

CONSTITUTIONAL ISSUES FOR A FREE SOUTH AFRICA: DECENTRALISATION OF A UNITARY STATE*

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Introduction

There is an existing reality in South Africa which has to be clearly grasped and understood in order that the debate on the future constitution of a free South Africa takes place along reasonably rational grounds.

Perceptions of reality will, of course, differ. There are those who may have feelings of loyalty towards existing institutions in South Africa and may now wish to ensure their survival, but freed of all overt manifestations of racialism and apartheid. On the other hand, there are those who had no part in the creation and maintenance of these governmental structures, who were denied the suffrage and therefore the right to participate in any debate dealing not only with the political future of their country but also with important issues arising out of the vast disparities in living standards, of the appalling housing and health conditions and the corrosive effect of poverty. For this disenfranchised majority, the issue is not whether existing structures of government can be adapted or modified, either at the local or regional level, but the very legitimacy of the governmental system.

The first aspect of reality is the need to recognise there are at present two South Africas, made up of those who have power, and the rightless who now want to participate actively in decisions concerning their future.

The second reality is the territorial partition of South Africa brought about by apartheid legislation¹ which has divided our population along racial lines and which will have serious repercussions in the determination of structures of regional and local government.

The third reality is the authoritarian tradition of government with the highest possible degree of power vested in the central government and a highly bureaucratised civil service wielding enormous power. An absence of democratic participation even in relation to whites has the dire result that governmental initiatives take the form of prescriptions, without the necessary consultation. This is borne out by the abrupt way in which provincial legislatures were abolished in 1986² and the reliance on administratively convenient

solutions of service councils and the complex and cumbersome procedure adopted for joint services in the Natal area through the legislation of 1986 and 1990.³

There must, therefore, be a basic commitment to democracy. The purpose of negotiations must be to bring about a non-racial democracy and we must therefore identify the objective and the means to achieve this end. The crucial question, therefore, is to what extent will the means used assist in the fulfilment of the objective. Put in another way, to what extent will any proposed solution about the objective of democracy.

The fourth reality is the continued co-existence of the four provinces of South Africa with ethnic entities, differentiated as between the four 'independent' homelands and the six 'self-governing' bantustans. Three of the four homelands have already rejected their 'independent' status while the fourth's illusions are maintained by South African arms. Their incorporation into a free South Africa cannot really be a matter of debate.

However, it is interesting to note that some of the proposals for devolution expressly accept the present boundaries of the 'self-governing' or 'independent' entities as the bases for regional government, ignoring the facts of their poverty and lack of resources and the inexorable feature of their creation as part of 'grand' apartheid.⁴

There is also the issue of language and the meaning to be ascribed to such concepts as 'devolution', 'federalism' and 'entrenched rights'. In principle, it ought to be possible to have an academic discourse about the value of such concepts and the necessity for restraints on governmental power. In the South African context, in the absence of agreement about the implications of majority rule, various strategies are proposed which have the effect of maintaining racial privilege and the racial mode of thinking, under the guise of adapting to South African structures from other parts of the world which have a different historical setting.

Apartheid may have become 'outdated' or 'irrelevant' but racism remains at the core of our country. But racism today is the hatred that dare not speak its name. Instead, it finds voice in propositions of sweet reasonableness in which the message of exclusion hangs only by implication through notions such as group rights, veto powers for minorities, 'orderly and civilised' government and the replacement of the Population Registration Act with concepts such as voluntary 'background groups' which, ostensibly, would become the basis for electing the upper house of Parliament.

We still have a long way to travel in order to exorcise the ghost of racialism. Any debate on structures of government will have to grapple with the fact that virtually universally-agreed and accepted consequences of majority rule do not

find ready acceptance in a number of circles such as the Government. Conversely, there is a consensus among anti-apartheid forces, along a broad front, that special electoral arrangements for groups, group participation in decision-making, group autonomy and representation of the group will only perpetuate the focus on race and are intended to provide special privileges for the minority in order to maintain the benefits they have always enjoyed under apartheid.

Attempts to establish new and sophisticated versions of 'own affairs' structures must be rejected as an assault on open negotiations. The Government has recently tried to set up a working group on 'second tier constitutional structures and the composition of a negotiation forum'. It is to be composed of apartheid-created structures - bantustan governments, provincial administrators and representatives of the houses of representatives and delegates. This is clearly unacceptable as such negotiations and discussions interfere with the central role of negotiations at the top.

Federalism, Devolution and Democracy

There has been little demand for federalism in South Africa, apart from the old United Party and its lineal or non-lineal successors such as the Progressive Federal Party and now the Democratic Party.

However, some recent proposals, such as the attempt to generalise the Kwa Natal Indaba proposals to the whole of South Africa, posit a 'federalist option based on regional governments each with their own special composition'⁵ and the call by the Deputy Minister for Constitutional Affairs for 'support for a federal state'⁶ may reflect a shift of position. In any event, the emphasis on special arrangements for regions and a local option for third tier government, with constitutional entrenchment of these structures and their powers, as recent proposals have demanded, together with a plethora of statements on constitutional reform made by members of the Government on devolution, presuppose models which are very different from accepted principles of devolution or decentralisation.

It is therefore necessary to clarify what devolution is *not* about.

In a federation, sovereignty is divided between two levels of government, with the federal government sovereign in some matters and the provincial or 'state' governments being sovereign in others. Each within its own sphere exercises its powers without control from the other, and neither is subordinate to the other. It is this feature which distinguishes a federal from a unitary constitution. In the latter, final authority (or 'sovereignty') rests with the central government; if provincial governments exist, they are subordinate authorities, deriving their power from the central legislature, which may overrule them at any time by the ordinary legislative process.

Secondly, the allocation between federal and provincial governments is set out in a written constitution and the basic terms of the constitution are 'entrenched' in that they cannot be amended at the sole discretion of the federation or of any province or combination of provinces. Changes may only be brought about by a variety of procedures laid down in the constitution. Federations also have two houses of parliament, the 'upper' house having special powers in relation to matters affecting provincial interests, with disputes between the centre and the periphery being resolved ultimately by a constitutional court. Federal arrangements - based on the 'inherent' rights of separate governmental bodies - usually provide for financial resources to be divided between the federal and provincial governments to match their respective responsibilities under the constitution.

South Africa has been administered as a unitary state since 1910 and the system of control and supervision and the division of functions have become part of the culture of our society. Proposals which simply modify the existing system are attempts to ensure limited government in institutional form and to frustrate the consequences of majority rule. Proposals for geographical or 'racial' federation ignore the need for a recognition of the political and economic unity of South Africa. This is not a matter of sentiment or aspiration. Unity is important for an effective role in international relations; it is crucial for the central management of the economy and for the redistribution of resources in favour of the less prosperous parts of South Africa, as well as for undoing the patterns of discrimination which the majority have undergone.

Disparities in size and economic strength, resulting in the overwhelming economic and political strength of the PWV area would make a federation so 'unbalanced as to be unworkable', a recognition from the British Royal Commission on the Constitution 1969-1973 (paragraph 531) which ought not be ignored. As the Royal Commission also pointed out, 'Federalism was designed and is appropriate for states coming together to form a single unit, and not for a state breaking up into smaller units' (paragraph 526).

It is for these and other reasons that the African National Congress, in adopting the Constitutional Guidelines in 1988, emphasised the need for the vesting of sovereignty in the people 'as a whole' to be 'exercised through one central legislature, executive and administration'.⁷ The ANC has rejected the concept of 'inherent' or 'original' powers for regional or local authorities by positing the indivisibility of South Africa but it recognises the need for relating governmental powers and decision-making closer to the people. Administration must be moved to where people live and work but this will be done by 'the delegation of the powers of the central authority to subordinate administrative units for the purpose of more efficient administration and democratic participation'.

These bald statements cannot, of course, be the last words on this important

topic. Discussion within the ANC has recognised the need to initiate debates on a variety of factors associated with decentralisation by the creation of regional authorities and viable local authorities. These refer to:

(i) The legitimate discontent with centralisation and the desirability of transferring the execution of governmental functions away from remote capitals and nearer to people whose lives government affects. In this context, it is clear that the present provincial boundaries are no longer appropriate to the needs of a non-racial South Africa. The Cape is too large and the Transvaal is too populous. In addition, the ten apartheid 'homeland' authorities will have to be integrated into the future shape of the provinces in order to create zones with an extended and relevant tax base. Such an approach implies the rejection of a super 'local option'⁸ whereby arrangements at local and regional levels would be made between existing 'historic' authorities and selected representatives of the majority. Ideally, a delimitation commission to draw up the boundaries of the regions and local authorities would be the appropriate way to establish the areas of these authorities. For its size and population, South Africa could be usefully divided into ten regions, taking into account the need not to separate the second tier of government from the third in terms of geography and powers.

(ii) The function of economic management. Any major changes in present arrangements have to be reconciled with the maintenance of uniformity of approach in South Africa as a whole as to the allocation of resources, to taxation arrangements and to the overall management of the economy. The need for co-ordination has been emphasised in the recent policy document, *The Economy beyond Apartheid*, adopted by a joint meeting of the ANC and the Congress of South African Trade Unions where the need to 'develop industrial policies aimed at transforming imbalances that exist between blacks and whites, between urban and rural areas and between regions' was emphasised, together with the need for rural industrialisation 'with well-developed linkages with the local region'⁹. This, as the British Royal Commission recognised, is part of the argument for social justice as '...governments should do a great deal to help the needy and to ensure a larger measure of equality in public services and general standards of living (paragraph 514).

(iii) The principle of democratic accountability, a concept not very deeply rooted in the culture of rights in South Africa, which will provide control over the complex process of government and bring government closer to the people. Although the central government must have control over all issues that are vital to the conduct of national policy and must ensure uniformity of standards, it can be envisaged that some functions will enable

regional and local authorities to exercise a choice among competing priorities.

(iv) The need to recognise basic changes in the environment in which regional and local authorities operate, the increasing inter-dependence of town and country, and the demand for environmental regulation. There have been enormous shifts of population during and after the collapse of 'influx control' which, together with the imminent empowerment of the vast majority of the population, have changed the population profile of whole regions and towns. Reliance on 'traditional' structures, apart from ignoring the new reality of South Africa, will ensure that units of local government will continue to be too small not only for efficiency but also for local democracy.

Stronger regional government and larger local authorities would be able to conduct their affairs more efficiently. Their greater resources and wider areas would enable them to provide better services - an important objective of national policy - and give better value for money. They would therefore do better the things that central government relies on them to do. In many ways, such authorities would become development agencies in the regions, with an integrated structural and social plan.

(v) If the 'bantustans' have to be discarded in favour of regional government, then reliance on traditional white local authorities would totally subvert the central role of local democracy in the provision of goods and services. For this reason, the ANC-COSATU policy document emphasises that 'State policies would include integration of towns and cities into metropolitan management structures and an end to separate black local authority structures'.

In addition, reliance on present structures will result in all-black and all-white local authorities, with distorted tax bases. Therefore, the ANC-COSATU document rejects the 'principle of financial self-sufficiency for poor communities and its replacement by the integration of divided urban areas into a single local tax base and cross-subsidisation within metropolitan areas'.

It is not surprising that, in the quest to ensure that change in South Africa will not really interfere with vested rights, there has been so little discussion as to what powers regional and local authorities should exercise in the future and the extent to which the size of the regions or the local authority will determine what powers can be transferred to the second and third tiers of government. The establishment of large metropolitan councils for the major urban areas is without prejudice to the maintenance of a tier of local authority closer to the people and which can be charged with carrying out

functions most closely and intimately connected with the needs of the people - such as drainage, sewage disposal, lighting, etc. The larger metropolitan authority could then deal with the more important functions of planning, environmental control, housing, education, etc.

(vi) Local and regional government will operate under the general political arrangement of a written constitution with a justifiable bill of rights which would entrench the traditional civil rights. In addition, cultural rights such as the right to language, religion and education (including private education) can be invoked by individuals if their effective observance has been infringed. Such an approach is based on the idea that no one may be discriminated against because of her or his race, ethnicity, gender or social status, a surer foundation for the protection of rights of personality than the other systems and approaches which continue to define individuals as a part of a group.

Together with further institutional changes, such as the establishment of the office of the Ombudsman with regional offices and the creation of parliamentary structures to supervise subordinate structures, greater vitality can be given to such bodies and individual grievances investigated and settled.

In addition, there must be recognition that the cultural, social and economic diversity of South Africa requires the adoption of an electoral system at all levels (central, regional and local) which will enable sectoral groups and political tendencies to be adequately represented in decision-making. The first-past-the-post system used for central government elections and for ward representation at local government level (and previously used for provincial elections) in South Africa effectively excludes large parts of the electorate. The winner-takes-all majoritarian electoral system may have served its purpose in ensuring stability among the whites but it is a form of stability which a democratic South Africa must re-consider.

In Namibia, proportional representation for elections to the National Assembly is constitutionally entrenched but other elections, for the regions and local government, are on the majority principle.¹⁰ But the virtues of proportional representation are increasingly becoming evident. Therefore, in order to ensure adequate representation of all interests, there needs to be a single system of proportional representation at all levels, with no votes being 'wasted' as seats should be allocated on the basis of the number of votes. There will, of course, be the additional advantage that the boundaries of wards for local authority elections and constituencies in regions cannot be 'gerrymandered' under this system to maximise support for one side and to minimise support for one's opponents.

(vii) It is necessary to remember that there are different forms of devolution, where central government powers are delegated without the relinquishment of sovereignty. The adoption of one or the other of these forms will depend on the political arrangement made, so long as it is understood that the over-riding authority of the central parliament is maintained.

The most advanced form of devolution is the exercise of powers by persons or bodies who, although acting on the authority of parliament, are not directly answerable to it or to the central government for their actions. The essence of these arrangements is that those who exercise the devolved powers in various parts of the country have some measure of independence, permitting them to do things in their own way, which may not always have the support of the central government. In this form, the regional authority has power to determine policy on a range of subjects, to enact legislation to give effect to policy and to provide machinery for its execution.

The second form is executive devolution where the central parliament and government remain responsible for the framework of legislation and all major policy in all subjects and would transfer to regional assemblies responsibility within that framework for devising specific policies for the regions and for the execution of those policies and for general administration.

Finally, there are various ways in which the central government or parliament, without transferring responsibility to bodies without a measure of independence, might arrange for aspects of the central authorities' work to be conducted on a regional framework or in a regional setting. This is the minimalist approach.

A combination of the three forms, together with a mechanism for adequate and equalised funding, could provide the basis for a lively and vital regional system.

Alternative Approaches

What I have tried to describe is the general approach to regional or local systems. My primary aim has been to ensure that apartheid structures and apartheid modes of thought are exercised in favour of a unitary state which recognises the diversity of South Africa by entrenching individual rights and needs and which by proportional representation encourages the participation and representation of all or most of the significant social, cultural and political groups in the representative assemblies. But there would be no special group or minority protection, and 'consociational' approaches such as veto powers, decision-making by 'consensus' or a 'stalling' mechanism based on ethnicity are unacceptable.

In addition, the constitution should not entrench the different 'levels' of government, because the recognition of the autonomy of regional and local government in constitutional terms would be the introduction of federalism in another form (unless this occurs with full understanding of the implications of such proposals). This kind of entrenchment is integral to the series of proposals now being made in ruling South African circles.¹¹ They recognise the need for autonomy, devolution, democracy and participation but look for them in a form which will have the least possible effect on their own privileged position.

As a result, 'official' South African policy documents of the past few years appear to demonstrate a dramatic change. The genesis of this *volte face* lies in the realisation that present apartheid structures cannot continue. The new proposals are aimed at altering the form without much effect on the reality and are based on various policy statements made by the government on such matters as the implications of majority rule (with 'simple' or 'unsophisticated' majority rule being excluded), protection of minorities, 'power-sharing' and the way decisions are to be arrived at, either in plenary bodies or in executive committees.

The most exhaustive application of the 'philosophical' principles propounded by the government are reflected in the Progress Report submitted to the Council for the Co-ordination of Local Government Affairs on the investigation into uniform legislation for local government in South Africa, otherwise known as the Thornhill Report, after its author, a senior civil servant.¹²

The implications of the report are not limited to local government as some of the assumptions have been extrapolated into regional government. The report is based on a rejection of a single statute which would provide for the powers and areas of local government as this is neither 'feasible nor desirable' because of diversity and the 'genuine need to accommodate regional differences and divergent needs'.¹³ Apart from general observations about the historical basis of some institutions and financial accountability, the exact nature of such regional differences and divergent needs has not been identified.

However, the report proposes that the new local government act, which would be enabling legislation rather than mandatory provisions and would not regulate local government in detail, should be incorporated *into a new Constitution*¹⁴ (my emphasis).

According to the United Municipal Executive Discussion Document on *Local Government in the New Dispensation*,¹⁵ the Government's aim for all levels of government is to be (i) the right to democratic political participation, (ii) the elimination or prevention of group domination, (iii) the protection of community life, (iv) freedom of association and (v) a commitment to negotiation as a method of change.

The UME document identifies the following principles from the Government's approach as far as regional and local government is concerned: firstly, maximum devolution of power to the lowest effective level of decision-making; secondly, the transfer to local government level of the maximum number of government functions; thirdly, minimum administrative control and, finally, devolution of responsibility in accordance with the capacity of the local government body to deal with the function effectively and efficiently.

Quite how these principles are arrived at is not made clear. Other countries undergoing periods of intense change appoint commissions of enquiry to investigate the role of regional and local governments, their powers and functions and, at decisive periods in history, the suffrage itself. South Africa instead produces a major report without the direct involvement of the vast majority of the population and, through a virtually closed system of consultation based on apartheid structures, evolves a policy which will confer binding decision-making powers through a remarkable principle of 'local options'. It appears that the Thornhill approach has now been firmly established as government policy.¹⁶

The local option approach is based on the assumption that 'citizens' of each town and city will, through a process of negotiation at local level, determine the constitutional and institutional structures of their local authority. The *institutional option* refers to the internal functioning of local authorities, such as the role and power of the mayor and the type of committee system to be adopted. The *constitutional option* concerns the kind of local authority to be established.

Who decides on which option to be used is determined by a local 'indaba'. Thornhill says that participation in a local meeting cannot be limited to those who at present participate in local government structures but 'must include all local leaders committed to peaceful solutions. The historical area of jurisdiction of the 'mother' local authority serves as a guideline in this regard, although participation would be broadened to include neighbouring communities where essential and relevant'.¹⁷ No method of identifying 'essential and relevant communities' is proposed, though it is evident that the report intends participation to include Indian and 'coloured' members of the local affairs committees and what remains of the black authorities' members. There is some gnomeric reference to 'regional governments' as facilitators.

Four constitutional and three institutional models are proposed. As far as the constitutional options for local choice are concerned, they range from:

- (i) separate local authorities for the various 'population' groups, providing these authorities fulfil the 'functional and political criteria for instituting a viable local authority';
- (ii) local service councils which entail co-operation in the same town or

city between fully-fledged autonomous authorities (for which read existing white bodies) and/or local bodies which do not possess 'the necessary viability to be converted into autonomous local governments'. They posit the continued existence of the local affairs committee brightened up with decision-making powers in their 'own' areas. This model requires the establishment of a joint service council between the different races;

(iii) the community government model with a joint local authority for a town or city with an option for local communities to establish neighbourhood management committees at sub-municipal level for community autonomy over their own community life, on a geographical basis. In other words, this model entails the joint local authority taking decisions on affairs involving the town or the city as a whole, while the neighbourhood management committee decides on matters affecting its specific geographical area, a neat version of 'general' and 'own' affairs. One important 'benefit' suggested for this model is that its adoption may reduce the potential total of approximately 1100 local authorities to about 550, with administrative savings, especially as members of the neighbourhood management committees will not receive allowances!

Election to these neighbourhood management committees could be either on a proportional or ward basis and it is not exactly clear how such a community can be formed, although there is a preference for 'free association'. These committees will exercise 'autonomy' over the usual municipal functions, such as parks, roads, water supply, recreation facilities, but through 'intensive devolution' even such matters as health and education could be transferred to them.

(iv) Finally, there is proposed the 'simple' majoritarian model. This involves the division into wards of the historical local government area of a town or city (ie the white areas), including the 'residential' areas of all the population groups (presumably, the black townships and the Indian and 'coloured' areas). It is suggested that the electoral boundaries of wards may be 'done according to the number of voters and/or financial criteria'. This latter basis presumably refers to the municipal valuation of property, which must involve some considerable turning back of the political clocks in South Africa.

Like all the models, the 'simple' majority model (the adjective is from the text of the report) can only be adopted through negotiation between the 'constituent units' of the local community and its implementation 'must also be based on consensus'.¹⁸

The 'constitutional' options, rather than the institutional arrangements, are of primary importance. Under the guise of protecting local autonomy, they en-

visage arrangements where black and white may seem to participate in local arrangements but the underlying aim is really to implement the present 'dispensation'.

Conclusion

In the last analysis, discussion on the structures and powers of regional and local authorities cannot be separated from the model adopted at the central level. If, as appears from recent proposals¹⁹, a post-apartheid constitution is to reflect a version of 'consociational' government, with a rotating chairman in a multi-party cabinet, a senate to be elected by regions and by groups and where cabinet seats will be shared between parties and regions, then the regional government will bear the hallmarks of the Kwa Natal Indaba proposals of 1986, with their continued emphasis on ethnicity and the effective diminution of democratic principles.

If on the other hand, as a result of genuine negotiations, there emerges the vision of a unitary state based on majority rule, with carefully identified and protected human rights,²⁰ with a serious emphasis on the right to establish political parties and independent bodies accepted as part of civil society, then the discussion on devolution can be freed from the hidden agenda of race, ethnicity and the protection of privilege. Instead, we would be able to refer to the priority of a democratic state to foster the establishment of democratic, non-racial bodies.

The Thornhill and other proposals for local and regional government are also deeply flawed for reasons other than the one noted above. The South African system of local government is basically an inheritance from the British structures of the turn of the century and is based on British assumptions which have changed radically in the past 50 years. If these structures were a significant focus for local loyalties, they no longer are. There is neither affection nor loyalty from the vast majority towards the present provinces or the local authority. There is a lack of recognition of this factor as also for the fact that such authorities depend for their efficacy and adequate working on a whole series of conventions and presuppositions, which may not be present when their legal and political base changes.

While there is a dramatic and, it must be said, sudden recognition of the need for autonomy and devolution and a passion to reduce control and remove any attempt at uniformity of powers or standards, from establishment circles, there has been little understanding of the effects of apartheid on the vast majority of the population in terms not only concerning the provision of housing, health care and education - basic services in any area - but also the effects of apartheid in terms of experience of local government, efficiency and administrative skills.

There is no reflection in any of the 'official' reports as to why the black authorities have been rejected and why the local and management committees have been treated with derision, if not contempt.

Even on the assumptions on which these reports have been drafted, it ought to have been possible to have taken a more innovative and creative approach by referring to developments in regional and local government in other parts of the world which could usefully be adapted for South African conditions. Such matters as the city management system, local appointments commissions for administrative, technical and scientific staff and central purchasing agencies for greater efficiency and to raise standards of integrity must be part of the agenda of future discussion.

The real argument for devolution is not simply a practical one of the provision of services. From the administrative point of view, it can be conceded that certain public services must be organised on a geographic basis as some services require local knowledge for their administration and convenient means of access by citizens in their area. But there is no reason why these should be autonomous or independent entities with a directing body elected by and answerable to residents in the area.

After all, these authorities could be local branches of the central state. The real argument for the provision of regional and local services is that such authorities are essential elements of democracy. They are that part of a government which is most accessible to the average citizen, which most closely touches the public and presents the most opportunities for public service. They are schools of citizenship, in which men and women can graduate as public representatives and aspire to roles in the central government, where the major policy decisions are taken and which exercise powers of co-ordination and control over these bodies. It follows that regional and local authorities must be seen as part of the central administrative structure of the state, and not totally divorced from or independent of national strategies. It is imperative, therefore, to establish a national policy concerning their structures, powers and competencies, and not a series of regional or local options.

There is, needless to say, a need for a complete reconstruction of local and regional democracy, but it does not follow that the constitution of the State is an appropriate means to this end. The division of powers between local and central government, at the best of times even in a 'normal' democracy, is a highly complex matter. In many cases, there will be shared responsibility but the exact demarcations are bound to be complex and may have to change as our society changes.

In the absence of a complex federal arrangement which would require constitutional provisions, the relationship between central government and regional

and local authorities is best dealt with by ordinary legislation. The Constitution could, with profit, include a general reference to the effect that a 'democratic organisation of the State shall include regional and local authorities, and their functions, organisation and powers shall be regulated by law in accordance with the principle of administrative decentralisation'.

Beyond that, it is my contention that a free South Africa badly needs two statutes on regional and local government which would deal with the following issues in a systematic and coherent charter:

- a) the boundaries and electoral law of regional and local government;
- b) the nature and powers of these authorities;
- c) genuine devolution of legislative functions in local matters;
- d) the financing of regional and local government;
- e) the democratic control of the management of these authorities;
- f) the powers and duties of members of regional assemblies and councillors;
- g) the relationship of these authorities with the people and the central government;
- h) empowering these bodies to take positive action, consistent with the Constitution to accelerate changes in order to undo the inherited patterns of racial and sexual discrimination;
- i) arrangements concerning the use of a regional language for official purposes;
- j) the extent to which such authorities shall be obliged to consult and involve in decision-making, civic bodies, trade unions and other community organisations.

Regional and local authorities have played an essential part up to now in the maintenance of apartheid. The issue for the future is the extent they can be part of the structures of a non-racial democracy.

Endnotes

*This article is based on a paper delivered to the Conference on Constitutional Issues for a Free South Africa, UNISA, October 1990.

1. Principally the Land Act of 1913 and the group areas legislation.
2. By the Provincial Government Act, 1986.
3. Respectively, the Natal KwaZulu Executive Authority Act, 1986, and the KwaZulu and Natal Joint Services Act, 1990.
4. We have been told that we are now living in post-apartheid South Africa. But it is necessary to remind ourselves that even academic white South Africans continue to think and write in the language of apartheid. Dr Barry de Villiers is able to begin his paper to an international audience with the arresting sentence: 'The Republic of South Africa is composed of four provinces and six self-governing regions', from 'Ethnicity and Federalism in Africa: The case of the KwaNatal Indaba proposals', presented to the International Political Science Association, 1990. The text of the paper provides no evidence as to whether the opening sentence was written in an ironical vein.
5. *Idem*, p.2.
6. *Irish Times*, 24 August 1990.

7. Under the heading 'The State', South Africa is described as an independent, unitary, democratic and non-racial state!
8. As identified in the 'constitutional guidelines by the Minister for Finance at the OFS National Party Congress in September (see *Daily Despatch*, 5 September 1990).
9. See *New Nation*, 15-21 June 1990, for the full text of this important document.
10. See Articles 46 and 106(3) of the Constitution of Namibia, 1990.
11. Such entrenchment has been proposed by the Minister for Finance on behalf of the Government: for the reference, see note 8 above.
12. May 1990.
13. Par 5, page 7 of the Report.
14. Paragraph 5.1.
15. July (?) 1990.
16. See the statements made by the State President on 7 May 1990. The Minister of Planning and Provincial Affairs on 6 August said: 'We also believe that the right and duties of local governments (sic) must be entrenched in a new constitution'.
17. Paragraph 5.3 of the Thornhill Report.
18. The different constitutional models appear at paragraphs 5.3.1 to 5.3.14 of the Thornhill Report.
19. See *Sunday Tribune*, 9 September 1990, 'Nats studying detailed non-racial constitutional model'.
20. See the author's paper 'Democracy and Human Rights: Developing a South African Human Rights Culture', University of Transkei Conference on Democracy in Post-Apartheid South Africa (September 1990) for the persistent emphasis on human rights in the liberation movement since its foundation in 1912; and Albie Sachs' *Protecting Human Rights in a New South Africa* (OUP, 1990) for the philosophy behind the fullest protection of human rights and the way in which devices can be developed for frustrating democracy.