

2/4/3/7/1

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 3

**RELATIONSHIP BETWEEN
LEVELS OF GOVERNMENT**

DRAFT TEXT

**NATIONAL AND PROVINCIAL LEGISLATIVE
COMPETENCIES**

BY PROF VENTER

15 JUNE 1995

DRAFT TEXT
National and Provincial Legislative Competencies

Legislative authority of provinces

XX1. (1) The legislative authority of a province vests in its provincial legislature.

(2) A provincial legislature shall be competent to make laws for the province with regard to all matters which fall within the functional areas specified in Schedule X.¹

(3) Laws made by a provincial legislature shall apply only within the territory of the province.²

Acts of Parliament on matters falling within the competence of provinces³

XX2. (1) An Act of Parliament regulating a matter which falls within the functional areas specified in Schedule X shall apply in a province to the extent that such Act is not amended or repealed by the provincial legislature.⁴

(2) An Act of Parliament intended in subsection (1) and which applies uniformly in all parts of the Republic,⁵ shall not be amended or repealed by a provincial legislature⁶ if—

- (a) it is essential that the Republic should attain specific national goals in its international relations regarding such matter and the Act of Parliament provides therefor;⁷
- (b) the matter is regulated effectively by the Act of Parliament regarding the quality and rendering of services and cannot be regulated effectively by provincial legislation;⁸
- (c) essential uniform, generally applicable norms or standards for the whole of the Republic concerning the management or administration of the matter or of a related function are necessary, are not provided for by the provincial law and are provided for by the Act of Parliament;⁹
- (d) minimum standards for the rendering of public services are necessary regarding the matter, they are not provided for by the provincial law and are provided for by the Act of Parliament;¹⁰
- (e) the Act of Parliament —
 - (i) provides effectively for the maintenance of the unity of the national economy;¹¹
 - (ii) is necessary to protect the environment across provincial boundaries;¹²
 - (iii) promotes interprovincial commerce;¹³
 - (iv) ensures the mobility of goods, services, capital and labour across provincial boundaries,¹⁴ or
 - (v) is essential to protect the national security,¹⁵ and provincial legislation does not do so; or
- (f) the provincial law unreasonably prejudices the national economy, the health of the community or the security of the Republic.¹⁶

Provincial laws on matters not listed in Schedule X

XX3. (1) A provincial legislature may, within the framework of an Act of Parliament, make laws concerning the performance of functions of the national government which have been delegated to the provincial government.¹⁷

(2) A provincial legislature may, within the framework of an Act of Parliament, make laws concerning the performance of functions of the national government regarding which the provincial government has by agreement been appointed as agent for the national government.¹⁸

Ancillary competences and interpretation

XX4. (1) The legislative competence of a province includes the competence to make laws which are reasonably necessary for or incidental to the effective exercise of such legislative competence.¹⁹

(2) A provincial legislature may recommend to Parliament the passing of any law relating to any matter in respect of which such legislature is not competent to make laws.

(3) An Act of Parliament and a provincial law shall be construed as being consistent with each other, unless, and only to the extent that they are, expressly or by necessary implication, inconsistent with each other.²⁰

(4) An Act of Parliament shall prevail over a provincial law only if it is not possible for the Constitutional Court to resolve a dispute in this regard by means of a reasonable interpretation of subsection (4) of section 125.²¹

(5) An Act of Parliament is invalid insofar as it purports to cause or empower an encroachment upon the geographical, functional or institutional integrity of a province.²²

ENDNOTES

- 1 Constitutional Principle XX and the Report Part I, par 1.
- 2 Constitutional Principle XXI 2 ("action taken by one province which is prejudicial to the interests of another province or the country as a whole").
- 3 See the Report Part I, par 3. Note that although the expressions "exclusive" and "concurrent" are not employed, Constitutional Principle XIX is satisfied. Parliament will have "exclusive powers" in all matters not listed in Schedule X, whereas concurrency consists with regard to the listed matters. However, provinces will be able to establish exclusive competence over a matter by passing a law which is not qualified by an Act of Parliament under sub-clause (2) - the so-called "overrides".
- 4 Report Part I, par 4; Part II, par 5.
- 5 Constitutional Principle XXI 2 and 4.
- 6 Report Part II, par 4.
- 7 Constitutional Principle XXI 3.
- 8 Constitutional Principle XXI 1.
- 9 Constitutional Principle XXI 4.
- 10 Constitutional Principle XXI 2.
- 11 Constitutional Principle XXI 2.
- 12 Constitutional Principle XXI 2.
- 13 Constitutional Principle XXI 5.
- 14 Constitutional Principle XXI 5.
- 15 Constitutional Principle XXI 2.
- 16 Constitutional Principle XXI 2.
- 17 Constitutional Principle XIX ("delegation"); Report Part I, par 2 & 4; Part II par 3.
- 18 Constitutional Principle XIX ("agency"); Report Part I, par 2 & 4; Part II, par 3.
- 19 Constitutional Principle XXI 8.
- 20 Constitutional Principle XX ("promotes national unity and legitimate provincial autonomy").
- 21 Constitutional Principle XXIII.
- 22 Constitutional Principle XXII.