

SOLIDARITY PARTY
WORK GROUP 2
CONSTITUTIONAL PRINCIPLES

KEY ISSUE: The balance between central, regional and local government.

We note at the outset that every government confronts a different situation from every other - different in economic conditions, technology and resources, different with respect to the character and composition of the population, different in geographical features, different in the imprint of the social heritage, customs and values upon the land - no government is the mere replica of a type. Each has its peculiar and distinctive quality, and each can be comprehended and assessed only through intimate knowledge of its particular being. A constitution must be indigenous and reflect the needs and circumstances of the society in which it founded. South Africa is no exception.

This submission is made in the context of achieving commonality of constitutional principles at this forum. The principles generally subscribe to democratic values. Democracy is an evolutionary product and it can only grow and flourish under certain conditions. Democracy is a system that requires much, and usually long, preparation. The responsibility of government is therefore to create, maintain and foster democracy.

The concept of a division of government into three tiers - central, regional and local - is accordingly supported. We support the concept of power being divided among the tiers of government and power sharing at the different levels of government.

How a constitution functions and whether it is able to contain and reconcile political conflict between competing political groups in a just and democratic manner are very important

issues for considerations. A purely ideological approach to constitution making is inappropriate. A pragmatic approach is suggested in the light of our constitutional history bearing in mind the necessity to avoid the potential for inherent conflict in our heterogenous society.

CENTRAL GOVERNMENT

Central government must be granted certain minimum authority and powers. The maximum separation of legislative, executive and judicial powers, coupled with checks and balances is intended to ensure the undue concentration of power at any level which could result in its abuse or misuse.

The legislative authority should be established by the electoral process based on a system of proportional representation.

A bicameral system is proposed in which the one House represents all the voters on a country-wide basis and the other House represents the constituent regions. The two Houses must be given equal powers. A bicameral system ensures that proposed legislation is exposed to a more comprehensive input in order to achieve a greater level of consensus.

The relationship between the region and central government should be regulated by the constitution in terms of which the powers of the region are protected from arbitrary interference by the central government.

REGIONAL GOVERNMENT

Regionalism involves the granting of decision making powers (limited autonomy) to the regions. The principles that generally apply at the central level must also apply mutatis mutandis to the region.

The region should have original powers, and these powers are entrenched in the constitution. The region must also have subordinate or delegated powers. There are certain areas of control over which the central government and the region may possess concurrent jurisdiction.

A regional legislature may not act contrary to the constitution of the state. The composition of the executive must also reflect the proportionality of votes to ensure that the decision making is in the interests of the region as a whole.

The delimitation of geographic regions must be based on objective criteria.

LOCAL GOVERNMENT

Local government is an essential form of government as it brings government close to the people and is an essential link in the chain of government. Local functions could only be carried out efficiently by a local authority.

Local authorities play a key role in the preservation of community identity and provide an opportunity for involvement of community representatives in local affairs.

The regional authority should delegate powers and functions to the local authority. There is no real transfer of autonomy to the subordinate body. As subordinate bodies local authorities should be vested with powers which are exercised in a prescribed and controlled manner.