

**Inkatha Freedom Party**

**Iqembu lenkatha Yenkululeko**

**THEME COMMITTEE No. 3**  
**ON RELATIONS BETWEEN LEVELS OF GOVERNMENT**

**FIRST REPORT ON**  
**NATURE OF THE PROVINCIAL SYSTEM AND**  
**LOCAL GOVERNMENT'**

TYPE OF POWERS TO BE ALLOCATED

- 1 All powers of a state are to be allocated between the national and the provincial level of government.
2. The most important powers of the state, the so-called residual powers', often do not necessarily translate into governmental line functions or powers of government.
3. Residual powers should be left with the provinces.

PRINCIPLE OF SUBSIDIARITY:

- 1 . The Provinces shall be the primary governments of the people and shall be entitled to those powers and functions which can be properly and adequately exercised at provincial level'.

The IFP makes this submission under protest, for the Constitutional Committee

should withhold consideration of the matters covered in this report and further development of the work program so as to allow international mediation to take place.

1. Technically, residual powers all those powers which are not listed in the provisions of a constitution which distribute powers between different level of government. A Parliament has power to enact legislation about over more than

300 functional areas, which include matters such as corporate, family, criminal, inheritance, contract, and administrative law.

1. First Rule of Subsidiarity: A higher level of government shall not do what the lower level government is capable of doing: this principle requires that powers be allocated to the lowest level of government capable of exercising them, even if such allocation is not the most efficient solution, as long as it is a "practical" one. Second Rule of

Subsidiarity: No government shall do what the family or civil society is capable of doing

2. Only those powers which cannot be adequately or properly exercised at provincial level should be devolved upward to the central level.

#### ALLOCATION OF POWERS

1. Only the powers of the central government shall be specifically listed in the constitution, and all the powers not allocated to the central government shall be powers of the Provinces
2. Provinces shall have full judicial powers in all matters of their competence, in addition to fully autonomous legislative and administrative powers.

#### RELATION BETWEEN POWERS

1. There shall be separation of powers between national and provincial level of government.
2. National government shall have no overrides.
3. Provinces shall have exclusive powers.
4. Both the national and the provincial levels of government shall enjoy exclusive powers.
5. The relations between the two levels of government shall be regulated by checks and balances, intended as a predetermined set of mutual interference among the powers of each level of government.

These interferences are based on the extension by relevancy or implication of the exclusive power of the national level of government into the areas of competence of the Provinces, as in theory is the case in the U.S. (i.e. interstate commerce).

6. In specific areas of provincial competence, the techniques of national framework legislation regulating exclusive provincial powers could also be used.

Framework legislation shall not enable the national government to act in lieu of the provincial one, but should merely direct the action of the provincial government, leaving sufficient space for implementing action on the side of the provincial legislature.

#### FISCAL AUTONOMY

1. The IFP believes that provinces shall have original and residual taxing and revenue raising powers on the basis of a parallel system of taxation.

#### FISCAL EQUALIZATION

1. There shall be constitutionally mandated equalization.
2. The constitution may also provide for a predetermined share of nationally collected The following are generally recognized alternatives to structure the relation of powers:
  - (a) mutually excluding national and provincial exclusive powers with an open set of national interferences on provincial powers; or (b) national framework legislation with either provincial (bi) concurrent powers or (bii) exclusive powers; or (c) national overrides with either provincial (ci) concurrent powers or (cii) exclusive powers, or (d) national general principles of legislation with either provincial (di) concurrent powers or (dii) exclusive powers. revenues to be transferred to provinces, for equalization purposes. This function should be guided by an independent Fiscal and Financial Commission.

#### ENTRENCIMENT OF PROVINCIAL AUTONOMY

1. Provincial autonomy shall be indestructible, and no national legislative or executive action shall be valid if it encroaches on provincial autonomy.
2. The Constitutional Court should judge any conflict between provinces and national levels of government.
3. In addition, provinces should have the opportunity of influencing by means of their own judicial system how the national constitutional court interprets the constitutional provisions which define their autonomy.

#### CONSTITUTIONAL COURT IN PROTECTING PROVINCIAL AUTONOMY

1. Each provincial legislature should elect judges from its own provincial court system to sit on the Constitutional Court as additional judges when the Constitutional Court adjudicates a conflict between the central government and that particular province.
2. When assessing the compatibility of national legislation with provincial constitutions, the Constitutional Court should be bound by the interpretation of the provincial constitution adopted by the court of final instance in the provincial court system.

## LOCAL GOVERNMENT

1. The national constitution should entrench the notion that local government should be entirely regulated by means of provincial constitutions and legislation.

This is necessary to allow a system of local government which reflects local administrative needs as well as the plural nature of South African society.

In fact, the local government system will need to reflect a variety of realities ranging from traditional communities to metropolitan areas. This calls for fluidity and suggest the nonadvisability of entrenching in the national constitution any given type of local government system.

## PROVINCIAL CONSTITUTIONS

1. Provinces shall be entitled to adopt their own constitutions in autonomy without the preemptive control of any organ of the national government, provided that such constitution shall not exceed the area of autonomy recognized to the provinces and that such limitation be fully reviewable by the constitutional court.
2. Provincial constitutions shall determine any matter related to the organization and operation of the legislative, executive, judicial and administrative branches of the provincial governments.

## ASYMMETRY

1. The national constitution shall provide for the maximum degree of provincial autonomy.
2. Each Province shall be free to opt to exercise lesser powers than the full autonomy to which such Province is entitled, if such Province is not ready, willing or able to exercise any of the legislative or administrative powers concerned.
3. The issue of federalism cannot be settled by virtue of majoritarian rule, no matter how large the majority concerned is. Even if the

rest, of South Africa wishes to organize itself as a unitary state, regions such as KwaZulu-Natal which have expressed federal aspirations should be entitled to receive the autonomy they demand and to coexist with the rest of South Africa on the basis of a federal relation.

#### PROVINCIAL AUTONOMY AND ECONOMIC UNITY

- 1 . The segmentation of government along provincial divides does not imply nor require the segmentation of the economic continuum.
2. The establishment of a federal system modelled after the U.S.A. or Germany has no negative effect on the preservation of national economic unity.

#### SENATE

1. The Senate should not have less legislative authority than that given to the National Assembly.
2. The Senate should represent the Provinces and its members should derive directly from the provinces through indirect elections by the provincial legislatures in consultation with the provincial cabinets.
3. Each province shall be equally represented in the Senate.
4. The Senate should have the specific power to monitor executive functions such as defense and foreign affairs in which Provinces have no competence.