

# The challenges of co-operative governance in South Africa

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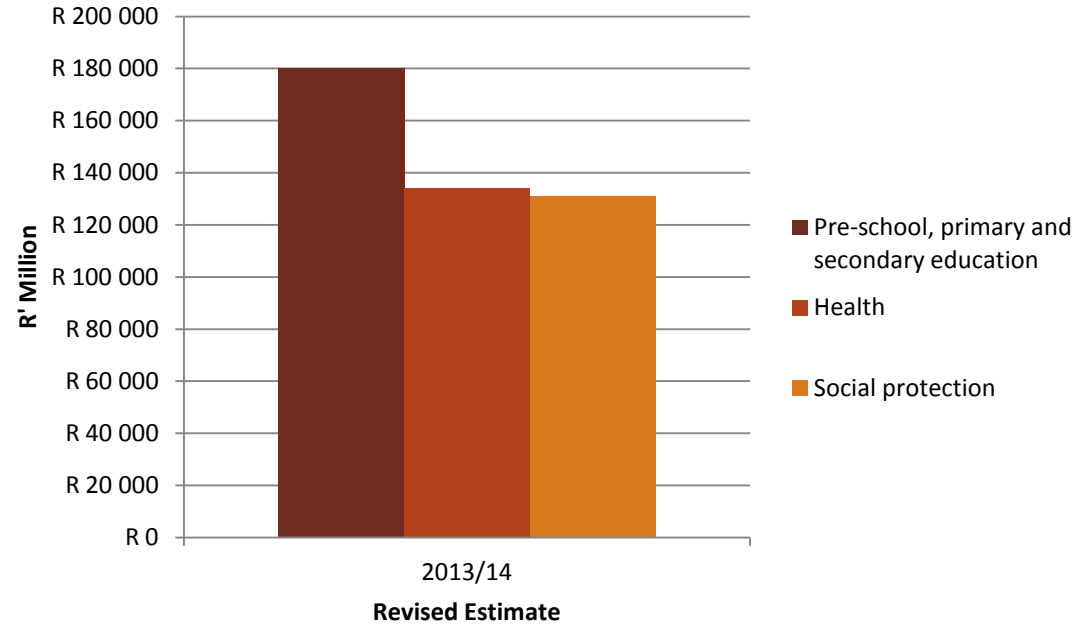
## Outline

- Introduction
- Constitution
- Instruments
  - Endorsing national priorities
  - Administrative oversight
  - Conditional grants
- Policy considerations

## Introduction

- Constitution – All citizens are entitled to certain basic rights
- South Africa is signatory to various international treaties
- Rights bestow an obligation on the state to provide specific social services
- And not because it is a benevolent benefactor
- Provision of basic services is not about morality or charity

## Introduction



- Government is not oblivious to its Constitutional obligations
- Government has allocated budgets and resources to realise these rights
- Not always translated into better service delivery for the citizenry

- Various reasons for the lack of basic services delivery
  - Insufficient resources
  - Lack of capacity
  - Corruption
  - *Inability of sub-national government to pursue national prerogatives*

- For example: Section 29(1)(a) stipulates that everyone has the right to basic education
- Provision of basic education is a concurrent function
- Concurrence bestows sub-national governments to deliver certain services (e.g. education, health, welfare)
- National government mainly responsible for policy formulation and oversight

## Introduction

- National government mainly employs three instruments to ensure that national priorities are attained at sub-national level
- Endorsing national legislation
  - Non-adherence to prescribed norms and standards
- Administrative oversight
  - Resolutions are not adopted
- Conditional grants
  - Specific priorities has not been alleviated
- Shortage of textbooks, children deaths in hospitals – National Minister called to account

## Constitution

- Constitution crafted in the context of reconciling a divided nation
- Section 40(1) - constituted as national, provincial and local spheres which are ***distinctive, interdependent and interrelated***
- Unitary state - also has federal features
- South Africa is a 'composite state' with two particular federal features
  - distribution of powers between the national and provincial spheres
  - a judiciary, specifically a Constitutional Court
- 'Co-operative government' requires collaboration between the three spheres of government



## Constitution

- Schedule 4 relates to concurrent functional areas
- Concurrence was prescribed in the Constitution to ensure a co-operative relationship between the spheres of government
- National government pursue policies of national interest to ensure uniformity in the provision of basic services
- Concurrence enables national government to set certain priorities which sub-national spheres must deliver
- Constitution prescribe principles of co-operative government and intergovernmental relations
- Section 41(3) provides guidance to resolve disputes that may arise between the various spheres
- Sections 146-150 provides greater clarity and the mechanisms to employ for the resolution of conflicts between national and provincial spheres

## Constitution

- Section 100(1): National government can institute appropriate action against a province or even assume responsibility of the relevant organisation if it fails to maintain essential national standards or meet minimum standards for rendering a service
- Action of last resort
- Co-operation of provincial counterpart achieved via three instruments:
  - Endorsing National Legislation
  - Administrative Mechanism
  - Conditional Grants

## Endorsing National Priorities

- Minimum set of standards for all citizens
- Concurrent competencies have legislated norms and standards to ensure minimum standards for the provision of services
- Provincial Department of Education has to provide funding for education in terms funding norms
- Children's Act (and attendant regulations) prescribe in detail minimum norms and standards
- Oblige provinces to provide the minimum services embodied in these legislations.
- Provinces are cognisant of these obligations but fail to deliver for a variety of reasons

## Endorsing National Legislation

- Too many prescriptions
- Insufficient funds
  - Provincial Equitable Share – Fiscal Equalisation
  - Unconditional transfer can be spent at the discretion of the provincial government
  - Relevant Acts specifies who is responsible for providing the service, but funding is the prerogative of the provincial executive who determines what gets funded
- National Treasury does not usually give what is actually requested or needed
- Financial implications of policy directives are unanticipated e.g. OSD

## Endorse national legislation

- Sometimes concomitant funding is not given
- No guarantee that the service will be sufficiently funded
- National government needs to recognise that sub-national does not have requisite funding nor the capacity to fulfil the responsibilities
- Unfunded mandates create tension
  - KZN and Eastern Cape were R310.9 million and R6.4 billion in 2011/12, respectively
  - Government should be wary of imposing further financial burdens
  - Not feasible to hold the provincial departments accountable
- Lack of funding renders the MEC powerless

## Administrative oversight

- Formal, semi-formal and informal platforms for engagement
- Formal
  - Intergovernmental Relations Framework Act, 2005

### Intergovernmental Relations Framework Act, 2005

Budget Council

MinMeCs

Presidents  
Co-ordinating  
Council  
(PCC)

## Administrative oversight

- National Legislation - Established in terms of specific Acts which allow the national minister to engage with his/her provincial counterpart.
  - Section 23 (1) (a)(iii) of the National Health Act makes provision for a National Health Council

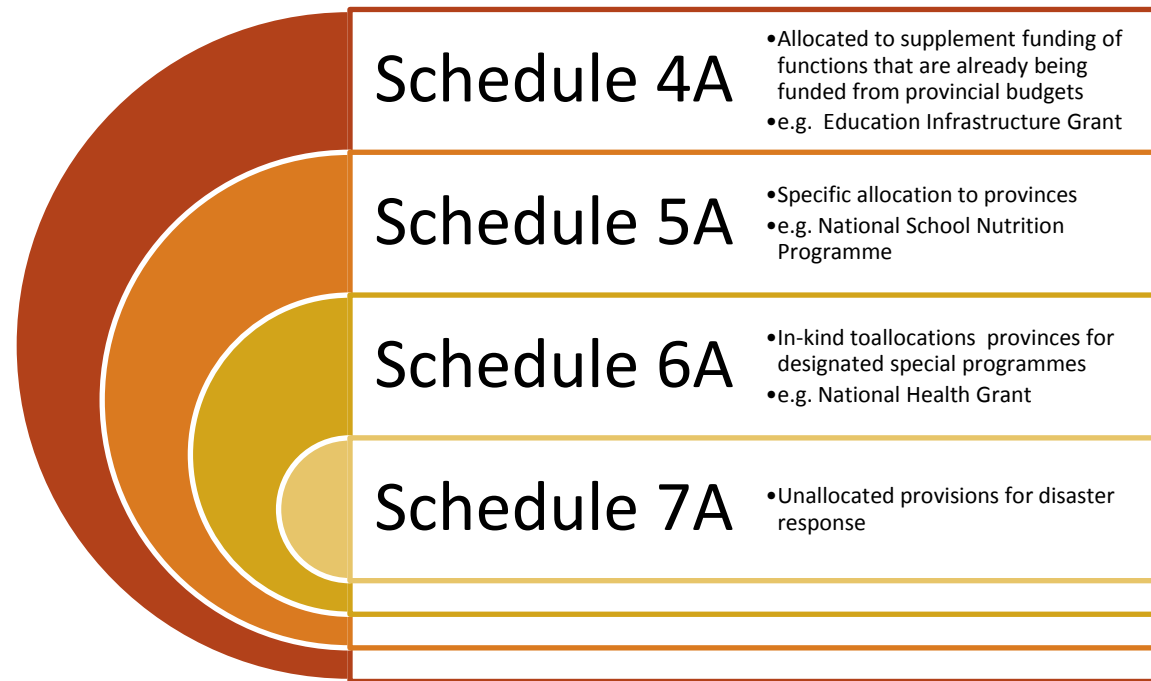
## Administrative oversight

- Semi-formal
  - Child Care Protection Forum is established in terms Section 5 of the Children's Act
  - Do not specify what form this should take
- Informal
  - Not legislated
  - Initiatives by the sector themselves
    - Task team formulated to deal with specific issues (e.g. OSD)
- Principal-agent problem



## Conditional Grants

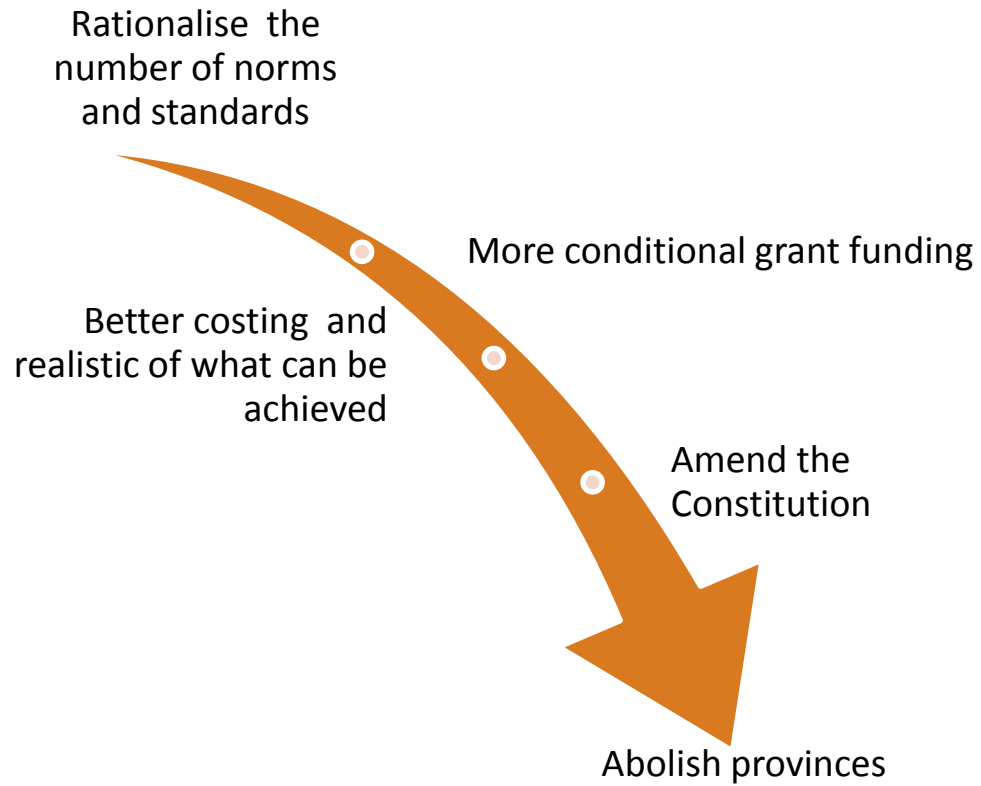
- Conditional grants ensure national priorities are funded at a minimum service level
- Funding and the outputs are specified in conditional grant framework



## Conditional Grants

- Provides uniformity and consistency in the delivery of public services across province
- But government should be circumspect not to undermine the provincial autonomy
- More control to the national minister, imposes administrative burden on provincial and national departments
- Cannot re-allocate funding to another province if a province underspends (Schedule 4 and 5)
- Unspent conditional grant funding is reflected in the Annual Report of national department

# Policy considerations



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