INTERGOVERNMENTAL RELATIONS AND THE VOICES OF THE MARGINALISED

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Despite a mandate by the Constitution to adhere to the principles of co-operative government, in practice intergovernmental relations continues to face challenges that often paralyse local government responses to the voices of many in South Africa.

Despite the new local government system, marginalised communities often resort to violent protests to express their service delivery concerns. Although government has responded, it is still a far way off from solving the real problems that underpin these protests. Government officials, particularly at local government level, claim that some are genuine service delivery protests motivated by real service delivery failures, while others are politically driven. Municipalities claim that some service delivery concerns do not fall within their local sphere of government and that they are simply the first door that disgruntled communities knock on. In many instances, senior government officials who have great influence over policy change admit that IGR problems, particularly the co-ordination of service delivery amongst all three spheres of government, is often to be blamed for these problems.[1] However, communities waiting for service delivery do not care which sphere of government delivers what. All that they are concerned about is seeing services delivered effectively in their areas.

Despite their being channels of participation in 'invited' spaces, through which communities have a voice, failure by government to deliver has led communities to show their dissatisfaction through

protests in 'invented' spaces'. More often than not, these protests are directed at local government.

Poor IGR has two fundamental consequences – the voice of citizens as expressed in local processes is ignored or significantly watered down in IGR processes, and effective service delivery is hampered, contributing to the frustration of impoverished and vulnerable communities.

The powers and functions listed in Schedule 4 and 5 B of the Constitution. Section 156 (1), (2) and (5) of the Constitution equip municipalities with the necessary executive and legislative powers. Municipalities fulfil these duties within a regulatory and supervisory framework. The oversight powers of both national and provincial government outlined in sections 139 and 154 of the Constitution is a core component of this framework. The Presidency's Ten Year Review Report (2003:8) provides that 'municipalities are subject to both national and provincial regulatory and supervisory powers [and] they are responsible for the provision of basic services'[2].

In practice municipalities also play a facilitative role in assisting provinces to fulfil their mandate. Of concern is the extent to which municipalities are expected to fulfil aspects of concurrent national and provincial functions such as housing without being given the necessary authority or financial resources to fulfil these functions effectively. According to the Housing Act (1997), it is the duty of national, provincial and local government to give priority to the needs of the poor in respect of housing development and to consult meaningfully with individuals and communities affected by development. [3]

This paper focuses on IGR in relation to human settlements development with particular emphasis on the relations between provincial and local government. It explores the challenges related to IGR

and the impact through a range of case studies. The research methodology includes a qualitative case study approach including:

- Literature review (policy documentation, relevant government documents, theoretical studies, case study documentation etc),
- Interviews with government officials and site visit observations, and
- Qualitative analysis of data collected.

We anticipate that the findings will assist local, provincial, and national government, development practitioners and marginalised communities in advocating for better IGR and information about where to channel community concerns so they can be addressed more effectively. This will also assist communities and support organisations in identifying which levels of government and departments to directly interact with regarding a specific service delivery issue.

THE EVOLUTION AND DEFINITION OF IGR

South Africa's newly elected democratic government in 1994 faced a mammoth task of transforming a racially segregated country as well as restructuring government systems. In December 2000, South Africa held local government elections which marked the end of the local government transitional phase and gave birth to 284 fully elected municipalities. The transformation resulted in local municipalities being the key site of service delivery and development.[4] For effective service delivery at the local level, local government requires support from the national and provincial government through effective IGR.

As defined in the White Paper on Local Government (1998), 'intergovernmental relations are the set of multiple formal and informal processes, channels, structures and institutional arrangements

for bilateral and multilateral interaction within and between spheres of government'. In South Africa a system of IGR is emerging to give expression to the concept of cooperative government contained in the Constitution.[5] According to the IGR Framework Act Inaugural Report (2005/06-2006/07), 'the effectiveness of the IGR system may be measured by the extent to which it adds value in effective service delivery, development and good governance across the three spheres of government'.[6]

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The primary location of the IGR system is within the Department of Cooperative Governance and Traditional Affairs (Cogta) in conjunction with the Cabinet Governance and Administration Cluster. Cogta is responsible for various programmes and policy interventions geared towards predictability, stability and institutionalisation of the IGR system. The Intergovernmental Relations Framework Act, No.13 of 2005 was promulgated in response to this mandate.[7]

THE LEGAL FRAMEWORK

In addition to the Constitution,[8] South Africa has various pieces of legislation that inform the IGR system, with common underlying goals to guide the interaction of different spheres of government. Although the three spheres of government are independent, the Constitution provides that they are also interrelated. In other words, they are dependent on each other to ensure the well-being of citizens. IGR legislation guides spheres to provide effective and efficient government, which must be achieved through mutual consultation on policy implementation, co-ordinated strategic planning, and

accountability – and ultimately to ensure that services are provided for all citizens of this country.

THE WHITE PAPER ON LOCAL GOVERNMENT

The White Paper (1998)[9] directs all spheres of government to observe the principles of co-operative government as put forward in the Constitution. Co-operative government assumes the integrity of each sphere of government[10], providing a system of IGR with the following strategic purposes:

- To promote and facilitate co-operative decision-making,
- To co-ordinate and align priorities, budgets, policies and activities across interrelated functions and sectors,
- To ensure a smooth flow of information within government, and between government and communities, with a view to enhancing the implementation of policy and programmes, and
- The prevention and resolution of conflicts and disputes.[11]

These objectives indicate the importance of effective partnerships in co-operation between all government spheres.

IGR FRAMEWORK ACT

The Intergovernmental Relations Act (2005)[12] provides a framework for national, provincial and local governments to facilitate co-ordination in the implementation of policy and legislation, and to provide for mechanisms and procedures to facilitate the settlement of intergovernmental disputes. In line with this, different spheres of government are required to establish IGR forums to assist them to conduct their affairs.[13] These forums have been established at national, provincial and local level and are meant to deal with issues of alignment, integration and coherence. They are also to develop

systems and processes by which national, provincial and local governments pursue common objectives and engage in joint work and common projects to give effect to these objectives. The IGR forums include the President's Co-ordinating Council, National Intergovernmental Forums, Provincial Intergovernmental Forums, and Municipal Intergovernmental Forums.[14] Although not participatory structures to be used by community members, their existence gives government spheres and departments an opportunity to evaluate the extent to which planning and service delivery processes reflect the priorities set at the local level, as expressed by local communities.[15]

The President's Ten Year Review (2003:22), prior to the establishment of the IGR forums, pointed to the fact that local government was not well represented in the IGR process. It recommended that the participation of local government in national and provincial intergovernmental forums and processes should, where appropriate, be institutionalised.[16] While the forums by themselves cannot constitute co-operative government, it is the system and processes they produce and implement in the three spheres that give co-operative government life.

The Fifteen Year Review Report on IGR (2008: 62) has highlighted some crucial gaps in the functioning and efficacy of IGR forums, revealing a number of challenges that must be addressed to improve the system.[17] IGR forums, particularly at the local level, tend to be extensions of council forums or meetings and are criticised for excluding the voices of marginalised communities. There is a perception that because representatives, such as councillors, mayors or other delegates, are included in the forums, community voices have enough representation. Others argue that these are just forums about marginalised people, without involving them in key decisions about how services will be

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delivered and how expression will be given to the priorities set in IDP and budgeting processes.

MUNICIPAL SYSTEMS ACT
The Municipal Systems Act (2000) also responds to the directive in the Constitution to promote IGR. It gives local government the mandate to structure its operational systems in a way that joins forces with local communities. Section (5) allows the community an opportunity to participate in the activities of the local municipality. This includes participating in decision-making processes, ensuring that council meetings are open to the public, accessing council information and using and enjoying public facilities etc. Chapter 4 requires municipalities to include local communities in participation processes.[18] Community participation at this level is of the utmost importance as this is the level where municipalities draft plans that assist national and provincial governments to align their planning and budgeting to meet community needs and demands. However, instead of bottom-up planning as intended by law, more often than not, municipalities align their planning with that of national and provincial government.

IGR AND HUMAN SETTLEMENTS
Human settlements development is one of the most important and controversial issues in South Africa. The democratic government inherited serious human settlements challenges, negatively affecting the poor majority. Human settlements development is guided and monitored by the national government as part of its process of housing development. Provincial

governments are required to promote, co-ordinate and implement housing programmes within the framework of the national housing policy. Development projects have brought many IGR tensions to the fore, amid perceptions of competition between the different spheres for recognition in housing delivery processes.

In a number of projects undertaken by Planact between 2005 and 2010, we have observed challenges with regards to IGR, particularly a lack of co-ordination resulting in blockages of projects aimed at community development. Examples include the People's Housing Process (PHP) and informal settlement regularisation and upgrading programmes.

While community members are urged to participate in local government processes as the direct government interface for development projects, local government activity and authority is often limited by national and provincial roles and actions, as well as by poor co-ordination and communication among the various levels. This results in community voices fading, without much attention paid to them by different spheres and departments of government. Community members often do not understand the respective roles and responsibilities of different

spheres of government in the implementation of projects and direct their frustrations to the closest and most accessible to them, local government and, more specifically, ward councillors.

These are some practical examples of IGR problems that created distress in key community projects.

PEOPLE'S HOUSING PROCESS (PHP) PROJECTS

The PHP is a form of housing delivery that depends heavily on community initiative and involvement by the beneficiaries of the government housing subsidy. Instead of an established developer building houses on behalf of the beneficiaries, the community drives the process, and local job creation and skills development is maximised. The PHP was officially launched in 1998 with a set of guidelines. According to Chapter 3, Part 4 of the National Housing Code, the PHP is meant to 'support specifically the poorest of the poor families who usually only have access to housing subsidies and who wish to enhance their subsidies by building or organising the building of their homes themselves'.[19]

VOSLOORUS

The Vosloorus Extension 28, PHP Phase II, produced approximately 404 units of low-cost government subsidised housing between 2005 and 2006. Planact was asked by the then-Boksburg Local Council (later Ekurhuleni Metropolitan Municipality) to work with the community on a plan for upgrading a 'site-and-service' scheme through the PHP programme. During the implementation of the project, Planact faced a number of complex challenges. For example, the municipality was slow to release funds, which meant that Planact had to use some of its resources upfront and wait for reimbursement from the municipality at a later stage. The IGR problems between local and provincial governments (poor co-ordination) were so bad that some beneficiaries were left with uncompleted houses. Evaluation done by Planact revealed that beneficiaries were dissatisfied and frustrated about the abrupt way in which the project ended.

The Gauteng Department of Housing took a decision that all PHP projects in the province should use a newly created institution, Xhasa Accounting and Technical Centre, to administer PHP funds. The impact of this >>

>> on the Vosloorus project was that the new institution disrupted a working financial arrangement had with Ekurhuleni Metro and the project collapsed in 2006.[20] There was no proper consultation and communication with the local municipality, Planact or community members. Beneficiaries failed to identify the source of the problem and blamed Planact for the incomplete houses. The way the provincial government handled this project showed that, in spite of existing IGR measures meant to empower communities and improve relations between government spheres, communities and in this case, civil society organisations like Planact, were forced to bear the brunt of poor IGR.

THINASONKE

In 2009 a new township, Thinasonke Ext. 4, was established adjacent to Tokoza in the Ekurhuleni Metropolitan Municipality. A community housing project was earmarked to benefit from R50 million promised by the Gauteng provincial government in line with a Memorandum of Understanding signed between the national government, the Federation of the Urban and Rural Poor and Shackdwellers' International as part of a co-operative effort to eradicate informal settlements. In terms of this agreement, each province made a commitment to provide 1000 subsidies for these kinds of projects. In Gauteng, the provincial government pledged R50 million and undertook to finance infrastructure and housing in Thinasonke.

The municipality needed to attend to the following – zoning, township establishment, registration of title deeds for allocated sites, approving housing plans, putting in infrastructure once the zoning plan was approved and delivering municipal services to the community.[21]

Despite commitments on paper, the project did not proceed. The community remained in the dark, with neither the province nor the municipality informing them about the discontinuation of the project. Planact attempted to get provincial and municipal views but met with no response. The following explanation was provided by an official from a private company appointed to do the zoning for the new township:

> 'The province told us the day we had the township approval [November, 2009] that they were ready to go. Gauteng province gave money to the Ekurhuleni municipality to buy the land from uTshani to develop houses for the Thinasonke Ext 4 community. Ekurhuleni municipality was involved throughout the process. In anticipation of the project being implemented, the Ekurhuleni municipality reserved funds from Ekurhuleni's budget for the implementation, but they were told by the provincial government not to put funds aside as the province would fund it because it was one of their priority projects. We have everybody up and ready, and then they told us that they have no budget. I was told later in December 2009 that the province doesn't actually have the money, there's no money left.' (Urban Dynamics Gauteng representative). (2009:30)[22]

The municipality's failure to inform the local community about the project process goes against what the Municipal Systems Act (2000) promotes.[23] Municipalities are mandated by section 16(1)(a)(v) of the Systems Act to inform the local community about 'strategic decisions relating to the provision of **>>**

>> municipal services', which was not done in this case. This action by the provincial government shows the gaps in intergovernmental co-operation in practice, which undermines the principles of co-operative govern-ance. It is again a clear indication of how the IGR measures in place are ineffective in addressing communi-ties' demands.

INFORMAL SETTLEMENT UPGRADING PROJECTS

In 2004 the then Department of Housing (now National Department of Human Settlements) released an informal settlement upgrading programme to enable in situ upgrading without affecting residents negatively.[24] The ISU is a national programme which 'seeks to upgrade the living conditions of millions of poor people by providing secure tenure and access to basic services and housing'. It deals with the development of primary public, social and economic facilities within existing and new housing areas, as well as within informal settlement upgrading projects, in instances where municipalities are unable to provide such facilities. It also provides for extensive community consultation and participation, emergency basic services provision, permanent services provision and security of tenure.[25]

Planact is implementing a project to enhance community participation in the informal settlement regularisation and upgrading programmes of various municipalities by promoting effective public participation in the planning and monitoring of the programme. The objectives include:

• Strengthening the capacity of community members (leaders of community-based organisations and ward committee members) to participate in the planning and monitoring processes, and

• Providing municipalities, community members and development practitioners with models and lessons for effective participatory development

in the informal settlement regularisation pro-gramme, which could also be used in other development initiatives.

To improve community participation in the ISU programme, Planact seeks to develop an effective working relationship with municipal departments and community members to ensure that everyone has a voice and participates in a process that will contribute to the successful implementation of the programme by improving co-ordination between local municipal plans and residents' expectations.

The site selection phase of the project revealed IGR challenges experienced by municipalities as they attempt to roll out the programme. These challenges relate to co-ordination, municipal accreditation and provincial funding channels.

Although human settlement development is not a local government competency area, a report tabled to the United Nations by the then Department of Housing (2004), indicated that local government is expected to take greater responsibility for the management of settlements within their jurisdiction, particularly in relation to service and infrastructure provision for the poor. The report emphasised that challenges should be expected in terms of implementation of development projects.[26]

While some of the municipalities have indicated that they have plans for the implementation of the ISU programme, there is evidence that some beneficiary communities have not participated in the early planning stages and other major discussions concerning the details of the upgrading and relocation plans. Some communities do not know

whether they are included in the plans for in situ upgrading or whether they will be relocated.

Discussions with the City of Johannesburg Metropolitan Municipality (CoJ) revealed that the municipality deliberately does not communicate at the beginning of planning and development processes to avoid possible land invasions.[27] They have found that when people learn that the municipality is focusing on developing a settlement there is a sudden influx into that settlement. This persistent problem, however, remains a municipal issue with no assistance from the province. According to officials, the influx of people can cause delays in the upgrading or relocation processes as they sort out or accommodate the additional people.

This approach is contrary to legislation such as the Municipal Systems Act (2000), which asserts the involvement of the local community in planning and decision-making relating to their local affairs. Involving community members in decisions relating to the potential influx of people by including them in planning processes could alleviate this problem. However, those seeking to control new arrivals should be cautious of sparking xenophobic attacks or violence perpetrated against members of the community. Measures to limit influx should be defined and identified as an integral component of the process at the earliest stage of the project.

Municipal officials also emphasised that in some cases information was withheld from communities as a result of financial uncertainty. In Johannesburg municipal officials indicated that they were set to roll out an ISU programme in some communities, but then later cautioned Planact to avoid raising community expectations by revealing the upgrading plans in community meetings. Municipal officials indicated that the motive behind the withholding of information and excluding communities from early planning was because of poor IGR between the

provincial and local government. Although the provincial government promised to finance the ISU upgrading programme in the municipality, it was later discovered that the provincial government no longer had the required funding for the implementation and hence some of the planned projects could no longer proceed or had to be postponed.[28]

Direct provincial government engagement with local communities also caused confusion between local and provincial spheres, negatively affecting ISU projects. The evaluation of participation practices in Gauteng municipalities (2009: 105) shows that certain provincial government departments interact directly with local communities, which is understandable to a degree because numerous powers and functions are located within provincial government and not at local government level.[29] However, provincial government departments often interact directly with communities without co-ordinating with – or even informing – the relevant municipality. Municipalities often find themselves being held accountable for provincial projects being implemented in their area over which they had no influence. As a result, local communities often received mixed and confusing messages from the provincial government, a situation that many municipal officials and ward councillors find disempowering.[30]

An example of this occurred in a community in Emalahleni Municipality in Mpumalanga which was targeted for informal settlement upgrading, mainly

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through relocation. The community has been living in the area for almost ten years with approximately 1 500 households situated on private land without adequate basic services, except for water delivered by a truck at various intervals. The municipality is in the early process of relocating the community to a new low-cost housing development. On the site is a primary school run by the provincial department of education in a building donated by a local church. At the time of a site visit, it was clear that the school was being renovated .The municipality's planning officials were confused as to why the provincial departments of education and public works were constructing more classroom structures given the fact that the community is to be relocated in a few months. Furthermore, the fact that the province was renovating a school located on private land that the

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community is unlawfully occupying simply did not make sense.[31]   A senior municipal official indicated that a meeting was scheduled to take place between the relevant provincial departments and the local municipality to discuss the matter.[32] Not only is there is a communication problem between the municipality and the different provincial sector departments, but no proper communication is taking place with community members either.

To avoid such situations, the draft Provincial Framework for Public Participation in Gauteng (2009) recommends that all provincial governments interact with local communities through municipal structures and processes, whether it is consultation around new projects or efforts to engage the public more generally. [33] This will ensure that the municipal

structures are adequately informed and engaged in provincial plans affecting their areas.

PROVINCES, THE WEAK LINK?

Provincial government failure to effectively allocate and transfer resources required for municipalities to implement projects ultimately means municipalities fail communities. Provinces are often blamed for promising to fund municipal projects, which leads to municipalities making promises to communities, even implementing projects using other funds, in the expectation that provinces will fulfil their commitments and refund them.

Lesedi municipal officials in Gauteng indicated that informal settlement upgrading plans were negatively affected by experiences with provincial funding. For instance, in previous housing development projects in the municipality, the Gauteng department of housing promised funds to build low-cost housing and the municipality used bridging finance to start the process while waiting for the promised funds, which were not forthcoming. This created additional financial problems for the municipality. This poor IGR has affected local communities as the municipality vowed not to repeat the mistake, waiting instead for funds to be transferred in advance of project implementation.[34] Hence it is difficult for municipalities to plan with communities when funding to implement projects is not a certainty.

MUNICIPAL ACCREDITATION, THE ANSWER?

The municipal accreditation process presents a new IGR challenge. The process managed by the provincial government, whereby 'any municipality may apply in writing to the MEC of its province to be accredited for the purposes of administering one or more national housing programmes'.[35] Its objectives are described as follows:

'The accreditation of municipalities seeks to achieve two inter-linked objectives;

- Co-ordinated development, which also involves the relocation of decision-making authority with regards to the implementation of National Housing Programmes to the local sphere; and

- Accelerated delivery, as the efficiencies associated with creating certainty in respect of funding allocation and devolving delivery authority to the local sphere should lead to accelerated delivery and improved expenditure patterns.'[36]

The municipal accreditation process frustrates local municipalities, which see it as delaying effective incremental settlement development, with a complex application process, long waiting periods and unlikely accreditation. This is in the context of high housing demands from local people who do not want to know who is responsible for housing delivery but simply want to see visible progress in terms of delivery. An official from Emalahleni municipal planning department commented that accreditation process is a frustrating aspect in a municipality with a major housing backlog. He argued that it is the ordinary community members who suffer as a result of this bureaucratic process.

'Housing-wise we are still struggling on the accreditation process that is holding us back. We don't get to choose where we want to have housing and who we want to give it to. It sort of comes down from Province, they own us. It's a heavy-handed approach that's not working too well for council. We are getting behind on our housing backlog, we are not catching up and we are losing.'

The officials from Emalahleni indicate that, although they are accredited for the lowest level of housing delivery, they have the capacity for higher levels of accreditation, which would speed up the implementation of ISU and other housing programmes. Municipal officials blame the province for delays in the accreditation process. Although the system was introduced to ensure that there is accountability in housing delivery, municipalities view the process as yet another obstacle to the delivery process. On the basis of experience, municipalities argue that when provinces are solely responsible for overseeing the housing delivery processes, long, complex bureaucratic processes cause communities to lose patience as they wait for government to deliver.

CONCLUSION AND RECOMMENDATIONS

Despite local government reform and an extensive IGR system designed to provide efficient service delivery to communities, it is evident that marginalised communities are the casualties of the failures of this system. While government and community structures were created to give communities more power and ensure government deliver effective services, practice reveals that these structures are working against these objectives. In some instances, the lack of clarity in respect of the roles to be played by government spheres with regards to service delivery have rendered structures such as IGR forums ineffective. Structures at national, provincial and local governments often do not foster good working relations as they fight to claim influence in communities to remain politically powerful and relevant. Without healthy IGR the voices of the marginalised will remain silent, despite the gamut of legislation and other measures created for effective service delivery. There is a need to co-ordinate the implementation of IGR at different levels of govern-

ment, but also to ensure that poor IGR does not halt delivery processes as it does currently.

This paper argues that communities' expectations are failing to be addressed as a result of limited co-operation and poor communication by provincial governments, to the extent that some community projects were abandoned. Others were never started due to the failure of provincial governments to honour agreements made with local governments. Some actions by provincial governments have confused local municipalities and communities. The housing accreditation process was also highlighted as a challenge as municipalities believe that it negatively affects the pace of delivery.

In light of the above challenges and to maintain the principles of co-operative governance and intergovernmental relations this paper recommends the following:

- Legislation has been put in place to support the IGR processes. These result in scheduled interactions between government spheres which may not always alleviate problems. Government spheres should therefore consider creating interactions whenever necessary on an ad hoc basis to address specific problems as they occur in order to improve service delivery.
- There is a need to improve IGR practice and reform current IGR forums to allow the marginalised to have representatives from the community speak directly for themselves instead of always being represented by councillors. This is particularly true in specific projects that have a localised impact on certain communities.
- Provincial government should recognise the independence of and role played by local government. If provinces need to directly interact with local communities they should allow municipalities to organise the process as the sphere closest to communities.
- Although some municipalities are considered to have insufficient skills in handling housing development and large amounts of development funding, provinces have to find a strategy to improve the distribution of funds aimed for bigger projects at community level for the benefit of the poor.
- Even though there is a need for quality control in human settlements development projects, accreditation of municipalities is highlighted as a complicated process which requires municipalities to fulfil certain requirements to be accredited for certain aspects of delivery. There is a need for provinces to speed up the accreditation process to better support municipalities, as is mandated by the Constitution.

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[7] Department of Provincial and Local Government. http://www.dplg.gov.za/subwebsites/igr/index.html

[8] Chapter 3 of the Constitution declares that government comprised national, provincial and local spheres of government which are distinctive, interdependent and interrelated. Section 41 (2) says an Act of Parliament must establish or provide structures and institutions to promote and facilitate IGR. Section 41 (1) (b) and (h) shows that good relations amongst all government spheres is extremely important in order to address people's needs, expectations and ensure their satisfaction. Section (139) upholds the necessity of IGR by giving provincial governments a supervision role in relation to the local governments, while Section (154), mandates the national and provincial governments to give support and strengthen capacity of the local governments to run their own affairs.

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