

CHAPTER 7

RELATIONS BETWEEN GOVERNMENTS

When decentralisation involves the establishment of political bodies at provincial level with powers, functions, staff and other resources of their own, then decisions made about the ways in which relations between the national and provincial governments should be conducted are likely to be crucial to the operation of the entire decentralised system.

Working Paper 3.4 proposed a system of distributing law- and policy-making powers which would involve considerable consultation between the national and provincial governments. In its *Report*, the Special Committee on Provincial Government expanded on the constitutional requirement that consultations must include 'a genuine opportunity to present . . . views before the decision or action . . . is taken' (Solomon Islands: 1978a: section 140(1)), recommending that –

- a detailed request should be made in writing;
- there should be adequate time for a reply to be made, sent and received;
- although a reply should not be required, a reply received should be carefully considered;
- the result should be made known to the office-holder or body consulted, also in writing; and
- there should be a way of cutting short or not having consultation if the matter is urgent and it is in the national interest.

When collective bodies such as Provincial Assemblies or executives are consulted –

- they should be allowed until after their next regular meeting to make and send a reply; and
- there should be a formal motion outlining their views (Solomon Islands 1979b: 82-83).

The Committee also recommended that the national and provincial governments should circulate copies of draft bills, including private members' bills, to one another (*ibid.*: 83).

Working Paper 4.1 also dealt with aspects of relations between governments, specifically co-ordination between staff performing national and provincial functions. Again, the Special Committee's *Report* suggested what such staff should do:

Keeping governments informed

National government staff who make decisions or perform functions of direct concern to provincial governments should keep provincial governments fully informed of their activities and plans. Provincial governments should keep the national government and other provincial governments fully informed of activities and plans which have implications for them (*ibid.*: 43).

The *Report* also paid separate attention to consultations between provincial governments and the police (*ibid.*: 61).

The general thrust of the preceding recommendations, as well as others (cf. *ibid.*: 13), was

to look for means of encouraging co-operation between the national and provincial governments. But what should happen when co-operation becomes strained or breaks down?

Working Paper 7.1 canvasses relevant options, including withdrawal by the national government of powers, functions and/or financial resources of provincial governments, and suspension of provincial governments, including the circumstances in which, and the procedures through which, suspension might be attempted. It also canvasses more general questions regarding the ways in which differences between the national and provincial governments – and also differences between provincial governments – should be handled, including a possible formal requirement that regular meetings between representatives of the national and provincial governments should continue to take place (cf. *ibid.*: 61-62 for periodic meetings of Clerks/Provincial Secretaries arranged by the Ministry of Home Affairs).

The existence of a functioning system of local government on which the Committee proposed to build meant that the main focus of the Working Paper is on possible changes to the pattern of relations between governments which had prevailed under the *Local Government Act* (Cap. 14) and the *Plan of Operations*. Specifically, the Working Paper suggests that there are alternative ways of resolving disputes between the national and provincial governments additional to negotiation and direction, the two methods usually used in the past in Solomon Islands, and to judicial decision, the method which is characteristic of federal systems. The options outlined for resolving disputes short of withdrawal of powers, functions, etc. or suspension of provincial governments – namely, negotiation, conciliation, arbitration, judicial decision and direction – may be regarded as alternatives to one another or, in varying combinations, as possible steps in a single system. The first three, in particular, are consistent with the Special Committee's commitment to avoid the imposition of unnecessary legal restraints on political processes and the use of unnecessary legal forms.

The use of conciliation and/or arbitration to settle industrial disputes is familiar in both Papua New Guinea and Solomon Islands. Both means of disputes settlement are provided for in the *Convention on the Settlement of Investment Disputes* prepared under the auspices of the World Bank (United Nations 1968). But, when the same means were recommended for use in settling disputes between the national and provincial governments and between provincial governments, the governments of the two countries mentioned responded with marked lack of enthusiasm (Papua New Guinea 1974b: 37; Solomon Islands 1979c: 9). In neither country has the government tried to legislate for the use of mediation or arbitration in inter-governmental disputes (Papua New Guinea 1977: sections 75-99; Solomon Islands 1980: sections 32, 33, 44, 45), though such legislation has been promised in Papua New Guinea.

A further problem which seems likely to arise in any system involving political decentralisation is that of conflicts not so much between governments as between national and provincial politicians from the same province over their respective roles and statuses. The Special Committee on Provincial Government discussed the problem at some length, but confined itself to recommending that regular meetings should be held between the two – a practice which was already being followed in some provinces (Solomon Islands 1979b: 40). Conflict over status at least seems quite likely to occur both where political parties are weak, as in Solomon Islands, and where they are stronger, as in certain provinces of Papua New Guinea. Further material relevant to this problem is contained in Working Paper 2.1.

WORKING PAPER 7.1

RELATIONS BETWEEN GOVERNMENTS

1. This paper is concerned with relations between the national government and provincial governments. In particular, it is concerned with co-operation between governments and what might happen if co-operation breaks down.

2. Under the constitution, provincial governments are subject to a number of national controls:

- the constitution itself, including the procedures for amending the constitution;

and, in particular:

- the provisions dealing with fundamental rights and freedoms;
- the Leadership Code;
- the Ombudsman;
- the Auditor-General; and
- the provisions dealing specifically with provincial government (Solomon Islands 1978a: *passim*).

3. The Committee has also discussed, and made recommendations (sometimes only in principle) on the placing and/or removal of other constitutional, legislative, financial and policy controls over the activities of provincial governments. But the Committee has not discussed, or made recommendations on a number of controls which the *Local Government Act* places on provincial governments.

4. Under the *Local Government Act* (Cap. 14), provincial governments may:

- make bye-laws, and
- approve their own estimates,

subject to ministerial approval.

Provincial governments which do not carry out their functions properly may:

- be directed to do so; or
- have their functions transferred to another body.

In various circumstances they may be:

- suspended; or
- dissolved.

5. The Committee might like to consider whether the existing arrangements under the *Local Government Act*:

- are adequate; or
- should be changed.

If they should be changed, should it be made –

- easier/harder for the national government to withdraw powers/functions/money or to take over property from provincial governments?
- easier/harder for the national government to suspend/dissolve provincial governments?

6. If differences between the national and provincial governments do occur, they may be dealt with in several ways.

Option (i): Direct negotiation/consultation by the governments involved – perhaps according to specified procedures requiring adequate notice, an exchange of views, etc.

Advantages

- both sides deal directly
- both sides define issues as they see them
- compromise may be easier
- political leaders in control

Disadvantages

- may increase tension
- may not lead to compromise
- special skills may be necessary
- may lead to stalemate

Option (ii): Mediation/conciliation (that is, reference to another body – a skilled negotiator or a mutually acceptable leader chosen by the two governments or by a third party, or the Premiers' Conference – which acts as intermediary but does not decide the issue)

Advantages

- compromise still possible
- decision cannot be imposed
- intermediary may have special skills
- may reduce tension

Disadvantages

- may not lead to compromise
- may lead to stalemate

- may not be able to agree on intermediary or even who should appoint him
- delay may add to tension

Option (iii): Arbitration (that is, reference to another body – not necessarily a court – for decision)

Advantages

- must produce decision
- arbitrator may have special skills

Disadvantages

- decision may be unacceptable to one or both sides – and lead to appeal?
- political leaders lack control over outcome

Option (iv): Judicial decision

Advantages

- judges neutral
- law applied
- outcome likely to be clear and precedents binding

Disadvantages

- may involve judges in political disputes
- decision may be legalistic – and perhaps based on foreign precedents
- compromise less likely

Option (v): Direction (except where there is doubt about which government has a certain power)

Advantages

- outcome clear
- less likely to be political
- compromise may be quickly made

Disadvantages

- may not deal with real grievances
- may not be compromise
- may be unenforceable.

7. It is possible for differences between governments to go through any combination or all of the processes listed in the order listed. But claims by individuals or bodies other than governments that their political or legal rights had been infringed can probably be pursued only through Provincial Assemblies and/or the National Parliament and/or the courts and/or the Ombudsman. How effective are legal aid services and/or the Ombudsman likely to be in protecting private individuals' and non-official bodies' fundamental rights and freedoms against negotiated/conciliated/arbitrated agreements which appear to infringe them?

8. The Committee might also like to consider whether the national government should have the power to:

- (a) withdraw any/some/all of the powers and functions of provincial governments
 - in specified circumstances?
 - for limited periods?
 - subject to approval of Parliament, a court or some other body?
- (b) take control of money and/or property of provincial governments
 - in specified circumstances?
 - for limited periods?
 - subject to approval of Parliament, a court or some other body?
- (c) suspend provincial governments
 - in specified circumstances?
 - for limited periods?
 - subject to approval of Parliament, a court or some other body, or the holding of a provincial election?
- (d) dissolve provincial governments and hold fresh elections
 - in specified circumstances?
 - for limited periods?
 - subject to approval of Parliament, a court or some other body?

9. The specified circumstances in para. 8 above might include some/all of the following:

- natural disasters (how defined?);
- states of emergency declared in accordance with the constitution;
- bankruptcy/persistent overspending of available/budgeted funds;
- corruption;
- financial mismanagement;
- administrative breakdown, including failure to maintain essential services;
- obstruction/frustration of lawful/reasonable national government policies/directives;
- unlawful use of power;
- breach of the Leadership Code;
- arbitrary/unfair decisions or abuse of power as defined by the Ombudsman;
- other considerations.

10. It is also necessary to consider whether the grounds for dissolution/suspension of provincial governments should be justiciable.

11. The Committee might also like to consider who should administer a provincial government following its suspension/involuntary dissolution, for example –

- (a) in cases of dissolution, the outgoing provincial government?

(b) someone or some body appointed by the national government (for example, the Ministry of Home Affairs)?

(c) someone else?

12. The Committee might also like to consider whether provincial governments should have the power:

(a) to dissolve themselves –

– subject to national laws defining the circumstances/ majority needed/procedures to be followed, etc.?

– if they so decide?

– if they make their own rules for doing so?

(b) to refuse to accept/hand back to the national government any/some/all powers/functions –

– subject to national laws defining the circumstances/procedures to be followed?

– subject to negotiation with, and agreement of, the national government?

13. The Committee could also consider whether there should be a regular Premiers' Conference to allow national and provincial governments to consult on matters of common interest/concern, and if so –

(a) how often it should meet?

(b) who should attend?

(c) what its terms of reference should be?