

**The role of South African Local Government Association in the premier's  
intergovernmental relations forum: a case study of the Western Cape  
Premier's Intergovernmental Forum.**

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This research paper is submitted in fulfillment of the requirements for the degree of Masters  
in the Community Law Centre at the University of the Western Cape

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Cooperative Government; South African Local Government Association;  
National; Provincial; Local Government; Premier's Intergovernmental Forum.

## DECLARATION

I, Marcia Zikhona Dlanjwa, hereby declare that **‘The role of South African Local Government Association in the premier’s intergovernmental relations: a case study of the Western Cape Premier’s Intergovernmental Forum’** is my own original work. It has never been presented to any other tertiary institution. Where other people’s works have been used herein, references have been duly provided, and in some cases, quotations made. This dissertation is, therefore, submitted in partial fulfilment of the requirements of the MPhil Degree in Local Government Law and Decentralization, University of the Western Cape.

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## **DEDICATION**

This research paper is dedicated to my late mother for continuously instilling the value of education and the unlimited potential and determination within me. May her soul rest in peace. To my younger siblings for constantly looking up to me, thus making failure and giving up non optional avenues.

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

CC	Constitutional Court
DLG	Department of Local Government
DPLG	Department of Provincial and Local Government
FFC	Financial and Fiscal Commission
IGR	Intergovernmental relations
IGRF Act	Intergovernmental Relations Framework Act
NCOP	National Council of Provinces
NEC	National Executive Committee
MEC	Member of the Executive Council
MinMay	Ministers and Mayors
MinMayTech	Ministers and Mayors Technical
MinMECs	Minister and Members of Executive Council
MLG	Multi-level Government
OLG	Organised Local Government
SCA	Supreme Court of Appeal
SALGA	South African Local Government Association
S	Section
Ss	Sections
PCC	Presidential Coordinating Council
PIF	Premier's Intergovernmental Relations Forum
PIFTech	Premier's Intergovernmental Relations Forum Technical
PEC	Provincial Executive Council
PEO	Provincial Executive Officer
WC	Western Cape
WPLG	White Paper on Local Government

## CHAPTER ONE: INTRODUCTION

### 1. PROBLEM STATEMENT

The South African 1996 Constitution<sup>1</sup> adopted a multi-level system of government comprising three spheres of government: the national, provincial and local government. This is a cooperative system of government since the three spheres of government are distinct, interdependent and interrelated.<sup>2</sup> Each of the spheres of government is assigned its own powers and functions with some being assigned both exclusive and concurrent functions. Because of the distinct, interdependent and interrelated nature of the spheres of government, and the concurrency in the assignment of functions, cooperation and intergovernmental relations<sup>3</sup> among the three spheres of government and within them becomes necessary. In this scheme, local government is assigned an important developmental and service delivery role. However, because of the large number of the local government units, and the problems of coordination that they give rise to, section 163 of the Constitution seeks to achieve coordination among the municipalities by providing for a system of organised local government.<sup>4</sup> On the other hand, Chapter 3 of the Constitution provides for cooperation among the three spheres. All spheres of government are required to conduct their respective Constitutional mandates in cooperation, mutual trust and good faith through fostering friendly relations; assisting and supporting one another; informing one another of, and consulting one another on, matters of common interest; and coordinating their actions and legislation with one another.<sup>5</sup> Section 41 in particular, requires that legislation be enacted to provide for structures for IGR.

Pursuant to the requirements of section 163, the Organised Local Government Act<sup>6</sup> was enacted in 1997. The OLG Act states that local government's participation in IGR structures must be facilitated through an organisation or organisations recognised and determined by an Act of Parliament. The OLG Act provides for local government's participation and representation in both national and provincial IGR structures. It necessitates recognition of national and provincial organisations representing municipalities and it determines

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<sup>1</sup> Act 108 of 1996 (hereafter referred to as the Constitution).

<sup>2</sup> S 40 (1) Constitution.

<sup>3</sup> Hereafter referred to as IGR.

<sup>4</sup> Hereafter referred to as OLG.

<sup>5</sup> S 41 (1) (h) Constitution. See also The White Paper on Local Government (hereafter WPLG) (1998) 38.

<sup>6</sup> Act 52 of 1997 (hereafter referred to as OLG Act).

procedures by which local government may consult with national and provincial government.<sup>7</sup> On the other hand, pursuant to the requirements of section 41 of the Constitution, the Intergovernmental Relations Framework Act<sup>8</sup> was enacted to provide for and create structures and forums for IGR. The Act aims at regulating and creating uniformity in IGR structures and processes through which issues of common interest and concern are discussed. The structures and forums it establishes create a platform for interaction, planning, consultation and coordination as an essential dialogue between and within spheres of government and their respective organs of state.<sup>9</sup>

OLG as a platform for local government to participate in national and provincial IGR structures was given a role in these intergovernmental structures and forums. In 1997, the South African Local Government Association (SALGA) was recognised for the purposes of fulfilling this role. SALGA facilitates and represents local government's interests through engagement and participation in the national and provincial structures of IGR. Its role is to assert local government's voice in national and provincial legislation and to measure the impact of proposed or implemented legislation.<sup>10</sup> Sokhela<sup>11</sup> states that "the mission of SALGA is to build integrated and sustainable OLG that acts as one voice in provincial, national, regional and international relation".<sup>12</sup> One of the key mandates of SALGA is to 'represent, promote and protect the interests of local government'<sup>13</sup> at the national and provincial levels as it was established to facilitate a central IGR role on behalf of OLG.

Even though the Constitution envisages a role for OLG in IGR, and legislation provides a role for SALGA's participation in IGR, it is not clear how SALGA has been playing this role. This paper seeks to investigate the role of SALGA in the Premier's Intergovernmental Forum<sup>14</sup> and establish the manner in which SALGA discharges this role. It is clear that SALGA plays a representative role in the national IGR forums; the role of SALGA in respect of the Premier's Forum is however unclear. This indeed, is a significant matter in the process

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<sup>7</sup> Preamble OLG Act.

<sup>8</sup> Act 13 of 2005 (hereafter referred to as the IGRF Act).

<sup>9</sup> Layman T 'Intergovernmental relations and service delivery in South Africa' (2003) 28. See also IGRF Act.

<sup>10</sup> Baatjies RC 'Role of Organised Local Government in meeting the objectives of local government' (2012a) 5.

<sup>11</sup> Sokhela PM 'Intergovernmental relation in the local sphere of government in South Africa with specific reference to the City of Tshwane Metropolitan Municipality' (2006) 13.

<sup>12</sup> Sokhela PM (2006) 13.

<sup>13</sup> South African Local Government Association's Constitution (SALGA) (2004) art 4 available from <http://salga.org.za/pages/About-SALGA/Welcome-to-SALGA> (accessed 19 June 2013).

<sup>14</sup> Hereafter the Premier's Forum.

of assessing and evaluating how best the South African multilevel system has operated since its inception in 1994. In addition, without SALGA's effective participation in IGR on behalf of local government, there cannot be effective service delivery.

## **2. RESEARCH QUESTION**

On the basis of the research problem set out above, the research project seeks to answer the following question: What is the role of SALGA in the Premier's Forum? The following sub-research question will assist in answering the research question: What is the scope and nature of SALGA's role and participation in the Premier's Forum?

## **3. ARGUMENT**

Great strides have been made in relation to the implementation of IGR structures and the participation of OLG as prescribed by the IGRF Act. SALGA is an essential member and tool for local government representation in IGR forums. It is the voice of OLG at the national sphere of government however the same cannot be said in relation to its role in provincial government. It is the argument of this paper that SALGA's role in the Premier's Forum is undefined as it is not the sole representative for local government. At face value it would appear that SALGA has a role to play in the Premier's Forum however, the effectiveness of its role is yet to be discharged. SALGA's facilitation role in the Premier's Forum is hampered by the composition of the forum as local government has a direct platform to represent themselves.

Intergovernmental forums are a platform for executives to engage and since SALGA is not an executive body its IGR role in executive structures changes. It is only in the exceptional case, such as the national structures of IGR, where SALGA is the sole representative of local government. It is, therefore, the argument of this project that SALGA does not facilitate IGR for local government at the provincial sphere of government. Its role in the Premier's Forum is limited and undefined. Even though the law<sup>15</sup> provides that local government's participation in IGR structures must be facilitated through organisations recognised and determined by an Act of Parliament, in practise at the provincial level SALGA's role is impeded due to the nature and composition of the Premier's Forums' structure.

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<sup>15</sup> S 163 Constitution. See also IGRF Act 2005 and OLG Act.

#### 4. LITERATURE REVIEW

Intergovernmental relations are a relatively new concept which can be traced back to the early 1930s. One of the earliest recorded references to IGR on print occurred in an article by Professor C. F. Snider in 1937.<sup>16</sup> However, this concept only got recognition in the 1960s through the scholarly works of William F. Anderson;<sup>17</sup> Deil S. Wright<sup>18</sup> and R. Agranoff.<sup>19</sup> According to Wright the concept of IGR has been described by one of its originators, William F. Anderson as, indigenous to the United States.<sup>20</sup> Wright notes that IGR can be categorised into five distinct features. First, it occurs within a federal system; second, it has a policy component; third, important aspects of IGR are derived from the attention paid to the activities, interactions, and working relations among the institutions or persons engaging; fourth, IGR relations are not one-time, occasional occurrences, they are continuous, day-to-day patterns of contacts; and last, IGR respects the pre-eminence of public officials acting in an inter-jurisdictional context, and is concerned with informal working relationships in institutional context.<sup>21</sup> Drawing from the works of William Anderson,<sup>22</sup> Wright states that there is essentially no IGR but a relationship between human relations and human behaviours.<sup>23</sup> IGR, ultimately ‘alerts us to the multiple, behavioural, continuous, and dynamic exchanges occurring between various officials in our political system’.<sup>24</sup> Wright also states that IGR occurs within a federal system<sup>25</sup> hence the contemporary need and the conception of IGR ascending in the South African system of multi-sphere government.

Since the implementation of IGR in South Africa a number of scholars have written on the subject. Most notable are the works of Steytler, Simeon and Murray, Tapscott, Baatjies and Sokhela.<sup>26</sup> According to Steytler,<sup>27</sup> IGR is perhaps one of the aspects of federalism that is least shaped by the constitutional instruments. Noting the works of Ronald Watts, Steytler

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<sup>16</sup> Wright DS ‘Intergovernmental Relations and Policy choices’ (1975) 4 *Publius* 2.

<sup>17</sup> Anderson W ‘Intergovernmental Relations in Review’ (1960) University of Minnesota.

<sup>18</sup> Wright (1975).

<sup>19</sup> Agranoff R ‘Comparative intergovernmental relations’ in Agranoff R (ed) *Frameworks for Comparative Analysis of Intergovernmental Relations* (1990).

<sup>20</sup> Wright DS ‘The State and Intergovernmental Relations’ (1972) 1 *Publius* 3.

<sup>21</sup> Wright (1975) 4-6.

<sup>22</sup> Anderson (1960).

<sup>23</sup> Wright (1972) 9.

<sup>24</sup> Wright (1975) 6.

<sup>25</sup> Wright DS ‘Intergovernmental Relations: An Analytical Overview’ (1974) 416 *Annals of the American Academy of Political and Social Science* 2.

<sup>26</sup> All material of the different authors that has been referred to in this paper.

<sup>27</sup> Steytler N ‘Cooperative and coercive models of intergovernmental relations: South African case study’ in Courchene et al (ed) *The Federal Idea: Essays in honour of Ronald L Watts* (2011) 414.

enunciates that there are two models of IGR, cooperative and coercive IGR. The model adopted by a country differs from one federation to the next; however, it is primarily influenced by the predominant political culture of that federal system.<sup>28</sup> In South African IGR practices, the cooperative and coercive models of IGR suggested by Steytler have been adopted. As deduced from the works of Wright,<sup>29</sup> Steytler<sup>30</sup> also states that IGR is primarily practice driven and occupies the space between orders of government.

In the context of IGR and cooperative governance, Simeon and Murray<sup>31</sup> argue that multi-level governance has been a problematic arrangement in South Africa. Although the multi-level spheres are entrenched in the constitutional design, provinces and municipalities (particularly municipalities) are still struggling to establish and consolidate IGR processes to foster multi-level relations.<sup>32</sup> MLG is still a work in progress with basic facts of governance yet to be realised by leaders and the execution of IGR still to be established into a fully workable system. It is important that implementation structures are put in place to foster cooperation but, as Steytler articulated, ‘an understating of the role and responsibilities of spheres of government and how they interact with one another at the IGR level would be of greater value than focusing on regularizing the informal IGR structures that have sprung up’.<sup>33</sup> This observation is in line with and supports the analysis made by Simeon and Murray that:

[w]hile new systems have become fairly well established in a short time, their long-term success in promoting the values of democratization, effective governance, and conflict management remains uncertain.<sup>34</sup>

In view of the above, Steytler, and Simeon and Murray’s analysis of IGR practice is further enhanced by Tapscott’s<sup>35</sup> view on IGR practice. Tapscott states that codification of IGR will not necessarily lead to dramatic improvements in performance or relief in IGR tension. What may, however, materialise is aggravation of the tensions between spheres even though greater

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<sup>28</sup> Steytler (2011) 414.

<sup>29</sup> Wright (1975). IGR is a relationship between human behaviours and human relations and is primarily concerned with the activities and working relations of officials in their inter-jurisdictions.

<sup>30</sup> Steytler (2011) 414.

<sup>31</sup> Simeon and Murray (2001).

<sup>32</sup> Simeon and Murray (2001) 4.

<sup>33</sup> Steytler (2011) 418.

<sup>34</sup> Simeon and Murray (2001) 65.

<sup>35</sup> Tapscott (2000).

legal precision may be achieved.<sup>36</sup> Limitations in the IGR system lead to poor coordination within and amongst IGR structures thereby restraining its capacity to coherently facilitate multi-sectoral service delivery. Legislation on its own is unlikely to promote greater IGR cooperation and coordination,<sup>37</sup> hence the need to enhance and develop the relations of the different stakeholders involved in IGR processes. This observation is also elaborated by the works of Rueben Baatjies.<sup>38</sup> According to Baatjies, great achievements have been met in laying the foundations and systems for IGR, however, the substance of IGR engagements leaves much to be desired and a shift in focus of IGR structures is required.<sup>39</sup> While developments have been made in building cooperation between national and provincial governments, the coordination and integration of local government activities with other spheres is still limited and uneven.<sup>40</sup>

The works of the scholars mentioned above has primarily been on national and provincial government. Sokhela<sup>41</sup> has been one of the few scholars who have briefly engaged IGR impact from the perspective of local government. In his work, Sokhela seeks to establish whether IGR facilitates the performance of local government with a view to helping improve the role of IGR in facilitating service delivery.<sup>42</sup> Sokhela's research focused on deducing the impact and relations of IGR towards local government service delivery. It has also briefly discussed SALGA's role and participation in facilitating IGR, and this paper aims to investigate that topic in greater lengths and with more focus. As a result, few scholars such as Thornhill,<sup>43</sup> Malan,<sup>44</sup> Tapscott,<sup>45</sup> Baatjies,<sup>46</sup> Sokhela,<sup>47</sup> as well as Simeon and Murray<sup>48</sup> have written on IGR matters from an internal view and on different perspectives of IGR and its structures in the South African context.

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<sup>36</sup> Tapscott (2000) 127.

<sup>37</sup> Tapscott (2000) 119.

<sup>38</sup> Baatjies RC *The evolution and prospects of our intergovernmental approach: A local government perspective* (2012b).

<sup>39</sup> Baatjies (2012b) 1.

<sup>40</sup> Tapscott (2000) 125.

<sup>41</sup> Sokhela (2006).

<sup>42</sup> Sokhela (2006) 2.

<sup>43</sup> Thornhill C *South African intergovernmental relations: national and provincial structures (2002)* PAIR Institute.

<sup>44</sup> Malan LP 'Intergovernmental relations and co-operative government in South Africa: The ten-year review' (2005) 24 (2) *Politeia* 226-43.

<sup>45</sup> Tapscott (2000).

<sup>46</sup> Baatjies (2012a): (2012b).

<sup>47</sup> Sokhela (2006).

<sup>48</sup> Simeon and Murray (2001).

As noted from reviewed literature, what has transpired is that academic research, studies, IGR practitioners and scholars have focused on providing details on the features, composition, models, functions and powers, operations and decision-making mechanisms of IGR and its structures, especially from the national and provincial spheres perspective.<sup>49</sup> Despite constitutional and legislative provisions on OLG, little is known about the actual participation of SALGA in the Premier's Forum. There has been marginal attention directed towards investigating provincial IGR, substance and functionality with regard to OLG. This indicates that the role of OLG has been neglected in research. Hence, there is a limitation in the number of legal texts, academic writings, studies or empirical research conducted, that focuses on evaluating the role of OLG and its scope of participation in IGR structures provincially.<sup>50</sup> Therefore, a knowledge vacuum in research relating to SALGA's involvement in the Premier's Forum has been identified. This research project seeks to fill and contribute to the identified gap in the field. It aims at providing updated insight on the role, participation and representation of OLG in the Premier's Forum and on its practices.

## **5. STRUCTURE OF STUDY**

The research project is divided into five chapters. Each chapter outlines how it contributes towards answering the research question. The approach is to analyse the Premier's Forum and focuses on SALGA's role, participation and involvement in the structure.

Chapter two discusses IGR and cooperative government as defined in the Constitution as well as the key legislative framework for the implementation of IGR and cooperative governance. It focuses on the Constitution as the core source of provision for recognition and legislative foundation of IGR and cooperative governance. The chapter outlines the main objectives set out by the legislative framework in relation to cooperative government and IGR.

Chapter three provides an overview of the legal framework for OLG as prescribed by the Constitution and IGRF Act. This chapter focuses on the constitutional, policy and legislative framework for the participation of OLG in IGR with other spheres of government and the role of SALGA in the Premier's Forum.

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<sup>49</sup> Thornhill (2002). Also see the Department of Provincial and Local Government (DPLG) *15 Year review report on the state of intergovernmental relations in South Africa* (2008) dplg commissioned report.

<sup>50</sup> DPLG (2008) is one of the research reports that have dealt with the issue of intergovernmental relations but there is no evaluation into SALGA's role in IGR implementation structures.

Chapter four delineates the provincial intergovernmental structure envisaged by the IGRF Act. The first part looks into the formal structure of the Premier's Forum as prescribed by legislation. The second part looks into the compliance that has been adopted in practice and lastly, the role of SALGA in the provincial IGR, specifically in the Premier's Forum. The analysis on SALGA focuses on assessing the role and scope of participation in the Premier's Forum.

Chapter five summarises the nature and extent of the key findings and analysis of the research project. It concludes by providing general recommendations and conclusions based on the key findings and analysis of the research.

## **6. RESEARCH METHODOLOGY**

The research methodology employed for the purpose of this study has been both qualitative and quantitative. Data was mainly collected through a desktop survey on relevant literature and legislative material. Both primary and secondary data were used as tools of analysis and in acquiring the information for the research. The research gathered primary data from identified IGR structures' meetings, agendas and minutes whilst secondary data comprised the use of information gathered from other relevant research, reports, and official government documents. The researcher also made use of newspaper articles, and statistics that have covered and reported matters pertaining to this area.

## CHAPTER TWO: FRAMEWORK FOR COOPERATIVE GOVERNMENT AND INTERGOVERNMENTAL RELATIONS

### 1. INTRODUCTION

This chapter discusses the IGR and cooperative government as defined in the Constitution and the key legislative framework for the implementation of IGR and cooperative governance. The chapter outlines the main objectives set out by the legislative framework in relation to cooperative government and IGR.

### 2. THE NATURE OF THE SPHERES OF GOVERNMENT

#### 2.1 Cooperative government

According to the 1996 Constitution, South Africa is constituted by three spheres of government; national, provincial and local government.<sup>51</sup> Section 40 (1) makes provision for the constitutional autonomy and interaction of the spheres, providing that they are ‘distinctive, interdependent and interrelated’.<sup>52</sup> The relationship of the three spheres is fundamental to the system of multilevel government. Thus governments should not exercise their distinctive powers and functions in isolation of one another or in competition with each other.<sup>53</sup>

Case-law around cooperative government and IGR has played a fundamental role in the interpretation and enforcement of these fundamental principles. The importance of this relationship has been asserted in *First Certification of the Constitution of the Republic of South Africa*<sup>54</sup> and in *Independent Electoral Commission v Langeberg Municipality*.<sup>55</sup> Steytler and De Visser<sup>56</sup> state that the Constitutional Court in *First Certification* judgement stated that a choice was made not to opt for “competitive federalism” but for “cooperative government”.<sup>57</sup> Cooperation as opposed to competition is the golden thread that runs through the constitutional scheme that underlies the spheres of government.<sup>58</sup> The Constitution

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<sup>51</sup> S 40 (1) Constitution.

<sup>52</sup> S 40 (1) Constitution.

<sup>53</sup> Steytler N & De Visser J ‘Cooperative Government and Local Government’ in Steytler N & De Visser J *Local Government Law of South Africa* (LGLSA) (2007) 16-1.

<sup>54</sup> *In re: Certification of the Constitution of the Republic of South Africa* 1996 (10) BCLR 1253 (CC) [referred to as *First Certification* judgment] at para 287.

<sup>55</sup> *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC), 2001 (9) BCLR 883 (CC) [referred to as *IEC v Langeberg*].

<sup>56</sup> Steytler & De Visser (2007) 16-1.

<sup>57</sup> Steytler & De Visser (2007) 16-1.

<sup>58</sup> Phindela M E *The South African system of co-operative government and intergovernmental relations: an analysis* (2012) 2.

reinforces the distinct nature of spheres through exclusive functional areas referred to in Schedule 5 of the Constitution and equally underpins the interdependence of spheres through concurrent functional areas referred to in Schedule 4 of the Constitution.<sup>59</sup> This notion was also asserted in *IEC v Langeberg* when the Constitutional Court wrote that:

[a]ll the spheres are interdependent and interrelated in the sense that the functional areas allocated to each sphere cannot be seen in isolation of each other. They are all interrelated. None of these spheres of government nor any of the governments within each sphere have any independence from each other. Their interrelatedness and interdependence is such that they must ensure that while they do not tread on each other's toes, they understand that all of them perform governmental functions for the benefit of the people of the country as a whole.<sup>60</sup>

In both cases the Court asserted that functional areas assigned under both exclusive and concurrent powers cannot be executed in isolation. There is an obligation that all spheres of government are to conduct their respective constitutional mandate in cooperation, coordination and integration with one another. Whilst the different spheres have distinct functions and responsibilities, the notion of cooperative government set forth in Chapter 3 of the Constitution obliges that they must work together as a whole in order to fulfil the South African governments' constitutional mandate.<sup>61</sup> Within the spirit of interdependency and interrelatedness set out in section 40, it can be argued that sections 151 (3), 154 (1), 155 (6) and (7) are extensions of section 40 in relation to the execution of local government powers. Steytler and De Visser<sup>62</sup> define interrelatedness as the hierarchy that reinforces the relationship 'between the three spheres, which is manifested, in the context of local government, in the national and provincial governments' supervisory powers of regulation, monitoring and intervention'.<sup>63</sup> Woolman, Roux and Bekink<sup>64</sup> also state that even though the Constitution recognises the three spheres as equal autonomous governments, there is a clear hierarchy that runs from national government down to provincial government and further down to local government.<sup>65</sup> In *Cape Metro Council v Minister for Provincial Affairs and Constitutional Development & Others*<sup>66</sup> the Court reached a similar conclusion.

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<sup>59</sup> Phindela (2012) 2.

<sup>60</sup> *IEC v Langeberg* at para 26.

<sup>61</sup> Woolman S, Roux T & Bekink B 'Cooperative Government' in Woolman et al (eds) *Constitutional law of South Africa* 2ed (2004) 14-8.

<sup>62</sup> Steytler & De Visser (2007) 16-1.

<sup>63</sup> Steytler & De Visser (2007) 16-1.

<sup>64</sup> Woolman et al (2004) 14-8.

<sup>65</sup> Woolman et al (2004) 14-8.

<sup>66</sup> *Cape Metropolitan Council v Minister of Provincial Affairs and Constitutional Development and Another* 1999 ZACC 12; 2000 (1) SA 727; 1999 (12) BCLR 1353 at para 29.

Thus section 41 of the Constitution restrains the exercise of power by the obligations set forth by the principles of cooperative government and IGR.<sup>67</sup> Section 40 (2) clearly states that all spheres of government must observe and adhere to the principles of cooperative government and intergovernmental relations when conducting their activities.<sup>68</sup> As a result IGR become an essential mechanism in achieving cooperative governance.

## 2.2 Intergovernmental relations

According to the White Paper in Local Government:

[i]ntergovernmental 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.<sup>69</sup>

Chapter 3 of the Constitution defines and sets out the framework for IGR and cooperative government between and within the three spheres of government and organs of state. Section 40 (2) states that all spheres of government must conduct their activities within the parameters provided for by Chapter 3 of the Constitution.<sup>70</sup> To give effect to the provisions of section 40, section 41 provides a normative description and limit as to how spheres of government are to co-exist in peace and unity. Section 41 (*e*) – (*h*) highlights the positive obligations of cooperative government and IGR.<sup>71</sup> The Constitution states that:

[a]ll spheres of government and all organs of state within each sphere must ... (*e*) respect the constitutional status, institutions, powers and functions of government in the other sphere; (*f*) not assume any power or function except those conferred on them in terms of the Constitution; (*g*) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and (*h*) cooperate with one another in mutual trust and good faith

It is essential to understand the significance and importance of IGR in achieving the principles of cooperation and coordination that enable and foster the developmental goal of government. The IGR relationship between and amongst the different governments, and

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<sup>67</sup> Steytler & De Visser (2009) 16-1.

<sup>68</sup> S 40 (2) Constitution.

<sup>69</sup> WPLG (1998) 37.

<sup>70</sup> S 40 (2) Constitution.

<sup>71</sup> S 41(1) (*e*)-(*h*) Constitution. See Steytler & De Visser (2007) 16-2.

organs of state plays a significant role in the governance of the country. Section 41 (1)(h) specifically highlights this notion as it states that spheres of government and all organs of state must cooperate in mutual trust and good faith by:

- (i) fostering friendly relations;
- (ii) assisting and supporting one another;
- (iii) informing one another of, and consulting one another on, matters of common interest;
- (iv) coordinating their actions and legislation with one another;
- (v) adhering to agreed procedures; and
- (vi) avoiding legal proceedings against one another.

In order for government to achieve the ultimate goal of improving integrated service delivery, there must be coordination and integration of activities and plans, hence section 41 (1) (h) obligations. The objective is to ensure ‘delivery of outcomes through effective systems, processes and procedures that ensure cooperation of the different role players around policy formulation, planning, monitoring and support and delivery’.<sup>72</sup> In *Premier, Western Cape v President of the Republic of South Africa*<sup>73</sup> the Constitutional Court stated that:

[t]he provisions of chapter 3 of the Constitution are designed to ensure that in fields of common endeavour the different spheres of government cooperate with each other to secure the implementation of legislation in which they all have a common interest.<sup>74</sup>

Furthermore, national priorities and developmental objectives find translation and meaning at local government. Local government is the sphere that is closest to the people and, therefore, gives effect to government plans and strategies. It is thus indispensable that national and provincial spheres ensure that local conditions and commitments give effect to national objectives. This conclusion was also asserted by the court in the *Member of the Executive Council of Local Government, Mpumalanga v Independent Municipal and Allied Trade Unions and Others*.<sup>75</sup> It is imperative that ‘national and provincial governments must by legislation and other measures support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform the functions’.<sup>76</sup>

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<sup>72</sup> Baatjies RC ‘The evolution and prospects of our intergovernmental approach: A local government perspective’ (2012) 4.

<sup>73</sup> *Premier, Western Cape v President of the Republic of South Africa* 1999 (3) SA 657 (CC), 1999 (4) BCLR 382 (CC) [hereafter *Premier, WC v President*].

<sup>74</sup> *Premier, WC v President* at para 54.

<sup>75</sup> *Member of the Executive Council of Local Government, Mpumalanga v Independent Municipal and Allied Trade Unions and Others* 2002 (1) SA 76 (SCA).

<sup>76</sup> S 154 (1) Constitution. See Woolman et al (2004) 14-7.

Implementation may only be effectively achieved if communication and coordinated expressions are translated into action through IGR programmes. Failure to coordinate and cooperate may result in a number of duplications, wasteful expenditures and delay in the delivery of services which impedes the process of development.<sup>77</sup> Phindela<sup>78</sup> notes that section 41 (1) can be summarised into three obligations and ‘transports one to the destination that principles (a) – (d) re-emphasise the indivisibility of the Republic; principles (e) – (g) apply to IGR; and (h) to co-operative government’.<sup>79</sup>

Another essential element that arises from Chapter 3 of the Constitution is the dual responsibility that organs of state and spheres of government should adopt in relation to resolving intergovernmental disputes. Section 41 (3) and (4) provide for the manner in which disputes or conflict between spheres of government and organs of state may be resolved. Section 41 (3) discourages the need for spheres of government and organs of state to approach the courts for resolving intergovernmental disputes. It compels organs of state to take all reasonable steps and to exhaust all other remedies before approaching a court to resolve the dispute.<sup>80</sup> Furthermore, should the court not be satisfied that the requirements of subsection section 41 (3) have been met, it may refer the dispute back to the organs of state or spheres of government involved.<sup>81</sup> Therefore, section 41 (4) strengthens the provision made by subsection (3). The assertion made by the court in *Uthukela District Municipality and Others v President of the Republic of South Africa*<sup>82</sup> reiterates this position:

[i]n view of the important requirements of co-operative government, a court, including this Court, will rarely decide an intergovernmental dispute unless the organs of state involved in the dispute have made every reasonable effort to resolve it at a political level. When exercising discretion whether to deal with confirmation proceedings, this Court must thus bear in mind that Chapter 3 of the Constitution contemplates that organs of state must make every reasonable effort to resolve intergovernmental disputes before having recourse to the courts.<sup>83</sup>

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<sup>77</sup> DPLG (2008) 6.

<sup>78</sup> Phindela (2012).

<sup>79</sup> Phindela (2012) 4.

<sup>80</sup> Phindela (2012) 4.

<sup>81</sup> S 41 (4) Constitution.

<sup>82</sup> *Uthukela District Municipality and Others v President of the Republic of South Africa* 2003 (1) SA 687 (CC) [hereafter *Uthukela District and Others v President*].

<sup>83</sup> *Uthukela District Municipality and Others v President* at para 14.

Thus, it is the equal duty of all organs of state and spheres of government to avoid litigation against one another.<sup>84</sup> And in order for the spheres of government and organs of state to realise this obligation, ‘an Act of Parliament must establish or provide for structures and institutions to promote and facilitate IGR and provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes’.<sup>85</sup>

### 2.3 Concluding remarks

The principles of co-operative governance entrenched in Chapter 3 of the Constitution are key IGR and cooperative government, but also highly reflect the underlying values of ‘ubuntu’<sup>86</sup> and ‘batho phele’<sup>87</sup> instilled in the values of our developmental democracy.<sup>88</sup> Section 41 sets out a normative basis for intergovernmental relations. Government is constituted by three spheres that are distinct, interdependent and interrelated with clear objectives for each sphere.<sup>89</sup> It is, therefore, essential that activities of the different spheres of government are aligned, cooperated and coordinated to ensure synergy in the delivery of services by way of cooperative governance and friendly IGR. The relationship between and amongst the spheres of government and all organs of state is one of close cooperation within a larger framework that recognises the distinctiveness of every constituency as well as the interrelatedness and interdependence of all constituencies.<sup>90</sup>

Section 41 (2) (a) states that, an Act of parliament must establish or provide for structures and institution(s) to promote and facilitate IGR.<sup>91</sup> This provision has been met with the enactment of the IGRF.

## 3. INTERGOVERNMENTAL RELATIONS FRAMEWORKS ACT OF 2005

The IGRF Act brought about the statutory realisation of the IGR structures and institutions already in existence. The objectives and obligations set forth by the IGRF Act are primarily

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<sup>84</sup> Steytler & De Visser (2007) 16-3.

<sup>85</sup> S 41 (2) Constitution.

<sup>86</sup> Ubuntu means the spirit of human kindness.

<sup>87</sup> Batho phele means the people first and has been adopted as a mission statement for the South African public service and its delivery of services to the people.

<sup>88</sup> Provincial Department of Local Government (DLG) *Concept Paper on Intergovernmental Relations* (2009) 5.

<sup>89</sup> S 40 (1) Constitution.

<sup>90</sup> Rautenbach IM and Malherbe EFJ ‘Provincial Government’ in Rautenbach IM and Malherbe EFJ *Constitutional Law* 2ed (1998) 215.

<sup>91</sup> S 41 (2) Constitution.

based on the principles of cooperative government and IGR as stipulated in section 41 of the Constitution. The IGRF Act creates a formal platform where the national, provincial, local government and other organs of state can coordinate the implementation of policy and legislation in a coherent *modus* that ensures an effective, integrated delivery of services and national priorities.<sup>92</sup> The Constitutional Court in *Re: National Education Policy Bill*<sup>93</sup> judgement affirmed that:

[t]he Bill calls for cooperation between the provinces and national government and responses by the provinces to requests directed to them in terms of the Bill; Parliament is entitled to make provision for such cooperation and coordination of activities in respect of schedule 6 matters, and the objection to such provisions on the grounds that they encroach upon the executive competence of the provinces can also not be sustained.<sup>94</sup>

This was the judgement proclaimed by the court in relation to the implementation of national and provincial policies before the enactment of the IGRF Act. It is clear that the notion of cooperation and integration of legislation and the realisation of national priorities through and with collaboration of other spheres of government has always been the objective. All organs of state and spheres of government cannot afford to operate in silos if a developmental state is to be achieved. The same notion was reinforced by the court in *First Certification Judgment* when it was stated that intergovernmental cooperation is implicit in any system where powers have been allocated concurrently to make laws in respect of functional areas, the only reasonable way in which these powers can be implemented is through cooperation.<sup>95</sup> Therefore, it is the position of the IGRF Act to prescribe a framework for the nature of interaction, planning, consultation, cooperation and coordination, essentially a dialogue between and within the various spheres of governments and their respective stakeholders.<sup>96</sup>

However, according to Steytler and De Visser,<sup>97</sup> the IGRF Act falls short in jurisprudence and is limited in a number of ways.<sup>98</sup> Section 3(1) of the IGFR Act states that ‘[i]n the event

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<sup>92</sup> S 4 IGRF Act.

<sup>93</sup> *National Education Policy Bill No. 83 of 1995* 1996 (4) BCLR 518 (CC), 1996 (3) SA 289 (CC) [hereafter *National Education Policy Bill*].

<sup>94</sup> *National Education Policy Bill* at para 34.

<sup>95</sup> *First Certification Judgment* at para 290.

<sup>96</sup> Powell D ‘Intergovernmental relations in South Africa’ in C Saunders et al (eds) *Intergovernmental relations in federal countries* (forthcoming in 2013).

<sup>97</sup> Steytler & De Visser (2007).

<sup>98</sup> Steytler & De Visser (2007) 16-4.

of a conflict between a provision of this Act and a provision of another Act of Parliament regulating IGR, the provision of that other Act prevails'.<sup>99</sup> This provision thereby enforces the notion that the IGRF Act provides a default position only.<sup>100</sup> A further shortfall is the extent to which the IGRF Act is applicable; it applies only to the executive component of the spheres of government.<sup>101</sup> Even though IGR is a system inclusive and applicable to all spheres of government and organs of state, the IGRF Act focuses on regulating IGR in the executive component of spheres of government.<sup>102</sup> Section 2 (2) provides that the IGRF Act does to apply to the following structures, institutions and bodies:

- (a) Parliament;
- (b) the provincial legislatures;
- (c) the courts and judicial officers;
- (d) any independent and impartial tribunal or forum contemplated in section 34 of the Constitution and any officer conducting proceedings in such a tribunal or forum;
- (e) any institution established by Chapter 9 of the Constitution;
- (f) any other constitutionally independent institution; and
- (g) any public institution that does not fall within the national, provincial or local sphere of government.<sup>103</sup>

The IGRF Act provides for the establishment of councils or forums within the different spheres of government, as it is through the engagement of the different forums that issues of interest and concern are discussed. These forums include the President's Coordinating Council (PCC) and the Minister and MECs (MinMECs) Forum.

The PCC consists of the President; the Deputy President; the Minister in the Presidency; Minister for Finance; Minister for Cooperative Governance and Traditional Affairs (CoGTA); the Cabinet member responsible for the public service; Premiers of all provinces; and a municipal councillor designated by SALGA.<sup>104</sup> The MinMECs on the other hand consist of the Minister for a specific functional area; that Minister's Deputy; Members of the Executive Councils of all provinces who are responsible for a similar functional area in their respective provinces; and a municipal councillor designated by SALGA.<sup>105</sup> Therefore, the

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<sup>99</sup> S 3 (1) IGRF Act.

<sup>100</sup> Steytler & De Visser (2007) 16-4.

<sup>101</sup> Steytler & De Visser (2007) 16-5.

<sup>102</sup> Steytler & De Visser (2007) 16-5.

<sup>103</sup> S 2 (2) Constitution.

<sup>104</sup> S 6 (1) IGRF Act.

<sup>105</sup> S 10 (1) IGRF Act.

content of chapter 2 to 4 of the IGRF Act is in compliance with the structures, mechanisms, and procedures envisaged in section 41 (2) of the Constitution. Each chapter outlines the composition, role and function of the respective IGR structures at the national, provincial and local spheres of government. The IGRF Act articulates the difference between the objectives of cooperative governance and the measures needed to achieve them.<sup>106</sup>

#### **4. OBJECTIVES AND MEASURES OF INTERGOVERNMENTAL RELATIONS AND COOPERATIVE GOVERNMENT**

Within the principles of cooperative government and IGR provided for in Chapter 3 of the Constitution, the IGRF Act regulates how all spheres of government and organs of state can facilitate coordination in the implementation of policy and legislation.<sup>107</sup> Steytler and De Visser<sup>108</sup> state that the IGRF Act makes clear distinction between the objects of cooperative government and the measures needed to achieve them.<sup>109</sup> There are four objects that should also be achieved in this process.

There is an obligation placed upon IGR structures and institution to achieve: ‘coherent government; effective provision of services; monitoring implementation of policy and legislation; and the realisation of national priorities’.<sup>110</sup> Monitoring of the implementation of policy and legislation should enhance the coherence of an effective government. The realisation of national priorities through the collaboration of the different spheres and organs of state and obligations set forth by section 41(1)(h) of the Constitution should ultimately lead to the effective provision of services.

#### **5. CONCLUSION**

The South African Constitution is premised on the spirit of cooperative government. Chapter 3 provides a basis for the different stakeholders and government institutions to operate with in this *modus*. Although the Constitution does not define what IGR and cooperative government are, it is clear however, that it is within the distinct, interdependent and interrelated nature of the spheres of government that principles of co-operative government

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<sup>106</sup> Steytler & De Visser (2007) 16-5.

<sup>107</sup> S 4 IGRF Act.

<sup>108</sup> Steytler & De Visser (2007).

<sup>109</sup> Steytler & De Visser (2007) 16-5.

<sup>110</sup> S 4 IGRF Act.

and IGR find expression.<sup>111</sup> The next chapter will look at how local government is incorporated into the system of IGR and cooperative government. The Constitution creates scope for local government to organise itself and participate as a collective in IGR.

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<sup>111</sup> Phindela (2012) 6.

## **CHAPTER THREE: ORGANISED LOCAL GOVERNMENT**

### **1. INTRODUCTION**

Local government is made up of many municipalities: eight metropolitan, 44 district and 226 local municipalities. It is essential to ensure that local government acts as one body and one voice, which will enhance its ability to be effective in IGR. To effect cooperative government, municipalities need to be consulted on a range of national and provincial issues. However, it is neither always practical nor possible to consult 278 municipalities on an individual basis within an efficient time frame. This chapter focuses on the constitutional, policy and legislative framework for the participation of OLG in IGR with other spheres of government.

### **2. THE CONSTITUTIONAL, POLICY AND LEGISLATIVE FRAMEWORK**

#### **2.1 The constitutional provision**

The constitutional basis for OLG is set forth in section 163; it outlines and creates a basis for national legislation that establishes and determines the structures and institutions that would represent OLG. According to section 163, an Act of Parliament must be enacted that will:

provide for the recognition of national and provincial organisations representing municipalities and determine procedures by which local government may consult the national and provincial government, designate representatives to participate in the National Council of Provinces (NCOP) and nominate persons to the Financial and Fiscal Commission (FFC).

Pursuant to this section, the OLG Act has been enacted. It is through OLG that local government is able to participate in IGR structures established and underpinned by the IGRF Act.

## 2.2 Organised Local Government Act of 1997

With the advent of democracy in 1994 OLG was radically reconstructed to meet the challenges incurred and inherited from the apartheid era.<sup>112</sup> In the same year that the 1996 Constitution came into operation, the Organised Local Government Act of 1997 was adopted.

Section 2 (1) of the OLG Act provides that the Minister<sup>113</sup> must recognise one national organisation representing the majority of the provincial organisations.<sup>114</sup> Furthermore, on a provincial level the Minister with the consent of the Member of Executive Council<sup>115</sup> responsible for local government must recognise in each province one provincial organisation representing the majority of the municipalities on condition that all the different types of categories of municipalities in the province are members of the organisation.<sup>116</sup> Additionally, in consultation with the MEC for local government the Minister may set up additional regulations for the criterion of recognition and must ensure that the criteria take into consideration political inclusiveness; provincial representation and a balance between urban and rural municipalities.<sup>117</sup> The OLG Act also articulates that, if the organisation recognised by the Minister ceases to reflect or meet the representation conditions set forth in section 2 (1) (a)<sup>118</sup> and (b)<sup>119</sup>, the Minister may withdraw the recognition.<sup>120</sup> At the provincial level this decision may be taken with the consensus of the MEC for local government.<sup>121</sup> Within a 30-day period the Minister must issue a notice to the organisation informing it of the intended withdrawal.<sup>122</sup>

Moreover, the OLG Act makes provision for two other fundamental processes that affect local government. These are the nomination of two persons to represent the municipalities on the Finance and Fiscal Commission<sup>123</sup> and the designation of ten non-voting representatives to participate in the National Council of Provinces.<sup>124</sup>

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<sup>112</sup> Department of Cooperative Governance and Traditional Affairs (CoGTA) *The intergovernmental relations system in South Africa* (2006) 7.

<sup>113</sup> Minister of Department of Cooperative Governance and Traditional Affairs.

<sup>114</sup> S 2 (1) (a) OLG Act.

<sup>115</sup> Hereafter referred to as MECs.

<sup>116</sup> S 2 (1) (b) OLG Act.

<sup>117</sup> S 6 (1) (2) OLG Act. See also Steytler and De Visser (2007) 16-10.

<sup>118</sup> Represents a majority of provincial organisations.

<sup>119</sup> All different categories of municipalities in the province are associate members of the provincial organisation.

<sup>120</sup> S 2 (a) (i) OLG Act.

<sup>121</sup> S 2 (2) (b) OLG Act.

<sup>122</sup> S 2 (2) (a) (ii) OLG Act.

<sup>123</sup> Hereafter referred to as FFC.

<sup>124</sup> Ss 5 and 3 OLG Act.

Pursuant to the provision of section 163 of the Constitution and the objectives of the OLG Act, SALGA is the institution that has been recognised as the representative of OLG. It was first established in 1996 in anticipation of the OLG Act. In 1997 after the enactment of OLG Act, it was recognised by the Minister<sup>125</sup> as a voluntary body representing all municipalities and nine Provincial Local Government Associations (PLGAs).<sup>126</sup> It is a non-statutory body whose official status originates from the Minister's recognition in meeting the provisions foreseen by section 163 of the Constitution and in terms of the OLG Act.

### 2.3 The White Paper on Local Government

The White Paper on Local Government (WPLG)<sup>127</sup> adopted in 1998 is a policy document that outlines the systems which will make developmental local government a reality. Within this reality however, there needs to be a framework where a local government is able to realise and organise itself in order to ensure that it is both effective and efficient in meeting its objectives. This is why the WPLG also highlights the role of OLG in effecting the role of local government in its developmental context. The WPLG specifically provides for the strategic aims of the system of IGR by outlining the following as strategic purposes of IGR:

- to promote and facilitate co-operative decision-making;
- to coordinate 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.<sup>128</sup>

The WPLG refers to the constitutional mandate of municipalities to organise themselves in a structure of OLG through the legislation envisaged in the Constitution. It states that 'SALGA's key role is the effective representation of local government in the legislative processes of all spheres of government, and in intergovernmental executive processes'.<sup>129</sup>

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<sup>125</sup> The Minister of Provincial Affairs and Constitutional Development but now the Minister of Cooperative Governance and Traditional Affairs (CoGTA).

<sup>126</sup> Steytler & De Visser (2007) 16-10. See *Government Notice* No R 175, 30 January 1998, *Regulation Gazette* no 6087 *Government Gazette* vol 391 n 18645. SALGA (2012) 22.

<sup>127</sup> WPLG (1998) 48.

<sup>128</sup> Department of Provincial and Local Government (DPLG) *Practitioner's guide to the intergovernmental relations system in South Africa* (2007) 3.

<sup>129</sup> WPLG (1998) 48.

The WPLG states further that in order for SALGA to be effective in fulfilling this role, it must be able to develop advocacy capacity, internal mandates and consultative processes that will enhance its role of representing local government in the respective spheres.<sup>130</sup> It also further enunciates that OLG is an employers' organisation, and constitutes the employer component of the South African Local Government Bargaining Council.<sup>131</sup> SALGA therefore has a key role in building capacity in areas of labour relations and creating constructive relationship with organised labour for its members. A successful transformation of local government requires that the relations between SALGA and municipal trade unions are built around a common commitment to a developmental role for local government.<sup>132</sup>

The WPLG as a broad policy framework that defines and creates scope for developmental local government has also defined the objectives and role of OLG within the scheme of cooperative government and IGR. Policy implementations takes effect in local government, therefore it is essential that any policy framework defines the role of OLG within its intended objectives.

#### **2.4 The Municipal Systems Act of 2000**

The Local Government: Municipal Systems Act<sup>133</sup> reflected the Constitution and WPLG on how to institute the process of cooperative government at a municipal level. This is evident in the language and wording used by section 3 of the Systems Act which provides that OLG must:

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

These are the same objectives stipulated by OLG's mandate as measures that need to be obtained in fulfilling its role for developmental local government. Comparable notions are also made in relation to labour. According to section 71 of the Systems Act, any collective agreements concluded by OLG on behalf of local government in the bargaining council

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<sup>130</sup> WPLG (1998) 48.

<sup>131</sup> WPLG (1998) 49. Hereafter referred to as Bargaining Council.

<sup>132</sup> SALGA SALGA's Five Year Strategic Plan 2012/17 (2012) 24.

<sup>133</sup> Act 32 of 2000 (referred to as the Systems Act).

established for municipalities must be complied with.<sup>134</sup> It is important to note the use of language. In sections 3 (3) and 71 the word ‘must’ is used to indicate the mandate that OLG must pursue. This has been a process that is similarly applicable to other legislation envisaged and providing for OLG’s scope of functions.

### **3. THE ROLE OF SALGA IN INTERGOVERNMENTAL RELATIONS**

#### **3.1 Introduction**

SALGA and its provincial associations are collectively referred to as OLG.<sup>135</sup> It has been mandated and is recognised as the organisation that represents municipalities at the national and provincial spheres of government. SALGA is a Schedule 3A Public Entity, recognised in terms of the Public Finance Management Act;<sup>136</sup> hence, the statutory need for it to submit its annual financial statements to the Auditor General.<sup>137</sup> It is funded through an array of sources but primarily through membership levies, national and CoGTA grants and project specific funds from international donors.<sup>138</sup>

#### **3.2 SALGA’s Constitution of 2000 and its developments**

SALGA is run on the basis of its own constitution which was first established in 1996.<sup>139</sup> SALGA’s objectives and principles are adopted in the framework and background of the Constitution, the WPLG and OLG Act.<sup>140</sup> Because SALGA operates within an environment that is constantly changing and developing it is important that its constitution is kept abreast with continuous changes. This has primarily been one of the reasons that the SALGA constitution has undergone three phases of development since it was first established.

The first phase was from 1996 to 2000. While SALGA was first established in 1996, it was first recognised by the Minister as the national organisation representing PLGAs in January

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<sup>134</sup> S 71 Systems Act.

<sup>135</sup> Steytler & De Visser (2007) 16-10.

<sup>136</sup> Act 1 of 1999 (referred to as PFMA).

<sup>137</sup> Schedule 3A PFMA. See Steytler & De Visser (2007) 16-11.

<sup>138</sup> SALGA (2012) 22.

<sup>139</sup> SALGA *SALGA’s five year strategic plan 2012/17* (2012) 24.

<sup>140</sup> SALGA retrieved from

<http://www.salga.org.za/pages/About-SALGA/SALGA-Governance-Framework/The-SALGA-Constitution>  
(accessed on 30 September 2013).

1997 after the enactment of the OLG Act. In 1997 SALGA formally represented the nine PLGAs who in turn represented the 843<sup>141</sup> different structures of local government.

In May 2000<sup>142</sup> the SALGA constitution was amended and formally adopted in anticipation of the first local government elections in December 2000 which introduced a new local government dispensation.<sup>143</sup> The SALGA constitution at this stage focused on essentially providing for the political leadership, its structures and the frequency of the meetings convened by the political leadership.<sup>144</sup>

The second phase of amendments was from 2000 to 2004. This was just before and after the first local government elections<sup>145</sup> were held which had also brought with them a number of changes to local government and its mandate. Since the adoption of the constitution in 2000, a number of critical external and internal developments that affected SALGA and its role took place. In November 2000 the Local Government Municipal Systems Act was introduced which ushered in the new role and fundamental aspect of the new local government system.<sup>146</sup> Shortly after the Systems Act in December 2000 the new democratic local government dispensation was introduced and resulted in the amalgamation of the 843 local government structures to 278 local municipalities.

Prior to 2000, SALGA and the PLGAs had different respective constitutions. Membership only comprised of PLGAs with no direct membership for local municipalities. In 2001 amendments were internally introduced when SALGA approved a unified structure for the organisation and adopted a system for the central collection of membership levies. This brought about the unification of SALGA which introduced the formal creation of a unitary structure, the transfer of PLGAs to SALGA national and direct membership of municipal membership.<sup>147</sup> The amendment allowed for all municipalities who were members of the PLGAs to become members of SALGA thus creating a dual membership at national and provincial levels of SALGA.<sup>148</sup> This also meant that the annual membership levies of those

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<sup>141</sup> Nyalunga D 'The revitalisation of local government in South Africa' (2006) (1) 2 *International NGO Journal* 015-020.

<sup>142</sup> SALGA *Annual Report 2012/13* (2013) 22.

<sup>143</sup> SALGA (2013) 23.

<sup>144</sup> SALGA (2012) 24.

<sup>145</sup> The first democratic local government election was held on 5 December 2000.

<sup>146</sup> Preamble Systems Act.

<sup>147</sup> SALGA (2013) 23.

<sup>148</sup> SALGA National Conference 'NEC Presentation on Constitution Amendment 2012' (10-11 September 2012) slide 10.

municipalities who were members of each of the provincial associations would be levied by SALGA who in turn would pay the different provincial associations directly.<sup>149</sup> The process of moving local municipalities towards direct membership took effect in October 2002, the transfer and merging of the provincial administration commenced in July 2003.<sup>150</sup>

The third phase was a response to operational issues that had been brought about by the preceding amendments. This was from 2004 – 2007. It focused on a comprehensive review of the SALGA constitution in its totality and sought to ‘... provide for flexibility of process in the interest of practicality; increased clarity on the structures and processes of the organisation; and lastly to eliminate a number of apparent contradictions and duplications’.<sup>151</sup>

In 2004 the SALGA constitution was amended to give effect to the unitary structure of the organisation. The following categories of members were included: municipalities; provincial associations and associate member (organisations which are not a municipality or a provincial local government association, but are strongly concerned with or involved in local government matters and complied with criteria as may have been determined by the SALGA National Executive Committee).<sup>152</sup> The definition of National Office Bearers was also narrowed down to the Chairperson and two Deputy Chairs as before the amendment, the constitution provided for the office bearers to consist of the Chairperson; Deputy Chairperson; General Secretary; Assistant General Secretary; and Treasurer.<sup>153</sup> In 2007 the definition of National Office Bearers was further amended expanding it from two deputy chairpersons to three thus providing for an additional deputy.<sup>154</sup>

After these amendments, the organisation’s mandates may be thematically summarised into six pillars that are in the framework of the Constitution and the OLG Act. These are namely, representation, advocacy and lobbying; an employer body; capacity building; support and advice for member municipalities; strategic profiling; and knowledge and information sharing

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<sup>149</sup> SALGA (2013) 22.

<sup>150</sup> The process of transferring all PLGAs was completed in 2006 for all provincial associations’ administration.

<sup>151</sup> SALGA (2012) 25.

<sup>152</sup> SALGA Governance Framework ‘The SALGA Constitution: Amendments to SALGA constitution in chronological order to date’ available from <http://www.salga.org.za/pages/About-SALGA/SALGA-Governance-Framework/The-SALGA-Constitution> (accessed 04 November 2013).

<sup>153</sup> SALGA Governance Framework (accessed 04 November 2013).

<sup>154</sup> SALGA National Conference (10-11 September 2012) slide 10.

amongst members.<sup>155</sup> These are pillars that are essential in the process of SALGA achieving its role as the collective body of OLG as well as its IGR role in other spheres of government.

In summary, the SALGA constitution creates a framework of how SALGA as an institution should internally arrange its governance and administrative structures. It clearly defines and articulates the different roles and responsibilities of the administrative and political leadership in the institution that will give effect to the envisaged role of OLG.

### **3.3 The internal organisation of SALGA**

Since its establishment SALGA has always demonstrated a preference for a unitary structure for OLG.<sup>156</sup> The notion has been that for OLG to be representative of local government it needs to speak with one collective voice. Hence, the phase two amendments of SALGA's constitution, which amongst other changes, brought about the merging of the provincial administration of the nine provincial associations into one administration under the national umbrella of SALGA national. The aim was to create one structure that was governed by one constitution but most importantly had a singular voice and aligned activities.<sup>157</sup> As a result, SALGA is now a unitary structure which consists of the national office and nine provincial associations as the provincial arms bound by one constitution equally bestowed with the authority of representing OLG in respective provinces.<sup>158</sup>

An important consideration is that SALGA is not a statutory body although it has sanctioned, official status enunciated by legislation and the Constitution.<sup>159</sup> Consequently, in intergovernmental structures, it is unable to make executive and legislative decisions in intergovernmental structures that are legally binding on its members. It is a consultative, unitary body with a membership of 278 municipalities and is represented by provincial associations in all nine provinces around South Africa. The objectives of the provincial offices are to execute the organisation's function at a provincial level and to ensure that there is coordination and integration between the local and national tiers of the organisation.

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<sup>155</sup> SALGA (2012) 35.

<sup>156</sup> SALGA *Annual Report 2012/13* (2013) 22.

<sup>157</sup> SALGA (2012) 22.

<sup>158</sup> SALGA (2012) 22.

<sup>159</sup> Steytler N 'The Role of organised local government in intergovernmental relations in South Africa' in Jain LC (ed) *Decentralisation and Local Governance: Essays for George Mathew* (2005) 495-520.

### 3.4 Functions

The organisation's holistic role and fundamental objective in terms of legislation and its constitution is to represent, promote, and protect the interests of its constituent members and to facilitate OLG's participation in other spheres of government.<sup>160</sup> It represents local government on a vast array of intergovernmental forums such as the PCC, MinMECs Forum, the Budget Forum, and the National Council of Provinces (NCOP) and nominates two members to the President for the Financial and Fiscal Commission.<sup>161</sup>

As aforementioned, the holistic mandate and function of SALGA is to represent local government at the national and provincial sphere of government whilst transforming to enable it to fulfil its developmental goal.<sup>162</sup> This process would be achieved through the two distinctive roles constituting the main objective of SALGA; first, the role of representing local government in other spheres of government and second, providing a service to its members that will help them to meet their mandates.<sup>163</sup> The six thematic areas constituting SALGA's mandate can be directed or assigned into an onus of either representing its members or providing a service to its members. SALGA has delineated and set out its IGR role in line with the objectives set forth by the OLG Act and its own constitution. The functions of the organisation are underpinned by the obligation and expectation that are set forth for OLG.

SALGA, as a representative of OLG, is identified as one of the key stakeholders in the implementation and fostering of integration and coordination of stakeholders in ensuring effective service delivery. Cooperative governance of the respective spheres is a key driver in ensuring that service delivery and the needs of the communities are met. It is SALGA's role to facilitate and represent local government's interests through lobbying, engagement and participation<sup>164</sup> in the national and provincial structures of government, in order to enhance coordination and integration for service delivery purposes. Amongst others, its role is to primarily assert local government's voice through different means in national and provincial

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<sup>160</sup> SALGA (2012) 22. See art 4 SALGA Constitution.

<sup>161</sup> South African Government Information *South African Local Government Association (SALGA)* retrieved from <http://www.info.gov.za/aboutgovt/locgovt/salga.htm> (accessed on 11 September 2013).

<sup>162</sup> SALGA *SALGA's five year strategic plan 2012/17* (2012) 30.

<sup>163</sup> Steytler & De Visser (2007) 16-11.

<sup>164</sup> SALGA *SALGA's five year strategic plan 2012/17* (2012) 23.

spheres and to measure and keep up to date with the impact of proposed or implemented legislation at local government level.<sup>165</sup>

### 3.4.1 Representative role

Representation provided by SALGA to its members can be divided into three main objectives that form part of its strategic aims. These are representation, advocacy and lobbying in other spheres of government; acting as the employer body and strategic profiling locally and internationally.<sup>166</sup> SALGA is predominantly an intergovernmental organisation, therefore representing the voice of local government and advocating and lobbying on its behalf forms an essential part of its function. As articulated in the previous chapters, the role of representation is seen and exercised in numerous national, provincial and even local structures, different bodies and councils such as the Bargaining Council. SALGA has played a major role as an employer representative in the process of local government employment negotiations at the Bargaining Council. Municipalities no longer negotiate individually for wages, salaries and conditions of employment with trade unions. This has assisted in eliminating irregularities, discrepancies of salaries and variations in conditions of service amongst the employees.<sup>167</sup>

The same approach has been taken in relation to the lobbying and advocacy of national policies and legislation. SALGA is intensely involved in the process of analysing and advocating for policies and legislation that empower and enable local government to attain its developmental objective. It is mandatory for SALGA to advocate, review and provide commentary on policies and legislation that will affect local government. This is often achieved through a consultative process with members to gather their views on relevant legislation or policy.<sup>168</sup> As will be later highlighted, lobbying and advocacy also forms an essential component of providing a service to members and facilitating IGR in other spheres of government.

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<sup>165</sup> Baatjies (2012) 5.

<sup>166</sup> SALGA retrieved from <http://salga.org.za/pages/About-SALGA/Welcome-to-SALGA> (accessed on 22 September 2013).

<sup>167</sup> Sokhela (2006) 130.

<sup>168</sup> Personal communication with SALGA Western Cape senior official (17 September 2013).

### **3.4.2 Providing a service**

The practice of providing a service can also be associated with three strategic pillars of the organisation such as capacity building in municipalities; support and advice for member municipalities and a continuous process of knowledge and information sharing amongst members.<sup>169</sup> These are encouraged and progressed through administrative and political structures built and incorporated into the strategic objective of the organisation. SALGA provides an array of support, capacity building and advice initiatives to its members through individual or collective training, advice and support of municipalities. Section 3 (3) of the Systems Act states that: ‘... organised local government must seek to enhance cooperation, mutual assistance and sharing of resources among municipalities’.<sup>170</sup> It is therefore essential that SALGA is proactive in ensuring that local government realises this goal; thus, capacity building and knowledge sharing becomes a continuous necessity.

## **4. CONCLUSION**

This chapter has looked into some of the key legislations mandating, shaping and providing the scope for OLG. It is important that local government is able to address and highlight essential issues and activities that affect its daily operations and developmental objectives. However, with a large number of local government municipalities in the country, individual participation in this regard may not always be feasible or productive. It is therefore the responsibility of OLG to give effect to this role. Essential in achieving this process is ensuring that OLG has a clearly defined purpose, mandate and scope, articulated and supported by a legislative framework that enables it. Having discussed OLG and its role, the next chapter will look into the Premier’s Forum and how OLG plays its facilitation role within this structure.

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<sup>169</sup> SALGA *SALGA’s five year strategic plan 2012/17* (2012) 29.

<sup>170</sup> S 3 (3) Systems Act.

## **CHAPTER FOUR: SALGA'S ROLE IN THE WESTERN CAPE'S PREMIER'S INTERGOVERNMENTAL FORUM**

### **1. INTRODUCTION**

Intergovernmental relations is a continuous process that occurs within relationships, be it in formal intergovernmental structures or informal engagements that occur between spheres of government or ministries. There are different institutions and mechanisms that the IGRF Act requires to be established at national, provincial and local spheres of government that foster IGR. The function and responsibility of each structure are ultimately determined by the respective sphere in which the forum is established.

This chapter is divided into two parts. The first part looks into the formal structure of the Premier's Forum as prescribed by legislation. The second part looks into the compliance that has been adopted in practice and then at the role of SALGA in facilitating IGR, specifically in the Premier's Forum. Due to the large number of Premier's Forums across the country, this paper focuses specifically on the Western Cape<sup>171</sup> Province's Premier's Forum. It will also look at the period from 2009 to 2013 as the scope of the case study. This period allows for a view that has been influenced by the changes brought about by the most recent national and local government elections.<sup>172</sup>

### **2. THE LEGISLATIVE FRAMEWORK**

The Constitution provides for a broad framework and for principles of IGR as well as the context in which it should operate. The distinctiveness, interdependence and interrelatedness of the three spheres of government outlined in Chapter 3 of the Constitution are central and form the backbone of IGR in South Africa.<sup>173</sup> Section 41 (2) of the Constitution states that:

... an Act of Parliament must *establish or provide for structures* and institutions to promote and facilitate intergovernmental relations.

The IGRF Act thus provides for the establishment of structures such as the Premier's Forum whilst the OLG Act provides for the establishment of institutions to facilitate IGR such as SALGA. The IGRF Act formally mandates and revitalises provincial-municipal IGR. It does

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<sup>171</sup> Hereafter WC.

<sup>172</sup> The last national elections took place in 2009 and local government elections took place in 2011.

<sup>173</sup> DPLG (2007) 3.

this by stimulating and creating a generic, synchronised framework for provincial, intergovernmental forums<sup>174</sup> as there was no legislative framework or guidelines that steered or stipulated the modes of engagement and, more importantly, the dispute measures that so often precipitated challenges and gridlocks in the structures. It was through the IGRF Act that IGR practices were given a statutory mandate and steered towards specific objectives.

### **3. THE PREMIER'S FORUM – LEGAL FRAMEWORK**

This will be a brief discussion on the generic composition and functional framework for the Premier's Forum as prescribed by legislation. Later on in the chapter the discussion will focus on the practice that has been adopted in the WC Premier's Forum.

#### **3.1 Roles and functions of the Premier's Forum**

Section 18 of the IGRF Act outlines the key roles of the Premier's Forum as a platform to deliberate on issues such as implementation of national policy and legislation that affects local government and new national legislative and policy initiatives that will affect local government. Additionally, it must discuss and consult on development of provincial policy and legislation; and co-ordinate and align the strategic and performance plans and priorities, objectives and strategies of the provincial and local governments in the province.<sup>175</sup> It is also required to report on an annual basis to the PCC on matters relating to the advancement of national policy and the implementation of legislation in the respective provinces.<sup>176</sup> This reporting mechanism may also be utilised by the Premier's Forum to highlight issues of importance to the PCC in relation to provincial interests.<sup>177</sup> The Premier is responsible for ensuring coordination of IGR in the province.<sup>178</sup>

#### **3.2 Composition and structure**

According to section 17 (1) of the IGRF Act, the Premier's Forum consists of the Premier of the province; the MEC responsible for local government; mayors of districts and metropolitans in the province; a municipal councillor designated by SALGA in the province;

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<sup>174</sup> DPLG (2008) 18.

<sup>175</sup> S 18 IGRF Act.

<sup>176</sup> S 29 (a) IGRF Act. See also Western Cape Department of the Premier *Western Cape Premier's Coordinating Forum: Terms of Reference* (2009a) 7 (hereafter TOR).

<sup>177</sup> TOR (2009a) 6.

<sup>178</sup> S 38 IGRF Act.

and lastly any other MEC designated or other persons invited by the Premier.<sup>179</sup> Section 17 (3) further provides scope for the Premier to extend invitations to other stakeholders beyond that which is prescribed in the IGRF Act.<sup>180</sup>

### **3.3 Internal governance procedures**

Each Premier's Forum adopts its own internal rules which outline in detail the terms of reference<sup>181</sup> and rules of order<sup>182</sup> of the forum. The TOR and RoO highlight the functions and responsibilities of the delegates in the forum in relation to the conduct of meetings and procedures that govern its processes.<sup>183</sup>

### **3.4 Agenda setting and meetings**

The Premier arranges and determines the agendas for the forum meetings with administrative support service and assistance provided by his/her department.<sup>184</sup> Items for agenda consideration from other stakeholders may be submitted for consideration in terms of a framework determined by the Premier.<sup>185</sup> The IGRF Act doesn't set forth a specific number of meetings to be held, however, the Premier's Forum must report on an annual basis to the PCC thus creating the notion that the Premier's Forum is required to meet annually, at the least. Through its internal procedures the Premier's Forum must determine the frequency of meetings and the manner in which they are to be conducted.<sup>186</sup>

## **4. FUNCTIONING OF THE WC PREMIER'S FORUM: A FIVE YEAR REVIEW 2009 – 2013**

The Premier is responsible for the coordination of IGR in the province; however, since 2009 this responsibility was transferred and mandated to the Department of Local Government.<sup>187</sup> Essential engagements and decisions made in relation to the Premier's Forum are thus coordinated and directed by the DLG. In practice the composition, structure and undertakings

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<sup>179</sup> S 17 IGRF Act.

<sup>180</sup> S 17 (3) IGRF Act.

<sup>181</sup> Hereafter referred to as TOR.

<sup>182</sup> Hereafter referred to as RoO.

<sup>183</sup> TOR (2009a) 1.

<sup>184</sup> S 19 (1) IGRF Act.

<sup>185</sup> S 19 IGRF Act.

<sup>186</sup> S 35 (1) (e) IGRF Act.

<sup>187</sup> Department of Local Government (DLG) *A proposal for strengthening the functionality of district IGR forums* (2013) 3. Hereafter referred to as DLG.

of the Premier's Forum are directed and governed by the TOR and RoO of the forum. These are internal procedures which the IGRF Act foresees as a legislative requirement in order to ensure that delegates and members of the structure understand what the different roles and responsibilities of the members in the forum entail.<sup>188</sup>

#### 4.1 Representation and composition

In practice, the compliance of the Premier's Forum in relation to membership has gone beyond prescribed legislative requirements. A broad framework for the composition of the Premier's Forum has been set out in chapter 3 of the IGRF Act; however each provincial forum has the scope to modify the prescribed structure in accordance to their needs. The WC and most other provinces have included local municipalities as members of the Premier's Forum.<sup>189</sup> In the WC in terms of the TOR this means that in addition to one metro mayor and five district mayors, there are 24 more local mayors who are afforded membership. Furthermore, membership also consists of all MECs, HODs and 24 municipal managers.<sup>190</sup> Even though the IGRF Act prescribes a structure that consists of membership that is highly executive, in the WC the Premier's Forum has a large pool of officials who are recognised as members. It is important however to note that even though HODs and municipal managers form part of the membership, section 16 of the RoO states that they do not have the power to vote. HODs and MMs do not form part of a quorum.<sup>191</sup> In most meetings mayors are accompanied by their senior officials as technical advisors or in the capacity of observers as they do not have voting rights.<sup>192</sup>

Over the past five years the Premier's Forum has adopted two different models for conducting their engagements. For 2009 and 2010, the Premier's Forum was divided into two structures; the *plenary* and *cluster* sessions.<sup>193</sup> The *plenary* session consisted of the Premier (as the chairperson) and all MECs in the province; the Director-General (DG) and Head of Departments (HOD); Mayors and Municipal Managers of all municipalities (metros, districts

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<sup>188</sup> S 33 IGRF Act.

<sup>189</sup> DPLG (2007) 69. Baatjies R & Steytler N *District Intergovernmental Forums: A preliminary assessment of institutional compliance with the Intergovernmental Relations Framework Act* (2006).

<sup>190</sup> S 3 TOR (2009a).

<sup>191</sup> S 14 RoO (2009b).

<sup>192</sup> Attendance registers for Premier's Forum from 2009-2013. Personal communication with SALGA Western Cape IGR senior official (17 September 2013).

<sup>193</sup> Department of the Premier *The Premier's Coordinating Forum: Overview* (2013) available from <http://www.westerncape.gov.za/pcf> (accessed on 29 August 2013).

and local municipalities) in the province.<sup>194</sup> The *cluster* session structures were somewhat similar to that of the plenary session with the exclusion of the Premier as a delegate and with each session chaired by the relevant MEC in collaboration with the host district mayor.<sup>195</sup> The plenary session primarily focused on discussing general issues from all sectors and departments in the province, whilst the cluster sessions focused on sectorial specific topics such as social and economic issues and governance and administration.

There appears to be a disjuncture in relation to the substantive structural arrangement of the Premier's Forum and what has been outlined as the meeting's structure from its internal procedures. From 2011 to 2013, the meetings have been attended as a singular generic structure. It appears that the cluster arrangement is no longer utilised even though internal procedures have not been amended to reflect such adjustments. Meetings attended from 2011 to date are generic sessions, thus giving the impression that the cluster system is no longer operational.<sup>196</sup>

#### **4.2 Preparatory and support structures for meetings**

As aforementioned, the DLG has been delegated the responsibility of coordinating IGR. In its endeavour to coordinate intergovernmental relations, the DLG has established the Premier's Intergovernmental Forum Technical,<sup>197</sup> the Minister's and Mayor's<sup>198</sup> forums and its technical structure<sup>199</sup> to support the Premier's Forum. The PIFTech and MinMayTech are established in terms of section 21 of the IGRF Act as technical support committee for the Premier's Forum hence their ability to influence and set the tone for the Premier's Forum engagements. Items 12 and 13 of the TOR also outline the function and support role that the PIFTech structure has towards the Premier's Forum. The MinMayTech is also seen as a technical support structure that advises the MinMay (its principal political structure), which then feeds into the Premier's Forum. The MinMay proposes strategic agendas and sets the tone for the Premier's Forum.<sup>200</sup> The PIFTech, MinMay and MinMayTech meetings have an

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<sup>194</sup> Department of the Premier (accessed on 29 August 2013).

<sup>195</sup> Department of the Premier (accessed on 29 August 2013).

<sup>196</sup> Agendas and meetings arranged from the year 2009 -2010 were over two days in cluster sessions. Meetings and agendas as of the years 2011 – 2013 reflect that meetings take place over a one day period with all discussions taking place in one meeting as opposed to the previous cluster arrangement.

<sup>197</sup> Hereafter referred to as PIFTech.

<sup>198</sup> Hereafter referred to as MinMay.

<sup>199</sup> Referred to as MinMayTech.

<sup>200</sup> DLG (2013) 3.

essential role in shaping and determining the discussion surrounding the Premier's Forum themes and agendas.

### 4.3 Frequency of meetings

The legislative framework leaves room for provinces to determine the required number of meetings to be held annually. In the WC in terms of the TOR, meetings are to be held every quarter, in different district municipalities on a rotational basis.<sup>201</sup> What has transpired in practice in relation to the regularity of meetings is however different. The number of meetings held on an annual basis varies from year to year. In 2009, two meetings were held in the last two quarters of the year<sup>202</sup> after the national elections which brought a new Premier, Helen Zille, into office in June 2009. The following year, in 2010, three meetings took place, one in the first quarter and the last two in the last two quarters of the year.<sup>203</sup> In 2011, which happened to also be the local government election year, there was only one meeting held at the end of third quarter.<sup>204</sup> For 2012<sup>205</sup> and 2013,<sup>206</sup> two meetings were held for each year, one in the first quarter and the second meeting in the last quarter of the year. It is also important to note that the budget speech falls in the first quarter of the year and the MTEF budget speech in the last quarter. This may be motivation for the current scheduling of meetings. The regularity of meetings has thus been consistent with an average of two meetings annually, in the first and last quarter of the year.

This is however, another example of the disconnect between what internal rules prescribe and that which occurs in practice. The dates for each Premier's Forum are identified at strategic moment in order to influence the planning and budgeting cycle of both provincial and local spheres of government.<sup>207</sup> It is the responsibility of the DG who is also the chairperson of the

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<sup>201</sup> Department of the Premier (accessed on 29 August 2013).

<sup>202</sup> Minutes of *Western Cape Premier's Intergovernmental Forum* (19-20 August 2009) (hereafter PIF 2009a).  
Minutes of *Western Cape Premier's Intergovernmental Forum* (18-19 November 2009) (hereafter PIF 2009b).

<sup>203</sup> Minutes of *Western Cape Premier's Intergovernmental Forum* (17-18 March 2010) (hereafter PIF 2010a).  
Minutes of *Western Cape Premier's Intergovernmental Forum* (27-28 July 2010) (hereafter PIF 2010b).  
Minutes of *Western Cape Premier's Intergovernmental Forum* (18 November 2010) (hereafter PIF 2010c).

<sup>204</sup> Minutes of *Western Cape Premier's Intergovernmental Forum* (13 September 2011) (hereafter PIF 2011).

<sup>205</sup> Minutes of *Western Cape Premier's Intergovernmental Forum* (28 February 2012) (hereafter PIF 2012a).  
Minutes of *Western Cape Premier's Intergovernmental Forum* (27 November 2012) (hereafter PIF 2012b).

<sup>206</sup> Minutes of *Western Cape Premier's Intergovernmental Forum* (05 March 2013) (hereafter PIF 2013a).  
Minutes of *Western Cape Premier's Intergovernmental Forum* (17 September 2013) (hereafter PIF 2013b).

<sup>207</sup> Department of the Premier (accessed on 29 August 2013).

PIFTech to give notice of the Premier's Forum meeting in writing to each member.<sup>208</sup> However, it seems that in practice that the DLG has taken over this responsibility.

#### **4.4 Attendance at Premier's Forum meetings**

The three attendance registers<sup>209</sup> obtained for the Premier's Forum indicate that a high percentage of mayors were in attendance at meetings. Furthermore, the Premier has not missed a single meeting over the past five years since being elected into office.<sup>210</sup> This has also been the case for the majority of the members and invited guests attending the meetings. Occasionally there would be apologies but in most cases alternative representatives were available to ensure representation. There were also a number of officials who were non-members whom attended the meetings of the forum or invited guests who were observers from municipalities and various state entities. This, however, differs from meeting to meeting and is primarily influenced and determined by the theme of engagement for the specific meeting. For instance, mayors and municipal managers are usually accompanied by senior managers from the municipality depending on the thematic area of the meeting.<sup>211</sup> SALGA's representatives have also been similarly diligent with attending the meetings. If the designated member who represents SALGA in the Premier's Forum is unavailable, his deputy attends on his behalf; thus SALGA representatives are always available at the meetings. The records indicate commitment to the attendance of meetings is of great response.<sup>212</sup>

#### **4.5 Agenda setting and its discussion themes**

Ideally, all stakeholders should participate in the process of agenda setting in the IGR structures. This is to prevent the Premier's Forum from becoming an 'array of provincial presentations to the municipalities'.<sup>213</sup> The Premier, through DLG, organises the theme of the meetings and determines the agenda.<sup>214</sup> Proposals for agenda items for a meeting may be submitted as per the framework determined by the Premier.<sup>215</sup> However, what has transpired in practice is different from the obligations and parameters set forth by the IGRF Act. The

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<sup>208</sup> RoO (2009b).

<sup>209</sup> PIF (2012a), PIF (2013a) and PIF (2013b).

<sup>210</sup> Personal communication with SALGA Western Cape IGR senior official (17 September 2013).

<sup>211</sup> See attendance registers for 2009 – 2013.

<sup>212</sup> See attendance registers for the years 2009 – 2013.

<sup>213</sup> DPLG (2008) 19.

<sup>214</sup> S 19 (1) IGRF Act.

<sup>215</sup> S19 (2) IGRF Act.

process of setting the theme and agenda has been a major challenge in relation to ensuring that relevant stakeholders are consulted and contribute their input.<sup>216</sup> DLG sends an invitation to members for input and proposals but most municipalities, particularly district and local municipalities, are not able to provide feedback due to capacity constraints.<sup>217</sup> DLG has for the past three years (2011 – 2013) been consulting with SALGA through informal meetings and electronic communication to propose current issues and interests pertinent to local government. The PIFTech and MinMayTech are also essential structures that drive the agenda for the Premier’s Forum and SALGA presides in these support structures.

Whilst the agenda of the meetings may not need to consider each of the objectives listed in the IGRF Act, it is important that the Premier’s Forum discusses the most pressing issues in provincial-municipal relations.<sup>218</sup> Based on the observation and analysis of the Premier’s Forum agenda and meetings for the period 2009 – 2013, it seems that there is considerable alignment and measures that are made towards meeting the objectives set forth by the IGRF Act. The Premier’s Forum meeting and agendas are focused primarily on deliberating on national policy and legislation that affects local government, developing provincial legislation and discussing key issues of interest to the province and its municipalities which is the core objective of the intergovernmental structure. For instance, the themes for the meetings in 2010 to 2012 have been:

- November 2010 *Finding Intergovernmental Solution: Sustainable Water Usage.*
- September 2011<sup>219</sup> *Working Towards an Integrated Planning and Budgetary Framework*
- February 2012 *Integrated Development Planning Indaba*
- November 2012 *Progress Towards Clean Audits and Administration*
- March 2013 *Towards Sustainable Economic Growth through the Implementation of the National Development Plan*
- September 2013 *Implementing the National Development Plan and Vision 2040: Towards a Common Agenda between State-Owned Enterprise and the Western Cape Government.*<sup>220</sup>

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<sup>216</sup> Personal communication with DLG senior official: Integrated Service Delivery *Department of Local Government in the Western Cape* (28 August 2013).

<sup>217</sup> Personal communication with DLG senior official (28 August 2013).

<sup>218</sup> Baatjies & Steytler (2006) 14.

<sup>219</sup> Minutes for this meeting are not available therefore the discussion, resolutions or changes that might have affected the agenda items cannot be confirmed.

<sup>220</sup> PIF (2010c), PIF (2011), PIF (2012a), PIF (2012b), PIF (2013a) and PIF (2013b).

All other meetings before these dates were arranged according to clusters, thus themes and discussion varied from cluster to cluster.

As seen from the themes<sup>221</sup> the issues discussed are primarily focused on issues that affect local government, its development and the implementation of national policies and legislation. This has varied from IDPs, aligning planning and budgetary,<sup>222</sup> State-owned enterprises' engagements for the purpose of local government advancement,<sup>223</sup> national and provincial policy and legislation affecting local government<sup>224</sup> to local governmental financial management.<sup>225</sup>

## **5. ANALYSIS OF SALGA'S ROLE IN THE PREMIER'S FORUM**

In reviewing the key issues in relation to the research question determining SALGA's facilitation role in IGR structures, it is important that the role that SALGA plays in IGR is assessed. According to the OLG Act,<sup>226</sup> SALGA is mandated to represent and speak on behalf of OLG. However, it becomes complicated and politically delicate when the very same institutions and bodies that SALGA is supposed to represent are given a platform to represent themselves. Under these prevailing conditions, this section analyses what SALGA's role in the Premier's Forum has been in view of the fact that districts and local municipalities represent themselves. In addition, it looks at what SALGA's scope has been in the forum's engagements.

### **5.1 Attendance and the WC representative**

In the Premier's Forum, SALGA delegates the chairperson of SALGA's Provincial Executive Committee accompanied by a senior official, the Provincial Executive Office, to represent OLG.<sup>227</sup> The chairperson is the principal political delegate who speaks on behalf of SALGA with the Provincial Executive Office as his technical advisor and support. The Premier's Forum is a highly political structure and, for that reason, how individuals are politically

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<sup>221</sup> For detailed information on the items arising from the agenda and issues surrounding the theme, minutes provide a more detailed scope.

<sup>222</sup> Item 3 PIF (2013a). Item 3 PIF (2011).

<sup>223</sup> Session A and item 12 PIF (2013b).

<sup>224</sup> PIF (2010a) and (2010b).

<sup>225</sup> Session A, B and C PIF (2012b).

<sup>226</sup> S 2 OLG Act.

<sup>227</sup> See attendance register for 2009 – 2013. Personal communication with SALGA Western Cape IGR senior official (17 September 2013).

affiliated and their political stance becomes crucial in engagements. Over the past five years SALGA has been represented by different delegates. From 2009 to 2011, SALGA was represented by Councillor Steven De Vries. He was a Speaker and Deputy Mayor for the Eden District municipality, thus had political clout. After the 2011 local government elections a new administration and political leadership was introduced which affected SALGA's representative in the Premier's Forum. In relation to provincial political structures, the new chairperson of SALGA Western Cape, Alderman Demetri Qually, is also a member of the Mayoral Committee (Maycom) for the City of Cape Town. He presides as a Maycom member for corporate services and has been a councillor for the City of Cape Town for the past 13 years as he was first elected into office in 2000.<sup>228</sup> He has also served as the Chairperson of the Association of Democratic Alliance Councillors (ADAC) within and outside the Premier's Forum. The chairperson of SALGA Western Cape thus holds political authority. This also puts SALGA in an advantageous position as their representative has vast knowledge and experience in relation to issues that would be important in local government.

## 5.2 Representation

The Premier's Forum has shifted the role of SALGA as the representative of OLG as individual municipalities in the province are represented by their mayors. The Premier's Forum allows for the provincial government to engage directly with the various municipalities thus creating a new, additional role for SALGA in the Premier's Forum. Even though the structure consists of mayors from districts and local municipalities, it is not always the case that districts fully represent or speak on behalf of their local municipalities. Practice has shown that, in most cases, district mayors highlight issues that affect their area of responsibility as opposed to addressing issues that are affecting the all the municipalities in the district.<sup>229</sup> Districts often lack the incentive to address issues as a collective representative for local municipalities. Therefore, at times SALGA also needs to represent and fill the gap. SALGA therefore ensures that municipalities are represented as a single voice, thereby highlighting issues that affect municipalities holistically in the province, and nationally.

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<sup>228</sup> City of Cape Town *Council, committees and subcouncil meetings* available from <http://www.capetown.gov.za> (accessed on 04 November 2013).

<sup>229</sup> Observation made from the *Overberg* District Coordinating Forum meeting (10 September 2013). Personal communication with SALGA Western Cape senior official (17 September 2013).

As mentioned previously, SALGA's representation role was limited in relation to speaking on behalf of OLG of the province. It has, however, been given an additional role which is directed towards discussing key issues that arise from the strategic meeting of SALGA Provincial Executive Committee and SALGA national.<sup>230</sup> In the meeting held on 17 September 2013 SALGA's key discussion was in relation to the distribution of electricity and the constitutional right municipalities have to distribute electricity.<sup>231</sup> Resolutions noted that SALGA was to lead an engagement between the National Energy Regulator of South Africa, ESKOM and the National Department of Energy with regard to the hand-over of electricity distribution in municipal areas as it is a large and for some municipalities a potential source of revenue for municipalities.<sup>232</sup> It also raised issues pertaining to the conditions and the lack of proper maintenance of electricity distribution infrastructure that have been handed over to municipalities.<sup>233</sup> It is therefore clear that SALGA represents and speaks on issues that are generic and affect municipalities on a national platform.

### **5.3 Participation in agenda setting**

The PIFTech and MinMayTech are instrumental in shaping and setting the agenda for the Premier's Forum. Interesting enough though is that in the composition of the support structures outlined in the TOR of the Premier's Forum SALGA is not stated as a stakeholder in the technical structures. However, section 31 of the IGRF Act states that there is an obligation to consult OLG on any matter affecting local government through appropriate intergovernmental structures. This allows SALGA the scope to participate in the MinMayTech and PIFTech.

The issue of how OLG is represented in agenda setting has been progressively changing. Between 2009 and 2011 SALGA was occasionally invited to participate in the process of agenda setting outside the formal intergovernmental structures such as the MinMay and PIFTech.<sup>234</sup> However, in 2011 the DLG took the initiative to ensure that continuous engagement and consultation with SALGA Western Cape needed to be built in order to

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<sup>230</sup> Personal communication with SALGA WC IGR senior official (17 September 2013). Item 9 PIF (2012b), item 7 PIF (2013a) and item 12 PIF (2013b).

<sup>231</sup> Item 12 PIF (2013b).

<sup>232</sup> Item 3 PIF (2013b).

<sup>233</sup> Item 12 PIF (2013b).

<sup>234</sup> Personal communication with SALGA WC IGR senior official (17 September 2013). Personal communication with DLG senior official (28 August 2013).

ensure alignment and coordination of dates and organisational activities.<sup>235</sup> This initiative has resulted in SALGA being given a standing item in the agenda as from 2012.<sup>236</sup> Before 2011 SALGA primarily used MinMayTech and PIFTech engagements to influence the agenda of the Premier's Forum. After 2011 this scope was extended to that of informal communication and continuous engagements between SALGA and the DLG.

#### **5.4 Scope of participation in the meeting**

One of the objectives of the Premier's Forum is to ensure that an organised voice of local government is represented and expressed in engagements and deliberations. Additionally, it ensures that there is a universal, aligned approach in the coordination of strategic plans, priorities and objectives of the provincial and local governments' deliberations of the Premier's Forum. These are vast issues that require specific timeframes and scope of engagement for deliberations. It is therefore important that SALGA is provided with this platform in the forum.

In practice however, the arrangement and scope allocated to SALGA has not always prioritised nor provided enough platform for key issues to be highlighted. For instance, from 2009 to 2010 the Premier's Forum meetings were arranged and held according to clusters, which made it difficult for SALGA to engage in the different cluster meetings. This was because, while there is only one representative who speaks on behalf of SALGA in the Premier's Forum, the cluster arrangements were organised into three sessions which held meetings that simultaneously discussed issues that affected local government.<sup>237</sup> This arrangement therefore meant that SALGA could sit in the deliberation of only one cluster and missed the opportunity to be part of the engagements of the other clusters. Even though plenary sessions highlighted the discussions of the different clusters, it was not always adequate as critical issues and discussions that led to resolutions would already have been made. The plenary session was merely consolidated feedback structured from what the different clusters would have agreed upon as resolutions, thereby leaving little room for meaningful engagement. The newly adopted generic plenary structure discusses collective issues in one session as of the meeting held on 18 November 2010. SALGA's ability to engage in the structure was therefore rectified.

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<sup>235</sup> Personal communication with DLG senior official (28 August 2013).

<sup>236</sup> PIF (2012b), PIF (2013a) and PIF (2013b).

<sup>237</sup> PIF (2009a), PIF (2009b), PIF (2010a), PIF (2010b).

In relation to the actual participation, going by the last meeting held in 2012,<sup>238</sup> SALGA has been given a standing item time-slot for discussion and presenting its strategic input.<sup>239</sup> However, this has been met with the challenge of the time allocated for the slot decreasing over the years. In 2012 SALGA's issues were allocated a time slot of 30 minutes for presentation and discussions.<sup>240</sup> In the first meeting of 2013<sup>241</sup> the timeframe allocated was decreased to 20 minutes.<sup>242</sup> At the latest meeting this time was reduced to 10 minutes for presentation and discussions.<sup>243</sup> Also of concern is the position of the time that SALGA is allocated. SALGA is scheduled as the last item on the agenda which may create an assumption that there is a lack of agency in the issues that are discussed by SALGA. The item is at the end of the day when everyone is tired and some of the delegates and guest presenters have been excused.<sup>244</sup> In most cases there are no deliberations or discussions that occur based on the presentation, it simply becomes a feedback or noting issue on the minutes of the forum.<sup>245</sup>

## 6. EFFECTIVENESS OF THE PREMIER'S FORUM

The Premier's Forum should be an ideal structure where local government coordination and integration with the activities of the province is achieved. The main focus and core function of provincial government as articulated by the Constitution is to develop the capacity to support and oversee local government.<sup>246</sup> It is against this backdrop that the effectiveness of the Premier's structures is analysed. Equally essential in this process is the role played by organised local government.

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<sup>238</sup> Item 9 PIF (2012b).

<sup>239</sup> Item 9 PIF (2012b), item 7 PIF (2013a) and item 12 PIF (2013b).

<sup>240</sup> Item 9 PIF (2012b).

<sup>241</sup> Item 7 PIF (2013a).

<sup>242</sup> Item 7 PIF (2013a).

<sup>243</sup> Item 12 PIF (2013b).

<sup>244</sup> Personal communication with SALGA Western Cape senior official (17 September 2013). As observed in the Western Cape *Premier's Coordination Forum* attended (17 September 2013).

<sup>245</sup> Personal communication with SALGA Western Cape senior official (17 September 2013). As observed in the Western Cape *Premier's Coordination Forum* attended (17 September 2013).

<sup>246</sup> S 154 (1) Constitution.

## **6.1 The integration and coordination of provincial–municipal intergovernmental relations objectives**

The integration and coordination of the provincial and municipal IGR in the province has been progressive. The structural arrangement of the Premier’s Forum builds a direct relationship between the provincial and local governments thus strengthening intergovernmental engagement. Section 155 (6) of the Constitution states that provincial government must provide for monitoring and support of local government in the province whilst the WPLG further reinforces that provinces should play an intergovernmental role in establishing forums and processes that include local government in decision-making which promotes horizontal cooperation and coordination between the province and municipalities.<sup>247</sup> The Premier’s Forum has been effective in meeting this objective.

Discussions and themes surrounding the Premier’s Forum are primarily directed towards the integration and coordination of provincial and municipal relations. In the past five years, from 2009 to 2013, some of the issues have included enhancing integration and coordination of the provincial and local relations. There is a top-down approach with regard to issues discussed, as municipalities do not determine nor influence the themes of the discussion. The Premier, through the DLG is responsible for the topics and mayors do not necessarily add value to the discussions. There is a lack of alignment between the discussions and issues that occur at local level and provincial levels. There needs to be a shift from discussions being merely theoretical platforms towards implementation and results.

One can therefore conclude that great strides have been made by the Premier’s Forum in creating effectiveness with regard to strengthening provincial and municipal relations. However, the approach is still highly top down with municipalities at the receiving end as opposed to being consulted and providing input based on their plans. Provincial government must also ensure that municipalities are capacitated to provide meaningful engagement and proposals for intergovernmental discussions.

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<sup>247</sup> DLG (2013) 6.

## 6.2 SALGA's facilitation role

The use of the terms 'spheres' and 'co-operative government' by the Constitution is critical because it shows that IGR is not about neatly defining and defending areas of competency but rather about co-operation between organs of state in different spheres of government.<sup>248</sup> This requires a relationship based on influence and mutual trust which cannot singularly be enforced effectively through regulations or legislation. SALGA's role in facilitating IGR, if analysed from this perspective, is therefore limited. The Premier's Forum in the WC and evidently<sup>249</sup> in other parts of the country is inclusive of all local government representatives from local municipalities and district municipalities. Municipalities are therefore able to address and highlight issues of interest and concern for the constituency to the forum themselves. SALGA's role then becomes directed and focused on presenting strategic generic issues that arise from national and provincial matters.<sup>250</sup> Its facilitation role becomes a formal channel for communicating provincial and national issues addressed in SALGA's executive structures. SALGA relies on, and is most influential in, informal structures outside the scope of the Premier's Forum.<sup>251</sup> In its endeavour to be effective in facilitating IGR, SALGA's success lies in the ability to influence and lobby for political advocacy from the Premier's Forum.

## 7. CONCLUSIONS

IGR in its true sense requires the inclusiveness and consideration of the different functions and responsibility of stakeholders and spheres of government into a progressive strategic objective. It is therefore important that the relevant role players and stakeholders are part of the structures championing this objective. This chapter has reviewed and outlined the structural composition and scope of functionality of the Premier's Forum which is a key driver of intergovernmental relations at the provincial level. It is important that the different role players and stakeholders involved in intergovernmental structures are committed to the obligations set forth in achieving a coordinated and integrated governance process attained through intergovernmental interactions. Equally essential to this process is for structures to always bear in mind that the IGRF Act is a framework designed to steer engagements in a progressive manner. It is therefore up to the commitment and responsibility of the different

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<sup>248</sup> DPLG (2007) 1.

<sup>249</sup> See Baatjies & Steytler (2006).

<sup>250</sup> Item 9 PIF (2012b), item 7 PIF (2013a) and item 12 PIF (2013b).

<sup>251</sup> Personal communication with SALGA Western Cape senior official (17 September 2013).

stakeholders to determine and pursue measures of ensuring that intergovernmental structures are effective and efficient whilst operating within that framework.

## **CHAPTER FIVE: CONCLUSION**

### **1. INTRODUCTION**

This study set out to investigate the role of SALGA in the Premier's Forum as established by the IGRF Act and envisaged by the Constitution. The relationship of the spheres of government, based on interdependence, interrelatedness and distinctiveness, necessitated the need to create a legislative framework that guides and synchronises interaction of the different spheres of government and equally provides a role for OLG within the framework. The Constitution, WPLG, OLG Act and IGRF Act thus created an environment and structures that would facilitate and enhance the realisation of this objective. Section 163 of the Constitution clearly articulates the requirement for the establishment of OLG which is represented by SALGA. The IGRF Act assigns SALGA a role in IGR as the representative of local government.

It was for this purpose that the study asked the following question: What is the scope and nature of SALGA's role and participation in the Premier's Forum? To answer this question the study first established a theoretical framework for IGR, cooperative government and second, it determined the legal framework for the Premier's Forum and it has assessed the approaches that have been adopted in practice. Third, through empirical research the paper determined SALGA's role in the Premier's Forum. Below is a brief reflection on the legislative framework, key findings and recommendations that have been reached in this study.

### **2. REVISITING THE OBJECTIVES OF COOPERATIVE GOVERNMENT, IGR AND ORGANISED LOCAL GOVERNMENT**

The activities of the different spheres of government must be aligned, cooperative and coordinated. Section 41 (2)(a) of the Constitution states that an Act of Parliament must establish or provide for structures and institution(s) to promote and facilitate IGR.<sup>252</sup> The IGRF Act provides for the establishment of councils or forums within the different spheres of government, as it is through the engagement of the different forums that issues of interest and concern are discussed. Section 163 of the Constitution sets the basis for national legislation that establishes and determines the structures and institutions that would represent OLG in

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<sup>252</sup> S 41 (2) Constitution.

these structures. The OLG Act provides for local government's participation and representation in both national and provincial intergovernmental structures. It necessitates the recognition of national and provincial organisations representing municipalities and determines procedures by which local government may consult with national and provincial government.<sup>253</sup> There is a broad obligation set forth by section 31 (1) of the IGRF Act that OLG must be consulted in the province for matters affecting local government. It is through OLG that local government is able to participate in appropriate IGR structures such as the Premier's Forum. The Premier's Forum comprises of the Premier of the province; the MEC responsible for local government; mayors of districts and metropolitans in the province; a municipal councillor designated by SALGA in the province; and any other MEC designated or other persons invited by the Premier.<sup>254</sup> The aim of IGR forums is to facilitate relations and cooperation between executives as seen from the composition of the Premier's Forum.

### **3. RESEARCH FINDINGS ON THE PRACTICE OF IGR IN THE WC PROVINCE**

#### **3.1 The WC Premier's Forum**

The study found that there were major differences in the practice adopted by the WC Premier's Forum and that which has been prescribed by legislation.

First, in terms of representation, the study found that in practice the compliance of the Premier's Forum in relation to membership has gone beyond prescribed legislative requirement. In the WC, in terms of the TOR, membership also consists of all local municipality mayors, all MECs, HODs and 24 municipal managers.<sup>255</sup> Even though the IGRF Act prescribes a structure that consists of membership that is executive, in the WC the Premier's Forum has a large pool of officials who are recognised as members.

Second, the Department of Local Government has been delegated with the responsibility to coordinate IGR on behalf of the Premier's office. In its endeavour to coordinate intergovernmental relations, the DLG has established the PIFTech and MinMayTech to support the Premier's Forum. The PIFTech and MinMayTech propose strategic agendas and

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<sup>253</sup> Preamble OLG Act.

<sup>254</sup> S 16 and 17 (1) IGRF Act.

<sup>255</sup> S 3 TOR (2009a).

set the tone for the engagements in the Premier's Forum.<sup>256</sup> Thus the PIFTech, MinMay and MinMayTech meetings have an essential role in shaping and determining the discussion surrounding the Premier's Forum themes and agendas. Furthermore, the Premier through the DLG organises the theme of the meetings and determines the agenda.<sup>257</sup> Proposals for agenda items for a meeting may be submitted as per the framework determined by the Premier.<sup>258</sup> The process of setting the theme and agenda has however been a major challenge in relation to ensuring that relevant stakeholders are consulted and contribute their input.<sup>259</sup> The DLG sends invitations to members for input and proposals but most municipalities, particularly district and local municipalities, are not able to provide feedback due to capacity constraints.<sup>260</sup>

Third, in terms of the TOR, meetings are to be held every quarter, in different district municipalities on a rotational basis. However, the study found that the regularity of meetings has been consistent with an average of two meetings on an annual basis in the first and last quarter of the year. In relation to the attendance of the meetings, the study found that there were a high percentage of members in attendance. SALGA's representatives have been similarly diligent in attending the meetings.

Finally, the study found that even though the Premier's Forum was inclusive of local municipalities' participation and engagement, process prior and during meetings does not allow much room for municipalities to provide their input. The forum is currently an intensive information session towards municipalities with little room provided for consultation and deliberation on issues from the municipalities' point of view or interest. The approach adopted still lacks effectiveness in incorporating and bringing on board municipal contributions and discussions directed by the interest of local government in the province.

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<sup>256</sup> DLG (2013) 3.

<sup>257</sup> S 19 (1) IGRF Act.

<sup>258</sup> S 19 (2) IGRF Act.

<sup>259</sup> Personal communication with DLG senior official: Integrated Service Delivery *Department of Local Government in the Western Cape* (28 August 2013).

<sup>260</sup> Personal communication with DLG senior official (28 August 2013).

### **3.2 The Role of SALGA in the Premier's Forum**

The empirical aim of this study was to assess the role of SALGA in the Premier's Forum. The findings of the study reveal that there are three major areas that affected the role of SALGA in the Premier's Forum. These are its functional role, its participation and involvements and its effectiveness.

First, as already articulated, the study found that the TOR of the Premier's Forum were inclusive of local municipal mayors and their municipal managers. This has, as a result, affected SALGA's representational role in the forum. Given this structural arrangement, SALGA does not solely represent local government in the province. All municipalities directly represent themselves in the Premier's Forum. This has redirected SALGA's role from being the representative of local government in the province to the role of being a formal communication channel for national and provincial perspectives in the Premier's Forum.

SALGA presents a common view of all municipalities in the province and as a national organisation also represents all other municipalities in the country. Thus it brings a national perspective to the province and additionally takes provincial views to the national body. It is clear that in this structure SALGA does not represent the metropolitan, district or local municipalities. There is a clear distinction between the role of SALGA as the sole representative of OLG in the PCC and MinMECs and the one that it plays in the Premier's Forum. In the PCC and MinMECs, SALGA is the sole representative of local government. However in the Premier's Forum SALGA speaks alongside local government as opposed to speaking for local government. The structure of membership in the Premier's Forum thus affects the role of SALGA as the representative of local government.

Furthermore, SALGA's activities in the Premier's Forum are limited as evident from its participation and involvement in agenda setting and its time allocation for presentations. In the preparatory process of agenda and theme setting SALGA's scope of participation has also been limited, until 2012 to 2013, when the DLG who has been mandated with the task to coordinate the Premier's Forum took measures to engage SALGA on a regular basis with regard to issues that are potent and critical to local government. On the other hand, the PIFTech and MinMayTech (which are support structures that guide and influence discussion of the Premier's Forum) also allowed SALGA better participation in their engagements.

Thus, SALGA has a greater platform and scope of involvement with structures that influence the Premier's Forum than in the Premier's Forum itself.

The study also revealed that the timeframe allocated to SALGA for deliberations has been an issue of concern as it has been progressively decreased over the years.<sup>261</sup> The allocated timeframe makes it difficult for any meaningful deliberations and engagements from other stakeholders to take place and the progressive decrease in the time slot erodes SALGA's ability to communicate all national and province views and issues. The time slot has also been scheduled at the end of the agenda when the majority of stakeholders and participants are either tired or have been excused, thus highlighting a lack of priority and agency associated with the information brought to the forum for engagement by SALGA.

## **4. RECOMMENDATIONS**

### **4.1 Effecting the role of SALGA**

The study found that municipalities directly represent themselves in the Premier's Forum, therefore SALGA's representative role for local government in intergovernmental structures envisaged by legislation has been redirected and caused to shift focus. Its role has been directed to that of strategic inputs of SALGA national (representing all the views of municipalities in the country) and broader common provincial inputs. What would have been a role to facilitate relations and be the voice of local government to the provincial sphere has been changed into a formal communication channel between national and provincial perspectives for SALGA. It is therefore the recommendation of the study that SALGA must consolidate national and provincial views and align and represent these views to the Premier's Forum. SALGA should therefore present the holistic view of local government in the province with that of local government in the country in a manner that has been consolidated and aligned according to priorities and potent issues from the province and SALGA national's perspective.

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<sup>261</sup> Item 9 PIF (2012b), item 7 PIF (2013a) and item 12 PIF (2013b).

## **4.2 Strengthening SALGA's participation in the Premier's Forum**

SALGA has not been able to influence the agenda of the Premier's Forum through direct participation and involvement in the Premier's Forum. However it has been allowed better participation in the Premier's Forum's support structures such as the PIFTech and MinMayTech which influence and propose discussion themes for the forum. It is the recommendation of this paper that SALGA should focus on utilising the participation platform it has in the PIFTech and MinMayTech structures to influence agenda points, its scope of participation and slot for deliberations in the Premier's Forum. SALGA as a national body that represents a holistic view of municipalities across South Africa must be one of the keynote speakers at the Premier's Forum, as it would help in setting the tone for the rest of the engagement in the forum.

## **4.3 Creating an inductive scope in engaging municipalities**

The Premier's Forum is a one way information download towards municipalities as municipalities barely have a role in agenda settings and guiding the themes of the discussion of the forum based on their interests. Therefore, municipalities must be given more opportunities to influence the agenda by ensuring that the Premier's Forum engages with issues that flow from the discussions of the District Intergovernmental Forum or proposes that agendas and proposals for meetings should be concluded at the Premier's Forum.

The researcher also recommends that discussion must be solution and implementation focussed. The discussions and themes of the Premier's Forum should focus on unpacking the challenges and progress made by municipalities in implementing their IDPs. The forum must also allow municipalities to give feedback on the processes of implementation of their IDPs. This way, municipalities would be encouraged and brought into discussion as IDPs are central to their service delivery objectives.

## **BIBLIOGRAPHY**

### **Case Law**

*Cape Metropolitan Council v Minister of Provincial Affairs and Constitutional Development and Another* 1999 ZACC 12; 2000 (1) SA 727; 1999 (12) BCLR 1353.

*Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC), 2001 (9) BCLR 883 (CC).

*In re: Certification of the Constitution of the Republic of South Africa* 1996, 1996 (10) BCLR 1253 (CC).

*Member of the Executive Council of Local Government, Mpumalanga v Independent Municipal and Allied Trade Unions and Others* 2002 (1) SA 76 (SCA).

*National Education Policy Bill No. 83 of 1995* 1996 (4) BCLR 518 (CC), 1996 (3) SA 289 (CC).

*Premier, Western Cape v President of the Republic of South Africa* 1999 (3) SA 657 (CC), 1999 (4) BCLR 382 (CC).

*Uthukela District Municipality and Others v President of the Republic of South Africa* 2003 (1) SA 687 (CC).

### **Books**

Neuman WL *Social Research Methods: qualitative and quantitative approaches* 3 ed (1997) Cape Town: Prentice Hall (Pty) Ltd.

Steytler N and De Visser J *Local Government Law of South Africa* (2007) Butterworth: Lexis Nexis.

Thornhill C *South African Intergovernmental Relations: National and Provincial Structures* (2002) PAIR Institute, South African Foundations for Public Management Publishers: Pretoria.

## **Chapters in Books**

Agranoff R ‘Comparative intergovernmental relations’ in Agranoff R (ed) *Frameworks for Comparative Analysis of Intergovernmental Relations* (1990) School of Public and Environmental Affairs International Programs.

Powell D ‘Intergovernmental relations in South Africa’ in C Saunders et al (eds) *Intergovernmental relations in federal countries* (forthcoming in 2013) New York: Oxford University Press.

Rautenbach IM and Malherbe EFJ ‘Provincial Government’ in Rautenbach IM and Malherbe E F J *Constitutional Law* 2 ed (1998) Durban: LexisNexis.

Steytler N ‘Cooperative and coercive models of intergovernmental relations: South African case study’ in Courchene et al (ed) *The Federal Idea: Essays in honour of Ronald L Watts* (2011).

Steytler N ‘The Role of Organised Local Government in Intergovernmental Relations in South Africa’ in Jain LC (ed) *Decentralisation and Local Governance: Essays for George Mathew* (2005).

Woolman S, Roux T & Bekink B ‘Cooperative Government’ in S Woolman et al (eds) *Constitutional law of South Africa* 2 ed (2004) Kenwyn: Juta & Co.

## **Journal articles**

Edwards T ‘Key challenges of improving Intergovernmental relations at local sphere: A capacity building perspective’ (2008) 3 *Journal of Public Administration* 89-98.

Nyalunga D ‘The revitalisation of local government in South Africa’ (2006) 1 (2) *International NGO Journals* 015-020.

Malan LP ‘Intergovernmental relations and co-operative government in South Africa: The ten-year review’ (2005) (24) 2 *Politeia* 226-43.

Mathebula FM and Malan LP ‘Intergovernmental Relations and Co-operative Governance in South Africa’ (2002) The PAIR Institute of South Africa Harare: Zimbabwe.

Simeon R and Murray C ‘Multi-sphere governance in South Africa: An Interim Assessment’ (2001) 31 *Publius* 65-92.

Tapscott C 'Intergovernmental Relations in South Africa: The challenges of Cooperative Government' (2000) 20 *Public Administration and Development* 119-28.

Wright DS 'The State and Intergovernmental Relations' (1972) 1 *Publius* 7-68.

Wright DS 'Intergovernmental Relations: An Analytical Overview' (1974) 416 *Annals of the American Academy of Political and Social Science* 1-16.

Wright DS 'Intergovernmental Relations and Policy Choices' (1975) 4 *Publius* 1-24.

### **Thesis**

Sokhela P M 'Intergovernmental relation in the local sphere of government in South Africa with specific reference to the City of Tshwane Metropolitan Municipality' (2006) (unpublished thesis) University of Pretoria.

### **Papers**

Anderson W 'Intergovernmental Relations in Review' (1960) University of Minnesota Press.

Baatjies RC *The Evolution and Prospects of our Intergovernmental Approach: A local government perspective* (2012).

Baatjies R C *Role of Organised Local Government in meeting the objectives of local government* (2012).

Baatjies R & Steytler N *District Intergovernmental Forums: A preliminary assessment of institutional compliance with the Intergovernmental Relations Framework Act* (2006) Community Law Center: UWC.

Department of Cooperative Governance and Traditional Affairs (CoGTA) *The Intergovernmental Relations System in South Africa* (2006).

Department of Local Government (DLG) *A proposal for strengthening the functionality of District IGR forums* (2013).

Department of Provincial and Local Government (DPLG) *Practitioner's Guide to the Intergovernmental Relations System in South Africa* (2007).

Mathebula F M and Malan L P 'Intergovernmental Relations and Co-operative Governance in South Africa' (2002) Available from <http://www.search/cache-governmentalrelations-South Africa>.

Phindela M E *The South African system of co-operative government and intergovernmental relations: an analysis* (2012) Secretary to the National Council of Provinces of South Africa.

Provincial Department of Local Government (DLG) *Concept Paper on Intergovernmental Relations* (2009).

### **Statutes**

Local government: Municipal Structures Act No. 117 of 1998.

Local Government: Municipal Systems Act No. 32 of 2000.

*Government Notice* No R 175, 30 January 1998, *Regulation Gazette* No. 6087 *Government Gazette* vol 391 n 18645.

Intergovernmental Relations Framework Act No. 15 of 2005.

Organised Local Government Act No. 52 of 1997.

Public Finance Management Act No. 1 of 1999.

Constitution of the Republic of South Africa, 1996.

### **Policy Document**

White Paper on Local Government (1998) Ministry of Provincial Affairs and Constitutional Development Pretoria: Department of Constitutional Development.

### **Reports**

Layman T *Intergovernmental Relations and Service Delivery in South Africa: a ten year review* (2003) Commissioned by Presidency.

SALGA *SALGA's Five Year Strategic Plan 2012/17* (2012).

SALGA *Annual Report 2012/13* (2013).

Department of Provincial and Local Government (DPLG) *15 Year Review Report on the State of Intergovernmental Relations in South Africa* (2008) DPLG Commission Report Pretoria.

Department of Provincial and Local Government, GTZ and EISA *Working Together for Development: Understanding Intergovernmental Relations* (2008) DPLG commission report.

### **Official Documents**

Minutes of *Western Cape Premier's Intergovernmental Forum* (19-20 August 2009)

Minutes of *Western Cape Premier's Intergovernmental Forum* (18-19 November 2009)

Minutes of *Western Cape Premier's Intergovernmental Forum* (17-18 March 2010)

Minutes of *Western Cape Premier's Intergovernmental Forum* (27-28 July 2010)

Minutes of *Western Cape Premier's Intergovernmental Forum* (18 November 2010)

Minutes of *Western Cape Premier's Intergovernmental Forum* (13 September 2011)

Minutes of *Western Cape Premier's Intergovernmental Forum* (28 February 2012)

Minutes of *Western Cape Premier's Intergovernmental Forum* (27 November 2012)

Minutes of *Western Cape Premier's Intergovernmental Forum* (05 March 2013)

Minutes of *Western Cape Premier's Intergovernmental Forum* (17 September 2013)

Western Cape Department of the Premier *Western Cape Premier's Coordinating Forum: Rules of Order* (2009b).

Western Cape Department of the Premier *Western Cape Premier's Coordinating Forum: Terms of Reference* (2009a).

### **Websites**

City of Cape Town *Council, committees and subcouncil meetings* available from <http://www.capetown.gov.za> (accessed on 04 November 2013).

Department of the Premier *The Premier's Coordinating Forum: Overview* (2013) available from <http://www.westerncape.gov.za/pcf> (accessed on 29 August 2013).

Parliamentary Monitoring Group (PMG) available <http://www.pmg.org.za/bills/municipalsystemsact.htm> (accessed on 27 August).

SALGA Governance Framework ‘The SALGA Constitution: Amendments to SALGA constitution in chronological order to date’ available from <http://www.salga.org.za/pages/About-SALGA/SALGA-Governance-Framework/The-SALGA-Constitution> (accessed 04 November 2013).

South African Government Information *South African Local Government Association (SALGA)* retrieved from <http://www.info.gov.za/aboutgovt/locgovt/salga.htm> (accessed on 11 September 2013).

South African Local Government Association (SALGA) available from <http://salga.org.za/pages/About-SALGA/Welcome-to-SALGA> (accessed 04 November 2013).

Western Cape Government *Premier of the Western Cape: Big issues and projects* (01 September 2013) from [http://www.westerncape.gov.za/eng/pubs/public\\_info/P/163379/4](http://www.westerncape.gov.za/eng/pubs/public_info/P/163379/4) (accessed 04 November 2013).

### **Presentations and personal communication**

SALGA National Conference ‘NEC Presentation on Constitution Amendment 2012’ (10-11 September 2012).

Personal communication with DLG senior official: *Integrated Service Delivery Department of Local Government in the Western Cape* (28 August 2013).

Personal communication with *SALGA Western Cape* senior official (17 September 2013).

*Overberg* District Coordinating Forum Meeting (10 September 2013) *Overberg District Municipality*.