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**CONSTITUTIONAL  
ASSEMBLY**

**THEME COMMITTEE 3**

**TRANSCRIPTION  
OF THE  
WORKSHOP**

**HARMONISING  
INTER-GOVERNMENTAL  
RELATIONS**

**5 JUNE 1995**

## TABLE OF CONTENTS

1	Transcript	Pages 1 - 38
2	Briefing Document by Mr TD Rudman, Dept of Constitutional Development <i>The Structures presently in place to deal with Inter-Governmental Relations</i>	Pages 39 - 45
3	<i>Inter-Governmental Structures</i> , from the Dept of Constitutional Development	Pages 46 - 50
4	<i>Overview of the proceedings of the Inter-Governmental Forum</i> , from the Dept of Constitutional Development	Pages 51 - 89

**TRANSCRIPT OF THE WORKSHOP ON  
HARMONISING INTER-GOVERNMENTAL RELATIONS  
HELD ON 5 JUNE 1995 IN ROOM E249 (90H00 - 12H00)**

The workshop was chaired by Prof DC Du Toit and Dr TJ King, and addressed by Mr NM Phosa, Premier of the Eastern Transvaal and Mr D Rudman, Mr C Mulder and Mr M Stein representatives of the Ministry of Provincial Affairs and Constitutional Development.

Chairperson

Prof DC Du Toit    The aim of this briefing to this morning is;

1.    To enlighten members of Parliament as to mechanisms employed to harmonise relations between the three tiers of Government;
2.    To discuss the rationale for setting up mechanisms for Inter-Governmental relations;
3.    To identify whether it is necessary to provide for these mechanisms in the Constitution, (at present there is only the police one that is provided for in the Constitution and none other one);
4.    To identify guidelines for the institutionalisation of Inter-Governmental relations; and
5.    To discuss problem areas in Inter-Governmental relations.

A special word of welcome then to our representatives from the Ministry of Provincial Affairs and Constitutional Development. We are extremely thankful to you gentlemen, for accepting and responding to our invitation at very short notice.

We have here today, firstly, Mr D Rudman and Mr C Mulder and Mr M Stein from the department (who) will act as speakers. I hope we will leave this room quite enlightened as the operation of bodies like the Premier's Forum, the Inter-Governmental Forum (IGF) (minus Inkatha), the Technical Inter-Governmental Committee and the MINMEC's Forums, (the Forums of Ministers and MEC's).

We are extremely honoured to have here Mr Matthew Phosa, the honourable Premier of the Eastern Transvaal. He will be one of our discussants this morning. We do thank you for your presence and I am going to give it over now to the panel.

Mr Rudman

Thank you very much for the opportunity to address you on the structures that we have in place at the moment for Inter-Governmental relations.

I would like to apologise, firstly, for the Minister, the Deputy Minister and the Director General who cannot be here unfortunately. They asked me to make apologies for them.

In my briefing, Chairperson, I will refer to the letter that I received from the CA and use that as the departure point. The request to the Department was to give a briefing on the operation of bodies such as the IGF, the Technical Inter-Governmental Committee, the Ministers and MEC's Forum; and then with specific reference to how many meetings and the nature of these meetings have been held in the past year; when these meetings started; what the issues were that were discussed; the type of decisions that were taken and the status and effect of decisions at these meetings.

To kick off, Chairperson, may I just mention that after the election in April 1994, it soon became clear that the establishment of three levels of Government brought about major changes to the governmental process, which confronted the Government with new challenges insofar as good Governments, the efficient and effective delivery of services and the employment of resources are concerned.

The Ministry for Provincial Affairs and Constitutional Development and the Department therefore took the initiative to arrange for a meeting between the National Government and the Premiers of the nine provinces. This meeting was also attended by the President of South Africa and the Deputy Presidents. It was held on the 25 May 1994. At this meeting the President and Deputy Presidents stressed the importance of the meeting as it had to deal with the first steps in implementing the system of provincial government, as well as the challenges that existed in this regard.

At the meeting of the IGF that was held on the 12 August 1994, the need for structures to enhance Inter-Governmental co-operation between National Government and the provincial governments was also accepted. The meeting therefore resolved that the following Inter-Governmental structures should be established:

- (i) An IGF comprising of the Premiers of the nine provinces and representatives of the National Government, which would meet on a monthly basis, and which are to be attended twice annually by the President and the Deputy Presidents of the Republic of South Africa;
- (ii) Ministerial Forums between responsible line function Ministers at National level and their respective counter

parts at provincial government level which would meet on an ad hoc basis.

- (iii) It was resolved that the above mentioned Forums be supported by Technical Committees to provide them with the necessary technical advice and expertise.

This resolution was ratified by Cabinet on the 1 November 1994. From that date, the meetings between the National Government and the Premiers became known as the Inter-Governmental Forum (IGF).

As far as the role of the IGF and the other structures are concerned, the IGF was established to encourage and ensure the development and maintenance of a co-operative relationship between the National and Provincial levels of Government.

The Forum provides an opportunity for consultation and joint decision making between National Government Ministers and the Premiers of the provinces on matters of mutual interest.

The Inter-Governmental process should, however, not be seen as a substitute for the governmental process, but as supportive in that it promotes joint decision making to the extent that those decisions that cannot be made individually or in isolation by any one government or level of government.

The Forum serves as a mechanism for policy dialogue at the political level regarding a number of strategic and important issues requiring Inter-Governmental consultation, co-operation and co-ordination. Furthermore, it oversees the process of implementation of strategies and actions which have been identified. The Forum acts as a multi lateral Inter-Governmental policy planning and implementation body and is as such the most important Inter-Governmental structure at the moment.

Consequently, the IGF should promote Inter-Governmental consultation and decision making with regard to the following: important and sensitive political matters; line function matters which, because of their importance and conflict potential, should preferably be dealt with by the Forum upon request and after having been considered by a Ministerial Forum; and matters for which a Ministerial Forum have not been established, which have important implications for provincial governments. In this regard non-Schedule 6 functions have special relevance.

Further, an integrated and co-ordinated Inter-Governmental

policy and development framework; multi sectoral policy issues; financial, fiscal and other governmental resource matters; matters pertaining to the efficient and effective functioning of the system of government; and lastly, constitutional issues.

Ministerial Forums, on the other hand, deal with line function responsibilities with specific reference to the following. The harmonisation of legislation; the division and employment of financial resources; the harmonisation of programmes on a national basis; consultation and negotiation with regard to national norms and standards applicable to a specific function, as well as minimum norms and standards; the harmonisation of policies and the drafting of an Inter-Governmental policy which should serve as guideline to the respective Governments in their own policy formulation process; the transfer of information; the undertaking of joint programmes and projects; and finally, the formulation and implementation of strategies.

As already mentioned, all these Forums are supported by Technical Committees. These Committees provide the Forums with technical advice and expertise. The main task of the Technical Inter-Governmental Committee, which serves as the Technical Committee of the IGF, is to identify key policy and strategic issues and other matters which fall within the terms of reference of the Forum and which should be addressed by the IGF.

The Committee furthermore attends to issues referred to it by the Forum. Against this background, the terms of reference of the Inter-Governmental Committee could be seen as follows: to provide support to the IGF with regard to technical, policy and strategic matters falling within the terms of reference of the Forum; to mobilise Inter-Governmental technical policy and strategic expertise; to support the IGF; to identify, discuss and consult on matters falling within the terms of reference of the Forum; to make proposals to the Forum on the addressing of these matters; to address matters referred to it by the IGF through investigation, consultation and other appropriate means; to advise the Forum on the further addressing of these matters; and finally, to facilitate, guide and monitor the implementation of decisions taken by the IGF and to report back on progress made to the Forum.

In general, the Technical Committees supporting the Ministerial Forums have similar terms of reference. As far as membership of the structures are concerned, the permanent members of the IGF, that is the members who are considered central to the

functioning of the Forum on a continuous basis, are the Provincial Premiers, the Minister of Provincial Affairs and Constitutional Development, the Minister for the Public Service and Administration, the Minister of Finance, the Minister without Portfolio in the Office of the President, the Deputy Minister of Provincial Affairs and Constitutional Development, the Deputy Minister of Finance and the Director General in the Office of the President.

The Ministers and Premiers are assisted by their Directors General at meetings of the Forum or other technical officials. The President and Deputy Executive Presidents are ex officio members of the Forum and attend at least two meetings of the Forum on an annual basis.

Ministers of the National Government and members of the Provincial Executive Councils, excluding those already mentioned, also attend meetings of the IGF as members. Their attendance and membership are determined by the need of the Forum to consult with them on a regular basis in order to make decisions which fall within the jurisdictions of the respective Ministers.

Further membership of the IGF is based on the responsibility of the Forum with regard to the integration of the activities of the various Inter-Governmental structures. The need to consult on matters of a multi sectoral nature and the need to promote Inter-Governmental communications and co-operation with regard to those functions on which provincial governments do not have legislative competence.

The meetings are Chaired by the Minister for Provincial Affairs and Constitutional Development and he also acts as link between the Cabinet and the Forum. In the latter regard he presents decisions of the Forum to Cabinet and informs the Forum of Cabinet decisions on matters of mutual concern and interest.

The Technical Inter-Governmental Committee consists of the Director General of the permanent members of the IGF, which include the Directors General of the provinces. Permanent members further include the Director General of the Office of the President, as well as the Chairpersons of the Commission on Provincial Government and the Financial and Fiscal Commission. The Directors General of the Department of Constitutional Development chairs the meetings of the Committee.

Other members of the Committee include those Directors General and members of Government Departments and Institutions considered to be able to contribute to the efficient and effective functioning of the Committee.

The first meeting, as I have already mentioned, of the IGF, was held on 25 May 1995 and since then eleven meetings were held, which included two meetings in the form of a "bosberaad". Since its first meeting the Forum has deliberated and accepted resolutions on a number of issues.

Chairperson, I have distributed a document which deals with these issues in detail. In summary, the following can be mentioned: assignment of powers and functions to the provinces; the establishment of provincial governments and effective service delivery; financial matters; economic matters; the Reconstruction and Development Program; the establishment of houses and the Council of Traditional Leaders; casinos, racing, gambling and wagering; provincial boundary issues; the local government elections; the Masakhane campaign; rural development matters; land matters; the Development Facilitation Bill; the drafting of the Open Government Act; foreign development aid; the privileges and remuneration of the premiers; the position of the Performing Arts Council; disaster and emergency management in South Africa; and finally, Inter-Governmental relations.

At this stage, the decisions of the Forum serve as guidelines and should be considered by Governments in their decision making process. This matter should possibly receive further consideration.

The Department of Constitutional Development provides the Secretariat to the IGF. The Secretariat is responsible for the recording of the proceedings of the Forum; the compilation of the agenda; and the provision of process and technical support to the Forum. The Secretariat is accountable to all permanent members of the Forum.

In an effort to promote the integration of the activities of the various inter-governmental structures, members of the Secretariat should perhaps also attend meetings of these structures on a regular basis.

As far as the institutionalisation of Inter-Governmental relations is concerned, I would like to quote from a speech by the Minister for Provincial Affairs and Constitutional Development in Parliament. He said the following, and I quote, "in view of



this experience and our vision of Inter-Governmental relations for the future, government policy on this matter should now be structured through a White Paper. Until now the Inter-Governmental system has developed on a voluntary basis, step by step, by way of a learning process. The knowledge gained should now be utilised to develop a longer term view for the implementation of a more formal system in which all role players will participate. They will do so with a clear perspective on the objectives, composition and functioning of Inter-Governmental structures, and further, the institutionalisation of Inter-Governmental relations is at present actively debated. It deals with the structures that are needed for Inter-Governmental purposes and the way in which they should be established, either through the Constitution or through an Act of Parliament or through agreement between the participating Governments. In view of the fact that an Act of Parliament is easier to amend and thus provide for the changing institutional requirements of the Inter-Governmental process, it seems to be the more practical route to take."

Finally, the Technical Inter-Governmental Committee has also had eleven meetings. The Committee has generally dealt with all the matters that were considered by the IGF.

I have indicated that there are also numerous MINMEC Forums. I have also prepared a document of all those structures that have come to our attention. It sets out the structure itself, also indicating the frequency of the meetings and also a condensed terms of reference. This document has been distributed so I don't think it is necessary for me to go through this document.

I may just also mention that there are Premier's Forums. Premier Phosa will probably give you more information on those Forums. Reference was made to the relationship between the National Government and local government. May I just mention as far as that is concerned, that the Ministry for Provincial Affairs and Constitutional Development has taken the initiative as far as that is concerned.

At the MINMEC Meeting for Local Government, a request was put to the MEC's responsible for local government to assist in the process of restructuring organised local government in their provinces. A deadline for this restructuring has been set for the end of June of this year and I may mention that progress has been made in this regard and it appears that in the majority of the provinces such structures will be established before the end of June. The idea then being that at the end of July of this year there should be a restructuring at the National level of

organised local government.

Chairperson .... there are two papers - one with the title *Overview of the Proceedings of the IGF* and the other one *Inter-Governmental Structures*. That is the only two papers. Right?

Mr Rudman That is correct, Chairperson. If you would like a copy of the briefing that I have given you, I will have it prepared and it should be available within a couple of days for the Secretariat.

Chairperson I think we must kindly request you to prepare that for us.

I think Mr Phosa could perhaps address the following types of things - the structures of Inter-Governmental relations in South Africa at the moment, as they have developed, will need orientated. For example, it is an executive organisation and it doesn't seem to have been created in conjunction with these structures, legislative linkup or a structural concept.

Number two, when the new White Paper is being developed, as we have heard, the development of the structures at the moment, the status which is apparently informal at the present time, their legal status, their constitutional status, et cetera, should also be addressed with a link up view towards the new Constitution, because otherwise, this Committee is going to draft structures here for the new Constitution which is not kind of growing out of what we have got.

So, those people responsible for developing the structures, should establish a closer inter-linking, I think, as we have done today, with this Committee which works with these matters for the new Constitution, and, I think, we can do with the empirical knowledge you are developing and, I think, we must bear in mind that also in the development of that White Paper, this linkage should not be lost.

Could I say that this is a very late stage that we only get this historical moment to have a Premier addressing this meeting. We should have had it a long time ago, because you chaps are doing the job and we don't know what is actually happening there always. Thank you very much and please continue.

Mr Phosa

Chairperson, thank you for the opportunity.

We in the IGF are busy discussing the very subject matter which you assist with at the moment here, and indeed, during the meeting of last month, it was introduced and there was a draft discussion paper. A difference of opinion which led to a

decision being taken saying that provinces should go and discuss, make inputs and this month's meeting will then be taking it further.

Now, one of the points which was raised in the discussions is the very same point you raised now, that there should be a relationship structured between whatever we are discussing and deciding upon, with what is going on in the Constitutional Assembly discussions, because then you'll have a situation where the other Interim-Constitution you get structures which may appear very much difficult to fit in the new Constitution. We made that point, that there must be a relationship with that. But the discussions continue in the IGF on this very subject matter.

If one was to summarise, very briefly, the structures as we see them, there are the constitutional structures, and the non-constitutional institutions, which arose since the elections, to be more specific. Constitutional structures, I will submit, are the following: the Senate, the Constitutional Courts, the Commission on Provincial Government, the Auditor General, the Financial and Fiscal Commission, the Commission on the Remuneration of Representatives, Public Service Commission, Police Board of Commissioners and the Committees of Ministers and MEC's and National Assembly. These are clearly the constitutional structures.

But, there is a category of non-constitutional structures and Mr Rudman has referred to them without labelling them, in that particular way, and there are about four or five. It is the very IGF itself; Technical Committee to the IGF; the Inter-Departmental Minister's Forums; the Inter-Departmental Technical Committees; and the Premier's Forum. These are the non-constitutional structures which have evolved to this end.

Mr Rudman has explained in detail the functions of most of these non-constitutional structures, except the Premier's Forum. The Premier's Forum is simply a caucus forum by Premiers to prepare for the IGF's meetings and to raise whatever issues we need to raise in preparation for IGF meetings. That is about the structures.

There is a proposal on the table of the Commission for provincial government that a National Commission on Inter-Governmental relations be established to monitor Inter-Governmental relations to undertake relevant research, to support policy formulation and to make recommendations to the various levels of Government.

There are certain principles, which, we want to submit, should guide Inter-Governmental relationships. I want to be brief and very pointed. If you miss one of these principles, you won't understand my input. More focus on strategy and less focus on structure. We want to submit that that is very important.

Clear legal guidelines as opposed to Constitutional Principles as to the division of taxes between the three levels of Government. If provinces do not have own taxing powers, they should have clearly defined percentages of income from VAT, income tax, the national levy on fuel and transfer duties. That is, you will have to bring certainty in the situations in the provinces by fixing certain minimums, otherwise you will be in a situation where your planning is based on chance. There is no proper planning. You don't know what to expect with regard to some of these things.

The principle of other allocations from sectoral budgets should be accepted, as all provinces do not have similar income generating potential. There is an uneven economic development in the provinces that needs to be recognised and addressed properly.

Laws made by the National Government on Inter-Governmental relationships should set a clear framework for provinces and local governments to prevent fragmentation of laws on lower levels of Government.

At the moment, as a matter of interest, we are rationalising personnel, we are rationalising laws. What could happen if we do not speed up this process, is that, take the Eastern Cape, you will have a set of laws applying in the former Ciskei, and another set of laws applying in former Transkei. So, a nightmare for a legal practitioner in one province.

So, with that process throughout the provinces going or rationalising the laws. But, we are saying there that it is very important there is no fragmentation of laws on lower levels of Government.

Permanent and formal and informal structures for the support and strengthening of Inter-Governmental relations should be established. Specific proposals. This is to stimulate debate. The Senate should both be streamlined and restructured to fit the dynamic relationship between central government and the provinces.

A restructuring of the Senate would result in a mixture of the

current system, fulltime Senators, and maybe the German system, part time Senators, being Senators that are also members of the Legislature. It is crucial that the Premiers should be members of the Senate. The Senate could be streamlined by allowing six or seven members per province, thereby reducing the number of full time Senators to 30 or 40. The Senate could play much more of a binding and lobbying role viz a viz the Provincial interest.

If a National Commission on Inter-Governmental Relationships is established, the roles of the Commission on Provincial Government and the Financial and Fiscal Commission should be re-evaluated so that they become chambers of the new institution or be absorbed by it.

There is a bit of a problem at the moment with the Commission on Provincial Government, especially with regard to the consultation they seek to conduct on constitutional matters. We have informed them about this very sharply. They were moving on a wrong assumption, that you could have a provincial constitutional perspective, as opposed to a party position, because it is unrealistic to expect a member of the Freedom Front in the Eastern Transvaal, to hold a Constitutional position which is different from his national leadership.

Therefore, the assumption on the basis, on which the Commission of provincial government was operating, was false, at worst mischievous, because then they have accepted that argument. That is no way. They only have to record party positions and not try to assume that you could have a KwaZulu-Natal constitutional position. It is not possible. The ANC and the Inkatha are poles apart; the NP and the Inkatha not so many poles apart, but you have those differences there.

So, I thought I should mention that, which is the problem we have run into and the question of to what extent do we still give them that function, becomes an important question. I think, with regard to Constitution making, they are becoming slightly relevant, because they are repeating what is happening at the top. The policy formulating role of any new institution, we think, should be strengthened. Provinces should have interest office(r?)s, secretariats in the seat of central government to support Senators, MP's, members of provinces, standing committees activities, as well as lobbying, on behalf of the provinces.

You will see at the moment, there is very bad co-ordination

between the provinces and the Senators, if you can talk about co-ordination. You need support structures which support the Senators, who support the MP's. We don't have them at the moment. I am carrying all the vote of the province for the Senators, MP's from Eastern Transvaal. I want them to know what was happening in our Parliament. There should have been a link, which linked us naturally. It is not there. We need to create that dynamic link so that we all make sense at the various forums where we operate.

The Premier's Forum should be strengthened by a permanent capacity in terms of administrative and especially research support. I have explained what it does. It is a very voluntary body which is a caucus by the Premiers. There should be a Ministry for Inter-Governmental Affairs separating this function from Constitutional Affairs. So there is a focus attention to what is happening at those particular levels, the reason our Services Councils should be restructured, possibly with a new focus on rural reconstruction or provincial regional decentralisation. I don't know any other provinces, but in the Eastern Transvaal these REC's have been terribly discredited by various interest groups and sectors. Mohammed Bhabha is here, he knows this. We feel that they need to be restructured.

A similar structure to the Commission on Provincial Government, (I am just saying similar in a loose way), you need to have a structure that is going to co-ordinate local government structures. You are going to have them all over, but what co-ordinates them? You have some co-ordinating provinces. What co-ordinates local government structures? Are they just going to be on their own, moving in all directions?

We think that something along those lines needs to be thought about, a structure, from province to province. A national framework approach should be developed concerning the following issues, that have an impact on Inter-Governmental relations:

- (i) Traditional leaders and their role in Provincial and local government affairs;
- (ii) Development corporations as inherited from the TBVC countries and self governing territories; and
- (iii) Farming and business interest representation on the different levels of government.

Chairperson, those will be the points which, I thought, would be important for me to make to this Committee.

- Chairperson Thank you, honourable Premier for that very valuable input.
- Mr Leeuw Chairperson, my question is in relation with the nature or the discussion in the Forum, whether is it functional or political?
- Chairperson Mr Phosa, is it just ANC doing politics against themselves or is it inter-party politics or it is no politics, the IGF?
- Mr Phosa I thought Mr Rudman had gone to great lengths, even giving resolutions which were taken at all the meetings which have taken place during the past 13 months. If you look at that, I think this is the thick document here, you will see that it is a normal Forum where you discuss matters in the manner which you will represent your province and some times, and it is very normal, people will be moved by their party positions and it is a highly political. Sometimes it become very boring and it returns to varied administrative issues and we shift them to Mr Rudman and other guys.
- Chairperson There you have it. The politicians talk politics and they give the work to the administrators.
- Ms de Lille Chairperson, my first question is, I seek clarity on the relationship between these constitutional and non-constitutional structures and then the decisions arrived at in the non-constitutional structures. Are they binding on the various provinces? Secondly, how are they communicated to the Constitutional structures?
- Then Premier Phosa also mentioned that we need clear legal guidelines - to guide what? To guide a relationship? Is it between constitution(al) and the non-constitutional forums? He mentioned also that they possibly need a Ministry for Inter-Governmental relations and not separating it from the Constitutional Department. Is the suggestion for a future Constitution or is he looking at what is existing now? because we have got the Constitutional Department here and we have got the Premier's Forum. So, I just seek clarity.
- Chairperson Thank you. Could I just, from this side of the Chair, add something to the last question which Ms de Lille has asked. The same question, just differently phrased, perhaps. The problem for us is this, if we developed a system of Inter-Governmental relations, shouldn't it be done by the Senate in the new conceived form also in the way Mr Phosa talked about it and which is contained in the ANC proposals, also in Theme Committee 2.

Could I just say what the problem is. If you go and look at Germany for example, you will see that they don't have a Central Department of Education. So, in Germany intensive and extensive forums on inter- governmental educational matters has risen. It is now so big that it consists of, I think, 96 sub-committees. The 1989 budget, which I saw of that Inter-Governmental Committee, was over 16 million Deutschmark. Just for the Secretariat. How should we really organise the administration of Inter-Governmental Affairs? That is the question which Ms de Lille actually asked also. Should it be done by a Department? Perhaps the way of having it as an executive arm. Or should they link up with the legislatures, also be created in your system of Inter-Governmental affairs?

Mr Phosa

The second question of the Ministry you are proposing. We are looking ahead, Ms de Lille. We are not looking at what now exists. We are proposing for the new Constitution informed by the experience which we say we have or arising from our own conditions.

The Constitutional Assembly is a Forum where you need to write some of the submissions we are making, we are looking at that. We submit, that why you have so many non-constitutional structures and proposals coming this way and that way, is because there are many anachronisms in the Interim Constitution which have been exposed by practice and experience and anyone who refuses to accept these practices and experiences, is a fool.

Chairperson

Mr Phosa, perhaps while you are on that answer, could you perhaps say, if this system developed naturally and it developed apparently quite good, shouldn't one leave it to develop naturally?

Mr Phosa

Ja, I think it developed naturally because there were certain imperatives or pressures on the provincial governments. The Ministers themselves in different ways, you know. First, because the national government and provincial government were born on the same day, the one was not prepared to deal with the other; and then you spent six months without Schedule 6; functions being dissolved at the provinces; and then the provincial premier sitting there, people toyi toying saying we want this, but they say I don't have the powers.

So there are those type of things and then it would develop around loans for development. Around economic questions. So we then realised we needed to talk amongst ourselves, and we began to talk, and this is how the IGF became this type of



structure and we realised we have to talk to the national ministers through line functions. A meeting which would require an MEC in education to go and talk to Prof Bhengu. And they then all came together and said let us not have one to one, let us have nine to one. So, it moved from one department to the other. Now, I think all these things are clumsy. We need to correct them in the new Constitution.

Mr Rudman

Can I perhaps assist, Chairperson, to answer some of the questions that Ms de Lille asked? Firstly, as far as the decisions of the IGF is concerned. At this stage I indicated, that they serve as guidelines and should be considered by Governments in their decision making process and I also indicated that perhaps this matter should receive further attention.

The idea was mentioned that if a decision of the IGF is accepted by Cabinet and also accepted by the provincial cabinets, and there is unanimity regarding that decision, that it then should be binding on all the parties involved in that process. But that is still something that needs to be worked out and considered.

I also indicated what the Minister said and I would like to re-iterate this. The whole process of Inter-Governmental relations is something that is done, and has been developed, on a voluntarily basis. It is something that is developed step by step. One must be very careful not to infringe upon the rights of other structures in regard to Inter-Governmental relations. So, it is a careful process and it takes time to develop the process.

As far as the relationship between the IGF and other Constitutional structures are concerned, some of the members of the other Constitutional structures do serve on the structures for Inter-Governmental relations. For instance, at a very early stage we found that it was necessary for the chairpersons of the portfolio committees of Parliament to attend our MINMEC meetings and they have been doing so for the last couple of meetings. I am not quite sure for how many.

The other question that was raised was the fact that there should perhaps, be a separate department for Inter-Governmental relations. Now, we have also been talking about this in our Department. It appears to us that possibly the name of the Department should, at one or other, change to the Department for Inter-Governmental Affairs or Inter-Governmental Relations. We see the role of the Department in

Inter-Governmental Relations (as being) very important in the future. That is the way that the Department is developing in our view.

Mr Phosa

Then there was another question which Patricia asks on what did I mean by clear legal guidelines? You see, I have limited this to four issues, VAT, income tax, national levy on fuel and transfer duties and I have said that you need to give fixed indications to a province as to what they will be entitled to in terms of a certain minimum. So there is certainty on the matter. I then made a concession that we must concede that there is an uneven economic strength in provinces and therefore the responsibility of the richer ones, or stronger ones, to carry the weaker ones.

Ms de Lille

Chairperson, I think I am rather convinced that if we have provinces and local government as administrative centres of national government, you will be able to avoid some of the formation of these non-constitutional forums. In our previous submissions we said that these formations then come in of course - the concurrent powers, exclusive powers. But really, for the future, the Constitution, we have to consider this.

I am also just interested, in the explanation given by Premier Phosa of his view on the Senate. It sounds quite interesting. I wonder if he would like to repeat that, because, I think, that will also provide a resolution to having constitutional and non-constitutional structures.

Mr Montsitsi

My question is directed to Mr Phosa. In his input he mentioned these structures. He further said that Provincial Premiers should be members of the Senate. How practically possible is it that a Provincial Premier can be a member of the Senate, given the facts that Provincial Premiers have got their own busy schedules looking after provincial matters? Will they be consistent in their attendance in the Senate?

Chairperson

I think Prof Venter also wants to come into this. It is coming to the heart of our discussion. I must say that the ANC has submitted Senate proposals which are greatly in accordance (after the Conference), with what Mr Phosa has said.

They apparently have time for the IGF, (the Premiers), and the Senate, (as) Mr Phosa is talking about, is actually in some ways something like that Inter-Governmental Forum, sitting once every three weeks or so...., and having an ongoing administration.

The real question is this, the administration of Inter-Governmental Affairs. If we have a new type of Senate; a Senate which is the embodiment of Inter-Governmental affairs; a Senate which expresses in itself; the whole idea of Inter-Governmental affairs; the Senate not being owned by national level, but the Senate being owned by the provinces; would it, under those circumstances, be correct to give the Secretariat of Inter-Governmental Relations to a national department? Shouldn't the Senate, which is not a national department in that sense, be the Secretariat co-ordinator? Wasn't that what was behind the idea of a separate department actually? We are talking about a different type of management of the Senate, not something like a parliamentary or a staff organisation, but a whole Inter-Governmental relations concept.

Prof Venter

I wanted to ask this question following the previous two questions. I want to make it very clear, it is not a political question. It is not my role here. But, what I am interested in is the remarks made by Mr Phosa regarding the representation of provincial interests in various places such as the Senate and the Financial and Fiscal Commission, and all the others on the one hand, and then on the other hand, saying that in the constitutional process, which the Constitutional Assembly is involved in right now, the views expressed by political parties are also the views immediately at national level of what is going on at provincial level.

Now, I say again this is not a political question, but I can't quite understand why there should be a solidarity of views on constitutional structures and constitutional processes and so on, between those involved at national level and those at provincial level, where the actual experience is being made at this stage. I would, in other words, like Mr Phosa just to explain his remark on that a bit more, please?

I can very briefly just restate it. I would like Mr Phosa to explain why it is impossible for the people involved at Provincial level to have a different view from those involved at national level on Constitutional matters, where they are not necessarily of political nature? Because he said that inputs to the Commission on Provincial Government are requested from the provincial governments, but that is not the right procedure.

Mr Phosa

Well, I think the matter for common sense, that there will be different shades of opinion on matters which are not political. I have difficulty with Pravin on a number of those matters. But, on the fundamental constitutional matters, which are the matters with which the CA sees to, with respect, I will not be

able to make a submission to the CA which is different from the one Mr Cyril Ramaphosa will make and, I think, you will find that the same view will hold with the IFP and, in fact, in our Premier's Forum we have already agreed that that is the position and that parties positions must be respected from top to bottom.

I am not going to prescribe as Premier a view of the ANC, because we are a majority party, that therefore this is the view of the PAC and the IFP and everybody else. It is wrong. I don't have that right to prescribe it. The PAC people, the ANC people and the National Party people in my province are entitled to maintain the same positions as the National leadership.

But, if they so choose to differ, that will not be peculiar to the experience in the whole organisation, in terms of how we would take decisions.

Chairperson

Thank you, Mr Phosa. Perhaps I could just add this also after Prof Venter's question. The theory that the work that has been done on Inter-Governmental relations, all acknowledged that in the political psychology of Inter-Governmental relations, you must take into account the input of the Inter-Governmental relations of the political parties and their structures.

But, the point is that when you are busy with an input in a certain Inter-Governmental structure, that is only one of the interests that are being played off in that Forum, because there are a lot of other interest based inputs that are being made arising from the geographical area or the provincial area or other type of interest levels. For example, the effect of high component of business people in a certain province, will make a different interest base, but the political party interest is something else and it is usually suggested that when you develop a system of Inter-Governmental lines that your political parties develop their own Inter-Governmental relationship with this purpose.

Mr Phosa

At the centre of what we are discussing, is that we want to achieve effective Government from top to bottom, nationally, all three tiers. That will not take place outside the framework which includes proper consultation and proper communication, proper co-operation down the line.

Now, those should be guided principles and with which we write now the new Constitution. We will take them into account and create the necessary mechanisms and procedures

to be followed to ensure that there is proper consultation, communication and co-operation from top to bottom with the sole objective of achieving effective Government and good delivery of goods and services at the grass roots level. That is a Government of business.

The question placed by Mtunsi(?) is very simple to answer because we can make a wide comparative study of constitutional models. You will find that I am not making, and I won't even claim that it is a new idea, that of having a Provincial Governor. I would prejudice other models. It is there. There are many advantages in doing that and I am not talking about Matthew Phosa or Mdlalosa or Hernus Kriel. I am talking about the need for a certain Government, that is all. That is why we are saying we don't need a bulky national Senate. It must be trim and lean and then in getting your administration to be trim and lean and remove the fat which is there already, and have a professional Government running there properly, rather than have big bodies taxing the taxpayers every year.

Mr Rudman

Chairperson, thank you very much. I will also ask Mr Miller to add to what I have to say. Firstly, the major say that the role of the Senate, as I see it, is that of a legislative structure. It is focused on the legislative side then, as far as Inter-Governmental relations are concerned. It co-ordinates and it consults.

Inter-Governmental relations, on the other hand, covers the whole sphere of the political governmental process. It takes place on a daily basis and needs attention on a daily basis. So, I find it difficult to see how this role can be taken over by a legislative structure which is responsible, to a large extent, for legislation and consultation and co-ordination in regard to that.

Chairperson

That is the problem of how you conceived the Senate. We are not talking about a normal Second House any more in this sense, but I think, the question you ask is extremely valid and a detail of that should be discussed at length. I think another opportunity should be arranged for the parties to talk more, or even one to one basis, in smaller groups, with the officials from the Department.

Dr King

Premier Phosa, I would just like to know, from your own experience this far, are you satisfied with the powers which you have received through Schedule 6 and especially as one of the powers that is not listed in there, Financial Powers? You have to a certain extent already referred to the fact that it is necessary for you to have more knowledge on that and have

more security to be able to plan, which is quite true. One does not start with your budget the day that you receive the money from the central governmental. You have to start way before that time and obviously need to have that before the time.

At this stage, it is not one of the powers which is in Schedule 6 included there? Do you think that it could make any difference if some fiscal power was made available as one of the items on the list of Schedule 6? The other thing that I would like to ask you is, the fact that it is not there, does it have any impact? In other words where you are totally dependent on income which is given to you from the central level, does it have any impact on your ability to govern efficiently?

It sounds like a lot of questions, but they are really tie up together. That is, can you identify any other powers which should also be listed, which have not been included in Schedule 6, but which, through experience of the last 13 months, you have actually come across and which you find that there is a need for that?

Mr Phosa

Yes, the questions sound very familiar - sure to you and me who have been at Codesa, through the multi-party process. I think that substantially Schedule 6 goes a long way towards addressing the problem of provincial powers. What was the problem, and I don't want anyone to distort this, with what I said earlier on, that the central government and provincial government was born on the same day and because of that the central government was, had not done preparations in terms of how to assign powers allocated in Schedule 6 to the provinces. And we began to come under pressure which some people chose to ignore and call us all sorts of things and that was the problem, that the central government were sitting with provincial powers which they didn't have to. That was amended by Schedule 6.

The other problem, and I am trying to answer just that question directly here, is that budget processes can provide for satisfaction and certainty, that is answering your question. You don't need to take that function to the province. You need to set up proper budget processes. Do you remember after Chris Liebenberg, the Minister, came out with his budget, we shot it down? Not because it is a bad budget, but the process which was followed, we questioned that and we have since discussed this matter in the IGF and we have all agreed that provinces should be part of the process so that ons moet die koek saam bak, né en ook teenwoordig wees om daardie

koek te sny.

So, we have discussed the things very transparently, there's consultation, there's communication, there's co-operation, and at the end we agreed. Look at how they handled the police budget last week. The MEC's with their National Minister, it was just beautiful. It is a good example of what we call democracy, participation by the lower structures and at the highest level as well, making input and arriving at decisions together. I think, what you need is just proper ways of handling that matter. You don't need to bend out with all these things.

What I was saying is that you need to bring certain things like VAT and things as to what share will a province get, and that is one thing, as opposed to saying you want physical passports for the provinces. It is completely another thing. That is my answer. If you were to ask me to identify certain powers as we are doing, which you say should go to the provinces, I would go to what I was saying, the three C's, consultation, community and co-operation. You have a whole range of non-Schedule 6 functions which are direct. But, at the level of implementation, you are going to go to the provinces. Take water, forestry, imagining them just like that.... foreign affairs which makes South Africans hair rise up.

You need to create structures of co-ordination and co-operation in the provinces to be able to effectively interact with the provinces on the area of water, for example, or foreign affairs. Take provinces that are as such which are neighbouring with Mozambique and Swaziland. We can make a very important contribution in ensuring that these are implemented at close range there, if certain structures are to be put there.

Fortunately, Foreign Affairs has considered that, and Water Affairs have just formed the Provincial Water Committees to try and answer that question, because otherwise we are going to end up with the provinces having all these functions without the capacity of exercise those functions. Indeed, some of the provinces have already said they are sitting with money but they are not able to use that money because they don't have the capacity.

So, we have a problem. You should take this whole constitutional evaluation in South Africa, step by step, otherwise you'll make mistakes. You don't want to create new Bantustans today. They didn't work and the rushing of all the provinces will result in having new Bantustans which will again

not work.

Dr King

I hear what you are saying, Premier Phosa. I was just interested because what you are saying, about for instance, Foreign Affairs, I can see that that is for your province specifically. That would be something which would not, for instance, affect North West or perhaps it would with Namibia close by, perhaps the Eastern province, et cetera. So, that was the kind of information that I was just looking for.

Because, you know, we are actually reviewing, at the moment, Schedule 6. For instance, looking at the others that should be included or that some of those that were included originally, and as you said happened in Kempton Park it was really very much an operation on paper, not having yet the experience which you have had to gain the difficult way. You were really thrown in on the deep side of the swimming pool and at the same time that the central government had to also start swimming on the deep side.

Why I was asking about the fiscal situation, is that we are actually having a workshop this afternoon on that, and what we are interested to know is whether, at the provincial level, what would you, through your experience at this stage, say? We all accept that the majority of your income is going to come from central level. Personally that it is not possible really to do it otherwise.

You did refer to the fact that you wondered how much would you, for instance, get from VAT, et cetera. In other words, you do foresee an income which is generated almost within your own province and which comes back to you. That was actually what I wanted to know or whether you saw it as, as everything coming from central level?

So, you do agree that, that you would also see that every province would have a certain demand, en ekskuus, ek is ook maar Afrikaanssprekend? Dan gaan dit moeilik om te sê in Engels.

A certain claim to the funds that are actually generated in the province? You do see that there is a need for that? And I'm not trying to make politics out of this. I am really trying to say, what is the right way to go?

Mr Phosa

You are succeeding in making politics, but you are welcome. But the fact of the matter is, it will be very ideal to have a situation of going to say what you are saying. But, we are not



living in a normal situation in South Africa. I think more than half of the provinces are economically on their knees. So, you don't have the luxury to approach the matter that way, if you move from that as to your first premise, that most of the provinces are economically on their knees and therefore highly dependent on the others.

How do you level economic playing fields in terms of things? You have got to be very sensitive and have a good sense of history as a South African and realise what other responsibilities which are just as important to you at a particular time, like today, coming, as you do, from where you are coming from.

We are saying, in order to address those questions and achieve those objectives, you need to have central government doing what it is doing. Collect the taxes and then we go through a democratic process of discussing how you do the distribution, allocations. Where there are specific allocations which are being allocated. We need to discuss those things, because the provinces will know what the priorities are and all those sorts of things; moving from the very grass roots position.

But then, when you begin to say what I said this morning, that you need to get a very clear indication as to what are the minimums you should be entitled to, with regard to only specified areas like VAT and those types of things. It has to be principles in terms of your planning. That is something else, away from saying you need fiscal power to the provinces.

The essence of your question is, whether or not the physical powers should be accounted in Schedule 6? That is the actual question. and as I know, from my point of view.

Dr King

No, I wasn't thinking in terms of total fiscal powers at all. I was just thinking in terms of, for instance, money coming from casinos, money coming from other ways of gambling, like horse racing or in other words, that a province has the ability to create some extra income, those who are able to.

Mr Phosa

But that input has been answered, because the Wiehahn Report has made specific recommendations and broken down that money into even the last percentages and then we are waiting for National Cabinet to accept or reject, with amendments that report. From our positions as Premiers, it is almost accepted that report with the new amendments brought in by Minister (Phisma?) on the Inspectorate, that there should be a national type of body. We have accepted that, but the National Cabinet

must decide what they want to do.

But, as to what happens to that money, it is spelt out in the report. It is not something which we need to debate. That is if you accept the Wiehahn Report. If we don't accept the report, then we change the distribution of funds there.

Mr Gordhan

I have two entirely different questions, but let me put them. The first is, is the experience in relation to the present system, that whilst the Inter-Governmental structures operate at an executive level, they even, at times, assume a legislative function, in the sense that an IGF or structure can say how an Act should be amended for a particular purpose, whilst the Executive has the right to make recommendations of that sort. Ideally that function is the legislature's function and where the legislature then is required to consider the matter, is it required to actually take account of or do that which the Governmental Executive Forum has actually decided.

In other words, we don't have a dynamic interaction between a legislative process at national level and the Inter-Governmental process at an executive level between the provinces and the governmental level. The question of which decision is "superior" to which, is unclear, and you can actually have a tennis match going on some times between the executive process and the legislative process. Clearly the time and ideas that Mr Phosa and others are putting forward about the Senate must attempt to bridge that difficulty, and between the executive process on the one hand and the legislative process on the other hand.

The second set of issues arises from, and I think we need to address this very frankly, what kind of conception do we have of the provincial system? Is it a conflictual conception or is it a co-operative conception?

I would like Mr Phosa and Mr Rudman and his team to address this question, from their practical experiences. Where we have a conflictual conception of the provinces, then the tendency is to look for rigid walls which demarcate the functions between the national and the province; to look for clear separations which must be handled through confrontation, rather than through co-operation.

The co-operative body, I think, begins to establish institutions, conventions and procedures in a statutory sense which helps to overcome day to day difficulties that will definitely arise in this relationship.

Only in recent weeks we have had a number of experiences, particularly on the local government debate, which starkly brings out this question, co-operation or conflict, confrontation or consultation, negotiations versus stand offs? I think their comments on this will be very useful.

Mr Phosa

Can I kick off? In a constitutional arrangement like the one we have, it is a bit of a hybrid, and even in others which are federal or even others that are purely...., (if you can call it such a thing), unitary, you will still have tiers of Government in one form or another. Then what you label it, is something else. Then even in all those wide range of models which exist in the world, elements at all levels won't co-operate with one another. The common rule of the nation.

You don't create local government because tomorrow that local government will then come and stand up and want to bring down the provincial government. It's out. You don't do that. It doesn't make sense, unless there are other agendas which come direct from it. The relationship should be essential, as I said before, co-operative, consultative, communicative. The three C's. A key to the relationship for all three tiers of Government.

There are certain natural tensions in those type of things which you cannot avoid, but they are constructive tensions between the National and the province. There will always be those tensions. They are very necessary, creative, dynamic. Because of the nature of how issues arise, decisions are taken. Those tensions are unavoidable in that arrangement. There will be certain tensions between political governments and local government structures. They are coming and provinces are prepared for this, for those tensions. They will come because of the nature of the division of functions, of responsibilities here, competition there. Those are necessary tensions. Those are tensions which are there, whether you have got a federal situation, unitary situation, they will always be there as long as there will be tiers of government.

But the stand off ones are not the type of relationships which are conducive to good Government. They are disruptive. They are destabilising and they can tear apart a nation and at all costs they should be avoided, and the part of resolving conflicts through the negotiations has always been successful, and should be resorted to.

There would be many many problems in the United States today if there was no co-operation between those many states

and a federal state. There would be many many problems in Germany, in France, in Australia; like there is problems in Nigeria, where one of the states decided to go on stand off, (I am talking about states), and what happened was a national disaster. You had Biafra. It could happen if the situation is confrontational and conflictual, in a different version in South Africa.

But, then you need to resist and oppose that and insist on a more co-operative situation and less conflictual situation and accept the natural tensions in every system of that nature.

Chairperson

Thank you very much, Mr Phosa. I just want to confirm that, I think in the National Assembly at one stage, Mr Roelf Meyer and I actually clashed on who owns the term 'co-operative governments'. So, I think it is a good sign of some direction developing.

Can I ask you to clear one thing up which you went over quite quickly in your speech. You mentioned the roll of the Commission for provincial government under the possibility of a National Commission for provincial government. I think those were the words you used. Perhaps the gentlemen at the Bar could inform us of the reviews of the future of the CPG, because at present, (I think for almost three months), we haven't had a Chairman full time there. The Deputy Chairman is also perhaps considering to go out and there is some worry as to what the future of the CPG is. What are your views on this?

Mr Phosa

I think one should start from what is stated in the Constitution and say whether or not that is correct and I have already indicated in which respect it is defective and I went on at length to explain it there.

But, if you have that Commission, you should redefine its functions. That is what you need to do and that is something which we can discuss at length. But I don't know exactly. I've not thought about it - what should be the new functions.

But, to the extent where it seeks to elicit provincial views on Constitutional matters, good luck to it, because the only success it can achieve is to repeat what is in the CA, by and large. Like I said, it would be incorrect to say the National Party in Eastern Transvaal must accept the view of the ANC in Eastern Transvaal as a majority view in a discussion where we vote and we say this is our provincial constitutional position.

But, that is what will happen. We will basically enforce our views and I am saying that is wrong. The National Party in Eastern Transvaal is entitled to say our views is as reflected by President de Klerk in the CA and there is nothing wrong with that.

But the way they were approaching issues there, they were operating on the assumption that it would have Provincial Constitutional views, I am saying, it is an illusion which you can chase, but you will never achieve anything.

Mr Rudman

Chairperson, if I can just come back to the questions that were proposed by Mr Gordhan. As far as the inter-action between the Inter-Governmental structures and the legislature is concerned. I mentioned that in our MINMEC meeting, it very soon became clear to us that there should be that inter-action, because legislation is discussed there and we need also the inputs from the legislature.

That is why it was approved and implemented that the Chairpersons of the Portfolio Committees, that is from National Assembly as well as from the Senate, attend these meetings. So, I think, that is very important.

We also, at the request I may say, of the Chairpersons of the Portfolio Committees, provide the members of the Portfolio Committees, that is the Portfolio Committees of Constitutional Development, with copies of the minutes or summaries of the minutes of the IGF as well as of MINMEC I think, that also illustrates the importance that there should be this co-operation between the legislature on the one side and these informal Inter-Governmental structures.

As far as discussions are concerned regarding legislation, for instance, in the IGF or in the MINMEC's, Mr Gordhan raised the question what would the situation be if a matter is referred from the IGF to the legislature for implementation and there is not perhaps acceptance of the decision that was taken? My feeling is that at that stage it can in all probability be referred back to that particular structure for further consideration. We have found that there is a co-operative spirit in these meetings and consultation takes place on a regular basis.

Of course, and I think Premier Phosa has referred to that, there are also the tensions in these meetings. I specifically referred to the whole question of the assignment of functions from central government to the provinces. A lot of discussions flowed from this item on the agenda of the IGF and we are still

in the process of dealing with these matters.

But, I think, we have come a long way through co-operation between central government structures, as well as provincial government structures, the forming of committees and a consultation process. An ongoing consultation process to deal with these matters and, I think, as Premier Phosa has also pointed out, consensus is to a very large extent reached in these structures, either through the committees which they established themselves, through the Technical Inter-Governmental Committee, smaller committees that are formed to investigate certain matters and to deal with certain matters, and where report back is then given to the IGF.

Mr Manie

Chairperson, I wonder if I could just make a very brief comment on something that Dr King raised with regards to financial and fiscal powers of the provinces.

I find it very strange that this point has been raised before where motivation is put forward for the provinces to have the ability to raise certain provincial taxes. I think that is an accepted thing amongst all parties. The ANC as well. That even at local government level, people must have the ability to raise certain finances through whatever mechanisms. It is just that the types of taxes that are raised at the different levels, there might be a difference around that.

My second point is around the Commission for provincial government. Now, I heard that people when they talk about this particular area, that when they do talk about the Commission, they talk more with respect to the question of how the powers are devolved and how they will be implemented, but very little is spoken about how that particular Commission assists with respect to building the ability of the various provinces in order so that it can deliver.

In other words, it has a supportive role, beyond just looking at clinically what are the legislative competencies that must go down, or not go down, or whatever. But to ensure that, because of the differences, the regional and provincial differences that we have in this country, to ensure that people, when they are given the powers, what other mechanisms need to be considered that to go with that in order that, now that they have the competency, that they are actually able to deliver. Because, in my view, just to give the powers down and not making sure that people have the ability, both financially and with respect to infrastructure and so on, then it is just removing the responsibility from National Government

and you give it to people who can in any case not do much with it.

So, I would like to see that that particular function, if it is to continue in the future, must go beyond just this clinical thing of determining whether they should have the power or not, but to have a much more supportive role. Whether that could be dealt with in some other way or not, I am not sure, but it is not just enough to deal with the competencies in the way that it has been dealt with now.

Ms de Lille            Chairperson, I am just interested as to where do we get the funding for it, to fund the non Constitutional Forums? Is it funded by the Constitutional Development Department, and, if so, what amount of money is being set aside for these non Constitutional Forums for the 1995/96 budget?

Mr Phosa                If I am to answer this question, I will say that I am about to send a statement of account to Minister Roelf Meyer.

Chairperson            You just send the account to Mr Roelf Meyer and then he pays it!

Mr Phosa                On a serious note, I think Constitutional Affairs and Provincial Affairs should carry the expenses, but at the moment we are carrying them together with provinces and Constitutional Affairs. We have to travel and book hotels and eat and have a Coca Cola as well.

Chairperson            No, we are very glad to hear that the Premiers are drinking Coca Cola.

Mr Phosa                It is not organised, Patricia. It is very haphazard. As haphazard as the character of the structure. So, when we have to travel we have to buy a ticket and we buy it; and we have to book the meetings, very far from where we are; and maybe we have to sleep over or the day before and after that, if it finishes very late. So, that has not been organised. So, in terms of accountabilities, it is going to be bit of a messy thing.

Chairperson            Although we have quite a few structures, we can't talk of a system of Inter-Governmental affairs at this stage, or am I wrong?

Mr Rudman             Chairperson, yes, at this stage Premier Phosa is correct. There is not a specific amount budgeted for on our budget, as such, for Inter-Governmental relations. It's spread through our whole budget in the sense that it is under travel, and subsistence, and

allowance and so forth.

So, at this stage the provinces pay for their own transport fees and accommodation. We arrange the meetings; make sure that there are venues available; that there is something to eat and so forth. So, it is spread through the whole budget and it will be difficult to specifically say what it is costing.

Mr Phosa

There is another question which is being asked there about what should be the role, which was asked to me as well. But what my colleague is saying there is, the Commission should not only focus on their powers, they should try and create capacity in provinces.

Now, I would agree with that, but then that depends on whether or not you still have that Commission in your Constitution or another structure which deals with that particular thing. But capacity is a big problem with provinces.

Mr Rudman

Can I perhaps just add to that, Chairperson, that the IGF, in fact, decided that before a particular function is devolved to a province, that province should have the administrative capacity to deal with that function. In fact, together with the Premiers or their representatives, the Public Service Commission defined the term administrative capacity, because it is not always easy to decide whether a province complies with that definition or not. But in that sense the IGF also gave attention to this matter, decided that there should be administrative capacity and also defined the term administrative capacity.

Chairperson

The problem is, of course, that the Constitution says the CPG must develop provincial government and they did do a lot of contact work. But, that development can be understood as the development in the new Constitution, making submission on that, devising on that. Also, in the present system, the actual system and now, to develop that and, I think, that is what Mr Manie meant when he was putting this on empowering.

Mr Manie

Ja, Chairperson, that is precisely my problem with the way Mr Rudman responded now, that the way this issue has been dealt with, was to see whether in fact people meet that criteria and it is quite clear that, somewhere along the line a decision had to be made. But having established that people lack capacity in whatever way that expresses itself, what is the responsibility of the CPG then to ensure that practical things are done to assist those provinces where you have identified that there is a lack? Because it seems as if it is just done at a theoretical level, (and maybe I am repeating myself), but the point is, that



it is for the department also to ensure that it is not just dealt with by looking at 'do these people meet the criteria'? You don't meet the criteria, therefore this program or plan will then be actioned and it will be done with the support and the expertise of the CPG, and that is what I found lacking in all of this.

Mr Rudman

Chairperson, that is correct. I think in terms of the Constitution one of the tasks of the Commission of provincial government, is in fact to assist provinces and to facilitate the whole concept of capacity building within provinces. As far as I understand it, and perhaps you should ask this of the Commission itself, the Commission has, as far as it sees its role in this regard, completed this task. I think they have come to a stage where they have indicated that they have facilitated, as far as they could possible facilitate. That is how I understand it. But, I think, perhaps this is something that should be dealt with by the Commission itself.

I may just mention, Sir, that the whole concept of capacity building in provinces is receiving urgent attention at the moment by a committee that was established by Cabinet.

Ms Coetzee

My question is about this IGF. What will the function be of the purpose of this IGF if the Premier of KwaZulu-Natal, Mdlalose, has resigned or withdrawn now? The other question I want to ask is, the Premier said that they are paying for all their travelling and cost and so on together with the department, isn't it maybe because of that that he has withdrawn?

Mr Phosa

No, I think the Premier of the KwaZulu-Natal issued a four page press statement and explained why he has resigned and he has not mentioned that as one of the reasons. So, I think, we should discount that, but then the essence of the issue, and we have taken it up with him at our last Premier's Forum Meeting, was that, in Ulundi, that he is not the Premier of Inkatha Freedom Party. He is the Premier of the KwaZulu-Natal province. Therefore the Premier of all the people of Natal, and therefore not entitled to take a party position in that capacity as Premier. I think it is irresponsible. If I was to take a party position where I am expected to act as Premier, in that particular matter.... I am pretty sure it isn't the interest of the entire spectrum of the population in there.

The fact of the matter is, we tried to discuss a matter in the Premiers Caucus Forum on which we had already taken a decision in the IGF, and the argument as to going in the Premier's Forum when we nearly contradicted a decision taken

in IGF and we said no, you can't do that, because he was not there. So, you loose on the co-ordination and interaction and integration of common positions, if one of us has not attended those meetings, and we urged the honourable Premier to try and review his position and he said he will report to the Central Committee and they will discuss the matter. But, we were really open about it.

- Chairperson Thank you for the explanation. We hope he returns.
- Mr Rudman Perhaps just mention, Chairperson, that this matter is also receiving the attention of the National Government. The Minister for Provincial Affairs and Constitutional Development being the Chairperson of the IGF has also taken some initiatives, I think.
- Ms Seperepere Thank you, Chairperson. The Premier in his input lastly mentioned something about the traditional leaders and its role and their role in the Provincial and local government. But that is very little. What I would like the Premier to comment on, is the question of the progress and preparation for these houses which are in these various levels. We are having some problems, especially from the Eastern Cape, in regard with these chiefs since they are demanding a certain number. What actually is the number? How big should these houses be in these various provinces?
- Mr Phosa Well, there is uneven development in the different provinces on this question. Maybe I should start at home. We found, that after six months, in the consultations and discussions with the traditional leaders, at the end, that we could reach a decision to set up the house with ease, and indeed it has been set up and the problem we are faced now is to try and sort out the payment of those traditional leaders. It is an issue which is being handled at National level at the moment and we trying to create support staff for them so that they have this Secretariat which deals with the day to day administrative matters. That we are working on. We do have problems setting it up.
- But, I am aware of problems of different natures in different provinces, because the Northern Transvaal's problem is the tribal divisions. The ....(unclear) is saying that they are entitled to more representation than the Tsongas and the Vendas, and the Vendas say there is no superior culture, we should have equal representation. But, that is being handled at a different level. That is causing a delay.

In Natal, I think, the problems are well known and well

documented, where you even have the Minister of Home Affairs (as) the Chairman of the House, which is an issue which, I think, we should discuss in Inter-Governmental relations. We think there is something wrong with that way of handling the matter and not consulting enough. We have got a smooth running thing in North West. The Western Cape is pretending it doesn't have traditional leaders. I don't know (for) sure. They may be somewhere. You see and the Free State has got it right, I think. It is okay.

And then they have got the Eastern Cape having a lot of problems, but then you need to find compromises in that Eastern Cape situation and in Northern Transvaal. A lot of consultation we will have to go into those discussions. It will be unfortunate if we were to increase expenses by the creation of a House of Traditional Leaders. We should be as modest as possible and keep them. Again, not to big, but the temptation is to, from their side, get as many of them as possible to be represented. But that will cost the taxpayer a lot of money and we need to be very careful and form small ones, but to make sure that the different shades of interests are represented. Find compromises along the way. There are problems as we now see it in those provinces which I have mentioned, Northern Transvaal, Eastern Cape and Natal has got problems too.

Sen Bhabha

I would like to follow up on what Patricia Coetzee had to say. The IGFs, to a large extent, are voluntary associations, and it brings the question of the status of decisions in these Forums. Patricia touched on the issue of one of the Premiers not being present. But what happens if decisions are made, whether in the presence of everybody or in the absence of one or two people, where agreement is reached by all the participants, all the provinces in an IGF meeting, and then we have got to question the status of that and what do you do if, after agreement, one of the participants reneges on that agreement? It appears that there are no, I hate to use the word, punitive measures, but what is there to address such an eventuality?

Mr Rudman

Chairperson, I have indicated that the decisions of the Forum only serve as guidelines and should be considered by Governments in their decision making process. So, at this stage it is not binding on anybody. I also indicated that the possibility has been raised, that these decisions should at a stage when they are ratified by National Cabinet, as well as the Cabinets of the provinces, that perhaps one could then consider to have these decisions declared binding decisions on those who have taken them, but at this stage that is not

possible. We are still looking at this matter and I can't add anything further to that.

Mr Phosa

But, if I may add to what Mr Rudman has said. I think it is undesirable to have loose structures which affect Government. It is a bad practice. We should have structures which are legal, statutory or otherwise, and then all of us know exactly when we meet, when we take decisions, what happens to the decisions, what are the disciplinary terms of being bound or not being bound? I think we should move in that direction. That is one of the reasons why I very clearly distinguished between constitutional and non-constitutional, and provoked and unprovoked, questions of accountability and many other things.

Mr Manie

To me, it is quite clear how this can be resolved, and that is that legislation needs to be passed where the status of decisions taken at those forums are sorted out. In fact, it has been highlighted as an area of concern in the past by several people, that it is a glorified talkshop. Obviously there is a possibility of getting people to agree on certain issues, but at the end of the day, whether now or way down in the future, if people just want to go back on decisions they are free to do it, because nothing binds them. In my view, I think a process of legislating on this issue should be commenced with, and it is not for us to wait until we have a new Constitution to try and tie it up there. I think we would have the opportunity to do it now and, I think, we should seriously consider that.

Dr King

Mr Manie, may I perhaps add, and perhaps Mr Phosa would like to react to that as well - isn't the idea really that, and I think you have mentioned it previously in the relationship between local government and provincial government, the province will not do something that will make local government unhappy? Because if they don't operate, then obviously it is also going to be a problem for the provincial government. Wouldn't that very much be the kind of situation which would also occur here, where you have nine provinces? They cannot possibly separate themselves from one another completely. They are inter-dependent and therefore their decisions would very much be influenced in the same way. If one of them, when acting contrary to a decision - it will boomerang on them as well. Wouldn't that actually be a better one than having strict lines of decisions which you can't go back on, because in any respect, every one of those nine provinces have a totally different set up? So, each of them may take back the same principle but will in practice would have to implement them according to the needs and the realities of that specific province.

Mr Phosa

No, I think there is a lot of experience. We are trying to re-invent the wheel. Take the Australian situation where there are Inter-Governmental structures, or even the American situation. Those meetings have got status, whether it is meetings of Premiers or Governors or meetings of Premiers and Governors, meetings of Finance and Fiscal Commissions, it has got status. And decisions have got status. And the nation recognises the status of those decisions and they are binding and they are expected to go and implement those decisions in terms of how they have been understood by the nation in those Forums which represented the nation's through a state or provinces or whatever entity we are talking about.

So, I think it would be very dangerous and, I think, as we have seen it, an example in the Western Cape, the thing which is now burning here. It is a clear example of what can happen if you take decisions together at certain levels and I go home and I do as I please, contrary to the decisions. Those things should be discouraged. It is not good Government. It is bad.

Then on the other thing which you raised, the first part of your question. We need to begin to think ahead about what would be the sort of problems which provinces could experience with local government. The creative tensions I talked about. There will be non-creative tensions, as well, from province to province. What are we doing to prepare, as provinces, to address the whole question of how do we deal with local government as provinces? It is the same finger which provinces used to point at national, the local government is going to point at provinces as well. It is going to happen.

Prof du Toit

Thank you, Mr Chairman. I have got actually two questions, but let me first put the easy one, the snazzy one.

In Canada, for example, you have occurrences, also in Germany. Isn't there a need, because it is not only a question of provincial province which must be solved in a co-operative way, but provinces must also be informed of national matters, because of the leadership position of, for example, Premiers? Isn't there need, for a once a year perhaps, a high media event of a Presidential Inter-Governmental Conference, with the basic purpose where the President informs, for example, the Premiers in such a once a year event, of international problems, national problems, and create that type of intercourse? It seems to be very successful, such a high profile event, in a country like Canada, for example. How do you react to this type of Presidential Conference, (I could include the Premiers, perhaps MEC's, perhaps a king or two) - those types of leaders of the

nation together?

Mr Phosa

It sounds very nice. It would be nice to have a meeting where the President convenes, but the question is, in the IGF, (I think Mr Rudman made reference to this, né), the President was there the first meeting, and the two Deputies were there, and then in addition there were a number of National Ministers present. Now, the question is what do you want to achieve with that? Do you want to brief the Premiers at the beginning of the year about your legislative programmes and international situations; international agreements which were entered into the previous years which need to be implemented; practical things? because we are interested in practical things, not big theoretical stuff.

Now, you have to define the objective of that meeting very clearly I don't want to sound like I am criticising the first meeting we had. We were just feeling our way through. It is time to say how do we relate to one another? But maybe as we form new structures and new conventions develop; what does the President do with regard to provinces at the beginning of a year? Those types of things could be looked at, but, I think, the objectives, the purposes of that meeting must be very, very clear and the nation must understand why the President should go to those lengths to convene Premiers, National Ministers, MEC's, into that type of Forum.

I think once the objectives are agreed, the meeting becomes something secondary, if we agree on the objectives. I think I have mentioned earlier in my input, "Less on structures, more on strategy." That was my formulation.

Mr Rudman

Thank you, Chairperson. Just to confirm what Premier Phosa has said, Chairperson, I referred to the Resolution of the IGF which was accepted on the 12 August and in this Resolution it was resolved that the IGF comprising of the Premiers of the nine provinces and representatives of the National Government which would meet on a monthly basis and which are to be attended twice annually by the President of South Africa and the Deputy Presidents. So, we have that Resolution and, as the Premier has indicated, the President has attended one of our meetings. We are trying to arrange for the next meeting with the President, but due to practical reasons it has not been possible at this stage.

If I can just also briefly, Chairperson, refer to the whole question of legislation to deal with Inter-Governmental relations. The IGF has requested the Technical Inter-

Governmental Committee to look at two matters. Firstly, the terms of reference and framework for the functioning of the IGF and the Technical Inter-Governmental Committee; and then secondly, provision for Inter-Governmental relations.

The Department has prepared two documents which have been approved by the Technical Inter-Governmental Committee. These documents deal with these matters that I have referred to. It has been discussed at the IGF and the IGF, as the Premier has indicated in his address, has requested further consultation to take place with a view to reporting back to the IGF at its next meeting which, I think, is on 12th of this month.

Chairperson Mr Rudman, would it be possible to make copies available to this Theme Committee?

Mr Rudman I have just consulted with one of the permanent members, Chairperson, and we can make that available.

Chairperson Thank you very much.

Ms de Lille Chairperson, I just want to separate the two issues. I think we need to look at the current Constitution and the current situation within our country. I don't think there is any need for legislation to formalize or legalise the non Constitutional Forums. I think what we need to do is to look at.... - we have got regional representation in the National Assembly representing provinces. We also have Senators coming in on a province ticket.

Now, you need to say then how do you make those structures accountable to the provinces which, at the moment, there is no mechanism to regulate that. We have got how many members in the National Assembly and the Senate, and, I think, that is a separate issue which we need to look at first, before we can say - now to compliment the mechanism and the function, we then need the IGF for Ministers, Technical Committees and so on. I see a lot of duplication here. Without taking in consideration the constitutional role and function of the Regional Representatives within the National Assembly and the Senate. And the second issue, Chairperson, is that when we look at the final Constitution we need to evaluate the role, the function, the powers, the composition of these constitutional structures and see now that we have got the experience of the Interim-Constitution, whether we need to change them for the future Constitution or whether we need legislation now, that if the provinces is excluded from the Financial and Fiscal Commission, they must be included there to accommodate the

point raised by Premier Phosa. That process of consultation. I think those two issues are really separate, but I really personally feel no legislation to formalise and legalise any non Constitutional Forums at this stage. Thank you.

Chairperson

Thank you. Can we accept then that we will close our meeting at this stage. May I please remind all members that we convene here again at two o'clock this afternoon for the workshop on Financial and Fiscal Arrangements.

Mr Phosa, thank you very much for your time. We have certainly appreciated your being prepared to make your precious time available to us and the same to Mr Rudman and the two gentlemen who have accompanied him. Thank you.

### **A D J O U R N M E N T**



**BRIEFING BY MR T D RUDMAN OF THE DEPARTMENT OF  
CONSTITUTIONAL DEVELOPMENT TO THEME COMMITTEE 3 ON  
THE STRUCTURES PRESENTLY IN PLACE TO DEAL WITH  
INTERGOVERNMENTAL RELATIONS**

**ESTABLISHMENT OF THE FORUM AND OTHER STRUCTURES**

After the election in April 1994, it soon became clear that the establishment of three levels of government brought about major changes to the governmental process which confronted the Government with new challenges in as far as good governance, the efficient and effective delivery of services and the employment of resources are concerned.

The Ministry for Provincial Affairs and Constitutional Development and the Department therefore took the initiative to arrange for a meeting between the National Government and the Premiers of the nine Provinces. This meeting was also attended by the President and the Deputy Presidents. At this meeting the President and Deputy Presidents stressed the importance of the meeting as it had to deal with the first steps in implementing the system of provincial government as well as the challenges that existed in this regard.

At the meeting of the Intergovernmental Forum that was held on 12 August 1994, the need for structures to enhance intergovernmental co-operation between national government and the provincial governments was accepted. The meeting therefore resolved that the following intergovernmental structures should be established:

- i) An Intergovernmental Forum comprising of the premiers of the nine provinces and representatives of the national government which would meet on a monthly basis and which are to be attended twice annually by the President and the Deputy President of the Republic of South Africa.
- ii) Ministerial Forums between responsible line-function ministers at national level and their respective counterparts at provincial government level which would meet on an *ad hoc* basis.

- iii) The above-mentioned forums be supported by technical committees to provide them with the necessary technical advice and expertise.

This resolution was ratified by Cabinet on 1 November 1994. From that date the meeting between the National Government and the Premiers became known as the Intergovernmental Forum.

### ROLE OF THE FORUM AND OTHER STRUCTURES

The Intergovernmental Forum was established to encourage and ensure the development and maintenance of a co-operative relationship between the national and provincial levels of government. The Forum provides an opportunity for consultation and joint decision-making between national government ministers and the premiers of the provinces, on matters of mutual interest. The intergovernmental process should, however, not be seen as a substitute for the governmental process, but as supportive in that it promotes joint decision-making to the extent that those decisions cannot be made individually or in isolation by any one government or level of government.

The Forum serves as a mechanism for policy dialogue at the political level regarding a number of strategic and important issues requiring intergovernmental consultation, co-operation and co-ordination. Furthermore, it oversees the process of implementation of strategies and actions which have been identified. The Forum acts as a multilateral, inter-governmental, policy planning and implementation body and is as such the most important intergovernmental structure.

Consequently, the Intergovernmental Forum should promote intergovernmental consultation and decision-making with regard to the following:

- important and sensitive political matters;
- line-functions matters which, because of their importance and conflict potential, should preferably be dealt with by the Forum upon request and after having been considered by a Ministerial Forum;
- matters for which a Ministerial Forum have not been established, which have important implications for provincial governments. The Non-Schedule 6 functions

## 3

have special relevance in this regard;

- an integrated and co-ordinated intergovernmental policy and development framework;
- multi-sectoral policy issues;
- financial, fiscal and other governmental resource matters;
- matters pertaining to the efficient and effective functioning of the system of government; and
- constitutional issues.

Ministerial Forums, on the other hand, deal with line-function responsibilities with specific reference to the following:

- the harmonisation of legislation;
- the division and employment of financial resources;
- the harmonisation of programmes on a national basis;
- consultation and negotiation with regard to national norms and standards applicable to a specific function, as well as minimum norms and standards;
- the harmonisation of policies and the drafting of an intergovernmental policy which should serve as guideline to the respective governments in their own policy formulation process;
- the transfer of information;
- the undertaking of joint programmes and projects; and
- the formulation and implementation of strategies.

As already mentioned, all these forums are supported by technical committees. These committees provide the forums with technical advice and expertise.

The main task of the Technical Intergovernmental Committee which serves as the Technical Committee of the Intergovernmental Forum, is to identify key policy and strategic issues and other matters which fall within the terms of reference of the Forum and which should be addressed by the Intergovernmental Forum. The Committee furthermore attends to issues referred to it by the Forum.

Against this background, the terms of reference of the Technical Intergovernmental Committee could be seen as follows:

- to provide support to the Intergovernmental Forum with regard to technical, policy and strategic matters falling within the terms of reference of the Forum;
- to mobilise intergovernmental technical policy and strategic expertise to support the Intergovernmental Forum;
- to identify, discuss and consult on matters falling within the terms of reference of the Forum and to make proposals to the Forum on the addressing of these matters;
- to address matters referred to it by the Intergovernmental Forum through investigation, consultation or other appropriate means and to advise the Forum on the further addressing of these matters; and
- to facilitate, guide and monitor the implementation of decisions taken by the Intergovernmental Forum and to report back on progress made to the Forum.

In general, the technical committees supporting the Ministerial Forums have similar terms of reference.

#### **MEMBERSHIP OF THE STRUCTURES**

The permanent members of the Intergovernmental Forum, that is members who are considered central to the functioning of the Forum on a continuous basis, are the provincial premiers, the Minister of Provincial Affairs and Constitutional Development, the Minister for the Public Service and Administration, the Minister of Finance, the Minister without Portfolio in the Office of the President, the Deputy Minister of Provincial Affairs and Constitutional Development, the Deputy Minister of Finance and the Director-General in the Office of the President. The ministers and premiers are assisted by their directors-generals at meetings of the Forum. The President and Deputy Executive Presidents are ex officio permanent members of the Forum and attend at least two meetings of the Forum on an annual basis.

Ministers of the national government and members of the provincial executive councils, excluding those already mentioned, also attend meetings of the Intergovernmental Forum as members. Their attendance and membership are determined by the need of the Forum to consult with them on a regular basis in order to make decisions which fall within the jurisdictions of the respective ministers. Further membership of the Intergovernmental Forum is based on the responsibility of the Forum with regard to the integration of the activities of the various intergovernmental structures, the need to consult on matters of a multisectoral nature and the need to promote intergovernmental communication and co-operation with regard to those functions on which provincial governments do not have legislative competence. The meetings are chaired by the Minister for Provincial Affairs and Constitutional Development and also acts as link between the Cabinet and the Forum. In the latter regard he presents decisions of the Forum to Cabinet and informs the Forum of Cabinet decisions on matters of mutual concern and interest.

The Technical Intergovernmental Committee consists of the directors-general of the permanent members of the Intergovernmental Forum which include the Directors-General of the Provinces. Permanent members further include the Director-General of the Office of the President as well as the Chairpersons of the Commission on Provincial Government and the Financial and Fiscal Commission. The Director-General of the Department of Constitutional Development chairs the meetings of the Committee. Other members of the Committee include those directors-general and members of government departments and institutions considered to be able to contribute to the efficient and effective functioning of the Committee.

### MEETINGS OF THE STRUCTURES

The first meeting of the Intergovernmental Forum was held on 25 May 1995 and since then 11 meetings were held which included two meetings in the form of a "Bosberaad". Since its first meeting, the Forum has deliberated and accepted resolutions on a number of issues in detail. In summary the following can be mentioned:

1. Assignment of powers and functions to the provinces, the establishment of

## 6

provincial governments and effective service delivery

2. Financial matters
3. Economic matters
4. The Reconstruction and Development Programme
5. The establishment of Houses and the Council of Traditional Leaders
6. Casinos, racing, gambling and wagering
7. Provincial boundary issues
8. The local government elections
9. The Masakhane Campaign
10. Rural development matters
11. Land matters
12. The Development Facilitation Bill
13. The drafting of the Open Government Act
14. Foreign development aid
15. The privileges and remuneration of the premiers
16. The position of the Performing Arts Council
17. Disaster and emergency management in South Africa
18. Intergovernmental relations

At this stage the decisions of the Forum serve as guidelines and should be considered by governments in their decision-making. This matter should possibly receive further consideration.

The Department of Constitutional Development provides the secretariat to the Intergovernmental Forum. The secretariat is responsible for the recording of the proceedings of the Forum, the compilation of the agenda and the provision of process and technical support to the Forum. The secretariat is accountable to all the permanent members of the Forum. In an effort to promote the integration of the activities of the various intergovernmental structures members of the secretariat should also attend meetings of these structures on a regular basis.

As far as the institutionalisation of intergovernmental relations is concerned I would like to quote from a speech by the Minister for Provincial Affairs and Constitutional

## Development.

He said the following:

*"In view of this experience and our vision of intergovernmental relations for the future, Government policy on this matter should now be structure through a White Paper. Until now the intergovernmental system has developed on a voluntary basis, step by step, by way of a learning process. The knowledge gained should now be utilised to develop a longer term view for the implementation of a more formal system in which all role players will participate. They will do so with a clear perspective of the objectives, composition and functioning of the intergovernmental structures."*

*"The institutionalisation of intergovernmental relations is at present actively debated. It deals with the structures that are needed for intergovernmental purposes and the way in which they should be established, either through the Constitution, or through an act of Parliament or through agreement between the participating governments."*

*In view of the fact than ac act of Parliament is easier to amend and thus to provide for the changing institutional requirements of the intergovernmental process, it seems to be the more practical route to take."*

The Technical Intergovernmental Committee has also had 11 meetings. The Committee has generally dealt with all the matters that were considered by the Intergovernmental Forum.

1. MINMEC's
  2. Premiers Forum
  3. Relationship - National and Local Government
- Attention should be given to the relationship between provincial and local government.

### INTERGOVERNMENTAL STRUCTURES

STRUCTURE	FREQUENCY OF MEETINGS	CONDENSED TERMS OF REFERENCE
1. Intergovernmental Forum	Monthly	<p>Promotes intergovernmental consultation and decision-making with regard to the following:</p> <ul style="list-style-type: none"> <li>• important and sensitive political matters;</li> <li>• line function matters which, because of their importance and conflict potential, should be dealt with by the Intergovernmental Forum, preferably upon request and after having been considered by a Ministerial Forum;</li> <li>• matters for which a Ministerial Forum have not been established, which have important implications for provincial governments. The non-Schedule 6 functions have special relevance in this regard;</li> <li>• an integrated and coordinated intergovernmental policy framework;</li> <li>• multi-sectoral policy issues;</li> <li>• financial and fiscal and other government resource matters;</li> <li>• matters pertaining to the efficient and effective functioning of the system of government; and</li> <li>• constitutional issues.</li> </ul>
Technical Intergovernmental Committee	Monthly	<ul style="list-style-type: none"> <li>• To provide support to the Intergovernmental Forum with regard to technical, policy and strategic matters falling within the terms of reference of the Forum;</li> <li>• to mobilise intergovernmental technical policy and strategic expertise to support the Intergovernmental Forum;</li> <li>• to identify, discuss and consult on matters falling within the terms of reference of the Forum and to make proposals to the Forum on the addressing of these matters;</li> <li>• to address matters referred to it by the Intergovernmental Forum through investigation, consultation or other appropriate means and to advise the Forum on the further addressing of these matters; and</li> <li>• to facilitate, guide and monitor the implementation of decisions taken by the Intergovernmental Forum and to report back on progress made to the Forum.</li> </ul>
2. Intergovernmental Forum on Agriculture	Monthly	<p>To coordinate political decision-making affecting the agricultural sector in general and to promote the rendering of services in that particular sector.</p>



STRUCTURE	FREQUENCY OF MEETINGS	CONDENSED TERMS OF REFERENCE
Intergovernmental Technical Committee on Agriculture	Monthly	<ul style="list-style-type: none"> <li>• To coordinate administrative decision-making affecting the agricultural sector in general;</li> <li>• to promote cooperation in rendering services to that particular sector by governmental and parastatal institutions and agricultural related organisations and bodies in an orderly manner; and</li> <li>• to report to and make recommendations to the Intergovernmental Forum on Agriculture concerning matters requiring a political decision or matters being referred to by the Intergovernmental Forum on Agriculture.</li> </ul>
3. Council of Culture Ministers	Monthly	To facilitate intergovernmental relations with regard to arts and culture.
Technical Committee for Culture	Monthly	To advise the Council of Ministers and to prepare items for discussion by the Council, especially with regard to the devolution of powers to the provinces.
4. Ministers' Committee for Science and Technology	Three/four times per year	Concentrate on policy matters regarding science and technology
5. Intergovernmental Forum dealing with environmental matters and nature conservation	Monthly	
Technical Committee dealing with environmental matters and nature conservation	Monthly	
6. Intergovernmental Forum dealing with tourism matters		
Technical Committee dealing with tourism matters		
7. Ministerial Forum for Finance (MFF)	At least twice per year	<ul style="list-style-type: none"> <li>• To exchange information;</li> <li>• to deliberate on policy matters of a financial nature and of common interest to national and provincial levels of government;</li> <li>• to coordinate legislation where necessary;</li> <li>• to identify subjects for further investigation and to consider reports and recommendations submitted thereon; and</li> <li>• to liaise with the Intergovernmental Forum on matters of a national interest.</li> </ul>

STRUCTURE	FREQUENCY OF MEETINGS	CONDENSED TERMS OF REFERENCE
Technical Committee for Finance (TCF)	Four times per year	<ul style="list-style-type: none"> <li>• Consider policy matters of a financial nature and of common interest to national and provincial levels of government and submit recommendations in respect thereof to decision makers/bodies at the political level;</li> <li>• support the activities of the Ministerial Forum for Finance and promote effective decision-making by the Forum;</li> <li>• exchange information to promote a better understanding of policy objectives of and problems experienced at the respective levels of government to assist decision-making at both levels;</li> <li>• promote sound and cordial relations between finance/treasury departments and their officials at national and provincial level; and</li> <li>• appoint task teams to investigate and to make recommendations on matters identified by the TCF and/or the Ministerial Forum.</li> </ul>
8. Provincial Health Restructuring Committee	Monthly	Concentrates on policy and decision-making with regard to health matters.
9. Ministerial Forum on housing matters	Monthly	The formulate housing policy and to provide the housing departments of the provinces with guide-lines for the uniform implementation thereof.
Standing Committee of the Heads of Housing Departments	Monthly	<ul style="list-style-type: none"> <li>• Provide support to the monthly meeting of Ministerial Forum;</li> <li>• discuss any relevant issue and to report to the Ministerial Forum;</li> <li>• deal with pressing matters that require urgent attention; and</li> <li>• play a supportive and coordinating role without taking decisions which are within the political/policy realm.</li> </ul>
10. Provincial MECs Responsible for Land Reform and Rural Development	Bi-monthly	To coordinate land affairs within the greater context of the national land reform programme.
11. Forum for Effective Planning and Development	Bi-monthly	
Technical Committee to the Forum For Effective Planning and Development	Ad Hoc meetings two weeks before meetings of MECs	
12. Meetings between the Public Service Commission and Provincial Service Commissions	Monthly	
13. Committee of Executives (South African Police Service)	Monthly	To ensure the effective coordination of the Service and effective cooperation between the various Commissioners.
Board of Commissioners (South African Police Service)	Weekly	To promote cooperation and coordination in the Service.

STRUCTURE	FREQUENCY OF MEETINGS	CONDENSED TERMS OF REFERENCE
14. Ministerial Conference of Ministers of Transport (MINCOM)	Four to six times per year	<ul style="list-style-type: none"> <li>• Considers the political and financial implications of transport policies and legislation;</li> <li>• refers policy and technical matters to COLTO or other committees for investigation and report;</li> <li>• discusses the political aspects of international and interprovincial transport policy, and</li> <li>• monitors progress with the HDP.</li> </ul>
Committee of Land Transport Officials (COLTO)	Four to six times per year	<ul style="list-style-type: none"> <li>• Reports to each MINCOM meeting;</li> <li>• considers the policy and financial implications of technical standards and guidelines;</li> <li>• refers technical matters to its coordinating committees for investigation and reports;</li> <li>• prepares a policy framework for technical matters;</li> <li>• submits a legislative framework to MINCOM;</li> <li>• exchanges technical policy and experience; and</li> <li>• considers the technical aspects of interprovincial and interregional transport policy.</li> </ul>
COLTO Coordinating Committees	Four times annually or as required	<ul style="list-style-type: none"> <li>• Reports to each meeting of COLTO;</li> <li>• investigates technical matters referred to it by COLTO and departments, or it refers these to its subcommittees;</li> <li>• prepares standards and guidelines for submission to COLTO;</li> <li>• submits proposals for amendments to legislation and technical documents;</li> <li>• exchanges technical information and expertise; and</li> <li>• investigates the practical and economic aspects of technical standards.</li> </ul>
15. Ministerial Forum for Water Affairs and Forestry		

STRUCTURE	FREQUENCY OF MEETINGS	CONDENSED TERMS OF REFERENCE
Provincial Water Liaison Committees (PWLCs)	Monthly	<ul style="list-style-type: none"> <li>• Liaison related to the planning, development and management of water resources;</li> <li>• identification of priorities and areas of critical need for community water and sanitation in both the provision of physical infrastructure and its subsequent management;</li> <li>• advising national and provincial levels of government on the implementation and coordination of the RDP as it relates to community water supply and sanitation;</li> <li>• liaison regarding the provision of assistance in building the necessary institutional capacities at district/metropolitan and village/local levels related to water matters;</li> <li>• liaison with regard to the implementation and maintenance of sound water tariff policy; and</li> <li>• liaison on other water matters of common interest.</li> </ul>
16. Ministers' Committee for Welfare	Monthly	To consider and take resolutions on overall policy matters on social welfare.
National Strategic Management Committee (NSMC)	Once or twice per month	<ul style="list-style-type: none"> <li>• To manage the process of restructuring of the social welfare system;</li> <li>• to ensure linkages and interdependence between the various technical committees;</li> <li>• to eliminate overlapping;</li> <li>• to monitor the implementation of strategic plans and report back to the Ministers' Committee for Welfare; and</li> <li>• to investigate the provinces' capacity to implement the transformation process.</li> </ul>
17. Ministerial Forum for Local Government	Monthly	To facilitate local government development.

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## OVERVIEW OF THE PROCEEDINGS OF THE INTERGOVERNMENTAL FORUM

### INTRODUCTION

The first meeting between minister of the national government and the premiers of the respective provinces was held on 25 May 1994, whereafter consecutive meetings followed on a monthly basis. The meeting on 25 May 1994 was opened by President Mandela and was also attended by Deputy President De Klerk. President Mandela and Deputy President De Klerk stressed the importance of the meeting as it had to deal with the first steps in implementing the system of provincial government as well as the challenges that existed in this regard. Since the first meeting that was held on 25 May 1995, the *Intergovernmental Forum* has held 11 meetings, which also include two meetings in the form of a "Bosberaad" which primarily focussed on discussions of a policy and strategic nature.

At the meeting held on 12 August 1994, the need for structures to enhance intergovernmental co-operation between national government and the provincial governments was recognised. The meeting therefore resolved that the following forums should be established:

- i) An *Intergovernmental Forum* comprising of the premiers of the nine provinces and representatives of the national government which would meet on a monthly basis and which are to be attended twice annually by the President and the Deputy President of the Republic of South Africa.
- ii) Ministerial Forums between responsible line-function ministers at national level and their respective counterparts at provincial government level which would meet on an *ad hoc* basis.
- iii) The above-mentioned forums be supported by technical committees to provide them with the necessary technical advice and expertise.

-2-

Cabinet ratified the resolution taken by the meeting of the *Intergovernmental Forum* through Cabinet memorandum 13 of 1994, dated 1 November 1994.

The frame of reference of the *Intergovernmental Forum*, in broad terms, is to encourage and ensure the development and maintenance of a co-operative relationship and spirit between the provincial governments and the national government. In more practical terms, the *Forum* is to provide an opportunity for consultation, negotiation and joint decision-making between ministers representing the national government and premiers on any matter of mutual interest. The *Intergovernmental Forum* should furthermore also act as a mechanism for the co-ordination and integration of interaction between the first and second tiers of government.

## 2. PROCEEDINGS AND ACHIEVEMENTS OF THE INTERGOVERNMENTAL FORUM DURING 1994 AND 1995

Since its first meeting in May 1994, the *Intergovernmental Forum* deliberated and made resolutions on a number of issues, of which the following are of special importance:

### 2.1 ASSIGNMENT OF POWERS AND FUNCTIONS TO THE PROVINCES

The *Intergovernmental Forum* played an important role in the assignment of powers and functions to the provinces. This was done through the establishment of committees at the political and technical levels who were to reach agreement on the distribution of powers and responsibilities with regard to Schedule 6 functions, between the national and provincial levels of government. This process was facilitated through the technical support and advice provided by the Public Service Commission and the State Law Advisors who played an important role in the progress that has thusfar been made. The *Forum* further facilitated the assignment of powers and functions through consistent monitoring and co-ordination of the process.

-3-

Attention was also given to the rationalisation of non-Schedule 6 functions and national departments also reported on a monthly basis on progress that has been made.

In order to expedite and coordinate the process of assigning powers and functions to the provinces, resolutions and decisions taken by the *Intergovernmental Forum* at its meetings included *inter alia* the following:

a) **The meeting held on 12 August 1994 resolved that:**

- i) political functionaries at the national and provincial level entrusted with matters referred to in Schedule 6 of the Constitution, should establish joint technical committees within ten working days to propose an appropriate distribution of powers and responsibilities in terms of section 126 of the Constitution;
- ii) the political functionaries referred to in paragraph (i) should meet before the next meeting of the Intergovernmental Forum to reach agreement on the proposed distribution of powers and responsibilities between national and provincial governments;
- iii) all legal and technical proposals regarding the transition of the distribution of powers and functions should be made available to the national and provincial governments on an equal basis;
- iv) in the case of education, health and local government, joint technical committees must be established within seven working days to finalise proposals on draft proclamations already prepared;
- v) the Public Service Commission, the Commission on Provincial Government, Department of State Expenditure and provincial governments must establish a joint technical committee within fourteen working days to prepare specific definitions of administrative capacity in relation to functions and provinces.

-4-

This committee must take proposals to the political functionaries referred to in paragraph (ii) and to the next Intergovernmental Forum;

- vi) the joint technical committees established in paragraph (i) must report in writing to the meetings of the Intergovernmental Forum on a monthly basis on progress made;
- vii) the national government should expedite the process of vesting responsibility for functions of the former homelands falling outside Schedule 6 in the new national government departments; and
- viii) the Ministries of Provincial Affairs and Constitutional Development and Public Service and Administration shall take responsibility for ensuring that this resolution is implemented without delay.

**b) The meeting held on 15 September 1994 decided that:**

- i) progress has been made with regard to the finalising of proclamations and the assignment of powers in the fields of education, health and local government;
- ii) the premiers should consult more closely with responsible MEC's on progress made while the Minister for the Public Service and Administration would put pressure on the national ministers to ensure that proclamations are finalised as soon as possible;
- iii) non-Schedule 6 functions, should also be investigated with a view to future meetings. In this regard, relevant departments should prepare progress reports for the next meeting of the *Intergovernmental Forum*;
- iv) provincial governments should forward comments on the progress reports discussed at the Meeting of 15 September 1994, to the Office of the Public Service Commission in order



-5-

to assist the acceleration of the process of assigning powers to the provinces; and

- v) the progress reports which do not indicate satisfactory progress will be taken up with the relevant departments and ministers. Departments that did not provide progress reports would also receive attention.

c) **The meeting held on 14 September 1994 decided that:**

- i) problems with regard to the further definition and transfer of powers and functions with regard to trade and industry, as indicated by the Western Cape, should be addressed at the next meeting between the Department of Trade and Industry and the MEC's or at the next meeting of the Working Group on Trade and Industry;
- ii) a meeting would be arranged between the Department of Education, the Public Service Commission and representatives of the provinces to provide provinces with more clarity regarding the basis for the allocation of education posts, communication between the Department of Education and the provinces and the administrative support necessary for education services;
- iii) the Office for the Public Service Commission should assist the departments at national and provincial level in ensuring rationalisation of functions pertaining to arts, culture, science and technology; and
- iv) allegation of malpractices by magistrates in a province should be taken up directly with the department of Justice;
- v) premiers should consult with the Minister of Water Affairs and Forestry in cases where particular problems pertaining to water affairs and forestry are experienced.

-6-

- d) **The meeting held on 24 November 1994 decided that:**
- i) progress reports should be submitted by the various departments well ahead of the meetings of the Intergovernmental Forum in order to allow for the timeous distribution thereof to the provinces;
  - ii) premiers should, where applicable, comment on or indicate queries with regard to the reports well in advance to the meetings of the Forum;
  - iii) arrangements would be made with relevant ministries or departments to be present at a meeting of the Forum to cater for the necessary interaction;
  - iv) an assessment would be done at the meeting of the Intergovernmental Forum which is scheduled to be held in March 1995 of the progress pertaining to the assignment of all Schedule 6 functions and to take account of developments regarding areas outside of Schedule 6 functions; and
  - v) the Office of the Public Service Commission would submit a comprehensive report regarding the progress that has been made for the purpose of the assessment in March 1995.
- d) **The meeting held on 3 February 1995 resolved that a "Bosberaad" between the Deputy Presidents, Premiers and specific Ministers will be held on 10 March 1995 to discuss in depth issues that were identified by the respective provinces. With regard to the establishment of provincial administrations and effective service delivery, the "Bosberaad" held on 10 March 1995 resolved that:**
- i) the forum that has been instituted between the Office of the Public Service Commission and the provincial service commissions, together with the directors-general of the provincial government administrations, should be requested to:

-7-

- (a) investigate the urgent revision of Chapter J of the Public Service Regulations and to make recommendations for revision and amendment;
  - (b) institute programmes and determine guidelines with regard to the motivation of public servants, dealing with redundant public servants, the re-orientation and re-training of public servants and the right-sizing of the public service;
  - (c) investigate and make recommendations on the approach to be taken in labour relation matters; and
  - (d) report back on progress that has been made in this regard to the *Intergovernmental Forum* on 7 April 1995.
- ii) Having noted that the assignment of laws which relate to the functional areas mentioned in Schedule 6 of the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993), is still receiving attention, the Office of the Public Service Commission, in conjunction with the State Law Advisors and the responsible national government departments, should provide the *Forum* with a comprehensive report on the assignment of Schedule 6 laws for discussion at its meeting on 7 April 1995. Provincial governments are requested to inform the Secretariat of the *Intergovernmental Forum* of any problems with regard to the assignment of Schedule 6 laws before 7 April 1995.
- iii) Having noted that certain non-Schedule 6 functional areas have an impact on effective government in the provinces, the *Intergovernmental Forum* therefore requests:
- (a) that the *Technical Intergovernmental Committee* of the *Intergovernmental Forum* presents to the *Intergovernmental Forum* recommendations with regard to procedures which will govern the relationship between national government departments and provincial administrations with the aim to promote

-8-

- effective service delivery and in regard to the rationalisation of non-Schedule 6 former homeland administration departments by the responsible national government ministries and departments; and
- (b) the directors-general of the provincial government administrations, the Public Service Commission and a senior State Law Advisor to attend the meeting of the *Technical Intergovernmental Committee* on 28 March 1995; and
- iv) in view of the problems which are being experienced with regard to the functions of the Commission on Provincial Government, with special reference to its role in the Constitution-making process, the Ministries for Provincial Affairs and Constitutional Development and for the Public Service and Administration are requested to review the role of the Commission on Provincial Government.
- v) Having noted that the Browde Commission, established to deal with the matters referred to in section 236 (6) of the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993), has been instituted and that the co-operation of the Premiers is needed to assist it in its task, the *Intergovernmental Forum* resolved that:
- (a) the Premiers should co-operate with the Browde Commission and should submit their requests for investigations in terms of section 236 (6);
- (b) contact persons from the respective provinces should be identified with which the Browde Commission can liaise; and
- (c) the Department of Constitutional Development, in co-operation with the Public Service Commission and Judge Browde, should make a recommendation on a possible amendment to the Constitution to extend the time limit

-9-

on the functioning of the Browde Commission.

- e) With regard to the revision of Chapter J of the Public Service Regulations, the Intergovernmental Forum resolved at a "Bosberaad" held on 15 May 1995 that:
- i) the Technical Intergovernmental Committee should evaluate the situation with regard to the financial implications as determined by Gauteng; and
  - ii) the Office of the Public Service Commission should, in the interim, proceed with the proposals to extend Chapter J.

## 2.2 FINANCIAL MATTERS

The *Intergovernmental Forum* played a facilitating role in managing the transitional phase with regard to financial matters of an intergovernmental nature and interest through the transfer of information and their co-ordination between governments. The following matters received special attention:

- \* the institution of the Financial and Fiscal Commission;
- \* the division of assets and the assignment of liabilities;
- \* the 1994/95 and 1995/96 budgets;
- \* exchequer accounts of provinces and the establishment of finance departments and treasuries in the provinces;
- \* borrowing by provinces;
- \* Cabinet's priorities with regard to budget allocation;
- \* the "Belt Tightening" policy;
- \* the involvement of provinces in the budgetary process;
- \* investigations of corruption in the former self-governing territories and TBVC-states;
- \* the allocation of debts and liabilities pertaining to the Development

-10-

Bank of Southern Africa;

- \* personal income tax harmonisation and harmonisation of general allowances given to the public servants

Resolutions and decisions taken at meetings of the *Intergovernmental Forum*, include *inter alia* the following:

a) **The meeting held on 12 August 1994 resolved that:**

- i) the Department of Finance discuss *inter alia* the following financial issues with the MEC's responsible for finance in all the provinces:
  - \* the 1995/96 budgeting processes;
  - \* the initial tasks to be performed by the Financial and Fiscal Commission;
  - \* the sharing of revenue;
  - \* borrowing by provinces; and
  - \* the role of the Department of Finance with regard to integrating the tax system.
- ii) special time be allotted for the presentation and discussion of the key points pertaining to financial issues at the next meeting of the Intergovernmental Forum; and
- iii) a document containing the proposals of the premiers with regard to their remuneration in general, and the matter of rent free official housing in particular, be drafted for submission to the responsible Special Cabinet Committee.

b) **The Intergovernmental Forum resolved at a "Bosberaad" held on 10 March 1995 to:**

- i) request the Minister of Finance and the respective provincial governments, with the involvement of the Financial and Fiscal

-11-

Commission, to propose to the *Intergovernmental Forum* at its meeting on 12 May 1995, guidelines and procedures which will facilitate the involvement of the provinces in the budgetary process and ensure a budgetary process which meets the required criteria, taking into account models that might exist elsewhere.

**c) The Intergovernmental Forum agreed at its meeting held on 7 April 1995 that:**

- i) the Auditor-General's report regarding investigations of corruption in the former self-governing territories and TBVC-states should be taken further in conjunction with the MEC's responsible for finance, in as far as provinces are affected in the report, as well as the steps that should be taken to curb further occurrences of the problems highlighted in the report.

**d) The Intergovernmental Forum resolved on 15 May 1995 that:**

- i) the Ministry of Finance, the provincial governments and other relevant ministries concerned should work out a budgetary control and coordinating mechanism. Various legislative and budgetary changes will be necessary to bring about the complex reorganisation. Work teams will have to investigate the matter and draft a comprehensive plan whereafter any necessary legislative changes will have to be tabled;
- ii) recommendations with regard to amendments that should be made to Section 239 of the Constitution should be drafted and submitted to Cabinet and Parliament;
- iii) the Ministry of Finance should circulate a document pertaining to the new role envisaged for the DBSA after all ministers have studied the matter and have given their inputs. The issue

-12-

- should, thereafter, be brought back to the Intergovernmental Forum on 12 June 1995 for further deliberation, with a view to making a submission to Cabinet for consideration;
- iv) the Financial and Fiscal Commission should be requested to attend the meeting of the Intergovernmental Forum on 12 June 1995 in order to present an overview on the fulfilment of their objectives as well as the processes that will be followed in this regard; and
- v) a submission with regard to financial matters should be made to the Constitutional Assembly who is currently working with financial matters. In this regard, the Minister of Finance should make a submission to the Intergovernmental Forum at its meeting on 12 June 1995 and the Constitutional Assembly should be informed in the interim that a submission is being prepared.

### 2.3 ECONOMIC MATTERS

The *Intergovernmental Forum* played a facilitating role with regard to economic matters of an intergovernmental nature and interest through the transfer of information and their coordination between governments. The following matters received special attention:

- \* the creation of a climate for economic growth in South Africa;
- \* addressing labour instability;
- \* economic transformation;
- \* impediments experienced in the economy; and
- \* economic planning.

Resolutions and decisions taken by the Intergovernmental Forum include inter alia the following:



-13-

- a) **The Intergovernmental Forum resolved at a "Bosberaad" held on 10 March 1995 to:**
- i) request the Minister of Trade and Industry to present to the *Intergovernmental Forum* at its meeting on 7 April 1995 an overall picture on economic development and growth in South Africa.
- b) **The Intergovernmental Forum agreed at its meeting held on 7 April 1995 that:**
- i) clarity with regard to policy and strategy formulation has to be promoted;
  - ii) addressing the lack of coordination between levels of government is very important;
  - iii) more time is needed to discuss economic development and growth in depth;
  - iv) Minister Manuel should attend the "Bosberaad" of the *Intergovernmental Forum* on 15 May 1995 in order to discuss economic development and growth in South Africa more elaborately; and
  - v) the MEC's for Economic Affairs and Finance of the respective provinces should be requested to attend the "Bosberaad" in order to give them the opportunity to partake in the discussions pertaining to this issue.
- c) **The Intergovernmental Forum resolved at a "Bosberaad" held on 10 May 1995 that:**
- i) the existing intergovernmental structures, namely the respective Ministerial Forums (MINMECs) and their technical committees, and especially the *Intergovernmental Forum* and

-14-

- the *Technical Intergovernmental Committee*, are sufficient to facilitate cooperation between the National government and provincial governments with regard to economic planning;
- ii) the NEDLAC structures should be used to consult more widely in this regard;
  - iii) the MINMEC structure that has been established between the Minister for Trade and Industry and his provincial counterparts, be employed to promote economic cooperation and coordination between National government and provincial governments;
  - iv) the Minister for Trade and Industry initiates a process to draft a comprehensive economic policy and strategic framework with the involvement of the responsible national government departments and provincial governments through the intergovernmental structures which deal with the various sectors of the South African economy;
  - v) a memorandum containing proposals in respect of this process be drafted and presented to Cabinet; and
  - vi) the *Intergovernmental Forum*, via the *Technical Intergovernmental Committee*, will, in the final instance, be responsible for the intergovernmental coordination and integration of the economic planning and implementation process.

## 2.4 RECONSTRUCTION AND DEVELOPMENT PROGRAMME

The *Intergovernmental Forum* also attended to the promotion of the Reconstruction and Development Programme. The following matters were *inter alia* discussed at meetings of the *Forum*:

- \* the White Paper on the RDP;
- \* provincial RDP structures;

-15-

- \* the process of accessing RDP funds;
- \* the Business Plans;
- \* lead projects of the RDP including provincial development projects;
- \* the RDP Steering Committee; and
- \* the relationship between premiers and RDP co-ordinators;
- \* RDP funding and provinces;
- \* the implementation of the RDP;
- \* development planning; and
- \* capacity building.

**Resolutions of the Intergovernmental Forum include inter alia the following:**

- a) **The Intergovernmental Forum resolved at a "Bosberaad" held on 10 May 1995 that:**
  - i) the Minister responsible for the RDP, in consultation with the Minister of Provincial Affairs and Constitutional Development and the Minister of Finance, draft a Cabinet memorandum containing proposals with regard to the process to be followed for the drafting of a national development policy and strategy in cooperation with the provincial governments, taking into account provincial and other policies and strategies;
  - ii) the "Bosberaad" of the *Intergovernmental Forum*, which is scheduled for 24 July 1995, be informed of progress, recommendations and implementation in this regard;
  - iii) the Minister of Provincial Affairs and Constitutional Development, the Minister responsible for the RDP, the Minister of Finance and the Minister for the Public Service and Administration, in consultation with the Premiers, establish as a matter of urgency, a programme of capacity support to empower provinces to accelerate delivery;
  - iv) the RDP Office should, after consultation with the provinces,

-16-

table a document with regard to an urban development strategy as well as a rural development strategy at the next "Bosberaad" of the Intergovernmental Forum to be held on 24 July 1995. If possible, the matter should be dealt with by the Technical Intergovernmental Committee prior to the "Bosberaad" on 24 July 1995;

- v) the Intergovernmental Forum should provide the opportunity to deal with the issues raised by the provinces at the political level. The MECs responsible for planning in the provinces should be invited to attend the Intergovernmental Forum to partake in the discussions in this regard; and
- vi) more clarity should be given with regard to the role of tourism within the national strategy.

#### 2.4 Other matters

The *Intergovernmental Forum* also played a coordinating and facilitating role with regard to the following matters:

- i) The establishment of Houses and a Council of Traditional Leaders. The drafting of legislation, issues pertaining to remuneration and gender equality were dealt with and contributed to the establishment of these structures within the time-frame required by the Constitution.
- ii) Matters relating to casinos, racing, gambling and wagering between the national and provincial levels of government, in which case broader policy issues and proposals pertaining to draft legislation for provincial legislatures was discussed and attention was given to a strategy to act against illegal casinos, the establishment of a national lottery and the licensing of lotteries and casinos.
- iii) Provincial boundary issues and procedures to be followed for the amendment of provincial boundaries.

-17-

- iv) The local government elections and the need and importance of intergovernmental co-operation in this regard.
- v) The Masakhane Campaign, in terms of its objectives, the role of the respective tiers of government and the advertising of the Campaign. The Intergovernmental Forum noted at a "Bosberaad" held on 12 May 1995 that:
  - (a) provinces should liaise with the advertising agency involved in the advertising of the Campaign in order to give feed back on the advertising thereof;
  - (b) it is suggested that premiers should appoint a person in their offices that could give attention to the advertising of the campaign and to assist those responsible for the advertising thereof, where possible; and
  - (c) report back should be given at the next meeting of the Intergovernmental Forum on 12 June 1995 on further progress that has been made with the Campaign.
- vi) Rural development matters, in terms of the functioning of the Department of Land Affairs and the devolution of powers to the provinces;
- vii) The Development Facilitation Bill, in terms of the consultation process that has been followed to initiate the Bill, the aims and provisions of the Bill, as well as the competencies of national government and provincial governments;
- viii) The confidentiality of government documents and, in this regard, the functioning of the *Task Team on the drafting of an Open Government Act* and the interim arrangements pertaining to the handling of delicate matters by governments;
- ix) Overseas funding for transformation and reconstruction in the provinces. With regard to accomodating provincial interests in overseas funding and the functioning of the of the *Interdepartmental Committee on International Development Assistance*, the Intergovernmental Forum decided on 24 November 1994 that:

-18-

- i) provinces should be allowed to state their position with regard to programmes that affect them and to make submissions on this matter; and
- ii) in order to ensure provincial interests with regard to international assistance, the Department of Constitutional Development must be represented on the Interdepartmental Committee;
- x) The privileges of the premiers, in which respect the Intergovernmental Forum decided that a committee be instituted involving representatives of the national government as well as the provinces to resolve the issue;
- xi) The position regarding the Performing Arts Councils in South Africa and the problems that are encountered;
- xii) Disaster and emergency management in South Africa, in which respect the Intergovernmental Forum evaluated a submission on this matter and made specific recommendations with regard to areas that needed further attention;
- xiii) The Freedom Day celebrations on 27 April 1995 in terms of the planning thereof and the contribution of national government departments and provinces to the festival as well as utilising facilities for the celebrations to promote registration for the local government elections as well as the Masakhane Campaign;
- xiv) intergovernmental relations, in which respect the *Intergovernmental Forum* resolved on 3 February 1995 that the *Technical Intergovernmental Committee* should:
  - (a) draft and present to the *Forum* a proposed terms of reference for the *Forum* and the *Technical Intergovernmental Committee*; and
  - (b) investigate and make proposals to the *Forum* regarding provisions concerning intergovernmental relations which could further guide the intergovernmental process during the interim and which, if relevant, could also be presented to Cabinet and

-19-

the Constitutional Assembly.

The *Intergovernmental Forum* discussed the documents pertaining to the above issues at a "Bosberaad" held on 10 March 1995 and resolved that the matter be referred back to the *Technical Intergovernmental Committee* for further consultation and processing whereafter the matter will be dealt with further by the *Forum* on 12 June 1995.

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