

Implementing intergovernmental

The lack of a structured relationship between provincial local government associations and the provinces has been a burning issue. Unlike SALGA, which has the right to take part in the NCOP, and participate in national intergovernmental fora such as MINMECs, provincial associations have no formal communication and cooperation links with their provinces. In an endeavour to deal with this void, the Eastern Cape Local Government Association (ECLGA), the Executive Council of the Eastern Cape and the Provincial Legislature concluded on 15 April 1999 a Memorandum of Understanding on intergovernmental relations. The parties see this Memorandum as a first step towards formalising co-operation and intergovernmental relations between the provincial and local spheres of government by way of legislation.

Purpose

The purposes of the Memorandum are threefold:

- to concretise and institutionalise cooperative government and intergovernmental relations between the provincial and local spheres of government according to the principles of Chapter 3 of the Constitution;
- to provide for interim mechanisms in terms of which the provincial government can discharge its constitutional duty to support and strengthen the capacity of municipalities to manage their own affairs, exercise their powers and perform their functions; and
- to provide for mechanisms for resolving intergovernmental conflicts in the absence of an Act of Parliament as provided for in section 42(2)(b) of the Constitution.

The aim is thus to give effect to the basic principles of intergovernmental relations and the Memorandum is regarded as "the best way forward to obtain the best practical experiences to include in legislation".

Provincial Intergovernmental Relations Conference

The principal intergovernmental relations mechanism is a Intergovernmental Relations Conference which must be held annually in August. The Conference is composed of

- the Executive Council,
- members of the Provincial Legislature, and
- the Executive Committee of ECLGA.

The Speaker or Deputy Speaker of the Legislature is the chairperson of the Conference.

The task of the Conference is to provide policy and guidelines for -

- co-operative government between Provincial and Local Government in the Province;
- provincial intergovernmental relations in the Province;
- the support and strengthening of the capacity of municipalities.

Provincial Intergovernmental Relations Committee

While the Conference sets the broad policy and guidelines, the Provincial Intergovernmental Relations Committee is tasked with its implementation. The Committee consists of

- the MEC responsible for Local Government;
- the chairperson of the Standing Committee on Local Government of the Legislature;
- the chairperson of ECLGA, the MEC responsible for intergovernmental relations in the Executive Council;

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- the chairperson of Committees of the Legislature;
- the ECLGA representative on the Local Government MINMEC; and
- the NCOP, and the chairperson of the Standing Committee on Constitutional Affairs in the Legislature.

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Committee must meet monthly. It takes decisions by consensus, and if consensus cannot be reached, the Committee must agree upon a mechanism for making decisions. The Committee must also table an annual report at the Conference.

Provincial Intergovernmental Relations Technical Committee

The task of implementing the decisions of the Conference and the Committee falls on this Committee. It is comprised of the following senior officials:

- a senior official responsible for intergovernmental relations in the office of the Director-General;
- a senior official from the provincial Department responsible for local government;
- a senior official from the Legislature who will be the chairperson; a senior

relations in the Eastern Cape

official from ECLGA;

- a senior official of an urban municipality designated by ECLGA; a senior official of a rural municipality designated by ECLGA;
- a senior legal official nominated by the Committee; and
- a senior official with financial skills nominated by the Committee.

Apart from its primary implementation function, this Technical Committee must provide technical and secretarial services to the Committee and the Conference and generally assist and advise the Committee on the implementation of the policy and guidelines provided by the Conference.

Participation in Legislature, Provincial and Local Government Structures

The three parties to the Memorandum explicitly accepted the principles of participation by organs of one sphere of government in structures of another sphere on matters of common interests, as well as consultation among these organs of government. To implement these principles, the parties undertook to investigate mechanisms to ensure participation in and consultation with their respective structures, including-

- participation by ECLGA in the Standing Committees of the Provincial Legislature;
- participation in ECLGA Committees by MPLs; and
- participation by ECLGA in intergovernmental fora and the Executive Council Committee on Intergovernmental Relations.

The parties committed themselves to

formally adopt the Memorandum at their first respective meetings. At the time of writing, the ECLGA was set to adopt the Memorandum at its executive committee meeting scheduled for the week of 6 December 1999. Thereafter, a meeting of the Technical Committee will be convened early in 2000 to set the agenda for the Provincial Intergovernmental Relations Committee.

Evaluation

This is an important document because it sets an example of a provincial initiative that gives flesh to the bare bones of Chapter 3 of the Constitution. The creation of intergovernmental fora in the form of the annual Conference and the monthly Committee meetings should place intergovernmental relations in the Eastern Cape on a sound footing and promote co-operative government.

Formalising each party's participation in the other parties' structures will further enhance this process. Giving ECLGA the right to participate but not vote in the Standing Committees of the Legislature would follow the example of SALGA's participation in the National Council of Provinces.

The first tasks of the two fora should be to deal with the other two purposes listed in the Memorandum – the role of

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provincial governments in supporting and strengthening municipalities, and the settlement of intergovernmental disputes.

(a) Provincial support for municipalities

It has been a general complaint across South Africa that provinces are not fulfilling their constitutional obligation of supporting and strengthening local government. Often no budget has been allocated for this purpose. It is trusted that the Conference and the Committee will address this issue as a matter of priority.

(b) Settlement of intergovernmental disputes

There is no Act yet which provides for appropriate mechanisms and procedures to facilitate the settlement of intergovernmental disputes. Should the Conference and the Committee devise such mechanisms and procedures, the practice of this aspect of

intergovernmental relations would assist the development of the envisaged national legislation.

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