Politics and conflicts in South African cooperative government: analysis of the discursive issues under the 1996 constitution

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**Abstract**

Globally, there is welf of evidence demonstrating that cooperative government is likely achievable where the same political party in charge of the national government is also a power holder at sub-governmental level. This has been the experience of the South Africa’s African National Congress (ANC) which has been in charge of the national government and the majority of provinces for 30 years, except in few instances where opposition parties are in control. Since the ANC lost Western Cape (WC) province to the Democratic Alliance in 2004, cooperative government has been a difficult practice due in part to party ideological differences. The contradictions often play out at executive levels but the silence of legislation, in as far as ensuring that cooperative government is achievable for common goal, necessitates attention. This non-empirical article refers to numerous cases of intergovernmental tensions, with the intention being to debate the discursive issues under the Constitution of the Republic of South Africa, 1996 (hereafter referred to as 1996 Constitution). Following comprehensive reflection, the article concluded that the extent to which national government is showing inherent inertia to work with WC and other areas where the DA is governing has been perpetuated by the lacuna in the current legal framework, but most of the conflicts have much to do with party ideology and politics of the ‘left’ where parties just oppose executive decisions and programmes not on substance but because they are official opposition. As a result, the continuation of these actions stands to bedevil the national and provincial executive relations in a decentralised South Africa.

**Introduction**

Cooperative government refers to a system of government that requires the three spheres of government to function as a single, unified system, collaborating rather than competing (Shopola & Mukonza, 2020). Intergovernmental relations, on the other hand can be defined as the set of multiple formal and informal processes, channels, structures and institutional arrangements for bilateral and multilateral interaction within and between spheres of government (see Simeon & Murray, 2001; Malan, 2005). These two concepts appear to be different in their descriptions, but they are used interchangeably by various scholars and in this study. The justification is derived from Chapter 3 of the 1996 Constitution where cooperative government and intergovernmental relations are collated in the same principles, meaning that they are inseparable in operation, therefore a failure to achieve one will automatically mean a failure to achieve the other.

At thirty (30), the democratic South Africa is still experiencing a wave of intergovernmental tensions especially between the executives at national government and Western Cape province. This article argues that despite the law textually portraying South Africa as a unitary democratic state with federal characters, it will prove very challenging to curtail the recurrence of intergovernmental tensions and conflicts precisely because of the discursive issues found in the 1996 Constitution. These issues include the attenuated form of administrative discretion accorded to the upper spheres of government including the national executive to deal with failures or leadership problems at provincial level.
This article referred to numerous cases of intergovernmental tensions between national government and the Democratic Alliance led WC province and some municipalities in order to debate the discursive issues under the 1996 Constitution and related implications on cooperative government and public service delivery. In terms of methodological orientation, a qualitative approach was adopted whereby relevant literature materials were thematically sampled and studied in order to complement the scholastic argument made in the article. According to Fousche and Roestenburg (2021), qualitative approach can be applied in studies that are both empirical and non-empirical and in cases of the latter researchers rely largely on the existing literature materials. Therefore, the non-empirical materials in this article included legislation, scholastic reports, books, academic journals and news sources generated from reputable internet sources.

**Federalism: A Theoretical Exposition**

The federal theory seeks to explain key elements, origins, formations, and success of federalism (Watts, 2001). As Watts observes, there are three ways in which federalism manifest itself in a state, it does so through; (1) aggregation of the former separate subunits; (2) devolution from its former unitary state; and lastly (3) is through a combination of aggregation and devolution (Watts, 2008). Federalism, according to Freeman (in Burgess, 2006:13), is therefore a product of political thought that draws an interconnect between “the system of large states and the system of small states. However, both the large states, the small states and the intermediate federal system may assume a democratic, an aristocratic, or even monarch form of government”.

In terms of origins, federalism can be hinged on countries like the United States, Canada, Australia and Switzerland. These countries hold considerable experience on federalism and have contributed greatly to its theorisations. Federalism, just like other state architectures or systems, has worked in some countries and failed in others. United States, Australia and Switzerland are counted among the countries where federalism has been effective in as far as demonstrating durability as well as realising original objectivity. According to Franck (1968) measuring durability of federalism is relatively simply as it concerns in the main, an assessment on whether the system still exist or not, but measuring achievement is something not to underestimated as countries have different contexts in their federal arrangements. Contexts range from political, economic, social, cultural etc. Burgess (2006) acknowledge that it is for these contexts that makes federalism difficult to understand and ultimately practice it. Burgess (2006:14) further recorded the following criticism of a federal system:

i. Weakness in the conduct of foreign affairs.

ii. Weakness in home government, meaning, deficient authority over the component states and the individual citizens.

iii. Liability to division into groups and factions by the formation of separate combinations of the component states.

iv. Liability to dissolution by the secession or rebellion of states.

v. Absence of the power of legislating on certain subjects wherein legislation uniform over the whole union is needed.

Many of these weaknesses are already visible in some federal states like Nigeria and Ethiopia in Africa, but the quasi-federal states too, South Africa in this case. The context of Nigeria is an interesting one, because before the federal system Nigeria was established as a unitary state by the British (Fortes & Evans-Pritchard, 1940). Various segments of Nigeria had to be merged for economic reasons and as independence approached, questions of regionalism, ethnicity, religion and economic dominated the political negotiations for self-determination (Gebeay, 2015). These imprints continued even in the post democratisation of Nigeria and have continued to make the federal arrangement difficult. Below let us explore South African context.

**Contextualisation of The Systems of Government Influencing South Africa and The Continued Debate on Federalism**

Historically, South Africa is marked by two distinct periods. The first period is 1910 to 1993, and the second is from 1994 to Date. Essentially, what distinguishes the two periods is fact that –as opposed to the post 1994 democratic government, the mission of government during pre-1994 was that of ‘divide and rule’ whereby through repressive laws the majority African populations was denied voting rights in favour of the White minority. This resulted in racial segregation and tensions, oppression and exclusion of Blacks, Indians and Coloureds groupings during the State’s decision-making processes. Despite the above, the concept federalism was notably a powerful aphorism that continued to dominate South African constitutional debate in both the periods (see Khan, Madue & Kalema 2016). A reason for this, as Schwella (2016) accentuate, is the contestable nature and reality associated to the concept’s application in South Africa. So, if there is one question that preoccupied scholars and policymakers alike during pre and post 1994 at least according to Simeon and Murray (2001) is the question *Is South Africa a unitary or federal state?*

The period 1910 marked the birth of the first Constitution in South African land known as the ‘Constitution of the Union’. This Constitution is a product of the two colonies, the Dutch and British that came together to form a Union Parliament (Nkuna & Shai, 2017). With no pronouncement made through the constitution whether or not South Africa is a unitary state, other scholars believe that the very nature and supremacy of the Union Parliament led to the conclusion that South Africa is a unitary state (Jennings, 1962 & VerLoren, 1967 in Bekker, 1979). This is despite the involvement of the British Kingdom in the affairs of the Union because, at the time, SA was not yet an independent republic. It can noted that South African parliament only became sovereign or supreme post 1948, in particular through the 1961 and 1993 Constitutions. However, by contrasting union and federation, Jennings (1962) correctly argues that it is only a unitary state that believes on the supremacy of the central authority and not federation. This view is cemented
by Mello and Maserumule (2010) who confirm that a unitary state is one that centralises authority in the hands of a central or national government as opposed to the federal system where decentralised authority is guaranteed. In that regard, for the reason that power was vested with the Union Parliament, some scholars have aptly concluded that a decentralised unitary state is the system South Africa was based on (Jennings 1962 & VerLoren 1967 in Bekker, 1979).

Contrary to above and according to May (1955), any conclusion that sought to portray South Africa as a purely unitary state is shortsighted as there are numerous attributes related to federalism. The latter argued in line with the South African Act of 1909 which essentially empowered provincial councils to exercise discretion in certain matters of concern (May, 1955). There were four established provinces for administrative purposes, namely, Transvaal, Natal, Orange River Colony, and Cape Colony. A reference can also be made to Section 114 of the Constitution (1910) which basically restricted Union Parliament from interfering in the affair of provinces, except by petition to Parliament by the provincial council concerned (Bekker, 1979). To mention few, the Black Authorities Act of 1951 which allowed for black people to be organised in tribal or community, regional and territorial authorities is an example par excellence of a federalist state. From this few constitutional and historical notations, it appears that South Africa was governed through a hybrid model that combined elements found in both unitary and federal state. According to Khan et al (2016), the ideological orientation of government was done through the three-sphered model (national, provincial and local).

**Going into The Democratic Dispensation – Unnailing The Uncertainties of The African National Congress with A Devolved System of Governance**

A consideration of the position of ANC as a ruling party in government on a number of issues including ‘provincialism’ or decentralisation is crucial for this study. This is because, as Maserumule (2012) charges, the ANC dictates the ideological thinking of contexts and is responsible for ascribing the contextual schema of its historical, institutional and cultural contexts. In other words, its attachment and attitude towards a certain phenomenon (federalism in this case), to some extent, might assist in understanding specific practicalities or contextual realities. Furthermore, it is unarguable that the history of the democratic government in South Africa is shaped by the ANC – a party that won majority votes in the first democratic elections in 1994. Its involvement in the pre-1994 negotiations which produced an interim constitution was important as it arguably represented the majority black population. Other parties that represented the black population include IFP, Azania People’s Organisation (AZAPO), and African Christian Democratic Party (ACDP) etc. As opposed to parties like National Party (NP) and Chief Mangosuthu Buthelezi’s IFP that vied for a “Federal Republic of South Africa” (Egna & Tylor 2003: 104), the ANC – guided by its strategic policy documents such as the 1969 Morogoro strategy and tactics and the 1992 Ready To Govern, the ANC envisioned a united democratic South Africa (ANC: Online; South African History Online (SAHO): Online).

In the build up to the new democratic dispensation between 1990 to early 1994, the negotiating parties have had to discuss the same old question again Is South Africa a Unitary or Federal State? (Yitirmesi 2018). Whilst one section was adamant to divide the country into federal states with a view to realise among other things cultural identity, traditional freedom through autonomous sub-governments, the other section however, envisaged a unitary form of government that will unite South Africans and basically accommodate interests of the previous ruling minority (Sithole, Undated: online; Inman & Rubenfield, 2005).

The ANC, however ended up acceding to the call over devolution of power – recognising some basic federal elements such as having legally establish sub-political entities, and this is apparent in the Interim Constitution (1993) which provided for three spheres of government namely, national, provincial and local (Yitirmesi 2018). According to the latter, this process also resulted in the inclusion of the system of traditional leadership in the democratic governance set-up. While some of the negotiated federal principles made it up to both the Interim Constitution (1993) and final 1996 Constitution, some did not make it to the final (Simeon & Murray, 2001). For example, the wish to have independent provincial governments as strongly proposed by IFP was not acceded to but cooperative government with distinctive, interdependent and interrelated spheres as seen in sections 40 and 41 of the final 1996 Constitution was the position instead.

**More Contradictions Emerge as ANC Embark on Managing Tensions and Political Differences Post 1994**

As the abstract ‘decentralisation/devolution’ became reality through the 1996 Constitution, it meant that sub – national governments, that is 9 provincial governments and 257 municipalities, will have some political, legislative, administrative, and fiscal autonomy to operate within their constitutionally protected physical boundaries. This much is clear in Sections 1, 2, 104 and 143 of the 1996 Constitution where it is stated that “South Africa is one, sovereign, democratic state”, with one supreme constitution in the entire republic, and that where provincial constitutions are passed, they shall be consistent with the main constitution.

As a result, the WC province under Democratic Alliance (DA) was the first provincial government in the democratic dispensation to pass its own provincial constitution and this was followed by the KwaZulu Natal province in 2006, which at the time was led by the Inkata Freedom Party. Notably, the logic behind these provincial constitutions follows the party’s ideological orientation which, as observed, both parties (the DA and IFP) embraces federalism as opposed to the unitary position of the ruling party (the ANC) that is at the helm of the state. It suffices to indicate that these differences on ideology is not anti – democracy. The problem lies in the extent of their application and delimitations thereof, have not been clearly defined under the 1996 Constitution.

In 2007, exactly 13 years within democratic South Africa – the ANC in its 52nd Policy Conference held at Polokwane the capital city of Limpopo Province, for the first time resolved on the possible abolition of provincial governments citing its initial affection to a
pure unitary state and the inertia to fully realise development under the federal – type provinces. Expressing the dislike [of provincialism or federalism], the ANC asserted that:

*Accepting a federalist system was a difficult pill of the ANC to swallow. It was made a little easier by two visits of delegations of constitution – writers made to Germany – a culturally homogenous federation that emphasises cooperative and consensual decision making and provincial implementation of national legislation. Indeed, the South African system draws heavily on the German model, most obviously in its conception of provinces as primary administrative bodies, implementing legislation that is agreed nationally, and in the design of NCOP [National Council of Provinces]. The perceived centralism of German federalism alloyed the worst fears of the ANC negotiations. A senior member of the ANC’s negotiation team reported back after a visit to Bonn that Germany ‘is not federal at all’ (Simeon & Murray 2008 cited in Schwella, 2016: 90)*

A move towards abolishing the provinces and adopting a preferred system of governance would basically require a two-third majority in the national assembly – something which the ANC last had in 2008. A similar call was made in 2012 and 2017 ANC policy conferences where a proposal was made for provinces to be reduced from 9 to 6 (ANC, 2012: Online). Based on the above historical events, one can safely conclude that the ANC has never favoured a federal state and that the future of provincial governments under the ANC led government is not certain. The ANC’s position, as strongly emphasised by the former cabinet member Collins Chabane (2009) and former NCOP chairwoman Nomaitndia Mfeketo (2012), is that South Africa is a unitary state. This may as well be extended to explain what Simeon and Murray (2008) terms ‘a reluctant federalist’ that the ANC has become, meaning that the party is not committed to a federal government; owing to poorly articulated roles of provinces and difficulties in managing provinces that are governed by a different political party, like in the WC.

**Contextualisation of This Study in The Existing Literature**

The current article’s *loci standi* and its analysis follows decentralisation as an encompassing paradigm for cooperative government, and intergovernmental relations. These are interrelated concepts, and their application takes different forms depending on the paradigm or philosophy or systems influencing state administration. The concept of decentralisation has been subjected to scholarly and theoretical interpretations throughout ages and different outcomes emerged (Huran, 2019; Elmi, 2015; Bancati, 2009), but one which stood out for this study is by the United Nations development Programme [UNDP] (2009) which denotes that:

> Decentralisation or decentralising governance refers to the restructuring or reorganization of authority so that there is a system of co-responsibility between institutions of governance at the central, regional and local levels according to the principle of subsidiarity, thus increasing the overall quality and effectiveness of the system of governance, while increasing the authority and capacities of sub-national levels.

It is apparent from the above definition that the notion of devolution, its practice and the associated contrivances of governance are all parts of the wider mosaic of democratic decentralisation. However, the breadth of this definition clearly conjures the complexity and multifaceted kind of practice decentralisation turns to be. Hence a considerable number of scholars have since acceded to Rondinelli (1981) and Freidmen (1983)’s proposed *pareto* approach wherein the concept of decentralisation is broken down into four categories for purposive understanding, namely political and legislative, administrative, and fiscal decentralisations (Oakley 1995; Mohan 2001). Under this typology, political decentralisation includes devolving legislative powers to the sub-national governments i.e., to pass relevant legislation affecting citizens within a sub-state or province in the case of South Africa, while administrative decentralisation includes transference of limited policy making, planning and management powers from central/national government to sub-governments (provinces and municipalities). On the other hand, fiscal decentralisation refers to the [limited] devolution of economic powers to sub-governments to allow local authorities to raise and manage own revenues and other economic resources (Moyo & Neube, 2014: 291-292).

As observed by Ekiru (2016:2), many countries across the world including those in the Eastern Europe and the former Soviet Union have used decentralisation to pursue political transformation and correctly so from the centralised mode of government where only the few select participated in a decision – making to a devolved system where many people are able to access government and participate in its decisions. In Africa, decentralisation is increasingly viewed as a possible long-term solution to address issues such as sustainable development, democracy, growth, inequality and poverty (Elmi, 2015). Literature further revealed that the main reason why countries such as Sri Lanka, Nigeria, Kenya, and South Africa (partial) preferred decentralisation was due in part to ameliorate the ethnic and regional conflicts (Huran 2019; Abidoye 2015; Anwa & Theresa, 2014). This due to the countries’ experience with racial, ethnic, regional and tribal violence. One key finding all these studies including Moyo and Neube (2014) who reviewed the practice of devolution in Zimbabwe, and Shah et al (2014) in Uganda, is that successes of decentralisation are overweighted by challenges ranging from power allocations between organs and spheres of government, revenue distribution, management and supervision of sub-governments, policy making between states and conflictual intergovernmental relations. Equally important is the issue of political and power dynamics in the ruling political party. To decentralise or not to decentralise is partly influenced by who to deploy and the relations between the deployer and the deployees. In the context of South Africa, it may even be complicated by the fact that other provinces may not be in the control of the national ruling party (ANC). Decentralising absolute powers to the provinces may not be desirable for the ANC because of the political/power dynamics. This is in relation to the WC of the DA, and KZN which was once in the control of the IFP.
Politics, Conflicts, and Cooperative Government in a Decentralised System

The African Peer Review Mechanism (APRM) concluded that decentralisation, as opposed to centralisation, is one of the political systems that have proven to be effective in promoting good governance in most African public administrations. The report further emphasised the imputes of politics in promoting unity and co-cooperativeness and intergovernmental relations in order to make decentralisation work. What this means is that the success of decentralised governance system is strongly dependent on the ability of the political executives to manage among other things contradictions and conflicts between central and subgovernments, and a lot of scholars agree with this conclusion (Shopola, 2022; Munzhedzi, 2020).

Powell (2015), who reviewed IGR in South Africa, seems to believe that whatever happens at pollical level have little to no impact on cooperative government because the real coordination work is done by officials in the various technical IGR structures and outside them. But the question is, who are these officials and at whose behest are they serving if it’s not their political principals? Powell’s understanding is not far from Wright’s basic interpretation of IGR which views IGR as nothing without the officials who’s the success of IGR is dependent on. The official’s buy-in is important but as Mathebula (2011) added, it might so well be difficult to ensure policy realisation through a mere interaction if such excludes transactive tools that can be used to bind the officials towards a common goal. Where Powell’s argument falls short is the failure to recognise that bureaucracies and public policies are politically inclined to the party in charge of government. This is to say that the governing party dictates the ideological direction of policy contexts including how the bureaucracy should approach IGR.

A primary study conducted by Shopola (2019) in Mopani District Municipality found that some of the decisions taken in IGR technical committees were always overridden by Council decisions, which rightly elevates the status of political decisions higher than that of DIF. Hence the suggestion that a legal redefinition of DIFs in as far as their distinction with councils and the enforceability of decisions taken at that level (Shopola, 2022).

Analysed from legislative framework, particular the textual interpretation of section 3(1) of the Intergovernmental Relations Frameworks Act 13 of 2005, it is clear that the applicability of IGR is only to the executive component of the spheres of government. Dlanjwa (2013:16) emphasised this point by stating “even though IGR is a system inclusive and applicable to all spheres and organs of the state, the IGRF Act focuses on regulating IGR in the executive component of spheres of government” as well as defining the role of parliament, provincial legislatures, the courts, and chapter 9 institutions in promoting IGR. Moreover, Powell’s conclusion could be informed, correctly so, by some practical observations that have not been fully tested theoretically, especially in the context of bureaucratic politics theory which edifice better the questions of politico – administrative questions.

James Q. Wilson’s (1989) article titled Bureaucracy: What Government Agencies Do and Why They Do It, provides even greater theoretical insights towards understanding the influence of politics on bureaucracies and the behaviour of bureaucrats in the context of goal realisation with civil service. Wilson rejects the notion that goals driving officials’ behaviour are wholly, or even largely, determined by legislation, which in the context of Powell’s argument is IGRFA, but instead he argued that the behaviour of officials is often purposive and at most inclined to the philosophical dictates of the executives at a given particular time. Of course, this kind of conformity or inclination is not blind to unlawful injunctions but is indeed limited to the overall achievement of a policy and immediate goal realisation (Wilson, 1989). Therefore, it can only be fair to argue that officials as IGR coordinators have a greater role to play in ensure success but that cannot come to fruition in the absence of executive support, politicians in other words.

In a paper that reviewed the federal Nigeria’s governmental relations, Abidoye (2015:56) described the negative impact of ‘toxic’ political relationships between political figures on intergovernmental relations. Abidoye cites the decision by the federal government under President Obasanjo to direct the Federal Ministry of Finance not to disburse funds to a number of sub-governments (Lagos, Jigawa, Niger among others) which ended in the Supreme Court. Lagos in particular argued that the withholding of funds was illegal but most importantly, it an impediment to the functioning of local governments and implementation of policies at states level. The author concluded that “most of the controversies that arose in the area of governmental relation in Nigeria can partly be attributed to constitutional imperfection and flaw” (Abidoye, 2015:58). This review is crucial in as far as supporting the gist of arguments pursued in the current paper and it is of particular interest because it precisely explored the role and actions of political executives in forging cooperative government.

In another review, Woolman (2009) explored a similar matter but focused on the internal relations between and within provinces in South Africa. Interestingly, the author correctly problematise grey areas in the legislative framework governing IGR and further characterise these as ‘the lacuna in law’ to argue a point that the Constitution of South Africa and the IGRFA in their current formats cannot regulate horizontal relationships between departments within a province. He further argued that the reason provincial departments experience relentless intra-conflicts is because “provincial departments lack autonomous legal personality” (Woolman, 2009:67). This argument is solid, but it would seem that intra-provincial relationships in South Africa have thus far been productive and are characterised by less conflicts as compared to national – provincial and provincial – local relations. We hold a suspicion that such easiness is also guaranteed by fact that provincial departments are headed by politicians who serves at the behest of the Premier, and in most cases, these will be members of the same party. Cementing the above view, Stytler (2015:313) correctly opined that “the practice of intergovernmental relations is informed by and embedded in the broader political context of one – party dominance”.

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Findings on The Re-Emergence of Power Contestations in the Quasi

Federal South Africa, Thirty Into Democracy: A Dissection on Few Selected Cases

This section refers to the cases conjuring clear power contestations that are bedevilling cooperative government and IGR in South Africa, 30 years into democratic decentralisation. It is clear from the consulted literature that decentralisation has always been anchored on the good cause, but as this paper argues, most of the prevailing tensions are borne out of differences in political party ideologies and nemesis which their ramifications turn to bedevil the principle of co-operative government and service delivery.

Before venturing into the said case studies, perhaps a brief picture on the country’s source of political dynamics that affect IGR and cooperative government presently is necessary. The ANC has been in charge of the national government since 1994. From 1999, the party has since lost the Western Cape which is one of the strategic provinces in the country to opposition party Democratic Alliance. KwaZulu-Natal was another province that the ANC lost to IFP but gained it back in 2009. The losing pattern could also be seen in local government as early as 2006 with the ANC losing City of Cape Town to a DA led coalition. Currently, the party failed to maintain its long-sustained majority in local elections (45%) – losing in five out of eight metropoles and leaving over 60 local hung councils.

These political – sponsored changes in various administrations have unfortunately exposed and frustrated the principle of cooperative government instead of promoting it, and the citizens often bear the ramifications in the end. It is clear that on numerous occasions IGR principles have either been intentionally disregarded or misunderstood by political heads of the spheres. Few examples can be referred in qualifying the political spillages into cooperative government paradigm. In 2018, the Western Cape government under Premier Zille announced that it will have its annual State of the Province Adress (SOPA) which traditionally follows the State of the Nations Adress (SONA). This led various objections and insinuations from opposition caucus (Ngcobo, 2018). Styler and Pal-Ghai (2015:315) argue that Zille has always been political target of the ANC due to DA taking over City of Cape Town in 2009 and Western Cape in 2009, hence they always “sought to clip her wings”. Nevertheless, on SONA and SOPA or SOCA addresses we argue that that although the sequence and chronology of makes sense in the body politic of South Africa, it is however not expressed anywhere in the Constitution nor legislation of the country.

This means that provincial governments do not have to wait for national directive in order to convene its annual SOPA. This is a case of party nomism practiced in a wrong platform, IGR space. It is illogical to present SOPA ahead SONA, especially recognising that SONA informs the national budget as well as directing actions of the unitary government to a particular goal. To the extent that legislation is silent the WC government cannot be faulted for the ‘discursiveness’ lest we forget that from the time DA took charge of the Western Cape, one of their self-imposed duty has always been to challenge the “constititutional space of provincial powers, which has provoked strong opposition from the national government” (Styler & Pal-Ghai, 2015:315).

Another problematic area is the relationship between national – provincial executive heads. The 1996 Constitution empowers national government to intervene into provincial administrations through section 100, and the provincial to local through section 139 (Munzhedzi, 2020), but does not empower President to take action against the provincial leaders where there is non-performance or in cases of poor performance. This is not surprising because the texts of the 1996 Constitution in Chapters 3 and 5 are also silent in as far the President taking reasonable action to address questionable leadership problems at a provincial level. This was apparent during the removal of Supra Mahumapelo as the premier North West Province in 2018 where President had to descend to the province only to address the matter through ANC provincial executive committee (PEC).

Despite the gravity of the matter and the exigency, it is clear that President Ramaphosa would not have had the courage to descend in that province if this incident was occurring in a province that is led by opposition party, i.e., WC. In addition, this constitutional grey area in as far as President’s role in provinces fizzes the unitary status and powers of the central government. Hence, premiers like the DA’s Allen Winde hold the idea that the public management performance demonstrated by opposition – led provincial authorities is incomparably sufficient for more power devolution than to have critical functions in the hands of under-performing national government. One of the many direct enchantments to this particular argument was apparent in the middle crisis management in 2021, where the Western Cape decided it wants the permission to procure corona virus vaccines for its citizens, citing poor management and lack of transparency by national government (Winde, 2021).

The foregoing spillages that have been unambiguously captured by the former Premier of Limpopo province and Deputy Minister of Correctional Service, Ngoako Ramathlodi who said that “the problem, if there is any, is that the 1996 Constitution expressly legislates for both conflict and cooperation…. On the one hand, it allocates well – defined domains of responsibility [to each sphere], while on the other hand, it provides for the supervision of [one sphere by another]” except in so far as the courts have the final word on all constitutional matters (Ramathlodi, 2013:37). As things stand, these constitutional provisions have not been able to preclude spill – overs from politically-inspired ideological contestations that, at times, affect government fundamentals especially from the perspective of intergovernmental relations and co-operative government.

On the Russia Ukraine War

South Africa has adopted a non-alignment position on the ensuing Russia-Ukraine war (RSA, 2022). However, the national government’s assessment and its reaction to these particular geo-political developments which includes the warrant of arrest issued
by the ICC [where South Africa is a signatory] cannot be ignored as they resulted in a rift between the national government and Western Cape province ahead of BRICS summit. The fact that the BRICS was hosted in the Western Cape - a province that is governed by a different party which is willing to execute the warrant of arrest brought to the fore questions of intergovernmentalism and the role of national and provincial governments in handling geo-political matters within the unitary South Africa. The contradiction on this matter, which ended in Gauteng High Court, are documented and the DA-led WC won this case (see DA, 2023).

Apart from the judicial conclusions, this commotion has placed cooperative government practices to test. It seems there is linguistic gap in how the DA interprets IGR and how the IGRFA conceptualises the relationship between the spheres of government. The DA, on the one hand, understands IGR and cooperative government from the comparative federalism practice and theory, which is that each government has its autonomy and no government shall practice authority over another irregardless of position or status. On the other hand, the ANC which is charge of national government subscribe to IGRFA’s conceptualisation of relations between the spheres, which suggests a top-down hierarchy, resulting in what others call ‘coercive’ intergovernmental relations (Shopola & Mukonza, 2020; Styttler, 2011).

Still on the issue of BRICS, what seems to exacerbates matters is the differing political ideologies between the national ruling party (ANC) and the WC ruling party (DA). The ANC looks and relates with Russia in a totally different light as opposed to the DA which has no historical ties with them whatsoever. Emphasising policy at the time, the Minister in the Presidency Khumbudzo Ntshaveni questioned the status of provinces in respect to policing powers, she said “[we] don’t know how Premier Winde will arrest President Putin without police functions, and premier Winde can continue dreaming”. Indeed, Section 205 and 206 of the 1996 Constitution bestowed the powers of policing on the national government, with provinces only retaining supervision powers. In this case, it appears the WC government was going to use its formal and informal relations with the City of Cape Metro pole which is also governed by the DA to execute the arrest – something described by the ANC as ‘flip-flopping’.

Insisting on this improbable move was the Premier of WC Allen Winde whose response was that “There is no flip-flopping here in the Western Cape…and if Putin [the Russian president] comes here our law enforcement agencies will arrest him and send him to ICC”. On the one hand, the WC government plan in as far as effecting Putin’s arrest through sub-governments policing structures was unthinkable and had it happened it was going to affect negatively South Africa’s relations with Russia. Yet on the other, the national government’s position, which is influenced by the historical strategic relations that the ANC has with the Russian federation and Putin in particular, was precarious because it would have meant a disregard of international laws.

Again, in May 2022 the DA leader John Steenhuisen was in Ukraine on a fact-finding mission where he could be heard contradicting the position of the national government, saying “I am in Ukraine….to speak for my country. It is strongly in South Africa’s interest to stand with the free world and come out against Russian aggression” (Aljazeera, 2022). Based on this context and discussions above, it is clear that the DA generally defines itself outside the unitary arrangement of government and this can be hinged in the manner in which political decentralisation was done in respect to provincialisation, but to the extent that such has become a position of WC administration it can also be seen as executive uncooperativeness.

What is interesting though is that the majority of national – provincial IGR conflicts that the DA or WC filed with the judiciary, judges ruled in their favour. The IGRFA calls for organs of government to regard the courts as the last formal dispute resolver, but it is apparent that due to politics and differences in ideology there is very limited chance that any IGR instrument nor informal can be used to settle disputes between national government and Western Cape province if it’s not the judiciary. According to the school of thought that favours a quasi-federation form of state whereby sub-governments are understood to be extensions of the central government, provincial and local governments cannot act exclusively or decide contrarily to the central state policy and the supreme Constitution.

**On the ANC Led National and Provincial Governments Relations With The DA Led Municipalities**

It is rare that the national government would find itself in a conflictual relations with individual municipalities within local government as compared to provinces and municipalities, and national and provincial governments as covered in the above sections. The recent Hammanskraal water tragedy which resulted in over 100 deaths shun spotlight on the deep-rooted intergovernmental conflicts between the responsible DA led Municipality (City of Tshwane) and the ANC controlled national and provincial governments. The context, as explained by the City of Tshwane mayor, is that a multi-million tender was awarded to a contractor when the City was still under the ANC and as with many cases of corruption the contractor was paid without having completed the work.

The project was left unattended until the loss of lives happened, but the national government through Water and Sanitation Ministry on the other hand argued that the Municipality refused assistance. Essentially, the Ministry’s proposal was that the pending capacity on water related matters in Hamanskraal the City should allow provincial and national intervention through section 139 of the Constitution – a move that the DA views as an illegal power seizure in the name of cooperative government.

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1 Mayor of City of Cape Town vs Premier of Western Cape 2008(6) SA345
2 Minister of Police and Others vs Western Cape and Others 2014 (1) SA 1
3 Western Cape and Others vs State President and Department of Correctional service and NPA
According to the DA, this was a repetition of 2018 when Gauteng provincial government unlawfully placed City of Tshwane under administration which the decision was reversed by Court (DA and Others vs Gauteng Department of Cooperative Government and Human Settlement). We argue that the upper spheres appear to make it difficult for IGR by wanting to invoke constitutional intervention procedures instead of practicing their support functions. The 1996 Constitution allows national and provincial governments through COGTA to support technically, finically, or otherwise the local government without taking over municipal administrations. Interventions through 100 and 139 are often viewed as political takeover by the affected parties and this is the case even with ANC controlled municipalities (Shai, 2023; Shopola, 2023a:5).

It can be said that politics is major contributor to IGR conflicts and even if political action would result in stability such would always be viewed with suspicion rather than intervention by the affected party. In the local government space, the rivalry has reached a point that the DA withdrew their participation in one of the key IGR instrument, namely South African Local Government Association (SALGA), country wide on the reasons that the organisation is a strategic power management institution of the ANC. This is a consequence of political indifference which as a result have become a thorn in the cooperative government principles. Referring to the tensions between Water Ministry, Gauteng Province, and the City of Tshwane, Mahlatsi (2023) and Shopola (2023b:5) correctly characterised these as a consequence of unmanaged and strained relations between spheres of government which the citizens bear ramifications.

Conclusions

This review is important in so far as confirming the existence of ‘discursive’ issues within the current constitutional framework. The analysis zoomed into many issues that contradict the envisaged cooperative government framework including unlegislated spaces that affect national and provincial executive relations as well as the position and actions of the Western Cape province on the national government’s management of foreign affairs, and how such position can threaten the functioning of intergovernmental relations in South Africa. The article however recognises the fact that South African cooperative government model is not premised on coerciveness, and this is its weakness because critical governance actions gets delays and sometimes extenuated because of executive conflicts.

The authors further submits that the Western Cape government’s reluctance to fully embrace the constitutional principles of cooperative government which recognises the significance of the country’s unitary system, is not innocent as it precipitates from the discursive issues under the 1996 Constitution. More so, this reluctance and to some extent, competitive behaviour, re-introduces the debate on whether federalism was part of the ANC’s visualisation of the post-apartheid design of public administration, and the relevance of provincial authorities in the contemporary South Africa. This article departed from the premise that sought to establish the effects of the discursive issues in the current 1996 Constitution on the functioning and application of the three-sphered model as the anchor of intergovernmentalism and cooperative government.

Therefore, it is concluded that the current Intergovernmental conflicts and uncooperativeness between the power holders at national and WC are based on ideological differences and not much on personalities. It is understood from the findings that the DA supports federalism and because of that there is temptation to isolate WC from the unitary South Africa. Perhaps it would be advisable to adopt coercive measures flowing from the IGRFA and the 1996 Constitution to affirm the superiority of the national sphere and or upper spheres to administers reasonable administrative actions where necessary without resistance. In so doing, caution should be given to abuse of power and political purging like in Nigeria (Abidoye, 2015) where a president can just pass instruction or take a decision without considering the outcomes. An independent body chaired by a retired judge can be established on an ad hoc basis to deal with conflicts arising from executive relations and this will limit organs of state from burdening the court roll with IGR cases.

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