

ADDENDUM TO ANC SUBMISSION ON SENATE (COUNCIL OF PROVINCES)

The prior ANC submission to the Constitutional Assembly on National and Provincial Legislative Competencies, contained within the documentation of Theme Committee 3 (and more fully set out at pages 31 and 32 of the ANC's Constitutional Proposals published as "Building a United Nation"), should be read together with the ANC's submission of 5 September 1995 on the Senate (Council of Provinces).

National and Provincial Legislative Competencies

1. Provincial legislatures shall be competent to make laws for the province with regard to all matters which fall within the functional areas specified in Schedule 6 of the Interim Constitution (save for policing which we believe is subject to Chapter 14 and should not have been included in the Schedule). Legislative competence shall include the competence to make laws which are necessarily ancillary to the effective exercise of their legislative competence. Parliament shall have the same powers to make laws in regards to the above matters.

11. In the event of an inconsistency between national and provincial legislation, the Act of Parliament shall prevail over provincial legislation only to the extent of any inconsistency between them if:
 1. The national law deals with a function in respect of which uniformity across the nation is desirable.
 2. The national law deals with a matter in respect of which it is necessary for South Africa to speak with one voice or to act as a single entity - in particular, in relation to other states.
 3. The national legislation is necessary for the maintenance of essential national standards, for the establishment of minimum standards required for the rendering of services, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one province which is prejudicial to the interests of another province or the country as a whole.
 4. The national legislation deals with national economic policies, the power to promote inter-provincial commerce and to protect the common market in respect of the mobility of goods, services, capital and labour.
 5. The national legislation provides for equality and opportunity or access to a government service.

6. The national law establishes a national framework for the provision of public services or the management of institutions relating thereto.
- III. Where a provincial law deals specifically with matters other than those referred to above (such as the socioeconomic and cultural needs of a particular province), such matters shall prevail over national legislation. Provinces are not precluded from passing laws in regard to matters set out at 1 - 6 above, provided such legislation is not inconsistent therewith.
 - IV. In the event of a dispute concerning the legislative powers allocated by the constitution concurrently to the national and provincial governments:
 - a. Such legislation shall be deemed to be "necessary' or 'desirable" in terms of the requirements set out at 1 - 6 above, if such legislation has been approved by the Senate (or Council of Provinces);
 - b. If such dispute cannot be resolved by a court by a construction of the constitution, precedence shall be given to national legislation (Constitutional Principle XXIII).
 - V. Without derogating from the powers of national government under the constitution, national government shall not otherwise exercise its powers so as to encroach upon the geographical, functional or institutional integrity of the provinces.
 - VI. Residual powers shall be within the exclusive competence of national government.
 - VII. Provinces shall, in addition to the power to legislate in concurrent areas of legislative competence, be responsible for developing the details of the framework legislation of the national government, more specifically in relation to its implementation and in ensuring that regional and sub-regional variations are taken into account.