

ANNEXURE A

1. CONSTITUTIONAL PRINCIPLES AND STATUS OF REGIONAL GOVERNMENTS

The Constitutional Committee's recommendations regarding the functions of regional and local government in a new constitutional dispensation, rest upon a number of assumptions and requirements that may be summarized as follows :

- * The structure of a political system will have to reflect and accommodate the great need for unity, as well as the reality of the great diversity of cultural and political interests. National unity will, in the prevailing conditions of diversity, not be achieved by enforcing conformity, but rather by allowing it to develop spontaneously in a situation where the diverse interests feel secure in controlling their own destinies;
- * The challenge of synthesizing unity and diversity in South Africa requires a strongly decentralized political system with definite federal characteristics, including the following :
 - Government should be structured at national, regional and local levels.
 - Each level of government should have appropriate and adequate legislative and executive powers that would enable it to function effectively.
 - These powers should be clearly defined and entrenched by the constitution to be the exclusive sphere of competence of that level of government; and
 - In addition to the functions and powers assigned to it by the constitution as its exclusive sphere of competence, each level of government may delegate function and powers to the lower level of government.
- * As far as the constitutional status of regional government is concerned, autonomy is of the essence.
- * The constitutional autonomy of regional governments may be defined as follows :
 - Guaranteed existence : that they may not be abolished or their boundaries changed without their agreement.

- Clearly defined and entrenched spheres of competence.
 - The right of participation in the decision-making process on the national level.
- * The constitutional autonomy of regions has to be supported by financial autonomy. As long as functions and powers are assigned to regional governments without corresponding fiscal powers, regional governments will be at the mercy of central government. To be de facto autonomous, regions have to have control over their own economic activities as well as the tax base that goes with it. This means in effect that the major sources of revenue (personal income tax, company tax and VAT) have to be at the disposal of regional governments;
- * To genuinely control conflict (as the federal structure is intended to be) regions will have to be allowed to negotiate - within the framework defined by the national constitution - their own governmental structures and procedures. This is often referred to as the "local option" because realities in the regions often vary widely. Consequently, the solutions may also vary widely. The power sharing formula negotiated for Natal may not necessarily suit the conditions and requirements of the Free State. Regional constitutions reflecting locally negotiated power sharing formulas, while operating within the constitutional framework of the national constitution, seem to be the appropriate way of dealing with the given political realities;
- * It will, however, be a grave mistake to overemphasize the autonomy of the regions at the expense of national unity. The federal concept entails a delicate balance between the autonomy of the components and the sovereignty and unity of the whole. Regional autonomy is not to be interpreted as the right to secession or irregular activities.

2. DIVISION OF GOVERNMENTAL FUNCTIONS

METHODOLOGY

The Committee has decided not to employ the concept "maximal devolution of power" (which is a top-down-approach), but rather to work with the subsidiarity principle (which is a bottom-up-approach). The subsidiary principle in constitutional law simply means that a function is vested on the lowest governmental level that can perform it effectively. Consequently, the process of identifying and allocating functions starts on the local level, working upwards to the national level.

The effect of this methodology is that the governmental functions on the national level are limited to those of a truly national nature, while those on the regional and local levels are expanded. Bringing decision-making power closer to the people and giving people power over their own living conditions is after all of the essence of the democratic process.

A second methodological approach that was followed by the committee needs to be mentioned here. Federal constitutions distinguish at least three categories of functions : national, regional and concurrent. The concurrent list refers to functions that cannot be assigned exclusively to either the national level or to the regional level because they are exercised on both levels if not on all three levels, eg. health, education, transport, etc. To avoid the problems inherent in working with a concurrent list, the Committee has decided to specify those aspects of the concurrent functions that have to be exercised on the national level and on the regional level separately. The basic approach of the Committee was to vest the primary responsibility regarding the performing of the function at the regional level and to assign only the establishment of national standards and the co-ordination of the regional efforts to the national level. In most cases, national commissions instead of fully fledged government departments would be sufficient to perform these functions on the national level, eg: a National Education Commission. These distinctions, however, need to be developed further, preferably with the assistance of experts from the relevant government department.

The table also indicates on each level, the governmental structures that are expected to be responsible for the exercise of the functions as well as the proposed sources of income for defraying their expenses.

The question arose whether all regions should perform all the functions assigned to the regional level in table 3.1. In some federal systems regional governments are allowed to choose from a "menu" of functions according to their own ability/means. Assuming that regions in South Africa will be demarcated in such a way that a measure of economic parity will exist amongst the regions, the committee recommends that this option is not chosen. Instead, it is recommended that the functions of all three levels of government and that all regional governments assume responsibility for all those functions assigned to the regional level.

The above division of functions are still very preliminary. On the one hand, the list is still incomplete. It is likely that a number of important functions have been missed out. On the other hand, most categories regarding the concurrent functions are still very general and fairly vague and need to be clarified by identifying the various dimensions / aspects of each function and assigning them to particular levels of government according to the principle of subsidiarity.

ANNEXURE B
LIST OF SATSWA PARTICIPANTS

The following persons have participated to date in the SATSWA initiative.

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