

A81
[81]**ANC RESPONSE TO THE TECHNICAL COMMITTEE ON CONSTITUTIONAL MATTERS.****THE QUESTION OF CONSTITUTIONS FOR THE REGIONS AND REGIONAL ASYMMETRY**

The ANC is opposed to the constitution-making process beginning with the drafting of regional constitutions. The drafting of regional constitutions at this stage assume, incorrectly, that there already exists acceptable, functioning and immutable regional boundaries. It would also be a recipe for promoting division at a time when National Unity is a paramount objective. The constitutional framework for the envisaged regions is best dealt with as part of a National Constitutional process and within a National Constitution.

The crucial question is who decides on the constitutional framework for regional government. We are firmly of the opinion that it should be the constitution-making body that makes this determination. It will do so subject to two major conditions: the regions will be directly heard through their representatives elected to the constitution-making body, and secondly, it will be bound by the agreed constitutional principles relating to the powers and functions of regions.

It will then be up to the CMB to decide whether, within this framework, the constitutional framework for regions should be identical or not. In other words, the question of total symmetry or possible divergence is not one of principle to be agreed definitively one way or the other in advance. Argument will have to be heard at the CMB and the issue decided in the light of the total configuration of the constitution.

Our general approach will be to avoid the following:

The perpetuation of anything reminiscent of the divisions of the past, of the marginalisation of certain zones, or the creation of what in effect would be a league of first, second and third division regions;

The facilitation of competitive economic policies that would undermine national macro-economic discipline, especially in relation to inflation, the public debt and balance of payments;

The encouragement of wasteful public expenditure on unnecessary government structures intended to promote regional grandeur;

The undermining of a sense of shared national citizenship, and with it, a feeling of shared rights and responsibilities throughout the land;

871

The creation of impediments to the free movement of capital, labour and goods throughout the country;

The establishment of mechanisms that would permit the perpetuation of inequality and racial domination in any part of the country;

The existence of separate armed formations that could be used for purposes of ethnic tyranny, ethnic cleansing and secession.

Outside of these negative parameters, and within the framework of the agreed principles of three-tiered government applicable to the whole country, as well as of the principles in the Bill of Rights, we could consider some degrees of flexibility and a certain measure of particularity in relation to the exact character of each region.

Thus we accept that a certain amount of demographic, cultural and economic diversity between the regions is inevitable. Indeed, the fact that each region has its own particularities and characteristics is a source of richness for the country as a whole.

Yet poverty provided that poverty and lack of infra-structure should never be accepted as part of this distinctive character.

Diversity should in no circumstances be equated with inequality. Though in South Africa we have both what are called first world and third world features, we do not envisage any constitutional arrangement that perpetuates any supposed division of our citizens into so-called first world and third world peoples. We are all South Africans, and all equally entitled to share in the bounty of the country.

Economic inequality between regions therefore calls for urgent constitutional attention, rather than constitutional re-inforcement or constitutional neglect. It requires express acknowledgement both of the principle of regional equalisation and of the principle that every person is entitled to the same basic necessities of life, independently of where he or she is born or lives. These concepts, which are found in the German and Japanese constitutions, amongst others, reflect themselves in fiscal measures which ensure that the disadvantages suffered by persons in poorer regions are progressively attended to.

Language and cultural diversity, on the other hand, are to be respected rather than eliminated. Our policy on language rights - that is, the right to use and develop one's language, and to be understood by speakers of other languages - is that they should be available to all South Africans wherever they might be in the country.

It could well be that for practical purposes, certain languages are designated as the languages of record at national, regional and local levels. We are, however, against restricting the free use of the African languages to the regions only. There is no reason, for example, why Zulu or Sotho should not be spoken in the national Parliament as well as in regional assemblies. Why should English and Afrikaans be the only South African languages permitted in Parliament.

The question of asymmetry in relation to powers and functions is of another order. The reasons that we have seen advanced in favour of such an approach are so weak that we wonder whether the actual motivation is not different.

We have difficulty in seeing how different powers and functions can be given to different regions. Where the regions may indeed differ is in respect of how best to exercise their powers. That is what elections are all about.

To give an example: a matter that will have to be carefully considered is the question of who exercises control over natural resources that are found in any particular region. Our general approach is that natural resources such as minerals, water and the riches of the sea belong to the nations as a whole but are managed within the framework of national policy by the regions.

There is therefore no question of attributing different powers to different regions, depending on whether they have a coastline or possess hydrocarbons in their soil. Rather, each region will have the same general powers of economic management, but will exercise them differently according to the nature of the concrete activities to which they relate, and in line with the mandate given by the local electors.

As far as institutional diversity or asymmetry is concerned, our general standpoint is that the basic institutions of democratic government should be the same throughout the country. We do not favour the invention of institutions just to prove that regions are different. Furthermore, and it worth repeating, we are totally against the wasteful pomp associated with the proliferation of unnecessary regional institutions intended to promote an artificial regional grandeur.

What could be considered, on the other hand, would be institutions of a genuinely local character that could be integrated into the structures of regional government. Their objective would be to enhance rather than dilute democracy and promote rather than interfere with good government.

Thus, in certain areas there might be a special role for traditional leaders assisted by elected councillors. In others, trade unions, community bodies and other organs of civil society could have a significant position (without, of course, losing their autonomy.)

A highly industrialised region like the PWV might have special structures relevant to urban development, while a more rural one might have special bodies more directed towards developing policies on agricultural land use. We would certainly not insist that if Natal has Shark Board, a region in the Transvaal has one as well.

We can envisage that regions will decide for themselves where their capitals should be sited, and, within the framework of constitutionally acceptable criteria, where the boundaries of sub-regions or other administrative zones should be.

To sum up: The crucial test facing the CMB in relation to whether or not regional variations should be accepted will accordingly be whether or not, on the one hand, in a negative sense they avoid the evils and dangers referred to above, and whether or not in a positively way, they promote democracy, development and respect for human rights. Our final position in relation to any concrete proposal will, accordingly, be determined by how it measures up against these concrete criteria rather than by any absolute and abstract stance established in advance.

22 June 1993