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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 3

DRAFT REPORT 2

INTER-GOVERNMENTAL RELATIONS

BY THE TECHNICAL ADVISORS

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**THEME COMMITTEE 3
RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT**

REPORT : PARTY SUBMISSIONS : ON INTERGOVERNMENTAL RELATIONS

This report is modelled on four issues that seem to be covered by all political parties who have made submissions on intergovernmental relationships. While it attempts to be brief, it also endeavours to capture some of the detail that accompanies some of the submissions. Some of the submissions deal with issues that are not directly, or even indirectly canvassed by the other political party submissions.

On such issues it is difficult to determine whether there is agreement or contention among the party submissions. An example is the submission of the African Christian Democratic Party which focuses on the size of the civil service. It advocates a smaller, skilled, motivated and efficient civil service and suggests that in this manner there will be a reduction of duplication and unwieldiness. What is not clear from the submission is whether a smaller civil service facilitates intergovernmental relations. On the other hand, the African National Congress sees the senate as one of the intergovernmental mechanisms that should be constitutionalised while other submissions do not deal with this matter.

It appears from the submissions, in general, that all political parties appreciate the fact that in a multi-tiered government system the need exists for mechanisms which will ensure that there is consultation, co-operation, co-ordination and smooth interaction among the various levels and sections of the system. Agreement is missing regarding the question whether intergovernmental mechanisms should be constitutionalised. There does not appear to be consensus as to which mechanisms should be constitutionalised, which is not a major issue when one considers the fact that some party submissions propose that intergovernmental mechanisms should be allowed to evolve.

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Intergovernmental Relations : Report on Party Submissions

Issues	Agreement	Contentious	Further clarity
<p>1. The Importance of intergovernmental mechanisms in a three-tier system of government.</p>	<p>1. To an extent, parties accept the importance of intergovernmental relations</p> <p>2. ACDP - In favour of a system of intergovernmental relations where the national level concentrates on particular and constitutionally defined aspects.</p> <p>3. ANC - Emphasises the principle of co-operative governance. All state organs should act in concert to the benefit of the people and nation building.</p> <p>3. DP - They are of critical importance and aim to promote co-ordination and consultation.</p> <p>4. NP - Mechanisms, structures and procedures are imperative so that the different levels of government liaise on the basis of equality.</p> <p>5. PAC - There is a need to create a framework on intergovernmental relations.</p>		<p>1. ACDP - Although it favours some system of intergovernmental relations it also says that intergovernmental mechanisms must be avoided.</p> <p>2. PAC - Although it accepts the three-tier system of government, it advocates a central government with a strong executive president. Provinces should be headed by administrators. The relationship between the central government and the provinces should be regulated by commissions such as the Commission on Provincial Government which should make recommendations on provincial problems, the Finance and Fiscal Commission and the Commission on Local Government. Not clear how important it sees the mechanisms under that kind of arrangement, considering that when government is centralised, the need for intergovernmental mechanisms is reduced. It sees some of the intergovernmental mechanisms as important.</p>

Issues	Agreement	Contentious	Further clarity
	6. CPG - The need for intergovernmental relations is obvious, and they should receive constitutional recognition and be mandatory on all tiers of government.		

Issues	Agreement	Contentious	Further clarity
<p>2. Objectives of inter-governmental mechanisms.</p>	<p>1. ANC - The promotion of cooperation between levels of government, including the local government level, and between the various provincial governments. Also the promotion of joint policy-making where it is necessary to prevent lack of co-ordination. There should be a duty on different levels of government to co-operate.</p> <p>2. DP - The promotion of co-operation, consultation and co-ordination among the various levels of government.</p> <p>3. NP - The facilitation of interdependence, co-ordination and co-operation - but not to subjugate provinces.</p> <p>4. CPG - The objective is to facilitate co-operative, consultation and co-ordination among various levels of government with the aim of serving the people of SA.</p>		<p>1. ACDP - It sees the emergence of the need for intergovernmental mechanisms as a sign that there is something wrong in government and as a sign that it must go back to the drawing board.</p> <p>2. PAC - Although it does not deal with the objectives of intergovernmental relations, this party's submission implies an acceptance of the objectives given in the second column.</p>

Issues	Agreement	Contentious	Further clarity
<p>3. Should inter-governmental mechanisms be constitutionalised? That is, should there be a specific formulation?</p>	<p>1. All parties agree that the principle of intergovernmental mechanisms should be constitutionalised.</p> <p>2. NP - It propose that some mechanisms (not specified) should be constitutionalised but the rest should be left to evolve. It also proposes that there must, at least, be a committment to mechanisms for regulating intergovernmental relations contained in the Constitution.</p> <p>3. DP - Proposes that at least one mechanism, namely the Premiers Forum or Council, should be constitutionalised but that others be left to evolve voluntarily.</p> <p>4. ANC - Some mechanisms, but not all should be constitutionalised. However, elaborate details on intergovernmental relations should not be contained in the constitution.</p>	<p>1. Regarding details, the formulations in the Constitution proposed by the parties are so different that the issue is contentious.</p> <p>2. ANC - It is necessary to constitutionalise some but not to spell out in detail all specific institutions of intergovernmental relations. Elaborate provisions on the detail of intergovernmental co-ordination and structures in regard to especially executive and administrative matters should not be contained in the Constitution. The ANC submission, however, does emphasise the primary importance of the Senate as the forum of legislative intergovernmental relations.</p>	<p>1. CPG - The new Constitution should contain a general provision which requires that all levels of government shall strive towards co-operative government, consultation and co-ordination with the aim of serving the people of SA. Such provision should require that higher levels of government shall not dominate or encroach upon the geographical, functional or institutional integrity of any lower levels [CPXXII S174(4) and (5)].</p>

Issues	Agreement	Contentious	Further clarity
		<p>4. NP - The Constitution should contain a commitment to intergovernmental mechanisms in the form of a principle (framework legislation) and leave details to parliamentary legislation because intergovernmental relationships are a process which cannot be confined to mere structures. The other reason is that an extensive provision in the Constitution leads to inflexibility.</p> <p>5. CPG - It is necessary to constitutionalise some. CPXXVII requires, by implication, constitutionalisation of the Finance & Fiscal Commission.</p>	

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4. What intergovernmental mechanisms should be constitutionalised, if any?

1. DP - The Premiers Forum or Council and all others should be left to evolve voluntarily. The Party mentions the Finance and Fiscal Commission [CPXXVII, S198], Commission on Provincial Government for 10 years, [S163] Police Board of Commissioners [S220], Committee of the Minister and the MEC's and the Senate.

2. NP - The senate which should be representative of provinces, should be constitutionalised. As far as other mechanisms are concerned, the Constitution should make provision for the matter to be addressed via parliamentary legislation. Parliamentary legislation can then make provision for structures and mechanisms such as the Finance and Fiscal Commission, the Police Board of Commissioners, the Commission of Provincial Government and other structures like the Advisory Committee on Intergovernmental Relations.

3. PAC - Maintain the Commission on Provincial

1. NP - The proposal provides that there should be provision for senate representation on the Finance and Fiscal Commission and on the Commission on Provincial Government. It is not clear whether this should be provided for in the constitution or in parliamentary legislation. The NP submission, however, does not deal with the Senate as a mechanism for intergovernmental relations.

2. Other than the submissions of the ANC and the NP, the submissions of other political parties do not address the Senate as one of the intergovernmental relations mechanisms.

3. CPG - The Senate. It should be composed in such a way that it is truly representative of the provinces. Also retain the Commission on Remuneration of Representatives whose job should be expanded to cover remuneration of traditional leaders. The IGF should be retained but restructured to reflect a greater equality among the participating governments. The Financial & Fiscal Commission [CPXXVII and S198 & 199 of the Interim-Constitution] should be

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		<p>provinces to provide a major say in the National Assembly bills that deal with provincial affairs. It is also a forum in which provinces can interact with each other.</p> <p>4. ANC - A Senate which is representative of the provinces and possibly of local government. For these purposes it becomes a Council of Provinces to provide a major say in the National Assembly Bills that deal with provincial affairs. Also a forum in which provinces can interact with each other.</p>	<p>provided for in the new Constitution. Establish a Council for Intergovernmental Executive Relations to monitor the operation of national-provincial-local relations, to propose options for solving conflicts between levels of government and to assist with the establishment of intergovernmental partnerships within and between provinces.</p>

Prepared by: Prof. B C Majola
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