



# Local Government and Intergovernmental Relations

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Experiences from South Africa and  
Observations for the Philippines

**POLICY BRIEF**

**Prof. Jaap de Visser  
Shireen de Visser**

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## ABOUT THE AUTHORS

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Shireen de Visser (BIURIS, LLB, MPhil) has 17 years' experience in public finance, fiscal policy, integrated strategic planning, good governance and ethics. She started her career in Blaauwberg Municipality in 1999 (which subsequently merged into the City of Cape Town) during the transitional period in South Africa, Western Cape Treasury (Budget Office and Fiscal Policy) and more recently worked as the Senior Manager Governance and Strategy at Stellenbosch Municipality.

Shireen has worked extensively across different areas of expertise in South Africa including, intergovernmental relations, developing and analysing socio-economic profiles at provincial and local level, financial and performance monitoring and evaluation. Further research and practical work experience involves areas of energy and water sustainability, municipal tariffs, analysis of services across different spheres of government, risk and fraud management and ethics in government. More recently Shireen was appointed as a member to the Research and Ethics Committee of the Fiscal and Financial Commission of South Africa.

## SUMMARY AND RECOMMENDATIONS

- South Africa's local government system is rooted in the history of apartheid, and the choices made in the transition to democracy.
- South Africa has adopted a so-called 'layer-cake' approach to the place of local government in its semi-federal order. This means that both national and provincial governments have responsibilities towards local government.
- The supervision of municipalities takes the form of regulation, monitoring, support and intervention.
- In general, it is the national government that regulates municipalities.
- The monitoring of municipalities is done by both national and provincial governments. Provinces conduct 'hands on' monitoring and national government aggregate information.
- Both national and provincial governments support local governments. The national government transfers intergovernmental grants to municipalities and provincial governments support municipalities with expertise, advice, information etc.
- The Constitution allows provinces to intervene in municipalities that collapse. If a province does not intervene where it should, the national government may do so in its stead.
- National, provincial and local governments are enjoined to work together according in a framework of 'cooperative governance'. This includes joined-up planning and budgeting, regular meetings in intergovernmental forums, the conclusion of intergovernmental agreements to deal with uncertainty and overlap as well as the resolution of intergovernmental disputes.
- Organised local government is recognised in the law. All municipalities are members of a national association of local governments, which operates as the voice of local government. It is represented in the second chamber of Parliament, interacts with all spheres of government, and articulates the local government interest in intergovernmental relations.

## 1. INTRODUCTION

This Policy Brief discusses the local government system of South Africa, viewed primarily from an intergovernmental relations point of view. It briefly discusses the historical context, the transition to democracy and then sets out the relationship of local government with other levels of government. It presents these relationships in two categories, namely supervision and cooperation. Where relevant, brief comparisons are made with the content of the Bangsamoro Organic Law (BOL).

## 2. BRIEF HISTORICAL CONTEXT – LOCAL GOVERNMENT AND APARTHEID

The system of local government in South Africa is shaped by the history of apartheid and colonialism. Under apartheid, the government created different local government structures for the different racial categories identified under the policy of institutionalised racism. Essentially, there were white local authorities, black local authorities, so-called coloured local authorities and Indian local authorities, all functioning under the tutelage of national and provincial governments.

The grand apartheid design was that the black majority was to reside in the so-called homelands, which were essentially rural reserves for black people. However, the presence of black people in the cities and towns was ‘tolerated’ as black people were needed to provide cheap labour, for example, in the mines, factories and suburban homes. Townships were created for them, most often at the periphery of the towns. These townships were poorly serviced and housed the black labour force. Black people were expected to travel into the white town, contribute their exploited labour, and then travel back to their townships without benefiting from the first-class municipal services provided in the white towns. The segregated local authorities were grossly unequal. The ‘white’ local authorities enjoyed a measure of local democracy and could raise revenue from their privileged residents. However, the black, coloured and Indian local authorities were led by stooges imposed by the apartheid government and starved of revenue. This scheme of exploitation and neglect produced huge inequality in access to services and opportunities for a dignified life. This legacy continues to haunt the South African local government landscape.

## 3. TRANSITION TO DEMOCRACY

The future of local government was a major theme in the negotiations and transition towards a democratic South Africa. After the first democratic elections in 1994, the government, led by the African National Congress, set out to redesign the local government system. Municipalities were given a new mandate, termed ‘developmental local government’. This was matched with an elevated status in the 1996 Constitution, which was the ultimate product of the constitutional negotiations between the liberation movements and the outgoing apartheid government. The 1996 Constitution protects municipalities’ boundaries, institutions, democracy, powers and fiscal autonomy. This was done to ensure that ‘senior’ levels of government would be prevented from interfering with the developmental mandate of these new municipalities.

An entirely new legal framework was then designed, and the abovementioned fragmented apartheid local authorities were amalgamated. To illustrate the dramatic impact of amalgamations: towards the end of apartheid, there were more than 1000 local authorities. These were reduced to 287 by the end of 1999. Another new feature was the concept of metropolitan municipalities: a special status and single-tier structure for South Africa's largest cities.

The Constitution now recognises local government as a third order of government, integrated into the semi-federal system of government. The functional powers of local government are listed and protected by the Constitution. Furthermore, the Constitution protects essential fiscal powers by providing that they may levy property rates and charge for services.

The autonomy of municipalities is not absolute, however. Municipalities are subject to national and provincial 'supervision' and are instructed to 'cooperate' with other levels of government. These concepts are further explained below. However, first the question as to *who* supervises local government will be addressed.

### 3.1 Layer cake or marble cake?

One of the many thorny issues in the design of the semi-federal system of government was the question: which level (or 'sphere' as it is called in the Constitution) will supervise local government? In other words: who is going to regulate, monitor, support and, if need be, intervene in municipalities? Will it be the national government, or will it be the provincial government? Or will it be both? The choice was essentially between two systems. The first is the so-called 'layer cake' system, and the second is the so-called 'marble cake' system. In the 'layer cake' system, local government is the responsibility of the second order of government (provinces) to the exclusion of the national/federal government. In the 'marble cake' system, local government is the responsibility of both national and provincial governments. In other words, they both have responsibilities to regulate, monitor, support and intervene in municipalities. South Africa chose the 'marble cake' model. Both national and provincial governments have responsibilities toward local government. This ties in with the constitutional reality (discussed in the Policy Brief on Intergovernmental Fiscal Relations) that virtually all taxing powers are vested in the national government. This approach makes a direct national-local linkage inevitable. At the time, it was also informed by the fear of parochial provincial interests frustrating the development agenda of municipalities.

### 3.2 Brief comparison with BOL

The question as to who is responsible for local government also features in the BOL. Several provisions illustrate that the BOL intends to make the BARMM responsible for most of the supervision of the local government.

The first indication is article VI.1 of the BOL, which provides for general supervision by the President over BARMM to ensure that laws are faithfully executed. This provision does not mention the supervision of local government units in BARMM. The second indication is article V.2. In this article, local government is not mentioned as a specific BARMM competency. However, the BOL is very clear that



it falls within the BARMM's authority to create, divide, abolish, merge, establish and alter the boundaries of local governments and *barangays*. It seems that it is subject to a plebiscite in the political units directly affected. Thirdly, article VI.10 of the BOL guarantees BARMM the right to regulate local government in accordance with the BOL and a Bangsamoro Local Government Code (identified as priority legislation to be adopted by the BARMM government XVI.4). The privileges that local governments enjoyed before the BOL shall not be diminished. The latter provision is critical as it must ensure that local government units in BARMM retain the level of local autonomy they enjoyed before the transition.

Let's turn to the two key concepts of intergovernmental relations, namely supervision and cooperation.

## 4. SUPERVISION OF LOCAL GOVERNMENT UNPACKED

As alluded to earlier, the concept of supervision of local government comprises four elements, namely regulation, monitoring, support and intervention. These are briefly explained below.

### 4.1 Regulation

Regulation refers to the regulation of the institutions, governance, finances etc., of local government as well as the regulation of the sectors (water, sanitation, roads, electricity etc.) in which local government is involved.

The regulation of local government is mainly made by the national government. The Constitution reserves most of these regulatory powers for national government. The national government has passed legislation dealing with issues such as -

- Municipal boundaries (Municipal Demarcation Act 27 of 1998)
- Municipal elections (Municipal Electoral Act 27 of 2000)
- Municipal governance (Municipal Structures Act 117 of 1998)
- Municipal finances (Municipal Finance Management Act 56 of 2003)
- Municipal administration (Municipal Systems Act 32 of 2000)
- Municipal property rating (Municipal Property Rates Act 6 of 2004)

Furthermore, there are many national laws, pertaining to sectors that regulate local government activities such as -

- water delivery (Water Services Act 108 of 1997)
- town planning (Spatial Planning and Land Use Management Act 16 of 2013)
- municipal health services (National Health Act 61 of 2003)
- electricity reticulation (Electricity Regulation Act 4 of 2006)
- public transport (National Land Transport Act 5 of 2009)

Provinces are responsible for compliance over limited areas listed above, such as governance, finances, administration, to some extent, property rates, town planning and

public transport. The national and provincial governments share concurrent powers in all these areas.

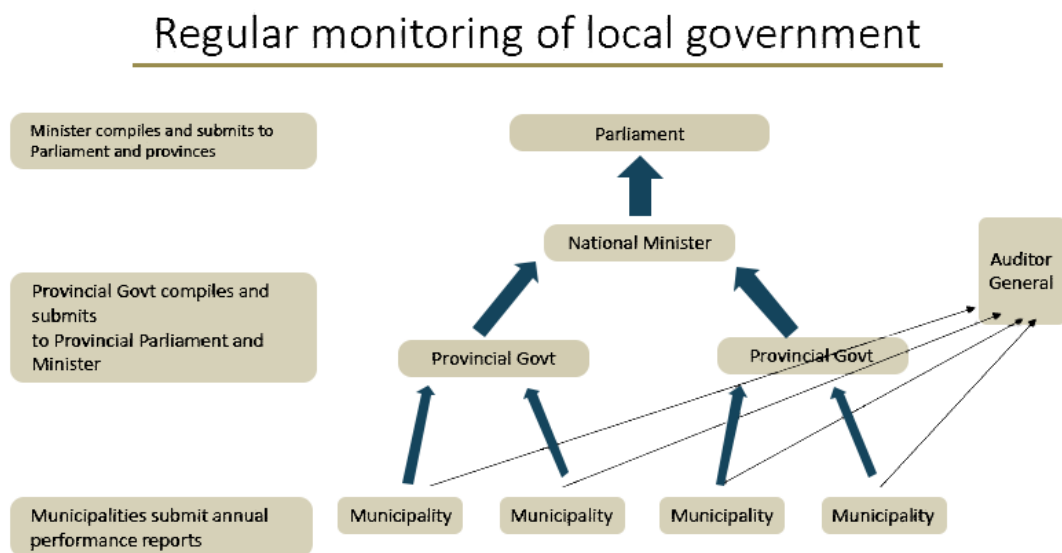
With regard to areas such as municipal boundaries, municipal elections, bulk water, and electricity generation, provinces have no constitutional competency. This then connects municipalities to the national government with respect to those areas.

## 4.2 Monitoring

Monitoring refers to the monitoring of local government finances and compliance as well as the monitoring of the performance of municipalities. Municipalities in South Africa are subject to a comprehensive scheme of intergovernmental monitoring. As indicated earlier, both national and provincial governments play a role in monitoring municipalities. For example, municipalities submit monthly, quarterly and annual financial reports to their provincial government. The provincial government compiles these reports and submits them to the national government. The national government aggregates these into a comprehensive country-wide report. Furthermore, the national Auditor-General, an independent institution, audits the books of each municipality.

To sustain the credibility of especially financial information submitted to the provincial and national government, various legally prescribed reporting systems have been developed by a national government and rolled out to all municipalities. These include highly regulated budget templates, performance reporting frameworks and financial accounting standards with oversight support by provinces. To ensure respect for the rule of law, compliance was phased in to achieve full compliance by all local authorities eventually. This forms part of the annual auditing of municipal finances and performance.

**Figure 1:** Regulation monitoring of local government in South Africa



Reports released to the public by the auditor general indicate that many municipalities still struggle to achieve fully compliant reporting, with gradual improvements observed across various provinces.

These are but two manifestations of the comprehensive scheme of intergovernmental monitoring. The division of responsibilities between national monitoring of local government and provincial monitoring of local government is not without difficulty. In practice, the national government directly monitors the big cities, and the provinces monitor smaller municipalities. The provinces play a crucial role in monitoring the governance of municipalities. For example, they receive reports of crucial administrative appointments made by municipalities and keep a watchful eye over the preparation of municipal budgets.

### 4.3 Support

Support refers to the assistance extended to municipalities through funding, capacity building, information etc. Both national and provincial governments support local governments. The national government does it mainly by providing intergovernmental funding (the equitable share and conditional grants, discussed in the Policy Brief on Intergovernmental Fiscal Relations). Provincial governments cannot really provide much funding to their municipalities but they play a crucial role in supporting municipalities. For example, they support municipal budgeting processes, assist with governance queries and provide training.

### 4.4 Intervention

Intervention is the last resort in the menu of supervision powers. Intervention occurs when a senior government removes authority from a municipality, places it under administration and/or withholds intergovernmental funding. The Constitution permits provincial governments to take control of a municipality that fails to deliver basic services, meet financial commitments or perform basic governance functions such as passing a budget. Interventions are tightly regulated and subject to intergovernmental checks and balances. In line with the 'marble cake' model, the national government may also intervene directly in municipalities, but only if the relevant provincial government fails to do so. Interventions are used often, which is an indicator of the challenges in local government. In 2022, more than 30 of the 257 municipalities were under intervention. Withholding intergovernmental funding occurs less frequently but has happened on occasion. For example, in 2020, the national government [withheld more than R1 Billion in grant funding](#) from Nelson Mandela Bay Metropolitan Municipality.

### 4.5 Brief comparison with BOL

A comparison with the BOL shows that the BOL contains provisions that envisage regulation, monitoring and support with respect to local government finances, budgeting and democracy.

Article XII.3 of the BOL provides that the Bangsamoro Regional Office of the Bureau of Local Government Finance (which resorts under the Department of Finance) is tasked with coordinating, assisting, and monitoring the treasury and

assessment operations of constituent local government units within BARMM. The objective of this is to pursue good governance and local autonomy. This Regional Office must be guided by the (national) Department of Finance-Bureau of Local Government Finance. Included in its scope are the requirements for the appointment of local treasurers. Article XII.40 provides that the BARMM government must provide protocols for the guidance of local authorities in the implementation of transparency in budgeting, financial reporting and civil society participation in the budget process. Another manifestation of direct regulation of local government budgeting is article XIII.5, which provides that 5% of budget appropriation of local government units must go to gender-responsive programs in accordance with a gender and development plan.

In a general provision dedicated to support local government, Article XIII.2 provides that the BARMM government must provide equitable opportunities for developing constituent local government units and shall strengthen governance systems to ensure people's participation.

## 5. COOPERATION WITH LOCAL GOVERNMENT UNPACKED

As alluded to in earlier Policy Briefs, the Constitution establishes a quasi-federal system with a strong national government, weak provinces and strong local governments. A key element of the quasi-federal system is the insistence, in the Constitution, on 'cooperation' between the three orders of government. This is aside from the national and provincial supervision of local governments discussed above. Cooperation can be broken down into five elements, namely (1) principles of cooperative governance, (2) intergovernmental planning and budgeting, (3) organised local government, (4) intergovernmental forums and (5) alternative dispute resolution.

### 5.1 Principles of cooperative governance

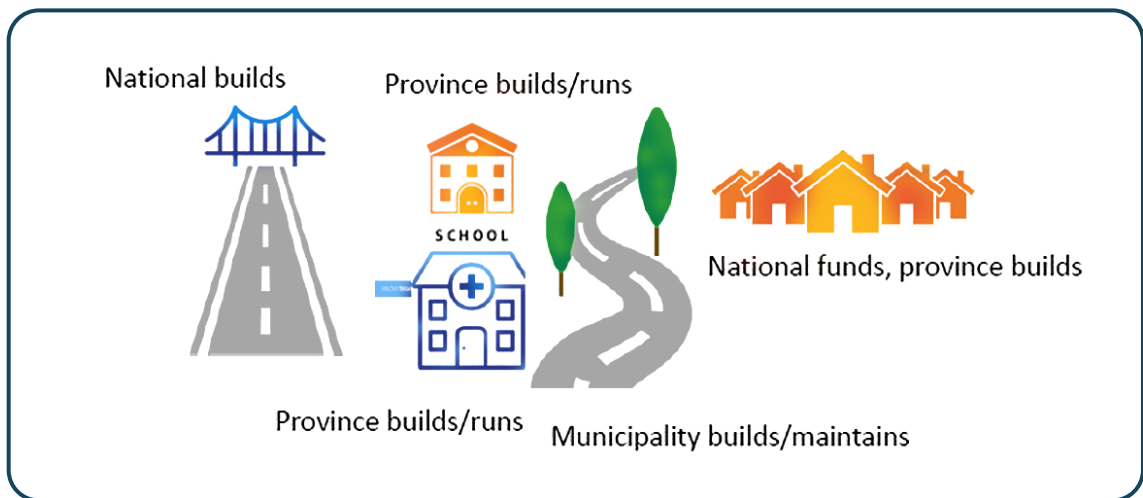
The constitutional principles of cooperative governance are a set of normative, high-level principles that enjoin the three 'spheres' of government to work together. They are set out in Chapter Three of the Constitution. They instruct organs of state in different spheres of government to respect each other's institutional integrity, collaborate, share information, consult etc.

### 5.2 Intergovernmental planning and budgeting

The constitutional division of powers results in a division of expenditure and planning responsibilities. The practical plans of the government for specific projects or interventions can affect multiple spheres. For example, establishing a large human settlement will often involve all three spheres of government. For example -

- i. national government provides funding, and builds national infrastructure such as highways;
- ii. provincial government builds and run schools, hospitals and build and maintain provincial roads;
- iii. the municipality conducts town planning, builds and maintains access roads, and provides services such as water, electricity and sanitation.

**Figure 2:** illustrating the need for intergovernmental planning and budgeting in South Africa



Coherent service delivery requires a joining up of different organs of states' expenditure plans. The three spheres of government are thus expected to conduct 'joined up planning and budgeting', i.e. to align their plans and budgets to achieve coherent service delivery. For local government, the main instrument is the Integrated Development Plan. Each municipality adopts a five-year strategic plan at the beginning of the council term. This plan comprehensively sets out the municipality's strategy, objectives, targets and business plans. It brings together corporate strategy, spatial development framework, environmental plans, infrastructure plans, transport plans etc. This municipal budget must follow this plan within the confines of the municipality's fiscal capacity.

In preparing and adopting this IDP and the accompanying budget, the municipality must consult with departments and entities of other spheres of government to gain insight into their plans in the municipal jurisdiction. Ultimately, the IDP is expected to be the 'all of government' plan for that municipality. Provincial governments play a crucial role in identifying areas of alignment in planning and support.

### 5.3 Brief comparison with BOL

Two provisions in the BOL illustrate its commitment to joined-up planning and budgeting and alignment of plans across levels of government. Article XIII.4 provides that the BARMM Parliament must establish the Bangsamoro Economic and Development Council as the planning, monitoring and coordinating agency for all development plans. Furthermore, it then provides that the BARMM development plans, program, and projects "shall take into account the development plans of the provinces, cities, municipalities, and barangays as approved by their respective local development councils". Another example is article XIII.7, which provides that the BARMM government must ensure that local government units adopt local climate change action plans.

## 5.4 Organised local government

The Organised Local Government Act provides for the ‘accreditation’ of a national association representing municipalities in IGR. The South African Local Government Association has been accredited as such. It participates in intergovernmental relations and represents local government in discussions on national and provincial laws, policies and budgets. It does so in two major ways. First, SALGA occupies ten non-voting seats in the National Council of Provinces, which is the second chamber of Parliament. Secondly, SALGA is represented on many national and provincial intergovernmental forums (see below) and uses its representation to alert these structures to issues affecting local government.

## 5.5 Intergovernmental forums

Intergovernmental forums are regular meetings where the political and/or executive leadership of national and provincial governments meet and similarly, provincial governments meet with the politicians and executives of the local government. Whether the forum is political or administrative, depends on the nature of the intergovernmental consultation and the composition of the forum. The overall architecture is set out in the Intergovernmental Relations Framework Act 13 of 2005. This Act provides for forums for local government to participate in. For example, the provincial Premier regularly meets with all mayors in his or her province to discuss matters of common interest.

Also, national ministers regularly meet with their equivalent provincial ministers in so-called ‘MinMECs’. For example, the National Minister responsible for human settlements meets regularly with the nine provincial executive councils (MECs) members with the same portfolio. These are national/provincial forums where local government participates through organised local government (if the functional area affects local government). A specific arrangement exists in the intergovernmental fiscal arena: the Budget Council and the Budget Forum are IGR forums that deliberate the upcoming budget and division of revenue (see the earlier Policy Brief on Intergovernmental Fiscal Relations). These forums and the Financial and Fiscal Commission play a key role in advising the national government on the vertical and horizontal division of national revenue. The President’s Coordinating Council stands at the apex of this comprehensive architecture of IGR forums. This is a meeting of the President, key members of his/her Cabinet, the nine Premiers and a representative of organised local government. It has been a long-standing complaint of cities that they are not directly represented at the PCC but are represented only through a broad association of local governments.

## 5.6 Brief comparison with BOL

Comparing the above architecture with BARMM and the provisions of the BOL, it becomes clear that the focus of the Intergovernmental Fiscal Policy Board (IFPB) (article VI.4 of the BOL) seems to be on fiscal matters pertaining to the BARMM government and not necessarily the constituent local government units. The BOL does not seem to include the fiscal matters pertaining to local government units as part of the IFPB’s mandate. The same applies to the Intergovernmental Infrastructure Development Board (article VI.6). There is also no direct local government representation.

With regard to local government's fiscal autonomy in the BOL, it is important to note that the BOL guarantees the revenue sources of local government units by stating in article XII.7 that the constituent local government units will continue to exercise the taxing powers granted under the Republic Act 7160. Also, article XII.6 guarantees local government units a 70% share of the tax revenue extracted from the exploration of stones, sand, gravel etc. mined from their local jurisdictions.

Furthermore, article XI.13 instructs the BARMM Parliament to enact a law detailing the shares of constituent local government units in the 75% share of national taxes (as set out in XI.10), fees and charges collected in the BARMM jurisdiction. Government revenues generated from natural resources flow to the BARMM government and importantly, this includes the portions for local government units. In other words, the revenues flow to the BARMM government and are then transferred to the local government units. The BOL provides that this must be done according to the following formula:

- 30% to BARMM government and local government units
- 20% to provinces
- 15% to cities
- 20% to municipalities
- 15% to *barangays*

Article VI.9 of the BOL provides for the Council of Leaders which advises the Chief Minister. It is worth noting that the Council includes the mayors of chartered cities.

## 5.7 Intergovernmental agreements

Intergovernmental agreements or implementation protocols are 'contracts' between municipalities and organs of state in other spheres that delineate responsibilities, funding arrangements etc., pertaining to a specific project or programme that affects multiple spheres of government.

## 5.8 Alternative dispute resolution

The Constitution encourages organs of state in all three spheres of government to avoid litigating against each other. They should rather aim to solve their disputes through alternative dispute resolution (ADR). In fact, the courts may refuse to entertain a case if it is clearly is an intergovernmental dispute and the parties have not yet tried their best to solve it between themselves. The courts regularly use this mechanism. For example, when the City of Cape Town attempted to force the national government to allow the City to generate and purchase its own bulk electricity, [the High Court refused](#) to entertain the matter and instead referred it back to the parties for further negotiations (see Policy Brief on Multilevel Government and Energy). The IGRFA sets out a generic framework for ADR, but sectoral legislation often contains specific arrangements that apply to disputes within that specific sector.

## 6. CONCLUSION

In summary, local government in South Africa is embedded in the system of intergovernmental relations across the three spheres of government. The history of local government, the transition from apartheid to democracy, is important for understanding the roles of national and provincial governments in supporting local government and ensuring equity. While there are serious challenges in local government, the system of intergovernmental relations is generally well-designed and suited to assist this sphere to ensure basic services and development. It combines supervision of municipalities (by both national and provincial governments) with instruments of cooperation. All of these are designed to ensure coherence and good governance across the three spheres.



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