

South African Society of Archivist

Ref.: NC 4/3/1

31 May 1996

The Registrar of the
Constitutional Court
P.O. Box X32
BRAAMFONTEIN
2017

Dear Sir

CERTIFICATION *OF NEW CONSTITUTIONAL TEXT*: SCHEDULE 5

1. Schedule 5 of the new Constitution specifies archives other than national archives as an exclusive provincial legislative competence. This differs from the interim Constitution Act (Act No. 200 of 1993), section 126 of which assigned concurrent competence with Parliament to provincial legislatures to make provincial laws with regard to all matters which fell in the functional areas specified in Schedule 6. Cultural matters ,were a Schedule 6 functional area, incorporating archival services.
2. The provision of concurrent competence in the archive functional area enabled the following core provisions to made in section 3 of the National Archives of South Africa Bill, B17-96 (which was tabled **in** Parliament in February 1996):

"Objects and functions of National Archives

3. The objects and functions of the National Archives shall be to -
 - (e) maintain a national automated archival information retrieval system, in which all provincial archives services shall participate;
 - (g) assist, support, set standards for and provide professional guidelines to provincial archives services;"
3. It is the contention of the South African Society of Archivists that the classification of provincial archives services as an exclusive provincial competence does not comply with constitutional principle XXI (,I) of Schedule 4 of the. interim Constitution)., viz.: "Where uniformity across the nation is required for a particular: function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government."

4. The National Archives of South Africa Bill was drafted through a fully consultative process involving all provincial governments,, and complete agreement was achieved regarding all its provisions. The classification of provincial archives services as an exclusive provincial competence would imply that the provisions of the Bill mentioned in paragraph above would be invalid. This in turn would mean that essential archival functions, such as the national automate archival retrieval system, would have no legislative basis This position would hold grave implications for the ability of public archives services to fulfil their obligations in democratic society, as envisaged in e.g. the Open Democracy, Bill.
5. it is the contention of the south African Society of Archivists that **archives** should be retained as a concurrent national and provincial legislative competence.

Yours **faithfully**

Clive Kirkwood
CHAIRPERSON, NATIONAL COMMITTEE

Presented by:
DF SPANGENBERG Blur Pr Eng

OBJECTION

AN OBJECTION TO THE CERTIFICATION OF THE NEW CONSTITUTION

A. INTRODUCTION

1. A press notice published in the Sunday Times of 19 May 1996 "invites" objections to the certification of the new constitution for being not in accordance with 34 principles set out in the interim constitution Act 200/1993.
2. The notice sets out in 11 paragraphs the conditions pertaining to such objection.
3. For this objection to be understood and properly considered it is necessary to know and understand the following:
 - (i) Since about 1980 the mechanistic Newtonian Cartesian understanding of Creation has been passing away so that today we understand the world, nature, ourselves and others holistically;
 - (ii) quantum physics and chaos and order have given man this new understanding and the fields of biology, medicine, health, **psychology** economics, technology, politics, sociology all contributed to this new vision of reality;
 - (iii) this vision of reality is a systems view and includes the consciousness of man/woman in an essential way;
 - (iv) the systems view replaces the senses and language of man as the main test of reality in favour of lived experience and inner wisdom;
 - (v) these facts have been brought to the attention of all Government, quasi-Government, Education, Labour, Business and Legal institutions at regular intervals during the last 15 years;
 - (vi) the manner in which these 'admonitions' have been ignored at Codesa and the Constitutional Assembly is a cause for grave concern - it condemns society to an archaic mechanistic **system of** governance which are heading society towards disintegration and running the risk **of** destroying life.
 - (vii) the system view demand a transformation of our thinking as follows: regarding our view of nature:
 - (a) shift from parts to whole
 - (b) shift from structure to process
regarding our epistemology:
 - (c) shift from objective to epistemic science

- (d) shift from building to network as metaphor for knowledge
 - (e) shift from absolute truth to approximation.
- (viii) the cover page of this submission contains an illustration **of** our new understanding of the journey of consciousness and man's role in creation. It bears on the way we are to govern ourselves as open democratic society and the structures and institutions we erect and the manner in which we do business in terms of a new social covenant;
- (xi) language was never developed as medium for thinking or resolution of conflict. Yet the new constitution in conception and expression rely solely on language and logic and therefore commit us to less than 10% of mental capacity (see front cover).

B. GROUNDS FOR OBJECTION

1. After more than 200 years of democracy in the USA that country is trying to reinvent Government. Europe also is in search of a system to escape adversarial democracy. Yet this new South African Constitution, conceived in conflict, designed in Newtonian Cartesian terms is taking us into the same cul-de-sac from which the Americans and Europeans are trying to escape.
2. The National Party who governed the Country before 27 April 1994 and was instrumental in compiling the 34 principles has withdrawn from the Government of the Country. With the IFP the two main opposition political parties therefore do not support this constitution.
3. Crime, violence, poverty, corruption, unemployment continue unabated and the new constitution cannot address these successfully - a higher level of complexity is required and the realisation that these problems require systems thinking.
4. Constitutional Principles:

I

The Constitution shall provide a democratic system of government

II

Everyone shall enjoy all universally accepted fundamental rights

IV

The Constitution shall be the supreme law of the land ...

V

The legal system shall ensure the equality of all before the law and an equitable legal process ...

VI

appropriate checks and balances to ensure accountability, responsiveness and openness

VII

The judiciary shall be appropriately qualified ...

VII

... representative government embracing multi-party democracy ...

XXIX

The independence and impartiality of a Public Service Commission ...

XXX

1. There shall be an efficient, non-partisan career-orientated public service ...

XXXI

Every member of the security forces (police, military and intelligence)... shall be required to perform their functions ...

are quoted as not being complied with by the new constitution. These principles

- (i) infer more spiritually than expressed in the constitution.,
- (ii) while expressive in creating structures in support of democracy new paradigm thinking demands a shift from structure to process;
- (iii) emphasis should be on the whole and not parts;
- (iv) everything depends on God and should be expressed .. In humble submission to Almighty God.

C **SUMMARY & PROPOSAL**

The Constitutional Court is hereby informed:

- (i) the new constitution does not comply with the intent of the 34 principles;
- (ii) the 34 principles themselves were conceived in adversarial conflictual circumstances and are based on an archaic system of government -adversarial democracy;
- (iii) the new science and systems view of life mind consciousness make the process of dialogical politics, social covenant, shared vision, systems thinking, mental models imperative for South Africa and should be reflected in the Constitution;
- (iv) the new constitution should be referred back to the Constitutional Assembly;

- (v) an appropriate model for the peaceful, productive co-operative and learning governance of South Africa 's available and needs to be viewed for acceptance universally and for committing the creative power of all South Africans to creating their future.
- (vi) the interim constitution should be transformed in project fashion according to the principles above and put in operation until April 1999.

DF Spangenberg
Centurion
27 May 1996