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NATIONAL PARTY CONSTITUTIONAL PROPOSALS (BY SOUTH AFRICA EMBASSY IN JAPAN)
CONSTITUTIONAL RULE IN A PARTICIPATORY DEMOCRACY

INTRODUCTION: THE FEDERAL COUNCIL OF THE NP THIS MORNING IN BLOEMFONTEIN PRESENTED A DOCUMENT CONTAINING A BROAD OUTLINE OF ITS VIEWS CONCERNING A CONSTITUTION FOR A NEW SA. IT 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 ALL PARTICIPATING PARTIES THE STATE PRESIDENT, MR F W DE KLERK, SAYS IN A PREFACE TO THE DOCUMENT. THE DOCUMENT FOLLOWS IN FULL:

BASIC POINTS OF DEPARTURE

The National Party has repeatedly committed itself to the creation of a new constitutional dispensation through negotiation. Such a new dispensation must be based on certain fixed points of departure. A system must be sought which, inter alia

- ensures that universally accepted values and norms in South Africa are maintained
- is based on universal franchise in a democratic structure of government
- is free from apartheid and discrimination in any form
- is free from domination #
- establishes an ordered and orderly society
- makes good government possible
- ensures justice for all
- promotes a market-orientated economy coupled with private initiative and social responsibility
- accommodates the cultural differences in South Africa
- enables all South Africans to share in peace, progress and prosperity

There are considerable differences of opinion as to the specific constitutional model in which these basic points of departure may best be realised. In order to achieve the best possible result the National Party is striving for

- negotiation at national level in order to reach agreement on the broad structure of government and to establish the position of central, regional and local authorities within that structure
- negotiation at regional level so that the needs, aspirations and problems of the resident of such a region may be properly accommodated and
- negotiation at local level in order to accomplish co-operation and harmony at grassroots level

STRUCTURAL PRINCIPLES

A THREE-TIER GOVERNMENT

on central government and regional and local authorities.

Regional and local authorities are therefore not merely administrative extensions of the central government; they are not merely the consequence of decentralised administration; on the contrary, every tier is "government" in its own right, with its own

- elected authority that is responsible to the voters
- legislative and executive power
- tax base.

A three-tier system of government takes account of

- 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

the need to bring government as close to the people as possible, so that decisions can be taken at a level where the citizen's position is best understood

- the need for a rationalised and effective state administration. w

The question is how the boundaries of regions are to be determined for regional government purposes. It is essential in any event for the present multiplicity of second-tier governments, consisting of four provinces, six selfgoverning territories and three own affairs administrations, to be simplified and included in a single system of regional government. It is suggested that the present nine development regions may present a good starting point for negotiation about new regional boundaries. Naturally adjustments to these will have to be considered. The present development regions which may be used as a starting point currently comprise Region A (Western Cape), Region B (Northern Cape), Region C (Orange Free State and Qwaqwa), Region D (Eastern Cape), Region B (Natal and KwaZulu), Region F (Eastern Transvaal and KaNgwane), Region G (Northern Transvaal, Lebowa and Gazankulu), Region H (the PWV area and KwaNdebele) and Region J (Western Transvaal).

Although the present development regions include the four independent national states (the TBVC states) in terms of agreements for purposes of co-operation regarding regional development, their relationship with the new South Africa will have to be negotiated with each state individually.

As far as local authorities are concerned, municipal boundaries will have to be delimited on an appropriate geographical basis so as to replace current boundaries based on race. A delimitation authority could handle this task. A question which requires attention is whether the concepts "municipality" or "city council" should possibly be extended to include the whole of a district (that is, a town together with its rural district).

THE SEPARATION OF POWERS

A clear separation of the legislative, executive and judicial powers is a characteristic of modern democracies. Such separation is accepted as an essential feature of a new dispensation in South Africa.

The separation of powers prevents an over-concentration of power being vested in a specific part of government and contributes to achieving checks and balances. Consequently the constitution must contain arrangements that

- prevent the executive authority from dominating the legislative authority, and vice versa
- confer on Parliament the authority to call the executive to account
- confer on the judicial authority jurisdiction, based on the Constitution and the Charter of Fundamental Rights, to test and set aside Acts of Parliament and actions of the executive.

PARTICIPATORY DEMOCRACY:

TWO PILLARS

For the framework sketched above to really satisfy 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

- a constitutional state is established
- a system is designed which will ensure the realisation of a participatory democracy.

THE FIRST PILLAR:

A CONSTITUTIONAL STATE

The term rule of law is used in constitutional debates to express the pursuit of justice and a limit on the power of the state.

The National Party accepts the rule of law as the foundation on which such endeavours must be based. However, this term was