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
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.
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.
1996 Constitution establishes local government as a sphere of government
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.
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.
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 !!