

MCH91-16-3-8



The Free Market Foundation
of Southern Africa

an organisation to promote economic freedom
'progress through freedom'

Die Vryemarkstigting

van Suidelike Afrika

is organisasie om ekonomiese vryheid te bevorder
'vooruitgang deur vryheid'

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MESSAGE: "What's wrong with the interim
Constitution."

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What's wrong with the interim constitution

1. The interim constitution does not create a federal system of any kind. It does not give a province any exclusive powers. The system of government it establishes is the same system as the old provincial system under the previous constitutions of 1909 and 1961.
2. The interim constitution states that provincial legislatures shall have power to make laws with regard to matters falling within specified subjects. These subjects do not differ significantly from the subjects on which a provincial council could make laws under the old provincial system in terms of the previous constitutions of 1909 and 1961.
3. And the interim constitution states that the central parliament will have concurrent power to make laws with regard to the matters on which a provincial legislature may make laws. This is no different from the old provincial system under the previous constitutions.
4. And when a national law and a provincial law deal with the same subject, they must be interpreted as being consistent with each other, unless they are inconsistent in express terms or by necessary implication. This is a confirmation of the practice under the old provincial system, when the courts, when confronted by a national law and a provincial law dealing with the same matter, would usually read the two laws together as being able to stand very well together side by side. The courts were very slow to find repugnancy between provincial and national laws, and there is no inconsistency if effect can be given to both laws at the same time. This means that central and provincial laws on the same matter will co-exist as a rule. This results in a plethora of overlapping and concurrent laws.
5. In the unlikely event that two laws can be shown to be inconsistent with each other, the interim constitution states that a national law which applies in all parts of the Republic will prevail over the provincial law to the extent that it is necessary for the determination of national economic policies or the maintenance of economic unity or national security. So national laws will apply when they can co-exist with provincial laws. And, even where a national law cannot co-exist with a provincial law because of some inconsistency, the national law will still prevail where necessary for national economic or security policy.
6. The police will be regulated by national legislation, which must establish uniform standards of management and control of the police. The commissioner of police will appoint police commissioners for each province in terms of national legislation. National legislation must set out the circumstances when crime requires national investigation. The constitution authorises police officers to act outside the province where they are stationed. Provincial legislatures are authorised to make laws on police functions such as community policing and police stations. All this means that existing central control of the police will remain, as will the potential for conflict which central police control has provoked. In contrast, in most large countries policing is a local or regional function even in unitary states such as Britain and Italy.
7. The interim constitution states that a province shall be entitled to an equitable share of revenue collected nationally to enable it to provide services and execute its powers. When the authority which spends the taxes is different from the authority raising the taxes, accountability to voters and taxpayers is lost. It creates perverse incentives to provincial governments to be spendthrift and to encourage the central government to levy higher taxes to finance regional spending. This occurred with the homelands, where the central government financed ever-increasing homeland spending with