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GENERAL NOTICE

NOTICE 1770 OF *2006*

MINISTRY FOR PROVINCIAL AND LOCAL GOVERNMENT

INTERGOVERNMENTAL RELATIONS FRAMEWORK ACT, 2005
(ACT NO. 13 OF *2005)*

GAZETTE FOR PUBLIC COMMENT

I, Fholisani Sydney Mufamadi, Minister for Provincial and Local Government, acting in terms of section 47(1)(f) of the Intergovernmental Relations Framework **Act,** 2005 (Act No. 13 of 2005), hereby publish for public comment the draft guidelines contained in schedule 1 to this notice.

Any person wishing to submit comments on these guidelines should do so on or before 15 January 2007 at email address: thembaf@dplg.gov.za or fax number 012 **-334** 0903, or mail to: Private Bag **X 804,** Pretoria, 0001. For attention: Mr Themba Fosi.

FHOLISANI SYDNEY MUFAMADI

MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT

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Intergovernmental Dispute Prevention and Settlement

Practice Guide

Guidelines for Effective Conflict Management

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The Guidelines Deal with the Following Matters

Part 1 Introduction
Part 2 Principles of Conflict Management
Part 3 Avoidance and Prevention of Conflict
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Part 1
Introduction

1. Objectives of Guidelines

The objective of these Guidelines is to assist organs of state in the national, provincial and local spheres of government to manage conflict appropriately. They operate in the context of the constitutional mandate for cooperative government which requires governments to:

- facilitate co-ordination in the implementation of policy and legislation;
- cooperate with one another in mutual trust and good faith;
- avoid legal proceedings against one another; and
- try and resolve their disputes amicably.

The Guidelines advise, explain and illustrate for parties the use of the structures and institutions for promoting and facilitating intergovernmental relations and their use of the mechanisms and procedures for preventing and facilitating the settlement of intergovernmental disputes required by the Constitution and the Intergovernmental Relations Framework Act 13 of 2005. *This **Act** is referred to as **IRFA** in the Guidelines.*

Appropriate conflict management is achieved by:

- preventing disputes from emerging in the first place,
- intervening early when they do emerge, and, where early intervention does not succeed,
- dealing with them effectively, and
- containing them while they are being dealt with.

Good conflict management saves time and costs, reduces conflicts over time and maintains good relations between organs of state which interact regularly with one another.

2. Constitutional mandate to avoid litigation

The Guidelines give effect to the principles and provisions of the Constitution and to judgments of the Constitutional Court in interpreting the Constitution. They give effect to the constitutional requirement that all organs of state must, in complying with their duty to cooperate with one another in mutual trust and good faith, avoid legal proceedings against one another (section 41 (1) (h) (vi)).

The Constitutional Court has depicted this duty positively: organs of state must 'try and resolve their dispute amicably' *(National Gambling Board v Premier of KwaZulu-Natal* 2002 (2) BCLR 156 (CC) para 41). The Constitutional Court has held that 'the obligation to settle disputes is an important aspect of the co-operative government which lies at the heart of Chapter 3 of the Constitution' (*National Gambling Board v Premier of KwaZulu-Natal* 2002 *(2)* BCLR 156 (CC) para 33). This flows from the basic premise behind the constitutional provisions relating to the dispersal of powers between the spheres of government which, the Constitutional Court has pointed out, does not embody 'competitive federalism' but 'co-operative government' *(In re Certification of the Constitution of the Republic of South Africa* 1996 4 **SA** 744 (CC) para 287). This in turn entails that disputes should, where possible, 'be resolved at a political level rather than through adversarial litigation' *(In re Certification of the Constitution of the Republic of South Africa* 1996 4 **SA** 744 (CC) para 291).

Whereas adversarial litigation is rule-based, politics deals with interests and the accommodation of diverse interests – the very purpose of co-operative government. Political settlement through compromise and accommodation, which lies at the heart of non-judicial dispute resolution, reflects the letter and spirit of co-operative government. Political energy should be harnessed towards co-operative governance rather than be dissipated and wasted in conflictual relations.

The Guidelines thus give effect to the demanding constitutional requirement that 'every organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of the mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute' (section 41(3)). Courts may enforce this duty by referring a dispute back to the parties if the requirements of section 41(3) have not been met. The Constitutional Court has taken compliance with this duty seriously, holding that a court would 'rarely decide an intergovernmental dispute unless the organs of state involved in the dispute have made every reasonable effort to resolve it at a

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political level" (*Uthukela District Municipality and others v President of the Republic of South Africa* 2002 (2) BLCR 1220 (CC) par 14.)

3. Application

The Guidelines are applicable to all organs of state that are, in terms of the IRFA, obliged to comply with the provisions of Chapter **4** dealing with the settlement of intergovernmental disputes Organs of state include:

- National government departments and all organs of state falling within the national sphere of government;
- Provincial governments, provincial departments and other organs of state falling in the provincial sphere of government, but excluding the provincial legislature;
- Municipalities, municipal entities and other organs of state falling in the local sphere of government (section 239(a) Constitution).

An organ of state is any institution exercising a public power for performing a public functions in terms of any organ of state. This includes any school or governing body of a school.

3.1 Organs of state excluded from the operation of the IRFA

The IRFA excludes a number of organs of state from its application and, consequently, from the dispute settlement obligations:

(a) Parliament;
(b) The provincial legislatures;
(c) The courts and judicial officers;
(d) Any independent and impartial tribunal or forum;
(e) The state institutions supporting constitutional democracy, established by Chapter 9 of the Constitution, including the Electoral Commission;
(9 Any other constitutionally independent institution, including the Municipal Demarcation Board; and
(g) Any public institution that does not fall within the national, provincial or local sphere of government.

A public institution (or organ of state) falls outside the national, provincial or local sphere if it is not subject to executive control at the national, provincial or local level. For example, the determination by a governing body of a school of the language and admission policy of a school, is not subject to the executive control of either the national or provincial government. Thus, insofar as these functions are concerned, the governing body or the school does form part of any sphere of government (*Minister of Education, Western Cape v Governing* **Body,** *Mikro School 2006* **(1)** SA 1 (SCA) applying *Independent Electoral Commission v Langeberg Municipality* 2001 (9) BCLR 925 883 (CC)).

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3.2 Disputes excluded from the operation of Chapter 4 of the IRFA

Chapter 4 of the **IRFA does** not apply to a dispute arising from a national executive's intervention in a province in terms of section 100 of the Constitution, or a provincial executive's intervention in a municipality in terms of section 139 of the Constitution.

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Part 2
Principles of Conflict Management

1. The principles of cooperative government

The Constitution embodies principles of cooperative government. The principles are based on the belief that government is more effective, efficient and responsive to community needs when the individuals and organs responsible for exercising state power act in collaborative and cooperative ways.

Intergovernmental collaboration and cooperation require procedures, institutions and expertise to deal with disputes first through the political process. The Constitution, IRFA and other legislation establish the structural foundations for collaboration and cooperation. They are designed to achieve positive outcomes in policy-making and decision-making.

An important part of cooperative government is the avoidance of conflict and dealing with disputes constructively when they arise. Here the focus is on preventing or minimising the negative consequences of badly-managed conflict. This is recognised by constitutional provisions and by the principles, objectives, preamble and provisions of the Intergovernmental Relations Framework Act 2005.

2. Why there is a duty to avoid litigation

The constitutional principles and statutory provisions reflect, and in turn influence, international best practice in the contemporary management of conflict through alternative processes to the courts. The avoidance of litigation is an intrinsic part of cooperative government and constructive conflict management. It is more than a constitutional requirement in that many justice systems throughout the world manifest a new appreciation of the disadvantages of litigation in terms of delay, costs, the duration of hearings, the limited range of outcomes and the adverse consequences for future relations between the litigating parties.

Throughout the world, in domestic and cross border disputes, there is an increasing emphasis on the use of mediation, conciliation, arbitration and other alternative processes to the courts. These processes can deal with the real needs and interests of the parties, preserve good relations and generate creative outcomes, and do so in ways that are more effective in terms of time and costs. The alternative processes are particularly beneficial where there are continuing relationships between parties in conflict and they have to work together after the dispute is settled – as is the case with organs of state within a system of government.

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3. Best practice in conflict management

The Guidelines are based on the following factors which are reflected in best international practices in conflict management:

- ***Prevention*** is better than resolution in the case of most disputes because it is less costly and damaging to good relations. Prevention procedures and strategies should be used in anticipation of disputes developing and should continue to be used once disputes arise to avoid them escalating into more complex disputes.

- Where disputes cannot be prevented there are well-recognised ways of attempting to ***contain,*** settle and resolve them effectively and efficiently. These practices are referred to in the theoretical literature and are applied increasingly in many international contexts, for example by committing parties to a protocol of behaviour without external publicity.

- Most intergovernmental disputes are better resolved ***politically*** because they centre around policy choices and administrative discretion. They should be dealt with through political processes and should not be packaged as legal issues to be determined by the courts.

- Where possible there should be ***early intervention*** in disputes or in conflict situations which might develop into disputes. Early intervention entails that as soon as a conflict or dispute arises parties become actively involved in dealing with it. Normally early intervention prevents disputes from becoming, complex, intractable and costly to resolve. Thus where a dispute arises over a miscommunication or differing interpretations of legislation, early intervention might be able to resolve it by correcting the communication or developing a mutually-acceptable common interpretation.

- Deliberate steps should be taken to avoid the ***escalation*** of disputes and to ***de-escalate*** disputes which have already developed. A dispute escalates when additional issues arise, more parties become involved, experts are engaged on each side, parties demonise each other, the costs increase and the problem becomes larger than it originally was. Disputes often escalate into larger problems where they are ignored and are not dealt with by the parties. They can be made smaller and more manageable by appropriate early interventions.

- The best ways to prevent the escalation of disputes are to ***communicate early*** and accurately, to respond to communications promptly and comprehensively, to communicate directly with the other side and not through the media, to keep communications private and confidential, and to keep written or electronic records of all discussions, negotiations and decision-making.

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- Resources are always a consideration in dispute resolution processes and cost-efficiency is as important in dealing with conflict as it is in other areas of government activity. Some dispute resolution processes are more costly than others because they are more technical in nature, the parties lose control to professionals, experts have to be engaged on each side, there are disputes over evidence and information, there are procedural difficulties and delays, and the transaction costs of dealing with the dispute increase - for example officials in an organ of state become involved in dispute resolution instead of their normal government work. Cost-efficiency requirements dictate that organs of state should always attempt to use low-cost processes, such as direct negotiation between the parties in dispute, before they use higher-cost processes, such as arbitration.

- Where organs of state are engaged in dispute resolution activities they must continue with *business as usual* between them. They should isolate the dispute out from other administrative, financial, commercial, planning or implementation activities in which they are involved together, *and* they should continue to engage in these activities at the same time that they are dealing with the dispute.

- Parties involved in dispute resolution activities must use their best endeavours to maintain *good institutional and personal relations* with each other. This involves recognising the dispute as a problem distinct from the individuals and personalities involved and focusing on the problem and not the individuals and personalities involved.

- Even when no bad faith is involved, organs of state engaging in dispute resolution activities must still avoid surprises, negative publicity or other competitive tactics with each other as these activities could make it more difficult to resolve the dispute.

- Organs of state must focus more on their *interests and needs* than on their legal rights and obligations in managing disputes. While one organ of state may have a theoretical legal right over another, its real interests might be found in its non-legai needs and interests, such as financial efficiency, economic development, administrative convenience, public confidence and good relations with the other organ of state. When the focus is on interests the organs of state might be able to focus on factors that they have in common between them whereas legal rights and duties tend not *to* be shared in common.

- Organs of state should make use of *objective criteria* and independent assessments to evaluate possible outcomes. Where technical issues are in dispute the parties should attempt to avoid the use of partisan experts, such as accountants or engineers, and collaborate with each other over ways of jointly using the same independent and non-partisan experts to resolve a relevant accounting or engineering

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problem, as the case may be. In some circumstances it may be possible to use the 'minibus' technique where each side has engaged its own experts. Here all experts are invited to a joint gathering at which they are able to present their opinions on disputed issues, to ask one another questions, and to be questioned by the disputing parties or their representatives. At the end of the process they are required to draft a single joint report which indicates their areas of agreement and the issues on which they do not agree, and provides reasons as to why they disagree. The report is used by both sides to narrow the areas of dispute and to decide on appropriate procedures, such as arbitration or consultation of an independent expert, for resolving these issues.

- There must be ***time limits*** for every dispute resolution process and indicators for determining when to move from one process to the next, for example from negotiation to arbitration. Time limits can be agreed between disputing parties to provide reliable structures on which each side can depend in dealing with the other. Time limits provide incentives to prepare, they prevent disputes from being overlooked because of the pressure of other business, and they help to avoid conflicts from escalating through delay, inattention and attrition.

- Managing and resolving conflict should be regarded as specialised ***professional*** activities requiring education, training, assessment and recognition of status. Dispute resolution professionals can develop techniques in questioning, listening, summarising, advocating, bargaining, problem-solving, risk analysis, and the other skills appropriate for constructive and effective dispute resolution.

- There must be a ***systems,*** rather than an ad hoc, approach to the prevention and settlement of intergovernmental disputes. A systems approach involves accepting the inevitability of conflict and creating permanent structures, procedures and personnel for anticipating, preventing, containing and managing disputes effectively. The system should emphasise the use of low intervention procedures initially, and procedures involving high-intensity intervention only when other avenues have been tried. It also involves developing social capital in conflict management by capturing information and data and learning from past experiences in dispute prevention and settlement. A systems approach to conflict, as in other aspects of government, requires initial financial outlays but it can create cost efficiency in the long term by providing the basis for disputes to be dealt with more quickly and inexpensively.

Part 3
Avoidance and Prevention of Conflict

1. Statutory obligation

All governments and organs of state to which the Intergovernmental Relations Framework Act 2005 applies must, in conducting their affairs, seek to achieve the objectives of IRFA by attempting to avoid intergovernmental disputes when exercising their statutory powers or performing their statutory functions (section 37(1)(a) IRFA).

2. Avoidance strategies for different categories of disputes

How to avoid or prevent a dispute depends partly on what caused it in the first place. The following sections show how different preventive strategies can be used for the different factors which can cause disputes:

(a) Problems in communication or information

A conflict can be caused through inadequate communication, shortage of information, or lack of information-sharing. Where one party is not told about another party's proposed course of action in relation to new infrastructure developments, they cannot understand the situation and may attribute wrong negative motives to the party which made no disclosure.

Here avoidance strategies include the timeous sharing of information and signalling of plans on matters of common interest, which assist with consultation and coordination and the avoidance of misunderstandings, miscommunications and other breakdowns. The sharing must take place wherever another organ of state is involved in similar activities – the notion of \common interest' should be broadly interpreted and involves not only substantive issues, such as money, but also the ways in which conflict are managed and resolved and the relationships between individuals and between institutions.

The importance of preventive communication is a key principle of cooperative government and is reflected in section 41(1)(h)(ii) of the Constitution which requires that all organs of state must inform 'one another of ...matters of common interest.'

(b) Conflicts of interest over financial matter and other scarce resources

Conflicts can be caused where the financial, material or political interests of the parties are in opposition, for example, there are not enough resources to satisfy both of them and more resources for one means less for the other.

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Here dispute resolution best practice suggests that consultation on matters of common interest can serve to avoid these conflicts by providing the benefits of participation, publicity and transparency in decision-making so that parties recognise the legitimacy of the way in which conflict is managed, regardless of the substantive outcome. Consultation involves more than information-sharing – an organ of state must inform other interested parties about a proposed decision, invite them to comment, and consider their comments in good faith (section 1 IRFA). In making the final decision the organ of state must take account of the other's interests, but ultimately it makes its own decision in its areas of responsibility.

This dispute resolution principle is upheld by IRFA which requires that organs of state must take account of the circumstances, material interests and budgets of other governments and organs of state when exercising their statutory powers and functions (section 4(a) IRFA).

(c) Conflicts of power

Conflicts of power can arise out of the division of powers and functions among various organs of state. For example there could be disputes over what each organ of state can do in relation to the extent of a province's autonomy or the extent of the provincial government's supervisory powers over local government. In these situations the more powerful party can assert its strength to get its own way, but if it did so the dispute would not be dealt with in terms of the constitution or good dispute resolution practice.

Organs of state can attempt to deal with conflicts of power by agreeing on procedures in terms of which they will exercise their respective powers. This **does** not mean that one organ of state can prescribe when or how another should exercise its powers, for example in relation to supervisory functions. However, agreed procedures and structures for consultation, coordination and decision-making can manage power relations and avoid conflicts from arising.

Section 5(b) of IRFA upholds this approach in providing that organs of state must consult other affected organs of state in accordance with formal procedures, as determined by legislation, or accepted convention, or as agreed with them, or in the absence of formal procedures, consult them in a manner best-suited to the circumstances, including by way of direct contact or through any relevant intergovernmental structures. Section 5 (c) *of* IRFA provides that organs of state must co-ordinate their actions when implementing policy or legislation affecting the material interests of other governments.

(d) Distance and animosity between the parties

A minor disagreement can escalate into a serious dispute because the parties are on bad terms and one party allows lack of communication or misunderstandings to damage the other party, or it conducts the conflict

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publicly to generate political support. This creates further distance and animosity between the parties.

Distance and animosity can be minimised by having frequent meetings between parties, establishing personal relations among individuals involved, talking openly and constructively, hearing and acknowledging each other's concerns and problems, and fostering friendly relations. They can also be minimised through patterns of reciprocal support and assistance between organs of state.

These approaches are reinforced by section 41(1)(h)(i) of the Constitution which provides that all spheres of government must foster friendly relations with one another and by section 4(f) of **IRFA** which provides that organs of state must participate in inter-governmental structures of which they are members in efforts to settle intergovernmental disputes.

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Part 4
Organisational Requirements

Disputes, when they arise, can effectively be dealt with when organs of state put an appropriate organisational framework in place. The first element, required by IRFA, is to include dispute resolution clauses in intergovernmental agreements. The second is to develop in-house capacity to manage disputes effectively through the designation and training of a dispute settlement manager. The third is the composition of a panel of recognised facilitators.

1. Dispute resolution clauses in intergovernmental agreements

1.1 Policy considerations

In modern dispute resolution practice conflicts are prevented, managed and contained through the use of dispute resolution clauses in contracts, agreements, protocols and understandings.

Dispute resolution clauses identify in advance the steps to be taken in the event of a dispute arising between the relevant parties. Best practice in conflict management requires certainty of procedure before disputes arise. The certainty can be promoted by a dispute resolution clause which provides for notification of a potential conflict, communications, exchange of information, good faith behaviour and reasonable efforts to settle, and the use of mediation, conciliation or arbitration where the parties cannot negotiate their own settlement.

1.2 Legal obligations

Section 40(2) of IRFA requires that any formal agreement between two or more organs of state, including any implementation protocol or agency agreement, must include clauses providing for dispute-sefflement mechanisms or procedures. Such mechanisms or procedures should be appropriate to the nature of the agreement and the matters likely to become the subject of a dispute.

1.3 Contents of dispute resolution clauses

Where two or more organs of state conclude a service or agency agreement it should contain a dispute resolution clause which includes at least the following elements:

- Nomination of dispute resolution process or processes to be used;
- Description of a procedure for the selection of a mediator or arbitrator, if relevant;
- Time-lines for different parts of dispute resolution processes; and
- A commitment to act reasonably and in good faith in complying with the clause.

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1.4 Standard clauses

Unless there are good reasons to do otherwise the agreement should include the dispute settlement procedures set out as follows:

1. A party to this Agreement claiming that a dispute has arisen must, within 21 days of the date on which the dispute is said to have arisen, give written notice to the other parties to the dispute specifying the nature of the dispute.
2. Within seven days of receipt of the notice, representatives of the parties must meet with each other and endeavour in good faith to settle the dispute by informal negotiations.
3. If within 14 days of the dispute occurring it has not been resolved through informal negotiations the parties shall participate in good faith in mediation conducted by a facilitator appointed for this purpose by the parties or, if they are not able to agree on a facilitator, appointed by a designated third party.
4. The mediation will be conducted according to the directions of the facilitator and the parties will respond to all reasonable directions and requests of the facilitator in attempting to resolve the matters in dispute.
5. In the event that the mediation has not resolved the dispute within 21 days of its commencement the parties shall submit the. dispute to arbitration to be conducted by an arbitrator appointed for this purpose by the parties or, if they are not able to agree on an arbitrator, appointed by the designated third party. The arbitrator shall not be the same person who conducted the mediation.
6. The arbitration shall be conducted according to the directions of the facilitator and the parties will comply with all reasonable directions and requests of the facilitator. The facilitator will give a written decision, with reasons, which will be binding on the parties.
7. The costs of mediation and arbitration will be shared equally by the parties, unless directed otherwise by the mediator or arbitrator.

2. Disputes settlement manager

2.1 Policy considerations

The office of Disputes Settlement Manager recognises the specialised nature of dispute prevention, management and settlement, the need to have an identifiable official assume responsibilities in this area, and the desirability of providing a basis for review and improvement of dispute resolution practices. It provides a focus for responsibility in relation to the management of conflict and disputes and reinforces the systems approach to this aspect of government. It is a manifestation of the contemporary professionalisation of

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conflict management and dispute resolution and will bring government into international best practice in this area.

2.2 Designation db DSM

Each organ of state should designate an official to perform the functions of a Disputes Settlement Manager (DSM). In small organs of state the DSM functions can be performed on a part-time basis in conjunction with an official's other duties - for example, a municipal manager could be designated as the DSM for a municipality..

2.3 Functions of the DSMs

The functions of the DSMs are to:

2.3.1 Assume the initiative, on behalf of the organ of state, in respect of the preventive and avoidance activities referred to in the Guidelines.

2.3.2 Ensure compliance by the organ of state with national policy and legislation, provincial policy and legislation, and relevant implementation protocols or agreements on dispute-settlement mechanisms or procedures referred to in these Guidelines.

2.3.3 Develop for the organ of state a conflict management policy linked to its organisational mission and identify the skills and resources required by the organ of state to give effect to the policy.

2.3.4 Take steps to ensure early intervention in disputes once they arise.

2.3.5 Make decisions, in consultation with other DSMs, on an appropriate process, or the appropriate processes, of dispute resolution for specific disputes and consider the feasibility of parallel processes operating at the same time. It may, for example, become apparent to the DSMs that a dispute requires arbitration to resolve definitively a question of law but this should not preclude them from continuing to negotiate a settlement pending the arbitration.

2.3.6 Involve senior managers in their organs of state in dispute resolution processes where their involvement is necessary.

2.3.7 Advise and monitor representatives of their organs of state in their conduct of dispute resolution processes.

2.3.8 Analyse and keep records of what went well and what could have been done better in all dispute resolution activities.

2.3.9 At all stages of a dispute management process, including litigation, consider the use of low resource dispute resolution methods such as direct negotiations with the other party.

2.4. Training and resources

Organs of state should avail themselves of the opportunities of training courses for DSMs in relation to conflict management practices and the practical implementation and operation *of* these Guidelines.

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3. Panel of recognised facilitators

Organs of state must make use of facilitators whose credentials have been recognised in an appropriate form. Where the Minister has established a panel of recognised facilitators they should be used by organs of state.

Organs of state should encourage their own staff members to be included on any panel of recognised facilitators established by the Minister.

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Part 5
Settlement of Disputes

Where an organ of state is in an intergovernmental dispute situation, the following steps must be followed:

Step1: Determine if there is an 'intergovernmental dispute'

There is an intergovernmental dispute for the purposes of IRFA if

1.1 The parties involved are organs of state within the national, provincial or local spheres of government. Excluded are the institutions referred to in chapter 9 of the Constitution.

1.2 There is a dispute, that is a specific disagreement concerning a matter of fact, law or policy in which a claim or assertion of one party is met with a refusal, counter-claim or denial by another. This implies a specific impasse on which the parties cannot agree, rather than a broad and general disagreement about a problem *(National* Gambling *Board v Premier of KwaZulu-Natal* 2002 *(2)* BCLR 156 *(CC)* par 19).

1.3 The dispute is a *legal* one, that is, it could be determined by the courts if it was not dealt with under the Guidelines. Since the aim is to avoid litigation, political differences between spheres of government which could be resolved in the political arena are excluded from the scope of 'intergovernmental disputes'.

1.4 The dispute is an *intergovernmental* one, that is, the organ of state is acting in its capacity as an organ of state and is exercising a statutory power or exercising a statutory function (see section 40(1)(a) of IRFA)). A statutory function or power means any function assigned by the Constitution or by an agreement or other instrument emanating from the Constitution, or by legislation (section 1 of IRFA). Where an organ of state acts in the same capacity as a private person or corporation, for example in buying or selling services, it is not exercising state authority.

1.5 When a dispute concerns an intervention in terms of sections 100 and 139 of the Constitution the provisions of IRFA with regard to settlement of disputes do not apply (section 39(1)(b) of IRFA.)

Step 2: Negotiate

2.1 Section 41(2) of IRFA requires that an organ of state must in good faith make every reasonable effort to settle a dispute, including the initiation of

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direct negotiations with the other party or negotiations through an intermediary (section 41(2) of IRFA).

2.2 In settlement negotiations the parties are at liberty to take into account all matters they consider important or necessary, including commercial and financial needs, administrative demands and the maintenance of good relations with the other party.

2.3 Methods of negotiations

(a) ***Direct negotiations***

In direct negotiations with each other the parties can control all aspects of the process as there are no standardised rules of procedure. It is good practice first to negotiate on procedural matters, namely who will be involved in the negotiation, its time and venue, the issues for discussion, and what information should be exchanged before-hand. Direct negotiations on these procedural issues (the 'how' factors) can help to develop a constructive basis for the subsequent negotiations on substantive issues (the 'what' factors). The negotiation process can be as simple, informal and quick as circumstances allow, provided the negotiations are conducted in good faith and in the spirit of IRFA. They can be conducted face-to-face, by writing, telephonically or electronically, and multiple forms of communication can be used. The negotiating parties must:

- Use skilled techniques to improve communication and understanding;
- Identify and address underlying needs and interests;
- Promote the consideration and acceptance of common interests;
- Examine creative ways of resolving the issues before them.

(b) ***Negotiations through an intermediary***

An intermediary is a person or institution with experience, stature and status, and with the skills and resources to open channels of communication and overcome misunderstandings between disputing parties. Examples of intermediaries are respected politicians, retired public servants, professional mediators, academics with expertise in local government and community leaders. Intermediaries can be appointed by one organ of state without consultation with the other and each side could have more than one intermediary.

The functions of intermediaries include the furnishing of information and advice on procedures or settlement options, establishing contacts, suggesting referrals to other sources of assistance, assisting the parties to choose options, and establishing indirect contacts with the other side. Intermediaries have no contractual or statutory authority to bind the

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parties and they act in more *informal and partisan* ways than facilitators in using their good offices as go-betweens, brokers and peace-makers.

If direct and indirect negotiations do not produce a settlement and an organ of state wants to pursue the matter further it may declare a formal intergovernmental dispute.

Step 3: Declare a formal intergovernmental dispute

3.1 Pre-requisites for declaring a formal dispute

Section 41 (1) of IRFA provides that before declaring a formal intergovernmental dispute an organ of state must have made every reasonable effort to settle the dispute through negotiations as described in **Step 1** above.

3.2 Considerations in declaring a formal dispute

The declaration of a dispute is the end point of the informal dispute settlement stage and is an acknowledgement that the parties cannot through their own endeavours settle the dispute within a reasonable time and that they require outside assistance to do so. Careful consideration is required in making the decision. Among the factors which can be taken into account are the fact that *direct* or facilitated negotiations have not produced an agreement, the situation has become entrenched, there are strong differences in relation to the facts, the law or technical matters, or the other side has indicated clearly that they are not interested in settling the matter.

3.3 Requirements of a declaration

3.3.1 A dispute is declared by an organ of state notifying another organ of state in writing that the dispute is a formal intergovernmental dispute.

3.3.2 The notification must be sent to the usual address of the recipient organ of state by registered mail.

3.3.3 It would be appropriate for the DSM of one organ of state to serve the notification on the DSM of the other.

3.3.4 Any declaration of a formal dispute by an organ of state should be copied to:

(a) the Minister for his or her information if one of the parties is an organ of state in the national sphere of government; or
(b) the relevant MEC responsible for local government if one of the parties is an organ of state in the local sphere of government.

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3.3.5 The notification must:

(a) refer to the reasons for declaring the dispute, including a reference to the failure of the negotiations as described above,

(b) describe the nature of the dispute with sufficient clarity for the other party to be able to identify it, and

(c) assert that there has been compliance by the notifying party with all requirements under **IRFA.**

3.3.6 The notice of dispute must call for a meeting with the other organ of state as soon as reasonably possible (usually not more than 15 working days) of receipt of the declaration and must propose a suitable venue.

3.3.7 Unless the circumstances require otherwise the notification should be in the form recommended in the Appendix to the Guidelines.

3.4 Duty to respond to a declaration

On receipt of a declaration the receiving party must within five business days communicate acknowledgement to the notifying party in writing that they have received it.

Step 4: Convene a meeting

4.1 Requirement to convene

Section 42(1) of **IRFA** requires that parties to a formal intergovernmental dispute must promptly after receipt of the notification of dispute (usually not more than 15 days) convene a meeting between themselves or their representatives at a suitable venue. The obligation to convene a meeting and meet is on both parties, not only the one which declared the dispute.

Where a **DSM** is a person other than the chief executive of an organ of state, the **DSM** must attend the meeting, with or without their principal, and with other officials or advisers who have knowledge about the dispute.

Where a meeting has been successfully convened the parties should proceed to **Step 5** below.

4.2 Failure to convene

Where the parties fail to convene a meeting then, depending on the nature of the organs of state involved, they may approach either the Minister or the MEC.

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A meeting will not have been convened by the parties where, for example:

(a) There has been no response by the organ of state on whom the declaration of a dispute was served;
(b) No organ of state has attempted to convene a meeting;
(c) One organ of state has not responded to an attempt to convene a meeting; or
(d) No meeting has been convened promptly on the receipt of the declaration of a dispute.

4.2.1 Approaching the Minister

If one of the patties falls into one of the following categories the organ of state may approach the Minister for assistance in convening a meeting:

(a) a national organ of state involved in the dispute;
(b) provinces or provincial organs of state from different provinces involved in the dispute;
(c) the dispute involves organs of state from different governments that do not fall into paragraphs (a) or (b) or do not fall under the jurisdiction of an MEC in a province.

4.2.2 Approaching an MEC for Local Government

If both parties fall into one of the following categories either party may approach the MEC for assistance in convening a meeting:

(a) a provincial organ of state and a local government or municipal organ of state in a province;
(b) a municipality and municipal organs of state in the same province.

4.2.3 The Minister and MEC have a discretion on whether to convene a meeting on the approach of an organ of state.

4.2.4 The Minister or MEC can convene a meeting on their own initiative when it is apparent that a meeting has not been convened by the parties.

4.2.5 A meeting convened by the Minister or MEC will have the same functions as those referred to below.

4.2.6 If the parties fail to attend the meeting convened by the Minister or MEC the Minister or MEC may designate a facilitator on the parties' behalf with the objective of assisting the parties further in their dispute resolution process. See further on the role of facilitator Stage 6 below.

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Step 5: Identify the issues and dispute settlement mechanisms or procedures - preliminary decisions at a meeting

5.1. First decision – the issues

In terms of section 42(1)(a) of IRFA parties at the meeting must together determine:

(a) the nature of the dispute;
(b) the precise issues in dispute; and
(c) any material issues not in dispute.

The parties may also determine which interested parties or institutions should be invited to participate in the dispute resolution process.

On the basis of the clearly identified issues and parties the organs of state are then able to decide on the prescribed or appropriate dispute resolution procedure.

5.2 Second decision – selection of mechanisms and procedures

In terms of section 42 (1)(b) of IRFA the parties at the meeting must identify existing mechanisms or procedures that are available to the parties to assist them in resolving the dispute and must use them instead of other alternatives.

5.2.1 Statutory or contractual mechanisms or procedures

Existing mechanisms may be either prescribed or available by statute or be required by agreement:

(a) Statutory-prescribed procedures. Where national legislation other than IRFA provides dispute resolution mechanisms or procedures they must be followed by the parties, for example:

- The division of functions and powers between district and local municipalities, defined in general terms, can be a cause of conflict. Section 86 of the Municipal Structures Act 117 of 1998 charges the MEC with resolving such disputes when they arise between a district and a local municipality. The MEC has the role of 'adjudicator'; he or she determines the matter by clarifying the responsibilities of the two disputing municipalities by notice in the *Provincial Gazette.* A third party from a different sphere thus gives a binding disposition on the dispute.

- If there is a conflict between a municipality and the province that reviews that municipality's integrated development plan

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(IDP), the Municipal Systems Act 32 of 2000 provides a conflict resolution mechanism with a final remedy. If a municipality disagrees with an MEC's request to change its IDP, the MEC, if necessary, must appoint a special committee to decide on the municipality's objection (s 33(1)). If that committee rejects the municipality's objection, the municipality must comply with the MEC's request within 30 days. The MEC appoints representatives of local, provincial and national government as members of such a special committee, The rule within that committee is that if at least two spheres of government agree on a matter, it will be decided accordingly (s 32(4)).

(b) Available statutory procedures: The Constitutional Court held that before a district municipality could approach the Court with regard to the allocation of the equitable share, the municipality had to participate in the intergovernmental processes, including the Budget Forum, that shape the allocation decision *Uthukela District Municipality and others v President of the Republic of South Africa* 2002 (2) BLCR 1220 (CC)). Subsequently, the Division of Revenue Act of 2002 provided that an organ of state involved in an intergovernmental dispute regarding any provision of the Act, must, before approaching a court to resolve the dispute, make every effort to settle the dispute, including making use of the structures established in terms of the Intergovernmental Fiscal Relations Act 97 of 1997 (s 31(1)).

(c) Contractual mechanisms and procedures: Where dispute resolution procedures are contractually provided in agreements between the parties they must be used in the event of a dispute, for example, where there is a service or agency agreement which contains a dispute resolution clause or there is an implementation protocol.

5.2.2 Agreed Upon Mechanisms or Procedures

Where there are no statutory or contractual mechanisms or procedures the parties may by mutual agreement determine an appropriate procedure, including:

(a) Intergovernmental forums

Where an intergovernmental forum is a suitable institution to effect a settlement of the dispute in question the organs of state should consider referring the dispute to the appropriate forum for resolution in terms of the procedures for settlement of intergovernmental disputes adopted by the forum.

Section 33(1)(g) of IRFA requires that every governmental structure must adopt rules to govern its internal procedures, including procedures

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for the settlement of intergovernmental disputes between the parties or that are referred to the intergovernmental structure for settlement.

Such referrals should be made where the conflict is of a political more than a legal nature, and the wise counsel of peers in the forum may serve to settle it or contain it. Referrals to the forums should be made early in the life of the conflict before it has escalated, become entrenched or used up extensive time and resources.

The forums can,

- Seek to resolve the issues,
- Appoint a fact-finding commission where there are conflicts over factual issues,
- Appoint a special task team, or
- Adopt other processes appropriate for the circumstances.

Where the forum undertakes one of the above processes which results in a finding of facts or recommendation to the parties, they should consider these in good faith as a basis for settlement.

Where the matter does not settle as a result of the intervention of the forums, the organs of state should use the material and advice obtained during the process to contain the conflict and use it in other dispute resolution processes.

(b) Alternative Dispute Resolution (ADR) Processes

Where there are no existing mechanisms for resolving the dispute the parties must identify an ADR process, such as mediation, conciliation or arbitration. This would entail the appointment of a facilitator by mutual agreement. An appointment from the panel of recognised mediators would be the most suitable.

5.3 Other decision at a meeting

The organs of state are also required to appoint a facilitator – this aspect is dealt with in **Step 6** below.

Step 6: Appoint a facilitator and determine their role

6.1 Designation of facilitator

Section 42(1)(d) of IRFA requires organs of state to appoint a facilitator at a meeting.

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6.2 Failure to designate facilitator

Section 42(5) of IRFA provides where the parties have convened a meeting and they cannot agree on the designation of a facilitator, a party may approach the Minister or MEC to designate a facilitator on their behalf. When appointing the facilitator the Minister may also provide instructions on the appropriate dispute resolution process to be followed or they attend the meeting but fail to designate a facilitator.

6.3 Role of facilitator

Section 43(1)(a) of IRFA provides that a facilitator must assist the parties to settle the dispute in any manner necessary to help the parties. A facilitator should normally have qualifications, skills and experience in conflict management, negotiation, dispute resolution and mediation. The parties must determine the role of the facilitator, which may include assistance in:

- ***Preparing for the relevant dispute resolution process***

(a) Identifying the issues in dispute, and those not in dispute, Dispute clarification is an important element in constructive conflict management and involves the identification of issues in dispute, appropriate defining and framing of the issues, and acknowledgement of what is not in issue between the organs of state.

(b) Investigating and establishing disputed facts through formal or informal processes, with or without recommendations by the facilitator. These functions require the facilitator to have full access to all relevant documentation and information, each party to provide evidence, the provision of an opportunity for the parties to comment on the evidence, and the furnishing of a final report.

(c) Exchanging necessary documents and reports. This involving the facilitator assisting the parties to identify documents, reports, records and other written or digital information and exchanging them with each other in appropriate form, and, where the parties cannot agree on a particular disclosure, assisting them to resolve this difference.

- ***Providing mediation, conciliation*** *or* ***arbitration, as the wse may be:***

(a) Mediating the dispute by assisting the parties to communicate, facilitating the negotiations, considering options, encouraging settlement and contributing in other ways to the parties' own decision-making. Mediators provide structure and formality to the negotiation process and assist the parties to define the issues, communicate appropriately, negotiate constructively and consider a range of options for settlement. Mediators cannot make determinations binding on the parties, and are usually limited in terms of any advisory or evaluative function.

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(b) Conciliating the dispute by performing the same functions as in mediation and in addition furnishing the parties with an opinion, advice or recommendation on the merits of the dispute, on relevant legal information and on possible outcomes, without making a binding decision for the parties.

(c) Arbitrating the dispute by establishing the relevant facts and circumstances, ascertaining the appropriate legal rules and principles and making a binding decision for the parties.

6.4 Considerations when parties determine terms of reference for the Facilitator

The parties must determine and convey to the facilitator a suitable time-frame for the conduct of the dispute resolution process, which should occur as expeditiously as circumstance permit.

In conflict management practice there is increasing emphasis on the need for parties in dispute, and their advisers, to diagnose dispute situations in order to determine the most appropriate process for dealing with them. The parties must attempt to select a dispute resolution process appropriate for the circumstances of the dispute and appoint a facilitator with expertise in the particular process. The following guidelines assist in relation to the parties' negotiating and decision-making on this choice:

6.4.1 A *fact-finding* process can provide the foundations for other dispute-resolution processes and is suitable where there is uncertainty or disagreement over fundamental facts, these facts can be ascertained in an efficient way, and the establishment of the facts would contribute significantly to settling the dispute.

6.4.3 *Mediation* will be indicated as an appropriate process where the parties have a history of co-operation, they have been able to agree on some issues, no major hostility has developed, the desire for settlement is high, unassisted negotiations have not succeeded, there is no great imbalance of power between the parties, there are adequate resources to effect a compromise, or there are more than two organs of state in dispute.

6.4.4 *Conciliation* will be indicated as an appropriate process in similar circumstances to mediation and where, in addition, the parties would benefit from a facilitator's expert opinion, advice or recommendation on the law, the facts, policy or other factors which would assist them to settle.

6.4.5 *Arbitration* will be indicated as an appropriate process where the circumstances are not favourable for mediation or conciliation and the dispute involves technical or legal issues, it has not been possible to resolve issues of fact, there are significant policy or value differences

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between the parties, there is a significant power imbalance between the parties, or there is a need to shift responsibility for decision-making to a third party.

6.4.6 None of the factors in these lists are preconditions for the success of a particular dispute resolution process, nor will their absence necessarily indicate failure - they are no more than general indicators of the suitability of a particular process. Resource issues will be another factor relevant in selecting an appropriate dispute resolution option.

6.5 Changing the terms of reference of the facilitator

The parties may decide to appoint more than one facilitator and may by consensus change, amend or vary the instructions to the facilitator.

6.6 Reporting duties of facilitator

Sections 43(1)(b), 43(2) and 43(3) of IRFA provide that where a facilitator was appointed by the Minister he or she must submit to the Minister an initial report on the nature of the dispute, the issues in dispute, the mechanism or procedure to be used in settling it, and any other matter prescribed by regulation under section 40(1) and (2) of IRFA.

Step 7: Participate in good faith in dispute settlement process

In order to satisfy the requirement of participating in dispute settlement processes in good faith organs of state are required to behave meaningfully and reasonably in their efforts to resolve the dispute, to avoid merely going through the motions, and to refrain from manipulative, ulterior or other bad faith tactics. Good faith participation does not require the parties to abandon their rights and interests or actually to reach an agreed settlement. In practical terms it requires them to be prepared, to have authority to settle, to participate properly in the negotiations and to give consideration to making and responding to offers *(see* section 41(1)(h) of the Constitution).

7.1 Preparing for dispute settlement activities

Parties to a dispute must prepare for dispute resolution processes in good faith, and should include the following steps in their preparation:

- Prepare all documents and reports and make necessary disclosures to the other party. The DSM must coordinate this activity with all responsible officials.
- Work out the party's own interest, needs and priorities. An organ of state should establish what are its real interests and priorities, in terms

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of financial considerations, provision of services, community support, long term goals, good relationships with other bodies, and so forth.

- Lawyers should be retained where the dispute requires legal issues to be resolved, and not otherwise. Professional experts such as engineers, surveyors or planners should be involved where there are differences between the parties over relevant technical issues.
- The parties should exchange with each other reports and recommendations from experts.
- Parties should always confer with each other in order to establish whether they can engage a single independent expert to give an opinion or advice on a disputed issue.
- An organ of state must designate, through its internal procedures, its participants and representatives in the dispute resolution process. External professional advisers such as lawyers should only be involved where their involvement is necessary for the effectiveness of the dispute resolution process.
- An organ of state must take every reasonable step to have individuals with authority to settle participate in a dispute resolution process. Where authority cannot be obtained at the commencement of the process it must be accessed as soon as possible during the conduct of the process.

7.2 Confer with other side and make decisions

Parties to a dispute must confer with the other side and make decisions on:

- A mediation or arbitration agreement, as the case may be, to regulate any mediation or arbitration in which the organs of state participate.
- The extent to which outside persons will have access to the dispute resolution process. Normally the processes will be conducted privately with only the parties and their advisers.
- Who can gain access to any documents prepared for a dispute resolution process or which reflect the outcome of the process.
- What joint disclosures should be made to the media, constituents or other outside bodies. While privacy and confidentiality might be beneficial for the parties, for example to avoid disclosure of commercially-sensitive or embarrassing information, there may be a need for some public scrutiny of the process

7.3 Confidentiality of documents

Documents prepared for a dispute resolution process and communications made during the process are legally privileged and cannot be referred to in subsequent legal proceedings. In the light of this protection the parties in dispute resolution processes should (section 45(2) IRFA):

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7.4 Reaching a settlement

7.4.1 Communicate their interests

Each organ of state should inform the other side of its interests, as referred to above, and not focus only on legal rights and duties.

7.4.2 Consider options for settlement

Both organs of state must consider creative options for settling the dispute.

7.4.3 Consider plans of action for the future

Both organs of state should consider not only the past problems but ways of enhancing their future relations together, including ways of avoiding similar problems from arising again.

7.4.4 Bargain and compromise

Both organs of state should attempt to bargain constructively, be prepared to compromise, and operate in a spirit of give and take.

7.4.5 Record the agreement

Organs of state should record in full all agreements reached and, where relevant, should also record a list of issues on which there was no agreement.

7.4.6 Reporting the outcome

The DSM and other representatives who participated in a dispute resolution process must report back in writing to the responsible officials in the organ of state, and include in the report a copy of the settlement agreement. Where necessary they should explain the meaning of the agreement to officials who will be responsible for its implementation.

Step 8: Ask for assistance of Minister or MEC

8.1 Organs of state may seek assistance from the Minister or MEC for local government, as the case may be, to assist in the dispute resolution process (section **44 IRFA).** Where a Minister or MEC intervenes in terms of this section the parties lose the control which they would otherwise have over the process. This must be considered an exceptional circumstance which takes the parties out *of* **Step 6** above where they were in control of the facilitator. The only situations in which this assistance should **be** requested is where the parties cannot themselves manage the appointment of a facilitator and their only option is outside assistance.

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8.2 An organ of state may request assistance from the Minister if

(a) a national organ of state is involved in the dispute; or
(b) the dispute is between different provinces or provincial organs of state from different provinces;
(c) the dispute is between organs of state from different governments that do not fall into paragraphs (a) or (b) or do not fall under the jurisdiction of an MEC in a province.

8.3 An organ of state may request assistance from the MEC for local government in the relevant province if the dispute is

(a) between a provincial organ of state and a local government or a municipal organ of state in the province; or
(b) between local governments or municipal organs of state from different local governments in the province.

8.4 The following forms of assistance may be requested where an organ of state does not have the resources to obtain it themselves:

- Access to documents, reports, statistics and other information;
- Expert reports or information on matters of a technical nature;
- **Legal** information relevant to the dispute;
- Other objective information which will assist in resolving the dispute, in saving resources and in avoiding the prospect of litigation.

8.5 Minister's or MEC's intervention powers

(a) The Minister or MEC make may any interventions which are appropriate for the organs of state concerned and the circumstances of the dispute.

(b) Without derogating from the generality of a Minister's or MEC's powers, they may designate an official in the public service or other person to act as facilitator between the patties.

(c) Where a facilitator is appointed by a Minister or MEC t hey are required to act on the instructions of the Minister or MEC, as the case may be.

8.6 Impartiality of Minister or MEC

Where the Minister is requested to provide assistance by one party he or she should provide assistance in a neutral and objective manner to both parties.

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Step 9: Implement and monitor the agreement

9.1 Implement agreement

The DSM must confer and liaise with responsible officials in the organ of state to ensure that the agreement is implemented and where there are difficulties in implementation must confer directly with the DSM in the other organ of state.

9.2 Review

In keeping with the principles of cooperative government and conflict prevention the DSM must review and evaluate dispute settlement activities in terms of the principles of conflict management referred to in these Guidelines and provide the reviews to relevant managers in the organ of state as a basis for learning from experience, identifying recurring problems and preventing future disputes.

9.3 Report and review

The representatives of organs of state involved in dispute settlement procedures must report back to the relevant DSM on what worked well in the process and what could have been done better, with an evaluation of the performance of the facilitator, if any, involved in the settlement process.

9.4 When the dispute was settled

The DSM and other responsible officials must monitor the implementation of the settlement agreement and liaise with their counterparts in the other organ of state if there are any problems in complying with the agreement.

9.4 Where there was no settlement

Each organ of state must use'the previous dispute resolution processes to narrow the issues in dispute for possible judicial proceedings, identify areas of factual agreement, identify documents and evidence which can be exchanged, and consider other options for narrowing the scope of litigation and the time and costs of judicial proceedings.

9.5 Remedies for enforcement

Where the process results in a binding agreement between organs of state each party has the normal legal remedies for seeking enforcement of the agreement.

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Part 6
Going to Court

1. No government or organ of state may institute judicial proceedings unless the dispute has been declared a formal intergovernmental dispute and all efforts to settle the dispute referred to in these Guidelines have been attempted without resolution of the dispute (section 42(1) IRFA).

2. In determining the good faith of the parties a court might consider whether they have exhausted all procedures and remedies referred to in the Guidelines before seeking judicial relief.

2.1 The onus is on the organ of state seeking judicial relief to establish that there has been compliance with the dispute settlement requirements referred to in the Guidelines.

2.2 Where the requirements have not been met the court may refer the dispute back to the parties (section 43 Constitution).

2.3 The Constitutional Court has taken compliance with the duty seriously in holding that it would 'rarely decide an inter-governmental dispute unless the organs of state involved in the dispute have made every reasonable effort to resolve it at a political level' (*Uthukela District Municipality and others v President of the Republic of South Africa* 2002 (2) BLCR 1220 (CC) par 15).

3. In judicial proceedings any reports prepared for, and any communications made during the course of, a dispute resolution process are privileged and may not be used as evidence by or against any of the parties to an intergovernmental dispute (section 42(2) IRFA).

4. No organ of state may call a facilitator or intermediary as a witness in judicial proceedings except with the consent of the other organ of state (section 45(2) IRFA).

5. Notwithstanding their participation in the dispute settlement procedures referred to in these Guidelines, organs of state reserve all their legal rights in relation to any subsequent judicial proceedings.

6. Even when judicial proceedings are on foot, organs of state should still seek to resolve disputed issues through communication, negotiation, mediation or other processes which can assist them reach an agreed settlement.

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Appendix

Declaration of Dispute

An organ of state must use the following pro forma notice for serving a declaration of dispute on another organ of state. Additions can be made where they are required by the circumstances.

To: The Manager
XYZ Municipality

Our reference:

Sir/Madam

Declaration of Dispute in terms of Section 41(1) of the Intergovernmental Relations Framework Act 13 of *2005*

Notification is hereby given of a dispute between the ABC Municipality and the XYZ Municipality in relation to [here identify the dispute].

This notification is made on the basis that the parties have attempted to negotiate a resolution of the dispute and have not been successful in achieving a settlement and have complied with the provisions of the Intergovernmental Relations Framework Act 13 of 2005 in that they have conducted negotiations during the period of [1-15 March 2006].

The ABC Municipality wishes to convene a meeting in terms of section 42(1) of the Intergovernmental Relations Act Framework of 2005 at a mutually convenient date between 1 and 5 July 2006.

You are requested to communicate your acknowledgement of receipt of this notification within five business days.

Yours faithfully

Municipal Manager

Copy: MEC for Local Government

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