

2/2/1/1/2/6

CONSTITUTIONAL ASSEMBLY

**CONSTITUTIONAL COMMITTEE
SUB-COMMITTEE**

**MONDAY
07 AUGUST 1995
14H00
V16**

**DOCUMENTATION
NATIONAL AND PROVINCIAL
LEGISLATIVE AND
EXECUTIVE COMPETENCIES**

CONTENTS

No	Content	Page
1.	Schematic report - Part 1 General principles	1 - 4
2.	Schematic Report - Part 11 Detailed Analysis of Party Proposals	5 - 22
3.	Political Party Submissions	23 - 67
4.	Addendum - Recommendations of the Commission on Provincial Government	68 - 69
5.	Civil Society submissions	70 - 87

CONSTITUTIONAL ASSEMBLY

MEETING OF THE CONSTITUTIONAL COMMITTEE SUB-COMMITTEE

Please note that a meeting of the above committee will be held as indicated below:

DATE: Monday 07 August 1995

TIME: 14h00 - 18h00

VENUE: V16

DRAFT AGENDA

1. Opening
2. Theme Committee 3 report on National and Provincial Legislative and Executive Competencies
3. Any other Business
4. Closure

HASSEN EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY

Enquiries: Ms MM Sparg, Tel 245031, page 4184616 Code 6970

REPORT THEME COMMITTEE 3
SUMMARY: AREAS OF AGREEMENT & CONTENTION:
NATIONAL & PROVINCIAL LEGISLATIVE & EXECUTIVE COMPETENCIES

PART I : GENERAL PRINCIPLES

1. This section deals only with the approach of the various parties to the applicable Constitutional Principles. The details of the analysis of party proposals are attached in Part II.

Constitutional issues	Agreement	Contention	Further clarity
1. The existence of exclusive & concurrent powers.	There is agreement amongst all parties that there should be powers allocated to both national & provincial governments.	1. Where the residual powers of government lie. In other words for the ANC, NP & PAC residual power lies with the national entity, for the IFP & DP (ACDP?) residual power lies with the provinces.	1. Not all parties have expressed a view as to whether specific powers of provinces & of national government shall be listed expressly in the Constitution.
2. Role of framework legislation to be passed by central government.	There is agreement that national government should be empowered to pass framework legislation within which the provinces are then entitled to implement detail within the context of the framework provided by the said legislation.		1. Not all parties have expressed a view about framework legislation & functions. 2. The exact role to be fulfilled by framework legislation and under what circumstances.
3. The prevalence of powers of central government.	1. The principle of an override power to be exercised by the national parliament is accepted.	1. There is dispute as to the extent & ambit of the override. 2. There is a dispute as to the presumption that the legislature of central government prevails over that of provincial governments if the requirements of the override have been met (or vice versa).	1. Certain parties have not made clear as to whether the Bill of Rights overrides legislation which is in conflict therewith. 2. What is still in dispute is the extent an override power is to be exercised.

4. Should the competencies of the provinces be fixed by the Constitution or should the Constitution allow for an evolutionary process?

Where parties have addressed the question directly, there is agreement that the power should be evolutionary.

1. The definition of evolutionary.
2. For the ANC evolutionary appears to mean that the vertical division of competence should not be rigid. The concept of framework legislation can be used to extend the legislative activity of provinces.
3. For the NP the principle of evolution is linked to the principle of asymmetry namely that provinces will be obliged to assume certain of the powers certified in the Constitution but can take them up upon decision by such province at a later stage.
4. The PAC considers that the list of provincial powers should be fixed in the Constitution. However, the question of whether a province can take up these powers on an evolutionary basis has not been dealt with expressly.
5. The DP considers that lists of national & provincial powers should be fixed in the Constitution. However, provinces should be able to take up their powers on an evolutionary basis.
6. Certain parties have not addressed this question at all.
7. Certain parties (IFP) need to address the matter expressly.

<p>5. Executive competence of the provinces.</p>	<p>Provinces should be granted executive competency.</p>		<p>The detail of how & where such competence should be specified remain to be canvassed. Should there be extensive executive competence without legislative competence? Some parties have not addressed the matter directly.</p>
<p>6. Alternative mechanisms for safeguarding interests of provinces.</p>	<p>There is agreement between the ANC, NP, IFP & DP that the Senate constitutes a body capable of representing provincial interests in national lawmaking.</p>		<p>1. Liaison with TC2 which is also studying the Senate should be instituted as a matter of urgency to bring clarity to the role & composition of the Senate. 2. More detail is required on the role of other inter-governmental institutions which might be utilised in reconciling the powers of the provinces with the national government. 3. Certain parties to express their views more clearly (IFP).</p>
<p>7. The manner in which the Constitution would deal with local government. In particular the question arises as to the distribution of competencies between national & provincial levels of government as far as local government is concerned.</p>	<p>The promotion of maximum participation in democratic & accountable government at local level should be encouraged.</p>		<p>1. Although there is a difference in certain of the proposals which dealt with local government specifically, namely as to whether local government should be entirely regulated by means of provincial constitutions & legislation, the matter was not canvassed by all the parties. 2. Should central or provincial government have a supervisory role over local government?</p>

<p>8. Asymmetry as a Constitutional Principle governing the allocation of power.</p>			<p>1. There is a need for all parties to define exactly what they mean when they apply this term. 2. Certain parties have not dealt with the matter expressly (ANC & PAC).</p>
---	--	--	---

**REPORT THEME COMMITTEE 3
SUMMARY: AREAS OF AGREEMENT & CONTENTION:
NATIONAL & PROVINCIAL LEGISLATIVE & EXECUTIVE COMPETENCIES**

PART II : DETAILED ANALYSIS OF PARTY PROPOSALS

Constitutional issues	Agreement	Contention	Further clarity
<p>1. Residual legislative power.</p>	<p>The level where the seat of residual power is vested is usually the level which is more powerful. The ANC, NP & PAC agree that the national competency should be unallocated & the IFP & DP agree that the provincial competency should be unallocated.</p>	<p>The ANC, NP & PAC believe that the national competency should be unallocated (residual). The IFP & DP (on the other hand) believe that the provincial powers should be unallocated (residual) power.</p>	

2. The existence of exclusive & concurrent legislative powers: the listing of powers.

The level where the powers are listed is usually the weaker level of government. The ANC, NP & PAC agree that only the concurrent provincial legislative powers should be listed. The ANC & PAC agree that the said provincial competencies should be listed in the manner provided by the present Schedule 6. The NP wishes to add functional areas to the present Schedule 6 and also states that more information must be obtained in this regard. The IFP & DP argue that the exclusive national legislative competencies must be listed. However, the IFP believe that only these powers must be listed whilst the DP also lists exclusive provincial legislative powers as well as functional areas for framework legislation.

1. The ANC believes that concurrent provincial competencies should be listed in the manner provided for by the present Schedule 6. Framework legislation forms a separate category of concurrent legislative competencies (see below). Furthermore, the provinces have exclusive legislative competencies when they legislate on matters specific to the socio-economic & cultural needs of provincial inhabitants, subject, however, to the overrides (see below).
2. The NP believes that the concurrent legislative competencies must be listed - adding agency & delegated functions, water affairs, forestry, public works, land affairs & publication control to the present Schedule 6. The NP suggests that more information is to be obtained before such list is finalised. The NP further believes that exclusive provincial competencies is catered for when the provincial laws prevail (see overrides below); when the provinces pass detail legislation in terms of framework legislation of the national government (see below); & when provinces make laws that are reasonably necessary for or incidental to the effective exercise of their functions. The NP also proposes a

second list containing the functional areas for framework legislation (see below).

3. The IFP believes that the residual legislative competencies of provincial legislatures (see above) provide provinces with exclusive legislative power. Furthermore, the IFP believes that only the exclusive national legislative competencies must be listed as follows: foreign affairs, defence, citizenship, immigration, emigration, extradition & asylum, currency, money & coinage, weights & measures, customs, excise, tariffs, foreign trade, admiralty, maritime law, railways, national public service, industrial & intellectual property rights, monetary policy, national public finance, banking, credit, national statistical services, civil aviation, policing, telecommunication & broadcasting, postal communication. Concurrent provincial legislation only exists in the case of framework legislation (see below).

4. The DP believes that exclusive national legislative competencies must be listed as follows: citizenship, immigration & passports, customs & excise, defence, foreign affairs, mineral & energy affairs, national economic policy, national finance, national intelligence & security, national public service, national public works, transport, posts & telecommunication, registration of companies, trade & industries, water. Furthermore, exclusive provincial legislative competencies must also be listed: casinos, racing, gambling, cemeteries & cremation, clinics & hospitals (excluding teaching hospitals), cultural affairs, delivery of water, electricity & other essential services, education at all levels (excluding university & technicon education), firefighting, ambulance, housing, indigenous & customary law, land affairs, language policy, legal aid, liquor controls, local government, markets & pounds, nature conservation, provincial public media, provincial sport & recreation, roads, regional planning, traditional authorities, provincial public service,

		<p>provincial public works, public holidays, trading hours, urban & rural development, waste disposal. The DP also lists functional areas of provincial legislative competency where it is possible for the national government to pass framework legislation (see below).</p> <p>5. The PAC believes that only concurrent provincial legislative competencies must be listed (in keeping with the present Schedule 6).</p>	
--	--	---	--

<p>3. Role of framework legislation to be passed by central (national) government.</p>	<p>The ANC & NP agree that framework legislation forms a separate category of concurrent legislative powers. The NP wishes to add a second list in a Schedule containing the functional areas for framework legislation. The IFP, DP & PAC are also in agreement that there must be framework legislation.</p>	<p>1. The ANC views framework legislation as a separate category of concurrent legislative powers (see above) in order to give elasticity to concurrent powers (where provinces have exclusive power to legislate on the detail). The ANC does not list these functional areas - apparently it is part of the residual legislative competencies of the national government.</p> <p>2. The NP argues for a Schedule containing a second list of the functional areas for framework legislation (see above). It views these powers as a further category of concurrent legislative competencies. Again, the NP suggests that more information is to be obtained before such list is finalised.</p> <p>3. The IFP proposes framework legislation for its limited provision of national concurrent legislative competencies. It is the (exclusive) prerogative of provinces to provide the detail of such legislation. In this regard the IFP distinguishes between framework legislation (obliging provinces to legislate against standards established nationally) & general principles of legislation (obliging provinces to legislate</p>	<p>Further clarity as to exactly what parties mean by using this term.</p>
---	--	---	--

norms & standards in harmony with national principles).

4. The DP (as one of the areas where provincial legislation does not prevail - see above) lists the functional areas where the national government is empowered to pass framework legislation for setting minimum standards or uniformity across the nation which are necessary for a particular function to be performed effectively: abattoirs, agriculture, airports, animal control & disease, archives & museums, consumer protection, correctional services, justice, labour, police & public safety, pollution control, population development, provincial public enterprises, public transport, registrations, refugees, road traffic, soil conservation, trade & industrial promotion, university & technicon education, veterinary services, welfare services.

5. The PAC is in favour of framework legislation whilst the ACDP does not address the issue of framework legislation.

<p>4. The legislative prevalence of the powers of central government (overrides).</p>	<p>The ANC, NP, DP & PAC propose a national override on largely similar grounds. The ANC places the onus on the provinces to show that the overrides do not apply whilst the NP & DP place the onus on the national level to show that the overrides do apply. The IFP allows for a national override on only the narrowest of grounds. The ACDP believe that biblical standards override all legislation.</p>	<p>1. The ANC proposes that national overrides may take place upon the following grounds:</p> <ul style="list-style-type: none"> (a) provided that the Senate has consented; and (b) provided that the law sets minimum or uniform norms or standards across the country, or provides for equal opportunity or access to government services; or (c) provided that the law deals with a matter that affects more than one province or enables the country to act as a single entity or with one voice; <p>or</p> <ul style="list-style-type: none"> (d) provided that the law establishes a national framework for delivery of services or the management of institutions or providing a public service (see above); or (e) provided that the law deals with the protection of the environment, the economic union of the capital/labour market of the country, the implementation of national economic policies, or the maintenance of security; or (f) provided that the provincial law prejudices the economy, health, safety of the public, or security interests of another province or the country as a whole. The idea is that the Act of Parliament shall prevail over a law passed by the provincial 	<p>The ANC, NP, DP & PAC are to define the powers of override more clearly. A strong basis for complete consensus exists here. The parties (with the exception of the DP which has already done so) should spell out clearly that the Bill of Rights overrides all forms of legislation.</p>
--	--	---	--

legislature if the said grounds are met.

2. The NP proposes that there shall be prevalence of provincial laws over Acts of Parliament, except insofar as:

- (a) matters cannot be regulated provincially; or
- (b) matters require to be regulated or co-ordinated by uniform standards for the management or administration of that matter that apply generally throughout the country; or
- (c) the Act of Parliament is necessary to set minimum standards not provided for by provincial legislation for the rendering of services; or
- (d) the Act of Parliament is necessary for the maintenance of national economic policies, the protection of the environment across provincial boundaries, the promotion of inter-provincial commerce, the protection of the common market in respect of the mobility of goods services, capital & labour, or the maintenance of national security; or
- (e) the provincial law materially prejudices the economic, health, or security interests of another province or the country. The idea is that a law passed by a provincial government shall prevail over an Act

of Parliament unless certain grounds are met. Accordingly, the NP believes that the present section 126 should be retained but on narrower grounds. Furthermore, these overrides should be restricted by the principle of subsidiarity (see below) as well as by Constitutional Principle XXII (the national level may not encroach upon the geographical, functional & institutional integrity of the provinces).

3. The IFP rejects the idea of national prevalence or overrides. The IFP merely allows for prevalence of the national government on very narrow grounds: when a province fails to deliver essential services so as to jeopardise the health, safety & welfare of the citizens of the province. However, national overrides are valid & effective only for so long as or insofar as the province concerned has not adopted its own adequate legislative measures.

4. The DP allows for overrides in terms of the Bill of Rights; & states that a provincial law (in the case of exclusive or framework provincial powers - see above) shall prevail over an Act of Parliament unless:

(a) the Act deals with a matter which is the subject of an international treaty or international law to which SA is bound; or

(b) the provincial law or practice materially & unjustifiably prejudices the economic, health, environment or security interests of another province or of the country as a whole; or

(c) the provincial law or practice materially & unjustifiably obstructs the free movement of people, goods, money, information or assets between provinces. Furthermore, a provincial law prevails unless Parliament passes framework legislation in the designated functional areas (see above). In the event of a dispute concerning which level of government should have legislative competence in respect of a particular activity or functional area which cannot be resolved by mediation or by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the provincial legislatures.

5. The PAC proposes national overrides according to CP XXI.

6. The ACDP suggests that there is an override of legislation (whether of national or provincial nature) where a law does not comply with biblical principles.

5. Should the legislative competencies of the provinces be fixed by the Constitution or should the Constitution allow for an evolutionary process?

Most parties agree that provincial powers should evolve, *inter alia*, by making use of framework legislation. The IFP appears to favour a definitive prescription of powers.

1. The ANC sees framework legislation as providing for the provincial legislative competencies to have some elasticity.
2. The NP submits that constitutional certainty as to the powers at each level of government is needed. Powers are to be set out in the Constitution with, however, enough flexibility to allow for future development & for differences amongst the provinces. This will create the opportunity for asymmetry (see below).
3. The IFP proposes a Constitution where powers are defined definitively.
4. The DP believes the legislative competencies of the provinces should be fixed by the Constitution, but that provinces should be able to take up their powers on an evolutionary basis.
5. The PAC & ACDP do not address this issue directly.

<p>6. Executive competence of provinces.</p>	<p>All parties agree that the provinces shall have executive powers where they have legislative competencies. The ANC, NP, DP, IFP & PAC agree that even more executive competencies (even in areas where no legislative competence exists) must be given to the provinces.</p>	<p>1. The ANC distinguishes between legislative & executive functions on all the levels of government: practical executive functions in the administration must be assigned increasingly to elected & accountable provincial governments as administrative capacity grows while the weight of legislative activity at the national level of government is to be concerned especially with the setting of norms, standards & framework.</p> <p>2. The NP proposes both legislative & executive competencies for provinces in the areas indicated above. That is, the NP believes that the provinces must have executive competence where they have legislative competence.</p> <p>3. The IFP proposes the strengthening of provincial administrative executive powers through the provision of the following national matters to be administered by the provinces: customs, excise & tariffs, federal taxation, national statistical services, post & telecommunications.</p> <p>4. The DP believes that the national & provincial government should have executive competence where</p>
---	---	---

		<p>they have legislative competence (see above). Powers & functions at national & provincial (and local) level shall include the power to perform functions for the other levels of government on an agency or delegation basis.</p> <p>5. The PAC believes that the granting of exclusive executive powers to the provinces will satisfy the requirements of CP XIX.</p>	
--	--	---	--

<p>7. The Senate.</p>	<p>Most parties support the idea of a Senate representing provincial interests.</p>	<ol style="list-style-type: none"> 1. The ANC believes in co-operative governance & sees the Senate as a body representing provincial interests in national lawmaking - the preferred method whilst the courts will still determine the overrides (see above). 2. The NP strongly favours the introduction of the Senate as a body representing provincial interests. 3. The IFP submissions to TC2 show that it is in favour of a strong Senate to protect provincial interests, however, the IFP also states that relations between levels of government should not be institutionalised. 4. The DP states that the Senate shall have special powers to protect the interests of provinces & to promote co-operation & co-ordination between the national government & the provinces & between provinces themselves. Other possible mechanisms are mooted. 5. The PAC sees no need for a Senate - as it is presently composed it merely represents political party interests. The PAC's support for a Senate will depend upon its composition in terms of the final Constitution. 6. The ACDP does not address this issue.
-----------------------	---	--

<p>8. Alternative mechanisms for safeguarding the provinces.</p>	<p>Only the DP & PAC directly address this issue.</p>	<p>The DP moots the possibility of alternative mechanism for safeguarding the provinces. The PAC alludes to mechanisms such as the Financial & Fiscal Commission and the Commission on Provincial Government. The ACDP does not address this issue.</p>	
---	---	---	--

9. Local Government.

All parties appear to support strong & independent, democratically accountable local government. The NP states that the national & provincial levels should deal with local government whilst the IFP & DP state that it should be dealt with in provincial constitutions & legislation.

1. The ANC does not address this issue.
2. The NP states that the national & provincial levels must be able to make laws on local government. However, this should not endanger the fundamental status, character or purpose of local government. Recognition by the supreme Constitution means that local government cannot be regulated by the other levels at will.
3. The IFP states that local government should be entirely regulated by provincial constitutions & legislation. Each provincial constitutional shall be entitled to make provision for different categories of local government. Local government cannot be dealt with more specifically than in Chapter 10 of the present Constitution.
4. The DP believes in the maximum devolution of power - substantial powers & functions should be allocated to local government & should be dealt with primarily in provincial constitutions & legislation.
5. The PAC states that local government shall be as independent as possible & that provincial powers should merely be supervisory & co-ordinating powers.
6. The ACDP believes that the great majority of power should reside at the local level.

<p>10. Asymmetry</p>	<p>It would appear that most parties support the idea of at least some asymmetry being allowed for. The parties differ with regard to the degree in which and the way in which asymmetry should be allowed.</p>	<p>1. The ANC does not address this issue directly. 2. The NP & DP propose that asymmetry be promoted as follows: (a) provinces should be allowed to adopt their own constitutions (see below); (b) provinces should be able to take up functions according to their different needs & capabilities; (c) powers should be granted to the provinces not by the executive but by an independent body; (d) agency & delegation should be provided for as well; and (e) framework legislation will aid provincial asymmetry (see above). 3. The IFP does not address this issue directly. 4. The PAC & ACDP do not address this issue.</p>
<p>11. Provincial constitutions</p>	<p>Most parties agree that the provinces must be able to draw up their own constitutions.</p>	<p>1. The ANC, NP, IFP & DP propose provincial constitutions. The ANC believes that the (national) Constitution must provide for a framework for provincial constitutions which could allow for variations in defined aspects. 2. The PAC & ACDP do not address this issue.</p>
<p>12. Subsidiarity principle</p>	<p>It is uncertain what the parties who support this principle mean when applying this principle in practice.</p>	<p>The NP, IFP & DP should explain this principle more clearly, that is, which are the functions which can be exercised best at the lowest levels of government?</p>

**POLITICAL
PARTY
SUBMISSIONS**

SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE THREE

RELATIONSHIP BETWEEN
LEVELS OF GOVERNMENT

Biblical Foundations of Government

In accordance with the Biblical principles on which the party is based, the ACDP states that government is an institution of the true God, Creator of all and the mandate God had given to His institution is stated in Romans 13:4: Government is to be the servant of God for the good of all citizens.

From this aspect, it follows that government exists for two very basic purposes: Firstly to regulate society as a ruler of men in the attitude of a servant to God, and secondly, to do this to the benefit of all who submit under its authority.

ACDP

Decentralisation of Government

Since power residing in the people is a basic premise of democratic government, the government should be kept as close to the people as possible. This can be accomplished by establishing a small national government and strong local and regional governments.

History has shown that centralisation of governmental power destroys the liberty and the rights of man. The way to have good and wise government is to divide the power among the people and the localities, instead of entrusting it to one body.

Delineation of Powers and Capacities

Govt. government in a country should be subdivided into many levels (local, regional, national). The power of each level should be clearly defined and sovereign in those defined areas. No level of government should be able to usurp the jurisdiction of another. A great majority of the power should rest on the local level.

AFRICAN CHRISTIAN DEMOCRATIC PARTY

SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY THEME COMMITTEE THREE

RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT

Biblical Foundations of Government

In accordance with the Biblical principles on which the party is based, the ACDP states that government is an institution of the triune God, Creator of all and the mandate God had given to His institution is related in Romans 13:4: Government is to be the servant of God for the good of all citizens.

From this aspect, it follows that government exists for two very basic purposes: Firstly to regulate society as a ruler of men in the attitude of a servant to God, and secondly, to do this to the benefit of all who submit under it's authority.

Decentralisation of Government

Since power residing in the people is a basic premise of democratic government, the government should be kept as close the people as possible. This can be accomplished by establishing a small national government and strong local and regional governments.

History has shown that centralisation of governmental power destroys the liberty and the rights of man. The way to have good and safe government is to divide the power among the people and the localities, instead of entrusting it to one body.

Delimitation of Powers and Capacities

Civil government in a country should be subdivided into many levels (local, regional, national.) The power of each level should be clearly defined and sovereign in those defined areas. No level of government should be able to usurp the jurisdiction of another. A great majority of the power should rest on the local level.

The limited powers of the national government should be clearly defined in a constitution and involve those things which affect the country as a whole, such as defence, foreign policy, regulation of interregional and foreign commerce, citizenship laws, coining money, and copyrights. All other powers should remain with the people, or with the local and regional governments. The powers of local and regional government can be written in a regional constitution and include such things as traffic regulations, business regulations, public works, voting procedures, and law and order.

The test should be whether these aspects of civil government can most effectively and efficiently be handled by an encompassing authority that has restricted resources with which to work - whether they be natural or otherwise.

Powers and competencies of the regions should not be a 'numerus clausus' or contained in the Constitution: this document, by nature should be tampered with as little as possible and it would be an extremely undesirable situation to have to amend this instrument every time a particular provincial government identifies a required competency in order to function smoothly.

In keeping with the inclusionary nature of the democratic process, currently underway in this country, a bottom to top approach is proposed for governmental relationships. This would mean that the citizens be given the first opportunity to make their needs and requirements known on a regional geographic basis.

It has already become undeniably apparent that no two provinces have the same strong or weak points, needs or requirements. The only effective way to ensure that these be addressed in a satisfactory manner, with the most efficient and effective application of limited natural and human resources would be to leave the allocation of resources to the national government. It is further submitted that assisting services be provided by the national government in the forms of research to find: eg. viable alternatives in an area where natural fuels are becoming scarce, or where the skills of the provinces are not sufficient, or the manpower not available to undertake a province-wide polio vaccination, or the supply of sufficient water, etc.

Overriding Powers and Competencies

Referring to the Biblical mandate for civil government, the following aspect becomes relevant:

No government, at whichever level, should enact any law or have any competencies that transgress the law of God or the morality thereof. Should a province rule that only the religion of secular humanism be allowed in secondary and tertiary institutions, thereby discriminating against other religions, national government should eg. have competence to override this legislation. The same power should, however, exist for the provincial governments to override national decisions that are not in line with the scriptural principles referred to.

It is submitted that this would provide a system of checks and balances that have a fixed and defined content, no matter what the context and, as such, a definitive standard against which uses of competencies and powers shall be tested.

Current thinking, following legally positivist tendencies, hold that societal changing needs will be the yardstick to measure when use becomes abuse and when corruption surfaces. A very real problem is that no absolutes, no standards are set, that will not be capable of being overruled by anyone with hidden agendae.

Coupled herewith, comes the corollary that government must benefit the citizens thereof. Government has authority which it received from God, as shown above. The word authority, stems from the Hebrew word meaning "increase". The test for government should always be - are the citizens better off than before? This is always subject to the morality of God's law. Homosexuals and lesbians will not eg. be able to claim political rights as members of their particular sexual orientation because this would be directly opposed to God's Word.

Biblical Principles include the right to self-defence and mobilisation against attack - even on national level.

Keeping in mind that a powerful elite group can easily turn into an even more powerful totalitarian elite, the powers of the respective governments in terms of war and imminent attack from outside the borders, should preferably not allow any group to consolidate themselves into a mini-dictatorship and checks and balances must always be found. Again, having Godly men and women in Government, who are there because of a calling on their lives by the Most High God and, as such, not drawn to the power attendant to leadership, but rather to the opportunity to be leaders from a position of servanthood, is proposed by the ACDP, to be the most vital requirement for anyone wanting to enter for public office or to accept the mandate of the Creator of heaven and earth.

7th April 1995.

[LEVELS.WPS]

ANC



National and Provincial Legislative and Executive Competences

Constitutional Assembly
Submission to Theme Committee 3
Block 2

Draft 3, 6 April 1995.

General principles

1. The following ideals, which are relevant to the inner consistency of the whole of the final constitution, should be achieved in relation to the provincial system:
 - 1.1 National unity, reconciliation and nation building;
 - 1.2 cost efficient and effective government, capable of redressing the iniquities of the past and the disparities of the present;
 - 1.3 the promotion of maximum participation in democratic and accountable governance at all levels;
 - 1.4 the promotion of governance close to the people and which is responsive to their needs.

Cooperative governance

2. The final constitution should establish a cooperative system of governance with the following guidelines:
 - 2.1 Cooperative and coordinated national and provincial governance should be promoted, while strengthening the role of provinces in national policy and law making.

- 2.2 National and provincial governments should have regard for one another's legitimate interests in the exercise of their powers and functions.
- 2.3 Recognition should be given to legitimate regional aspirations and needs within a context of overall national imperatives.

General matters

3. The constitution should provide for a national and uniform framework for provincial constitutions, which could, however, allow for provincial variations in defined aspects.¹
4. There should be democratically elected provincial legislatures, which should have the executive and legislative powers as set out below. From each of these legislatures a provincial executive should be formed. A provincial executive must be accountable to its provincial legislature.
5. The allocation of powers and intergovernmental relations should be based on the principle of coordinated and cooperative governance.
6. The final constitution should make a distinction between the following two aspects of the division of powers:
 - 6.1 The division of *legislative powers* between national and provincial levels. and
 - 6.2 the division of *executive/ administrative powers* between national and provincial levels.

Elements of the provincial system

7. The provincial system should have the following elements:
 - 7.1 A Senate, representative of provinces, which effectively reflects provincial needs and interests at national level, while providing an appropriate forum for intergovernmental coordination.²
 - 7.2 Concurrent legislative competences for national Parliament and provincial legislatures.
 - 7.3 Executive and administrative competences at national and provincial levels.
 - 7.4 A clear framework for determining uncertainties between national and provin-

1 The ANC reserves the right to make further submissions with regard to the principles applicable to provincial constitutions at a later stage.

2 Noted here for the sake of completeness; submission in this regard is the responsibility of Theme Committee 2. See also below.

cial competences.

7.5 The location of residual competences at national level.

National and provincial legislative competences

8. The final constitution should enact concurrent legislative powers for national and provincial government broadly in accordance with the currently existing competences and in compliance with Constitutional Principle XVIII(2) of the Interim Constitution, 1993. The inherent elasticity of concurrent legislative competences should be reflected in the constitution.
9. An Act passed by Parliament shall prevail over a law passed by a Provincial Legislature to the extent of any inconsistency between them, provided that the Senate has consented to such legislation³ and further provided that:
 - 9.1 the law sets minimum or uniform norms or standards across South Africa or provides for equal opportunity or access to government services, or
 - 9.2 the law deals with a matter that affects more than one province or enables the country to act as a single entity or with one voice, or
 - 9.3 the law establishes a national framework for the delivery of services or the management of institutions, or providing a public service or
 - 9.4 the law deals with the protection of the environment, the economic union or the capital/labour market of South Africa, the implementation of national economic policies, or the maintenance of national security, or
 - 9.5 the provincial law prejudices the economy, health, safety of the public or security interests of another province or the country as a whole.⁴
10. In respect of any law referred to under §9.1 - 9.3 above, the provinces may pass legislation not inconsistent therewith.⁵
11. Where a provincial law deals with a matter which is specific to the socio-economic and cultural needs of the inhabitants of that province, it shall prevail over national legislation other than that intended in §9 above.⁶
12. Provinces' legislative activity should also (in addition to its powers to legislate in its

³ Or mediated upon in case of conflict between National Assembly and Senate.

⁴ The overriding legality, desirability or necessity of such legislation is and should be finally resolved when the Senate approves the act; it should not be left to the courts to decide. Compare Constitutional Principle XXIII.

⁵ Where national government has the power to issue subordinate legislation dealing with national legislation administered by the provinces, the Senate could be required to approve thereto.

⁶ §11 entails a formulation of exclusivity of provincial exclusive legislative competence to comply with the requirements in this respect of Constitutional Principle XIX.

concurrent areas of legislative competence) be responsible for working out the detail of the "framework" or the "enabling" legislation of the national government, specifically relating to implementation, and ensuring that regional and sub-regional variations are taken into account. This "framework legislation" should form a separate category of concurrent legislative powers.

13. The vertical division of competences should not be rigid and divisive. The system must evolve and should have elastic characteristics. Provincial legislation will give way to national legislation, and then only to the extent of any specific inconsistency in the circumstances set out in §9 above. Where those circumstances do not apply, the national legislation should not override provincial legislation. Especially through the category of "framework concurrent legislation" the intention in the final constitution should be to provide elasticity for legislative activity by the provinces without going the cumbersome way of constitutional amendment each time that there is need to enlarge provincial legislative powers.
14. All residual (unallocated) powers⁷ shall be within the exclusive competence of National Government.

Aspects of competence affected by the character of the Senate

15. The final constitution should provide for a Senate, comprised of representatives of the provinces (and possibly representatives of local government level),⁸ which should allow for effective influence and participation of the provinces in national law-making at national level, and which should function as the suitable forum for intergovernmental coordination.
16. Members of the Senate should be appointed and recalled by provincial legislatures and/or provincial executives.
17. The consent of the Senate shall be required for all laws dealing with provincial matters. It may initiate laws regarding provincial matters and it shall have the right to review other legislation.
18. The provinces shall be entitled, primarily through the Senate and its structures or committees, to participate in financial and fiscal matters affecting the provinces, especially in the drafting of the national budget.
19. The intention in the final constitution should be to introduce a framework whereby the judicial determination of the pre-eminence of national legislation is replaced by the requirement that the provinces themselves through the Senate conclusively establish the desirability of the relevant national legislation.⁹ The courts will still have a role to determine whether the overriding legislation fits the categories set out.

7 As in the present Constitution

8 Full submission to be effected under Theme Committee 2. Regarding the question of representation of local government by Senators, the ANC reserves the right to make another submission at a later stage.

9 See also footnote 5 above.

National and provincial executive competences

20. Also in respect of executive or administrative competences the constitution should give expression to the following two guiding principles:
 - 20.1 Bringing government closer to the people, allowing for governance to fit the specific conditions and variations in each province, region or sub-region, and
 - 20.2 at the same time building and maintaining a single harmonious and prosperous nation and maintaining effective and cost-efficient government.
21. National and provincial government shall both have executive powers in regard to their concurrent competences. Ordinarily such powers should, with the consent of the Senate, be allocated to provincial government and, where appropriate, to local government, even if the relevant legislation was passed at national level.
22. The final constitution should have the basic feature that practical executive functions and administration may increasingly be assigned to elected and accountable provincial governments as administrative capacity grows, while the weight of legislative activity at the national level of government should be especially concerned with the setting of norms, standards and frameworks.
23. Provincial governments should be the primary agent of administrative/ executive activity regarding matters of provincial interest and purport.
24. *Exclusivity* of executive functions for provinces should primarily exist in the context of executive implementation under enabling or framework legislation, as approved by the provinces in the Senate, and the implementation of provinces' own legislation.

Executive Authority

25. Provinces shall be allocated the resources and powers to implement or administer its legislation and such national legislation as is delegated or assigned to it. In general, provinces shall be responsible for executing the national legislation set out in §9 above. In this regard:
 - 25.1 Executive powers shall be allocated to the level at which it can be exercised most effectively and efficiently.
 - 25.2 In the event of a province failing or refusing to implement national legislation, the national government may itself implement the legislation or intervene.

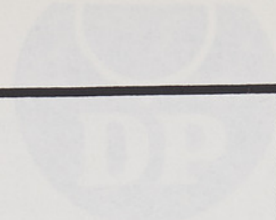
Outstanding issues

26. The ANC will make further and more detailed submissions on outstanding issues, amongst which are the following:¹⁰

- 26.1 The size of provincial legislatures when weighed against cost and the principle of inclusivity and representativity.
- 26.2 The manner in which provinces are to be represented in the Senate, and the size of the Senate.
- 26.3 The administration and functioning of the Senate and its relation with the National Assembly.
- 26.4 Questions of intergovernmental coordination in regard to executive and administrative matters.

C:\CA\FINANCIAL\... \FINANCIAL\DC 00 04 1985

DP



Demokratiske Parti
Democratic Party

7th April 1995

Democratic Party Subordinate: Block 2 (Phase 1)
Theme Committee 3

National and Provincial Legislative and Executive Competences

Introduction

DP

The system of representative parliamentary democracy only works effectively in circumstances where a political minority or minorities have the opportunity and the real prospect of becoming the political majority from time to time.

Parliamentary democracy will not work if because of linguistic, religious, cultural, ethnic or other factors political minorities are intimidated or because of political apathy and lack of interest the prospect of being permanent minorities is perceived. In such circumstances the interests within the society become unbalanced.

It is imperative to look for alternatives that can mitigate the effects of single-party dominance. A major potential political danger in democracy is that a party can be reduced to a single issue: the concentration of power in a single site. The objective should be to increase the sites of power and recast the points of reflection. In short, the political system must be kept as pluralistic as possible. Devolution of power to provincial and various local governments are an important part of the answer.

The DP believes in the maximum devolution of power.

The Democratic Party believes that the people must govern, and that there is no more effective way of giving this expectation than for the government to provide for a variety of sites of power in which the people can participate in making decisions affecting them.

JUSTIFICATION

By providing a variety of different sites of power, devolution enables more people to take part in the process of government. It brings government closer to the people. This promotes accountability of political office-bearers to their constituents, and promotes the establishment of a democratic culture. It can also reduce the level of the struggle for power at the central government level as it ceases to be a "winner takes all" system.

Devolution system

The Democratic Party believes that an over-concentration of power in central government



**Demokratiese Party
Democratic Party**

7th April 1995

**Democratic Party Submission: Block 2 (Phase 1)
Theme Committee 3**

National and Provincial Legislative and Executive Competences

1. Introduction

The system of representative parliamentary democracy only works effectively in circumstances where a political minority or minorities have the opportunity and the real prospect of becoming the political majority from time to time.

Parliamentary democracy will not work if because of linguistic, religious, cultural, ethnic or racial factors political minorities are relegated to a position of political impotence and have to endure the prospect of being permanent political minorities. In such circumstances the pressures within the society become unbearable.

It is imperative to look for alternatives that can mitigate the effects of single-party dominance. A major potential political danger to democracy in South Africa can be reduced to a single issue: the centralisation of power in a single site. The obvious remedy must be to increase the sites of power and maximise the points of influence. In short, the political system must be kept as pluralistic as possible. Devolution of power to provinces and vigorous local government are an important part of the answer.

The DP believes in the maximum devolution of power

The Democratic Party believes that the people must govern, and that there is no more effective way of giving this expression than for the constitution to provide for a variety of sites of power in which the people can participate in making decisions affecting them.

Distributing power

By providing a variety of different sites of power, devolution enables more people to take part in the process of government. It brings government closer to the people. This promotes accountability of political office-bearers to their constituents, and promotes the establishment of a democratic culture. It can also reduce the intensity of the struggle for power at the central government level as it ceases to be a "winner takes all" contest.

Defence against tyranny

The Democratic Party believes that an over-concentration of power in central government

leads to the retention of power for its own sake, and the use of power and patronage for the advantage of the party or group which is in power. South Africa's history is littered with examples of the use of the monopoly of centralized political power to impose an oppressive philosophy on the entire country. Decentralising power makes this very much more difficult, and provides a variety of sites of power in which more people can exercise power, making the retention of central government power relatively less important.

Accommodating pluralism

The Democratic Party accepts the cultural, linguistic, geographic and political diversity of South Africa. This diversity is a national asset which needs to be developed in a spirit of mutual respect, tolerance and conciliation. Devolution of power helps to accommodate this diversity by multiplying the sites of power.

Subject only to considerations of the essential national interest, legislative and executive decisions should be taken at the level that is closest to the people who will be affected by such decisions.

It is essential that the rights, powers and responsibilities of the provincial political authorities are written into and entrenched in the constitution. It is a central tenet of DP policy that the national parliament will enjoy co-ordinate sovereignty with the provincial parliaments. It is also essential that the constitution guarantees equitable access by provincial political authorities to the resources of the nation as a whole: otherwise any rights, powers and responsibilities of such authorities will be meaningless.

2. Constitutional Principles

The Constitutional Principles contained in Schedule 4 of the Constitution stipulate requirements which have to be met in a new constitution.

Principles XVIII to XXVII are directly related to relationships between different levels of government. This submission is not required to comment on financial and fiscal relationships, so these matters are not addressed.

The elements of the principles which most directly prescribe requirements in respect of allocation of powers are:

- (a) XVIII 1. The powers and functions of the national and provincial governments shall be defined in the Constitution.
- (b) XVIII 2. The powers and functions of the provinces defined in the (new) Constitution, shall not be substantially less than or substantially inferior to those provided for in this (current) Constitution.
- (c) XIX The powers and functions at the national and provincial levels of government shall include exclusive and concurrent powers.

- (d) XX Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively.
- (e) XXI This Principle sets out criteria to be applied in the allocation of powers.
- (f) XXII The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the provinces.

3. Allocation of Powers

- 3.1 Subject to the provisions of paragraph 3.4, Parliament shall have exclusive legislative competences, including all necessary ancillary powers pertaining thereto, in the following functional areas:

Citizenship, immigration and passports
Customs and excise
Defence (See 3.12)
Foreign Affairs
Mineral and Energy Affairs
National Economic Policy
National Finance
National Intelligence and Security
National Public Enterprises
National Public Service
National Public Works
National Transport
Posts and Telecommunications
Registration of companies and financial institutions
Trade and industries
Water

- 3.2 Subject to the provisions of paragraphs 3.4 and 3.5, a provincial legislature shall have exclusive legislative competences, including all necessary ancillary powers pertaining thereto, in the following functional areas:

Casinos, racing, gambling and wagering
Cemeteries and cremation
Clinics and hospitals, excluding teaching hospitals
Combating of public nuisances
Cultural Affairs
Delivery of water, electricity and other essential services
Education at all levels, excluding university and technikon education
Firefighting, ambulance services and other protection services
Housing
Indigenous and customary law

Land Affairs
Language policy and the regulation of the use of official languages
Legal Aid
Liquor licensing/controls
Local government
Markets and pounds
Nature conservation, excluding national parks, national botanical gardens and marine resources
Provincial public media
Provincial sport and recreation
Roads
Regional planning and development
Tourism
Town planning
Traditional Authorities
Provincial public service
Provincial public works
Public Holidays
Trading hours
Urban and rural development
Waste disposal

3.3 Subject to the provisions of paragraphs 3.4, 3.5 and 3.6, a provincial legislature shall have legislative competences, including all necessary ancillary powers pertaining thereto, in the following functional areas:

Abattoirs
Agriculture
Airports
Animal control and disease
Archives and Museums
Consumer protection
Correctional Services
Environment
Forestry
Harbours
Health services
Justice (See 3.12)
Labour
Meteorological services
Police and Public Safety (See 3.12)
Pollution control
Population development
Provincial Public Enterprises
Public transport
Registration of deeds and surveys, excluding trigonometrical surveys
Registration of births, deaths, marriages and issuing of identity documents
Refugees and expellees

Road traffic regulation
Soil conservation
Trade and industrial promotion
University and technikon education
Veterinary services
Welfare services

- 3.4 Parliament and provincial legislatures shall not enact legislation that is in conflict with the Bill of Rights.
- 3.5 A law passed by a provincial legislature shall prevail over an Act of Parliament which deals with a matter referred to in paragraphs 3.2 and 3.3 except in so far as -
- (a) the Act of Parliament deals with a matter which is the subject of an international treaty or international law to which South Africa is bound; or
 - (b) the provincial law or practice materially and unjustifiably prejudices the economic, health, environment or security interests of another province or the country as a whole; or
 - (c) the provincial law or practice materially and unjustifiably obstructs the free movement of people, goods, money, information or assets between provinces.
- 3.6 A law passed by a provincial legislature shall prevail over an Act of Parliament which deals with a matter referred to in paragraph 3.3 except in so far as the Act of Parliament is in the form of framework legislation and is required because minimum standards or uniformity across the nation are necessary for a particular function to be performed effectively.
- 3.7 In the event of a dispute concerning which level or levels of government have legislative competence in respect of a particular activity or functional area which cannot be resolved by mediation or by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the provincial legislature or legislatures.
- 3.8 If parliament exercises its legislative competence in terms of paragraphs 3.5 or 3.6, the legislative competence of a provincial legislature shall be constrained only to the extent that the relevant parliamentary legislation deals with such matters, and expressly or by implication limits the legislative competence of the provincial legislature.
- 3.9 Executive power relating to all functional areas listed in paragraph 3.1 shall vest in the national government.
- 3.10 Executive power relating to all functional areas listed in paragraphs 3.2 and 3.3 shall vest in the provincial executive.
- 3.11 Powers and functions at national, provincial or local level shall include the power to perform functions for other levels of government on a mutually agreed agency or delegation basis.

- 3.12 The allocation of the powers of the national and provincial governments in respect of Police, Justice and Defence are set out in greater detail in separate Chapters of the Constitution as per DP submissions to Theme Committees 5 and 6.4.

4. Senate

The Senate will have special powers to protect the interests of provinces and to promote co-operation and co-ordination between the national government and the provinces, and between the provinces themselves. A DP submission has been made to Theme Committee 2 in this regard.

Other bodies and mechanisms to facilitate co-operation and co-ordination are the subject of the next submissions to Theme Committee 3.

5. Local Government

- 5.1 Local government is a fundamentally important tier of government at which people at grassroots level have their say in the laws, regulations and administration which impact most directly on their communities and daily lives.
- 5.2 In line with the approach of bringing government as close to the people as possible, substantial powers and functions should be allocated to local government. These allocations to local government should be dealt with primarily in provincial constitutions and legislation.
- 5.3 Wherever practical, an endeavour should be made to allocate to local governments the powers and functions allocated to provinces in these proposals.

THREE COMMITTEE
RELATIONS BETWEEN LEVELS OF GOVERNMENT

SUBMISSION FOR BLOCK No. 2

PART I
NATIONAL AND PROVINCIAL
LEGISLATIVE, EXECUTIVE AND JUDICIAL COMPETENCIES

ALLOCATION OF LEGISLATIVE COMPETENCIES

The constitution shall only list the legislative competencies of the national government.

Residual legislative power shall be vested with the Provinces.

National provincial levels of government shall have exclusive administrative and judicial powers in all subject matters in which they have legislative competence and in so far as they have such competencies.

Exclusive competencies of the National Government

The national government shall have exclusive legislative competence on the following subject matters:

Foreign affairs

Defense against foreign threats

National citizenship

Immigration, emigration, extradition and asylum

Currency, money and banking, weights and measures

Customs, excise, tariffs and foreign trade

Administration and maritime law and regulations

Railways across provincial borders

National public service and other national public services

Industrial and Intellectual property rights

Monetary policy

National public finance, including central government's taxation

Banking, credit, insurance and financial services across provincial boundaries

National statistical services

Civil aviation



INKATHA

Inkatha Freedom Party

IQembu leNkatha Yenkululeko

THEME COMMITTEE 3 RELATIONS BETWEEN LEVELS OF GOVERNMENT

SUBMISSION FOR BLOCK No. 2

PART I NATIONAL AND PROVINCIAL LEGISLATIVE, EXECUTIVE AND JUDICIAL COMPETENCIES

1 ALLOCATION OF LEGISLATIVE COMPETENCIES

- 1.1 The constitution shall only list the legislative competencies of the national government.
- 1.2 Residual legislative powers shall be located with the Provinces.
- 1.3 National provincial levels of government shall have exclusive administrative and judicial powers in all subject matters in which they have legislative competence and in so far as they have such competence.
- 1.4 **Exclusive competencies of the National Government**
The national government shall have exclusive legislative competence on the following subject matters:
 - Foreign affairs
 - Defense against foreign threats
 - National citizenship
 - Immigration, emigration, extradition and asylum
 - Currency, money and coinage, weights and measures
 - Customs, excise, tariffs and foreign trade
 - Admiralty and maritime law and regulations
 - Railways across provincial borders
 - National public service and other national public servants
 - Industrial and intellectual property rights
 - Monetary policy
 - National public finance, including central government's taxation
 - Banking, credit, insurance and financial services across provincial boundaries
 - National statistical services
 - Civil aviation

Policing with respect to offenses determined by national legislation within the ambit of national legislative competence; international police liaison; criminal data, records and statistics; special task force for high-risk security operations in support of Provincial police services; national protection services; technical support services and logistical technology in support of Provincial police services;
Technical regulation of equipment of telecommunication and broadcasting
Post and interprovincial telecommunications

1.5 **Concurrent competencies**

1.5.1 **Framework legislation** With respect to the following subject matters Provinces shall exercise their legislative competence within the parameters of national framework legislation:

toxic waste disposal and migrant pollution

Interstate commerce

Road traffic regulation

Animal diseases and control

Communicable disease control constituting an interprovincial danger to public health; admission standards for the medical or ancillary professions; as well as registration of and trade in drugs, medicines, narcotics and poisons.

1.5.2 **General principles of legislation** With respect to the following subject matters Provinces shall exercise their legislative competence in harmony with general principle of legislation set out in national legislative directives:

Nature and soil conservation

National roads

Energy

Tertiary education

Local government

Welfare services

2 RELATIONSHIP BETWEEN POWERS

2.1 Both provinces and the National Government shall have exclusive powers.

2.1.1 The relations between the two levels of government shall be regulated by checks and balances, intended as a predetermined set of mutual interference among the exclusive powers of each level of government. These interferences are based on the extension by relevancy or implication of the exclusive power of the national level of government into the areas of competence of the Provinces.

2.2 National government shall have no overrides.

2.3 The Constitution shall list concurrent powers of the National and Provincial Governments.

2.3.1 Concurrent powers shall be characterized as either:

a framework legislation, obliging Provinces to legislate against standards established nationally as defined under 1.5.1.

b general principles of legislation, obliging Provinces to legislate norms and standards in harmony with these principles as defined under 1.5.2.

2.4 Should any Province fail to deliver essential services so as to jeopardizes the health, safety and welfare of citizens in the Province, the National Government may adopt the required legislative or administrative actions, provided that such actions are consistent with similar actions adopted in other Provinces and that such actions shall be valid and effective only for as long as and in so far as the Province concerned has not adopted its own adequate legislative or administrative measures.

2.5 A Provincial legislature may recommend to Parliament the passing of any law relating to any matter in respect of which such legislature is not competent.

3. ALLOCATION OF EXCLUSIVE ADMINISTRATIVE COMPETENCE

3.1 The National Government shall have administrative competence in all areas of legislative competence, save where indicated otherwise.

3.2 The following areas of exclusive national legislative competence shall be administered either wholly or in part by the Provinces:

Customs, excise and tariffs

Federal taxation

National statistical services

Post and telecommunications

4. ALLOCATION OF JUDICIAL FUNCTIONS

4.1 National provincial levels of government shall have exclusive administrative and judicial powers in all subject matters in which they have legislative competence and in so far as they have such competence.

PART II LOCAL GOVERNMENT

1 The national constitution should entrench the notion that local government should be entirely regulated by means of provincial constitutions and legislation. This is necessary to allow a system of local government which reflects local administrative needs as well as

the plural nature of South African society. The local government system will need to reflect a variety of realities ranging from traditional communities to metropolitan areas. This calls for fluidity and suggests the non-advisability of entrenching in the national constitution any given type of local government system.

2 Constitutional Principle XXIV states:

A framework for local government powers, functions and structures shall be set out in the Constitution. The comprehensive powers, functions and other features of local government shall be set out in Parliamentary statutes or in Provincial legislation or both.

The requirement of this principle would be satisfied by a provision in the national Constitution prescribing the following framework:

The Provincial Constitution shall set out the general principles of the local government system, ensuring its coherence and consistence with the principles underlying the national constitution. The provisions of the Constitution of each Province relating to local government shall be implemented by a law of the provincial legislature. Each provincial constitution shall be entitled to make specific provision to provide for each different category of local government as determined by such provincial constitution and provincial implementing legislation with appropriate autonomous fiscal powers and functions.

This approach is consistent with an accurate reading of Constitutional Principle XXIV which that the "framework" for powers, functions and structures of local government be provided for in the constitution and not local government's actual powers, functions and structures, including their "different categories", which is a function of the "structure" of local government.

3 Moreover the second sentence of Constitutional Principle XXV creates an exception to the broader and more general rules set out in the preceding Principle, requiring greater detail with respect to local government's fiscal autonomy, requiring that local government is to enjoy its "own fiscal powers". Clearly this reference must be intended as a more specific part of the same "framework" as indicated by the opening words of the second sentence of Constitutional Principle XXV.

4 In interpreting the relevant Constitutional Principles, it must be noted that Constitutional Principle XVIII (2) states that the Constitutional Assembly does not have the discretion to provide Provinces with less autonomy and fewer powers with respect to local government than that given to Provinces in terms of Chapter 10 of the interim constitution. The "framework" can therefore not be more detailed and specific than the provisions set out in Chapter 10 of the interim constitution.

PART III
INTERGOVERNMENTAL RELATIONS

- 1 Intergovernmental relations are an essential feature of federalism with respect to relations between each Province or Provinces as whole and national government, and between and among Provinces themselves.
- 2 Intergovernmental relations shall not be institutionalized in any type entity, forum, agency or commission provided for in the Constitution. In fact, if such entity exercises any type of executive or advisory power as provided for in the Constitution or in implementing laws, by definition that would encroach on the autonomy of Provinces in their exercise their powers concerned, and if such entity does not exercise executive or advisory powers it is useless.
3. Relation between levels of government shall not be institutionalized and shall develop freely so as to accommodate the changing needs of society. Federal cooperativism operating in the United States is a completely voluntary basis and has proven to be extremely effective in addressing any relevant need for coordination and integration when and as required.

THEME COMMITTEE 3

BLOCK 2: NATIONAL AND PROVINCIAL LEGISLATIVE AND EXECUTIVE COMPETENCIES

1 INTRODUCTION

Before proceeding to the questions of the Technical Committee, we wish to emphasize that the matter of national and provincial legislative and executive competencies entails some of the most crucial issues to be resolved in the constitution-making process. Not only the status, powers and functions of both the provinces and the national government are involved, the relationship between these levels of government and, eventually, the form of the future South African state itself, is at stake. For this reason, we wish to make a responsible, fair and constructive contribution to the deliberations on this aspect of the constitution in the best interests of the whole country and all its regions and people.

We believe that in drafting the constitution, the Constitutional Principles form the legal framework within which we are obliged to operate, and also the guiding light for the direction that we should take. The Constitutional Principles are not only a technical instrument; they breathe the democratic spirit that should guide and inspire us in our task. With regard to the provinces, the Constitutional Principles obviously call for extensive arrangements covering in detail all aspects of the relationship between the different levels of government, but they also call for a strong, stable and representative

NATIONAL PARTY SUBMISSION

THEME COMMITTEE 3

BLOCK 2: NATIONAL AND PROVINCIAL LEGISLATIVE AND EXECUTIVE COMPETENCES

1 INTRODUCTION

Before proceeding to the questions put by the Technical Committee, we wish to emphasise that the matter of national and provincial legislative and executive competences entails some of the most crucial issues to be resolved in the constitution-making process. Not only the status, powers and functions of both the provinces and the national government are involved; the relationship between these levels of government and, eventually, the form of the future South African state itself, is at stake. For this reason, we wish to make a responsible, fair and constructive contribution to the deliberations on this aspect of the constitution in the best interests of the whole country and all its regions and people.

We believe that in drafting the constitution, the Constitutional Principles form the legal framework within which we are obliged to operate, and also our guiding light for the direction that we should take. The Constitutional Principles are not only a technical instrument; they breathe the democratic spirit that should guide and sustain us in our task. With regard to the provinces, the Constitutional Principles obviously call for extensive arrangements covering in detail all aspects of the relationship between the different levels of government, but they also call for a strong, viable and entrenched

provincial system as an integral part of a stable and democratic dispensation. In our endeavours we should heed the technicalities as well as the underlying spirit of these Principles. Therefore, it is our view that within the framework of the Constitutional Principles, it is incumbent upon us to protect and strengthen the autonomy and position of the provinces.

We are further mindful of the fact that, due to the complex and dynamic nature of modern government and of the relationships between different levels of government, the formal distribution of powers often do not fully and accurately reflect the true relationship between those levels and that we should allow for continuous growth and development in this respect. For the same reason, we should not focus too narrowly on a particular theoretical model, but should work towards the development of a system unique to our own circumstances and needs.

Guided then by the Constitutional Principles pertaining to the provinces and also by those Principles providing for a democratic system based on freedom, equality, accountability, transparency and an entrenched, justiciable constitution, we approached the questions of the Technical Committee.

For the sake of convenience, a summary of the salient viewpoints and proposals emerging from this submission, is as follows:

- (a) We believe in strong and viable provincial government for South Africa and our proposals are directed at protecting and strengthening the position and autonomy of the provinces
- (b) In South African circumstances, the powers of the provinces should be listed in a schedule to the constitution and residual powers should vest in the national government. In addition, the following should be provided for:
 - (i) In terms of the criteria for the allocation of functions to the provinces set out in Constitutional Principle XXI, we propose that Agency and Delegated Functions, Forestry, Land Affairs, Publication Control, Public Works and

Water Affairs be added to the present list. However, we believe that a proper allocation can be accomplished only if all relevant information is available. We propose, therefore, that accurate information should be obtained from the state administration on the progress made with the implementation of the present list of provincial functions before a list of provincial functions is finalised.

- (ii) Due to the complexities of modern government, a strict separation between the levels of government is impossible and undesirable. Therefore, we propose that Parliament should have concurrent powers with the provinces over its list of functions.
 - (iii) Provincial laws in respect of these matters should, however, prevail over national laws except insofar as national laws comply with certain prescribed criteria. These overrides should be restricted *inter alia* by narrower definition, the principle of subsidiarity and the Constitutional Principle that the national level may not encroach upon the geographical, functional and institutional integrity of the provinces.
- (c) The principle of subsidiarity in terms of which functions should be allocated to the lowest level of government where it can be exercised and performed effectively, should apply to the allocation of functions and the application of the overrides.
- (d) A *second list of matters* should be identified over which Parliament may only adopt framework legislation, in order to allow the provinces to make detail legislation on those matters not subject to any other overriding powers of the national level. A further submission on matters to be included in such a list will be made at a later stage, but expert advice should be obtained on which matters

4

qualify for such a list. In addition, the state administration should be approached for an input in this regard based on progress to date with the implementation of the present list of provincial functions.

(e) Regional differences are part of the South African reality and the principle of asymmetry in terms of which differences may exist among the provinces in respect of their structures, powers and functions, should be allowed to develop. Asymmetry can be promoted as follows: (i) Provinces should be allowed to adopt their own constitutions. (ii) Provinces should be able to take up functions according to their different needs and capabilities. In this regard, the transfer of functions to the provinces should be the responsibility of an independent body and not the executive. (iii) Provision should be made for the performance of functions on an agency or delegated basis in order to allow provinces to request other governments to perform particular functions on their behalf. (iv) Asymmetry will finally be furthered by the concept of framework legislation which will enable provinces to make detail legislation peculiar to their own circumstances and needs.

(f) Mechanisms for the promotion and regulation of inter-governmental relations must be provided to enhance interaction and co-operation between the provincial and central levels of government. Detailed proposals in this respect will be made at a later stage.

(g) Detailed submissions on local government as a provincial function, and the Senate as the body representing provincial interests in national decision-making, will also be made later.

2 THE QUESTIONS

A ALLOCATION OF POWERS

A1 Should the Constitution list only the competences of the government at national level? If so, which?

In general, no. *Firstly*, we do not believe there is any compelling reason to deviate from the arrangement contained in the transitional constitution in terms of which only the powers and functions of the provinces are listed. As a matter of fact, if one adopts the principle that residual powers should be vested at the national level (see below), it would be rather illogical to list the competences of the national government and not those of the provincial level. Normally, in other systems, residual powers are vested at the level of which the powers are *not* listed. *Secondly*, Constitutional Principle XVIII(1) provides that both the powers and functions of the national government and the provinces shall be *defined* in the Constitution. Although this could be interpreted to mean that the powers and functions of both levels of government need not actually be *listed* in the Constitution, and that it is still possible under this Principle only to make the necessary arrangements to *determine* the powers and functions of each level of government, we feel that the Principle at least implies that listing national competences without sufficient reference to the provinces would be inconsistent with the Principle.

A2 Should the Constitution list only the competences of government at provincial level?

(a) In general, yes. The same reasons and arguments apply. We see no reason why the present approach in terms of which only provincial competences are listed in a schedule need to be amended.

6.

(b) In our reasoning, in present South African circumstances the sensible corollary to this is that *residual* powers shall vest at the national level.

(c) What needs to be done, however, is to look carefully into the present list of provincial functional areas in order to identify according to the criteria contained in Constitutional Principle XXI, (and bearing in mind the limitation imposed by Principle XVIII(2) which prescribes that provincial powers shall not be substantially less than those provided for in the transitional constitution), those matters that rightfully belong at provincial level. In particular, we believe that the principle of subsidiarity referred to in Principle XXI(1) should be applied consistently. In terms of this principle, functions must be allocated at the lowest level where it can be performed effectively.

In addition, the allocation of functions should be done *inter alia* with reference to the progress made to date with the implementation of the transitional constitution and the practical experience of the provinces in this regard since April 1994. We propose that the state administration, and possibly the Commission on Provincial Government, be requested to furnish this information in order for the Theme Committee to form a well-founded opinion on the ideal list of provincial functions.

Meanwhile, in terms of the criteria in Principle XXI, we recommend that the following matters be added to the present list of provincial functions: Agency and Delegated Functions, Forestry, Land Affairs, Publication Control, Public Works, and Water Affairs.

(d) The provinces should not have *exclusive* jurisdiction over such a list of functions. As pointed out in the introduction, we believe that the complexities of modern government require a more flexible approach providing for concurrency and co-operation. We therefore see the list of provincial competences as a list of matters over which there shall be concurrency with the national level. This implies an arrangement with regard to which legislation shall prevail, requiring in turn an exposition of the criteria in this regard - the so-called "overrides" (see below).

7

Although Constitutional Principle XIX provides for exclusive and concurrent powers for both the national and provincial levels of government, this does not necessarily mean the exclusive allocation of complete functional areas to the provinces. We believe that exclusive powers for the provinces should be arrived at *firstly*, through the prevalence of provincial laws if national legislation does not comply with the "overrides" and, *secondly*, by the concept of framework legislation which implies that the detail of those matters dealt with by national framework legislation, shall be the exclusive concern of the provinces. (These concepts are discussed in more detail below.)

(e) As at present, the provinces should be able, *firstly*, to make laws that are reasonably necessary for or incidental to the effective exercise of their powers and functions and, *secondly*, to recommend to Parliament the passing of laws on any matter not within their competency.

A3 Should the Constitution list both national and provincial competences?

In view of the comments above, not in principle. Of course, we envisage a list of provincial matters over which the two levels of government shall have concurrent powers, as well as a list of matters over which the national level shall only have the authority to adopt framework legislation. To this extent, the Constitution will contain a list of provincial as well as national competencies.

With regard to *framework legislation*, our proposal is that matters be identified which require only a framework of general principles and/or guidelines that apply throughout the Republic, whereas detail provisions can be left to the provinces to fill in. As a matter of fact, providing for the detail will be the exclusive concern of the provinces in the sense that the national government will only be able to promulgate framework legislation and not to prescribe detail on the grounds, for instance, of effectiveness, maintenance of economic unity, promotion of interprovincial commerce, etc. This will allow the provinces the opportunity to design detail peculiar to their

different circumstances and needs, thus giving expression to provincial diversity, without sacrificing national control over norms, standards, etc. We believe there are a number of matters even now in the list of provincial functions, as well as other matters presently under exclusive national jurisdiction, which the national government need not deal with in detail. The matters we have in mind may, therefore, extend to both the residual and concurrent powers. Moreover, some matters in the existing list of provincial functions do not readily present themselves as matters over which national legislation will ever be required for the sake of, for example, the maintenance of economic unity, the protection of the common market, the security of the country, or the implementation of national economic policies. They may, however, require uniform norms and standards. Such matters should then rather form part of a separate list not subject to the whole range of "overrides". We further propose that in order not to impede the freedom of the provinces to act, or to prevent their action altogether, they should be able to proceed in respect of these matters in the absence of national framework legislation. Of course, as soon as such framework legislation is promulgated, their own arrangements must be amended accordingly.

The items to be included in a list of matters subject to national framework legislation need careful consideration and a further submission in this regard will be made at a later stage. However, we believe this to be a highly technical matter and we propose that expert advice be obtained as well on the functions that qualify for such a list. We further propose that the state administration should be approached for an input in this regard based on its experience to date with the implementation of the present list of provincial functions.

The following draft provision on framework legislation is submitted for consideration:

"(1) Subject to subsection (2), a provincial legislature shall be competent to make laws for the province with regard to all matters which fall within the functional areas specified in Schedule Y.

(2) The national parliament shall be competent to enact only framework legislation which sets out principles and/or guidelines, and which shall be generally applicable in all the provinces, with regard to the matters which fall within the functional areas specified in Schedule Y."

B RELATIONSHIP BETWEEN NATIONAL AND PROVINCIAL GOVERNMENTS

B1 Should exclusive and concurrent powers be listed expressly for each level of government?

In principle, no. However, as explained already, we foresee a list of concurrent matters as well as a list of matters subject to national framework legislation only. See below with regard to concurrency and national preemption.

B2 Should the Constitution expressly provide for overriding powers for the national level of government in certain prescribed instances?

Yes We have already stated that a list of concurrent powers should be provided for. It stands to reason that when one adopts the notion of concurrency, an arrangement in this regard will be necessary. We therefore believe that the Constitution should expressly provide for overriding powers for the national level. However, the prescribed instances in which national legislation shall prevail or, put another way, the criteria with which national legislation has to comply in order to enjoy preference, have to be reconsidered. As they stand in the transitional constitution, we believe they are virtually limitless. The present section 126(3) enables the national level to undermine the integrity and autonomy of the provinces systematically and completely. For this reason, we propose that the overrides be redrafted more narrowly. In addition, balancing

criteria such as the subsidiarity principle, which forces the national government to justify its interference in a provincial matter, and Constitutional Principle XXII which prohibits the national government to exercise its powers in a way that encroaches upon the geographical, functional and institutional integrity of the provinces, should be included. We therefore propose the following set of "overrides":

"(1) A law passed by a provincial legislature in terms of this Constitution shall prevail over an Act of Parliament which deals with a matter allocated to the provinces, except insofar as -

- (a) the Act of Parliament deals with a matter that cannot be regulated effectively by provincial legislation;
- (b) the Act of Parliament deals with a matter that, to be performed effectively, requires to be regulated or co-ordinated by uniform norms or standards for the management or administration of that matter that apply generally throughout the Republic;
- (c) the Act of Parliament is necessary to set minimum standards not provided by provincial legislation for the rendering of public services;
- (d) the Act of Parliament is necessary for the maintenance of national economic unity or policies, the protection of the environment across provincial boundaries, the promotion of inter-provincial commerce, the protection of the common market in respect of the mobility of goods, services, capital or labour, or the maintenance of national security, or
- (e) the provincial law materially prejudices the economic, health or security interests of another province or the Republic.

(2) An Act of Parliament shall prevail over a provincial law as provided for in subsection (1) only if it applies uniformly in all parts of the Republic.

(3) An Act of Parliament and a provincial law shall be construed as being consistent with each other, unless, and only to the extent that, they are, expressly or by necessary implication, inconsistent with each other.

(4) An Act of Parliament shall prevail over a provincial law only if a dispute in this regard cannot be resolved by the Constitutional Court on a construction of the Constitution.

(5) In exercising its powers in terms of this or any other section of the Constitution, Parliament shall not encroach or cause, enable or allow any encroachment upon the geographical, functional or institutional integrity of any province.

(6) This section shall be construed in terms of the principle that a power shall be allocated to the level of government at which it can be exercised most effectively."

B3 Should the competences of the provinces be fixed by the Constitution, or should the Constitution allow for an evolutionary process?

We do not believe that these alternatives are mutually exclusive. On the one hand, we need constitutional certainty as to the powers of each level of government. Therefore, the powers of the provinces should be spelled out and entrenched in the constitution. Simultaneously, enough flexibility should be provided to allow for future developments and for differences among the provinces. This creates the opportunity of encouraging *asymmetry* in our provincial system. We believe that regional and provincial differences are a part of the South African reality that should be accommodated in our system. The principle of asymmetry is a particularly suitable vehicle for this purpose.

Asymmetry can be encouraged in the following ways

(a) The provinces should be allowed to adopt provincial constitutions that may differ from the provisions of the constitution regarding provincial legislative and executive structures and processes (see the present section 160)

(b) The list of provincial functions should, in principle, apply to all provinces. Albeit concurrent, it is a set of original functions entrenched in the constitution and determining the position and status of the provinces. However, the national level and the provinces should also have the power to perform functions for other levels of government or for other provinces on an agency or delegated basis. This would enable a province unable or unwilling to take care of a particular function, to request another province or the national level, to perform that function on its behalf. The principle, however, is that it is a provincial function and that it is for a province to decide not to perform it by itself.

(c) The provision dealing with the transfer of functions to the provinces in relation to current legislation is also of particular relevance (the present section 235(8)). This provision, *inter alia*, allows for the extension of the powers of a province as it becomes capable of exercising it, implying that at any given time, the powers of provinces may vary. However, the decision whether a province is indeed capable of exercising a particular function effectively should not be in the sole discretion of the national executive, but should be arrived at independently. We therefore propose that this decision be entrusted to an independent tribunal or other forum. Details in this regard should be worked out.

(d) The concept of framework legislation, which allows provinces to adopt detail legislation peculiar to their own circumstances and needs, will also further the idea of asymmetry. This concept has been discussed above.

B4 Should the Constitution provide for additional inter-governmental mechanisms to enhance co-ordination and to prevent or mediate possible conflicts regarding the exercise of competences, ie what mechanisms should regulate this relationship?

Yes, additional inter-governmental mechanisms should be provided for. In modern states, levels of government cannot operate in separate compartments and extensive co-operation and interaction are imperative. This should be encouraged and promoted by means of formal and informal structures and processes. A further submission in this regard will be made at a later stage.

B4 Should the fields of potential activity of provincial authorities be amended?

We have already indicated that the present list of provincial functional areas should be extended - see above.

C LOCAL GOVERNMENT

C1 How, in broad terms, should the Constitution deal with local government as a consideration in the distribution of competences between the national and provincial levels of government.

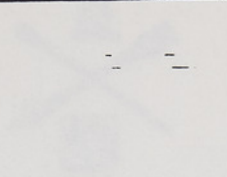
Local government is a fully-fledged level of government and should be entrenched as such. See in this regard Constitutional Principle XVI. In addition, the Principles prescribe a framework for the structures, powers and functions of local government to be provided for in the constitution (Principle XXIV). Local government should, nonetheless, still fall under the control of the other levels of government and should be one of the functional areas over which provinces have jurisdiction. This arrangement has two implications. *Firstly*, the national and provincial levels will be able to make laws affecting local government but, as presently provided, should not be allowed to compromise the fundamental status, purpose and character of local government (see section 174(4) of the transitional government). *Secondly*, as a functional area of the

provinces, they will be able to regulate local government in full. However, the provisions on local government in the constitution will enjoy higher status than any provincial law and the latter must always be consistent with those provisions. Recognition of local government in the supreme constitution has thus changed the traditional discretionary authority of higher levels of government over local government. They are unable to regulate and affect local government at will. This position should be retained.

D MISCELLANEOUS

D1 What should the nature and extent of the provinces' national involvement in matters concerning provincial government be? Should there be a second parliamentary chamber representing the provinces, and if so, how should it be composed? What should the voting mechanisms be for deciding questions of this nature, both where a second parliamentary chamber is instituted and alternatively, in the event of a unicameral Parliament being established?

In principle, we are strongly in favour of a second parliamentary chamber to represent provincial interests in the national legislature. A further submission in this regard will be made at a later stage.



April 1996

THE APPOINTMENT COMMISSION
APPOINTMENT COMMISSION RULES 2
PART 2 - CHAPTER 2

Question 1

To

Question 2

Yes, as listed in Regulation 18(2) of the Commission's Regulations and Commission Principle 18 (2).
These should be reviewed and updated regularly.

PAC

With reference to the Commission's Regulations in so far as it refers to exclusive
powers and should be reviewed and updated regularly administrative powers or

Question 3

To

relationship between the Commission and Provincial Governments in relation to their
powers

Question 4

1. Only powers in the Bill of Rights and consistent with National should be
exercised and no other powers should be exercised. National powers will reside with
National Government.

2. The national government should maintain its powers in accordance with
Constitutional Principles.

3. The Commission's Regulations should be maintained to make
necessary adjustments to provincial government powers.
The Commission's Regulations should be maintained.
The Commission's Regulations should be maintained.

4. The Commission should maintain its powers and exclusive administrative power



7 April 1995

PAN AFRICANIST CONGRESS
INTERIM SUBMISSION BLOCK 2
THEME COMMITTEE 3

Question 1

No

Question 2

- a. Yes, as listed in Schedule 6 so as to comply with Constitutional Principle 18 (2).
These should be viewed as concurrent powers only.
- b. With reference to Constitutional Principle 19 in so far as it refers to exclusive powers this should be construed to mean exclusive administrative powers only.

Question 3

No

Relationship between national and Provincial Governments in relation to their powers.

Question 4

1. Only Powers of Provinces (which are concurrent with National) should be listed and no exclusive powers to be listed. Residual powers will reside with National Government.
2. Yes national overrides all provincial legislation in accordance with Constitutional principle 21.
3. The Commission on Provincial government must be maintained to make recommendations on provincial government problems.
The financial and fiscal Commission must be maintained.
The Constitutional Court shall be the final arbiter.
4. The basis for allowing only concurrent and exclusive administrative powers

is to allow for an evolving process.

5. Some of the fields of activity like abbatoirs etc. are really Local Government functions and can be delegated to Local Government.

Local Government should be as independant as possible from the Provincial Government. Since it is listed in Schedule 6 as a provincial government power, and may be important in the light of Principle 18 (2), however, a Provincial Government must be given merely superiority and co-ordinated powers. The Constitution must gaurantee a local government share when the revenue is being allocated.

Mrs P de Lille

MP

ADDENDUM:

**THE PRELIMINARY RECOMMENDATIONS OF THE COMMISSION ON PROVINCIAL GOVERNMENT
WITH REGARD TO THE SUMMARY ON:
NATIONAL AND PROVINCIAL LEGISLATIVE AND EXECUTIVE COMPETENCIES**

Constitutional Issues	The Preliminary Recommendations of the CPG
<p>1. The existence of exclusive and concurrent powers.</p>	<p>The Commission takes the Interim-Constitution as its point of departure and provisionally concludes that the powers and functions contained in the present s126 (read together with Schedule 6 to which further functional areas such as finance may be added) are at this stage appropriate to serve the interests of good government in South Africa. However, further consideration needs to be given to the formulation of s126 (as well as to the functional areas listed in Schedule 6) in order to ensure greater legal certainty and compliance with the applicable Constitutional Principles. The CPG points out that two opposite views can be identified with regard to s126: on the one hand it is said that it does provide for exclusive provincial powers but on the other hand this is denied.</p>
<p>2. Role of framework legislation to be passed by central government.</p>	<p>The Commission does not address this issue.</p>
<p>3. The prevalence of the powers of central government.</p>	<p>The Commission does not address this issue. It does point out that in terms of the present arrangements (s126) parliamentary Acts prevail and residual powers are vested in Parliament.</p>
<p>4. Should the competencies of the provinces be fixed by the Constitution or should the Constitution allow for an evolutionary process?</p>	<p>The Commission is of the view that the implementation of the present s126 in the Constitution allows for functional asymmetry to develop (see below on asymmetry). The provinces must also have the right to negotiate with the national government institutions to allow for the performance of national functions on an agency or delegation basis, that is, an evolutionary process.</p>
<p>5. Executive competencies of provinces.</p>	<p>Apart from allowing provinces to adopt constitutions with own executive structures and procedures (see below on provincial constitutions) this issue is not addressed directly by the Commission.</p>

<p>6. Alternative mechanisms for safeguarding interests of provinces.</p>	<p>The CPG points out that in terms of the present system the provinces are allowed to have a say in policy-making and the determination of norms and standards at the national level through the evolving systems of inter-governmental relations. Such arrangements could be formalised in the final Constitution. The CPG further believes that (in a system where parliamentary overrides apply) a second chamber (Senate) could provide necessary checks and balances. The Senate could provide a further means to represent provincial interests (as an effective voice in the national legislature) and therefore the CPG recommends that the Senate is to be retained but restructured to allow for representation of provincial interests.</p>
<p>7. The manner in which the Constitution is to deal with local government.</p>	<p>To date, this matter is not addressed by the CPG.</p>
<p>8. Asymmetry as a constitutional principle governing the allocation of powers.</p>	<p>The provisions of the present s126 (and Schedule 6) enable but do not compel any province to make laws on the subject matters (functional areas) allocated to provinces. This allows for a measure of functional asymmetry to develop. In other words, the CPG believes that this measure of provincial autonomy will allow functional asymmetry to develop.</p>
<p>9. Provincial constitutions.</p>	<p>The CPG cannot support any change to the relevant provisions of the Interim-Constitution which bind provincial constitutions to the national Constitution's provisions relating to these matters: the national Constitution is the supreme law and the provinces merely have the power to adopt provincial constitutions that only differ with regard to the legislative and executive structures and procedures provided in that Constitution. The CPG concludes that the present s160 (with reconsideration of the retention of s160.4(b) provides adequately for provincial constitution-making. Amendments may be considered to ensure conformity with the criteria established by the Constitutional Principles.</p>

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 3 RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT

SUBMISSIONS BY CIVIL SOCIETY

ORGANISATIONS:

Organisation : **African Christian Action**
Individual : **Van Wyk C (Chair-person)**
Category : **Provincial and Local Authorities**
Summary : The Central government should concentrate on matters of central importance eg. Defence, Justice, Foreign Affairs etc. and that all other issues of concern be dealt with by Provincial and Local authorities.

Organisation : **ANC - Athlone North Branch**
Individual : **Brian Pretorius**
Category : **Executive Powers - Accountability**
Summary : National and Provincial powers to be listed in New Constitution.
Provincial Government not autonomous, but have limited powers w.r.t. eg. education and local government.
Premier to be accountable to President and the People.
President has the right to discipline any MP.
Provincial government policies to be passed by Central Government.

Organisation : **Animal Groups Alliance**
Individual : **Miss C Blumberg**
Category : **Separation of powers and Animal protection rights**
Summary : The group submits that **National government** have more power and be solely responsible for decision making on the protection of animals so as to ensure uniform decisions are made in this respect in all provinces.
They also call for the establishment of a **Statutory National forum** to be involved with animal protection and other vested interests.

Organisation : **City of Durban**
Individual : **O'Meara M.J. (Exec. Dir)**
Category : **Provincial and Local government systems**
Summary : All functions be devolved to the lowest appropriate level of government, allowing Central government to concentrate on **national issues**.
Local authorities must ensure that the **national standards** be upheld and exercised.

Organisation : **Department of Water Affairs and Forestry**
Category : **Powers and functions of the levels of government**
Summary : **Water**
The provision of water and the whole water function is indivisible and should not be allocated to any of the Provincial or Local governments.
It is inter-related in areas of responsibility where management is required viz. quantity and quality.
Although water distribution and supply is a function of Local government, National government must retain powers relating to:

- development and utilisation of resources;
- minimum standards of service
- ensure equity in tariff setting;
- imposition of restrictions.

Several other functions are already under provincial jurisdiction and this additional function will affect the water function negatively.

It is therefore recommended that this function be undertaken by National government and so ensure a basic supply of good quality of water, and an equitable share to all regions.

The submission then covers other areas of competence of different levels of government.

Forestry

Due to the long term nature of the exploitation process of commercial forests, and even more so in the case of indigenous forests, coordination of both the demand and the supply of this resource is essential for the economic stability and should therefore be handled by National government.

Other inter-related areas should all be governed by national government.

The submission then refers to the other levels of government and their competencies.

The submission includes a memorandum which could be referred to in Volume 19 of TC3 Submissions.

Organisation : **Honorary Rangers Association (Natal Parks Board)**
Category : **Legislative competence of provinces w.r.t Environment**
Summary:

A provincial legislature shall have concurrent competence with parliament to make laws w.r.t. the environment and nature conservation, excluding national parks, botanical gardens and marine resources subject to an act of parliament which shall prevail over provincial law inconsistent therewith and subject to international treaties.

Organisation : **Institute for Defence Policy**
Individual : **Dr Jakkie Cilliers**
Category : **Presidential / Executive powers / Legislative Authorities / Residual powers / Financial and Fiscal , Accountability - SANDF; SAPS; intelligence agencies and correctional services.**
Summary : *Recommend that original be read.*

Organisation : **Interprovincial Coordinating Traffic Committee**
Category : **Central and Provincial government competencies - Traffic legislation**
Summary : **The Road Traffic Act of 1989 realised a long yearned attempt to nationalise road traffic legislation. Not only did this Act ensure the promotion of nationally consistent traffic policing; but also contributed towards greater public acceptance.**

Traffic safety, being a matter of national interest, should be addressed at that level.

There are however, matters which has to be addressed differently at provincial levels eg. licence fees, handling of sports events and control over abnormal-loads. Provision must also be made for new matters such as the transport of dangerous materials.

Uniform action, in accordance with international norms, should be implemented without the possibility of fragmentation.

Organisation : **POPCRU**
Individual : **Sgt. P.M. Ntuli (Secretary of Popcru - North Coast)**
Category : **Accountability**
Summary : A minister to control each department which renders services.
Central government to control security; safety; defence; finance; education; correctional services; justice.
 Provincial government to control regions with no autonomy to allow for appeal to central.
Premiers to control chiefs, mayors, director-generals, but not the "king". The king to demarcate boundaries with chiefs.

Organisation : **Provincial Administration - Western Cape**
Category : **Powers and Functions of the levels of government**
Summary : **Powers and Functions**
 Provincial and Local governments must be given a clear and unambiguous definition of it's powers and functions.

Each legislature must be competent to legislate on a range of exclusive powers.

The matters of competence must be clearly defined and also include other local government related matters which could be dealt with as an auxiliary power.

Provinces must be given exclusive powers to legislate; and the parameters spelt out clearly.

Provinces should be allowed to write their own constitutions in terms of which it deals with eg. elections and vacancies, oath of office, appoint of a speaker, the name which is given to a provincial law etc. and the method of citation of that law so as to identify the provinces concerned.

Provinces must have more powers to handle it's own finance, to levy taxes and raise loans.

Local government

There shall be a third tier of government consisting of local authorities of various forms and sizes for metropolitan, urban and rural areas.

Local authorities shall have a body-corporate capable in law of doing all those things they may by law perform. The council of the local authority shall govern and represent residents within it's jurisdiction.

Residents on the Voters' role shall elect members of the councils.

Organisation : **Rand Afrikaanse Universiteit**
Individual : **Prof. G.N. Barrie**
Category : **Powers and functions between National and Provincial institutions**
Summary : The submission calls for the delimitation of powers and functions as well as for greater autonomy for regions. The writer proposes "Regionalism" is the overriding importance, but suggests that institutions of the government operate upwards from it's base.

Organisation : **Sokhulumu Tribal Authority**
Category : **Role of Traditional Leaders in local and Provincial Government**
Summary : **Re: Section 182 of the Interim Constitution**
 Amended to ensure maximum participation by Traditional Leaders within Local Government structures. Refer to original submission for constitutional wording.
Re: Section 183 (2) a
 Ensure Traditional Leaders participate in law making process when relevant to indigenous laws, customs etc. Refer to original submission for constitutional wording.

Organisation : **Standard Bank**
Individual : **E.P. Theron**
Category : **Relationships between Central and Provincial powers**
Summary : The task of Central government (subject to constitution constraints) with respect to regional finance are to:

- *determine the total sum of grants from the centre.*
- *determine the path towards equalisation among regions.*
- *determine the balance between general purpose and specific purpose grants.*
- *decide the level of regional borrowing and the governing rules.*
- *set down frameworks and assist in the development of methodologies and systems for regions' budgeting and auditing.*
- *set parameters within which the regions may vary tax bases and rules of taxes under their control.*

Regional governments should have the following responsibilities:

- *set the base and rates of own taxes within the parameters mentioned.*
- *decide on regional budgets*
- *establish regional auditing.*

- *decide on borrowing within the rules laid down by the centre*

Organisation : **Transvaal Municipal Organisation**
Category : **Federalism - powers of state and autonomy; Competencies entrenched; Concurrent powers - approval of local government; executive / structures / chambers / powers and functions/ accountability / local authorities - services / Local government - financial and fiscal.**
Summary : ***Recommend that original be read. Contains constitutional principles and wording.***

Organisation : **The Free Market Foundation of South Africa**
Category : **Nature of Provincial/Local Government - competencies**
Summary : **Trend is local participation and decision making. Genuine autonomy - keep government close to the people**

INDIVIDUALS:

Individual : **H.P. Bierman**
Category : **Competencies of the levels of government**
Summary : **Central government to concentrate on matters of National interest such as Foreign Affairs. Local government to have more autonomy to handle local community matters.**

Individual : **Mrs A.J. Booysen**
Category : **Provincial Legislative Authority - Legislative competence of provinces with regards to the environment.**
Summary : **These sentiments are supported by 46 other letters. A provincial legislature shall have concurrent competence with parliament to make laws w.r.t the environment and nature conservation excluding national parks, botanical gardens and marine resources subject to an act of parliament which shall prevail over a provincial law inconsistent therewith and subject to international treaties.**

- Individual** : **M.B. Buthulezi**
Category : **Provincial powers - Kwazulu Natal**
Summary : **Central government should give this province**
- Individual** : **L. Cader**
Category : **Provincial Autonomy**
Summary : **More autonomy w.r.t. taxation; provinces to have own provincial constitutions.**
- Individual** : **E.C. Chonco**
Category : **Competencies of Levels of Government**
Summary : **Power to be divided and shared between Central, Regional and lastly the combination of Central and Regional governments.**
Central government should concentrate on matters such as foreign affairs, minting the currency, defence, mineral affairs, etc.
Central government should have a Legislative Assembly that passes laws binding on it.
Regional government must have authority over all matters pertaining to traditional leaders.
- Individual** : **N.P. Cloete**
Category : **Central / provincial / local government - limit size Budget competencies**
Summary : **All levels of government to be small and few ie. central. provincial and local government should be "lean and hungry".**
- Individual** : **J.G. Coetzee**
Category : **Devolution of power, Accountability**
Summary : **There must not be determination to keep all the power in the hands of Central government.**
Similarly we must not allow power to be in the hands of one individual as this could lead to dictatorship.
We must move away from this centralisation of power and grant more power to the provinces.
- Individual** : **G.C. Cox**
Category : **Legislative and administrative competence - marine resources**
Summary : **Marine resources are identified in schedule 6 of the**

Interim Constitution as falling within the legislative competence of the Central Government. Deep sea fishing should be included in above due to policing of territorial waters.

Different considerations apply to **coastal zones** whose resources are used and enjoyed by the local inhabitants.

The legislative and administrative competence of coastal zones should thus be a matter **local and provincial concern**.

Individual : **S. Dalhazei**
Category : **Concurrency - Provincial legislative authority - Competence w.r.t the environment.**
Summary : A provincial legislature shall have concurrent competence with parliament to make laws w.r.t. the environment and nature conservation, excluding national parks, botanical gardens and marine resources, subject to an act of parliament which shall prevail over provincial law inconsistent therewith and subject to international treaty.

Individual : **Dr. P.A. Donovan**
Category : **Levels of Government**
Summary : Maximum individual autonomy and responsibility with minimum government interference.
Prerequisite for this, would include limited government, decentralisation, privatisation and deregulation.
All matters concerning the individual (in his/her chosen community) shall be devolved to the lowest possible level viz. Community or District level.
Only the matters, of common interest to all communities, shall be delegated upwards to the State level.

Districts associated shall have the right/power to delegate to the Community the functions it considers, of common interest to all Districts in the Community, and/or believes could be performed more economically, without loss of efficiency and accountability by these Communities.

The Community council, elected from at least 2 delegates from each District involved, shall be responsible for carrying out these functions delegated by Districts.

Individual : **E. M. De Witt**
Category : **Local and Provincial Governments**
Summary : Maintenance of a Constitutional dispensation based upon federal principles through transferral of powers to Provincial and Local Government and the promotion of autonomous Local Government, which is are the basic building blocks of a constitutional system is South Africa.

Individual : **M.J. du Plessis**
Category : **Centralisation - water rights; Regionalism**
Summary : Water and minerals should be declared national assets and would thus be **state controlled**.

Individual : **P du Toit**
Category : **Powers of Central and Provincial governments**
Summary : Maximum powers must be devolved to Provincial governments.
The **provinces** must determine what powers Central government may exercise over the country.
Provinces must have the **power** to protect their sovereignty and also be responsible for the collection of taxes and paying a pre-determined percentage to central government.

Provinces must handle the following :

- *education, policing, health, provincial defence agriculture, infra-structure and housing*

Central government must **not be able** to interfere with the provincial governments whatsoever.

Individual : **A.H. Gaum**
Category : **National and Provincial legislature and executive powers.**
Summary : 1. **Judicial Authority** - Judges of the Constitutional Court should not be appointed by the president / cabinet, but by a Judicial Service Commission to insure the independence of the judiciary.
2. Provinces to have **exclusive legislative powers**, concurrency limited.

Individual : **R.W.J. Gemmill**
Category : **Provincial government competencies**
Summary : The Provincial government must take whatever steps are necessary to protect life and property within their province.

Central government need only provide the financial, labour and other resources and not interfere otherwise.

Individual : **B.A.L. Hellryd**
Category : **Cabinet Ministries and Civil Service**
Summary : The cabinet ministers should only deal with policy matters, prepare and propose legislation to parliament, answer questions, compile budgets and propose taxes. They should give general instructions to the administrative agencies.

Administration should be carried out by **independent** central agencies, operating within the framework provided by parliament. Civil servants should be appointed on **merit** and not for political affiliation.

Individual : **P.J. Hoagerty**
Category : **Powers**
Summary : A system of checks and counter-checks to power is essential in our constitution because "power tends to corrupt".

Individual : **K Hlekane**
Category : **Devolution and limitation of Provincial powers**
Summary : Powers of provincial governments be **limited** in comparison to National but still have **sufficient** and be **relevant** to the needs of Local government and **concerned** with needs of the people eg. language, basic services etc.

Individual : **J. Jacobs et al (Public Admin. Lecturers' personal views)**
Category : **Separation of powers / autonomy /**
Summary : Constitution to provide structures to ensure service provision; responsibilities and powers to be clearly spelt out especially w.r.t. health services and regional development.

Individual : **D. B. Kilpin**
Category : **Regional Competencies; Role of Traditional Authorities**
Summary : Power devolved to regional levels so that people can solve their own problems.
 Less pressure and dictatorship from Central government allowing regions more autonomy.

Individual : **E.M. Lekhoa**
Category : **Local Government - Services and Competencies**
Summary : **The Nature of the Provincial system**
 The provincial system must be **reconstructed** in **new boundaries** and be recognised with equal power.
 There will be nine(9) provinces and each will have a **provincial legislature**.
 Provincial executive will consist of a Premier, who will appoint ten(10) executive members to administer provincial departments and determine a policy.
 The **legislature** will have the power to make concurrent laws with the national unity government on issues like the *water, electricity, free education, primary health care, housing, public transport, social and welfare*.
 A province must be entitled to an **equitable share of revenue** collected nationally to enable it to function. It can raise other revenue and secure loans only with the permission of the GNU.
 There must be a single tax system, and all luxury goods must be taxable, but all the **necessity goods must be exempted** to reduce **poverty**.

Individual : **L. Liebenberg**
Category : **Competencies - Environmental policy and revenue**
Summary : **Legislative competence of provinces**
 A provincial legislature shall have **concurrent competence** with parliament to make laws with regard to the **environment, nature conservation**, excluding national parks, national botanical gardens and marine resources, and subject to an act of parliament which shall prevail over a provincial law inconsistent therewith and subject to international treaties.

With regard to the exercise of powers at different levels of government, a **national framework and philosophy** regarding protection and development of parks and reserves need to be **established**.

National parks and reserves should not be **isolated islands of bio-diversity**, but should be **part of an overall**

land-use policy.

Individual : **J.A. Louw**
Category : **Structure of Central, Provincial and Local governments**
summary : **Provincial Government**
The highest degree of authority to be delegated to provincial governments to deal with their own matters including taxes and levies.
All their matters must concern the local community, such as education, roads, health, etc.
Only matters of national interest to be handled by National government eg. foreign affairs, defence, etc.
Provinces must have great autonomy.

Individual : **P. Mankge**
Category : **Powers of Provincial government**
Summary : " General government" to supervise provinces.
"Senate House" to keep in touch with the people so that they too can contribute to this process.
Provinces to have deciding power but not absolute/total power.
People must be given the opportunity to comment on the restructuring of South Africa as part of democracy.

Individual : **R. S. Masango**
Category : **Character of State**
Summary : **Provincial powers** to be determined via **negotiation** between National and Provincial governments - considering cultural diversity at all times.

Individual : **M.A. Mcloughlin**
Category : **Powers and Competencies**
Summary : Powers of provinces should be devolved to the lowest possible level of government or authority, enabling the community to have a say in the conduct of the affairs.
Central government should only be concerned with specific predetermined issues such as security, financial and foreign affairs.

Individual : **McGregor, Rayne, Shone and Williams**
Category : **Competencies - Environmental policy and revenue**
Summary : All powers should rest at the provincial level.
 National level powers should include *health, education, security, transport, foreign affairs and trade and industry.*
 There should be **legislative competence at the provincial level.**
 The national government should not be able to override provincial laws.
 No provincial legislation may conflict with constitution or with laws dealt with at a national level.

Individual : **B. Nsele**
Category : **Devolution of Power**
Summary : Freedom from Central and Provincial government.
 Local government to be given more autonomy and scope to decide on matters within their boundaries.

Individual : **E. W. Ortom**
Category : **Legislative competence of provinces w.r.t. the Environment**
Summary : A provincial legislature shall have concurrent competence with parliament to make laws w.r.t. the environment and nature conservation, excluding national parks, botanical gardens and marine resources, subject to an act of parliament which shall prevail over provincial law inconsistent to that and subject to international treaties.

Individual : **M. Pendlebury**
Category : **Personal autonomy**
Summary : Personal autonomy (protection and development), the power and will to control one's own life.
 To achieve this implies the devolution of powers to lower tiers of government viz. regions and towns.
 However, to achieve this improved personal autonomy we need Central government intervention in the lower levels of government, when these levels are not achieving it's goals.

Individual : **W. Plaatjies**
Category : **Competencies of Cultural groups (Griqua Nation)**
Summary : The Griquas should have their - *Own representation in parliament*

Individual : **C.F. Rack**
Category : **Form of government; Powers of Prov. governments**
Summary : **Provinces in the Republic should have the right to formulate their own constitution.**

Individual : **W. Ridley**
Category : **Provincial Government**
Summary : **Environmental protection against pollution be emphasised and waste generation be minimised. Provincial legislature to have equal/concurrent competence with parliament to make laws with regard to the environment subject, which shall prevail over a provincial law inconsistent therewith.**

Individual : **M.H. Stegen**
Category : **Secular State**
Summary : **There must be as much powers as possible devolved to the lowest possible level.**

Individual : **N Shepstone**
Category : **Structure and powers of government**
Summary : **Powers of the departments must be constitutionally defined and protected.**

The Legislature, Judiciary and the Executive must be separate independent parts of the central government and have limited powers.

Powers

Central government must have the **power to pass laws** relating to individuals, since passing of laws relating to provinces are very difficult to enforce.

The central government must be able to raise taxes, but these taxes must be based on consumption not on income.

Provincial powers

Provincial powers may be restricted only when they affect the nation as a whole or when they affect foreign affairs. Provinces therefore need extensive powers over aspects such as local policing, education, health, housing, the media, etc.

Individual : **E. Schultz**
Category : **Financial and Fiscal - Funding adequate health-care / powers / accountability / decentralisation.**
Summary : **Role of the Central and Provincial Government:**
 Funds allocated to local authorities via Provincial government from Central government based on local needs and resources.
 Central government to set standards and system of control via guidelines - Provincial government to monitor and guide local authorities.
 Local Authorities to be accountable to their constituents.
 Medical intervention to be prioritised in order to make it accessible to all.

Individual : **Nick Taylor**
Category : **Competencies - Responsibilities and powers of tiers of government**
Summary : **NB! The FIRST Tier of Government is local, SECOND Tier is provincial and THIRD Tier is Central.**
 All possible functions of creating laws should be undertaken locally at MUNICIPAL LEVEL.
 Where Municipalities have conflicting laws (could lead to conflict), the responsibility should be delegated to PROVINCIAL LEVEL.
 Any Provincial business which can be more effectively handled by CENTRAL GOVERNMENT, should be delegated to them.
 If regions are to have power, Central Government must trust people at grassroots level to be responsible.
 Ideally, Central Government should handle the currency, major roads, defence, citizenship registration, and any other functions delegated by regions/provinces.
 The Constitution should reflect the spirit of the Freedom Charter and return power to the people at maximum grassroots capacity.

Individual : **J Thuynsma**
Category : **Separation of powers**
Summary : **The central government shall have overriding power in all spheres over the provincial council and local government.**
 Only the **Constitutional court** will have overriding powers over the central government on constitutional matters.

Provincial government

There will be no provincial government, but a provincial

council representative of all metropolitan councils as well as all local councils.

Provincial council members will be elected by the metro. council and the local council in the case of rural areas. This provincial council will be a coordinating body with no statutory powers.

Individual : **A.C. van Niekerk**
Category : **Competencies - water rights**
Summary : No authority has the right to introduce any substances into the public water supply, except to render it safe for domestic use.

Individual : **J.A. VENTER**
Category : **Provincial government powers**
Summary : Greater provincial powers must be implemented.

Individual : **Weight L**
Category : **Autonomy of different levels of government.**
Summary : It is noted that Provinces should have more (maximum) autonomy to control activities in their respective provinces eg. Education, Health, Housing, Environment etc.
The Central government on the other hand should concentrate it's efforts on departments which require national control eg. Defence, Justice, Foreign Affairs etc.
Coalition between Central and Provincial governments should take place so as to ensure uniformity among provinces.

Individual : **H. Wolffe**
Category : **Residual powers - provinces / competencies**
Summary : *Recommend that the original be read.*
Constitutional wording has been used.

Individual : **C. Williams**
Category : **Devolution of power to the lowest level.**
Summary : **Power to be devolved to the lowest practical level.**
Philosophy of devolution of decision-making and power to be entrenched.
Central governments role: strategists and context-setters
so that " ... the people can truly take decisions that will

get the nation on the move."
Higher level reserve right to act in nations interest eg.
defence, foreign affairs etc.

Individual : **Anonymous**
Category : **Provincial Powers**
Summary : To reduce Provincial powers in return for stronger
Senate, will be disadvantageous for this country.
Reduced provincial powers will turn provincial legislature
into mere implementers of decisions and policies taken
at Central government level; and so turn Premiers into
"Pretoria's prefects".
Provincial legislature will not be cost-worthy if they
merely act as conveyor belts for the G.N.U.
Centralised power is unacceptable.

If the people are to be empowered, the government
must be brought closer to the people, and the best way
to do that is to devolve real powers to the provinces.

Individual : **Constitutional Public Meeting - Ivory Park**
Category : **General**
Summary : **P14.L7**
Central government should not be dominated by one
party, nor should it have absolute power.
Provincial government should be given total power and
some delegated to Local government.

Pg.27-Ln.20

Local government to concentrate on the needs of the
people such as roads, electricity, schools (education)
and housing.

Individual : **Constitutional Public Meeting - Northern Cape Region**
Category : **General**
Summary : **Pg.14-Ln.19**
Community must have more power.

Pg.17-Ln.3

Local government should have more power than
Provincial government because local government
understands certain matters (community issues) better.

Pg.22-Ln.18

Parliament should not have power over the law but the
law over parliament. Written in the constitution so as to

prevent parliament from changing and making laws to suit itself.

Pg.33-Ln.8

Central government should devolve powers to provinces.

Individual : **Constitutional Public Meeting - Pietersburg**
Category : **Powers of the levels of government**
Summary : **Pg.23-Ln.9 - Regional powers**
More power be granted to regions (provinces) so as not to have a too powerful central government.
Provincial government must be able to veto Central government decisions.

Pg.28-Ln.1

Central government should write the laws with input from all other levels of government and provinces.

Individual : **Constitution Public Meeting (White River)**
Category : **Powers of Provincial governments**
Summary : **Some powers be devolved and given more especially to Provincial legislature.**
Proper infrastructure be provided enabling Provincial legislature to get what they want from the National Assembly.
Powers given to Ministers in the Central government should be clarified in a visible manner.

