

ESTABLISHING REGIONAL GOVERNMENT IN THE NEW CONSTITUTION

A Government Position Paper Submitted for Discussion

INTRODUCTION

It must be noted at the outset that it has been the clear policy of the Government that a new constitution must be the result of a **negotiated settlement**. It is therefore important that an approach also to regionalism as a feature of the new constitution should take cognisance of the views of other participants in the process of negotiations. It is of no avail to put forward an approach or proposal that will be rejected out of hand by other participants.

One of the views of particularly the ANC and others is that only an elected body could properly act as a constitution making body (CMB). This view is difficult to reconcile with the insistence that regionalism/federalism should be predetermined.

The Government is well aware of the strong support for and insistence on federalism as the basis for a new constitutional dispensation. The Government shares the view that a system based on strong regional government is the only system that will address properly the needs of South Africa.

In the following paragraphs the main elements of a process to establish a system of regional government are outlined. The process embraces:

- (i) **a comprehensive principle on regionalism**
- (ii) **a Commission on Regional Government**
- (iii) **a process to deal with the Report of the Commission**
- (iv) **a process for the implementation of regional government.**

A COMPREHENSIVE PRINCIPLE

It was accepted in the course of negotiations that a constitution making body would be bound constitutionally by such justiciable principles as may be agreed upon multilaterally to before an election. A panel of experts or a constitutional court will certify that these principles have been embodied in the final constitution.

To a certain extent a principle on regionalism will predetermine the type of constitution that is envisaged in that it will determine the degree of devolution of power to regional government and the degree of autonomy for regional government.

Government proposes the following principle:

THE PRINCIPLE OF SUBSIDIARITY

- ✓ 1. *Government shall be structured at national, regional and local levels.*
- ✓ 2. *At each level there shall be democratic representation.*
3. *Each level of government shall according to the principle of subsidiarity, have appropriate and adequate legislative, executive and fiscal powers and functions that will enable each level to function effectively; such powers and functions to be entrenched in the constitution.*
- ✓ 4. *In addition to the powers and functions entrenched in the constitution, each level of government may delegate powers and functions to other levels of government.*
- ✓ 5. *Regions shall be empowered with financial, economic and administrative authority in order to make regional government viable. Regions shall not be competent to raise loans without the consent of the Reserve Bank or other agreed statutory institutions. Regions shall within limits be able to grant developmental incentives to encourage economic growth.*
- ✓ 6. *Powers and functions may either be exclusive or concurrent.*

+ Overriding

- ✓ 7. *The national government shall have overriding power in those matters not allocated exclusively to the regional or local levels of government.*
Delport: The powers & boundaries of a region, once fixed in a constitution, shall not be changed without the consent of that region.
- ✓ 8. *Special procedures involving the consent of regional representatives will be required for changes to the powers or boundaries of the regions.* J.S. Q. *Of each region?*
 Delport: *Yes*

A COMMISSION FOR REGIONAL GOVERNMENT

1. *Composition*

A Commission for Regional Government shall be established as soon as possible in terms of an agreement of the multi-party forum, consisting of "experts" or a panel of "wise men".

2. *Terms of Reference*

The Commission shall take evidence from all interested parties (including the existing political structures at regional level) and shall make recommendations regarding the following:

2.1 *Boundaries/Regions*

The minimum and maximum number of regions to be demarcated, will be stipulated.

The Commission shall take into account, *inter alia*

- historical boundaries and other historical factors
- demographic considerations
- economic viability
- developmental potential
- cultural and language realities
- administrative considerations

— *objections set out in the Declaration of Intent*

— *equation of regional integrity with equal protection*

2.2 Powers, duties and functions

The Commission shall allocate powers, duties and functions to regional government in terms of and applying the **Principle of Subsidiarity**.

2.3 ^{Const.} Political structures

The Commission shall define political structures for regional government taking into account

- the principle of proportional representation and
- the principle of power sharing.

PROCESS TO DEAL WITH REPORT

1. Report to MPF

The Commission shall report to the multi-party forum. The boundaries proposed by the Commission shall form the basis of the election of regional representatives to the Parliament in terms of the transitional Constitution. Regional representatives shall form 50% of the total number of elected representatives.

2. Report to Parliament (CMB)

- (a) Parliament, sitting as a CMB, must deal with the finalisation of regional government in the final constitution as a first priority.
- (b) The Commission's Report will be tabled and must either (a) be accepted by a 2/3 majority or (b) be referred back to the Commission, whereafter the second (final) report must be considered and the **recommendations finalised** with a 2/3 majority of the CMB sitting as a whole plus a 2/3 majority of the regional representatives. Thus the boundaries, powers, duties and functions and the political structures for regions are finalised.

- X (c) The representatives of each region thereafter draft the final structure pertaining to their region in an own regional constitution subject to the parameters set in terms of paragraph (b) above, and other criteria set by the CMB. In particular the regional representatives will determine which powers will be devolved *exclusively* to that regional government. After finalisation the regional constitution must be endorsed by the CMB as a whole by simple majority. Thereafter it must be certified by the Constitutional Panel/Court to be in accordance with the *Principles* as predetermined by the MPF.

PROCESS FOR IMPLEMENTATION

- 7 (a) The Parliamentary representatives of each region shall appoint a Transitional Executive Committee for their region on the basis of proportional representation.
- (b) The Transitional Executive Committee will be charged with the phasing in of the new regional government in interaction with existing regional government structures and with Parliament and with the Central Government.