

# BRIEFING PAPER

Konrad-Adenauer-Stiftung e.V.

AUSLANDSBÜRO SÜDAFRIKA

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Dear Reader

## INPUT TO THE REVIEW UNDERTAKEN BY THE DPLG OF THE FUNCTIONING OF PROVINCIAL AND LOCAL GOVERNMENTS

As you may be aware, the Konrad-Adenauer-Stiftung (KAS) recently facilitated a series of three workshops to discuss issues related to the functioning of provincial and local governments. The workshops were held to discuss the policy review of provincial and local governments that was announced in August 2007.

The workshops which were held in Pretoria, Durban and Cape Town, attracted a wide and diverse audience from all political groupings. Representatives from all spheres of government participated. The discussions were most informative and constructive.

The most recent occasional paper by KAS published in book form entitled **Review of provinces and local governments in South Africa: constitutional foundations and practice** (De Villiers, ed 2008) was launched at the workshops and gave rise to very lively discussions and debates. Copies of the book are available at the KAS office in Johannesburg.

Mr Derek Powell from the Department was invited to attend and speak at the workshops but he unfortunately had to withdraw at short notice. Since no other representative from the Department was present at any of the workshops, the speakers and participants encouraged KAS to request Dr Bertus de Villiers to draw up a summary of the main issues discussed during the three days. A copy of the draft summary has been circulated to all the speakers and they have agreed with the content thereof.

It therefore gives me great pleasure to submit to you for consideration and dissemination the summary of discussions and outcomes of the workshops. KAS would be delighted to continue its participation in the review process. If there are any specific issues that arise from the book or this summary that you would like us to comment on, please do not hesitate to contact me.

I trust that this summary, which is the outcome of very open and intense debate, would be of great assistance to the Department, political decision-makers and the general public.

Kind regards



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**SUMMARY OF OBSERVATIONS MADE DURING WORKSHOPS ON THE REVIEW OF  
PROVINCIAL AND LOCAL GOVERNMENTS HELD UNDER THE AUSPICES OF KAS AND  
DDP FROM 10-13 NOVEMBER 2008**

**Prepared by Dr Bertus de Villiers**

**Constitutional Framework**

1. The Policy Review and subsequent White Paper should accept the Constitution as the essential point of departure for any assessment of the functioning of the three spheres. Using the Constitution as point of departure is not "legalistic" - it is lawful, democratic, constitutional and shows respect for the political compromise that has brought our nation together. The Constitution is more than a mere technical apparatus for the management of the country; it is the ultimate symbol of the dignity, freedom and respect for which the nation fought so long and sacrificed so much. Far-reaching amendments to the Constitution, which reducing the number of provinces, etc, imply, should thus not be considered lightly. On the contrary, the principles and values of the Constitution, as well as every provision giving effect to them, should be cherished and protected with jealousy.
  
2. The Policy Review and White Paper should recognise that the provincial and local government spheres form an essential and integral part of democratisation, of representivity and accountability. Provincial and local spheres are not mere administrative appendixes that can be removed by slight of hand – they are vital democratic organs of the young South African democracy. South Africa must protect every democratic institution in all three spheres with all its means and should rather build, expand and enhance such institutions instead of taking them down.
  
3. The management of a three-sphere system is per definition more complex than a unitary or highly centralised system, but then it goes without saying that democracy is by definition complex. However, the benefits it brings far outweigh the negatives. International experiences of developed and developing nations show that the complexity that a three sphere system brings, is balanced with greater efficiency, deeper democracy and accountability, and increased political stability. Reference should be made to the experiences of countries such as India, Malaysia, Indonesia, Nigeria, Brazil and Mexico which have all used federal-type arrangements to expand and consolidate democracy in those nations.
  
4. The main reasons for service delivery problems in South Africa are not constitutional or legal. The reasons can rather be attributed to shortages and lack of skills, training and resources. The structural framework of the South African democracy is the product of extensive negotiations and should not be altered without very good grounds and multiparty support. Non-structural challenges such as service delivery cannot be solved by structural changes. It is a matter of horses for courses. Service delivery can and must be improved by better training, secondments, resource sharing and so forth.

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5. The current demarcation of provinces should remain unaltered with the exception of the reversal of alterations in areas such as Kutsong and Matatiele that have already been announced by government. The provincial identities are well established and there is little if any public call for a change of boundaries or for a reduction of the number of provinces. More effective arrangements must however be put in place to regulate cross-border services where a community is spread over more than one province. Rather than to amend provincial boundaries, agency and other cooperative arrangements must be used to ensure that members of a community receive proper services regardless in which province they reside.

#### **Clarification of powers and functions**

6. Many aspects of the Constitution's demarcation of powers and functions require further clarification. This can be done by means of intergovernmental agreements rather than by constitutional amendments. Even the most detailed constitutions such as those of India and Malaysia, require further clarification of powers and functions through agreements.
7. In order to clarify powers and functions, a broad based approach should be averted. It is not conducive to proper governance if general and sweeping statements are made about the provinces and local governments. It is better to identify specific functional areas, for example health or education, and to analyse in detail which sphere is responsible for which aspect thereof and where improvements can be made.
8. The general principle that must guide clarification of functions is that the national sphere should limit itself to framework legislation whereas provinces and local governments fill in the details in accordance with their circumstances and needs. International experience shows that the notion of concurrency can easily be abused by national parliaments to the detriment of provinces. Successful systems show that the national parliament should limit itself to framework legislation while provinces are at liberty to add provincial-specific detail to it.
9. The origins, extent and reasons for shortcomings in service delivery at all three spheres of government require thorough and detailed investigation. Wide consultation must occur to establish where government services are failing, why the services are failing and what remedies are available. It is only after extensive analysis of the respective functional areas that constitutional amendments, may be considered if necessary.

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10. The philosophy of co-operative governance is based on the point of departure that it recognises three distinct, interdependent and interrelated spheres of government. In short, promoting co-operative government is not necessary in a unitary state in which lower levels function as mere administrative agents! Co-operative government thus depends on the commitment of all political parties and participants to respect, cherish and promote the existence of the three spheres of government. It is essential that the governing ANC treats provincial and local government as "governments" and not mere "administrative agencies". Disrespect for the **governance** function of provincial and local spheres permeates the entire system of intergovernmental relations and impacts on service delivery. The result is that the very existence of the local and provincial spheres may become challenged and for the reasons mentioned in the beginning that would not bode well for the South African democracy.
  
11. The national policy framework is fragmented and policies and priorities often overlap each other, or worse even contradict each other. There is a multitude of programmes that cause confusion amongst all spheres. The scheme of legislation is very confusing to public officials who are trying to improve service delivery to the people. A single national policy framework weakens effective co-operative government.
  
12. Predictability of initiatives and meetings in the field of intergovernmental relations is required. Regardless of the merit of presidential and ministerial Imbizo's, these are often called at short notice with provincial and local officials not being properly prepared and without it forming part of any general strategy. As a result, follow-up within the local government or province is often not up to standard. A well-coordinated cycle of events, encapsulated in a National Planning Schedule, is necessary. The meetings should also be harmonised with planning sessions to enable the outcome of meetings to be factored into the planning of the local government or province.
  
13. The voluntary nature of intergovernmental relations means that compliance with decisions is generally voluntary. As a result there is no consistency with implementation and follow-up. Another issue that needs to be looked at is that the varying status of officials attending intergovernmental meetings erodes the effectiveness of discussions and limits the ability of forums to make decisions.
  
14. A sectoral assessment is required of the functioning of intergovernmental relations in specific functional areas for example housing, health, education, agriculture, etc. In such a way specific problem areas can be identified and rectified. A one size fits all-approach would increase inefficiency and cause more problems than it solves. If a broad brush-approach is taken where generalisation dictate the outcomes, there is a real risk that government efficiency will decline even more.

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15. The constitutional obligation of spheres to assist one another through training and resources must be given practical effect. Centralisation is not the answer to poor service delivery. Many national government departments are also plagued with poor service delivery. Training, education and capacity building are the answers to improve service delivery and deepen democracy.

#### **National Council of Provinces**

16. The functioning of the NCOP is impacted upon by the dominance of the ANC at national and provincial spheres. The way in which the NCOP discharges its functions, is therefore influenced by what is in effect a one-party set-up. It is therefore difficult to do a proper assessment of the way in which the NCOP functions and whether it serves the interests of the provinces as was originally intended. The impact of the NCOP on the national legislative programme is slight, but that is probably due to political party dominance rather than its formal powers and functions.
17. The NCOP has been shown to be more complex than the drafters of the Constitution had anticipated. Some of the issues that can be identified are: the time for consultation with provincial legislatures is extremely limited; the fact that legislation is not introduced in the NCOP diminishes its status; its use of the committee system to effectively scrutinise legislation is below standard; and the instructions its members receive from the national party head office undermine it as a house of the provinces.
18. A proper review of the powers and functioning of the NCOP should be undertaken. The current policy review is, however, not the appropriate vehicle to undertake the review. It is, however, probable that the functioning of the NCOP would be influenced if after the 2009 election, some provinces are governed by non-ANC party/ies.

#### **Local government**

19. The job insecurity suffered by municipal managers is impacting upon the entire service delivery process and the stability of local governments. Municipal managers often live in anxiety since their positions are tenuous and subject to political interference. Employment security and career opportunities must be offered at local level to attract sufficiently qualified staff.
20. Ward committees are often dominated by special interest groups that drive their own agenda. As a result, public participation in formal structures and institutions at the local level is in a decline. There is a real risk that public demonstrations will increase due to the decrease in credibility of existing structures.

21. The main political parties, in particular the ANC and the newly formed COPE, must re-commit themselves to the current Constitution and the distribution of powers to three spheres of government. If necessary, a multi-party conference should be convened to assess the functioning of the current allocation of powers and to make adjustments thereto if necessary.
22. Provincial governments must be encouraged and allowed to become more active in the legislative field by co-legislating in concurrent matters. Agreements in inter-governmental forums can be left to the provinces to enact, which allows them the opportunity to make provincial-specific legislation without deviating from the principles, norms, standards and frameworks agreed upon. The credibility of the system would be enhanced thereby and the effectiveness of decision-making would be enhanced.

**Financing of provincial and local spheres**

23. A total review must occur of the system of financing of government functions. While it is accepted that a high degree of fiscal transfers and grants would always characterise the South African system, a clearer and more certain formula should be developed. The principle of the "level that spends must be the level that taxes" must be complied with as far as practically possible. In such a way provinces and local government would be able to better plan policies and local populations would be able to hold them accountable for failures.

**Administrative and other arrangements**

24. The Constitution provides ample scope for cooperation, agreement and delegation between the respective spheres. If problems are experienced by a specific provincial government to deliver a specific function, the answer is not to centralise the power but to enter into an arrangement with the province where training is given or assistance is rendered on an agency basis. After all, the national government is duty-bound by section 125(3) of the Constitution to assist the provinces in developing the capacity to perform their functions effectively. The same applies to the relationship between provinces and local governments. A partnership approach is required to ensure each sphere can discharge its constitutional functions without centralisation taking place.
25. The proposed (now withdrawn) Single Public Service Bill must be reviewed since the imposition of a single public service would divest local governments of the essential elements of autonomy that could make them a success. If there are problems with recruiting staff at municipal level, it could be addressed by secondments, training and agency arrangements rather than centralisation of the entire workforce.

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## Electoral system

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26. The functioning of the three spheres of government cannot be analysed in isolation of the political realities of South Africa. The fact that one party has dominated the national, provincial and most local governments has contributed to a culture of centralisation and patronage. Provincial and local spheres cannot be blamed for lack of performance – those that govern at the respective spheres must be criticised. If other parties were to be elected into government at the provincial and/or local spheres, the dynamics of the system would be different.

27. Account must be taken that the electoral system is enhancing centralisation of decision-making and an alienation of the electorate. Members of the public perceive representatives as unresponsive and subservient to the interests of the party and not the people. The result is that public demonstrations are on the increase.

## Criticism of the review process

28. The review process which was embarked upon in August 2007 is too vague, general, biased, and poorly motivated to enable comprehensive inputs. The lack of public participation undermines the entire review process. There is also a real risk that the review process may lead to findings and recommendations that are not based on fact but on perception and bias. The entire review process must be re-opened with proper objectives and sufficient opportunity for public consultation.