



## Why Do We Need Provinces?

### 1. Introduction

As we approach the local government elections in two months' time, and as we continue to experience serious instability at the level of national government, it may seem strange to focus on the 'middle level' of government – the provinces. But arguably at least, the provinces have the potential both to support and strengthen local government, and to close the gap between national government departments and policies, and the people these are meant to serve. Unfortunately, the record of provincial governments in both respects is patchy, and for this reason alone it is worth asking what the provinces are for; whether we need them; and, if so, whether we should reduce or increase their number.

These questions were addressed at a CPLO roundtable, sponsored by the Hanns Seidel Foundation, on May 20<sup>th</sup>. Three speakers gave their views: Mr Themba Fosi, a Deputy Director-General in the national Department of Co-operative Governance and Traditional Affairs (COGTA); Mr Kevin Mileham, a Democratic Alliance MP and 'shadow minister' of COGTA; and Prof Erwin Schwella of the School of Public Leadership at Stellenbosch University.

### 2. How Our Provinces Came About

During the CODESA<sup>1</sup> negotiations that led to South Africa's political transition in 1994, one of the many sticking points was the matter of whether the country should be a unitary or a federal state. Broadly speaking, the apartheid-era political parties, including the National Party, the opposition Democratic Party, and the predominantly Zulu Inkatha Freedom Party, favoured a federal system with a large degree of devolution of power to the regions. They saw this

as a key means of limiting the power of central government. On the other hand, the liberation movements favoured a strong unitary state, arguing that such an arrangement would be necessary in order to address regional inequalities and to pursue a programme of redistribution of resources and empowerment of the dispossessed.

As with many other issues at CODESA, a compromise was reached. There would be provinces, but they would have limited powers and competences. Nevertheless, the existence of provinces, each with its own directly-elected legislature, did constitute a move away from the complete centralisation of power. Furthermore, in a context where it was as good as certain that the ANC would win an outright majority, the fact that there would be a second level of government gave comfort to groups and parties with a strong regional, but weak national, base – they might not gain much of a footing in the national parliament, but they could be relatively confident of exerting a meaningful influence in one or two of the provinces.<sup>2</sup>

It was also envisaged that provincial government would provide, in Mr Fosi's words, "another platform for political participation and representation." National governments and parliaments, no matter how responsive they try to be, simply cannot attend to the huge number and variety of issues that arise regionally; and this is all the more so in a pure proportional representation system, where MPs are not directly accountable to geographical constituencies.

Lastly, the negotiating parties realised that the new dispensation would have to find ways of accommodating the armies of civil servants that had been brought into being by apartheid's homeland and Bantustan systems. By absorbing them seamlessly into provincial administrations much potential dissatisfaction and unrest, not to

mention job losses, could be avoided. It was at least partly for this reason (though also because of ethnic, linguistic and historical considerations) that some of the new provincial boundaries either followed, or at least absorbed, former homeland territories. Thus, for example, the North-West Province almost completely covered the territory of Bophuthatswana, and the Eastern-Cape took over both Transkei and Ciskei.

### 3. What Do the Provinces Do?

As a result of South Africa's weak form of federalism, virtually all significant areas of state power are vested in the national sphere, with the provinces having exclusive competence over relatively minor matters, such as liquor licensing, ambulance services, provincial roads and traffic, and recreation and amenities.<sup>3</sup> However, the provinces share competence with national government in a much wider range of activities (known as concurrent competences), including some of the most important of all – education, health, housing, public transport, and social development and welfare.<sup>4</sup>

To a very large extent, the provinces function as delivery mechanisms. They receive an allocation of funds from the national treasury and they are required to spend the money on schools, hospitals, roads, social grants, and the like. Although certain minimum standards are set down by statute for the whole country in each of these fields, national government does not dictate to the provinces what percentage of their allocation they should spend on specific functions – education, health, etc.

This means that each province has some room to move when deciding on where to apply the resources at its disposal. One may decide to prioritise child health and disease prevention, while another may focus on treating TB and HIV/AIDS. One may concentrate on pre-school and early learning, but another may emphasise support for pupils who have reached the higher grades. The point is that a province is likely to have a better idea of the needs of its people, and of how to address them, than national government would have.

Regional needs can also be addressed through the provincial system. Our provinces are not the same agriculturally, for example. The Free State may be suffering a drought, with devastating consequences for its maize crop, while the dams in

KwaZulu-Natal could be full. The fact that each province has its own agriculture department allows them to respond appropriately, and probably more efficiently, to such exigencies.

But the provinces have a more directly political role as well. It may well be that voters believe that party A has the best policies when it comes to defence, international relations, and trade; but that party A lacks insight into the peculiar challenges of their region. Such voters may well wish to have party B in charge of their region, and the provincial system gives them this choice. In other words, the provincial system allows citizens to differentiate between national and regional priorities, and to choose their parties accordingly.

The system also creates space for minority parties to govern at regional (provincial) level. As mentioned above, this happened in two provinces in 1994: the Inkatha Freedom Party won a narrow outright majority in KwaZulu-Natal (41 out of 81 seats; it was unable to repeat this success in 1999). In the same year the National Party won a majority in the Western Cape (23 out of 42 seats). It, too, was unable to repeat this victory thereafter, and the province was governed by various coalitions until 2009, when the Democratic Alliance won an outright majority which it extended in 2104.

It is important that parties in opposition at the national level have this kind of opportunity to govern at provincial level. It allows the electorate to evaluate their capabilities, and it gives the parties concerned an opportunity to showcase their policies and put them to the test. This is especially important in a country, such as ours, where one party has been completely dominant at national level for over twenty years.

### 4. What *Should* the Provinces Be Doing?

At the roundtable, Mr Mileham made the point that there is a lot that the various provinces could do in order to differentiate themselves. They have the constitutional capacity to legislate in their areas of competence, but relatively little seems to be happening in this regard. The key opportunity for the provinces is to go beyond the minimum levels of service provision required by national government. For example, if national policy were to stipulate a maximum teacher/pupil ratio, there is nothing to stop a province from improving on this ratio. Likewise, provinces can build more clinics than the minimum required; and they can

make social grants more easily accessible and improve security at payment points.

Provincial governments can also do a lot to address regional needs in areas such as culture, language and ethnicity. There are many distinct attributes present in each of our provinces, and these can be promoted and accentuated with clever planning and application of resources. Tourism, of course, forms a big part of this, and the provinces are free to promote themselves to the international tourist market and to enter into 'twinning' agreements with foreign countries or regions.

Infrastructure development is another area where provinces can make a big difference both to people's quality of life and to economic development. The Gautrain is perhaps the best example of this so far.

In all of these, the major limiting factor is finance. Since the provinces have only very limited ways of raising their own money (they may not impose income tax, VAT, property rates or customs duties) they are effectively dependent on allocations from the national treasury. Such allocations are primarily intended "to enable [provinces] to provide basic services and perform the functions allocated to [them]." For the rest, if provinces wish to go beyond merely this implementation role, they can apply for extra funds from treasury, or they can try to find creative ways of raising further finance.

## 5. Do We Really Need Them?

All three speakers agreed that, rather than debating whether or not to have provinces, we should be looking for ways of making provincial government more competent and capable. Some political voices, notably within the Economic Freedom Fighters (EFF), have suggested that provinces could be scrapped, and that their implementation and delivery functions could be handled at municipal level. However, this would require a massive constitutional rearrangement. Not only would whole chapters of the Constitution have to be amended or scrapped, but the complex relationship between the existing three spheres of government (national, provincial and local) would have to be entirely reworked into a two-sphere system. None of the speakers, and hardly any of those who contributed from the floor, though this was at all a worthwhile or practical prospect.

Another option that has been floated occasionally is to reduce the number of provinces. It is argued that to revert to a four province system, or even to go down to five, would result in significant savings. This idea, too, received little support. For one thing, any such change would itself require a set of constitutional amendments, which would no doubt be contested and drawn-out. In addition, the idea is unlikely to be politically popular. Opposition parties (especially the DA, given its control of the Western Cape) see the provinces as offering crucial opportunities to exercise real power and to build a support-base for their national efforts. The ruling party, on the other hand, also uses the provinces as a kind of nursery for political talent and as a way of distributing opportunity and influence across the country's many regions, languages and ethnic groups.

## 6. Conclusion

Prof Schwella made the point that the country as a whole needed to move away from emotional and ideological arguments and towards arguments (and thus policies) based on ideas and experience. A central question had to be asked: "When we design or assess state institutions, in view of the great challenges of poverty, inequality and unemployment, does what we do contribute to the creation and distribution of wealth in an effective and ethical way?"

Applying this question to our provinces, we would certainly find that to some extent they contribute to the distribution of wealth. They do this directly, through their implementation role in education, health, social development, etc., and indirectly, in that they allow central government to deploy additional funds to provinces or regions that are least able to fend for themselves. But the record is distinctly patchy. Provinces routinely fail to spend their full housing budgets, for example<sup>5</sup>, and it is common knowledge that thousands of rural schools still lack basic necessities such as running water, toilets, etc. In other words, there is room for the provinces to work much more effectively. And outside of Gauteng and the Western Cape, there is not a lot of evidence that the provinces are finding innovative ways to create new wealth.

Despite these reservations, however, it seems clear that the provinces and the three-tier system of government are here to stay. They certainly have the potential to improve the living standards and the prospects of the people who live in them,

and to foster a greater level of political participation by citizens, and accountability on the part of their public representatives. But – as with so many other provisions of the negotiated transition of the early 1990s – we have not learned

how to use them to anywhere near their maximum effect. Perhaps that failure, rather than questions around the existence of the provinces, or their number, is what ought to occupy us.

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<sup>1</sup> Convention for a Democratic South Africa.

<sup>2</sup> As it happened, in the 1994 elections the Inkatha Freedom Party and the National Party won control of the KwaZulu-Natal and Western-Cape provinces respectively. Six of the other seven provinces were comfortably won by the ANC, which also managed to take 50% of the vote in the Northern-Cape.

<sup>3</sup> A full list can be found in Schedule 5 of the Constitution.

<sup>4</sup> See Schedule 4 of the Constitution.

<sup>5</sup> <http://www.iol.co.za/news/politics/r886m-of-housing-budget-unspent-1486131>

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