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Plagiarism declaration

I, Andisiwe Mzingelwa, do hereby declare that the dissertation entitled *An assessment of South Africa's Intergovernmental Relations System as a Response to the Covid-19 Pandemic* is my original work. I herewith further certify that this dissertation has not been submitted for another degree or examination in any other university or institution of higher learning. All the sources used or quoted were properly acknowledged by means of references.

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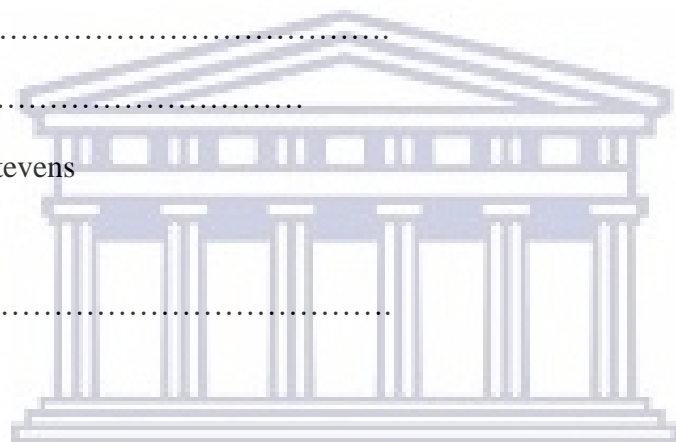
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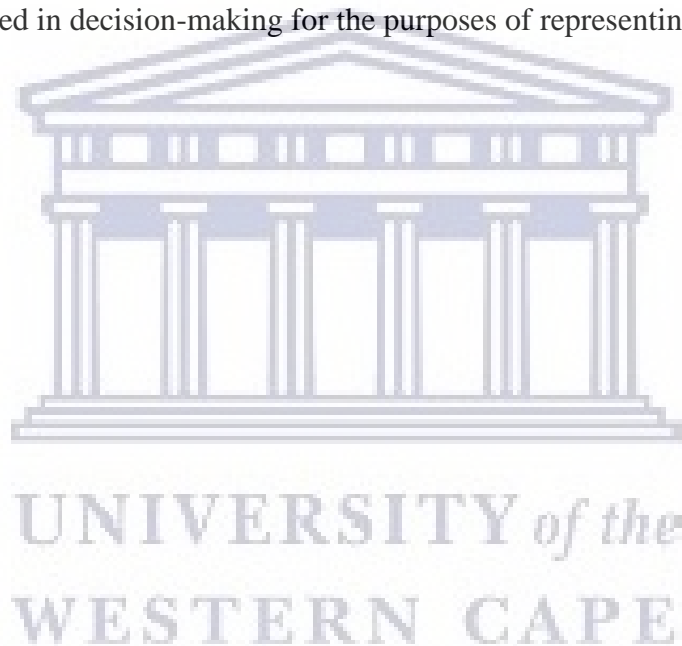
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Abstract

South Africa was among the numerous nations impacted by the Covid-19 pandemic. The health systems in every nation were overhauled because of this pandemic, which claimed countless lives. The pandemic in South Africa, however, also had a direct impact on the system of multilevel governance, since it necessitated cooperation between the national, provincial, and local governments, particularly in disaster management. According to schedule 4 (Part A) of the 1996 Constitution, disaster management in South Africa is a concurrent function between the three spheres of government. The intergovernmental relations (IGR) structures were put in place for the concurrent functions, disaster management being one of them, since the three spheres could only collaborate through the IGR structures to manage the Covid-19 pandemic.

The questions raised in this thesis are whether the South African government observed and adhered to the principles of cooperative governance as set out in Chapter 3 of the Constitution when it dealt with the Covid-19 pandemic? Whether the national government utilised the established IGR structures as directed by the Constitution in its pandemic response. Further, what strategies or methods did the national government employ to control the pandemic if it did not adhere to the cooperative governance principles and did not make use of the IGR structures? This thesis argues that the national government did not follow the principles of cooperative government as listed in Chapter 3 of the Constitution. Instead, the national government took a centralised approach to dealing with the pandemic. The thesis argues further that the national government's employment of the IGR institutions during the pandemic was limited and ineffective. Instead of serving as advisory committees, these IGR entities served as implementation bodies. Prior to the pandemic, IGR structures were used as consultation bodies between the spheres of government on issues of common concern. The study argues that, since the Covid-19 pandemic spread rapidly, the national government was faced with making swift decisions and taking quick actions in a bid to manage the pandemic. This is one of the reasons that the IGR structures were used ineffectively. The study further argues that the National Coronavirus Command Council (NCCC), a national body, was created due to how the national government approached its responsibility to respond to the Covid-19 pandemic. The NCCC was instrumental in leading the fight against the pandemic. The NCCC was a single entity of the national government, not an IGR structure. The President and the cabinet members met through this body to discuss decisions on how the national government would manage the pandemic.

Despite the pandemic's impact on the concurrent function of disaster management, provinces and local governments were not represented at the NCCC. Since the IGR institutions were established in accordance with the law, and are meant to represent all branches of government, eliminating the obstacles they encounter and enabling them to function as intended will require strong political will. The study recommends that the ICDM should be utilised for consultation and coordination purposes by the spheres when dealing with a disaster in South Africa. This structure is important for the management of disasters because it comprises members from all spheres and encourages cooperative governance. The study proposes that the IGR structures be used effectively for their intended purpose, and that the PCC should continue holding meetings as frequently as it did during the pandemic. Further, the study recommends that all three spheres of government be involved in decision-making for the purposes of representing their spheres.



Acknowledgments

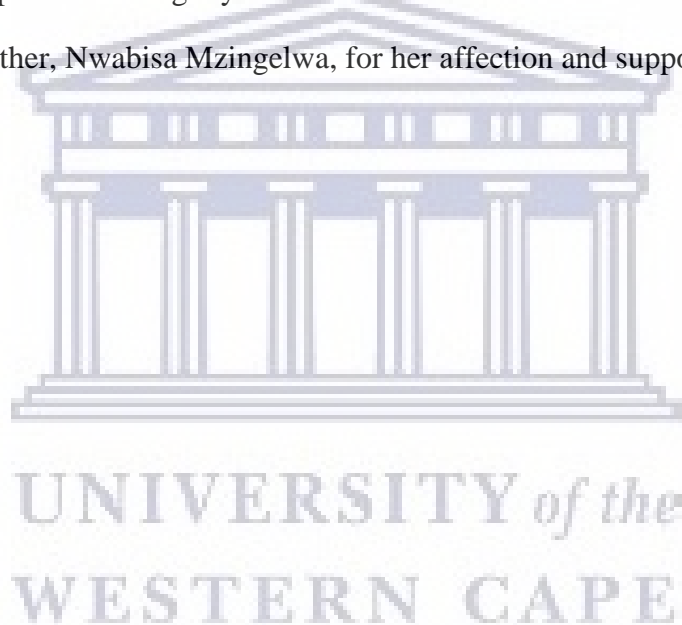
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List of acronyms

CEM	Council of Education Ministers
COGTA	Cooperative Governance and Traditional Affairs
COVID-19	Coronavirus disease
DCCC	District Coronavirus Command Council
DHC	District Health Council
DIF	District Intergovernmental Forum
ICDM	Intergovernmental Committee of Disaster Management
IGR	Intergovernmental relations
LG	Local government
MinMECs	Ministers and Members of Executive Councils
NatJoints	National Joint Operational and Intelligence Structure
NCCC	National Coronavirus Command Council
NDMC	National Disaster Management Centre
NEC	National Executive Committee
NEPA	National Education Policy Act of 1996
NICD	National Institute of Communicable Diseases
OLG Act	Organised Local Government Act
PCC	President's Coordinating Council
PCCC	Provincial Coronavirus Command Council
PIF	Premier's Intergovernmental Forum
PPE	Personal Protective Equipment
ProvJoints	Provincial Joint Operational and Intelligence Structure

SALGA	South African Local Government Association
SANDF	South African National Defence Force
SAPS	South African Police Services
SMMEs	Small, medium, and micro enterprises
SSA	State Security Agency
UNDP	United Nations Development Programme
WHO	World Health Organization



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Table of contents

Plagiarism Declaration i

Abstract ii

Acknowledgments iv

List of Acronyms v

1

1.1 Background 1

1.2 Problem statement 2

1.3 Research Question 3

1.4 Argument 4

1.5 Literature Review 5

1.6 Chapter Outline 7

1.7 Research Methodology 7

Chapter 2: INTERGOVERNMENTAL RELATIONS AND COOPERATIVE GOVERNMENT IN SOUTH AFRICA PRIOR TO MARCH 2020 9

2.1 Introduction 9

2.2 Defining Key Concepts 10

2.2.1 Intergovernmental Relations (IGR) 10

2.2.2 Cooperative Governance 12

2.3 Constitutional Framework on IGR and Cooperative Government 12

2.3.1 Interim Constitution 12

2.3.2 The Constitution of the Republic of South Africa, 1996 13

2.3.2.1 IGR and Cooperative Government principles 14

2.3.2.2 Overview: Cooperative Principles 16

2.4 Statutory and Practical arrangements on IGR 17

2.4.1 Principles: Intergovernmental Relations Framework Act 13 of 2005 17

2.4.2 The Role of SALGA in IGR 19

2.4.2 President's Coordinating Council 20

2.4.4 Ministers and Members of Executive Councils Meeting (MinMECs) 22

2.4.1.1 MinMEC on Health 24

24

2.4.7 Dedicated Acts establishing IGR forums in concurrent functional areas of education and disaster management 25

2.4.7.1 National Education Policy Act 27 of 1996 – Council of Education Ministers 25

27

2.4.5 Provincial IGR Structures	30
2.4.6 District Intergovernmental Forum	32
	34
2.5 Conclusion	35
Chapter 3: INTEGGOVERNMENTAL RELATIONS AND THE RESPONSE TO COVID-19 BY THE THREE SPHERES OF GOVERNMENT	
3.1 Introduction	36
3.2 The Impact of the Covid-19 pandemic on South Africa	37
3.3 The impact of the pandemic on the responsibilities of each sphere of government	39
3.3.1 National Government	40
	40
	41
	42
	45
	47
	47
	48
	54
	57
	59
	59
	59
	63
	63
	66
	66
	68
	68
Chapter 4: CONCLUSION	70
	70
	73
	74



CHAPTER 1: INTROUCTION

1.1 Background

On 31 December 2019, the Wuhan Municipal Health Commission in Wuhan City, Hubei province, China, reported a cluster of 27 pneumonia cases (including seven severe cases) of unknown aetiology, with a common reported link to Wuhan's Huanan Seafood Wholesale Market, a wholesale fish and live animal market.¹ The samples from this market were tested to determine what they were, and they tested positive for a novel coronavirus. The emerging coronavirus (Covid-19) pandemic swept across the world, affecting more than 200 countries and territories.² It disrupted national health services and caused economic and financial havoc.³ The World Health Organization (WHO), on 11 March 2020, declared the novel coronavirus (Covid-19) outbreak a global pandemic⁴ because it had spread to many countries since its emergence. Globally, by 22 July 2020, 14,731,563 confirmed cases of Covid-19, including 611,284 deaths, had been reported to the World Health Organization (WHO).⁵

The first case in South Africa was confirmed by the National Institute of Communicable Diseases (NICD) on 5 March 2020, and the first fatality was recorded on 27 March 2020. As Covid-19 spread throughout the world, it also affected South Africa.⁶ Nearly four months later, on 22 July 2020, there were 382,798 confirmed cases of Covid-19 in South Africa, with 5,368

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¹ European Centre for Disease Prevention and Control (ECDC) 'Event background COVID-19' [Last Updated 2 July 2020] available at <https://www.ecdc.europa.eu/en/novel-coronavirus/event-background-2019> (accessed 22 July 2020).

² Alanagreh L, Alzoughool F & Atoum M 'Its Origin, Characteristics, and Insights into Potential Drugs and Its Mechanisms' (2020) 9(331) *Pathogens Journal Review* 1.

³ Erasmus G & Hartzenberg T 'Governance in abnormal times dealing with COVID-19 A regional perspective from South Africa' (2020) Tralac Working Paper No. US20WP01/2020. Stellenbosch tralacBlog available at <https://www.tralac.org/publications/article/14584-governance-in-abnormal-times-dealing-with-covid-19-a-regional-perspective-from-south-africa.html> (accessed 22 July 2020).

⁴ WHO Director-General's opening remarks at the media briefing on COVID19 -11 March 2020 available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (accessed 13 August 2020).

⁵ World Health Organisation Coronavirus Disease (COVID-19) Dashboard Data [last updated: 2020/7/22] available at <https://covid19.who.int/> (accessed 22 July 2020).

⁶ Labuschaigne M & Staunton C 'COVID-19: State of Disaster in South Africa' *VerfBlog* (2020) available at <https://verfassungsblog.de/covid-19-state-of-disaster-in-south-africa/DOI> (accessed 07 July 2020).

fatalities.⁷ On 15 March 2020, President Cyril Ramaphosa announced a national state of disaster as a precaution against the pandemic.⁸

Despite being a health emergency, the pandemic had a direct impact on South Africa's system of multilevel governance since it required cooperation between the national, provincial, and local governments, particularly in disaster management. As a result, after the disaster was declared, provinces and municipalities had to cooperate, and were given particular tasks to complete in order to manage the pandemic. For example, the provinces and municipalities had to oversee that the provincial hospitals were in good shape, had enough hospital beds, and had facilities for isolation or quarantine as well as personal protective equipment (PPE). Additionally, as the custodians of the provision of water services, the municipalities were obligated to furnish water by any means necessary, and to shut down all public areas and buildings that did not offer essential services, such as libraries and swimming pools.

The thesis seeks to ascertain whether the South African government observed and adhered to the principles of cooperative governance as set out in Chapter 3 of the Constitution when it dealt with the Covid-19 pandemic from the period of 20 March to June 2022. It also investigates whether the national government utilised the established IGR structures as directed by the Constitution in its pandemic response. It further investigates the strategies or methods that the national government employed to control the pandemic if it did not adhere to the cooperative governance principles and did not make use of the IGR structures.

1.2 Problem statement

The Covid-19 pandemic became a worldwide issue that no country had ever dealt with before. It was unprecedented, and its rapid spread demanded swift government action. In South Africa, the pandemic had social, economic and health implications as it impacted the lives of the population. The pandemic also called into question South Africa's multilevel government system from an intergovernmental perspective. This multilevel government system requires the spheres of government, particularly in the areas of concurrency, to work together in terms of

⁷ COVID-19 Coronavirus South African Resource Portal (2020) available at <https://sacoronavirus.co.za/> (accessed 22 July 2020).

⁸ Deochand E & Baduza M 'In Depth: What does a COVID-19 National State of Disaster mean for rights?' (2020) available at <https://www.spotlightnsp.co.za/2020/03/20/in-depth-what-does-a-covid-19-national-state-of-disaster-mean-for-rights/> (accessed 22 July 2020).

the principles of cooperative government. The areas of concurrency are disaster management, education, and health care. Section 41(1) of the 1996 Constitution⁹ lists several principles that require the three spheres of government to co-operate with one another in mutual trust and good faith, by fostering friendly relations, assisting, and supporting one another, informing one another of and consulting one another on matters of common interest, and lastly, co-ordinating their actions and legislation with each other.

Various intergovernmental relations (IGR) structures have been established by legislation to realise these principles. The IGR structures include the President's Coordinating Council (PCC), the Ministers and Members of Executive Councils Meetings (MinMECs) for the concurrent powers, and the statutory MinMECs, including the Council of Education Ministers (CEM) and Intergovernmental Committee on Disaster Management (ICDM), Premiers' Intergovernmental Forum (PIF) and the District Intergovernmental Forum (DIF).

With the declaration of the disaster, it appears that only a few of the existing IGR structures were used in response to the pandemic, not at the decision-making stage but during implementation. The national government, in responding to the Covid-19 pandemic, opted to establish a new centralised body, the National Coronavirus Command Council (NCCC), to focus on preventing and reducing the outbreak of the virus. The NCCC is not an IGR structure but a central body that was not representative of the provincial and local governments. This is despite the fact that the pandemic affected all the spheres of government, and that disaster management and health care are concurrent functional areas.

1.3 Research question

This thesis aims to answer the following research questions:

- First, when managing the Covid-19 pandemic, did the national government do so with reference to the principles of cooperative government as set out in Chapter 3 of the Constitution?
- Second, did the national government use the existing IGR structures, as directed by the Constitution, when it sought to manage the Covid-19 pandemic?

⁹ Constitution of the Republic of South Africa, 1996 (Constitution).

- Lastly, if not, what strategies or methods did it employ to control the pandemic if it did not adhere to the cooperative governance principles and did not make use of the IGR structures?

In order to answer this question, the following prior sub-questions are asked:

- 1) What are the principles that inform cooperative government and intergovernmental relations in South Africa?
- 2) What IGR structures have been established to realise cooperative governance in South Africa, and how did these structures work prior to March 2020?
- 3) Were the existing IGR structures used in the management of the pandemic? If not, why not? If yes, to what extent?
- 4) What important lessons can be drawn from South Africa's reaction to the pandemic for intergovernmental relations and disaster management?

1.4 Argument

This thesis makes several findings, and its arguments can be divided into three key points.

First, it finds that the national government did not follow the principles of cooperative government as listed in Chapter 3 of the Constitution. Instead, the national government took a centralised approach to dealing with the pandemic.

Secondly, it argues that, in managing the Covid-19 pandemic, the national government made use of only a few of the existing IGR structures. The IGR structures that were used are the PCC and the CEM. The ICDM was not used at all by the national government in response to the pandemic. The IGR structures were not used effectively, as they were used as implementation bodies and not as consultative bodies, which was what they were intended for.

Thirdly, it argues that the national government opted to centralise the powers in the national executive because the spread of the pandemic required a quick and a decisive response from the national government to deal effectively with the disaster. In other words, the national government established a new body that was used in the management of the pandemic, the NCCC, which was a body that was not consultative in nature and was a cabinet committee of

the national government. The NCCC was not an IGR structure; hence it did not follow the IGR principles.

1.5 Literature review

The concept of intergovernmental relations gained recognition in the 1960s through the scholarly works of Anderson and Wright. In the 1960s, Anderson attempted to end the conceptual uncertainty in IGR by defining it as ‘an important body of activities or interactions occurring between governmental units of all types and levels within a federal system’.¹⁰

Since IGR emerged in practice in South Africa, several authors have written on the subject. The most notable writings on this subject are by Steytler, Simeon and Murray, Tapscott, Malan, Kahn, Madue and Kalema.¹¹ According to Steytler, IGR is a broad term with two forms of IGR, supervisory and cooperative government. Both have been adopted in South Africa.¹² Steytler further explains that cooperative government IGR is of two types, one being cooperative government and the other coercive. Cooperative government operates from the premise that the relation between the federal government and its subnational constituents is one of equality, while the second, coercive IGR, is infused by notions of hierarchy between the orders of government.¹³ Cooperative IGR is about consultation and coordination between the spheres, while coercive IGR takes regard of the hierarchy that exists between the spheres. This means that coercive IGR supports the supervision by the higher spheres of the lower spheres.

When Simeon and Murray wrote about IGR in South Africa 20 years ago, they referred to it as a ‘work-in-progress’.¹⁴ This claim is no longer valid because the IGR framework has advanced greatly since then, and numerous structures have been developed over the years. The South African Local Government Association (SALGA) is a representative of the municipalities in IGR structures. They described difficulty in establishing and integrating IGR processes to

¹⁰ Wright DS ‘Intergovernmental Relations: An analytical overview (1974) 416 *The Annals of the American Academy* 2.

¹¹ Kahn S, Madue SP & Kalema R *Intergovernmental Relations in South Africa* 1st ed (2011).

¹² Steytler N ‘Cooperative and coercive models of intergovernmental relations: South African case study’ in Courchene TJ, Allen JR, Leuprecht C & Verrelli N (eds) *The Federal Idea: Essays in honour of Ronald L Watts* (2011) 414.

¹³ Steytler (2011) 414.

¹⁴ Simeon R & Murray C ‘Multi-Sphere Governance in South Africa: An interim assessment’ (2001) 31(4) *Publius: The Journal of Federalism* 65.

promote multilevel relations.¹⁵ Twenty years ago, Tapscott held the opinion that enshrining IGR in law was not likely to encourage more IGR collaboration and coordination and would not prevent conflicts between the various domains of government.¹⁶

The works of the above-mentioned authors have focused on many aspects of IGR in South Africa. Some like Tapscott,¹⁷ Malan¹⁸ and Mathebula¹⁹ expressed their views about the evolution, the challenges as well as the successes of the IGR system in South Africa over the years. Other scholars such as Haurovi have written on the role of cooperative government and IGR in promoting service delivery using Amathole district as an illustration.²⁰ Makoti has noted that cooperative governance in a multilevel government is imperative in the sense that the responsibility of any government is to render essential basic services to the people, community, and society at large.²¹ This means that the spheres of government in a multilevel government can only render those services effectively to society when they coordinate and work together.

Other authors have also written on disaster management in South Africa, which is the focus of this thesis, with specific reference to the management of Covid-19. Authors such as Vermaak,²² and Van Niekerk²³ have written on the Disaster Management Act and its policy framework, and on the critique of the Act and the National Disaster Management Policy Framework. Sithole,²⁴ on the other hand, seeks to develop a model for cooperative governance on disaster management using IGR as a planning instrument.

To date, many scholars have written about IGR in general, and in the South African context. Authors such as Steytler, Simeon and Murray, and many more, have shared their thoughts on

¹⁵ Simeon & Murray (2001) 65.

¹⁶ Tapscott C 'Intergovernmental relations in South Africa: the challenge of cooperative government' (2000) 20 *Public Administration and Development* 119-127.

¹⁷ Tapscott (2000) 120.

Malan L 'Intergovernmental relations and co-operative government in South Africa' (2005) 24(2) *Politeia* 243.

¹⁹ Mathebula FM 'Intergovernmental relations reform in a newly emerging South African policy' (unpublished LLD thesis University of Pretoria, 2004) 1.

²⁰ Haurovi M 'The role of cooperative government and intergovernmental relations in promoting service delivery: A case study of the Amathole District Municipality' (unpublished LLM thesis University of Fort Hare, 2012) 1.

²¹ Makoti MZ & Odeku OK 'Co-operative Governance in South Africa Impetus for Fostering Effective Inter-Governmental Relationships' (2021) 12(2) *African Journal of Public Affairs* 59.

²² Vermaak J & Van Niekerk D 'Disaster Risk Reduction Initiatives in South Africa' (2004) 21(3) *Development Southern Africa* 555-574.

²³ Van Niekerk D 'A critical analysis of the South African disaster management act and policy framework' (2014) 38(4) *Disasters* 858-877.

²⁴ Sithole BE 'Municipal Disaster Management in South Africa: Intergovernmental Relations as a Planning Instrument' (unpublished LLD thesis, Central University of Technology, Free State, 2014) 1.

this concept in South Africa, its challenges, weaknesses, and how it can be improved. However, no author has yet explored whether South Africa's response to the Covid-19 pandemic followed the principles of cooperative government, and also whether the long-existing IGR structures were used by the South African government in response to the pandemic. More recently, a few scholars such as Steytler, De Visser and Chigwata have written on South Africa's response to Covid-19, with their chapters tracing the Covid-19 response at each level of government,²⁵ but have placed no emphasis on the IGR structures and the principles of cooperative government. This thesis aims to fill this gap. This thesis explores how IGR functioned in South Africa during the pandemic, a topic yet to be explored by the scholarship dealing with IGR.

This thesis draws from the existing literature and will contribute to this body of scholarship by investigating whether the South African government followed the principles of cooperative government and IGR in managing the pandemic, as there is little, if any, literature on this aspect.

1.6 Chapter outline

This study is divided into four chapters, including the introduction to the thesis. Chapter two deals with the constitutional and the legislative framework of the IGR system. It also examines the practice of cooperative governance and intergovernmental relations in South Africa prior to March 2020. The third chapter covers intergovernmental relations and the responses of the three levels of government to Covid-19. The chapter examines the IGR structures used in managing the Covid-19 pandemic in order to understand how the national government governed during the times of the pandemic, with the aim of establishing whether the principles of cooperative government were followed or not. Chapter four provides the general conclusion and recommendations.

1.7 Research methodology

This is a desktop-based study that used both primary and secondary materials. Primary sources included legislation, regulations, policies, and government statements as evidence as it was first described or happened, without any interpretation, or commentary. The secondary sources

²⁵ Steytler N, De Visser J & Chigwata T 'Surfing towards centralisation on the Covid-19 wave' in Steytler N (ed) *Comparative Federalism and Covid-19: Combating the Pandemic* (2021) Routledge, 337-354.

analyse primary sources; they are books, theses, and journal articles. The study also uses news articles.



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CHAPTER 2: INTERGOVERNMENTAL RELATIONS AND COOPERATIVE GOVERNMENT IN SOUTH AFRICA PRIOR TO MARCH 2020

2.1 Introduction

The 1996 Constitution of the Republic of South Africa establishes a multilevel government system with national, provincial, and local spheres of government.²⁶ These spheres are distinct, interdependent, and interrelated, according to the Constitution.²⁷ In effect, the spheres have a relationship with one another, and no sphere exists in isolation. This link is emphasised through the principles of cooperative government. Each of these spheres has unique as well as shared competencies to perform. The exclusive powers of the national government are those that are not indicated anywhere in the schedules, such as controlling international and national airports, whereas schedule 4A lists the concurrent powers of national and provincial competencies. Concurrent powers and functions of the three spheres include education at all levels (except tertiary education), health care, and, most importantly, disaster management. These concurrent functions are essentially those affected by the Covid-19 outbreak, therefore requiring collaboration and coordination across spheres for effective management of the pandemic's impact.

This chapter lays out the workings of the IGR system in South Africa's legislative and policy framework prior to March 2020, which is the time period from its inception up to the outbreak of the Covid-19 pandemic. The chapter argues that South Africa has IGR structures that were established in terms of the IGR Act, and others that were established in terms of other special acts. It also argues that some of the IGR structures have been operative from their inception, while others have never functioned.

In this chapter, section 2.2 defines key concepts such as intergovernmental relations and cooperative governance, which will be used throughout the thesis. Section 2.3 examines the constitutional framework underpinning IGR in South Africa. To this end, the section will review the Interim Constitution, the Final Constitution, and certain Constitutional Court cases, and will discuss the South African Local Government Association's (SALGA) position on

²⁶ Section 40(1) 1996 Constitution.

²⁷ Section 40(1) Constitution.

IGR. Section 2.4, in turn, explores the legislative and policy framework for IGR, with a special focus on the Intergovernmental Relations Framework Act 13 of 2005, which is the main legislation regulating the IGR system. Section 2.5 discusses specific Acts that established the IGR forums in the concurrent functional areas of education and disaster management, namely the National Education Policy Act of 1996, which established the Intergovernmental Committee of Education Ministers, and the Disaster Management Act 57 of 2002. This is the principal disaster management legislation in South Africa, which established the Intergovernmental Committee on Disaster Management for the purpose of disaster management consultation among and between spheres of government. Lastly, section 2.6 will review and examine the practices on IGR in South Africa prior to March 2020, with the aim of highlighting challenges and successes.

2.2 Defining key concepts

IGR and cooperative government are the basic concepts that will be used throughout the thesis, so it is important to examine some agreed definitions or interpretations of the terms within the South African context. It is important to point out that IGR commonly refers to the relationship and interactions between the spheres of government within the same country, unlike the phrase ‘international relations’, which applies to the relations between states with each other and with international organisations.²⁸ This research is focused on the previous IGR within the South African context, in terms of the Constitution. It focuses on the nature of the relationship between the three spheres of government, which in South Africa is informed both by the principles of cooperative government and IGR principles.

2.2.1 Intergovernmental relations (IGR)

IGR is defined by two key words: ‘intergovernmental’ and ‘relations’, where ‘intergovernmental’ is an adjective that refers to activities existing or occurring between two or more governments or governing structures,²⁹ and ‘relations’, a noun referring to how a

²⁸ McClelland CA & Pfaltzgraff R ‘International relations’ Encyclopaedia Britannica (2019) available at <https://www.britannica.com/topic/international-relations> (accessed 15 April 2022).

²⁹ Merriam-Webster Dictionary ‘Intergovernmental’ *Merriam-Webster.com Dictionary*, Merriam-Webster, available at <https://www.merriam-webster.com/dictionary/intergovernmental> (accessed 8 November 2021).

person, object, or entity is associated with another.³⁰ According to these dictionary definitions, intergovernmental relations are basically interactions between spheres of government.

Some authors' definitions of IGR are consistent with the above dictionary definition. For example, Van Niekerk et al. define IGR as 'the regulations that regulate the orderly relations between individuals in authority, government agencies and departments, as well as between governments at various spheres'.³¹ IGR is also described in the White Paper on Local Government as a system of formal and informal procedures, networks, mechanisms, and knowledge exchanges facilitating bilateral and multilateral cooperation within and between spheres of government.³²

In other words, IGR refers to the relations or interactions between the spheres of government, and it also refers to organs of state operating within their relations with one another and operating within the three spheres of government. This relationship of IGR that exists between these various spheres is governed by a set of principles in the Constitution and legislation. The primary objective of these principles is ensuring that the three spheres or organ of state within each sphere respect each other's status, communicate, coordinate their actions, and work together. IGR has another dimension; it has, on the one hand, a cooperative IGR dimension, where the spheres are equal and, on the other, it speaks to a hierarchy relationship where the higher spheres of government are tasked to supervise the lower spheres of government. These forms of IGR were discussed by Steytler.³³

From the explanations above, the following basic explanations of IGR can be deduced: IGR is made up of relationships between the spheres of government and among the organs of government. The relations exist with the goal of facilitating co-operation, coordination, and decision-making between the spheres. In other words, IGR is intended to ensure that the various spheres are in sync. IGR also features a dispute resolution component for resolving any disputes that may arise during spheres' interactions. This thesis however focuses on the relationship informed by the cooperative government principles.

³⁰ Merriam-Webster Dictionary 'Relations' *Merriam-Webster.com Dictionary*, Merriam-Webster available at <https://www.merriam-webster.com/dictionary/relation> (accessed 8 November 2021).

³¹ Van Niekerk D, Van Der Waldt G & Jonker G 'Governance, Politics and Policy in South Africa' (2001) 69.

³² Ministry for Provincial Affairs and Constitutional Development White Paper on Local Government (1998) 37.

³³ Steytler (2011) 414.

2.2.2 Cooperative governance

Cooperative government is a unique aspect of the Republic of South Africa's 1996 Constitution. When there is a concurrency of powers, this concept calls for the spheres of government to collaborate explicitly on issues of mutual interest. The spheres of government and organs of states are seen as equals under cooperative government.

Cooperative government is defined as where there is an engagement between the spheres of government in the exercise of their distinctive powers and those shared amongst them. With this form of IGR there is equality, as they engage equally without any sphere assuming a superior role in a hierarchy. The definition given by Steytler, that there are two forms of IGR under cooperative government, one of equality and one of hierarchy, is not far-fetched. It is clear from the heading of Chapter 3 of the Constitution that it does not only set up principles that govern cooperative governance, but also deals broadly with principles that deal with IGR. Cooperative government is not a term that is used independently but is a subspecies of IGR. Cooperative intergovernmental interactions between the national, provincial, and municipal governments assist in the achievement of common goals.³⁴ As previously stated, the goal of an IGR framework is to create a cohesive government that works together for the country's benefit on issues of common concern. These structures compel cooperation between the spheres, so IGR institutions, mechanisms, and procedures ensure that a government based on cooperation and collaboration is possible. What follows is an examination of the constitutional framework for IGR and cooperative governance.

2.3 Constitutional framework on IGR and cooperative government

2.3.1 Interim Constitution

The concept of IGR can be traced back to the Interim Constitution of the Republic of South Africa, which was adopted in 1993 (Act 200 of 1993). IGR came into being when the provinces were established in 1994, which was before the introduction of the 1996 Constitution.³⁵ In other words, the Interim Constitution introduced multilevel government in South Africa through the establishment of the provinces, which then shared concurrent powers with the national

³⁴ Shah A *The Reform of Intergovernmental Fiscal Relations in Developing and Emerging Market Economics* (1994) 11.

³⁵ Steytler N 'National Cohesion and Intergovernmental Relations in South Africa' in Steytler N & Ghai YP (eds) *Kenya-South Africa Dialogue on Devolution* (2015) 311.

government. The provinces became the second sphere of government, known as provincial government, and then local government became the third. During the years of the Interim Constitution (1994-1996), the IGR structures were informal in nature as there was no provision detailing the institutions, nor national policy on what basic principles should inform intergovernmental relations.³⁶

However, even though there was no provision on IGR in the Interim Constitution, when deciding the *National Education Policy* case, the Constitutional Court (CC) stated that where two legislatures have concurrent powers to make laws in the same functional areas, the only reasonable way in which these powers can be implemented is through cooperation.³⁷ Concurrent functions refer to a constitutional mandate empowering two or more levels of government to exercise powers in the same functional area.³⁸ This indicates that the CC noted the importance of cooperative government between the spheres, even though it was not provided for in the Interim Constitution. It is in the final Constitution (1996) that the framework for IGR and cooperative government was entrenched.

2.3.2 The Constitution of the Republic of South Africa, 1996

Section 40(1) of the Constitution provides in South Africa that 'government is constituted as national, provincial, and local spheres of government which are distinctive, interdependent, and interrelated'. The meaning of these phrases may be found from the way the Constitution works. The 'distinct' element refers to the fact that each sphere of government has constitutionally defined functions which are different. Their interdependence refers to the fact that they must work together, meaning that they are dependent on each other in the performance of their functions or tasks. Lastly, they are interrelated in the sense that the national sphere has a duty to supervise the provincial government, and both the national and provincial governments have the duty to supervise local government. The final Constitution introduced clear provisions for IGR and the implementation of a cooperative governance system.

³⁶ De Villers B 'Codification of Intergovernmental Relations by Way of Legislation: The Experiences of South Africa and Potential Lessons for Young Multitiered Systems' (2012) 74(4) *Heidelberg Journal of International Law* 676.

³⁷ *In re: The National Education Policy Bill No. 83 of 1995* 1996 4 BCLR 518 (CC) para 34.

³⁸ De Visser J 'Concurrent Powers in South Africa' in Steytler N (ed) *Concurrent powers in federal systems: meaning, making, managing* (2017) 222.

2.3.2.1 IGR and cooperative government principles

Section 40(2) clearly states that all spheres of government shall observe and adhere to the principles of cooperative government and intergovernmental relations when carrying out their duties. In practice, this means that the spheres must cooperate when exercising their functions, particularly the concurrent powers that they all possess. This clause highlights the importance of cooperative governance and collaboration within and between the spheres.

The content of cooperative government and intergovernmental relations is contained in section 41(1) of the Constitution. The section lists several principles that all spheres of government and organs of state must follow when conducting their business or performing their duties. In general, this subsection might be viewed as establishing a foundation for intergovernmental cooperation between the spheres. This clause also specifies who is subject to the IGR and the cooperative governance principles.

The constitutional principles of cooperative government, according to Chaskalson P in the case of *Premier, Western Cape*, have two purposes: (a) to enable our new democracy to develop a system of government that allows each sphere of government to function relatively autonomously within the scope of its legislative competence; and (b) to allow each sphere of government to work together in a coherent manner.³⁹

Section 41(1) calls on all spheres of government and organs of state within each sphere to:

- (a) Preserve the peace, national unity and indivisibility of the Republic;
- (b) Secure the well-being of the People of the Republic;
- (c) Provide effective, transparent, accountable and coherent government for the Republic as a whole;
- (d) Be loyal to the Constitution, the Republic and its people;
- (e) Respect the Constitutional status, institutions, powers and functions of government in the other spheres;
- (f) Not to assume any power or function except those conferred on them in terms of the Constitution;
- (g) Exercise their powers and perform their functions in a manner that does not encroach on the geographical functional or institutional integrity of government in another sphere; and
- (h) Co-operate with one another in mutual trust and good faith.

³⁹ *Premier, Western Cape v President of the Republic of South Africa and Another* 1999 (3) SA 657 (CC) para 58.

The duty of spheres to cooperate with one another was also noted in the *First Certification* judgment,⁴⁰ which was the first case to deal with cooperative governance within the parameters of the final Constitution. The Constitutional Court (CC) in that case elaborated on the significance of cooperative governance, holding that a decision was made to opt for ‘cooperative government’ rather than ‘competitive federalism’.⁴¹ The CC showed that the cooperative governance principles include an express requirement that all spheres of government must exercise their rights and functions in a way that does not jeopardise the geographical, functional, or institutional integrity of government in another field.⁴² When it came to the spheres’ obligation to avoid litigation against each other, the CC held that this provision ‘binds all departments of state and administrations in the national, provincial, or local spheres of government’, and that ‘disputes should be resolved at a political level rather than through adversarial litigation’.⁴³

Section 41(2) states that an Act of Parliament must be enacted to provide the structure and the institutions required to promote and enhance inter-sphere cooperation, as well as appropriate processes and procedures for resolving intergovernmental disputes. In other words, the provision provides for ways in which section 41 must be implemented.

The Constitution envisions a nation in which the various spheres of government are continually engaging and working with one another, and hence develops a set of laws to govern the manner and quality of those interactions. Before turning to a court of law to address an intergovernmental dispute, an organ of state must make every reasonable effort to resolve the issue using structures and procedures set up for that purpose and must exhaust all other options.

Section 41(4) gives the court discretion by allowing it to refer a matter which the organs of state have brought to court back to the parties if the court feels that the organs of state have not attempted to address their disagreement outside of court. In other words, before going to court, the spheres must attempt to resolve their issues internally through meaningful debate or mediation, and if the court determines that the spheres have exhausted all internal institutions, the case will be referred to the spheres at issue.

⁴⁰ *Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa, 1996*, 1996 (4) SA 744 (CC) (*First Certification*).

⁴¹ *First Certification* para 287.

⁴² *First Certification* para 289.

⁴³ *First Certification* para 291.

This issue was further emphasised in the *First Certification* judgment, where the CC stated that any disagreements between spheres of government should be handled at a political level by discussion, rather than through confrontational litigation, to the extent practicable.⁴⁴ Further, in *Uthukela District Municipality and Others v President of the Republic and Others*,⁴⁵ the Court stated that the obligation to settle disputes is an important aspect of co-operative government, which lies at the heart of Chapter 3 of the Constitution.⁴⁶

IGR exists to enhance the objectives of service delivery, public accountability, coordination, and integration, including successful execution, dispute resolution, and sustainable development. The provisions of Chapter 3 of the Constitution are intended to ensure that, in areas of concurrent competency, the various organs of government collaborate.

Section 154 of the Constitution further provides that the national and provincial governments shall promote and improve the capacity of municipalities to manage their own affairs, exercise their powers, and fulfil their tasks by legislation and other measures. In other words, these two spheres must help municipalities with developing their capacity so that they can be a partner in IGR.

2.3.2.2 Overview: Cooperative principles

To summarise, the Interim Constitution established a multilevel government system in South Africa but did so without introducing a provision for the principles of cooperative government, or even IGR measures. It also failed to establish cooperative governance norms, resulting in ad hoc intergovernmental relations that were based on the nature of the sectors. Only in Chapter 3 of the final Constitution were the principles of cooperative government and IGR incorporated. The Chapter also called for an Act that would ensure that the principles are realised, and IGR structures established. The Intergovernmental Relations Framework Act of 2005 (IGRF Act) was then established. This was the Act that laid the foundation for the South African IGR system. The Act and the Constitution altered the landscape of cooperative government and intergovernmental interactions since they were no longer ad hoc but a system that could be regulated because it was now fully codified. The three spheres of government

⁴⁴ *First Certification* para 14.

⁴⁵ *Uthukela District Municipality and Others v President of the Republic and Others* 2003 (1) SA 678 (CC).

⁴⁶ *Uthukela District Municipality* para 33.

were required to observe and adhere to these principles. The next section discusses the statutory and practical arrangements of IGR, and it refers to the IGRF Act.

2.4 Statutory and practical arrangements on IGR

2.4.1 Principles: Intergovernmental Relations Framework Act 13 of 2005

The Intergovernmental Relations Framework Act was passed to establish frameworks and platforms for IGR in compliance with section 41(2) of the Constitution. The Act's goals are to give the national, provincial, and local government a framework for encouraging and facilitating intergovernmental cooperation, and to provide resources and procedures to speed up the resolution of intergovernmental conflicts.⁴⁷ In other words, an IGR system's goals include encouraging group decision-making, ensuring policy execution through effective communication, coordinating goals and budgets across sectors, and resolving conflicts and disagreements within the confines of government.

Section 4 of the IGRF Act outlines the Act's goals, which include, among other things:

- (a) coherent government;
- (b) effective provision of services;
- (c) monitoring implementation of policy and legislation; and
- (d) realisation of national priorities.⁴⁸

Section 5 lays out the principles that must be followed by all spheres of government and state organs to promote and achieve the objectives of the Act.

- (a) by taking into account the circumstances, material interests and budgets of other governments and organs of state in other governments, when exercising their statutory powers or performing their statutory functions;
- (b) consulting other affected organs of state in accordance with formal procedures, as determined by any applicable legislation, or accepted convention or as agreed with them or, in the absence of formal procedures, consulting them in a manner best suited to the

⁴⁷ Preamble of the IGRF Act.

⁴⁸ Section 4 IGRF Act.

circumstances, including by way of- (i) direct contact; or (ii) any relevant intergovernmental structures;

(c) co-ordinating their actions when implementing policy or legislation affecting the material interests of other governments;

(d) avoiding unnecessary and wasteful duplication or jurisdictional contests;

(e) taking all reasonable steps to ensure that they have sufficient institutional capacity and effective procedures- (i) to consult, to co-operate and to share information with other organs of state; and (ii) to respond promptly to requests by other organs of state for consultation, co-operation, and information sharing; and

(f) participating (i) in intergovernmental structures of which they are members; and (ii) in efforts to settle intergovernmental disputes.

This Act established a few IGR structures in South Africa that assist all three spheres of government to work together and have good relations. These IGR structures were established to ensure coordination and cooperation within and between spheres when discussing issues of common concern or interest. The President's Coordinating Council (PCC), MinMECs, the statutory IGR structures, Council of Education Ministers (CEM), the Intergovernmental Committee on Disaster Management (ICDM), Provincial Intergovernmental Forum (PIF), the District Intergovernmental Forum (DIF), and the Technical Committees that support all the IGR structures are all examples of IGR structures that will be discussed below. Every intergovernmental structure must create rules to control its internal procedures, such as when meetings will be held, the roles of the chairperson, and procedures for the IGR structure's own functioning, according to the IGRF Act.⁴⁹ The goal is to give IGR structures the autonomy to decide their own internal issues without interference from outside forces. It also ensures that meetings are held at times when all members of the structure are available.

⁴⁹ Section 33(1) IGRF Act.

2.4.2 The Role of SALGA in IGR

In a democracy, local government is the branch that is said to be closest to the people or the one that makes government immediately available to the population. More importantly though, local government serves as the means through which services are provided to the communities. It is crucial that it is represented in the IGR structures, so that other spheres can consult it concerning ongoing issues that the sphere is affected by or involved with. Local government interests are safeguarded and represented by SALGA on the national intergovernmental bodies, while at the provincial level, municipalities are either directly represented or represented through the provincial local government associations. Thus, these collective IGR bodies consult the municipalities.

The Local Government: Municipal Structures Act of 1998's preamble outlines the role of local government. This preamble lays out a vision for local government that is democratic and growth-oriented, in which municipalities uphold their constitutional duties to guarantee efficient, effective, and sustainable municipal services, to foster social and economic development, and to encourage a safe and healthy environment by collaborating with local communities to build environments and human settlements where all of our people can live happy, respectable lives.⁵⁰ The Constitution makes reference to local government for two reasons: first, it established a system of wall-to-wall local government, firmly ensuring local government's autonomy;⁵¹ and secondly, municipalities have a constitutional obligation.

Section 163 of the Constitution provides that an Act of Parliament shall provide for the recognition of national and provincial organisations representing municipalities, as well as methods through which local government may communicate with other sectors of government.⁵² To give effect to section 163, the Organised Local Government Act 52 of 1997 (OLG Act) was adopted. Section 1(b) of the OLG Act states that on a provincial level, the Minister (local government) must recognise one provincial organisation representing most municipalities in each province, with the consent of the Member of Executive Council (MEC) responsible for local government, on condition that all types of municipalities in the province are members. Furthermore, the MEC for local government, in consultation with the Minister

⁵⁰ Preamble of the Local Government: Municipal Structures Act 117 of 1998.

⁵¹ South African Local Government Association, Municipalities: About Municipalities available at <http://www.salga.org.za/Municipalities%20AM.html> (accessed 19 November 2022).

⁵² Section 163 Constitution.

of local government, may establish additional regulations for the basis of recognition, ensuring that the standard considers political inclusivity, provincial representation, and a balance between urban and rural municipalities.

Organised local government is seen as a platform for local government to participate in national and provincial IGR institutions and forums, and it has been granted a role in them. SALGA was established in 1996 with the purpose of representing local government interests through engagement and participation in IGR's national and provincial institutions. SALGA exists in terms of the Organised Local Government Act (1997) and is recognised by the Minister of Cooperative Governance and Traditional Affairs (COGTA). SALGA is a public entity established under section 21 of the Companies Act, 1973.⁵³

2.4.2 President's Coordinating Council (PCC)

Section 6 of the IGRF Act governs the composition of the President's Coordinating Council (PCC). This IGR structure includes the President, the Deputy President, the Minister in the Presidency, the Minister of Provincial and Local Government, the Minister of Finance, the Minister of Public Service, the premiers of the nine provinces, and the Chairperson of SALGA. The President also serves as the Council's chairperson, and according to section 6(2) and 6(3), he may invite anyone to the council's meetings. The PCC is the President's consultative structure, with no decision-making powers, and the President sets the agenda for its meetings. Its goal is for the President to consult with the members of the council on matters of national importance that require collaboration from other spheres.

Section 7(b) lists the subjects for which the President will or can convene a meeting, and which may be discussed as an agenda of a PCC meeting:

- i. to consult provincial governments and organised local government on; 'the implementation of national policy and legislation in provinces and municipalities;
- ii. the coordination and alignment of priorities, objectives, and strategies across all spheres of government;
- iii. any other matters of strategic importance that affect the interests of other governments;

⁵³ Section 21 Companies Act 61 of 1973.

- c. to discuss performance in the provision of services in order to detect failures and to initiate preventive or corrective action when necessary; and
- d. to consider-
 - i. reports from other intergovernmental forums on matters affecting the national interest, including a report referred to in section 21; and
 - ii. other reports dealing with the performance of provinces and municipalities.

The PCC is the central forum of the IGR system, to which all other IGR forums are linked, and through which communication routes are built. It is the IGR structure that debates issues affecting all areas and implements national policy objectives. The PCC's responsibilities include improving provincial executives' ability to contribute to national policy formulation, promoting inter-provincial dialogue, resolving disputes at the inter-provincial level as well as between provinces and the national government, and improving cooperation between the national and provincial spheres of government, including local government strengthening.

The PCC was established in 2005 with the adoption of the IGRF Act. The PCC held its first meeting in 2007. It was convened by President Thabo Mbeki on 14 September 2007, and the Department of Provincial and Local Government presented a proposal to encourage economic development in the 21 nodal areas by encouraging private sector investment.⁵⁴ Since then, the PCC has met on several occasions throughout the years. The PCC's meetings fluctuate from year to year, with some years seeing three meetings rather than the mandated two. In 2010 for example, the PCC held three meetings: on 31 March, 18 May,⁵⁵ and 29 November 2010.⁵⁶

⁵⁴ South African Government Speeches: T Mbeki on meeting with Presidential Co-ordinating Council (2007) available at <https://www.gov.za/t-mbeki-meeting-presidential-co-ordinating-council> (accessed 4 September 2021).

⁵⁵ It focused on addressing the challenge of developing sustainable human settlements, agreed to review legislation impeding delivery, agreed on the need to address the housing funding model, and, lastly, looked at mechanisms to improve access to suitable land close to economic opportunities and civil facilities.

⁵⁶ SA: Reply to questions in the National Council of Provinces, by Jacob Zuma, the president of South Africa, Cape Town (2012) available at <https://www.polity.org.za/article/sa-reply-to-questions-in-the-national-council-of-provinces-by-jacob-zuma-the-president-of-south-africa-cape-town-24052012-2012-04-24> (accessed 4 September 2021).

The PCC's penultimate meeting before March 2020 was on 20 August 2019, and it focused on reporting on the progress of the implementation and service delivery model.⁵⁷ In the meeting the PCC also received briefings on the draft Provincial Growth and Development Strategies that enable its members to assess alignment with the National Development Plan.⁵⁸ The meeting served to introduce the new District Coordination Model, which was designed to address service delivery and economic development challenges at the district level by ensuring that all levels of government have a shared plan in place,⁵⁹ as well as for the completion of budgets and programmes, so that the necessary district coordination structures could be put in place for the model's implementation.⁶⁰ Prior to March 2020, the PCC's practice was to convene meetings at least twice a year.⁶¹ However, it can be seen that the PCC has been a functioning IGR structure, and has had a practice of convening meetings each year, even though it did not stick to at least two meetings a year, the statutory requirement. The meetings of the PCC involve monitoring the implementation of national policies and regulations, and ensuring that national, provincial, and local development strategies are all in correspondence. It is worth noting that very little information is available because these meetings are not public events.

2.4.4 Ministers and Members of Executive Councils Meeting (MinMECs)

At the national level, departments that exercise concurrent functions have intergovernmental forums where Ministers meet with Members of Executive Councils (MECs) and SALGA, but only if this affects the functional areas of local government. These forums are called Ministers and Members of Executive Councils Meeting (MinMECs). MinMECs play the important coordination role of policy development and the implementation of policies and legislation. These functional areas include education, health care services, social welfare, disaster

⁵⁷ South African Government Speeches: Opening Remarks by President Cyril Ramaphosa at the meeting of the President's Coordinating Council (2019) available at <https://www.gov.za/speeches/opening-remarks-president-cyril-ramaphosa-meeting-president%E2%80%99s-coordinating-council-pcc> (accessed 3 September 2021).

⁵⁸ Opening Remarks by President Cyril Ramaphosa at the meeting of the President's Coordinating Council (2019).

⁵⁹ South African Government Speeches: President to launch Presidential District Coordination Service Delivery Model (2019) available at <http://www.thepresidency.gov.za/press-statements/president-launch-presidential-district%C2%A0coordination-service-delivery-model> (accessed 3 September 2021).

⁶⁰ Opening Remarks by President Cyril Ramaphosa at the meeting of the President's Coordinating Council (2019).

⁶¹ De Villiers (2012) 685; See also Malan (2005) 232.

management and others.⁶² However, the thesis deals with the ones that were affected by the Covid-19 pandemic.

MinMECs were evidently in existence prior to the Intergovernmental Relations Framework Act, as section 9(2) states that ‘any MinMEC that existed when this Act took effect must be regarded as having been established in terms of subsection (1) for the purposes of this Act’, unless such MinMEC was established by another Act of Parliament. Section 9(1) stipulates that any Cabinet member may establish a national intergovernmental forum to promote and facilitate intergovernmental cooperation in the functional area for which that Cabinet member is responsible after the Act took effect. The composition of the MinMECs is set out in section 10(1) as follows, (a) the Cabinet member responsible for the functional area for which the forum is established; (b) any deputy minister appointed for such functional area; (c) members of the Executive Councils of provinces who are responsible for a similar functional area in their respective provinces; and (d) a municipal councillor designated by the national organisation representing organised local government, but only if the functional area for which the forum is established includes a matter assigned to local government in terms of Part B of Schedule 4 or Part B of Schedule 5 to the Constitution or in terms of national legislation.⁶³

The Cabinet member serves as a chair of that MinMEC, which is the Cabinet member's consultative body for that functional area. MinMECs are formed to bring to national interest ‘issues within that functional area to the attention of provincial governments and, if appropriate, organised local government’, as well as to hear their perspectives on relevant issues. These issues include:

- a) to consult provincial governments and, if appropriate, organised local government on-
 - (i) the development of national policy and legislation relating to matters affecting that functional area;
 - (ii) the implementation of national policy and legislation with respect to that functional area;
 - (iii) the co-ordination and alignment within that functional area of- (aa) strategic and performance plans; and
(bb) priorities, objectives, and strategies across national, provincial and

⁶² Edwards T ‘Cooperative governance in South Africa, with specific reference to the challenges of intergovernmental relations (2008) 27(1) *Politeia* 70.

⁶³ Section 9(1)(a)- (d) IGRF Act.

- (iv) any other matters of strategic importance within the functional area that affect the interests of other governments; and
- b. to discuss performance in the provision of services in order to detect failures and to initiate preventive or corrective action when necessary.⁶⁴

The Intergovernmental Relations Framework Act does not have a provision that specifies how many meetings the MinMEC is to convene each year. Section 12(1) of the Act requires the MinMECs to report to the PCC on any topic brought to them by the PCC.

The following section will discuss pre-selected MinMECs that concentrated on the concurrent competencies that were affected by the Covid-19 pandemic. These MinMECs are those on health, water, and sanitation.

2.4.1.1 MinMEC on Health

At a meeting in July 2002, the MinMEC agreed that municipal health services (MHS) should be defined simply as environmental health services. The MinMEC proposed the formation of a Provincial Health Council for each province, which would advise the MEC on health issues such as intergovernmental policy, proposed legislation, requests from District Health Councils (DHC) for functions to be delegated or assigned to them, management of health districts, and national policy implementation.⁶⁵ It is worth noting that very little information is available about the functioning of this MinMEC because their meetings are not public events. The relevance of this information is to show that at least there is a Health MinMEC as an IGR structure.

2.4.1.2 MinMEC on Water and Sanitation

Water supply and sanitation are key tasks of the local government, according to the Constitution. The MECs are involved because they are the members of a provincial Executive Council that is responsible for local government matters in the province. As a result, municipalities must take control of local water supply systems and devote sufficient resources

⁶⁴ Section 11(1)(a)-(b) IGRF Act.

⁶⁵ Haynes R & Hall W, 'South African Health Review Report, Chapter 5: District Health Systems and Local Government Developments' (2014/15) 1-337 UNDP *Covid-19 Rapid Needs Assessment Report* (2020) 86.

to their operation and upkeep.⁶⁶ This MinMEC was formed to ensure effective IGR in the delivery of water and sanitation services to communities.⁶⁷

The first meeting held by the MinMEC on Water and Sanitation was on 24 January 2017.⁶⁸ This meeting gave the Minister an opportunity to update the provinces on the water and sanitation delivery performance plans of the national department. They also received an update on the drought conditions that continued to threaten national water security. In the area of sanitation, the provinces received an update on the newly adopted National Sanitation Policy.⁶⁹ The Minister of Water and Sanitation, Nomvula Mokonyane, met with the MECs responsible for Cooperative Governance in the nine provinces of the Republic and SALGA, as the issue involved the concurrent functional area of local government.

This was the first official MinMEC meeting to be held on Water and Sanitation since the fifth administration.⁷⁰ The fifth administration began in 2014 and ended in May 2019. No information is available about the previous year's meetings, so it is difficult to determine the functionality of the structure without full information.

2.4.7 Dedicated Acts establishing IGR forums in concurrent functional areas of education and disaster management

2.4.7.1 National Education Policy Act 27 of 1996 – Council of Education Ministers

The Council of Education Ministers (CEM) was established by section 9(1) of the National Education Policy Act 27 of 1996 (NEPA). The CEM consists of the Ministers of Basic Education, Higher Education and Training, and the nine provincial members of the executive councils for education. This structure is to meet regularly to discuss the promotion of national education policy; share information and views on all aspects of education in South Africa; and coordinate action on matters of mutual interest.⁷¹ In other words, the council is an IGR structure

⁶⁶ South Africa Department of Constitutional Development: Green Paper on Disaster Management (1998) 27.

⁶⁷ Department of Water and Sanitation: Minister Mokonyane briefs media on outcomes of Water and Sanitation MinMEC (2017) available at <https://pmg.org.za/briefing/24487/> (accessed 5 July 2021).

⁶⁸ South African Government Speeches: Minister Nomvula Mokonyane convenes first MinMEC on Water and Sanitation, (2017) available at <https://www.gov.za/speeches/minister-nomvula-mokonyane-convenes-first-minmec-water-and-sanitation-24-jan-23-jan-2017> (accessed 19 November 2022).

⁶⁹ Minister Mokonyane briefs media on outcomes of Water and Sanitation MinMEC (2017).

⁷⁰ Minister Mokonyane briefs media on outcomes of Water and Sanitation MinMEC (2017).

⁷¹ South Africa Yearbook 2015/16 Education available at

for cooperation and coordination between the spheres that are involved in the management of education in South Africa. The Minister of Education serves as the chairperson of the council while the Deputy Minister of Education, if one is appointed, serves as chairperson in the absence of the Minister.⁷² According to section 9(2), the Director-General is required to attend meetings of the Council in order to report on the Council's activities, and to advise on any other topic relevant to the Department's responsibilities. The chairperson of the National Assembly's Portfolio Committee on Education may attend the Council meetings.⁷³

The functions of the CEM as provided in section 9(4) are to:

- a) Promote a national education policy which takes full account of the policies of the government, the principles contained in section 4, the education interests and needs of the provinces, and the respective competence of Parliament and the provincial legislatures in terms of section 146 of the Constitution;
- b) Share information and views on all aspects of education in the Republic; and
- c) Co-ordinate action on matters of mutual interest to the national and provincial governments.⁷⁴

Section 9(5) grants the CEM the authority to establish rules for the convening of its meetings, the frequency of its meetings, the procedure at its meetings, including the quorum, and any other matter it deems necessary or expedient for the proper performance of its functions or the exercise of its powers.

The CEM is a very important and active IGR structure when it comes to the education sector in South Africa. The Council participates in all matters involving schools or the education sector in South Africa, including the process of making a school calendar.

The CEM receives reports, plans, proposals, and other initiatives aimed at improving the education sector, including learners' performance. Its job is to approve such plans and make decisions about the reports received. The CEM makes decisions on a range of topics including

<https://www.gcis.gov.za/sites/default/files/docs/resourcecentre/yearbook/Education-SAYB1516.pdf> (accessed 7 December 2021).

⁷² Section 9(1)(a)-(d) of NEPA.

⁷³ Section 9(3) NEPA.

⁷⁴ Section 9(4)(a) – (c) NEPA.

the approval of proposals of curriculums, submission of assessment opportunity for matric candidates who failed the subject Life Orientation, and the approval of the proposal to implement uniform regulations for progression and promotion from Grades 1 to 9.⁷⁵

The CEM met on 13 September 2019, which was the first meeting of the Minister of Education, Deputy Minister and the newly appointed MECs following the 2019 May General Elections, which ushered in the sixth administration.⁷⁶ The school calendar for 2021 was approved for publication at this meeting.

The CEM's last meeting before March 2020 took place on 5 March 2020, where a variety of concerns affecting the basic education sector were discussed, for example, the progress made in testing the implementation of the Inclusive Basket,⁷⁷ which moves the sector closer to meeting the goals and objectives of the National Development Plan. Others included the approval of the 2020 National Senior Certificate (NSC) and Senior Certificate examination calendars, and the implementation of the bilingual examination in the National Senior Certificate, especially in the Eastern Cape, and the reduction of orders for school nutrition for learners in high schools by 10 per cent during examination times.⁷⁸

Before the onset of Covid-19, the CEM was functioning as a structure because it had held a fair share of its meetings, and the members were working together to guarantee that the education system was operating properly.

2.4.7.2 Disaster Management Act 57 of 2002 – Intergovernmental Committee on Disaster Management

Since its promulgation on 15 January 2003, the Disaster Management Act, 2002 (Act 57 of 2002) has guided the disaster management managers, government officials, and stakeholders in all things relating to disaster management. The objective of the Act is to provide an integrated and co-ordinated disaster management policy that focuses on preventing or reducing

⁷⁵ Department of Basic Education: Council of Education Ministers meeting: the last one of the year, 17 November 2008 press (2008) available at <https://www.education.gov.za/Newsroom/MediaReleases/MediaReleases/2008/tabid/244/ctl/Details/mid/590/ItemID/2902/Default.aspx> (accessed 7 September 2021).

⁷⁶ Department of Basic Education: Minister Angie Motshekga meets with Council of Education Ministers (2019) available at <https://www.gov.za/speeches/council-education-ministers-16-sep-2019-0000> (accessed 7 September 2021).

⁷⁷ Minister Angie Motshekga: Meeting of the Council of Education Ministers (2020).

⁷⁸ Minister Angie Motshekga: Meeting of the Council of Education Ministers (2020).

the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery.⁷⁹ The preamble further provides for the establishment of national, provincial, and municipal disaster management centres; disaster management volunteers; and matters incidental thereto.⁸⁰ The President must form an Intergovernmental Committee on Disaster Management (ICDM) under section 4(1). This committee is to be made up of Cabinet members involved in disaster management or the administration of legislation referred to in section 2(1)(b); the MECs from each province involved in disaster management or the implementation of legislation referred to in section 2(1) in their respective provinces, selected by the Premier of the province concerned⁸¹, and members of municipal councils selected by the SALGA.⁸² The Minister is the chairperson of the Committee.⁸³ This committee must report to Cabinet and ensure a uniform approach to disaster risk management in South Africa.

Section 4(3) lays out the roles and responsibilities of the ICDM which is accountable to the Cabinet for;

- (a) ensuring effect is given to the principles of co-operative government in Chapter 3 of the Constitution on issues relating to disaster management.
- b) is accountable and must report to Cabinet on the co-ordination of disaster management among the spheres of government;
- c) must advise and make recommendations to Cabinet-;
 - (i) on issues relating to disaster management; and
 - (ii) on the establishment of a national framework for disaster management aimed at ensuring an integrated and uniform approach to disaster management in the Republic by all national, provincial, and municipal organs of state, statutory functionaries, non-governmental institutions involved in disaster management, the private sector, communities and individuals.⁸⁴

⁷⁹ Preamble of Disaster Management Act 57 of 2002.

⁸⁰ Preamble Act 57 of 2002.

⁸¹ Section 4(1)(b) Act 57 of 2002.

⁸² Section 4(1) (c) Act 57 of 2002.

⁸³ Section 4(2) Act 57 of 2002.

⁸⁴ Section 4(3)(a) -(c) Act 57 of 2002.

The Intergovernmental committee has one purpose, which is adherence to the principles of cooperative governance.⁸⁵ Given this and the established understanding of disaster management, disaster management in South Africa is primarily the duty of the three spheres of government, as each sphere has a role to play in disaster management.

Section 5 provides that the Minister must establish a National Disaster Management Advisory Forum. This advisory forum is a technical support mechanism to the committee created in terms of section 4 above. The forum is comprised of the Head of the National Centre, a senior representative of each national department whose Minister is a member of the ICDM designated by that Minister, a senior representative of each provincial department whose MEC is a member of that Committee, designated by that MEC, municipal officials selected by SALGA, and representatives of other disaster management role-players designated by the Minister.⁸⁶ The Head of the National Centre is the chairperson of the Forum.⁸⁷ The Forum is a body in which national, provincial and local government, and other disaster management role-players consult one another and co-ordinate their actions on matters relating to disaster management.⁸⁸ The advisory forum in performing its role also has the obligation to make recommendations concerning the national disaster management framework to the ICDM. It may advise any organ of state, statutory functionary, non-governmental organisation or community, or the private sector, on any matter relating to disaster management.

In accordance with section 4 of the Disaster Management Act, President Jacob Zuma established the ICDM in 2016. The fact that this Council was established 14 years after the Act was passed demonstrates considerable disregard for the law and its requirements. This is not to say there were no disasters that had occurred between the passing of the Act and up to the date of the formation of the body. The ICDM is made up of members of the relevant Cabinet and provincial Executive Councils who are active in disaster management, as well as members of municipal councils chosen by SALGA.⁸⁹ To be precise, the ICDM is made up of two members

⁸⁵ Paragraph 1.1.1 of the National Disaster Management Framework gives further clarity by stating that this intergovernmental committee must give effect to the principles of cooperative governance and aims to bring together the different levels of government, as well as other needed role-players.

⁸⁶ Section 5(1) (a-e) Act 57 of 2002.

⁸⁷ Section 5(2) Act 57 of 2002.

⁸⁸ Section 5(3)(a) Act 57 of 2002.

⁸⁹ Presidency of the Republic of South Africa: President Zuma appoints Intergovernmental Committee on Disaster Management (2016) available at <https://www.presidency.gov.za/content/president-zuma-appoints-intergovernmental-committee-disaster-management> (accessed 9 July 2021).

of Municipal Councils chosen by SALGA, 20 Ministers, and all MECs from all provinces, who oversee COGTA.

According to the National Disaster Management Framework, the ICDM should meet at least four times per year.⁹⁰ However, the Disaster Management Act, which formed the ICDM, does not specify how frequently the structure is to meet. Despite the fact that the ICDM was constituted by the president and is obliged to convene at least four times a year, it did not meet from 2016 to March 2020.⁹¹ This means that there was no cooperative governance or any IGR in an area of concurrent function, namely disaster management.

2.4.5 Provincial IGR Structures

The common IGR structure within the provinces is the Premier's Intergovernmental Forum (PIF). It was established as an IGR structure to promote and facilitate IGR between the province and local government in the province.⁹² Part three of the IGRF Act creates a framework for provincial intergovernmental forums, for provincial-municipal cooperation.

The members of the PIF are (a) the Premier of the province; (b) the member of the Executive Council responsible for local government in the province; (c) any other members of the Executive Council designated by the Premier; (d) the mayors of district and metropolitan municipalities in the province; (e) the administrator of any of those municipalities if the municipality is subject to an intervention in terms of section 139 of the Constitution; and (f) a municipal councillor designated by organised local government in the province.⁹³ The Premier serves as the forum's chairperson, and the PIF is a consultation platform for the premier and the province's municipal governments.

The PIF's purpose is to discuss and consult on matters of mutual interest, such as the implementation of national policy and legislation affecting local government interests in the province, and issues raised in the PCC and other national intergovernmental forums affecting

⁹⁰ Introduction: A policy framework for disaster risk management in South Africa, 6 available at <http://www.ndmc.gov.za/Frameworks/Disaster%20Management%20Framework.pdf> (accessed 20 September 2023).

⁹¹ Van Niekerk D & Du Plessis E, Opinion | Understanding the Disaster Management Act and its implementation (2020) available at <https://www.news24.com/news24/columnists/guestcolumn/opinion-understanding-the-disaster-management-act-and-its-implementation-20200613> (accessed 3 September 2021).

⁹² Section 16 IGRF Act.

⁹³ Section 17 1(1)(a) – (f) IGRF Act.

local government interests in the province, according to section 18(a). In other words, all that is required from the PIF is discussion and consultation of the issues mentioned in that section.

Furthermore, in terms of section 18(b), the PIF is to consider reports from (i) other provincial intergovernmental forums on matters of mutual interest to the province and local governments in the province; and (ii) district intergovernmental forums in the province.

The Premier of a province oversees the convening sessions of the PIF and the topics to be discussed in the forum according to section 19(1). A PIF must report to the PCC at least once a year on progress with the implementation of national policy and legislation within the province, as well as report to the Council on matters of national interest that have arisen in the forum, according to section 20.

Furthermore, section 21(1) states that a province's Premier may establish a PIF for any specific functional area, to promote and facilitate effective and efficient IGR between the province and its local governments in that functional area, as well as to encourage and facilitate effective and efficient IGR between the province and municipal governments in the region. The PIF's composition and role are completely under the control of the province's premier.

Each of the nine provinces has its own provincial intergovernmental forum. Prior to the adoption of the IGRF Act on 15 August 2005, various provinces had created a number of provincial intergovernmental forums across the country.⁹⁴ The Western Cape, Eastern Cape, and KwaZulu-Natal provinces were among the first to form PIFs, whereas the Free State and Limpopo provinces waited for the Act to be promulgated before aligning their intergovernmental structures with it.⁹⁵ Intergovernmental forums in the Northwest, Mpumalanga, and Gauteng, on the other hand, continued to function as before the Act.

KwaZulu-Natal and Gauteng are two provinces that have developed dual IGR frameworks.⁹⁶ KwaZulu-Natal established the Premier's Coordinating Forum (PCF) and another forum that is a broad inclusive forum, while Gauteng established the Gauteng Intergovernmental Forum (GIGF) and the Gauteng Premier's Coordinating Forum (GPCF).⁹⁷ These forums had different memberships. For example, the GIGF brought together the Premier, the provincial cabinet,

94 Fessha Y 'The practice of the Premier's Intergovernmental forum' (2006) 8(5) *Local Government Bulletin* 1.
95 Fessha (2006) 1.

96 Fessha Y & Steytler N 'Provincial intergovernmental forums: A post – Intergovernmental Relations Framework Act compliance assessment' (2006) *Local Government Project* 10.

97 Fessha & Steytler (2006) 10.

organised local government, mayors, and municipal managers of all municipalities, while the GPCF included only the Premier and the mayors of all municipalities within the province, excluding the provincial cabinet.⁹⁸

The purpose of the GPFC is to facilitate effective co-operation between the provincial government and local government in the province. Its main aim is to enhance integrated development and to consider priorities for the province, while that of the GIGF is to co-ordinate service delivery, consultation, collaboration between local and provincial spheres, and the establishment of synergy between programmes of provincial and local government.⁹⁹ Nonetheless, it is important to note that not much is known about the practice or operations of these structures.

There is no standard set for the meetings that should be held by the PIFs. The number of meetings held each year varies by province; for example, the Western Cape must hold meetings at least four times a year, whilst the PCF in the Eastern Cape is required by its founding Protocol to meet no fewer than three or four times a year.¹⁰⁰ In terms of its establishing protocol, the Limpopo forum is intended to convene bi-annually, whereas the KwaZulu-Natal forum is supposed to meet on a regular basis.¹⁰¹ The NWPPC Protocol demands that the dates of the year's meetings be decided well in advance, sometimes before the start of each year, but in Gauteng, each PCF's meeting is ended after the date for the following meeting is determined.¹⁰²

The majority of provinces have developed an all-inclusive IGR framework that connects the province with local government, as the discussion has demonstrated. However, since these IGR institutions were established in 2006, no information could be found regarding their meetings and deliberations, so their functionality is unknown.

2.4.6 District Intergovernmental Forum

Section 24 of the IGRF Act establishes the District Intergovernmental Forum (DIF). The DIF serves as a forum for district dialogue, collaboration, and coordination. The mayor of the district municipality, the mayors of the local municipalities in the district, or if a local

⁹⁸ Fessha & Steytler (2006) 4.

⁹⁹ Fessha & Steytler (2006) 10.

¹⁰⁰ Fessha & Steytler (2006) 12.

¹⁰¹ Fessha & Steytler (2006) 12.

¹⁰² Fessha & Steytler (2006) 15.

municipality does not have a mayor, a councillor designated by the municipality, and the administrator of any of those municipalities if the municipality is subject to an intervention under section 139 of the Constitution, constitute this forum.¹⁰³ The mayor of the district municipality or, if that municipality is under intervention, the administrator of the municipality, is the chairperson of the forum, according to section 25(2).

A DIF's duty, according to section 26(1), is to serve as a consultative forum for the district municipality and the local municipalities in the district to discuss and consult on subjects of mutual concern, such as:

- a) draft national and provincial policy and legislation affecting local government interests in the district;
- b) the implementation of national and provincial policy and legislation with respect to such matters in the district;
- c) matters arising in the Premier's intergovernmental forum affecting the district;
- d) mutual support in terms of section 88 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- f) e) the provision of services in the district; coherent planning and development in the district;
- g) the co-ordination and alignment of the strategic and performance plans and priorities, objectives, and strategies of the municipalities in the district; and
- h) any other matters of strategic importance which affect the interests of the municipalities in the district.

DIF meetings are believed to help sustain the relationship between district and local mayors, which is vital for preventing problems by allowing for frequent exchanges of ideas. The ability of DIFs to function in the real world determines their effectiveness. Agendas are useful for developing a manageable list of topics to cover during a meeting, as well as for allowing local governments to express their concerns.

The chairperson of the DIF convenes and presides at meetings of the forum, according to section 27(1)(a) of the IGRF Act. In accordance with section 25(2), the forum's chairperson is the mayor of the district municipality. The forum must meet at least once a year with service

¹⁰³ Section 25 (1)(a) – (c) IGRF Act.

providers and other stakeholders involved in the district's development to coordinate effective service delivery and planning. When districts require assistance, it is recommended that they establish technical forums.¹⁰⁴

No information could be found regarding the practice of the district IGR structures at the time of the research.

2.4.7 Overview of the role and functioning of IGR structures

A forum for intergovernmental dialogue and discussion is described as an intergovernmental structure in section 32(1), which deals with the status of IGR structures. It is further stated in subsection (2) that despite it not being an executive decision-making body, it may pass resolutions or make recommendations in accordance with established procedures.

The Minister of COGTA has not submitted many reports to the National Assembly in the last fifteen years, as required by section 49 on the conduct of IGR structures. According to papers submitted for the 2019 report, numerous IGR platforms and structures exist vertically and horizontally throughout all three spheres of government. Very little information is available regarding the use of IGR structures and their functionality, and no reports of IGR practice as required have been provided.

On the eve of the pandemic, the IGR structures performed as follows. The PCC had been functioning relatively well as it had managed to convene its meetings each year without failure and even convened more meetings in some years, which shows that the structure was active. The practice of the MinMECs was that there had been no consistency in the regularity of their meetings. The MinMECs would hold meetings in some years, and in others they would not.

The CEM was an active IGR structure as decisions, plans and initiatives to better the education sector were taken in the meetings of this structure yearly. The CEM held many meetings throughout the years. The ICDM, on the other hand, never convened any meetings after its establishment in 2016.

¹⁰⁴ Kirkby C 'District Intergovernmental Forums: Best Practice from the Past' (2006) 8(3) *Local Government Bulletin* 2.

Little information could be found regarding the practice of the Provincial IGR structures that had been established by the provinces, while no information was available either about the district IGR structures or their functionality.

2.5 Conclusion

The purpose of the chapter was to lay down the practice of the IGR structures in South Africa before 20 March 2020. The IGR structures in South Africa are informed by the collaboration and cooperation of the spheres. Cooperative governance is another form of IGR which requires the spheres to have a relationship of working together in situations of common interest. The final Constitution introduced the framework for IGR and cooperative government, with IGR having a full provision that states how it should be developed, and cooperative government having an entire chapter dedicated to it.

Regarding the practice of IGR structures in South Africa prior to 20 March 2020, it was not always clear whether all the structures were operational or not, because there was little to no information accessible. However, the PCC was operating rather successfully because it was able to hold its meetings every year without fail and, in some cases, held even more meetings, demonstrating that the structure was active. The MinMECs' custom is that there has never been any consistency in how frequently they meet. In some years, the MinMECs would convene, whereas in others, they would not.

As decisions, strategies, and attempts to improve the education sector are made in the CEM's yearly meetings, this structure is an active IGR structure. The education sector is never static; thus, this structure is continually in motion.

On the other hand, the ICDM existed in name only; since its creation in 2016, it has never had any meetings. This demonstrates that there is no cooperative governance amongst the spheres to discuss disaster management issues and develop plans to manage a disaster in South Africa, because the primary structure created for that purpose was never used.

Although the provinces have set up a variety of provincial IGR structures, nothing is known about how they are used or function. Regarding the district IGR structures and their operation, no information was found at the time of the research.

CHAPTER 3: INTEGOVERNMENTAL RELATIONS AND THE RESPONSE TO COVID-19 BY THE THREE SPHERES OF GOVERNMENT

3.1 Introduction

The rapid spread of the Covid-19 pandemic placed enormous pressure on multilevel government systems across the world.¹⁰⁵ These governments were expected to take quick decisions or actions in a bid to manage this unprecedented pandemic. In South Africa, these actions were necessitated by, among other things, the social and health impact of the pandemic.

The objective of this chapter is to assess whether and how the principles of cooperative government and the IGR structures discussed in chapter 2 were used to manage the Covid-19 pandemic. If the IGR structures were not used, the aim is to establish what the national government did use to manage the pandemic, and whether it followed the principles of cooperative government in dealing with the pandemic.

Covid-19 had a huge social and health impact on the South African population and the health-care system of the country. The population was heavily affected, and many people lost their lives during this pandemic. The pandemic also proved that the health-care system of South Africa was not prepared for such a disaster, as many of the hospitals had shortages of beds and personal protective equipment (PPE). There was also a shortage of isolation and quarantine sites for those infected by the pandemic. Many new temporary hospitals and quarantine sites were opened to assist and care for Covid-19 infected patients. Moreover, the pandemic had an impact on the responsibilities of each sphere of government, as it affected how they functioned, and what functions they had to perform to manage the spread of the pandemic. The provinces, together with the municipalities, had additional functions to perform because of the pandemic.

It is argued that the South African government made use of only a few of the existing IGR structures when it dealt with the pandemic. The IGR structures used were not used effectively by the government as they were not used for the purpose that they were intended for. It is safe to argue that the national government made use of an entirely new centralised body to manage

¹⁰⁵ Baatjies R & De Visser J 'Covid-19 putting Multi-Level Governance to the test: Transgression and Innovations in South Africa' (2020) *The Forum of Federations* 7.

Covid-19, which was not an IGR structure, as it did not have representation for provincial and local government.

This chapter is divided into six main parts. Section 3.2 discusses the social and health impact of the unprecedented Covid-19 pandemic in South Africa. Section 3.3 discusses how this impact changed each sphere of government's duties, including the exercise of several concurrent functions in the provision of water and sanitation by municipalities, as well as health, education, and social services by provinces. The measures that were taken by each sphere of government to control the pandemic are covered in section 3.4. The decision-making processes or structures utilised in relation to concurrent issues are examined in section 3.5. Section 3.6 discusses the pre-existing IGR structures used in the management of the pandemic. An overview and conclusion are presented in section 3.10.

3.2 The impact of the Covid-19 pandemic on South Africa

This section discusses the impact of the Covid-19 pandemic on the population of South Africa from the period of March 2020 until June 2022 which was the period when the Covid-19 pandemic regulations were applied. The pandemic had a significant impact on social life and disrupted the health-care system of South Africa.¹⁰⁶ The pandemic presented threats previously unknown and reordered the priorities for health-care. The pandemic had a direct impact on the health system as it negatively affected the way the health-care system functioned. This does not mean that the health system of South Africa was functioning without any challenges prior to the emergence of the pandemic, as the country already faced challenges to health-care service delivery, which included lack of funding,¹⁰⁷ environmental changes,¹⁰⁸ and unequal distribution of resources (including health facilities and health-care workers, especially in the Eastern Cape).¹⁰⁹ As a result of Covid-19, hospitals reprogrammed care units to accommodate

¹⁰⁶ Burger R & Mchenga M 'Anticipating the Impact of the COVID-19 Pandemic on Health Inequality in South Africa: Early Evidence on Direct and Indirect Influences' (2021) PEP Working Paper Series 1.

¹⁰⁷ Malakoane BC, Heunis J, Chikobvu PG, Kigozi N & Kruger HW 'Public health system challenges in the Free State, South Africa: a situation appraisal to inform health system strengthening' (2020) 20(58) *BMC Health Services Research* 1–14.

¹⁰⁸ Whiteside A 'South Africa's key health challenges' (2014) 652(1) *The Annals of the American Academy of Political and Social Science* 166–185.

¹⁰⁹ Maphumulo W & Bhengu RB 'Challenges of quality improvement in the healthcare of South Africa post-apartheid: a critical review' (2019) 42(1) *Curationis* 1–9.

Covid-19 patients, while others were temporarily closed.¹¹⁰ In other words, the hospitals performed differently as well as negatively, in the sense that patients with Covid-19 were prioritised when it came to providing medical care services to people. The coronavirus pandemic led to more than 300,000 excess natural deaths, with a disproportionate toll exacted among people aged 60 years or above, according to the latest figures from the Medical Research Council (MRC).¹¹¹ The excess natural deaths recorded were from the period between 3 May 2020 and 5 March 2022, and it was slightly more than triple the state's official figure of 99,543 recorded Covid-19 deaths as of 5 March 2022.¹¹²

The insufficiency of resources to curb the pandemic became evident when the South African health system began to experience acute shortages of PPE such as face shields or goggles, heavy-duty aprons and gloves, as well as N95 respirators for frontline health-care professionals, due to disruptions in the global supply chain of medical equipment.¹¹³ There were also shortages of equipped health facilities and PPE for Covid-19 health-care workers, patients and suspected individuals in quarantine and self-isolation centres, increasing chances of infection of health-care workers.¹¹⁴

The Covid-19 pandemic threatened not only people's physical health, but their mental health as well.¹¹⁵ The high levels of transmission and infection of Covid-19, resulting in, inter alia, rising unemployment and fatality rates, financial losses, continuous lockdowns, forced quarantine, restrictions on the movement of people significantly changed the daily lives of the population.

Border closures, supply-chain disruptions, sharp depreciation of currencies, sharp drops in share and commodity prices, flight cancellations and groundings all contributed to a socioeconomic crisis in South Africa and around the world during Covid-19.¹¹⁶ Several sectors of the economy were disrupted by the Covid-19 pandemic. The impact of the pandemic on

¹¹⁰ Hofman K & Madhi S 'The unanticipated costs of COVID-19 to South Africa's quadruple disease burden' (2020) 110(8) *South African Medical Journal* 698.

¹¹¹ Kahn T 'Covid-19 drives SA's excess natural deaths past 300,000' *Business Live Premium* 10 March 2022.

¹¹² Kahn (2022) 1.

¹¹³ SAcoronavirus 'South Africa covid-19 experiences to date' (2020).

¹¹⁴ SAcoronavirus (2020).

¹¹⁵ SAcoronavirus (2020).

¹¹⁶ Udo F 'COVID-19 lockdown: South Africa battles the deadly epidemic of gender-based violence' (2020) *Institute for African Women in Law* available at <https://www.africanwomeninlaw.com/post/covid-19-lockdown-south-africa-battles-the-deadly-epidemic-of-gender-based-violence> (accessed 16 January 2021).

South Africans was felt in many ways. It destabilised the lives of people and the economy of the country.

3.3 The impact of the pandemic on the responsibilities of each sphere of government

The social and health impact of Covid-19 also affected the responsibilities of each sphere of government, especially in the areas of concurrent powers (health; education; welfare services; water and sanitation; and, most importantly, disaster management). This section will deal with the impact of the pandemic on the concurrent powers of the spheres and the responsibilities of each sphere of government.

Of particular importance, the pandemic had an impact on the concurrent powers which are provided for in Schedule 4A. The Schedule 4A concurrent powers include health services, welfare services and disaster management. The powers and responsibilities of local government are entrenched in Schedule 4B, and cover water and sanitation amongst other services. As such, the three spheres exercise their concurrent powers by planning, budgeting for, and implementing programmes aimed at delivering a broad range of services to the South African population. These include, for example, the provision of health-care services, education, housing, water, and sanitation and welfare services.

Thus, because of the impact of the pandemic on the concurrent powers, the spheres had to ensure that they performed their responsibilities well and provided services to the population in an attempt to manage the disaster. In addition, provinces and municipalities had to ensure that there were enough hospitals and beds, quarantine or isolation facilities, and PPE.¹¹⁷ While the provincial health departments are mandated to provide health-care services, the role of the national department is to formulate policy, to coordinate and support provincial departments in fulfilling their mandates.¹¹⁸

¹¹⁷ South African Local Government Association, *The Fight against COVID-19 Report* (2020) 32, 8.

¹¹⁸ South African Health Government 'Health' *Official Guide to South Africa* (2021/22) available at <https://www.gov.za/about-sa/health> (accessed 22 July 2020); Disaster Management Act Regulation 6.6.1 (b) in *GN 399 GG 43147* of 25 March 2020.

3.3.1 National government

The Constitution allocates certain powers exclusively to national government, namely any power not mentioned in Schedule 4 or Schedule 5. These include major powers such as border control, among others. The first recorded case of Covid-19 in South Africa was reported on 5 March 2020; it was an imported infection that came with a 38-year-old man who had travelled back to South Africa from Italy. From that point, the pandemic started spreading within the borders, requiring the national government to take swift decisions, as the duty to control the border and international travel lies with this sphere. The national sphere then took the decision to close South Africa's borders, banned travelling, and restricted almost all social and economic activities in order to manage the spread of the pandemic within the borders.

3.3.2 Provincial government

The schedule 4A concurrent powers of the national and the provincial government include health services, education at all levels, excluding tertiary education, public transport, welfare services and disaster management. Provinces also have powers which are exclusively reserved for them in Schedule 5A of the Constitution. These schedule 5A powers include matters such as provincial sports, provincial cultural services, and veterinary services, which are not the focus of this thesis. However, schedule 5A also includes ambulance services which were vital during Covid-19 to transport patients to hospitals for medical care. Given the fact that these provinces are also responsible for primary and secondary education, they had to deal with the additional issue of school closures.¹¹⁹ Furthermore, since provinces share the responsibility for social development with the other spheres, the obligation to provide food for the hungry also fell to them.¹²⁰

3.3.3 Local government

The local sphere of government comprises 257 municipalities, metropolitan, district, and local, which are responsible for the delivery of basic services such as water, sanitation services, municipal health services, electricity and refuse removal.¹²¹ The Covid-19 pandemic affected the municipalities in numerous ways as they could not function normally. The municipalities,

¹¹⁹ Steytler N 'Federalism and the COVID-19 crisis: A perspective on South Africa' (2020) *Forum of Federations* Conference Paper 1.

¹²⁰ Steytler (2020) 2.

¹²¹ Schedule 4B Constitution.

as the custodians of the provision of water services, were required to provide water by any means necessary. As a matter of fact, they provided potable water and sanitation services to high-density settlements, rural communities, and informal settlements.¹²² They also provided water through other means such as water tankers, boreholes, and storage tanks, to water-constrained communities with limited access to municipal water supplies.¹²³ By 4 April 2020, municipalities had delivered more than 6,000 tanks and 723 tankers to various communities.¹²⁴

Municipalities were also required to close all public spaces and facilities that did not provide essential services, such as swimming pools and libraries.¹²⁵ Local government was also required to identify isolation and quarantine sites, identify and make available facilities for shelter for the homeless, to sanitise public transport facilities, cleanse and sanitise public space facilities, provide facilities for the payment of social grants, and issue permits to informal food traders.¹²⁶ It may be argued that the Covid-19 pandemic had an impact on the responsibilities of local government as a sphere. Local government had additional responsibilities to perform which, in normal circumstances, did not form part of the mandate of municipalities.¹²⁷ For instance, Schedule 4A of the Constitution assigns the national and provincial governments the concurrent function of providing housing, medical care, and food for the homeless, as well as welfare services.

It is obvious that the local government sphere was active in the management of the pandemic to lessen its impact. When it came to the handling of the pandemic as a disaster, all three spheres of government were involved because they shared responsibilities.

3.4 Measures to curb the spread of Covid-19 and cushion its effect on society

The next section describes how each sphere of government responded to the pandemic's spread. This section discusses the approaches, IGR structures, and bodies that acted as decision-making platforms for managing the Covid-19 pandemic.

¹²² Disaster Management Act Regulation 6.2.1 (b) & (c) in *GN 399 GG 43147* of 25 March 2020.

¹²³ Disaster Management Act Regulation 6.2.1 (b) & (c) in *GN 399 GG 43147* of 25 March 2020.

¹²⁴ SAcoronavirus 'Presidential Coordinating Council aligns national response to COVID-19' (2020) available at <https://www.sanews.gov.za/south-africa/presidential-coordinating-council-aligns-national-response-covid-19> (accessed 7 September 2021).

¹²⁵ Disaster Management Act Regulations 6.5.2 (a) in *GN 399 GG 43147* of 25 March 2020.

¹²⁶ SALGA: The Fight against COVID-19 Report 32 (2020) 8.

¹²⁷ SALGA: The Fight against COVID-19 Report 32 (2020) 8.

3.4.1 National government

In South Africa, disaster management is a concurrent function between national and provincial spheres of government in accordance with Schedule 4A of the Constitution. This function has also been assigned to local government through the enactment of the Disaster Management Act, 2002.¹²⁸ However, local government has the executive powers to implement the national law, not to make laws. Therefore, all three spheres of government have duties as well as responsibilities when it comes to disaster management.

When dealing with the pandemic, the national government took drastic measures based on the increasing rate of Covid-19 infections within its borders, by making use of the Disaster Management Act. This is the primary legislation dealing with disaster management in South Africa. There was no new legislation specifically enacted to deal with the Covid-19 pandemic. On 5 March 2020, the national government declared a National State of Disaster giving Dr Nkosazana Dlamini-Zuma, the Minister of Cooperative Governance and Traditional Affairs (COGTA), the power to limit certain rights and freedoms within South Africa.¹²⁹ The power was given to her because the Act is administered by the Department of Cooperative Governance, and she was the minister of that specific department.

A state of disaster is a temporary measure through which certain rights are limited in order to deal with a disaster. It may be declared invalid if the requirements for a declaration in section 27(1) of the Disaster Management Act are not met. Section 1 of the Disaster Management Act 2002 specifically defines a disaster as a progressive or sudden, widespread, or localised, natural, or human occurrence that causes or threatens to cause death, injury, or disease.¹³⁰ Covid-19 was a disaster that was progressive and widespread; it occurred in waves and caused numerous deaths in the country and globally. The national disaster declaration in South Africa resulted in the banning of international travel, the closure of schools and other institutions of learning, the restriction of large gatherings, and the promotion of social distancing and hand

¹²⁸ Act 57 of 2002.

¹²⁹ Deochand E & Baduza M 'In Depth: What does a COVID-19 National State of Disaster mean for rights?' *Spotlight Newspaper* 20 March 2020. See also Disaster Management Act, 2002 Declaration of a National State of Disaster in *GN 313 GG 43096* of 15 March 2020.

¹³⁰ Section 1 Act 57 of 2002.

hygiene.¹³¹ The rationale for the national state of disaster was to drastically limit the number of people in one place to stop the transmission of the virus.

The President announced a lockdown in South Africa for 21 days from 26 March 2020 to 16 April 2020 as a further drastic measure to combat the spread of the pandemic.¹³²

A 'lockdown' in South Africa is defined as an emergency protocol that requires all South Africans to stay at home except for essential services. Essential services are defined as including shopping and transactions in places such as grocery stores, pharmacies, banks, and other necessary businesses. The lockdown order included the closure of schools and all non-essential businesses, restrictions on public transport, and restrictions on movement. Regulation 11C(1) of the 25 March 2020 regulations provided for restrictions on public transport, meaning that all commuter transport services including passenger rail, bus services, taxi services, e-hailing services, maritime and air passenger transport were prohibited. In other words, during the lockdown, people were permitted to leave their homes only to buy essential goods, seek medical attention and buy medical products, collect social grants, attend a funeral of no more than 50 people, and access public transport for essential services outside of curfew times. All non-essential activities were prohibited for three weeks, and this is what led to the closure of borders, schools, and businesses that did not deal with essential activities.

During the lockdown, all gatherings, including gatherings for prayer, were initially prohibited for three weeks. This lockdown was further extended by two weeks, and it ended on 30 April 2020. The purpose of the nationwide lockdown was to fundamentally disrupt the chain of transmission.¹³³ In other words, the lockdown was to prevent the spread of the virus and save the lives of South Africans. According to the President, the lockdown was also necessary to serve as a preparation stage or time for the national government to put in place measures,¹³⁴ especially within the health-care sector, to deal effectively with Covid-19 by the time the infections reached their peak.

¹³¹ Salim S & Karim A 'The South African Response to the Pandemic' (2020) 382(24) *The New England Journal of Medicine* 1.

¹³² South Africa Government Speeches 'President Cyril Ramaphosa: Update on Coronavirus COVID-19 lockdown' (2020) available at <https://www.gov.za/speeches/president-cyril-ramaphosa-update-coronavirus-covid-19-lockdown-30-mar-2020-0000> (accessed 28 December 2020).

¹³³ Spatari M 'COVID-19: 21-days lockdown explained' *eNCA News* 28 December 2020.

¹³⁴ South Africa Government Speeches 'President Cyril Ramaphosa: Update on Coronavirus COVID-19 lockdown' (2020).

To deal with the social impacts of the pandemic, on 23 April 2020, President Ramaphosa announced a set of safety net interventions to ‘cushion our society’ against the economic and human consequences of the lockdown.¹³⁵ These included a Solidarity Fund, which was established on 23 March 2020 as a financing vehicle to help fight the spread of Covid-19 and to care for those who become ill from it.¹³⁶ It was financed mainly by voluntary donations. There was in place a Temporary Employee Relief Scheme for employees of companies in distress, and a tax subsidy for low-income private sector workers. This was necessitated by the closure of many (non-essential) businesses affected by the lockdown. Other measures taken by the government included underwriting bank loans from commercial banks to businesses, re-adjusting the 2020 budget to shift money to health-care and to the provinces, increasing social grants and providing food vouchers and packages.¹³⁷

On 1 May 2020, the government commenced a risk-adjusted strategy to ease the country’s lockdown restrictions over five levels.¹³⁸ As of 1 June, the government activated Alert Level 3 nationally. The economy reopened and persons were allowed to leave their homes to access or provide any service unless it was expressly excluded, on the understanding that everyone who could work from home should continue to do so.¹³⁹

However, there was a constitutional challenge that was brought against some of the restrictions associated with Alert Levels 3 and 4 in the *De Beer and Others v Minister of Cooperative Governance and Traditional Affairs*¹⁴⁰ case, and it was upheld. The Pretoria High Court found that an unspecified number of restrictions were irrational and accordingly did not comply with the constitutional requirements for the reasonable and justifiable limitation of rights under

¹³⁵ Devereux S ‘Social protection responses to the COVID-19 lockdown in South Africa’ *The Conversation* 6 April 2020.

¹³⁶ COVID-19 Content Centre available at <https://supportbusiness.co.za/faq/faq/what-is-the-solidarity-fund-who-will-benefit-from-it/> (accessed 7 March 2020).

¹³⁷ Zembe-Mkabile W, Ramokolo V & Doherty T ‘Covid-19, and social grants: Relief measures welcome, but not enough’ *Daily Maverick News* 26 May 2020.

¹³⁸ Level 5 - High virus spread, and/or low health system readiness: involves drastic measures to contain the spread of the virus to save lives; Level 4 - Moderate to high virus spread, with moderate readiness: includes the resumption of some activity subject to extreme precautions to limit community transmission and outbreaks; Level 3 - Moderate virus spread, with moderate readiness: involves the easing of some restrictions, including on work and social activities, to address a high risk of transmission; Level 2 - Moderate virus spread, with high readiness: involves further easing of restrictions but maintaining physical distancing and some restrictions to prevent a resurgence of the virus; Level 1 - Low virus spread, high health system readiness: includes the resumption of most normal activity, with precautions and health guidelines. See UNDP Covid-19 Rapid Needs Assessment Report, (2020) South Africa 4.

¹³⁹ Kruger P, Moyo K, Mudau P, Pieterse M & Spies A ‘Republic of South Africa’ in King J, Ferraz O et al. (eds) *The Oxford Compendium of National Legal Responses to Covid-19* (2021) 13.

¹⁴⁰ *De Beer and Others v Minister of Cooperative Governance and Traditional Affairs* [2020] ZAGPPHC 184.

section 36 of the 1996 Constitution. The High Court ordered the Minister of COGTA to reconsider, amend, and republish the regulations.¹⁴¹

In addition to the above measures, the national government adopted a coordinated approach to manage the Covid-19 response, using existing structures and establishing new ones. The new structures that the national government established at the national level were the National Coronavirus Command Council (NCCC), the National Joint Operational and Intelligence Structure (NATJOINTS), the Inter-ministerial committee (IMC) on Covid-19, and the Emergency Operations Centre.¹⁴²

3.4.1.1 National Coronavirus Command Council (NCCC)

The NCCC was a crucial body of the national government since it served as the primary structure of this sphere to coordinate its decisions regarding the pandemic.

As an ancillary to declaring a national state of disaster and imposing a nationwide lockdown, the NCCC was established to focus on decisions taken to prevent and reduce the outbreak of the virus.¹⁴³ The NCCC was headed by the President, and comprised 19 cabinet ministers (including members of the Inter-Ministerial Committee on Covid-19), their respective directors-general, the head of the South African National Defence Force, the National Police Commissioner, and a secretariat.¹⁴⁴ The members of the NCCC played the role of facilitating a coordinated all-of-government approach to flattening the Covid-19 curve in South Africa; it was to meet three times per week. It is important to remember that the NCCC was a key structure of the national government, not an IGR body, because the provincial and local spheres were not represented in this body, although disaster management is a concurrent authority

¹⁴¹ Regulations issued in terms of Section 27(2) of the Disaster Management Act, 2002 (43258/ R480) (29 April 2020), reg 16.

¹⁴² Rosenkranz B, Anelich L, Harrison P, Mubangizi CB, Ndevu Z, Rabie B & Rumbold K, Presidency of South Africa, 2021, Chapter 1. Overview. South Africa Covid-19 Country Report [First edition]. DPME (Department of Planning, Monitoring and Evaluation), GTAC (Government Technical Advisory Centre) & NRF (National Research Foundation) (2021) 6.

¹⁴³ Caesar M 'Urban household food security and COVID-19 governance responses in South Africa' (2020) available at <https://hungrycities.net/urban-household-food-security-covid-19-governance-responses-south-africa/> (accessed 22 July 2020).

¹⁴⁴ Singh JA 'How South Africa's Ministerial Advisory Committee on COVID-19 can be optimized' (2020) 110(6) *South African Medical Journal* 439.

between them. It can therefore be claimed that the South African government did not take the principles of cooperative government into consideration in the composition of the NCCC.

There have been various media reports about the constitutionality, legality, and accountability of the NCCC. In *Esau & Others v COGTA Minister & Others*, the Western Cape High Court clarified the confusion about the establishment of the NCCC by saying that it was a Cabinet committee which does not require a law for its establishment. According to Section 101 of the Constitution, the President must put decisions in writing if they affect legislation or have legal repercussions. Even though the NCCC's decisions had legal consequences, the President was not required to reduce its establishment to writing.

As well as the NCCC, the national government also established the National Command Centre, comprising Directors General of departments and serving as a technical committee or support structure to the NCCC; it also met three times a week.¹⁴⁵ The National Joint Operational and Intelligence Structure (NATJOINTS) was activated to provide ongoing coordination together with the National Joint Operations Centre (the NatJOC) as its Secretariat; the structure was to meet daily.¹⁴⁶ The NATJOINTS was chaired by the South African National Defence Force (SANDF), State Security Agency (SSA) and South African Police Services (SAPS), as well as Director Generals of key departments involved in the Covid-19 response. It was supported by the National Disaster Management Centre (NDMC) within COGTA.¹⁴⁷ The NATJOINTS made inter-sectoral work easier in the sense that the different departments had an opportunity to engage and debate issues of mutual interest and then develop informed and coordinated response to the challenge.¹⁴⁸ The NATJOINTS established various workstreams to deal with different aspects of the disaster. These included 'public health containment', 'social', 'economic', 'border control', 'legal and regulatory', while the National Disaster Management Centre in COGTA was responsible for chairing the 'public health containment' workstream, and for processing reports for this workstream into the NATJOINTS.¹⁴⁹ The National Disaster

¹⁴⁵ Ngeleza B 'Case Study on Gauteng City Region's efforts to combat the impact of COVID-19 A Provincial Deep Dive Draft Paper' 2021 2, 11.

¹⁴⁶ Rosenkranz (2021) 7.

¹⁴⁷ Ngeleza (2021) 12.

¹⁴⁸ Rosenkranz (2021) 7.

¹⁴⁹ Ngeleza (2021) 12.

Operations Centre was also activated to coordinate with the provincial and local disaster management centres.¹⁵⁰

3.4.1.2 The Inter-Ministerial Committee (IMC) on COVID-19

The Inter-Ministerial Committee on Covid-19 (IMC) was established by the Cabinet on 6 August 2020 to consider the extensive reports of acts of corruption and theft of the resources allocated in response to the Covid-19 pandemic.¹⁵¹ The Inter-Ministerial Committee was a 16-member group of cabinet ministers of affected national departments.¹⁵² This was not an IGR structure but a committee to deal specifically with the corruption.

The Minister of Health also activated a coronavirus emergency operations centre to deal with the global outbreak of the coronavirus. He stated that this was a mechanism for centralising coordination and data collection, so this body was for information-sharing purposes.¹⁵³ This fell under the national government health department.

3.4.1.4 Conclusion

The national government established various structures to deal with the management of the pandemic, with the NCCC as a leading structure in the fight. This was the decision-making body; it was a cabinet committee which had no representation from the other two spheres of government, namely provinces and local government. The other structures were established for the sole purpose of supporting the main structure. They were the NATJOINTS and the NatJOC, both of which were administrative in nature. The national government also established a committee, the IMC, to deal with corruption that might occur in the procurement of the

¹⁵⁰ Rosenkranz (2021) 7.

¹⁵¹ Parliamentary Monitoring Group 'COVID-19 procurement corruption: Inter-Ministerial Committee briefing' (2020).

¹⁵² The Minister of Health, Zweli Mkhize; Minister of Finance, Tito Mboweni; Minister of Cooperative Governance and Traditional Affairs, Nkosazana Dlamini Zuma; Minister in The Presidency for Planning, Monitoring and Evaluation, Jackson Mthembu; Minister of Defence and Military Veterans, Nosiviwe Mapisa-Nqakula; Minister of Police, Bheki Cele; Minister of State Security, Ayanda Dlodlo; Minister of Higher Education, Science and Innovation, Blade Nzimande; Minister of Public Enterprises, Pravin Gordhan; Minister of Home Affairs, Aaron Motsoaledi; Minister of Public Service and Administration, Senzo Mchunu; Minister of Trade, Industry and Competition, Ebrahim Patel; Minister of Social Development, Lindiwe Zulu and Minister of International Relations and Cooperation, Naledi Pandor.

¹⁵³ South African Government News Agency 'SA activates Coronavirus emergency operations centre' (2020) available at <https://www.sanews.gov.za/south-africa/sa-activates-coronavirus-emergency-operations-centre> (accessed 15 June 2020).

resources needed to manage the pandemic. This was a centralised rather than an IGR body, because it consisted of cabinet ministers. A centre was also established in the national Health Department which was for purposes of information sharing between the public emergency management personnel.

3.5 Provincial government

When it came to provinces, the provincial government was required to establish new institutional structures in each of the nine provinces that would assist in the implementation of the responses to manage the pandemic. The Minister of COGTA issued directions to ensure a well-integrated and coordinated planning and response system to the Covid-19 pandemic. Section 6.8 of the Directions required the Provincial COGTAs and Offices of Premiers to establish a Provincial Coronavirus Command Council (PCCC), as well as coordinating structures to support the national institutional arrangements; support the establishment of joint operation centres in district and metropolitan municipalities, including making resources available to supplement capacity if necessary; and monitor the impact of interventions by, inter alia, submitting weekly consolidated reports to the national disaster management structures.¹⁵⁴ The PCCC was to also support district and metro command councils, develop and implement Covid-19 response plans, and support and monitor responses in the municipal sphere. They had to submit a weekly report to the national disaster management structures.¹⁵⁵ The PCCCs were to meet three times a week.¹⁵⁶

A further COGTA Circular (10 of 2020) followed on 4 April 2020, providing the Terms of Reference for Provincial and Municipal Coronavirus Command Councils.¹⁵⁷ The purpose of the circular was to give more clarity to provincial and local governments on the institutional arrangements required, including membership of these structures, in order to ensure a consistent approach across the country.¹⁵⁸ Circular 10 further required provinces to set up

¹⁵⁴ Direction – GN R432 Amended, COVID-19 Disaster Response Directions; Department of Cooperative Governance Department of Cooperative Governance: *Progress with Measures against COVID-19*, Report to DPME (2020).

¹⁵⁵ Rosenkranz (2021) 35.

¹⁵⁶ Rosenkranz (2021) 36.

¹⁵⁷ Harrison P 'Intergovernmental relations and sub-national responses in the management of the Covid-19 pandemic in South Africa Input paper into Chapter 3 'South African government legal and regulatory responses to COVID-19' of the national DPME country report on the measures implemented to combat the impact of COVID-19 in South Africa, Version 1 (2020).

¹⁵⁸ Ngeleza (2021) 14.

command centres. These centres were the intervening structure between the command councils and the disaster management centres, and met three times a week to submit reports to the provincial command councils.¹⁵⁹ The PROVJOINTS was made up of various government departments and security forces, led by the South African Police Service (SAPS).¹⁶⁰ The PROVJOINTS would be active participants, while the provincial disaster management centres were expected to undertake the technical work around the reports.¹⁶¹ The circular further called for provincial ‘disaster operations centres’, which were to meet daily.

All nine provinces of South Africa established their Provincial Coronavirus Command Councils (PCCC) to head up their management of the pandemic in their respective provinces as required. De Visser and Chigwata argue that the PCCC was responsible for coordinating and guiding the provincial government’s response to the pandemic to ensure that their response and implementation of the Directions aligned with those of the national government.¹⁶²

PCCCs were established and chaired by the premiers and involved most, if not all, provincial Members of the Executive Council (MECs).

The following discussion will cover the measures that the provinces took to combat the Covid-19 outbreak, including the establishment of new structures and the actions that the provinces took in relation to the concurrent functions of health, education, provincial social development, and welfare.

The PCCC was the core structure to deal with the pandemic within the provinces. However, some of the provinces established not only the PCCC to manage the pandemic, but also two to four structures to assist it. For example, Gauteng established the PCCC which was chaired by the Premier, but also included Provincial Members of the Executive Council (MECs), the provincial Director Generals, and the provincial police commissioner; it held meetings twice a week.¹⁶³ Gauteng also established additional structures as well as the PCCC.

¹⁵⁹ Rosenkranz (2021) 36.

¹⁶⁰ Mokgwabone S ‘PROVJOINTS role players ready to provide safety and security during SOPA: Potchefstroom (2022) available at <https://www.saps.gov.za/journal/sdetails.php?jid=15203> (accessed 8 October 2022).

¹⁶¹ Rosenkranz (2021) 36.

¹⁶² De Visser J & Chigwata TC ‘Municipalities and COVID-19: A Summary and Perspective on the National Disaster Management Directions’ (2020) 15(1) *Local Government Bulletin* 8.

¹⁶³ Ngeleza (2021) 14.

The Department of Health of Gauteng (GDoH) was the first to set up response structures, including a structure that it called a war room, because the Covid-19 pandemic was first dealt with as a health emergency in that province.¹⁶⁴ The war room was established when the country was in the state of disaster, before the lockdown and the COGTA Directives. Departments and various other role-players were invited to join the war room.¹⁶⁵ The war room was subsequently renamed the Provincial Disaster Management Command Centre (PDMCC) to help distinguish it from the PCCC, and it became the body in charge of the comprehensive health response.¹⁶⁶

The PDMCC was co-chaired by the Provincial Director-General and the Provincial Police Commissioner.¹⁶⁷ The PDMCC was the operational core of Gauteng's response, meeting daily each weekday. Its responsibilities were monitoring and assessing performance (against the provincial Covid-19 strategy, as executed by the workstreams), mitigating risks identified by or arising in the workstream, resolving issues escalated from the workstreams, or alternatively escalating these to the PCCC, challenging the approaches being taken to address impending risks, and promoting cooperation amongst workstreams and external interfaces.¹⁶⁸

The other structure established by Gauteng province was the Provincial District Coronavirus Command Council (PDCCC). The PDCCC was a co-operative structure across provincial and local government, and it met twice a week, bringing together the provincial political leadership with metro and district mayors.¹⁶⁹ Gauteng also established the Disaster Management Centre in accordance with the National Disaster Management Act. This was known as the Provincial Disaster Management Centre.

Limpopo, the Eastern Cape, and the Western Cape provinces also established additional structures to deal with the management of the pandemic. Limpopo established a number of internal provincial bodies for purposes of internal coordination, namely the Limpopo Special Executive Council (EXCO), the Provincial inter-ministerial committee and the Technical

¹⁶⁴ Ngeleza (2021) 14.

¹⁶⁵ Ngeleza (2021) 14.

¹⁶⁶ Ngeleza (2021) 15.

¹⁶⁷ Rispe LC, Marshall C, Matiwane B, & Tenza IS 'Innovations, contestations and fragilities of the health system response to COVID-19 in the Gauteng Province of South Africa' (2021) 16(12) *PLOS ONE* 10, available at <https://doi.org/10.1371/journal.pone.0261339> (accessed 19 March 2023).

¹⁶⁸ Ngeleza (2021) 18.

¹⁶⁹ Ngeleza (2021) 17.

Working Committee.¹⁷⁰ These internal bodies dealt with different issues including customising the national plan pronouncements of the President, devising other measures to respond to the crisis, dealing with corruption in the procurement of PPE, and dealing with specific matters of expertise relating to the outbreak.¹⁷¹ The focus was on internal coordination.

Limpopo also established a Provincial Joint Operations Committee to deal with the monitoring of the increasing numbers of Covid-19 cases. The Eastern Cape on the other hand, established an extended or expanded Covid-19 command council, which consisted of all political parties, civil society organisations, churches and other entities. These were involved in the province's strategies in dealing with the virus.¹⁷² In addition to the PCCC, the Western Cape (WC) province also set up the Coronavirus Coordinating Centre (CCC), which assisted in the implementation of the pandemic management strategies, and the Provincial Disaster Management Joint Operations Centre (PDMC-JOC), which was established to ensure the preparedness of the provinces to respond to the Coronavirus.¹⁷³

Many if not all provinces developed ways of responding to the pandemic which would align with the national strategy. For example, the Gauteng Provincial Government adopted a strategic response to the Covid-19 pandemic that aimed to address the dual challenges of saving lives and saving the economy.¹⁷⁴ The Gauteng Covid-19 Strategic Response incorporated a detailed risk assessment that took account of multiple levels of deprivation at the district level. It had six pillars: a comprehensive health response; food security and social relief; state capacity and adaptability; economic response; social mobilisation and human solidarity; and law enforcement and compliance.¹⁷⁵ The six pillars were translated into a workstream that presented updates to the PMDCC, which in turn reported to the PCCC and to the Provincial Cabinet.¹⁷⁶ The WC Covid-19 response was led by the Provincial Department of Health (DoH). The Department of Health, with the support of the PDMC, led the operational coordinating

¹⁷⁰ South African Government Speeches: Limpopo Government holds special executive council meetings on Coronavirus COVID-19 available at <https://www.gov.za/speeches/special-executive-council-meeting-18-mar-2020-0000> 18 Mar 2020 (accessed 16 September 2021).

¹⁷¹ Limpopo Government holds special executive council meetings on Coronavirus COVID-19 (18 March 2020). Ngeleza (2021) 20.

¹⁷² Malila H, National Portfolio Committee on COGTA: COVID-19 Response (2020).

¹⁷³ Rispel, Marshall, Matiwane, & Tenza (2021) 10.

¹⁷⁴ Rispel, Marshall, Matiwane, & Tenza (2021) 10.

¹⁷⁵ Rispel, Marshall, Matiwane, & Tenza (2021) 10.

structure.¹⁷⁷ The primary focus remained on mitigation (containment); JOC was responsible for the operational execution of policy decided upon by the provincial government Cabinet.¹⁷⁸ The JOC operated on a 24/7 basis from 20 March 2020, coordinating all operations in support of the health response; a cluster approach was implemented to ensure a multi-agency response, and a risk assessment done.¹⁷⁹

When it came to their humanitarian support or response, all provinces had similarities. One or more field hospitals to accommodate and care for Covid-19-infected patients were established in each province as the number of infections increased. They also provided more resources to help fight the spread of the pandemic. For example, the Gauteng Provincial Government allocated R4 billion to the health sector for the appointment of additional staff, the procurement of PPE, and the upgrading or building of additional infrastructure.¹⁸⁰ The Western Cape Province's Departments of Social Development (DSD) and Health provided PPE to the various shelters. These PPE included sanitisers and face shields so that people could comply with the health and hygiene protocols to mitigate the risk of contracting the virus.¹⁸¹ Those who screened positive for Covid-19 symptoms were referred to a public quarantine venue or an isolation facility.¹⁸²

In Gauteng, to overcome the shortage of beds, the provincial government planned that empty wards in existing facilities should be prepared for the use of Covid patients. The government also created temporary capacity outside existing facilities through field hospitals.¹⁸³ Only one field hospital was established to help ease the burden of Covid-19 patients at clinics and hospitals across Johannesburg. This was the Nasrec field hospital. In the Eastern Cape, the government opened two quarantine sites in the main stadiums in East London and Port Elizabeth. A new field hospital was opened in Port Elizabeth, which was paid for by Volkswagen and the Nelson Mandela Bay Business Chamber.¹⁸⁴ When all phases had been

¹⁷⁷ Wenger (2020) *Parliamentary Monitoring Group*.

¹⁷⁸ Wenger (2020) *Parliamentary Monitoring Group*.

¹⁷⁹ Wenger (2020) *Parliamentary Monitoring Group*.

¹⁸⁰ Rispel, Marshall, Matiwane, & Tenza (2021) 12.

¹⁸¹ Kamnqa S 'COVID-19: Staying safe on (and off) the streets (2020)' *Spotlight Newspaper* 18 August 2020.

¹⁸² Kamnqa (2020).

¹⁸³ Rispel, Marshall, Matiwane, & Tenza (2021) 15.

¹⁸⁴ Majavu A 'Will the Eastern Cape pass the Covid-19 test?' *New Frame* 7 May 2020 available at <https://www.newframe.com/will-the-eastern-cape-pass-the-covid-19-test/> (accessed 21 March 2023).

completed, it provided 3,330 beds.¹⁸⁵ As infection numbers increased in the WC, the Cape Town International Convention Centre (CTICC) was converted into an 800-bed field hospital for Covid-19 patients.¹⁸⁶

The provinces also made plans to address food shortages in their provinces. For example, the Gauteng Provincial Government and social partners provided relief to poor and vulnerable groups.¹⁸⁷ The Gauteng Premier, David Makhura, visited food banks across the province to ensure there were enough supplies available for families in distress. Since the start of the lockdown, the provincial government worked with social partners to provide 15,000 households with food.¹⁸⁸ The WC Government established a humanitarian relief workstream to co-ordinate humanitarian relief efforts in the province. This workstream was led by the Provincial Minister of Social Development, and its members comprised representatives from various provincial departments, municipalities, SASSA, and the Solidarity Fund. It reported to the provincial council established as per the COGTA Disaster Management regulations.¹⁸⁹ By 19 May 2020, this workstream had distributed 134,515 food parcels and nearly 200,000 daily cooked meals to beneficiaries in the province with the assistance of civil society organisations.¹⁹⁰ By April 2020, a total of 615 water tanks were delivered to the WC province. Of these, 401 tanks were allocated within non-metro areas, 214 distributed in the metro, and 14 water tankers used.¹⁹¹ These practices of the Western Cape province were different to those of the other provinces.

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¹⁸⁵ New Volkswagen Magazine ‘VW hands over first phase of Covid-19 temporary medical facility’ (2020) available at <https://www.vw.co.za/en/volkswagen-experience/magazine/news/volkswagen-hands-over-first-phase-of-covid-19-temporary-medical-.html> (accessed 7 October 2021).

¹⁸⁶ Statement by Premier Alan Winde: Western Cape Government to turn CTICC into 800-bed COVID-19 hospital (2020) available at <https://www.cticc.co.za/statement-by-premier-alan-winde-western-cape-government-to-turn-cticc-into-800-bed-covid-19-hospital-29-april-2020/> (accessed 7 October 2021).

¹⁸⁷ South African Government Speeches ‘Gauteng prioritises food security in fight against Coronavirus COVID-19’ available at <https://www.gov.za/speeches/gauteng-prioritises-food-security-fight-against-coronavirus-covid-19-14-apr-2020-0000> (accessed 19 March 2023).

¹⁸⁸ Gauteng prioritises food security in fight against Coronavirus COVID-19.

¹⁸⁹ Parliamentary Monitoring Group ‘Department Quarter 1 Performance; Municipal Structures Amendment Bill: negotiating mandate’ (2020) available at <https://pmg.org.za/committee-meeting/31080/> (accessed 19 March 2023).

¹⁹⁰ Department Quarter 1 Performance; Municipal Structures Amendment Bill: negotiating mandate (2020).

¹⁹¹ Western Cape Water & Sanitation Plan; Water Boards; District Model; with Deputy Ministers (2020).

It is important to note that the Western Cape took extra measures to support its municipalities as it improved the basic water supply in high-density informal settlements, while all district municipalities embarked on programmes to clean public open spaces.

The Western Cape Department of Local Government (WCDLG) noticed that, soon after the lockdown, the municipalities were experiencing cash flow problems as businesses had closed down and people had no salaries to pay their municipal bills. The Department advanced R16.2 million, which cabinet endorsed, and transferred this to all municipalities except City of Cape Town.¹⁹² This 16.2 million came from the national government.

The provinces did not establish any provincial legislation in order for them to deal with the pandemic.¹⁹³ In conclusion, there appears to have been a common theme among them in their response: the establishment of new internal bodies and ad hoc structures to aid in their pandemic response, the opening of field hospitals and quarantine sites, and procurement of PPEs (health response); and the humanitarian response (social and welfare). It was only the WC that did more in its response to the pandemic.

3.6 Local government

The local sphere of government also played a role in the fight against the Covid-19 pandemic. In terms of Regulation 6.8.2 of GN R432, municipalities were directed to establish a District Coronavirus Command Council (DCCC) as well as coordinating structures to support national and provincial institutional arrangements; to participate in joint district and provincial disaster management structures to ensure a coordinated response to Covid-19; and to monitor progress on interventions by submitting weekly consolidated reports to the provincial and national disaster management structures. The districts and metros had to set up command centres that were to meet three times a week and submit reports to the provincial command councils.¹⁹⁴

Further structures were established for additional support, namely the Disaster Operations Centres. On 25 March 2020, CoGTA activated its Covid-19 District Disaster Operations Centre in the National Disaster Management Centre to coordinate provincial and local government responses. Its primary role was to analyse daily reports from provinces and districts and to submit weekly consolidated reports to the provincial and national disaster management

¹⁹² Department Quarter 1 Performance; Municipal Structures Amendment Bill: negotiating mandate (2020).

¹⁹³ Steytler (2021) 343.

¹⁹⁴ Rosenkranz (2021) 36.

structures.¹⁹⁵ To facilitate reporting, the District Disaster Operations Centre created a situational reporting system to standardise reporting requirements for provinces and municipalities. Another structure had to be established which was to meet daily. This was the district disaster operations centres.¹⁹⁶

Most of the district and metropolitan municipalities established the DCCC, which was the structure to be used at the forefront of managing the pandemic. The mandate of the DCCC was to receive directives from the NCCC and ensure that they implemented the directives. Two examples of district municipalities that established the DCCC were the Ugu district municipality in KwaZulu-Natal, which was chaired by the district mayor, Cllr Sizwe Ngcobo,¹⁹⁷ and the Mopani District Municipality in Limpopo. In combating the spread of Covid-19, the DCCC embarked on a campaign to monitor adherence to the coronavirus lockdown regulations during social grants payment.¹⁹⁸ These monitoring visits included checking if social distancing were being implemented, along with the wearing of masks and washing of hands by South African Social Security Agency employees and beneficiaries.¹⁹⁹

The eThekweni Metropolitan Municipality implemented the directives of the Minister of COGTA by establishing structures, and developing, coordinating, and monitoring strategies around Covid-19.²⁰⁰ This Metro was the only one that established more than four different structures for the performance of different tasks. First, the Metro municipality established a Covid-19 Municipal Command Team, headed by the Mayor and the MEC for Education, Kwazi Mshengu.²⁰¹ In other words, this was an IGR structure between the local government and the province in that its membership included both local and provincial spheres. The Command Team was important for the Covid-19 response as it assisted the province and the municipalities to cooperate in order to respond effectively to the disaster in their areas.²⁰² This municipality also had a 'Multi-Disciplinary Task Team comprising of all units of the

¹⁹⁵ Rosenkranz (2021) 35.

¹⁹⁶ Rosenkranz (2021) 36.

¹⁹⁷ Press Release: District Political Command Council intensifies efforts to fight spread of covid-19 (2020) available at <https://www.ugu.gov.za/Newsroom/Pages/District-Political-Command-Council-intensifies-efforts-to-fight-spread-of-covid-19.aspx> (accessed 28 December 2022).

¹⁹⁸ Nkuna E 'Priority 2: Education, Skills, and Health: Monitoring COVID-19 protocol adherence' 33, 2020, 5 available at <https://www.gcis.gov.za/sites/default/files/MDT%20Issue%2033.pdf> (accessed 28 December 2022).

¹⁹⁹ Nkuna E (2020) 5.

²⁰⁰ Maziwisa MR 'eThekweni Metropolitan Municipality vs COVID-19: 90 days into the Lockdown' (2020) 15 *Local Government Bulletin* 8.

²⁰¹ Maziwisa (2020).

²⁰² Maziwisa (2020).

organisation’, which met daily on online platforms to coordinate a comprehensive response to Covid-19 in the workplace.²⁰³ The eThekweni metro also established a new Covid-19 Joint Operations Centre (JOC) made up of doctors and technical officials who advised the Department of Health and the National Institute for Communicable Diseases (NICD) about Covid-19 safety measures.²⁰⁴

The Metro also established the Recovery Fund Oversight Committee that oversaw the Covid-19 Fund administered by the Metro’s Treasury, with advisory support from business leaders.²⁰⁵ Lastly, the metro established a Covid-19 War Room, consisting of political leadership and senior management of the Metro, which met twice a week; its duty was to make and implement decisions on Covid-19 interventions.²⁰⁶

The last structure consisted of the District Mayor, Local Mayors, Municipal Managers and Head – Disaster Management. They had to meet once a week, and other stakeholders could be invited to the meetings.²⁰⁷ Directive 43147 of 25 March 2020 required District Municipalities to establish coordinating structures at municipal level to support the national and provincial institutional arrangements in collaboration with district and provincial administrations. Following the national directives, each metro in Gauteng (Johannesburg, Ekurhuleni, and Tshwane) and each district (Sedibeng and West Rand) established its own Covid-19 response structures, with each headed by a Command Council (or equivalent) specific to that municipal area.

There is little, if any, information published about the operation of the DCCC in various districts and metropolitan municipalities across the country during the pandemic. As for the ones that published their operations, not much has been said about the performance of their structures during the pandemic. However, the district and metropolitan municipalities established the structures that were to tackle the response to the pandemic, and also took on additional functions in response to the Covid-19 pandemic to deal with social impacts. These included the provision of food to the indigent, provision of meals and psychosocial support for the homeless, and the sanitisation of public places. In other words, the co-ordination and

²⁰³ Maziwisa (2020).

²⁰⁴ Maziwisa (2020).

²⁰⁵ Maziwisa (2020).

²⁰⁶ Maziwisa (2020).

²⁰⁷ Circular C13 of 2020, 4.

provision of food parcels provided by the National Department of Social Development, donor organisations and individuals fell under the municipalities. Some municipalities also introduced food banks to improve access to supplies.²⁰⁸ The municipalities performed the new functions by providing shelter for the homeless, installed Jojo water tanks, and delivered water using water trucks. The municipalities also gave their residents soap and sanitisers for hygiene purposes to stop the spread of the virus.

Compared to the municipalities, the eThekweni metro exceeded their actions on the municipal health mandate. For example, it developed disease-control-systems geo-mapping, working with epidemiologists, mobilising clinical expertise, and implementing the National Centre for Infectious Diseases (NCID) guidelines through contact tracing and testing, community screening and testing, and mass testing.²⁰⁹

Municipalities also procured chemicals and appropriate PPE. They worked closely with the Provincial Department of Transport in the cleansing and sanitisation of transport facilities.²¹⁰ Municipalities used hygiene education communication and awareness campaigns to address the health and safety of informal dwellers.²¹¹ Municipalities embarked too on educational campaigns to raise awareness on how communities could protect themselves from Covid-19.

3.6.1 The role of SALGA

SALGA played a role in managing the spread of Covid-19. It was instructed to determine whether municipalities were adhering to the Directives issued by the Minister of COGTA in direct response to the Covid-19 pandemic. Executive Mayors were called upon to work closely with the municipal troika²¹² and the provincial and national government public office bearers to assist the nation in curbing the spread of Covid-19.²¹³

²⁰⁸ South African Local Government Association ‘The Fight against COVID-19’ (2020) Report 11.

²⁰⁹ Maziwisa (2020).

²¹⁰ SALGA: The Fight against COVID-19 Report 11.

²¹¹ SALGA: The Fight against COVID-19 Report 11.

²¹² A municipal troika is an unlegislated political structure that consists of three functionaries, namely the Speaker, Mayor, and Whip of the council.

²¹³ SALGA News: Local Government’s Role in Combatting COVID-19 (30 March 2020) available at <http://www.salga.org.za/Salga%20News378.html> (accessed 15 October 2022).

SALGA met with the ANC's National Executive Committee (NEC)²¹⁴ and the Parliamentary Portfolio Committee on Cooperative Governance and Traditional Affairs on 28 April 2020 to discuss the progress report on the Local Government's response to Covid-19. At this meeting SALGA acknowledged the five-stage lockdown plan that would be implemented from 1 May 2020, and said that local government would be at the forefront of implementing Covid-19 plans and strategies.²¹⁵ SALGA announced that its members had adhered to the call of the Minister of COGTA to promote awareness on Covid-19 to improve government's communication. For example, mayors led local radio and social media campaigns in their respective communities.²¹⁶ In partnership with the United Nations Development Programme (UNDP), SALGA invited eligible small, medium and micro enterprises (SMMEs) and the informal sector to apply for the Covid-19 relief support programme. The Covid-19 relief support was for SMMEs that had been negatively impacted by Covid-19. It was open to both formal and informal traders operating in the following local municipalities: Victor Khanye, Dr JS Moroka, Thembisile Hani, Nkomazi, City of Mbombela, Thaba Chweu, Dr Pixley ka Isaka Seme, Lekwa and Dipaleseng.²¹⁷

SALGA also urged municipalities to suspend their credit control measures. Several municipalities responded positively, stating that they would not disconnect water and electricity supplies.²¹⁸ Water has been identified as a critical element in fighting infections, and access to water services by communities is vital. In response to the Covid-19 pandemic, municipalities reprioritised their budgets to upscale the delivery of basic services such as refuse removal, water, and sanitation.²¹⁹

SALGA played a role in ensuring that local government did all it could to provide the essential services to their communities during the pandemic, and ensuring that local government

²¹⁴ The ANC's NEC is its main executive body. The president of the ANC serves as the head of the NEC, which also includes the other members of the so-called 'Top Seven' (formerly 'Top Six') leadership group, including the deputy president, chairperson, secretary-general, two deputy secretaries-general, and treasurer general.

²¹⁵ SALGA News: SALGA meets with Parliamentary Portfolio Committee: Cooperative Governance and Traditional Affairs on LG's response to Covid-19 (29 April 2020) available at <http://www.salga.org.za/Salga%20News381.html> (accessed 15 October 2022).

²¹⁶ SALGA News: SALGA meets with Parliamentary Portfolio Committee: Cooperative Governance and Traditional Affairs on LG's response to Covid-19 (29 April 2020).

²¹⁷ SALGA News: SALGA-UNDP Covid-19 Relief Support Programme (17 August 2020) available at <http://www.salga.org.za/Salga%20News401.html> (accessed 15 October 2022).

²¹⁸ SALGA briefing: Role of local government in combating the spread of COVID-19 virus (2020).

²¹⁹ SALGA: The Fight against COVID-19 Report 10.

implemented the Covid-19 regulations and directives. SALGA also called for other measures that were necessary during the pandemic.

3.7 IGR in areas of concurrent competencies affected by Covid-19

This section discusses how the pre-existing IGR structures were used in the management of the pandemic. It will explore the national IGR structures, namely the PCC, MinMECs, and IGR structures established under the Disaster Management Act, as well as the statutory IGR bodies – the CEM and the ICDM. It will discuss further the provincial IGR structures and the district IGR. It will explore whether these existing IGR structures were used in decision-making.

3.7.1 National IGR structures

The Covid-19 pandemic required that all the spheres of government worked together to manage an issue that fell under the shared competency of all spheres, namely disaster management. Other concurrent competences were education, health care, and social development. The disruption caused by the Covid-19 pandemic in South Africa prompted the national government to establish the NCCC which became a cabinet committee and included only the members of the national executive branch. The NCCC had no representation from the other spheres of government for its decision making. The NCCC was not an IGR structure, therefore it did not follow the prescripts of cooperative governance required by the Constitution to foster collaboration and coordination between and amongst the spheres. The national government did make use of the IGR structures, but not extensively.

3.7.2 President's Coordinating Council (PCC)

The PCC started holding meetings weekly (virtually) after the start of the lockdown, as compared to once or twice a year before the outbreak of Covid-19.²²⁰ In other words, this structure held more frequent meetings during the Covid-19 period than it did prior to March 2020 given that there were many issues to be discussed. Consultation with the provinces can be said to have taken place before some decisions were taken by the national government to deal with the pandemic. The reason for saying 'some decisions' is that the national government often took decisions without consulting any of the other two spheres, provincial and local government. Steytler et al. note that the national government had consulted with the provincial

²²⁰ Steytler (2020) 2.

sphere when the first lockdown was announced.²²¹ However, the spheres should have performed the consultation and coordination in going about their task of managing the pandemic. This then means that the consultation between these two spheres was not consistent at all.

The first meeting of the PCC during the pandemic was held on 4 April 2020. It was a virtual meeting where the national response to Covid-19 was outlined. The meeting was convened to assess the progress on and challenges to the implementation of the nationwide lockdown to stop the spread of the coronavirus.²²² It is worth noting that this meeting came a week after the declaration of the state of disaster and the first set of regulations. This clearly shows that the PCC was not part of the decision-making concerning these actions, as it held a meeting after the measures had been taken.

The meeting of the PCC touched on, amongst other things, adherence to the national lockdown regulations, contact tracing, accommodation requirements, including identified quarantine sites, and the roll-out of the mass community testing programme.²²³ It would appear that the tone was set at the first meeting that the PCC would be used as an implementation body and not a coordinating one. This can be noted from the first meeting, where the PCC simply assessed the progress and challenges of the structure in implementing the measures and directions passed by the national government.

The PCC further considered the security of supply of essential medical supplies, including regulations that had been established to restrict exports of essential medical goods. The PCC acknowledged the work done by the Department of Water and Sanitation to increase access to water through the delivery of water tanks and tankers across the country. The PCC appreciated the clarity provided on the recent amendments to the lockdown regulations relating to informal traders and public transport, particularly minibus taxis. These statements were made after the passing of those amendments which the PCC had to implement and were made in their meeting.

²²¹ Steytler N, De Visser J & Chigwata T 'Surfing towards centralisation on the Covid-19 wave' in Steytler N (ed) *Comparative Federalism and Covid-19: Combating the Pandemic* (2021) 347.

²²² South African Government News Agency 'Presidential Coordinating Council aligns national response to COVID-19' (2020) available at <https://www.sanews.gov.za/south-africa/presidential-coordinating-council-aligns-national-response-covid-19> (accessed 19 March 2023).

²²³ Presidential Coordinating Council aligns national response to COVID-19 (2020).

The amendments were made before the meeting had taken place, showing that they were never consulted about the amendments.

The second meeting of the PCC was held on 18 April; the PPC reinforced measures to strengthen and intensify the country's response to the coronavirus pandemic.²²⁴ The PCC agreed on the need for a risk-adjusted approach to the resumption of economic activity at the completion of the lockdown period. This entailed the gradual easing of regulations in various sectors, guided by available evidence, to support the ongoing containment of the virus, until the economy was operating once more at full capacity.²²⁵ The agreement happened after the measure had been announced by the national government. The PCC agreed to ensure that it was implemented by the provinces because it had the role of ensuring that the provinces were aligned to the national response to the pandemic. The deliberations of the PCC did not inform the decisions of the NCCC, because the PCC accepted decisions of the NCCC so that it could implement those decisions or regulations with clarity within the provinces.

The point that the PCC was an implementer is illustrated by the statement that 'the Presidential Coordinating Council will be meeting frequently to ensure alignment on the national response to the coronavirus pandemic'.²²⁶ That might have been the case for that announcement only, but in all decisions that followed, the PCC, which has provincial and local representation, was merely used as an implementer and had no input in decision-making.

Another meeting of the PCC was held on 9 July 2020. The agenda was to deliberate on recommendations emanating from the National Coronavirus Command Council.²²⁷

The President convened a President's Coordinating Council meeting on 15 September 2020 where he discussed the next phase of the lockdown with Ministers and the Premiers of all the

²²⁴ President's Coordinating Council Reinforces Intensified Response Covid-19 (2020) available at <https://www.gov.za/speeches/presidents-coordinating-council-reinforces-intensified-response-coronavirus-covid-19-18-apr> (accessed 15 October 2022).

²²⁵ President's Coordinating Council Reinforces Intensified Response Covid-19 (2020).

²²⁶ President's Coordinating Council Reinforces Intensified Response Covid-19 (2020).

²²⁷ 'President Cyril Ramaphosa will this afternoon, 09 July 2020 chair a virtual meeting of the President's Coordinating Council (PCC)' (2020) available at <https://www.gov.za/speeches/president-cyril-ramaphosa%20A0chairs-virtual-president%E2%80%99s-coordinating-council-meeting-9-jul-9> (accessed 15 October 2022).

provinces.²²⁸ The Premier of the Western Cape at that meeting motivated for the further opening of businesses and economic activity on the grounds that the citizens of Western Cape had proven to be able to take individual responsibility by changing their behaviour towards the lockdown.

The PCC had another meeting on 13 December 2020. At that meeting, the developments in relation to the country's response to the coronavirus pandemic were again discussed.

These meetings of the PCC were held after the NCCC had convened. This shows that these meetings were to update the PCC about the NCCC's next measure or response to the pandemic. The meetings were merely for providing information and instruction to the provincial and local government, as the PCC represented both these spheres. It is worth noting that the PCC was informed about the decisions or directives that were to be implemented by the national Cabinet.

It is safe to say that the PCC played an essential role in aligning the responses of the other spheres to that of the national government through facilitation and implementation. However, it is important to note that the PCC did not play its role as a coordinating structure because the NCCC, at the forefront during the pandemic, side-lined it. The role of facilitating and aligning that the PCC took on was noted even by the President when he stated:

The PCC is an invaluable platform that allows us to assess the extent to which our response to this pandemic has fully embraced the principles of cooperative governance. Fundamental to all the work we do to combat the coronavirus is the interface between different spheres of government, each of which has responsibilities for effective implementation.²²⁹

In conclusion, the PCC was used as an implementation body, assessing whether the response to Covid-19 embraced the principles of cooperative governance. The PCC allowed spheres to cooperate and coordinate. It also ensured that each sphere played its role in the implementation of the directives and decisions taken in response to the pandemic.

²²⁸ Media Release: Western Cape to call on President Ramaphosa to open up international travel, lift curfew and save jobs(2020) available at <http://www.gardenroute.gov.za/2020/09/15/media-release-western-cape-to-call-on-president-ramaphosa-to-open-up-international-travel-lift-curfew-and-save-jobs/> (accessed 12 October 2022).

²²⁹ President's Coordinating Council Reinforces Intensified Response Covid-19 (2020).

3.7.3 Ministers and Members of Executive Councils Meeting (MinMECs)

The MinMECs that will be discussed in this chapter are those in the key areas that were affected by the Covid-19 pandemic: Health, Education and Disaster Management.

It would seem that the Minister of Health, Dr Zweli Mkhize, did not convene any MinMEC meetings, but resorted to large online meetings of all stakeholders. The purpose of the online meetings or press briefings were for the Minister to engage on strategies to respond to the pandemic. These were not MinMEC meetings. Those who attended them were the MECs, along with their Heads of Department (HODs) and other stakeholders such as private companies and the Department of Labour.²³⁰ The MinMECs involve only the Minister, MECs, and SALGA if local government is affected. During the press briefings, he simply gave a briefing about the actions that had been taken by Cabinet after meetings of the NCCC.²³¹ He would provide insights or discuss the roll-out of vaccines. This shows that the Ministers who were part of the NCCC instructed the MECs and others to implement the regulations or directives which were informed by subjects and agendas discussed at the NCCC meetings. The online meetings that Dr Zweli Mkhize convened were on a regular basis. During most of these meetings he gave daily updates about the infections in the country.

There is no record of Minister Lindiwe Sisulu convening MinMEC meetings on water and sanitation.²³² Sisulu also gave briefings about the progress that Departments had made in their sectors.

3.7.4 Council of Education Ministers (CEM)

Before 11 March 2020, there were no national or provincial guidelines, protocols, or instructions on how to immediately manage a suspected Covid-19 case or contact in the school environment. An existing IGR structure, CEM, was used extensively to deal with Covid-19 in

²³⁰ COVID-19 Update: Engagement with Minister, Deputy Minister, NICD & MECs (2020) *Parliamentary Monitoring Group*.

²³¹ South African Government Speeches 'Health Minister Dr Zweli Mkhize speaks about the sharp rise in COVID-19 infections' (2020) available at <https://sacoronavirus.co.za/2020/12/28/health-minister-dr-zweli-mkhize-speaks-about-the-sharp-rise-in-covid-19-infections/> (accessed 8 August 2022).

²³² South African Government Speeches 'Minister Lindiwe Sisulu on government's response to Coronavirus COVID-19 pandemic (2020) available at <https://www.gov.za/speeches/minister-lindiwe-sisulu-government%E2%80%99s-response-coronavirus-covid-19-pandemic-29-apr-2020> (accessed 19 March 2023).

the education sector. The nature and frequency of the CEM's meetings changed after March 2020; the structure now held meetings virtually as opposed to face-to-face. and the meetings were held regularly as the education sector was greatly affected by the spread of the pandemic.

The first meeting of the CEM was held on 16 March 2020, a day after the President declared the national state of disaster and the announcement of the closure of schools from 18 March 2020. In that meeting, it was emphasised that the schools must be closed after the Cabinet decision, because schools had been identified as one of the biggest threats in terms of transmission.²³³ The CEM agreed on several steps to be taken to ensure that education was not compromised. For example, each province, district, circuit, and school had to come up with a practical and comprehensive catch-up plan.²³⁴

On 26 March 2020 the CEM held a meeting where they further considered and evaluated the plans that they had been working on. The Education Minister stated that they had had a series of consultations with the provincial departments of education. These were to identify ways to ensure that the children would not lose out on education and that they continued to learn at home.²³⁵ The CEM in this meeting agreed to focus on a catch-up programme for the Promotion of Learning and Teaching in homes, and on preparing for catch-up when the children returned to schools. The CEM also discussed the provision of a school nutrition programme during the lockdown, as well as preparations for the opening of schools after the lockdown was lifted. It was stated that the date of the opening of schools would be communicated at a later stage after it had been confirmed by the NCCC.²³⁶

In an effort to ensure that the children did not lose out on their schoolwork, in the next meeting, held on 8 April 2020, the SABC and the Department of Basic Education introduced a multi-

²³³ South African Government Speeches: 'Statement by the Minister of Basic Education, Mrs Angie Motshekga at the inter-ministerial media briefing on the Covid-19 following the announcement by President Cyril Ramaphosa' (2020) available at <https://www.education.gov.za/Newsroom/MediaReleases/English/tabid/2322/ctl/Details/mid/8847/ItemID/7811/Default.aspx> (accessed 9 March 2021).

²³⁴ Mrs Angie Motshekga at the inter-ministerial media briefing on the Covid-19 following the announcement by President Cyril Ramaphosa (2020).

²³⁵ Minister Angie Motshekga on Basic Education Sector Plans to support learners during Coronavirus COVID-19 lockdown (2020) available at <https://www.gov.za/speeches/minister-angie-motshekga-basic-education-sector-plans-support-learners-during-covid-19> (accessed 15 October 2022).

²³⁶ Minister Angie Motshekga on Basic Education Sector Plans to support learners during Coronavirus COVID-19 lockdown (2020).

media learner support initiative under the banner ‘Covid-19 Learner Support’, aimed at limiting the impact of the lockdown on the school calendar.²³⁷

These were measures to ensure that the CEM was able to save the school year. The CEM also handled the re-opening and closure of schools as an education response to manage the spread at schools. Schools would be closed and later re-opened in phases that related to the grades of the children. In a meeting of the CEM, held on 2 July 2020, they received and considered five reports focusing on key areas in the basic education sector during Covid-19. These reports provided a broad overview of all the developments relating to the phased approach to the return of learners to school.

The CEM then took a decision, after consideration of all the reports, that only Grade 6, Grade 11 and Grade R would return to school on Monday, 6 July 2020. The decision affected all provinces.²³⁸ To save the school year, the CEM agreed that the department must retain the amended 2021 school calendar as it had been from its very last amendment – specifying that the October vacation period would not be interfered with.²³⁹ This was after they had said the October school holidays were going to be scrapped so that teachers could catch up on the lost days of schooling due to the school closure.

The CEM held a meeting on 14 July 2022 where it emphasised that the schools would continue to open according to the Risk-Adjusted Approach and that the phase-in of grades would also continue as the country was at the peak. At this meeting, the Minister also emphasised that the re-opening and closure of schools was a legislative responsibility afforded to the national and provincial government only, and reminded civil organisations and individuals that they did not

²³⁷ South African Government Speeches, ‘Basic Education and SABC launch Coronavirus COVID-19 TV and radio curriculum support programmes for learners’ (2020) available at <https://www.gov.za/speeches/basic-education-and-sabc%2%A0launch%2%A0coronavirus-covid-19-tv-and-radio-curriculum-support> (accessed 9 March 2021).

²³⁸ Council of Education Ministers Makes Amendments to Grades Returning to School (2020) available at <https://www.polity.org.za/article/council-of-education-ministers-makes-amendments-to-geades-returning-to-school-2020-07-02> (accessed 15 October 2022).

²³⁹ BusinessTech News ‘October school holidays will not be scrapped: minister’ *BusinessTech News* 29 August 2021 available at <https://businesstech.co.za/news/government/516746/october-school-holidays-will-not-be-scrapped-minister/> (accessed 15 October 2022).

have the authority to close down schools.²⁴⁰ The CEM at this meeting also touched on school nutrition, on corruption on Covid-19 resources procurement, on international lessons, and on school attendance.

The CEM was the most functional of the existing IGR structures. This structure dealt with everything that had to do with education during the Covid-19 outbreak. The CEM took decisions and addressed issues of education. It was guided by the NCCC in their efforts to save the school year during Covid-19. All these decisions were made by the central government, with the CEM as the structure to ensure that they were implemented. The Council of Education Ministers acted together, and there was coordination within the IGR structure. The Ministers ensured effective implementation of the centrally designed strategy. Later they held meetings to evaluate their response and the efforts to manage the pandemic in the school environment. They ensured that the children did not get infected, and that they were not deprived of their right to education.

3.7.5 Intergovernmental Committee on Disaster Management (ICDM)

The ICDM is an IGR structure that was established in terms of the Disaster Management Act. It was appointed by the President as the primary structure to oversee disaster management in the country and is required to meet not less than four times a year. However, the ICDM was not operational before Covid-19, and even worse, not during the pandemic.²⁴¹ IGR structures that were not operational before Covid-19, were not brought to life by the pandemic.

3.8 Provincial IGR structures used during Covid-19

It is important to note that, because the research for the thesis was desktop-based, it is unclear which provincial IGR structures were used in each province. As a result, there has been little to no information released about provincial IGR structures.

²⁴⁰ Statement by the Council of Education Ministers Following a Virtual Meeting Held on the 14th July 2020 (2020) available at <http://www.northern-cape.gov.za/index.php/news-room/news-and-speeches/152-media-room/office-of-the-premier/news-and-speeches/1592-statement-by-the-council-of-education-ministers-following-a-virtual-meeting-held-on-the-14th-july-2020> (accessed 15 October 2022).

²⁴¹ Van Niekerk D & Du Plessis E, Opinion | Understanding the Disaster Management Act and its implementation (2020) available at <https://www.news24.com/news24/columnists/guestcolumn/opinion-understanding-the-disaster-management-act-and-its-implementation-20200613> (accessed 3 September 2021).

No information could be found about the operation of the provincial IGR structures in the provinces. All that is known is that the provincial premiers were at work in all provinces during the pandemic because of their constitutional responsibilities, including the provincial hospitals, public schools, and provincial social development and welfare.²⁴² This meant that the provincial premiers had to create measures to prevent the entire school year from being lost, to make sure that the hospitals were not overcrowded and had adequate beds for the Covid-19 patients, and to have food available for underprivileged groups and homeless people. Provincial premiers and their top leadership were highly visible during the lockdown and led the response within their provinces.²⁴³ For example, the Gauteng Premier held online press conferences and would visit the areas in the province that were most affected by the pandemic. The WC Premier undertook Facebook question-and-answer sessions, and the KZN Premier released prompt provincial infection statistics daily and gave tips on prevention.²⁴⁴

Due to constitutional requirements and the fact that the provinces bore the brunt of the pandemic, the burden of the work fell on provincial leaders, who also played a part in the battle against the pandemic. It has been noted that the Premier's Coordinating Forum of the Western Cape convened its first meeting with the mayors of the province on 1 September 2020, at which he thanked the districts for the work done in responding to the pandemic.²⁴⁵ The PCF met weekly over the holiday period from 11 December 2020 to 19 January 2021.²⁴⁶ Metro and District reports were submitted to it every week. There seems to be no information about what was discussed in the subsequent meetings of this structure, except that the Premier showed gratitude to the districts for the work done.

There is no available information about what the IGR structures in other provinces did during the pandemic, but as we have seen, the premiers were at work and employed different responses to the pandemic within their provinces.

²⁴² Kiewit L 'Fighting Covid-19: The rise of the premiers' *Mail & Guardian* 16 April 2020.

²⁴³ Kiewit (2020).

²⁴⁴ Kiewit (2020).

²⁴⁵ COVID-19: 22 More Deaths recorded in Western Cape (2020) available at <https://www.georgeherald.com/News/Article/General/covid-19-22-more-deaths-recorded-in-western-cape-202009010447> (accessed 1 January 2021).

²⁴⁶ Wenger M 'Covid-19 Resurgence Response Plan for Western Cape: Premier & Health MEC briefing (2020) *Parliamentary Monitoring Group*.

3.9 District IGR structures

There seems to be no information from other scholars that suggests that the existing districts IGR structures were used or not during the management of the pandemic. The existing district IGR structure is the district intergovernmental forum. The districts used the newly established district coronavirus command councils and other bodies that were not the district IGR structures which were required to be established in terms of Regulation 6.8.2 of GN R432.

3.10 General conclusion

The social and economic impact of the pandemic in South Africa affected the concurrent competencies of the three spheres of government. The spheres were expected to perform the concurrent functions through consultation, cooperation, and coordination, and to take decisions together on measures to manage the pandemic. However, in reality things happened differently. South Africa's response to the Covid-19 pandemic was a centralised approach led by the national government using the NCCC that was established for its management. The national government started by introducing a national state of disaster, restricting many activities within the country and closing borders. As infection rates rose, a national lockdown was introduced. The NCCC was essentially the lead structure in the fight against the pandemic, as it was a coordinating structure for the national cabinet and the President. Decisions pertaining to the management of the pandemic were decided upon within this structure.

Only a few of the existing IGR structures were used in the management of the pandemic. These IGR structures were the PCC and the CEM, while the ICDM was not used at all. There is little evidence to show that the MinMECs were used. These IGR structures that came into play were used as implementers. They were to implement the Directives and Regulations approved by the NCCC and issued by the Minister of COGTA. These structures were not, however, used as coordinating bodies. The IGR structures that were not functional prior to the Covid-19 pandemic did not revive during it; for example, the ICDM remained non-functional. The national government, when leading the management of Covid-19, did not follow the precepts of cooperative government, as coordination and consultation with other spheres of government did not happen during the pandemic.

There is no available information about what provincial IGR structures in other provinces did during the pandemic, except that the WC structure did hold meetings on few occasions. The

premiers though, did take a stand on responding to the pandemic within their provinces through different methods.

There seems to be no information from other scholars suggesting that the district intergovernmental forum was used during the management of the pandemic.



CHAPTER 4: CONCLUSION

4.1 Findings

The research questions posed at the outset were dealt with throughout the thesis. First, did the national government use the existing IGR structures effectively, as directed by the Constitution, when it sought to manage the Covid-19 pandemic? Secondly, if not, why did it not use IGR structures? When the national government took steps to manage the spread of the Covid-19 pandemic, did it do so with reference to the principles of cooperative government? If not, how was the task performed?

South Africa has a multilevel government system comprising three spheres of government. The multilevel government system was first established during the time of the Interim Constitution, before it was finally entrenched in the 1996 Constitution. The Interim Constitution did not have a provision for the principles of cooperative government and IGR measures. During the Interim Constitution, IGR were ad hoc in nature, and it was only in Chapter 3 of the 1996 Constitution that the principles of cooperative government and IGR were incorporated. Chapter 3 called for an Act that would realise the cooperative principles and ensure that the IGR structures were established. The IGRF Act was then established in terms of the 1996 Constitution. The IGRF Act established the IGR structures before Covid-19.

Local government is one of the spheres, and SALGA was introduced as the representative of local government in the IGR structures. The IGRF Act established the PCC under the national government, statutory MinMECs, Provincial IGR structures and District IGR structures. There are some IGR structures that were established by specific Acts within the concurrent functional areas of education and disaster management. The National Education Policy Act of 1996 founded the CEM, and the Disaster Management Act 57 of 2002 founded the ICDM. The system of IGR ensures coordination and consultation between the spheres when performing their concurrent powers.

The spheres of government also have concurrent powers, which are powers that all the spheres can exercise and pass legislation on. These powers include education, health-care services, social welfare, and disaster management. It is on this premise that the principles of cooperative government and the system of the IGR is entrenched in Chapter 3 of the Constitution. The principles of cooperative government enable the spheres to coordinate and consult with each

other on issues of concurrency which, in turn, will prevent the spheres from entering into intergovernmental disputes when it comes to the performance of these powers.

The practice of IGR structures in South Africa prior to 20 March 2020 was not always clear and there is little to no information available about their functionality. The PCC was operating, and the MinMECs were not consistent in their operation. The CEM was always active, while the ICDM was never functional at all.

During its response to the Covid-19 pandemic, the national government did not use IGR structures effectively, as directed by Chapter 3 of the Constitution; it used only a few of them. These were used for implementation purposes of the Directives and Regulations passed by the national government. Their job was to ensure that the response of the other spheres aligned with that of the national government. At the national level, they included the PCC and the CEM. The PCC met every week (virtually) after the outbreak of the pandemic, as compared to once or twice a year before the outbreak of Covid-19. This shows that the PCC was at work during the pandemic, as it ensured that the provinces effected the efforts of the national government in the management of the pandemic.

The CEM is an IGR structure that helps the national and provincial governments consult and work together in issues of mutual interest in the education sector. This was the only functional sectoral IGR structure during the pandemic to take decisions in the education sector in a bid to manage the spread of the pandemic in schools.

The ICDM, on the other hand, is a dedicated structure of disaster management in South Africa. The ICDM is an advisory IGR structure and the primary intergovernmental structure to advise on disaster management issues. However, this IGR structure did not feature in the response to Covid-19.

At the provincial level, the Premier's Coordinating Forum (PCF) of the Western Cape convened some meetings during the pandemic. There is no information to suggest that other provinces utilised their PCFs.

At local level, there is no mention of the existing District IGR structures being used to fight Covid-19.

At the national level, SALGA was used as the necessary vehicle for local government to participate in national and provincial IGR structures.

The national government did not follow the principles of cooperative government as required by the Constitution when it took steps to deal with the Covid-19 pandemic. It used a body consisting of Cabinet members to deliberate and take decisions dealing with the pandemic, although this cabinet body had no representation from its provincial counterparts and SALGA. The national government used the PCC to ensure that the directives and regulations dealing with the pandemic were adhered to by the provinces as they were the implementers. To control or regulate the pandemic's spread, the national government used its centralised body. Only a limited number of IGR structures were used as implementers of decisions taken within the NCCC. The NCCC, which was not an IGR body, but a national structure created particularly to manage the spread of the Covid-19 pandemic, forced the IGR structures to take a back seat, and centralised the response.

Arguably, the government's broad approach to the pandemic was to maintain national uniformity and central decision-making. In other words, the approach taken by the South African government in dealing with Covid-19 was highly centralised, as decisions were taken by the national government and implemented by all spheres. The premiers and mayors had to ensure that their PCCC and DCCC implemented the national regulations and complied with the decisions taken at Cabinet level. This was further noted by Steytler, De Visser and Chigwata, who stated that the response to Covid-19 by South Africa's system of multilevel government entailed a centralisation of power that made the subnational governments implementers rather than partners within the constitutional framework of cooperative government.²⁴⁷ Baatjies and De Visser argue that this kind of response and containment of the virus showed the essence of the nature of multilevel governance in South Africa, which uses centralised command and decentralised implementation.²⁴⁸

In essence, the South African government did not follow the cooperative governance principles at the decision-making stage. The President seemed to consult with the Premiers after the decision had been taken to brief them, to ensure that they aligned their responses with the national decisions or directives. The national government decentralised implementation, meaning that the other spheres implemented the decisions, measures and actions taken by the national government. This was always the case, even before the pandemic. The national government would direct how the spheres should use their powers; in this case it was in relation

²⁴⁷ Steytler, De Visser & Chigwata (2021) 337.

²⁴⁸ Baatjies & De Visser (2020) 20.

to the pandemic. The way the government took its decisions clearly reveals that greater premium is placed on centralised governance than cooperative governance as constitutionally mandated.

4.2 Recommendations

Given the practice of IGR and cooperative government during Covid-19, the following recommendations are made in order to assist the spheres of government in improving the practice of IGR and in discharging their cardinal functions in response to disasters in the future.

- 1) It is recommended that in the future the ICDM should be utilised for consultation and coordination purposes by the spheres when dealing with a disaster in South Africa. This structure is important for the management of disasters because it comprises members from all spheres and encourages cooperative governance.
- 2) The thesis revealed that IGR structures were used, but not effectively and not for their intended purpose. On this basis, the IGR structures should be utilised more effectively for coordination and cooperation across all three spheres, and the PCC should continue to hold meetings as frequently as witnessed during the pandemic.
- 3) In future, all three spheres should be involved in decision-making, so that each sphere is able to raise important concerns about what is happening in its areas and what methods could be helpful to it as a sphere.

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