa. In the following chapter, intergovernmental relations in South Africa are compared to key aspects of intergovernmental relations in a number of selected states.

2.2 INTERGOVERNMENTAL RELATIONS IN BRAZIL

The state of Brazil is currently a federation consisting of 27 states with each state having its own Constitution which is very similar than the federal Constitution which was proclaimed in 1988 (Soares, 1998:67). Brasil had its first republican Constitution in 1891, which was based on the Constitution of the United States of America, and which established a bicameral Congress. The different states had equal representation in the Congress even though great disparities existed among the states in terms of population distribution, income and economic activities (Fleischer, 1998:45). A President and governors, that were named State Presidents, were elected and the states were given autonomy in terms of political and fiscal matters. Municipal governments were also established and were very dependent on the states for the appointment of public officials and for public works resources (Fleischer, 1998:42). Municipal governments were rated in terms of their political beliefs. Those municipal governments that adhered to the same political principles as the federal and state governments were favoured more than those that were not in the same political camp. By means of military intervention by the federal government, certain states were later replaced by states that followed the same political principles as the federal government so that better federal-state relationships could be established (Fleischer, 1998:43). Intergovernmental relations in Brazil are influenced by the unequal distribution of resources among regions and states, including economic and political resources.

The current federation in Brazil consists of the federal government, which is the main policy initiator, and federal units namely the states and municipalities. These three tiers of government have distinct and concurrent competencies. The different states have the power to legislate on certain matters and also have power over municipalities, while the municipalities may only legislate on local matters which is not already provided for in state provisions (Soares, 1998:68).

The federal government can intervene and overrule competencies of the states after the Supreme Court has ruled on the matter and in cases of national interest, where there is public disorder or state financial trouble (Tapscott, 1998:15). Intervention of the federal government in the affairs of state governments should only occur after the particular matter has been thoroughly discussed and formal provisions to overrule are made in the Constitution through petition from the executive to the Supreme Court, through an appeal to the judiciary or an intervention decree to be confirmed by Congress or State Assembly (Soares, 1998:70). An informal means of intervention is described by Soares (1998:71) as follows:

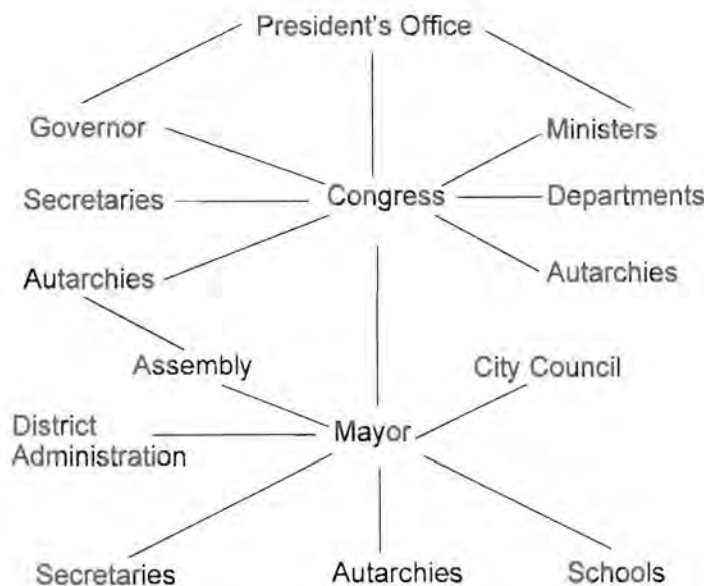
“An infrequent, but informal and customary, means to overrule and intervene is the anticipation of legislation over the same subject while it is still under public discussion within the state or municipality, thus allowing a federal law to implement a policy in a different way, within the same principles”.

In the states of Brazil, governors are elected and have a lot of economic power. A number of the governors have previously been mayors and/or senators more than once (Fleischer, 1998:47). The governors control the budget of the state, the local media, state police and are also concerned with the making of political appointments (Tapscott, 1998:18). Governors influence the delegation of the state in Congress and therefore the President and Ministers in the federal government have to acknowledge the demands of the governors when discussing policy decisions and evaluating conflicting demands (especially when Congress has to approve a decision). Intergovernmental relations in Brazil therefore have a strong political character. Brazil also has a very centralised presidential form of government which is in charge of all financial matters, including the state-operated banks. A large number of the governors have majorities in their state legislatures and are also responsible for the appointment

of judges to the state Supreme Courts (Fleischer, 1998:47). The latter questions the independence of the state's judiciaries.

Each federal unit has government structures that are very similar to one another but have different names, namely states and municipalities have secretaries and sometimes autarchies (Soares, 1998:70). The relationships between different federal units are mostly bottom-up where mayors and state secretaries make demands to federal agencies through congressmen and the legislature of the federal government mostly support cities, state secretaries and autarchies (Soares, 1998:69)(See Figure 2/1).

Figure 2/1: The relationship between the federal government and different federal units in Brazil.



Source: Soares, R. M. 1998. *Intergovernmental Relations in Brazil. Intergovernmental Relations: An International Comparative Study.* Pretoria: Department of Constitutional Development and Provincial Affairs.

Demands, over public policy or the implementation of programmes, made by federal units in Brazil, may only occur after widespread negotiations had taken place (Soares, 1998:71). Negotiations between the federal units and the federal government imply that intergovernmental relations do exist although it is more of an informal nature than through formal intergovernmental structures.

According to Soares (1998:70) overlapping sometimes occurs within the jurisdictions of secretaries by autarchies pertaining to matters of the environment, agriculture, administration and development and therefore conflict among executive authorities does take place. An example of frequent conflict between areas where both the agencies have the resources and capabilities to develop programmes, is the overlapping of conservation and environmental programmes and rules in Brasilia, Paraná and São Paulo. Pressure from the states and municipalities to obtain more financing and political support for their programmes as well as from the Union to obtain support for federal programmes and policies, sometimes encourage interest groups to assist in getting finance and expertise for the implementation of projects in each jurisdiction. Although this assistance should lead to the addressing of all federal, regional and municipal concerns, problems are experienced, for example in the field of environmental policy (Soares, 1998:74). Where complementary environmental programmes have been implemented successfully in Rio de Janeiro and São Paulo, implementation in the Northeast and Brasilia is difficult because interest groups differ in terms of their approaches from the federal government. In the North the three tiers of government also differ with regard to the timing and implementation of environmental policies in the area (Soares, 1998:74). There are problems with regard to intergovernmental relations because of the lack of funds from the national budget for projects and the allocation of federal projects to be implemented by federal offices and agencies or autarchies. Federal programmes are usually undertaken by the federal offices which are situated all over the states and they have agencies in state capitals as well as local offices

in the cities. Where federal agencies do not exist, federal offices and state agencies enter into agreements (which are mostly determined by political leaders and interested allied parties in the states and municipalities and also at the federal level)(Soares, 1998:72). Autarchies also assist when general agreements for co-ordination are undertaken.

Financial intergovernmental relations in Brazil are characterised by the distribution of constitutionally mandated amounts of money among states and municipalities in accordance with the share that is provided for by regulation (Soares, 1998:72). The Union is responsible for the collection of main taxes through its agencies or through state and municipal agreements, and the sharing of money should be directly related to the size of the population, for municipal shares, as well as inversely proportional to *per capita* income for state shares. According to constitutional provisions regarding finance, regional funds should be shared by regions that are less developed to enable them to integrate with other regions (Soares, 1998:72). The transfer of money by the Union to the smaller federal units, such as the states and municipalities, is undertaken through official banks. Approximately all of the states have their own banks, with almost all having financial troubles. States and municipalities are indebted to regional enterprises and their governments because of unpaid loans. This indebtedness leads to the slow initiation of state policies. Over the past three decades, a lot of fiscal autonomy was granted to the states and municipal governments in Brazil, an example being the fact that states are permitted to require loans directly from multi-lateral funding agencies (Tapscott, 1998:25).

In 1987/88 the Constitutional Assembly decided to lower the federal government's share of income from taxes which led to a deficits of the budget of the federal government because the responsibilities of the federal government were not reduced. To address the deficit problem of the federal government, a Fiscal Stabilisation Plan was introduced which gave the Minister of Finance the

power to reduce or abolish transfers to the states and municipalities temporarily (Tapscott, 1998:25). The Fiscal Stabilisation Plan led to the establishment of a continuing bargaining process with the Minister of Finance, governors, state finance secretaries and senators promoting financial intergovernmental relations.

Except for the informal channels of dialogue as means for promoting intergovernmental relations in Brazil, as well as lobbying and communication offices in the capitals of most big cities, structures for intergovernmental relations consist of an Interparliamentary Union and an Association for the Benefit of Municipalities. According to Soares (1998:75) neither of the two structures contribute significantly to the promotion of intergovernmental relations because the main relations between the federal government and federal units take place through politicians. Although governors relate with the two houses of the Congress as well as the President and Ministries, their relations are usually within specific regions.

2.3 INTERGOVERNMENTAL RELATIONS IN INDIA

Although the state of India is classified as a federation, the Constitution of India stipulates that the constitutional structure of India is a Union of States, its 395 Articles and ten Schedules do not refer to the word federal (Mehra, 1998:80). The developing state of India has three levels of government namely the Union or Central Government, State Governments (25) and Union Territories (seven). Intergovernmental relations in India are therefore analysed in terms of these three levels. The history of India is characterised by political uncertainty and debate in the legislature regarding the federal or union nature of the state. There were plights from the Indian National Movement to enforce federal principles in the 1920's while the Nehru Committee Report requested a strong central Union Government for India in 1928 (Mitra, 1928:71). A final report of the Union Powers Committee in 1947, which made proposals regarding the

constitutional structure of India, recognised the territories in India as autonomous units but also stressed the importance of a strong central authority. The proposals were entrenched in the *Indian Provisional Constitution Order of 1947*. Mehra (1998:83) is of the following opinion regarding debates in the Constituent Assembly of India and the Indian federal design:

“The Constituent Assembly debates clearly reflect the fears of centrifugal forces in a multi-cultural state striving for nationhood and the concerns of national integrity overpowering the concerns of grassroots democracy and devolution . The federal design emerging out of the brainstorming in the Constituent Assembly and subsequent federal experiments have been aimed at discovering the manner and extent to which ethno-linguistic diversity should not only be recognised but also assigned a role in the politico-administrative system”.

Even though the Indian Constitution stresses the importance of a strong central government, Schedules five and six of the of the Constitution of India provide for the establishment of Autonomous Regional or District Councils to resolve ethnic conflicts. According to Roy Burman (1993:7), intergovernmental problems were created with the use of the Sixth Schedule in the Indian Constitution. These intergovernmental problems are summarised in Table 2/1.

Table 2/1: **Problems created for intergovernmental relations because of the use of the Sixth Schedule in the Constitution of India**

It is not clear whether the Governor, as the constitutional head of the State, is to be guided by advice of the State Ministry, or whether he can exercise his power based on the resolutions adopted by the Autonomous District Council.

There has been ambiguity regarding the context and conditions of the right of supersession of the District Council by the Union Government.

The power of the Union Government in the disbursement of the share of revenue of the District Council, has not been clear.

Concurrent jurisdiction of some states, even in matters of enactment of customary laws, has been a point of contention.

The right of the State to take over functions like primary education, which are inherent functions of the District Council under the provision of the Constitution, has set off jurisdictional row on several occasions.

The discretionary role of the Union Government in assigning development activities to the District Council has given the State an upper hand.

Source: Burman, B.K.R. 1993. *Federalism in Perspective: Problems and Prospects for North-East India. Mainstream*. 7 August 1993. p. 7.

From the above-mentioned problems created for intergovernmental relations in India, it is evident that the Indian Constitution favours a central union which has the power to create new states and change the boundaries of current states. The union-state relations will therefore impact on intergovernmental relations and the limitations of the authority of the states and the dominance of the Union Government over the states may lead to conflict.

After the new Republic of India had been established, the States Reorganisation Commission (SRC) was created to redraw the internal boundaries of India (Mehra, 1998:85). Several changes were later made to these internal boundaries of India when the Union Government was forced to agree to the proposals of a number of states or regions to become autonomous. The power of the Union Government to change the boundaries and names of states were now limited and democratic principles were adhered to in the stipulations of the Constitution of India. The influence of political parties and leaders in the making of decisions became more important than in the past (Mehra, 1998:86). Articles 245 to 291 of the Constitution of India now regulates intergovernmental relations between the Union Government and State Governments.

The Union-State relations in India can be broken down into three categories namely, legislative, administrative and financial intergovernmental relations. According to Merha (1998:86) the issues of main concern regarding the mentioned categories of Union-State intergovernmental relations are summarised in table 2/2. It is also important to note that three lists of functions to be rendered by the Union and State Governments are mentioned in Article 246 of the Constitution of India, namely the Union list, State list and Concurrent. These list of functions will have and influence on legislative intergovernmental relations in India.

Table 2/2: Legislative, administrative and financial intergovernmental relations in India

Legislative intergovernmental relations	Administrative intergovernmental relations	Financial intergovernmental relations
Although the States are autonomous, parliamentary dominance over state legislatures influences legislative intergovernmental relations.	The executive power of the Union Government is co-extensive with its legislative power and the same applies to the executive power of the States.	Sharing of revenue between the Union Governments and the States are promoted through the existence of a finance Commission.
A list of 47 concurrent competencies exist over which both the Union and State governments can legislate.	The Union Government has control over the State Governments in administrative matters.	The allocations and distributions made by the ten Finance Commissions that have been established and their rewards for proper sharing of resources between the Union and the States has failed to put the question of fiscal federalism in India beyond debate.

<p>A Union law will prevail over a State law when a dispute arises between a law made about a concurrent subject giving the Union Government an advantage over the State Governments.</p>	<p>The Union Government has the power to direct the State Governments when financial propriety needs to be observed and to reduce the salaries of persons serving in connection with the affairs of the Union, for example Judges of the Supreme and High Courts.</p>	<p>The Central (Union) Government have greater power of taxation, but the revenue collected has to be shared in accordance with constitutional principles. The constitutional principles therefore guides financial intergovernmental relations in India.</p>
<p>Powers of Parliament will extent over a State subject in the following circumstances:</p> <p>if the Council of States declares by a resolution that the Parliament may, for a temporary period, make laws with respect to matters in the State List when it is of national interest and for as long as the resolution remains in force; during a period of a Proclamation of Emergency;</p> <p>when two or more States declare that it shall be lawful for Parliament to make law with respect to matters included in the State List relating to those States;</p> <p>when international obligations have to be met; and</p> <p>when a Proclamation of Failure of Constitutional Machinery in a state is made by the President.</p>	<p>The executive functions have usually remained with the States except in the following instances:</p> <p>where a law of Parliament relating to subjects of a concurrent nature delegates certain executive functions specifically in the Union; and</p> <p>where the provisions of the Constitution itself vest certain executive functions upon the Union, for example the implementation of a treaty or international agreements.</p>	<p>The five taxation sharing arrangements in India are the following:</p> <p>duties levied by the Union but collected and appropriated by the States;</p> <p>taxes levied and collected by the Union but assigned to the States;</p> <p>taxes levied and collected by the Union and distributed between the Union and the States;</p> <p>surcharge on certain duties and taxes for purposes of the Union;</p> <p>and</p> <p>taxes which are levied and collected by the Union and may be distributed between the Union and the States.</p>

Source: Mehra, A.K. 1998. Intergovernmental relations in India. *Intergovernmental Relations: An International Comparative Study*. The Department of Constitutional Development and Provincial Affairs. p. 94.

Other institutional arrangements for intergovernmental relations in India are recognised in the Constitution of India. The Parliament of India is able to arbitrate when disputes arise between States concerning the use and management of waters in any inter-State river (Article 262 of the Constitution of India) An Inter-State Council may also be established in India to inquire, give advice and make recommendations pertaining to disputes (Mehra, 1998:95).

To be able to assess the value of comparing intergovernmental relations in Brazil and India with intergovernmental relations in South Africa, it is necessary to highlight some similarities and differences between the institutional structures of the different states. In the following paragraphs intergovernmental relations in Brazil and India are compared with intergovernmental relations in South Africa.

2.4 A COMPARISON OF INTERGOVERNMENTAL RELATIONS IN BRAZIL AND INDIA WITH SOUTH AFRICA

The constitutional structure of Brazil may be compared with the constitutional structure of South Africa in terms of the dividing of competencies between different tiers or spheres of government which in turn necessitates intergovernmental relations. Even though the Constitution of Brazil, being a federation, differs from the constitutional dispensation of South Africa, comparisons can still be made between intergovernmental relations in the two states because of the number of federal elements enshrined in the *Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)* (*Supra* paragraph 1.6.3). The influence that the separation of powers has on intergovernmental relations in Brazil, as in South Africa, emphasises the strong political component in intergovernmental relations in the two states. The political nature of intergovernmental relations is also strengthened by the existence of a number of political parties in both states.

The federal system in Brazil allows for the Federal and State Governments to both have distinct and concurrent competencies and, as in South Africa, it may have a direct influence on legislative intergovernmental relations in the two states. In South Africa, the national government may intervene in the action of provincial governments in certain instances just as the Federal Government in Brazil will override decisions made by the State Governments. Intergovernmental relations in Brazil are mainly informal and seldom structured and may also be compared with the informal nature of intergovernmental relations in South Africa where interaction between national and provincial departments occur by means of e-mail, fax, memorandums or personal visits. The opening of informal channels of communication may however contribute a lot towards resolving conflict between different spheres of government.

Financial intergovernmental relations in Brazil are influenced by the power struggle between the Federal and State Governments. The distribution of funds to the States by the Federal Government is therefore influenced by the political support it receives from the different states. In South Africa, allocation of revenue is more equally distributed and not dependent on the political support of the various provinces (*Supra* paragraph 1.4.2). The most valuable lesson for South Africa to be learnt from the Brazilian financial intergovernmental relations is according to Tapscott (1998:26) the following:

“... where a constitution assigns considerable fiscal autonomy to lower tiers of government, the potential exists for unco-ordinated financial management, overspending and, ultimately, rampant corruption. This is because the provincial governments have little accountability other than to themselves.”

The national government of South Africa will therefore have to monitor and control provincial budgets by strengthening the role of the Budget Council and

Financial Committees of Ministers and Members of Executive Councils of the provinces. As is the need in Brazil, the formalisation of legislation with regard to intergovernmental relations in general should also receive urgent attention in South Africa..

The three tiers of government and the distribution of power in India can be compared to the three spheres of government in South Africa (*Supra* paragraph 1.3). This distribution of power in both states will influence the legislative, executive and administrative intergovernmental relations (the similar classification of intergovernmental relations in the two states need to be noticed). Concurrent competencies to the provinces and national government are assigned in Schedule four of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) while the *Indian Constitution* also provides for competencies assigned according to a Concurrent List which guides the legislative spheres of the Indian Union Government and the various State Governments. Similar to the case in South Africa, regarding exclusive competencies in the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996), the Union Government's exclusive responsibilities in India include defence, foreign affairs, banking and specific tax levying (Tapscott, 1998:13). As already mentioned in a previous chapter, the national government in South Africa also has the power to intervene and override provincial decision-making when the national interest has to be protected (*Supra* paragraph 1.3.3). The Union Government in India may also intervene directly in the affairs of the States and this intervention will have an influence on intergovernmental relations in India just as the national government's intervention in provincial issues, under particular circumstances, will also impact on intergovernmental relations in South Africa.

The South African national government is responsible for the collection of income tax as well as for the distribution of revenue collected among the nine

provinces. The Union Government in India has, according to Tapscott (1998:24), greater power to levy taxes and to distribute a portion of the revenue collected to the different States in India. A Finance Commission is further responsible for determining of principles for the distribution of revenue. The Financial and Fiscal Commission in South Africa has similar responsibilities to those of the Finance Commission in India and plays an important role in regulating financial intergovernmental relations (*Supra* paragraph 1.11.4). Valuable lessons can be learnt from comparing intergovernmental relations in South Africa with the same in other states, such as Brazil and India, but the unique situation in South Africa still requires unique legislation to regulate intergovernmental relations. A need for definite structures and institutions for intergovernmental relations is evident and open channels of communication should lead to better interaction between spheres of government.

2.5 CONCLUSION

The constitutional dispensation in South Africa is unique and addresses the needs of the heterogeneous society it represents. Valuable lessons can however be learnt from studying intergovernmental relations in other states even though their constitutional provisions may differ from those mentioned in the *Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)*. Intergovernmental relations in Brazil and India are, in some instances, very similar to governmental relations in South Africa although both states have federal governments. The strong central element in the constitutions of the two selected states however, makes it possible to identify certain similar elements in the study of intergovernmental relations. South Africa has a number of structures and institutions for intergovernmental relations that assist in promoting relations between the three spheres of government. A lack of formal legislation to guide intergovernmental relations may however lead to confusion between national and provincial legislatures where concurrent competencies exist.

Although lessons can be learnt from other states regarding intergovernmental relations, it is still up to the policy-makers of South Africa to evaluate the local situation and to formulate legislation that will promote intergovernmental relations in South Africa.