Provincial Government in South Africa

16–18 August 2000
Holiday Inn Garden Court
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Introduction

The adoption of a political dispensation that could provide for the dispersal of political authority from the center to regional areas was a compromise reached by the negotiating parties before the 1994 elections in South Africa. Prior to that compromise, the African National Congress (ANC) favoured a strong central government, while the National Party advocated the devolution of strong powers to the regions.

During the constitutional negotiations, an agreement was reached on the decentralisation of government thereby giving significant powers to the regions. Strong regional governments were agreed on in order to encourage democratic participation, promote local initiatives and foster a redistribution of resources and economic development. Nine provinces were identified based on economic, social and population criteria.

South Africa, like Yugoslavia, is characterised by significant territorially defined communal diversities of, for example, culture, language, ethnicity as well as economic disparities. Historically, pluralist societies such as the United States, Switzerland and India opted for such devolution of power to states, regions or provinces so as to bring about national unity. National unity and political stability were equally influential in persuading the ANC leadership to agree to decentralisation of power to the provinces.

It is against this background that the need to evolve special arrangements to accommodate regional interests and demands for regional autonomy was recognised by the ANC government. However, the division of political authority and the distribution of political responsibilities as they relate to the two levels of government – central and provincial – have not been entrenched in the Constitution. South Africa's provincial governments have little autonomy and indeed are weak in relation to the powers of the national government. All the provinces possess legislatures, cabinets and premiers that are concerned with local affairs such as education, health services, highways, tourism and fish and game. The public demand for services far outstrips the financial ability of both the provinces and the ailing local governments, particularly in the poorest of these provinces, the Eastern Cape. The performance of many of these provinces, therefore, has a mixed record.

The Department of Political Studies, in collaboration with the Konrad Adenauer Foundation, organised a conference on intergovernmental relations to address the problems that confront the system of provincial government in South Africa. The international conference entitled *Provincial Government in South Africa* took place in Umtata, Eastern Cape from 16 to 18 August 2000. This provided a forum for academics, non-governmental organisations, politicians, political parties and government representatives to share perspectives on the provincial system of government in South Africa.

The conference aimed at stimulating debate on the role and future of the provincial governments in South Africa and at generating proposals for capacity building and/or alternatives to the present politi-

cal dispensation. The papers were a blend of theoretical and practical contributions to the ongoing debate around ways of ensuring efficiency, democracy and more responsive governments in the provinces. The conference therefore provided a forum to take a fresh look at the Constitution and to find a new balance in intergovernmental relations.

Some of the key questions that the conference hoped to address were the following: How can the capacity of these provinces be enhanced to ensure delivery at this level of government? Are the provincial governments strong and competent to supervise and control local governments? Is the system of provincial government costly and wasteful in view of the duplication of political structures and functions? How can the system be modified in order to make it efficient and cost effective? More importantly, is there an evident shift in South Africa from a quasi-federal structure to a more federal or more unitary form of government?

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University of the Transkei (Unitra)

Welcoming Remarks

Michael Lange

INTRODUCTION

On behalf of the Konrad Adenauer Foundation (KAF), I would like to extend a warm welcome to you all. This is now the fifth conference KAF has organised jointly with the University of the Transkei's (Unitra's) Department of Political Studies.

The forthcoming deliberations will focus on an issue which is of particular significance to KAF, since questions relating to the role of provincial governments in the new democratic dispensation of South Africa have formed part and parcel of KAF's ongoing involvement in the consolidation of new political dispensations, not only in South Africa but around the world.

1. A BRIEF BACKGROUND

For those wondering what kind of organisation KAF is, allow me to sketch a brief background to the German political foundations and to outline some of the reasoning behind KAF's involvement in academic endeavours of this nature.

The German political foundations are a unique feature of today's democratic culture in Germany. The move behind their creation – which dates back to the 1960s – was the expectation that political and civic education would help develop and consolidate democracy in post-war Germany.

Both in Germany and abroad, these foundations seek to further develop and encourage people to engage in political debate, thereby strengthening democracy and promoting a pluralistic society. By engaging in a variety of activities, they help to strengthen the concept of human rights, assist economic development as well as help to implement social justice and the rule of law.

KAF is one of six political foundations in Germany today and is closely affiliated to the Christian Democratic Union Party – a centrist political party founded after the Second World War. It proudly bears the name of one of its founding members, Konrad Adenauer, who subsequently became the first Chancellor of post-war Germany.

The international activities of KAF are rooted in the Christian concept of human nature. By advocating Christian values, the Foundation is helping to establish Christian Democratic principles not only in Germany, but worldwide.

KAF has been cooperating with partners throughout the world for almost 40 years. Currently, some 80 colleagues oversee some 200 projects and programmes in more than 100 countries. In this way, KAF makes a unique contribution to policies serving peace and justice in international relations.

2. KAF IN SOUTH AFRICA

KAF currently has wide-ranging programmes in different parts of Africa, as well as in the different provinces of South Africa. The Foundation cooperates with centrist political parties and their respective think-tanks, as well as with reputable education and research institutions, as witnessed by today's event.

Since the beginning of our involvement in South Africa we have actively participated in projects concentrating on, among other things, constitutional development at federal, provincial and local levels.

A large number of the Johannesburg office's research and seminar publications have tackled constitutional issues, as can be noted from the titles of some of these publications:

- *Implementing Federalism in the Final Constitution of South Africa*
- *The Final Constitution of South Africa: Local Government Provisions and their Implications*
- *Future Challenges for Local Government in the 21st Century*
- *Local-Provincial Government Relations*
- *The Constitutional Basis of Local Government*
- *Constitution and Law*
- *Subnational Constitutional Governance*

3. FEDERALISM

Germany is a federal state. During the Kempton Park negotiations, we believed strongly that the new South Africa could gain from our experience with a federal system of governance.

This conviction formed the basis of a strong interaction ever since between the German governmental aid agencies – such as the German Agency for Technical Cooperation (GTZ) – and other semi- or non-governmental bodies – such as the German political foundations – the aim of which was to provide knowledge and experience with our particular form of federalism.

The new constitutional system of South Africa designed at the Kempton Park conference and further refined in the Constitutional Assembly at Cape Town is, in the end, a decentralised system of government, i.e., a system with certain federal characteristics.

At the Kempton Park constitutional negotiations it was clear that the new provinces had to have some measure of legislative authority. Some parties argued for more powers for the provinces while others were more centralistically inclined.

The result of this debate was an agreement that provinces should have a list of legislative powers concurrent with the national government. This new concept in South African constitutional law, namely concurrency, has since become an essential element of South Africa's new constitutional system.

4. CONCURRENCY

Concurrency is a concept that is accepted in some other decentralised or federal systems, such as Canada and Germany. South Africa – as a result of well-intentioned advice – has developed a rather unique political dispensation with much less provincial powers than is the case in the Federal Republic of Germany. This might explain the fact that the application of concurrency in South Africa is fraught with problems.

The new South African Constitution envisages the development of legislation in the concurrent field in a manner based on shared responsibility between national and provincial governments.

The practice in South Africa, however, often creates the impression that national Parliament is very active in the concurrent field, while the various provincial legislatures have only passed a limited number of laws on concurrent matters. It can therefore be argued that provinces have up to now not fully utilised their constitutionally allocated legislative authority.

A reason for this may be found in the limited drafting capacity of provinces compared to other spheres of government.

We know that finding the required number of qualified people needed to run a decentralised, more federal system of governance – with its different tiers of government – is not an easy task, especially looking at the circumstances prevailing in South Africa. We have therefore been providing expertise from Germany in all matters concerning cooperative governance, as well as training for a number of different groups of government officials in all spheres of government.

CONCLUSION

Germany, with its federal approach to governance, sets a reasonably good example in favour of provincial autonomy regarding the definition of rights and responsibilities, especially in areas of particular provincial concern, such as cultural affairs, education and taxation.

Germany's federal system is, however, not perfect – and this has become more apparent over the past couple of years.

Improvements also need to be made in South Africa. A recently published report by the Minister of Provincial and Local Government challenges the state to reassess the roles, responsibilities and relationships between the provinces and the national government.

Several aspects of the current system of co-

operative governance in South Africa have come under scrutiny and certain suggestions have been forwarded.

A case in point is the power of taxation, where the report concluded that, "… increased taxation powers at provincial level could help enhance accountability at the margin for provincial expenditures …"

Another point has been the effectiveness of the National Council of Provinces (NCOP) and the suggestion that the NCOP needs to carry out its oversight function more competently and effectively.

Criticism was also expressed about the efficacy of the intergovernmental forum which, the report says, "… has failed as a multilateral, intergovernmental policy planning body upon whom government could rely for support, advice and the implementation of its development programme".

This symposium is designed not only to stimulate debate on the role of provincial governments in the current South African constitutional framework, but also to answer the difficult question as to the extent to which a provincial constitutional framework may or may not give expression to a particular view regarding the rights and responsibilities of the citizens in question.

Let these proceedings be KAF's humble contribution to the resolution of all these difficult challenges. I wish you fruitful deliberations and hope you find the forthcoming dialogue inspiring and worthwhile.

Opening Remarks

Xoliswa Jozana

INTRODUCTION

The theme of this year's conference focuses on perspectives on the provincial system of government. The conference aims at stimulating debate on the role and future of the system of provincial government and at generating proposals for capacity building and/or alternatives to the present political dispensation. It is hoped that the conference offers a forum in which theoretical and practical contributions to the ongoing debate about the ways of ensuring efficiency, democracy and more responsive governments in the provinces can be made. The conference is also an opportunity to take a fresh look at the Constitution and the way in which it can provide a new balance in intergovernmental relations.

1. INTERGOVERNMENTAL RELATIONS

Let me take this opportunity to make a few observations about intergovernmental relations in general, and South Africa's provincial system in particular.

The provincial system of government as a power-sharing formula can be seen as an answer to debilitating obstacles to progress in the social, economic and political spheres. It has been perceived elsewhere as the most viable formula for sustaining the ideology of diversity in unity. The true genius of power sharing among the levels of government therefore lies in the ability to reconcile diversity in unity.

The provincial system of government has a number of advantages in terms of governance, management of the economy and democratic life. Its major objective is to ensure that all citizens have, to the greatest possible extent, access to public services of comparable and optimal quality. However, it is important that each province has the means to pursue this quest for quality in its own way. That requires innovative and creative redistribution mechanisms to benefit even the less wealthy provinces.

2. FUNDAMENTAL PRINCIPLES

Productive intergovernmental relations must be based upon certain principles and I propose four fundamental principles:

- *Cooperation.* More often than not, it is important to cooperate because government jurisdictions touch on each other in almost all sectors of activity. The need for cooperation is obvious for purposes of pooling resources and talents to achieve national objectives.
- *Fairness.* For intergovernmental relations to yield positive results, there must be a measure of redistribution among the constituent entities of the system so that even the less wealthy provinces are able to provide their citizens with services of acceptable quality.
- *Exchange of information and communication.* Exchanging information allows the constituent units of the political system to compare their performance, assess their respective initiatives and establish a healthy emulation. Communication is essential for effective public service and enhances the relations among the three levels of government. A communication breakdown between the different spheres of government in South Africa has been identified as the cause of poor relations among the three levels, result-

ing in uncoordinated programmes and policies.

- *Transparency.* Transparency enables the public to be aware of the respective contributions of the different governments. The public must be able to assess the performance of each province. The need for transparency in the system is to gain trust with the public servants that administer programmes and provide funding for contracted services.

3. DIVERSITY

The reality of the diversities of culture, language and ethnicity must have been at the heart of the adoption of the formula of power sharing between the central government and the nine provinces in South Africa. Historically, pluralist societies such as the United States, India and Switzerland opted for the devolution of power to states, regions or provinces in order to bring about national unity. National unity and political stability were equally influential when the major parties in the negotiation process in South Africa agreed on the decentralisation of power to the provinces. This was a compromise reached by the negotiating parties before the 1994 elections. Non-racial regional governments were agreed on in order to encourage democratic participation, to promote local initiatives and to foster redistribution of resources and economic development. The nine regions were identified on the basis of economic, social and population criteria.

4. WEAKNESSES OF THE SYSTEM

The assumption behind the adoption of the system of provincial government in South Africa was that the subnational units would perform certain functions more effectively than the national government. Provinces are responsible for delivery while the national government retains responsibility for norms and standards. The provincial governments, however, operate as implementing agencies for central government.

Cheema and Rondinelli in a book entitled *Decentralisation and Development Policy Implementation in Developing Countries* observe:

> "In more than a few countries decentralisation may have been seen as a convenient way for national leaders to rid themselves of responsibility for regional and local government development problems by transferring them to local units of government. This pertains to a situation whereby responsibilities are assigned to provinces without accompanying funding better known as 'unfunded mandates'."

In other words, they are given tasks by the central government without the money to perform them. Consequently, the provinces are very weak and unable to provide effective service to their communities. The weak and non-viable subnational governments have given rise to the debate on their relevance to South Africa's political system or, put bluntly, whether South Africa needs them or not.

The provincial administrations are costly and complex and the public demand for services far outstrips the financial ability of the provinces. They lack money to finance programmes and officials are poorly trained and, in some provinces, corruption is rife. Mismanagement, corruption, waste and inefficiency led to the appointment of a commission by former President, Nelson Mandela, to investigate their operation.

The report of the Maphai Commission recommended more control by central government and a virtual takeover of weak provinces such as the Eastern Cape. Owing to poor delivery, corruption and mismanagement, the provinces in South Africa have few friends. Some critics have adopted a radical position to suggest that the provincial system is a disaster and must be scrapped.

To suggest that the provincial system must be abandoned is an impractical solution to the reality on the ground in South Africa. Citizen groups at grassroots level have little chance of being heard by the centre and have far better prospects at the provincial level. Even if South Africa were to switch to a unitary system, some form of regional government offices staffed by officials would be necessary.

My point of departure in thinking about central–provincial relations is the primary need for provision of services to the people. Public service must be our watchword. The assumption behind the provincial system of government, as stated above, is the provision of public services. It is too easy to look at central–provincial government relations in terms of concentration or devolution of power or from the vantage point of a gain or loss for one level of government.

To view provincial responsibilities in terms of who gets what ignores the aspect of public service. Yet it is the citizens' health, safety and welfare that is at stake.

CONCLUSION

I would like to pose a few questions that I hope will be touched on by the papers at this conference.

How can the capacity of the provinces in South Africa be enhanced to ensure delivery at this level of government?

Are the provincial governments strong and competent to supervise and control local government?

How can the duplication of functions and responsibilities be improved? How can the system be made efficient and cost effective?

Opening Remarks

Peggy Nomfundo Luswazi

INTRODUCTION

On behalf of the management and university community I welcome you as distinguished guests and participants to this meaningful conference. In Xhosa we say *namkelekile*, which simply means, you are well received.

Those who have followed the national debate in the media on the future size and shape of tertiary institutions in South Africa are aware that this conference is taking place at a time when in the history of higher education, tertiary institutions – especially black institutions – are facing serious challenges with regard to their missions and future identity.

Despite all these problems, the University of the Transkei (Unitra) is optimistic and is facing the future with a problem-solving and forward-thinking attitude. Our planning and actions are guided by Unitra's new mission which reads:

> "Unitra is committed to excellence in providing service to its clientele through optimal utilisation of its resources, and in offering relevant and effective teaching, research and community outreach programmes with a special emphasis on the promotion of sustainable rural development."

This mission is a commitment by this institution to become a major resource centre for the development of the Eastern Cape.

The university is refocusing its programmes to address through teaching, research and community development activities, the key agenda of the region and province as reflected in the provincial integrated rural development strategy.

You are friends of the Eastern Cape; friends of Unitra in that your participation in this conference contributes to the fulfilment of this mission.

1. UNITRA–KAF COOPERATION

This conference is a joint project of the German-based Konrad Adenauer Foundation (KAF) and Unitra's Political Science department. It is a long time since 1996, when former Unitra Principal Prof. Moleah and I visited the KAF offices in Johannesburg. The aim of that trip was to introduce Unitra to KAF and other German foundations. We were exploring possibilities of establishing partnerships to foster Unitra's development and that of the region.

As a strategy to ensure success of our mission, Prof. Moleah suggested I open the discussion in German and that contrary to normal protocol I should do most of the talking to appeal to the sentiments of our German colleagues and soften their hearts. I did just that. Indeed, when later Prof. Oseghae, former Head of the Political Science department, put forward a proposal for financing an annual conference, he found soft ground. All three conferences that have taken place so far have put our Political Science department on the academic and political map of this province, this country and indeed the world.

In my view, KAF deserves to be thanked for contributing to Unitra's development in the following ways:

- The conference has promoted national and international networking and has made a difference to the political and academic landscape of the province. We always look forward to this annual event.
- The inter-party political debate which is

always an integral part of the programme contributes towards the peace dialogue. As Alfonso Cabal in his book *The University as an Institute Today* writes: "Relations among people are closer if they become dialogues." I must admit that there was a time during the anti-apartheid struggle when foreign organisations such as KAF were looked upon with suspicion by those engaged in the struggle, including myself. But engaging in open debate and dialogue at this conference means, in the words of Alfonso Cabal, that we "subordinate the stubborn and egoistic interests that often convert dialogues into quarrels and we elevate them to shared values and aims". This must be done since, as Cabal concludes, "dialogue can make hostile elements agree harmoniously and efficiently".

- We also recognise that KAF and all speakers at this conference are here to promote scientific knowledge production. The German word for science is *wissenschaft*. Literally, it means knowledge creation or production. *Wissen* means knowledge and *schaiffen* means to create or produce. Two German authors, Martin Thunert and Sylvia Neuner, explain that politics is a field which constantly needs new ideas and concepts in order to tackle complex and urgent tasks facing the world. This conference then becomes a platform for an exchange of ideas between science – the politically interested public especially in the province and those engaged in political practice. Unitra's Political Science department then serves as a political think-tank to assist in preparing decision makers for the process of decision making on key issues in our society.
- Having worked for development agencies in the past, when I hear the term "development aid" I foresee problems because foreign aid easily creates dependence and can stifle development. To the German development scientist O. Odenstedt, aid between materially unequal partners is meaningful if it helps people to help themselves.

2. HOPES AND EXPECTATIONS

Finally, allow me to say a word about the hopes and expectations of ordinary citizens and lay people like myself, on this conference and its theme of provincial governance. Our hopes were raised in 1993/94 by political scientists and politicians who promised and assured us of the following:

- That it is much easier for a country with a federal structure as opposed to a centralised state to take account of regional problems, and this appealed to many. Grassroots organisations expected they would have a greater say in the affairs of the province.
- That a federal structure binds the country's external unity with internal diversity.
- That a federal structure enhances our engagement in the political process through regional and local elections which are easier to understand and identify with.

Although we note all these advantages, we ordinary people lack differentiated terms of reference to guide us in analysing how well or badly our province is faring in comparison to other provinces or to provincial systems elsewhere. All we read and hear about is chaos, corruption, etc. But is the story as simple as that, or are the provincial problems so complex that they need a more sophisticated analysis in order to enable us to arrive at workable solutions? We do not know, for instance, to what extent our province participates in the national legislative process. In the field of education we are certainly more aware of national than provincial legislature. Is this because there are no education laws passed at provincial level? Whether this marks a strength or a weakness, I cannot tell.

CONCLUSION

We have also read that the province takes responsibility and implements national policies and laws, for example, the planning of building projects. I therefore become concerned when, travelling, for example, to Bisho or Libode, I see new settlements of crowded, tiny match box houses with no space for gardens: I see our rural landscape change to slums under the new dispensation. To me, this is a contradiction. But to whom do I direct my complaint, who is to blame? Is it the province, national policy or private industry?

We hope this conference will lead us to answers on aspects such as these. We wish you fruitful deliberations in the days ahead.

Keynote Address: Provincial Government in South Africa

Zam Titus

INTRODUCTION

There is much debate around the issue of provinces in South Africa. Some have the view that we do not need provinces and others question the number of provinces we have in the country. Others raise issues related to functional allocation, service delivery, mismanagement, etc. There is also the view that we should switch over to a unitary system – for ours is a quasi-federal system.

All these questions arise because we have a vibrant democracy which allows for freedom of expression. In order for us to understand fully the debate surrounding provinces, we need to understand the constitutional responsibilities of provinces.

Our provinces are a creature of statute. Initially, provision for the establishment of provinces was embodied in the 1993 Interim Constitution. Thereafter, the Constitutional Assembly conducted an in-depth study into the governmental system that would serve our country into the new millennium.

The Constitutional Assembly considered numerous issues as well as reviewing the systems currently in use around the world. The reports of the various theme committees were unanimous that we should establish a three-tier system, which ensures that government is brought closer to the people.

The issue for government is therefore not about whether or not we should have provinces, it is more about ensuring that provinces are properly capacitated so that they can give full effect to their constitutional mandate. This standpoint led to President Mbeki – in June 1999 – establishing a new Ministry for Provincial and Local Government. When one focuses on the role of provinces one can therefore not analyse this in isolation from the broader challenges facing government.

When delivering his 2000 budget speech in Parliament, Minister Mufamadi stated:

> "The issue of governance continues to engage the minds of practitioners and scholars all over the world. The first five years of democratic governance in our country has given us a basis to test the viability of theories, systems and structures which are germane to this issue. There is no terminus, where, as practitioners, we sit back and proclaim that our democracy is finally developed to perfection. In human affairs there are always new issues to confront, new methods to apply and new insights to discover."

1. THE PRESIDENT'S COORDINATING COUNCIL

It was as a result of the continuing need for us to examine the system of government that, on the 15 October 1999, the President, the premiers of the nine provinces and the Minister for Provincial and Local Government, agreed that the President's Coordinating Council (PCC) be established.

The Council will not replace the Ministers and Members of the Executive Council (Minmecs). Minmecs have an important sectoral function and will continue to deal with the detail of policy and its implementation. The Council, on the other hand, discusses framework and transversal issues impacting on enhancing development, strengthening the institutions of governance and improving the

quality of service delivery. It will be supported by a forum of provincial director-generals and relevant national director-generals and is convened by the Director-General for Provincial and Local Government.

Among other things, the Council addresses the following issues:

- Enhancing the ability of provincial executives to make an impact on the elaboration of national policies.
- Strengthening the capacity of provincial governments to implement government policies and programmes.
- Integrating provincial growth and development strategies within the national development plans.
- Improving cooperation between the national and provincial spheres of government with regard to the strengthening of local government.
- Improving cooperation with regard to fiscal issues.
- Enhancing cooperation with regard to the institutionalisation of a cooperative relationship between the elected institutions and the structures of traditional leadership.
- Ensuring that there are coordinated programmes of implementation and the establishment of the necessary structures with regard to such issues as rural development, urban renewal, safety and security, etc.
- Increasing the possibility for all citizens to interact with all spheres of government to ensure that our system of governance functions in a manner which empowers citizens.

2. COOPERATIVE GOVERNMENT

One may ask what the character of the South African state is: the answer might be found in section 46 of the Constitution.

The Constitution creates a system of government based on the three spheres of government: national, provincial and local government. Each has legislative and executive powers within its own functional area, although the bulk of these powers are exercised concurrently between national and provincial government or devolved to local government.

These spheres of government are not independent of each other, rather they are dependent and interrelated yet functionally distinctive. Each sphere of government is specifically directed by the Constitution, among other things, to preserve peace, the national unity and the indivisibility of the Republic of South Africa. Moreover, the fiscal regime of the country ensures equitable allocations for each sphere of government within a framework of tight fiscal discipline.

Some would call this structural arrangement quasi-federalism. In South Africa it goes by the name of cooperative government. Cooperative government is a product of the political forces, the history and the aspirations of South Africans. The principles of cooperative governance enable the three spheres to cooperate so as to ensure, among others, coordination, sharing of resources and the involvement of local communities.

Given the challenge of reconstructing a country divided for hundreds of years on the basis of race, ethnicity, ideology and wealth, any blueprint for government necessarily had to balance decentralisation and political competition with common citizenship, national unity and a single government, thus heralding the development of the country. Cooperative government seeks to achieve unity of vision, destiny and purpose, even as it recognises diversity of interest and opinion.

Cooperation, it can then be said, is one of the central pillars of the South African constitutional order. The will to cooperate, it may be further argued, is the impetus that was needed to deliver the South Africa of today from hostility, conflict and stagnation. Arguably too, cooperation characterises the way in which government governs, as well as the institutional and policy architecture in key areas such as macro-economic policy and regional and international relations. The Government of National Unity (GNU) was an experimental form of cooperative government.

Cooperation does not mean acquiescence agreement on everything or absence of disagreement or subversion of valid viewpoints to a dominant viewpoint. Nor is it a counterpoint to strong political and economic leadership. All of these are accommodated within the Constitution by principles such as multi-party democracy, and independent institutions such as the Human Rights Commission, etc.

3. THREE SPHERES OF GOVERNMENT

The spheres of government must be understood to be component parts of a larger single body,

the government of the Republic of South Africa. This is clearly pronounced in the founding provisions of the Constitution through the statement that "the Republic of South Africa is one, sovereign, democratic state…" (Section 1).

The preference for the word "sphere", as opposed to "tier", was premised on a deliberate attempt to ensure that all levels of government were accorded equal status and treatment. The Constitution deliberately refers to the term "spheres", as the term "tiers" would emphasise the existence of a hierarchical relationship between the three levels of government, with local government occupying the lowest rung. We cannot, however, deny – and must acknowledge – the existence of a hierarchy of sorts in our system of government as expressed in the monitoring, support and supervision sections of the Constitution (sections 100, 125[3], 139, 154[1] and 155[6]). What the Constitution attempts to emphasise is the need for cooperative government as stipulated in Chapter 3.

The existence of the three spheres in South Africa is fact. When analysing the role and place of provinces in our system of governance, we have to bear in mind that provinces do not exist independently from the other spheres.

Our Constitution assigns to provinces a number of strategic functions regarding the ongoing evolution of local government. The role of provincial governments in this regard includes:

- *A strategic role:* Provinces have to develop a vision and a framework for integrated economic, social and community development in the province through the respective provincial growth and development strategies.
- *A development role:* Provincial governments should ensure that municipal planning and budgetary processes give priority to the basic needs of the community and promote social and economic development.
- *An intergovernmental role:* Provincial governments should establish forums and processes for the purpose of including local government and traditional leaders in decision making.
- *A regulatory role:* Section 155(7) of the Constitution gives national and provincial governments the legislative and executive authority to see to the effective performance by municipalities of their functions through legislative and other means.
- *An institutional development and capacity building role:* Provincial governments establish municipalities, and are enjoined by section 155(6) of the Constitution to promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs. These responsibilities give provincial government an important role in the institutional development of municipalities.
- *A fiscal role:* Provincial governments play a role in monitoring the financial status of municipalities through the provincial task teams implementing project viability.
- *A monitoring role:* Provincial governments have a key role in monitoring local government in order to ensure that high standards of public service and good government are maintained.
- *An intervention role:* Provincial governments are given powers to intervene in the affairs of local government so as to protect and promote minimum standards of local government service delivery and ensure that local government fulfils its constitutional mandate.

What is the role of premiers? It is important to state that municipalities are required to work with provincial and national government in order to enhance the effectiveness of provincial and local programmes.

South Africa, like all other developing countries, is faced with a number of challenges. In some instances, when searching for solutions, we tend to focus on our constitutional structures. Sometimes we tend to forget that the primary challenge is to capacitate those who are in government and promote accountability.

What does this entail for an institution such as the University of Transkei (Unitra)? Is the curriculum at Unitra meant to address the development needs of the Eastern Cape Province? Are there any university programmes specifically targeting the capacity needs of the province? What about legislative drafting? Does the university have any project meant to promote good governance and to facilitate debate on complex and intricate issues such as the monitoring and supervision framework for South Africa; the challenges arising from globalisation; the national overrides and the functional allocation as provided for in schedules 4 and 5?

Our academic institutions have a greater responsibility that transcends pure analytical

work. We have to ask ourselves a number of searching and pointed questions – what can we do to assist this province and the rest of the country in deepening constitutional democracy, enhancing good governance and promoting an environment which will bring about stability and prosperity. What work can an institution of this nature do to foster cooperative government and strengthen our complex system of intergovernmental fiscal relations, particularly issues relating to the vertical split of revenue collected nationally.

A doctor friend of mine often says that if any part of your body gives you a problem, it should simply be chopped off. The continued existence or desirability of any constitutional structure cannot be decided upon simply on the basis of its current performance. As our President said: "the system of governance we are working to create is radically different from the one we inherited." Let us all bear in mind that our nascent democracy is six years old and we also have to acknowledge that there is a yawning gap between theory and practice.

Today, unlike yesteryear, we are aware that some provinces lack the capability to monitor, support and supervise local government effectively, either due to their lack of capacity or absence of resources to do so. So what we may want to look at are the options/strategies available to overcome this. We are also aware that some political commentators and politicians have suggested that provincial governments need more powers if they are to be effective. While we should all be willing to entertain these debates, we must, collectively, first assess whether or not provinces have the capacity to execute the current functions they enjoy.

CONCLUSION

Accruing from the experience of the past six years of democratic government, we have acquired a better understanding of how best to optimise the work of our institutions of government. We have been able to identity weaknesses in the system; inasmuch as we have identified strengths and opportunities. So, when we consider the weaknesses in the provincial system of government, we must do so having focused on the entirety of our system of governance.

Our governance system is presently being reviewed, and we are looking at this challenge bearing in mind that governance institutions the world over, are restructuring to meet the challenge of the 21st century. We are also aware that the global trends towards the restructuring of governance take place within the parenthesis of the twin pressures of globalisation and decentralisation.

Our transformation is informed by the country's vision as embodied in the South African Constitution, which is to "improve the quality of life of all citizens and free the potential of each person", and to "build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations". This should serve as our guide in the discussions about South Africa's governance system and should also apply to the discussions relating to the provincial system of government.

I am convinced that the deliberations that will unfold throughout this conference will contribute immensely to the current debates. Indeed, this conference could not have taken place at a more ideal time. I have no doubt that our discussions will provide government with some indication as to how this country's academic institutions are positioning themselves during this phase of consolidation.

Let us, together, build a winning nation. Our centres of learning have a role to play in this regard: they must spawn real debate.

I trust that I have sown the seeds of action for – in the end – it is only action that counts.

International Perspectives on the Allocation of Powers Between the Tiers of Government: The Case of Nigeria

Jerry Kuye

INTRODUCTION

Military regimes should not be tolerated in the pursuit of modern governance. The Nigerian situation should constitute a lesson for new democracies in understanding that the ability to abrogate civil liberties by a handful of "uneducated rat packs" should not be allowed.

The disgrace Nigeria faced for the past 30 years should not be allowed to repeat itself. The lesson for South Africa is that it must continue to "civilianise" its armed forces and not allow the confines of civil liberties to be taken for granted. The custodians of civil governance must be protected within the confines of the constitution.

These failures and the protracted political instability in Nigeria over the years, led to a dominance of the military in the running of the nation. The election of the new government of President Olusegun Obasanjo should constitute the template for future governments. However, the shape and size of the apparatus of the state, should be addressed. The implications of the three-tiered governance structure must be revisited. The multiplicity of states must be stopped and the real issue of managing the economy should be brought into question. It is on this premise that this paper rests its case.

1. OVERVIEW

The Nigerian Constitution of 1963 existed for a little over two years before the country was overthrown by the military on 15 January 1966. This military incursion into the lives of Nigerians survived for 14 years. The proliferation of states, the prosecutions of the civil war and the commandist hierarchical approach of the military to governance, all combined to create considerable standardisation and centralisation. The states were governed, for instance, by military administrators who answered directly, not to the citizens of their states, but to the federal military government at the centre. The climax of this standardisation process was the local government reform of 1976 which saw the adoption of a uniform system of local government for the whole country, whereas under our democratic system, the form and structure of local government was entirely the responsibility of regional or state governments – which would have in mind the need of the local government system to reflect the diversity within the state or region. Also, in 1976, seven new states were created, bringing the total number of states to 19.

2. THE CONSTITUTIONS

2.1 The 1954 Constitutional framework

Nigeria became a Federation in 1954. This Constitution provided for four regions – the Northern Region, the Western and Eastern Regions and a Federal Territory – Lagos. The Constitution also established a Legislative House and styled the House of Representatives, which also legislated for the Federal Territory. The legislatures of the Northern and Western Regions were bicameral in nature with each having a House of Assembly and a House of Chiefs. The legislatures of the East and the Cameroons were kingship based.

2.2 The 1960 Constitution

This is the second schedule of the Nigerian Constitution. It marked the dawn of indepen-

dence from Britain with the parliamentary Independence Act of 1960 from the British Parliament.

2.3 The 1963 Republican Constitution
This Constitution lasted for well over two years before the military overthrew the government. This marked the beginning of the Nigerian dilemma.

2.4 The 1979 Presidential Constitution
The 1979 Constitution was produced by a Constituent Assembly and modified by the military. It was to take effect after almost 14 years of military dictatorship, and its aim was to jettison the parliamentary system in which colonial Nigeria had considerable tutelage, opting for the executive presidential system, generally along the lines of the practice in the United States.

The Constituent Assembly confirmed by constitutional fiat the centralising and standardising propensities of the military. For the first time in Nigeria's federal constitution making, constitutions of the federating states were abolished. There was now only one constitution for Nigeria and its component states.

Under the new arrangement, it was accepted that the structure of the legislature of the states, the structure of the state executive and the structure of the state courts were all uniformly regulated by the one constitution of the Federal Republic of Nigeria (FRN). Even the number and names of the local governments existing in Nigeria were listed in the Constitution, notwithstanding that Section 7 thereof stated that:

> "The structure of local government by democratically elected local government councils under this constitution guaranteed that the government of every state should ensure their existence under a law, which provides for the establishment, structure, composition, finance and functions of such councils."

The 1979 Constitution made an effort to give every Nigerian a sense of belonging and had to do with the composition of federal, state and local governments. It was accepted that the composition of the local, state and other agencies would be structured in such a manner that the diversity of Nigeria would be reflected in its deliberations.

Strangely enough, this idea did not materialise. It should, however, be noted that section S.6 (6)(c) of the Constitution dealing with the fundamental objectives and directives of the principles of state policy could be considered unjust. This was a form of affirmative action. The same principle applied to admission to military institutions.

With respect to the structure of the Federal Executive, the Constitution stipulated that the President shall appoint at least one minister from each state, who shall be an indigene of such state. But nowhere in the Constitution was the word "indigene" defined. Nor was there any provision in the Constitution as to conditions to be fulfilled before a "non-indigene", howsoever defined, could acquire the residency status of the state of his/her domicile.

The 1979 Constitution was in operation for a little over four years before the elected civilian administration was once again ousted following another military *coup d'etat*. A period of four years was hardly enough time to put the Constitution to a critical test and to assess fully its merits and demerits in terms of promoting "unity in diversity".

3. THE SECOND MILITARY ERA

The second coming of the military lasted for almost 15 years (31 December 1983 to 29 May 1999). This was a period of hell for the inhabitants of Nigeria. It was also a period of confusion regarding policy mandates. It marked the blatant abrogation of law and order and the violation of the constitutional rights of most Nigerians.

The 1989 Constitution, which had no life span of its own, called for the operational elevation of local governance structures as a third tier of government. This led to the creation or increase in state structures from 19 to 21. This number subsequently increased in 1991 from 21 to 30, and finally in 1997 from 30 to 36. As a result, the federal government grew steadily stronger and the state governments grew steadily weaker throughout the period of military rule. Due to the monopoly of power by the military (now more than 29 years in 39 years of Nigeria's existence as an independent nation) Nigeria's history is recorded with painful punctuations.

The Constitution also provided for three vice-presidents and for power sharing at the executive level of the federal and state governments.

It also established a Federal Character Commission to elevate the federal character provisions of the 1979 Constitution to a level where these provisions become justiciable. However, the 1995 Constitution never materialised.

4. THE 1999 PRESIDENTIAL CONSTITUTION

This Constitution was put into effect on 5 May 1999 by a military government. The opinion in Nigeria is that the present 1999 Constitution does not address sufficiently the problems of the multi-ethnic, multilingual and multireligious construct of the Nigerian federation. This is evident in the latest series of ethnic clashes in the north of Nigeria.

Nigeria has today returned to democratic civilian governance. Most Nigerians believe in the indivisibility of the Nigerian nation state based on the principles of freedom, equality, equity and justice for all her citizens as enshrined in the Constitution. Many Nigerians are optimistic that as the search for "unity in diversity" continues over time, an acceptable constitutional and conventional arrangement will evolve, which will satisfactorily address the ethnic, cultural, social and religious diversity of the Nigerian population.

5. LOCAL GOVERNMENT RESTRUCTURING

Most Nigerians accept the fact that a dual structure of governance at local level is needed (although this creates a burden on the bureaucratic structure) and that the procedure for the incorporation of new states should be through a referendum. For a city or town, a two-thirds majority in the provincial council – simple in the State Assembly – should support it; all these proceeded by a referendum. It is further contended that at the administrative level, an administrator and not a governor should handle the governance of the state.

5.1 State structure

Listed below are responsibilities state structures should have:

- public schools
- public health
- hospitals (can enter into private sector partnership)
- emergency medical services (ambulances)
- court buildings
- building inspections
- child protection service
- child support enforcement
- pre-trial detention centres
- library services
- agricultural extension
- marriage certificates
- birth certificates
- death certificates
- public school transportation
- sheriff (providing public safety to those areas outside the jurisdiction of incorporated cities or towns).

5.2 City or town

A city or town's responsibilities include:

- building permits
- parks and recreation
- parking control (vehicle parking spaces)
- animal control
- business names and business licences
- police department
- fire service
- environmental sanitation
- market allocation and development
- estate development and town planning
- property rates
- sewer and water
- public works, street cleaning, maintenance, repairs, potholes, streetlights and outages, traffic signal malfunction.

6. SOME SOLUTIONS

The political landscape of Nigeria can be changed through political accommodation. The state structure needs to be revisited and the number of local governments need to be reduced. The capacity to pay and maintain these structures is not feasible under the current economic set up because the 768 local government areas in Nigeria would need to be restructured to meet the actual needs of the 36 state structure.

The past political situation in Nigeria saw itself creating a panacea for the continued interference of civil democratic rights by the military. Some so-called political scientists, even recently, have praised the position of the military in Nigerian politics. The simple answer is that they either benefited from the squandering of the excesses of the military or, they themselves, were mere admirers of the idea of military insurrection.

The provision of free primary education in Nigeria was a luxury most Nigerians never ben-

efited from. Although the concept was laudable, the mechanics at local level were impossible to implement. Healthcare continues to pose a problem at local level. Service delivery is left to local councils and local governments to implement. The issue here is that the three tiers of government in reality mushroomed into four, with local municipalities unable to deliver to the people.

On the political front, there needs to be a careful preservation of democratic values. With the new government of President Olusegun Obasanjo, tactical restructuring of the local tier needs to be examined. The ability to pay for goods and services calls into question the viability of the existence of most local government authorities.

Some critical issues at all tiers of government in Nigeria must be addressed. These include the actual nature of the federal state, the viability of the current state structure of 36 and the financial consequences of managing the apparatus of governance. There is also the question of capital expenditure to develop new infrastructures at the various state levels. Is it wise to continuously create states just to address the political volatility in which past and current governments see them? The economic capacity of most of these states to function does not exist. As the number of states continues to grow, so will expectations of the state and local tiers of government.

The preservation of geo-politics in Nigeria is a recipe for the future breakdown in the ability of these structures to maintain governing infrastructures. Does Nigeria really need the current state structure?

CONCLUSION

Are there failures in the current structure? The system at present comprises federal, state and local tiers of government. The complex nature of ethno-politics and geo-economic structures makes it almost impossible to address all the needs of the nation.

If we accept that the functions of local government are strictly in the areas of cities and towns, then it is not surprising to note that most of the developments and service deliveries are in the capital centres where government operates. The rest of the jurisdictions within the third tier are left undeveloped. Service delivery is almost non-existent.

My core opinion is that Nigeria should abandon the three-tier system and reshape the bureaucracy to a two-tier operation. The costs are minimal and service delivery ability will be increased.

In a budget speech of 1999, the former Head of State, General Abdulsalami Abubakar, stated:

> "In 1999, the Federation Account Revenue is estimated at N262.4 billion. The existing allocation formula will be maintained. Therefore, the federal government will receive N127.2 billion; states – N63 billion; local government councils – N52.5 billion; the Federal Capital Territory – N2.6 billion and special funds – N17.1 billion" (1999 Budget, Nigeria).

Having said this, the economy still experienced a severe shortfall. Therefore, the recipe for good governance is one that calls into question the reality of having multitiered government structures in as complex a society as Nigeria.

REFERENCE

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Intergovernmental Relations in South Africa: A Comparative Analysis

Rashid Kalema

INTRODUCTION

The size and complexity of most modern states is such that some form of decentralised or deconcentrated authority is essential. Irrespective of the federal or unitary character of a state, the number of tiers of authority, the division of powers between them and the financial resources they have at their disposal will all, in different ways, influence the overall performance of government both in the advancement of democracy and in the delivery of services.

The new South African Constitution sets out the structure of the state and delineates, in broad terms, the responsibilities of the different tiers of government. As a product of the multiparty negotiations which took place between 1992 and 1994, and which aimed to establish as broad a consensual base as possible, the constitution provides an enabling framework rather than a prescriptive one. Thus, while it specifies that certain goals should be pursued, it does not say how this should happen; in yet other instances it simply states that certain policies may be followed. Because of this, national legislation must be enacted before many of the provisions of the Constitution can be given effect.

The development of an effective system of intergovernmental relations (IGR) in particular will need to be supported by appropriate policy pronouncements and by legislation. The process, moreover, will be a complex one which will entail striking a balance between the technical requirements for interaction between the different tiers of the governing hierarchy and the imperatives of political power relations. The development of an operational system of IGR will need to accommodate the aspirations and vested interests of the different tiers of government and at the same time manage areas of disputes. However, this is a process that is as likely to be worked out in practice as to be dictated by legislative fiat. In that respect, South Africa has much that it can learn from the experiences of countries elsewhere in the world, since IGR are the subject of contestation and debate in most modern states.

Although South Africa's history and social and political economies have given distinctive character to the state, a comparative perspective affords the opportunity to learn, from both differences and similarities, what the possible consequences of perusing particular paths in the development of IGR might be. This is not to suggest just that a comparative perspective has been overlooked thus far, but rather that comparisons have been drawn from a relatively narrow range of countries in Europe and North America.

This comparative analysis draws from the experiences of six countries – Mexico, Brazil, Argentina, Spain, India and Malaysia – hitherto little studied in the South African context. They are all, with the exception of Spain, developing countries that have been through or are undergoing periods of transition.

They are all, furthermore, states that have attempted with varying degrees of success to grapple with and accommodate political and social diversity in their intergovernmental structures. The discussion in this paper is selective and focuses on a number of key themes rather than a systematic analysis of IGR in the countries reviewed.

1. THE CONCEPT OF IGR

Though focusing on local government, Botha provides an insightful definition of IGR.

> "The concept of intergovernmental relations assumes importance where there is a division of powers at both administrative and legislative levels among different tiers of government. Put differently, it is creative mechanism to maintain cooperative relationships and coordination among and between vertical and horizontal sites" (1996, p. 67).

Looking at the above quotation, we can deduce two things: first, that the IGR are forms of interaction between various levels of government (vertical interaction) on the one hand and between equal governmental jurisdictions (horizontal interactions) within a given state.

Second, that the definition alludes to coordination and cooperation as objectives of IGR. Redcliffe-Maud and Wood (1974) offer broader perspectives of IGR: they include interventions, directions, control and consultations, and these do not always enhance coordination or corporation. Instead these elements could work to reinforce subjection of one level of government by another, or such relations may take the form of assistance and support of one or more levels by another, particularly higher level of government.

There is a tendency to restrict the description of IGR to formal, especially constitutional or legal, provisions. While these prescribed patterns are, however, important, they are almost supplemented by formal, semiformal and informal relations. IGR have also been classified into constitutional, political and financial relations (Boraine, 1995). Boraine's reference to the constitution is important in that the constitution is a product of national (central) government legislature and all levels of government are by this fact subject to central government. This implies that provincial and local governments are subordinate to the national government and their relations reflect this fact. The position of central government *vis-à-vis* other levels is the source of much misgiving, suspicion, debate and even mischief in IGR (Lungu, 1998).

2. IGR IN THE NEW SOUTH AFRICA – A COMPARATIVE PERSPECTIVE

The adoption of a new Constitution in early 1997 represented the formal and final repudiation of apartheid rule. Significantly, the Constitution also specifies that in the configuration of the state there will be "national, provincial and local spheres of government" and that these will be "distinctive, interdependent and interrelated" (para. 40.1) The decision to describe the different levels of government as "spheres" rather than "tiers" was a conscious attempt to move away from the notion of a hierarchy with all the connotations of subordinancy. In practice, however, this has not generally proven to be the case, as the essence of hierarchy remains prevalent in IGR.

2.1 State/provincial relations

One of the most controversial issues in the debate that preceded the drafting of the Interim Constitution was whether the South Farina State should be unitary or federal in nature. This reflected a tension between the need for devolution of power – which was seen by the African National Congress (ANC) alliance as being of importance in taking democracy to the people – and the expressed fear that the devolution of too much authority to the provinces, could lead to a situation where the national identity would be thwarted by political intransigence at lower levels. Since then, experiences in the province of the Western Cape, where the ruling National Party (NP) attempted to gerrymander municipal boundaries to exclude black communities, and in Kwa-Zulu Natal (KZN) where the provincial government expressed their intention to establish a Zulu kingdom, have reinforced these fears (Tapscott, 1999).

The final Constitution stipulates that "the Republic of South Africa is one, sovereign, democratic state." Despite this, however, the state reflects many of the characteristics of a federal state and relations between the centre and the periphery are, in some instances, not different from those in many federations.

Added to this, the demand for greater autonomy at the provincial level and for self-government at other levels, remains a source of discontent which carries with it the potential for political and social instability.

The new Constitution assigns authority to provincial legislatures to enact legislation within their defined spheres of competence (para. 114). It also spells out the functional areas of exclusive provincial legislative competence as

well as areas of concurrent responsibility with the national government. With provisos, the Constitution also stipulates that "the implementation of provincial legislation in a province is an exclusive provincial executive power". This implies significantly more autonomy than under the previous dispensation, where provincial authority largely represented de-concentrated power from the national government.

There are, however, a number of conditions under which the autonomy of a province may be overridden by national government. This might occur "when a province cannot or does not fulfil an executive obligation in terms of legislation or the constitution". The intervention may be in the form of a directive to the provincial executive, or the assumption of the responsibilities of the province to fulfil its obligations. The conditions under which such an intervention might take place, would include instances where essential national standards are not being maintained, where economic unity or national security are threatened or where a province's actions are prejudicial to another province or to the country as a whole.

An assessment of IGR in the six country studies reveals that the unitary–federal state distinction is less a dichotomy than a continuum. That is to say, the use of the term "federation" is of less consequence than the way in which power is devolved to lower tiers of government and the competencies which they are assigned. Thus, the Malaysian federation is a highly centralised system which, in effect, devolves less authority to the states (provinces) than is the case in South Africa.

The establishment of federal states has sometimes been the outcome of efforts to amalgamate and accommodate the political aspirations of pre-existing states which may not have formed part of the national state. In Argentina the establishment of a federation arose as part of an attempt to resolve tensions between politically powerful groupings in the major urban centre, Buenos Aires, and the largely autonomous rural provinces. The founding of the federation was based on three considerations: geographical (occasioned by the remoteness of the provinces and the need for a central base), ideological (the conviction that power should be dissolved), and practical (managing relations between the disparate provinces was extremely complex).

In terms of constitution, the provinces ostensibly devolve powers to the federal government and residual powers are seen to vest in the provinces. In practice, however, the central state arrogates considerable authority to itself. This is because the constitutionally defined system of federation is based on three principles: subordination, participation and coordination. Under the principle of subordination, the federal government has supremacy by virtue of the fact that it derives its mandate directly from the federal constitution, which sets the parameters for constitutions drawn up by the provinces.

The constitution specifies the competencies assigned to the central and provincial governments as well as areas of concurrent responsibility. Among the competencies assigned exclusively to the states are internal relations, the right to federal intervention in other tiers of government, the right to declare martial law, as well as a host of other responsibilities for the overall development of the nation. The *inter vireos* competencies assigned to the provinces are also extensive and are shielded by the constitution from arbitrary intervention by the federal government, to administer primary education, among many other responsibilities.

Among the competencies incidental to the provinces, is the right to raise standing armies in the event of external invasion or imminent danger where delay would threaten the whole nation. The decision would need to be ratified by the federal government. The provinces also control their own police forces although their competencies are narrowly confined to public security and the enforcement of hygiene and morality laws.

Despite what appears to be extensive provincial autonomy, the federal government reserves considerable constitutional authority to intervene in the affairs of the provinces and municipalities if this is deemed to be necessary to enforce the federal constitution or to protect the national interest.

In India, IGR have predominantly revolved around centre-state relations with local government, somewhat surprisingly, only gaining statutory status through the introduction of constitutional amendments in the 1990s. It is of interest to observe that state (provincial) boundaries were drawn up to accommodate ethno-linguistic divisions rather than according to economically funded units. In that respect, the

Indian Constitution allows considerable flexibility to the Union (central) government to create autonomous regions or district councils to accommodate the aspiration of specific ethnic groups. This asymmetrical approach could be of relevance in resolving seemingly intractable boundary disputes such as those at Bushbuck Ridge.

The Indian Constitution assigns government competencies according to a Union list, a State list and a Concurrent list – which collectively determine the legislative spheres of the Indian Parliament and State Legislature. The Union's extensive responsibilities include defence, foreign affairs, banking, currency and specific tax and levying. The state's competencies include responsibility for public order and police, local government, public health, education and state taxes, among others. Even in those states that are fully autonomous with their statutory domain, the Union Parliament predominates over the State Legislature fields'. Thus the State Legislature is subject to the power of the Union Parliament to legislate on matters enumerated in the Union and Concurrent list.

The central bias in the Indian Constitution is further reflected in the power which the Union government has to intervene directly in the affairs of the states. These include power in terms of the proclamation of a state of emergency – subject to a two-thirds majority of the Council of States (similar in function to the National Council of Provinces [NCOP] in South Africa) – power to legislate over matters covered by the State list, where it is deemed to be in the national interest; as well a proclamation of Failure of Constitutional Machinery, made by the president declaring that the powers of a state legislature will be exercised by or under the authority of Parliament . In addition, all state governors are appointed by the President of the Union, with powers of oversight over the affairs of the state. Generally speaking, however, the Union government does not intervene in the administrative activities of the states, and even in the case of concurrent responsibility, executive decisions are normally made at state level.

The history of IGR in Mexico has been one of continuing tension between the central government and the states. Part of this tension stems from the constitution which has some form of "co-sovereignty" between federal and state government but, at the same time, underscores the supremacy of national sovereignty. In legal terms, the federal government and the state are co-extensive entities, both of which are subordinate to the Constitution. At the national level the interests of the states are represented through a second chamber similar to the American senate.

Despite this federalist structure, however, there have always been strong tendencies towards centralisation of power. Part of this centralisation tendency stems from the orientation of the Constitution. The Mexican Constitution, like the South African, was drafted within the contest of a broad social programme – the Mexican revolution – to transform the state and society. This vision was largely shared by all tiers of government and, in a sense, social rights have tended to predominate over political rights. Since this national vision emanated from the federal government, as a consequence, its laws have historically been virtually identical to federal laws.

In the 1980s there was an attempt both to recognise and modernise public administration and to improve intergovernmental coordination. Amendments to the Constitution in 1993 granted the state the rights to participate in the formulation of the National Development Plan. In that year the Planning Act assigned to the federal government the responsibility of convening the state governments to develop a coordinated system of national planning.

In order to give effect to this intergovernmental coordination, State Planning Committees (Coplades) were established (building earlier economic promotional committees (Coplades) to coordinate planning between the federal government and the states. The Coplades also involved representatives from civil society in an effort to promote democratic planning. Municipal Development Planning Committees (*Coplades*) were also established to promote coordination between a state and local government. Despite their laudable objective, the *Coplades* suffered from their excessive size and from a shortage of information for effective planning.

During the course of the past two decades, other steps were taken to promote IGR, including the establishment of intergovernmental congresses. The first of these was the Individual Coordination Covenant which was a mecha-

nism for the transfer of fiscal resources to individual state administrations according to established norms and criteria. After 1983 the congresses were renamed Development Covenants (*Covenio Unico de Desarollo*, *CUD*) and were charged with coordinating federal and state activities in the promotion of regional economic development and the strengthening of municipal governments. At this time, there was an attempt to channel more resources to the state and municipal levels to give true meaning to the federal system. The National System of Federal Coordination (discussed below) was a further initiative in that direction.

A change of government in the early 1980s, however, saw an undermining of the covenant system and that of the *Coplades*, and increasing centralisation of decision making on financial matters. It was argued that increased centralisation was necessary in that the decentralisation of resources and responsibilities to the states was leading to excessive bureaucracy and policy incoherence. However, a recent change of government has seen yet another swing back towards decentralisation. This has become politically necessary in that various state governorships are now in opposition hands and the power relations between the states and the federal executive are more matched.

In common with many countries in South America, Brazil has passed through various cycles of military and civilian rule. The federal system followed, nevertheless, derives from the American bicameral model, with a congress and a senate. In terms of the Constitution, the three tiers of government (federal, state and local) have both distinct and concurrent competencies. Most states assume responsibility for agriculture, finance, education, health, commerce and industry, among others, while the municipalities' responsibilities are largely service oriented, for example, water, sewerage, etc.

Despite the constitutionally prescribed competencies of the states, the federal government can overrule the state legislature when the national interest is threatened, when there is dangerous public disorder, or when state finances are seriously in arrears. Such interventions are subject to a ruling of the supreme court and generally only occur after the breakdown of lengthy talks between the federal government and the state government involved.

This is because IGR in Brazil are largely informal and rely on extensive political lobbying and brokered deals between the different tiers of government. The channel of lobbying is generally upward with officials and politicians from lower tiers, municipal councillors and mayors, petitioning the state legislature. These in turn petition congress people and senators, while governors appeal to federal ministers and to the president. The relationships are seldom structured, and rely on personal communication, telephone calls, faxes, etc.

2.2 Autonomous regions – the Spanish case

Spain, in contrast, is considered quasi-federal and yet devolves considerable power to its regions. The Spanish case is of interest, further, in the way that power is devolved asymmetrically to different parts of the country. Up until 1978 the state was divided according to central, provincial and local tiers of government. Changes to the Constitution in that year introduced "autonomous regions" as a fourth tier of government between the provinces and the central state. The establishment of autonomous regions was an attempt to accommodate the strong, and sporadically violent, demands for self-government that were characteristic of Spanish political life for much of the preceding decades.

Typically, an autonomous region is formed through an amalgamation of two or more adjacent provinces and municipalities with a common historical, cultural and economic background. Alternatively, it might be comprised of a single province which has its own historical identity. The decision to form an autonomous region is a voluntary one, adopted by municipalities and provinces themselves, but goes according to the provisions set down by the Constitution in what are known as "statutes of autonomy". In exceptional cases, the central government may authorise the formation of an autonomous region where this does not involve more than one province.

Unlike the provinces which have no real political autonomy and whose affairs are closely regulated from the centre, the autonomy conferred on autonomous regions assigns them considerable *ultra vires* powers to manage the affairs of the region. These include responsibility for the organisation of self-governing institutions, the demarcation of municipal bound-

aries, regional legislation, town planning, housing, transport and infrastructural development as well as many other sectoral responsibilities. They also have the right to generate revenue through a variety of tax mechanisms.

In establishing themselves as autonomous, regions may decide on a "fast lane" or a "slow lane" in achieving their autonomy. Those choosing the fast lane will assume immediate responsibility for the competencies assigned to them in terms of the Constitution. Those in the slow lane assume full responsibility progressively over a five-year period. This provision ensures that the lack of capacity is not a limiting factor to political demands for regional autonomy.

Although autonomous regions have the competence to legislate on a wide sphere of activities, their status does not confer on them any economic or social privileges that are denied to Spanish citizens living elsewhere in the country. That is to say, irrespective of the form of government under which they live, all Spaniards have the same rights and the same freedom of movement to reside or work wherever they choose.

Despite the considerable authority devolved to autonomous regions, the central government still retains considerable power over matters of national interest. Thus it assumes responsibility for international relations, defence, the administration of justice, labour legislation, foreign trade, banking and planning of the national economy, in addition to a host of regulatory responsibilities. Furthermore, while the *ultra vires* competencies of autonomous regions are extensive and protect them from central government, they are also subject to exceptional clauses in the Constitution.

Thus, if an autonomous region fails to comply with obligations imposed by the Constitution, or if it acts in a manner which threatens the national interest, the central government may issue directives to the president of the region to comply with the legislation. Should these directives be ignored, the government may – following an absolute majority of the Senate – adopt measures to ensure that the region fulfils its constitutional obligations. In that respect, it is important to note that, in addition to defence, security and law and order are national competencies, and a delegate appointed by central government manages the police in each autonomous region. The power to deal with recalcitrant regions, although latent within the central government, is nevertheless real.

The establishment of autonomous regions was, in essence, an attempt to resolve an impasse in the political life of Spain and to blunt the secessionist ambitions of the Basque and Catellonian regions, among others. To that extent, it has been considerably successful. At the same time as indicated, this arrangement has not served to emasculate the central government, which still retains considerable power to manage the state as a whole.

Although the demands for provincial autonomy in KZN, or for a Boere Staat elsewhere, have not reached the levels of Spain in the 1970s, the Spanish option might be considered in the long run if the current system of IGR proves to be incapable of accommodating these political aspirations and, in the case of KZN, of stemming the ongoing violence.

2.3 The role of the provincial/state governor

The role of the provincial/state governor is worth comparing with that of provincial premiers in South Africa. In Argentina and India, one of the mechanisms employed by the central government to ensure that national policy is implemented at the provincial level, is the appointment of provincial governors to act as agents of the federal government. This provision is a powerful one in that it ensures central government oversight of the activities of the provinces. It is noteworthy, that in instances where provincial/state governors are political appointees of the ruling party, the central government appears to have more confidence in devolving far reaching powers to the provinces, and particularly control over the provincial police force. It must also be noted, however, that arrangements of this nature are often the source of discontent, in that they are seen to undermine the political autonomy of the provinces.

In Brazil, in contrast, governors are directly elected in each state and wield considerable political and economic power. Many own, or control, the main local media (television being the most popular of these). They also control the state's budget and disbursement, the state police and are responsible for all state-level political appointments, in addition to state operated banks. Typically, these governors also

exert influence over the state delegation in congress. For these reasons, the president, federal ministers and other agencies must weigh up carefully the demands, as well as the power, of certain governors when elaborating major policy decisions, especially when there are conflicting demands and when congress's approval is required.

3. MECHANISMS FOR THE PROMOTION OF IGR AND DISPUTE RESOLUTION

Chapter 3 of the South African Constitution spells out the parameters for the promotion of cooperative governance and emphasises the fact that the three tiers of the government have distinct powers and responsibilities which must be respected. These parameters specify, *inter alia*, that all spheres of government must "respect the constitutional status, institutions, powers and functions of government in other spheres; exercise their powers and functions in a manner that does not encroach on the geographical, functional, or institutional integrity of the government in other spheres", etc.

The Constitution further specifies that the different tiers of government must cooperate with the others "in mutual trust and good faith", *inter alia* by "fostering friendly relations", by assisting and supporting each other, by coordinating their actions, adhering to agreed procedures and by avoiding legal proceedings against each other. These values, however, represent statements of intent rather than a formula for action.

At present there are no formal procedures specified for the achievement of this intergovernmental harmony – if, indeed, this were ever possible – and an organ of state involved in an intergovernmental dispute is exhorted to "exhaust all remedies before it approaches a court to resolve a dispute". (para. 41.4) An act of parliament is required to establish appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes. (para. 41.3)

Where conflicts between national and provincial governments do arise, national legislation will prevail. These relate to threats, national policies, norms and standards, to national security, economic unity, the environment, the promotion of equal opportunities, etc. (para. 146). If none of these conditions apply, then provincial legislation prevails over national legislation. On balance, however, the outcomes of disputes are weighted in favour of the national government.

The national government has established a number of mechanisms to promote IGR. These include the intergovernmental forum (IGF), Ministers and Members of the Executive Council (Minmecs) and technical intergovernmental committees. The issues raised by the IGF thus far, have tended to address rather distinct and technocratic issues, but have not really touched on the substance and processes of IGR. They have also not seriously addressed how intergovernmental structures might be rationalised, nor have they defined the specific role of intergovernmental institutions. At the same time, thus far, the Minmecs have not been well integrated with the IGF, and the IGF is not providing overall coordination of the Minmecs.

The recent establishment of the NCOP provides a direct channel for provincial governments to participate in policy formulation at national level. Although the Constitution also makes provision for the national government to override the objections of the NCOP, this would require a two-thirds majority. Such an override, however, would require a considerable degree of unanimity among political parties at the national level.

A similar mechanism has been institutionalised in Argentina to ensure that the provinces are, to an extent, able to participate in the formulation of federal policy. A bicameral system of government makes provision for a congress and senate; three senators from each province represent provincial interests at the federal level.

All six countries reviewed are constitutional, defined as federations, with the implication that the state governments have a substantial degree of autonomy from the centre. In practice, in all six cases the federal governments reserve considerable authority to intervene and overrule the decisions of subordinate tiers of government. Although the threat of intervention is latent, rather than actualised, it does nevertheless set the parameters for IGR, and asserts the primary role of the federal government.

It is evident, however, that the central governments seldom invoke their override powers and rely, instead, on politically invoked solutions or institutions established to promote dispute resolution. Thus, in Spain a Constitutional

Tribunal is empowered to resolve disputes over competencies. The decisions of the Constitutional Tribunal, which functions like the Constitutional Court in South Africa, are binding. The Constitution also makes provision for "laws on harmonisation" which are intended to promote coordination and cooperation between the central government and autonomous regions. These may be resolved either by the Constitutional Tribunal or in an ordinary court of law, depending on the substance of the dispute. In general, however, attempts are made to avoid conflicts through the reciprocal referral of reports on interventions and resolutions between local institutions and the state and autonomous regions. At the same time, the establishment of a National Commission for Local Administration and Provincial Commissions, promotes collaboration between municipalities and provinces.

In the case of Argentina, the principle of the supremacy of the federation is such that the central government complies with federal law, and this may be enforced by provincial militia that are subject to federal control.

In the first three decades of the Indian state's existence, intergovernmental disputes were generally resolved in the ruling party's caucus. This was because the Congress Party was in control of both the Union and most of the state governments. Since then, hegemony of Congress has diminished and intergovernmental disputes have become more contentious. On balance, dispute resolution is heavily weighted in favour of the central government. This is because the President's power to intervene in centre-state relations is mandated by the constitution and is considerable. The Proclamation of Emergency due to what is termed a "failure of constitutional machinery" (popularly known as the president's rule) has been invoked in a number of instances and remains a problematic issue in central-state relations.

In instances of interstate dispute, the Union Parliament is constitutionally empowered to adjudicate contested matters. In addition, the president is empowered to establish an interstate council to investigate and advise on disputes that have arisen between states, to make recommendations and to facilitate better coordination between them.

Although provision is made in the Malaysian Constitution for dispute resolution, through the Federal Court, the country has been singularly free from intergovernmental disputes and only two formal cases have been addressed in the past 40 years.

This seeming harmony is a function of several factors. Firstly, the central government's powers are overwhelming, while the states have only minor powers; secondly, constitutional provisions are heavily weighted in favour of the centre, and thirdly, the central government and all the state governments – except one – belong to the same coalition party, which has dominated the political arena since independence. In this context, most intergovernmental disputes are settled at party level. Despite this, the Malaysian Constitution makes provision for various councils (a National Finance Council, a National Land Council and a National Council for Local Government) to encourage uniformity at the state level in terms of legislature, policy and implementation. Both state and federal governments are compelled to consult these councils (which have state and federal members) with respect to legislation and policy.

One further instrument is available to central government to exert its will over the states, this relates to its sole right to amend the Constitution in Parliament. The arrangement, similar to that which prevailed in South Africa prior to 1994, permits the ruling party to change the Constitution to suit its own needs. The Malaysian situation points to the restrictions placed on equitable IGR when a constitution is subordinated to parliament. Under this arrangement, any legitimate challenge to central government policy made by a state government may be rendered illegal by the federal government exercising its rights to amend the constitution.

4. FINANCIAL MATTERS

Control over the distribution of financial resources and the amounts allocated to the different tiers of government are among the most contentious issues in IGR throughout the world. In South Africa the Constitution makes provision for the allocation of financial resources, for budgeting and for treasury control. It also stipulates that national legislation is necessary to give effect to most of the important provisions on the allocation and disbursement of public funds. Among the more significant provisions made by the Constitution are that there

must be an equitable division of revenue raised nationally among the national, provincial and local spheres of government. The criteria under which revenue is allocated to the different tiers must take into account various factors including the national interest, the national debt, the fiscal capacity and the efficiency of the provinces and municipalities, as well as their development needs and the economic disparities between provinces. The Finance and Fiscal Commission will play an important role in deriving appropriate formulae for the allocation of revenue. From a comparative perspective, the Argentinean federal Constitution assigns considerable competence to the provinces to raise local taxes, to establish provincial banks and to manage their own financial affairs. Although the Constitution assigns specific sources of revenue to the central government and the provinces, constitutional reforms in 1994 established mechanisms for the equitable disposal of all funds raised by the different tiers of government. Under the Federal Joint Participation of Taxes law, 42.3% of revenue is allocated to the central government, 56.6% to the provinces and one per cent to the national treasury. This split was made according to agreed criteria on the specific responsibilities and needs of the different tiers of government.

In India, the central government has greater powers of taxation than the state but, according to constitutional principles, it is obliged to distribute a portion of this revenue to the states. In that regard, there are four kinds of tax sharing, namely:

- Duties levied by the Union and appropriated by the states.
- Taxes levied and collected by the union and distributed between the union and the states.
- Surcharges on certain duties and taxes for the purposes of the union.
- Taxes which are levied and collected by the union and which may be distributed between the union and the states.

The principles for the sharing of these taxes and duties are decided upon by a Finance Commission appointed by the president for a five-year period. Despite their attempts at objectivity, the resolution of successive finance commissions have been heavily criticised by the states, and fiscal federalism remains a source of considerable intergovernmental tension.

In Malaysia, the central government controls all major sources, while the power of the state to raise income is confined to water rates, licences and rents on state property, among others. Each state, however, receives a captivation grant from the central government, according to the size of its population. Additional grants may be made to any state by the federal parliament entirely at its discretion.

In 1980, Mexico inaugurated a National System of Federal Coordination as a mechanism for more equitable revenue sharing by the three levels of government. The system was an attempt to develop a more integrated tax base which would avoid the multiplication of taxes across three tiers of government. It was also intended to promote a more participatory and less discretionary system of grant allocation from the federal government to the states. Despite the best intentions of this system of fiscal coordination, it has served to increase rather than decrease the states' dependency on central government. This was because, in the drive to create a more integrated and uniform tax system, they lost control over a number of lucrative tax sources – value added tax (VAT), for example – which were taken over by the federal government that still controlled 81% of the national revenue and accounted for 78% of spending, indicating that both income and spending remain highly centralised.

In Brazil as discussed above, IGR are largely a matter of power brokering. In the allocation of revenues to the different tiers of government this system applies no less and emphasis is generally placed on those areas where the federal government derives its principal support. Local governments have been allowed to own their own banks and, since 1987, have been permitted to receive loans directly from the multilateral funding agencies – although these are underwritten by the federal government.

The 1987–1998 constitutional assembly, in particular, was strongly oriented to state and municipal interests and in addition to inserting revenue sharing bloc grant formulas into the new Constitution, also reduced the federal government's overall share of tax revenues. This step was, however, taken without a concomitant decrease in the responsibilities of the federal government (and by implication, a reduction in its expenditure obligations) and this in turn lead to chronic budgetary deficits at the national level. This crisis necessitated the introduction

of a Fiscal Stabilisation Plan which empowered the Minister of Finance to reduce and or suspend transfers to the state and municipal levels, as a temporary measure. The implementation of this plan entailed a protracted process of bargaining, involving the minister of finance, governors, state finance secretaries and senators and represented something of a triumph for politically brokered IGR.

In that respect perhaps the most significant feature of national fiscal affairs in Brazil is its overly political nature. The allocation of the national budget, in particular, involves intense lobbying at congressional level, as members of congress, senators and other political figures strive to achieve the best deals for their home constituencies. This process, which is somewhat chaotic at times, is seen as preferable to the technocratic formula-based funding that existed under the military regime. Critics of the technocratic approach point to the fact that the formula applied failed to take into account regional disparities, local issues or the socio-economic standing of different communities.

Perhaps the most important lesson to learn from the Brazilian experience is the fact that where a constitution assigns considerable fiscal autonomy to lowers tiers of government, the potential exists for uncoordinated financial management, overspending and ultimately rampant corruption. This is because the provincial governments have little accountability other than to themselves. The collapse of the state economies, however, impacts adversely on the national economy as a whole, worsening deficits and driving up inflation rates.

5. LESSONS FROM THE CASE STUDIES

The structure of government, and by implication the structure of IGR, may be set up asymmetrically, and need not apply to all provinces or local governments in the same uniform way. That is to say, political realities may sometimes need to shape IGR rather than the converse:

- Competence can be assigned to lower tiers of government gradually; this is particularly pertinent in the case of municipalities which presently lack capacity.
- Labels such as “federal” and “unitary” are less important than the manner in which IGR are structured and function in practice.
- The political dimensions of IGR are always the most contentious and mechanisms are needed to accommodate them.
- IGR in South Africa tend to focus on relations between the central government and the provinces. The case of Mexico, however, points to the potential of involving local governments in joint planning structures.
- The effective flow of information between the different spheres of government is essential to the development of an affective IGR system.

CONCLUSION

The South African Constitution makes provision for national legislature to regulate IGR. Yet as the six country studies illustrate, IGR are always dynamic and evolve over time to accommodate changing social, economic and political relations. Attempts to codify IGR, while they might bring greater legal precision to the process, will not necessary relieve intergovernmental tensions and may, in practice, aggravate them. This is because the most contentious issues in IGR as indicated are generally of a political, not a technical nature. Policy framed to support IGR should therefore take cognisance of the need to maintain a flexible framework for promoting greater cooperation between the different spheres of government.

In the final analysis, it must also be borne in mind that neither a constitution nor an effective system of IGR can guarantee political stability in a country. Certainly the recent histories of Argentina, Brazil, Mexico and Spain have been troubled ones, swinging variously from democracy to dictatorship, military rule and back to democracy. While sound IGR are not a sufficient condition for a stable democracy, their absence is, however, likely to aggravate the situation.

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Provincial Government in South Africa Since 1994

David Pottie

ABSTRACT

Provincial government, initially a product of the negotiated political transition in South Africa, has subsequently become an entrenched feature of South African politics following the passage of the Constitution in 1996. The structure and form of provincial government thus reflects a careful balancing act structured by the shifting power relations of post-apartheid South Africa. The country is neither explicitly federal nor centrist, although provincial government finds itself in a peculiar, and sometimes precarious, position *vis-à-vis* both national and local government. For example, provincial government has relatively few areas of legislative autonomy and is highly dependent upon the national government for financial transfers since its lacks revenue powers. In electoral terms, however, the diversity of political parties represented in provincial legislatures suggests that it be regarded as a level of state office worth contesting. This paper surveys several aspects of this position, including electoral, political and financial considerations about the sustainability of provincial government in South Africa.

INTRODUCTION[1]

In 1994, nine provincial governments and legislatures were introduced to the people of South Africa.

The current make-up of provincial government is largely a result of the pre-election negotiations over the form of the post-apartheid state system. South Africa was to settle on a three-tiered system of government with national, provincial and local government. In the pre-1994 negotiations, the National Party (NP) – now called the New National Party (NNP) – and the Inkatha Freedom Party (IFP) were the strongest proponents of strong regional government and a federal state structure for South Africa. As Lodge has written:

> "The case for South African democracy's assuming a federal form was based chiefly on the supposed political benefits of a multi-centered political dispensation in ethnically divided societies. Dividing executive authority between central and regional government would give minorities, defined in different ways, a stake in the system."[2]

Both the NP and the IFP were able to protect their regional power bases through the promotion of decentralised state power. The prospect of gaining regional office was therefore a strong drawcard for parties that could not hope to achieve political power at national level. While the NP is the majority party in the Western Cape, the IFP stronghold is in KwaZulu-Natal (KZN) and as a result each party holds the premier's post in the respective provinces. Although South Africa (and seven of the provinces) was governed by the African National Congress (ANC) – as the leading partner in the Government of National Unity (GNU) – the IFP and the NP also had a stake in parliamentary politics with their regional strongholds.

While federalism did not appear among the 34 constitutional principles that laid the groundwork for the Interim Constitution of 1993, it was nevertheless implied in at least 10 of the principles and in the division of concurrent and exclusive powers for national and

provincial government.[3] Federalism was also retained in the drafting of the final Constitution of 1996. Devenish notes that the 1996 Constitution was designed to promote cooperative federalism rather than competitive federalism.[4] However, as will be shown below, the emerging politics of federalism in South Africa has not necessarily led to strong and effective provincial government. In fact, financial instability, political turmoil and calls from some quarters to re-think the role and purpose of provincial government have marked the experience of provincial government since 1994.

1. BUILDING PROVINCIAL GOVERNMENT

The establishment of provincial government posed a number of administrative and financial challenges for South Africa. For a start, nine new provinces had to be demarcated for electoral and administrative purposes. In some cases former homeland administrations had to be integrated with the previous regional structures of the apartheid era and the new provincial legislatures had to be established from scratch.

The boundaries and number of provinces were confirmed in the final Constitution of 1996. But even the selection of provincial capitals posed a challenge to the new government. For example, in the new Eastern Cape province, five cities laid claim to capital status with the matter eventually being settled in favour of Bisho, the former capital of Ciskei. The fact that so many cities laid claim to the title speaks to the fact that the Eastern Cape administration was being forged out of diverse and competing territorial administrations. In KZN, a different solution was found with both Ulundi and Pietermaritzburg serving as dual capitals and the provincial legislature rotates between the two cities. Moreover, the choice of provincial capital played a role in a provincial boundary dispute involving the Bushbuckridge region of the Northern Province. The residents preferred to be serviced from the Mpumulanga capital of Nelspruit, only two hours away by car, rather than the Northern Province capital of Pietersburg, which was an overnight drive. Lodge argues that this political affiliation is a good sign that formal borders aside, popular political affiliations are in the process of being reconstructed around regionalism.[5]

Table 1: Seat allocations to provincial legislatures: 1994 and 1999

Provincial legislature	*No. of seats – 1994*	*No. of seats – 1999*
Eastern Cape	56	63
Free State	30	30
Gauteng	86	73
KwaZulu-Natal	81	80
Mpumulanga	30	30
North-West	30	33
Northern Cape	30	30
Northern Province	40	49
Western Cape	42	42
Total	**425**	**430**

2. PROVINCIAL ELECTIONS AND REPRESENTATION

The structure of formal electoral representation in provincial legislatures is therefore a matter of concern if South Africa is to succeed in giving effective voice to this emerging regionalism. The Constitution stipulates that a provincial legislature should consist of between 30 and 80 members. The number of members, which differs among provinces, is determined using a formula prescribed by national legislation. The 1998 Electoral Act provides for awarding one seat for every 100 000 persons whose ordinary place of residence is within that province. The Independent Electoral Commission (IEC) is charged with making this determination. Table 1 indicates the seat allocations to provinces for 1994 and 1999.

Each provincial legislature is elected in terms of proportional representation (PR) with an executive comprised of a premier and a number of members who form an executive council. The premier is elected by the provincial legislature. From 1994 to 1999, national and provincial government were structured in terms of a GNU. The GNU rules meant that consensual politics and PR were to play a role in the composition of the executive and the distribution of cabinet portfolios. Under the rules for the GNU, a party required at least 10% of the seats in the provincial legislature to be represented by a member in the executive council.

The 1994 elections resulted in the ANC gaining provincial power as the majority party in seven of the nine provinces.[6] Only in KZN (IFP) and the Western Cape (NP) do other

Table 2: 1994 and 1999 Provincial election results[7]

Province	*Seats won in 1994 and 1999 provincial legislature elections[8]*	*Total seats*
Eastern Cape	1994: ANC 48, NP 6, DP 1, PAC 1	56
	1999: ANC 47, NNP 2 PAC 1, UDM 9	63
Eastern Transvaal	1994: ANC 25, NP 3, FF 2	30
Mpumulanga	1999: ANC 26, NNP 1, UDM 1, FF 1, DP 1	30
KwaZulu-Natal	1994: ANC 26, NP 9, IFP 41, DP 2, PAC 1, ACDP 1, MF 1	81
	1999: ANC 32, NNP 3, IFP 34, DP 7, ACDP 1, MF 2, UDM 1	80
Northern Cape	1994: ANC 15, NP 12, FF 2, DP 1	30
	1999: ANC 20, DP 1, NNP 8, FF 1	30
Northern Transvaal	1994: ANC 38, NP 1, FF 1	40
Northern Province	1999: ANC 44, DP 1, NNP 1, PAC 1, UDM 1, ACDP 1	49
North-West	1994: ANC 26, NP 3, FF 1	30
	1999: ANC 27, UCDP 3, DP 1, NNP 1, FF 1	33
Orange Free State	1994: ANC 24, NP 4, FF 2	30
Free State	1999: ANC 25, NNP 2, DP 2, FF 1	30
PWV	1994: ANC 50, NP 21, IFP 3, FF 5, DP 5, PAC 1, ACDP 1	86
Gauteng	1999: ANC 50, DP, 13, NNP 3, IFP 3, ACDP 1, Federal Alliance 1, UDM 1, FF 1	73
Western Cape	1994: ANC 14, NP 23, FF 1, DP 3, ACDP 1	42
	1999: ANC 18, NNP 17, DP 5, ACDP 1, UDM 1	42

political parties hold greater power and the premiership. The ANC and the NP were the only two parties to win seats in every province. The Freedom Front (FF) won seats in seven provinces and the Democratic Party (DP) won seats in five. Table 2 compares the provincial election results for 1994 and 1999, indicating the number of seats attained by each party.

Participation in the 1999 provincial elections was marked in several ways:

- 26 parties contested the 1999 elections
- 15 parties contested the National Assembly and provincial assemblies
- 1 party contested the National Assembly only
- 10 parties contested for provincial assembly seats only (each of these contested in one province only)
- 13 parties won seats in the National Assembly
- 12 of those same parties won seats in provincial assemblies
- none of the parties contesting provincial assemblies only won any seats
- women in provincial government: 27.6 % of Members of the Provincial Legislature (MPLs) are women, slightly lower than the 29.7% of women in the National Assembly. There are 20 women of 99 Members of the Executive Council (MECs), 20.2% of the total.

Table 3 compares the distribution of total provincial seats by party for 1994 and 1999.

The election results provide evidence for the importance of provincial elections:

- Provincial elections provide an opportunity for political parties to gain greater representation than might be possible at national level – the United Christian Democratic Party (UCDP) and the United Democratic Movement (UDM) built strength in regions. The UCDP was eighth nationally, but came second in one province. The UDM was fifth nationally but second in two provinces.

Table 3: Distribution of total provincial seats by party: 1994 and 1999

Party	*1994*	*1999*
ANC	266	289
NP/NNP	82	38
IFP	44	37
FF	14	5
DP	12	40
PAC	3	2
ACDP	3	3
MF	1	2
FA	Did not exist	1
UCDP	Did not exist	3
UDM	Did not exist	10
Total seats	**425**	**430**

- Provincial races also show the relatively equal strength of several parties at provincial level. The DP, NNP and IFP have roughly the same number of total provincial seats, however, the IFP won seats in only two provinces while the DP and NNP won seats in every province along with the ANC.
- Regional representation varies and builds respect for diverse political identities, e.g.:
  – the ANC was first nationally, first in eight provinces
  – the DP was second nationally, second in three provinces, third in five and fourth in one
  – the IFP was third nationally, first in one province, but only fourth, eighth, ninth, tenth and eleventh in the other provinces
  – the NNP was fourth nationally, second in two provinces, third in four and fourth in three.

Provinces also play a role in the determination of candidates for the National Assembly. As in 1994, a total of 400 seats were contested in the 1999 elections for the National Assembly. In the PR electoral system adopted in South Africa these seats are filled from the party lists. The list system in South Africa is closed, and party executives select names for the lists. The composition of the list for the National Assembly comprises two types of allocations: the first is a direct list ("national to national") for 200 seats in the National Assembly while the second allocation of 200 seats is drawn from the provinces. This "provincial to national" list is officially known as the list for regional seats reserved for the National Assembly. The number of regional seats allocated to each province is determined on the basis of the voting population and representations by interested parties. Table 4 indicates the seat allocations assigned to each province for its share of the regional lists for the National Assembly.

Provincial representation in the national government also extends beyond the National Assembly. The provinces also achieve representation in the National Council of Provinces (NCOP). Along with the National Assembly, the NCOP is a component of Parliament. It represents the provinces to ensure that provincial interests are taken into account in national government. The NCOP replaced the former Senate when the 1996 Constitution was adopted and came into operation on 4 February 1997.

Table 4: Regional ("provincial to national") allocations to National Assembly, 1994 and 1999

Province	*1994*	*1999*
Eastern Cape	28	27
Free State	15	14
Gauteng	43	46
KwaZulu-Natal	40	38
Mpumulanga	14	14
Northern Cape	4	4
Northern Province	20	20
North West	15	17
Western Cape	21	20
Total	**200**	**200**

The NCOP may legislate in areas falling under the functional jurisdiction of provinces (discussed below) and all national bills referred to it by the National Assembly, but it may not initiate money bills. Bills amending the Constitution must also be referred to the NCOP and can only be passed with a supporting vote of at least six provinces.

There are 90 delegates in the NCOP. There is a single delegation from each of the nine provinces and each delegation comprises 10 delegates. The 10 delegates are:

- four special delegates consisting of the premier of the province or a member of the provincial legislature designated by the premier and three other special delegates
- six permanent delegates drawn from the provincial legislature in proportion to the representation of their respective political parties in that legislature.

Each delegation has a single vote and all questions before the NCOP are agreed when at least five provinces vote in favour of the question.[9]

The NCOP is presided over by a chairperson, elected for a term of five years from among the permanent delegates to the chamber. Prior to the 1999 elections the ANC had a two-thirds majority of the total delegates to the NCOP (60 of the 90 seats). The IFP's largely regional powerbase in KZN was evident in the composition of the NCOP, with the province comprising the entire basis of its representation in the chamber (5).[10] By contrast, the FF, also with five members in the NCOP, drew its members from five different provinces.[11] The NCOP is therefore able to reflect not only the diversity of provincial parties, but does so as a reflection of

the different basis of regional party political support (concentrated in the case of the IFP and dispersed for the FF). However, the block voting procedure of the NCOP (based on one vote per provincial delegation) consolidates the provincial power of the ANC in the national government since it holds a majority in six of the nine delegations.

The NCOP is rooted in the provinces by virtue of its powers, purpose and representation but it is also part of the National Assembly. It is therefore designed as a bridge between national power and provincial power. But provincial power and the ability of provincial legislatures to structure that power effectively have had a rather mixed record since 1994.

3. PROVINCIAL POWERS

On 10 May 1994, the central government assumed the powers of the four former provinces and the homelands. In effect, the new provinces did not have any power and would only receive their powers as central government determined that the new provinces had established new administrations capable of exercising that power. Some premiers began to complain that they had assumed offices without power.[12]

In August 1994 an intergovernmental forum was established to determine the distribution of powers between national and provincial governments.

The restructuring and amalgamation of former homeland administrations posed an additional immediate challenge to effective provincial government. For example, the creation of the Eastern Cape province involved the amalgamation of the former homelands of Transkei and Ciskei with part of the former Cape Province. As a result:

> "The legacy of the old Transkei and Ciskei to the new Eastern Cape government was chaos. More than a dozen reports by various auditor-generals indicate that no reliable accounts were kept from about 1987. So many records have been destroyed or lost that it is now virtually impossible to find out where the money went, to construct asset registers for inherited offices, or to hold anybody accountable for the mess."[13]

The nine provinces created in terms of the Interim Constitution brought about a new system of government in South Africa. But in the course of drafting the 1996 Constitution the place of the provinces in the overall form of the state remained contentious. The extent of the powers and functions of the provinces was part of the debate over the degree to which the South African state would be federal or centralised. In the end a model of cooperative government was adopted to promote coordinated governance instead of allowing the provinces to "compete with each other and the national government for power and resources."[14]

Under the new Constitution, provincial government has relatively few areas of exclusive legislative competence. Provinces have executive authority only to the extent that they have the necessary administrative capacity and national government may, under some circumstances, take over functions that a provincial government cannot properly perform. National government also bears a responsibility to ensure that the provinces build that capacity. The exclusive areas of provincial legislative competence are set out in Schedule 5 of the Constitution as follows:

- Abattoirs
- Ambulance services
- Archives other than national archives
- Libraries other than national libraries
- Liquor licences
- Museums other than national museums
- Provincial planning
- Provincial cultural matters
- Provincial recreation and sport
- Provincial roads and traffic
- Veterinary services excluding regulation of the profession.[15]

Provincial government also has oversight powers with respect to certain areas of local government. With the adoption of the 1996 Constitution, however, provincial government saw the removal of some powers that it had enjoyed under the Interim Constitution. For example, provincial government lost the power to determine the remuneration of provincial premiers, MECs and traditional chiefs. Further, Parliament was given the power to intervene in areas of exclusive provincial jurisdiction by passing legislation which is necessary to:

- maintain national, economic unity or essential national standards
- establish minimum standards for service provision
- prevent unreasonable action being taken by a province which is prejudicial to the interests

of another province or the country as a whole.[16]

In practice, however, the lines of distinction between national and provincial areas of competence are not so clear cut since the Constitution envisages shared or concurrent powers and legislation in so many areas.[17] These concurrent powers include areas such as education, housing, welfare, environment, health, tourism, agriculture, trade, etc. Moreover, with respect to matters of concern outside the authority of provincial legislation, a provincial legislature may make recommendations to the National Assembly.[18] In the event of jurisdictional disputes between national and provincial legislation, the Constitution also provides for conflict resolution. Where there is a dispute, the Constitutional Court "must prefer any reasonable interpretation of the legislation that avoids a conflict, over any alternative interpretation that results in conflict".[19]

An important source of provincial power lies in the Constitutional provisions for provinces to adopt their own provincial constitutions.[20] However, only two provinces (the Western Cape and KZN) have sought to exercise this power. The KZN constitutional process has endorsed a strong federalist interpretation of the role of provinces in South Africa. This agenda can be summarised with reference to the draft constitutional text submitted by the IFP in 1995. This draft called for the province to be renamed the Kingdom of KZN and for the retention of a Zulu monarch without executive powers. In addition, the kingdom would have its own independent judiciary, constitutional court and militia. Clearly, the IFP strategy was to expand the boundaries of provincial power. In September 1996 the Constitutional Court, however, rejected the provincial constitutional text approved by the KZN legislature. Subsequently the IFP dropped many of its demands and later drafts accepted that a provincial constitution had to conform to the national constitutional guidelines.

The exercise of provincial power by opposition parties in both the Western Cape and KZN also led to delays in the scheduling of local government elections in those two provinces. Whereas the rest of the country voted in the first democratic local government elections in November 1995, parts of the Western Cape and all of KZN had to wait for the following year, owing to various demarcation disputes. In KZN, the IFP was determined to ensure a role for traditional leaders in the transitional regional councils that would represent residents in rural areas. Ultimately local elections did take place in June 1996. The dispute, and the delay, indicated that substantial provincial variations existed with respect to the acceptable form of government in the country.

4. THE PROVINCIAL LEGISLATIVE RECORD

The flow of legislation emanating from provincial government has been slow. This is partly owing to the restricted areas of exclusive legislative competence. As a result, most of the laws passed by provincial government have been of a technical nature, designed to bring various provincial practices in line with national legislation or the Constitution. Aside from legislation of a technical nature, provincial legislatures have enacted laws that provide regional institutions with an enabling framework for national legislation.

The Development Facilitation Act (DFA) of 1995 is a case in point. The DFA was designed to speed up the delivery of basic services by eliminating procedures and regulations – much of them inherited from the apartheid era, and now encumbering government with excessive duplication. In order to respond to different needs in the provinces, the DFA provided for regional development tribunals that would enable public participation in the selection of development priorities in the provinces. As part of this process, provinces were able to develop their own parallel legislation. In KZN, where a political rivalry between the ANC and the IFP persists, efforts to draft provincial enabling legislation for the DFA to be implemented never took route. The result is that development efforts that KZN must continue to respond to are an often-bewildering array of regulations that differ between urban and rural areas, and from district to district within the province. Table 5 summarises the provincial legislative record for the period 1994-1997.

As table 5 indicates, provincial legislatures have passed relatively few pieces of legislation. In addition to their limited legislative output, provincial legislatures have met for a relatively few number of days each year. The provincial legislatures have not typically convened for extended sittings. For example, the Northern

Table 5: Provincial acts/laws – 1994–1997

Province	*1994*	*1995*	*1996*	*1997*
Eastern Cape	5	12	3	9
Free State	6	6	13	7
Gauteng	3	6	11	10
KwaZulu-Natal	9	4	12	10
Mpumulanga	8	8	5	4
Northern Cape	8	6	5	7
Northern Province	6	9	8	4
North West	24	16	4	11
Western Cape	12	8	8	13

Province legislature sat 23 days in 1994, 38 in 1995, 45 in 1996 and 42 in 1997. As these figures indicate, there is an overall trend of lengthier legislative sittings. But to take another example, the KZN legislature only sat for 27 days in 1996, passing 12 pieces of legislation. In response to this record, the ANC complained that: "This is totally unacceptable. We cannot get bills through the House because we spend half our time correcting technical mistakes."[21]

All three counts (the brief length of the legislative sessions, the limited amount of legislation passed and the type of legislation) indicate the relatively narrow scope of provincial powers under the Constitution. Under a harsher light, these considerations may also indicate underperformance on the part of provincial government. But the limited legislative output at provincial level is also due to the lack of capacity at provincial level. This assessment cannot be based solely on the criteria above, but it can be supported with reference to the administrative and financial management in the provinces.

5. PROVINCIAL GOVERNANCE

The provinces employ some 800 000 of the country's 1.15 million public servants. As many as 400 000 of these may have been inherited from the former homeland administrations. Moreover, provincial government holds several labour-intensive functions such as health and non-tertiary education, thereby contributing to the high number of provincial civil servants.[22] If one excludes these categories, the provinces employ just over 230 000 people, or 20.13% of the entire civil service. Even so, this figure is nearly three times the total number of non-uniformed (excludes defence force and police) civil servants employed by the national government (76 513 persons).

In addition to the large absolute number of provincial civil servants, the distribution of civil servants across the provinces is also skewed. The Constitution delegates the same functions to every province and yet the ratio of civil servants to population varies greatly from province to province.[23] For example, in Gauteng, there is a ratio of one civil servant to every 58 persons, whereas in the Eastern Cape, the ratio is one for every 42 persons (the provincial average is 47). This might be interpreted that Gauteng is using its civil servants more effectively than is the Eastern Cape. But if we exclude the health and education sectors of public employees, the ratio is quite different. The ratio of "other" civil servants to provincial population in Gauteng becomes 142 (the provincial average) and the Eastern Cape becomes 261. Given the other difficulties experienced in the Eastern Cape provincial administration, this ratio suggests that the civil service in the Eastern Cape is vastly overstretched. The implication for public sector restructuring is that depending on which ratio is considered acceptable, one province or another would be affected by significant retrenchments, rationalisation of services, or additional national to provincial financial transfers.

Since 1994, government at all levels in South Africa has been preoccupied with improving government administration and the delivery of services while keeping an eye on financial sustainability. In 1997, Paseka Ncholo, Director General of Public Service and Administration released a report on governance within the nine provinces.[24] The report signalled that national government policy was often set without due consideration to the organisational, financial and service delivery implications in the provinces. National government was further criticised for insufficient provision of support in respect of capacity, clarity over management of key functions and adequate communications.

Provinces shared a number of common problems. Among them were: political interference in administration, over centralisation of management, weak strategic planning, poor budget formulation and spending controls, insufficient departmental organisation and inappropriate human resource distribution. This report found that three provinces – the Eastern Cape, KZN

and Northern Province – were on the verge of collapse. Perhaps not surprisingly, each of these provinces had inherited former homeland administrations. The report identified further problems in financial management, human resource management, chronic staff shortages, and the prevalence of fraud and theft. Planning was not coordinated and the salary bill was distorted by double payments and a high number of "supernumeraries" (those employees who no longer have a designated post but continue to draw a salary; most supernumeraries were left over after the amalgamation of homeland administrations). Poor communication and ineffective and centralised management hampered effective policy implementation.

The 1998 Presidential Review Commission (PRC) also directed its attention to the provinces. It did not intend to replicate the work of the Ncholo provincial audits, choosing instead to evaluate five provinces: KZN, Gauteng, Northern Province, Eastern Cape and Western Cape. The PRC was mandated to review the structure of all levels of government with an eye to improving government structure, administration and service delivery. The PRC identified five principle issues from the provinces surveyed for the report:

- Widespread confusion over the different roles of political and administrative leadership.
- Range of problems in human resource management.
- Overcentralised financial decision-making and poor management of funds.
- General lack of strategic planning.
- Poor state of information technology.[25]

The PRC therefore confirmed many of the findings of the Ncholo audits. It found that the Northern Province and the Eastern Cape had the most serious capacity problems and urged central government "to maintain constant vigilance over these two provinces" and further:

> "The National Government should therefore not hesitate, in certain dire circumstances, to resume functions delegated to certain provinces or their departments, where those provinces provide irrefutable evidence of inability to carry on those functions."[26]

The PRC noted that it was a sad but unintended consequence of the federal system of government in South Africa – as well as the sunset clauses regarding the entrenchment of public sector employees agreed to in the negotiations prior to the 1994 elections – that public service was in a deplorable condition in some provinces. The existence of the provinces had tended to consolidate the bloated civil service of the former homelands and given the poor financial control of some of those former areas it was not surprising that the current systems were defective.[27] Of equal importance, however, was the PRC recommendation that central government should re-visit the role and powers of provincial government. This theme would assume increased prominence as the 1999 elections approached.

6. FINANCIAL SUSTAINABILITY

The Interim Constitution of 1993 stipulated that provinces are entitled to an equitable share of revenue collected nationally. There are two steps to this process: first, resources must be divided between national and provincial governments (a vertical division), and second, the total provincial share must then be divided among the nine provinces (a horizontal division). Transfers to provincial government may be affected by changes in population, policies that affect provincial government's ability to raise its own revenue, and the changing distribution of responsibility for service delivery among national, provincial and local government. For example, national legislation designed to address backlogs in infrastructure and services may impose a greater or lesser financial and administrative burden on some provinces than others. Meeting national policy standards therefore imposes direct financial costs on the provinces. Further still, legislation passed during the period 1994–1999 with respect to housing delivery has added more responsibility for local government, over which provincial government has political oversight. The overall picture for provincial governments is therefore one of a moving playing field. Some of these dimensions are sketched in the section that follows.

The Borrowing Powers of Provincial Government Act of 1996 regulates provincial spending power. The Budget Council (comprising the Minister of Finance and the provincial MECs for Finance) decided that provinces would not borrow in the financial years 1997–1998 and 1998–1999. However, a number of provinces were forced to use overdrafts at commercial banks to cover basic salary and administration

costs during this period. In 1997, both Finance Minister Trevor Manuel and Constitutional Affairs Minister Valli Moosa warned provinces which overspent that political heads and director-generals would be held responsible.[28]

Projected overruns for the 1997–1998 financial year were R8 billion – approximately 10% of the budgeted provincial allocation of R80.8 billion.[29] The Eastern Cape's overspending was the highest, projected at R2.7 billion.[30] In fact, provincial budget deficits were stabilised somewhat in 1997–1998, running a 2.3% deficit and by 1998–1999, two of the provinces in the worst financial shape, the Eastern Cape and KZN – ran in-year surpluses.[31] In his 1999 budget speech, Finance Minister Trevor Manuel praised the provinces for their efforts to control overexpenditures.[32]

Nevertheless, the overall state of provincial finances remains precarious. Some have blamed provincial overspending on the wage bill of provincial public servants and the inability, or unwillingness, of provincial government to retrench public sector workers. The 1998 wage bill, as a percentage of provincial budgets, ranged from a low of 55% in the Western Cape to a high of 65.4% in the Northern Province.[33] Labour relations play a role in this dynamic with tabled wage demands ranging from 9.5% to 15.0%. Increased spending on wages leaves provinces no choice but to cut capital expenditure; a recipe that only leads to a further downward spiral in the poorer provinces.[34]

Others have cited the responsibility of provincial governments to extend services to those who had previously been excluded from access to public services. Furthermore, the cost of integrating former homeland bureaucrats (approximately 400 000 employees) has to be taken into account. To alleviate the financial burden of past practices by these bureaucrats, national government absorbed R1 billion in cash debts run up by the former homelands prior to 1994.[35] These debts were largely in the form of overdrafts, with loans to the former homelands having been absorbed by national government in 1996. Finally, attention has also been focused on improving the budget skills and spending practices in the provinces to ensure that provincial administrations draft realistic and sustainable budgets.

Provinces have highly restricted revenue-raising powers and are dependent on central government for their fiscal status. At present, provincial own revenue amounts to only 5% of their total budget and is collected primarily from user charges such as motor vehicle licensing and hospital fees. The remainder of provincial revenue comes from central government. Central government has thus far rejected proposals to enable provinces to collect a surcharge on personal income tax. Given the questions raised about provincial administrative capacity, central government is wary of sharing tax powers with the provinces.

In the medium term, provinces must improve their expenditure controls while cutting costs before the national government does it for them. But provinces face a number of challenges in this regard:

- Provinces do not control salary levels; these are negotiated at national level.
- Provinces have very limited retrenchment powers.
- National policy decisions, such as the extension of free health care to pregnant women and children under the age of six, eat into provincial revenue by reducing hospital fees while increasing service costs.
- The national Department of Finance began to transfer money on a weekly, not monthly basis. As a result provinces can no longer earn the interest on unspent money through the residual weeks of the month.[36]
- Costs in the big three – services, education, health and welfare – are difficult to drive downwards without provincial government bearing the political costs of an unhappy electorate.

Against this background provinces are likely to face ever-tightening fiscal options.

7. POLITICAL INTRIGUE AND PROVINCIAL PERFORMANCE

Lodge argues that federal politics in South Africa since 1994 has vastly increased the complexity for the ANC running its own inner organisational life.[37] Between 1994 and 1998 there were three changes of leadership (Free State, Gauteng and Eastern Cape) in the seven ANC-led provinces and two of them (Free State and Gauteng) were highly contested. The ANC has also faced considerable internal dissent in Mpumulanga were the premier and members of his executive committee have been investigated

for fraud. Part of the problem lies with the need for the ANC to expand rapidly to fill all of the posts it achieved after the 1994 elections. In some cases political "outsiders" were called upon, "deployed" in the language of the ANC, to fill the new positions. In other instances, rivalries developed when different individuals held the posts of provincial party leader and premier. And at a more general level, ANC members were still learning the ropes in terms of running a government.

The ANC was not alone in changing leadership in the provinces. KZN has had three premiers since 1994. In turn, Frank Mdlalose, Ben Ngubane, and most recently, Lionel Mtshali have rotated into the premier's office as a result of internal party shake-ups within the IFP. In the Western Cape, Gerald Morkel of the NP replaced Hernus Kriel in April 1998 following Kriel's resignation.

Changes in provincial leadership did not stop in the run-up to the 1999 elections. In an attempt to avoid these intra-party rivalries and challenges the ANC executive adopted the recommendation that in future, premiers will be appointed by national structures. As a result of this policy, the ANC removed three of its current premiers (Free State, Gauteng and Mpumulanga) from the top spot when it selected candidates for the provincial party lists.

Explaining the ANC national executive's decision, ANC Secretary-General Kgalema Mothlanthe dismissed the interpretation that the national leadership was disciplining provincial leaders. Instead, he said that ANC President Thabo Mbeki was merely exercising his prerogative to appoint candidates for the top spot of the provincial list: "It's only fair, because the ANC is more concerned with the ability to run the provincial administration than the popularity of an individual. The same prerogative goes to the premier, who has the power to appoint MECs."[38] For some, this move reflects yet another indication that the ANC national executive is set to trim the power of the provinces.[39]

While the future of the provinces is under scrutiny from the party elite, it has also received mixed reviews from below. Public perceptions of provincial government provide yet another perspective with which to evaluate the track record and viability of this tier of government. A Human Sciences Research Council (HSRC) survey indicated substantial provincial variations in perceptions of the way in which the country is being run.[40] Only in North West (60%) and Free State (56%) were a majority of respondents satisfied with the way South Africa is being run. In the rest of the provinces, the majority were dissatisfied. Nationwide, 49% were dissatisfied with the way the country is being run, and slightly more than a third (37%) were satisfied. This figure marks a substantial decline from the 64% who claimed to be satisfied with the way the country was being run in 1994.

On the whole, one-third of respondents (32%) are satisfied with the way in which their province is run. With regard to provincial government, for every five satisfied respondents there are nine who are dissatisfied. In the provinces governed by opposition parties – the Western Cape and KZN – respondents are even more dissatisfied than the average South African resident with the way in which both the country and the province are being run. However, the ANC-run provinces of the Northern Cape and Northern Province joined them in this category. The average satisfaction rates with both national and provincial government were higher in the Free State, Mpumulanga, Gauteng and North West.

8. PROVINCIAL GOVERNMENT PROSPECTS

The 1999 elections reflected the continuing turbulence of provincial government. The Western Cape and KZN remained hotly contested provinces. Further, whereas the ANC has retained power in seven of the nine provinces as this chapter has argued, the future status of provincial leadership and provincial administration cannot be taken for granted. Provincial government in South Africa will continue to face challenges on four main fronts:

- The ongoing federalism debate is unlikely to subside as many opposition parties press for greater power at provincial level. The emergence of two new parties with substantial provincial levels of electoral support (the UDM in the Eastern Cape and the UCDP in the North West) indicate that ANC hegemony cannot be taken for granted. Further, former homeland leaders lead both of these parties, and they may therefore present a pair of wildcards at provincial level.
- The ANC itself occupies an uneasy seat of national–provincial relations within its lead-

ership structures, and between leaders and supporters. In the immediate aftermath of the elections there is a spirit of triumph, but as the experience since 1994 has indicated, leadership challenges, regional divisions, and internal debate are likely to remain features of ANC internal relations.

- The ongoing fiscal crisis at provincial level and the role of national payments to provincial government are both likely to keep provincial financial administrators in the news. The South African economy remains a tense balancing act and government revenue arrangements are themselves very much tied to a policy of fiscal prudence. The pressure on provincial government to get fiscal matters under control is therefore likely to continue.
- While the overall constitutional status of provincial government is highly unlikely to change, there will most certainly be discussion about the relative powers and status of provincial government within the context of cooperative governance. In May 1999, ANC Secretary-General Kgalema Motlanthe revealed that discussion on the future status of the provinces could start soon after the June elections. He stated that the view within the ANC was that cities such as Durban, Cape Town and Johannesburg were of "greater importance than some provincial governments because they have bigger responsibilities".[41] Motlanthe compared the city of Durban to the Free State province and concluded that "it is obvious that the mayor of Durban has more responsibilities and demands than the premier of the Free State: the Durban metropolitan budget is even bigger than Namibia's".[42] Motlanthe acknowledged that many current provincial leaders would surely resist any perceived demotion in power.

But is the size of the budget really the measure of the importance of a tier of government? Friedman argues that provinces were meant to be vehicles for democracy, not management of service provision.[43]

Friedman reminds us that provinces provide voters and parties a stake in the electoral system if they cannot win power at national level. That way they are not relegated merely to criticising, but can try to put some of their ideas into practise in their region.

CONCLUSION

For these and other reasons discussed in this paper, provincial government will therefore remain an important centre of attention for reform and debate. While the debate between those who advocate a unitary and centrist conception of the state versus those who prefer a strongly federal South Africa has been settled in favour of the compromise of cooperative governance, provincial government's relative status is still open for discussion. This fluidity will also persist in terms of provincial government's performance. Some provinces will shine, while others will continue to struggle to achieve their policy goals. The one certainty is that the debate will remain vigorous.

ENDNOTES

1) This paper is an adaptation of a paper published in Andrew Reynolds, ed. *Election 99 South Africa: From Mandela to Mbeki* (Oxford: James Currey, Cape Town: David Philip, New York: St. Martin's, 2000).
2) Tom Lodge, *South African Politics Since*

1994 (Cape Town and Johannesburg: David Philip, 1999), p.13.
3) T.R.H. Davenport, *The Transfer of Power in South Africa* (Cape Town: David Philip, 1998), p.64.
4) G.E. Devenish, *A Commentary on the South African Constitution* (Durban: Butterworths, 1998), p.169.
5) Lodge, p. 25.
6) For a detailed analysis of the 1994 election results in South Africa see Andrew Reynolds, ed. *Election '94: The Campaigns, Results and Future Prospects* (Cape Town: David Philip, 1994).
7) For detailed tables of 1999 election results see: E*lectoral Institute of Southern Africa, National and Provincial Election Results: South African Elections, June 1999* (Johannesburg: EISA, 1999).
8) ANC – African National Congress; NP – National Party; NNP – New National Party; IFP – Inkatha Freedom Party; FF – Freedom Front; DP – Democratic Party; PAC – Pan-Africanist Congress; ACDP – African Christian Democratic Party; MF – Minority Front; UDM – United Democratic Movement; UCDP – United Christian Democratic Party.
9) However, for ordinary bills not affecting the provinces each delegate has one vote.
10) The IFP did win seats in Gauteng, but it gained an insufficient percentage of the vote to gain representation in the NCOP delegation from Gauteng.
11) The FF does have members in seven provincial legislatures, but gained an insufficient percentage of the vote in two of those provinces to gain representation in the NCOP delegation from those provinces.
12) South African Institute of Race Relations, *1994/95 Race Relations Survey* (Johannesburg: SAIRR, 1995), p. 351.
13) *The Daily Dispatch*, 26 August 1997.
14) *Mayibuye*, May 1995, p. 9.
15) Constitution of South Africa, 1996, Schedule 5, Part A.
16) Constitution, Sec 44(2) read with Sec 76(1).
17) See Schedule 4, Constitution.
18) Constitution, Sec 104 (5).
19) Constitution, Sec 150.
20) Constitution, Sec 104 (1a).
21) *The Daily News*, 4 December 1996.
22) J.P. Landman. "How big and how costly is the civil service?" Centre for Policy Studies, Policy Brief 4, July 1998. p.3.
23) Ibid. p.4.
24) Department of Public Service and Administration, *The Provincial Review Report*, August 1997.
25) *Developing a Culture of Good Governance: Report of the Presidential Review Commission on the Reform and Transformation of the Public Service in South Africa*, 27 February 1998, Sec 2.6.4.
26) Ibid.
27) Ibid.
28) *Daily Dispatch*, 26 August 1997.
29) South African Institute of Race Relations, *Survey 1997/98* (Johannesburg: SAIRR, 1998), p. 485.
30) Early in 1998, the MECs for Education and Welfare were removed from their posts in the Eastern Cape owing to the inability of the provincial government to pay pensions.
31) *Business Day*, 12 March 1998.
32) *Business Day*, 18 February 1999.
33) *The Sunday Times*, 22 March 1998.
34) Finance Minister Trevor Manuel has stated that public sector personnel costs had increased 12.2% a year between 1995 and 1998. In 1999, personnel costs would account for about 51% of non-interest state spending. Minister of Finance, Budget Speech, 17 February 1999.
35) *Business Day*, 9 April 1998.
36) Private service providers who rely on government contracts are also caught in this spiral when government is slow to pay fees or cuts back on its demand for services. *The Sunday Times*, 2 May 1999.
37) Lodge, p. 16.
38) *The Sunday Independent*, 16 May 1999.
39) *The Sunday Times*, 25 April 1999.
40) Human Sciences Research Council, Media Release, 11 March 1999.
41) *The Sunday Independent*, 16 May 1999.
42) Ibid.
43) Stephen Friedman, "Why we need provincial governments," *Business Day*, 9 March 1999.

Igoli 2002: Towards a Megacity Government

Sam Kongwa

INTRODUCTION

There have been concerns regarding the rationale behind the plan of Igoli 2002. One source of acrimony is between the service providers of this new Johannesburg Unicity Metropolitan Council (JUMC), who have embarked on the plan, and the average citizen who is supposed to benefit from the successful implementation of the unicity concept.

1. UNICITY STRUCTURE AND AIMS

The new JUMC – comprising Midrand, Modderfontein, the Northern, Eastern, Western and Southern Metropolitan local councils – is destined to introduce major changes in the administrative, operational and financial structures of the Greater Johannesburg Metropolitan Area and its environs. Igoli 2002 management envisages that such changes:

> "will address the problem of fragmentation in political governance and within the council's administrative structures. Greater Johannesburg, including Midrand, will improve the city's leading position within the national economy and its ability to extend service provision to residents, ratepayers and business."[1]

2. CUSTOMER SERVICE

Of interest are the planned central distribution service functions: metropolitan police services, heritage services, emergency management services and planning services. These decentralised regional administrations will provide local communities with health care, social services, housing, libraries and sport and recreation facilities.

3. UTILITIES, AGENCIES AND CORPORATISED ENTITIES

Perhaps of greater significance is the establishment of utilities, agencies and corporatised entities (UACs). These are essentially autonomous business enterprises which are to operate under the Companies Act. Their major responsibility will be developing business plans, which will focus on:

- service delivery
- customer care improvements
- environmental protection
- efficiency
- profitability
- safety standards
- social and economic development
- innovative income-generating ideas.

The city will, however, continue to be associated with the enterprises by: determining their areas of operation; granting licences; acting as shareholders; drawing dividends from utilities; providing subsidies for agencies; determining tariffs and capital expenditure; human resources development; and corporate planning and quality control.[2]

4. THE FINANCIAL PLAN

The financial plan "focuses on achieving financial sustainability by reducing the operating deficit, improving payment levels, reducing wastage, improving efficiency and increasing capital expenditure to sustainable levels".[3]

5. FULFILLING A MANDATE

Igoli 2002 is premised on section 152 of the Constitution, which mandates local government to:

- provide democratic and accountable government for local communities
- ensure the provision of services to communities in a sustainable manner
- promote social and economic development
- promote a safe and healthy environment
- encourage the involvement of communities and community organisations in matters of local government.

6. OVERALL OBJECTIVES

The overall objectives of Igoli 2002 are to transform the Greater Johannesburg region by enhancing service delivery, promoting accessibility, encouraging and facilitating community participation and promoting political involvement and policy making. Ultimately, it is hoped that Johannesburg will be an efficient city – one which will be pleasurable to live in and possessing an enabling environment to attract investors.

In order to ensure that Igoli 2002 objectives are consolidated and go beyond the short- and medium-term, Igoli 2010 – a long-term perspective – has already been presented to government, business, labour and the community.

7. HUMANKIND IS BECOMING PREDOMINANTLY URBAN

The move by Greater Johannesburg towards a megacity government reflects a global trend, and mankind's inability to control the forces dictating this trend:

- For the first time in human history there are more people living in urban areas than in the countryside, and this proportion of urban dwellers is increasing at a much faster rate than ever expected.
- The world urban population increased from 29% in 1950, to 47% in 1998 and is projected to reach 55% in 2015.
- In Europe and North America, it is estimated that four out of five people are urban-dwellers.[4]
- The developing world is fast following this trend. In 1950 the top five world's most populous cities were New York, Tokyo, London, Paris and Moscow. Today, London, Paris and Moscow have been succeeded by Mexico City, São Paulo and Mumbai (Bombay). It is projected that by 2015, the top five will be Lagos, Shanghai, Mumbai, Jakarta and Tokyo.
- In 1975, there were only five megacities in the world with ten million plus people. In 1995, this had increased to 15 and it is estimated that by 2015 the number will increase to 26.

8. REASONS FOR THE MEGACITY TREND

Urban dwellers have been attracted and encouraged by the globalisation of commerce, trade and industry. This globalisation process takes place predominantly in the urban areas. More people therefore flock to cities and towns for: opportunities; services created in the world wide web (www) process; recreation; education and development skills; the emotional value created by the bright lights of the city's slogan and as centres for international communication.

In addition, the increasing mechanisation of the main employment rural sector – agriculture – has reduced employment opportunities in this sector, and therefore forces people to migrate to cities. As globalisation of the world economy increases, there are likely to be more people leaving rural areas and heading for the "promised land" of the megacity where often they will encounter unemployment, homelessness, crime, worse poverty and even less water and good sanitation.

9. IMPLICATIONS FOR DEMOCRACY

Our concern with this trend as political scientists is not so much about the socio-economic consequences, but about the political implications; about decentralisation and its impact on democracy, and about the future of provincial government in South Africa and worldwide.

Problems caused by this inexorable global trend towards the megacity concept – and therefore the danger that Igoli 2002 poses – are many. These include:

- People's loss of participation in the political process.
- Increasing amalgamation of cities, leading to a megacity, is an affront on local political autonomy.
- The activities of the envisaged Greater Johannesburg Metropolitan area, for example, are so enormous and of such vital importance to the national economy, that central government is increasingly involved in their planning, operations and funding.

The exercise becomes a central government show. Already the Department of Finance has

budgeted for a R550 million grant to kick-start the Igoli 2002 process. Central government involvement tends to debilitate local democracy.

Lessons from other countries which have gone through the process that Igoli 2002 proposes, confirm that local participation in the process is often the first casualty. This fact was confirmed in a recent report published after the amalgamation of several small Canadian cities and towns:

> "The move towards government efficiency can hamper the public's ability to participate in the political process. What is given up is immediate participation. People will feel less access to their government."[5]

The fusion of towns, municipalities and cities led to a reduction in the number of local politicians, and thus less representation.

It appears that this loss is acknowledged by everybody, but those in favour of amalgamation express a cynical defence of this assault on local democracy by saying that the loss of participation in local democracy is a price worth paying. A Canadian professor argues, for example, that "the multiplicity of governments and municipalities is an impediment to growth". He goes on to point out that economic growth is hindered when potential investors are forced to visit several municipalities, in one region, to obtain services and information.

CONCLUSION

Drawing from international experience, we find that even within original decentralised provincial governments, amalgamation produced very powerful and often arrogant executive mayors, such as New York City's ex-Mayor Giuliani. It is interesting that Igoli 2002 does not even mention this aspect.

The argument of the advocates of amalgamation is the same: amalgamation will result in considerable cost-savings as a result of economies of scale, and less duplication of services. But these savings – which no amalgamation has proved – are often not passed on to the ordinary people; they usually go into the pockets of new bureaucrats – of the entrepreneurs of the corporatised utilities and services.

Political education is difficult to promote in a megacity because of its sheer size. Local issues disappear from the political agenda. The only relevant issues are those concerning national political parties because the stakes are now too high and the central politicians are reluctant to leave the stage of the Greater Johannesburg unicity to the local community or to independents. Invariably, the same party ruling at the centre rules in the megacity, leading to the disappearance of political accountability.

To sum up: the concept of Igoli 2002 should be "killed" because it does not advance democracy.

ENDNOTES

1) *Igoli News*, July 2000. p. 2.
2) *Igoli 2002: Making Greater Johannesburg Work*, Greater Johannesburg Metropolitan Council, July 2000, provides a detailed plan.
3) Ibid., p. 8.
4) Fred Pearce, Metropolitan Monsters, *Geographical Magazine*, February 2000 vol. 72, no. 2, discusses this trend, the characteristics of megacities and the economic impact.
5) Ibid. discusses this point.

Public Participation in Provincial Legislative Processes in South Africa

Gregory Houston

INTRODUCTION

It is widely accepted among scholars that public participation in political processes is a virtue in its own right, and a *sine qua non* of a democracy (Dowse and Hughes, 1986:266). A healthy democracy is generally seen as one in which the citizens participate regularly in formal political activities,[1] despite the lack of agreement among scholars about the required nature and degree of participation.[2]

There is a wide variety of approaches to the study of public participation in political activities. Three of these have particular relevance to this paper:

- The first looks at levels/degree of participation in political activities, and focuses on electoral turnout (Rose, 1980; Crewe, 1981; Borg, 1995); involvement in campaign activity (Kenny, 1993); involvement in interest groups (Le Roy, 1995); active membership of a political party, etc.
- The second looks at the social variables that influence individual and group participation in political activities, and includes studies of socio-economic status (Tingsten, 1937:155); education (Linder, 1994: 95-6; Powell, 1986: 27-8; Seligson et. al., 1995:166-71; Muller et. al., 1987; Lijphart, 1997:2-3), environment[3] (Kenny, 1993); race (Olsen, 1970); ethnicity; gender; personality (Campbell et. al, 1960; Dowse and Hughes, 1986:279ff), etc.
- The third approach examines attitudinal reasons for non-participation, and includes studies of apathy and lack of interest (Campbell, 1962; Milbrath, 1972; Verba, Nie and Kim, 1971); cynicism about political influence through participation[4] (Agger, Goldstein and Pearl, 1961; Baker, 1973; Brody, 1978); alienation from the political system[5] (Brody and Page, 1973; Olsen, 1969); etc.

However, the overwhelming majority of studies on political participation focus on election data. Thus, voter turnout is used to determine levels/degree of participation. The social variables influencing participation are determined by examining the various social characteristics of voters, and attitudinal reasons for non-participation are determined by focusing on non-voters.

The introduction of a new democracy in South Africa provides a range of possibilities to extend the study of political participation beyond the focus on election data for two reasons, both arising from the introduction of forms of participatory and direct democracy.[6]

Firstly, the new democracy has entrenched a number of processes and established a variety of institutions for citizen participation at all levels of the political structure. These include mechanisms for public participation, for example, through the Integrated Development Planning (IDP) processes at the local level, petitions and public hearings in the legislative process at provincial and national level, Green and White Paper processes of provincial and national government departments, etc. In addition, a number of consultative forums have been introduced since 1994 to engage civil society actively in the legislative, policy-making and planning processes of government at local, provincial and national levels.

Secondly, there is a statutory (including in some cases, a constitutional) obligation for institutions at all levels of the political structure

to facilitate public participation in their processes. Local authorities, for example, are legally obliged to facilitate public participation in their IDP processes, while provincial and national legislatures have a similar constitutional obligation. Democratic governance in South Africa therefore goes beyond the establishment of processes and structures for public participation to include the requirement that institutions of governance actively engage with civil society in the process of carrying out their activities. The result has been the establishment of a number of processes and structures to facilitate public participation by civil society, both as individuals and as members of collectivities, in the legislative, policy-making and planning processes of organs of governance.

This paper examines public participation in provincial legislative processes in South Africa, which are defined as voluntary activities by which members of the public, directly or indirectly, share in the legislative activities of provincial legislatures.[7] The paper begins with an examination of the statutory and other provisions for public participation in legislative processes, and the steps taken by various legislatures to educate the population about participation processes as well as to facilitate public participation. This is followed by an analysis of levels of public participation in various processes, knowledge about the legislature and legislative processes, intention to participate in various processes, and perceptions of ability to influence government decisions.

At present no other study exists which examines public participation in the legislative processes by focusing on levels/degree of political participation in South Africa. However, this is a preliminary study, and focuses on the regional and racial dimensions of public participation in legislative processes. The study therefore tries not to exhaust the range of social and attitudinal factors that influence individual participation in democratic governance. The focus is on knowledge and understanding of political processes and institutions, intention to participate and perceptions of the ability to influence government decisions as factors underlying levels/degree of citizen participation. The existence of participatory democratic structures and processes present a range of possibilities for the study of public participation in democratic governance in South Africa. Such studies may, for example, examine the influence of various social factors such as education, socio-economic status, ethnicity, age, environment, and gender on levels/degree of public participation in democratic governance. Attitudinal studies could examine non-participation by focusing on apathy, lack of political efficacy, etc. They could also focus on a range of participatory processes, such as the IDP processes of local government structures, participation in the policy-making processes of national government departments, etc.

1. STATUTORY AND OTHER MEASURES FOR PUBLIC PARTICIPATION

It is necessary to begin by establishing the importance of public participation in the legislative processes of a democracy through an analysis of the role of its legislative structures. The South African Constitution (Act 108 of 1996) sets out two broad powers for the national and provincial legislatures: legislation and oversight. Section 114 of the Constitution reads as follows:

(1) "In exercising its legislative power, a provincial legislature may –
  a. consider, pass, amend or reject any Bill before the legislature; and
  b. initiate or prepare legislation, except money bills.
(2) A provincial legislature must provide for mechanisms –
  (a) to ensure that all provincial executive organs of state in the province are accountable to it; and
  (b) to maintain oversight of –
    (i) the exercise of provincial executive authority in the province, including the implementation of legislation; and
    (ii) any provincial organ of state."

Sections 55 and 68 of the Constitution make the same provisions for the National Assembly and National Council of Provinces (NCOP), respectively.

First, legislatures are charged with considering, passing, amending or rejecting any bill placed before them by the executive, and with initiating or preparing legislation. They are thus meant to be deliberative bodies, and not simply structures that serve as "rubber stamps" for the executive. In dealing with legislation initiated by the executive, legislatures provide the opportunity for elected representatives to scru-

tinise draft legislation for their practicality, relevance, comprehensiveness, clarity, anticipated impact, constitutionality, etc., and to introduce other views – such as those of the public and the opposition – in the legislative process (refer to Proctor, 1999:12).

Legislatures can also initiate legislation in areas where the executive has failed, or is reluctant, to take the initiative. This can come from two sources: the standing committees or private members' bills. Provincial legislatures also have the capacity to take legislation into the NCOP, which is also tasked with initiating legislation. Thus, through their representation in the second chamber of the National Parliament, members of provincial legislatures can initiate legislation in the national legislature that has broader application to all provinces.

Second, legislatures are charged with the responsibility for due diligence and oversight. In this respect, the legislature is responsible for monitoring "the administration and effectiveness of the programmes that have been enacted into law" (School of Government UWC, 1998:2, cited in Senay and Besdziek, 1999:4). Senay and Besdziek (1999:6-7) point out that, among others, oversight must be exercised by the provincial legislature over:

- the work and activities of the executive council, as well as of the provincial public administration and other organs of state
- the policies drafted by the executive council, the administration and other organs of state
- the implementation of policies by the executive, the administration and other organs of state
- the legislation drafted by the executive and administration
- the impact of administrative action on provincial residents.

In this task, the legislature is charged with maintaining oversight over the executive and its agencies, the exercise of their power and authority, and the implementation of legislation (refer to Proctor, 1999:20). The oversight task of the legislature is, of course, linked to the executive's responsibility to account for its functions and conduct:

> "(I)t must respond to concerns and criticisms raised in parliament about its actions because members of parliament are democratically elected representatives of the people" (Senay and Besdziek, 1999:10).

The South African Constitution makes explicit this responsibility of the provincial executive in Section 133.

> (1) "The members of the executive council of a province are responsible for the functions of the executive assigned to them by the premier.
>
> (2) Members of the executive council of a province are accountable, collectively and individually, to the legislature for the exercise of their powers and the performance of their functions.
>
> (3) Members of the executive council of a province must –
>
> (a) act in accordance with the Constitution and, if a provincial constitution has been passed for the province, also that constitution; and
>
> (b) provide the legislature with full and regular reports concerning matters under their control"
>
> (cited in Senay and Besdziek, 1999:11).

Ian Sinclair (1982:70, cited in Maloka) summed up the oversight work of legislatures as follows:

> "… the main opportunities or procedures for the parliament to scrutinise and criticise the government are through the debate on the address in reply; the budget process; debates on particular bills … private members' notices of motion and private members' bills; debates on matters of public importance and censure of a minister, member or government. Along with these procedures are the debates on government statements, petitions, and, of course, Question Time."

The legislative and oversight tasks of legislatures are carried out in plenary sessions and in standing committees. Parliamentary committees have emerged as the most prominent institutions for holding the executive accountable and for conducting the bulk of the legislature's other work (refer to Proctor, 1999:20). Standing committees have the power to initiate policy and legislation as well as to exercise oversight over the executive and administration (Senay and Besdziek, 1999:16). The latter arises from the power they have to summon members of the executive council and departmental officials to answer questions and to undertake investigations into departmental activities. Standing committees also provide an opportunity for the

legislature to hear interest groups and to involve the public in the policy and legislative process (Kotzé 1997:18, cited in Senay and Besdziek, 1999:16).

Public input is essential in a legislature's legislative and oversight responsibilities for a variety of reasons. First, members of the provincial legislature, as the representatives of the electorate of the province, are charged with accepting policies and laws arising from the executive, as well as making or initiating policies and laws that are consistent with the interests of the population. This charge places a responsibility on the legislature to obtain as much public input on proposed legislation as possible. Public input in the legislative process also allows a diversity of viewpoints to be aired (Hilliard and Kemp, 1999:46), thus allowing the registration of popular support or opposition to proposed legislation.

Second, the oversight responsibility of a provincial legislature requires input from the provincial population on issues of governance in order to enable the legislature to hold the executive accountable. Public input provides an understanding of needs and the impact of policy and legislation, and promotes the development of priorities. It is through interaction with the public that the legislature can know what the electorate expects from the government and whether the implementation of policy and legislation is inadequate or not, and thereby promote the development of priorities for the executive authority.

Furthermore, as Hilliard and Kemp (1999: 43) put it, "(t)he citizen … has a surveillance role to play to ensure that the public functionaries comply with the mandate that was granted to them ... ."

Public accountability is made effective through the public's input in areas where public functionaries fail to comply with the mandate to provide good, effective government. Ultimately, good governance is best served by these consequences of public interaction with the legislative authority.

Most important, however, public participation in the legislative process and the accountability and oversight tasks of legislatures is essential for long term democratic stability (refer to Khululekani Institute For Democracy, 1999:1). Public participation promotes legitimacy and public support for legislation and government policies, and thereby ensures democratic stability.

The most important mechanisms for public involvement in the legislative processes are: lobbying by organised groups, the raising of issues by constituents at parliamentary constituency offices,[8] petitions and public hearings.

- Lobbying is used by organised groups in civil society to present well-reasoned arguments to targeted decision makers.[9] It may include detailed written representations outlining a group's views on a particular issue. Influential decision makers may also be approached personally. Lobbying is of particular relevance to organisations of civil society such as trade unions, business associations, voluntary and mutual benefit associations, and advocacy and lobbying groups. A lobbying campaign, if it is strong enough, can give rise to changes in proposed legislation, and can force society to confront certain issues by focusing attention on them.[10]
- Members of the public can raise issues at the constituency offices of their elected representatives, who then raise these issues in the legislature on their behalf. Thus, parliamentary constituency offices can contribute to the legislature's accountability and oversight tasks by serving as a barometer of community needs, and helping to determine priorities (refer to Proctor, 1999:23). Furthermore, such offices provide a direct link with members of the legislature, and could thereby reduce delays in responding to citizens' problems (refer to Proctor, 1999:9).
- Petitions allow individuals or groups to raise issues in a formal way without having to go through a particular member of the legislature. They are useful mechanisms for unorganised sectors of society to come together to raise particular issues for consideration by the legislative authority.
- Public hearings are normally convened by standing committees and afford the public the opportunity to make a written and/or oral submission on any matter for which a public hearing has been convened. Here, both individuals and groups have the opportunity to table a written comment or address the standing committee on the relevant issue.

All legislative bodies at national and provincial levels are required to facilitate public involvement in their legislative and other processes.

Sections 59 and 72 of the South African Constitution charge the National Assembly and the Council of Provinces respectively with responsibility for facilitating public participation in the national legislative process. For example, Section 59 stipulates that:

(1) "The National Assembly must –
(a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and
(b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken –
(i) to regulate public access, including access to the media, to the Assembly and its committees; and
(ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.

(2) The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society."

The national legislature has set up the Public Participation and Information Section to facilitate public participation in the legislative process. This Section has set itself the following objectives:

- Developing and providing information about Parliament and promoting the understanding of the institution.
- Making Parliament accessible to the public.
- Building Parliament's profile as a key institution of democracy.
- Supporting a public education campaign to reach out to all South Africans, particularly marginalised groups.
- Mobilising the media in providing information to the public about Parliament (Mbete-Kgositsile, 1999:5).

This office has two tasks: The first is to provide public education about the workings of the legislature and the mechanisms for public involvement in the legislative processes; and the second is to facilitate the public's use of the mechanisms for public participation in the legislative processes.

The Public Participation and Information Section has emphasised marginalised groups – the youth and women, particularly rural women – in its efforts to canvass views from specific sectors of society regarding issues of particular importance to them (Mbete-Kgositsile, 1999:6). Its public consultancy programmes are supplemented by various programmes aimed at educating the public about participation processes, and include the National Youth Parliament (NYP), which is a countrywide "edutainment" pilot project with each province represented by about 15 schools at the provincial youth parliaments; community meetings and workshops conducted at parliamentary constituency offices; and briefing sessions during which members of parliament address visitors to parliament on any relevant legislative topic (Khululekani Institute for Democracy, 1999:17).

The Constitution also enjoins provincial legislatures to facilitate public involvement in the legislative processes. Section 118 of the Constitution of the Republic of South Africa stipulates that:

(1) "A Provincial Legislature must –
(a) facilitate public involvement in the legislative and other processes of the legislature and its committees; and
(b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken –
(iii) to regulate public access, including access to the media, to the legislature and its committees; and
(iv) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.

(2) A provincial legislature may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society."

Some of the provincial legislatures have enacted their own constitutions, which, in some cases, make provision for public participation. They have also engaged in a number of activities to educate the public about participation mechanisms and to facilitate public participation. The Western Cape Legislature's standing committee meetings as well as sittings of the House are open to the public and other interested bodies. Standing committees also advertise public hearings in the local daily newspapers. In addition, bills and invitations for comment

on them are published in the *Provincial Gazette*. In the event that submissions are to be considered, the relevant parties are invited to present their submissions to the standing committee.

In addition to the above, the Western Cape Legislature receives groups of school children, community groups, and other interested parties on visits to its building. These groups are taken on a basic tour of the main facilities and the legislature's chamber where they are addressed on the history of the building, parliament, provincial emblems and the legislative process. These tours are initiated by members of the provincial legislature and the Office of the Speaker.

In 1998 the Western Cape Legislature produced two internal information documents relating to the legislature: a basic *Visitor's Guide* and a more comprehensive *Western Cape Parliamentary Information Pack*. The documents provide information on the functions and responsibilities of the legislature, the legislative process, provincial symbols and emblems, functions and duties of parliamentary office-bearers, facts and figures relating to the legislature, etc.

The Western Cape Legislature has not, however, established an office dedicated to dealing with public participation: at present the Library and Research Service is managing this function. The Western Cape Legislature has, nevertheless, begun a process to establish such an office and to find ways to encourage and facilitate public participation.[11]

In KwaZulu-Natal (KZN), the Public Participation Unit provides information on legislative developments through action-alert documents to notify people of public hearings. The Unit also runs regional workshops to bring community organisations together to plan joint responses to legislative issues. It provides training to community-based trainers on the structure of the provincial legislature, and on how to interact by lobbying and drafting submissions. In addition, there is a volunteer monitoring programme whereby information on legislative matters is disseminated through non-governmental organisations (NGOs) to communities. The Unit is also developing information packs for distribution aimed at alerting stakeholders to imminent legislation and providing information in both English and Zulu on how they can take part (Khululekani Institute for Democracy, 1999:16).

Although the Northern Cape has not established an office dedicated to dealing with public participation, it has put in place a number of measures to educate the public about participation processes and to encourage their participation. The NYP has been established to educate the youth about the processes of democratic practice. A number of publications are utilised, including newsletters, brochures, flyers, handbooks, pictorial pamphlets and newspaper adverts. The legislature also conducts seminars on legislative matters, which are led by members of the provincial legislature. The elderly are encouraged to visit the legislature's chamber, where members of the provincial legislature take part in mock debates. Visiting school children are shown video recordings of actual debates, led through the debate, and given the opportunity to ask questions during the education programme.[12]

The Free State Legislature uses constituency offices to facilitate public participation in the provincial legislative processes. The main feature of this programme is an invitation for petitions (Khululekani Institute for Democracy, 1999:14-15).

The Gauteng Legislature has set up the Standing Committee on Petitions and Public Participation, together with an office of support staff to this Committee, to facilitate public participation in the process of governance in this province.[13] The main activities of the Committee and the office include: the receipt and processing of petitions; the production of posters; the production of a leaflet series that provides information on the functioning of the legislature and how the public should be involved in the legislature's processes; and ongoing workshops of two types, namely, one-day lay person's education workshops, and two-day trainer's workshops to prepare trainers to educate their own communities on the petitions and public participation process. The main vehicles for implementing public participation are the parliamentary constituency offices, through which the legislature facilitates contact between members of the public and members of the provincial legislature (Khululekani Institute for Democracy, 1999:15). In addition, the legislature has tried to bring public involvement closer to the people

by holding public hearings in six regions of the province.

The Programme on Governance of the Canadian International Development Agency assisted the Public Participation Office of the Gauteng Legislature by organising workshops in seven disadvantaged communities to prepare for public hearings to be held by the welfare committee of the Provincial Legislature. The first stage of the outreach programme was a workshop to explain the role and function of the provincial legislature and to explain the issues to be addressed by the committee. The second stage was designed to assist people interested in preparing a presentation or statement to be used at the welfare committee's public hearings (Sutherland, 1999:37-8). In addition, the Khululekani Institute for Democracy works with elected representatives in this province to facilitate interaction in parliamentary constituency offices (Khululekani Institute for Democracy, 1999:15). The legislature also intends to go on a province-wide road show, to draw the public's attention to the role of the legislature, as well as to increase awareness about public participation processes.

2. LEVELS OF PUBLIC PARTICIPATION, PUBLIC KNOWLEDGE ABOUT PARTICIPATION PROCESSES, AND INTENTION TO PARTICIPATE

Two methodologies are used in this study: the first is derived from the results of a national survey conducted by the Human Sciences Research Council (HSRC) in March 1999; and the other is a series of focus group interviews conducted in Gauteng in late 1999.

The HSRC survey was administered to random clustered national probability samples of 2200 respondents[14] throughout the Republic of South Africa in March 1999.[15] The universe for the sample design was all members of the South African population over 18 years, which was stratified according to the nine provinces and the four racial groups. Some of the data used in this analysis are drawn from selected questions in the survey around topics such as participation in legislative processes; knowledge about legislative processes; intention to participate in legislative processes; and perceptions of ability to influence government decisions.

Ten focus group interviews were conducted in informal settlements in Gauteng.[16] The universe for the sample design was all adult African people in these areas over the age of 18 years. Each focus group brought together between 10 and 18 randomly selected individuals of various ages and both sexes,[17] drawn from the most disadvantaged sectors of society in terms of education, unemployment, poverty, etc. Use was made of a semi-structured interview format, and an attempt was made to cover topics such as participation in provincial legislative processes; knowledge of the political system; awareness of and involvement in public participation education programmes; and intention to participate in provincial legislative processes.[18]

Tables 1 and 2 (*over page*) provide indications of the level of participation in various legislative processes.

It is clear that there is a low degree of public participation at all levels of the political structure. Over 60% of respondents have never attended a public hearing of a provincial legislature and 17% seldom do so. Slightly more than 12% of respondents indicated that they often attend public hearings of provincial legislatures while only 3.5% of respondents indicated continuous attendance at such hearings. Over 60% of those respondents who indicated their attendance at a public hearing stated that they never present statements at these hearings. Close to 15% indicated that they seldom present statements. 12.8% and 6.1% of the respondents who attended public hearings presented statements often or continuously, respectively. Interaction with parliamentary constituency offices is particularly low, with 73.2% of respondents indicating that they never made inquiries at these offices, and 12.2% indicating that they seldom do so. Only 6.7% of respondents often made inquiries at parliamentary constituency offices and 2.1% do so continuously.

Respondents in the Eastern Cape indicate a higher level of participation than any other province in all the processes dealt with in the table. This province is closely followed by Gauteng and KZN. The Northern Cape, Free State, Western Cape and North West have limited attendance at public hearings of their provincial legislatures, as well as below the national average for presentation of a statement or opinion at a public hearing. Public interaction with parliamentary constituency offices is also low in

Table 1: Participation in various processes and institutions by province, March 1999

Participation	*EC*	*FS*	*GT*	*KN*	*MP*	*NC*	*NP*	*NW*	*WC*	*Total*
Never attend a public hearing of a provincial legislature	56.0	78.2	54.2	53.2	70.2	83.9	63.9	65.7	81.0	61.8
Seldom attend a public hearing of a provincial legislature	12.8	16.6	26.2	19.0	11.8	9.7	9.4	20.1	9.2	17.0
Often attend a public hearing of a provincial legislature	23.0	2.9	14.9	9.3	13.5	4.9	18.3	10.1	3.6	12.6
Continuously attend a public hearing of a provincial legislature	0.1	2.4	2.5	4.2	1.8	0.0	3.8	0.4	0.6	3.5
Never present a statement or opinion at a public hearing	50.4	71.9	54.1	58.6	69.8	83.3	58.4	66.7	81.7	61.8
Seldom present a statement or opinion at a public hearing	15.4	18.9	21.2	13.3	11.3	6.9	10.0	15.0	7.7	14.6
Often present a statement or opinion at a public hearing	18.9	7.8	14.4	8.2	12.9	8.2	22.6	13.8	4.7	12.8
Continuously present a statement or opinion at a public hearing	11.9	1.5	8.3	8.7	1.8	0.0	4.4	0.8	1.6	6.1
Never make inquiries at parliamentary constituency offices	62.1	88.3	66.3	71.4	84.7	87.7	74.1	76.6	83.3	73.3
Seldom make inquiries at parliamentary constituency offices	11.7	9.7	23.0	6.4	10.2	8.7	9.5	15.5	5.0	12.2
Often make inquiries at parliamentary constituency offices	14.0	1.5	6.9	4.2	2.6	2.0	10.6	3.9	6.1	6.7
Continuously make inquiries at parliamentary constituency offices	5.6	0.5	1.1	3.0	0.7	0.0	1.1	0.4	1.8	2.1

the Free State, Northern Cape, North West and Mpumalanga provinces. Respondents from the Northern Cape registered the highest levels of people who never participate in certain political activities, ranging from 83.9% who never attend a public hearing of the provincial legislature, to 87.7% who never make inquiries at parliamentary constituency offices. The Western Cape follows closely behind in levels of non-participation, while 88.3% of respondents from the Free State do not make inquiries at parliamentary constituency offices.

The racial dimension is particularly significant, given South Africa's history and continuing racial polarisation at the political level.[19] Thus, participation by Africans is highest in all the areas of participation covered in the table. Just above 50% of Africans never attend a public hearing of a provincial legislature or presented a statement at a public hearing. However, those African respondents who seldom (which indicates at least some activity), often or continuously engaged in these activities are more than the national average in each case. In particular, more than 15% of African respondents indicated that they often participated in each of these activities. Interaction with parliamentary constituency offices is particularly low for Africans, with about 69% who never make inquiries at these offices.

Table 2: Participation in various processes and institutions by race, March 1999

Participation	*African*	*Coloured*	*Indian*	*White*	*Total*
Never attend a public hearing of a provincial legislature	54.3	77.8	74.0	89.1	61.8
Seldom attend a public hearing of a provincial legislature	20.1	7.6	19.1	6.1	17.0
Often attend a public hearing of a provincial legislature	15.1	9.6	5.3	2.3	12.6
Continuously attend a public hearing of a provincial legislature	4.2	2.4	0.0	1.1	3.5
Never present a statement or opinion at a public hearing	53.9	78.2	76.9	90.2	61.8
Seldom present a statement or opinion at a public hearing	17.2	6.9	21.5	4.2	14.6
Often present a statement or opinion at a public hearing	15.9	6.5	0.0	3.0	12.8
Continuously present a statement or opinion at a public hearing	7.3	5.3	0.0	1.6	6.1
Never make inquiries at parliamentary constituency offices	68.9	83.1	76.4	89.8	73.2
Seldom make inquiries at parliamentary constituency offices	14.2	5.4	22.0	3.9	12.2
Often make inquiries at parliamentary constituency offices	7.6	5.6	0.0	3.8	6.7
Continuously make inquiries at parliamentary constituency offices	2.2	3.4	0.0	1.0	2.1

Participation by whites and Indians is particularly low, while there is a slightly higher level of participation by coloureds. Thus, 5.3% of Indians and 2.3% of whites often attend public hearings of a provincial legislature; not one Indian and only 1.1% of whites indicated that they continuously attend public hearings of a provincial legislature; not one Indian respondent indicated that they often or continuously present a statement at a public hearing, while only 3.0% and 1.6% respectively of white respondents often or continuously presented a statement at a public hearing; none of the Indian respondents often or continuously made inquiries at parliamentary constituency offices; and 3.8% and 1% respectively of white respondents stated that they often or continuously made inquiries at parliamentary constituency offices. Non-participation by whites is particularly high, ranging from 89.1% who never attend a public hearing of a provincial hearing to 90.2% who never present a statement at a public hearing.

Non-participation was also high for coloureds at all levels of the political structure. Thus, 77.8% never attend a public hearing of a provincial legislature, 78.2% of those who do attend public hearings never present a statement at a public hearing, and 83.1% never make inquiries at parliamentary constituency offices. However, more coloured respondents participate often or continuously in political processes than do Indian and white respondents.

The survey data were supported by the focus group interviews, which indicated a low level of participation among residents of Gauteng's urban informal settlements. The overwhelming majority of interviewees had limited interaction with formal political structures and processes. Not one of the approximately 160 interviewees had participated in any formal way in the processes of provincial structures. None of the participants had interacted with parliamentary constituency offices, nor had there been any participation in processes of the national legislature and government departments. The only form of participation was at local level, including attending ward meetings, taking complaints to councillors, and attempting to influence local government decisions through various organisations of civil society. These varied from settlement to settlement, but the overall impression was also a low level of interaction with local government structures.

Public participation in political processes is dependent to some extent on:[20]

- public knowledge about participation mechanisms in legislative processes
- intention to participate in legislative processes
- perceptions of ability to influence government.

Tables 3 and 4 (*over page*) provide figures indicating levels of understanding and knowledge of various processes and institutions.

The survey indicated widespread lack of knowledge about the Green and White Paper processes, with only slightly lower numbers of people believing they had insufficient or no knowledge about the processes surrounding bills and acts of parliament. These range from the 78.7% who believed they had insufficient or no knowledge of the act process, to the 91.1% who believed they had insufficient knowledge

Table 3: Understanding and knowledge of processes by province, March 1999

Understanding	*EC*	*FS*	*GT*	*KN*	*MP*	*NC*	*NP*	*NW*	*WC*	*Total*
Insufficient or no knowledge of Green Paper process	79.8	91.6	89.3	95.4	92.1	94.0	97.5	95.0	91.2	91.1
Sufficient knowledge of Green Paper process	20.2	8.4	10.7	4.6	7.9	6.0	2.5	5.0	8.8	8.9
Insufficient or no knowledge of White Paper process	82.2	89.1	85.2	95.2	92.9	90.7	95.9	91.2	89.5	89.6
Sufficient knowledge of White Paper process	17.8	10.9	14.8	4.8	7.1	9.3	4.1	8.8	10.5	10.4
Insufficient or no knowledge of the Bill process	78.7	86.3	78.2	89.5	83.6	77.0	91.9	81.4	84.3	83.6
Sufficient knowledge of the Bill process	21.3	13.7	21.8	10.5	16.4	23.0	8.1	18.6	15.7	16.4
Insufficient or no knowledge of the Act process	71.3	83.8	79.1	71.6	82.6	79.1	91.4	75.4	85.5	78.7
Sufficient knowledge of the Act process	28.7	16.2	20.9	28.4	17.4	20.9	8.6	24.6	14.5	21.3

of the Green Paper process. One in 10 people have sufficient knowledge of the white paper process, while only 8% of respondents indicated sufficient knowledge of the green paper process. This suggests a relationship between levels of participation and levels of understanding and knowledge about political processes.

This connection is even more clearly demonstrated when the provincial variable is taken into account. The Eastern Cape, for example, which displays higher levels of participation than the other provinces, also has relatively high levels of understanding and knowledge of political processes and institutions. In the Western Cape, by contrast, between 84.3% and 91.1% of respondents indicated insufficient or no knowledge of a process. This province also has a low degree of participation.

In some cases less than 10% and in others less than 20% of Africans, coloureds and Indians indicated sufficient knowledge of a political process. Very few Indian respondents believed they had sufficient knowledge of any of the processes. Although whites are the most knowledgeable about political processes and institutions, they also have a low level of participation. For this group, then, there must be other reasons for the low level of participation in political processes.

The focus group interviews similarly revealed high levels of ignorance about policy-making and legislative processes and institutions.

Table 4: Understanding and knowledge of processes and institutions by race, March 1999

Understanding	*African*	*Coloured*	*Indian*	*White*	*Total*
Insufficient or no knowledge of Green Paper process	92.5	89.9	91.3	84.4	91.1
Sufficient knowledge of Green Paper process	7.5	10.1	8.7	15.6	8.9
Insufficient or no knowledge of White Paper process	91.4	87.6	93.2	80.7	89.6
Sufficient knowledge of White Paper process	8.6	12.4	6.8	19.3	10.4
Insufficient or no knowledge of the Bill process	86.5	86.2	84.3	66.2	83.6
Sufficient knowledge of the Bill process	13.5	13.8	15.7	33.7	16.4
Insufficient or no knowledge of the Act process	81.8	86.5	81.6	56.5	78.7
Sufficient knowledge of the Act process	18.2	13.5	18.4	43.5	21.3

Table 5: Intention to participate in various processes and institutions by province, March 1999

Intention to participate	*EC*	*FS*	*GT*	*KN*	*MP*	*NC*	*NP*	*NW*	*WC*	*Total*
Likely to complain to a member of the provincial or national legislature	56.2	37.6	47.5	24.5	44.7	25.7	36.3	28.8	21.4	36.3
Unlikely to complain to a member of the provincial or national legislature	40.1	57.7	47.8	59.9	51.8	73.9	51.4	65.7	67.2	54.6
Likely to participate in a public hearing of a provincial legislature	49.5	45.2	49.0	32.2	58.1	29.2	48.5	42.9	38.2	43.9
Unlikely to participate in a public hearing of a provincial legislature	37.7	48.8	46.2	52.0	24.4	44.5	19.0	24.1	30.7	38.7
Likely to participate in a public hearing in the national legislature	57.6	31.3	37.6	21.9	35.6	19.4	31.9	32.0	35.0	35.0
Unlikely to participate in a public hearing in the national legislature	27.2	62.3	57.2	52.9	41.0	49.3	27.0	31.8	34.2	43.7

Most of the interviewees in the focus groups were unaware of the role of legislatures, and some interviewees were even unaware of the existence of provincial legislatures. Although most of the interviewees were aware of petitions, most had not participated in drawing up a petition. Moreover, virtually all the interviewees were unaware of the public hearing process. The lack of knowledge about constituency offices was almost total, with only a handful of interviewees aware of the closest constituency office to their homes. In addition, none of the interviewees in Gauteng had heard of the Petitions and Public Participation Office of the legislature, or of any attempts to expand public knowledge about participation processes through leaflets, posters and workshops. This lack of knowledge about political institutions and participation processes is an important factor underlying low levels of participation.

It is clear that knowledge and understanding of political processes and institutions is only one factor that affects participation. Participation is also determined by the willingness of citizens to participate. Tables 5 and 6 indicate the level of intention to participate in various processes. Respondents were asked how likely is it that they would engage in particular forms of participation.

The majority of respondents (54.6%) indicat-

Table 6: Intention to participate in various processes by race, March 1999

Intention to participate	*African*	*Coloured*	*Indian*	*White*	*Total*
Likely to complain to a member of the provincial or national legislature	41.6	28.8	18.0	23.6	36.3
Unlikely to complain to a member of the provincial or national legislature	49.8	61.8	71.7	72.2	54.5
Likely to participate in a public hearing of a provincial legislature	48.8	40.1	35.0	21.6	43.9
Unlikely to participate in a public hearing of a provincial legislature	35.3	24.8	52.5	63.6	38.7
Likely to participate in a public hearing in the national legislature	37.4	35.1	42.2	20.2	35.0
Unlikely to participate in a public hearing in the national legislature	41.3	29.3	40.8	67.1	43.7

ed that they were unlikely to complain to a member of the provincial or national legislature. Just more than one-third of respondents indicated an intention to complain to members of provincial and national legislatures. More respondents indicated that they were likely to participate in a public hearing of a provincial legislature (43.9%) than those that indicated they were unlikely to do so (38.7%). Respondents were less likely (43.7%) than likely (35%) to participate in a public hearing of the national legislature. Thus, the likelihood of participation in legislative processes decreases at levels higher up the political system. The table demonstrates a progressive decline in willingness to participate in institutions at higher levels.

There was a markedly higher likelihood of participation by people from the Eastern Cape in participatory processes at virtually all levels of the political structure than people from the other provinces. Respondents from the Western Cape indicated a lower likelihood of participating than any other province, with some variance. In KZN and the Northern Cape, for example, there was a marked reluctance to interact with the provincial and national levels of government. Respondents in the Eastern Cape were more likely to participate in public hearings of the national legislature than in public hearings of the provincial legislature. In all the other provinces there was a higher likelihood of participation in the processes of legislatures at the provincial level than at the national level.[21]

More African, coloured, Indian and white respondents believed they were unlikely to take their complaints to a member of the provincial or national legislature than respondents in these groups who were likely to do so. More white respondents were unlikely to participate in public hearings at all levels of the political structure than respondents in this group who were likely to participate in this process. The majority of African respondents indicated that they would be unlikely to participate in public hearings of the national legislature. The proportion of Indians (52.5%) and whites (63.6%) who indicated that they were unlikely to participate in a public hearing of a provincial legislature is particularly high. These figures, together with the figures indicating a lack of intention to participate in the other processes in table 6, suggest reluctance on the part of these groups to participate in political processes in the new South Africa. Willingness to participate for all four groups declines progressively at higher levels of the political structure.

The focus groups demonstrated a high willingness to participate at the local level, and a progressive decline in willingness to participate in institutions at higher levels. This could be due to a number of factors, including a primary concern with issues that fall within the domain of local government structures, the distance between local communities and the location of structures at higher levels, as well as ignorance about the role of the latter structures. The focus group interviews indicated a direct relationship between lack of knowledge about the role of provincial legislatures and willingness to participate. Initially there was limited interest among the interviewees in the participatory processes of the provincial legislatures. However, once the group was informed about the role played by the provincial legislatures, and

Table 7: Perceptions of ability to influence government decisions by province, March 1999

Perceptions	*EC*	*FS*	*GT*	*KN*	*MP*	*NC*	*NP*	*NW*	*WC*	*Total*
It is possible to influence national government decisions	76.8	52.8	56.3	23.7	40.6	40.8	46.0	41.5	21.9	45.1
It is NOT possible to influence national government decisions	20.5	40.3	36.7	58.7	53.8	50.8	44.6	54.7	43.1	43.4
It is possible to influence provincial government decisions	62.8	44.8	52.4	18.7	33.9	29.8	40.8	31.9	18.5	38.5
It is NOT possible to influence provincial government decisions	22.1	45.8	39.6	56.5	51.6	50.4	45.5	55.8	36.9	45.0
It is possible to influence local government decisions	69.9	53.5	55.8	34.5	35.9	41.2	39.5	32.7	25.6	45.0
It is NOT possible to influence local government decisions	26.5	39.3	32.1	46.1	50.4	45.1	48.1	57.6	35.0	40.0

Table 8: Perceptions of ability to influence government decisions by race, March 1999

Perceptions	*African*	*Coloured*	*Indian*	*White*	*Total*
It is possible to influence national government decisions	50.6	33.5	32.7	25.6	45.1
It is NOT possible to influence national government decisions	39.8	41.1	55.1	62.4	43.4
It is possible to influence provincial government decisions	43.1	27.4	21.1	23.6	38.4
It is NOT possible to influence provincial government decisions	43.0	35.0	64.4	58.1	45.0
It is possible to influence local government decisions	47.2	33.6	40.0	41.3	45.0
It is NOT possible to influence local government decisions	40.3	34.9	35.4	43.0	40.0

the importance of public participation, there was a notable increase in enthusiasm about participation. It follows that increasing the public's knowledge about the role of legislatures, about the importance of public participation, and about participation processes may well lead to an increase in levels of public participation.

The level of public participation and intention to participate in legislative processes will also be influenced by people's perceptions of their ability to influence government decisions. Respondents were asked to agree or disagree to the statement: "People like you can have an influence on government decisions."

Roughly the same number of respondents believed it was (45.1%) and was not (43.4%) possible to influence national government decisions. More respondents believed it was not possible to influence provincial government decisions (45%) than believed it was possible to influence decisions (38.5%) at this level. The majority of respondents (45%) believed it was possible to influence local government decisions. Nevertheless, the proportion of respondents who believe it is not possible to influence government decisions is high (above 40%) for all levels of government.

The majority of respondents in the Eastern Cape believed they were able to influence government decisions at all levels of the political structure. This corresponds to very low proportions who believed it is not possible to influence government decisions at all levels. There was a strong feeling among respondents from KZN that it was not possible to influence government decisions at the national and provincial levels, with about 46.1% of respondents from this province feeling this way about local government. In the North West province the majority of respondents believed it was not possible to influence government decisions at all levels of the political structure. KZN and the Western Province are notable for the small numbers of people who believed they could influence government decisions at all levels of the political structure. This can be related to the lower likelihood of participation in political processes expressed by respondents from some of these provinces.

White respondents were particularly sceptical about their ability to influence government decisions. There were more respondents in this group who believed it was not possible to influence government decisions than believed it was possible to influence government at all levels of the political structure. By contrast, more African respondents believed it was possible to influence national, provincial and local government decisions than believed it was not possible to do so. However, around 40% of African respondents indicated that it was not possible to influence national, provincial and local government decisions.

Almost two-thirds of the Indian respondents believed it was not possible to influence provincial government decisions, compared to 21% who believed they could influence decisions at this level. The majority of Indian respondents also believed it was not possible to influence decisions made at the national level. More Indian respondents believed, however, it was possible to influence local government decisions (40%) than believed it was not possible (35.4%) to do so. The majority of coloured respondents believed it was not possible to influence decisions made at the local, provincial and national levels. However, these were generally lower than the national averages for people who believed it was not possible to influence local, provincial and national government decisions.

There may be many reasons for low levels of public participation, but one reason that has particular relevance for participation in legisla-

tive – and other – processes may be a belief among the public that their input would not be given adequate consideration. This perception is particularly clear among white respondents, and to a lesser extent among Indian and African respondents, at the provincial and national levels. It is therefore necessary to remove any doubt that people – and particular race groups – may have about their ability to influence government decisions in order to encourage participation in political processes.

CONCLUSION

South Africa's new democracy defines democratic governance as regular interaction between the citizens and popularly elected institutions. This includes, at one level, the establishment of a number of mechanisms and processes for public participation and, at another level, the obligation imposed on various political structures to facilitate public participation in their activities. The former includes lobbying by organised groups, the raising of issues by constituents at parliamentary constituency offices, petitions and public hearings for participation in the activities of legislative structures. The latter includes the establishment of offices and agencies and a variety of programmes by the various legislatures to encourage participation in their activities. It has, however, been demonstrated that public participation in legislative processes is generally low, and is particularly low for coloureds, Indians and whites. In part, the reason for this is a general lack of knowledge about the role of political structures and the mechanisms for public participation.

The latter was clearly demonstrated in the focus group interviews, where there was very limited knowledge of political institutions and processes as well as low levels of participation. It therefore follows that a public education campaign is required to increase knowledge about the functions of political structures and the mechanisms for public participation.

There are, however, distinct regional as well as racial variations in the level of intention to participate in various processes, which indicate reasons other than lack of knowledge for the low levels of participation. In particular, respondents in the Western Cape indicated low levels of willingness to participate in processes at all levels of the political structure, while Indian and white respondents indicated reluctance to participate in these processes. In part, this reluctance to participate can be explained by perceptions of the ability to influence government decisions. Once again, respondents from the Western Cape, as well as Indian and white respondents, were sceptical about their ability to influence government decisions. This indicates a direct relationship between willingness to participate and perceptions of ability to influence government decisions.

In other words, in regions and among racial groups where there is scepticism about the ability to influence government decisions, there are low levels of intention to participate in political processes. Perceptions that it is not possible to influence political decisions in certain provinces and among certain racial groups arise from a variety of factors, including alienation from the political system, opposition to the ruling party, lack of faith in democratic institutions, perceptions that public inputs are not given adequate attention, etc.

On the other hand, the focus interviews indicated that lack of knowledge about the political system and mechanisms for participation were primarily responsible for low levels of participation. As pointed out above, once the participants were informed about the role played by the provincial legislatures, and the importance of public participation, there was a notable increase in enthusiasm about participation. Lack of knowledge about the political system, as well as perceptions of ability to influence government decisions are therefore important factors underlying low levels of public participation in political processes.

It is important, then, that action be taken in these two areas to avoid the danger of marginalising sectors of the population either through ignorance of their right to – as well as mechanisms to – participate in democratic processes or by decreasing their disposition to participate in the political system.

ENDNOTES

1) Stephen Rosenstone and John Hansen (1993: 238) have found, for example, that in the United States the smaller the number of participants in political activity, the greater the inequality in participation. In such cases, participation is likely to be high among more privileged citizens – those with high incomes, better education, etc. – thus undermining political equality by making influence unequal (refer to Lijphart, 1997:1). Perhaps the most significant link between high levels of participation and democracy is the legitimacy the former confers.
2) Ben-Eliezer (1993:408n) points out that scholars such as Schumpeter (1950) and Morris-Jones (1954) advocate a relatively low degree of participation for democracy while Bachrach (1967) and Pateman (1970) advocate a high degree of participation.
3) This includes length of residence, presence of active community organisations, institutional factors, such as registration requirements and processes, the electoral system, the frequency of elections, etc. (refer to Lijphart, 1997:7-8).
4) This is generally called the feeling of lack of political efficacy or the feeling that one is incapable of influencing the decision-making process. It includes lack of internal political efficacy, or the feeling that as an individual one has no influence on government decisions, and lack of external political efficacy, which is the feeling that governments' do not respond to citizens' concerns.
5) Alienation can include non-allegiance, disaffection, estrangement, political powerlessness, and anomie.
6) Formal democracy generally has four features: "regular free and fair elections; universal suffrage; accountability of the state's administrative organs to the elected representatives; and effective guarantees for freedom of expression and association as well as protection against arbitrary state action." Participatory democracy entails a fifth dimension, namely, high levels of participation in the political process through a variety of institutional channels (refer to Huber, et. al., 1997).
7) There are a wide variety of ways in which people participate in politics, which ranges from voting, active membership of a political party or interest group, to holding public office, with a range of different types of activity in between. Dowse and Hughes (1986: 267) draw on Milbrath's (1965:19) typology of political activities and Verba and Nye's (1972: 79-80) study of modes of participation. Political participation is seen to take the form of a hierarchy of involvement, ranging from the person engaged only in voting, to the person only engaged in near-to-home concerns, people engaged purely with personal problems, the campaigners involved in electoral campaigns, and activists who involve themselves in the whole field of political activity, including the holding of political office (Dowse and Hughes, 1986:267). However, in this study political participation is limited to participation in democratic legislative processes as defined.
8) It must be noted, however, that constituency offices are not directly related to the legislature. Instead, they are agencies of political parties. They nevertheless function as mechanisms for public participation.
9) There is a wide variety of interest groups such as business organisations, trade unions, civic organisations, action groups, environmental groups, and national self-help and voluntary non-governmental organisations that try to influence legislative and policy-making processes on a variety of issues through this mechanism.
10) An example of how interest groups can affect legislation in South Africa through an effective lobbying campaign is given by Douglas (1997).
11) This information was supplied by James Retief, Senior Librarian of the Western Cape Provincial Legislature.
12) This information was supplied by Mr J. C. Qwemesha, Head of Committees and Proceedings, Northern Cape Provincial Legislature.
13) This information was supplied by the Petitions and Public Participation Office of the Gauteng Provincial Legislature.

14) We have applied the term "interviewees" to people who participated in the focus groups and the term "respondents" to people who were interviewed for the national surveys.
15) The HSRC has conducted regular national surveys of public opinion for several years. The survey instrument comprised a questionnaire consisting of 38 pages of questions. It was divided into different topics and the duration of interviews of respondents was between 60 and 90 minutes. A sample of 2200 respondents was selected throughout South Africa in clusters of eight and situated in 338 census enumerator areas (EAs) as determined in the 1996 census. Each EA was classified in terms of a dominant lifestyle category, based on an HSRC analysis of the 1996 census data. In order to enhance adequate representation in the sample from each of the nine provinces and from each of the four dominant racial population groups, the sample was stratified by province and by race. Disproportionately large samples were drawn from areas known to be inhabited by the two smallest components of the population, namely (i) areas with dominantly Indian populations and (ii) the Northern Cape. In terms of population group (race), the spread was sufficiently wide to facilitate statistical generalisations about opinions prevailing among persons of each of the population groups. Each case was then weighted so that the resultant weighted dataset would approximate the distribution of the population of South Africa in terms of population group and province.
16) Focus group interviews were held in the following informal settlements: Nellmapius, Free and Fair (Cullinan); Alexandra township; Freedom Square (Thembisa); Diepsloot (Randburg), Atteridgeville (Extension 6); Wattville; Mandela Village (Mamelodi); Mandela Village – Block S (Soshanguve); and Thokoza. In all, 160 people participated in the ten focus group interviews.
17) There was very little difference in the responses to the set of questions dealt with here based on variables such as age, education and sex. Only a very small number of young people, who also tended to be better educated, had some knowledge of political processes and institutions. The extent of their knowledge was, however, also very limited, and most were as unaware of participation processes as the older interviewees were.
18) At the end of each focus group interview the interviewees were given a brief questionnaire which covered the schedule for the focus groups in somewhat more detail. This was done in order to ensure that if any participant was reluctant to talk for any reason, the data would be picked up in the questionnaire.
19) The results for the first democratic election in April 1994 demonstrate the salience of group identity in South African politics. The results indicate a racial census although considerable cross-racial voting took place with all the major parties drawing support from every race group. The National Party (NP) was supported by 65% of the coloured and Indian voters in the 1994 election, with 60-70% of coloured voters in the Western Cape voting for the party (Reynolds, 1994). Similarly, a large proportion of the white vote went to the NP. Apartheid indoctrinated racial fears of African domination and suspicion of black administrative competence, loss of relative status in the racial hierarchy, and competition for jobs and housing were in large part responsible for this support (Finnegan, 1994; Adam, 1994:27-28). The Freedom Front (a conservative Afrikaner political party) achieved 2.17% (400 000 white voters) of the support of national voters in the elections. 94% of the support gained by the African National Congress came from the African community (Reynolds, 1994).
20) There is a wide variety of other reasons why people do not participate in political processes, such as apathy, lack of interest, alienation from the political system, feelings of lack of political efficacy, opposition to the ruling party, etc. The focus on knowledge of participation mechanisms is crucial because these processes are new in South Africa, while the majority of South African citizens have only recently been allowed to participate in provincial and national political processes. In addition, intention to participate in legislative pro-

cesses provides insight into levels of alienation, particularly among certain racial groups. Finally, perceptions of ability to influence government provide insight into levels of perception of lack of political efficacy.

21) One should avoid reading too much into these figures because it is possible that low levels of intention to participate may signify satisfaction with the performance of the provincial legislature instead of alienation or feelings of lack of political efficacy. By contrast, high levels of intention to participate may signal dissatisfaction with the performance of the provincial legislature and a desire to intervene where possible.

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Accommodating Groupism in a Liberal Democratic Dispensation

Eric Labuschagne

> "What became of the Black People of Sumer?" the traveller asked the old man, "for ancient records show that the people of Sumer were black. What happened to them?"
> "Ah," the old man sighed. "They lost their history, so they died"
> (A Sumer Legend, from Williams C., *The destruction of black civilisation*, 1996).

INTRODUCTION – THE PROBLEM

This paper argues that an essential requirement for the success of any liberal democratic government is the inclusion of certain groupings, just because they are groupings.

A problem arises, however, when one considers the fact that a democratic government is built upon the principles of democracy, which in turn is built upon the principles of liberalism, which in turn has its roots in the attempt to dissolve group-loyalties.

The problem is then: How can we accommodate certain group-loyalties in a liberal democratic dispensation if those group-loyalties are exactly the opposite of what any democracy is built upon?

1. COMMUNITARIANISM VERSUS LIBERALISM?

Not too long ago, way back in the early 1990s, we were introduced to a new school of thinking commonly referred to as "communitarianism" or, as I wish to call it, "groupism". This new theoretical approach came after a worldwide resurgence of group identities. In general it was, and still is, a very definite attempt to give recognition to and justification for people organising themselves into groups.[1]

At the same time Rustow wrote about a tide of democratic change "sweeping the world, not only in the once-monolithic communist regions but also in a wave that started in Mediterranean Europe in the mid-1970s and spread to Latin America, Asia, Africa and even South Africa"[2] – a global wave of democratisation based on "liberal" democratic principles.

The question that suddenly confronted the academic fraternity was: Is liberalism or "individualism" (the latter as one of the underlying principles of liberalism) not the direct opposite of communitarianism or groupism (the latter as one of the underlying principles of communitarianism)? This question, if answered affirmatively, would then have implied an academic reflection on a world that is developing into a mutually excluding and divergent division.

"The Liberal-Communitarian Debate"[3] as Markate Daly recaps it, was born. He qualifies the "debate" however as:

> "Not a conflict between the values of liberty and of community. The debate focuses on the theoretical and social consequences of stressing either liberty or community as the primary value in society."

The alternative of either stressing the one or the other in a society thus appears to be a society where the values of liberalism and the values of communitarianism complement one another. In other words, a society where individualism and groupism coexist without the one infringing upon the rights of the other.

However, while the idea of peaceful coexistence appears to be very attractive, it does appear also to be unattainable. Why else would there be a tendency for either liberty excluding

community or vice versa? More to the point: Are they not in principle at loggerheads with each other where the one has been introduced purposely to negate the other? This is precisely what George Ketab's introductory comments to *Notes on pluralism*[4] alludes to when he comments:

> "Constitutional democracy exists in order to give people a chance to be individuals."

However, as he continues, what we find today are "people-citizens of constitutional democracies – clamouring for groups".

Constitutional democracy has according to this analysis failed in its *raison d'être*. If group-clamouring is the order of the day, then the notion that democracy has conquered the world is a fallacy. We might even have to conclude that the third reverse wave of democratisation has started. Von Beyme's "third growth-wave of right-wing extremism" that started in the 1980s, was just the beginning.[5] Huntington not only had it right with his notion that historically "a primary wave of democratisation" is usually followed by "a reverse wave of democratisation.[6] His prediction that *The Clash of Civilisations?*[7] might be the future of world politics, has definite merits. If one considers the way in which their members belonging to a certain group unite countries on a broader scale, his words acquire prophetic status.

2. A SOLUTION?

Stephen Holmes appears to have the solution. In the same edition of *Social Research* from which Ketab was earlier quoted from, he reminds us that liberalism excludes "exclusive" groupism and vice versa. He writes:

> "They (liberals) strove to dilute or relativise group identity just enough to increase the chances for peaceful coexistence and mutually beneficial cooperation. … The starting point for liberalism is not the atomistic individual, then, but the moral and emotional conflict that ensues when differently socialised individuals clumsily rub shoulders and attempt to coexist. Liberals are not blind to loyalty, therefore, but instead assume that loyalty is sometimes good and sometimes bad, depending largely on the way conflicting affiliations and affinities are handled politically. While liberals are not anticommunitarian in a militant sense, they reasonably refuse to apotheosise loyalty as the source of all meaning and the highest human good, insisting that a sharp distinction be made between group identifications to be encouraged and factionalisms and xenophobias to be discouraged."[8]

If one now were to study Ketab's "group-clamouring" and remember Holmes' warning against factionalisms and xenophobias based on zealous misplaced loyalty, then the lasting impression still is that:

- the resurgence of groupism on a global scale is indeed very close to, if not very distinct from, examples of factionalisms and xenophobias in the making
- this resurgence might hold a sure threat to democracy and democratisation in the future.

However, the principle that we now have to take into account is that the accommodation of groupism in a liberal democratic dispensation is possible provided that group-loyalty does not turn bad, that is, when a member's opportunity to be an individual is threatened or, in extreme cases, annulled.

According to this principle neither individualism nor groupism is ever absolute. In a distinct context they each qualify to exist side-by-side given that each functions as "a relative interpretation of the absolute". The opposite of "a relative interpretation of the absolute" is mankind's tendency to want to make "absolute interpretations of the relative". We like to think of ourselves as masters of the universe where our interpretations carry absolute weight. In all of history this has been the cause of many conflicts where political ideas were considered to be absolute. If the idea then fails and does not get actualised, it is discarded. So if the practice of absolute individualism fails, the alternative is to resort to the other extreme … absolute communitarianism (with no democracy).[9]

Also, the fact that groupism is not discredited *per se*, says something about its value. Holmes refers to group identity diluted "just enough" to increase the changes for peaceful coexistence and of liberals being not anti-communitarian in a "militant" sense. This does not prove my next point but, within the context of Holmes's article, hints at the fact that there might be something commendable in groupism.

This commendable virtue is the principle that people organising into groups is a factual as well as a "necessary" condition of living. Organising as part of a social club in the pub-

lic-social sphere or merely relating to a family to share your personal-private life, hereby addresses the human need to belong. This need is a natural inclination of the "wise man" (homo sapiens) which prompts him or her to attach him- or herself to the living and the dead alike.

You join the local church or you buy yourself a new car – in both cases you address your need to belong by finding anchor-points in your life. When the storms of life then erupt, you have a shelter where you can wait for the storms to abate. Especially in our modern world where people are flooded with useless information, people escape their fate by clinging on to certain fixities.

It remains unequivocally true that a group can be cruel to, and destructive for, a democracy.[10] Yet the reality of bad groupism being so close to its good side, gives us no excuse to penalise groupism as such.

We are subsequently left with the general principle that groupism is valuable as long as it does not turn into exclusive groupism where the opportunity to be an individual is denied.

But having solved the problem of communitarianism versus liberalism in principle still requires us to give it a practical side. For the purpose of this paper we will make it practical in the public-social/political sphere where the encompassing group-mark is culture. A simple definition for culture would be the arts and other manifestations of human intellectual achievement regarded collectively.

For the purpose of our discussion and also as our next example of accommodating groupism in a liberal democratic dispensation, we refer to Avishai Margalit and Moshe Halbertal's definition. Once more in the fall 1994 edition of *Social Research*[11] one finds their definition of culture as:

> "A comprehensive way of life [with the latter] that can only exist in a group, in contrast to a lifestyle, which may characterise the particular manner in which individuals lead their lives."[12]

They then plead for the protection of culture according to which:

> "Human beings have a right to culture – not just any culture, but their own."

A culture can, however, as they readily admit:

> "Contradict(s) the status of the individual in a liberal society… when the group norms cannot be reconciled with the conception of the individual in a liberal society".[13]

Arranged marriages, for example, deny the partners their freedom of choice; so does the notion that women should not be allowed to get education; or the idea that all Afrikaans-speaking boys should play rugby. The list is endless. The bottom line remains that in the case of culture there again arises a conflict between groupism and individualism. Principally we can quickly subscribe the remedy as it was worked out in the above. This would then mean that the obligation is on the state to neutralise any cultural expression that disallows individual choice. The classic Sotho experience comes to mind.

3. THE SOTHO EXPERIENCE

As Sandra Burman reminds us,[14] the problem of dealing with "threatening groups" is nothing new in African and especially South African history:

> "In the early days of the Cape Administration, the magistrates were very aware of the hostility of the Sotho chiefs, and feared that, given the right conditions, they might attempt to lead a revolt against the Cape government."[15]

In their reaction, the Cape government tried to neutralise the chiefs by dividing them. Junior chiefs' interests were tied to those of the government by, for example, appointing them in the police force. Several of the sons of chiefs were also send to Cape Town in the hope that they would acquire a new set of values.[16] With a similar agenda of neutralising group-loyalty, the people were targeted. The chiefs' followers were weaned from them through "carefully calculated" alterations to Sotho law in exchange for government protection from unwelcome impositions by their chiefs.[17] Widows, for example, received the right to custody and a girl was allowed to marry against her father's wishes when she had reached the age of maturity.

Another way of weaning them away was by enticing the people with more money in the economy with traders buying goods from the Sotho in exchange for money. Missionaries also made their contribution by drawing people away from their Sotho heritage through conversions and European school education while, at the same time, condemning Sotho customs. For

their part district medical officers were discrediting traditional superstitions in the process of providing medical care.

Initially during the first eight years the efforts did pay off. However, in particular with the major changes to Sotho law, uneasiness with the white man's burden was beginning to show. Through several acts of defiance – among others the "War of the Guns" – the white man, his way of life, his religion and his laws were denunciated. Instead of expanding its influence and conversely eroding the power of the chiefs, the government's efforts drew the people closer to each other and to the chiefs.

On the whole the Sotho experience proves that:

> "For any government to introduce effective laws making radical changes in the daily practices of a population, it must either have the use of overwhelming force and be prepared to use it ruthlessly, or it must obtain the cooperation of the people … virtually nothing can be done without popular support."

The first possibility is by nature undemocratic. If the second option to neutralise exclusive groupism is taken, then the administration or government has to be satisfied with gradual changes to established customs based on consideration and consultation. In the process, the administration will also have to make inevitable concessions. It will further have to depend heavily on the assistance of missionaries and medical officers. As a final and most important recourse, the administration will have to accept that it needs the support of the paramount chief and his heir; the administration will also need to bolster its power.[18]

The solution for dealing with an exclusive public-social/political culture as an expression of groupism, is therefore the neutralisation of its group loyalty which will in turn lead to the eventual dilution or relativisation of that cultural group identity, or so it would seem. But the case is alas not as clear-cut as that. The complication steps in when we stop to consider the obligation/s of the liberal state.

4. THE LIBERAL STATE AND ITS OBLIGATION/S

The liberal state is primarily defined by its obligation to protect and advance individual rights. There ought to be no arguing in that. This is so, as Holmes has reminded us right at the outset, not because the atomistic individual is that important but because individual rights help to defuse the destructive effect of irrational group loyalties. Loyalty is herein not necessarily a bad thing but it can grow into one.

In the same manner that unrestrained loyalty threatens individual rights, it can also develop into a threat for state security. This situation arises when this kind of loyalty requires the further rejection of shared values and symbols of a society and indirectly of state authority. Margalit and Halbertal explain the connection:

> "(But) these shared values and symbols are meant to serve as the focus for citizens' identification with the state, as well as the source of their willingness to defend it even at the risk of their lives."[19]

The liberal state is thus called upon explicitly to protect the rights of the individual and implicitly itself. In order to do this, it must qualify as a "strong" state. "(S)tatelessness means rightlessness"[20] and "statelessness" is nothing else than "weak" statehood. A weak state will not only fail in its protection of individual rights; it will in tandem also contribute to its own downfall.

This notion that a strong state is needed for the protection of individual rights – as well as for its own survival – has been apparent in democratisation efforts where weak states have been associated with democracy and subsequently also with liberalism. The resultant dispensation was one where little to no rights could be guaranteed. In fact, newly democratised countries after 1974 have been plagued with lawlessness. In the former Soviet Union, for example, organised crime has been blooming since the abolishment of the old order. South Africa has proved itself to be another example of lawlessness and subsequent rightlessness. The law-abiding citizen in South Africa has been the victim of a relatively uncontrolled crime frenzy ever since the inception of democracy in 1994. For South Africans then, the third wave of democratisation did not only bring a new political dispensation. It also had a new criminal dispensation with which to contend.[21]

On the issue of identifying democracy and more in particular liberalism with a strong state, a substantive misunderstanding must be clarified. The healthy maintenance of law and order essential for the survival of the liberal state, is often depicted as an illiberal characteristic. In fact, statism is regarded as illiberal. The truth

is, however, that a liberal dispensation requires a strong state in order for it to exist. So liberalism utilises the state's authority for its own ends. The existence of centralised and bureaucratic states does, therefore, not mean that stateness itself is inherently illiberal.[22]

There is, however, an example of a liberal state's obligation that comes much closer to an illiberal obligation. This brings us once again back to our topic of discussion where we have, up to now, drawn the following conclusion:

- Groupism is valuable as long as it does not degenerate into exclusive groupism where the opportunity to be an individual is negatively affected or even denied.
- With an exclusive public-social/political culture as a case in point, the state has the obligation – or so it would seem – to neutralise its group loyalty through democratic means.

However, and this must certainly qualify as the proverbial upset of the apple cart, Margalit and Halbertal insist that human beings have a birthright[23] to their "own" culture even if that exclusive culture contradicts the status of the individual in the liberal society.

Moreover, the state might be required to:[24]

- "use illiberal means. For example, granting a particular cultural group the opportunity to preserve its cultural homogeneity in a given region under certain circumstances may exact the price of preventing outsiders from living there, even if they are willing to pay the going prices for homes in that area
- abjure its neutrality, in our view, not for the sake of the majority, but in order to make it possible for members of minority groups to retain their identity".

The state is thus expected to use illiberal means to condone illiberal behaviour. The justification is as follows:[25]

> "The right to culture is, thus, not the right to identify with a group but the right to secure one's personality identity."

Personality identity as opposed to personal identity (with the latter qualifying one as an anthropological individual) is what one becomes when one gives expression to, what we have called, "one's human need to belong". One's anchor-points or fixities in one's life accordingly determine one's identity.

CONCLUSION

The right to these fixities and the subsequent right to culture as a specific manifestation of groupism, is of extreme importance. The alternative is a society filled with schizophrenics where the only difference between you and your neighbour is the level of schizophrenia.

The state, however, is also of extreme importance, and here I have to underline Thomas Hobbes' claim that outside of political society the life of man is solitary, poor, nasty, brutish and short. Aside from the importance of the state keeping itself intact, is the state's obligation to uphold, protect and forward the liberal democratic dispensation.

In danger of running the gauntlet, I take up the gauntlet. I therefore submit the following for further discussion:

- Any cultural grouping in a liberal democratic dispensation must be allowed to exist, recognised and supported.
- An exclusive cultural grouping that contravenes liberal principles must also be allowed to exist, and be recognised and supported.
- The elements in the exclusive grouping that are illiberal should be gradually neutralised through democratic means.
- The responsible party for this type of neutralisation is one's provincial government.
- The way to go about it is to, among others:
  - Pull the exclusive culture into the liberal democratic dispensation through small tokens of recognition and appreciation – giving, for example, paramount duties and responsibilities to the culture – offering it the perks of the system.
  - Increasingly introduce capitalism, available education, and the right of freedom to conduct a personalised religion.

ENDNOTES

1) Hence also the preamble to "The Responsive Communitarian Platform: Rights and Responsibilities" – a document signed by over 50 proselytes united in their belief that "(n)either human existence nor individual liberty can be sustained for long outside the interdependent and overlapping communities to which they belong". (Published in *Responsive Community*, Winter 1991/2, No. 4).
2) Rustow, *Foreign Affairs*, Vol. 69, No. 4, p. 75.
3) Daly, *Communitarianism*, 1994, p. xix.
4) Ketab, *Social Research*, Vol. 61, No. 3, p. 511.
5) Von Beyme, *West European Politics*, Vol. 11, No. 2, pp. 1-18.
6) See Huntington's *The Third Wave: democratisation in the late twentieth century* (1991).
7) Huntington, *Foreign Affairs*, Vol. 72, No. 3, pp. 22-49. According to this: "…(T)he fundamental source of conflict in this new world will not be primarily ideological or primarily economic. The great divisions among humankind and the dominating source of conflict will be cultural. … The clash of civilisations will dominate global politics" (p. 22).
8) Holmes, *Social Research*, Vol. 61, No.3, pp. 601-602.
9) Further examples of "thinking" (next to a "relative interpretation of the absolute" and an "absolute interpretation of the relative"), are the "absolute interpretation of the absolute" which is impossible and thus amounts to sinlosism, and the "relative interpretation of the relative" which is an example of not thinking at all (hence the inverted commas accompanying thinking in the beginning of the sentence).
10) Take for instance the way in which organised crime is threatening the survival of newly founded democracies – a supreme example of factionalism and xenophobia which follows of course in the footsteps of its predecessor "the Mob" where the extended family justifies the misplaced loyalty.
11) See Margalit and Halbertal, *Social Research*, Vol. 61, No.3, pp. 491-510.
12) Ibid., p. 497.
13) Ibid., p. 491.
14) See *Chiefdom politics and alien law: Basutoland under Cape rule, 1871–1884* (1981).
15) Ibid., p. 61.
16) Ibid., p. 69. Noticeable is the fact that these newly recruited "government employees" were still allowed to speak at *pitsos* (public meetings) as chiefs rather than as government employees – an exception aimed at keeping the loyalty of their followers in tact.
17) Ibid., p. 75. "Carefully calculated" i.e. "without too greatly annoying the chiefs". Ibid., p.77.
18) Ibid., p. 185-191.
19) Margalit and Halbertal, *Social Research*, Vol. 61, No.3, p. 491.
20) Holmes, *Social Research*, Vol. 61, No.3, p. 605.
21) Taken to the extreme a weak state will have to surrender to anti-democratic forces – a reverse wave of democratisation. Unhealthy statehood therefore opens up the door for an oppressive regime. The citizenry of a democracy expect the state to deliver the virtue promised by that democracy and even though the virtue of individual rights is not for the sake of the individual (but for the sake of diffusing irrational group loyalties), it serves as a definite incentive for them to uphold the rules of that democracy. With the goods not being delivered and individual rights not being protected, the citizenry will in all likelihood reach for another messiah, in which case an oppressive alternative will gladly comply.
22) See Holmes, *Social Research*, Vol. 61, No.3, p. 605-609.
23) This birthright includes (pp. 498-499):
    • "the right to maintain a comprehensive way of life within the larger society without interference, and with only the limitation of the harm principle
    • the right to recognition of the community's way of life by the general society
    • the right to support for the way of life by the state's institutions so that the culture can flourish."
24) Margalit and Halbertal, *Social Research*, Vol. 61, No.3, p. 491-492.
25) Ibid., p.502.

The Impact of Constitutional Relationships Between the Three Spheres of Government: The South African Perspective

Sitembe Msaseni

ABSTRACT

Each state demonstrates its constitutional and philosophical approach in its system of government. It is extremely difficult to conceive any state that demonstrates its fundamental constitutional principles outside its system of government.

The overriding principles of the constitutional system in South Africa since the adoption of the 1909 and 1983 constitutions was a fragmented system of government. This paper seeks to venture and discuss the constitutional development that engulfed the country since the establishment of the Union in 1910, until the period when a democratic interim constitution was adopted in 1993. Furthermore, the paper discusses the underpinnings and profound implications of such pieces of legislation to the broader South African society.

The South African constitutional dispensation of the 1990s and beyond therefore articulates democratisation and transformation of structures or institutions of governance. The two phenomena have become common clichéd concepts. Nevertheless, constitutional reforms are inevitable. It is therefore a process that is unfolding, i.e., a means to realise the desired outcomes.

With all the constitutional endeavours, South Africa needed a constitution that would embrace a basic human rights philosophy. But adoption of a democratic constitution does not guarantee effective functioning of public institutions and realisation of national ideals. Rather it is just one recurring process that would enhance institutional transformation. A constitution should therefore be viewed as a guiding principle to a new socio-political, cultural and economic discourse.

INTRODUCTION

The Republic of South Africa is a constitutional democracy, henceforth the Constitution is viewed as a liberal piece of legislation. Furthermore, the Constitution is regarded as a hybrid piece of legislation based on principles of inclusiveness, representativeness, democracy, accountability and transparent government, aimed at promoting the general well being of the populace. The Constitution is indeed an acceptable final product of a collected negotiated settlement. The world views the South African Constitution as most liberal in the sense that it encapsulates the fundamental principles of human rights as enshrined in the United Nations Charter.

The Constitution also incorporates the socio-political and economic factors that characterise the South African system of government. It must also be stressed that the Constitution is fundamentally based on extensive research comparisons of several pieces of legislation from various countries. It is also the result of broad consultation with all stakeholders envisaged to be affected by the Constitution, including local and international interest groups (Msaseni, 1998).

The concept of hybrid emanates from the characteristics of the Constitution. In the context of the South African Constitution, hybrid entails that the Constitution has strong features of both federal and unitary systems of government. The concept of a quasi federal-unitary system of government was, of course, a com-

promise during the negotiation process, which negotiators were obliged to acknowledge and observe, based on the concept of "sharing of power" – as articulated by the late Joe Slovo. Prominent political scientists argued against the concept of power sharing and instead proposed a new phenomenon, which they termed "joint exercising of power".

The distinction between the two concepts is fluid if there is any difference at all, because the two terms were used interchangeably during and after the negotiation process. The underpinnings of these phenomena could be observed in the previous Government of National Unity (GNU), adopted after the 1994 general elections.

In the post-Mandela era – popularly termed "The Madiba Magic" – the two concepts are still by and large in operation in the Mbeki administration. The "final product" of the negotiation process culminated in the adoption of the Interim Constitution Act 200 of 1993. The interim legislation made provision for the creation of the GNU with various government structures, for example, nine provincial administrations and the establishment of transitional local councils, to mention just a few.

It is extremely difficult to conceptualise in practical terms the system of government that South Africa practices. Most people regard it as a tripartite alliance or relationship between business, government and labour. This paper seeks to address the following:

- The process of devolution of constitutional power between the national, provincial and local government spheres.
- The nature and extent of power disseminated to provincial and local administrations.
- The constitutional mandate of the three spheres of government to render public services to the local people.
- The type of power decentralised by the national government to lower government structures.
- A clear distinction between relative and absolute power is brought to the fore.

1. SYNOPSIS ON THE SOUTH AFRICAN CONSTITUTIONAL DISPENSATION

It is imperative to provide a brief synopsis of the several constitutional dispensation and political arrangements in South Africa since 1909. This is the period when the country adopted Act 1909, which later established what was to become a Union of South Africa. Furthermore, the Act created a framework of government. It was not, however, an absolute constitutional code for the country, rather it was a temporary provision. Since crucial matters were still being decided according to the Statute of Westminster, foreign and diplomatic relations were, for example, referred to the British governor-general, who was responsible for the administration of the colony (Marais and Driekerk, 1981:31).

Act 1909 made provision for the establishment of four major provinces, *inter alia*, two Boer Republics – the Transvaal and Orange Free State – and two British colonies – the Cape Province and Natal. The Act was inconsistent as far as its application was concerned to the four provinces. For example, citizens at the Cape were obliged to register as voters, irrespective of race, colour and/or ethnicity (Ibid., 1981:32).

This principle was applied differently in the other three provinces whereby non-white citizens were not allowed to exercise their democratic vote. In terms of the Act, article 137 makes a provision for equal protection of the two official languages – Dutch and English – which were entrenched in terms of article 152 of the 1909 Constitution.

This was one of the common constitutional principles applicable to all four provinces. Article 152 states that if Parliament intends to amend clauses 35 and 137, a two-thirds majority of both houses of Parliament was required, i.e. the House of Assembly and the Senate (Ibid., 1981:32). The adoption of the South African Constitution Act 1909 was not the end of constitutional reforms. Subsequent to Act 1909, the country once again adopted a "new" Constitution Act (Act 32 of 1961).

The Act brought significant changes. For example, the position of the governor-general was transformed to that of president, which advocated republicanism (Ibid., 1981:38). South Africa became a complete sovereign state but the concept of "distant rule" or "remote authority" remained intact even beyond the establishment of the republic (Act 1961).

The 1961 Constitution was not without its shortcomings – based on racial constitutional principles – because the majority of citizens

were excluded from participating in constitutional negotiations. This exclusion created discomfort among the excluded groups, and therefore the Constitution was declared illegitimate. In a sense, the legitimacy of the 1961 Act was challenged from many fronts. From these challenges another constitutional transformation was imminent.

Henceforth, the South African Constitution Act 110 of 1983 was adopted. The 1983 Act was a response to the exclusion of the majority from contributing constructively to the socio-political and economic transformation of the country. The major change advocated by the Act was the introduction of a tricameral parliamentary system.

Three houses of Parliament were established for the different ethnic groups, namely: the House of Representatives for coloured people, the House of Commons for whites and the House of Delegates for the Indian population. The constitutional transformation process that extended from 1909 to 1983 was regarded to be undemocratic and illegitimate because the process was not representative or inclusive, hence it was essential for the country to venture to another round of constitutional talks which commenced in 1990 (Marais, 1991:253).

The Republic of South Africa had eventually adopted its first democratic Interim Constitution Act 200 of 1993, after a long history of racial segregation and discrimination. The Interim Legislation, 1993 made provision for an opportunity for the country to hold its first non-racial democratic election in 1994, in which the majority of South Africans were granted an opportunity to exercise their votes and express their political will for the first time (Ibid., 1991:253).

The Independent Electoral Commission (IEC) and international observers declared the 1994 general elections free and fair. Subsequent to the general elections, the GNU was established under the leadership of Mandela, as the first black president. Several political parties that participated in the elections characterised the GNU, and their representation in all state apparatus was determined to a large extent by the number of votes obtained in the 1994 elections. The concept of proportional representation (PR) was advocated as an attempt to apply the concept of power sharing among political parties, irrespective of their size.

But there were two essential conditions or requirements to PR: a political party must have participated in the 1994 general elections and should obtain a minimum of five per cent of the vote. It is worth noting that the GNU was interim until the Constitutional Assembly – a structure which was tasked with the responsibility to frame the final constitution – adopted the Constitution Act 108 of 1996. Act 200 of 1993 made provision for the GNU to exist for a period of five years and thereafter it should cease to exist (Constitutional Talks, 1994/5).

The GNU comprised seven political parties that had participated in the 1994 elections. Furthermore, the government introduced two houses of Parliament, namely, the National Assembly and the Senate – the latter was later changed to the National Council of Provinces (NCOP). The South African system of government is not different from western democracies, because its Constitution acknowledges the separation of powers between the executive, judiciary and legislature. It therefore has a strong *triad-politika* ensuring checks and balances of the functions of each state branch. In terms of the Constitution the president is the head of the state, but the Constitution is the supreme law of the state (Constitution, 1996).

2. PROVINCIAL ADMINISTRATIONS

Before the 1994 general election, South Africa was constituted of four major provinces: the Cape Province, Natal, Orange Free State and Transvaal. After the 1994 elections, the country was demarcated into nine major provinces, which incorporated the former "black homelands and self-governing states" to a strong unitary and democratic system of government.

The jurisdictions of the various provinces are delineated in Part 1 of schedule 1 of the Constitution of the Republic of South Africa, 1993. The legislative authority of a province only applies within the territorial boundaries of the province concerned. Each of the nine provinces is constitutionally obliged to elect its own premier and executive council, which are responsible for the effective and efficient smooth running of the provincial administration (Constitution, 1993).

Finally, the provincial Legislative Assembly is a law-making authority for the province and it should not consist of fewer that 30 and not more than 100 members elected in accordance

with the principle of PR. A provincial legislature is elected for a period of five years (Van Der Waldt and Helmbold, 1995:84).

However, a provincial legislature cannot act *ultra-vires*. That is, it should act within the ambit of the law. Furthermore, it should function within the constitutional guidelines or parameters prescribed by the central government. Provincial laws therefore cannot contradict an act of Parliament. The provincial administrations operate in terms of delegated power or authority.

In terms of the national Constitution section 147, the provincial legislative authority is expected to uphold, observe and promote the national Constitution (Mckenzie, 2000:14).

The national Constitution makes provision for the establishment of a provincial constitution which may not be in conflict with an act of Parliament. As yet, only the Western Cape has adopted a provincial constitution. One therefore wonders as to the effectiveness of provincial constitutions in relation to the powers of provinces. As provincial and local government spheres do not have an absolute constitutional mandate or political will, they are therefore governed in accordance to the principles prescribed by the national Constitution.

Subsequent to the provision of the establishment of provincial constitution(s), the Senate House was abolished and substituted with the NCOP. The latter was created on the assumption that it would improve coordination of public functions and bring the government closer to the people. The NCOP consists of ten elected members from each province and the election of provincial delegates is based on PR (Ibid., 2000:7&14).

It should be noted that the NCOP has been criticised for being a mere rubber stamp of the National Assembly. Put differently, it has become a "gate keeper" or merely an extension of central government's constitutional obligations.

Complementary to this criticism, the Constitution has been amended to give executive powers to the Members of the Executive Council (MECs) at provincial spheres.

For instance, MECs have the authority to hire and fire public employees in their respective departments. This might be a stepping-stone to a spoil system practised in the American federal government (*Business Day*, 2000).

3. UNITARY VERSUS FEDERAL SYSTEM OF GOVERNMENT

The South African government system is fundamentally based on the principles of consensus and negotiated settlement, seeking agreement on several contested issues, namely: political participation, representation, integration, good governance, transformation and democratisation, as well as many topical or unresolved issues that still confront the Mbeki administration in the 21st century.

All these topical issues are enshrined in the Interim Constitution Act 200 of 1993 that was adopted as a building block to a system of government which the country adopted six years ago. The 1993 Constitution created a platform for further deliberations and negotiations on the preceding contested issues. The end product of such negotiation was the adoption of the final Constitution Act 108 of 1996. It has already been alluded to that the final Constitution is regarded by many international constitutional experts as the most liberal constitution in the world.

The aforementioned synopsis can be attributed to a profound assumption. During the formal negotiation that commenced at the beginning of 1990, a team of experts in constitutional matters as well as delegates from the National Party (NP) government and African National Congress (ANC) visited several countries as a conscious effort to compare their constitutions. Henceforth, the South African Constitution has both features of a unitary and federal system of government (Act 108, 1996). But it should be stressed that the final Constitution has established prominent unitary powers vested to the central government. Furthermore, it also created two other spheres of government – provincial and local government. In terms of chapter six of the Constitution, which deals with provincial matters and chapter seven which deals with local government issues, the latter two spheres of government are supposedly autonomous or independent entities.

The breakaway from the hierarchical relationship between the three spheres was based on levels or tiers of government, because they were not regarded as a self-reliant administration in their own right – they operated within the national broad policy directives formulated at the central government sphere. The paradigm shift from levels to the new functional concept

of spheres, denotes that the three spheres of government are equal partners in terms of the Constitution (Ibid., 1995:2).

Therefore, neither the central sphere nor the provincial government sphere should interfere in the domestic affairs of the local government sphere. The three spheres in the real conceptual framework of autonomy, have equal status so far as their administration is concerned. But one wonders how much autonomy or power has been devolved to local and provincial spheres, because the Constitution is silent on the issue of power distribution. There has been minimum devolution of power to both provincial and local government spheres.

Prominent scholars in the fields of Public Administration and Management as well as Political Studies have made an interesting observation that provincial and local government spheres in terms of the South African constitutional relationship, have what is referred to as relative political power as opposed to absolute power. The former entails that the two spheres of government cannot take decision(s) on a policy issue that will affect the country.

With relative political power the central government still has some control over provincial or local government administrations. In terms of relative political power, the central government has the right to intervene, particularly if provincial and local administrations are dysfunctional and do not provide the required capacity. There have been several instances whereby the central government was forced to intervene in various levels of administration at provincial and local level.

The concept of absolute political autonomy as espoused by many is a direct contrast to relative political power (Ibid., 1995:3). Absolute political power means complete or total control of local administration, without interference by the central government. With the foregoing synopsis of the constitutional relationship between the three spheres of government, one can infer that the relationship is that of central political control with minimum discretionary powers granted to provincial and local spheres.

The assumption of a constitutional relationship can be articulated from two essential theories, namely, political and financial relationships between the three spheres of government. The debate on the two theories is a daunting and unfolding one as it is embedded in the Constitution and it cannot be changed overnight, unless certain constitutional clauses are changed. Provincial and local spheres therefore cannot even begin to advocate or open discussions on financial powers if the debate on political power has not been resolved (Pierre, 1995:215).

Central government is reluctant to yield power to other spheres of government without it being in control of such spheres. The stance taken by the national government to centralise its power can be attributed to several factors: the legacy of the previous government, deeply rooted divisions within government structures and political and socio-economic considerations (Ibid., 1995:215).

Concerning the relationship between the three spheres of government, metaphorically speaking, one sphere cannot serve two masters at the same time, and therefore it should become responsive to the public and be accorded the autonomy it deserves to take policy decisions on pertinent issues (Idem, 1995:216).

It has already been said that the 1909 Act made provision for the establishment of four former colonies, which later became provinces. That system of provincial administration remained basically the same except with limited powers devolved by the central government. With the adoption of the Constitution Act 108 of 1996, both local and provincial spheres underwent drastic transformation, for example, the provincial administration was granted more constitutional obligations and competencies than was the case with the previous constitutional dispensation.

But the constitutional relationship between central and provincial government is fluid. Although the national Constitution sets guidelines and a list of provincial powers or competencies, there is lack of absolute clarity as to where the powers and functions of national government stop and where those of provinces begin (World Bank Report, 1999/2000:6).

This lack of a clear mandate has culminated in litigation or legal wrangling in which provincial authorities have taken up the matter with the Constitutional Court to resolve the impasse. It should be indicated that the Constitutional Court has been the upholder of the rights of the provinces and in its certification of the new Constitution it made it clear that provinces are here to stay (Ibid., 2000:7).

4. RETHINKING PROVINCIAL GOVERNMENT

Public institutions around the world seek greater self-determination or self-reliance in order to influence central decisions. This demand has been conceptualised as localisation or, put simply, decentralisation. Approximately 95% of democracies have established subnational governments where devolution of political, fiscal and administrative power to spheres of government has been the order of the day. Decentralisation of such powers is, however, often haphazardly executed and decision makers fail to fully comprehend the dynamic exegesis of the transformation process (Idem, 1999/2000:107).

Furthermore, decentralisation models are frequently exported from one country to another without due regard to local circumstances, which are unique and peculiar. The phenomenon of decentralisation is neither good nor bad, rather it is a means to an end, often imposed by political and socio-economic realities. The positive aspects of decentralisation are immense: it improves efficiency, responsiveness of government to local demands and it also accommodates divergent political forces to have synergist mutual relationships to accomplish the predetermined government objectives. On the other hand, negative aspects of abortive decentralisation impose threats to macroeconomic development and growth, as well as political stability and disrupt service delivery, performance and equity (Ibid., 1999/2000:111).

5. BENEFITS OF DECENTRALISATION

The primary purpose of decentralisation is to bring together opposition parties into a formal rule-bound bargaining process. It also unites a deeply divided country, especially along racial and ethnic lines. Thus decentralisation illustrates a concrete mechanism to national reconciliation and unity. A classic argument in support of decentralisation is that it increases effective and responsive government because locally elected representatives know their electorates better than the central government. It goes without saying that geographical proximity makes it easier for local people to hold political representatives accountable for their performance (Smith, 1991:1-2).

What provincial administrations can achieve depends really on the resources and responsibilities granted, and on the power of central government to override their decisions. But conceding power to local authorities is no guarantee that local needs and interests would be reflected in local politics (Idem., 1999/2000: 112).

Elcock summed up the aforementioned benefits of decentralisation in terms of a mutual relationship between the three spheres of government and the purpose of public organisations:

> "…(t)o develop a new kind of organisational culture which is capable of being more open, democratic and self critical and organisational culture which is anxious to learn and eager to appraise its own performance. Such an organisation is very different from the service provision we have labelled bureaucratic paternalism" (Elcock, 1991:39).

6. DECENTRALISATION AND DEVOLUTION OF POWERS

A fixed and essential relationship exists between observation as a mode of knowledge and decentralisation. The concept *decentralisation* is indeed a misnomer – it appears to have been derived from centralisation. Furthermore, a decentralised constitutional system would indeed be decentralised in an original manner – it would be decentralised simply because it consists of autonomous entities. This type of independence is authentic, it is not derived from the centre or unity as is the case with South African constitutional relationships between the three spheres of government (Marais, 1991 5).

According to the *World Bank Development Report 1999/2000*, decentralisation means the transfer of political, fiscal and administrative powers to subnational units of government. The report states further that the central government has not decentralised unless the country encourages "autonomous elected local authorities capable of taking binding decisions in at least some policy area".

Decentralisation could therefore bring together existing local authorities or expand their resources and responsibilities. In short, decentralisation shifts the focus of accountability from central government to elected local constituencies.

In this respect decentralisation in the South African context will leave aside a fluid political

discourse that surrounds the phenomenon and other measures that reduce political autonomy of provincial and local government spheres and the relationships between bureaucracy and society. Decentralisation is therefore both a cause and effect of the changing relationship between three spheres of government (Idem, 1999/ 2000).

Elcock observed that decentralisation and areas of management embrace a wide spectrum of mutual relationships which public institutions have developed within their jurisdictions to make public services more accessible and affordable to local inhabitants, in order to enhance responsiveness to their needs and wants.

The spectrum of mutual relationship, which Elcock talks about, presupposes to encourage concerted and collaborative efforts to all stakeholders responsible for service delivery. He further accentuates his interpretation of mutual relationship by introducing the concept of corporate management "from below" as opposed to "from above. The corporate management concept encourages cross-departmental working relations among relatively junior staff, what Elcock called "street bureaucrats" (Ibid., 1991: 56).

CONCLUSION

The constitutional relationship in South Africa between the three spheres of government emanates from three successive comparative constitutional dispensations. The three constitutional dispensations are compared in terms of socio-political, economic and cultural factors, which enhance meaningful participation and the contribution of all South Africans to a coherent transformation and democratisation of structures of governance.

The system of government in South Africa is therefore influenced by and large by three prominent constitutional developments that shape the nature and extent of powers devolved to provincial administrations by the central government sphere. The South African system is regarded as semi-federal with strong central powers vested in the National Assembly. The Constitution itself is a hybrid type, that is, it has prominent characteristics of both federalism and unionism. The Constitutional relationship establishes guiding principles for effective and efficient execution of public policies by state departments or institutions that are responsible for the rendering of services. From a South African perspective, Constitution Act 108 of 1996 is the supreme law for the state. The adoption of the Interim Constitution Act 108 resulted in the introduction of the GNU, based on the principle of "sharing of power" or "joint exercising of power".

In the final analysis, the constitutional relationship between the three spheres of government is more or less relative as opposed to absolute socio-political and economic relations. Furthermore, the Constitution is not elucidative in respect of how much power should be devolved to both provincial and local spheres of government. By the latter point, it is assumed that it would create mistrust between the three spheres of government as far as decentralisation of powers are concerned.

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Transformational Challenges in Provincial Administration

Masilo Mabeta

INTRODUCTION

Codesa's constitutional debates in the early 1990s centred on whether South Africa should have a unitary or federal form of government. The advocates of a unitary state were probably concerned about the fragmentation of our society into racial and ethnic entities, which had been characterised and formed the basis of apartheid's separate development governance. They would naturally see the advent of a federal form of government as one that perpetuates a fractured socio-political order.

Federalists had always argued against the centralisation of power in a central government and the diminishing of political responsibility at regional and local level because this had all the ingredients to erode democratic participation at local level, leading to the centralisation of power in the hands of the executive at central government level.

This view is reinforced by the authoritarian nature of the apartheid state that was being negotiated out of power. The apartheid government was one of the worst manifestations of a unitary state. It does not follow, however, that a unitary form of government need necessarily be undemocratic.

For the purposes of this discussion we now look at the form of provincial government established under South Africa's Constitution. It is safe to say that this country's constitutional structure is a compromise between centralised and federal government. Our provincial structures enjoy a measure of autonomy. This can be seen by the existence of provincial legislatures that have a mandate to matters of a provincial nature, where these matters do not trespass on central government's sphere of legislation and governance. The increased measure of participation should under normal circumstances facilitate better delivery of services.

South Africa has been characterised by uneven development – in a typical colonial development sense – where a modern infrastructure and developed first world economy exist alongside with an Iron Age substructure of underdevelopment. Attempts by the apartheid regime to reverse this trend by creating development points and providing incentives to attract industries to rural communities, had minimal success because these measures were based on an economy that had relied on the migratory cheap labour system – which drew that labour from rural labour reserves. There was little incentive for major industries to relocate to rural areas where there was no infrastructure for development.

Our provincial government under a democratic government has the mammoth task of correcting that historical imbalance. At present, there is little evidence that provincial government is tackling this problem, nor is there any real understanding of the nature of the problem or any real commitment from central government to see development and delivery of services at provincial and local government level.

However, a constitutional framework exists for government to assert itself at provincial level to ensure that budgets are allocated to it to improve roads, provide appropriate and quality education, adequate health services as well as to see that social benefits are properly utilised for that purpose. Good performance by

provincial government would ensure an empowering environment for local government structures to whom the responsibility for service delivery at grassroots level would be filtered.

The perception that the Bantustan apartheid structure did more for the people on the ground in the provinces is a serious indictment of the performance of central and provincial government. The deterioration of health and social services and the collapse of the education system testify to uncaring provincial governments that are tarnished by corruption, nepotism and inefficiency. The situation is aggravated by rampant unemployment resulting from economic stagnation.

1. GOOD, CLEAN GOVERNANCE

The core issue in United Democratic Movement (UDM) policy on provincial administration and local government is that of good and clean governance. To realise this objective our society must address the issue that centres on the power of provinces and their capacity to function in a manner that is efficient and accountable.

The current structure of the provincial administrations and their relationship with central government militate against the creation of efficient and accountable management systems. The prevalent culture in the present administrations is that of inefficiency and corruption, which emanates from poor training, lack of adequate resources, institutional fragility, duplication of services, conflicting power between provincial and central government, partisan orientation of managers and the total neglect of codes of conduct in various aspects of service delivery administrations.

This is very important because institutional chaos and non-accountability in various areas of the public sector derives from the subordination of standard administrative norms and practices to the interests served by a corrupt and unofficial network of operations, at the expense of ordinary citizens whose interests are neglected and disregarded.

The distribution of resources between the urban and rural communities is inequitable. The government still seems to adhere to apartheid's uneven developmental patterns which concentrated resources in urban communities while relegating rural areas to the economic back waters of neglect, impoverishment and unemployment.

In the housing sector these is a clear unequal distribution of resources because the housing policy and its subsidy schemes focus on urban dwellers and excludes other taxpayers who are the rural dwellers.

Although we appreciate that annexed rural areas by urban municipalities will benefit in the short-term, it must be pointed out that the national government has no long-term national strategy for development in rural areas. The present approach creates the impression that unannexed rural communities will not benefit from local government resource allocation and service deliveries. The truth of the matter is, however, that people in rural communities need water, roads, sewerage systems, electricity, etc.

Government has not been able to provide answers to all the questions arising from the proposed annexation of rural communities to the municipalities to which they are adjacent. The questions are:

- Will government provide the necessary infrastructure in the annexed territories, which will be comparable to the existing one in the municipal area to which they are annexed?
- How does government address the perception of the people in the proposed annexed territories that they will be used to beef up the ailing finances of the villages' boards which are responsible for the general decline and rot in these small, rural towns?
- How does government respond, on the other hand, to the fears of the urban municipal dwellers, who believe that they will be taxed to provide financial resources for the upgrading of annexed undeveloped territories?

All these questions give credence to the contention that central government makes far-reaching decisions unilaterally in the corridors of power without proper consultation with relevant stakeholders at the lowest levels of civic society. The poor continue to suffer in poverty and general neglect by a government that has come to be seen as uncaring and non-responsive to the needs of those who put it in power.

2. TRANSFORMATIONAL PROBLEMS FACING PROVINCIAL ADMINISTRATIONS IN SOUTH AFRICA

South Africa has a history of racial division and serious inequalities that coincides with these

racial divisions. The past policies have exploited tribal and ethnic diversity to reinforce the racial policies and the apartheid ground plan.

South Africa is a society with diverse groups and corresponding interests and concerns. These cannot be wished away by the Constitution that highlights non-racialism and unity. Antagonism and mutual suspicion will continue to mar our society for some time yet. We need a government that will seriously address the negative impact of these divisions. This needs to be done by pursuing policies that begin to erode these divisions rather than reinforce them by legitimising them.

It is not within the scope of this paper to expand on all the difficult issues facing the transformation agenda in our provincial administration. However, two critical problems, often overlooked if not reluctantly acknowledged, are worth mentioning.

First, is the difficulty in dismantling and reassembling the various apartheid era, local government structures, so meticulously crafted through the Group Areas Act and its numerous enabling regulations. Second, is the failure of our legislation to take into account such factors as financial constraints, party political influence, intergovernmental relations and traditional institutions in the establishment of spheres of authority between central and provincial governments. The result of this tendency is the demise of meaningful legislative and executive autonomy which provinces or regions would require in order to satisfy the most critical and immediate needs of the people in their jurisdictions.

The way in which power is defined in both the Interim and final constitutions – giving both levels legislative jurisdiction over the same functions – not only causes confusion as to the accountable level of government responsibility for a particular function, it also encourages the solving of disputes by means of intergovernmental agreements, which in turn could reduce transparency and increase public uncertainty as to the allocation of particular functions.

3. SPECIFIC TRANSFORMATIONAL INNOVATIONS

Specific transformational innovations need to be implemented. They are as follows:

- Decentralisation of central government so that more power is given to the provinces.
- Provinces should develop their own sources of revenue through taxation.
- Taxes should be centralised or decentralised in line with subsidiary principles, effective execution and management capacity.
- Viable local government infrastructures and local institutions should be established.
- Capacity building points for local people should be established.
- Soft economic borders should be reconciled with hard political borders based on what is economically and socially viable.
- National consultation should take place dealing with the desirability of fewer provinces based on a costed norms approach in which the distribution of resources is based on finances available for basic social needs.

CONCLUSION

South Africa is a highly heterogeneous society. Provincial strategies for administration and development should therefore mobilise local human and institutional resources in an integrative manner. As the local focus of administration and development is strengthened, so will the gap be closed between rural and urban centres, the rich and the poor, the landed and the landless. This will be done through the full participation of local stakeholders in what are local issues in the first place. Such an approach will make a meaningful contribution to national unity and integration. This will reduce the tension between democratic expectations of the majority of citizens and politico-administrative control of state organs at both national and provincial levels. Namibia and Botswana are appropriate African examples in this respect.

The necessary formula for these transformative innovations is, in short, strong provincial governments with meaningful powers and adequate financial resource bases.

The IFP Perspective on Provincial Government

Narend Singh

INTRODUCTION

I welcome the opportunity to participate in this international conference on provincial government, knowing that in South Africa there exists an exceptional case study for the ever present conflict between the provinces and the national government around the issue of decentralisation and the devolution of powers. The Inkatha Freedom Party (IFP) strongly believes in, and constantly advocates, greater local autonomy.

South Africa has been the battleground of centralistic autonomy for almost a century. Since before the Act of Union, the forces of centralisation have fought those of local autonomy in an ongoing battle, the outcome of which will determine the future success of our country. In this context, diverse political agendas have assumed various sides of this conflict throughout the different stages of history. One may trace the origins of this conflict to before 1910, and follow its path running parallel to the development of South Africa.

Apartheid was a complex system of constitutional engineering, using a carefully crafted and specifically designed local autonomy for the purposes of racial oppression. The main components of this system were territorial segregation of populations, the division of the population into racial groups, segregation by territory and the prohibition of movement from one part of the territory to another without the necessary authorisation. The apartheid system was formally equal for all, but substantially unequal due to the obvious and strictly maintained differences of affluence and economic power. This divide would make it unlikely for white people to want to settle in black townships, while black people were blatantly barred from entering white areas after dark, without a permit to do so.

Apartheid was characterised by self-administration and different governments for each subject matter. With the living memory of this terrible abuse of local autonomy for uses of racial oppression, when the question was posed of moving beyond apartheid to enable democracy to rule South Africa, the pendulum swung in the opposite direction. The perception was that local autonomy was bad and centralism good.

At the outset, the African National Congress (ANC) was the dominating factor in the liberation movement. Both the ANC and the Pan Africanist Congress (PAC) operated under the suggestions of the communist and Marxist ideology of the time and were trapped in the conflict and dynamics of the Cold War. Both subscribed to a centralistic model. The notion was that it was necessary to redress the legacy of the past, which was one of perverted local autonomy. It was believed that this could only be done by virtue of a strong central government. The other consideration was that, obviously, much had to be done in order to achieve the call for social justice, which remains the unfinished agenda of South Africa after liberation, and that this too could only be done by a strong government.

The premise was that we need to have a strong government to perform a monumental job. The perception persisted that a strong government necessarily meant a central government. Indeed, it was unquestioningly believed that the stronger the central government, the greater the possibility of successfully complet-

ing the daunting task confronting us. That which the IFP always knew, was finally proven only once confronted with the real issues. Since 1972, the leader of the IFP, Prince Mangosuthu Buthelezi, put forward his vision for federalism and pluralism which contradicted the established beliefs. Dr Buthelezi proposed that in order to fulfil such a task as faced South Africa, one would need to rely on the forces and strength of all.

1. DEVOLUTION OF POWER AND LOCAL AUTONOMY

The IFP believes that only the devolution of powers and local autonomy could muster the forces of every South African towards a collective effort of changing society. Society would need to be changed from the bottom up, and not from the top down. We believe in empowering the lower levels of government and in devolution of powers. We are not interested in talking down to the people, but are committed to enabling the people to speak up and make themselves heard, which we believe can only be done by allowing the people in the province to determine how the province should be administered. This system would encourage policy differentiation and competition among provinces and would be best suited to serving the needs of their citizens. Such an approach would maximise our capacity. The IFP provided this input in the negotiation process. In retrospect it is clear that the negotiation process really concerned the form of state. This remained the fundamental issue which set the ANC and the IFP apart, to the point of almost collapsing negotiations. The impending collapse was averted through international mediation at the last moment, and by the promise that international mediation would carry over after the 1994 elections.

Devolution of power, federalism and policy differentiation leads to healthy competition, which can and should develop among provinces on how to best serve the needs of their respective citizens. Provinces should pursue their own path towards institutional excellence in an effort which motivates them to excel, rather than assuming the present uniformity as the single yard-stick upon which performance is measured.

In addition, the IFP favours a justiciable divide between government and civil society, also based on the notion of subsidiarity, so as to ensure the pre-eminence of civil society over government. Civil society, including families, traditional communities, trade unions, universities and professional associations should be empowered to exercise individual autonomy and to regulate their own interests whenever there is no compelling reason for government to interfere.

International mediation was likewise concerned with the form of state. The dominating question on the table was whether South Africa should be a unitary, a regional or a federal state, and the degree of autonomy to be given to provinces. The form of state is defined not only by the existence of provinces, nor by their type, but also particularly by the level of autonomy bestowed upon each province. We see federalism as the fastest way of building capacity at the lower level of government to enhance delivery, reconstruction and development. We also understand the dangers of a centralisation of power and advocate devolution of powers to the provincial and local level. After years of oppression, we seek to place the power to govern as close to the people as possible. Genuine democracy would require a federal system. There is no point in bestowing powers when provinces remain under the constant control of "Big Brother" and lack the autonomy to exercise those powers. The end result is a system which has been denounced both by the Premier of KwaZulu-Natal (KZN) and by the leader of the IFP, who now sits in government.

The present system, developing out of the established and misguided belief in a centralist government, has been denounced as a system which is neither fish nor fowl. It has all the costs of a federal system, with few of its benefits. The IFP has called for the inadequacies of this system to be overcome, posing the challenge of either abolishing provinces or making them work. Provinces have become a section in a conveyor belt which emanates from the centre towards the periphery. There is unity of policy formulation, unity of legislation and unity of action.

What were originally the minimum standards in the Constitution that made provision for minimum standards across the territory, have become the only standards which govern all the matters of provincial competence, as set out in schedules 4 and 5 of the Constitution.

2. PROVINCIAL COMPETENCE

Schedule 4 of the Constitution lists areas where provinces have concurrent legislative competence with the central government, while schedule 5 lists areas which are exclusive competences of provinces. These latter matters of exclusive competence are quite marginal and for purposes of our discussions it may suffice to focus on those functional areas in which the legislative powers of provinces and the national government are concurrent.

2.1 Functional areas

Some of the most important functional areas are quite broad and include:

- agriculture
- airports (international and national)
- consumer protection
- cultural matters
- disaster management
- education at all levels (excluding tertiary education)
- environment
- health services
- housing
- industrial promotion
- language policy
- libraries
- museums
- nature conservation
- population development
- provincial public enterprises
- public transport
- regional planning and development
- tourism
- trade
- welfare services.

In spite of the constitutional provisions, these listed functional areas of provincial competence are in fact regulated by national legislation and national policies alone. National legislation controls housing and education, which is the same across the board whether in KZN or the Western Cape or the Northern Cape. Even though people speak different languages and have different needs, cultures and aspirations, there is no space for policy differentiation. There is likewise no space for policies to test and attempt different ideas or different models, to discover what works better. Similarly, there is no space for provinces to compete with one another on how best to serve the interests of the country and their own constituencies. Provinces have effectively become implementers of policies developed at the central level. They are little more than administrators.

Furthermore, the eradication of persistent poverty, and the reduction of the extreme inequalities of the apartheid era, remain the IFP's fundamental challenge and the core objective of the overall policy for reconstruction and development. Sound governance and decentralised decision making and management have been recognised as being essential for effective and accountable delivery of essential public services, promoting partnerships for local empowerment and local economic development. Racial divisions were maintained at all levels of government in the past, and were reflected in vast inequities in service delivery and access to opportunities for development.

These new structures are faced with huge challenges, including capacity building, transformation, delivery and consolidation of democratic forms of government. The decentralisation to provincial government of the delivery responsibility for the bulk of priority services, is the key to translating policies for poverty eradication and inequality reduction into specific action programmes.

In spite of their administrative nature, provinces have established premiers and a legislature which is expensive and cumbersome. In the end, the acid test of what a province does and how much it produces is in its legislation. Considering the past six years and comparing legislation on so-called provincial matters passed at national level with that passed by provinces, it is not difficult to determine that basically all legislation is national and provinces have failed to perform. The question I wish to put forward is one we are asking ourselves in many circles of our provinces: What went wrong? In answering this question, we will expose the lesson which must be learned from South Africa's experience.

3. WHAT WENT WRONG?

In South Africa, we have adopted a notion of full concurrent legislative powers. The powers of provinces and of the national government in matters of provincial competence are equal. Both have the full measure of legislative powers. It was understood that provincial powers would overcome national powers, except where an override could be invoked. In the absence of

an override, the provincial powers would prevail. Instances of overrides were set down in the Constitution, but are so broad, vague and generalised that no one could definitively state where and when they would apply. The end result has been that central government has legislated on everything, and provincial government on almost nothing.

It is significant that after almost six years, in spite of our having had an enormous amount of constitutional litigation on almost anything and everything, not one single case has been brought before the Constitutional Court on the adjudication of overrides. This would seem to indicate that there has been no conflict between national and provincial legislation, in spite of the fact that this should have been the case. It may be seen, however, that full concurrent powers in the Constitution failed to create a conflict simply because provinces are not legislating. The lesson that emerges can be captured in the comment of a Constitutional Court judge who, when looking at the system of full concurrence, likened it to forcing the lamb to lie beside the lion.

It is true that cooperative governance as shaped in our Constitution is, to a certain extent, the lamb being forced to lie beside the lion. The South African Constitution requires provinces to work very closely with the central government. Provinces cannot move unless central government consents, and vice versa. But we are not equal. The centre of government is provided with a far greater capacity. Moreover, a mechanism has been set in place to ensure that cooperative governance is exercised throughout. As the provincial Minister of Agriculture, I am called along with my colleagues into a joint meeting of Ministers and Members of the Executive Council (Minmec).

Provincial ministers, such as myself, are expected to meet with respective provincial and national colleagues and to discuss any policy matter. Usually the agenda is held by the central government.

Through the Minmec, Ministers and Members of the Executive Council (MECs) create an input for the formulation of national policy. Such input is, however, not always taken aboard. Nevertheless, the Minmec creates an input which travels up toward the central government, rather than enabling provinces to receive capacity and ideas through which we could develop our own action at a provincial level. An identical problem developed around the National Council of Provinces (NCOP). The NCOP consists of 90 members, each drawn from and representing the nine provincial legislatures. Members of the NCOP participate in the formulation and adoption of laws of the national government in respect of provincial and other matters. In respect of provincial matters, they naturally have greater influence. Bills affecting provinces are regulated by section 76 of the Constitution, while other matters are regulated by section 75.

Each delegation from each of the provinces consists of ten members, five of which are permanent and five are selected by the provincial legislature on an ad hoc basis. Depending on whether it is a provincial or non-provincial matter, the NCOP operates on the basis of mandates it receives from the provincial legislature. Effectively, the provincial legislature spends most of its time involved in the adoption of legislation not within its precincts, but rather at a national level in Cape Town. Provinces are required to prepare a mandate and send delegates across the country with the purpose of holding lengthy discussions. The focus of the provincial legislature is that of contributing to the formulation of national legislation which can only apply uniformly across the country. Once again, a conveyor belt system is in place where little is developed at the bottom for the bottom.

The entire system demands reconsideration. I believe that South Africa is an exceptional country. For more than 100 years it has excelled in constitutional engineering. However, in the past, such engineering has been applied for purposes of oppression. Today, constitutional engineering must be applied for the full liberation of our people. We believe that constitution-making must continue. An awareness of this need exists because our Constitution has a peculiarity which is not found in many other constitutions. In South Africa, we have the constitutional obligation to review the Constitution annually, to which end a Constitutional Review Committee has been established by the Constitution itself.

The Constitutional Review Committee has not met as frequently as required, but is nevertheless operating and deliberating. It is in this forum that the issue of the form of state contin-

ues to be tabled and debated. There remain outstanding amendments designed to rethink our system of institutional government across the issue of local autonomy and decentralisation, many of which the IFP has promoted. There is a further problem in our system of government, which is common to many other countries but is particularly sensitive in our own, given the features of centralisation which I described earlier. This is the problem of unfunded mandates.

4. UNFUNDED MANDATES

Unable to determine for ourselves what is required, and unable to pursue such requirements, provinces are forced to pursue the goals of central government. Furthermore, this is to be done with the money allocated for that purpose. Thus the process of determining needs and that of allocating money to fulfil them somehow lacks a common policy framework and a common decision-making centre. Funding is received as *ex post facto*, as a distribution of what is available through the constitutional mechanism of the fiscal and financial commission determining the share of national revenues to be given to provinces. In basic terms, this commission takes the entire cake and determines what slice of the cake needs to go to provinces.

From this point, provinces have the power and discretion to allocate such funding amongst their functions and various mandates, but it is an *ex post* arrangement which does not feature in the determination of obligations and responsibilities. Obligations and responsibilities are determined centrally through the mandates given to provinces. Hence, the problem of unfunded mandates becomes unusually prominent.

5. TRADITIONAL COMMUNITIES

In respect of local government, there is a perception which I, for one, share: that the pendulum has swung from one extreme to the other in a country which has the most diverse population and variety of forms of societal organisation. South Africa is home to traditional communities, which exist and operate on the basis of communal principles and customary law, but also to highly industrialised segments of urban areas. Given this context, it seems almost absurd that we could impose a uniform system of local government, based on a unified notion of municipalities, which is determined at the central level, although this is indeed what we are doing.

The possibility provided for in the Interim Constitution – which is no longer given to provinces – is for provinces to design their own model of local government to accommodate our diversity. In the province of KZN, one of the most relevant issues is the existence of a strong and very valuable group of traditional leaders, who are important not only because of the position of relevance they exercise, but because they reflect a specific model of societal organisation. They are the symbol of communities which operate on the basis of communal land and a distinct legal system, and which share services.

Our commitment is to enable these communities to take full advantage of the developmental opportunities made available by our government, and transition them toward modernity and greater levels of progress. However, we believe that they should be entitled to do so while respecting the features of their established societal organisation. We wish to transform traditional communities into modernity, not out of existence. We believe that they are capable of becoming part of an advanced society while preserving some of the communalistic features of their societal organisation.

Obviously, this cannot be done unless we adjust the present model of local governance and provide a more relevant role for traditional leadership. Under the present legislation, however, we are bound by a unified model which was never designed to take traditional leadership into account.

The IFP strongly believes in the recognition of the autonomy of traditional communities, and the protection of traditional leadership within the overall system of pluralism.

Traditional communities should be recognised as a form of self-governance at community level which consequently entitles participation in other levels of government. In local government there should be *ex officio* positions for traditional leaders in the category ‘‘C’’ municipal councils. In the provincial government, the House of Traditional Leaders should advise on all bills placed before the legislature, and exercise executive functions with respect to traditional communities. At a national government level the IFP favours a Council of Tradi-

tional Leaders (COTL) which would relate to the Houses in much the same way as the NCOP does with respect to the provincial legislatures. The COTL should advise on all bills passed before Parliament, and should work closely with the NCOP.

By accommodating the role of traditional communities within the system of governance, there are certain advantages to be gained. For instance, the delivery of housing could be speeded up by delegating traditional authorities to address needs in their own communal property structures.

The accountability of traditional leaders to their communities can be preserved by limiting central government remuneration.

This one example could be duplicated in respect of many other contexts throughout South Africa. Cognisant of these truths, one of the messages I would wish to convey is that, if attention must be given in terms of maximising the benefits of local governance, it must be done at the local government level. Local government must be designed by local government.

6. NATIONAL SUPERVISION OF PROVINCIAL ADMINISTRATION

In addition to the centralised system of powers, our institutional system of government maintains some convincing means of deterring local autonomy. For instance, Section 100 of the Constitution enables central government to intervene in the exercise of provincial functions whenever it feels that a task is not being adequately fulfilled.

Section 100 reads:

(1) "When a province cannot or does not fulfil an executive obligation in terms of legislation or the Constitution, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including –

(a) "issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and

(b) assuming responsibility for the relevant obligation in that province to the extent necessary to –

(i) maintain essential national standards or meet established minimum standards for the rendering of a service;

(ii) maintain economic unity;

(iii) maintain national security; or

(iv) preventing that province from taking unreasonable action that is prejudicial to the interests of another province or to the country as a whole.

(2) If the national executive intervenes in a province in terms of subsection (1)(b) –

(a) notice of the intervention must be tabled in the National Council of Provinces within 14 days of its first sitting after the intervention began;

(b) the intervention must end unless it is approved by the Council within 30 days of its first sitting after the intervention began; and

(c) the Council must review the intervention regularly and make any appropriate recommendations to the national executive.

(3) National legislation may regulate the process established by this section."

Naturally, this section will rarely be invoked. Yet it plays in the subconscious mind of provinces. Indeed, this is the chilling effect that a section of this nature may have. We are aware of how often such a section has been applied in a country such as India, where it had a tremendous affect on the development of India's local autonomy. Moreover, there are similar provisions in respect of local government which enable the central government – and, at times, the provincial government – to intervene if there is a concern.

Furthermore, over and above what is already expressed in the Constitution, the system is becoming increasingly more centralised and the presence of the central government is increasingly felt by virtue of ad hoc arrangements established within the system of so-called cooperative governance. In this respect, reference must be made to the President's Coordinating Council (PCC) in which the President has convened all premiers of provinces. In constitutional terms, premiers are accountable to the members of our Parliament and to the people. They are not accountable to the President.

But, effectively, through the PCC the perception is created that premiers are indeed accountable to the President. The premiers of our provinces are convened by the President, who asks questions and creates situations where each premier feels accountable to the President

and his own colleagues. Once again, this is an element of distortion of the system which runs deep in the collective institutional psyche.

One may also mention the relationship which has developed between the provincial government administration and national administration. One of the most peculiar aspects of the South African system, which is entirely unknown in most other federal systems, is that we have a unified civil service. In terms of the Constitution, the civil service employed in provinces is part of the national civil service, with the consequence that the central government has control over how our civil service is organised, the conditions of employment, structure, positions and organisation. A centralised civil service commission has been established which creates an additional element of continuity from the provincial civil service to the national civil service.

This makes it increasingly difficult for someone in my position to develop policies for my own department which divert from the path or the pathos of the national Department of Agriculture, as my own civil servants are in constant working relationships with national civil servants. The centralisation of the civil service is also increased at the higher levels of government by the fact that, for instance, all director-generals are appointed by the President, and not by the relevant minister. Director-generals are responsible for the final administration of their departments and are the final accounting officers. They are accountable to the President of the Republic and not to the minister of the department.

This effectively creates the perception that the President can reach into any department and control his own ministers through the director-general. In provincial departments it is the premier who appoints the heads of departments. The relationship between each of the director-generals at the national and provincial level is constant, as there are special venues at which they regularly meet to strengthen the constitutional reality of a unified civil service. The final authority in such meetings eventually lies with the President. There must be strong provincial Public Service Commission (PSC) structures to facilitate a proper devolution of public service and administration.

As in the case of federal systems, labour relations should be dealt with at a provincial rather than national level. In a federal system, even centralised bargaining often devolves down to regional forums. The PSC cannot assume the role of representing the employer while the biggest employers, i.e. the provinces, are not included in the collective bargaining process. Labour laws should be administered by the various provincial ministers and departments of labour.

In keeping with the IFP federal approach, the provision and management of education should be a provincial competence. All schools and colleges should be regulated in terms of provincial legislation. The role of the national Department of Education should be to monitor compliance with essential norms and standards. Teachers should be employed by provincial administrations on the recommendations of principals and governing bodies.

Apart from legislative competence over primary and secondary schools, the IFP takes the view that provinces should also enjoy legislative and executive power over tertiary education, including teacher-training colleges. The IFP supports the autonomy of tertiary institutions.

Each province should have its own department of justice, courts and prosecution machinery. In addition, each province should also develop its own body of substantive law, with every province enjoying equal status. Provinces should exercise judicial functions in all areas in which they govern. In each province, where such do not already exist, a single division of the High Court, whose jurisdiction will correspond with provincial boundaries, should be established. All necessary administrative and professional support (Master, State Attorney, Registrar and Attorney-General) should be decentralised. Provincial constitutional courts should determine issues of constitutionality in the provinces, as is universal practice in other federations.

The IFP opposes the establishment of the post of National Director of Public Prosecutions. The provincial attorney-generals should be charged with the administration of justice in their areas. In addition, the IFP does not support the creation of a super-ministry to fight crime. It sees merit in maintaining and strengthening the existing specialised provincial ministries and promoting cooperation among them.

To complete the picture, the peculiarity must

be mentioned of the national government having much greater responsibility in respect of local government than provinces do. The IFP believes that the South African Constitution was deliberately drafted to emasculate provinces and this is particularly pronounced with respect to local government. Moreover, the IFP is concerned that local government sometimes competes with, undermines and attempts, at times, to supplant the role of provincial government. Provinces have been entirely bypassed and are only titularly responsible for the establishment of local government. However, the legislation relating to the establishment of local government, their types, size, structure, systems and operational procedures are all determined by national legislation and national legislation alone. Provinces have no legislative powers. Even legislation determining the position of town clerks, who effectively run the municipalities from an administrative viewpoint, is determined by the national level of government. Budgetary allocation to local governments can be done directly from the central government to the local government concerned, bypassing the provincial government.

The concern expressed in our context, as it is always expressed by those who do not believe in local autonomy, is the fear that something will go wrong. We are apprehensive about the exercise of autonomy and devolving power, for fear that it will be abused. The concern is valid and the possibility does indeed exist, but the debate ought to focus on how one intervenes in this eventuality. One cannot refuse to sell prescription drugs in case they are abused. Since in many respects, local government requires hands-on coordination, the IFP believes the Constitution should be amended to grant provinces – which are far closer to the problems of local government than the national government – far more discretion than presently exists with respect to policy formulation on, and executive oversight of, local government.

CONCLUSION

We will continue to promote the agenda of devolution of powers to strengthen the role of provinces and local governments. Since the opening of negotiations in 1992, we urged the ANC to consider how the challenges of liberation are closely related to the type of governance to be chosen for South Africa. We wanted to have a preliminary determination on the issue of governance to decide up-front whether it should be top-down or bottom-up. We called for a preliminary determination of the form of state and urged the ANC to adopt the philosophy of maximum devolution of powers. We were not heard then, but we hope that within the parameters of a renewed spirit of reconciliation, we may be heard now. There must be recognition that the devolution of powers to provinces and local governments and their empowerment with real autonomy of policy formulation, is not an issue which affects the IFP, but it is indeed about the people of South Africa and their future.

Prospecting for Productivity: Enhancing Good Governance in the Provinces

Heather Nel

INTRODUCTION

Provincial government in South Africa has been the source of much criticism over the past few years and, at times, there has even been mention made of abolishing the provincial structures. It is against this background that it is imperative to analyse critically the right to existence of provincial government and thereafter explore the prospects for productivity and good governance in the provinces. This paper will aim to address these pertinent issues by focusing on:

- provincial government as a distinct sphere of government
- the advantages of decentralising authority to provincial government
- the problems experienced by provincial government, particularly in a South African context
- various measures whereby the productivity of provincial government can be improved.

In this respect, it is necessary to provide a brief overview of the constitutional status of provincial government as a distinct sphere of government.

1. PROVINCIAL GOVERNMENT AS A DISTINCT SPHERE OF GOVERNMENT IN SOUTH AFRICA

Chapter 6 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) makes provision for the establishment of nine provinces, each with its own legislative and executive authority. Furthermore, section 40(1) of the Constitution stipulates that government in South Africa is constituted as national, provincial and local spheres of government, which are distinctive, interdependent and interrelated.

It is thus apparent that provincial government in South Africa constitutes a distinct sphere of government with the authority to make decisions on matters listed in schedules 4 and 5 of the Constitution. In this respect, provincial government in South Africa resembles regional institutions in countries such as Italy, France and Spain in that it is distinct from local government in terms of area, functions and the degree of autonomy envisaged for it. However, it is furthermore distinguishable from federalism in that the provinces do not share sovereignty with the national state and their powers are handed down to them from national government.

Decentralisation reflects the institutional relationship between central government and subnational spheres of government. Provinces cannot become autonomous federal entities competing with the power of central government. Rather, they are regarded as decentralised entities supporting the functioning of the state and sharing the power and authority of the central government. The reference to cooperative governance in Chapter 3 of the Constitution denotes supportive and complementary roles among the three spheres of government. Thus, decentralisation as it applies to the creation and right of existence of provincial government, needs to be understood in a South African context as a process that should contribute to:

- national integration and unity
- redressing historical wrongs and empowering people in the sense of enhancing cooperation, co-responsibility and the involvement of citizens in the governance of the country

- a unified approach and solutions equally supported by central, provincial and local governments to the diverse problems and challenges facing the country.

From the above, it can be deduced that provincial government in South Africa enjoys the status of a sphere, as opposed to a level or tier, of government. This terminology connotes a shift away from a hierarchical relationship towards a vision of non-hierarchical government in which each government sphere has equivalent status, is self-reliant and possesses the constitutional latitude within which to define and express its unique character.

In this respect, it may prove to be enlightening to explore the right of existence of provincial government in South Africa.

2. RIGHT OF EXISTENCE OF PROVINCIAL GOVERNMENT IN SOUTH AFRICA

According to Mawhood (1993:1) most governments favour the concept of decentralisation since it implies a transference of legislative, administrative and judicial authority "away from the centre" to subnational levels of government. This transfer of authority to, in this case, provincial and local governments is favoured for various reasons, *inter alia*, it:

- can become an effective mechanism for overcoming the serious limitations of centrally controlled national planning and ensuring that local needs are more effectively addressed
- will serve to curb the tendency of an all-powerful central government by building the capacity of provincial/local officials in terms of management and technical skills
- would ensure greater representivity for divergent political, religious, ethnic and tribal groups in development decisions
- could promote more flexible, innovative and creative management by allowing for experimentation in respect of policy and programme implementation
- enables government to locate services more effectively within communities and to monitor the implementation of development projects more carefully
- can further the efficiency of service delivery by reducing the diseconomies of scale inherent in overconcentration in the national capital.

Kliksberg (2000:252) supports the above and writes that one of the main opportunities for making positive changes in the state social sphere in developing countries is provided by decentralising service delivery to regions and municipalities. He argues that such decentralisation enhances effectiveness by ensuring that programmes are matched more closely to the real needs of the target population.

From a managerial standpoint, decentralisation will heighten efficiency by offering greater opportunities for a dynamic, flexible and rapid response. Decentralisation can furthermore enhance the medium- and long-term sustainability of programmes in that it encourages recipient populations to articulate their needs. Kendall (1991:22) concurs by pointing out that problems such as poverty, homelessness, crime, and a crippled public education system do not lend themselves to top-down solutions imposed from above. Rather, solutions require the bottom-up participation of those affected, as well as a redistribution of functions and powers to subnational governments to ensure the highest possible level of initiative and independence.

Keating (1995:185–186) adds that provincial or regional government has been sought by decentralists seeking to transform the state and shift power from the centre in the interests of democracy and pluralism. With larger areas, populations and resource bases, provinces are seen as having a greater capacity for autonomous action over a wider range of functions than the traditional units of local government. In particular, provincial government is seen as being essential if economic and industrial powers were to be decentralised, since local government is at too small a scale to address these issues.

Despite the various arguments in favour of decentralising authority to provincial governments, close attention needs to be paid to past experience in this respect in order to be aware of the difficulties and risks that may arise and to devise strategies for tackling and resolving them. For this reason, the next section of this paper will focus on the problems experienced by provincial government, particularly within South Africa.

3. PROBLEMS EXPERIENCED BY DECENTRALISING AUTHORITY TO PROVINCIAL GOVERNMENT

Reddy (1999:19–20) argues that decentralisation cannot be seen as a panacea for all govern-

mental problems. Several of the problems associated with decentralising authority to the provinces in South Africa could be summarised as follows:

- Central–provincial intergovernmental relations are often marked by tension in that nationally based administrators and politicians may fear that provincial governments would demand independence from the centre and undermine national policies. On the other hand, since their inception, provincial governments have continued to demand increased powers which would ensure significant provincial autonomy.
- Inefficiency is prevalent since provincial authorities cannot command sufficient resources to provide adequate services. Rapoo (1995:7) highlights the fact that the predominance of central government on fiscal matters is regarded by some provinces as an area of deficiency in the relationship between central and provincial government. De Bruyn (1997:6) supports this and writes that a vertical fiscal imbalance exists whereby central government raises the vast majority of revenues, yet its expenditure responsibilities are relatively lower than the provinces. It is thus apparent that provincial governments in South Africa are expected to fulfil a vital role in meeting basic needs and reducing inequalities in respect of service provision, despite the fact that their revenue base to do so is restricted.
- Decentralisation can serve to increase regional disparities as the more developed and affluent provinces are in a better position to utilise their devolved powers. Such regional inequalities can lead to social problems whereby young, economically active people migrate to the more developed regions in search of well-paid employment and a higher standard of living. This leads to a breakdown of especially rural communities and the task of enhancing economic development in the less developed regions becomes much more difficult.
- Decentralisation measures have to be implemented under severe economic constraints and such reforms are costly due to additional expenses for qualified personnel, transport, buildings, maintenance, etc. Linked to this is the important aspect of the institutional and managerial capacity of provincial governments. Kliksberg (2000:253) correctly points out that if their capacities are weak and if no sustained effort is made to strengthen them, then service delivery will be seriously threatened.
- Decentralisation can encourage separatist tendencies particularly among minority groups who desire complete sovereignty. Based on field studies conducted in Argentina and, in part, Brazil it has been noted by Raczynski (1995) that the pressures and practices of special interest groups are often far more intense at the provincial and local levels than at the national level. In this way, elite power groups in regions and municipalities may seek to steer decentralised resources towards their economic or political interests.
- Corruption in the provinces remains a critical problem which will only serve to further weaken the capacity of provincial authorities in terms of service delivery if it is not dealt with seriously.

The problems mentioned above do not invalidate the opportunities offered by decentralisation. It is vital, however, that provincial governments take stock of their current strengths and weaknesses and plan strategically for concerted efforts to boost their productivity and build their internal capacity. In this respect, it is necessary to provide an overview of those aspects which require attention in order to enhance the prospects for good governance and productivity in the provinces.

4. ENHANCING THE PROSPECTS FOR GOOD GOVERNANCE AND PRODUCTIVITY IN PROVINCIAL GOVERNMENT

Any organisation must be productive to survive and government is no exception. The contemporary pressures of scarcity, inflation, globalisation and taxpayer discontent have further enhanced the demand for increased attention to productivity by elected politicians and public managers.

4.1 Defining productivity and good governance

Crane, Lentz and Shafritz (1976:1–3) refer to productivity improvement as organised efforts to obtain a greater yield from the resources allocated to government functions. Productivity improvement efforts have a more specific meaning than better management in that they

feature a technical core centred around the relationships of input to output and to standards of performance. This implies that productivity has to do with something called the production process. All organisations, including those in government, can be seen as converting resources from one form into another. Systems analysts call this the input-through-output cycle. When it is said that an operation is productive, it means that it is getting a satisfactory yield out of the production process. Quantity is satisfactory in terms of the relationship of output to input. In other words, the operation is efficient. At the same time, being productive implies that the quality of the product is satisfactory in that the output meets previously agreed upon standards of performance; in other words, the operation is effective. This dual definition of productivity has critical implications: first, any continued improvement of productivity is highly dependent upon the ability to define input, output and standards of performance; and second, individuals will understand these criteria in a common way.

Improving productivity requires acting in new and different ways. People change their ways of doing things; they change the direction and persistence of their actions because the new way is more rewarding than the old. They are motivated to change because the new way will satisfy some basic wants for material needs such as money or socio-emotional needs such as self respect. If people are anxious enough about these wants and if their job is seen as a vehicle for satisfying one or several of these needs, then they will change their patterns of work. Once people are engaged in more productive action, this behaviour must be consistently rewarded.

The problem of productivity motivation, using the above assumptions, is twofold. First, there is the technical aspect – knowing the specific agency production process well enough in order to determine what changes should be made in the physical tasks of production. Second, there is the personnel management problem of influencing the members of that agency to move in favourable directions in a persistent way.

Finally, emerging productivity improvement programmes often possess the following unique features:

- Investment of significant resources in careful development of measures of efficiency and effectiveness on a programme-by-programme, agency-by-agency basis.
- A focus on better resource utilisation within an established organisation, with given objectives. Careful differentiation of information needs depending on varying roles and levels within government.
- A concern with the interplay of motivation, incentives and the role of participation in decisions by various levels in the organisation.
- Relating the assessment of the performance of individuals and groups to the assessment of programme efficiency and effectiveness.
- Substitution of processes for reconciling multiple and conflicting views on objectives for exclusively centralised and hierarchical ones.
- Emphasis on the need to assess performance of a programme or operation in terms of both efficiency and effectiveness as the two major dimensions of assessing resource utilisation.
- Differentiation of analytic and management techniques that are appropriate by the nature of tasks or objectives involved rather than rigid application of one uniform approach to all activities of government.

Visser (1996: 241) supports the above conception of productivity and writes that productivity improvement programmes need to start with an analysis of the effectiveness of provincial government. In other words, critical questions need to be asked such as:

- Does provincial government do the right things?
- Is the output of provincial government truly acceptable to the recipients of that output?
- Does the output have value?

The starting point is thus whether provincial government is doing the right things and then the next step is to measure whether those things are being done correctly. Here the focus is on efficiency, but it is important not to think of productivity mechanistically in that attention must also be devoted to the willingness or desire of people to be productive. Above all, productivity can be regarded as a state of mind. It is the spirit of progress and of continuous improvement on what exists today. It furthermore denotes the sustained effort to apply new techniques and methods to improve on the current situation regardless of how good it may seem.

Muthien (1996:256) elaborates by asserting that, although objective performance measurement is an invaluable management tool, it cannot replace dedicated public officials who are thoroughly socialised in the ideals and ethos of public service. Their critical judgement combined with proper performance measurement can contribute significantly to the improvement of the ends-means equation in government.

Related to productivity improvement in provincial government, is the concept of good governance. The use of the term "governance" instead of "government" implies a shift in emphasis away from a top-down approach to government to an approach that seeks the active participation of citizens in public policy decisions which affect their daily lives.

The principles of good governance enshrined by the Constitution are listed in Section 195 as, *inter alia*:

- A high standard of professional ethics must be promoted and maintained.
- Efficient, economic and effective use of resources must be promoted.
- Services must be provided impartially, fairly, equitably and without bias.
- The public must be encouraged to participate in policy making and their needs must be responded to.
- Accountability and transparency must be fostered.
- Human potential must be maximised by means of sound human resource management and career development practices.

With these principles in mind, it is necessary to highlight certain key areas where provincial governments in South Africa can focus their energies in an effort to enhance productivity and good governance. The first of these is promoting a sense of professionalism among provincial officials.

4.2 Promoting a professional ethos

As pointed out previously, the problem of corruption and maladministration is widespread in the South African public service. This serves to undermine the effectiveness of public institutions and directly contradicts the principles underlying the spirit of *Batho Pele* or "people first". In this respect, citizens must be made aware of mechanisms such as the anti-corruption arm within the Public Service Commission, the Public Protector and the Auditor-General, which have been established to tackle this problem. In the interests of democratic accountability, citizens must be able to report instances of corruption or unethical behaviour on the part of public servants without fear of victimisation or reprisal.

In addition to the above, a code of conduct for public servants is a vital tool in reinforcing a professional ethos. The Public Service Regulations, 1997 (Notice No. R825) make provision for this by including a Code of Conduct for Public Servants. This Code of Conduct stipulates that public servants must not use their official positions for personal gain, but should always act in the interests of the public being served. It is further indicated that in the performance of their duties, public servants must, *inter alia*:

- execute their duties in a professional and competent manner
- be honest and accountable in dealing with public funds
- strive to achieve the objectives of their institutions and the interests of the public
- promote sound, efficient, effective, transparent and accountable administration.

Clapper (1999:386–389) furthermore provides a breakdown of an ethics infrastructure which, in essence, can be regarded as a conceptual framework composed of mutually reinforcing functions and elements designed to achieve the requisite coherence and synergy that will support a public sector environment where high standards of right-doing can be encouraged and rewarded. This ethics infrastructure comprises eight elements, namely:

- Attempts to improve public sector ethics which need to be sponsored and supported by political and administrative leadership.
- An effective legal framework needs to be in place to enforce constitutional documents, such as codes of ethics and other regulatory codes and legislation.
- Efficient accountability mechanisms are required to facilitate the early detection of any violations so that corrective action can be taken timeously.
- Workable codes of conduct will serve to channel the personal morality of public officials towards public service aims, but will only be truly effective if punitive measures exist for non-compliance.
- Professional socialisation mechanisms, such

as ethics training and exemplary rolemodels in the workplace, can further ensure that public officials are conscientised as to what is expected and what is acceptable in terms of organisational behaviour.
- Public service right-doing is also facilitated by ideal supporting public service conditions such as competitive salaries, positive organisational hygiene factors, as well as measures that contribute towards security, growth and motivation.
- A coordinating ethics body or bodies would serve as watchdogs, counsellors and promoters of ethics and right-doing.
- An active civil society can also fulfil a watchdog role provided citizens are informed and enabled by government structures, legislation and regulations to perform their civic duties.

In respect of an active civil society, it can be noted that provincial governments are required by legislation to provide full, accurate and up-to-date information about the services they provide. The mechanism for achieving this will be an *Annual Report to Citizens* published by national and provincial departments. The purpose of this report is to set out, in plain language:
- staff numbers employed
- names and responsibilities of senior officials
- performance targets in respect of service delivery, financial savings and increased efficiency
- resources consumed
- sources of income
- targets for the following year
- a name and contact number for further information.

The aim of these reports is to provide the public with key information which they are entitled to know and which will assist them in holding public servants accountable. To fulfil this aim adequately, these reports should be publicised as widely as possible and should also be submitted to national and provincial legislatures to assist in legislative oversight and scrutiny of departmental activities.

It is thus apparent that while there are no easy solutions in the fight against corruption, it is imperative that provincial governments employ any means possible to curb unethical behaviour and to promote a professional work ethos.

Related to this is the spirit of *Batho Pele*. This implies that all actions undertaken by provincial governments need to be guided and driven by the needs of the citizens. In this respect, the prospects for productivity in provincial government can be further enhanced by promoting democracy and citizen participation.

4.3 Promoting democracy and citizen participation

Democratisation goes beyond the right to vote and requires a comprehensive approach to the development of a democratic and accountable public service. In this respect, attention needs to be devoted to:
- internal democracy whereby mechanisms are in place within a particular department to facilitate a participatory approach to decision making on the part of both workers and management
- external democracy whereby the public is able to influence and evaluate policy, both indirectly, through elected representatives, as well as directly.

In accordance with the *Batho Pele* principle of consultation, it is also necessary that all provincial departments consult the public regularly and systematically, about:
- services currently provided
- the provision of new basic services to those who lack them.

There are many ways to consult users of services including surveys, interviews, citizen forums, or meetings with non-governmental or community-based organisations. However, whatever method is chosen, consultation must cover the entire range of existing and potential customers, with particular emphasis on including the view of those previously denied access to public services. Consultation must be conducted intelligently and the outcome thereof should be a balance between what the citizens want and what provincial departments can realistically afford.

Related to this, it is necessary for provincial departments to treat citizens as customers. This implies that provincial officials and politicians need to:
- listen to the view of the citizens and take these into account when making decisions pertaining to service delivery
- treat citizens with consideration and respect
- ensure that the promised level and quality of service is always of the highest standard

- respond quickly and effectively when service standards are not being maintained.

The Premier of the Eastern Cape, Reverend Stofile, remarked in a speech made to promote the *Batho Pele* White Paper (1998) that provincial employees need to be committed to:

- creating a corporate culture whereby everyone belonging to the same organisation commits themselves to fulfiling the objectives of the White Paper
- instilling a strong work discipline and sense of self-responsibility
- understanding and being able to express the kind of service their organisation provides
- ensuring a greater visibility of the vision and mission of each provincial department.

From the above, it is clear that a public service ethos is one of the key ingredients of a productive provincial government system in South Africa. It is essential that provincial governments be viewed as responsive to the needs of the public and that the scarce resources available to provincial departments to provide services are being utilised in the most effective and efficient manner. This requirement can further be met through sound financial management.

4.4 Promoting sound financial management

International experience, particularly in developing countries, has shown that while fiscal decentralisation can offer significant gains under the right conditions, it also carries the risk of accentuating regional inequities and compromising macroeconomic stability. Thus, establishing strong foundations and correctly sequencing the devolution of responsibilities is critical to attaining good governance.

National government in South Africa recognises that there are sometimes vast differences between provinces in terms of levels of development, economic prosperity and social welfare. For this reason, the national allocations of revenue to the provinces are based on a redistributive formula which takes into account the demographic and economic profiles of the provinces. It is furthermore acknowledged that the levels of wealth or income in a province are important determinants of demand for social services. The equitable share formula is accordingly redistributive, to assist poorer provinces in providing a basic level of services for their citizens.

Despite this, it is noted in the Medium Term Budget Policy Statement by Trevor Manual (1999:64) that provincial own revenue has been steadily decreasing, falling from R4.3 billion in 1995–1996 to an estimated R3.4 billion in 1998–1999. Provincial own revenue sources are limited, mainly comprising fees for motor vehicle licences, gambling licences and hospital services.

In line with the above, Moodley and Sing (in Reddy, 1996:187) write that there is a need for foresight and planning in provincial government financing, ensuring a balance between justifiable expectations and available financial resources for delivering services. It is added that, in bringing about efficient, viable or adequate financing on a rational basis, consideration of certain factors is necessary. These factors include, *inter alia*, the:

- nature and scope of functions and services to be performed by provincial authorities
- current and potential sources of funding and other available resources
- level of infrastructural base and development of beneficiary communities.

This need for foresight and planning in respect of provincial government financing is somewhat addressed by the Medium Term Expenditure Framework (MTEF) which serves as a tool to help reprioritise expenditure and make informed policy choices that are affordable in the medium term. National government is, however, placing greater emphasis on the delivery of quality and efficient services to people. This implies that provincial governments are required to make budgetary decisions which take cognisance of what money will buy, with particular emphasis being placed on spending which will have the greatest impact on the quality of life of the beneficiaries (Manual, 1999: 51).

The prospects for productivity and good governance in the provinces will therefore not only be determined by merely increasing the national allocation of revenue to provincial government. Rather, it is imperative that the provinces explore possibilities for expanding their own revenue bases and that they implement sound financial management principles. This will ensure that provincial revenue is spent in the most efficient and effective way, with the end result being the provision of quality services which respond to the expressed needs of the citizens.

CONCLUSION

This paper served to explore the prospects for productivity and good governance in the nine provinces of South Africa. Although it was pointed out that provincial governments are confronted with many problems and challenges, there are several advantages attached to decentralising authority to subnational units such as provinces.

It was furthermore asserted, however, that the opportunities provided by decentralisation can only be fully maximised if provincial governments recognise their responsibility in terms of productivity improvement and good governance.

In this respect, it was recommended that provincial governments in South Africa commit themselves, *inter alia*, to :

- promoting a professional ethos and adopting an ethics infrastructure to ensure public service right-doing
- enhancing democracy and citizen participation in respect of service delivery by devoting attention to the principles of *Batho Pele*
- ensuring sound financial management principles in an effort to curb financial maladministration and to enhance the delivery of quality services to citizens.

Should these and other principles be implemented by committed provincial leadership, the prospects for productivity and good governance in the South African provinces are good.

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Prospects for Provincial Government in South Africa: The Way Forward

Mohammed Surty

INTRODUCTION

In 1995, prior to the adoption of the final Constitution, President Thabo Mbeki stated:

> "The African National Congress (ANC) is committed to a constitutional framework which balances constitutional powers between the national, provincial and local governments in such a way that the unity and integrity of the state is not impaired."

He cautioned that the failure to secure an appropriate constitutional framework may result in "provincial and ethnic conflict which in turn could lead to balkanisation of the provinces". President Mbeki also indicated that we should deal with the issue of diversity with sensitivity.

At the same time, the then ANC Secretary-General and Chairperson of the Constitutional Assembly, on behalf of the ANC, stated that the final Constitution would "empower provinces within a framework of cooperative governance and not as a constitution of competing fiefdoms". These remarks reflected a constellation of four elements within the ANC in terms of political perspective on provincial government, which shaped the framework of cooperative governance and the three spheres of government.

1. THE FOUR ELEMENTS

The first element is the commitment of the ANC to a united democratic sovereign state which – as eloquently stated in the Preamble of the Constitution and based on the ANC's Freedom Charter – "belongs to all who live in it, united in our diversity". This must be understood in the context of the oppression and repression that the black majority were subjected to over some three centuries of colonial rule and almost half a century of apartheid. It must also be understood in light of the attempt by the apartheid state to create surrogate states in the former Bantustans based on ethnic division, supported by the myth that those homelands would contribute to the effective development of the black people of South Africa.

A constitution must reflect the ethos and aspirations of a nation. Our Constitution has been described as the birth certificate of the nation, as it represents a transition from a polarised racially divided and authoritarian state to a non-racial and democratic state. It was a transition from a closed society which regarded any opposition to its ideology as subversive, to an open and transparent democracy. It is for this reason that the Constitution in its founding provision, describes South Africa as one, sovereign, democratic state founded on the values of human dignity, the achievement of equality and the advancement of human rights and equality. It also commits itself unconditionally to non-racialism and non-sexism. I shall reflect on this aspect further on.

The second element emphasises the perspective of cooperative government. With this in mind it set the tone of the relationships between the different spheres of government by adopting principles of cooperative government and intergovernmental relations. While recognising the integrity and distinctiveness of the three spheres, the Constitution emphasises their interdependent and interrelated nature.

Among the principles worth mentioning, are that all organs of state within each unit must:

- preserve the peace, the national unity and the indivisibility of the Republic
- secure the well-being of the people of the Republic
- cooperate with one another in mutual trust and good faith by:
  - fostering friendly relations
  - assisting and supporting one another
  - coordinating their actions and legislation
  - informing and consulting one another.

The third element within the ANC perspective is that the provinces should not be seen as competing fiefdoms, but as a constellation of geographic entities in a diverse society committed to the constitutional values.

2. CONSTITUTIONAL VALUES

I now turn to these values. We are a nation divided along racial lines. Blacks were subjected to the indignity of inferior education, unequal resources, deprivation of job opportunities, access to the economy, the franchise and – through the creation of homelands – their citizenship. In fact, whether at work, at home or at play, the dignity of blacks was violated.

Blacks were disadvantaged to such an extent that we had what our President referred to as two nations, in one country: the white one privileged, skilled, educated, resourced; and the black one lacking resources, education, skills and amenities. The achievement of equality was therefore also a pre-eminent value in the Constitution.

The cornerstone of any democracy is a bill of rights that is universally acknowledged. These rights, both civil and socio-economic, had to be entrenched in the supreme law to ensure that they become the "touchstones" of our new democracy.

The fourth and final element, alluded to earlier, is the recognition of the diversity of our people and the sensitivity required here. This diversity – be it linguistic, cultural or religious – can be best managed through a cooperative system of government, which while emphasising a common South Africa and African identity, does not seek to diminish but rather protect the linguistic, cultural and religious diversity of its peoples. The Bill of Rights and the provisions relating to languages are a reflection of this.

3. STRATEGIC CHALLENGES

What I have reflected on thus far are the ideological and political bases on which a system of government has been established. What must now be addressed are the strategic challenges that face government in general, and, in the context of this conference, provincial government.

The government through the President's address at the opening of Parliament on 25 June 1999, set its development agenda along the following principles:

- A better life for all.
- A government at work.
- Advancing human dignity.
- Construction of a people-centred society.
- Building a winning nation.
- Coordination of government activities.
- Intergovernmental cooperation.
- Ensuring an integrated approach to service its delivery.
- Regional cooperation.
- The African Renaissance.
- Accommodation of traditional leadership.
- Crime prevention.

This programme unleashes certain strategic issues for consideration by the spheres of government. They are, among others:

- The need to integrate government activities with a view to enhancing service delivery.
- The need for national and provincial government to support local government as an important sphere, or site, of service delivery.
- The need for improved coordination and cooperation between national and provincial government through an integrated, properly sequenced and efficient intergovernmental system.
- The need for a monitoring framework both in respect of performance and service delivery.
- The need for championing development within a province including rural development.
- Strategic planning.

The Demarcation Board has established new, different council boundaries. The support of provinces in making district councils effective, coordination nodal points cannot be over emphasised. Rural development strategies by provinces must be integrated with national initiatives to have a coherent and integrated strategy for the country as a whole.

The provinces are obliged to provide capacity to local government and to make use of appropriate technology and managerial systems to achieve operational efficiency in their budgets.

The issue of unfunded mandates, while transient, is a matter that must be addressed.

Provincial government should ensure that municipal IDPs combine to form a viable development framework and are vertically integrated within the Provincial Growth and Development Strategy. Provincial governments are also responsible for processing grants to municipalities for bulk infrastructure, such as housing and public works. Provincial government should ensure that municipalities give priority to basic needs and promote social and economic development.

The provincial government must also ensure there is effective institutional development and capacity building. It must monitor the financial status of municipalities and must put in place appropriate fiscal controls.

It must also monitor local government in a constructive way by empowering local government councillors within local government. It must, when appropriate, intervene where the municipality is not fulfilling its executive obligations – this should be a last resort. Provinces must work in unison with the various local government associations.

Provincial taxation has already been the subject of a commission. The matter was debated in the National Council of Provinces and the general view of premiers is that, at the current stage of our development, it may be inappropriate.

CONCLUSION

Provincial government and all entities of government including Parliament and all legislators must reflect on our strengths, weaknesses and challenges, and may have to realign or refine their method to deal with the pressing priorities of reconstruction and development and the current trends of globalisation.

The Constitution sets out the framework, and it is the ability to manage institutions efficiently and effectively that will in the end reflect the satisfaction or dissatisfaction of the performance of government by the electorate.

Transparency International and the Fight Against Corruption

Gladwell Otieno

INTRODUCTION

Corruption is found to some degree in every society. It is becoming a pervasive phenomenon and is a sign that something has gone wrong in the relationship between society and state. Indeed, if one is to adopt the more comprehensive approach to corruption being demanded and adopted, for example, by Transparency International's (TI's) South African chapter, then corruption is also a sign that something has gone wrong between the individual and the community.

President Thabo Mbeki, in a speech to mark the official opening of the Ninth International Anti-Corruption Conference held in Durban in 1999, decried the fact that material values have gained a greater worth in the eyes of many people at the expense of spiritual values:

> "Corruption is a social phenomenon; there can be no doubt that all of us need to do everything in our power to give corruption in both the public and the private sector no quarter whatsoever."

1. CONCEPTUALISING CORRUPTION

There are many definitions of corruption, and a detailed examination would go beyond the bounds of this discussion.

In its simplest terms, it is the abuse of power, most often for personal gain or for the benefit of a group to which one owes allegiance. It can be motivated by greed, by the desire to retain or increase one's power or – perversely enough – by the belief in a supposed greater good.* The definition long used at TI was, "the abuse of public power for private gain". However, the definition which now holds sway is, " the abuse of entrusted power for private gain". It is in keeping with the advance of globalisation and privatisation and the already-mentioned concern for a comprehensive advance against corruption, which does not demonise one party.

Corruption is most decidedly not the preserve of developing countries, as media reports of scandals in Europe show.

What is true, however, is that corruption causes the greatest damage in developing countries and destroys the life chances of the poorest of the poor. The evils of corruption have been amply demonstrated elsewhere and I will not address them in detail here, except to say that it is accepted that corruption undermines good government and distorts public policy. It leads to the misallocation of resources, harms the private sector and private sector development. It, above all, hurts those who can afford it least.

In its most extreme state, corruption can lead to the implosion of entire polities, as seen by the descent into chaos of the former Zaire, now Democratic Republic of Congo (DRC).

2.TRANSPARENCY INTERNATIONAL

TI is the only international global non-profit and politically non-partisan movement with an exclusive focus on corruption. It is an international non-governmental organisation (NGO) dedicated to curbing both international and national corruption and increasing accountability in all spheres of public life, particularly, but not only, in government. As such, the concerns and strategies of TI are of relevance to our deliberations here on the shape, structure of government and the relations between its dif-

ferent levels and, in particular, of provincial government.

TI was founded in 1993, by a small group of people led by Peter Eigen, now chairperson of TI. From humble beginnings it has grown to be a respected and sought after interlocutor at both national and international levels.

3. STRUCTURE

National chapters (NCs) in more than 77 countries worldwide – with more in formation – are at the heart of the global anti-corruption movement.

The Board of Directors is the central governing body of TI. It is democratically elected at the Annual General Meeting. An Advisory Council, consisting of prominent individuals of international standing, advises our movement and assists in developing our programmes. The Council on Governance Research, consisting of prominent academics and practitioners in the fields of corruption and governance, contribute to research projects and proposals supported by TI. The International Secretariat supports NCs and implements our international agenda.

The TI mission statement provides a framework for programmes and policies. Internally, TI is governed by its Charter, its Code of Conduct for TI office holders and the NC Guidelines which govern the relationship between NCs and the international movement.

Detailed information about current finances is given in the financial report as an income statement, in the list of our donors and in the annual report.

As stated above, TI is active at both international and national level.

4. INTERNATIONAL INITIATIVES

At the international level, TI has successfully kept the issue of corruption on the international agenda. An important instrument in this effort, and one which I am sure many of you are aware of, is the Corruption Perceptions Index (CPI).

4.1 Corruption Perceptions Index

The last CPI – the largest yet – was published in October 1999. It ranked 99 countries with Denmark at the top and Cameroon again at the bottom. The CPI is a "poll of polls", reflecting the perceived degree of public sector corruption in the surveyed countries. The 1999 survey drew on 17 different polls and surveys from 10 independent institutions, carried out among business people and country analysts. The impact of the CPI now reaches far beyond the original awareness-raising goals it had hoped to achieve at its inception. In many countries of the South, the CPI has served the constructive purpose of stimulating public debate on corruption, acting as a catalyst for meaningful reforms.

Intense concern for the controversial impact of the CPI has motivated efforts to widen its scope and increase the number of countries surveyed. As a result of this concern – and with the aim of answering the critics in the South who complained that the CPI was unfairly targeting developing countries – the new Bribe Payer's Index (BPI) was published.

4.2 The Bribe Payers Index

The BPI was published in tandem with the CPI in October 1999, for the first time. The BPI, based on data collected by Gallup International on commission to TI, surveyed perceptions of business leaders in 14 major emerging markets with respect to the use of bribes by companies from the 19 leading exporting states to win businesses. The data reflected a disturbing lack of awareness of the Organisation for Economic Cooperation and Development (OECD) convention in the corporate sector.

A more detailed Bribe Payers Survey was published at the beginning of this year.

Apart from bribery, diplomatic or political pressures were identified as the leading unfair business practice.

4.3 The OECD Convention Combating Bribery of Foreign Public Officials

The entry into force of the OECD Convention against the Bribery of Foreign Public Officials, which criminalises the bribery of foreign public officials to win or retain business, was a major success for TI chapters, particularly in Europe and the United States (US). The convention does have limitations but it is a positive sign that more countries are adhering to it and implementing the enabling legislation at national level. South Africa has declared its intention of belonging to the convention. TI plays an active role in the monitoring process which is unfolding at the OECD and will continue to press for strict and coherent application. But the success of the convention will not be achieved

without the adherence of major international players and the active support of the corporate sector. Recognition is growing in the corporate sector of its social responsibility, and dialogue with the sector may lead to the development of an internationally accepted integrity standard which would be used as a benchmark for an international ISO-type certification.

5. ACTIVITIES AT NATIONAL LEVEL

As already stated, NCs form the core of the international movement. It is from this international network of NCs that TI derives its legitimacy as an international representative of civil society. The phenomenal growth in the number of NCs, points to the inroads that TI has made in bringing the issue of corruption to the fore of the international agenda.

An NC, when it adheres to TI, subscribes to a basic set of principles which govern its actions and interactions with other groups and sectors. An NC must agree to be politically non-partisan and independent from government and commercial interests. It should refrain from investigation of individual cases and "naming and shaming" of individuals, rather concentrating its efforts on the improvement of systems which make it more difficult for corruption to entrench itself. NCs practise coalition building and bringing together people from the private sector, government and civil society.

6. WHAT IS THE ROLE OF NATIONAL CHAPTERS?

TI's NCs lie at very the core of its strategy because TI strongly believes that informed anti-corruption initiatives that are homegrown, have the best chance of lasting success. The chapters are independent institutionally and financially from the Secretariat while observing the guiding principles. The NCs, embedded in their varying contexts, can far better judge the local context and adopt appropriate strategies than TI ever could. In deciding their national strategies, there is an exchange of information and experiences in the international movement, facilitated by the Secretariat. However, the TI chapters are autonomous; they are independent as long as they adhere to the basic principles already mentioned.

One of TI's highest priorities is the strengthening of its NCs and its contribution to the humanitarian and anti-corruption endeavours of civil society worldwide.

7. STRATEGY

TI focuses on building awareness that simply strengthening prosecution and judicial powers cannot by itself curtail corruption. Ibrahim Seushi of TI Tanzania originated the concept of a National Integrity System (NIS) – an edifice built on what were termed pillars such as political will, administrative reforms, watchdog agencies, parliaments, media, the private sector and the foundation of the whole structure namely, public awareness and involvement. The totality of institutions or pillars which make up an NIS are interdependent: if one or more are weakened, the structure is thrown off balance and an increased load is thrown on the others. This concept underlines the necessity for a holistic approach to combating corruption. While "quick wins" are desirable in mobilising and motivating the public, an undue reliance on one pillar of the integrity system, e.g. the judiciary, will not appreciably reduce corruption.

8. STRENGTHENING CAPACITY FOR THE FIGHT AGAINST CORRUPTION

Reflecting TI's own meteoric growth, civil society organisations (CSOs) are mushrooming across the globe. They are growing in terms of membership, while becoming more structured, articulate and effective. New communication technologies are enabling CSOs such as TI to network across national borders thus strengthening their knowledge and influence.

I single out civil society because it has a particularly crucial role to play in the fight against corruption. Governments are often part of the problem and lack credibility even when promoting anti-corruption strategies. Similarly, business is very often as much the perpetrator of corrupt practices as it is sometimes the victim.

While in many countries there are strong chapters waging a struggle against corruption and sometimes even winning a battle or two, many other chapters are located in countries where recently won democracy is still young and fragile and civil society is not strongly developed. TI places particular importance on the necessity to strengthen the capacity of its NCs to undertake the task they have set themselves. To this end limited funds have been sourced for training.

To maximise the potential for change, the anti-corruption agendas of civil society must be

empowered by knowledge and public support as they feed off each other. The greater the research, the more convinced the public becomes of the need for action. The greater the public support, the greater is the influence of CSOs.

9. PROGRESS IN SOUTH AFRICA

As a whole, in comparison to many other governments, the South African government can be proud of the advances it has made in the struggle against corruption and for accountability. This, however, does not mean it can rest on its laurels. While a multiplicity of institutions have been put in place to address the issue – e.g. the Special Investigation Unit headed by Judge Willem Heath and here in the Eastern Cape, the Public Protector's Office – an important indicator of commitment to watchdog bodies is the extent of their independence from the government of the day and their resourcing in order to adequately perform the job that they are mandated to do.

The promulgation of laws such as the Promotion of Access to Information Act – giving effect to the constitutional right of access to state or private information that is required for exercising or protecting one's rights, contained in Section 32 of the Constitution – with certain justifiable limitations was a further advance. Access to information is a fundamental necessity if citizens are to be empowered to press for accountable government.

However, continuing reports of corruption on a grand scale point to the need for further vigilance.

The development of a national anti-corruption strategy (NACS) and a coordinating structure has been moving ahead at a steady pace during the past two years. The national anti-corruption summit held in April 1999, was the culmination of a process which had started the year before with a public sector anti-corruption conference. In 1999, representatives from the public sector, the private sector and organs from civil society looked at problems related to each sector and came up with a set of recommendations. An important decision was to "rapidly establish a cross-sectoral task team to look into the establishment of a national coordinating structure with the authority to effectively lead, coordinate, monitor and manage the national anti-corruption programme", which was one under the guidance of the Public Service Commission and its chief directorate of ethics. The envisaged coordinating structure is currently under development. TI South Africa is part of the National Cross-Sectoral Task Team established to take recommendations to further transparency. South Africa is playing a central part in the process of developing a more coherent and coordinated input into the NACS. Several meetings at national and regional level will culminate in a national anti-corruption civil society summit to be held in November 2000.

The Ninth International Anti-Corruption Conference was hosted in Durban in October 1999 and it brought together delegates from around the world to exchange experiences and ideas.

10. ACTIONS BY CHAPTERS – SOME EXAMPLES

To provide a more concrete idea of the ways in which civil society around the world is taking action against corruption, here are a few examples.

The chapter in Argentina has been successfully endeavouring to compensate for weak national disclosure requirements in the area of political party funding. Political parties in Argentina are not required by law to disclose the amount of private funding they receive. By monitoring total political party spending above publicly disclosed levels of government financing, our chapter was able to estimate the amount of private funding the parties were receiving. Once released to the media, these figures became a potent trigger for change. In the latest election campaign, corruption issues have made headlines and the three leading parties were expected to sign an agreement whereby they would disclose the full amount of private funding.

In nearby Malawi, the NC has conducted awareness raising seminars for religious and educational leaders to conscientise them on the issue of corruption. A drama competition has mobilised the youth to come up with plays against corruption. TI Kenya has been a central player in the development of an NACS, and has also assisted Parliament in closed-door deliberations on the finalisation of an anti-corruption and economic crimes bill to be presented to Parliament this year.

TI India, and another NGO, after years of empty promises took the bold step of establish-

ing an Independent People's Ombudsman Commission in response to the Indian government's lack of will to establish institutions vested with the power to investigate the charges of corruption levelled against elected public officials.

A committee of three senior retired judges will be backed by a Citizen's Vigilance Committee composed of seven lawyers, who will seek to file a public interest petition before the High Court and the Supreme Court for further criminal investigation on allegations which the Ombudsman Commission has found to have substance.

Barely beyond its first anniversary, our chapter in Bulgaria is playing a key role in monitoring a flagship privatisation for the Bulgarian economy. An expert group formed by TI Bulgaria has been monitoring the sale of a strategic holding in the Bulgarian Telecommunication Company, thus ensuring that the process has been taking place in accordance with the relevant laws and regulations in all due probity. Members of the expert group were given the opportunity to sit in as observers on most meetings with interested companies and observe the submission and opening of the bids. Such monitoring on the part of civil society is the key in confirming compliance to the rules and ultimately, in the case of Bulgaria, it will point to the success of reforms and the potential for integration into international economic structures.

CONCLUSION

Corruption at the local level touches ordinary people in their daily lives. It undermines the delivery of basic services and weakens efforts to entrench democracy in countries in transition. Local level involvement is an ideal starting point for civil society in the pursuit of open and responsive government. It is for this reason that TI's NCs have become increasingly interested in corruption issues relating to local government. Our chapters in Central and Eastern Europe are now involved in a major initiative focusing on corruption in local government. These local level initiatives will focus on improved service delivery as well as on diagnosing and rooting out corruption.

ENDNOTE

* Cf. Stapenhhurst and Kpundeh, *Curbing Corruption, EDI Development Studies*, 1999, Washington DC.