



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NATIONAL COUNCIL OF PROVINCES



Nature of government

- Government in the Republic of South Africa is constituted by national, provincial and local spheres
- The spheres are distinctive, interrelated and interdependent.
- In addition to concurrent national and provincial functional areas of competence, each has its area of competence
- Despite their being distinctive, the Constitution authorizes national and provincial executives to intervene in local government within certain constitutional constraints

Nature of government

- The meaning of
 - co-operative government – planning among the spheres
 - intergovernmental relations – power relations among the spheres
 - Distinctiveness – distinct functional areas (***schedules 4 and 5***)
 - Interrelatedness – co-operation on matters of common interest
 - Interdependencedness – assistance and support (**section 154**)

Responsibilities

- Who is **to co-ordinate** co-operation and intergovernmental relations
- Who is **to oversee** co-operation and intergovernmental relations
- Interplay between the spheres of government
- Interplay between intervention and support (**sections 139 and 154**)
- Is section 139(1)(a) a prerequisite for section 139 provisions

Requirements

- The intervention in local government is authorized by 139
- Intervention must be
 - in accordance with the procedure prescribed by the Constitution; and
 - for a valid reason

Procedural and Substantive requirements

(Time limits imposed by the Constitution and reasons proffered to validate it)

Purpose of intervention

- To direct the municipality to carry out or fulfil executive obligations
- To assist the municipality to carry out or fulfil executive obligations
- To restore good governance in the municipality
- To assist the municipality to approve budget or revenue raising measures
- To return the municipality to sound financial position

Intervention is not intended to permanently usurp the powers of the Municipal Council

Lesson learned

- Lack of co-ordination among and between the spheres
- No proper planning between and among the spheres
- Failure to adhere to constitutional requirements of intervention
- Some interventions are permanent/recurring
- Failure to implement resolutions of the National Council of Provinces
 - Failure to submit reports
 - Failure to implement Recovery Plans
- The cost of interventions – two administrations

Interventions not achieving their intended constitutional purpose

Previous judgements

- Definition of executive obligations
 - ***Mnquma Local Municipality and Another v Premier of the Eastern Cape Province and Others***
- Whether dissolution is an appropriate step (exceptional circumstances)
 - ***See Overberg District Municipality and Others v The Premier of the Western Cape and Others***
- Interests of the community against interests of councillors
 - ***Ngaka Modiri Molema District Municipality v Chairperson North West Provincial Executive Committee and Others***
- Whether a provincial Executive Council under intervention may intervene

Makana Judgment: Implications

- Whether the courts have the power to direct the provincial Executive Council to dissolve a Municipal Council
- Whether the courts have the power to determine the content of an intervention - a policy choice
- Whether the courts have the power to enforce implementation of a Recovery Plan

THANK YOU

The background features a series of overlapping, semi-transparent geometric shapes in various shades of orange and brown, creating a dynamic, layered effect on the right side of the frame.