

THEME COMMITTEE 3
NATIONAL PARTY SUBMISSION
BLOCK 2: INTERGOVERNMENTAL RELATIONS

A. INTRODUCTION

In any modern state in which government is structured at different levels and in which powers and functions are distributed constitutionally among them, formal and informal structures, mechanisms and procedures regarding intergovernmental relations are imperative. In a modern state, such a degree of interaction, interdependence, co-ordination and co-operation exists between the various levels that it becomes impractical, even impossible, to perform government functions at these levels in isolation. The necessity of intergovernmental relations is beyond argument; what can and should be discussed is the nature and extent of the formal and informal provision that should be made for it.

However, the National Party wishes to emphasise that the objective of mechanisms for intergovernmental relations should never be to subject the provinces to national control, supervision or domination. Unless the different levels of government always liaise and co-operate on the basis of equality, respect each other's constitutional status and domain and honestly listen to each other and meet each other's wishes and needs, the practice of intergovernmental relations will be in conflict with the constitutional entrenchment of different levels of government and their status and powers, and the idea of constructive intergovernmental relations will be lost. We strongly recommend that this basic point of departure be followed throughout.

B. THE TRANSITIONAL CONSTITUTION

1. The transitional constitution makes limited provision for intergovernmental relations:

- (a) The provinces are formally represented in the **Senate** and, therefore, in the legislature at national level (section 48).
- (b) The **Constitutional Court** has jurisdiction in constitutional disputes between state bodies at different levels of government (section 98(2)(e)).
- (c) The **Financial and Fiscal Commission**, which is a body operating at national level, is *inter alia* responsible for recommendations in connection with the fair allocation of funds to the provinces (sections 155 and 199).
- (d) The **Commission on Provincial Government**, also operating at national level, must promote the establishment of provincial government and, in the process, advise the Constitutional Assembly on a future provincial system, and advise the national government on the establishment and consolidation of provincial administrations and the rationalisation and integration of resources (section 164).

2. In pursuance of the transitional constitution, various informal mechanisms for intergovernmental relations have nevertheless been established:

- (a) The **Intergovernmental Forum**, jointly chaired by the Ministers of Provincial Affairs and Constitutional Development and of Public Service and Administration, and attended by the Premiers of all nine provinces, is the most important structure that has been formed.
- (b) The **Technical Committee to the Intergovernmental Forum** is responsible for the preparatory work of the Premiers' Forum.
- (c) **Ministerial Forums** are established ad hoc on a line-function basis between ministers at national level and members of provincial executive councils.
- (d) **Technical Committees** consisting of officials assist the Ministerial Forums.
- (c) A **Senate Secretariat** promotes communication between the Senate and the provinces.

C. THE FINAL CONSTITUTION

1. The Constitutional Principles

In terms of the Constitutional Principles contained in Schedule 4 to the transitional constitution, a system is envisaged of which extensive structures, mechanisms and procedures for intergovernmental relations must, by definition, form an integral component. The following examples may be mentioned:

- (a) The principle of concurrent powers referred to in CP XIX and XXI(6) and (7) presupposes the closest interaction, co-ordination and co-operation between the national and provincial levels.
- (b) The performance of functions for other levels of government on an agency or delegated basis alluded to in CP XIX, presupposes mechanisms or structures for liaison.
- (c) The whole system of revenue sharing among the various levels of government envisaged in CP XXVI and XXVII, can only be implemented and conducted efficiently and satisfactorily through special mechanisms for liaison and co-operation.
- (d) CP XXII, in terms of which the national government may not encroach on the geographical, functional or institutional integrity of the provinces, also presupposes procedures for liaison and for the prevention and resolution of jurisdictional disputes.
- (e) On local government (CP XXIV), which is a provincial function, but over which the national government has always exercised much influence, close liaison will definitely be of the utmost importance.

2. Options

2.1 Broadly speaking, there are three ways in which to approach the provision of structures, mechanisms and procedures for intergovernmental relations:

- (a) One method would be to make no formal provision for intergovernmental relations and allow all structures, mechanisms and procedures to develop informally according to practical needs and developments.
- (b) Another method would be to include in the constitution extensive provisions on all conceivable mechanisms and structures for intergovernmental relations.
- (c) A third method would be to include in the constitution only a commitment to the principle of intergovernmental relations, the detail to be filled in legislation adopted by Parliament at a later stage.

We prefer the third method. The first method ignores the constitutional necessity for mechanisms for intergovernmental relations, whereas the second seems to be too inflexible, not allowing for the development of the new provincial system and of relations between the different levels of government. After all, intergovernmental relations is a process of interaction which cannot be confined to mere structures.

2.2 Without sacrificing flexibility, parliamentary legislation dealing with intergovernmental relations, could, firstly, provide for structures and mechanisms such as those already established informally (see paragraph B2). These could, of course, be fleshed out in the legislation. Secondly, the following additional mechanisms could be considered:

- (a) A single structure for the co-ordination of intergovernmental relations, called the Advisory Committee on Intergovernmental Relations, and consisting of representatives of the national government, the provinces and other bodies concerned, such as the Commission on Provincial Government, could be established.
- (b) Provision could be made for the representation of the Senate on certain bodies such as the Financial and Fiscal Commission and the Commission on Provincial Government.
- (c) Senate liaison with the provinces, inter alia through the Senate Secretariat, could be extended.
- (d) Express scope for further formal and informal developments could be built into the legislation. The legislation should, in other words, provide for a compulsory minimum of mechanisms, with room for additional optional structures and procedures.

D. PROPOSALS

1. The necessity for structures, mechanisms and procedures for intergovernmental relations which, at the same time, respect the constitutional status and domain of each level of government, should be acknowledged in the constitution.

2 The constitution should only lay down the principle that intergovernmental relations must be provided for in parliamentary legislation and should not provide an detail itself.

3 Consideration should be given to the inclusion in such parliamentary legislation of the mechanisms contemplated in paragraph C2.2 above.