

Inkatha Freedom Party

**THEME COMMITTEE 3
RELATIONS BETWEEN LEVELS OF GOVERNMENT**

SUBMISSION FOR BLOCK No. 2

**PART I
NATIONAL AND PROVINCIAL
LEGISLATIVE, EXECUTIVE AND JUDICIAL COMPETENCIES**

1 ALLOCATION OF LEGISLATIVE COMPETENCIES

- 1.1 The constitution shall only list the legislative competencies of the national government.
- 1.2 Residual legislative powers shall be located with the Provinces.
- 1.3 National provincial levels of government shall have exclusive administrative and judicial powers in all subject matters in which they have legislative competence and in so far as they have such competence.

1.4 Exclusive competencies of the National Government

The national government shall have exclusive legislative competence on the following subject matters:

Foreign affairs

Defense against foreign threats

National citizenship

Immigration, emigration, extradition and asylum

Currency, money and coinage, weights and measures

Customs, excise, tariffs and foreign trade

Admiralty and maritime law and regulations

Railways across provincial borders

National public service and other national public servants

Industrial and intellectual property rights

Monetary policy

National public finance, including central government's taxation

Banking, credit, insurance and financial services across provincial boundaries

National statistical services

Civil aviation

Policing with respect to offenses determined by national legislation within the ambit of national legislative competence; international police liaison; criminal date, records and statistics; special task force for high-risk security operations in support of Provincial police services; national protection services; technical support services and logistical technology in support of Provincial police services;

Technical regulation of equipment of telecommunication and broadcasting Post and interprovincial telecommunications

1.5 **Concurrent competencies**

1.5.1 Framework legislation With respect to the following subject matters Provinces shall exercise their legislative competence within the parameters of national framework legislation:

toxic waste disposal and migrant pollution

Interstate commerce

Road traffic regulation

Animal diseases and control

Communicable disease control constituting an interprovincial danger to public health; admission standards for the medical or ancillary professions; as well as registration of and trade in drugs, medicines, narcotics and poisons.

1.5.2 General principles of legislation With respect to the following subject matters Provinces shall exercise their legislative competence in harmony with general principle of legislation set out in national legislative directives:

Nature and soil conservation

National roads

Energy

Tertiary education

Local government

Welfare services

· **RELATIONSHIP BETWEEN POWERS**

2.1 Both provinces and the National Government shall have exclusive powers.

2.1.1 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 exclusive 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.

2.2 National government shall have no overrides.

2.3 The Constitution shall list concurrent powers of the National and Provincial Governments.

2.3.1 Concurrent powers shall be characterised as either:

- framework legislation, obliging Provinces to legislate against standards established nationally as defined under 1. 5. 1.
- general principles of legislation, obliging Provinces to legislate norms and standards in harmony with these principles as defined under 1.5.2.

2.4 Should any Province fail to deliver essential services so as to jeopardises the health, safety and welfare of citizens in the Province, the National Government may adopt the required legislative or administrative actions, provided that such actions are consistent with similar actions adopted in other Provinces and that such actions shall be valid and effective only for as long as and in so far as the Province concerned has not adopted its own adequate legislative or administrative measures.

2.5 A Provincial legislature may recommend to Parliament the passing of any law relating to any matter in respect of which such legislature is not competent.

3. ALLOCATION OF EXCLUSIVE ADMINISTRATIVE COMPETENCE

3.1 The National Government shall have administrative competence in all areas of legislative competence, save where indicated otherwise.

3.2 The following areas of exclusive national legislative competence shall be administered either wholly or in part by the Provinces:

- Customs, excise and tariffs
- Federal taxation
- National statistical services
- Post and telecommunications

4 ALLOCATION OF JUDICIAL FUNCTIONS

4.1 National provincial levels of government shall have exclusive administrative and judicial powers in all subject matters in which they have legislative competence and in so far as they have such competence.

PART 11 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. The local government system will need to reflect a variety of realities ranging from traditional communities to metropolitan areas. This calls for fluidity and suggests the non-advisability of entrenching in the national constitution any given type of local government system.

Constitutional Principle XXIV states:

A framework for local government powers, functions and structures shall be set out in the Constitution. The comprehensive powers, functions and other features of local government shall be set out in Parliamentary statutes or in Provincial legislation or both.

The requirement of this principle would be satisfied by a provision in the national Constitution prescribing the following framework:

The Provincial Constitution shall set out the general principles of the local government system, ensuring its coherence and consistence with the principles underlying the national constitution. The provisions of the Constitution of each Province relating to local government shall be implemented by a law of the provincial legislature. Each provincial constitution shall be entitled to make specific provision to provide for each different category of local government as determined by such provincial constitution and provincial implementing legislation with appropriate autonomous fiscal powers and functions.

This approach is consistent with an accurate reading of Constitutional Principle XXIV which that the "framework" for powers, functions and structures of local government be provided for in the constitution and not local government's actual powers, functions and structures, including their "different categories", which is a function of the "structure" of local government.

- 3 Moreover the second sentence of Constitutional Principle XXV creates an exception to the broader and more general rules set out in the preceding Principle, requiring greater detail with respect to local government's fiscal autonomy, requiring that local government is to enjoy its "own fiscal powers". Clearly this reference must be intended as a more specific part of the same "framework" as indicated by the opening words of the second sentence of Constitutional Principle XXV.
- 4 In interpreting the relevant Constitutional Principles, it must be noted that Constitutional Principle XVIII (2) states that the Constitutional Assembly does not have the discretion to provide Provinces with less autonomy and fewer powers with respect to local government than that given to Provinces in terms of Chapter 10 of the interim constitution. The "framework" can therefore not be more detailed and specific than the provisions set out in Chapter 10 of the interim constitution.

PART III

INTERGOVERNMENTAL RELATIONS

- I Intergovernmental relations are an essential feature of federalism with respect to relations between each Province or Provinces as whole and national government, and between and among Provinces themselves.
 - Intergovernmental relations shall not be institutionalised in any type entity, forum, agency or commission provided for in the Constitution. In fact, if such entity exercises any type of executive or advisory power as provided for in the Constitution or in implementing laws, by definition that would encroach on the autonomy of Provinces in their exercise their powers concerned, and if such entity does not exercise executive or advisory powers it is useless.
 3. Relation between levels of government shall not be institutionalised and shall develop freely so as to accommodate the changing needs of society. Federal cooperativism operating in the United States is a completely voluntary basis and has proven to be extremely effective in addressing any relevant need for co-ordination and integration when and as required.