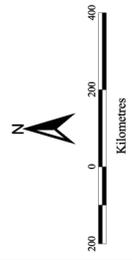


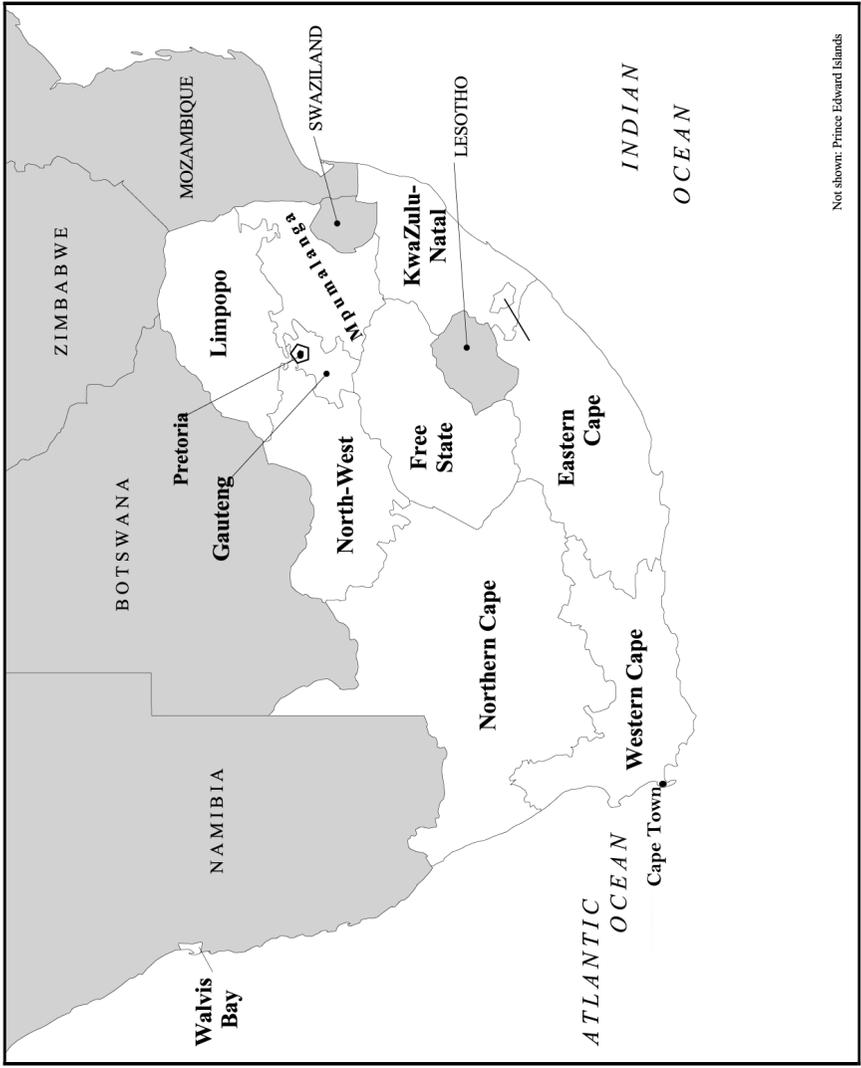
Republic of South Africa

Capital: Pretoria
Population: 43.5 Million
(2002 est.)

Boundaries and place names are representative only and do not imply official endorsement.



Sources: CIA World Factbook; ESRI Ltd; Times Atlas of the World; UN Cartographic Dept



Not shown: Prince Edward Islands

South Africa

CHRISTINA MURRAY AND
SALIM A. NAKHJAVANI¹

Emerging in 1994 from decades of international isolation and eager to surmount the socio-economic legacy of apartheid, South Africa's new provinces and municipalities were as enthusiastic about the possibility of foreign relations as the national government. However, the extent to which the constituent governments can engage in foreign relations is far from clear, and the national government's response to international initiatives by provinces and municipalities varies from indulgence to disapproval. The conduct of international relations affecting matters of concurrent competence underscores the uncertainty about the roles of provinces and municipalities in international relations. In particular, the constitutional framework intended to secure a provincial voice in international relations is not being used effectively. Indeed, with the notable exception of environmental matters, the national government seldom consults with provinces on international matters relating to their competences. Thus South Africa's international relations take place in a system that is but partially formed and characterized by more questions than answers, few established practices, and perhaps more uncertainty than is found in many older federal countries.

In practice, this means that although provincial and municipal officials may travel abroad and host foreign visitors (usually in the interest of developing trade links), enter twinning agreements, and receive international development aid, these activities remain haphazard. The national government has successfully asserted control of the most important international relations matter, development aid, and only the wealthiest province, Gauteng, has foreign trade offices.

THE COUNTRY, PEOPLE, AND PROVINCES

South Africa's transition from apartheid to democracy in 1994 changed both domestic politics and the country's relationship to the rest of the world. Most

significantly on the domestic front, the extension of the franchise to all adult South Africans and a commitment to constitutionalism were entrenched in an interim constitution and then in the “final” Constitution of 1996. The constitutional settlement also divided the country into provinces and municipalities with protected powers. At the same time, South Africa engaged constructively with the regional and international organizations of which it is now a full member, such as the Southern African Development Community (SADC), the Organization of African Unity (now the African Union), the Commonwealth of Nations, and the United Nations (UN). The country also seized the opportunities for international trade arising from the abundance of international goodwill created by the peaceful transition to democracy.

South Africa’s political history is one of the separation of white people and black people by a white elite and the deliberate neglect of the needs of black people.² This meant that, when the interim constitution was negotiated in 1993, the primary concern was to unite the country across colour lines. The nine provinces were not intended to have distinct ethnic identities, nor were they to have significant autonomy. South Africa is accordingly best described as a weak federal system. Some refer to it as a quasi federation. The bitter legacy of “separate development” – manifested through the proliferation of ethnically distinct “homelands” – accounts, at least in part, for strongly centralizing tendencies in South Africa’s federal structure.

In practice, the dominance of the national sphere of government inscribed in the Constitution is compounded by the dominance of the national party of liberation, the African National Congress (ANC), which commands more than 70% of the vote in the National Assembly and controls all nine provinces. During the drafting of the Constitution, the ANC did not favour the creation of provinces, and the prospect of their consolidation into purely administrative “regions” was once again mooted within party structures in 2006.³

There remain significant differences in the racial composition of South Africa’s nine provinces. In seven, black South Africans make up over 75% of the national population⁴ of 47.9 million people,⁵ but in the two others, the “coloured” (i.e., mixed-race) population, constitutes the majority. Linguistic diversity provides a second dimension of difference. English is the first language of only 8.2% of the population, and it is one of eleven official languages, but it can be considered the *de facto* national auxiliary language. IsiZulu is the most widely spoken home language (23.8%), followed closely by IsiXhosa (17.6%). Other languages are spoken by much smaller numbers. Language use varies across provinces.⁶ However, the divisions between black, coloured, Indian, and white still dominate politics, while differences in language use and ethnicity play little role.

South Africa’s nine provinces differ enormously in terms of territorial size and population density. Just 1.8% of the people live in the largest province,

the Northern Cape, while Gauteng, the smallest province, comprises only 1.4% of the surface area but is the second most populous province with 19.7% of the population.⁷

Overall, South Africa's gross domestic product (GDP) is US\$201 billion,⁸ or US\$11,417 per capita.⁹ Provincial development levels and GDP contributions vary substantially. Gauteng is by far the greatest contributor to GDP, accounting for 33% of the national total. The Northern Cape accounts for a mere 2.4%.¹⁰ Six major cities contribute 55% of the country's GDP.¹¹

Foreign trade amounts to about 50% of GDP, indicating strong integration into the world economy.¹² Just over 27% represents export revenue,¹³ mostly supplied from the primary sector (i.e., minerals, commodities, and agriculture).¹⁴ Although manufacturing represented only 19% of total merchandise exports in 1993, this figure rose to about 33% in 2000. There has been a corresponding decline in the share of mineral exports.¹⁵ Foreign direct investment accounts for around 2% of GDP.¹⁶

SOUTH AFRICA IN ITS INTERNATIONAL CONTEXT

South Africa was isolated economically and politically during most of its apartheid years. Although the United Nations condemned South Africa's racial policies in 1946 and forty-six countries cut arms links in 1963, the major powers would not condone South Africa's expulsion from the UN. Thus from 1974, a frustrated General Assembly simply rejected the credentials of the South African delegation, effectively excluding its participation. An OPEC oil embargo was imposed in 1973. Private disinvestment started during the 1960s and peaked in 1985 when a state of emergency was imposed in many parts of the country.¹⁷ In some countries, including the United States and Canada, constituent governments engaged in anti-apartheid disinvestment.¹⁸ In 1977 the UN Security Council banned arms sales to South Africa – the first mandatory sanctions against a full UN member.¹⁹ However, South Africa remained the tenth-largest arms producer in 1994.²⁰ Perceived as a US ally against communism, South Africa's international isolation was never absolute.²¹

South Africa is bordered by Namibia, Botswana, Zimbabwe, Mozambique, and Swaziland. It also surrounds Lesotho. Under apartheid, South Africa had a strained relationship with its neighbours – the “frontline states” – including Angola and Zambia, which openly supported South African liberation movements against the apartheid regime. As community links across these borders have always been close and many languages are shared, it is unsurprising that struggles for independence in the region strengthened transborder links. For example, in the 1970s displaced people from the Mozambican civil war – a conflict fuelled by the apartheid government – found refuge in Mpumalanga and Limpopo in South Africa. In the postapartheid

era, South Africa's regional relationships are completely different and its cross-border military activities have been limited to a 1998 intervention to restore law and order in Lesotho, at the request of SADC.²²

South Africa's strong role in Africa is similar to that of India in Asia and Brazil in South America.²³ It aligns itself with developed liberal states like Sweden, Norway, and Canada²⁴ but seeks, generally successfully, to represent the South, aiming to bridge the North and South divide while pressing a southern agenda. It is broadly acknowledged to be an "emerging" middle power – a "good citizen" that punches above its weight in the international arena and with international standing above countries with comparable development indicators.²⁵

Political factors linked to its transition to liberal democracy have contributed to South Africa's rapid integration into the international community, but "hard" factors such as its economic and development status have played a role too. It has 40% of Africa's gross national income, its trade surplus dominates Africa, and it is the major source for foreign direct investment in Africa, with a threefold increase from US\$1 billion in 1996 to US\$3.4 billion in 2001.²⁶ Its GDP per capita in 2004 exceeded that of its poorest neighbour, Lesotho, by a factor of seven, and that of Namibia by 160%, falling just shy of Botswana.²⁷ It is also the highest-ranking Sub-Saharan country in the UN Human Development Index (HDI),²⁸ ranked 121st in the 2006 report (with an HDI of 0.653).²⁹ The South African literacy rate of 86% outranks that of most SADC countries.³⁰

Since the end of apartheid, South Africa has forged significant commercial and trade links with neighbours in SADC and farther north. It enjoys a favourable SADC trade balance, with exports accounting for US\$2.45 billion of US\$2.95 billion in total trade.³¹ South African businesses and joint ventures have been active in acquiring interests in African countries and are responsible for the national railway in Cameroon and for airports serving seven African capitals. A subsidiary of the national electricity supplier is responsible for state electricity utilities in Tanzania, Rwanda, Malawi, and Zanzibar while managing power plants in six nations from Zimbabwe to Morocco. South African businesses have controlling shares in Telecom Lesotho and provide cellular services in six African nations.³² Retail stores have also crossed borders.³³ This corporate expansion makes South Africa the single biggest source of foreign direct investment (FDI) in southern Africa, pouring more money into the SADC region since 1994 than Britain and the United States combined.³⁴

South Africa's economic strength makes it an influential member of both the African Union (AU) and SADC.³⁵ The fifty-three-member AU aims to create a peaceful, democratic, and developed African continent with an effective common market. SADC aims to achieve a regional peace and security community with an integrated regional economy, and it is working

toward a free trade zone with common external tariffs and no internal tariffs by 2012. Both institutions enjoy the support of government and the business community and are seen as contributors to stability and economic development in Africa.

Aside from a good road network and the ubiquity of cellular phones among the urban poor and rich alike, transport and communications infrastructure in South Africa still bears the divisive imprint of the apartheid era. Commuter links, for example, were designed to ferry black workers to and from white centres of industry on working days only. Travel by bus remains the most affordable and popular mode of transborder public transport. The railroad operation is the largest in southern Africa, with 31,700 kilometres of single rail track. However, the only operational transborder rail route is between Pretoria and Maputo, Mozambique. The national airport agency manages three international and six national airports and projects 30% growth per year in the air transport market to 2030.³⁶ The so-called “low-cost” airline market has also taken root, and although most travel is internal, transborder flights are increasingly available to the middle class.

In 2001 South Africa had 52 land border posts, over a total border distance of 3,500 kilometres, of which 19 were open for the movement of commercial goods. There were 10 air border posts and 8 sea border posts. Borders are considered porous, and besides illegal immigration, cross-border criminal activity includes a flow of illegal weapons, drugs, diamonds, and stolen vehicles.³⁷

After the transition to democracy, it was feared that South Africa would be overwhelmed with migrants and refugees alike, aggravating the acute skills shortages of its neighbours. Accordingly, from 1994 to 2000, restrictive immigration policies sought to circumvent any “threat” to the new polity through mass migration from southern Africa.³⁸ Census data indicate that these fears did not materialize.³⁹ However, recent research by the Southern African Migration Project suggests that mass-skills migration to South Africa may be on the horizon, as “skills acquisition” dominates the domestic regulatory agenda and as the economic and political situation of neighbouring countries – especially Zimbabwe and the Democratic Republic of Congo – continues to deteriorate.⁴⁰

A 2001–02 migration survey indicated that almost half the migrants from South Africa’s neighbours came from Lesotho, and 28% from Swaziland.⁴¹ Causes are complex and interwoven, but general reasons include cross-border trading, poor economic conditions in the countries of origin (including unemployment, low wages, expensive consumer goods, and the low value of local currencies), employment opportunities in South Africa, and border penetrability.⁴² Notably, any immigrant absorption

burden is likely to fall not on the poorer frontier provinces but on tiny, highly urbanized Gauteng. With a median annual income of US\$3,404 for working-age adults, Gauteng remains attractive to economic migrants despite its 25.8% unemployment rate.

South Africa and its neighbours have a generally good record of cooperation on environmental conservation and sustainable development, particularly through the promotion of eco-tourism. The region includes five transfrontier parks and conservation areas, crossing parts of four provinces.⁴³ These areas are governed by bilateral or multilateral treaties, and in one case they provide an implementing role for the provincial authorities of KwaZulu-Natal. The mountainous border of Lesotho and KwaZulu-Natal includes the most significant water catchments for the region, and two bilateral civil engineering projects supply water to major industrial and population centres in Gauteng while generating hydroelectric power for Lesotho.⁴⁴

Finally, South Africa is significantly involved in peacekeeping operations in Africa, with troops in Burundi and the Democratic Republic of Congo under UN command and in Sudan as part of the AU peacekeeping effort.

Despite the country's increasing political and economic integration in the international community, the role of South Africa's provinces in international relations is often underestimated. In practice, provinces and municipalities have interacted enthusiastically with foreign counterparts in a number of different areas. Nico Steytler observes that "the South African provinces are slowly but surely pushing open the door to the international community."⁴⁵ As discussed below, most foreign relations of provinces are modest at present. But the seven frontier provinces are increasingly involved in what John Kincaid has called cross-border "housekeeping."⁴⁶ That South Africa's borders cut across ethnic and linguistic communities suggests that these arrangements are likely to expand, perhaps including cultural links in the future.⁴⁷ In addition, as provinces and the national government come to understand the role of provinces more clearly, provinces are also likely to be more directly involved in international relations driven by the national government.

CONSTITUTIONAL SETTING

Under the South African Constitution, provinces and municipalities have only those powers that are expressly stipulated. They fall into three categories: (1) so-called "concurrent," or "Schedule 4," powers that provinces and municipalities share with the national government; (2) exclusive provincial and municipal powers in Schedule 5; and (3) a limited number of other constitutional powers. All other powers vest in the national government. Both the national government and the provinces have legislative

authority over the concurrent powers, but the national government's power to override provincial legislation and municipal bylaws is strong. In case of conflict, provincial legislation prevails over national law unless the national law deals with a matter that provinces cannot effectively regulate on their own or if it is necessary for "national security," "economic unity" and the common market, the promotion of equal opportunity and equal access to government services, or the protection of the environment.⁴⁸ Such legislation must operate uniformly across the country. In areas of concurrent and exclusive provincial competence alike, national legislation can trump provincial initiatives if necessary, *inter alia*, to maintain national security, economic unity, and "essential national standards" or to "prevent unreasonable action taken by a province which is prejudicial to another province or the country as a whole."⁴⁹

Enumerated provincial powers do not include international relations, treaty making, foreign policy, or the like. Thus the prevailing understanding is that these matters are entirely and exclusively a national concern. The Constitution seems to support this view with respect to treaty making because Section 231(1) states that "[t]he negotiating and signing of all international agreements is the responsibility of the national executive."⁵⁰ However, this apparently unambiguous statement of national control of international agreements is undercut immediately by the requirement in the following subsection that international agreements be approved by both houses of Parliament. Hence an international agreement can be vetoed by the vote of five of the nine provincial delegations in the National Council of Provinces (NCOP), the second chamber of the national Parliament.⁵¹ This power is considerable, as it extends to matters that fall outside the usual competence of provinces and is greater than the power that the NCOP has over national legislation.

The collective power of South Africa's provinces to veto international agreements in the NCOP is limited in only one way: agreements of a "technical, administrative or executive nature" and agreements that "[do] not require either ratification or accession" must be tabled in Parliament but need not be approved by Parliament and so, presumably, cannot be vetoed by the NCOP. The Constitution does not define "technical, administrative, or executive" agreements; the executive defines these as agreements that are departmentally specific or politically insignificant or that carry no financial or domestic legal consequences.⁵² In law, the only authoritative interpretation of what agreements fall under this provision lies with the Constitutional Court. In the absence of judicial determination, because Parliament has the inherent power to control its own procedure, it is responsible for deciding whether specific agreements require Parliament's approval.⁵³ In practice, the executive arrogates to itself the power to make a determination of which procedure to invoke in Parliament, leaving

the decision to the substantive department negotiating the agreement in consultation with legal advisers from the ministries of justice and foreign affairs.⁵⁴

The constitutional framework also anticipates a role for provinces in international relations. For instance, chapter 3 of the Constitution sets out principles of cooperative government applicable to relations among the three spheres of government and requires consultation “on matters of common interest” and coordination of “actions and legislation.”⁵⁵ The national government and provinces share concurrent jurisdiction on matters such as trade, the environment, and agriculture, all of which are frequent subjects of international agreements. Although Section 231 might reserve the right to sign international agreements for the national government, the requirement of cooperative government clearly requires provinces to be consulted. This is a “soft” requirement. Although provinces can insist that they be consulted, and there is some indication that courts would enforce this right,⁵⁶ they cannot insist that their views be accepted. Moreover, the constitutional provisions that give the national government precedence in protecting national security, the economic unity of the country, “the common market in respect of the mobility of goods, services, capital and labour,” and the environment⁵⁷ suggest that the Constitution contemplates the dominance of national policies.

The requirement of consultation is not a mere constitutional gesture. The Constitution anticipates that provinces will implement not only provincial but also national legislation that falls within concurrent areas. If provinces are to implement the laws that result from international agreements, it is obvious that they should be involved in the preceding negotiations. Despite this, an examination of current practice indicates that provinces have – and expect – little involvement in international negotiations.

Precisely which agreements may be entered into on the sole prerogative of provincial and local governments remains contentious.⁵⁸ The *Manual on Executive Acts of the President of the Republic of South Africa* states that “[p]rovinces may not enter into agreements governed by international law except as agents of the National Executive.” But, it adds, “[t]hey may of course conclude contracts with foreign companies or constituent unit entities.”⁵⁹ This approach seems right. It assumes that when provinces (or municipalities) enter agreements with counterparts in other countries, they do not have the capacity to bind the state under international law and are not concluding international agreements per se. Of course, the principles of cooperative government set out in the Constitution apply here too. Just as the national government must, in principle, consult with provinces when engaging in international relations on matters of concurrent jurisdiction, provinces must, in principle, keep the national government abreast of their international activities.

There are two areas in which the limits on provincial engagement in international relations are clear: international borrowing and defence. First, the Constitution permits provinces and municipalities to take out loans "in accordance with national legislation,"⁶⁰ but national law enacted pursuant to these provisions prohibits international borrowing by provinces or municipalities.⁶¹ Second, with two exceptions, full responsibility for defence vests in the national government.⁶² The exceptions relate, first, to the use of the defence force "in cooperation with the police service" in defence of the country and in fulfilment of an international obligation; and second, to a declaration of "a state of national defence." In these circumstances, both houses of Parliament must be informed and, in the second case, must approve the declaration.

Finally, provinces have some involvement with policing. For instance, they can monitor the effectiveness of policing, but the Constitution gives the National Executive ultimate authority over all policing; thus the national government is responsible for international policing activities.⁶³

Under the Constitution, then, the most significant provincial involvement in international relations will be, first, their engagement and conclusion of agreements with constituent units in other countries and, second, their participation as partners in a system of multisphere government, deeply implicated in the exercise of concurrent powers. However, as shown below, national, provincial, and municipal officials and politicians are confused about the legitimate and appropriate roles of different spheres of government in foreign relations. First, the national government has not developed an understanding of the constitutional framework within which provinces and municipalities may engage in international relations. Second, with very limited exceptions, national departments do not engage the provinces in the development of international relationships and agreements in matters that affect the provinces directly. Third, the provinces do not exercise their right to review international agreements in the NCOP.

INTERGOVERNMENTAL RELATIONS IN FOREIGN AFFAIRS

Intergovernmental relations in South Africa have developed rapidly over the past fourteen years. However, the assumption that international relations are a national prerogative has meant that foreign affairs matters are not often raised in the "mainstream" intergovernmental forums such as meetings of ministers and of officials serving particular portfolios. With the notable exception of environmental matters, the national government seldom consults with provinces on international matters relating to provincial competences and frowns upon uncoordinated foreign ventures by provincial and

municipal governments. Moreover, as the agendas of intergovernmental fora are determined and dominated by the national government, the provinces rarely use them to raise issues related to their international activities.

The first clear manifestation of these realities was the production of a policy framework on municipal international relations in 1998 by the national Department of Provincial and Local Government (DPLG). The framework was intended to help all spheres of government develop “sound, efficient and effective” municipal international relations programs that support both “internal developmental priorities” as well as South Africa’s “approach to foreign relations.”⁶⁴ As early as 1997, the self-defined role of the DPLG extended to “managing,” “coordinating and facilitating” the conduct of municipal international relations, the establishment of learning networks between municipalities, and the encouragement of “affordable and beneficial” twinning arrangements.⁶⁵

In addition, and consistent with the centre’s intention of controlling these matters, provinces have been encouraged (perhaps instructed) to set up units to deal with international relations. All provincial governments now include a small, dedicated directorate for “intergovernmental relations,” “international relations,” and/or “protocol,” typically within the immediate Office of the Premier or the larger Department of the Premier, comprising up to seven staff members.⁶⁶ Each either has a separate budget or depends on the overarching office or department for budget management. These units act as provincial “points of entry” for the national government. Otherwise, their role seems to be limited. Provincial officials may see their role as including the management of development grants from foreign sources, but this is not always the case. Although about seven out of nine donors approach provinces first, provinces are now instructed to direct these donors to the National Treasury.⁶⁷ Sometimes fairly detailed programs are developed before this happens, but the current policy is that no formal agreements may be concluded without the National Treasury’s approval, and provinces appear to adhere to this requirement.

The system has both benefits and drawbacks. Once the National Treasury approves an agreement, lawyers in the Department of Justice and the Department of Foreign Affairs (DFA) ensure compliance with domestic and international law. The president then signs a Presidential Minute authorizing the relevant national minister, under domestic law, to conclude an “international agreement.” The National Treasury is responsible for meeting increasingly stringent donor accounting and reporting requirements attached to official development assistance under all “international agreements.” This system is intended to allow the national government to ensure that national and broader regional development priorities⁶⁸ are addressed properly and that the benefits of donor largesse are distributed equitably. Curtailed provincial

autonomy to pursue development priorities is an intended consequence, given the Treasury's practice of meeting annually with potential donors to identify areas for new agreements.

The national government has attempted to ensure coordination of provincial and municipal international relations through the establishment of International Relations Coordinating Groups for each sphere.⁶⁹ These bodies bring together the key national departments (i.e., the provincial and local governments, Treasury, and DFA) with constituent-unit international relations practitioners and the South African Local Government Association, an organization established under the Constitution to represent municipalities. Assertions that better coordination is needed are not unfounded. For instance, although the national policy is for officials to visit Taiwan when visiting the People's Republic of China, the flow of South African municipal officials to Chinese sister-cities shows little awareness of foreign policy directives. Also, without proper diplomatic notice, local delegations attempting to enter the Palestinian territories have had their passports confiscated at Israeli border posts. Nevertheless, provincial and municipal governments complain of inadequate support from the DFA. This could be a result of the DFA's view that constituent governments should really not engage in international relations at all, although it is more likely caused by the allocation of responsibility for provincial and municipal international relations in the DFA to relatively low-ranking officials and by the DFA's own limited capacity.

The efforts of the national government to supervise the international activities of provinces and municipalities have not been matched by a concomitant willingness to consult with provinces on international matters that affect the areas over which provinces have competence. The obvious forums for such consultation are the MinMECs. These are regular meetings of the national minister and provincial executive council members (MECs) held in each area of concurrent responsibility, including the environment, health, agriculture, and trade.⁷⁰ Clearly, many matters relating to international relations arise in fields of concurrent responsibility, yet all available evidence suggests that – with one notable exception – national departments make little effort to consult with their provincial counterparts on international matters. This is partly explained by the limited capacity of provincial governments to engage on these matters, although as provincial capacity strengthens, practices may change. However, the firmly held idea that international relations are beyond provincial concern contributes at least equally to this approach.

The exception is the environment, where intergovernmental practice emerges as a source of best practice. The main reason for this seems to be that a number of provinces, but most notably KwaZulu-Natal, have sophistication in this area that is not matched in the national sphere. The

provinces are, in short, essential to the effective implementation of international environmental arrangements.

The NCOP should provide provincial checks and balances on international agreements that engage the concurrent competences of the provinces. While the threat of an NCOP veto has not yet encouraged a more cooperative attitude from the National Executive, this may change as the NCOP's perception of its role develops. Currently, international agreements are tabled at the NCOP without comment, even when they involve key provincial interests such as health.⁷¹ What discussion there may be relates to general national issues, not to specific provincial interests.

Several factors strengthen the hand of the national government over provincial and municipal international relations. First, as noted above, there is constitutional uncertainty concerning the allocation of responsibility for international relations. Second, the ANC's control of every province and most municipalities, together with the very limited capacity of most of the provinces and municipalities, has meant that there has been little resistance to national supervision and ready acquiescence to assertions that national (and nationally determined) priorities must underpin all decisions. Third, in discussions of appropriate roles and relationships in matters of international relations, the national government's rhetorical justifiers – rationalization and efficiency – go unchallenged. An additional justifier – risk of diplomatic incident – is readily deployed by the Department of Foreign Affairs.

DOMESTIC AND INTERNATIONAL MANIFESTATIONS OF DIPLOMACY BY PROVINCES AND MUNICIPALITIES

As noted in the introduction, in the first years after the 1994 elections, South Africa's nine provinces as well as many of its municipalities stumbled enthusiastically into international relations, excited by the sudden interest paid to them by the international community. At the same time, they had little understanding of their overall role in South Africa's new constitutional framework and even less grasp of the full burden of their domestic responsibilities. During this honeymoon period, many international agreements were concluded by provinces and municipalities, but most focused more on "trips, toasts and twinning," as Steytler observes, than on substantive projects. Despite good intentions, following initial visits and exchange of cards, many arrangements became dormant.⁷²

Now all provinces are demonstrating more systematic approaches to international relations, promoted in part by national control over international relations. As described above, the national government now insists that most forms of development aid – the subject of many agreements – be channelled through the National Treasury and that there be a clearly

identified national liaison point in each province that benefits from development aid. Provinces and municipalities seem to share the national government's concern that their international ventures should contribute in concrete ways to developmental priorities identified by the national government. To this end, in 2006 most provinces had already developed or were in the process of developing some form of framework or policy within which to conduct international relations.⁷³

As noted earlier, provincial directorates for international relations serve as liaisons between the national and provincial governments and are intended to coordinate the international activities of all provincial departments and to interact with other bodies such as provincial agencies responsible for trade. They are usually also specifically mandated to manage twinning agreements. There are some indications that, in some provinces at least, the appointment of staff dedicated to managing international relations is starting to bear fruit and, for instance, that dormant agreements are being revived and exploited by provincial departments. Provincial international relations activities – whether mere travel or the conclusion of arrangements – usually also require the approval of the relevant provincial cabinet committee. Nonetheless, insiders acknowledge that provincial line-function departments do engage overseas counterparts in international relations without alerting either the relevant Cabinet committee or the international relations directorate, demonstrating a disregard for harmonization with national or broader regional developmental objectives. Expressing a sentiment that probably holds for all provinces, one provincial bureaucrat noted that “other departments have their own agendas.” This may help to explain why the role of the directorates is at times limited to arranging trips.

It is difficult to ascertain the budgets of the provincial directorates, but generally they appear to be relatively small, and most international activities are paid for by the line-function departments concerned. So, for example, staff appointed to a directorate might facilitate international relations for a provincial department of health, with that department carrying the costs.

Major cities, including Tshwane (Pretoria), Johannesburg, eThekweni (Durban), Ekurhuleni (East Rand), and Mogale City (Krugersdorp), employ dedicated international relations personnel in small units that function as a protocol officer and an international media adviser to the mayor while also advising line-function departments on the implementation of international relations projects. Smaller municipalities do not deploy dedicated staff. Municipal officials in major cities are aware of the need to cooperate with national departments – especially the Treasury, which, as indicated above, channels and monitors international development aid received under “international agreements.”⁷⁴ Although the more cosmopolitan municipalities know how to leverage their international reputations,

they demonstrate awareness of the policy directives of the national government. As one municipal international relations officer commented, “there is one national interest, implemented at local, provincial and national levels.”⁷⁵ It is also safe to assume that the national government occupies the field where international relations are especially delicate.

There is no reliable information about the frequency with which provincial and municipal politicians and bureaucrats travel abroad or how many foreign delegations visit South Africa’s provinces and municipalities. Members of provincial legislatures do occasionally visit their counterparts in other countries, but any significant international parliamentary events are hosted by the national Parliament. Provincial officials report meeting many foreign delegations, and at least one province, KwaZulu-Natal, has developed a framework for hosting international delegations.⁷⁶ Trips abroad by provincial and municipal politicians and officials are attracting increased public scrutiny, leading to reduced travel. For instance, a 2005 parliamentary policy allows NCOP committees to undertake only two trips during each five-year term. The KwaZulu-Natal draft “Framework for Provincial International Relations” also discourages large delegations because they are expensive, difficult to arrange, and “can easily create a wrong perception with overseas hosts.”⁷⁷

Delegations abroad vary in their composition and often include representatives from business and the tourism industry. These participants are usually expected to pay their own way. Anecdotally, municipal officials tend to see themselves as informal “practitioners of goodwill”⁷⁸ for South Africa in their overseas engagements – although not as *de jure* representatives of the state with powers to generate international obligations.⁷⁹

Elections in South Africa are dominated by national parties and issues, and very few specifically provincial or municipal issues are raised. Moreover, international issues play virtually no role in national elections. However, in speeches to the provincial legislatures and the NCOP, provincial politicians refer quite frequently to international issues, including development aid, trade, culture, and sport. But such speeches present information rather than debate provincial foreign relations policy. Provincial politicians and NCOP members alike see themselves more as implementers of national policies for the provinces. Because the NCOP is intended to “represent the provinces in the national sphere of government,”⁸⁰ one might expect delegates to raise matters concerning international relations that have a direct impact on the provinces. Similarly, one might expect reports of study tours abroad to comment on the relevance of the trip to the concerns of South Africa’s provinces. Instead, debates and reports on international matters are of a general nature and reflect the attempts of NCOP delegates to emulate their counterparts in the National Assembly rather than to identify themselves as provincial representatives.

As one might expect in a country struggling to provide adequate services at home, South Africa's provinces do not have significant engagements in technical assistance or democratization projects abroad, nor do they provide financial aid to other governments or communities.

*Trade and Development Aid:
The International Focus of Provinces and Municipalities*

The combination of the constitutional arrangement that binds provinces to national policy on economic matters, the general lack of capacity of provinces, and the current dominance of the ANC means that provinces (and municipalities) seek to conform to national economic policies in their international endeavours and make little attempt to influence these domestically. Although national economic policies and the demands of the global economy are hotly debated, these debates do not have an obvious provincial dimension.

All but one of the provinces have established independent agencies to represent their commercial interests.⁸¹ These agencies offer services both to foreign investors seeking business opportunities in the provinces and to provincially based businesses seeking export or trade opportunities abroad. However, not all of these agencies operate abroad, and the nature and extent of their operations vary. Only the Gauteng agency has its own dedicated offices abroad, while the Western Cape has forged "strategic partnerships" with the foreign offices of the national Department of Trade and Industry (DTI) and with South African embassies abroad. Other provincial agencies undertake trade missions to foreign countries and participate in trade exhibitions organized by the DTI, but they do not maintain a permanent presence overseas. The agencies that do operate abroad are not accredited diplomatic representatives of the provinces but private companies, incorporated in terms of the laws of South Africa or established by statute in South Africa. They do not have the legal status or authority to bind provincial governments to agreements with foreign entities but rather see themselves as conduits for businesses in the province to enter key world markets.⁸²

As might be expected, the most ambitious of these agencies is located in Gauteng – the most economically productive province.⁸³ The Gauteng Economic Development Agency (GEDA) is a company registered as an association not for gain.⁸⁴ It is mandated to "implement and promote the economic development policies" of Gauteng "in the areas of economic production, investment and trade."⁸⁵ GEDA has two foreign offices – in Sao Paulo, Brazil, and in London, UK – as well as representation in San Jose, California. The aim of these offices is to facilitate access for Gauteng-based companies to markets in South America, Europe, and the Silicon Valley. GEDA also has links with the trade offices of a number of foreign countries and US states.⁸⁶ In

addition, it has undertaken a number of missions to other countries, including Uruguay, Japan, the United States, and Nigeria. In contrast to the approach of most provincial politicians, GEDA expressly links its activities to South Africa's role as a strategic access point for other African markets.

The Western Cape Investment and Trade Promotion Agency (Wesgro) offers a slightly different model. It is incorporated as a private and independent company, entirely owned by the Western Cape government and the City of Cape Town.⁸⁷ It reports to the provincial member of the Executive Council (MEC) for Economic Development and to the corresponding portfolio in the Cape Town City Council. Like its counterparts in other provinces, Wesgro's primary task is the promotion of business in the province. Both provincial and municipal politicians and officials participate in its activities. Although Wesgro states that it operates with the provincial context in mind, it takes its lead from national economic strategy and from the national Department of Trade and Industry.

The agencies established to promote investment in the other provinces are more modest in their activities. Most are intended to facilitate trade and fixed direct investment opportunities both locally and internationally. They conduct trade missions abroad and participate in trade fairs either at the invitation of the DTI or in their own right. The agencies of the Free State and the Eastern Cape have a predominantly domestic focus. In the Northern Cape the provincial Department of Economic Affairs itself promotes international investment.⁸⁸

Overseas trade missions often result in agreements between the provincial agency and foreign entities to stimulate relationships between individual businesses and commercial interests. In those rare cases where such "memoranda of understanding" have legal implications,⁸⁹ it seems likely that only the entity itself, as a juristic person with separate legal personality, will be bound to that agreement.

As described above, the national government now manages most forms of development aid, and provinces are required to direct most donors to the National Treasury. Insistence that the national government control development aid reached international headlines in 2002 when the national government blocked a major UN grant to KwaZulu-Natal for AIDS prevention, care, and treatment. The national minister for health claimed that the Global Fund had tried to bypass the national government by awarding the grant to the province. The national government's failure to approve the grant led to its revocation.⁹⁰ Available information does not establish how the national government's management of international development aid since 2002 has affected the flow of aid to the provinces.

Accountability issues are raised both in the context of the provincial entities intended to promote commerce and in respect to the use of development aid. The universal problem with institutions intended to promote

commerce is that they are rarely called to account, and in any event, it is hard to measure their success. The problems with accountability for development aid are just as acute. Where such aid is “off budget” and therefore not considered in the routine auditing and accounting processes, there is always a danger that it will not achieve its intended goals.⁹¹ The practice of channelling such money through the National Treasury may ensure that it is not mismanaged but does not require the provincial officials who spend it to engage with the people of the province concerning its use.

Twinning and Other Agreements

In 2004, 53 of the 284 municipalities in South Africa were parties to formal international relationships. However, only better-established municipalities have been able to form these relationships. In fact, just 13 of these municipalities account for two-thirds of such relationships.⁹² The municipalities of Buffalo City, Johannesburg, and Cape Town together are responsible for half.⁹³

South Africans have learned, however, that it is difficult to realize the promise of twinning. At least in part, this is due to inadequate capacity to manage such relationships. At least thirty-five of the relationships entered into by municipalities since 1988 have lapsed,⁹⁴ and many more exist only on paper.⁹⁵ The experience in provinces is similar, and both provinces and municipalities have realized that, for the energy expended on such relationships to pay off, they need to be more focused. For instance, in Mpumalanga, no new twinning agreements have been concluded since 2002, and the current approach is to activate those already in place. The long lists of objectives found in these older agreements will also not be replicated in the future. Instead, Mpumalanga officials say that future agreements must be focused on matters that can secure real benefits. This view is widely shared by provincial and municipal officials who claim that more recent agreements are focused on development objectives.⁹⁶

The medium-sized municipality of Buffalo City, in the Eastern Cape, is notable for its early efforts to engage in substantive international relations aimed at attracting development assistance. The municipality has received funding from Swedish and Dutch development agencies, coordinated through twinning agreements with the cities of Gavle and Leiden, for training and capacity building for municipal councillors and officials, urban renewal, spatial development, disaster and environmental management, and student exchanges.⁹⁷ As a quick starter in the arena of international development aid, Buffalo City experienced difficulty in channelling funds from overseas donors through the National Treasury's database in 2004,⁹⁸ although national systems appear to be functioning more effectively at present.

As with most other cities, Cape Town municipal officials, finding that symbolic and ceremonial relationships lack sustainability and cannot

weather political change, have refocused their activities on development projects. Current projects in Cape Town include local economic development and HIV/AIDS projects funded by Monaco – in its capacity as a city rather than a state, municipal officials note – as well as a partnership between schools in Arcueil, France, and the historically “coloured” neighbourhood of Athlone, in honour of the local ANC activist Dulcie September, who died in exile in France.⁹⁹

Although the South African Municipal International Relations (MIR) Policy encompasses a broad range of international relationships, including links that involve “local non-governmental organizations, community-based organizations or private associations,”¹⁰⁰ municipal governments have emerged as key facilitators in these agreements. This is because they are in a better position than members of civil society or business to access and develop organizational resources needed to foster international urban relations.¹⁰¹ Unsurprisingly, then, much of the content of over three-quarters of these agreements lies in the “soft” areas of citizen participation, exchange of information and expertise, exchange of officials and politicians, and symbolic exchange. Only half the agreements include provisions directed at the “hard” areas of business or industry and tourism.¹⁰² Indeed, participation by the business community in these twinning agreements is limited.¹⁰³

A 2005 study found that municipalities are often assisted by outside bodies – usually national and provincial governments – in concluding their agreements. Of 37 agreements reviewed, 21 were supported either by the national Department of Foreign Affairs or by the national Department of Provincial and Local Government Affairs. A further 8 were assisted by their respective provincial Department of Provincial and Local Government Affairs.¹⁰⁴ Perhaps in keeping with the largely ceremonial rather than commercial nature of these agreements, the national Department of Trade and Industry assisted in only a handful of cases. Although cultural links rank high in the priorities of these agreements, the national Department of Arts and Culture does not seem to have been involved at all. Similarly, although the environment is an area of concern in 41% of agreements and tourism in 56%, the national Department of Environmental Affairs and Tourism does not appear to have participated.

Regional development priorities, expressed in instruments such as the Windhoek Declaration on South-South Relations,¹⁰⁵ add weight to the national government’s encouragement of municipal and provincial international relationships with their counterparts in the region – in Lesotho, Mozambique, and Zimbabwe, for instance. These agreements are increasing. Some flow from agreements between the national governments. For instance, the Maputo Development Corridor agreement between Mozambique and South Africa was the catalyst for an agreement between the province of Maputo in Mozambique and Mpumalanga in South Africa. Other transborder agreements in the region appear to have been driven by

constituent governments themselves. Steyler provides the example of the Trans-Limpopo Spatial Development Initiative, which includes Limpopo province in South Africa and both the Bulawayo City Council and Matabeleland South and Matabeleland North provinces in Zimbabwe. Its goal is to foster cooperation in tourism, wildlife conservation, disease control, and agriculture.¹⁰⁶ Limpopo also has an agreement with the Mozambican province of Gaza, and Mpumalanga has agreements with both Gaza and Maputo. Municipalities – particularly those adjacent to South Africa’s borders – have also started to establish relations with their neighbours across the border. Most of these concern general “twinning” matters, cooperation on tourism and other business matters, and cultural links. But some are more specific and seek cooperation on matters such as stock theft, the movement of people, the use of shared resources such as water, and road building.¹⁰⁷

Other municipal South-South twinning agreements extend beyond the region, such as that between eThekweni in Durban and Mombasa in Kenya. The idea of tripartite agreements is a yet more ambitious manifestation of the same idea. These agreements would link a South African city, another developing African city, and a developed city in the North.

Examples of particularly effective provincial and municipal international relations arise in the areas of environmental conservation and sustainable development, where transboundary thinking is an operational requirement and where the national government has consented to extensive constituent-unit involvement. As noted above, South Africa is involved in a set of ambitious regional initiatives to create transnational parks with five of its neighbours. The provincial wildlife authorities in KwaZulu-Natal initiated two such engagements with their cross-border counterparts. A memorandum of understanding between the KwaZulu-Natal Nature Conservation Services and the Lesotho Ministry of Environment, Gender and Youth Affairs was a key stage in the establishment of the Maloti-Drakensberg Transfrontier Park through an agreement between the national government and Lesotho. KwaZulu-Natal is now South Africa’s implementing agent and is party to the “project agreement.” KwaZulu-Natal environmental authorities have played a similar role in the development of the Lubombo Transfrontier Conservation and Resource Area, which, when fully established, will span parts of South Africa, Mozambique, and Swaziland.

Informal International Relations

Perhaps the most significant foreign relations of South Africa’s provinces and municipalities are informal and deal with cross-border “housekeeping.”¹⁰⁸ Health officials in KwaZulu-Natal routinely spray malaria mosquitoes across the border in Mozambique. They have commented that “South Africa’s ability to control malaria will depend on the successes of its neighbours in

combating mosquitoes.¹⁰⁹ Officials also report that residents of Lesotho obtain health services in neighbouring South African district hospitals by informal acquiescence, as identity documents are not routinely checked. Under these circumstances, linkages between health authorities across the border are essential. Officials also point to agreements related to firefighting between Lesotho firefighting authorities and the Free State province in South Africa. It is more difficult to establish the degree to which transborder migration is dealt with informally, but it is likely that provincial offices of the national Department of Home Affairs liaise with provincial officials on the matter.

South Africa's Provinces and Municipalities in International Forums

Like the national government, South Africa's provinces and municipalities have been active in international organizations. All nine provincial legislatures are members of the Commonwealth Parliamentary Association, and provinces and municipalities are members of a variety of other international organizations, including the World Association of Major Metropolises (Johannesburg is a member) and the International Council for Environmental Initiatives (ICLEI). The South African Local Government Association (SALGA) is a member of United Cities and Local Governments (UCLG).¹¹⁰ SALGA, the national Department of Provincial and Local Government, and the national Municipal Demarcation Board are among the South African members of the Commonwealth Local Government Forum. The Western Cape is a partner in a grouping of five regions – the others are Quebec (Canada), Shandong (China), Bavaria (Germany), and Upper Austria – linked by an agreement focused on such areas of cooperation as tourism, agriculture, trade, health, and education.¹¹¹ Steytler suggests that the driving force behind this partnership may be a shared desire for greater autonomy. It may also be a sense that a small grouping like this can achieve concrete results.

Provinces also participate in international conferences. For instance, in Montreal, Canada, in 2005 members of provincial environment ministries were included in the South African delegation to the first joint Conference of the Parties to the United Nations Framework Convention on Climate Change and Meeting of the Parties to the Kyoto Protocol. Delegates from the Western Cape took this opportunity to attend climate-change meetings specifically for regions, convened by Quebec, as well as meetings of the Steering Committee of Regions for Sustainable Development (nrg4sd), where the Western Cape and the Basque Country hold the joint chair.¹¹²

CONCLUSION

To a close observer of South African politics, the preceding description of the international relations of South Africa's municipalities and provinces

contains few surprises. The most striking feature of these relations is the degree of control asserted by the national government and the extent to which the provinces and municipalities allow such control. Because most people consider provinces and municipalities firmly subordinate to the national government and due to the very limited capacity of these constituent governments, the national policy is seldom challenged. Instead, provinces and municipalities are generally content to allow the national government a considerable degree of say in their foreign relations (most obviously in the area of overseas development aid) and to entrust international negotiations to the national government, even on matters that fall squarely within provincial and municipal jurisdictions.

However, globalization constantly exposes provinces and municipalities to the attractions of international engagement, and those constituent units that have greater capacity, including the larger metropolitan centres and provinces such as the Western Cape and Gauteng, are responding. The most obvious developments are the establishment of agencies to promote the commercial interests of provinces and cities. It is likely that, if these agencies become successful, constituent-unit international relations will increase and expand to other issues. In addition, the excitement of the opening of South Africa's borders to its neighbours in the region at the end of apartheid provokes a strong desire to engage in the region, and the national government is generally in support of such regional, South-South relations. Regional international relations between South African municipalities and provinces and their counterparts in SADC are modest at the moment but are likely to grow as the region stabilizes.

It is impossible to predict when, if ever, provinces will engage as partners with the national government in international negotiations or demand more autonomy in negotiations involving aid and other international links. This depends both on political decisions concerning the future of the provincial system and on the role that provinces themselves assume. However, it seems certain that both municipalities and provinces will respond to the allure of international engagement in some way and gradually develop increasing commercial and cultural links with the outside world.

NOTES

- 1 The authors are grateful to Michelle Oliver for critical comments, to Rachel Logan, Paula Youens, Richard Stacey, Jewel Amoah, and Andrea M'Paradzi for invaluable research assistance, and to the participants at the South African Roundtable for their contributions. For background, see Nico Steytler, "Republic of South Africa," in John Kincaid and G. Alan Tarr, eds, *Constitutional Origins, Structure, and Change in Federal Countries*, 311–46 (Montreal and Kingston: McGill-Queen's University Press,

- 2005); Christina Murray, "Republic of South Africa," in Katy Le Roy and Cheryl Saunders, eds, *Legislative, Executive, and Judicial Governance in Federal Countries*, 258–88 (Montreal and Kingston: McGill-Queen's University Press, 2006); and Bongani Khumalo and Renosi Molcate, "Republic of South Africa," in Anwar Shah, ed., *The Practice of Fiscal Federalism: Comparative Perspectives*, 262–86 (Montreal and Kingston: McGill-Queen's University Press, 2007).
- 2 Recognizing this, Statistics South Africa classifies the population by racial group using the old apartheid classifications of black, coloured, Indian, and white.
 - 3 Vicki Robinson, "ANC move to scrap provinces," *Mail and Guardian online*, 28 July 2006, http://www.mg.co.za/articlePage.aspx?articleid=279004&area=/insight/insight_national (accessed 31 October 2006).
 - 4 Limpopo, Mpumalanga, the North West, the Free State, Eastern Cape, Gauteng, and KwaZulu-Natal.
 - 5 Statistics South Africa, midyear population estimates 2007, Statistical Release Po302, 3, <http://www.statssa.gov.za/PublicationsHTML/Po3022007/html/Po3022007.html> (accessed 1 October 2007). The country's surface area is 1,219,090 km².
 - 6 In the Eastern Cape, more than 80% speak isiXhosa as their home language, while in KwaZulu-Natal the same percentage speak isiZulu. Afrikaans is the majority language in the Western Cape and Northern Cape. In Gauteng no single language commands a majority. See Statistics South Africa, *Census 2001*, <http://www.statssa.gov.za/publications/Report-03-02-01/Report-03-02-012001.pdf> (accessed 4 October 2006).
 - 7 Ibid.
 - 8 Department of Trade and Industry, "Financial and Economic Data," <http://www.thedti.gov.za/econdb/sddsdata.html> (accessed 4 October 2006).
 - 9 National Advisory Council on Innovation (NACI), "The South African National System of Innovation: Structures, Policies and Performance," Background Report to the OECD Country Review of South Africa's National System of Innovation, ed. David Walwyn (July 2006), <http://www.naci.org.za/OECD/OECD%20Report%2021Aug.pdf> (accessed 2 January 2007), 6.
 - 10 Statistics South Africa, "Gross Domestic Product Annual Estimates: 1993–2003; Annual estimates per region: 1995–2003; Third Quarter: 2004," 76, <http://www.statssa.gov.za/publications/Po441/Po4413rdQuarter2004.pdf> (accessed 4 October 2006).
 - 11 Johannesburg and Cape Town together account for nearly 30% of national GDP; see South African Cities Network, http://www.sacities.net/downloads/cities_gdp.doc (accessed 6 October 2006).
 - 12 "South Africa Fast Facts," http://www.southafrica.info/ess_info/sa_glance/facts.htm (accessed 4 October 2006).
 - 13 Andre Roux, *Everyone's Guide to the South African Economy* (Cape Town: Zebra Press, 2005), 97.
 - 14 NACI, "South African National System of Innovation," 7.

- 15 Michael Nowak, "The First Ten Years after Apartheid: An Overview of the South African Economy," in Michael Nowak and Luca Antonio Ricci, eds, *Post-Apartheid South Africa: The First Ten Years*, 1–11 (Washington, DC: International Monetary Fund, 2005), 8.
- 16 The average over the last five years is 2.1%, the highest figure being 8.41% in 2001; see NACI, "South African National System of Innovation," 7.
- 17 Between 1 January 1984 and 14 April 1989, 155 US companies and 122 companies based in other countries disinvested from South Africa. Chase Manhattan Bank led the refusal of many to renew loans in 1985. See Philip Levy, "Sanctions on South Africa: What did they do?" Economic Growth Center, Yale University, Center discussion paper no. 796, 5, http://www.econ.yale.edu/growth_pdf/cdp796.pdf (accessed 25 September 2006).
- 18 See Linda Freeman, "All but One: Britain, the Commonwealth and Sanctions," in M. Orkin, ed., *Sanctions against Apartheid*, 142–56 (Cape Town: David Philip, 1989), 149.
- 19 Resolution 418. See also Human Rights Watch, "South Africa, A Question of Principle: Arms Trade and Human Rights, II. The Apartheid Era," <http://www.hrw.org/reports/2000/safrica/index.htm#TopOfPage> (accessed 15 May 2006).
- 20 Human Rights Watch, "South Africa."
- 21 President Ronald Reagan tried to prevent full sanctions and instead promoted "constructive engagement" until the US Comprehensive Anti-Apartheid Act was adopted in 1986; see Levy, "Sanctions on South Africa," 7.
- 22 This has been described nonetheless as an action of "dubious legality"; see John Dugard, *International Law from a South African Perspective*, 3rd ed. (Landsdowne: Juta, 2005), 521.
- 23 This is reflected in the short time it took for South Africa to play a leadership role in a number of international organizations. For instance, it represents Africa as one of the permanent governors of the International Atomic Energy Agency (IAEA), has occupied a nonpermanent seat on the UN Security Council since January 2007, chaired the 54th session of the United Nations Commission on Human Rights (UNCHR) in 1998, chaired the United Nations Conference on Trade and Development (UNCTAD) from 1996 to 1999, chaired the G77 in 2006, chaired the Commonwealth Heads of Government Meeting from 2000 to 2002, and chaired the Non-Aligned Movement from 1998 to 2003.
- 24 J. Cilliers, "An Emerging South African Foreign Policy Identity," Institute for Security Studies (ISS) papers no. 39 (April 1999), 10, <http://www.iss.co.za/Pubs/Papers/39/Paper39.html> (accessed 4 October 2006).
- 25 See Maxi Schoeman, "South Africa as an Emerging Middle Power: 1994–2003," in J. Daniel, A. Habib, and R. Southall, eds, *State of the Nation: South Africa 2003–2004*, 349–67 (Cape Town: HSRC Press, 2003); and Janis van der Westhuizen, "South Africa's Emergence as a Middle Power," *Third World Quarterly* 19, no. 3 (1998): 435–55, at 435.
- 26 S. Naidu, "South Africa and Africa: Mixed Messages?" in E. Sidiropoulos, ed., *Apartheid Past, Renaissance Future: South Africa's Foreign Policy 1994–2004*, 205–19 (Johannesburg: SAIHA, 2004), 214.

- 27 US\$4574 (South Africa) as compared with \$598 (Lesotho), \$2749 (Namibia), and \$4959 (Botswana) according to official figures of the Southern African Development Community; see <http://www.sadc.int> (accessed 10 October 2006).
- 28 The HDI is calculated on a scale of 0 to 1.0. The United Nations Development Program, *Human Development Report 2006*, describes the HDI as a broad definition of well-being; see http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_ZAF.html (accessed 28 November 2006).
- 29 Ibid.
- 30 Ibid.
- 31 Data from 1999; see J. Daniel, V. Naidoo, and S. Naidu, "The South Africans Have Arrived: Post-Apartheid Corporate Expansion into Africa," in J. Daniel, A. Habib, and R. Southall, eds, *State of the Nation: South Africa 2003-2004*, 368-90 (Cape Town: HSRC Press, 2003), 375-6.
- 32 Ibid., 376-7.
- 33 Ibid., 380.
- 34 Ibid., 379.
- 35 SADC's members are Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia, Zimbabwe, Namibia, South Africa, Mauritius, Democratic Republic of Congo, and Madagascar.
- 36 Daniel, Naidoo, and Naidu, "South Africans Have Arrived," 379.
- 37 Analysis of post-1994 regional police cooperation initiatives shows notable, if temporary, success in countering cross-border criminal activity; see F. Msutu, "Responses to Organized Crime in SADC: INTERPOL and SARPCCO," Monograph no. 56, Institute for Security Studies (2001), <http://www.iss.co.za/Pubs/Mongraphs/No56/Chap2.html> (accessed 10 October 2006).
- 38 J. Crush, "Vulnerable States," in J. Crush et al., eds, *States of Vulnerability: The Future Brain Drain of Talent to South Africa*, 1-7 (Cape Town: Southern African Migration Project, 2006), 3.
- 39 The number of SADC citizens in South Africa increased by only 40,000 from 1996 to 2001; see *ibid.*
- 40 Ibid., 5.
- 41 Marie Wentzel, Johan Viljoen, and Pieter Kok, "Contemporary South African Migration Patterns and Intentions," in Pieter Kok, Derik Gelderblom, John Ouchou, and Johan van Zyl, eds, *Migration in South and Southern Africa: Dynamics and Determinants*, 171-204 (Cape Town: HSRC Press, 2006), 175.
- 42 Ibid., 172-4.
- 43 These transfrontier parks are !Ai-!Ais/Richtersveld (Namibia and Northern Cape), Kgalagadi (Botswana and Northern Cape), Limpopo/Shashe (Botswana, Zimbabwe, and Limpopo), Great Limpopo (Zimbabwe, Mozambique, Limpopo, and Mpumalanga), and Maloti-Drakensberg (Lesotho and KwaZulu-Natal).
- 44 The Tugela-Vaal Scheme and the Lesotho Highlands Water Project.
- 45 Nico Steytler, "Cross-Border External Relations of South African Provinces," in Rudolf Hrbek, ed., *External Relations of Regions of Europe and the World*, 247-56 (Baden-Baden: Nomos, 2003), 247.

- 46 Ibid., 253.
- 47 The Basotho live in both the Free State province and Lesotho; the Swati live in Mpumalanga and Swaziland; and the Tswana live in the North West province and Botswana; see Steytler, “Cross-Border External Relations,” 253.
- 48 Constitution, Section 146.
- 49 Constitution, Section 44(2).
- 50 Steytler has suggested that Section 84(2)(h) and (i) of the Constitution, which gives the president responsibility for “receiving and recognizing foreign diplomatic and consular representatives” and for “appointing ambassadors, plenipotentiaries and diplomatic and consular representatives,” makes the president responsible for conducting foreign relations. However, these powers are relics of the old prerogative powers and are better interpreted as part of the apparatus of statehood than as the political function of conducting international relations and determining foreign policy.
- 51 The Constitution requires most NCOP decisions to be supported by the vote of five provincial delegations. Under Section 65(2), each provincial delegation must vote as instructed by its legislature. Certain constitutional amendments need the support of six provinces, and decisions on certain national bills are taken not by provincial delegations acting as units but by the individual delegates to the NCOP. For a description of the role of the NCOP, see Murray, “Republic of South Africa,” 266–70.
- 52 Office of the Chief State Law Adviser (International Law), *Practical Guide and Procedures for the Conclusion of Agreements* (Pretoria: Department of Foreign Affairs, 2004), 10.
- 53 Constitution, Section 57.
- 54 *Manual on Executive Acts of the President of the Republic of South Africa*, compiled by N. Haysom, G. Wissing, V. Kahla, and H. Masondo (Cape Town: Executive and Legal Services, Office of the President, March 1999), para. 5.5.
- 55 Constitution, Section 41(1)(h).
- 56 *National Gambling Board v Premier, Kwazulu-Natal, and Others* 2002 (2) SA 715 (CC); and *Uthukela District Municipality and Others v President of the Republic of South Africa and Others* 2003 (1) SA 678 (CC).
- 57 Constitution, Section 146(2)(c)(i), (iii), and (iv).
- 58 *Harksen v President of the Republic of South Africa and Others* 2000 (2) SA 825 (CC), paras 18–27.
- 59 *Manual on Executive Acts*, ch. 5, 29, emphasis added. Chapter 5 is titled “International Agreements and Representation of the Government at International Level.”
- 60 Constitution, Sections 230 and 230A.
- 61 Public Finance Management Act 99 of 1997, Section 67 (for provinces); and Municipal Finance Management Act 56 of 2003, Section 163 (for municipalities).
- 62 Constitution, Sections 198 and 199. In addition, under Sections 44(2) and 146(2), the national government can always override provinces on grounds of national security.
- 63 Constitution, Sections 205 to 208.

- 64 Ministry for Provincial and Local Government, *Municipal International Relations: A Policy Framework for South Africa* (Pretoria: Ministry for Provincial and Local Government, 1999), 1.
- 65 Department of Provincial and Local Government, *Annual Report 1997* (Pretoria: Department of Constitutional Development, 1997), 19, <http://www.dplg.gov.za/documents/annualreport/reports/arindex.htm> (accessed 12 October 2006).
- 66 Some work well, but others are barely functional.
- 67 The chief directorate of the International Development Cooperation, within the National Treasury, is responsible for the policy framework and procedural guidelines for the management of official development assistance. This body's Development Cooperation Information System is available at <http://www.dcis.gov.za> (accessed 12 October 2006).
- 68 These include the UN-sponsored Millennium Development Goals, the New Partnership for African Development (NEPAD), and SADC priorities and national initiatives.
- 69 These are the Municipal International Relations Coordinating Group (MIRCG) and the Provincial International Relations Coordinating Group (PIRCG); see E. Gqabaza, *Federalism and External Relations in South Africa* (King William's Town: Litha Institute, 2006), 24.
- 70 Dirk J. Brand, "The Role of Provinces in International Relations," in H-J Cremer, T. Giegrich, D. Richter, and A. Zimmerman, eds, *Tradition und Weltoffenheit des Rechts Festschrift für Helmut Steinberger*, 667–79 (Berlin: Springer, 2002), 675.
- 71 See, for example, parliamentary records surrounding the ratification of the WHO Framework Convention on Tobacco Control, which was tabled in the NCOP without debate: Hansard, National Council of Provinces Debates, 26 October 2004, 51.
- 72 Steytler, "Cross-Border External Relations," 252.
- 73 The most sophisticated of these is KwaZulu-Natal's draft "Proposed Framework for Provincial International Relations," Intergovernmental Relations Unit, Office of the Premier, KwaZulu-Natal, May 2006.
- 74 Interview with Denise Marais, National Treasury, 16 November 2006.
- 75 National Roundtable, Cape Town, 2 June 2006.
- 76 "Checklist for Hosting International Visitors and for Convening Formal Meetings – Guide 'C'," in KwaZulu-Natal, "Proposed Framework," 4, which sets out the roles and responsibilities of the provincial unit for liaison with the national Department of Foreign Affairs and for missions abroad and also provides a detailed checklist for logistics and protocol purposes. The existence of a company established to manage visits to South Africa by delegations of Chinese politicians and officials suggests that the Chinese are frequent visitors.
- 77 Ibid.
- 78 J. Kincaid, "The International Competence of US States and Their Local Governments," in F. Aldecoa and M. Keating, eds, *Paradiplomacy in Action: The Foreign Relations of Subnational Governments*, 111–33 (Portland: Frank Cass, 1999), 132.
- 79 Ibid.

- 80 Constitution, Section 42(4).
- 81 The Northern Cape is the exception. Its economic development is handled by the provincial Department of Economic Affairs.
- 82 Gauteng Development Agency, "Gauteng Development Agency Annual Report 2005–2006" (2006), 15, http://www.geda.co.za/X_Files/News/GEDA%202006%20AR_151106.pdf (accessed 30 December 2006).
- 83 See note 10.
- 84 Despite its apparent status as a private company representing the Gauteng government, GEDA is recognized as a "provincial public entity" in terms of Schedule 3C of the national Public Finance Management Act 1 of 1999.
- 85 Gauteng Development Agency, "What is GEDA," <http://www.geda.co.za/Default.asp?index=47&ID=37&sub=2> (accessed 30 December 2006).
- 86 Gauteng Development Agency, "Foreign Offices," <http://www.geda.co.za/Default.asp?index=53&ID=161&sub=2> (accessed 30 December, 2006).
- 87 Interview with Rifquah Jappie, Wesgro trade economist, 6 October 2006.
- 88 See <http://www.northern-cape.gov.za/index.asp?inc=departments/economic/main.html> (accessed 30 December 2006).
- 89 Wesgro recently entered an agreement with a Spanish organization called Promo Madrid, which involves an exchange of employees and a consequential need for legal regulation of the relationships flowing from the exchange.
- 90 South African Press Association, "Health Ministry Blocks UN Aids Grant to KZN-TAC," 11 July 2002, <http://www.aegis.org/news/sapa/2002/SA020707.html> (accessed 13 October 2006); Lynne Altenroxel, "KZN did try the right channels," *The Star* (Johannesburg), 2 August 2002, <http://www.hivan.org.za/arttemp.asp?id=1615&netid=403&search=KZNdidtrytherightchannels> (accessed 14 October 2006).
- 91 In practice, "off-budget" international donor funding is not subject to external auditing unless a "special purpose audit" is requested by the auditee or if the funds are considered income and selected in the audited sample of ordinary income and expenditure. See correspondence with Cobus Botes, senior manager, Office of the Auditor-General, 21 November 2006 (on file with the authors).
- 92 J.C. de Villiers, "Strategic Alliances between Communities, with Special Reference to the Twinning of South African Provinces, Cities and Towns with International Partners" (PhD diss., Stellenbosch University, 2005), 300. These thirteen municipalities are the only municipalities that have entered into more than three international relationships. They account for 113 of 171 relationships.
- 93 Ibid.
- 94 Ibid., 288–9.
- 95 Of 37 such agreements investigated, 4 are described as "dead," a further 4 as "stagnant and living off past performance," 2 as "need to jumpstart immediately or will be defunct" and as "declining," and 1 as "never got off the ground" (ibid., 310–11).
- 96 See also Brand, "Role of Provinces," 678, which explains the rationale behind the twinning agreements entered into by the Western Cape.
- 97 See E. Gqabaza, *Federalism and External Relations*, 26–32.

- 98 Ibid., 31.
- 99 Interview with Sindiswa Mququ, manager, International Relations in the City of Cape Town, 7 November 2006.
- 100 Ministry for Provincial and Local Government, *Municipal International Relations*, 3.
- 101 Y. Hsu, "Montreal's Twinning with Shanghai: A Case Study of Urban Diplomacy in the Global Economy" (PhD diss., Concordia University, 2003), 153, cited in De Villiers, "Strategic Alliances between Communities," 251. De Villiers notes that in South Africa just over half of these relationships are described as "municipal-to-municipal," about 40% involve the community as well as the municipality, and only the remaining 10% or so are "community-to-community" (306).
- 102 De Villiers, "Strategic Alliances between Communities," 311.
- 103 Ibid., 314.
- 104 Ibid., 309.
- 105 The South African Local Government Association (SALGA) represented municipal interests in the negotiation of this nonbinding instrument.
- 106 Nico Steytler et al., "Transfrontier Cooperation: Towards a Provincial Strategy," Discussion Document prepared for the Premier's Office, Government of KwaZulu-Natal, November 2004, 37.
- 107 Ibid., 38–9.
- 108 Steytler, "Cross-Border External Relations," 253.
- 109 Steytler, "Transfrontier Cooperation," 32.
- 110 Until 2004 this body was called the International Union of Local Authorities (IULA).
- 111 Steytler, "Cross-Border External Relations," 251.
- 112 See <http://www.nrg4sd.net>.