

2/21/16/23



CONSTITUTIONAL ASSEMBLY

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MEMORANDUM

TO: CONSTITUTIONAL COMMITTEE SUB-COMMITTEE

FROM: EXECUTIVE DIRECTOR

DATE: 22 February 1996

RE: ERRATA TO CPG RECOMMENDATIONS OF 16 FEBRUARY 1996

Herewith please find from the Commission on Provincial Government the errata to their recommendations entitled "*Response to the Working Draft of the new Constitution dated 22 November 1995*" of 16 February 1996.

The above document to which this *errata* refers was distributed at the meeting of the Sub-committee on Monday 19 February 1996.

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THE NEW CONSTITUTION

COMMISSION ON PROVINCIAL GOVERNMENT

RECOMMENDATIONS TO THE CONSTITUTIONAL ASSEMBLY IN TERMS OF SECTION 164 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1993

16 FEBRUARY 1996

ERRATA

Please make the following corrections :

Page 12 : 2.2.4
Below "Clauses 151 to 153 - Supported". insert :

Clause 194 - Financial and Fiscal Commission. The Commission supports the provisions regarding the Financial and Fiscal Commission. However, in drafting the provisions to be incorporated into the Constitution, consideration could be given to include a clause providing for local government representation in substructures of the FFC.

Page 22 : 2.8.1
Add the following sub-clause to 162A :

(4) *Local government must be represented in appropriate structures of the Council.*

Page 133: 2.2(g)
Delete the text and replace with :

(g) to perform any function ancillary to its object; and

- (a) *such legislation may only be enacted after consideration by the provincial legislature of any recommendations made by the Financial and Fiscal Commission concerning the criteria according to which such charges should be determined; and*
- (b) *there is no discrimination against non-residents of the province who are South African citizens."*

Clauses 151 to 153 - Supported.

Clause 194 - Financial and Fiscal Commission. The Commission supports the provisions regarding the Financial and Fiscal Commission. However, in drafting the provisions to be incorporated into the Constitution, consideration could be given to include a clause providing for local government representation in substructures of the FFC.

2.2.5 Provincial Constitutions

See Annexure 6 (page 71)

Clause 154 - The Commission supports the formulation of this clause. However, it is of the opinion that provinces should not have exclusive power to prescribe titles for office bearers or names for structures which differ from those provided for in Chapter 8 as this could cause considerable confusion in usage (e.g. the use of "minister", "cabinet", "parliament", etc.). Provincial legislatures should also not be free to determine the number of members of their own legislatures. This should rather be provided for in the national Constitution and national legislation containing the further details of the electoral system. The Commission is of the opinion that these limitations will not amount to a substantial reduction of the powers of provincial legislatures as contemplated in Constitutional Principle XVIII.2. The Commission consequently recommends that the following sub-clause be inserted in clause 154:

- "(2A) A provincial constitution may not provide for -**
- (a) titles for office-bearers or names**
for legislative or executive structures
different from those used for corresponding
offices or structures provided for in Chapter 8; or
- (b) a number of members of the legislature or**
the Executive Council greater than that provided for
in Chapter 8."

The Commission considers the possible alternative formulation for clause 154 contained in the working draft to be too restrictive and possibly contrary to Constitutional Principle XVIII. That formulation can consequently not be supported.

1995) and has also commented on it in Annexure 1 of the present document, concerning the proposal for a Council of Provinces/Senate.

2.8.1 The Commission consequently recommends that the following statutory provisions be made to deal with intergovernmental executive relations :-

(a) Constitutional provisions :

"EXECUTIVE RELATIONS

- 162A. (1) There is a Council for Intergovernmental Executive Relations consisting of the nine Premiers of the provinces and not more than nine Ministers appointed by the President.**
- (2) The object of the Council is to facilitate effective co-operation, co-ordination and consultation in executive matters among all levels of government and between governments on the same level.**
- (3) The structures, functions and procedures of the Council must be determined in national legislation.**
- (4) Local government must be represented in appropriate structures of the Council".**

(b) National legislation :

See Annexure 13 (page 131)

Annexure 13 contains suggestions regarding draft national legislation dealing with the proposed Council for Intergovernmental Executive Relations.

2.8.2 Advisory Body on Intergovernmental Relations

The Commission has received comment from a number of internationally recognised authorities on intergovernmental relations to the effect that serious consideration should be given to the establishment of an independent, expert advisory body to investigate and make recommendations on a continuing basis on the functioning of the country's system of intergovernmental relations. This would include administrative matters which would not ordinarily be dealt with by the proposed Council for Intergovernmental Executive Relations.

- (f) to monitor and facilitate the development of the capacity of the provinces' administrative structures to exercise their powers and perform their functions efficiently and effectively;**
- (g) to perform any function ancillary to its object; and**
- (h) to publish reports from time to time on its activities and matters which have engaged its attention and to table an Annual Report in Parliament and the provincial legislatures.**

Meetings of Council

- 3.(1) The first meeting of the Council must be held within 30 days of establishment at a time and place to be determined by the President. Subsequent meetings shall be held at a time and place determined by the Council or, if authorised thereto by the Council, by the Chairperson.**
- (2) A quorum for a meeting of the Council shall be not less than two-thirds of all its members.**
- (3) All the decisions of the Council must be recorded.**

Committees

- 4.(1) The Council must from among its members or from persons appointed in terms of section 4(2) establish a Committee to deal with local government relations and may establish such other committees as it may deem necessary for the execution of its functions.**
- (2) The Council may appoint persons to serve as members of a committee established in terms of subsection (1) and such members are entitled to take part in the proceedings and to vote at any meeting of such committee. At the invitation of the Council a representative local government institution for each province is entitled to nominate one person for appointment as a member of a committee established to deal with local government matters.**

