

A preliminary assessment of institutional compliance with the Intergovernmental Relations Framework Act

Premier's Intergovernmental Forums & District Intergovernmental Forums

1. Introduction

The Intergovernmental Relations Framework Act (IRFA or the Act) came into effect on 15 August 2005. This Act formalises the relations between (and within) the three spheres of government. For both provinces and districts, the Act mandated the establishment of premier's intergovernmental forums (PIFs) and district intergovernmental forums (DIFs) by 31 August 2006. The cut-off date has come and gone. How many provinces and district municipalities have established their respective forums? The mere existence of intergovernmental forums, of course, does not necessarily imply effective intergovernmental relations. Are these forums functioning effectively?

This report evaluates the formal and substantive compliance by provinces and district municipalities with the requirements of the IRFA, in particular the nascent forums and their activities. Formal compliance refers to the strict compliance with the requirements of the Act, while substantive compliance refers to the functioning of the fora, what they discuss, its effectiveness and the like. It goes to the legislative purpose of the forums. This report therefore seeks to provisionally assess the formal compliance of provinces and districts to the provisions of the IRFA and analyse the progress made in adhering to its goals. This is therefore a post-IRFA assessment that aims to examine, and assist in, the implementation of the Act.

The findings of this report are not conclusive, but are only indicative. This is mainly owing to the lack of adequate information with regard to intergovernmental structures established in some of the provinces and many of the districts. The findings should thus be considered as a catalyst for further discussion. The other important caveat stems from the institutional focus of the research papers upon which this report is based. The behavior and motives of the major actors in intergovernmental relations are not discussed in this report, nor are issues of ownership and participatory model of functioning canvassed. The report rather focuses on the organizational features of intergovernmental relations. That makes it too technical an approach to fully grasp the efficacy of intergovernmental relations. As the aim of this report is to assess the level of compliance with the provisions of the IRFA, the technical nature of the report should be appreciated accordingly.

2. Premier's Intergovernmental Forums

2.1 Establishment

Most provinces have either established afresh or, to some extent, adjusted their existing intergovernmental structures in order to comply with the provisions of the Act. Some of the provinces did not wait for the Act to fully come into effect before establishing their intergovernmental structures in line with the Act. Others established their PIFs after promulgation of the Act. The intergovernmental forums in North West and Mpumalanga, on the other hand, continued to operate without much change from their pre-IRFA structural arrangement. Gauteng continued with their dual approach establishing two forums: the Premier's Coordinating Forum (PCF) and the broad and inclusive Gauteng Intergovernmental Forum.

2.2 Composition

2.2.1 Representation of provincial and local government

Almost all provincial structures have included representatives of both provincial and local government as required by section 17 of the Act. Most of the provincial structures, in fact, provide for extensive representation of both provincial and local governments. Other than the MEC for local government who is a statutory member of PIF, most PIFs have included a number of other MECs. The PCF in KwaZulu-Natal includes the entire Executive Council of the Province. In some of the provinces, the representation of municipalities is not limited to the mayors of district municipalities. Contrary to the requirements of the Act, executive mayors and mayors of all local municipalities within the provinces were also included in the provincial structures. Others like Western Cape has tried to be innovative by including local municipalities in the first phase of each meeting and excusing them as the agenda gets more focused, only retaining districts and the metro in the last phase of the meetings.

An interesting feature of all the structures reviewed in this report is that they are, by and large, executive intergovernmental structures, in form and substance. All political structures are comprised of provincial and local executives only. In so far as the representation of the two spheres of government is concerned, a key issue that is emerging relates to the inclusion of local municipalities in PIF. The assumption behind the exclusion of local municipalities from the PIF was that communication to the municipalities could be facilitated via district municipalities and the District Intergovernmental Forum (DIF). However, this assumption does not always hold true. There is also no guarantee that the DIF can effectively serve as a conduit of communication between the province and local municipalities within the province. In some cases, the capacity and economic position of some of the local municipality is so central to provincial development that their exclusion from the PIF appears nonsensical. This might necessitate the reconsideration of a place for local municipalities in the PIF.

2.2.2 The combination of politicians and officials

Although the PIF is primarily intended to be a gathering of politicians, the provincial structures of Limpopo and Mpumalanga combine the Premier and mayors with heads of provincial departments and municipal managers in the same forum. In North West and Gauteng, however, officials, like municipal managers and heads of provincial departments, attend meetings only by invitation.

Although this is open for discussion, the combination of politicians and bureaucrats in the same forum has the potential effect of inviting interferences and politicization of issues from the side of the former. The other side of the problem is that the mixture of politicians and bureaucrats might create an atmosphere of power relations that might sometimes be “too intimidating to permit critical interventions”. These policy reasons undeniably underlie the decision of the drafters of the Act to avoid the mixing of politicians and officials by providing for the separate establishment of political and technical forum.

2.2.3 Invited parties

Bureaucrats are not the only addition to the statutorily determined members of the PIF. Most of the PIFs included, by invitation, para-statal and non-governmental organizations. The participation of para-statal and nongovernmental organizations, especially service providers like ESKOM, upon invitation, is most common in provinces like Mpumalanga and Limpopo. Gauteng sometimes holds an extended PCF meeting in which case invitations are extended to include a wider group of sectors and municipalities. This is not, however, designed on a standard basis but only when the need arises.

The value of including these entities in the provincial intergovernmental forums cannot be contested especially in the context of the infrastructure led growth espoused by ASGISA. Their inclusion to the forums provides provinces and municipalities the advantage of receiving constructive inputs from service providers. The question is rather whether the contribution of these entities would be better utilized if they participate in the PIF, which is a political structure, or in the technical structure, which is a bureaucratic forum. The latter, as a forum that is often charged with matters of implementation, appears to be the more appropriate forum to effectively cultivate the contributions of these institutions. It is also important to note that the co-optation of these organizations into the forum does not necessarily imply full participation. They may only be invited to make presentations for a fixed time slot during the meeting of the forum or a separate meeting can be arranged to hear their inputs and proposals.

2.2.4 Complex intergovernmental structures

The size of most provincial structures is hardly as concise as contemplated by the Act. Membership is extended to a wider group of representatives. 'Mean and lean' provincial structures are rare, with 'broad and inclusive' intergovernmental structures are more common. The largest provincial structures are in North West and Limpopo where more than 70 and 100 officials and politicians attend meetings respectively. These specific intergovernmental structures are an all-in-one forum that are much closer to a conference styled gathering rather than to a focused IGR forum contemplated by the Act.

Although a wider group of representations might help facilitate broader communication with all municipalities in the province, its implication for the size of the forum may not always be for the better. Large size does not necessarily imply that the forum will be more open to collective participation in the formulation of policies. There is rather a potential danger that too many members may limit the time required to sufficiently and effectively address all identified problems. Too many members are also likely to entail high cost in time and money.

2.2.5 Internal Procedures

Only the provincial intergovernmental structures in Eastern Cape and KwaZulu-Natal adopted protocols that outline their internal procedure following the adoption of the IRFA. The Protocols provides for terms of reference, which outlines the purpose of the intergovernmental structure, clauses on the name of the structure, quorum, the frequency and convening of meetings, the procedure for the adoption of decisions and their implementation as well as on the settlement of intergovernmental disputes. The content of the rules are, more or less, similar with the provisions of the IRFA

2.3 Functioning

Quite contrary to the poor track record that provincial intergovernmental structures had established in the pre-IRFA period, some provincial forums surveyed in this report have been meeting and interacting. Most of them have had at least three well-attended meetings in a period of one year. The forums in North West and KwaZulu-Natal have not been functioning well as they have held only few meetings since their establishment, with KZN having met only once, in 2006.

Meetings of some of the provincial forums are not held at defined intervals. The impression is that meetings are held sporadically with the provinces convening meetings as they deem it important. The most common explicit limitation in some of the provinces, like in Eastern Cape, is that the forum has to meet not less than three or four times per year. The potential problem of this kind of arrangement lies in the fact that the functioning of the forum heavily depends on the commitment of the chairperson of the forum to intergovernmental relations. A Premier that is not committed to intergovernmental relations might be tardy to convene meetings. The danger is exacerbated in provinces where members other than the chairperson do not have the power to request the convening of the forum. Of course, the setting of intervals on which

meeting shall take place does not necessarily result in the consistent holding of meetings. A case in point is KwaZulu-Natal where, despite the fact that its establishing protocol requires the convening of meeting on a regularly basis, meetings have been infrequent and irregular.

2.3.1 Focus of activities

Most of the discussions in the intergovernmental structures are informative. This does not necessarily downplay the effectiveness of the structures as information sharing is an important objective of intergovernmental relations. The information sharing practice has the advantage of facilitating support and assistance among the member units of the forum by helping to identify areas where intervention in terms of support and assistance is needed.

Provincial forums have also gone beyond information sharing and served as a platform for the two spheres of government to interact on a range of developmental issues. Quite encouraging is also that the developmental matters they discuss often require the interaction of both spheres of government and, by their nature, have important intergovernmental dimensions. Most forums have, for example, included IDPs in their agendas, which has an important component of intergovernmental relations as it involves vertical integration between the different spheres of government. The same can obviously be said of Project Consolidate and other sectoral issues.

PIFs that work on developmental initiatives which 'are grounded in specific impact zone' are not, however, common. Most of them focus on general discussion of developmental issues like IDP and Project Consolidate without engaging in the initiation, coordination and implementation of specific developmental programs.

Another important observation relates to the wide-ranging agendas of most provincial forums. Matters that are not of intergovernmental nature were even included in the meetings' of some of the forums. There is no doubt that the sharing of information on some of these topics may have a positive spin-off for intergovernmental relations. The problem is that the inclusion of these items in the agendas of the forum may come at the expense of a more urgent and important matters by limiting the time necessary to adequately deal with such matters.

2.3.2 Resolutions and their implementation

The provincial structures in Limpopo, North West and Eastern Cape have introduced procedures with regard to the adoption of resolutions and their implementation. There have, however, been some difficulties in the enforcement of resolutions on the part of municipalities. In some cases, it has been difficult to get progress report from municipalities. In some cases where each municipal council is supposed to discuss the resolutions of the forum and adopt the decision, this has mostly not happened. The other

problem has also been that some municipalities are represented by junior officials at PIFs who don't have the mandate or authority to take decisions.

2.3.3 PIFs as forums for managing division of powers

PIFs have been used for managing division of powers between the two spheres of government. The forums in Limpopo, Gauteng and Western Cape are used for facilitating the devolution of powers from provinces to municipalities. This demonstrates that provincial intergovernmental forums can be used to facilitate division of powers between the two spheres of governments. Such a process ensures the inclusion of inputs from municipalities thus creating an opportunity to take into consideration the relevant factors of capacity and finance when assigning or delegating functions to the local sphere.

2.3.4 A 'negotiated, non-hierarchic' relationship?

Although provincial intergovernmental forums are supposed to be a forum where equal partners of governments come together to consult on matters of common interest in mutual respect, the practice of intergovernmental relations does not always reflect this principle of "negotiated, non-hierarchic" interaction. A close look at some of the agendas and those who make the presentation in most provincial forums leaves the impression that the forums are used as a platform where the provincial government and its officials present their policies, without equal level of involvement from the side of municipalities. Most forums are dominated by presentations of provincial reports and provincial plans. Moreover, almost all presentations are made by members of the Provincial Executive Council. Representatives of municipalities are often limited to listening and responding to presentations. This leaves the impression that the forum is an instrument of the provincial government rather than a platform for interaction between provincial and local government representatives. As the experience of some of the province shows, a participatory model of functioning that involved the participation of municipalities in the setting out of agendas which, in turn, makes the activities of the forum relevant to the latter contributes immensely to the effective-functioning a provincial forum.

2.4 Recommendations

There is, generally speaking, ample room for improvement in terms of implementing the Act and institutionalizing intergovernmental relations. Few recommendations are in order:

- 1) Compliance with the letter and spirit of the Act must be ensured. Few provinces have continued to operate without any change from their pre-IRFA structural arrangement. Considering the duty of all intergovernmental structures to comply, within one year of the coming into operation of IRFA, with the provisions of the IRFA, these provinces should soon revise their structures in light of the requirements of the Act. As it is also specifically required by the Act, the forums must adopt protocols to govern their own internal procedure.

- 2) 'Secondary cities' or 'aspirant metros' play a critical role in provincial development. The reality that in some provinces these municipalities were included as members of provincial forums should be allowed to continue. This is unavoidable given the fact that the capacity and economic position of some of these municipalities is so central to provincial development. The imbalance that could result from excluding 'secondary cities' could undermine the functionality of a number of PIFs. It is suggested, however, that instead of including all local municipalities only the 'secondary cities' and district municipalities should be included.
- 3) The composition of most provincial forums is too large. In this regard, the disproportionate representation of provincial politicians must be looked into. From the side of municipalities, the forum should not include other than mayors.
- 4) Clarity on the role of officials in political forum must be attained. The same is true with service providers. Generally, the role and mode of participation of both officials and service providers must be clearly spelt out.
- 5) Although provincial forums can invite any person to attend the meeting of the forums, care must be made in this regard lest the forum turns into a mass meeting.
- 6) The forums must meet regularly. In this regard, each province, in consultation with district municipalities, must develop an IGR calendar which sets out the dates of meetings at the beginning of each year. This helps to avoid clashes of meetings and ensures good attendance.
- 7) By adopting a participatory model of functioning, each provincial forum must ensure equal participation of municipalities lest it becomes dominated by provincial officials. This should begin from the setting of agendas. By ensuring the participation of municipalities in agenda setting, it can develop discussion matters that are relevant to municipalities. Provincial Salga offices can play an important facilitative role in this regard.
- 8) Procedures for adopting resolutions that reflect developmental priorities of the province and ensuring their implementation must be adopted by all provincial forums that have not yet done so.
- 9) With the view to ensure the effective functioning of provincial forums, the President's Coordinating Council (PCC) must monitor the activities of each provincial forum. .
- 10) The Department of Provincial and local Government (DPLG) must also support and monitor the activities of provincial forums. It must ensure that the forums go beyond information exchange and serve as agents of development-that developmental issues appear on the agenda. The monitoring and supporting role

of the DPLG must extend to agenda setting and making collaborative works possible. The DPLG, in order to effectively monitor the functioning and activities of these forums, is advised to develop indicators. It, in consultation with provinces, can also organize trainings to provincial and district politicians and officials with the view to improve their understanding of the Act.

3. DISTRICT INTERGOVERNMENTAL FORUMS

3.1 Establishment

Most districts have established the DIF. A number of districts had intergovernmental forums in one form or another prior to the Act. Some of those that had forums in place prior to the Act did not establish new ones but simply amended the existing structure to comply with the Act. Others have, however, not yet amended their forums to comply with the Act. A number of DIFs are still in the establishment phase - drafting of constitutions, protocols, rules as well as understanding the formal requirements of the Act. However, a number of districts established DIFs either in anticipation of the Act (when it was in bill form) or after its promulgation. Some DIFs have not been established, although quite a few are in the process of establishment.

Those districts that have not established the DIF are now in breach of an executive obligation as more than one year has passed since the Act's promulgation. Where no DIF has yet been established, it is the responsibility, first of the district, to ensure compliance and failing that, of the provincial government to exercise its supervisory function and compel, by directive, those districts to establish the DIF where they have not done so. The provincial government should further support these districts to establish the DIF by assisting them with draft protocols, setting up a calendar of meetings and the like.

3.2 Membership and representation

The composition and membership of DIFs are very diverse, ranging from municipal officials to government departments to organised local government. Quite evident from the DIFs canvassed, was that most of them did not follow the "mean and lean", politicians only, composition as contemplated by the Act, instead opting for more 'broad and inclusive' DIFs. While the Act envisages the DIF as a political forum, most of the forums still had municipal managers as members. In some fora, the majority of attendees were district officials. That said, there are a number of DIFs where municipal managers attended in the capacity of observers or technical advisor to the mayor only.

While the membership of the DIF is fairly limited in terms of the Act, the chairperson may invite any other person, body or institution he/she deems necessary. So while the Act limits the membership of the forum to mayors only, the DIF may in fact have a wide range of persons and bodies consistently present in each meeting as an invitee. In practice, however, the distinction between formal members of the DIF and persons invited to attend by the chairperson is unclear. In this regard, there appears to be some confusion around the composition of the DIFs and its support structures, particularly the distinction between formal members and invited members, as well as the meaning of a technical support structure as opposed to technical or administrative support. In general, there seems to be a misconception around the term technical structure. Some municipalities thought that the attendance of municipal managers in the DIF meant that they had established technical support structures. While a technical support structure is

not a requirement, if a municipality does decide to have one, it must comply with the Act and must then be a forum for municipal managers only. The fact that a technical structure has not been established should not mean an all-in-one DIF. Although officials may attend their roles must be kept discrete.

3.3 Functioning

With regard to functioning, some DIFs are implementing the vision of the Act. However, some have not yet reached the stage of dealing with substantive issues, and have merely established the forum. Nevertheless, there is sufficient evidence to indicate that some DIFs are functioning well, with some of them already being in full, formal and substantive, compliance with the Act.

While the Act prescribes at least one meeting per year, on average most of the fora met three times, with very few meeting only the mandatory once. Yet some have not met at all despite establishing their DIF prior to the commencement of the Act. A significant factor in the frequency and continuity of meetings was the local government elections of March 2006. A change in leadership in many of the districts and indeed in most of the local municipalities had a visible impact on the organisation and attendance of DIF meetings. Some DIFs had two or three meetings between 15 August 2005 and 1 March 2006. This is most probably due to a change in leadership in the district and/or the local municipalities. Potentially, the relationships built up between district and local politicians over the last few years would have been lost. Of course with the departure of previous mayors, the knowledge and understanding of local government and the importance of intergovernmental relations which may have been gained was also lost. This is an issue of some concern, since DIFs should be ‘election proof’, in that provision should be made for the fact that elections will have a(n) (disruptive) impact if it is not taken into account in the planning of the forum.

That said, it need not be disruptive as the practice in some DIFs shows. There were some DIFs which had been dysfunctional or never even met prior to the election that held establishment meetings since then. New brooms sweep clean and with new politicians came new enthusiasm and vigour which led to the establishment of DIFs where they did not exist before, or the revival of existing, but dormant DIFs. Subsequent to the election, some have even gone as far as establishing all the structures required by the Act and being in full compliance therewith.

3.4 Agenda/ discussion and decisions

Common trends were the discussion of shared services and district-wide projects, and indeed all the DIFs agenda and deliberations were pursuant to the goals of the IRFA. Some even went positively beyond the minimum requirements of the Act and assisted local municipalities fulfil their mandate where they could not do so. Of the DIFs canvassed, in depth debate and candid discussion on a number of issues of district-wide

concern were prevalent in most meetings. However, the key issues were neglected in most of DIFs. For example, not many forums discussed the integration of IDPs, matters arising from the Premier's Intergovernmental Forums or the integration of local municipalities' policies and projects in a district (horizontal alignment). For instance, one local mayor stated that district projects implemented in his local municipality's area were taking place without the interaction of that local municipality. Another noted the need for coordination across line functions which were not happening in that district.

In the end, however, fora are only as useful as the outcomes they achieve. If the forum is merely a talkshop or a friendly meeting of mayors, then it has little use. The ultimate aim of having a DIF is, and must be, to result in better coordination and improved service delivery in the district. In this regard, the decisions taken, resolutions adopted and recommendations made are of critical importance in measuring the effectiveness of a particular forum. However, many of the DIFs canvassed have not yet reached the stage of dealing with substantive issues, let alone making recommendations and decisions. Nevertheless, some DIFs are quite far advanced, already making recommendations, taking decisions and implementing them.

3.5 District-local relations

The DIFs are chaired by the district mayor, which permits the district municipality to set the agenda and, in effect, dictate the focus of intergovernmental efforts. In well-functioning forums, the principle of district-local equality ensures that local municipalities help set the agenda and can have their concerns addressed during meetings. Indeed this was the case in nearly all the DIFs canvassed. An overview of the minutes' available indicates that local mayors submitted, or simply raised, issues in the meeting itself. The chairperson then allowed discussion on these issues. The facilitative role of the district chair is critical in ensuring effective relations, and was well exercised in most of the DIFs.

However, in one DIF, the protocol provides that the meetings of the DIF will be held 'at times to be determined by the district mayor'. This is a matter of some concern as local mayors may feel that they were not consulted in the setting of meeting dates, which may then result in poor attendance arising from a feeling of a top-down DIF. Indeed, as indicated above, no more than six members, including municipal managers, attended meetings of that DIF, which is one of the poorest attendance records of the DIFs canvassed. It may therefore be advisable to set dates for the DIF in consultation with local mayors so as to procure consensus, which may then secure, on the one hand, greater participation and, on the other, a real feeling of ownership (in the DIF) among local mayors. In contrast, the amicable resolution of a service related dispute in another DIF led to uninterrupted service being provided to the local community. This might not have been the case had relations between the district and its member local municipality been less effective or antagonistic. This illustrates the impact that effective district-local relations and communication can have, which is precisely in keeping with the spirit and purport of the Act.

Underlying tension may arise from the fact that many local municipalities have questioned their district's ability or capacity to provide leadership in policy or action. In some districts, local municipalities depend on the district to assist them with their daily functions. This was noted as a key challenge for some DIFs, where locals view the district as 'big brother' that must provide them with financial, technical and advisory assistance. In other districts, however, one or more strong local municipalities are wealthier and have more capacity than their districts. The strong local is then in the paradoxical position of helping the district to fulfil its duties, particularly in relation to other, less capable local municipalities. In this case, intergovernmental forums should recognise the actual capacity of municipalities and let the most capable municipalities have a bigger role to benefit all municipalities in the district. In cases where a district insists on taking a leadership role it is unequipped to play, more competent local municipalities have simply ignored the intergovernmental forums. This may explain the dysfunctional or ineffective nature of some DIFs, particularly those with more than one strong local municipality in its district.

3.6 Recommendations

On the basis of these findings, a few recommendations are proffered:

- 1) With regard to establishment of the DIF, those districts that have not established the DIF are now in breach of an executive obligation as more than one year has passed since the Act's promulgation. Where no DIF has yet been established, it is the responsibility, first of the district, to ensure compliance and then, failing that, of the provincial government to exercise its supervisory function and compel, by issuing a directive to, those districts to establish the DIF where they have not done so. The provincial government should further support these districts to establish the DIF by assisting them with draft protocols.
- 2) The membership of the DIFs is still too broad and all inclusive, with the distinction between members and invitees not always being clear. Again, provincial government should play a supportive role in facilitating training and workshops among the official members (mayors) to improve the understanding of the Act's requirements and, more importantly, the rationale behind those requirements.
- 3) Technical support structures are also conceptually misunderstood in many districts. Many districts did not appreciate the difference between a support structure as a forum and the DIF itself, with much overlap occurring between those structures. While the Act does not require a technical support structure, most DIFs have in fact established them, which then mean that they must comply with the requirements of the Act. The provincial governments can again play a crucial supportive role with training and workshops to improve understanding of the importance, and role, of a technical support structure.

- 4) On the functioning, the local government elections proved to be quite disruptive in most of the DIFs. This ought not to be the case, however, as the municipal managers, through the technical support structure, should ensure the continuity of the DIF regardless of a change in political leadership. This could be done by having a calendar of meetings before the election with the technical structure providing the necessary planning and support to ensure continuity. Provincial governments can also play a role with regard to the agenda of the DIFs as part of the agenda should be vertical integration with the PIFs.
- 5) Provincial governments can also play a role with regard to the agenda of the DIFs, particularly the lack of vertical integration with the PIFs that was prevalent in most of the DIFs. This could also be done through workshops and training outlining the requirements of the Act in this regard, with a view to making the agenda more focused than it has been in some forums to date.
- 6) The role of 'secondary cities' or 'aspirant metros' in districts is becoming an issue of increasing district-local tension, and should be addressed through the demarcation process of the Municipal Demarcation Board (MDB).
- 7) In general, the provinces should provide training and workshops with the members of the DIFs to improve understanding of the Act and its rationale. However, provincial governments should be careful not to overstep their supervisory and supportive role in assisting district municipalities fulfil their mandate. Ultimately, however, the success of the DIFs depends on the political will of the leaders within the municipalities concerned.