

AFRICAN NATIONAL CONGRESS
OFFICE OF THE SECRETARY GENERAL

INTERGOVERNMENTAL RELATIONS
PROVISIONAL SUBMISSION TO THEME COMMITTEE 3
PHASE 3

Background

In general the ANC envisages the following structures and provisions in the final constitution:

- South Africa shall be an undivided state in which there shall be a democratic government at local, provincial and national levels. The Bill of Rights and principles of non-racialism, non-sexism and democratic accountability shall apply at all three levels of government.
- Parliament shall consist of the National Assembly and Senate. The National Assembly will be elected by universal suffrage on a common voter's roll according to proportional representation. It will pass the national budget and have primary responsibility for the preparation and adoption of the country's main laws.
- The final constitution should provide for a Senate, comprised of representatives of the provinces and, possibly, representatives of local government level, which should allow for effective influence and participation of the provinces in national law-making at national level, and which should function as the suitable forum for intergovernmental co-ordination. Members of the Senate should be appointed and be subject to recall by provincial legislatures and/or provincial executives. Every province (and possibly the local level of government of South Africa as a whole) shall each be entitled to a single delegation of Senators.
- Other submissions of the ANC to Theme Committees 2 and 3 deal more fully with the institutions of provinces and their areas of competence. The provincial system should amongst others have the following elements:
 - Concurrent legislative competences for national Parliament and provincial legislatures.

- Executive and administrative competences at national and provincial levels, with the weight of executive competences being assigned to provinces.
- There should be a constitutional provision for determining when national or provincial legislation will be pre-eminent in the event of an inconsistency between national and provincial legislation.

2. Establishment of government at three levels

The final constitution should establish government at three levels in which all three levels have legislative and executive powers. This system of government offers a structure of government which is close to the people, accommodates regional diversity and provide for accountable and responsible governance.

On the other hand, where government exists at national, regional and local level, and when there are nine provincial governments, it can have an adverse impact on nation-building as well as cost-effective and efficient governance. These potential consequences are:

- Additional costs of governance.
- Mutually destructive norms in the various provinces, that is policies and legislation in one province which adversely affects another province's welfare.
- Perpetuation of regional distortions and disparities in resources.
- The marginalisation of provincial influence in respect of national legislation and the national executive.
- A system of governance which seeks to resolve problems only from the perspective of that particular province and in which provinces are precluded from understanding the broader picture in the absence of a forum to promote this.
- Inconsistencies or contradictions between the different provinces' legislation or between national and provincial legislation, unproductive competition between provincial governments and between levels of government.

- Inability to focus resources on, or develop policies for, problems and needs which are national in nature or origin, and which require national remedies.

In order to deal with these problems, it is necessary to develop institutions which will promote the positive aspects of the system and which will overcome potentially negative aspects. The ANC's solution to these potential problems is the development of institutions and mechanisms of cooperative governance. Cooperative governance is therefore an integral part of the ANC's proposals on the division of competences between national, provincial and local levels of governance,¹ as well as the proposals on the new Senate as a "Council of Provinces": a body having real provincial representation and increased powers.²

3. Principles for intergovernmental relations

The guiding principle of cooperative governance is that all state organs or entities should act in concert to the benefit of the people and nation-building. This implies a duty on the different levels of government to cooperate with each other.

Intergovernmental relations should be established on the premise that cooperation between the levels of government, and between the various provincial governments should be promoted and in which the following principles should find expression:

The different levels of government should

- assist and support each other,
- share information and consult with each other,
- cooperate in the development and execution of their policies,
- adhere to agreed procedures and maintain friendly relations.

The main aim of cooperative governance should be *to coordinate policy-making processes*³ with regard to

- legislative,

¹ . See ANC submission to Theme Committee 3, Phase 2.

² . See ANC submission to Theme Committee 2: The Senate.

³ . It will obviously also include the coordination of the administration of resources and programmes.

- a executive,
- administrative and
- technical/advisory functions

at national, provincial and local level. The central purpose of intergovernmental relations is *joint policy-making* where it is necessary to avoid the above-mentioned adverse aspects of government at the three levels.

4. The position of the Senate in intergovernmental relations

The Senate, in its proposed conceptualisation as a "Council of the Provinces", should have the following functions amongst others:

- Have a close and on-going relationship with the provincial governments and give expression to the views and the administrative experience and needs of the provinces.⁴
- Have a real say over National Assembly bills that deal with the exercise of powers and performance of provincial functions and articulate the interests of provinces at national level.
- It should be able to initiate legislation and bear co-responsibility as a chamber for the Republic of South Africa as a whole regarding provincial interests.
- The provinces shall be entitled, primarily through the Senate and its structures or committees, to participate in financial and fiscal matters affecting the provinces, especially in the drafting of the national budget, although the Senate will have no powers to block financial bills.
- Where the national government is empowered by national legislation to promulgate subordinate legislation or statutory instruments which affect the powers, functions or interests of provinces, the Senate should have a say over the content of such instruments, particularly where the provinces are required to implement such legislation or instruments.⁵

Thus the provinces will now have a greater say, through the Senate, in the making of national legislation affecting their interests. This will call upon provinces to take account of national

⁴ . The Senate should have a place for civil servants from the provinces at the Senate committee meetings.

⁵ . Thus providing opportunity for co-determination in administrative matters and for inputs from the provinces on account of their administrative experience.

considerations. It will require them to interact with each other and the National Assembly to consider the good of their province and the country as a whole. It will also support the regard for provincial considerations in the national law-making process.

The Senate should thus effectively reflect provincial (and local government)⁶ needs and interests at national level, while providing an appropriate forum for intergovernmental co-ordination. Suitable structural adjustments to existing intergovernmental structures will have to be made when the new Senate is instituted, because the executive and line functions of national ministries and departments in intergovernmental relations must be maintained. The ANC is of the opinion that elaborate provisions on the detail of intergovernmental co-ordination and structures in regard to especially executive and administrative matters should not be contained in the constitution.

5. The inclusion of local government in intergovernmental relations

The ANC wishes to promote the relationship between national government and local government. Local government, being a level of government, should not be neglected in a system of intergovernmental relations to increase the problem-solving capacities of the system.

6. Structuring of and constitutionalising intergovernmental relations

The ANC believes that it is not necessary or advisable for the constitution to spell out in detail all the specific institutions of intergovernmental relations. These will develop in line with the needs of executive and legislative cooperation.

However, in general the principle should be followed that intergovernmental relations should not obscure decision-making processes. Intergovernmental institutions should promote democratic government and function in a transparent way.

Secondly the Senate is the principle form of intergovernmental relations at the level of legislation and in regard to the respective legislatures. It should also be charged with the responsibility for supervising, co-ordinating, facilitating and directing executive intergovernmental relations.

⁶ . See below.