

The Constitution and Governmental Relations in South Africa

This chapter is devoted to important aspects of governmental relations in South Africa, specifically in terms of the Constitution of 1996.

The background to constitutionalism has been dealt with in chapter 1, and those facts need not be repeated except to repeat an aspect of what has been stated pertinently, namely: "In the modern era relations between government and society are regulated by so-called national politics by means of a constitution."

It has also been repeated a few times that the primary aim of government is to promote the welfare of the society it represents, that is, government should govern for the benefit of all.

French philosopher Jean-Jacques Rousseau (1712-1778), wrote in his *Social contract* in 1762: "Should we enquire in what consists the greatest good of all, the ideal at which every system of legislation ought to aim, we shall find that it can be reduced to two main heads: *liberty* and *equality*" (1946 p 308).

The South African Constitution of 1996 pre-eminently aims to create relations which will do just this. This is verified by two specific provisions in the Constitution.

First, Section 2 of the Constitution Act states:

"This Constitution is the supreme law of the Republic; law or conduct which is inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."

Second, Section 7 of the Constitution Act states in connection with the *Bill of Rights* in Chapter 2 of the Constitution:

"This Bill of Rights is a cornerstone of democracy in South Africa. It en-

shrines the rights of all people in our country, and affirms the democratic values of human dignity, equality and freedom.”

In this manner firm relationships are established in South Africa between state and subject, through its Constitution.

6.1

Historical Perspective

6.1.1

The National Convention

Two years prior to the National Convention of 1908, when the four colonies of Transvaal, the Orange Free State, the Cape and Natal met in Durban to discuss the possibility of unification, the choice between a unitary and federal form of government for the proposed new state elicited considerable interest, also in countries abroad (cf Thompson 1960). One of the most widely known local publications in this regard was a comprehensive document of the Central News Agency entitled “The Government of South Africa” (1908) which objectively discussed the administrative implications of federal and unitary forms of government. Other publications included a lengthy appeal in favour of a federal form of government, in *The Transvaal Leader* of October 1908 by the well-known author Olive Schreiner (Schreiner 1961).

In motivating her preference she maintained that a unitary form of government would be unsuitable in view of the disparate history and traditions, as well as the diverse nature of the territories to be united. Her main motivation was that she felt a federal system would be more in keeping with the spirit of individual freedom, since in a unitary state the various territories would be closely united and consequently forfeit their individual freedoms.

The National Convention opened in Durban on 12 October 1908, and lasted until 5 November of that year. On the second day, the matter of a constitutional system was raised by John X Merriman of the Cape and Jan Smuts of the Transvaal, who both strongly favoured a unitary form of government (Thompson 1960:187). Merriman underscored his arguments

by attempting to discredit the federal system and cited examples of “undesirable” conditions in the federal systems of the USA and Australia.

Smuts, who also advanced arguments in favour of a unitary form of government, maintained that the new state should be based on mutual trust and that the colonies should thus be united under a unitary form of government. He pointed out that federalism would result in an inflexible constitution and that the final say on matters affecting the community would rest with a court of law instead of with representatives of the community. As a union, the country would instead function as an economic unit, while a uniform approach could also be adopted on issues concerning the black population. He was careful not to discourage the colonies, however, and in conclusion, promised that the “provinces” would be endowed with distinct powers in terms of the constitution. Smuts and Merriman were strongly supported by Steyn (Orange Free State), while Natal initially resisted these proposals but agreed to a unitary form of government after having called a referendum. On 11 May 1909 the constitutional proposals were approved in Bloemfontein, and submitted to London for finalisation and proclamation as a British law.

6.1.2

The Constitution of 1909

In terms of the *Zuid Afrika Wet, 1909*, the four former colonies were united in a union under a single, sovereign authority. Concessions in respect of the division of functions between the central authority and the provinces prompted intimations concerning the federal nature of the Constitution which, in some circles, was described as quasi-federal (South Africa 1987:135). This approach, however, was incorrect, *since the supreme sovereign power of parliament was clearly defined in the constitution*. A division of functions does not imply a division of power, and power was vested in parliament. The *Zuid Afrika Wet* made provision for relations on three vertical and three horizontal levels, the former being central, provincial (the former colonies) and local (under provincial authority); and the latter being legislative (parliament), executive (the cabinet) and judicial authority (the courts).

Specific relations laid down by the 1909 constitution deserve particular attention. The *Zuid Afrika Wet* was drawn up for the Union parliament,

which was subordinate to the British parliament, largely as a result of the British Colonial Laws Validity Act, which stipulated that colonial legislation was subject to approval by the British throne. Although South Africa subsequently attained dominion status and its laws were no longer subject to British approval, ties with Britain were finally severed only with the promulgation of the 1961 constitution.

Other important relations laid down by the constitution were those between the legislative and judicial authority. With the promulgation of the 1909 constitution, the judicial authority was created to deal with all judicial matters in South Africa. As a consequence, the courts occasionally also delivered judgement on parliamentary legislation. However, a watershed in these relations was reached in the Harris case (see Wiechers 1967:503), when the court delivered judgement against the government concerning a matter of fundamental importance. This gave rise to the promulgation of Act 9 of 1956, which stipulated (sec 2) that no court of law would in future be empowered to investigate or deliver judgement on an Act passed by parliament. The well-known 'entrenched' clauses in respect of the official languages were excluded from this stipulation. By passing this Act, the legislative authority demonstrated its sovereign power in respect of judicial matters.

6.1.3

The Constitution of 1961

The Constitution of the Republic of South Africa, 1961 (Act 32 of 1961) was promulgated to establish the Republic, following South Africa's decision to withdraw from the Commonwealth. This constitution thus finally severed British constitutional relations with South Africa, in contrast to the 1909 constitution, which recognised South Africa's subordination to Britain.

The vertical and horizontal relations created by the 1909 constitution were incorporated in the 1961 constitution and provided for three hierarchic levels of authority (central, provincial and local) as well as a legislative, executive and judicial authority at the horizontal level. As a forerunner to the 1983 constitution this Act also made provision for a state president as head of the Republic (Sec. 7) but with only nominal powers in relation to the legislative authority.

The Constitution Act of 1983 made far-reaching changes to the 1961 constitution.

6.1.4

Race Relations in South Africa

Before discussing governmental relations manifested in the 1983 constitution, it would be useful - particularly with a view to the fundamental changes it embodied in comparison to the previous constitutions and the ethnic basis introduced by it - to discuss race relations which, even before Unification in 1910 and up to the 1996 constitution, have always formed an integral part of South African politics. In the interest of clarity, the actions in respect of the various racial groups are discussed separately.

6.1.4.1 Governmental Relations with Indians

Prior to unification, Indians were entitled to the vote in Natal and the Cape Colony. After unification, registered Indians in Natal retained the right to vote but no further Indian voters were registered. For all practical purposes, Indians in the Cape Province, as in Natal, lost the right to vote in 1956 with the introduction of separate voters rolls (Booyesen & Van Wyk 1984:7).

The first essentially *formal* relations between the central government and the Indian population came into being with the establishment of the Indian Council in terms of the South African Indian Council Act, 1968 (Act 31 of 1968). Prior to the establishment of the Indian Council and at least up to 1960, it had been National Party policy that steps should be taken to repatriate Indians living in South Africa (National Party 1960: par 7). In the Orange Free State, the domiciliary rights of Indians had been abolished in 1891. In terms of the 1968 Act, the Indian Council had no legislative authority and acted merely in an advisory capacity to the South African government. This Act was repealed by the 1983 constitution.

In the course of time, a few local authorities for Indians were established by the Natal Provincial Council, while advisory bodies were established in Indian areas within the jurisdiction of the white local authorities.

Meanwhile the Group Areas Act, 1966 (Act 36 of 1966) made provision for a system of local government whereby certain urban areas would gradu-

ally be developed into independent local authorities (both in respect of Indians and coloureds). A consultative committee was initially established within the jurisdiction of white local authorities to advise the latter, while provision was made to upgrade such committees to management committees (or local affairs committees in the case of Natal), provided that this step was merited by the further growth and development of the relevant areas. These committees were to discharge duties assigned to them by regulation by the central government from time to time, and in such cases relations with the white local authorities extended to a system whereby the committees would *advise* on local government services for the relevant community.

These committees could eventually develop into independent local authorities. This last step was achieved only in respect of Indian communities in Natal, where four "autonomous" local authorities were established at Verulam, Isipingo, Umzinto North and Marburg.

The *intensity of relations* between the government and the Indian population was thus characterised by a high degree of dependence, since Indians had at no stage been granted autonomous authority and were in all respects subordinate to the government. The 1983 constitution and other legislation inaugurated an entirely new phase in relations between Indians and the central government. This aspect is discussed at a later stage.

6.1.4.2 Governmental Relations with Coloureds

Relations with the coloured population of South Africa were consistently more formal than with the Indians.

In the old Cape Colony, the right to vote was subject to certain requirements, irrespective of race or colour. This ruling was incorporated in the *Zuid-Afrika Wet* of 1909 as an entrenched clause, and coloureds who met these requirements thus retained the right to vote after unification in 1910. An Advisory Coloured Council was established in 1943, which was subsequently succeeded by a Union Board for Coloured Affairs in terms of the Separate Representation of Voters Act, 1951 (Act 46 of 1951). Both the Advisory Council and the Union Board were *advisory* bodies.

The Act of 1951 above came into force with retrospective effect only in 1956 following a protracted struggle in the courts against the government's intention to remove Coloureds from the white voters' roll. Since the

coloureds were entitled to the vote in terms of an entrenched clause, the court insisted that the government follow the legal procedures required to amend an entrenched clause, which called for a two-thirds majority vote in a joint sitting of parliament and the senate. As a consequence, the government circumvented the obstacle by increasing the number of senators in order to meet this requirement (The Senate Act, 1955 (Act 53 of 1955)).

With the promulgation of the 1951 Act the coloureds were thus removed from the white voters' roll and obtained, instead, the right to be represented in parliament by four white representatives. This right was repealed by Act 50 of 1968, leaving the coloureds without direct representation.

The Coloured Persons Representative Council Act, 1964 (Act 49 of 1964) made provision for the establishment of a Coloured Persons Representative Council. However, this council was established only in 1969, in terms of Proclamation No 77 dated 3 April 1968. It replaced the previous Board for Coloured Affairs. In contrast to the Indian Council of 1968, this council was endowed with qualified legislative authority in respect of finances, local government, education, welfare, agriculture and coloured settlements. The relevant Act was thus responsible for decreasing the intensity of relations between the government and coloureds. All such legislation was, however, subject to the approval of the Minister of Coloured Affairs and, where applicable, the Minister of Finance and the provincial administrators. The government's underlying motive was that the Coloured Representative Council should prepare the ground for the eventual development of a coloured parliament. The experiment failed, however (Booyesen & Van Wyk 1984:9), since coloureds refused to allow the council to function properly.

The Coloured Representative Council was abolished in terms of Act 24 of 1980 (sec 4), and the latter Act was repealed in Annexure 2, vol 2 of the 1983 constitution.

As in the case of Indians, relations with coloureds at local government level were regulated by the Group Areas Act. Only one fully developed coloured local authority, that of Pacaltsdorp, was established in the Cape.

6.1.4.3 Governmental Relations with Blacks

At the time of Unification in 1910, blacks in Natal and the Cape whose names appeared on the voters' roll retained the right to vote and, by way

of a concession to the Cape, black franchise in the Cape was entrenched in the Constitution. Blacks were nevertheless removed from the white voters' roll without excessive protest, as in the case of coloureds, at a later date. In exchange, black voters obtained the right to elect three white representatives to parliament and two to the Cape Provincial Council in terms of the Native Representation Act, 1936 (Act 12 of 1936).

In 1959, when the idea of establishing self-governing homelands for blacks was very much in the forefront of South African politics, indirect black representation in parliament was abolished by the Promotion of Self-government Act, 1959 (Act 46 of 1959). The subsequent establishment of self-governing black national states added a new dimension of interstate relations to governmental relations with homeland blacks.

6.1.4.4 Governmental Relations with Urban Blacks

The expression, "urban" blacks does not necessarily refer to blacks living in urban areas, and the expression is employed merely to distinguish between blacks living in and outside the homelands which were established.

The purpose of the Native (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945) was to regulate the presence of blacks in white areas. In cases where blacks resided in or adjacent to the areas of white local authorities, the white governmental bodies controlled such areas on behalf of the central government in terms of Act 25. Since blacks had no representation in white areas and, in addition, had no councils or committees of their own, relations were without exception of a high intensity.

In terms of the Administration of Black Affairs Act of 1971 (Act 45 of 1971) administration boards were established to take over the administration of black areas from white local governmental bodies as from July 1 1973. As a consequence of this legislation, relations between the central government and black areas changed from indirect control by means of white local authorities to direct control by the central government, *although the intensity* of relations was not affected. Blacks still had no say whatever in governmental affairs.

The Community Councils Act of 1977 (Act 125 of 1977) represented the first step towards the establishment of separate local authorities for blacks. These community councils which, generally speaking, took over the func-

tions of the administration boards, were appointed in large black urban areas, while the functions of the administration boards were changed to one of overall control over community councils, since more than one of the latter could be established within the area of an administration board. The members of community councils were elected by the local inhabitants, which meant that for the first time, the interests of black communities were attended to by black councillors elected by the relevant communities.

The next step towards the establishment of "autonomous" black local authorities was the Black Local Government Act, 1983 (Act 102 of 1983), in terms of which the Minister of Co-operation and Development could establish local areas or town or city councils for blacks, depending on the size and state of development of the area concerned. The community council in a particular area was thus replaced by the establishment of the new council in that area. The functions of these new councils were virtually identical to those of white local authorities, and even the designations of the various posts were identical. However, in view of the wide diversity of traditions, cultures and lifestyles obtaining in black urban areas, it was an open question whether black local authorities could be run on the same basis as white local authorities. A more appropriate system would probably have proved more efficient and have contributed towards more satisfactory and more meaningful relations with the central government. Nevertheless, the new legislation provided urban blacks with an opportunity to attend to the interests of their own communities in their own areas.

6.2

Governmental Relations Under a New Constitutional Dispensation (1983)

6.2.1

Initial Steps

Preparatory steps to the changes embodied in the 1983 constitution were taken in 1976 with the nomination of a cabinet committee to investigate the possibility of amending the Westminster Parliamentary System applicable in South Africa, mainly with a view to accommodating other popu-

lation groups in the process of government (Booyesen & Van Wyk 1984:13). This committee, chaired by the then Minister of Defence, PW Botha, made various recommendations which were to eventually culminate in the promulgation of a new constitution.

6.2.2

The Schlebusch Commission

The Report of the Botha Committee engendered little enthusiasm in government circles and the matter was thus referred to the so-called Schlebusch Commission for further investigation (Booyesen & Van Wyk, 1984:14). Among the most important recommendations of this commission to be embodied in subsequent legislation were that the senate should be abolished, that parliament should be enlarged by the *appointment* of 12 additional members, and that a president's council should be established to advise the state president. These recommendations were embodied in Act 101 of 1980.

A remarkable aspect of these amendments was the acceptance of the principle that some members of parliament should be *appointed*. This constitutes a deviation from the principle of representative government, which was one of the fundamental requirements of extragovernmental relations between the central authority and the community (the electorate). According to this principle, the *electorate* appoints a representative who is accountable to them (cf paragraphs on constitutionalism). Members of parliament who were appointed did not meet this requirement.

Numerous drafts were considered before the constitution in its final form was passed by Parliament in September 1983 (Act 110 of 1983). In November of that year it was subjected to a referendum and approved by a large majority of the white electorate. *The referendum was held exclusively among white voters.*

By virtue of the referendum result, the new dispensation was an established fact and the new constitution embodied drastic changes in governmental relations in many respects.

The Constitution of 1983

The Constitution of the Republic of South Africa, 1983 (Act 110 of 1983), resulted in far-reaching and fundamental changes in the administration and government of the Republic and gave rise to extensive changes, amendments and revised accents in intergovernmental, intragovernmental and extra-governmental relations throughout the entire public sector.

It would serve no useful purpose to discuss the 1983 constitution in detail since the changes affected by the 1993 Interim Constitution and the final Constitution of 1996 basically nullified the provisions of 1983.

6.3.1

Constitutional Developments Since 1993

The year 1994 is of great significance in the constitutional history of the Republic of South Africa. The entire governmental spectrum, ranging from central government level to local government, was restructured.

The basic reason for the fundamental changes can be found in the steps of the central government to completely abolish constitutional differentiation between racial groups in the country. In the process a traditional government system, which had existed since the amalgamation of the four provinces into the Union of South Africa in 1910, was upended.

It has already been mentioned that a constitution is a set of rules in terms of which an elected government rules over its subjects.

The Republic of South Africa Constitution Act 110 of 1983 was repealed with effect from 27 April 1994. The Interim Constitution of the Republic of South Africa 1993, Act 200 of 1993, came into effect on the same day. This 1993 Act was superseded by Act 108 of 1996.

Because of the radical changes, which took place in the Republic and because of the fundamental effect these changes had on relations, comparisons will constantly be made between the respective provisions in the 1983

and 1996 constitutions. Meanwhile it is of some significance that the 1996 Constitution has specifically provided for principles of co-operative government and in particular emphasises the basic importance of governmental relations. Section 2(a) of Section 41 of the constitution clearly identifies this necessity as follows:

“An Act of Parliament must establish or provide for structures and institutions to promote and facilitate intergovernmental relations.”

In terms of the analysis of relationships identified in this book, it is accepted that this section in the Act would naturally include *intergovernmental*, *intra-governmental* and *extragovernmental* relations.

6.3.2

The Electorate

(a) The 1983 Provisions

In terms of the 1983 constitution, white, coloured and Indian persons who were South African citizens and who were at least 18 years of age could be registered as voters.

Voters' rolls for the three groups were kept separately, and *each group voted for its own representatives* in parliament and in their own constituencies.

Parliament consisted of 166 members in the white House of Assembly, 80 members in the coloured House of Representatives and 40 members in the Indian House of Delegates.

Provision was also made for the appointment by the state president of a small number of additional members to each house.

Functions of parliament were divided into general affairs and own affairs.

Each house exercised power in respect of its own particular group, and all general affairs were exercised by parliament as a whole (matters such as defence, foreign affairs, police, and finance matters).

It is important to note that in terms of the 1983 constitution blacks were not

It is important to note that in terms of the 1983 constitution blacks were not eligible to become voters and consequently had no direct representation in parliament. Black affairs were entrusted to the state president and for this purpose he generally appointed a minister in the cabinet to deal with these matters.

All relations (*intra-, inter- and extra-*) were still founded on racial lines, as had been the case since 1910.

(b) The 1996 Provisions

Far-reaching and fundamental changes to the electorate are affected in the new constitution.

In terms of section 3 of Act 108 of 1996 there is a common South African citizenship. This provision in the constitution means that for the first time, all South Africans are able to take part together in the election of representatives to the South African parliament.

At the time of unification in 1910, blacks in Natal and the Cape whose names appeared on the parliamentary voters' roll retained their vote, and the black franchise in the Cape was even retrenched in the 1910 constitution. Later, however, blacks were removed from the voters' roll without much protest and they obtained the right to elect three white representatives to parliament and two to the Cape Provincial Council.

However, in 1959 when the system of self-governing homelands for blacks was under consideration, the indirect representation of blacks in parliament was abolished.

In terms of the new constitution, all eligible voters share a common vote with no strings attached, and relations in respect of voting are no longer bound by racial restrictions.

6.3.3

The Election Process

(a) The 1983 Process

For the purposes of elections, the Republic was divided into electoral constituencies and seats were allocated to the various provinces and between the various races as follows:

	Cape	Natal	OFS	Transvaal
House of Assembly (white)	56	20	14	76
House of Representatives (coloured)	60	5	5	10
House of Delegates (Indian)	3	29	-	8

The political party obtaining the most representatives in parliament formed the government until the next election.

This system, which is called the Westminster system, and which was adopted from the British system, was not a very satisfactory method, because a party that obtained a majority of representatives could nevertheless have only obtained a minority of the total number of votes cast in the election.

(b) The 1996 Process

The election process in the new constitution is totally different from the previous system, and is based on "proportional representation" (section 46 of the Act). Elections are held in accordance with the provisions of the Electoral Act 202 of 1993.

The National Assembly consists of 400 members, who are elected on the principle of proportional representation. Briefly this means that political parties must submit lists (separate lists for the National Assembly and the provincial legislative authority of each province) before the election takes place.

Each voter is entitled to cast one vote for the National Assembly and one vote for the provincial legislative authority in his province.

After the election all votes cast are counted, and the 400 seats in the National Assembly are filled in accordance with a system of proportional representation in terms of the number of votes received by each party.

The number of seats awarded to a party participating in the election is that calculated by dividing the total number of votes cast nationally in favour of such party by the quota of votes which has been determined.

6.3.4

Parliament

(a) The 1983 Parliament

In terms of the 1983 constitution parliament consisted of the three houses mentioned previously. These houses met separately, but provision was also made for joint sessions of the three houses for particular purposes, on the order of the state president. At such joint sittings the principle of combined majority vote was not applied, *and when a vote was taken the votes of the respective houses were counted separately.*

(b) The 1996 Parliament

In terms of section 42 of the 1996 constitution, parliament consists of a National Assembly and National Council of Provinces.

The National Council of Provinces is composed of ten members from each province. Members are nominated by the parties represented in the respective provincial legislatures.

6.3.5

The National Executive

(a) The 1983 Constitution

The 1983 constitution provided for the appointment of a state president by parliament, and of a cabinet by the state president and for minister's councils for each of the three houses of parliament.

The Cabinet was generally responsible for general affairs, and the respective Minister's Councils dealt with the various own affairs of the respective Houses.

A member of each Minister's Council (usually the chairman) was also appointed to the cabinet by the state president.

Members of the cabinet were usually allocated various portfolios as their respective executive responsibilities.

(b) The 1996 Constitution

(i) The President

The 1996 Constitution provides for the appointment of a president (note, *not* a state president).

In terms of section 83 of the Act, the president is the head of state and head of the national executive, and he or she must exercise and perform his/her powers and functions in accordance with the constitution.

The president is elected by a majority of votes in parliament, and the procedure in this regard is set out in schedule 3 to the Act. Parliament must elect one of the members of the National Assembly as president.

The powers and functions of the president are set out in section 84 of the Act and are basically similar to those of the former state president. He or she generally also acts in consultation with the cabinet.

(ii) Executive Deputy Presidents

Executive deputy presidents are appointed as follows (section 91 and Schedule 6 of the Act):

Every party holding at least 80 seats in the National Assembly is entitled to designate an executive deputy president from among its members of the National Assembly.

If no party or only one party holds 80 or more seats, the party holding the largest number of seats and the party holding the second largest number of seats is entitled to designate an executive deputy president. This provision will lapse from the 1999 elections, leaving provision for only one deputy. An executive deputy president performs such duties as are assigned to him by the president.

(c) The Cabinet

The cabinet consists of the president, the executive deputy presidents and not more than 27 ministers appointed by the president (section 91). The system of proportional representation also applies.

Meetings of the cabinet are presided over by the president, and the cabinet functions in a manner which gives consideration to the spirit of consensus-seeking.

6.4

Constitutional Court

There was no constitutional court in the 1983 legislation.

Powers and duties of the constitutional court

In terms of section 167 of the 1996 Act, a constitutional court has jurisdiction in the Republic as the court of *final instance* over all matters relating to the interpretation, protection, and enforcement of the constitution.

A decision of the constitutional court is binding on all persons and all legislative, executive and judicial organs of the state.

In the event of the Constitutional Court finding that any law or provision is inconsistent with the constitution it will declare such law or provision invalid to the extent of its inconsistency. The Constitutional Court may require parliament or the responsible body to correct the defect within a specified period, and the defect will remain in force for that period.

Proceedings at the Constitutional Court and the manner in which its duties are engaged, are regulated by rules prescribed by the president of the Constitutional Court in consultation with the chief justice. These regulations must be published in the Government Gazette.

6.4.1

The Essential Role of the Constitutional Court in Relations

As already stated, the Constitutional Court is the court of final instance and in terms of section 167 of the Constitution, “makes a final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter”.

In the ordinary course of events the Constitutional Court would, for all intents and purposes, generally decide whether any legislation - national, provincial or local - is legal within the bounds of the constitution. In other words, it would adjudicate on *formal relations* between and within state structures generally. This would not normally affect the man in the street unless he is directly involved in a dispute with a governmental body.

However, as far as the new South African constitution is concerned the matter has far greater implications especially as far as relations are concerned. The reason for this is that the 1996 constitution contains most significant chapters concerning relations, involving virtually *every single member of society in South Africa*, namely chapter 2 - *the Bill of Rights*.

The Bill of Rights, which is most comprehensive, is purported to be “a cornerstone of democracy in South Africa” (section 7(1)) and “The State must respect, protect, promote and fulfil the right in the Bill of Rights” (Section 7(2)).

It is obvious that a relationship of the highest intensity is created through the Bill of Rights, between the state and its subjects. The watchdog in this regard is, of course, the courts. It is also clear that, by virtue of the fact that the Constitutional Court, as the final arbiter on constitutional matters, and the fact that the Bill of Right forms part of the Constitution, is the final guardian over the rights included in the Bill of Rights. The relations created by this situation are indeed multifaceted. Not only must the Constitutional Court guard the relationships between government and society and between governmental body and governmental person, it must also guard the relationships between persons and persons - all of this revolving around the simple fact that the many clauses contained in the Bill of Rights must be properly interpreted. Add to this the fact *that the*

interpreters are human beings, each one having his own subjective sense of values.

All of which makes the Constitutional Court a principal actor in inter-, intra- and extra-governmental relations arenas in the Republic.

6.5

Provincial Government

The relations between the government and the provinces are set out in chapter 6 of the constitution.

6.5.1

A New System and New Provinces

An entirely new system of provincial government is introduced in the new constitution.

The former provincial councils which were originally established in terms of the 1910 constitution (the Transvaal, Cape Province, Natal and the Orange Free State), remained in force in the 1961 constitution but the councils were entirely excluded from the 1983 constitution.

The areas of the four provinces remained intact, and these provinces were governed by an administrator and an executive committee appointed by the state president.

In terms of the new constitution the four provinces have been abolished, and nine new provinces as indicated in section 103 of the Act are established as follows:

Eastern Cape
Mpumalanga
KwaZulu-Natal
Northern Cape
Northern Province

North-West
Free State
Gauteng
Western Cape

6.5.2

Elections for Provincial Legislatures

Members of the provincial legislatures are elected on the same date as the members of the National Assembly on a separate ballot paper.

The allocation of seats among the various participating parties in the election is also on a proportional basis in accordance with provincial lists submitted by the parties.

6.5.3

Provincial Executive Authorities

(a) The Premier

The executive authority of a province shall vest in a premier (section 125 of the Act), who must exercise and perform his/her powers and functions subject to the provisions of the constitution.

Note that the office of premier replaces that of the former administrator of a province, who was appointed by the state president.

The premier is elected in terms of section 128 of the Act by the provincial legislature at its first setting after it has been convened.

The election of the premier takes place in accordance with the provisions of schedule 3 to the constitution, that is, basically by means of a secret ballot of all the members of the provincial legislature. The candidate receiving a majority of all votes cast is elected premier.

(b) The Executive Council

In terms of Section 132 of the Constitution the Executive Council consists of the premier and not more than ten members appointed by the premier from the members of the provincial legislature.

The premier of the province determines the specific portfolios to be allocated to each participating party in accordance with the number of portfolios allocated to the parties, and after consultation with the leaders of the respective parties.

6.5.4

Provincial Finances

Provinces are entitled to an equitable share of revenue collected nationally, based on a percentage of income tax collected in the province, and a percentage of value added tax. All percentages are to be fixed by an Act of Parliament (section 214 of the Act).

Provinces may also levy taxes, surcharges or levies, provided they are authorised by an Act of Parliament. Provinces may raise loans for capital expenditure only.

6.5.5

Powers of Provinces

The legislative powers of provinces are contained in schedule 5 to the Act. These powers do not significantly differ from the powers which were granted to the previous four provincial authorities which existed under the previous government.

It must also be borne in mind that the government is a government of national unity, and although it may appear that aspects of federalism are present in the allocation of powers to the provinces, federalism is, in fact, absent from the constitution. The relations between the government and the provinces are based on purely unitary principles, as described in chapter 5.

6.5.6

Provincial Constitutions

In terms of section 142 of the constitution, provincial legislatures are empowered to draw up provincial constitutions for their respective provinces. Such provincial constitutions will be of force and effect only after the Constitutional Court has certified that none of its provisions is inconsistent with any provisions in the national constitution. These constitutions will generally form the basis of relationships between the provincial authorities and the citizens of each province.

6.5.7

National Council of Provinces

A most significant change in emphasis in relations between the national government and the various provincial governments is the introduction and establishment of a *National Council of Provinces*, which, together with the National Assembly constitutes the parliament of the Republic (section 42(1) of the Constitution Act 1996).

The National Council of Provinces is composed of a single delegation from each province consisting of ten delegates.

All legislation must be passed by government. The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government (section 42(4)).

Extended provisions are made for voting procedures in parliament, but generally, any bills amending the constitution must be supported by the votes of at least six provinces.

The importance of the establishment of the National Council of Provinces lies in the fact that the provinces are now drawn directly into the legislative process, thereby creating relations of *high intensity* between the national government and the provinces. Previously, provinces were generally left to their own devices (within the controls which apply in a unitary state).

In a later chapter (where relations in other countries are compared with those in South Africa), the question of *access* is dealt with as an important catalyst for intergovernmental relations in France in particular. This present legislative process in South Africa, where the national government and the provinces (through the National Council of Provinces) meet to form the two pillars of parliament, undoubtedly provides a meaningful method of *access* between the *two governmental* sectors. This can only lead to an increase of meaningful relations between the national and provincial bodies.

6.5.8

Commission on Provincial Government

In terms of section 163 of the *Interim* constitution of 1993 a Commission on Provincial Government was established by the president to advise on various matters concerning provincial affairs. (This commission is *not* included in the final 1996 constitution). The commission issued a progress report for the period June to December 1994, in January 1995 (Commission report 1995).

It is interesting to note that the commission identified a number of crucial issues to be clarified and resolved, the first issue being "(a) The relationship between powers of national government and provincial government (p 8)".

This is another indication of the importance being attached to the question of relationships between the government and governmental bodies.

NOTE: It is of importance to note that provinces have *no autonomous powers*. Section 100 of the Constitution states: "When a province cannot or does not fulfil an executive obligation in terms of legislation on the Constitution, the national executive may intervene by taking appropriate steps to ensure fulfilment of that obligation ..."

In terms of chapter 7 of the constitution extensive provision is made for the establishment and development of local authorities and for powers and duties allocated to them.

As far as the question of relations is concerned, local government will continue to be under the control of the provinces as was the case since the establishment of the Union in 1910. This means that the so-called “autonomy” of local government is still virtually non-existent as previously, and all power still vests in the respective provincial authorities.

No extended provision has been made for further financial resources (a complaint of many years’ standing), except that section 214 to the Constitution Act provides that an Act of Parliament must provide for “the equitable division of revenue raised nationally among the national, provincial and *local* spheres of government”.

It is to be expected that the government will have to re-assess its financial relations with local government. There are large numbers of deprived communities throughout the country, and the government will be compelled to investigate carefully its subsidy policies and general financial relations as far as local government is concerned, simply because it is obvious that existing communities will not be able to finance essential upliftment programmes without considerable assistance.

A welcome improvement in the relations between local government and the higher bodies has however been provided by means of modes of *access* into the structures of the higher bodies.

First, in terms of Section 67 of the Constitution, the following provision is made:

“Not more than ten part-time representatives designated by organised local government... to represent the different categories of municipalities may participate when necessary in the proceedings of the national Coun-

cil of Provinces, but may not vote.”

Second, in terms of section 220 of the constitution a Financial and Fiscal Commission is established to advise the state on financial matters.

Section 221(1)(c) provides that, among other, *two persons nominated by organised local government* will be appointed to the commission.

These two provisions in the constitution constitute meaningful *access* methods for local government which would also lead to an improvement of relations between the various governmental bodies.

6.7

Some Significant Provisions Concerning The Advancement of Relations

In addition to the fundamental provisions of the Bill of Rights as contained in chapter 2 of the constitution, which creates an intense relationship between government and subject, there are a few further provisions which also affect relations considerably. These are contained in chapter 9 of the constitution and are aptly termed “State Institutions Supporting Constitutional Democracy”.

6.7.1

Public Protector

The public protector, the successor to the former ombudsman of the previous government, has the power “to investigate any conduct in state affairs, or the public administration in any sphere of government, that is alleged to be improper or to result in an impropriety or prejudice” (section 182 (1)(a) of the Constitution Act).

This power of the public protector is, therefore, primarily aimed at ensuring that the relationships as required by the fundamental *requirements of*

administrative law, as set out in a previous chapter, viz for example, actions must be authorised; all actions must be within the law; all procedures required by law must be complied with; the miscarriage of justice must be avoided; discretion must not be improperly exercised, and actions of officials must at all times comply with the requirements of reasonableness, integrity and unimpeachability.

It is obvious that the relationships required by the provision of administrative law are of the utmost importance in governmental matters, and that the duties of the public protector in this regard are therefore of fundamental necessity for intergovernmental, intra-governmental and extra-governmental relations throughout the entire process of government, and of public administration in general.

6.7.2

Some Further Provisions

There are a few other commissions provided for in the constitution, which are generally also intended to improve relations on all of the *inter-, intra- and extra-*governmental levels, and they are mentioned here merely to complete the picture of the importance of governmental relations as portrayed in the constitution generally:

- Human Rights Commission (section 184)
- Commission for the Promotion and Protection of Rights of the Cultural, Religious and Linguistic Communities (section 185)
- Commission for Gender Equality (section 187).

Bargaining and Negotiation in Governmental Relations

Introduction

Decision-making is a deliberate human behavioural action of selecting from alternative choices that activity which is designed to solve a problem or to achieve a goal. (Hanekom 1987:13). Hanekom also states that a decision “is but a moment in an ongoing process”, while at the same time he acknowledges that in making a choice between alternatives, numerous related actions are required to be considered and or carried out before the decision-making “moment” eventuates.

Decision-making activities become manifest in the public administration process in various ways. Generally, state legislation and other regulatory directives dealing with the establishment and operation of subordinate governmental bodies are to a large extent peremptory (the *shall* syndrome). Because of this, it could vaguely be argued that the value allocations between the state and its subordinate bodies have become so rigidly institutionalised and fixed that the very act of decision-making has become a mere formality, requiring few or no choices between alternatives. This could also be taken to imply that decision-making “moments” in public administration are limited, and that ongoing actions in the making of choices have only a limited place in the decision-making process.

These assumptions concerning the decision-making process can be basically equated with the general theory of perfect competition in the field of economics - any possibilities of bargaining and negotiation, or of value judgements, are excluded as being superfluous (Coddington 1972:43). In other words, if this line of thought is followed still further, the state would provide those resources which it regards as being adequate, it would issue the necessary directives, and the subordinate bodies concerned would receive and utilise that which is given strictly in terms of the directives.

This type of approach could be valid to some extent in the Republic of

South Africa because of a large number of restrictive laws and regulations - but as a general criterion it does not really exist in a democratic state. In spite of the sometimes formalistic nature of state legislation, necessity dictates that there will always be an abundance of delegated legislation, with a wide range of discretionary powers (the so-called *may* provisions). The consequent exercise of such delegated discretionary powers would inevitably involve the consideration of alternative choices in seeking to arrive at the particular "moments" where decisions are to be made. And where the consideration of alternative choices is necessary in respect of any particular matter, bargaining and negotiation would inevitably play a role. Very few functions allocated to particular governmental bodies by delegation are exercised solely and in isolation by each body. Rhodes (1981:86) states in this regard that there is a constant interdependence upon and an inter-relationship between governmental bodies (and also between governmental bodies and the private sector) in their search for the resources required to carry out their respective functions - "resources" in this particular sense meaning funds, information, enabling legal provisions, political resources, or anything else that would assist in the carrying out of a task. The search for such resources would require bargaining and negotiation to a greater or lesser extent.

The basic purpose of this chapter is to briefly investigate the role of bargaining and negotiation in public decision-making within the framework of governmental relations.

With this in mind, a brief survey will be made of the scope, problems, methods and processes of bargaining and negotiation in the context of their being essential aids to decision-making.

7.2

The Scope of Bargaining and Negotiation

The *Oxford English dictionary* provides the following brief definitions:

To bargain is to treat with any one as to the terms which one party is to give, and the other to accept, in a transaction between them.

To negotiate is to hold communication or conference with another for the purpose of arranging some matter by mutual agreement.

These definitions indicate that bargaining and negotiation are closely related activities, the main difference appearing to be that in the case of bargaining the question of agreement on exchange is the relevant factor while in the case of negotiation agreement is pertinent, although the question of exchange could also be relevant. These two activities obviously complement and even overlap each other, and in view of this, the discussions which follow will refer to negotiation only as being the collective word for both activities.

In determining the scope of negotiation the following factors will apply:

- (a) The process of negotiation could vary from the most simplistic to the most complex. On the one hand negotiations could cover singular and elementary matters, but on the other hand negotiations could be of a highly complicated and extended nature (Coddington 1972:43). The protracted discussions on the future of the former South-West Africa during 1988 represent a typical example of this type of negotiation (bearing in mind that the bargaining action was especially relevant in this particular instance).
- (b) The negotiating process could vary between a situation of bilateral monopoly, consisting of two single participants at the negotiating table (Siegel & Fouraker 1960:1), and multilateral participation by a large number of actors.
- (c) Negotiation is subject to a wide behavioural scope, running through attitudes such as honesty, bluffing, brinkmanship, coercion, blackmail, manipulation, power exertion, intransigence, antagonism, deceit, and probably a number of other human attitudes (Coddington 1972:44).
- (d) As a factor in decision making negotiation will initially be based on expectation in the face of uncertainty of the outcome. In other words the ultimate reaching of a final decision-making moment may even appear to be remote at the commencement of negotiations.
- (e) Any decisions which may be arrived at as a result of a negotiating process would probably have temporal limits - they would be subject to

review, revision, re-evaluation, revocation or renewal (Strauss 1978:5). This means that negotiation can hardly ever be negotiation for all time in respect of any particular matter.

(f) Negotiation is essentially a relationship situation in which the abilities of the various participants to gain their respective ends are dependent to an important degree upon the choices and decisions that each opposing participant may make (Schelling, 1960:89).

7.3

The Scope of Decision-Making

It has been indicated that a decision is but a moment in an ongoing process, but that the decision-making process could take some considerable time. Choices involve the objective consideration of available information and the analysis of various possibilities and preferences. Choices also involve knowledge of different decision-making approaches. Furthermore they would involve the necessity for applying different skills in the utilisation of various facts and values, in order to finally make a deliberate choice between a number of alternatives. All this means that the decision-making process is a complex phenomenon with many facets (Hanekom 1987:13). Participants in the public administration process share a common interest in arriving at satisfactory decisions, especially in view of their joint efforts to promote the welfare of the community. In their efforts to achieve that goal the participants would probably have divergent views, values and objectives, and that would make negotiation an essential activity in the decision-making process (Ingram, 1977:501).

7.4

The Scope of Governmental Relations and Negotiation

The contemporary state consists of a large and varied number of public institutions, operating by means of many public office bearers and officials. These institutions and persons are distributed haphazardly through-

out the country, and it would be well-nigh impossible to provide a single classification which could convey a true picture of their divergent natures, aims, functions and specific areas of operation. It is within these wide-ranging and complex frameworks that the problem of governmental relations is manifested. Perhaps Dwight Waldo's description (as was previously mentioned) of this problem is relevant to the complexity of the situation. He states that the problems of governmental relations are political, administrative, legal, constitutional, practical, theoretical, social, economic and ideological, and that those characteristics are interrelated and interwoven into a multitude of relations and situations (Hawley 1969:preface) which make the analysis and study of governmental relations most complex. It is within the framework of those relationships that negotiation also must inevitably take place, as governmental bodies (through their respective representatives) vie with each other for those resources which would enable them to perform their respective functions meaningfully and effectively.

7.5

The Negotiating Process

The negotiating process can be illustrated by means of two examples which will indicate two extreme negotiating situations, viz simplistic and complex situations. Within the bounds of the two extremes there may be a myriad of other situations, each with a lesser or greater degree of complexity.

7.5.1

Simple Negotiating Situations

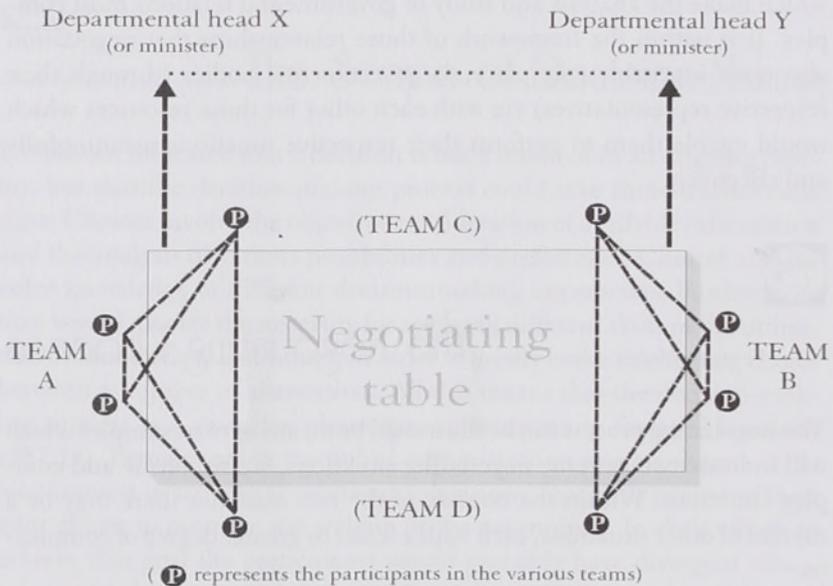
These particular situations do not require much attention or explaining. Negotiation between two participants (both possessing full decision-making powers) is direct and unfettered, and unhampered by extraneous circumstances of any nature. This type of negotiation, being of a basically straightforward nature, could result in decisions being taken speedily, depending, of course, upon the complexity of the subject matter. The simple form of negotiation is related to the concept of bilateral monopoly in the

study of economics “in which a single buyer of a specific commodity is confronted by a single seller of that commodity” (Siegel & Fouraker 1960:2). Each participant will attempt to achieve maximum benefit for himself.

7.5.2

Complex Negotiating Situations

Complex negotiating processes can be explained by means of the following illustration :



The following negotiating situations may be identified in the illustration:

(a) There are four participants within each team (A & B). Each participant, being an individual with his or her own personal value preferences, will be inclined to have his or her own attitudes towards the matters to be negotiated and for the sake of providing a united front there would have to be an initial and continuous horizontal internal negotiating process within each team, and also initial and continuous decision-making.

(b) Straightforward across-the-table negotiation will take place between teams A and B.

(c) Should the decision-making power not vest in the respective teams, they will be required to constantly consult and negotiate vertically with their respective departmental heads or ministers (X & Y), as the negotiations at the table progress.

(d) A complicating factor could enter the relations and negotiations when departmental head (or minister) X and departmental head (or minister) Y involve themselves in mutual sideline across-the-air negotiations on matters on hand, based on inputs from their respective teams.

(e) It is feasible that the negotiating table could also accommodate further teams (C & D), which would enhance the negotiations and relations to a more highly complex criss-cross horizontal and vertical negotiating situation, infinitely complicating the already difficult processes enumerated under (a) to (d) in respect of teams A and B. (In this respect also the 1988 negotiations on the future of South-West Africa are a typical example of this type of situation). It is evident that in a complex negotiating process as described above, negotiations could be protracted and difficult, which could aggravate the decision-making process. It is evident that a large number of secondary decisions would probably have to be made during the negotiating process. The final decision-making "moment" will occur only after the teams around the table reach complete agreement on all points, and after they have reported to their respective department heads or ministers (should that be required), on the terms of any agreement reached.

7.6

Negotiating Problems

To add to the complexity of the decision-making process where negotiation plays an important role, there are a number of aggravating circumstances which could play a complicating role in the relations and in efforts to arrive at decisions. Some of the more important circumstances are dealt with briefly.

(a) It is sometimes difficult to ascertain where, or at which place in time, the negotiating process in respect of a particular matter commences. It is evident that some form of discussion, or even of preliminary negotiation and decision-making must precede the commencement of formal nego-

tiations. This view is aptly described by Cameron (1988:6). "Negotiations do not start around the conference table - this is but the culmination of a very protracted and subtle process." This could in some instances imply that the participants around the negotiating table could possibly already be committed to act under various sets of directives, or decisions already made.

(b) Time is invariably a complicating factor in the negotiating process. Short-term gain or gain in the long run will influence the negotiating strategies of the various participants (Coddington 1972:45). Any form of delay from any of the participants could place the process in jeopardy if time is of the essence for other participants. If time is not of the essence, there is no saying when negotiation will lead to final decisions being taken. All kinds of extraneous circumstances could then become complicating factors - financial aspects, changes in the composition of the negotiating teams, and sometimes even the very reasons for the negotiations may lapse or change.

(c) The nature of the agenda on the negotiating table could be a complicating factor. An open agenda could lead to side-tracking aspects entering the negotiating process, and instances of "bargaining avoidance" (Rosenthal 1980:8) intended to deliberately delay or totally avoid the reaching of decisions, may even occur. A fixed and inflexible agenda, on the other hand, could contain and bind participants to such an extent that decisions could only be arrived at with difficulty.

(d) Pressman (1975:12) states that inter-governmental relations are in fact inter-governmental negotiations, in which the parties concerned are negotiating with each other on a wide range of matters in order to take specific decisions. That being so, a number of intergovernmental concepts could complicate the negotiating process.

(i) Governmental distance (Regan 1982:51-65) as a concept implies that every governmental body has a relative size within the framework of the total governmental hierarchy, based (in the case of local authorities, for instance) on its population, area of jurisdiction and financial resources. The implication, in the case of negotiation, would be that the smaller the relative size, the weaker the negotiating power and ability will be.

(ii) In terms of the concept of intensity of relations, relations between governmental bodies reflect dimensions of depth, since no two relations can be identical in every respect. The intensity of the relations between participants at the negotiating table will be influenced by factors such as their respective legal standing, their status, the degree of formality (or informality of the negotiations), and the behavioural attitudes already enumerated (honesty, bluffing, etc).

7.7

Methods of Negotiation

“In the game of chicken, victory goes to the side that more successfully demonstrates that it will not yield” (Fisher 1983:149). Fisher’s statement goes some way towards describing in general the methods which could apply around the negotiating table. However, just as the game of chicken could, in practice, have unexpected results, an attitude or approach of this nature around the negotiating table, could place the negotiating process in jeopardy. Nonetheless, negotiating situations are essentially situations in which the ability of one participant to gain his or her ends is dependent to a significant degree upon the choices or attitudes of the other participant (Schelling 1960:89) and to that extent an element of ordinary market haggling will probably always be present in negotiation. Furthermore, negotiating processes must inevitably be seen as efforts to arrive at decisions in the face of uncertainty (Coddington 1972:47) in the sense of the absence of foresight on the possible outcome of the negotiations. Added to these problems cognisance must also be taken of a frequently used attitude of “pure bluffing” (Cross 1965:70-71) which can be considered to be “deliberate misrepresentation of the outcome expectations in order to influence the opponents”.

Rubin (1983:145) has made a point that the process of negotiation is “one of the best human inventions” for the solution of problems, and consequently for arriving at satisfactory and acceptable decisions.

Two well-known authors in the field of negotiating problems and processes, OR Young and Roger Fisher, have researched means and methods by means of which negotiation can be utilised in ways which could avoid many problems that negotiators may encounter, and two of the more impor-

tant of these are briefly discussed.

(a) The availability and possession of information play a crucial role in successful negotiation. (Young 1975:9). Apart from the obvious requirement that a negotiator should have available all the relevant information concerning the matter in hand, his negotiating powers could be strengthened if he also has available adequate knowledge about the participants at the other end of the table, concerning, for example, their possible range of alternative choices, their preferences, and their probable reactions to specific proposals and suggestions (Young 1975:18).

(b) Possessing or acquiring the necessary negotiating power increases chances of success at the negotiating table, because it provides the ability to influence others (Fisher 1983:152). Fisher believes that the negotiator must be able to answer two questions with regard to negotiating power, viz how to utilise such power as he may have, and how to enhance that power. He provides the following checklist for utilising and changing negotiating power (p 153): the learning of negotiating skills; the establishment of good relationships before and at the negotiating table; the search for all possible alternatives; the search for "elegant" solutions to problems; the development of objective criteria and standards of legitimacy; and the planning and demonstrating of valid commitments to the matter at hand.

In terms of this Fisher checklist, the mere possession of power does not necessarily provide any advantage at the negotiating table. The advantage is gained rather by the manner in which power is utilised.

In the presentation of this short chapter on the negotiating process, and particularly as an aid to decision-making within the framework of governmental relations in public administration, it would be appropriate to conclude with a short summary of requirements for successful negotiating, as advocated by Jeffrey Rubin (1983:45). He states that a negotiator must

- (a) be aware of the difficulties which could confront the participants around a negotiating table;
- (b) avoid attempts to always look good in the eyes of the others;
- (c) be sensitive to the other's moves and gestures;
- (d) help to instil a sense of negotiating competence around the table;

- (e) avoid any form of intransigence; and
- (f) be sensitive to any form of possible conflict which could jeopardise the negotiations.

7.8

Bargaining Power

The concept of *bargaining power* manifests itself mainly in the field of labour relations, where employer and employee negotiate over conditions of service. However, in government generally there are constant negotiations over a wide range of matters, in which bargaining power plays a prominent role.

Wherever one body possesses or controls a facility which is sought after by another body, the question of bargaining and negotiation becomes relevant as the respective parties jockey for maximum advantage. The outcome of this bargaining process will generally favour the possessor of the greater bargaining power, which can be determined by one or more of the following factors:

- Bargaining power is influenced by the respective hierarchical positions of the participating parties. A higher governmental body or person would generally have a greater relative bargaining power than a lower body or person.
- The nature and measure of interdependence between the two groups will have a bearing on the bargaining power.
- The degree of relative autonomy of the parties will act as a determinant of their respective bargaining strengths.
- The history and nature of the co-operation or competition between the parties will be a factor in determining the bargaining power.
- Bargaining power can also be influenced by behavioural actions in a variety of mannerisms - by manipulation, coercion or persuasion.

Naturally, in spite of these factors, bargaining power will inevitably be

limited or extended by legal enactments, or by specific rules and regulations laid down for particular instances or circumstances.

Above all, most important, however, is the fact of the ever-presence of *people* who conduct the bargaining process and who create the relationships flowing from the process. Irrespective of any rules and regulations, and notwithstanding the influencing factors mentioned above, the subjectivity (or objectivity) of the participants, and their general demeanour (dominating, submissive, stubborn) will to a marked extent determine the relationships and the possible outcome of the bargaining.

Bargaining power can thus be considered to be a relative concept, which may be subject to any of a large number of factors and diverse influences.

On the whole, the bargaining power in a particular case will vest in those persons who prepare themselves properly on the subject matter of any bargaining get-together, and who have the further ability to take cognisance of all the possible extraneous influencing factors, and to utilise those factors to the best advantage.

7.9

Complexity of Negotiation and Bargaining

While it may be said that a decision is but a “moment” in an ongoing process, those actions required to be considered and executed before the “moment” arrives, could be complex, also because different decisions may require different decision-making models and different skills in the application of facts and values (Hanekom 1987;13). Whatever models or skills are applied, however, the negotiating process would invariably find a place somewhere along the decision-making line when making choices between alternatives. This line of thought is clearly illustrated by Bacow and Wheeler’s statement that one of the great virtues of applying decision analysis to negotiation is the fact that it combines such variables as uncertainty and time into a single process (Huelsberg & Lincoln 1985:127). Negotiation as part of the decision-making process in public administration is of particular importance as it is applied in an overall environment where all the participants work towards a common goal - arriving at decisions aimed at the advancement of the general welfare of the community.

Some Cross-National Patterns of Governmental Relations between Central and Regional Governments

The study of governmental relations within states has become an important aspect of the study of government in recent years - and the vertical relations between the central and local authorities have dominated these investigations.

This phenomenon can be ascribed to a number of circumstances which pertained after the second World War II. First, comprehensive reconstruction investigations were undertaken in a number of European countries, following the devastation which occurred in cities and towns as a direct result of the war activities. The underlying principle in these investigations was that a universal shortage of funds made it imperative that the reorganisations should be undertaken as economically as possible.

Greater delegation of powers was also investigated because this would enable local government bodies to fend for themselves instead of looking to the central government for funds.

Because of the divergent approaches to the creation and maintenance of relations between the central and local governments in different unitary states, cross-referencing could possibly lead to more acceptable and meaningful understanding of the methodology applied in the various states in this regard.

Cornerstones For Cross-National Comparison

It would serve no real purpose to select and compare the *governmental systems* of various states, as this would not bring us nearer to comparative governmental *relations*. It is therefore rather necessary to seek and apply those criteria which could act as catalysts for relations between the central and local authorities of the respective states selected for comparison.

For this purpose two of the more important catalysts have been selected namely *access* (that is, those channels of communication which are available to local authorities and provincial governments in their dealings with the central government), and *control*, because control always creates basic relations between governed and government wherever it is applied. The essence of these catalysts will be briefly explained.

8.1.1

Access

Access on governmental level refers to channels of interpenetration between central, provincial and local authorities, by means of which these bodies can create relations on both formal and informal grounds. This can be accomplished in various ways, by means of direct personal contact, through committees or associations, and also through statutory bodies. Each method of access creates its own particular types situations of relations between the higher and the lower authorities, and each state applies its own methods by means of which access can be arranged to suit local circumstances.

8.1.2

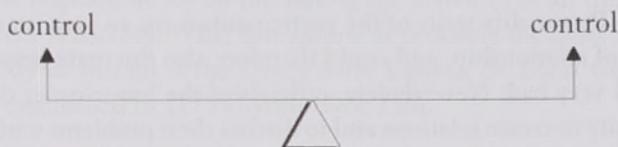
Control

The political supreme body created by the electorate must eventually give account to the electorate on its actions and also the actions of those subor-

dinate bodies created by it. For this very reason the introduction of *control* is so necessary and consequently, particular control patterns are created between the higher and lower authorities. The basic reason for this is that the control actions generally become manifest on any given point of a *linear control scale*, as indicated in the following simple sketch:

strictly formal

simple formal



Moving to the left from the centre point of the linear scale, the control action becomes more and more strict and formal. On the other hand, a movement to the right causes a gradual loosening of control until a position of simple informal control is reached. The eventual point of control on the linear scale will determine the nature and extent of the relations between the central and the local authorities in any particular state.

By means of cross-national comparisons between the various states, similarities and differences can be determined.

With the above information at hand, it now becomes possible to compare relationships between central and local authorities in various states, and for this purpose Great Britain and France have been selected to compare with the Republic of South Africa, for the simple reason that all these states are in essence also *unitary* states.

8.2

Access as Catalyst for Relations

8.2.1

Great Britain

A number of channels of communication between the central and local authorities in Britain have developed through the years in terms of which