



## South Africa: Provinces Take a Back Seat

CHRISTINA MURRAY / SALIM A. NAKHJAVANI

The advent of democratic elections in 1994 brought about a massive change for a critically isolated South Africa. Suddenly the pariah state was a celebrated new democracy and its president, Nelson Mandela, an international icon. The world wooed South Africa and South Africa responded wholeheartedly.

The Constitution is unequivocal on the exclusive authority of the national government to enter international agreements. Still, South Africa's nine provinces and many municipalities have enthusiastically developed international connections. But disputes remain regarding both the constitutional context in which provinces and municipalities engage in international relations and their role in national treaty negotiations affecting their jurisdiction.

The first international forays by sub-national officials were largely a matter of "toasting and twinning." A plethora of aspirational agreements were struck, but while motivated by sincere openness, produced little beyond paper and reciprocal travel.

Now, as the real challenges of transforming South Africa's racially skewed economic and social system are better understood, provincial and

municipal enthusiasm towards international relations is beginning to translate into agreements of concrete economic benefit or social value to the whole population. There is a shift towards purpose-driven arrangements guided by national socio-economic priorities which aim for greater alignment with national foreign policy objectives. The Eastern Cape Province, with a quarter of its 7 million people lacking any formal education and facing a 31 percent unemployment rate in 2003, paved the way by focusing only on project-specific agreements with development partners. Other provinces are following suit.

As provincial actors focus on securing donor funding, however, there has been a marked pull by the National Treasury to centralize accountability for the spending of that aid. In the name of fiscal oversight, the national government has begun occupying the field of provincial international relations.

Humanitarian concerns have also fostered a sense of African regionalism engendering more concrete benefits than earlier initiatives. For instance, the province of KwaZulu-Natal provides free health services, by informal acquiescence, to residents of Swaziland and Mozambique who cross the border for this purpose.

Although their international forays are increasingly aligned with national goals, provinces and municipalities continue to conduct international activities with minimal coordination amongst one another or with the national government – with sometimes embarrassing results. Thus, in order to reduce such confusion and inefficiency, the national Department for Provincial and Local Government first promulgated guidelines on municipal international relations and then started work on a policy framework for provincial international relations. Meanwhile, KwaZulu-Natal is circulating its own draft framework as *de facto* best practice. This pragmatic approach has pushed into the background questions about the legality of international agreements concluded by provinces and municipalities and set aside the line between provinces' legitimate international relations and agreements that trespass on the power of the national sphere.

But, however eager provinces and municipalities may be, under South Africa's constitutional framework international ventures by provinces and municipalities are likely to remain minor. By contrast, many agreements concluded by the national government have significant implications for provinces and municipalities.

South Africa is characterized by provinces with concurrent responsibility for trade, agriculture, health and the environment – matters which occupy a large part of South Africa's international agenda. Moreover, the Constitution anticipates that provinces will usually implement national laws concerning such matters. Thus, provinces have a vital interest in international agreements in these fields for two reasons: they concern provincial jurisdiction and provinces are likely to be required to implement them.

This constitutional framework suggests that provinces should be involved in the negotiation of international agreements in areas of concurrent responsibility. Provinces must consent to the ratification of some international treaties through their representation in the second chamber of the national Parliament, the National Council of Provinces (NCOP). Ironically however, the NCOP need only table, not obtain approval for agreements of ‘a technical, administrative or executive nature’ – precisely those most likely to raise matters of provincial concern.

This constitutional omission would seem immaterial within a constitutional framework of ‘cooperative’ government under which national government should engage provinces and municipalities when it negotiates agreements on matters concerning their responsibilities. But, this seldom happens. There is clear need for a framework to structure cooperation between the provinces and the national government. Otherwise, international relations at the sub-national level will be curtailed by the central government in the name of fiscal accountability and risk management rationales.

There is clear need for a framework to structure cooperation between the provinces and the national government.

There are exceptions to the reluctance of the national government to draw provinces into international negotiations on matters of concurrent responsibility. The most significant occur in the area of the environment in which the relevant national department uses provincial agencies with specialized expertise as implementing partners. The Maloti-Drakensberg Transfrontier Park – an ambitious, five-year project to promote conservation through nature-based tourism – established by agreement between Lesotho and South Africa and funded by the Global Environment Facility, is an excellent example. The province of KwaZulu-Natal was involved in the negotiations and the provincial conservation authority is the delegated implementing agency for South Africa.

South Africa’s multilevel government is young and as its provinces and municipalities struggle to provide housing, pay pensions and manage schools, their international activities ought not to be excursion opportunities for officials, but should translate into support initiatives to address domestic needs. Current strongly centralizing tendencies in national government, coupled with uncertainty about the future of provinces suggest that, for the time being, the involvement of South Africa’s subnational governments in international relations will likely depend on a stark choice between alignment with national frameworks, or ongoing, but eventually unsustainable, *ad hoc* engagements