



Die Nasionale Party se
raamwerk
vir 'n nuwe
demokratiese Suid-Afrika

RONDWETLIKE
REGERING
IN 'N
DEELNEMENDE
DEMOKRASIE



CONSTITUTIONAL RULE IN A PARTICIPATORY DEMOCRACY

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



Libertas
Pretoria
4 September 1991

Dear Nationalist

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.

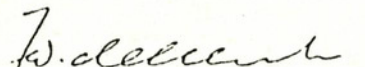
What is presented here is by no means a final constitution: in fact, the elements of a new constitution will have to be thrashed out by way of intensive negotiations amongst all the participating parties. This document is a summary of the principles underpinning our views on a new constitution and is 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 curtail 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 "*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 rather than excludes 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

CONTENTS

<u>Basic points of Departure</u>	1
<u>Structural Principles</u>	2
- A Three-tier Government	
- The Separation of powers	4
<u>Participatory Democracy: Two Pillars</u>	5
- The First Pillar: A Constitutional State	
- The Second Pillar: Participatory Democracy	8
<u>Participatory Democracy: A Political Model</u>	10
- Introduction	
- Central Government	11
* Parliament	
* The First House	
* The Second house	
* Executive Authority	12
- Regional Government	13
* Introduction	
* The Legislative Authority	14
* The Executive Authority	
* Sub-regions	
- Local Government	15
* Constitutional Framework	
* Participatory Democracy at Local Level	15
* The City Council	
* Neighbourhood Councils	17
<u>Freedom and Justice for all in the New South Africa</u>	18
- Political say and participation in government structures	
- Protection against the abuse of power	19
- The recognition of free and autonomous fields of interest of communities	19

CONSTITUTIONAL RULE IN A PARTICIPATORY DEMOCRACY

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 realized. 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 residents 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

The National Party proposes a three-tier government in which full legislative and executive functions and authority are conferred 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 decentralized 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 rationalized and effective state administration.

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 self-governing 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 E** (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 a 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

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The National 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 "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 powers 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 dispensation involving seven principles:

* The constitution must be the all-embracing criterion and guideline 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.

* 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 offer important protection of the interests of

groups and communities.

* 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.

* 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.

* 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 of judges must ensure the objectivity, professionalism and independence of the Bench.

* The 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.

* 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.

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**
- * **the fundamental rights of the individual, including rights exercised in group and community context, are protected against infringement**
- * **the government remains subject to the law, and cannot take arbitrary decisions**
- * **the government will not interfere in fields where there is no legal authorization for doing so**
- * **the abuse of power and maladministration are prevented**
- * **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.

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 more 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 party 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:

- * **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 and entrenched authority with which the other tiers of government may not interfere.) The

constitution must therefore stipulate which powers and duties are to be vested in the central government, regional government and municipal or local government. In each case it must be determined which tier of government can perform a particular function in the most appropriate and effective manner. While some functions may as a whole be allocated to one of the three tiers, it will be appropriate to spread other functions among all three tiers so as to allocate to each tier that aspect of a function which can be handled there most effectively in the interest of the community.

- * **Secondly, an effective say and participation in state power for a number of parties may be brought about.**

These principles are elucidated below by outlining the framework of a model.

PARTICIPATORY DEMOCRACY: A POLITICAL MODEL

INTRODUCTION

This exposition presents the framework of a model embodying the above principles. The National Party has already received a mandate from the voters to negotiate a new constitution based on these principles. This particular model is not necessarily a final proposal which cannot be amended. It may be revised as a result of further reflection in the NP and by negotiations and also in the light of the expected reports of the South African Law Commission on fundamental rights and on

constitutional models that may be appropriate for the South African situation.

CENTRAL GOVERNMENT

Parliament

It is proposed that Parliament should consist of two Houses. Both Houses must adopt legislation.

The First House

The First House is elected proportionally, so that each political party receives a number of seats in accordance with the share of the political support which that party enjoys nationally on the strength of a general election. The electoral system may further be so organized that voters are also given the opportunity to express their preference for specific candidates in particular electoral districts, without the requirement of proportionality being sacrificed.¹

Legislation will be passed by a simple majority, but will be subject to a weighted majority (eg. two-thirds) in respect of those issues entrenched in the Constitution.

The Second House

A Second House, which is smaller than the First House, is proposed. An *equal* number of seats in the Second House will be allocated to each region. Each political party which has gained a specified amount of

¹ Such a system is applied in Germany

support in the election in the region's legislative body will be allocated an equal number of the seats for that region in the Second House. Thus every democratic party which enjoys a significant amount of support in the region, will be represented in the Second House. This will result in equal representation of both the regions and those political parties with significant support.

The functions of the Second House are to

- * **deliberate on the bills which are approved by the First House and for which increased majorities are not required and to pass them by a simple majority**
- * **deliberate on and pass by a weighted majority legislation which**
 - **amends the constitution**
 - **relates to the interests of minorities**
 - **relates to the interests of regions**
 - **is entrenched in the constitution**
- * **initiate legislation relating to circumscribed matters and which affects the specific interests of minorities and regions.**

Executive Authority

The core of the National Party's proposals is that the executive should not be constituted from one party alone, but from members of a number of the major

parties.

Thus a multiparty government (of which Western European coalition-style-government is an example) is preferred to a system where the majority party alone forms the executive of government. (The Westminster system usually results in this situation)

The present constitution excessively concentrates functions and authority in a single person, the State President. Instead, it is proposed that the office of head of state and of government should be vested in a collective body known as the Presidency. The Presidency will consist of the leaders of the three largest parties in the First House. In the event that the three largest parties do not together represent the majority of the voters, the Presidency will be supplemented by as many additional leaders, in order of the size of their party, as may be required to represent a joint majority. A party that qualifies in these terms may however, if it so wishes, abstain from participating.

The chairmanship may rotate among the members on an annual basis.² Decisions are taken by consensus. Likewise, a State President may be elected on a rotating basis from the ranks of the Presidency.

The Presidency, by consensus, appoints ministers who form a multiparty Cabinet and who are obliged to carry out the policy of the Presidency.

The two Houses of Parliament may pass a motion of no confidence in the Presidency collectively (but not in individual members), in the Cabinet and in individual Ministers.

² *An example of this exists in Switzerland*

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 third 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
- * the representatives are elected from electoral districts within the region on a proportional basis
- * indirect nomination of part of the Legislative Authority by third-tier authorities, or

possibly by subregions, may also be considered

- * 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 interests and cohesion may be provided for as an option.

LOCAL GOVERNMENT

Constitutional Framework

The National Party proceeds from the following points of departure:

- * 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 each case vested with legis-

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

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

* Following negotiation at local level, a *formal agreement or charter* must be drawn up for every local authority and promulgated under the Local Government Act, to serve accordingly as the "local constitution" of the local authority concerned.

Participatory Democracy at Local Level

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 unfortunately true, however, that this is precisely where the large gap between developed and underdeveloped areas becomes evident. In the interest of the development of stable communities (and therefore in the interests of South Africa's future), a dispensation must be established 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 non-racial local authority will be established with one administration and one tax base.

The City Council

Participatory democracy may be put into effect at local level in various ways, *inter alia* by

* electing the City Council on the basis of the representation of wards, and accepting property valuations and voter numbers in a fair proportion to one another as the basis for the delimitation of wards

* determining the franchise in accordance with both the interests of all lawful residents and the particular interests of owners, lessees and rate-payers

* considering a combination model in which, for example, half of the city councillors are elected by a voters' roll on which the names of all residents appear, and the other half by a voters' roll containing only the names of owners, lessees and rate-payers

* providing for special decision-making procedures, such as increased majority votes in the city council, in respect of certain circumscribed sensitive matters.

Neighbourhood Councils

The National Party acknowledges the need to provide, within the broad boundaries of a municipal area, for the exercise by a geographical *neighbourhood* of an option for self-determination over community interests. This concept involves that

* a geographical area within a municipal area may decide on a voluntary basis to institute a Neighbourhood Council

* *a Neighbourhood Council may be elected by the residents of the neighbourhood*

* *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*

* *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 say 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 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

the constitution, and above all the supremacy of the law, which by means of an independent judiciary protects the freedom each citizen. The arbitrary exercise of power is eliminated by these proposals.

The recognition of free and autonomous fields of interest of communities

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, are acknowledged in the National Party's guidelines. Therefore it is suggested that the government's ability to interfere unnecessarily should be limited. By building this principle into the constitution effectively (as well as by giving it further expression in the Charter of Fundamental Rights) communities are guaranteed self-determination in regard to business and professional life, trade union affairs, education and culture, sport, religion, language, tradition and non-political community life.

Your comments may be directed to:

**The Secretary-General
National Party
P. O. Box 56503
Arcadia**

Die beskerming teen magmisbruik

Die uitgangspunt dat Suid-Afrika in 'n nuwe bedeling 'n regstaat moet wees, is vir die Nasionale Party van kardinale belang. In die riglyne wat hierin geskets is, word gevolglik klem gelê op aspekte soos kruiskontrollerende meganismes, die verdeling van gesag, 'n Handves van Fundamentele Regte, die integriteit van die grondwet en bo alles, die oppergesag van die Reg wat deur middel van 'n onafhanklike regbank die burse vryhede beskerm. Willekeurige magsaanwending word deur hierdie voorstelle uitgeskakel.

Die erkenning van vrye en outonome belangeterreine van gemeenskappe

Die riglyn dat die owerheid se inmenging beperk moet word in die outonomie van instellings op die nie-politieke terrein, het belangrike implikasies vir die burger. Hierdie riglyn, wat inpas in die hele netwerk van grondwetlike reëlins, hou rekening met die feit dat daar 'n tal van aktiwiteite in 'n samelewing is wat deur verskillende groepe, dikwels binne organisasies en instellings, beoefen word en waar juis die vryheid om sonder staatsinmenging voort te gaan, beskerm moet word. Kulturele, godsdienstige en sportaktiwiteite is hiervan besondere voorbeelde, sowel as verskillende beroeps-, professionele en ander belangessfeer, wat deur outonome instellings tot die ordelike struktuur van die gemeenskap bydra. Die werklikheid van groepe, legitieme groepsbelange en die feit dat daar altyd minderheidsgroepe in die gemeenskap is, word in die Nasionale Party se riglyne erken. Daarom word voorgestel dat die owerheid se vermoë om onnodiglik in te meng, beperk word. Deur hierdie beginsel effek-

tief in die grondwet in te bou (en ook verdere beslag daaraan te gee in die Handves van Fundamentele Regte) word aan gemeenskappe selfseggenskap ge-waarborg ten opsigte van die professionele, sake- en beroepslewe, vakbondwese, onderwys en kultuur, sport, godsdien, taal, tradisie en nie-politieke gemeenskapslewe.

Kommentaar kan na afloop van die Federale Kongres, gerig word aan:

**Die Sekretaris-Generaal
Nasionale Party
Posbus 56503
Arcadia
0007**

die breë grense van 'n munisipale gebied voorsiening te maak vir 'n geografiese buurt wat op 'n nie-rassige basis 'n opsie uit oefen vir selfbeskikking oor gemeenskaplike belange. Hierdie konsep behels dat

- * 'n aaneenliggende geografiese area binne 'n munisipale gebied op vrywillige basis kan besluit om 'n Buurtraad in te stel
- * die Buurtraad deur die inwoners van die Buurt verkies word
- * aan die Buurtraad outonome bevoegdheid verleen kan word vir sake van die Buurt soos
 - die regulering van norme en standaarde van die woonomgewing
 - reëlins rakende eiendomsgebruik
 - die voorsiening van gemeenskaps-fasiliteite
 - sekuriteitsaangeleenthede en burgerlike beskerming
 - aangeleenthede wat kragtens ander wette aan 'n Buurtraad opgedra kan word, byvoorbeeld aspekte van onderwys en welsyn
- * die Buurtraad die bevoegdheid kan hê om 'n addisionele heffing op sy inwoners te plaas ter bevordering van spesifieke projekte binne sy jurisdiksiegebied.

By die totstandkoming van Buurtrade kan bestaande betalersverenigings en burgerlike verenigings 'n belangrike rol speel.

VRYHEID EN GERECHTIGHEID VIR ALMAL IN DIE NUWE SUID-AFRIKA

Die hooftrekke van die Nasionale Party se grondwetlike denke is hierin geskets. Die beginsels wat die Nasionale Party in 'n grondwet ingebou wil sien, moet 'n raamwerk skep waarbinne verskillende reëlins gesamentlik 'n netwerk vorm om ware vryheid en gerechtigheid vir almal te verseker. Daar word dus nie op enkele voorskrifte of reëlins staatgemaak om die regte van die individu of van minderheidsgroepe te beskerm nie. Die voorgestelde riglyne werk trouens almal saam om op veral drie terreine die belange van alle Suid-Afrikaners te beskerm:

Politieke inspraak en effektiewe deelname in owerheidstrukture

Die riglyne wat voorgestel word, is daarop ingestel om oor die volle spektrum van die owerheidstruktuur politieke inspraak en effektiewe deelname in owerheidstrukture te verseker. In hierdie verband word die aandag veral gevestig op die belangrike rol wat die Tweede Huis vervul. Hy het die belangrike funksie om die grondwet, minderheidsbelange en streekbelange te beskerm. Die feit dat die uitvoerende gesag berus by 'n Presidensie waarin die belangrikste leiersfigure opgeneem word, waarborg deelname oor die breëds moontlike politieke spektrum. Ten slotte streef die reëling wat op plaaslike vlak voorgestaan word na 'n gesonde balans terwyl die buurtraad-konsep ordelike en vreedsame woonomgewings kan verseker. Dominasie word deur hierdie voorstelle uitgeskakel.

vertrekpunte uit:

* Die grondslag vir die plaaslike owerheidstelsel, naamlik dat plaaslike regering 'n demokraties-verkose, outonome regeringsvlak is wat in elke geval binne 'n eie jurisdiksiegebied beklee is met wetgewende, uitvoerende en fiskale gesag, moet in die grondwet neergelê en verskans word.

* 'n Nasionale Wet op Plaaslike Regering, wat produk van die (nasionale) staatkundige onderhandelingsproses moet wees, moet die breë prinsipiële en strukturele raamwerk vir die plaaslike regeringsvlak daarstel.

* Voortvloeiend uit onderhandeling op plaaslike vlak moet 'n formele reëling of oktrooi vir elke plaaslike owerheid opgestel en ingevolge die Wet op Plaaslike Regering gepromulgeer word, om dan as die "plaaslike grondwet" van die betrokke plaaslike owerheid te dien.

Deelnemende Demokrasie op Plaaslike Vlak

Op plaaslike owerheidsvlak kry die term deelnemende demokrasie 'n besondere betekenis. Op hierdie vlak, waar mense elke dag woon, werk en ontspan, is dit noodsaaklik dat 'n raamwerk vir goeie orde en samewerking geskep moet word. Dit is egter ook ongelukkig so dat die groot gaping tussen ontwikkelde gebied en agtergeblewe gebied juis hier na vore kom. In belang van die ontwikkeling van stabiele gemeenskappe (en daarom in belang van Suid-Afrika se toekoms) moet 'n bedeling gevestig word wat polities billik is vir alle komponente van die samelewing.

Hierdie balans moet prakties beslag kry by die samestelling van die politieke gesagsliggaam op plaaslike vlak, die Stadsraad. Binne die grense van elke dorp of stad word slegs een nie-rassige plaaslike owerheid tot stand gebring, met een administrasie en een belastingbasis.

Die Stadsraad

Deelnemende demokrasie kan op plaaslike vlak op verskillende wyses bewerkstellig word, onder meer deur

* die Stadsraad op 'n wyksverteenvoordigingsbasis te kies en by die afbakening van wyke eiendomswaardasie en kiesersgetalle in 'n billike verhouding met mekaar as grondslag te aanvaar

* stemreg te bepaal met inagneming van sowel die belange van alle wettige inwoners asook die besondere belange van eienaars, huurders en belastingbetalers

* 'n kombinasie-model te oorweeg waarvolgens byvoorbeeld die helfte van die Stadsraadslede deur 'n kiesersrol waarop alle inwoners se name verskyn, gekies word en die ander helfte gekies word deur 'n kiesersrol waarop slegs eienaars, huurders en belastingbetalers se name verskyn

* voorsiening te maak vir spesiale besluitnemingsprosedures, soos byvoorbeeld 'n verhoogde meerderheid in die stadsraad ten opsigte van omskrewe sensitiewe aangeleenthede.

Buurtrade

Die Nasionale Party erken die behoefte om binne

wantrou in die Presidensie kollektief (maar nie in die individuele lede daarvan nie), in die Kabinet en in individuele Ministers aanneem.

STREEKREGERING

Inleiding

Daar is reeds in die voorafgaande gedeelte daarna verwys dat voorsiening gemaak word vir verteenwoordiging vir die verskillende streke in die Tweede Huis van die Sentrale Parlement. Daar is ook reeds daarna verwys dat die huidige nege ontwikkelingsstreke as 'n beginpunt van die beplanning van 'n streekregeringbedeling gebruik kan word. Hierin word nou die vraag hoe so 'n streekregering saamgestel kan word, aan die orde gestel.

Ten einde deelnemende demokrasie en magsdeling vir meerdere politieke partye te verseker, moet ook op die tweede en derde owerheidsvlakke maatreëls vir effektiewe minderheidsbeskerming ingebou word in ooreenstemming met die beginsels wat reeds op die eerste owerheidsvlak neerslag vind.

Die Wetgewende Gesag

'n Verkose Wetgewende Raad vir elke streek word voorgestel waarin

* die getalsterkte deur die getal van die kiesersbevolking bepaal word

* die verteenwoordigers uit kiesdistrikte binne die streek op proporsionele grondslag verkies word

* dit ook oorweeg kan word om deel van die Wetgewende Raad deur derdevlakowerhede of moontlike substreke op indirekte wyse te laat aanwys

* besluitnemingsprosedures voorsiening maak vir beskerming van minderheidsbelange en ander skrewe aangeleenthede.

Die Uitvoerende Gesag

Die Uitvoerende Komitee van 'n streek sal saamgestel kan word uit drie tot vyf leiers van die politieke partye wat 'n voorafbepaalde minimum verteenwoordiging in die Wetgewende Raad het volgens dieselfde stelsel as wat vir die Presidensie op eerstevlak uiteengesit is. Die Uitvoerende Komitee moet kollektief as 'n eenheid funksioneer en elke lid daarvan moet verantwoordelik wees vir 'n spesifieke portefeulje.

Substreke

Binne streke kan die moontlikheid van substreke of distriksbesture vir gebiede met besondere belange en samehörigheid as 'n opsie voorsien word.

PLAASLIKE REGERING

Grondwetlike raamwerk

Die Nasionale Party gaan uit die volgende

liggaam 'n vasgestelde minimum hoeveelheid steun uit die streek ontvang het, word 'n gelyke aantal van die streek se setels in die Tweede Huis toegeken. Elke demokratiese party in die land wat dus 'n redelike hoeveelheid steun in 'n streek geniet, word in die Tweede Huis verteenwoordig. Die uitwerking hiervan is die gelyke verteenwoordiging van sowel die streke as van die politieke partye met noemenswaardige steun.

Die funksies van die Tweede Huis is om

* **die wetsontwerpe wat die Eerste Huis goedkeur en waarvoor verhoogde meerderhede nie vereis word nie, te oorweeg en met 'n gewone meerderheid aan te neem**

* **wetgewing wat**

- **die grondwet wysig**
- **betrekking het op die belange van minderhede**
- **betrekking het op die belange van streke**
- **in die grondwet verskans is**

te oorweeg en met 'n verhoogde meerderheid aan te neem

* **wetgewing oor omskrewe sake en wat die spesifieke belange van minderhede en streke raak, te inisieer.**

Uitvoerende Gesag

Die kern van die Nasionale Party se voorstel is dat

die uitvoerende gesag nie slegs uit een party nie, maar uit lede van die belangrikste partye saamgestel moet word.

Daar word dus voorkeur gegee aan 'n veelparty-regering (waarvan Wes-Europese koalisie-regerings, 'n voorbeeld is) bo 'n stelsel waar die meerderheidsparty alleen die uitvoerende gesag vorm ('n resultaat waartoe die Westminster-stelsel gewoonlik lei).

Die huidige grondwet konsentreer funksies en gesag uitermatig in die hande van 'n enkele persoon, nl. die Staatspresident. In plaas daarvan word voorgestel dat 'n kollektiewe hoofskap van die staat en die regering ingestel word, bekend as die Presidensie. Die Presidensie bestaan uit die leiers van die drie grootste partye in die Eerste Huis. Ingeval die drie grootste partye nie gesamentlik minstens die meerderheid van die kiesers verteenwoordig nie, sal die Presidensie aangevul word met soveel meer leiers van partye as wat, in volgorde van grootte, nodig is om 'n gesamentlike meerderheid te verteenwoordig. 'n Party wat hiervolgens vir deelname kwalifiseer, sou, indien hy so verkies, van deelname kan afstand doen.

Die voorsitterskap van die Presidensie kan tussen lede roteer op 'n jaarbasis². Besluite word deur konsensus geneem. Insgelyks kan 'n Staatspresident op roterende basis uit die geledere van die Presidensie aangestel word.

Die Presidensie stel by konsensus Ministers aan wat 'n veelparty-kabinet vorm en wat verplig is om die beleid van die Presidensie uit te voer.

Die twee Huise van die Parlement kan 'n mosie van

² 'n Voorbeeld hiervan bestaan in Switserland

outonome gesag (dit wil sê oorspronklike en verskanste gesag waarmee die ander owerheidsvlakke nie kan inneng nie) toeken. Die Grondwet moet dus bepaal watter magte, pligte en bevoegdheede sal berus by die sentrale owerheid, die streekowerheid en die munisipale of plaaslike owerheid. Daar moet telkens bepaal word deur watter owerheidsvlak 'n bepaalde funksie op die mees doelmatige en effektiewe wyse uitgevoer kan word. Terwyl sommige owerheidsfunksies in hulle geheel by een van die drie vlakke geplaas kan word, ander funksies gepas verdeel kan word tussen al drie vlakke ten einde aan elke vlak daardie aspek van 'n funksie toe te ken wat op die mees effektiewe wyse ten bate van die gemeenskap daar hanteer kan word.

*** Tweedens kan effektiewe inspraak in en deelname aan die staatsgesag deur meerdere partye bewerkstellig word.**

Hierdie beginsels word vervolgens toegelig deur die raamwerk van 'n model te skets.

DEELNEMENDE DEMOKRASIE : 'N POLITIEKE MODEL

INLEIDING

Hierdie uiteensetting bied die raamwerk van 'n model wat die voorgaande beginsels beliggaam. Die Nasionale Party het reeds 'n mandaat gekry om 'n nuwe grondwet gebaseer op hierdie beginsels, te onderhandel. Hierdie bepaalde model is nie noodwendig 'n onveranderlike finale voorstel nie. Dit kan hersien word deur verdere besinning in die NP en as gevolg van on-

derhandelings en ook in die lig van die verwagte verslag van die Suid-Afrikaanse Regskommissie oor fundamentele regte en oor grondwetlike modelle wat vir die Suid-Afrikaanse situasie toepaslik kan wees.

SENTRALE REGERING

Die Parlement

Daar word voorgestel dat die Parlement uit twee huise moet bestaan. Albei Huise moet wetgewing aanvaar.

Die Eerste Huis

Die eerste Huis word proporsioneel verkies, sodat elke politieke party 'n aantal setels ontvang in ooreenstemming met die aandeel aan politieke steun wat die party kragtens 'n algemene verkiesing nasionaal geniet. Die kiesstelsel kan ingerig word dat kiesers ook die geleentheid kry om hulle voorkeur vir spesifieke kandidate in bepaalde kiesdistrikte uit te spreek sonder dat die vereiste van proporsionaliteit opgeoffer word.¹

Wetgewing word deur gewone meerderheid aanvaar, maar onderhewig aan verhoogde (bv. twee-derde) meerderheid vir daardie sake wat in die Grondwet verskans word.

Die Tweede Huis

'n Tweede Huis, wat kleiner as die Eerste Huis is, word voorgestel. Aan elke streek word daar 'n gelyke aantal setels in die Tweede Huis toegeken. Aan elke party wat in die verkiesing van die streek se wetgewende

¹ So 'n stelsel word in Duitsland toegepas.

loopbaansekuriteit vir werksnemers van die staat moet verseker word en die Kommissie vir Administrasie moet met voldoende outonomie beklee word.

Deur hierdie sewe beginsels effektief in die Grondwet in te bou, kan verseker word dat

- * **die belange van die burgers soos dit in die grondwet verskans is, deur die owerheid eerbiedig moet word**
- * **die fundamentele regte van die individu, insluitende regte wat hy in groep- en gemeenskapverband uitoefen, teen inbreukmaking beskerm word**
- * **die owerheid ondergeskik staan aan die reg en nie besluite na willekeur kan neem nie**
- * **die owerheid nie sal inneng op terreine waar daar nie regsmagtiging daarvoor bestaan nie**
- * **magnisbruik en wanadministrasie aan bande gelê word**
- * **die grondwet in stand gehou word.**

DIE TWEEDE PILAAR : DEELNEMENDE DEMOKRASIE

Met "deelnemende demokrasie" word bedoel dat 'n regeringstelsel ontwikkel word waarin verskillende politieke partye effektiewe deelname verkry en waarin daar dus *magsdeling* plaasvind. Dit staan teenoor die *Westminster-stelsel* waarin meestal een party uitsluitlik

oor die mag beskik.

Hierdie pilaar hou rekening met die verskeidenheid van die Suid-Afrikaanse samelewing en die werklikheid van die bestaan van 'n veelheid van ekonomiese, maatskaplike en kulturele belangegroepes. Sulke groepe bestaan nie in die gemeenskap omdat hulle in wetgewing geskep of erken word nie, maar deurdat mense op 'n natuurlike wyse en vrywillig met mekaar assosieer sodat hulle belange van die een of ander aard met mekaar deel. In sy Vyfjaar Aksieplan van 1989 het die Nasionale Party onderneem om deur onderhandeling tussen leiers te soek na 'n regverdiger en sinvoller grondslag as ras en kleur waarop groepe vir doeleindes van politieke deelname gedefinieer kan word. Op staatkundige terrein is die politieke party die mees effektiewe wyse waarop sulke groepe se belange behartig kan word. Op ander terreine definieer belangegroepes hulleself volgens ander kriteria. Dit is die Nasionale Party se oortuiging dat 'n nuwe grondwet vir elke lewensvatbare politieke party ruimte moet skep om 'n effektiewe rol op plaaslike, streeks- en sentrale owerheidsvlak te vervul.

Hierdie uitgangspunt kan op twee wyses bewerkellig word:

- * **Eerstens kan politieke gesag verdeel word tussen verskillende owerhede. Die belangrikste hiervan is die verdeling van gesag tussen die verskillende vlakke van regering. Hierna word gewoonlik verwys as die beginsel van devolusie van gesag.**

Funksies moet so tussen die verskillende owerheidsvlakke verdeel word dat die grondwet aan elke vlak

na geregtigheid en die beperking van owerheidsgesag. Die Nasionale Party aanvaar die *rule of law* as die fondament waarop so 'n strewende gebou moet word. Die term het egter binne die eiesoortige milieu van die Westminster-stelsel en 'n ongeskrewe grondwet ontwikkel. Die term *regstaat* word daarom gebruik om aan te dui dat gestreef word na 'n stelsel wat goedsdiks as "grondwetlike regering" beskryf kan word; 'n stelsel waarin die grondwet en die reg die bron van, maar tegelykertyd ook die beperkende faktor is op, die bevoegdheid van die regering is.

Die begrip "regstaat" (Engels: Constitutional state) gee uitdrukking aan die siening dat

die grondwet van 'n land die gesag van die owerheid so moet reguleer dat vryheid, geregtigheid en regsekerheid vir elkeen gewaarborg word.

Dit gaan dus om 'n grondwetlik verskanste regsbedeling waarin sewe beginsels vervat word:

* Die grondwet moet die oorkoepelende maatstaf en riglyn vir die staat en die burger wees. Derhalwe sal dit 'n hoër status as alle ander reg geniet, sal dit slegs gewysig kan word as spesiale prosedures gevolg word en sal die nakoming van die voorskrifte daarvan deur die geregshoue afgedwing kan word.

* 'n Handves van Fundamentele Regte moet grondwetlik beskerm word en geregtelik afdwingbaar wees. Daardeur sal die burger toegerus wees om hom teen onregmatige optrede van die owerheid te verweer. Effektiewe beskerming van die fundamentele regte van die individu bied tegelyk belangrike beskerming vir die

belange van groepe en gemeenskappe.

* 'n Onafhanklike regsprekende gesag is 'n sluitstuk van die regstaat. 'n Onafhanklike howestruktuur moet oor die jurisdiksie beskik om wette van die Parlement en optredes van die regering ongeldig te verklaar as dit nie in alle opsigte aan die maatstawwe van die Grondwet en die Handves van Fundamentele Regte voldoen nie. Die individu moet vrye toegang tot die hove geniet.

* Organisasies en instellings wat op nie-politieke terreine funksioneer, moet die hoogste moontlike mate van selfsegenskap ten opsigte van hulle eie belangterreine in die burgerlike gemeenskap geniet. Volledige erkenning met grondwetlike verskansing moet aan hulle outonomie in hierdie verband verleen word.

* Meganismes moet ingebou word om te voorkom dat owerheidsgesag en staatstrukture misbruik word. Die amp van 'n onafhanklike en objektiewe Ombudsman moet ingestel word. Die Ouditeur-Generaal, die Kommissie vir Administrasie en die Reserwebank moet met groter outonomie beklee word en 'n prosedure vir die aanstelling van regters moet die objektiwiteit, professionaliteit en selfstandigheid van die Regbank verseker.

* Die integriteit van die grondwet moet verseker word en teen magsingrype beskerm word. 'n Stelsel wat effektiewe en gebalanseerde beheer verseker oor die veiligheidsmagte as die onpartydige en professionele instrument om die grondwet te alle tye in stand te hou, moet ontwikkel word.

* 'n Onpartydige en professionele staatsdiens met

oorweeg moet word. Die huidige ontwikkelingstreke wat binne RSA-verband as beginpunt gebruik kan word, bestaan tans uit

Streek A (Wes-Kaap), **Streek B** (Noord-Kaap), **Streek C** (Oranje-Vrystaat en Qwaqwa), **Streek D** (Oos-Kaap), **Streek E** (Natal en KwaZulu), **Streek F** (Oos-Transvaal en KaNgwane), **Streek G** (Noord-Transvaal, Lebowa en Gazankulu), **Streek H** (PWV-gebied en KwaNdebele) en **Streek J** (Wes-Transvaal)

Alhoewel die huidige ontwikkelingstreke ook die vier onafhanklike nasionale state (die TBVC-state) kragtens ooreenkomste vir doeleindes van samewerking ten opsigte van streekontwikkeling insluit, sal hulle verhouding tot 'n nuwe Suid-Afrika deur onderhandeling bepaal moet word.

Wat plaaslike owerhede betref, sal munisipale grense op sinvolle geografiese grondslag getrek moet word om die huidige grense wat 'n rassebasis het, te vervang. 'n Afbakeningsraad sal hierdie taak gepas kan hanteer. 'n Vraag wat aandag verdien, is of die begrippe "munisipaliteit" en "stadsraad" nie moet verbreed om die totale distrik (dit wil sê dorp en sy plattelandse gebied) in te sluit nie.

DIE SKEIDING VAN MAGTE

'n Duidelike skeiding tussen die wetgewende, uitvoerende en regsprekende gesag is 'n kenmerk van moderne demokrasieë. Hierdie skeiding word aanvaar as 'n noodsaaklike kenmerk van 'n nuwe bedeling in Suid-Afrika.

Die skeiding van magte verhoed dat daar 'n oorkonsentrasie van mag in 'n bepaalde deel van die owerheid gesetel word en dra daartoe by dat daar kruiskontroles ingebou word. Gevolglik moet die grondwet reëlins bevat wat

* voorkom dat die uitvoerende gesag die wetgewende gesag domineer en andersom

* aan die Parlement die gesag verleen om die uitvoerende gesag tot verantwoording te roep

* aan die regsprekende gesag die jurisdiksie verleen om wette van die Parlement en optredes van die uitvoerende gesag aan die hand van die Grondwet en die Handves van Fundamentele Regte te toets en ter syde te kan stel.

DEELNEMENDE DEMOKRASIE : TWEË PILARE

Ten einde die raamwerk wat hier bo geskets is, werklik te laat voldoen aan die eiesoortige behoeftes van die Suid-Afrikaanse situasie en ten einde te voldoen aan die basiese vertrekpunte wat in die eerste paragraaf geskets is, is dit nodig om die Grondwet so in te klee dat

* 'n regstaat (Engels : *Constitutional state*) tot stand gebring word

* 'n stelsel ontwerp word waarin deelnemende demokrasie tot sy reg sal kom.

DIE EERSTE PILAAR : 'N REGSTAAT

Die term *rule of law* word in staatkundige gesprekke gebruik om uitdrukking te gee aan 'n strewende

Oor die spesifieke grondwetlike model waarin hierdie basiese vertrekpunte verwesenlik kan word, mag daar verskil van mening bestaan, omdat daar verskillende wyses is waarop die verlangde resultaat met meerdere of mindere mate van sukses bereik kan word. Om tot die beste moontlike resultaat te kom, beywer die Nasionale Party hom vir

- * **onderhandeling op nasionale vlak ten einde ooreenstemming oor die breë owerheidstruktuur en die plek van sentrale, streek-en plaaslike owerhede binne daardie struktuur te bepaal**
- * **onderhandeling op streekvlak sodat die behoeftes, strewes en probleme van die inwoners van so 'n gebied behoorlik geakkommodeer kan word en**
- * **onderhandeling op plaaslike vlak ten einde samewerking en eensgesindheid op die grondvlak te bewerkstellig.**

STRUKTURELE BEGINSELS

'N DRIEVLAKOWERHEID

Die Nasionale Party stel 'n drievlakregering voor waarin daar aan die sentrale owerheid, streekowerhede en plaaslike owerhede volwaardige wetgewende en uitvoerende funksies en gesag toebedeel word. Streekowerhede en plaaslike owerhede is dus nie blote administratiewe verlengstukke van die sentrale owerheid nie; hulle is nie bloot die gevolg van gedesentra-

liseerde bestuur nie; intendeel elke vlak is kragtens die grondwet waaraan hy sy magte ontleen, "regering" in eie reg met sy eie

- * **verkose owerheid wat teenoor die kiesers verantwoordelik is**
- * **wetgewende en uitvoerende gesag**
- * **belastingbasis.**

Die drievlakowerheidstelsel hou rekening met

- * **die ryke diversiteit van die bevolking van Suid-Afrika, die behoeftes van gemeenskappe in streek- en plaaslike verband en die gevolglike behoefte aan selfseggenskap binne streek- en plaaslike verband**
- * **die behoefte daaraan om regering so na as moontlik aan die landsburger te bring sodat besluite op 'n vlak geneem word waar die burger se posisie ten beste verstaan word**
- * **die behoefte aan 'n gerasionaliseerde en effektiewe staatsadministrasie.**

Die vraag is hoe die grense van streekregering bepaal sal word. Dit is in elk geval noodsaaklik dat die huidige veelvoud van tweedevlakregerings, bestaande uit 4 provinsies, 6 selfregerende gebiede en 3 eie sake-administrasies vereenvoudig en in 'n enkele stelsel van streekregerings opgeneem word. Daar word aan die hand gedoen dat die huidige nege ontwikkelingstreke 'n goeie uitgangspunt vir onderhandeling oor nuwe streekgrense kan bied. Aanpassings hierop sal uit die aard van die saak

INHOUD

Basiese Vertrekpunte	1
Strukturele Beginsels	2
- 'n Drievlakowerheid	
- Die Skeiding van Magte	4
Deelnemende Demokrasie: Twee Pilare	5
- Die Eerste Pilaar: 'n Regstaat	
- Die Tweede Pilaar: Deelnemende Demokrasie	8
Deelnemende Demokrasie: 'n Politieke Model	10
- Inleiding	
- Sentrale Regering	11
* Die Parlement	
* Die Eerste Huis	
* Die Tweede Huis	
* Uitvoerende Gesag	12
- Streekregering	14
* Inleiding	
* Die Wetgewende Gesag	
* Die Uitvoerende Gesag	15
* Substreke	
- Plaaslike Regering	15
* Grondwetlike Raamwerk	
* Deelnemende Demokrasie op Plaaslike Vlak	16
* Die Stadsraad	17
* Buurtrade	
Vryheid en Geregtigheid vir almal in die Nuwe Suid-Afrika	19
- Politieke Inspraak en Effektiewe Deelname in Owerheidstrukture	
- Die Beskerming teen Magmisbruik	20
- Die Erkennung van Vrye en Outonome Belangeterreine van Gemeenskappe	

GRONDWETLIKE REGERING IN 'N DEELNEMENDE DEMOKRASIE

BASIESE VERTREK PUNTE

Die Nasionale Party het hom by herhaling verbind tot die skepping van 'n nuwe staatkundige bedeling deur onderhandeling. So 'n nuwe bedeling moet berus op sekere vaste vertrekpunte. Daar moet gesoek word na 'n stelsel wat onder andere

- * verseker dat algemeen aanvaarde waardes en norme in Suid-Afrika in stand gehou word
- * gebaseer is op universele stemreg in 'n demokratiese owerheidstruktuur
- * vry is van apartheid of diskriminasie in enige vorm
- * vry is van oorheersing
- * 'n geordende en ordelike gemeenskap daarstel
- * 'n goeie regering moontlik maak
- * geregtigheid aan almal laat toekom
- * 'n markgerigte ekonomie met privaat ondernemerskap en maatskaplike verantwoordelikheid bevorder
- * kulturele verskille in Suid-Afrika akkommodeer
- * vrede, vooruitgang en voorspoed aan alle Suid-Afrikaners laat toekom

Geagte Nasionalis

Die dokument wat die Federale Raad van die Nasionale Party hiermee aan u voorlê vir bespreking en kommentaar, skets in breë trekke die denke oor 'n grondwet vir 'n nuwe Suid-Afrika soos dit binne die geleedere van die Nasionale Party ontwikkel het.

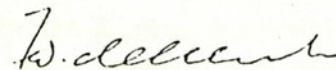
Ons poog nie om 'n finale grondwet aan u voor te lê nie; immers, die elemente waaruit die nuwe grondwet gebou moet word, sal deur intensiewe onderhandeling tussen al die deelnemende partye uitgemaak moet word. Wat ons hierin wil doen is om die beginsels onderliggend aan ons eie denke saam te vat en aan u te illustreer hoe daardie beginsels in 'n grondwet tot uitdrukking kan kom.

Soos uit ons tema blyk, streef ons na 'n grondwet wat van so 'n aard is dat die nuwe Suid-Afrika 'n "regstaat" genoem sal kan word. Hiermee bedoel ons dat die grondwet die willekeur van gesagshouers om na goeie dinge te handel, aan bande sal lê en dat die staatshuishouding dus binne paal en perk bestuur sal word. Dit is die eerste pilaar waarop ons denke berus.

Die tweede pilaar van ons denke is dat ons 'n stelsel van "deelnemende demokrasie" voorstaan. Met hierdie term wil ons aandui dat politieke gesag nie totaal in die hande van een persoon, politieke party of groep gesetel mag word nie. Hiermee spreek ons ons dus teen oorheersing van enige aard uit en gee ons voorkeur aan 'n stelsel wat partye en groepe eerder insluit as uitsluit.

Ek vertrou dat u aan ons die voordeel van u oorweging en kommentaar sal laat toekom en dat u so 'n medebouwer sal word aan 'n grondwet wat vir Suid-Afrika 'n nuwe era van geregtigheid, vrede en voorspoed sal inlui.

Met vriendelike groete



Hoofleier