

214/3/4/8

TC3

CONSTITUTIONAL ASSEMBLY

COPIES OF TRANSPARENCIES

OF

ADDRESS BY PROF F VENTER

**CONSTITUTIONAL PRINCIPLES
RELEVANT TO**

**THE RELATIONSHIP BETWEEN THE
NATIONAL, PROVINCIAL AND LOCAL LEVELS
OF GOVERNMENT**

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PROPOSED METHODOLOGY

- 1. Test submissions and proposals against the Constitutional Principles.**
- 2. Consider preferences regarding the submissions and proposals that pass the test.**
- 3. Translate proposals into draft constitutional text.**

WHICH PRINCIPLES ARE RELEVANT?

- All Principles are potentially inter-related.**
- Principles giving expression to specific goals are particularly useful as a source for the determination of the general purposes that must be served by the new constitutional text.**

The new Constitution must therefore ensure a dispensation which is, inter alia —

- **accountable**
- **responsive**
- **open**
- **financially viable**
- **effective and efficient**

**PRINCIPLES RELATING TO, BUT NOT
DIRECTLY DEALING WITH THE
DISTRIBUTION OF COMPETENCIES**

- **No secession**
- **No international subordination**
- **No specified seat of sovereignty**
- **All government authority to be exercised
within the four corners of the Constitution**
- **Separation of powers apply to all levels of
government**
- **It is questionable whether the present
provincial and local government systems
satisfy the requirements of the separation
of powers**

- **The Constitution must be the source of the competencies of all levels of government**
- **National and provincial competencies must be *defined* in the Constitution and a definitive *framework* must be provided in the Constitution for those of local governments**
- **The constitutional *origin* of the competencies of all three levels of government is a bulwark around the autonomy of each of the levels.**

PRESENT PROVINCIAL COMPETENCIES AS THE POINT OF DEPARTURE

- **All competencies founded in the present Constitution are involved, not only e.g. those emanating from Schedule 6.**
- **Not only the functions already taken up by the provinces, but all those that may be taken up, are involved.**
- **Provinces are to remain at least in the position of relative competence provided for in the present Constitution.**
- **Both the extent (quantity) of the competencies and their substance (quality) must compare favourably with the present provincial dispensation.**

EXCLUSIVE AND CONCURRENT

- **Section 126 as it stands, provides (together with section 37) both for concurrent and exclusive powers, both for the national and provincial levels.**
- **The potential confusion inherent in the terms "exclusive" and "concurrent" should be avoided.**
- **Agency and delegation should be written into the Constitution with precision in order to provide the clarity which is lacking in present public law theory.**

CRITERIA FOR THE ALLOCATION OF COMPETENCIES

- **No aspect of the Constitution should —**
 - ◆ **undermine national unity**
 - ◆ **reduce provincial autonomy**
 - ◆ **impose a cultural "melting-pot"**

- **The rest of the wide ranging criteria can best be considered in terms of a concrete draft text.**