

THE CONSTITUTIONAL STATUS OF LOCAL GOVERNMENT IN SOUTH AFRICA

Global and local challenges
VERACRUZ, 2001

INTRODUCTION

◆ Presentation will:

- ◆ Describe the background to the constitutional regime;
- ◆ Examine the constitutional establishment;
- ◆ Describe the system of intergovernmental relations; and
- ◆ Describe fiscal decentralisation

BACKGROUND

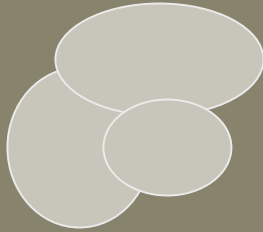
- ◆ Before 1994, state strictly centralised.
- ◆ Racial segregation resulted in municipalities for racially segregated areas.
- ◆ 1994 interim Constitution resulted in democratic representation of all in municipal councils.
- ◆ Municipalities merged and reduced from approx. 2000 to 843.
- ◆ Local government a functional area of provinces.

BACKGROUND cont

- ◆ 1994 interim Constitution contained three constitutional principles for entrenchment of local government –
 - ◆ Government structured at national, provincial and local levels;
 - ◆ Each level shall have executive and legislative powers; and
 - ◆ Framework for powers, functions and structures shall be in final Constitution.

CONSTITUTIONAL ESTABLISHMENT

- ◆ 1996 Constitution establishes local government as a sphere of government



CONSTITUTIONAL ESTABLISHMENT cont

- ◆ Municipalities have constitutional functions and powers.
- ◆ Municipal council has legislative and executive powers.
- ◆ Municipality must strive to achieve objectives of local government –
 - ◆ Democratic and accountable governance;
 - ◆ Sustainable service delivery;

CONSTITUTIONAL ESTABLISHMENT cont

- ◆ Social and economic development;
- ◆ Safe and healthy environment; and
- ◆ Cooperate with other spheres of government in spirit of cooperative government.

INTERGOVERNMENTAL RELATIONS

- ◆ Constitution declares government comprises of national, provincial and local spheres.
- ◆ Spheres are distinctive, interdependent and interrelated.
- ◆ Constituent components of the SA decentralised state.

INTERGOVERNMENTAL RELATIONS cont

◆ Distinctive

- ◆ Degree of legislative and executive autonomy entrenched by Constitution;
- ◆ Sphere has distinctive legislative and executive competencies;
- ◆ Based on particular interests best served by particular spheres;
- ◆ Promoted through decentralised state

INTERGOVERNMENTAL RELATIONS cont

◆ Interdependent

- ◆ The degree to which one sphere depends upon another to fulfill its functions;
- ◆ Province and national must:
 - ◆ Support local level to fulfill functions; and
 - ◆ Supervise fulfillment of functions.

INTERGOVERNMENTAL RELATIONS cont

◆ Interrelated

- ◆ Duty of spheres to cooperate in mutual trust and good faith;
- ◆ Based on distinctiveness, relationship is one of relative equality;
- ◆ Result is non-competitive federalism.

INTERGOVERNMENTAL RELATIONS cont

- ◆ Principles of cooperative government:
 - ◆ Unity. All interests are subject to the well-being of the nation.
 - ◆ Decentralisation. The existence of spheres with their respective interests respected in Constitution.
 - ◆ Cooperation in mutual trust and good faith.
 - ◆ Fostering friendly relations. Not possible to legislate but compliance with other duties will foster such relations.

INTERGOVERNMENTAL RELATIONS cont

- ◆ Information. Sharing of relevant information on matters of common interests.
- ◆ Consultation on matters of common interest.
- ◆ Coordinating actions and legislation through intergovernmental for a.
- ◆ Assisting and supporting one another.
- ◆ Adhering to agreed procedures.
- ◆ Avoiding legal proceedings.

FISCAL DECENTRALISATION

- ◆ Municipalities have taxation and borrowing powers subject to national legislation:
 - ◆ Taxation cannot “unreasonable prejudice” national and economic policies and activities.
 - ◆ Borrowing cannot fund budget deficits.
- ◆ Intergovernmental transfers
 - ◆ Entitled to “equitable share” of national revenue.
 - ◆ Grants on (un)conditional basis.



**VIVA LOCAL
GOVERNMENT !!**