

**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.