

Section 139 interventions

Establishing a regulatory framework

The Constitution demands that each sphere of government must respect the constitutional status, powers and functions of the other spheres and that each should exercise its powers and perform its functions without encroaching on the geographical, functional or institutional integrity of another sphere. On the other hand, sections 100 and 139 of the Constitution allow for the intervention into the affairs of provincial and local government by national and provincial government respectively. The Constitution then provides that national legislation must be enacted to regulate these processes. SALGA realised the urgent need for such legislation to be passed, but, more importantly, saw the need to start a process at the end of which it can emerge with a well considered position on all the issues germane to section 139. That process commenced during October 1998 and culminated in a workshop on Provincial Support and Supervision of Local Government in Pretoria on 12 and 13 March 1999.

Assessing the interventions

In the evaluation of the processes around the interventions in Butterworth and Warrenton, there was general consensus around the following points:

- prior to intervention, there must be statutory recognition of the role, and consultation with, organised local government both within the province and the NCOP;
- there must be an obligation to report regularly to organised local government and to the provincial standing committee;
- a need to establish permanent inter-governmental structures at provincial level with a view to provide for consultation on identification of problems, terms of intervention, reporting mechanisms and appointment of an administrator;
- interventions must be preceded by measures to support and strengthen local government;
- provincial commissions of enquiry must be preceded by consultations with organised local government;
- an urgent need for a regulatory framework to capacitate provinces to

deal with interventions; and

- a commitment that SALGA must be the principle organ to draft the required framework.

Defining provincial powers of intervention

The purpose of intervention is not to punish but to assist local government in addressing very specific problems. Intervention into the affairs of a municipality is a measure of last resort in a process of provincial supervision which would normally commence with review and monitoring of a municipality, followed by steps to strengthen and support where needed.

One aspect which elicited some discussion, was where the non-fulfilment of an executive obligation could be attributed to the failure of a province to fulfil its constitutional duty of support. In other words, in order to intervene, must a province show that it has fulfilled a supporting function in respect of a particular executive obligation which has been left unfulfilled by a municipality? One expressed view was that an intervention could only take place where a province had complied with the provisions of section 154 of the Constitution. The other was that an intervention should not be conditional and may take place without the province first having to comply with its obligation to support.

The procedure before intervention has to include the issuing of directives before an assumption of responsibility can occur. A clear position was taken that there must be adequate notice to a municipality and to organised local government of a province's intention to issue a directive, its reasons and an opportunity to respond. A similar notification has to precede an assumption of responsibility.

After having assumed responsibility for a particular executive obligation, a province may only deal with those issues which are germane to the fulfilment of that obligation; a municipal council must be able to continue with the exercise of the remainder of its powers. Only in the event where a council has been dissolved in terms of legislation, does the question of municipal powers during an intervention not arise.

It was emphasised that provinces

have certain duties during an intervention. There is a supportive role to be fulfilled, and mechanisms must be put in place to ensure that problems do not persist. Regular reporting to the municipal council must take place.

Supporting and monitoring municipalities

Building capacity can be seen as the main purpose of rendering support. This can take place through the training of staff and councillors, through the provision of material and technical support, making available legislative support systems, through methods of skills transfers and through the sharing of resources.

There is a constitutional obligation upon national and provincial governments to support and strengthen the capacity of municipalities. In respect of requests for support by municipalities, there was a general consensus that legislation should determine issues such as when and how support may be requested, the role of organised local government in that process, the identification of instances when support may be imposed (eg disaster management) and general criteria in terms of which indicators, showing a need of support, may be drawn up.

The Constitution also assigns a particular monitoring role for provincial governments in respect of municipalities under their jurisdiction. Certain general principles of establishing one uniform monitoring regime have been identified such as it taking place in a spirit of co-operative governance, in consultation with all interested parties, clearly setting out all rights and obligations and establishing reasonable limits within which monitoring may take place. The role and function of organised local government in a province with regard to monitoring needs to be provided for in such legislation.

SALGA emerged from this workshop with clearly identifiable goals in respect of issues such as interventions, monitoring and support of local government and will take these forward in the national legislative process.