

Provincial Comparative Study



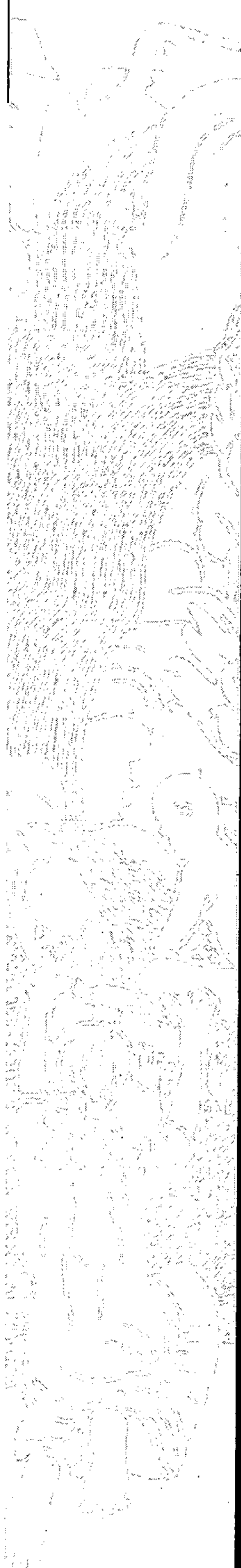
Conducted in Association with:
The National Democratic Institute for International Affairs, (NDI)
through a grant from the United States Agency for International Development





Provincial Comparative Study

Report of the
National Council of Provinces



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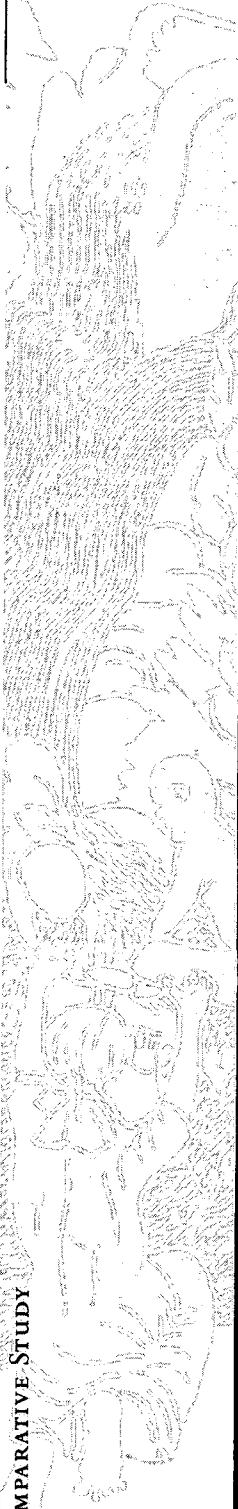
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Table of Contents

1.	Introduction.....	1
2.	Provincial Workshops and Assessment.....	2
3.	Role Players and Responsibilities.....	4
	a) Premier and MECs	6
	b) Speaker	8
	d) Permanent Delegates and Special Delegates	10
	f) Chairpersons of Committees.....	14
	g) Regis House.....	17
	h) Whips	20
4.	Communication Processes	23
5.	Legislative Processes	27
6.	Local Government and the NCOP	40
7.	Planning the Way Forward	48

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 Title: The Waterfall





1. Introduction

The National Council of Provinces, (NCOP), established as the second chamber of Parliament in February 1997, is a unique body created to facilitate provincial and local government participation in the national legislative process. The NCOP is a concrete expression of the principle of “co-operative governance” set out in Chapter Three of the Constitution. The NCOP is a functioning partnership among the three spheres of government: National, Provincial, and Local. Indeed, it is the only body in South Africa in which all three spheres of government meet to debate policy.

The underpinning rationale of the NCOP is to ensure that national policy is sensitive to provincial needs and concerns. It also requires that provinces do not act alone or in isolation – they must be fully integrated into the national legislative process through the NCOP. The NCOP institutionalises this principle of co-operative government by involving the nine provinces directly in the national legislative process.¹

While the NCOP is involved in both Section 75 and 76 legislation, its powers are significantly greater on Section 76 bills. On Section 75 matters members of the NCOP vote individually as members of a political party and not as a provincial delegation. On Section 76 legislation, each province (not each individual member) has one vote, and it takes five affirmative votes pass a Bill. To arrive at that one vote, a mandate, there must be consensus in each province on the bill.

The process of building consensus among provincial delegations requires a great deal of consultation and communication. This communication ensures that each province is fully informed of the content of the legislation and able to consult public stakeholders and come up with a mandate in time. The result is an extremely complicated legislative process, which requires consultation with nine provincial legislatures on all bills that are deemed to “affect provinces.” These are spelled out in Schedule 4 of the Constitution. This consultation demands an immense amount of co-ordination and synchronisation that was lacking in the NCOP’s first year of operation.

As a result the Presiding Officers of the NCOP initiated a number of interventions to prepare for, and improve, the daily functioning the NCOP. This report is an attempt to synthesise the results of each of those individual efforts into one document, a place to begin the debate around “*where we go from here.*”

¹ NCOP Study, Draft Report; European Union Programme for Development and Construction in South Africa, February 1998 by Mr. Gaitsiwe Lenepa, Prof. Christina Murray, and Mr. Robinson Ramaite. (pg. 13-18)



2. Provincial Workshops and Assessment

In October and November of 1996, the National Democratic Institute for International Affairs (NDI) conducted a series of workshops in eight of nine provinces focusing on the transformation of the Senate into the NCOP. The purpose of this series of workshops was to outline the provisions of the new Constitution – especially those that involved the implementation of the NCOP.

These workshops, involving Premiers, Speakers, MPLs, and Senators, provided a framework for discussion of the new legislative body and a forum to raise questions about its implementation. They also served as a basis for a national NCOP workshop in November of 1996, during which many aspects related to the implementation of the NCOP were discussed and finalised.

The provinces examined, in varying degrees of specificity, particular aspects of the NCOP composition, the nature of mandates for provincial delegations, how the NCOP will reflect the principle of co-operative government, and issues concerning the practical implementation.

In June 1997, five months into the NCOP's existence, a workshop for staff from both the national and provincial legislatures was conducted at Parliament by NDI to ensure that staff involved as "implementers" of the NCOP were well versed in the constitutional provisions involved as well as the rules and operating procedures of the legislative body. The workshop lasted for five days and included approximately 87 participants: 10 provincial liaison officers, 18 committee staffers, 22 NCOP administrative staff, 4 intergovernmental relations co-ordinators, and 30 staff members from the various provincial legislatures. Training focused not only on legislative areas such as programming, mandates and understanding legislative language, but also on communication skills, computer competency and time management.

At the request of NCOP Chairperson, Mr. Patrick Lekota and Deputy Chairperson Mr. Bulelani Ngcuka, another series of provincial workshops was then held to address communication and administrative deficiencies still existing in the NCOP legislative process.³

3 These workshops took place between September 1997 and February 1998. They were sponsored by NDI and organised in consultation with the leadership of the NCOP and the provincial legislatures.



Prior to each of these workshops, interviews were conducted with individuals dealing with the NCOP to ensure that the programme addressed the key concerns of individuals within the province. Every effort was made to include individuals from all parties and levels of government. NDI completed workshops in the North West, Gauteng, the Free State, Western Cape, Northern Cape and the Northern Province. Two provinces, KwaZulu-Natal and the Eastern Cape, held workshops on their own, while Mpumalanga held one organised and funded by GTZ. In addition, NDI sponsored and organized a national conference for the NCOP in May 1998 in which Deputy President Thabo Mbeki gave the keynote address also highlighting many of the issues discussed in this report.

Chapters One through Six of this report attempt to review the results of those workshops and provide insight into the different ways each province has chosen to deal with the challenges that accompany the implementation of the NCOP. Chapter Seven attempts to summarise the major issues highlighted in the report and suggests some possible solutions for debate and discussion.



3. Role Players and Responsibilities

During the course of the approximately 180 interviews conducted to inform the provincial NCOP workshops conducted between October 1997 and February 1998, the most common concern was a lack of understanding of the roles and responsibilities of stakeholders within the NCOP. Participants frankly admitted that they did not know what they were supposed to be doing, and longed for clarification but were unsure where to turn to receive it.

As a result, each provincial workshop attempted to provide participants with an opportunity to define for themselves what each of the key stakeholders' roles and responsibilities were. Participants were asked to enter into commissions, and assigned a particular role player such as the Premier, Speaker, Special Delegate etc. They were then asked to define for themselves the roles and specific responsibilities for that individual or group.

Several key findings were raised in each of the provincial workshops:

1. The critical need for communication and participation of the Provincial Executive in NCOP matters;
2. The need for a clearly defined and integrated communication structure within the province to deal with NCOP legislation;
3. The need for better communication and co-ordination between Permanent Delegates and Special Delegates;
4. The need for clearly defined legislative processes and informal communication between committees of national and provincial government;
5. The need for a re-evaluated and clearly defined role of the Regis House offices and personnel.

Premiers and Members of the Executive Cabinet (MECs)

1. Executive / Legislative Relations

Participants in the provincial workshops repeatedly stressed the need for effective communication and participation by the provincial executive in the provincial legislative processes of the NCOP. In order to work effectively, the process requires that role players from the provincial executive fully participate in the NCOP by:

- a) Acting as an early warning system on important policy issues affecting the province, by briefing relevant committees after MinMEC meetings;



- b) Participating in the provincial legislative processes of the NCOP such as committee meetings and plenary sessions;
- c) Assisting in the development of a provincial mandate through briefings to the relevant committee and providing departmental research when available.

While much of this work is tasked to the Members of the Executive Cabinet, (MECs), participants clearly felt that the Premier's leadership is required as a bridge between the executive and the legislative branches in the province. Annexure One lists by province the itemised roles and responsibilities given by participants for key executive branch role players.



Annexure One

Premier

PROVINCE	ROLES AND RESPONSIBILITIES
Eastern Cape	<ul style="list-style-type: none"> • Act as head of delegation in Cape Town. • Assist in determining provincial interest in legislation. • Oversee participation of MECs in provincial committees.
Free State	<ul style="list-style-type: none"> • Act as head of provincial NCOP delegation in Cape Town. • Designate substitute when unable to attend. • Arrange meeting with delegation when in Cape Town.
Gauteng	<ul style="list-style-type: none"> • Help determine provincial interest in legislation. • Lead delegation by ensuring disciplined following of the delegation's mandates; moderating conflict; ensuring delegation meets in advance to discuss legislation and following through on the provincial mandates. • Ensure effective participation of executive and proper management of NCOP Business. • Appoint delegation leader in his absence.
KwaZulu-Natal	<ul style="list-style-type: none"> • Act as head of provincial NCOP delegation in Cape Town. • Designate substitute when unable to attend. • Assist in determining provincial interest in legislation. • Oversee participation of MECs in provincial committees and NCOP processes.
Mpumalanga	<ul style="list-style-type: none"> • Lead delegation to the NCOP. • Appoint delegation leader in his absence. • Attend joint sittings of the NCOP and National Assembly. • Consult with the Executive, Legislature, and NCOP permanent delegate to ensure that Provincial interest is taken into account during the National legislative process.
Northern Cape	<ul style="list-style-type: none"> • Act as head of provincial NCOP delegation. • Play a leading role in the day to day action/control of the legislative process, not just a ceremonial figure. • Coordinate the NCOP legislative function with MECs.
Northern Province	<ul style="list-style-type: none"> • Act as head of provincial NCOP delegation in Cape Town. • Present the mandate from the Province. • Attend NCOP plenary when addressed by President. • Present special Provincial Reports. • Assist in determining provincial interest in legislation, especially where no appropriate provincial committee exists in legislature. • Appoint substitute when unable to attend. • Oversee participation of MECs in provincial committees and NCOP processes.
North West Province	<ul style="list-style-type: none"> • Liaise with provincial legislature following MinMEC meetings. • Ensure MECs participate in provincial committee meetings regarding NCOP legislation.
Western Cape	<ul style="list-style-type: none"> • Ensure involvement by MECs in NCOP process in province. • Assist in development of provincial mandate.



Members of the Provincial Executive (MECs)

PROVINCE	ROLES AND RESPONSIBILITIES
Eastern Cape	<ul style="list-style-type: none"> • Report to relevant chairperson in province following MinMEC. • Participate in NCOP plenary on Sec 76 legislation.
Free State	<ul style="list-style-type: none"> • Report to relevant committee chairpersons in the province following MinMEC. • Take chairpersons to MinMEC when possible to involve them in the earliest stages of the legislative process.
Gauteng	<ul style="list-style-type: none"> • Interact with provincial standing committees on NCOP legislation. • Enhance MECs' participation through interaction with Standing Committees as and when appropriate. • Participate in NCOP plenary on 76 legislation.
KwaZulu-Natal	<ul style="list-style-type: none"> • Provide input to committee while determining negotiating and voting mandates. • Ensure Provincial Department cooperation and involvement in provincial NCOP process. • Participate as Special Delegates in NCOP process. • Liaise regularly with Chairperson of NCOP Committee and relevant Portfolio committee chairperson in province.
Mpumalanga	<ul style="list-style-type: none"> • Mandate delegate who will participate in the NCOP. • Participate in provincial committees activities. • Provide input to committees in determining mandates. • Ensure that recommendations from NCOP are disseminated to all stakeholders and communities. • Liaise with committee chairs before and after MinMEC processes.
Northern Cape	<ul style="list-style-type: none"> • Incorporate NCOP work as a formal part of the legislative process. • Report back from MinMEC to legislature. • Work closely with provincial role players particularly in provincial legislatures. • Contribute to legislature's oversight function.
Northern Province	<ul style="list-style-type: none"> • Participate in NCOP delegation to Cape Town. • Brief relevant committees on policy debates following MinMEC. • Provide experts and support staff for public hearings. • Designate individuals within department to hold briefings. • Respond to research requests by legislature.
North West Province	<ul style="list-style-type: none"> • Liaise with provincial legislature following MinMEC meetings. • Participate in provincial committee meetings regarding NCOP legislation. • Respond to research requests by legislature.
Western Cape	<ul style="list-style-type: none"> • Liaise with provincial committee chairs following MinMEC process.



Office of the Speaker

2. Integrating Communication Structures Within the Province

Because the decisions taken by delegations to the NCOP are determined by provincial legislatures, the key decision-makers therefore are the provincial legislatures and their Members.² The Speaker of the provincial legislature, has an extremely important role to play in the development of smoothly functioning provincial NCOP structures for a number of reasons:

- a) The Speaker or Speaker's Office is usually the first formal point of contact for information regarding legislation before the NCOP;
- b) The Speaker has jurisdiction over all of the provincial legislature's administrative structures such as resource allocation and programming;
- c) The Speaker, in many provinces, sets the tone for the attention and overall focus of the provincial legislature.

For these reasons, participants in the provincial workshops were eager to assign the Speaker (or Speaker's Office) the responsibility of oversight of the overall provincial NCOP communication and legislative processes. In some provinces this is a very tangible part of the Speaker's job description involving everything from distribution of information to conferral of the mandate.³ In other provinces, the majority of these responsibilities are delegated to administrative staff and committees.⁴ Annexure Two shows the specific tasks and responsibilities that provincial workshop participants assigned to the Speaker and/or Speaker's Office.

2 NCOP Study, Draft Report; European Union Programme for Development and Construction in South Africa, February 1998 by Mr. Gaitsiwe Lenepa, Prof. Christina Murray, and Mr. Robinson Ramaite. (pg. 13-13)

3 In the North-West Province the Speaker is not only the first formal point of contact between the NCOP and the Province, but also responsible for conferring the mandate in consultation with the relevant Standing Committee, MEC and the Premier.

4 In KwaZulu-Natal it is handled by the Chairperson of the NCOP Committee. In the Eastern Cape and Northern Province, this is primarily the responsibility of the Secretary of the legislature. In Mpumalanga it is the Chairperson of the Prioritisation Committee, and in the Western Cape this is done by the Chairpersons of the relevant Standing Committees. (See chart in Annexure Two)



Annexure Two

Speaker

PROVINCE	ROLES AND RESPONSIBILITIES
Eastern Cape	<ul style="list-style-type: none"> • Chairperson of the NCOP Business Committee (NCOP and Legal Services Section provides administrative support services). • Oversee management of NCOP matters in the province ie. financial, admin. • Validate the mandate from the province to the NCOP. • Qualify the needs of the province with regard to participation in the NCOP. • Oversight of the prioritising committee. • Ensures delegates designated to the plenary session report back to the business committee on deliberations (with reference to S76 legislation).
Free State	<ul style="list-style-type: none"> • Oversee administration of the provincial legislature. • Establish and monitor NCOP communication structures within the province. • Monitor National legislative process and provide information to MPLs. • Monitor the participation and feedback of Special Delegates.
Gauteng	<ul style="list-style-type: none"> • Jurisdiction on NCOP and all other matters in Legislature. • Protect interests of all political parties and is therefore interested in ensuring that the NCOP matters are disposed of effectively and fairly. • Ensure that NCOP matters are dealt with in organised/timely fashion.
KwaZulu-Natal	<ul style="list-style-type: none"> • Oversee administration of the provincial legislature. • Delegate daily running of NCOP matters to NCOP Committee in Province.
Mpumalanga	<ul style="list-style-type: none"> • Act as point of contact between NCOP, Executive and legislature. • Assume overall administration of the provincial legislature. • Oversee and monitor the legislative process. • Interact with the NCOP regarding programming and implementation of programme at provincial level. • Receive and refer bills from the Executive and NCOP to relevant committees. • Ensure that provincial mandates are carried through. • Ensure and oversee liaison between permanent delegates and NCOP. • Ensure that administrative process flows smoothly.
Northern Cape	<ul style="list-style-type: none"> • Incorporate NCOP work as a formal part of the legislative process. • Report back from MinMEC to legislature. • Work closely with provincial role players particularly in provincial legislatures. • Contribute to legislature's oversight function.
Northern Province	<ul style="list-style-type: none"> • Oversee coordination between the NCOP and the legislature. • Administer procedures to facilitate legislature's participation in the NCOP. • Refer NCOP bills to relevant committees in Legislature. • Consult the Premier on the appointment of leader of NCOP delegation. • Oversee liaison between Permanent Delegates and provincial committees. • Ensure liaison between Committee Chairs and MECs in province.
North West Province	<ul style="list-style-type: none"> • Establish liaison office in the province within the Office of the Speaker. • Oversee and monitor the national legislative process. • Oversee Prioritising Committee. • Interact with the NCOP regarding programming and implementation of programme at provincial level. • Liaise with Party Whips (especially on Sec 75 legislation). • Liaise with Chairperson of Chairperson's Committee.
Western Cape	<ul style="list-style-type: none"> • Establish liaison office in the province within the Office of the Speaker. • Oversee and monitor the national legislative process. • Oversee Prioritising Committee. • Interact with the NCOP regarding programming and implementation of programme at provincial level.



Permanent and Special Delegates

3. Relationship Between Permanent and Special Delegates

“The division of delegations into permanent and special components and their close ties with the provincial legislature were intended to serve at least two purposes. First, the presence of MPLs in the delegation (as opposed to bureaucrats as in the Bundesrat in Germany) was intended to ensure that politicians were involved in the national legislative process. Secondly, permanent delegates not only represent the province on an ongoing basis in the NCOP but also, as national politicians closely tied to provincial legislatures, bring a broader national perspective to provinces.”⁵

During the course of the pre-workshop interviews conducted by NDI, it became apparent that the interlocking roles and relationships between Permanent and Special Delegates were not clearly defined or understood by participants.

In the Province: Provincial participants complained that Permanent Delegates seldom brief them or participate in the provincial legislature’s NCOP deliberations. In their words, “the old ‘Senate attitude’ still exists.” Permanent Delegates, on the other hand, complained of feeling isolated, understaffed, and left out by provincial legislative committees. There were also frequent concerns raised by opposition party members who felt that their input was often unwelcome and unheeded in the province due to their party affiliation.

In Cape Town: Permanent Delegates in turn complained that Special Delegates often failed to attend the meetings and briefings in which they were to represent the province, treating the trip to Cape Town as “a paid vacation”. They further stated that when they did appear, Special Delegates were often not adequately briefed, thus unable to make a meaningful input into the process.

Special Delegates in turn complained that they were often asked to travel to Cape Town with little or no information at their disposal, even basic information about the legislation, agenda for the meeting and its location in Parliament. Nearly all MPLs who had participated as Special Delegates furnished horror stories of delayed flights, missed briefings, last minute changes to agendas or venues that nullified the need for their presence. When added together these stories communicated a clear sense on the part of Special Delegates that NCOP processes in Cape Town are insensitive to their needs and the needs of their province.

Annexure Three lists by province the result of role clarification exercises conducted during the provincial NCOP workshops in which participants were asked to clarify for themselves the roles and specific responsibilities of Permanent and Special Delegates as key role players in the NCOP.

5 NCOP Study, Draft Report; European Union Programme for Development and Construction in South Africa, February 1998 by Mr. Gaitsiwe Lenepa, Prof. Christina Murray, and Mr. Robinson Ramaite. (pg. 13-18)



Annexure Three

Permanent Delegates

PROVINCE	ROLES AND RESPONSIBILITIES
Eastern Cape	<ul style="list-style-type: none"> • Attend committee meetings. • Report back to Provincial Standing Committees on NCOP meetings and briefings. • Inform province of other provinces stands on bill, by liaising with Permanent Delegates from other Provinces. • Meet special delegates prior to plenary.
Free State	<ul style="list-style-type: none"> • Attend committee meetings in Cape Town. • Convey committee minutes to the province. • Attend provincial meetings in province during NCOP provincial work week. • Monitor bills identified by province as a high priority and relay progress to Regis House.
Gauteng	<ul style="list-style-type: none"> • Attend sittings of provincial legislature and relevant committee meetings. • Report back to the province (standing committees) on NCOP committee meeting, and briefings. These reports will be verbal due to lack of administrative assistance. • Inform province of other province's stands on issues/bills by liaising with other Permanent Delegates informally. Begin lobbying provincial position during National Assembly stage. • Keep province informed on legislation before their committees. • Meet with Special Delegates prior to NCOP plenary.
KwaZulu-Natal	<ul style="list-style-type: none"> • Provide input to committee in deciding negotiating and voting mandates. • Report back to province on all NCOP related matters. • Represent the Province on Section 75 matters and plenary debates.
Mpumalanga	<ul style="list-style-type: none"> • Represent the interests of the province. • Brief provincial committees on bills. • Negotiate mandates with other provinces. • Inform province of other provinces stands on bills. • Attend committee meetings in Cape Town. • Liaise with Speaker on a regular basis.
Northern Cape	<ul style="list-style-type: none"> • Represent the interest of the province. • Take part in administration of NCOP. • Take part in Section 75 party matters. • Introduce motions & ask questions in plenary sessions in Cape Town & province. • Interpret questions & debate for province. • Forward information regarding tabled legislation to the province. • Propose legislation on behalf of the province as a private member. • Brief standing committees in province.



- Northern Province**
- Assist in the development of provincial mandate by liaising with relevant committee chairpersons.
 - Negotiate amendments with other provinces on Section 76 bills.
 - Represent the province and take provincial mandate to NCOP committees.

- North West Province**
- Bring the views and concerns of the province to bear on the writing of national legislation.
 - Inform and educate the provincial legislature on the development of national legislation that affects the province.
 - Assist the provincial members to make an informed decision on a mandate that will be voted on in the NCOP.
 - Discuss and negotiate issues with representatives of other provinces in order to develop a common provincial view.
 - Learn as much as possible about the needs of the province, and the experience of other provinces, in order to find solutions to our common problems.
 - Monitor the activities of national ministries in the province.
 - Attend committee meetings and sittings at the national level and share the information with the provincial legislature.
 - Meet with Special Delegates prior to plenary sitting or briefing by Department.

- Western Cape**
- Monitor legislation relevant to their committee assignments and inform province of its progress, especially legislation identified as a priority for the province.
 - Inform province of all amendments to legislation.
 - Meet with Special Delegates prior to plenary sitting or briefing by Department.

Special Delegates

PROVINCE	ROLES AND RESPONSIBILITIES
Eastern Cape	<ul style="list-style-type: none"> • Report to Regis House when arriving in Cape Town (collect mandate and attend pre-plenary session with Permanent Delegates) • Attend plenary and negotiate sessions. • Report back to province after plenary and briefings. • Convey mandate to plenary.
Free State	<ul style="list-style-type: none"> • Participate in NCOP debates on legislation. • Convey mandates to plenary. • Report back to province. • Report in with Regis House when arriving in Cape Town. • Meet with Permanent Delegates. • Attend committee meetings and briefings.
Gauteng	<ul style="list-style-type: none"> • Attend plenary and negotiation session with other provincial delegation. • Report back to province after plenary and briefings. • Attend NCOP briefings in Cape Town when necessary and report back to Standing Committees. • Liaise with permanent delegates. • Research NCOP legislation before committee throughout process (don't wait until arrival in Cape Town).



KwaZulu-Natal	<ul style="list-style-type: none"> • Attend Select Committee briefings on relevant bills. • Brief relevant provincial Portfolio Committee on Select Committee Proceedings. • Attend Select Committee provincial negotiations and negotiate in accordance with mandate. • Report on negotiations to the relevant portfolio committee. • Attend and speak at NCOP plenary debates.
Mpumalanga	<ul style="list-style-type: none"> • Carry the provincial mandate to NCOP plenary. • Contact the NCOP permanent delegates, and other provinces to find the trends of the debate. • Report back to legislature and Executive on debates they've attended. • Attend NCOP Select Committee meetings and report back to Standing Committees • Brief permanent delegates on provincial mandates.
Northern Cape	<ul style="list-style-type: none"> • Participate & speak in NCOP plenary debates on legislation. • Convey & report back information to committees. • Attend public hearings on legislation. • Suggestion: Explore option of allowing opposition parties to raise concerns while still supporting the mandate of the province.
Northern Province	<ul style="list-style-type: none"> • Participate in NCOP briefings and committees in Cape Town. • Liaise with Provincial Whip and Regis House office prior to and during visit to Cape Town. • Carry provincial mandate to NCOP.
North West Province	<ul style="list-style-type: none"> • Acquaint themselves with the tagging of the bill at hand. • Acquaint themselves with the content of the bill at hand. • Read all information supplied by the province and the Permanent Delegates. • Acquaint themselves with the mandate conferred onto them by the province. • Present the province's views to NCOP committees and plenary. • Negotiate, in conjunction with Permanent Delegates, a common position on issues mandated to them.
Western Cape	<ul style="list-style-type: none"> • Attend briefings by Ministers and MECs on relevant legislation. • Acquaint themselves with NCOP legislation early in legislative process (green paper stage) and follow it through as amended.



Chairpersons of Committees

4. Communication Between National and provincial committees

As the “engine rooms” of legislative action, Chairpersons in both the national and provincial spheres of government are critical links of communication in the NCOP legislative process.

Each committee in the NCOP consists of at least nine members. All provinces are represented by a permanent delegate on each committee. Political parties not represented by those permanent delegates are allowed one member each. However, those solely representing political parties cannot vote on 76 matters.

The legislative process of the NCOP envisions a great deal of formal and informal communication between national and provincial committee chairs sharing the same or similar portfolios. Chairpersons of committees and permanent delegates are expected to participate in briefings and in turn brief provincial committees and stakeholders. Provincial legislatures are then expected to convey a broad preliminary mandate to permanent delegates, after consultation with stakeholders. These mandates are sometimes called “negotiating mandates.”

Committee chairpersons and permanent delegates perform a critical function at this stage in the legislative process by liaising with one another to inform each province of the viewpoint of the other eight provinces. Commonalties are discovered and consensus is reached on as many clauses in the bill as possible.

When this communication does not take place provinces operate in a vacuum. They can waste a great deal of time on clauses that are likely to be resolved quickly during negotiations or advancing positions that are unlikely to be shared by a majority of the other provinces. It should also be noted that any province’s ability to advance a particular viewpoint during the negotiations rests largely on whether its delegation can communicate efficiently and effectively during this negotiation stage. Provinces that wait for the final mandate and discussion have little hope of success.

During the course of NDI’s interviews, several provincial respondents expressed the belief that their ability to successfully negotiate clauses compatible with their provincial viewpoint was often hampered by the poor communication processes of other provinces. They felt that provinces that had every reason to vote with them during the negotiations often did not because their negotiating team was poorly informed. They observed that this was most often the case when communication was poor between provinces’ permanent delegate on the relevant national committee and the committee chairperson in the province. The chart in Annexure Four shows the specific tasks and responsibilities that provincial workshop participants assigned to chairpersons of committees in the NCOP and provincial legislatures.



Annexure Four

Chairpersons of Committees

PROVINCE	ROLES AND RESPONSIBILITIES
Eastern Cape	<ul style="list-style-type: none"> • Call meeting when legislation affecting multiple committees arises. • Coordinate committee schedule to avoid clashing of meetings.
Free State	<ul style="list-style-type: none"> • Liaise with Chief Whip regarding programmes of committees. • Monitor bills as they travel through legislative process, and report to province on high priority legislation. • Co-ordinate planning of committee meetings and public hearings to avoid conflicts with national legislative programme.
Gauteng	<ul style="list-style-type: none"> • Receive bills and co-ordinate dissemination to committee members. • Recommend provincial interest in bills and report to Proceedings Committee. • Indicate (after consultation) to the House whether debate is required. • Monitor committee's selection of special delegates to NCOP. <p>Chair of Chairs:</p> <ul style="list-style-type: none"> • Monitor the mandating process. • Monitor the selection of special delegates. • Interact with Standing Committee chairs re scheduling of committee meetings and prioritisation.
KwaZulu-Natal	<ul style="list-style-type: none"> • Monitor progress of matters referred to the committee. • Liaise with Select Committee Chair, relevant chairpersons from other provinces, Permanent Delegates, and Special Delegates. • Ensure that cycle deadlines are met. • Present negotiating mandates to NCOP Standing Committee in province for approval.
Mpumalanga	<ul style="list-style-type: none"> • Convene committee meetings. • Ensure that committee reports are prepared correctly and tabled in the legislature. • Liaise with MEC on legislative processes. • Convene public hearings to solicit input from communities and stakeholders. • Provide special delegates and permanent delegates with reports. • Participate in the prioritisation and programming to avoid clashing of committee meetings.
Northern Cape	<ul style="list-style-type: none"> • Call meeting of committee chairs when legislation affecting multiple committees arises. • Coordinate committee schedule to avoid conflicts. • Coordinate public hearings • Compile reports & conduct review of oversight of committees.



ANNEXURE FOUR

- Northern Province**
- Coordinate all committee activities.
 - Facilitate plans and budgets for work of committees.
 - Ensure referred bills are attended to timeously.
 - Finalise committee reports and manage participation of Special Delegates in NCOF.
 - Simplify bills for purposes of public hearings.
 - Ensure that there is liaison with MECs.
 - Facilitate oversight of relevant government departments.

- North West Province**
- During week one of cycle: (National)**
- Arrange a briefing with legal advisors and the department and inform province.
 - Provide delegates with executive summary of briefings to give to the provinces.
- During week two of cycle: (Province)**
- Discuss the bill with the provincial legal advisors and the relevant MEC.
 - Convene a meeting of the relevant standing Committee.
 - Arrange with the Permanent Delegate to be present and brief the committee about the bill.
 - Arrange the public hearing if instructed by the Committee.
 - Issue provincial mandate, once consensus is achieved.
- During week three of cycle: (National)**
- Convene a meeting, call back a legal advisor and if necessary, the Department.
 - Advise the provinces to send the rotating members.
 - Accommodate the feedback of the nine provinces.
- During week four of cycle: (Province)**
- Convenes (chairperson) a meeting with the members to discuss the feedback on discussions of the provinces.
 - Formulate (committee) a draft mandate, recommend a delegation and submit a draft to the legislature.

- Western Cape**
- Maintain regular contact with MECs.
 - Complete a one year plan at beginning of legislative session.
 - Prioritise upcoming legislation at the beginning of the year to ensure that the process is proactive.



Regis House

5. The Role of Regis House

At this point in time eight out of nine provinces have NCOP liaison staff in Cape Town at Regis House.⁶ These liaison officers are employees of the provincial legislatures, and their individual roles in the NCOP processes vary greatly based on the needs and structures of the provinces they serve.

When originally created, these Regis House offices were envisioned as being the focal-point of provincial NCOP activity in Cape Town. Each province was allocated office space, basic office equipment, furniture and computers. Provinces were responsible for the hiring and salary of staff for these offices. Most offices have space not only for their full time administrative staff, but also for Premiers and Special Delegates. However, this space is rarely occupied.

Special Delegates complain that the offices are isolated, saying they “get more work done wandering around the halls of Parliament than they do at the Regis House office.”⁷ Permanent Delegates rarely visit these offices, and many did not even know where they were or how to contact them. Regis House staff themselves often expressed confusion about their role in the broader NCOP context – desiring a more specific job description that explained “exactly where they fit in the bigger scheme of things.”⁸

Some provinces such as KwaZulu-Natal and Gauteng have Regis House offices consisting of several staff members that fulfil a variety of functions. Other provinces have a single staff member who simply relays information between the province and the NCOP. Few of these offices are equipped to do research or legislative analysis.

6 The Western Cape is the only province that does not have a Regis House office, due to their proximity to the NCOP and a provincial hiring freeze that prevented the legislature from filling the position until recently.
 7 Pre Workshop Interview Report, NCOP Provincial Workshop Series 1997-98.
 8 Pre Workshop Interview Report, NCOP Provincial Workshop Series 1997-98.



Annexure Five

Regis House

PROVINCE	ROLES AND RESPONSIBILITIES
Eastern Cape	<ul style="list-style-type: none"> • Liaise between the province and Parliament. • Gather and disseminate information. • Highlight important information for the province. • Serve as a focal point for the delegation while in Cape Town and provide administrative support. • Assist in prioritising activities of delegation and decision making as to whether or not the province needs to send special delegates. • Coordinate pre-plenary and negotiate meetings between special and permanent delegates, and compile report for Speaker to review at business committee meeting. • Compile report of provinces' interaction in committee meetings. • Liaise with NCOP Whip in province on all NCOP related issues. • Coordinate weekly meetings with Permanent Delegates to discuss legislation and plan of action regarding Provincial week and Public Hearings. • Compile report on delegates interaction in plenary sessions to be tabled at Business Committee.
Free State	<ul style="list-style-type: none"> • Send information to province. • Convey information from province to Cape Town. • Liaise with Provincial Whip. • Receive Special Delegates. • Arrange meetings with Permanent Delegates. • Liaise with Prioritisation Committee.
Gauteng	<ul style="list-style-type: none"> • Coordinate flow of information from NCOP to Province. • Transfer documentation from NCOP to Province: green papers, white paper, briefings, committee minutes, list of bills, summaries of bills, amendment to bills. • Serve as focal point for delegation while in Cape Town, and provide administrative support. • Help to prioritise activities of delegation and identify whether province needs to send special delegates. • Provide political insight to province on activities of Parliament. • Liaise with both NCOP administration and provincial administration. • Create overall co-ordination of this office.
KwaZulu-Natal	<ul style="list-style-type: none"> • Liaise between the province and Parliament. • Gather and disseminate information. • Highlight important information & issues for the province. • Arrange meetings for the delegates (both permanent and special delegates) prior to plenary sittings. • Follow-up on mandates and special delegates. • Advise NCOP & province regarding changes and / or conflicts between NCOP and provincial programmes. • Advise and inform permanent delegates on provincial meetings. • Provide logistical and administrative support to delegation while in Cape Town.



Mpumalanga	<ul style="list-style-type: none"> • Coordinate flow of information from NCOP to Province. • Transfer documentation from NCOP to Province: green papers, white paper, briefings, committee minutes, list of bills, summaries of bills, amendment to bills. • Serve as focal point for delegation while in Cape Town, and provide administrative support. • Help to prioritise activities of delegation and whether or not province needs to send special delegates. • Provide political insight to province on activities of Parliament. • Liaise with both NCOP administration and provincial administration. • Create overall co-ordination of this office.
Northern Cape	<ul style="list-style-type: none"> • Receive members – delegates arriving in Cape Town, should report & notify staff ahead of time. • Provide link between province and the NCOP, especially in conveying information from province to Cape Town (staff should attend meetings & provide briefing materials). • Staff should report to parliamentary plenary sitting. • Provide logistical & administrative support to the delegation (including special delegates) for the duration of their time in Cape Town. • Eliminate duplication by only forwarding later versions of bills. • Arrange meeting of entire delegation prior to plenary. • Convene weekly meetings of permanent delegation to discuss legislation. • Concentrate on follow-up to debates.
Northern Province	<ul style="list-style-type: none"> • Facilitate communication between NCOP and Legislature. • Serve as information centre. • Receive Special Delegates in Cape Town. • Prioritise information coming from National Parliament.
North West Province	<ul style="list-style-type: none"> • Liaise between the province and Parliament. • Gather and disseminate information. • Highlight important information & issues for the province. • Arrange meetings for the delegates (both permanent and special delegates) prior to plenary sittings. • Follow-up on mandates and special delegates. • Advise NCOP & province regarding changes and / or conflicts between NCOP and provincial programmes. • Advise and inform permanent delegates on provincial meetings.
Western Cape	No Regis House office



Provincial Whips

Participants at the National Workshop on the NCOP held November 1996 proposed that committees be composed of provincial representatives. In addition delegates proposed that there be Whips from each province as well as a Chief Whip in the NCOP.⁹ These Provincial Whips are a critical link in the flow of information between the NCOP and their respective provinces. As indicated by the Provincial Role Clarification charts in Annexure Six, most Provincial Whips are expected to supplement the liaison functions of Regis House in addition to their duties as Permanent Delegates. Some provinces assigned Provincial Whips with the political responsibility of ensuring adequate information flow between the NCOP in Cape Town and the province – although this is assumed to be a consultative role, not a day-to-day activity. Still others expected the Provincial Whips to provide legislative tracking information and regular updates.

Most provinces expect their Provincial Whips to provide political and legislative insight regarding legislative activities in Cape Town. They are also expected to coordinate the delegation activities in Cape Town. This co-ordination is expected to take several forms:

- convene delegation meetings prior to the start of a plenary session to ensure that all delegates are present and fully informed about the issues at hand;
- liaise between Permanent Delegates and Special Delegates regarding the legislation and the negotiating mandates of other provinces;
- stand in as head of delegation when designated by the Speaker or Premier of the Province;
- submit recommendations during the selection of Special Delegates.

Often, provinces expect Provincial Whips to monitor the activities of Special and Permanent Delegates themselves, to ensure that they are performing their duties such as attending committee meetings and departmental briefings.



Annexure Six

Provincial Whips

PROVINCE	ROLES AND RESPONSIBILITIES
Eastern Cape	<ul style="list-style-type: none"> • Liaise with NCOP whip in Province on all NCOP related issues. • Liaise with political party they represent. • Oversee participation of permanent and special delegates in committee meetings and plenary sessions.
Free State	<ul style="list-style-type: none"> • Assist NCOP Administration in the programming of plenary sessions to avoid provincial conflicts. • Report back to province following programming session. • Liaise with Committee Chairs. • Brief Special Delegates when they arrive in Cape Town. • Liaise with Regis House.
Gauteng	<ul style="list-style-type: none"> • Liaise with Leader of the House before each NCOP whip. • Liaise with province. • Liaise with provincial role players, NCOP staff and provincial chief whip. • Liaise with other provinces on Mandates. • Ensure that Permanent delegates are involved in Mandate process.
KwaZulu-Natal (Party Whips)	<ul style="list-style-type: none"> • Liaise with relevant Committee Chairs and Committee Members. • Arrange for Special Delegates to attend briefings, negotiations, and plenaries.
Mpumalanga	<ul style="list-style-type: none"> • Liaise with Speaker and provincial committee chairperson. • Convene meetings of permanent delegates. • Monitor contact between permanent delegates and provincial committee chairpersons. • Participate in the programming process in the legislature and the NCOP. • Ensure that provincial interest is taken into account. • Act as link between the NCOP and legislature. • Monitor briefings by permanent delegates. • Ensure that the staff in Regis House support activities of the delegates. • Co-ordinate with provincial committee chairpersons. • Ensure attendance of meetings by permanent delegates. • Ensure that provincial mandates are put forward.
Northern Cape	<ul style="list-style-type: none"> • Co-ordinate work of legislature with NCOP. • Liaise with the executive. • Liaise with political party they represent. • Liaise with standing committees. • Liaise with the Speaker's office. • See to attendance & smooth running of plenaries & committee hearings. • Act as link between NCOP & legislature regarding flow of information i.e. minutes, bills & amendments. • Oversee participation of Permanent Delegates and Special Delegates. • Work with NCOP staff to ensure efficiency. • Delegate any duties to ensure productivity.



Northern Province	Provincial Whip in Cape Town <ul style="list-style-type: none">• Participate in programming processes in legislature and NCOP.• Encourage MPLs to forward motions in NCOP.• Coordinate functions of Special and Permanent Delegates.• Participate in processes of appointing delegates.• Ensure attendance of meetings and committees by members. Provincial Whip in Province <ul style="list-style-type: none">• Monitor briefings by permanent delegates.• Ensure and monitor public participation.• Ensure participation of the Executive in NCOP processes.
North West Province	<ul style="list-style-type: none">• Brief Special Delegates prior to or immediately upon arrival in Cape Town.• Allocate the Permanent Delegates into various NCOP committees and monitor their participation.• Track and monitor national legislation, and inform province.• Supervise participation of members in committees.• Liaise with province on a regular basis.• Participate in programming process in the NCOP and inform key role players such as: Speaker, Chairperson, and Committees.• Make recommendations to province on which members should come to Cape Town as special Delegates and when.
Western Cape	<ul style="list-style-type: none">• Inform committee chairpersons of upcoming legislation.• Participate in programming process in the NCOP and inform key role players such as: Speaker, Chairperson, and Committees.



4. Communication Processes

The success or effectiveness of the NCOP relies heavily on its ability to efficiently communicate with its members, partners in the provinces and SALGA. This is not an easy task considering that no single form of communication can be used to reach each and every individual.

The quickest, and most accurate form of communication – electronic mail – was only in use by five out of nine provinces at the time the workshops were conducted. Often the software packages are not compatible with those in use at Parliament. As a matter of fact, some departments within Parliament cannot communicate with each other because the software is not compatible. Individual Members of the NCOP often do not have computers, nor do they have the capacity to effectively communicate by e-mail even when they do.

Communicating by fax is often not desirable since long legislative documents or minutes from meetings can consume reams of fax paper, and tie up phone lines and staff for hours. Additionally, the typeface may not be legible by the time it reaches its destination as it will often be a third or fourth generation copy.

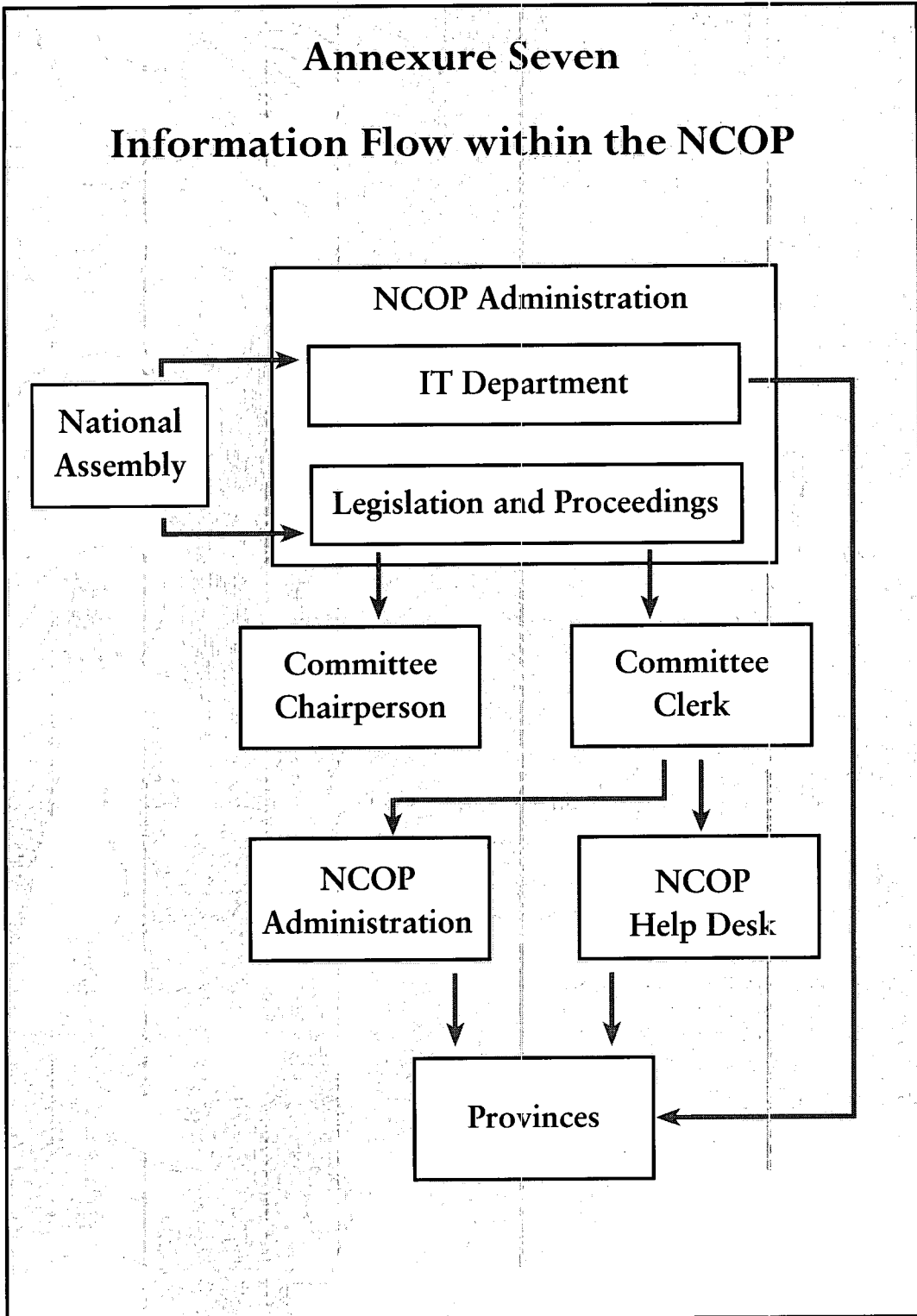
Courier services that convey information from the NCOP to the provinces have also proven to be problematic, given the tight time constraints that provinces work under to deliver a mandate on time and the fact that the courier services operate only twice weekly.

The result is that there is no uniform way in which information is transferred to the provinces and local government. Information is often duplicated, resulting in a time consuming and often confusing pattern. This confusion is exacerbated by a lack of understanding of the NCOP processes and procedures by provincial partners. In a Strategic Planning Workshop conducted by NDI for NCOP staff, participants raised concerns that, *“People don’t know who to call when they have questions or problems ... one week it’s this person, and next week it’s someone else.”*¹⁰ Participants also felt that these inadequate lines of communication, while not deliberate, make their jobs harder on a day to day basis and add to the *“sense of confusion surrounding the NCOP.”*¹¹

The root of this problem may be a technical one. The inadequacy of equipment at Parliament – such as fax machines, copy machines, e-mail, computers, working phones, and work space – is clearly a problem. Several participants made a direct correlation between this lack of technical capacity and poor communication structures saying, *“maybe if it weren’t so hard to communicate with one another, we’d do it more.”*¹²

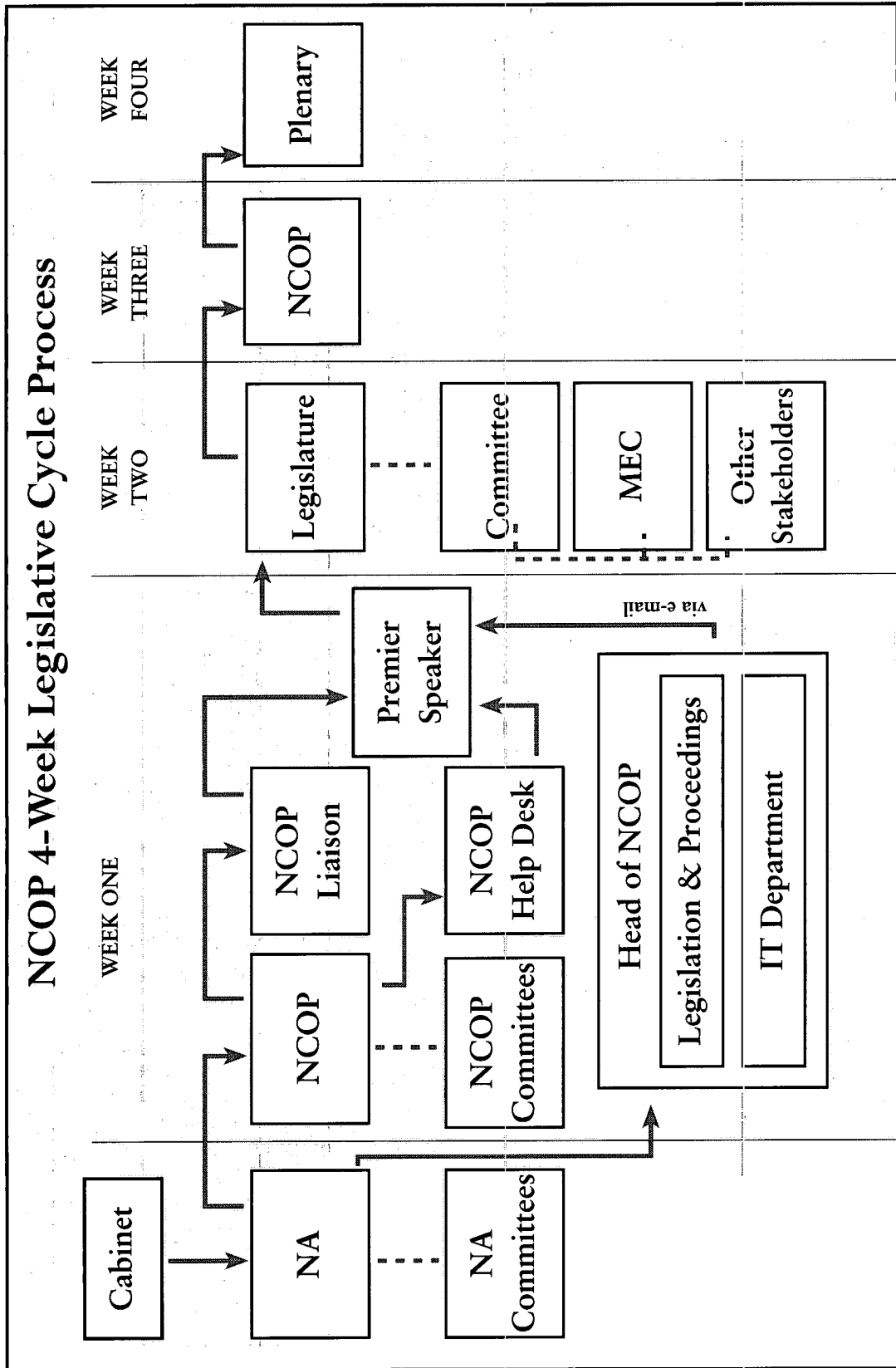
The NCOP Liaison Unit at Parliament has the primary responsibility of relaying information to the provinces and local government. This information is simultaneously sent both to the Regis House offices, and to the provinces themselves. The table in Annexure Seven shows exactly what information is conveyed as well as the way in which it is transferred.

10 Pre-Workshop Interview Report, NCOP Strategic Planning Workshop, NDI January 1998 (p.3)
 11 Bid, (p.2)
 12 Bid, (p.2)





SOURCE/ORIGIN	ITEM	MODE OF COMMUNICATION
Liaison office	Programme	Faxed to province Internal mail to Regis House
	Bills passed by NA (in consultation with table assistant)	Fax Fax
	Back-up daily papers	Courier; internal mail
	Back-up documentation of rules/ whips meetings	Fax; internal mail
	Draft resolutions and order papers	E-mail / fax
	Amendments to bills (emergencies) House	Fax and internal mail to Regis House
	Requests for special delegates	Fax; internal mail
	Staff issues: agendas; minutes of meetings and workshops; staff contact info.; etc.	
	Documentation re SALGA: cont. Info, govet gazettes, etc	
Table assistants	Agendas and minutes of rules, joint rules and rules of sub-committees	Fax; internal mail
	Letters to speakers re bills passed by NA	Fax; courier
Usher of the Black Rod	Agendas and minutes of whips' meetings	
Committees	Committee documentation	Fax; courier
Legislation and proceedings	Status of legislation	Courier; internal mail to Regis House
Hansard stores	Daily papers (order and papers, bills, Act's minutes of proceedings), hansard departmental annual reports	Courier; internal mail to Regis House
Data section	Daily papers (as above)	E-mail





5. Legislative Processes

In reality the NCOP consists of two distinct legislative processes – one for bills that affect provinces, and another for those that do not. Before a government department tables a bill in Parliament, the State Law Advisors determine what process the bill must follow.

Once a bill has been tabled in Parliament it must pass through what is referred to as the “Joint Tagging Mechanism.” This committee, made up of the Presiding Officers of each House of Parliament and the Legal Advisor to Parliament, then certify the State Law Advisor’s classification of the bill. If there is disagreement, the bill is then referred to the Constitutional Court for mediation.

Section 76 legislation, bills that are deemed to affect the provinces, require provinces to formally arrive at a mandate. Each province is allowed only one vote, and the legislation is passed with the support of at least five provinces. On the other hand, Section 75 legislation, or so called national competency bills, are voted on by individual or party-line votes.

Bills that do not affect the provinces are those that relate to national functions (such as Defence, Foreign Affairs, and Justice). When such a bill has been passed by the National Assembly, it goes to the NCOP. Each delegate has one vote and can decide whether to vote in favour or against the bill without consulting the province.

The process becomes considerably more complicated when a bill is deemed to “affect” the provinces. Legislative issues that affect the provinces are listed in Schedule 4 of the Constitution and include bills on issues such as Welfare, Education, Health, Agriculture, etc., where national and provincial government have concurring competence. These bills require that each province cast only one vote, and five provinces are needed to pass any bill.

“Because delegations vote according to the mandate of their provincial legislature, the legislative process in the NCOP must allow for provinces to discuss matters and formulate positions. At the same time, provinces, through their delegations, need an opportunity to discuss matters with each other.”¹³

To allow proper consultation and discussion both within provincial legislatures and among provinces, the NCOP operates on a four-week cycle process.

Week One: During week one the bill is tabled in the NCOP and Select Committees are briefed by the relevant Minister or representative from the National Executive Department initiating the bill. This briefing material will be forwarded to the province should they choose not to send a special delegate.¹⁴

13 NCOP Study, Draft Report; European Union Programme for Development and Construction in South Africa, February 1998 by Mr. Gaitsiwe Lenepa, Prof. Christina Murray, and Mr. Robinson Ramaite. (pg. 13-18)

14 There was a pilot project during 1997 to televise these briefings on Multichoice’s Parliamentary Network and allow provincial participants to fax in questions during the briefings.



Week Two: Considered a “provincial work week”, no meetings are allowed to be scheduled in Cape Town and all Permanent Delegates are expected to report to their respective provinces to participate in the provincial debates on NCOP legislation. During this week, negotiating mandates are developed to guide the delegations’ efforts to achieve the goals set out by the province. Public hearings may also be held during this week.

Week Three: In the early part of the week, Special Delegates and relevant Permanent Delegates attend provincial negotiations in Select Committees and negotiate in accordance with their provincial mandates. Later in the week, Special and Permanent Delegates report usually to the relevant portfolio or standing committee in the province on the progress of the negotiations and the province decides on a final voting mandate.

Week Four: NCOP meets in plenary to vote on the bill.

Prior to the start of this four-week cycle, provinces have several weeks, (if not months), during the green and white paper stages and through its progress in the National Assembly to acquaint themselves with the legislation and research provincial impact. This can only take place if there is an “early warning mechanism” and proper communication within the delegation in Cape Town and the provincial legislature. This effort at pre-planning allows the province to conduct public hearings as soon as the bill is passed through the National Assembly.

The Legislative Programme

Programming for the NCOP is a complicated process that requires the synchronisation of not only the NCOP and the National Assembly, but also the individual programmes of each of the nine provincial legislatures to ensure that there are not conflicting dates and times of meetings. Without this coordination, provincial legislatures cannot meet the deadlines for public input in time to confer their mandate through the NCOP.

The programming of this legislative cycle is done by a committee on which each province is represented, usually by provincial whips. Even before the beginning of the cycle however, provinces should have a rough idea of legislation that is likely to be introduced during the next cycle.

Without a doubt the programme is the most problematic administrative task facing the NCOP. This is exacerbated by the fact that the NCOP programme is largely driven by the National Assembly, because the majority of legislation is first introduced there.¹⁵ In its first year of operation, the NCOP was faced with a badly overloaded programme that forced the provinces to scramble to deliver mandates on a number of bills for which they had not been able to give proper consideration.¹⁶

15 In 1997 all but one piece of legislation was introduced first in the National Assembly.
16 Pre-Workshop Interview Report, Provincial NCOP Workshop Series 1997-98



“The Constitution anticipates the introduction of any legislation affecting provinces (section 76 legislation) in the NCOP and greater use of this procedure will undoubtedly ease pressure on the NCOP.”¹⁷

Constantly changing committee schedules and briefings the most common complaint by provincial participants during the interviews are a costly inconvenience for provinces and special delegates. Nearly every participant who had served as a special delegate conveyed frustrating stories of incurring two days of travel to arrive in Cape Town for a particular briefing only to find that the briefing had been postponed until later in the week when they were due to report back to their own committee on its outcome. Interviewees also complained of receiving notices of important briefings at the very last minute – too late for them to arrange to have a permanent delegate or Regis House staff member attend and take notes.

The Chairperson of Select Committees in the NCOP prepares a comprehensive list of scheduled committee meetings and briefings at the national level every week/month/cycle. This list is then circulated to each of the provincial legislatures most often through the Speaker’s Office. This co-ordination allows each provincial legislature to plan public hearings, schedule committee meetings and maximise the participation of both the special and permanent delegates.

Steps are also being taken in the NCOP to explore options, including cable television broadcasting of important NCOP committee meetings and briefings, to enable provinces to participate without incurring the cost of sending special delegates. This pilot project, begun late in 1997, allows provinces to watch the proceedings in their own provincial legislature and participate by faxing questions during the proceedings.

Delivering the Mandate

Section 65(2) of the Constitution requires that national legislation be passed to define a uniform procedure for provinces to confer voting authority to their delegations. This legislation has not been passed. Instead, provincial legislatures have developed a number of different methods for determining mandates.

In its NCOP Needs Assessment Study, the European Union Programme for Development and Construction in South Africa identified each province as falling in one of four models by which the mandate was conferred. The following is an excerpt from that report:

17 NCOP Study, Draft Report; European Union Programme for Development and Construction in South Africa, February 1998 by Mr. Gaitiwe Lenepa, Prof. Christina Murray, and Mr. Robinson Ramaite. (pg. 13-18)



MODEL 1

Only the House can confer the voting mandate.

A simple majority of the House confers the mandate. The Free State and Northern Province follow this approach. Although it causes scheduling headaches for provinces, this approach raises no constitutional difficulties, which the other models might.

MODEL 2

Adoption of the mandate depends on whether the House is sitting or not.

If the House is sitting it must confer the mandate. If the House is not sitting certain committees can confer a mandate by simple majority:

- Eastern Cape requires a resolution of the NCOP Business Committee
- Mpumalanga uses its Programming and Prioritisation Committee
- In the North-West the Speaker confers the mandate in consultation with the relevant Standing Committee, MEC and the Premier; and
- In the Western Cape the Standing Committee itself determines the mandate.

MODEL 3

Adoption of mandate by special majority of the NCOP Committee, failing which, adoption by the House.

KwaZulu-Natal uses this model, which allows a 75 percent majority of the NCOP Committee to confer the mandate regardless of whether the House is sitting. If the NCOP Committee cannot secure the special majority, the House must decide that matter. Thus far the mandating process has only had to go to the House once.¹⁸

MODEL 4

Flexible approach depending on the bill.

Gauteng's Proceedings Committee classifies a bill as "important", "ordinary", or "technical". The way the mandate may be conferred depends on this classification:

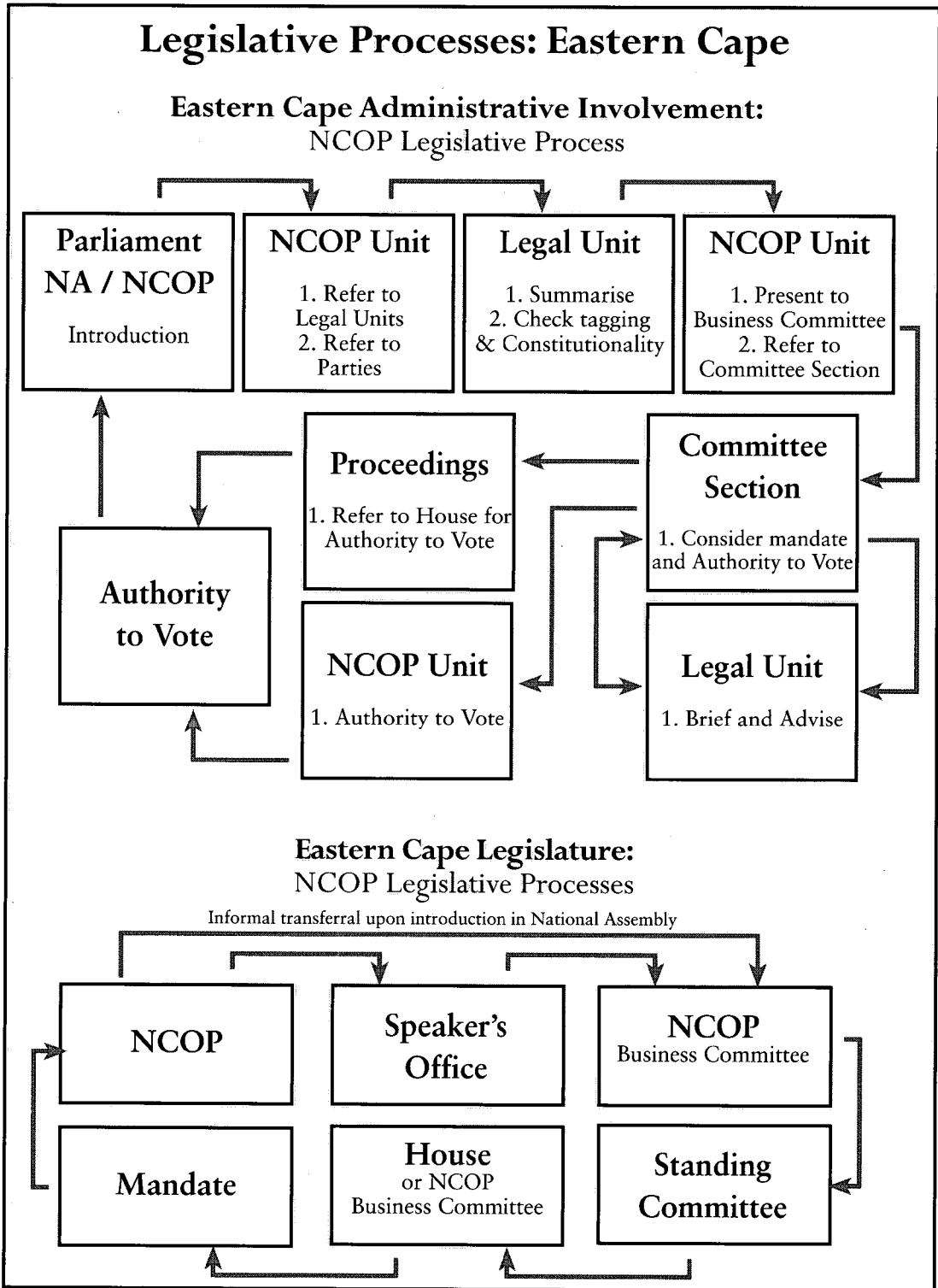
- "Important" bills follow the first approach (i.e. the House must confer the mandate).
- "Ordinary" bills follow a species of the second model. (If the House is sitting it confers the mandate. If the House is not sitting, the Speaker distributes the Standing Committee's report through the Announcement Tabling and Committee Reports and unless four written objections are received by 12h00 the next day, the report is taken as adopted).
- Technical bills¹⁹ do not ever have to go to the House and are simply included on the ATC. Again, if no objections are received the report is taken as adopted.²⁰

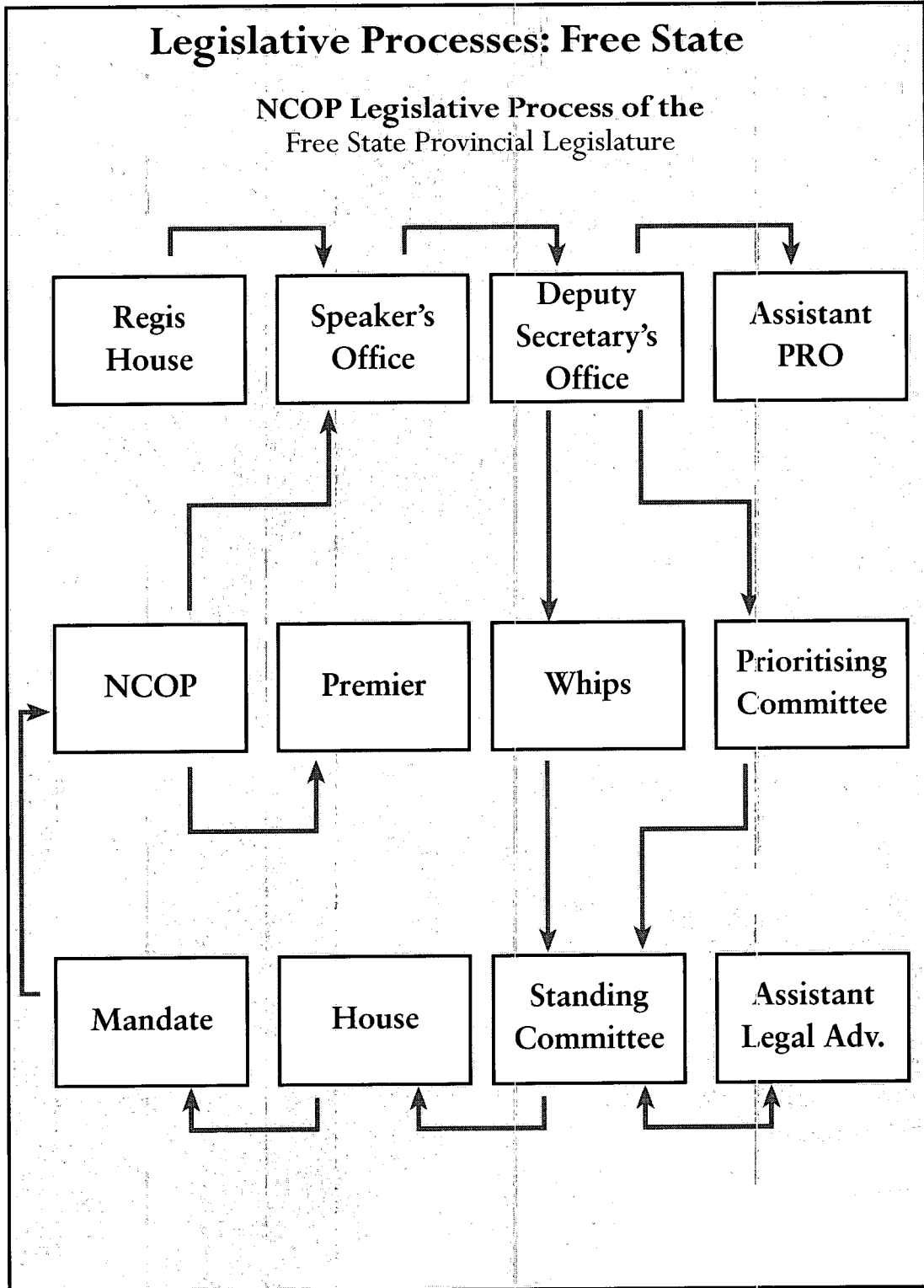
The charts in Annexure Eight attempt to capture these individual processes through the use of simplified "flow charts" or organograms.

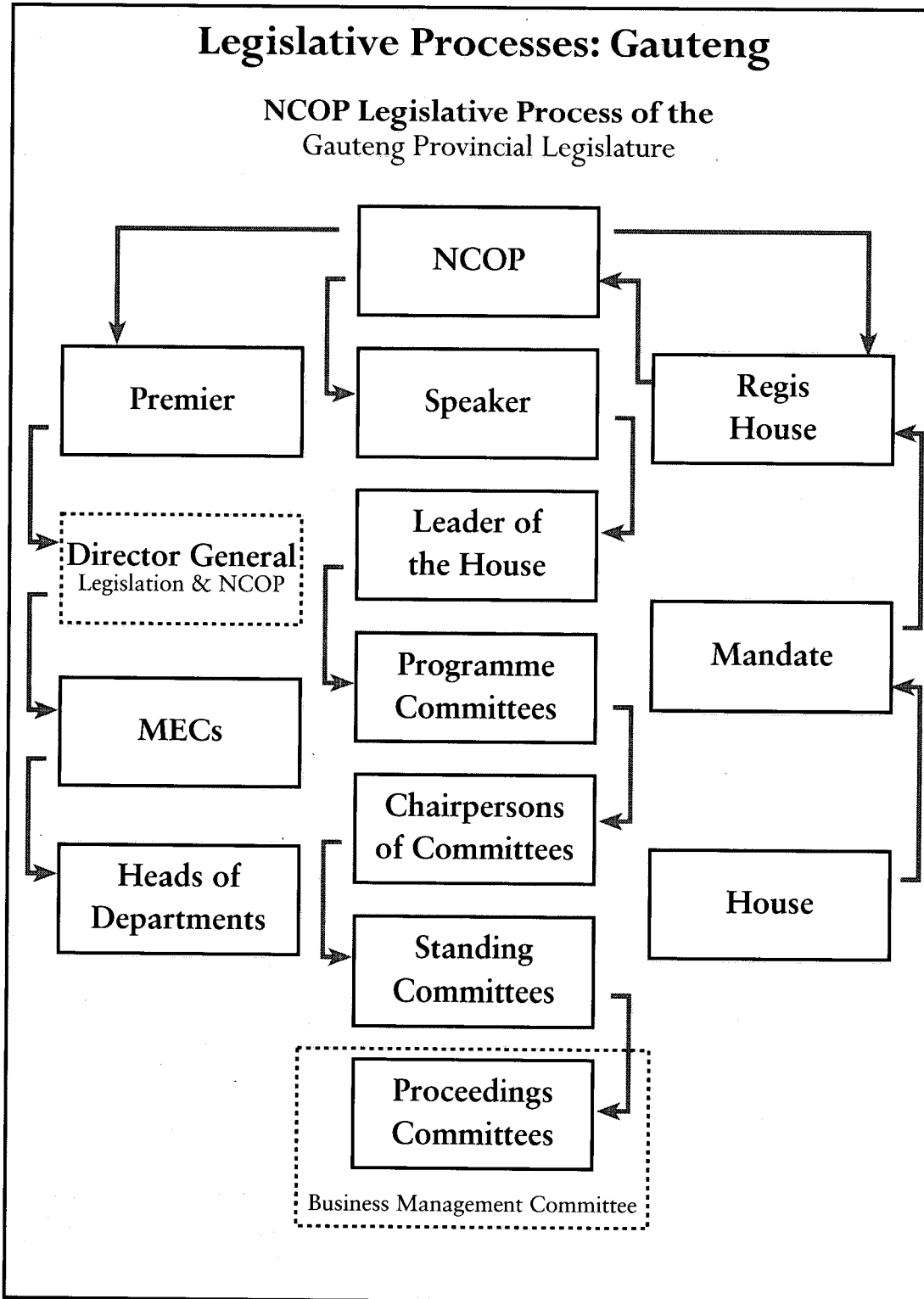
18 75 percent of the Committee (i.e. the ANC and the IFP) did not agree on the Council of Traditional Leaders Bill.

19 Section 76 Bills are unlikely to be classified Technical.

20 The formal document sent to the NCOP indicating the mandate of the province is usually certified by an MPL. In many provinces the Speaker performs this function: Free State, Gauteng, Northern Cape, and North-West. In the Eastern Cape and Northern Province the Secretary does so. In the remaining provinces it is done by a committee chair. (In KwaZulu-Natal the Chair of the NCOP Committee; in Mpumalanga, predictably the Chair of the Programming and Prioritising Committee; and in the Western Cape the Chair of the Standing Committee.)



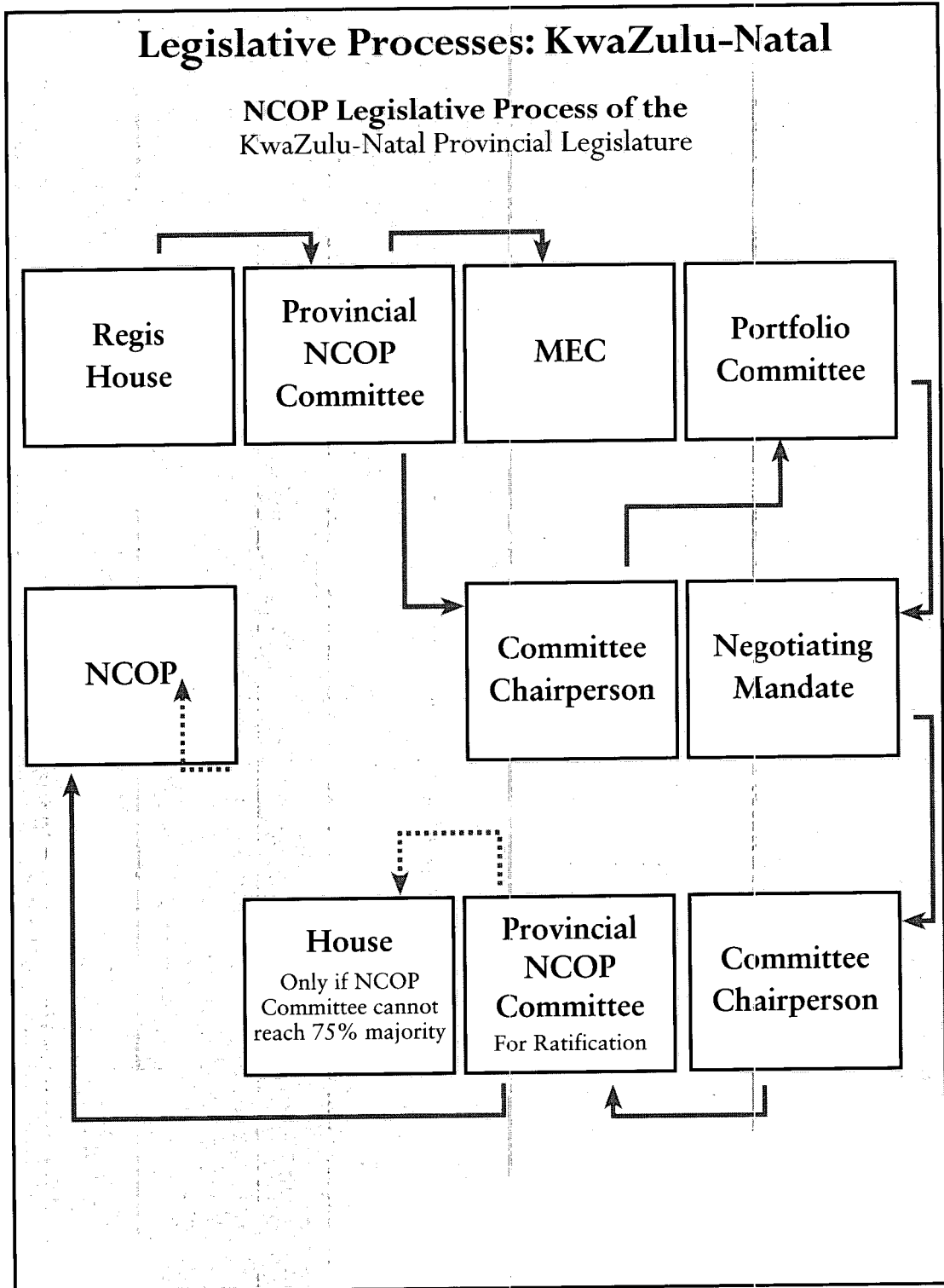






Legislative Processes: KwaZulu-Natal

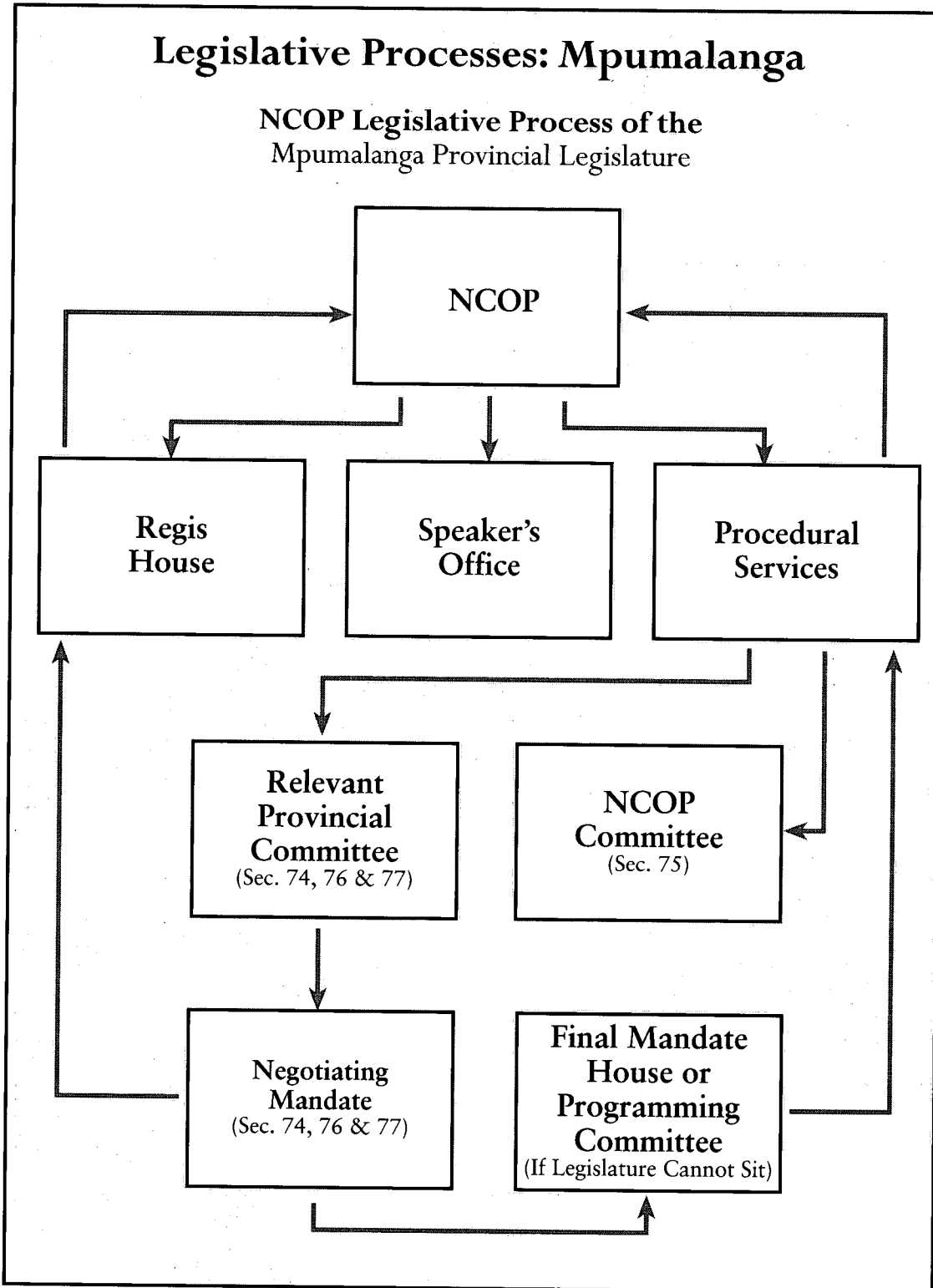
NCOP Legislative Process of the KwaZulu-Natal Provincial Legislature

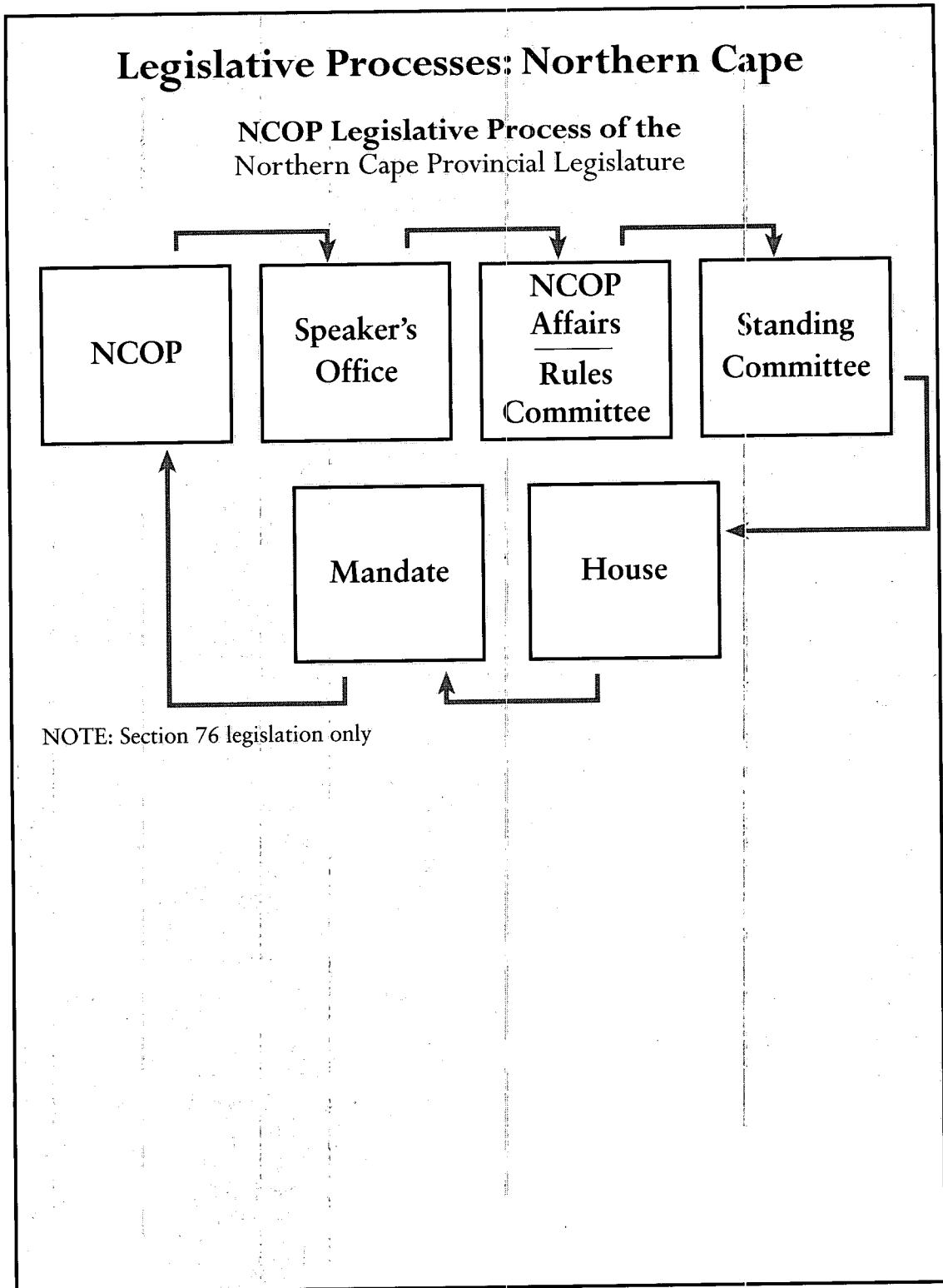




Legislative Processes: Mpumalanga

NCOP Legislative Process of the Mpumalanga Provincial Legislature

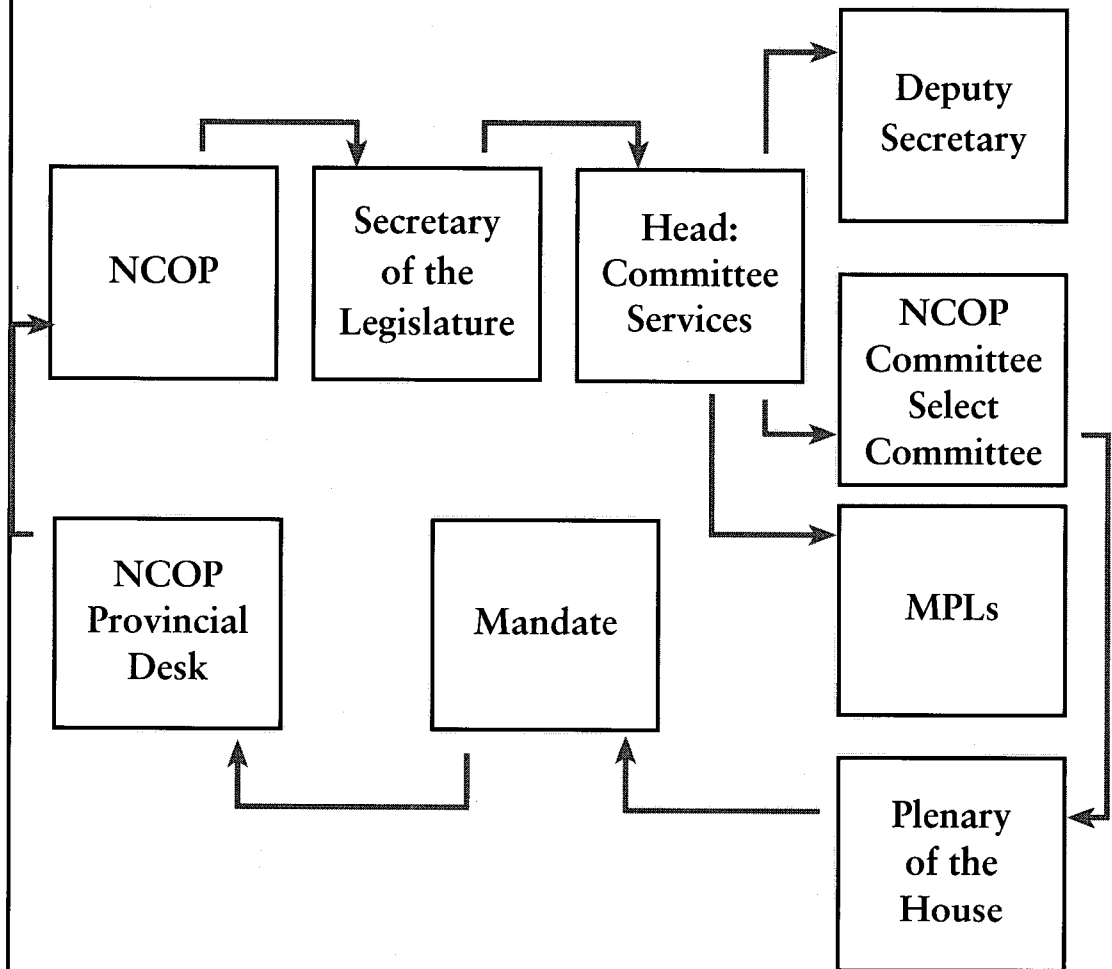


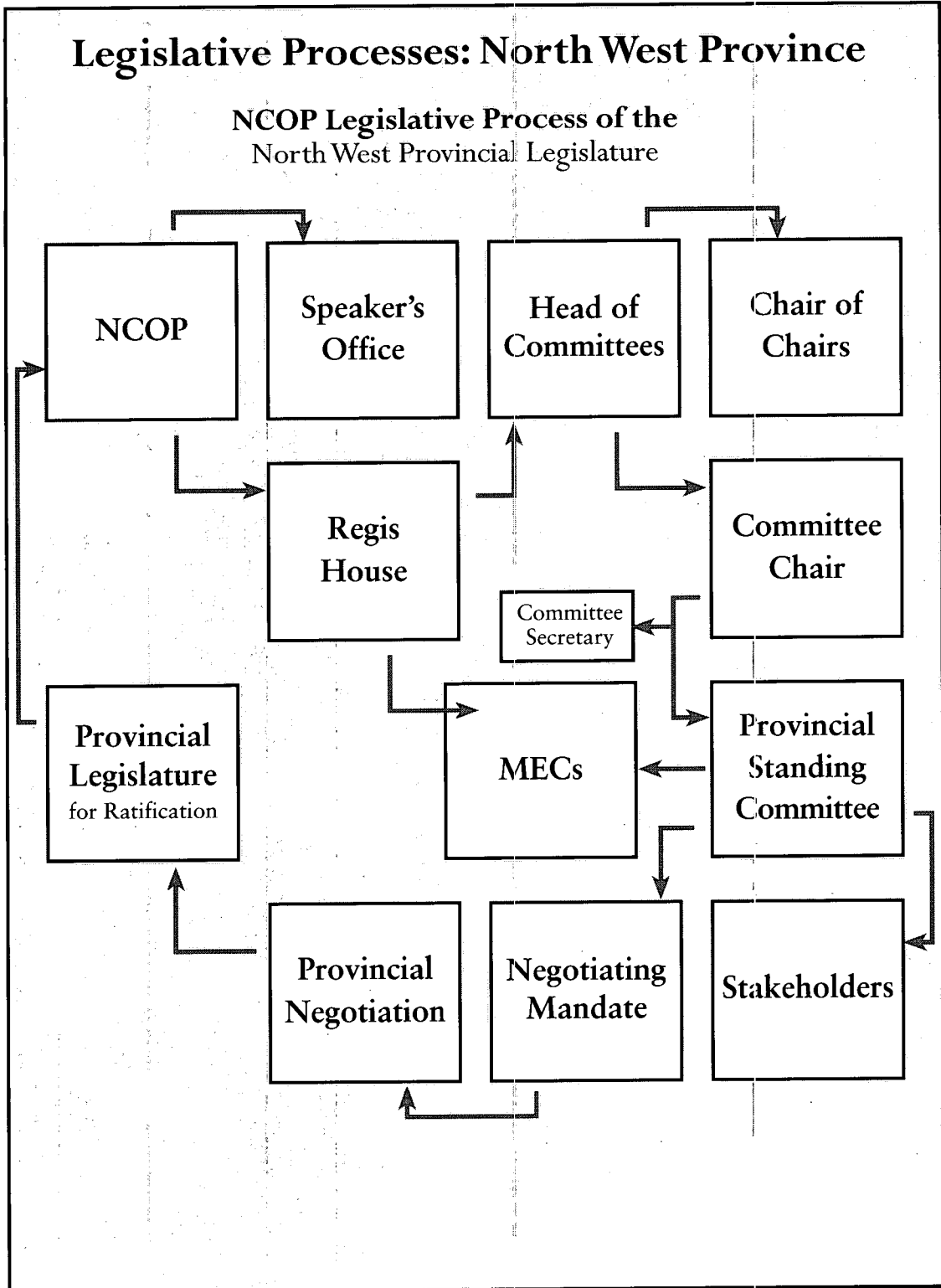




Legislative Processes: Northern Province

NCOP Communication Structure Northern Province Legislature

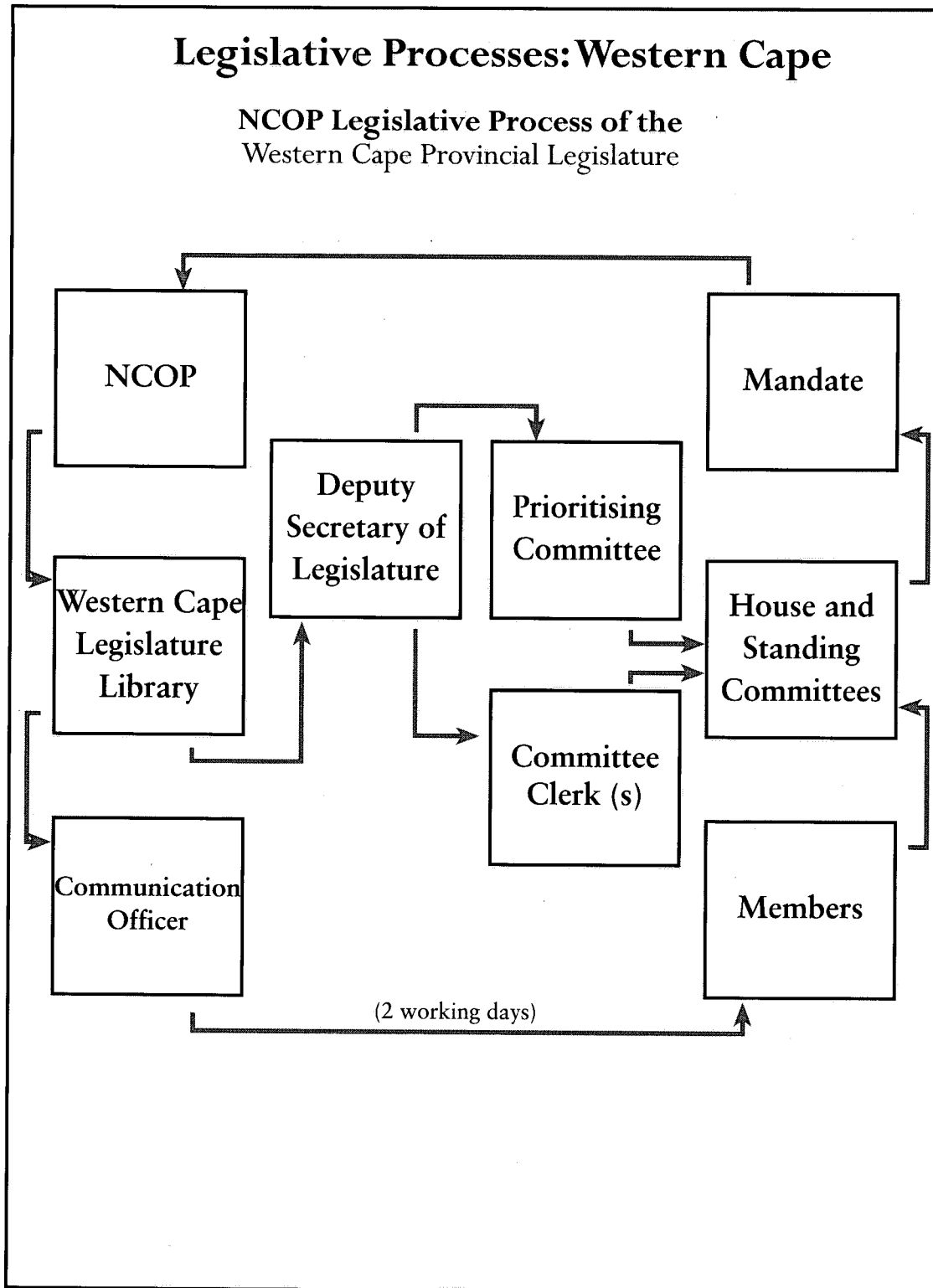






Legislative Processes: Western Cape

NCOP Legislative Process of the
Western Cape Provincial Legislature





6. Local Government and the NCOP

In accordance with Section 163 of the Constitution, Parliament passed the Organised Local Government Act on the 12th of November 1997. The Act provided for the recognition of one national and nine provincial organisations representing municipalities, and the procedures by which organised local government may designate representatives to the NCOP and the Fiscal Financial Commission, (FFC).

According to the legislation, each of the South African Local Government Associations (SALGA) provincial local government associations are able to nominate up to six representatives for designation by SALGA to participate in NCOP proceedings as non-voting members. SALGA's Executive Committee will then be able to designate up to 10 representatives from this pool of 56 delegates at any one time to participate in NCOP proceedings.

Acting on constitutional instruction, Minister for Provincial Affairs and Constitutional Development, Hon. M. Valli Moosa, officially recognised SALGA and its member provincial associations as representing organised local government in the Government Gazette on 30th of January 1998. That same day, NDI facilitated a joint strategic planning session between the NCOP and SALGA to collaborate in developing a Strategic Action Plan for integrating SALGA into active participation in the NCOP.

Role of Local Government in the NCOP

In March of 1998 NDI conducted a joint Staff Training Workshop for SALGA and the NCOP. At this workshop the key administrative personnel from SALGA, the provincial associations, and the NCOP were gathered together to exchange information and devise a workplan for streamlining communication structures between the two bodies.

Prior to each of these workshops, interviews were conducted by NDI to assess the current state of communication and communication technology as well as gauge the understanding of the NCOP and SALGA's role within it.

- Individuals expressed the opinion that national government, provincial departments and provincial legislatures did not yet recognise the important role of local government enshrined in the constitution.
- In general, many expressed the view that government departments were giving SALGA very little time to respond to important policy issues.
- Those interviewed expressed unanimous frustration with the time constraints on local government's input on policy, highlighting that time frames did not allow for proper consultation with member local authorities. One individual cited, as an example, the fact that SALGA and the provincial local government associations were given two days to make inputs on the draft demarcation bill.



- Lack of information coming from most provincial departments and the provincial legislatures was also a key concern and individuals felt that the mandate to consult with organised local government on provincial legislation should come directly from the NCOP leadership.

Annexure Ten provides a list of provincial association members' viewpoints on the role of local government in the NCOP as well as that of SALGA.

Information Flow and Communication with Provincial Associations

- More than 70 percent of the individuals interviewed expressed frustration with the current level of communication with the provincial legislatures. On average, most offices communicate with their provincial legislatures on a monthly basis.
- Most individuals reported frequent communication with the MEC for Local Government's office. On average, offices are communicating with the MECs' offices on a weekly basis.

Annexure Eleven includes charts detailing the specific communication patterns of SALGA and its provincial local government associations.



Annexure Ten

Role of Local Government in the NCOP

LOCAL GOVERNMENT ASSOCIATION	WHAT POTENTIAL ROLE DOES ORGANISED LOCAL GOVERNMENT HAVE IN THE NCOP? HOW DO YOU SEE SALGA'S ROLE IN THE NCOP?
SALGA	<p>“Broadly two-fold: (1) to represent interests of local government: at national level; in the national legislative process; and (2) play a role where local government is able to sensitise other government departments so that decisions they make will take into consideration local government concerns. SALGA’s role is to participate in Select Committee proceedings and review and prioritise information, determine what are important issues, and enhance our capacity to make informed input.”</p>
GALA: Gauteng Association of Local Authorities	<p>“To represent and lobby SALGA’s position on legislative matters concerning local government. Currently, contact is restricted to written submissions. No direct participation in the NCOP leads to inefficient lobbying function.”</p>
KWANALOGA: KwaZulu-Natal Local Government Association	<p>“OLG has a significant role. There is no piece of legislation – national or provincial – that doesn’t have a bearing on local government, particularly in terms of the constitutional mandate of cooperative governance. Organised local government will have to brief representatives to the NCOP correctly and prepare position papers on a whole range of issues.”</p>
FRELOGA: Free State Local Government Association	<p>“First, OLG can serve as a useful information tool for the NCOP. National and provincial legislators are often not clued up to what is happening in municipalities and so organised local government can provide information on how legislation affects people at the local level. Second, OLG’s role is to lobby national and provincial government on policy affecting local government and to get the best they can through their participation in the NCOP. Third, to serve as a link between the NCOP and municipalities itself with one proviso; how do you organise local government associations in provincial legislatures? SALGA should serve as a coordinating mechanism between all the interests of the provincial local government associations and member municipalities. From a provincial basis, SALGA needs to try to represent all provincial member associations’ interests in the NCOP itself.”</p>
WECLOGO: Western Cape Local Government Organisation	<p>“OLG will voice the viewpoints of local government in the NCOP. However, the challenge is that different views will arise from different provinces, but will have to be voiced as one national voice through one national body, SALGA.”</p>



LOCAL GOVERNMENT ASSOCIATION WHAT POTENTIAL ROLE DOES ORGANISED LOCAL GOVERNMENT HAVE IN THE NCOP? HOW DO YOU SEE SALGA'S ROLE IN THE NCOP?

NPLGA: Northern Province Local Government Association

"I don't feel comfortable speaking on what potential role SALGA has in the NCOP. However, I can say that it will be important that SALGA is not seen as a separate entity from the NCOP. SALGA will have to be integrated into the NCOP. We will need to provide support services on pending legislation."

NOCLOGA: Northern Cape Local Government Association

"Basically consultation, communication and cooperation in terms of bills, legislation tabled. SALGA's role is that of influencing the trend that legislation must take in respect of local government and taking an active participatory role and involvement."

LOGAM: Local Government Association of Mpumalanga

"The NCOP will be one way that people will recognise the role of local government. Local government is the contact to the day-to-day activities and concerns of the people. OLG's views will inform and link national government to the people. It is a very important role. All of us need each other under the cooperative governance structure in the Constitution. The proper functioning of the consultative process with member councils is crucial to this. SALGA is the voice of local authorities. SALGA needs to go to the NCOP and carry views of its members. Proper feedback process to ensure that we are getting our mandate from member councils is very important. We need to create a consultative process."

NORWELOGA: North West Local Government Association

"The potential role depends on what communication and administrative systems are put in place within SALGA. It also depends on the representatives of SALGA on the NCOP. The representatives need to be knowledgeable on policy issues. It will also depend on whether the NCOP is geared to make sure that OLG is recognized by government departments. It seems that government and provincial departments need to be oriented on the recognition of local government enshrined in the constitution. Local government needs to be recognised as a true partner and recognised for its role. SALGA and OLG must be seen as the same body and internal procedures within SALGA need to be clarified."

ECLGA: Eastern Cape Local Government Association

"To be the mouthpiece of all local government structures in the South Africa, collectively. SALGA's role is to represent the views of local government to ensure that local authorities have a voice."



Annexure Eleven

Information Flow and Communication with Provincial Associations

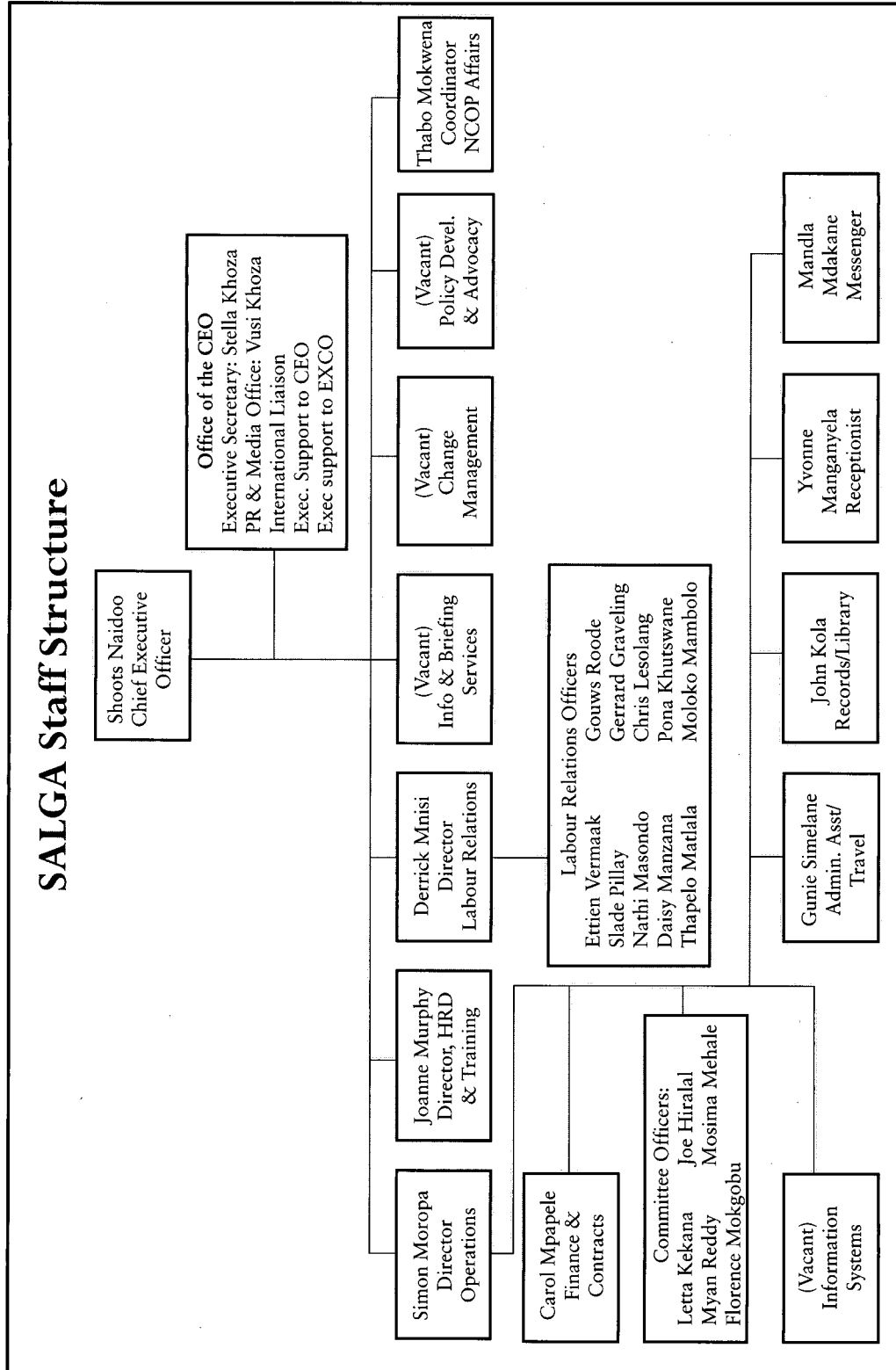
Provincial Local Government Associations	1st point of Contact on info. on pending legislation	How are inputs from members synthesised	Length of time for feedback from Members	Time needed for consultation with Members
GALA Gauteng Association of Local Authorities	ANC web page Government Gazette Provincial Legislature	Director or Technical Advisors at GALA depending on issue	1 month	2 months
KWANALOGA KwaZulu-Natal Local Government Association	Government Gazette Provincial Gazette	Director	1 month	approx. 2 months b/c EXCO meets once every two months
FRELOGA Free State Local Government Association	Legislative Briefs from LegiLink Government Gazette Provincial Gazette	Strategic Planner	6-8 weeks	at least between 2 weeks to 1 month
WECLOGO Western Cape Local Government Organisation	Government Gazette Provincial Gazette Provincial Legislature	Director	1 month	at least 1 month needed
NPLGA Northern Province Local Government Association	SALGA	Director	3-4 weeks	at least 1 month needed
NOCLOGA Northern Cape Local Government Association	SALGA NOCLOGA EXCO	Director	NA	NA
LOGAM Local Government Association of Mpumalanga	SALGA Provincial Departments	Working Group Committees	1 month	1-2 months needed



Provincial Local Government Associations	1st point of Contact on info. on pending legislation	How are inputs from members synthesised	Length of time for feedback from Members	Time needed for consultation with Members
NORWELOGA North West Local Government Association	Government Gazette Provincial Gazette	Director	4-5 weeks	6-8 weeks needed
ECLGA Eastern Cape Local Government Association	SALGA	Acting Director	1-4 weeks or no response	NA
Communication Patterns: PLGA's and Provincial Executive				
Provincial Local Government Associations	Contact with Provincial Legislature	Contact with MEC for LG'S office	Contact with Premier's Office	
GALA Gauteng Association of Local Authorities	3-4 times/ year	daily	3-4 times/year	
KWANALOGA KwaZulu-Natal Local Government Association	monthly	weekly	10 times/ year	
FRELOGA Free State Local Government Association	3-4 times/ year	bi-weekly	3-4 times/ year	
WECLOGA Western Cape Local Government Association	weekly	weekly	weekly	
NPLGA Northern Province Local Government Association	bimonthly	weekly	weekly	
NOCLOGA Northern Cape Local Government Association	monthly	weekly	monthly	
LOGAM Local Government Association of Mpumalanga	monthly	3-4 times a year	3-4 times/year	



NORWELOGA North West Local Government Association	monthly	monthly	monthly
ECLGA Eastern Cape Local Government Association	never	weekly	3-4 times/ year
Method of Information Dissemination to Provincial Associations			
Provincial Local Government Associations	Method of Contact	Frequency of Contact to Members	
GALA Gauteng Association of Local Authorities	by winfax and then followed up by courier	weekly	
KWANALOGA KwaZulu-Natal Local Government Association	weekly circulars, including legislative briefs by mail	weekly	
FRELOGA Free State Local Government Association	by fax and courier	as regularly as necessary, but it is very ad-hoc	
WECLOGO Western Cape Local Government Association	by fax	whenever get info; sometimes more than once in a week	
NPLGA Northern Province Local Government Association	by fax and followed up by mail	weekly	
NOCLOGA Northern Cape Local Government Association	by fax	as regularly as necessary; sometimes more than once in a week	
LOGAM Local Government Association of Mpumalanga	by fax and followed up by mail	biweekly	
NORWELOGA North West Local Government Association	by mail	weekly; sometimes more than once in a week	
ECLGA Eastern Cape Local Government Association	by fax and courier	monthly basis	





7 Planning the Way Forward:

Recommendations from the European Union NCOP Needs Assessment

The NCOP is currently in the process of organising a Strategic Planning Workshop on the Implementation of the NCOP as a follow-up to second round of provincial workshops and the NCOP National Conference. The purpose of this workshop will be to highlight the political and administrative blockages that still exist and resolve these issues. What follows is a brief overview of major concerns and some possible solutions for consideration.

Executive / Legislative Relations

Each of the provincial workshops participants expressed a desire for increased participation of the Provincial Executive on NCOP matters. While much of this consultation was tasked to the MECs, participants clearly felt that the Premier's leadership is required as a means for providing a bridge between the executive and the legislative branches in the province.

Participants at the National Workshop on the Implementation of the NCOP held in November 1996 expressed an expectation that MECs would regularly brief provincial legislative committees and participate in the NCOP as members of the provincial legislature. However this participation, in most cases, has not materialised. Provinces also voiced concern about the apparent lack of involvement of many provincial departments in the research and public input stage of the legislative process. At the NCOP National Conference in May of this year Deputy President Thabo Mbeki referred to this saying:

"It would appear that MECs consider participation in MinMECs as the sum total of their contribution to the development of policy and have failed to grasp the significance of the role of the NCOP in intergovernmental relations. As a result, legislatures do not have at their disposal the experience and expertise of MECs and their departments when considering legislation that will impact directly on the lives of the people in the province. In most instances provincial legislatures approve legislation in the NCOP without having fully examined the capacity of the province to implement such legislation."

While this participation the responsibility of each MEC, ultimately the political leadership in the province, namely the Premier, must be accountable for ensuring that it takes place. Ministers also must be sensitised to the need for consultation and participation with provincial legislatures and ensure that MinMECs do not conflict with legislative calendars.



Integrating Communication Structures

It seems clear that a centralised liaison function must be developed within the NCOP Liaison Office to monitor and possibly manage information flow between the NCOP and its provincial and local government partners. A computerised document tracking system is envisioned that will organise the documents produced or received by Parliament, and make them easily available on the Internet. Building on a Technology Assessment conducted in 1997, NDI is currently working with the NCOP on the development of such a system.

One of the most important elements of any such information system, however, is that it must adhere to three basic principles:

- It must be standards-based, meaning that the technology used to develop the system must be average or standard in the computer industry.
- It must be easy to use. The system must be both easy to understand and technologically easy to implement. In layman's terms this means that anyone with a computer, an internet connection, and a printer can access and use the system.
- It must be Internet based. By sharing and storing the information on the Internet, the system will guarantee access to up-to-the-minute changes in documents such as the parliamentary programme, committee schedules, legislation, testimony, departmental briefings, and a fully searchable archive of past information.

An 'alerts' or 'notices' based "push" email messaging model will inform recipients of the availability of information, providing links back to the document on the Parliament web site. Each time a notification is sent or a document received, the system will log the event so that reporting can inform NCOP management of information flow into and out of Parliament.

Communication Between National and provincial committees

Liaison activities can then be monitored and adjusted as necessary to address the concerns surrounding the inadequate flow of information between NCOP committees and the provinces. This system will also enable up-to-the-minute access to frequently changing documents such as the Programme and committee schedules. The single source web solution will guarantee that recipients get current information regardless of when they access a document. Information can then only become outdated at the time it is printed in the provinces. Ideally, to avoid that situation "links" to the documents can be forwarded among the provincial and local stakeholders so that information is current regardless of how many "jumps" one is down the information flow chain.



Relationship Between Permanent and Special Delegates

As was mentioned earlier several “barriers” exist between Permanent and Special Delegates – some physical, others psychological. These barriers can be as complex as access to information, or as simple as no place to sit. This need not be the case. During a national workshop on the development of the NCOP in November – attended by delegates from all political parties, all provinces, and local government – agreed that *“both permanent and special delegates must be directly involved throughout the legislative process.”*

Steps must be taken to make all delegates feel “at home” in either legislature. They must not be allowed to feel that their active participation in one makes their participation in the other “optional.” Improving the quality and eliminating the confusing duplication of information between the NCOP and the provinces will do much to eliminate these barriers. However, there are still practical steps that can be taken to improve these relationships:

- Provinces must keep Permanent Delegates fully informed of the provincial legislative programme;
- Provinces may want to issue “invitations” to Permanent Delegates when issues are being discussed related to their committee assignments;
- Permanent Delegates should utilise Provincial Whips to stay abreast of provincial activities;
- Permanent Delegates could be provided with work space in the provincial legislature to facilitate their productivity while they are there;
- NCOP Administration should explore the idea of expanding the liaison services it currently provides to include logistical and administrative support to Special Delegates.

The Role of Regis House

A centralised Liaison function necessitates that the role of Regis House be redefined. Currently the Regis House Offices contain a great deal of unused space and facilities. Staff there spend most of their time performing administrative and logistical functions on behalf of the province. These activities preclude them from performing much of the research function they were initially intended to do on behalf of the province.

