



RAAD VIR
GEESTES-
WETENSKAPLIKE
NAVORSING

RGHN
HSRC
HUMAN
SCIENCES
RESEARCH
COUNCIL

Sentrum vir Konstitusie-Analise
Centre for Constitution Analysis

Year 2, No. 4, 1991

Constitutional development in South Africa: Proposals by the ANC, DP and NP

The constitutional debate in South Africa is gaining unprecedented momentum. The past two months have witnessed the proposals put forward by the Democratic Party and National Party. The African National Congress constitutional proposals were published in April 1991. Given the historical background of conflict between various political organisations, it is surprising that a number of areas of common ground can already be identified. There are, however, a number of fundamental differences which still need to be addressed. The most important philosophical points of conflict between the ANC, DP and NP are the following:

Coalition government

The National Party and Democratic Party favour rigid constitutional guidelines which require coalition government to the extent that even if a single political party receives a majority of the votes, it would still need the co-operation of other parties in order to govern the country. The three man presidency, coalition cabinet and equal status of the two houses of parliament are aimed at preventing normal majority decisions. In such a way the NP believes the interests of minority political parties will be protected. The ANC, however, firmly rejects any notion of a constitutionally required coalition. The ANC - which views itself as a probable majority party - favours a system where even if coalition occurs, the majority should be able to act unhindered in executing its political and economic programme.

Constitutional guarantees for regions and local authorities

The National Party and Democratic Party support the principle of entrenched competencies for regional governments. That entails that the constitution, as the supreme source of governmental authority, sets out the competencies of central and regional governments. The regions thus have original powers and should a transgression occur, the courts could nullify such an act. The ANC is in favour of the delegation of powers to the regions and local governments by the national parliament. Parliament is therefore the source of regional autonomy and such autonomy can be limited or extended should parliament wish to do so. The ANC emphasise the duty of the central government to initiate and undertake programmes of national importance and is sensitive to the possibility that regions and local governments may frustrate the agenda of national priorities.

Affirmative action

The National Party and Democratic Party are in favour of affirmative action programmes aimed at assisting individuals to improve their skills, training, education and to encourage socio-economic upliftment of the general population. Such programmes, however, have to adhere to the basic requirements and guidelines set out in the bill of rights. The ANC proposes such extensive affirmative action programmes that any provision of the bill of rights may be suspended if an act aims to institute special measures to provide affirmative action for people who in the past have been disadvantaged by discrimination.

Socio-economic rights

The ANC, DP and NP agree in principle that certain social, cultural and educational rights be included in the bill of rights in addition to the traditional civil and political rights. There are, however, serious differences in regard to the judicially enforceable duty that the state has to address inequalities that may exist. The NP is in favour of governmental programmes to assist individuals but stress that such programmes cannot be judicially enforced. The DP favours a statement of social, economic and cultural obligations of government which will place political and moral duties on the government without creating judicially enforceable rights. The ANC supports the inclusion of extensive social, economic and cultural rights as part of the bill of rights. Such rights will enable the courts to require the government to undertake upliftment programmes with regard to freedom from hunger, right to shelter, rights to health, work and minimum income.

DIAGRAMMATIC COMPARISON OF PROPOSALS BY ANC, DP AND NP

PRESIDENT

<u>ANC</u>	<u>DP</u>	<u>NP</u>	<u>POSSIBLE DEVELOPMENT</u>
<ul style="list-style-type: none"> ● Executive president elected in general election ● President acts in consultation with prime minister ● President may serve a maximum of two five-year terms 	<ul style="list-style-type: none"> ● Executive president elected in general election ● President acts in consultation with prime minister and has the powers of the present state president ● President is elected for a seven-year term 	<ul style="list-style-type: none"> ● Presidency comprising 3-5 member with a rotating chairman ● Presidency must represent at least 50 % of parties in parliament. Decisions taken by consensus ● Term coincides with parliament 	<ul style="list-style-type: none"> ● President and prime minister elected by parliament ● President and prime minister act in consultation with each other. Prime minister chairman of multiparty cabinet ● Term coincides with parliament

CABINET

<u>ANC</u>	<u>DP</u>	<u>NP</u>	<u>POSSIBLE DEVELOPMENT</u>
<ul style="list-style-type: none"> ● Members of cabinet appointed by president at own discretion ● Prime minister appointed by president ● Prime minister acts as chairman of cabinet 	<ul style="list-style-type: none"> ● Multiparty cabinet required by constitution. Each party with 10 % and more support must be represented in cabinet ● Prime minister appointed by president ● Prime minister acts as chairman of cabinet 	<ul style="list-style-type: none"> ● Multiparty cabinet required by constitution. Parties represented according to electoral support received ● Ministers appointed by presidency ● Member of presidency acts as chairman of cabinet 	<ul style="list-style-type: none"> ● Multiparty cabinet required by constitution or special vote of confidence in cabinet by parliament ● Prime minister and president enjoy majority support in parliament ● Decisions not necessarily on basis of consensus, with prime minister as chairman

ENQUIRIES: Dr Bertus de Villiers, HSRC, Private Bag X41, Pretoria 0001. Tel. No. (012) 202-9111. Fax (012) 326-5362.

The views expressed in this newsletter are those of the author and not necessarily those of the HSRC or the Advisory Committee for Political Science Research.

PARLIAMENT

<u>ANC</u>	<u>DP</u>	<u>NP</u>	<u>POSSIBLE DEVELOPMENT</u>
<ul style="list-style-type: none"> ● Parliament consists of two houses ● <u>First house</u> — Members elected by proportional representation — Decisions taken by majority vote — First house has more competencies than second house 	<ul style="list-style-type: none"> ● Parliament consists of two houses ● <u>First house</u> — 350 members elected by proportional representation — Decisions taken by majority vote — Houses have equal status except for money bills, where first house can take final decisions 	<ul style="list-style-type: none"> ● Parliament consists of two houses ● <u>First house</u> — Members elected by proportional representation and single-member constituencies — Decisions taken by majority vote — Houses have equal status 	<ul style="list-style-type: none"> ● Parliament consists of two houses ● <u>First house</u> — 300-380 members elected by the list system of proportional representation. Provision for regional lists of candidates — Decisions take by majority vote. Special majority required for amendment of constitution — Extensive use of committees in order to facilitate consensus, with equal status for houses except in emergencies
<ul style="list-style-type: none"> ● <u>Second house</u> — Regions represented on proportional basis — Can delay but not veto legislation — Can refer a bill to constitutional court for opinion 	<ul style="list-style-type: none"> ● <u>Second house</u> — Regions have equal representation irrespective of other factors. 66 of the 100 members are directly elected by regions, 33 elected by local authorities and 1 appointed by president — Can veto legislation with the exception of money bills 	<ul style="list-style-type: none"> ● <u>Second house</u> — Regions have equal representation. Each political party in region has equal representation — Can veto all legislation 	<ul style="list-style-type: none"> ● <u>Second house</u> — Equal representation for all regions — All members directly elected by regions by means of proportional representation — Special powers with regard to treaties, appointments, etc. — Extensive use of committees to encourage consensus — Equal status between houses but provision for emergency procedures such as a joint sitting, when deadlocks occur

REGIONAL GOVERNMENT

<u>ANC</u>	<u>DP</u>	<u>NP</u>	<u>POSSIBLE DEVELOPMENT</u>
<ul style="list-style-type: none"> ● TBVC states reintegrated with South Africa ● Non-racial and non-ethnic regions demarcated (+ 12?) ● Regions have delegated competencies ● Regional governments are directly elected 	<ul style="list-style-type: none"> ● TBVC states reintegrated with South Africa ● 8-12 non-racial and non-ethnic regions demarcated ● Competencies of regions are entrenched in the constitution ● Regional governments are directly elected by means of proportional representation 	<ul style="list-style-type: none"> ● Future of TBVC states negotiated individually with each state ● 9 Regions demarcated on economic development lines with provision for subregions ● Competencies of regions are entrenched in the constitution ● Regional governments are constituted in similar fashion as on central level with a presidency, etc. 	<ul style="list-style-type: none"> ● TBVC states reintegrated with South Africa ● 8-12 regions demarcated on basis of economic feasibility, population composition and concentration, historical boundaries and infrastructure ● Competencies of regions entrenched in the constitution ● Constitution provides for limited parliamentary sovereignty to enable parliament to override regional powers should circumstances require it ● Popularly elected regional government on basis of proportional representation. Executive composed in similar fashion as on central level ● Limited local options to cater for needs of certain regions, for instance to accommodate traditional leaders

LOCAL GOVERNMENT

<u>ANC</u>	<u>DP</u>	<u>NP</u>	<u>POSSIBLE DEVELOPMENT</u>
<ul style="list-style-type: none"> ● Non-racial government with a single tax base for cities ● Powers are delegated by parliament ● Directly elected by proportional representation 	<ul style="list-style-type: none"> ● Non-racial local government with a single tax base for cities ● Powers are delegated by parliament or regional governments ● Directly elected by proportional representation 	<ul style="list-style-type: none"> ● Non-racial local government with a single tax base for cities ● Powers are entrenched in the constitution ● Directly elected. Two voters' rolls. One containing all names and the second, owners, rate-payers and lessees ● Neighbourhood councils on sub-municipal level to oversee civil protection, community services, etc. 	<ul style="list-style-type: none"> ● Non-racial local government with a single tax base for cities ● Powers are decentralized by regional governments ● Members directly elected by means of proportional representation and single member wards ● Neighbourhood committees formed on a voluntary basis with no constitutional status or powers