

**T**he Constitution requires from provinces to monitor, support and, if necessary, intervene in a municipality. The new local government dispensation, establishing metropolitan, district and local municipalities, will impact on the way provinces execute their constitutional obligations of monitoring and support. This article examines how provinces should respond to these challenges.

### **Constitutional obligations**

The Constitution provides in section 154(1) that –

“The National government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their duties.”

In addition to this overlapping duty between national and provincial governments, each province must, in terms of section 155(6), by legislative and other measures:

- “(a) provide for the monitoring and support of local government in the province; and
- (b) promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.”

### **Defining monitoring and support**

Monitoring and support is part of a continuous process of supervision by a province. It commences with monitoring, providing support and, then, finally, if all else fails, a province may intervene in a province in terms of section 139 of the Constitution (see *LGL Bulletin* 1999(2) at p 11) when a municipality cannot or does not fulfil its executive obligation.

### **Defining monitoring**

A province may monitor a municipality in two areas. The first relates to whether a municipality fulfils its

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executive obligations in terms of any law. On the basis of such monitoring, a province may intervene in terms of section 139 where a municipality has failed to comply with such obligations. The second relate to how well a municipality performs its functions. It is a qualitative assessment of the services delivered by a municipality.

There are various methods in terms of which provinces may monitor a municipality and these methods vary in respect of how intrusive they are. They include –

- requiring regular reports;
- requesting reports on specific matters;
- conducting an enquiry; and
- entering and searching the offices of a municipality.

The South African Police Services Act provides, for example, that a province may search the offices of a municipal police force in order to monitor the compliance with national standards (see *LGL Bulletin* 1999(2) at p 8.)

### Defining support

The support that a province may provide a municipality can be wide ranging. It may include the following:

- providing training;
- providing a service;
- providing advice, for example, by preparing model by-laws for municipalities (see *LGL Bulletin* 1999(1) at p 12 – Gauteng local government legislation); and
- providing resources, including financial support.

### Current practice

In an audit of intergovernmental relations conducted in 1999 for the Department of Provincial and Local Government, attention was paid to the practice of provincial monitoring of, and support for, local government. The most significant findings of the Audit were that provinces acknowledged that local government was in need of assistance and that their health and well-being should be monitored. However, there were very few provincially-initiated assistance programmes. A number of reasons for this were put forward:

- *First*, there was little capacity in provinces to provide assistance.
- *Second*, linked to the first, provinces simply did not budget for support. This problem came to the fore particularly when a province had to intervene in a local authority in terms of section 139 of the Constitution – there was no budget line item to support the intervention.
- *Third*, there is also a perception in provinces that local government should become self-reliant. The argument is that previously municipalities were creatures of statute and fell fully under the umbrella and control of the province. The Constitution changes this. Local government can no longer expect to receive much support from provincial government. Municipalities must stand on their own legs. Support, it was said, would stifle local government creativity.
- *Fourth*, provincial government has been cut out of the funding cycle of local government. Funds usually go directly either from the Department of Provincial and Local Government to municipalities. When they go via the provinces through Project Viability, the provinces act merely as an agent for the national government. There is thus no linkage between the constitutional responsibility of supporting local government and the funds provided for it. Money lies with the national government, yet provinces are expected to carry the responsibility. Support is therefore seen as an unfunded mandate.

The conclusion is thus that, in the past, there has been little monitoring, less support and often reluctant interventions. The question is, then, whether the new local government dispensation will change this practice. It is argued that the new local government dispensation will certainly affect the provinces' role of supporting local government.

### The challenges of the new dispensation

The three new features of the new dispensation – the establishment of district,

metropolitan and cross-border municipalities – present major challenges to provinces. Because these features are unevenly distributed across the provinces, the challenges they pose, vary accordingly. In Gauteng, for example, these challenges are accentuated. Gauteng has three metros containing 82% of its population. There are also a number of cross-border municipalities at district and local level.

## District municipalities

The first challenge is to work out a relationship between the provinces and district municipalities vis-à-vis the local municipalities. Up till now provinces had direct relations with transitional local authorities (TLCs). Provinces are expected to monitor and support these local authorities. This role will now be taken over by the district municipalities; the very purpose of district municipalities is to provide support for local municipalities (see pages 1–3). The objectives of a district municipality is to build the capacity of local municipalities and to promote the equitable distribution of resources between local municipalities in the district to ensure appropriate levels of municipal services. This means that where a local municipality lacks the capacity to provide a particular service, the district municipality must step into the breach.

If these are the duties of district municipalities, what, then, is the role of the province? Are provinces now superfluous with respect to local municipalities?

The answer is no. A change of role definition is, however, required. The primary responsibility of providing assistance to local municipalities, falls on district municipalities. This leaves the provinces with a twofold role.

### Monitoring

First, it must monitor the relationship between district and local municipalities. The new two-tiered local govern-

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ment structure is new. It is complex and is bound to give rise to numerous conflicts. The role of the province is to get the balance between the two levels right. Who must do what? Who can do what? To give answers to these questions, requires close monitoring of both levels of municipalities. The Municipal Structures Act foresees that this relationship between district and local municipalities is not a fixed one. It requires constant adjustments. Thus, monitoring will have to take place on a continuous basis.

Flowing from this monitoring role, is a conflict resolution function that provinces must perform. Any conflict between the levels where they perform the same function must be resolved by the MEC.

The role of the province is thus more of a manager or overseer, rather than a service provider. It must fine-tune the relationship between district and local municipalities. For this they need an intimate knowledge of the functioning of the respective municipalities.

### Support

Second, the primary supporting role of provinces will be in respect of district municipalities. As the objective of district municipalities is to provide support for local municipalities, provinces carry the responsibility to ensure that the districts are able to perform this role. In a number of provinces, totally new district municipalities are being created. In the Northern Province, for example, there will be six district municipalities, replacing the current two district councils. For district municipalities to play their assigned role, may initially require considerable assistance and guidance from the provincial governments.

### Cross-border municipalities

If the two-level local authorities are not complex enough, add a further element to the puzzle – another province. Cross-border municipalities will be established in North West, Gauteng, Northern Province and Mpumalanga

(see *LGL Bulletin* 2000 (2) at p 4.) For the moment, the operating model decided upon by the provinces is joint administrations. This entails two sets of laws applying to different parts of a joint municipality, two provincial administration making joint decisions. Such a set-up is fraught with difficulties. Added to this complexity is then the duties of monitoring and support. How is this to be done? Can one province monitor across its borders? Can it provide support (including funds) across its borders? Answers to these questions must still be worked out. The best way forward is to transfer the administration of the cross-border municipality to one of the provinces. This, of course, is politically difficult, but administratively essential.

### Metropolitan municipalities

The third challenge is how the provinces are going to monitor and support metropolitan municipalities. Gauteng has to monitor and support the three large metros of Johannesburg, East Rand and Pretoria, while KwaZulu-Natal, Eastern Cape and Western Cape have to monitor one each in the areas of Durban, Port Elizabeth and Cape Town respectively.

The problem is one of scale, of power and of resources. The budget for the greater Johannesburg is R9 billion, a few billion short of the entire Gauteng budget of R16 billion. Although Gauteng's budget is larger, it is committed by the national government to the tune of 85% to provide education, welfare and health services. Moreover, 95% of the budget comes from the national fiscus. In contrast, with the city raising almost all its income, the entire municipal budget falls under the control of the council. A metropolitan council will thus have more financial clout than the province. This will inform the power relationship between the two governments.

As to resources, the metros will be

looking to the national government for support. When the Johannesburg metropolitan council required substantial funds to carry out its Igoli 2002 plan, it approached the national treasury and received a R525 million grant. Gauteng province would not have been able to entertain such a request.

Increasingly, the primary intergovernmental relationship of metros will be with national departments. Because of the scale of their operations, the metros will not look to provinces for support but deal directly with the national departments with regard to water, finances, transport, etc.

What, then, is the role of provinces with regard to metros? The fact is that if a metro is mismanaged and goes bankrupt, the impact on a province could be devastating. Because the stakes are so high with a metro, provinces carry a particular responsibility with regard to monitoring. They may not be able to help a province out of trouble, but they will certainly be in the best position to assess and check its health. Monitoring is therefore of the utmost importance and is a constitutional duty from which provinces cannot shy away.

**How are provinces going to monitor and support metros?**

### Conclusion

The new local government dispensation introduces new sets of relationships between the various spheres of government. The details of monitoring and support duties, underlying these relationships, will be worked out in practice. The objective must be to ensure that the new system of local government is viable and sustainable. All spheres of government must assist, within the framework of co-operative government, to make this bold transformation initiative work. This entails facing the challenges of the new dispensation and getting appropriate monitoring procedures and support programmes in place.

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