

ONSTITUTIONAL
RULE
IN A
PARTICIPATORY
DEMOCRACY '
xx

The National Party's
framework
for a new
democratic South Africa

1" KL 1 UPC;
'.-1.11 I LliIDHD-
ZJ.I
3d.
QLF L'C1
l,ihertas
Prclorlu

4 September 1991

Dear Nationals!

The Federal Council of the National Party presents to you a document containing a broad outline of our views concerning a constitution for the new South Africa. These Views were developed within the ranks of the National Party and we invite your comment and deliberation.

What is presented here is by no means a final constitution ; in fact, the elements of a new constitution will have to be thrashed out by way of intensive negotiations amongst the participating parties. This document is a summary of the principles underpinning our views on a new constitution and is intended to demonstrate how these principles may find expression in such a constitution.

As is quite evident from our theme, we are striving for a constitution under which South Africa might rightly be called a "constitutional state." Such a constitution shall curb arbitrary action on the part of rulers as well as ensuring that the process of government shall be conducted within proper bounds. This represents the first pillar on which our views are based.

The second pillar is that we propound a system of "true participatory democracy". This term indicates that political power shall not be vested solely in the hands of any single individual, political party or group. We therefore proclaim our opposition to domination of any kind. We favour a system which includes more than just parties and groups.

I trust that you will let us have the benefit of your deliberations and comments, and that you will thus become co-builders of a constitution which will herald a new era of justice, peace and prosperity for South Africa.

With kind regards

Leader of the National Party

3% w . ' CONSTITUTIONAL RULE " "m
 3; WW 1 . IN A PARTICIPATORY
 '5'- mm. insights 2 i ' DEMOCRACY
 L - A Thrice-tier Governmnt '
 - The Seperation of powrs 4 I!
 Purgiciggtorx ngogrgy: ngg Eillggs 5 l
 - The First Pillar: A Corstitutional State ' BASIC POINTS OF DEPARTURE "
 - The Second Pillar: Paxicipatory Democracy 8 - 1!
 MW i a DC WC!" ' P itica Model 10 The National Party has repeatedly committed itself I
 - Introduction to the creation of a new constitutional dispensation I
 - Central Government 1 l .I
 through negotiation. Such a new dispensation must be
 based on cenain fixed points of departure. A system
 must be sought which, inter alia
 5 Parliament
 11 The First House
 1: The Second house
 f
 5 Executive Authority 12 \$ ensures that universally accepted values
 - Regional Government 13 and norms in South Africa are maintained
 5 Intrcxclusion 1: is based on universal franchise in a demo-
 :k The Legislative Authcity 14 cratic structure of government
 '1 The Executive Authoxty 1: is free from apartheid and discrimination in
 E 1: Sub-regions V any form '
 E' - Local Government ' 15 "5 is free from domination '
 33 \$ Constitutional Framcvork 5 establishes an ordered and orderly society . '
 L: '5 Participatory Democrcy at Local Level 15 g 1: makes good government possible '
 '4? \$ The City Council _ f 5': ensures justice for all ,
 :23 1: Neighbourhood Coum'ls 17 . 1: promotes a market-orientated economy I
 :1 Freed m and u. ti .r all in he : coupled with private initiative and social
 3:3 MM 13 l responsibility
 9;. - Political say and particpation in _ , 1: accommodates the cultural differences in
 23:. .govermmnt structures ;1 South Africa l
 :1 - Protection against the buse of power 19 '4: enables all South Africans to share in l
 '3" - The recognition of fret and autonomous 1 peace, progress and P1135139r ity
 5: fields of interest of cmmunities 19 l ' ;
 35 i There are considerable differences of opinion as to
 in
 Compiled and issued by the Federal (Juncil of the National Party. P O Box 56503, Arcadia.
 007
 the specific constitutional model in which these basic.

xxx le
points of departure may best be realized. In order to
:1 achieve the best possible result the National Party is
Ui- striving for
LL
3 negotiation: at national level in order to reach
agreement on the broad stmcture of govern-
ment and to establish the position of central,
5 regional and local authorities within that
' structure
at negotiation at regional level so that the needs,
aspirations and problems of the residents of
such a region may be pr0perly accommodated
and
J! t' negotiation at local level in order to accom-
, plish co-operntion and harmony at grassroots
level.

:5
!% STRUCTURAL PRINCIPLES
Q A THREE-TIER GOVERNMENT

11.
3; The National Party proposes a thi'eentier govern-
E5 ment in which full legislative and Executive functions
it and authority are conferred on can at government and
IN
regional and local authorities. Regional and local
b-J
.31: authorities are therefore notmerely administrative
IE: extensions of the central government; they are not
a merely the consequence of decentralized administration;
f; on the contrary, every tier is "gmemmeutii in its own i
:sz- right, with its own

CL
3% t elected authority that is responsible to the
i v ters
t legislative and executive power
t': tax base.

I
A thtee-tier system of government takes account of
t': the rich diversity of the population of South
Africa. the needs of communities in regional and
local context, and the consequent need for self-
determination in regional and local context
3 the need tu bring government us close :0 the '
people as possible, so that decisions can be taken
ata level where the citizenis position is best
understood

\$ the need for a rationalized and effectixe state
administration.

The question is how the boundaries of regions are i
to be determined for regional government purposes. It is I
essential in any event for the present multiplicity of
second-tier governments, consisting of four p'ovinces, 1
six seif-goveming territories and three own alfairs '
administrations, to be simplified and included in a single
system of regional government. It is suggested that the
present nine development regions may presett a good
starting point for negotiation about new regional
boundaries. Naturally adjustments to these will have to I
be considered. The present development regbns which '
may be used as a starting point currently comprise '

t
Region A (Western Cape), Regio'n B (Northern Cape),
Region C (Orange Free State and sztgwa), Region D
(Eastern Cape). Region E (Natal ztnd KwaZuu).

_ Notes
o__.

1

i .

Region F (Eastern Transvaal and KaNgwane). to prevent the executive authority from dominating Region G (Northern Transvaal, Lebowa and --
to limit the legislative authority, and
.- Gazankulu), Region H (the PWV area and KwaNde- vice versa
belc) and Region J (Western Transvaal).

Notes

\$5 confer On Parliament the authority to call the
Although the present development regions include executive, to account
the four independent national states (the TBVC states
in terms of agreements for purposes of co-operation regarding
regional development, their relationship with
to confer on the judicial authority jurisdiction

1

(ion. based on the Constitution and the i
new South Africa will have to be negotiated with each. Charter of Fundamental Rights, to the
state and

state individually. set aside Acts of Parliament and actions of
the executive. I

As far as local authorities are concerned. municipal
boundaries will have to be delimited on an appropriate
appropriate geographical basis so as to replace current PARTICIPATORY DEMOCRACY: I,
boundaries based on race. A delimitation authority TWO PILLARS I
could handle this task. A question which requires
attention is whether the concepts "municipality" or "For the framework sketched above to
really satisfy I

"municipality council" should possibly be extended to include.
the unique needs of the South African situation, and to
conform to our basic points of departure, it is necessary
to frame the constitution in such a way that
the whole of a district (that is. a town together with its
rural district).

at:

a constitutional state is established

THE SEPARATION OF POWERS

"that a system is designed which will ensure the

A clear separation of the legislative, executive and realisation of a participatory democracy.

judicial powers is a characteristic of modern democracies.
Such separation is accepted as an essential feature
of a new dispensation in South Africa.

Under the new order FURTHER

THE FIRST PILLAR:

1. A CONSTITUTIONAL STATE

"The separation of powers prevents an over-con-

centration of power being vested in a specific part of the state (the rule of law is under-
pinned by constitutional de-

central government and contributes to achieving checks and balances to express the pursuit of justice
and a limit on the

balances. Consequently the constitution must contain the powers of the state. . A- , - . V
- 7

ml. 1; . 'the , - v ' , ' ' ' e ational Party accepts the rule of law as the

foundation on which such endeavours must be based. However, this term was developed within the distinctive milieu of the Westminster system and an unwritten constitution. The term constitutional state is therefore used to indicate that we are striving for a system that may rightfully be described as a constitutional government: a system in which the constitution and the law are the source of justice, and at the same time serve to curtail the power of government.

The concept "constitutional state" expresses the view that the constitution of a country should regulate the power of government in such a way that freedom, justice and legal certainty are guaranteed for all.

Thus we are concerned with a constitutionally entrenched legal system involving seven principles:

EL:

1. The constitution must be the all-embracing criterion for the state and the citizen. Consequently it will enjoy a higher status than all other law; it may only be amended if special procedures are followed and compliance with its prescriptions will be enforceable by the courts.

2. A Charter of Fundamental Rights must be constitutionally protected and legally enforceable. This will equip the citizen to protect himself against unlawful action by government. Effective protection of the fundamental rights of the individual will at the same time be of benefit to the groups and communities.

3. An independent judiciary is a cornerstone of the constitutional state. An independent court structure must have the jurisdiction to declare Acts of Parliament and actions of the government null and void if they do not comply in all respects with the criteria of the Constitution and the Charter of Fundamental Rights. The individual must have free access to the courts.

4. Organizations and institutions that function in non-political spheres must enjoy the highest possible measure of self-determination in respect of their own fields of interest in the community. Full recognition must be given to their autonomy in this regard.

5. Mechanisms must be built in to prevent the abuse of government power and state structures. The office of an independent and objective Ombudsman must be instituted. The Auditor-General, the Public Service Commission and the Reserve Bank must be vested with greater autonomy, and a procedure for the appointment and independence of the Bench.

6. Judges must ensure the objectivity, professionalism and integrity of the constitution must be ensured. The constitution must be protected against infringements. A system must be developed that ensures effective and balanced control over the security forces as the instrument for maintaining the constitution at all times.

7. An impartial and professional civil service with career security for employees must be ensured and the Commission for Administration must be vested with sufficient authority.

CDN EMBRSSY PRETC'F'IR

Building these seven principles into the constitution effectively, will ensure that the interests of the citizens, as entrenched in the constitution, are respected by government

't the fundamental rights of the individual, including rights exercised in group and community context, are protected against infringement

i' the government remains subject to the law, and cannot take arbitrary decisions

l' the government will not interfere in Fields where there is no legal authorization for it doing so

I
it the abuse of power and maladministration are prevented

it the constitution is maintained.

THE SECOND PILLAR:

PARTICIPATORY DEMOCRACY

By participatory democracy" is meant that a system of government is developed in which a number of political parties effectively participate and in which power-sharing therefore takes place. This is in contrast to the Westminster system in which one party exclusively enjoys power.

Mmcwwh

WF- W-

Participatory democracy takes into account the diversity of South African society and the reality of the existence of a multiplicity of socio-economic and cultural interest groups. Such groups do not exist in the community because they have been created or recognized in terms of legislation, but by virtue of the fact that people naturally and voluntarily associate with one another because they have some kind of interest in common. In its Five Year Action Plan of 1989 the National Party undertook to seek, through negotiation between leaders, a new just and meaningful basis than race and colour on which groups may be defined for purposes of political participation. In the constitutional sphere the political aim is: the most effective means of furthering the interests of such groups. In other spheres, interest groups define themselves in terms of other criteria. The National Party's conviction is that a new constitution should offer the opportunity for every viable political party to play an effective role at local, regional and central government levels.

This concept may be put into effect in two ways:

1
t': First, political power may be divided among various authorities. Most important here is the distribution of power among the different tiers of government. This is normally referred to as the principle of devolution of power.

Functions must be distributed among the different tiers of government in such a way that the constitution confers autonomous authority on every tier.

(That is, original entrenched authority with which

Q!51.e e'f 'h .- _ _':

!

l

l

l

i'

lj

g

Notes

ates ' h Notes

(T N constitution must therefore stipulate which powers and constitutional models that may be appropriate for the t -

:Sx duties are to be vested in the central government, South African Situation.

1': regional government and municipal or local govern-

ment. In each case it must be determined which tier 01' CENTRAL GOVERNMENT

government can perform a particular function in the

most appropriate and :ffective manner. While some Parliament

functions may as a whole be allocated to one of the

three tiers, it will be appropriate to spread other It is proposed that Parliament should consist of

functions among all three tiers so as to allocate to two Houses. Both Houses must adopt legislation.

each tier that aspect of :l function which can be .

. handled there most effectively in the interest of the The First House

community.

The First House is elected proportionally, so that

it Secondly, an effective say and partici- each political party receives a number of seats in

._ pation in state power for a number of accordance with the share of the political support which

: parties may be brought about. that party enjoys nationally on the strength of a general election. The electoral system may further be so

These principles are elucidated below by outlining organized that voters are also given the opportunity to

ing the framework 01a model. express their preference for specific candidates in

E. particular electoral districts, without the requirement of

f5 proportionality being sacrificed'

3%: PARTICIPATORY DEMOCRACY: '

k A POLITICAL MODEL Legislation will be passed by a simple majority.

UE: but will be subject to a weighted majority (eg. two- I

E3 INTRODUCTION thirds) in respect of those issues entrenched in the Con-

LLJ situation. 4 l

:3. This expositor presents the framework of a model

P3 embodying the above principles. The National Party ' '5

:3 has already received a mandate from the voters to The Second House it

.4 negotiate a new constitution based on these principles.

U This particular model is not necessarily a final proposal A Second House. which is smaller than the First

\$1.. . which cannot be attended. It may be revised as a result House, is proposed. An equal number of seats in the

3,1 of further reflection in the NP and by negotiations and Second House will be allocated to each region. Each

WE also in the light of the expected reports of the South , political party which has gained a specified amount of h

' - ' - 7 . . n, s' . fundamental rights and on I

, Suchdsyuemts apply in .ermal 'yU U ' . - i- u - .- ,. . .

Notes

M

Q support in the election in the t'egiorls legislative body parties. Tg_ h will be allocated an equal number of the seats for that I E region in the Second House. Thus every democratic Thus a multiparty government (Of Whic h Western i

it party which enjoys a significant amount of support in European coalition-style-govemme nt is an example) is ll

Li the region, will be represented in th: Second House. prefened to a system where the ma jority party alone

This will result in equal representaton of both the re- forms the executive of government . (The Westminster

gions and those political parties witt signifieant sup- system usually ICSUIIS in this si tuation)

port. .

The present constitution excessively concentrates

The functions of the Second Hmse are to functions and authority in a single person, the S tate

President. Instead. it is proposed that the office of head

it deliberate on the hills which are approved by of state and of government should be ves ted in a collec-

the First House and for wlich increased tivc body known as the Presidency. The Presidency will

majorities are not requiret' and to pass them consist of the leaders of the three largest parties in the

by a simple majority First House. In the event that the three largest parties do

not together represent the majority of the voters, the

at deliberate on and pass by a weighted Presidency will be supplemented by as many additi onal

majority legislation which leaders, in order of the size of their party, as may be re- quired to represent ajoint majority. A party that quali-

. amends the constitution ties in these temts may however, if it so wishes, abstain

g 1 - relates to the interests of minorities from participating. ,

E," - relates to the inter of regions I

i3 - ls entrenched in tlimnstitution The chairmanship may rotate among the members I

'5 on an annual basis.2 Decisions are taken by cunsenmn.)

:53: at: initiate legislation relating to circumscribed Likewise, a State President may b e elected on a rotating

E matters and which affects he specific basis from the ranks of the Presidency.

5 interests of minorities and legions. I

g The Presidency, by consensus, appoints ministers

:1: who form a multiparty Cabinet and who are obliged to

2 carry out the policy of the Presidency.

9 Executive Authority

E: The two Houses of Parliament may pass a motion

:3 The core of the National Party'sproposals is that of no cunlidcuce iii the Presidency collectively (but not I

I: the executive should not be constitutfd from one party in individual members), in the Cabinet and in individual

U

L1

alone. but from members of a numbq of the major Ministers.

"'OFEI Ft ' "

"i F'FE

-F

to

UN EMER

L_l

i

I

I

l

l

l

I

I

l

I

REGIONAL GOVERNMENT

Introduction

It has already been mentioned in the preceding section that provision is made for the representation of the different regions in the Second House of the central Parliament; also, that the present nine development regions may be used as a point of departure for the planning of a regional government dispensation. The composition of such a regional government is suggested as follows:

To ensure participatory democracy and power-sharing for a number of political parties, measures for effective minority protection must also be built in at the second and aim levels of government in accordance with the principles already embodied at the first level.

The Legislative Authority

An elected Legislative Council for every region is proposed, in which

the numerical strength is determined by the size of the voting population

1: the representatives are elected from electoral districts within the region on a proportional basis

alt

indirect nomination of part of the Legislative Authority by third-tier authorities, or possibly by subregions, may also be considered

, which decision-making procedures provide for the protection of minority interests and certain circumscribed matters.

The Executive Authority

The Executive Committee of a region may be made up of three to five leaders of those political parties which have a predetermined minimum representation in the Legislative Council, according to the same system as already set out in regard to the Presidency at the first level. The Executive Committee must function collectively as a unit, and each of its members must be responsible for a specific portfolio.

Sub-regions

Within regions, the possibility of sub-regions or district authorities for districts with particular interest and cohesion may be provided for as an option.

—.

g l

I LOCAL GOVERNMENT I

Constitutional Framework I

The National Party proceeds from the following points of departure:

that the basis of the local government system - namely that local government is a democratically elected, autonomous tier of government, which within its own area of jurisdiction is in effect

Note;

i

l'.

t

ll

i

3x Notes

Nx lative, executive and fiscal authority - must be laid
X down in the constitution and entrenched.

t A national Local Government Act, which must
be a product of the (national) constitutional negotiation
process, must establish the broad principles and stm-
tural framework of local government.

it Following negotiation at local level. a formal
agreement or charter must be drawn up for every local
authon'ty and promulgated under the Local Govcrrmcnt
Act, to serve accordingly as the ulocal constitutum" of
the local authority concerned.

Participatory Democracy at Local Level

- _..L-.-_A-..A-je_- _

At local government level the term participatory
democracy gains a particular meaning. At this level,
where people live, work and take their recreation from
day to day, it is essential that a framework be created to
promote good order and co-operation. It is unfortu-
nately true, however, that this is precisely where he
large gap between developed and underdeveloped areas
becomes evident. hi the interest of the development of
stable communities (and therefore in the interests of
South Africa's future). a dispensation must be estib-
lished that is politically fair to all components of
society. This balance must be given practical
expression in the composition of the political authority
at local level, the city council. Within the boundaries
of every town or city only one noneracial local '
authority will be established with one administration
and one tux base.

b'vh t-r'r. lt'._Ir"_Lp-1 _

:40 kLJH Ll'lUZ-L-L

ti"

":1

WHO

t_ip

Paicipatory democracy may be put into effect at l!

local leel in various ways, inter alia by l,

l

l

't nlecting the City Council on the basis of the rep-
resentation of wards, and accepting property valuations
and votur numbers in :1 fair proportion to one another as
the basi for the delimitation of wards
t't letermining the franchise in accordance with
both tht interests of all lawful residents and the particu-
lar intecsts of owners, lessees and rate-payers
lt :onsidering a combination model in which. for
exampb, half of the city councillors are elected by a
votersltoll on which the names of all residents appear.
and theother half by a voters' roll containing only the
names If owners, lessees and rate-payet's
it groviding .forfspecial decision-making proce-
dures, itch as increased majority votes in the city count l

I

l

cil, in vspcct ofcertqin circumscribed sensitive matters.

I

N-ighbourhooal Councils

providt, within the broad boundaries of a municipal
area, ftt' the exercise by a geographical neighbourhood
of an otion for self-detemtination over community
interest. This concept involves that

"Fit: National Pihty acknowledges the need to I

l

I

l' (I geographical arm within a municipal area may
decide on a voluntary basis to institute a Neigh.
bourhood Council

Mates

I?

..

#h

A

l

L

)-

II

I!

I

E

L

41

7-.

:1

J

'b a Neighbourhood Council may be elected by the residents of the neighbourhood

h autonomous power may be entrusted to the Neighbourhood Council over neighbourhood matters, such as

- the regulation of norms and standards for the residential environment

- the granting of licences/permits in regard to the use of property

- the provision of communal facilities

- security matters and civil protection

- matters that may be allocated to a

Neighbourhood Council in terms of

other legislation, for example education and welfare

h the Neighbourhood Council may impose an additional levy on its residents for specific projects within its area of jurisdiction.

Ratepayers' associations and civic organisations

can play an important role in the establishment of Neighbourhood Councils

FREEDOM AND JUSTICE FOR ALL IN THE
NEW SOUTH AFRICA

The main points of the National Party's thinking on constitutional affairs are outlined in this document.

The principles which the National Party would like to see built into a constitution must form a framework

within which a variety of arrangements together form a

network in order to guarantee true freedom and justice for all. Thus, reliance is not placed on single prescriptions or arrangements to protect the rights of individuals

or minority groups. The proposed guidelines in fact all combine to protect the interests of all South Africans in

three fields in particular:

Political and effective participation in government structures

The proposed guidelines are aimed at ensuring a say in political matters and effective participation in the entire spectrum of government structures. In this regard

attention is drawn in particular to the important role played by the Second House: it has the important function of protecting the constitution and minority as well as

regional interests. The fact that the executive power is vested in a Presidency in which the most important

leaders are included guarantees participation across the widest possible political spectrum. Finally, the arrangement proposed for the local level aims to achieve a

sound balance, while the concept of "neighbourhood councils can ensure an orderly and peaceful residential

environment. Domination is eliminated by these proposals.

Protection against the abuse of power

The point of departure that South Africa should be a constitutional state is regarded by the National Party as

the basis of the new constitution.

being of cardinal importance. In the guidelines sketched in this document the emphasis consequently falls on matters such as checks and balances, the distribution of power, a Charter of Fundamental Rights, the integrity of
Notes

The guideline that government intervention in the autonomy of institutions in the non-political sphere should be limited has important implications for the citizen. This guideline, which fits into the whole network of constitutional arrangements, takes account of the fact that numerous activities in a society are performed by a variety of groups, often in non-governmental organizations and institutions, and that it is precisely here that the freedom to proceed without interference by the state must be protected. Cultural, religious and sporting activities are specific examples of these, as well as various occupational, professional and other spheres of interest, which contribute to the orderly structure of society through autonomous institutions. The reality of groups, legitimate group interests and the fact that there are always minority groups in society,

$$I \cup R ; H$$

:3 I 1' EL

VF____, _____. W-V ---'

E are acknowledged in the National Partyts guidelines.

3 Therefore it is suggested that the governments ability

3 to interfere unnecessarily should be limited. By build-

ing this principle into the constitution effectively (as ; Your c ommentsnay b e direct ed to:

I well as by givmg' it further expressxon m the Charter of

3 Fundamental Rights) communities are guaranteed self- ' The S ecretarGeneml

1.1 determination in regard to business and professional . N ati onal Part

0 life, trade union affairs, education and culture, sport, re- P. 0. B ox 5653

Religion, language, tradition and nonpolitical community Arcadia

3 life.