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**CONSTITUTIONAL
ASSEMBLY**

THEME COMMITTEE 3

DRAFT REPORT 3

**INTER-GOVERNMENTAL
RELATIONS**

**BY THE
TECHNICAL ADVISORS**

15 AUGUST 1995

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

REPORT : PARTY SUBMISSIONS : ON INTERGOVERNMENTAL RELATIONS

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

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

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

Intergovernmental Relations : Report on Party Submissions

Issues	Agreement	Contentious	Further clarity
<p>1. The importance of intergovernmental mechanisms in a three-tier system of government.</p>	<p>1. To an extent, parties accept the importance of intergovernmental relations. 2. ACDP - In favour of a system of intergovernmental relations where the national level concentrates on particular and constitutionally defined aspects. 3. ANC - Emphasises the principle of co-operative governance. All state organs should act in concert to the benefit of the people and nation building. 3. DP - They are of critical importance and aim to promote co-ordination and consultation. 4. NP - Mechanisms, structures and procedures are imperative so that the different levels of government liaise on the basis of equality. 5. PAC - There is a need to create a framework on intergovernmental relations. 6. CPG - The need for inter-governmental relations is obvious, and they should receive constitutional recognition and be mandatory on all tiers of government.</p>		<p>1. ACDP - Although it favours some system of intergovernmental relations it also says that intergovernmental mechanisms must be avoided. 2. PAC - Although it accepts the three-tier system of government, it advocates a central government with a strong executive president. Provinces should be headed by administrators. The relationship between the central government and the provinces should be regulated by commissions such as the Commission on Provincial Government which should make recommendations on provincial problems, the Financial & Fiscal Commission and the Commission on Local Government. Not clear how important it sees the mechanisms under that kind of arrangement, considering that when government is centralised, the need for intergovernmental mechanisms is reduced. It sees some of the intergovernmental mechanisms as important.</p>

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

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

Issues	Agreement	Contentious	Further clarity
		<p>leave details to parliamentary legislation because inter-governmental relationships are a process which cannot be confined to mere structures. The other reason is that an extensive provision in the Sonstitution leads to inflexibility.</p> <p>5. CPG - It is necessary to constitutionalise some. CPXXVII requires, by implication, constitutionalisation of the Finance & Fiscal Commission.</p>	

Issues	Agreement	Contentious	Further clarity
<p>4. What intergovernmental mechanisms should be constitutionalised, if any?</p>		<p>1. DP - The Premiers Forum or Council and all others should be left to evolve voluntarily. The Party mentions the Finance and Fiscal Commission [CPXXVII, S198], Commission on Provincial Government for 10 years, [S163] Police Board of Commissioners [S220], Committee of the Minister and the MEC's and the Senate.</p> <p>2. NP - The Senate which should be representative of provinces, should be constitutionalised. As far as other mechanisms are concerned, the Constitution should make provision for the matter to be addressed via parliamentary legislation. Parliamentary legislation can then make provision for structures and mechanisms such as the Finance and Fiscal Commission, the Police Board of Commissioners, the Commission of Provincial Government and other structures like the Advisory Committee on Inter-governmental Relations.</p>	<p>1. NP - The proposal provides that there should be provision for Senate representation on the Finance and Fiscal Commission and on the Commission on Provincial Government. It is not clear whether this should be provided for in the Constitution or in parliamentary legislation. The NP submission, however, does not deal with the Senate as a mechanism for intergovernmental relations.</p> <p>2. Other than the submissions of the ANC and the NP, the submissions of other political parties do not address the Senate as one of the intergovernmental relations mechanisms.</p> <p>3. CPG - The Senate. It should be composed in such a way that it is truly representative of the provinces. Also retain the Commission on Remuneration of Representatives whose job should be expanded to cover remuneration of traditional leaders. The IGF should be retained but restructured to reflect a greater equality among the participating governments. The Financial & Fiscal Commission [CPXXVII and S198 & 199 of the</p>

Issues	Agreement	Contentious	Further clarity
		<p>3. PAC - Maintain the Commission on Provincial Government, the Finance and Fiscal Commission on Local Government for these purposes it become a Council of Provinces to provide a major say in the National Assembly bills that deal with provincial affairs. It is also a forum in which provinces can interact with each other.</p> <p>4. ANC - A Senate which is representative of the provinces and possibly of local government. For these purposes it becomes a Council of Provinces to provide a major say in the National Assembly bills that deal with provincial affairs. Also a forum in which provinces can interact with each other.</p>	<p>Interim-Constitution] should be provided for in the new Constitution. Establish a Council for Intergovernmental Executive Relations to monitor the operation of national-provincial-local relations, to propose options for solving conflicts between levels of government and to assist with the establishment of intergovernmental partnerships within and between provinces.</p>

Prepared by: Prof. B C Majola
13 August 1995

**POLITICAL
PARTY
SUBMISSIONS**

ACDP

**AFRICAN CHRISTIAN DEMOCRATIC PARTY
SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 3**

INTERGOVERNMENTAL RELATIONS

The ACDP has consistently called attention to the true function of civil government as addressed in Romans 13: namely that government should be the servant of God and that it should bring about a better life for all citizens.

In this regard, we have expressed that the civil service should consist of a skilled and motivated small group of very efficient and experienced men and women. The civil service complement should be kept to a minimum, alleviating duplication where departmental functions overlap. A stream-lined public service where each section has a clearly defined role and function, will bring about greater efficiency and efficacy while becoming a sector of employment drawing a top calibre of personnel who take pride in themselves and their actions.

A sprawling empire of public officials with an already unwieldy appearance that is growing larger and more ungainly by the day, is a symptom of the illness of bureaucracy. Civil government from its institution was not meant to define for itself new areas of activity on an ongoing basis. The fact that the South African governmental institution has grown consistently over the past decades to include such rare entities as the central bank, public enterprises and parastatals is an indictment against the tendency to form new bodies to deal with new problems and functions, rather than re-think and replan the original systems.

Indeed, if there is to be any substance to the interrelated workings of the whole system of government, then a careful restructuring and blueprinting is indicated with a sense of urgency.

Moving next to the Montesquian idea of a separation of powers, again some clear thinking in this regard becomes imperative: The legislature, the executive and the judiciary can only function at their optimum when the executive can not legislate or adjudicate, the legislator can not adjudicate or execute, and the executive is not empowered with legislative and judicial functions except in very specific circumstances, (the boundaries of which must be clearly defined) when the executive can continue to function, despite a state of emergency or war even though the other branches of government may be prevented from continuing its operations.

As such the use of intergovernmental commissions comprising members from more than one department or branch of government, must be avoided as far as possible as the need for something like this body, already indicates that the drawing board needs to be consulted as there is a possibility of overlapping. As far as possible having adjudicative bodies within the executive, such as administrative tribunals should be given a wide berth. The argument normally advanced pro the existence of this type of pseudo-court, is that it deals with matters so technical that only someone in the system will be able to pronounce on related issues: this reasoning, however, falls flat when it is realised that from these very bodies normally exist a route of appeal to some level of the very judicial system previously adjudged too uninitiated to have handled the matter from the beginning.

A further strong line to be observed, is that of relations between the so-called different tiers of government. In keeping with the demands of a strong federal system, government needs to be most concentrated where it can best serve the population - at the local level. The regional governments have to have autonomy in their respective areas, because the particulars of each region distinguishes it from the next taking into account the particular and unique composition of each region. The ACDP is in favour, therefore, of a system of intergovernmental relations where the national level concentrates on particular and constitutionally defined aspects and where it has only the powers that these functions necessitate. At all times should the emphasis be on the autonomy of the other tiers of government in their respective areas of jurisdiction.

Because centralised systems of government have been proven to fail, while decentralised and federal systems continue to prosper and develop, South Africa should learn from the rich heritage of political history and not give national government a veto power over the regional and local levels of government and by concentrating power where its use can best be monitored by the democratic process: as close as possible to the very families that make up this country.

10 July 1995
[INTER.WPS]

ANC



AFRICAN NATIONAL CONGRESS

OFFICE OF THE SECRETARY GENERAL

SECRETARIAT, CONSTITUTIONAL COMMISSION
PARLIAMENTARY OFFICE, V 251, PO BOX 15, CAPE TOWN
TEL (021) 403-2839 FAX (021) 461-9461

INTERGOVERNMENTAL RELATIONS

CONSTITUTIONAL ASSEMBLY
PROVISIONAL SUBMISSION TO THEME COMMITTEE 3
PIIASE 3

Final draft 5

1. Background

In general the ANC envisages the following structures and provisions in the final constitution:

- South Africa shall be an undivided state in which there shall be a democratic government at local, provincial and national levels. The Bill of Rights and principles of non-racialism, non-sexism and democratic accountability shall apply at all three levels of government.
- Parliament shall consist of the National Assembly and Senate. The National Assembly will be elected by universal suffrage on a common voter's roll according to proportional representation. It will pass the national budget and have primary responsibility for the preparation and adoption of the country's main laws.
- The final constitution should provide for a Senate, comprised of representatives of the provinces and, possibly, representatives of local government level, which should allow for effective influence and participation of the provinces in national law-making at national level, and which should function as the suitable forum for intergovernmental coordination. Members of the Senate should be appointed and be subject to recall by provincial legislatures and/or provincial executives. Every province (and possibly the local level of government of South Africa as a whole) shall each be entitled to a single delegation of Senators.
- Other submissions of the ANC to Theme Committees 2 and 3 deal more fully with the institutions of provinces and their areas of competence. The provincial system should amongst others have the following elements:
 - Concurrent legislative competences for national Parliament and provincial legislatures.
 - Executive and administrative competences at national and provincial levels, with the

weight of executive competences being assigned to provinces.

- There should be a constitutional provision for determining when national or provincial legislation will be pre-eminent in the event of an inconsistency between national and provincial legislation.

2. Establishment of government at three levels

The final constitution should establish government at three levels in which all three levels have legislative and executive powers. This system of government offers a structure of government which is close to the people, accommodates regional diversity and provide for accountable and responsible governance.

On the other hand, where government exists at national, regional and local level, and when there are nine provincial governments, it can have an adverse impact on nation-building as well as cost-effective and efficient governance. These potential consequences are:

- Additional costs of governance.
- Mutually destructive norms in the various provinces, that is policies and legislation in one province which adversely affects another province's welfare.
- Perpetuation of regional distortions and disparities in resources.
- The marginalisation of provincial influence in respect of national legislation and the national executive.
- A system of governance which seeks to resolve problems only from the perspective of that particular province and in which provinces are precluded from understanding the broader picture in the absence of a forum to promote this.
- Inconsistencies or contradictions between the different provinces' legislation or between national and provincial legislation, unproductive competition between provincial governments and between levels of government.
- Inability to focus resources on, or develop policies for, problems and needs which are national in nature or origin, and which require national remedies.

In order to deal with these problems, it is necessary to develop institutions which will promote the positive aspects of the system and which will overcome potentially negative aspects. The ANC's solution to these potential problems is the development of institutions and mechanisms of cooperative governance. Cooperative governance is therefore an integral part of the ANC's proposals on the division of competences between national, provincial and local levels of governance,¹ as well as the proposals on the new Senate as a "Council of Provinces": a body having real provincial representation and increased powers.²

3. Principles for intergovernmental relations

The guiding principle of cooperative governance is that all state organs or entities should act in concert to the benefit of the people and nation-building. This implies a duty on the different levels

1 See ANC submission to Theme Committee 3, Phase 2.

2 See ANC submission to Theme Committee 2: *The Senate*.

of government to cooperate with each other.

Intergovernmental relations should be established on the premise that cooperation between the levels of government, and between the various provincial governments should be promoted and in which the following principles should find expression:

- The different levels of government should
 - assist and support each other.
 - share information and consult with each other,
 - cooperate in the development and execution of their policies,
 - adhere to agreed procedures and maintain friendly relations.

The main aim of cooperative governance should be *to coordinate policy-making processes*³ with regard to

- legislative,
- executive,
- administrative and
- technical/advisory functions

at national, provincial and local level. The central purpose of intergovernmental relations is *joint policy-making* where it is necessary to avoid the above-mentioned adverse aspects of government at the three levels.

4. The position of the Senate in intergovernmental relations

The Senate, in its proposed conceptualisation as a "Council of the Provinces", should have the following functions amongst others:

- Have a close and on-going relationship with the provincial governments and give expression to the views and the administrative experience and needs of the provinces.⁴
- Have a real say over National Assembly bills that deal with the exercise of powers and performance of provincial functions and articulate the interests of provinces at national level.
- It should be able to initiate legislation and bear co-responsibility as a chamber for the Republic of South Africa as a whole regarding provincial interests.
- The provinces shall be entitled, primarily through the Senate and its structures or committees, to participate in financial and fiscal matters affecting the provinces, especially in the drafting of the national budget, although the Senate will have no powers to block financial bills.

3 It will obviously also include the coordination of the administration of resources and programmes.

4 The Senate should have a place for civil servants from the provinces at the Senate committee meetings.

- Where the national government is empowered by national legislation to promulgate subordinate legislation or statutory instruments which affect the powers, functions or interests of provinces, the Senate should have a say over the content of such instruments, particularly where the provinces are required to implement such legislation or instruments.⁵

Thus the provinces will now have a greater say, through the Senate, in the making of national legislation affecting their interests. This will call upon provinces to take account of national considerations. It will require them to interact with each other and the National Assembly to consider the good of their province and the country as a whole. It will also support the regard for provincial considerations in the national law-making process.

The Senate should thus effectively reflect provincial (and local government)⁶ needs and interests at national level, while providing an appropriate forum for intergovernmental coordination. Suitable structural adjustments to existing intergovernmental structures will have to be made when the new Senate is instituted, because the executive and line functions of national ministries and departments in intergovernmental relations must be maintained. The ANC is of the opinion that elaborate provisions on the detail of intergovernmental coordination and structures in regard to especially executive and administrative matters should not be contained in the constitution.

5. The inclusion of local government in intergovernmental relations

The ANC wishes to promote the relationship between national government and local government. Local government, being a level of government, should not be neglected in a system of intergovernmental relations to increase the problem-solving capacities of the system.

6. Structuring of and constitutionalising intergovernmental relations

The ANC believes that it is not necessary or advisable for the constitution to spell out in detail all the specific institutions of intergovernmental relations. These will develop in line with the needs of executive and legislative cooperation.

However, in general the principle should be followed that intergovernmental relations should not obscure decision-making processes. Intergovernmental institutions should promote democratic government and function in a transparent way.

Secondly the Senate is the principle form of intergovernmental relations at the level of legislation and in regard to the respective legislatures. It should also be charged with the responsibility for supervising, coordinating, facilitating and directing executive intergovernmental relations.

5 Thus providing opportunity for co-determination in administrative matters and for inputs from the provinces on account of their administrative experience.

6 See below.

DP



PARLEMENT
PARLIAMENT

☎ 4032911 • 15. 8000 FAX 4610092 E-MAIL dpc@nic.net.za

Demokratiese Party
Democratic Party

Democratic Party: Submission to Theme Committee 3

Intergovernmental Relations

1. Introduction

In a country with three levels of government it is inevitable that tensions will arise between different governments from time to time. This in itself is not unhealthy - however, one wants those tensions to be creative, dynamic and constructive, not negative, sterile and destructive.

Intergovernmental relations are therefore of critical importance. The promotion of consultation, co-operation and co-ordination between national and provincial, provincial and local, and between provincial government themselves should enjoy a high priority.

These relations are generally best left to the development of a network of voluntary arrangements and mechanisms, although there is scope for some constitutional provisions.

Evolving voluntary and largely informal arrangements will be most conducive to the promotion of a culture of mutual respect and co-operation, and a tolerance of diversity and experimentation.

2. Current Constitutional Structures

These include the Financial and Fiscal Commission, the Commission on Provincial Government, the Police Board of Commissioners and the Committee of the Minister and MEC's, and the Senate.

All of these bodies should in some form be provided for in the new constitution. The precise role of the Senate is being considered by Theme Committee 2, so no further comment is included in this submission.

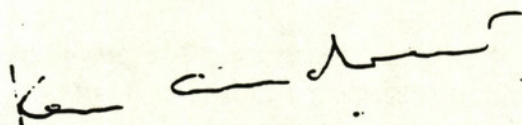
Some form of commission on provincial government should be retained for a period of 10 years to mediate and, if necessary, adjudicate disputes between the national and any provincial government as to whether that province has the capacity to assume a particular power or function allocated to provinces in the constitution. After 10 years all provinces would be entitled to assume all such powers and functions.

3. Other Intergovernmental Structures

In addition to those mentioned above, there should be a Premier's Forum or Council, which should meet at least twice each year, and provision should be made for the Provinces to be empowered to establish "Inter-Governmental Consultative Councils" to assist in achieving the necessary co-operation and agreement between the Provinces on matters of mutual interest.

Other structures should evolve and develop from these Councils and from the existing intergovernmental structures which have already come into being. Attempting to constitutionalise these fora, committees and councils is more likely to stifle their development than promote it. One cannot force unwilling people to co-operate without encroaching on their constitutionally prescribed autonomy.

In the sections on Provincial Finance, provision should be made to give the provinces the right to be heard by the Finance and Fiscal Commission, and by the national Minister of Finance, before the budget for any year is finalised - but no formal structure need be created to achieve this.



Ken Andrew MP
7 June 1995

NP

THEME COMMITTEE 3

NATIONAL PARTY SUBMISSION

BLOCK 2: INTERGOVERNMENTAL RELATIONS

A INTRODUCTION

In any modern state in which government is structured at different levels and in which powers and functions are distributed constitutionally among them, formal and informal structures, mechanisms and procedures regarding intergovernmental relations are imperative. In a modern state, such a degree of interaction, interdependence, co-ordination and co-operation exists between the various levels that it becomes impractical, even impossible, to perform government functions at these levels in isolation. The necessity of intergovernmental relations is beyond argument; what can and should be discussed is the nature and extent of the formal and informal provision that should be made for it.

However, the National Party wishes to emphasise that the objective of mechanisms for intergovernmental relations should never be to subject the provinces to national control, supervision or domination. Unless the different levels of government always liaise and co-operate on the basis of equality, respect each other's constitutional status and domain and honestly listen to each other and meet each other's wishes and needs, the *practice* of intergovernmental relations will be in conflict with the constitutional entrenchment of different levels of government and their *status* and powers, and the *idea* of constructive

intergovernmental relations will be lost. We strongly recommend that this basic point of departure be followed throughout.

B THE TRANSITIONAL CONSTITUTION

1 The transitional constitution makes limited provision for intergovernmental relations:

(a) The provinces are formally represented in the **Senate** and, therefore, in the legislature at national level (section 48).

(b) The **Constitutional Court** has jurisdiction in constitutional disputes between state bodies at different levels of government (section 98(2)(e)).

(c) The **Financial and Fiscal Commission**, which is a body operating at national level, is *inter alia* responsible for recommendations in connection with the fair allocation of funds to the provinces (sections 155 and 199).

(d) The **Commission on Provincial Government**, also operating at national level, must promote the establishment of provincial government and, in the process, advise the Constitutional Assembly on a future provincial system, and advise the national government on the establishment and consolidation of provincial administrations and the rationalisation and integration of resources (section 164).

2 In pursuance of the transitional constitution, various *informal* mechanisms for intergovernmental relations have nevertheless been established:

(a) The **Intergovernmental Forum**, jointly chaired by the Ministers of Provincial Affairs and Constitutional Development and of Public Service and Administration, and attended by the Premiers of all nine provinces, is the most important structure that has been formed.

(b) The **Technical Committee to the Intergovernmental Forum** is responsible for the preparatory work of the Premiers' Forum.

(c) **Ministerial Forums** are established *ad hoc* on a line-function basis between ministers at national level and members of provincial executive councils.

(d) **Technical Committees** consisting of officials assist the Ministerial Forums.

(e) A **Senate Secretariat** promotes communication between the Senate and the provinces.

C THE FINAL CONSTITUTION

1 The Constitutional Principles

In terms of the Constitutional Principles contained in Schedule 4 to the transitional constitution, a system is envisaged of which extensive structures, mechanisms and procedures for intergovern-

mental relations must, by definition, form an integral component. The following examples may be mentioned:

- (a) The principle of concurrent powers referred to in CP XIX and XXI(6) and (7) presupposes the closest interaction, co-ordination and co-operation between the national and provincial levels.
- (b) The performance of functions for other levels of government on an agency or delegated basis alluded to in CP XIX, presupposes mechanisms or structures for liaison.
- (c) The whole system of revenue sharing among the various levels of government envisaged in CP XXVI and XXVII, can only be implemented and conducted efficiently and satisfactorily through special mechanisms for liaison and co-operation.
- (d) CP XXII, in terms of which the national government may not encroach on the geographical, functional or institutional integrity of the provinces, also presupposes procedures for liaison and for the prevention and resolution of jurisdictional disputes.
- (e) On local government (CP XXIV), which is a provincial function, but over which the national government has always exercised much influence, close liaison will definitely be of the utmost importance.

2 Options

2.1 Broadly speaking, there are three ways in which to approach the provision of structures, mechanisms and procedures for intergovernmental relations:

(a) One method would be to make no formal provision for intergovernmental relations and allow all structures, mechanisms and procedures to develop *informally* according to practical needs and developments.

(b) Another method would be to include in the constitution *extensive* provisions on all conceivable mechanisms and structures for intergovernmental relations.

(c) A third method would be to include in the constitution only a commitment to the *principle* of intergovernmental relations, the detail to be filled in in legislation adopted by Parliament at a later stage.

We prefer the third method. The first method ignores the constitutional necessity for mechanisms for intergovernmental relations, whereas the second seems to be too inflexible, not allowing for the development of the new provincial system and of relations between the different levels of government. After all, intergovernmental relations is a *process* of interaction which cannot be confined to mere structures.

2.2 Without sacrificing flexibility, parliamentary legislation dealing with intergovernmental relations, could, *firstly*, provide for structures and mechanisms such as those already established informally (see paragraph B2). These could, of course, be fleshed

out in the legislation. *Secondly*, the following additional mechanisms could be considered:

(a) A single structure for the co-ordination of intergovernmental relations, called the Advisory Committee on Intergovernmental Relations, and consisting of representatives of the national government, the provinces and other bodies concerned, such as the Commission on Provincial Government, could be established.

(b) Provision could be made for the representation of the Senate on certain bodies such as the Financial and Fiscal Commission and the Commission on Provincial Government.

(c) Senate liaison with the provinces, *inter alia* through the Senate Secretariat, could be extended.

(d) Express scope for further formal and informal developments could be built into the legislation. The legislation should, in other words, provide for a compulsory minimum of mechanisms, with room for additional optional structures and procedures.

D PROPOSALS

1 The necessity for structures, mechanisms and procedures for intergovernmental relations which, at the same time, respect the constitutional status and domain of each level of government, should be acknowledged in the constitution.

2 The constitution should only lay down the principle that intergovernmental relations must be provided for in

parliamentary legislation and should not provide all detail itself.

3 Consideration should be given to the inclusion in such parliamentary legislation of the mechanisms contemplated in paragraph C2.2 above.

PAC



**PAN AFRICANIST CONGRESS (P.A.C.)
OF AZANIA
PARLIAMENTARY CONSTITUENCY OFFICE**

**Marks Building
Rooms 560/1/2
Parliament**

**Phone:(021) 403-3524/5
(021)462-1479**

Fax (021) 461-9596

OUR REF:

YOUR REF:

Preliminary submissions

Inter-governmental Relation.

The PAC subscribes to the view that there is the need to create a framework on intergovernmental relations given the fact that we also believe in the three - tier governmental system as contained in the Constitutional Principle xvi. The statement needs to be qualified in that the PAC does not see the interim constitution as giving the correct starting point.

The PAC strongly believes that there should be a central government that shall be headed by a strong executive president who shall appoint his/her cabinet in accordance with the established constitutional conventions. The Provincial together with the Local government structures will primarily deal with the administrative functions of government.

Contrary to the provisions contained in Constitutional Principle xviii, the PAC submits that there should be a reduced number of Provinces which shall be established along the following criteria :

1. They must bring governance closer to the people
2. They must be able to accomodate the question of possible land claims
3. They must be economically viable
4. Unlike the present provinces the borders must cut across ethnic or tribal lines and should be as soft as possible for administrative purposes. The advantage being that it will be effective and cheap to run.
5. Most of the present provinces were a recent creation of the interim constitution with no fully developed infrastructure and personnel.

The PAC submits thus that the Provinces be headed by Administrators who will be performing Schedule 6 functions including those contained in Constitutional Principle XIX.

The PAC is of the view that the Commission on Provincial government should be maintained to make recommendations on provincial government problems. In this respect the relationship thus become essentially that between the Central Government and the Provinces through the various Commissions, namely :

the Commission on Provincial Government and the Financial and Fiscal Commission(s) and finally the Local Government (which will be independent from the Provincial Structures). With respect to the powers of the Local Government the PAC would adhere to the provisions as contained in Constitutional Principle xxiv.

The PAC thus submits that due to the central role that is to be played by the Commissions outlined above, that they be re-evaluated so that they become chambers of the new institution and that;

- (i) the policy formulating role of these "new" institutions should be strengthened
- (ii) formal and informal structures for the support and strengthening of intergovernmental relationship(s) should be established and that could further draw in the Local Government structures.
- (iii) the intergovernmental forum (which is presently a non-constitutional institution) should also be formalised to deal with the political relationship(s) between the Central Government, the Provincial and Local Structures and the Traditional Leaders.

Ms. P. De Lille (MP) PAC

7 JUNE 1995