

CODESA Working Group 2 - South African Government - 2 March 1992

**THE BALANCE BETWEEN CENTRAL, REGIONAL AND LOCAL
GOVERNMENT**

1 The Issue

The *Draft Document on Common Principles regarding the Balance Between Central, Regional and Local Government prepared by the Steering Committee of Working Group 2* dated 25 February 1992 is the product of the discussion and debate in the Working Group and reflects some compromises, especially in paragraph 3, which reads as follows:

Each level of government shall have appropriate and adequate legislative and executive powers, duties and functions that will enable each level to function effectively; such powers, duties and functions to be entrenched in the constitution.

The phrasing of this paragraph is such that it can, due to its generality in some respects, accommodate various points of view relating to the vertical distribution of power.

The generality of the wording of the paragraph is due, inter alia, to the dispute which arose in the course of the debate regarding the question whether the devolution of power is a matter of constitutional principle or one of constitutional structure.

2 The opinions of the participants

From an overview of the position papers presented on this matter to Working Group 2, it would appear that the following participants have expressed themselves unequivocally in favour of regional autonomy:

Ciskei Government
Democratic Party
Dikwankwetla Party
Inkatha Freedom Party

Labour Party
National Party
National People's Party
Venda Government
Ximoko Progressive Party

The position of the South African Government remains to be the following:

The Constitution must accord a significant measure of constitutional autonomy to the regions and the autonomy of democratically elected local government institutions must be acknowledged in the Constitution.

3 The vertical distribution of power

It is essential that terminological precision and clarity must be maintained. In this connection the distinction between *delegated power*, *original power* and *autonomy* is vital and may be defined as follows:

3.1 *Delegated power*

Where central government entrusts the exercise of some of its functions to a regional authority, the latter is endowed with *delegated power*. Although the regional authority may exercise such functions in its own name, these functions continue to reside with central government, which may at any time intervene by revising or retracting the delegated functions.

3.2 *Original power*

Where functions are entrusted to a regional authority in terms of the Constitution, those functions are of an *original* nature since they are not derived from the powers of another entity. The granting of these powers may be withdrawn or amended without the consent of the regional authorities: however, for such amendment or withdrawal to be effective, the (entrenched) constitution will have to be amended by Parliament.

3.3 *Autonomy*

Autonomous regions are entrusted with original power over functions allocated to them by the Constitution. However, whereas original powers may be limited or withdrawn by constitutional amendment without the co-operation of the regions, autonomous powers may only be changed with the full acquiescence of the regions, obtained through a procedure prescribed and entrenched by the Constitution itself.

4 **Interpretation of the proposal of the Steering Committee of the Steering Group**

The South African Government considers the question of the autonomy of regional and local governments to be a matter of principle. Therefore, "appropriate and adequate legislative and executive powers, duties and functions" in the proposed paragraph 3 is understood to indicate *autonomous* powers, duties and functions, *originally* allocated to regional and local governments by the Constitution.

The specific functions to be entrusted to the regional and local government levels must be determined according to the principle of subsidiarity, which means that a function must be situated at the level where it may be performed optimally.

Since a function cannot be properly performed without the necessary financial capability, fiscal competency must accompany the allocation of powers to the highest practicable degree. Where full fiscal autonomy is not practicable, the financial capability of regional and local governments must be supplemented by means of constitutionally regulated horizontal and vertical fiscal equalization.

Read 24/2/92

WORKING GROUP 2

17-02-1992

THE BALANCE BETWEEN CENTRAL, REGIONAL AND LOCAL GOVERNMENT

The question of the balance between the central, the regional and the local government cannot be divorced from the form of state which will be in place in this country.

The Venda Government, therefore, sees two options on the vertical form of state, viz. UNITARY STATE WITH REGIONALISM AND FEDERALISM.

Consequently we have decided for a Unitary State with Regionalism as a form of the state which we would like to see in South Africa.

This implies regional autonomy which will be granted to regions whilst the central government retains sovereignty.

Residual powers with central part.

We therefore favour devolution of powers in the true sense of the word under indirect central control. This simply means we favour a strong Central Government; a strong Regional Government and a strong Local Authority.

This balanced relationship will ensure and enable these autonomous local or regional governments to decide, through their elected representatives, on matters affecting their culture and other interests of the inhabitants.

However, we reject regionalism as a device for recognising and preserving Ethnic differences. Indeed, we are tired of racial discrimination in this country.

We therefore, recommend regionalism to be used simply as a technique in the administration of the country as it was the case since 1910, although the 1910 Constitution excluded the majority of our people. In short a three-tier government which has been in place since 1910, must continue, save that the new constitution must entrench powers devolved to regional and local governments. It must not be based on pure decentralisation of powers or delegation of powers to these elected bodies, because such powers may be recalled or revoked by the central government.

In other words, the central government must be denied the power to revoke these original powers conferred to local and regional governments. Thus we would be rectifying some of the fundamental flaws of 1910 Constitution.

Not a "principle"

We accordingly move that the proposed nine development regions be taken as a point of departure in this regard. According to the S.A. Law Commission, pp 61, certain criteria were taken into account when the country was divided up into these regions. These criteria carry our approval.

VENDA GOVERNMENT