

A. CONSTITUTIONAL MATTERS

VOLUME TWO

A: CONSTITUTIONAL AFFAIRS

SUBMISSIONS RECEIVED BY THE TECHNICAL COMMITTEE ON CONSTITUTIONAL MATTERS BY 10.00 A.M. ON FRIDAY 21 MAY (AND NOT INCLUDING SUBMISSIONS AND DOCUMENTATION DISTRIBUTED TO THE NEGOTIATING COUNCIL ON TUESDAY 18 MAY 1993)

17.	NIC	14/05/93	Outline of submission.
18.	Gender Advisory Committee		Report to Codesa
19.	MA McLaughlan	15/04/93	Constitution and Bill of Rights
20.	Government	18/05/93	Draft legislation for the reincorporation of the TBVC states into the RSA
21.	M.A. McLaughlan	30/03/92	Submission: Constitution and Bill of Rights
22.	College of Magoshi in Lebowa	19/05/93	Contribution
23.	Inyandza National Movement	19/05/93	Submission
24.	United People's Front	19/05/93	The balance of power between the Central, Regional and Local levels of Government.
25.	Ciskei	19/05/93	Submission
26.	Bophutatswana	19/05/93	Additional Submission
27.	Bophutatswana	19/05/93	Fundamental principles recommended to be contained in a constitution.
28.	Ximoko Progressive Party	16/05/93	Submission

29.	AVU	19/05/93	Submission
30.	ANC	19/05/93	Consultative Conference on Regional Policy
31.	TIC/NIC	19/05/93	Submission
32.	Intando Ye Sizwe	19/05/93	Submission
33.	AVU	19/05/93	Submission: Self-determination
34.	DP	19/05/93	Powers, duties and functions of regions
35.	IFP	18/05/93	Position of the IFP on constitutional issues.
36.	Cape Province Traditional Leaders	19/05/93	Interim position on the form of state.
37.	KwaZulu	19/05/93	The constitution of the state of KwaZulu/Natal.
38.	Afrikanervryheidstigting Prof. AWG Raath	19/05/93	Selfbeskikking en sessessie: die saak van die Afrikanervolk
39.	Afrikaner Freedom Foundation	19/05/93	Codesa and Afrikaner self-determination
40.	PAC	21/5/93	Submission
41.	ANC	19/05/93	Interim Regional Administration
42.	PAC	21/05/93	Submission: Paper 1 and 2

NATAL INDIAN CONGRESS*Founded by Mahatma Gandhi in 1894*

P.O. Box 19172, Dorenton, 4015
Fax No. 031- 301 4341

MEMORANDUM

TO: PLANNING COMMITTEE
MULTI - PARTY NEGOTIATIONS
FROM: NATAL INDIAN CONGRESS
TRANSVAAL INDIAN CONGRESS
DATE: 13 MAY 1993
RE: SUBMISSIONS TO TECHNICAL COMMITTEE

1. We refer to the circular from the Planning Committee dated 11 May 1993 inviting participants to make submissions to the Technical Committee (TC).
2. At this stage we wish to submit an outline of our submissions to the TC's. Our submissions will be made to the following TC's.

Violence, Constitutional Matters, Fundamental Rights During the Transition, Transitional Executive Council.

3. The following is an outline of our submissions to the above mentioned Technical Committees:-

4. **VIOLENCE**

- Causes of Criminal and Political Violence
- Mechanisms to Combat Violence
- Mechanisms for an Anti-Crime Coalition
- Mechanisms for Community Policing
- Mechanisms to Combat Political Violence

National Peace Accord

Joint Control

Improving Policing Resources

Retraining of Police

Independent Monitoring of Investigations.

5. **CONSTITUTIONAL MATTERS**

Form of state: **Central & Regional Government**

Constitutional Principles:

- **Affirmative action**
- **"Minority Rights"**
- **Other Constitutional Matters**

6. **FUNDAMENTAL RIGHTS DURING THE TRANSITION**

7. **TRANSITIONAL EXECUTIVE COUNCIL**

Additions to the Terms of Reference: a) **Levelling the Playing Field**
 b) **Creating a Climate of Free Politi-**

cal Activity

Composition

Sub-Councils: to include Education

Decision Making

**GENDER
ADVISORY
COMMITTEE**



The GAC met for the first time on 6 April and has diligently studied the Terms of Reference, minutes and most of the decisions already taken by the Working Groups as well as internal and external submissions from women's organisations and political parties, with an unusual spirit of unity. The GAC has reached consensus on many issues, but consensus was not reached on others.

1. RECOMMENDATIONS AND ADVICE ON THE GENDER IMPLICATIONS OF ISSUES RAISED IN WORKING GROUP 01

1.1 The Free Political Participation of Women

Noting the Terms of Reference of Working Group 01, Items 1.1.4 (k), (p) and (q), the GAC recommends the following:

- 1.1.1 The rights of access of women to public facilities and meeting venues should be ensured, as should their right to meet with political organisations. This recommendation is necessary so that women can participate without fear and on an equal footing in the political process.
- 1.1.2 The right of access of political organisations to public facilities, and their right to meet with potential voters, is meaningless unless women may participate in the democratic process on an equal footing without fear of public or private harassment and intimidation.
- 1.1.3 That the roles mentioned here (Item 1.1.4 (o) of the Terms of Reference of Working Group 1) concerning educative and informative campaigns should be broadened to include specific educational campaigns informing women of, inter alia, their right to vote, particularly in areas where women are unlikely to be reached by usual media.

1.2 Agreements on Political Intimidation and Women

With regard to the agreement reached by sub group 2 of Working Group 1 on the Definition of Political Intimidation, the GAC recommends that the following additions be made to the activities which would, as per the aforesaid agreement, be considered, in particular, as forms of political intimidation (refer to Item 4.2 of the Minutes of the meeting of Sub-Group 2 of Working Group 1, 2 March):

- 1.2.1 To compel women, both within and outside the home, by virtue of the "power" vested in men with whom they may associate, to adopt a particular political position; or to similarly prevent women from engaging in free political activity.
- 1.2.2 To use political patronage in any form that threatens or denies an individuals political, social and economic rights, especially noting that women are frequently the victims of such practices.
- 1.2.3 To sexually harass any individual and thereby prevent him/her from the freedom of the right of expression/opinion, association and movement.

With regards to item 1.3.3 above the GAC defines sexual harassment, in general terms, as sexual advances without express consent, including innuendos or language of a defamatory or offensive nature, in all spheres, including political, social and economic life and in the media.

1.3 Agreements of the Interpretation of the National Peace Accord

With regards to agreements reached by Sub-Group 2 of Working Group 1 re the implementation and interpretation of the National Peace Accord, the GAC recommends that the following additions be made (refer to Item 6.1.6 and Item 6.4.1, respectively, of the minutes of Sub-Group 2 of Working Group 1, on 7 April):

- 1.3.1 That the reference to "Business representatives" in clause 7.4.4.3 of the NPA be interpreted to include representatives from professional and women's organisations.
- 1.3.2 The NPA make special efforts to include representatives of relevant local and tribal authorities as well as local women's structures into all RDRC and LDRC structures.
- 1.3.3 With regards to item 1.4.2 above (and with specific reference to items 6.1.6, 6.3.2, 6.4.2, 6.5.2, 6.6.2, 6.6.3 and 6.8 of the minutes of the meeting of WG1 SG2, 7 April) the GAC recommends that as part of its input on the interpretation and implementation of the NPA Working Group 1 recommend that women be included in all structures created by the NPA, RDRC's and LDRC's to ensure that gender implications of all decisions and functions of these structures, are considered.

1.4 On the Security Forces, Free Political Activity and Women

Noting that the many acts of violence committed against women allegedly by the security forces are a source of grave concern, the GAC recommends that:

- 1.4.1 any such crime be immediately investigated;
- 1.4.2 violent crime against women be treated with stricter and more stringent disciplinary action;
- 1.4.3 when searches of homes are conducted, women police must accompany male police
- 1.4.4 the position of high ranking officers who are unable or unwilling to maintain adequate control over their forces be urgently reviewed;
- 1.4.5 any peace keeping force should include women within their structures at all levels;
- 1.4.6 the gender sensitivity of these forces (refer to item 1.5.5) be monitored;
- 1.4.7 all individuals be informed of their rights with regard to the role and functions of these forces (refer to item 1.5.5);
- 1.4.8 these forces (refer to item 1.5.5) be trained to be gender sensitive and to ensure that they do not violate the rights of women.

Noting the lack of agreement in Working Group 1 over the definition of political prisoners, no recommendations with regards to the gender implications of this issue could be agreed upon.

The GAC also recommends that any Security Force established in the country, including the TBVC states, must begin to immediately redress race and gender imbalances both in their composition and functioning at all levels and introduce a Code of Conduct and norms which will create confidence among all the people of South Africa.

1.5 Working Group 01 Terms of Reference

The GAC proposes that Item 1.1.4 (c) of the Terms of Reference of Working Group 01 should be amended to read as follows:

"The amendment and/or repeal of any remaining laws militating against free political

activity including the elimination of racial and gender discriminatory laws.

1.6 The Media in the Transition (Recommendation to Working Groups 01 & 03)

The GAC recommends that Working Group 1 and Working Group 3 agree upon a politically neutral Independent Communications Authority which shall:

- include gender conscious persons;
- facilitate media access for women;
- monitor and discourage sexist programmes, articles and advertising;
- encourage non-sexist, non-discriminatory publications;
- ensure the participation of women on all media bodies, at all levels;
- organise that radio and television programmes which educate women about the democratic process and their right to participate therein without fear of intimidation, are prepared as a matter of urgency

2. Recommendations and Advice on the Gender Implications of the Issues Raised in Working Group 02

2.1 Constitutional Principles

The GAC advises that:

- 2.1.1 It fully supports a Justiciable Bill of Fundamental Human Rights to be attached to the constitution.
- 2.1.2 It fully supports the concept of a qualified Equality Clause in the Bill of Rights and the Constitution.
- 2.1.3 It recommends that Working Group 2 address the problem of redressing and eliminating gender inequalities.
- 2.1.4 It recommends to WG 2 that they take note of the desirability of a document containing a set of ideals regarding gender issues, which should be accepted by a future Constitution Making Body as a document to be used by the courts to assist women in claiming and exercising their rights under the constitution and Bill of Rights to ensure gender equality.
- 2.1.5 The GAC further recommends to Working Group 02 that the Bill of Rights include some form of rights and protection for children.

2.2 Constitutional Language

The GAC recommends that the terms "men and women" and "men, women and children" be used wherever respectively appropriate, in the drafting of the Constitution, in place of the terms "people" or "persons".

2.3 On Agreements Reached Regarding Constitutional Principles

Regarding the "Provisional Areas of Commonality that Already Exist" in Working Group 02 as adopted by the Steering Committee of WG 02 on 27 April, the GAC recommends the following (refer to Document prepared by the Steering Committee of Working Group 2 on 27 April):

- 2.3.1 Item 1.1.3 should be amended to read "The diversity of languages, cultures and religions will be acknowledged, within the non-racial and non-sexist principles of the Constitution."
- 2.3.2 Item 1.1.7.1 should be amended to read "A judiciary that will be independent, non-racial, impartial, gender sensitive and inclusive of women."
- 2.3.3 Item 1.1.7.2 should be amended to read "An entrenched and justiciable Bill/Charter of Fundamental Rights, which will protect the rights of women and children."
- 2.3.4 Item 1.2.2 should read "At each level there shall be democratic representation, consistent with non-racial and gender sensitive principles."
- 2.3.5 Item 1.3.1 should read "A new constitution shall provide for effective

participation of minority political parties consistent with democracy, non-racism and non-sexism"

2.4 Constitution Making Body/Process

- 2.4.1 The GAC recommends that when drawing up the electoral procedures, methods should be sought to encourage full participation of women. This should apply to both encouraging women to exercise their political rights to campaign and stand for election as well as to vote. These provisions would include, among others, education programmes, elimination of sexual harassment (refer to item 1.3), drawing up of electoral lists and giving women reasonable exposure in the media.
- 2.4.2 The GAC strongly recommends that all parties include a fair proportion of women in their electoral lists. It is essential that women are evenly distributed within the lists, to ensure their inclusion in the elected body.
- 2.4.3 The GAC recommends that any committees set up by the Constitution Making Body must contain an adequate number of women.
- 2.4.4 The GAC recommends that the Constitution Making Body should consider a sub-committee to monitor and raise gender issues in the drafting of the Constitution and the Bill of Rights.
- 2.4.5 The above 4 proposals should apply to future elections at a local, regional and national government level.

3. Recommendations and Advice on the Gender Implications of the Issues Raised in Working Group 03

3.1 The Funding of Programmes for Women

The GAC advises that Working Group 3 reach an agreement on the principle of funding and programmes to ensure the meaningful participation in, and education about the democratic electoral process.

In order that women be timeously informed about the franchise, and thus enabled to participate in interim elections without fear or pressure or intimidation, it is suggested that such agreement be expeditiously concluded.

3.2 The Technical Report to the Steering Committee of Working Group 3

The GAC advises the Technical Committee, Working Group 3 and its Steering Committee on the following points concerning the Technical Committee's recommendations made on 27 April:

3.2.1 In addition to Item 7.1 of the report:

"* Shall include women in its composition."

3.2.2 Item 10 of the report should state:

"The transitional executive structure will be constituted by legislation agreed to by Codesa, will have a multi-party character, including women and be . . ."

3.2.3 The reference to "persons" in line 14 of Item 10 of the report should be replaced by a reference to "men and women".

3.2.4 Line 5 of Item 14 of the report should read:

"Save for agreement that the TEC must have multi-party character, including women, the precise criteria . . ."

3.2.5 It is also recommended that the proposed TEC should include a Gender Structure, the exact nature of which is still to be determined.

3.3 Women and Local Government

The GAC advises that special mechanisms be created to promote the participation and representation of women in local government structures, so that these structures more closely reflect the gender composition of the populace.

Any projects undertaken during the life of CODESA and the Interim or Future Governments should be aimed at the interests of all groups in local communities including women.

3.4 The Media in the Transition (Recommendation to Working Groups 01 & 03)

The GAC recommends that Working Group 1 and Working Group 3 agree upon a politically neutral Independent Communications Authority which shall:

- * include gender conscious persons;
- * facilitate media access for women;
- * monitor and discourage sexist programmes, articles and advertising;

- encourage non-sexist, non-discriminatory publications;
- ensure the participation of women on all media bodies, at all levels;
- organise that radio and television programmes which educate women about the democratic process and their right to participate therein without fear or intimidation, are prepared as a matter of urgency

3.5 Women and the Foreign Service

Noting that South Africa's foreign relations have mainly been conducted by men, as from the interim government women should be trained, employed, promoted and recognised on an equal basis with men within the diplomatic service. Any existing discriminatory regulations and practices with respect to gender and race in South Africa's foreign service need to be removed.

3.6 Land and Women

The GAC wishes to place on record that no consensus could be reached on the following proposals concerning land and women:

Proposal 1: That Working Group 3 suggest an urgent Commission of Enquiry into legislation which prevents women's access to land ownership in South Africa and the TBVC states, and that the results of such an enquiry be immediately embodied in legislation.

Proposal 2: That Working Group 3: (1) look into those laws which prevent/inhibit women's ownership of or access to land in South Africa and the TBVC states, with the intention of amending or repealing those laws and (2) that there should be an immediate moratorium on the sale and transference of all state property to private or corporate individuals and organisations.

4. General Recommendations to Codesa (to all Working Groups)

4.1 Non-Sexist Language in CODESA documentation

The GAC recommends that CODESA documents should explicitly define the word 'person' as referring to both men and women.

4.2 Gender Discriminatory Legislation

The GAC recommends the repeal of all legislation in South Africa and the TBVC states which discriminates on the basis of race, creed or gender which circumscribe and impede free political, economic or social activity. We suggest that this be attended to by a general law asserting certain basic civil and political rights, combined with an omnibus law repealing all legislation in accordance with a schedule of Acts to be provided by the GAC.

We advise Working Groups 1, 2, 3, 4 and 5 to assist in the identification of such legislation.

5. Conclusion and The Way Forward

In conclusion, and in view of the short period of time which the GAC had had at its disposal, the GAC wishes to point out that, as of 7 May, proposals and recommendations on the proceedings of Working Group 4 and 5 have not yet been formulated, and that there are certain areas in other Working Groups on which consensus has not yet been reached. The GAC would also wish to look at present discriminatory legislation which needs to be repealed or amended. The GAC therefore recommends that it continues with its work after CODESA II both in terms of uncompleted work, feed-back on its submissions from the relevant Working Groups and forthcoming agreements emanating from the various Working Groups and committees.

M.A. McLOUGHLIN

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M A McLOUGHLIN/W11 MAM-M66

15 April 1992

The Chairman
Group 3 (Constitutional Affairs)
CODESA
P O Box 307
ISANDO
1600

Dear Sir,

re : CONSTITUTION AND BILL OF RIGHTS

With further reference to the above matter and my letter of the 30th March 1992, would you please inform me why the deliberations at CODESA seem to be shrouded in secrecy, and why the Media and the public are not allowed to report on, or observe, respectively, the deliberations. It would seem that, in an open democracy, the people should be informed of the deliberations towards achieving a democratic government at each step of the proceedings. I do not believe that any of the parties at CODESA have been given carte blanche to decide for their respective constituencies on the final format of any proposed constitution. Accordingly, unless the deliberations are aired publicly all along the way, the people will be merely presented with a fait accompli on which they will be expected to vote without having had the opportunity of providing input into those deliberations at each stage.

I look forward to hearing from you in this regard.

Yours faithfully


M A McLOUGHLIN

Date Rec'd : 23/4/92.....

Date Ackn : 24/4/92.....

Docs Sent : 1/1.....

Handed for Processing to :
..... 263.....

**SOUTH AFRICAN GOVERNMENT OFFICE
- WORLD TRADE CENTRE -**

18 May 1993

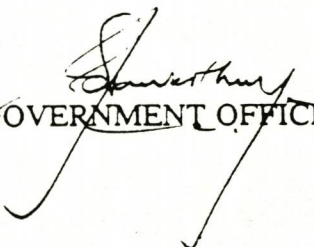
Head of the Administration
Multi-Party Negotiating Process
World Trade Centre

Dear Dr Eloff

**SUBMISSION BY THE SOUTH AFRICAN GOVERNMENT FOR THE
ATTENTION OF THE TECHNICAL COMMITTEE: CONSTITUTIONAL
MATTERS**

1. Attached is a submission by the South African Government entitled ***DRAFT
LEGISLATION FOR THE REINCORPORATION OF THE TBVC
STATES INTO THE REPUBLIC OF SOUTH AFRICA.***
2. Kindly transmit the document for immediate attention to the Technical Committee.

Yours sincerely


GOVERNMENT OFFICE: WORLD TRADE CENTRE

DEK



DEPARTEMENT VAN BUITELANDSE SAKE
DEPARTMENT OF FOREIGN AFFAIRS

14 May 1993

Head : Administration
Multiparty Negotiation Process
WORLD TRADE CENTRE

Dear Dr Eloff

REINCORPORATION OF THE TBVC STATES

The Government hereby submits for consideration by the Technical Sub-Committee on Constitutional Issues a proposal in the form of draft legislation for the reincorporation of the TBVC states into the Republic of South Africa.

The existing constitutional situation will require legislation in order to effect the process of reincorporation of these states if and when agreement can be reached on their future. Agreement is necessary as the South African Government cannot unilaterally effect reincorporation.

The proposed legislation enables the State President to reincorporate, either simultaneously or separately, by means of proclamation, those states with whom reincorporation agreements are concluded. Such agreements are to be given the force of law through provisions of the enabling legislation.

As an interim arrangement it is envisaged that those states being reincorporated into the Republic of South Africa will enjoy the status of Administrative Territories which are to

be governed by Administrators-General. Further provision is therefore made to enable the State President to empower such Administrators-General and Administrative Councils with executive and legislative powers necessary to administer these Territories.

Provision is also made for the granting of South African citizenship to the citizens of the TBVC states which will take place simultaneously with reincorporation.

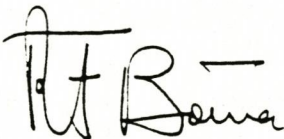
All the current laws and regulations applicable in these Territories, not exclusively transferred to the Administrators-General or the Administrative Councils, as well as all treaties, conventions and agreements in force between these Territories and the Republic of South Africa at the time of their reincorporation will be retained until they are repealed or amended.

Finally, the legislation proposes to repeal those laws, including the Status Acts, necessary to effect the reincorporation.

It should be noted that this is a proposal within the framework of the legal requirements necessary for the reincorporation process and could therefore serve as a basis for discussion in the Sub-Committee. The law advisors of the Department of Foreign Affairs are available should any assistance or further elucidation be required.

With kind regards

Yours faithfully

A handwritten signature in dark ink, appearing to read 'R F Botha', with a stylized, cursive script.

R F BOTHA

B I L L

To provide for the incorporation of certain territories in the Republic of South Africa; for the establishment of Administrative Territories; and to provide for incidental matters.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows: -

Transfer of certain territories to Republic of South Africa

1. (1) The State President may from time to time by proclamation in the **Gazette** determine that the territory of the states described in Schedules 1-4 shall from a date mentioned in such proclamation be reincorporated as part of the Republic of South Africa.

(2) The transfer of the territory of the states described in Schedules 1-4 shall be subject to the terms of this Act and the provisions of the Agreement reached in this regard between the Republic of South Africa and any of the said states: Provided that the said Agreement or Agreements shall from the date fixed in the proclamation issued under section 1(1) and whereby the Agreement or Agreements are published have the force of law in the Republic.

(3) As from the said date the Republic of South Africa shall have sovereignty over and shall exercise authority in the territories of the states in regard to which a proclamation has been issued under subsection (1).

Establishment of an Administrative Authority with an Administrator General, Administrative Council and Executive Committee

2.(1) The state thus incorporated shall from the said date be deemed to be an Administrative Territory as envisaged in this Act.

(2) The State President shall after consultation and with regard to the provisions of the Agreement mentioned in section 1(2) appoint an Administrator General for an Administrative Territory who shall act as the chief executive officer of the Administrative Territory.

(3) An Administrative Council shall be constituted for an Administrative Territory in accordance with the provisions of the Agreement mentioned in section 1(2).

(4) The Administrator General and the Administrative Council shall on the basis of consensus be jointly responsible for the exercise of all such functions and powers conferred to them under section 4.

(5) An Executive Council, appointed from the members of the Administrative Council in accordance with the Agreement mentioned in section 1(2), is constituted and assist the Administrator General in the exercise of those powers conferred exclusively to him under section 5.

Assignment of matters and related powers to the Administrator General and Administrative Council

3.(1) Notwithstanding the provisions of any other act, the State President may from time to time by proclamation in the Gazette assign exclusively to or withdraw any matter

including the related executive and legislative power from the Administrator General or confer it to or withdraw it from the Administrative Council.

(2) The assignment, conferment or withdraw of such a matter can relate to an executive and a legislative power or only to an executive power or only a legislative power or any part of a matter authorised by such legislative or executive power.

(3) The State President may assign the execution of a law of an Administrative Territory to any existing government institutions and can for this purpose amend the said laws to provide for the exercise and execution of the powers, functions and duties of such laws by such a government institution.

(4) A proclamation issued in terms of subsection (1) shall contain such transitional provisions as may be needed to ensure the orderly execution of the assignment, conferment or withdrawal of such matters and powers as well as the consequences thereof.

Powers of the Administrative Council

4. The Administrative Council in consultation with the Administrator General have the executive and legislative power with reference to all matters or part thereof which is not assigned exclusively to the Administrator General in terms of this Act and may legislate for the Administrative Territory in respect of any such matter: Provided that such a law shall not be inconsistent with South African legislation.

Exclusive powers of the Administrator General

5. The Administrator General shall after consultation with the Executive Council exercise any executive power relating to a matter or part thereof assigned exclusively to him in terms of this Act: Provided and unless otherwise expressly stipulated that the legislative power regarding matters thus exclusively assigned shall vest in the South African Parliament.

Granting of South African citizenship

6.(1) Every former South African citizen who would not have ceased to be a South African citizen in terms of any provision of the South African Citizenship Act, 1949 (Act No. 44 of 1949) if any law mentioned in Schedule 5 had not been passed, shall be a South African citizen.

(2) Every person, excluding a former South African citizen, who, if any law mentioned in Schedule 5 had not been passed, would have been a South African citizen by birth or descent, and who would not have ceased to be such a South African citizen in terms of any provision of the South African Citizenship Act, 1949 shall be a South African citizen by birth or descent.

(3) Any person, excluding any person referred to in subsection (2) or (3), who in terms of any law mentioned in Schedule 5 or in terms of any law of a state mentioned in Schedules 1-4, was a citizen of such a state, may in accordance with section 10 of the South African Citizenship Act, 1949 apply for a certificate of naturalization as a South African citizen, and such application may be granted in terms of that section if at the commencement of this Act

such person complied with the requirements prescribed by that section.

Continuation of laws

7.(1) Any rule of law which was in force immediately prior to the date of reincorporation of the states mentioned in the proclamation issued under section 1, shall continue to be in force until repealed or except in so far as it may be amended by the competent authority.

(2) Notwithstanding the provisions of subsection (1) and unless expressly otherwise stipulated, South African legislation shall apply to all matters assigned exclusively to the Administrator General in terms of this Act.

Continuation of treaties, conventions and agreements between South Africa and states described in Schedules

8. All treaties, conventions and agreements entered into between the Government of the Republic of South Africa and the governments of the states mentioned in Schedules 1-4 and which are still in force on the date of incorporation shall, in so far as it relates to such states and is capable of being applied thereto, as from such date remain in force until repealed.

Existing rights, liabilities and real rights in relation to the territory of the states not affected by the transfer of sovereignty to South Africa

9.(1) The transfer of sovereignty to the Republic of South Africa regarding the territory of the states mentioned in Schedules 1-4 does not derogate from or in any way infringe

upon any burden, servitude or other real right attached to the territory immediately prior to the date of incorporation mentioned in the proclamation issued in terms of section 1(1).

(2) Notwithstanding the provisions of section 7(2) any right, interest, activity or juristic act granted by law that existed or was performed immediately prior to the date of reincorporation mentioned in the proclamation issued in under section 1(1) or immediately before the assignment or withdrawal of powers under section 3, shall exist and is valid unless or until abrogated by the competent authority.

Existing courts to continue

10.(1) Notwithstanding any contrary provisions, every lawfully constituted court having jurisdiction to hear criminal or civil cases of whatever nature or scope in a state mentioned in Schedules 1-4 immediately prior to the date of incorporation mentioned in the proclamation issued under section 1(1), shall be and remain functioning in accordance with its existing constitution and jurisdiction until altered or dissolved by the competent authority.

Arrangement of matters

11.(1) The State President may from time to time by proclamation in the **Gazette** make such binding arrangements as he may deem necessary to enable or facilitate the proper administration of the Administrative Territories as part of the Republic of South Africa and may for this purpose, after consultation with the Administrative Council, amend or repeal any act.

(2) The State President may by proclamation in the **Gazette** make any South African legislation he may deem expedient applicable within the Administrative Territories.

Repeal of laws

12. The laws mentioned in Schedule 6 are repealed to the extent indicated therein on the date of incorporation mentioned in the proclamation issued under section 1(1).

Tabling of list of proclamations

13. A list of proclamations issued by the State President under this Act shall be laid upon the Table of the Parliament of South Africa in the same manner as the list referred to in section 17 of the Interpretation Act, 1957 (Act No. 33 of 1957), and if the Parliament by resolution disapprove of any such proclamation or any provision thereof, such proclamation or provision shall cease to be of force and effect, but without prejudice to the validity of anything done in terms of such proclamation or such provisions before it so ceased to be of force and effect or to any right or liability acquired or incurred in terms of such proclamation or such provision before it so ceased to be of force and effect.

Short title and commencement

14. This Act shall be called the Incorporation of Certain Territories in the Republic of South Africa Act, 1993 and shall come into operation on a date fixed by the State President by proclamation in the **Gazette**.

Schedule 1

TERRITORY OF TRANSKEI

All the land that form part of the territory of and is known as the Republic of Transkei on the date stipulated in the proclamation referred to in section 1.

Schedule 2

TERRITORY OF BOPHUTHATSWANA

All the land that form part of the territory of and is known as the Republic of Bophuthatswana on the date stipulated in the proclamation referred to in section 1.

Schedule 3

TERRITORY OF VENDA

All the land that form part of the territory of and is known as the Republic of Venda on the date stipulated in the proclamation referred to in section 1.

Schedule 4

TERRITORY OF CISKEI

All the land that form part of the territory of and is known as the Republic of Ciskei on the date stipulated in the proclamation referred to in section 1.

Schedule 5

Status of Transkei Act, 1976 (Act No. 100 of 1976).

Status of Bophuthatswana Act, 1977 (Act No. 89 of 1977).

Status of Venda Act, 1979 (Act No. 107 of 1979).

Status of Ciskei Act, 1981 (Act No. 100 of 1981).

Schedule 6

No. and year of law	Short title	Extent of repeal
Act No. 48 of 1963	Transkei Constitution Act	So much as is unrepealed.
Act No. 63 of 1966	Black Laws Amendment Act	Section 6.
Act No. 101 of 1967	Transkei Constitution Amendment Act	The whole.
Act No. 36 of 1968	Transkei Constitution Amendment Act	The whole.
Act No. 27 of 1970	Black Laws Second Amendment Act	Sections 7, 8, 9 and 10.
Act No. 49 of 1970	Black Laws Third Amendment Act	Section 12.
Act No. 31 of 1971	Transkei Constitution Amendment Act	The whole.
Act No. 23 of 1972	Black Laws Amendment Act	Sections 5, 6 and 7.
Act No. 102 of 1972	General Law Amendment Act	Section 22.
Act No. 7 of 1973	Black Laws Amendment Act	Sections 7, 8 and 9.
Act No. 70 of 1974	Black Laws Amendment Act	Sections 12, 13 and 14.

No. and year of law	Short title	Extent of repeal
Act No. 71 of 1974	Black Laws Second Amendment Act	Sections 1 and 2.
Act No. 9 of 1975	Black Laws Amendment Act	Section 1.
Act No. 61 of 1975	Transkei Constitution Amendment Act	The whole.
Act No. 66 of 1975	Exchequer Act	In the Schedule, the amendment of the Transkei Constitution Act, 1963.
Act No. 100 of 1976	Status of Transkei Act	The whole.
Act No. 89 of 1977	Status of Bophuthatswana Act	The whole.
Act No. 8 of 1978	Bophuthatswana Border Extension Act	The whole.
Act No. 107 of 1979	Status of Venda Act	The whole.
Act No. 110 of 1981	Status of Ciskei Act	The whole.
Act No. 2 of 1980	Borders of Particular States Extention Act	The whole.

M.A. McLOUGHLIN

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P O Box 72206
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Docex: Dxxx
Johannesburg

The Chairman
Group 3 (Constitutional Affairs)
CODESA
P O Box 307
ISANDO
1600

30 March 1992

Dear Sir,

re : CONSTITUTION AND BILL OF RIGHTS

Members of the public were requested and invited to make representations to CODESA over the deliberations for a new constitution and bill of rights. In accordance with the said invitation and in an effort to make a possible contribution to the debate over a truly democratic dispensation whereby the new constitution will truly be of the people, for the people and by the people and, in terms of which, the rulers are truly the servants of the people and not the other way round, have the following points addressed

It has been suggested, that elements within either the SADF or the police are, with or without the connivance of their superiors, actively attempting to destabilize the negotiating process towards a just dispensation for all. Alternatively, that different factions amongst the blacks are jockeying for position and that a "third force" is assisting one or other element in this regard. These are not idle allegations and one has only to look at recent press reports with regard to TV producer, John Drury, of the BBC's "Assignment" programme and, the continued local perception of such a third force, to realise that certain people are definitely trying to destabilize the democratic, negotiating process. Whoever is responsible, and it could, into alia, be the elements in the security forces referred to, power needs to be controlled in a new South Africa. No Constitution, or Bill of Rights, whether justiciable or not, will be of any force or effect, if the Armed Forces are controlled, effectively, by one man or, a small clique of Generals. One shudders when a whole band of ex-Generals, publicly advocated a No vote to the deliberations at CODESA. As Groucho Marx once said "Military intelligence is a contradiction in terms!"

I suggest/.....

19 MAY 1993

A 21/1

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I suggest that one way of insuring that a new government is not overthrown by the military, would be to decentralise security on a regional basis, so that no military council can take over the government by way of a Coup d'etat unless such regional military power has the support of the generals from all the other decentralised regions. This may lead to a more expensive military establishment but, will be well worth the cost if democracy is to be ensured. I have, to date, not heard any of the leaders of the various political parties at CODESA comment on control of the military in a new South Africa and, as Africa has a poor record of democracy and a good record for military takeovers, whatever constitution is in place, I feel that this important issue needs to be addressed publicly as well as being debated at CODESA. After all, if the Armed Forces are to be the guardians of the constitution and the bill of rights who, in turn, is to control the Armed Forces? They should be subject to even more stringent checks and balances than Parliament, to avoid any abuse of power.

2. "THE NATIONAL INTEREST"

This concept, which is used by governments world wide, including the great democracies, to cover up embarrassing actions and misdemeanors on their part, needs to be subject to scrutiny within a true democracy. Accordingly, will provision be made in the constitution or the Bill of Rights, for all information under the government's control, to be subject to scrutiny by the courts, (in camera, if necessary), to ensure that "the national interest" is not subject to the perverted subjective whim of the state or its officials. I believe that it is necessary that all state information and documents be freely accessible to the people, unless the government or its officials, themselves, apply to a constitutional court for such information or documents to be held secret, in the national interest. The inconvenience, to the government and its officials, of having to take positive action, will be far less than the damage caused to democracy if "the national interest" is to be left to the discretion of some politician, who may have something to hide. The US Freedom of Information Act, is a precedent which should be looked at by CODESA as a starting point and could be adapted, in its scope to suit local conditions.

3. ADVISORY COMMITTEES

I understand that in Germany the Ministers of
State/....

19 MAY 1993

A 21/2

State are advised by Committees in their respective areas of responsibility. These committees are made up of the best brains in the country, whatever the political persuasion of the individuals on committees are. The Minister may reject the committees' advice on any particular matter, but does not do so lightly. This is just another check against the taking of arbitrary decisions by politicians.

4 THE AUDITOR GENERAL

Although the Auditor-General is only responsible to Parliament, his position would be greatly strengthened and, as a civil servant, he would be free from political manipulation, if his report to parliament was given jointly, with a report from an independent team of auditors, made up of respected firms within the auditing profession. This would cost extra but, would be more than adequately compensated, by the prevention of corruption within the Government and Civil Service. I was recently shocked to read that in one of the provinces, less than 50% of the municipalities had balanced their books for the year or submitted their balance sheets to the Province. Some apparently were more than one year in arrears. This should not be allowed. If a Municipality is more than 6 months in arrear, a team of auditors, should immediately be sent in and the management committee suspended until the results of the audit is known.

5 RESERVE BANK

As in the case of the Bundesbank, the Reserve Bank should be completely free from political manipulation and the constitution should incorporate provisions similar to those in the German Constitution on this point.

DEFICIT FINANCING AND MONEY SUPPLY

I believe that deficit financing is wrong in principle and, if resorted to, should be limited to a maximum of 3% of the gross domestic product and then only for short periods when an economy is in a recession/depression. An Act similar to the Gramm Act in the United States, forcing the government to reduce the deficit, if this is not done voluntarily, should be included in the Legislative armoury. This type of Legislation would not be necessary, if deficit financing is covered by the Constitution/Bill of Rights. Similarly, money supply should be controlled, and put within limits, insofar as increases are concerned. In this regard, the money supply should be covered by the Gold and Foreign Exchange Reserves to a certain percentage, say, 25%. This discipline is necessary, to avoid inflation, which impoverishes the Nation, and is a fraud on its citizens.

19 MAY 1993

A 21/3

EXCHANGE CONTROL

This is an iniquitous control brought in by the Finance Minister of the Nazi Regime in Germany in 1930's. It is undemocratic, and should be outlawed in a new Constitution. All arguments for retention of exchange control should be seen for what they are - spurious! A citizen who has paid his taxes, should be allowed to invest his money, wherever he wishes, particularly, as the world is now becoming a global village. The country's currency will initially depreciate but, if exchange control is banned in the Constitution, this would be short term and investment will pour into the country, when investors realise that their investments are safe, and may be repatriated, without any intervention by whatever government of the day is in power. Similarly, citizens of the country will not be inclined to remove their capital as they will be secure, in the knowledge that their money can be moved, without let or hindrance from the government. If we call ourselves a free enterprise economy, we must not only pay lip service to the concept, but show this clearly by protecting it within the Constitution/Bill of Rights.

6. THE CALLING OF REFERENDA

In any truly democratic country, where the will of the people is to be given expression to, the right to call referenda on various issues, local, regional or national, should be encouraged, provided, of course, any person or group, wishing to call a referendum, has sufficient support for the issue to be aired. None of the delegates at CODESA who truly believe in a full democracy, should object to the constitution and bill of rights encompassing this matter.

7. POSTULATES OF JUSTICE : AND RETRO-ACTIVE LEGISLATION

Enclosed is an extract from Wille's Principles of South Africa Law, 8th edition, pages 14, 15 and 16 which clearly set out the qualities required by the rule of positive Law namely, that, all Laws should be :-

- (1) Reasonable
- (2) Impartial
- (3) Certain
- (4) Comprehensive
- (5) Publicly promulgated
- (6) In accordance with public opinion.

I believe/.....

19 MAY 1993

A 21/4

I believe these qualities should be the cornerstone of all legislation in the new South Africa and, in this regard, I particularly refer to the last two sentences of the paragraph headed "Promulgated", to wit, legislation which is made to apply to actions that were committed in the past, and which changes the law, is called retrospective or ex post facto legislation. It is, obviously, unfair and is almost universally condemned. Is the question of retro active legislation on the agenda at CODESA? If not, I suggest that it should be placed thereon and, hopefully, condemned, in line with a democratic constitution.

8. APPOINTMENT OF JUDGES

If the powers of the Executive, Legislative and the Judicial arms of Government are, hopefully, to have equal powers of veto against each other in a new constitution then the appointment of Judges is an important issue and should not be controlled, directly or indirectly, by the Executive and/or Legislative arms alone. At best, I believe that these other arms of government should be given a maximum of a 50% right to the appointment of judges and that the balance should rest with the legal profession as a whole or, possibly, it and other relevant constituencies. In the event of an impasse, the Appellate Division or the Constitutional Court should act as the final arbiter.

CARTELS AND MONOPOLIES

The proliferation of cartels and monopolies in the South African economy exist despite Legislation under the Monopolies Act and the existence of the Competitions Board. These seem to be ineffective, essentially, against the continuance of those cartels and monopolies. They are essentially undemocratic, if not immoral, and have been allowed to develop by virtue of the historical, undemocratic nature of our society. The argument that they need to exist to fund multi-million or multi-billion Rand contracts is not acceptable. If a need for such financial muscle is necessary, this can always be achieved by various big companies forming consortia to part-take in joint ventures. The cartels and monopolies should be broken up in an ordered manner over a period of, say, 10 years. Only in this way will free enterprise be seen to be working, in practice, as well as theory.

CONTROL BOARDS

These bloated bureaucracies have outlived any usefulness they may have had, which is doubtful. They should be disbanded as soon as possible to allow the market to regulate itself. They tend to act as another cost burden to the economy which is unnecessary. If the farmer wants, or needs a marketing arm and a mechanism for smoothing out fluctuations in price, he can formulate his own strategies through co-operatives and the like.

19 MAY 1993

A 21/5

POLICE

A democratic society needs a dedicated, professional and impartial Police Force which is seen to be such by all its people, in order to be respected. To achieve this, high standards and high pay are necessary.

HEALTH, EDUCATION AND HOUSING

In principle, the Government should act merely as a facilitator and catalyst setting down the principles and standards to be met and applied in each of these areas. It is not, or should not be, the function of Government to act as the bonus paterfamilias providing all the peoples needs. The people need to be taught how to catch fish not merely be given th fish. If one is merely given hand outs one never learns and a Nation should have enough pride in itself for each of its citizens to learn to stand on his or her own two feet. Provided this principle is accepted, it may be necessary for the State to assist in providing the initial impetus, for instance, by bearing the bulk of primary education. Parents should, however, be asked to contribute a reasonable amount out of their own pockets in accordance with their means. This would not relieve a citizen of his own self-respect and pride as well as his obligation for his own family. It builds character and can only improve the work and responsibility ethic in a Nation. To say that it is the States responsibility to provide housing, education, health and social welfare for its people is nonsense. The state should merely stand as a back stop to help the really needy and those who cannot, under any circumstances, help themselves. As stated previously, a conditional period may be necessary before this principle of self-help can be fully implemented, because of historical imbalances, but the principle should still be accepted and implemented, in a phased manner.

I have the following additional comments to make on various portfolios.

HOUSING

This should be financed over a number of generations and bonds granted at the finest rate of interest possible, excluding subsidies, and over a period of 50 years through banks, building societies and insurance companies. This finance should be seen as some form of retribution to our fellow citizens, who have been legally deprived from entering the housing market for so many years. By the same token, these communities must bear their responsibility for payment of bond instalments, lights, water and other services.

EDUCATION/....

19 MAY 1993

A 21/6

EDUCATION

In a free enterprise society, the State should merely set the minimum standards and principles to meet overall objectives and leave it, thereafter, to private enterprise to provide, in whatever form, the needs of various communities. This is well illustrated in Nobel Prize winning economist MILTON FRIEDMAN'S BOOK "FREE TO CHOOSE" where he suggests that a voucher system be implemented in American schools, in terms of which, each student is subsidised by the State up to a certain amount, depending on the level of education being sought. These vouchers can be cashed in at any institution, which may charge, either more or less, than the amount of the voucher. The institution then obtains payment for the amount of the vouchers received by it from the State and the parent then pays the difference, if any. The better institutions will then sell education at a premium, and in accordance with their results and facilities, will receive more vouchers than a school which does not meet the standards required by the community. Such a competitive base for an institution, can only be of benefit to the community as a whole. It will also give freedom of choice for different types of education as may be required by parents for their children. In a democracy, it should not be the prerogative of the State, to tell parents how their children should be educated other than by way of setting minimum standards!

AGRICULTURE

It must be accepted that a redistribution of land will have to occur, to correct the imbalances created by an apartheid society. The 1913 and 1936 Land Acts protected the interests of the white man alone and, obviously, these imbalances must be redressed. Some expropriation will be necessary, but farmers should be adequately compensated by the State. Such compensation should, however, take into account the tax breaks received by the farmer in terms of Schedule 1 of the Income Tax Act in setting the level of compensation to be paid. Thereafter, the farmer should be treated as any other businessman whose success or failure depends on his own ability and ingenuity. Farmers have in the past been too protected by the State, at the expense of the other citizens of the country who do not receive the same tax breaks. As a result, farmers have been allowed to build up substantial capital assets which other citizens have not and, although, their income may be relatively small, the capital value of their assets have increased substantially through the years. Any farmer who has not set aside sufficient reserves from good years, to cover bad years, has only himself to blame in most cases, for the dire straits in which he may now find himself. The market place must be the final arbiter of who should be a farmer or who should not.

HEALTH/...

19 MAY 1993

A 21/7

HEALTH

The emphasis here should be on preventative medicine and not curative medicine. The State should provide basic clinics throughout the country, together with the necessary education on preventative medicine, to change the whole culture of health care. Thought should be given to creating incentives for people to encourage them to lead healthy life styles. A National Health Scheme for curative medicine should be based on no claim bonuses being granted to those who do not utilise or abuse the system.

REGIONAL AND LOCAL GOVERNMENT

These tiers of Government should be obliged to run their levels of Government, incorporating the same principles, as outlined above for National Government within the framework of the Constitution/Bill of Rights.

LANGUAGE

I believe that the best way of ensuring National identity, cohesion and communication within a Nation is through a National language. The only language which would seem to fit the bill from a practical point of view would be English. If all the people speak one language, they can identify with each other more easily. The United States of America is an example of peoples of diverse Nations coming together and being unified through the use of one language. This in no way means that a particular ethnic or cultural group should not be proud of and continue to speak their own language within their own communities but it is impractical to expect the Nation as a whole to speak a number of languages.

Naturally, I would expect that in a democracy, a justiciable Bill of Rights would be a sine qua non, together with the division of powers as outlined above in national, regional and local politics. I would be pleased to hear that the above matters, if not specifically on the agenda for the debate within working group three, should be placed thereon. If, however, you do not feel that the issues raised are of sufficient importance to warrant discussion, would you kindly let me know. I would be happy to appear before your working group, if required, to expand on the themes outlined above.

I truly believe that a Constitution and a justiciable Bill of Rights, incorporating all the checks and balances set out above, would be something of which all South Africans

could /...

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A 21/8

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could be truly proud and, would insure that the politicians and servants of the state can truly say "I serve". Regrettably, human nature still seems to be guided by greed, fear and power, and as long as this is the case, the checks and balances, set out herein, will be necessary to insure evenhandedness down to the weakest member of society. If such a constitution can be agreed to at CODESA, I, for one, would be happy to accept my new destiny with pride and to serve under any President, no matter what his race, colour or creed. I would then push for elections to be held as soon as possible.

I do not think that it would be in the interest of the people as a whole for a transitional government to be installed before agreement, in principle, has been reached on what kind of democracy every one is talking about.

I shall be glad if you would confirm that my letter will be brought to the attention of all the interested parties within working group three and look forward to hearing from you.

Yours faithfully

M A McLOUGHLIN

encl:

19 MAY 1993

A 21/9

M A McLOUGHLIN/W11 MAM-M66
MR Z DE BEER

Dr Z De Beer
39 Gotswold Drive
SAXONWOLD
2195

20 April 1993

Dear Dr De Beer

re : CONSTITUTION AND BILL OF RIGHTS

I take the liberty of enclosing certain correspondence which I have had with the Chairman of the Management Committee of Codesa over the last year, the contents of which are self explanatory.

No doubt, the issues canvassed in my correspondence have been addressed by the Party but I feel that, despite the input of the various political parties, the man in the street's views should be addressed and taken into consideration.

I have always been a supporter of the Democratic Party and its predecessors from the inception of the Progressive Party in 1959. However, at this stage, I feel that, although the Party is probably in practice, the only truly democratic one, it is going to have very little support at the polls unless its image as an elitist white party, supporting big business, is changed. I believe that there is a lot of truth in the saying that "perception is reality" and this applies, in particular, to political parties. I believe that if the party were to be perceived to line itself more with the interests of the workers than to the elite and big business, as is the current perception, it will fare much better at the coming elections than it would do in its present form. To achieve this, I believe that creditable democratic black Trade Unionists should be approached with a view to alliances being formed and allegiances being switched from Cosatu and other Unions. Obviously, there would have to be some kind of trade off. I believe that the benefits of a more efficiently run trade union movement which could offer benefits through negotiation rather than through confrontation, could eventually build the party into one with a dominant role in South African politics. Such a trade union movement would be broadly based and include members from all race groups and the whole political spectrum but the Democratic Party would obviously have a lot of influence through its alliance with trade union leaders of a democratic hue.

At/.....

19 MAY 1993

A 21/10

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At the same time, I believe that the party should openly campaign for Anti Trust Laws, the break up of direct or indirect control of the economy by monopolies and an effective Competition Board in order to level the playing fields. The break up or "unbundling" of the conglomerates would not necessarily mean that capital formation for big projects would be hindered. All that would have to happen would be that syndications of companies would jointly tender for international projects through the medium of the Merchant Banks or otherwise. Whilst this may not be ideal from the conglomerates point of view, it would probably be healthier for the economy as a whole. With regard to Anti Trust Laws, I take the liberty of enclosing a copy of an article in the Star of the 3rd May 1992 which you may not have seen.

Insofar as, proportional representation is concerned, I believe that such representation should not be taken too literally. The problems arising from proportional representation in Italy could be instructive and should be looked at. A possible compromise between a "winner takes all" policy and proportional representation could be a better bet in the long term. This would avoid a multiplicity of a small parties having an influence disproportionate to their representation and being in a position to unseat a coalition government. This may not happen in the short term in South Africa but planning should be done for the long term.

I take the liberty of enclosing letters addressed to Codesa/The Multi-Party Forum dated the 30th March 1992 and and 26th March 1993 the contents of which are self explanatory and look forward to your comments.

Yours faithfully

M A McLOUGHLIN

19 MAY 1993

A 21/11

M A McLOUGHLIN/W11 MAM-MEC
MR M PHILLIPS

The Chairman
Management Committee
Multi-Party Forum
P O BOX 307
ISANDO
1600

26 March 1993

Dear Sir,

re : CONSTITUTION AND BILL OF RIGHTS

With further reference to the above matter I enclose herewith my letters of the 30th March 1992 and 16th October 1992 for ease of reference copies of which should, however, be in your file.

My letter of the 30th March 1992 was written in response to an invitation for the members of the public to address Codesa on issues relating to the Constitution and Bill of Rights. Unfortunately, whilst I asked that copies of my letter be circulated to all the delegations, I never received confirmation that this was, in fact, done. If it was done, then I was studiously ignored by all the delegations. I trust that this will not be the case when "Codesa 3" commences and that we can expect that the Constitution and Bill of Rights be negotiated from the bottom up rather than from the top down. Unless this is done, and seen to be done, it is unlikely that a democracy, other than in name, will be the result.

Other than control of the security forces, my main concern is with control of finances in the new South Africa. It would seem that control of expenditure to prevent corruption needs a complete overall. In this regard, Ministers of State must be made personally accountable for the performance of their departments. This, however, will be insufficient on its own. Internal and external auditors should be appointed to continuously monitor the financial performance of each department on a continuous basis and productivity incentives and bonuses should be given to civil servants where performance audits show that they have, not only performed within their budget but, in fact, have reduced the department's expenditure or, alternatively, have achieved more than was required of them within the budget. If goals are not

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19 MAY 1993

A 21/12

Page 2

set and productivity incentives are not given, we can expect the same, if not worse, inefficiencies and corruption in a new government as exists in the present one. The Ministers for the Budget and of Finance should be made more accountable for their respective portfolios and, in particular, the expenditure side of the budget should be carefully monitored throughout the year. Deficits should not be allowed to reach anything above 3% of Gross Domestic Product and these matters should be covered in the Constitution (cf. the Gramm Bill in the USA). The money supply should similarly be controlled within certain parameters and the Reserve Bank should totally independent of State control. These measures should prevent inflation ever occurring again. Inflation is, after all, a fraud on the public.

Insofar as corruption, fraud and gross negligence within any state department is concerned, state officials should be treated harshly. Ministers of State should be made to resign immediately, whether or not they were personally aware of any corruption, fraud or gross negligence within their own departments. The principle of delegation of authority but not of responsibility must be made to apply. The sanction for allowing such matters to occur should be, not only the loss of office, but the loss of, at least, the state's contribution towards such party's pension and, where the Minister and/or State Official is personally involved in any act or omission which causes loss to the State, such person should be prosecuted and made to make recompense, where possible.

The above measures are necessarily harsh, as they must be, in order to cope with the rampant corruption which is a bedevilling our society.

The whole tax system must be reviewed to encourage universally accepted moral and ethical values and geared to discourage the baser instincts of man. In this regard, I need only mention as an example, the high taxes and strict laws on the distribution of alcohol in countries like Norway and Sweden. There are, obviously, many areas in which the tax laws can be used to uplift society and not pander to man's greed and fear and other countries tax laws should be studied and, if possible, improved on to nurture more civilised values.

I/....

19 MAY 1993

A 21/13

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I trust that the man in the street is not going to be ignored when deliberations on these matters recommence and would be happy to address any of the relevant committees further on the various matters raised.

In the circumstances, I look forward to hearing from you.

Yours faithfully

M A McLOUGHLIN

19 MAY 1993

A 21/14

M A McLOUGHLIN/W11 MAM-M56
MR M PHILLIPS

The Chairman
Management Committee
CODESA
P O BOX 307
ISANDO
1600

16 October 1992

Dear Sir,

re : CONSTITUTION AND BILL OF RIGHTS

I am in receipt of your letter of the 21st September 1992. I have still not received any confirmation that the points raised in previous correspondence will be specifically addressed point for point. If and when Codesa or its successor reconvene and I would like to have an assurance that all the issues raised will be submitted to its delegations and that I will receive, as an ordinary citizen, the same courtesy as those afforded to the invited participants with regard to the issues raised. Insofar as these issues are concerned, I would also add that the right to privacy in its widest form be afforded to all citizens as this is a very important issue in a world in which the State intrudes more and more into the private lives of its citizens. The right to privacy must be incorporated both in the Constitution and the Bill of rights.

I look forward to hearing from you.

Yours faithfully

M A McLOUGHLIN

19 MAY 1993

A 21/15

**CONTRIBUTION BY THE COLLEGE OF
MAGOSHI IN LEBOWA**

The Role of the Traditional leaders in the future South Africa.

**Whereas the Constitution shall provide for a Central government, a
Regional Government and a Local Government;**

and

**whereas the traditional leaders are not active members of any
political organisation**

and

**whereas in the Regional and Central levels of Government the
principles of democracy in the sense of elections shall apply**

and

**Whereas Traditional Leadership is hereditary and cannot be
subjected to the principles of elections;**

**Wherefore the Constitution must entrench the Traditional leadership
at the Local Government level;**

and

**Provision must be made in the Constitution for participation in the
Regional and Central Government levels, only with advisory rights
or powers to enable the Traditional Leaders to be informed of, and
conversant with, all policies when they administer the Local
Government matters.**

19 MAY 1993

A

**INYANDZA NATIONAL MOVEMENT'S
SUBMISSION TO THE TECHNICAL
COMMITTEE ON CONSTITUTIONAL
ISSUES**

The first report of the Technical Committee which was tabled at the Negotiating Council Meeting on 18 May 1993 is commended and the approach adopted by the Technical Committee is endorsed to be a correct one.

FORM OF STATE AND CONSTITUTIONAL PRINCIPLES

The Inyandza National Movement envisages a united democratic, non-racial and non-sexist South Africa, a unitary state with strong but non-autonomous regional governments. It is recommended that the Committee addresses the following issues:

- a. the form of state;
- b. self-determination;
- c. national, regional and local governments;
- d. advisability on establishing a Regional Demarcation Commission which will advise the Planning Committee on regional boundaries for electoral purposes.

It is a misnomer to address various principles independent of each other since they are all components of one concept and to do so, will also result in dire misconceptions.

19 MAY 1993

A 23/1

It is of vital importance that a Constitution-Making Body be democratic in the universally accepted meaning of the term. It must be the government of the people, for the people, chosen by the people in free, fair elections.

CODESA agreements still stand regarding re-incorporation of both self-governing territories and the TBVC states.

19 MAY 1993

A 23/2

A24

UPF

THE BALANCE OF POWER BETWEEN THE CENTRAL, REGIONAL AND LOCAL
LEVELS OF GOVERNMENT

PREAMBLE:

WHEREAS THE UPF BELIEVES THAT IN THE SPIRIT OF NEGOTIATIONS AND RECONCILIATION, SOUTH AFRICA SHOULD BE A UNITED DEMOCRACY WITH THREE TIERS OF GOVERNMENT:

WHEREAS THE UPF IS ACUTELY AWARE THAT THE PRESENT GOVERNMENT HAS RULED SOUTH AFRICA AS A FRAGMENTED AND DIVIDED COUNTRY, WHICH RULE HAS BROUGHT ABOUT UNITED TRAGIC MISERIES.

NOW THEREFORE, THE UPF STRONGLY BELIEVES IN AND IS COMMITTED TO THE FOLLOWING BALANCE OF POWER BETWEEN THE THREE TIERS OF GOVERNMENT:

1. THAT GENERALLY, GOVERNMENT SHOULD BE BROUGHT CLOSER TO THE PEOPLE IN ORDER TO HAVE EFFECTIVE GOVERNMENT:
2. THAT STRONG AND EFFECTIVE CENTRAL GOVERNMENT IS NECESSARY TO BE ABLE TO EFFECTIVELY DIRECT NATIONAL POLICY:
3. THAT ANY DEMOCRATIC SYSTEM OF GOVERNMENT SHOULD PROVIDE FOR EFFECTIVE REGIONAL AND LOCAL GOVERNMENTS TO ENCOURAGE PARTICIPATORY DEMOCRACY, BUT THAT, HOWEVER, SUCH REGIONAL AND LOCAL GOVERNMENTS SHOULD BE VESTED WITH SUCH POWERS AS WOULD BE COMPATIBLE WITH THE REGULATION OF MATTERS OF REGIONAL AND LOCAL NATURE ONLY:
4. THE UPF STRONGLY BELIEVES THAT HAVING SET OUT THE ABOVE GENERAL CONSTITUTIONAL PRINCIPLES, THE ACTUAL AND DETAILED DEFINITION OF AND ALLOCATION OF THE NECESSARY POWERS TO THE LOWER TIERS OF GOVERNMENT RESIDES WITH THE APPROPRIATE CONSTITUTION MAKING BODY.

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5. THE CONSTITUTION SHALL ACKNOWLEDGE AND GUARANTEE THE DIVERSITY OF CULTURES, LANGUAGES, OWN COMMUNITY LIFE AND EDUCATION AND RELIGIOUS FREEDOM OF THE PEOPLE OF SOUTH AFRICA.
6. THE CONSTITUTION SHALL ENTRECH A JUSTICIABLE BILL OF RIGHTS GUARANTEEING AND PROTECTING THE PRINCIPLE OF EQUALITY BEFORE THE LAW, UNIVERSALLY RECOGNIZED FUNDAMENTAL HUMAN RIGHTS, FREEDOMS AND CIVIL LIBERTIES SUCH AS FREEDOM OF EXPRESSION, ASSOCIATION, THE RIGHT TO LIFE, RELIGION AND WORK AND THE RIGHT TO ACQUIRE, OWN AND DISPOSE OF ONE'S PRIVATE PROPERTY AND THE DUE PROCESS OF THE LAW.
7. THE CONSTITUTION SHALL RECOGNIZE ONLY ONE AND UNDIVIDED SOUTH AFRICA WITH A GOVERNMENTAL SYSTEM FUNCTIONAL AT NATIONAL, REGIONAL AND LOCAL LEVELS WITH APPROPRIATE, BUT NOT UNDULY ABSOLUTE, DIVISION AND DECENTRALISATION OF POWER, AS TO ENCOURAGE AND FOSTER NON-RACIAL PARTICIPATORY DEMOCRACY, AND NOT THE INEQUITOUS EMASCULATION AND STRATIFICATION OF THE CENTRAL AUTHORITY.
8. THE CONSTITUTION SHALL PROVIDE FOR AND ENFORCE THE PROGRAMME OF AFFIRMATIVE ACTION WITH A VIEW TO REDRESS THE HISTORICAL INEQUITOUS VESTIGES OF RACIAL, CLASS AND GENDER IMBALANCES.
9. THE CONSTITUTION SHALL APPROPRIATELY RECOGNIZE AND PRESERVE THE INSTITUTION OF TRADITIONAL LEADERSHIP.
10. THE CONSTITUTION SHALL RECOGNIZE AND RESPECT THE INDEPENDENCE AND SOVEREIGN INTERGRITY OF FOREIGN STATES AND RESTRAIN THE SOUTH AFRICAN GOVERNMENT FROM VIOLATING ANY SUCH INDEPENDENCE AND SOVEREIGN INTERGRITY IN VIOLATION OF INTERNATIONAL LAW AND CONVENTIONS, WITH A VIEW TO FOSTERING INTERNATIONAL PEACE, CO-OPERATION , CO-EXISTENCE AND STABILITY.

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SUBMISSION BY THE UNITED PEOPLE'S FRONT ON CONSTITUTIONAL PRINCIPLES WHICH
SHOULD BE ENSHRINED IN A NEW CONSTITUTION FOR A NEW SOUTH AFRICA

A. PREAMBLE:

WE IN THE UNITED PEOPLE'S FRONT, RECOGNIZING THE BACKGROUND AND
DIVIDED NATURE OF OUR SOCIETY, DO HEREBY WISH TO PRESENT
CONSTITUTIONAL PRINCIPLES AIMED AT PROMOTING AND FOSTERING A SPIRIT
OF NATIONAL RECONCILIATION AND UNITY AMONGST ALL THE PEOPLE OF SOUTH
AFRICA. WHILST WE FEEL IT A DUTY ON OUR PART TO ARTICULATE THE
ASPIRATIONS OF THE DISADVANTAGED SECTION ON OUR PEOPLE, WE NEVERTHE-
LESS APPRECIATE AND RECOGNIZE AS WELL THE NEED TO TAKE COGNIZANCE
OF THE FEARS AND CONCERNS OF SOME OF OUR FELLOW COUNTRY - MEN WHO
FEEL THREATENED BY THE UNFOLDING POLITICAL SCENARIO.

B. ENVISAGED CONSTITUTIONAL PRINCIPLES:

1. SOUTH AFRICA SHALL BE ^{an} ~~a~~ UNDIVIDED NON-RACIAL AND NON-SEXIST
CONSTITUTIONAL STATE IN WHICH THE SOVEREIGN AUTHORITY OF THE
STATE SHALL BE EXERCISED OVER THE ENTIRETY OF ITS TERRITORY.
2. THE CONSTITUTION SHALL BE THE SUPREME LAW OF THE LAND, TO WHICH
SHALL BE SUBORDINATED ALL OTHER ORDINARY LEGISLATIVE ENACTMENTS
AND AGAINST WHICH THE VALIDITY OF ANY SUCH LAWS SHALL BE TESTED,
AND SUCH CONSTITUTION SHALL BE JEALOUSLY GUARDED OVER BY AN
INDEPENDENT, IMPARTIAL, COMPETENT, NON-RACIAL AND NON-SEXIST
JUDICIARY.
3. THE CONSTITUTION SHALL GUARANTEE AND PROTECT THE PRINCIPLE OF
MULTI-PARTY DEMOCRACY WITH THE RIGHT TO FORM POLITICAL PARTIES
AND TO JOIN A POLITICAL PARTY OF ONE'S CHOICE, REGULAR ELECTIONS
ON THE BASIS OF UNIVERSAL ADULT SUFFRAGE ON A COMMON VOTER'S ROLL
WITH EACH VOTE BEING OF EQUAL VALUE WITH THE ELECTORAL SYSTEM
BEING THAT OF PROPORTIONAL REPRESENTATION.
4. THE CONSTITUTION SHALL GUARANTEE THE PRINCIPLE OF THE SEPARATION
OF POWERS WITH APPROPRIATE CHECKS AND BALANCES TO PREVENT ABUSE
OF POWER.

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IRiphabliki YeCiskei
I-Ofisi YeBhunga
LoMbuso



Republic of Ciskei
Office of the Council
of State

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P.O. Box 1, Bisho, Republic of Ciskei, Southern Africa. Telephone 0401-92310. Telex 25-0885CX Telefax No. (0401-91189)

19 May 1993

Multi-Party Negotiating Process
P O Box 307
ISANDO

Fax No: 011 - 3972211

Dear Sir

CISKEI GOVERNMENTS' SUBMISSION TO THE TECHNICAL COMMITTEE

We enclose herewith further representations in regard to Constitutional Issues, Fundamental Rights and Violence.

Yours faithfully


M.B. WEBB
CISKEI GOVERNMENT
MULTI-PARTY NEGOTIATING PROCESS

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CISKEI GOVERNMENT SUPPLEMENTARY SUBMISSION TO
CONSTITUTIONAL ISSUES - TECHNICAL COMMITTEE

1. ATTACHED HERETO ARE CISKEI'S STATED CONSTITUTIONAL PRINCIPLES. MARKED "A".
 2. CISKEI ALREADY HAS A BILL OF FUNDAMENTAL RIGHTS AND RESPONSIBILITIES WHICH IS DESCRIBED AS SCHEDULE 6 OF THE CISKEI CONSTITUTION DECREE AND MAY NOT BE AMENDED WITHOUT A 75% MAJORITY OF CISKEI VOTERS.
 3. THE CONSTITUTIONAL PROCESS IS AS STATED IN THE HEAD NOTES SUBMITTED TO THE TECHNICAL COMMITTEE ON THE 12TH MAY 1993.
 4. IN ORDER TO PLAN THE WAY FORWARD THE FOLLOWING APPROACH IS PROPOSED:
 - (a) INVOLVEMENT OF THE PEOPLE ON THE GROUND. THE PEOPLE MUST DETERMINE THE CONSTITUTIONAL WAY FORWARD AND INSTRUCT THEIR LEADERS TO SATISFY THE DEMANDS AND REQUIREMENTS OF THE PEOPLE.
 - (b) THE APPROACH MUST BE DETERMINED BY THE DECISION ON WHERE THE POWER WILL BE SEATED. IF POWER IS TO BE AT THE CENTRE THEN THE DEGREE TO WHICH POWER IS DEVOLVED DOWNWARDS WILL BE UNIMPORTANT. HISTORY TEACHES US THAT ALL GOVERNMENTS WHO HAVE THE POWER TO DO SO, WILL, WITH TIME, DRAW POWER UP TO THE CENTRE. ON THE OTHER HAND, IF THE POWER IS SEATED WITH REGIONS OR REGIONAL STATES, THE REGIONS HAVE THE POWER TO DECIDE WHAT FUNCTIONS, IF ANY, SHOULD BE DELEGATED UPWARDS TO THE CENTRE OR DOWNWARDS, TO THE LOCAL AUTHORITY, AND VILLAGE AUTHORITIES.
- REGIONS SHOULD NOT ONLY DEBATE THEIR FUTURE, REGIONS SHOULD DETERMINE THEIR FUTURE.
5. THE GUIDING PRINCIPLE TO BE CONSIDERED IN DETERMINING THE NUMBER OF STATES AND BOUNDARIES IS "THAT WHICH BELONGS TOGETHER MUST BE BROUGHT TOGETHER." AND THIS IS MAINLY DETERMINED BY:-

- (a) HISTORICAL FACTORS,

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- (b) CULTURAL REALITIES SUCH AS LANGUAGE, HOMOGENEITY AND WAY OF LIFE,
- (c) ECONOMIC VIABILITY, INFRASTRUCTURE AND TOURISM POTENTIAL,
- (d) ADMINISTRATIVE CONSIDERATIONS,
- (e) GEOGRAPHIC FEATURES SUCH AS RIVERS, MOUNTAINS, RAILWAYS AND ROADS,
- (f) COHESIVE FACTORS SUCH AS FORBEARANCE, INDUSTRIOUSNESS AND POSITIVE ATTITUDES,
- (g) MINORITIES.

6. CISKEI SUBMITS THAT:-

- (a) A UNITARY STATE OFFERS NO SOLUTION FOR THE COMPLEX CONSTITUTIONAL CHALLENGES OF OUR COUNTRY.
- (b) THE COMMUNITIES WITHIN THE KEI REGION/STATES OR AREA HONESTLY AND EARNESTLY BELIEVE THAT SOUTHERN AFRICA SHOULD BE DIVIDED INTO DIFFERENT STATES, EACH STATE WITH ITS OWN CHARACTER/PERSONALITY OR CULTURE, BASED ON ITS HISTORICAL BACKGROUND, WITH ITS OWN NATURAL AND EVEN HISTORICAL BOUNDARIES. WHAT BELONGS TOGETHER MUST BE BROUGHT TOGETHER. THESE STATES MUST SATISFY ADMINISTRATIVE, CULTURAL, ECONOMIC INFRASTRUCTURAL AND EVEN HISTORIC AND GEOGRAPHIC CONSIDERATIONS.
- (c) ALL POWER SHOULD BE VESTED IN THE INDIVIDUAL STATES AND THAT THESE STATES SHOULD DECIDE WHICH POWERS AND FUNCTIONS SHOULD BE DELEGATED UPWARDS TO ANY CENTRAL AUTHORITY OR DOWNWARDS TO LOCAL, TRIBAL AND VILLAGE AUTHORITIES.
- (d) THE ONLY SOLUTION FOR ANY LASTING PEACE-BRINGING SETTLEMENT SHOULD BE DECIDED BY THE COMMUNITIES WITHIN EACH REGION - PARTICULARLY THE KEI REGION, KEI STATE OR KEI REPUBLIC.

7. WHAT POWER MUST THE STATES HAVE

POWER SHOULD BE SEATED AT REGIONAL LEVEL WITH THE STATES. THIS MEANS THAT THE FOLLOWING FUNCTIONS ARE NOT NEGOTIABLE:

- (a) THE KEI WILL DRAW UP ITS OWN CONSTITUTION.
- (b) IT WILL HAVE THE SOLE RIGHT TO TAX THEIR PEOPLE.

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- (c) IT WILL BE RESPONSIBLE FOR ITS OWN SECURITY, DEFENCE FORCE AND LAW AND ORDER.
- (d) IT MUST HAVE THE RIGHT TO END ITS PARTICIPATION IN ANY CENTRAL AUTHORITY, THE RIGHT OF SECESSION.
- (e) IT WILL BE RESPONSIBLE FOR THE PROTECTION OF THEIR CULTURAL, LANGUAGE AND NATIONAL SYMBOLS.

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CISKEI CONSTITUTIONAL PRINCIPLES

PREAMBLE

The Ciskei Government believes that the peace and prosperity of a future South Africa will depend on the successful formation of regional structures. Regional decision-making and regional self-determination accommodating the diversity of populations and interest will be crucial to the creation of a stable and lasting constitutional dispensation.

Ciskei recognises that, for historical, cultural and economic reasons, it forms part of a larger region and cannot consider its future in isolation. It accepts that its interests will have to be considered in the context of its immediate setting and that of South Africa as a whole.

Ciskei is committed, therefore, to re-incorporation into the new South Africa but reserves the right to a defined regional autonomy, to protect existing economic policies and strategies for its economic development, to protect its civil service and existing infra-structures and to protect the right of the people of the region to promote their interests.

To this end, Ciskei considers it essential to articulate its views in the decision-making process and has committed itself to a meaningful contribution to the negotiating process in CODESA. The negotiating process will, however, have to be conducted at both the national level of CODESA and at regional and local levels where awareness of the true needs and aspirations of the people can be encouraged and support can be determined. Once the constitution has thus been agreed on, it should be tested in a nation-wide referendum.

The Ciskei Government supports a non-racial, multi-party democracy with a federal model of government in a united South Africa with firmly entrenched rights for the federal structures. The constitution which it envisages should materially correct the injustices of recent decades, yet respects the realities of the cultural diversity of South African Society.

PRINCIPLES

1. CONSTITUTIONAL STATE

There should be a united non-racial multi-party democracy with autonomous powers demarcated on a regional basis, which powers are constitutionally entrenched under a binding constitution.

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2. SEPARATION OF POWERS

There should be separation of powers between the Legislature, Executive and the Judiciary. An independent state institution, such as a Judicial Service Commission, should be created to guarantee the independence of the Judiciary.

3. CHECKS AND BALANCES

The separation of powers, providing checks and balances, should be entrenched in a bicameral system at central and regional government levels.

4. BILL OF RIGHTS AND RESPONSIBILITIES

There should be a justiciable Bill of Rights and Responsibilities which should also emphasise the responsibilities of citizens and should be upheld by an independent constitution court.

5. UNIVERSAL FRANCHISE

There should be a universal adult franchise based on the principles of proportionality as well as other principles to secure regional autonomy with regular periodic free and fair elections in a multi-party system.

6. ENTRENCHED RIGHTS

Not only the rights of individuals, but also the powers of regional and local government structures, should be entrenched in the constitution.

7. EMERGENCY POWERS

The Executive should have emergency powers to protect the integrity of the State and the individual under extreme conditions which should be determined constitutionally to protect the democratic order and should under no circumstances destroy the nature of that democratic order.

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The exercise of emergency powers should be ratified by Parliament within a short fixed time span and be limited to a specified period.

8. THE PRESIDENCY

The Head of State should be a State President who has the confidence of the people and will share executive powers with the Prime Minister and the Cabinet.

9. THE CENTRAL GOVERNMENT EXECUTIVE

There should be a carefully defined division of executive powers between the State President and the Prime Minister, who leads the cabinet, in a type of cohabitation system.

The Prime Minister should form a multi-party coalition cabinet which should enjoy the confidence of the majority of the National Assembly.

10. THE CENTRAL GOVERNMENT LEGISLATURE

The legislative powers should rest with a Bicameral Parliament. There should be a National Assembly (Lower House), with members reflecting a proportional representation of the electorate. The Assembly should exercise final budgetary control. There should be a Senate (Upper House) with senators elected by both Houses of the federal states, vested with supervisory and scrutinising powers of non-fiscal legislation passed by the National Assembly. Both Houses should utilise multi-party standing committees.

11. A FEDERATION OF STATES.

The diversity of cultures and regional interests of communities should be reflected in the creation of regional states with rights and responsibilities entrenched in the constitution. The determination of regional boundaries should be based on cultural, economic, technical and political parameters as determined by consensus.

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12. THE STATE EXECUTIVE AND LEGISLATURE

The State Executive should consist of a Governor and Secretaries of State heading government departments. A bicameral legislative system should consist of a Lower House, elected by proportional representation, which exercises final budgetary control, and an Upper House, elected indirectly by the urban and rural local authorities with representation of traditional leaders where applicable.

13. LOCAL AUTHORITIES

Local authorities should be urban and rural authorities directly elected with provision for traditional leaders in the rural local authorities where applicable. Local autonomy and local characteristics should be guaranteed in the constitution.

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A. CONSTITUTIONAL MATTERS
VOLUME THREE (A)

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REPABOLEKI YA BOPHUTHATSWANA



REPUBLIC OF BOPHUTHATSWANA

REPUBLIEK VAN BOPHUTHATSWANA

TONA YA MEBERO YA PUSO, YA PHHELO LE YA DIPHOFO TSA SELEGAE
THE MINISTER OF STATE AFFAIRS, OF DEFENCE AND OF CIVIL AVIATION
DIE MINISTER VAN STAATSAANGELEENTHEDE, VAN VERDEDIGING EN VAN BURGERLIKELUGVAART

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FAX TRANSMISSION

TO: ... *Administration, WTC* ...FOR ATTENTION: ... *Dr. Eloff* ...

FROM: JOHAN FERREIRA, TEL 0140-841327

DATE: ... *19 May 1993* ... FAX NO: ... *011-3972211* ...SUBJECT: ... *Submission to TC on Confrontation* *Matters* ...

NO OF PAGES: ... *2* ...
(INCLUDING THIS ONE)

MESSAGE:

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GOVERNMENT OF BOPHUTHATSWANA

ADDITIONAL SUBMISSION TO TECHNICAL COMMITTEE ON CONSTITUTIONAL MATTERS.

In allocating functions and powers to second tier governments, it has to be borne in mind that not all the present administrations and governments share the same degree of experience in governmental matters. The same will apply to future governments.

To provide for this difference, we submit that the principles of subsidiarity and asymmetry be applied in the process of the allocation of functions and powers.

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REPABOLEKI YA BOPHUTHATSWANA



REPUBLIC OF BOPHUTHATSWANA

REPUBLIEK VAN BOPHUTHATSWANA

TONA YA MERERO YA PUSO, YA PHAMELO LE YA DIPHOFO TSA SELEGAE
THE MINISTER OF STATE AFFAIRS, OF DEFENCE AND OF CIVIL AVIATION
DIE MINISTER VAN STAATSAANGELEENTHEDE, VAN VERDEDIGING EN VAN BURGERLIKELUGVAART

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FAX TRANSMISSION

TO: Administration, Multi-Party Negotiation Proc.

FOR ATTENTION: Dr. T. Eloff

FROM: JOHAN FERREIRA, TEL 0140-841327

DATE: 19 May 1993 FAX NO: 011-3972211

SUBJECT: Bophuthatswana Govt's submission to

Technical Comm. on Constitutional
Matters

NO OF PAGES: 37

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MESSAGE:

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BOPHUTHATSWANA GOVERNMENT'S SUBMISSION

FUNDAMENTAL PRINCIPLES RECOMMENDED TO BE CONTAINED IN A CONSTITUTION

The following is a model for a Constitution which embodies certain fundamental principles. It does not purport to be a conclusive model in this regard, but does contain those principles which ought to form the cornerstone of any proper constitutional model.

Addition to the proposed constitution:-

The recommended constitution does not deal with the following issues, although it is accepted that it may or ought to be embodied in a constitution namely:-

- (a) the principles viz a viz democracy, independence and economy upon which the territory is based;
- (b) the National Flag;
- (c) the National Anthem ;
- (d) official languages;
- (e) territory; and
- (f) supreme law of the territory

Apart from the above the embodiment of the following principles is recommended:-

Enforcement of rights.

- 1.(1) The following fundamental rights are binding on the legislature, the executive and the judiciary, and are directly enforceable by law.
- (2) Any person may apply to the Supreme Court by appropriate proceedings to enforce the rights conferred under the provisions of this Declaration.
- (3) Subject to the provisions of subsection (4), the Supreme Court shall have the power to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any of the rights conferred under the provisions of this Declaration.

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Equality before the law.

2. All people shall be equal before the law, and no one may because of his sex, his descent, his race, his language, his origin or his religious beliefs be favoured or prejudiced.

Right of life.

3. (1) Everyone's right of life shall be protected by law and no one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- (2) Deprivation of life shall not be regarded as inflicted in contravention of this section when it results from the use of force which is no more than absolutely necessary-
- (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Punishment.

4. No one shall be subjected to torture or to inhuman and degrading treatment or punishment.

Right of liberty and freedom.

5. (1) No one shall be held in slavery or servitude.
- (2) No one shall be required to perform forced or compulsory labour - provided that this shall not include-
- (a) any work required to be done in the ordinary course of detention imposed under the provisions of sub-section (3) or during conditional release from such detention;
 - (b) any service of a military character in terms of a law requiring citizens to undergo military training;

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- (4) If, in relation to any proceedings brought before the Supreme Court for the enforcement, against the State or any of its Ministers or officials, of any right or duty referred to in section 5(3)(g) or (5), section 8(1) or section 9(1) of this Chapter, there is lodged with the Court a certificate under the hand of the State President to the effect that, after having received information from the National Security Council, he is satisfied that any affidavits or other documents or evidence to be tendered by the State or any of its Ministers or officials in answer to such proceedings, will or is likely to divulge information which will prejudice any general criminal or public investigation which is then pending into-
- (a) any alleged conspiracy, any armed or military rebellion or insurrection, or other acts of treason or sedition, aimed at effecting a change of the Government of the territory in a manner contrary to that provided for in this Constitution or any other relevant law, or at effecting the secession from the territory of any part of its territory; or
- (b) any conduct or activity alleged to constitute an offence in terms of section 15(c) or (d) or section 22(1)(a) or (b) of the Internal Security Act, 1979 (Act 32 of 1979),

the Court shall, on application on behalf of the State or, as the case may be, any such Minister or official cited as the defendant or respondent in such proceedings, postpone such proceedings for such period as shall be specified in such application, but not exceeding two months, for the purpose of concluding such general investigation: Provided that on application brought on behalf of such defendant or respondent on the day first following the expiration of such period of two months, and the lodgement with the Court of such a certificate to the effect that the conclusion of such general investigation could not be effected within that period despite all reasonable endeavours having been applied to that end, the Court shall grant one more postponement of such proceedings for such further period as shall be specified in the latter application, but not exceeding one month.

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- (c) any service exacted in case of an emergency or calamity threatening the existence or well being of the territory;
- (d) any work or service which forms part of normal civic obligations imposed by law.
- (3) Everyone has the right to liberty and security of person and no one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
- (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so, provided that such a person shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within reasonable time or to release pending trial, and that release may be conditioned by guarantees to appear for trial;
 - (c) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (d) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;
 - (e) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the territory or of any person against whom action is being taken with a view to deportation or extradition;
 - (g) lawful detention in the interests of national security or public safety.

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(4) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

(5) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided promptly by a court and his release ordered if the detention is not lawful.

(6) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law; judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interest of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(7) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law, and shall have the following minimum rights;

- (a) to be informed promptly, in a language which he understands and in detail of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or, unless a law otherwise provides, through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free of charge when the interests of justice so require.

(7A) Notwithstanding the provisions of subsections (5), (6) and (7), a person held in custody by virtue of his arrest or detention pursuant to and for the purposes of or in connection with any general criminal or public investigation into any of the matters referred to in paragraphs (a) and (b) of section 1(4), shall, time as such general investigation has been concluded-

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- (a) where he has been charged with an offence regarding any such matter, **not be tried for such offence,** unless the attorney-general, in concurrence with the Minister of Law and Order, otherwise directs; and
- (b) irrespective of whether or not he has been so charged, but subject to the provisions of section 25(7) of the Internal Security Act, 1979, not be entitled to visitation by any other person, and no one shall have a right of access to the person so in custody, except with the written authority of the said Minister and subject to such terms and conditions as that Minister may determine and specify in such authority.

(8) No one shall be guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under the law in force at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time the criminal offence was committed.

Respect for private and family life.

6. (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of such a right except in so far as it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the territory, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.
- (3) The system of education shall be controlled by the State, but private educational institutions may, on application, in the discretion of the Government and subject to such conditions as the Government may deem fit, be allowed where such institutions in their educational aims and standards are not inferior to state institutions.

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Freedom of thought, conscience and religion.

7. (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

(2) Freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others.

Freedom of expression.

8. (1) Everyone has the right to freedom of expression; this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontier but this provision shall be subject to the requirements for the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of the right of expression, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Freedom of assembly.

9. (1) Every citizen has the right to freedom of peaceful assembly and to freedom of association with others.

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(2) No restrictions shall be placed on the exercise of such rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health and morals or for the protection of the rights and freedom of others and the provisions of this section shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the territory.

Protection of property.

10. (1) The right to own and possess private and communal property is protected.

(2) Expropriation shall be authorised only in terms of an Act of Parliament, if it is for the public benefit and if reasonable compensation is paid.

Restriction of fundamental rights.

11. (1) The rights and freedom referred to in section 12 to 10 may be restricted only by a law of Parliament and such a law shall have a general application.

(2) Except for the circumstances provided for in this Declaration, a fundamental right and freedom shall not be totally abolished or in its essence be encroached upon.

THE STATE PRESIDENT

Office of State President.

12. The Head of the State of the territory is the State President, who shall represent and serve the territory and its people.

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Powers of State President.

13. (1) The State President is the executive Head of Government and commander-in-chief of the defence force of the territory.

(2) The State President, in his capacity as commander-in-chief of the defence forces of the territory, may, subject to such conditions as may be prescribed by or under any law-

(a) mobilize and call out the defence forces or any part thereof for operational purposes or otherwise for the maintenance of law and order, the preservation of the peace, the protection of life, health or property or the provision or continuance of essential services; and

(b) confer commissioned ranks in the defence forces on any person serving or qualified to serve therein and give to such person a commission under his hand.

(3) The State President shall in addition to the other provisions of this Constitution, further have power-

(a) to confer honour;

(b) to appoint and to accredit, to receive and to recognise ambassadors, pleni-potentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;

(c) to pardon or reprieve offenders, either conditionally or unconditionally and to remit any fines, penalties or forfeitures;

(d) to enter into and ratify international conventions, treaties and agreements;

(e) to proclaim and terminate martial law;

(f) to declare war and make peace; and

(g) to make such appointments as he may determine under powers vested in him by any other law and to exercise such other powers as may be vested in him and perform such other functions as may be assigned to him, by any other law.

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Election of State President.

14. (1) The State President shall be directly elected, as hereinafter provided, by general suffrage of persons who are registered as voters as contemplated by this Constitution.

EXECUTIVE GOVERNMENT**Executive government.**

15. The executive government of the territory is vested in the State President, who shall consult the Ministers in Executive Council.

Executive Council.

16. The Executive Council shall consist of the State President and the Ministers of State appointed under section 18(1).

Confirmation of executive acts of State President.

17. (1) The State President shall exercise his powers, authorities and functions vested in him under section 15 in writing under his signature which shall be confirmed by the impress of the Seal of the territory.
- (2) All decisions of the Executive Council shall be recorded in writing and such decision shall be taken in accordance with such rules of procedure as determined by the Executive Council.

State departments and Ministers.

18. (1) The State President shall establish such Departments of State as he deems necessary for the Government, and shall appoint persons as Ministers of State to administer such Departments: Provided that the State President may, in lieu of appointing a person as Minister of State in respect of any Department, in relation to such Department act as the responsible Minister and administer such Department himself, in which event he shall for all purposes in law be deemed to be the Minister of such Department.
- (2) Persons appointed under sub-section(1) shall be Ministers of State and shall hold office during the pleasure of the State President.

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Deputy Ministers.

19. (1)(a) The State President may from time to time appoint persons, who are members of the National Assembly, to hold office during his pleasure as Deputy Ministers of any specified departments or as Deputy Minister of such other description as the State President may determine, and to exercise or perform on behalf of a Minister any of the powers, functions and duties entrusted to such Minister under any law or otherwise which may, subject to the direction of the State President, be assigned to him from time to time by the said Minister.
- (b) Any person appointed under paragraph (a) shall not be a member of the Executive Council.
- (2) The remuneration and retirement benefits of a Deputy Minister shall be determined by an Act of Parliament.

Power to appoint and dismiss persons.

20. Except as may otherwise be provided in this constitution or any other law, the appointment and dismissal of persons in the service of the territory vests in the State President.

THE LEGISLATURE

Legislative power.

21. (1) The legislative power of the territory shall vest in Parliament consisting of the State President and the National Assembly.
2. Parliament shall, have full power to make laws for the peace, order and good government of the territory.
3. Parliament shall exercise its power to make laws by Bill passed by the National Assembly and assented to by the State President and every law assented to shall be styled as Act.

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Constitution of National Assembly.

22. (1) The National Assembly shall consist of-

- (a) twenty-four members designated by the regional authorities in the territory, in accordance with the provisions of subsection (2), on or before such date, being within fourteen days of the reconstitution of such regional authorities in terms of section 16(4)(a) of the Traditional Authorities Act, 1978 (Act 23 of 1978), as the State President may by proclamation determine;
- (b) seventy-two members elected in the manner provided in subsection (3);
- (d) the person holding the office of State President who shall, upon having taken the oath be an ex officio member of the National Assembly, with all the rights and privileges conferred on members by the provisions of this Constitution, subject to any specified provisions to the contrary contained therein.

Persons entitled to register as voters and to vote.

23. (1) Every persons who-

- (a) is a citizen of the territory;
- (b) is of the age of twenty-one years or over or, if he is a taxpayer, of the age of eighteen years or over; and
- (c) is not subject to any disqualification mentioned in section 24, shall be entitled to be registered as a voter in an electoral division and, if he is so registered to vote at an election.

(2) Every person registered as a voter shall, at an election of members of the National assembly have as many votes as there are members to be elected for the electoral division in which he is registered, but shall not record more than one vote in favour of any one candidate.

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Disqualification of voters.

24. (1) No person shall be entitled to be registered as a voter or to the continuance of his registration as a voter or to vote in any election-
- (a) if he has been convicted of any of the offences referred to in Schedule 1 of the Aliens and Travellers Control Act, 1979 (Act 22 of 1979) or amendment thereof: Provided that his disqualification shall lapse ten years after such conviction or, if any sentence of imprisonment had been imposed on any person so convicted, ten years after the expiration of such period of imprisonment;
 - (b) if he has been convicted of any offence and sentenced to a period of imprisonment of more than twelve months without the option of a fine or ordered to be detained in a rehabilitation centre under any law and such period has not finally ceased to be operative at least three years before the date of completion of his application to be registered or the date upon which it is decided whether or not his name is to be removed from the voters' list, as the case may be; or
 - (c) if he has been convicted of any corrupt or illegal practice under any electoral law and has been declared incapable of being registered as a voter or of voting at an election during any period and the said period has not expired; or
 - (d) if he is subject to an order of court declaring him to be of unsound mind or mentally disordered or defective or is lawfully detained as mentally disordered or defective.
- (2) For the purpose of paragraphs (a) and (b) of sub-section (1)-
- (a) a person who has been granted a free pardon shall be deemed not to have been convicted of the offence in respect of which he has been pardoned; and
 - (b) a period of imprisonment means the full term of a sentence of imprisonment notwithstanding any suspension or remission of the whole or any portion of such sentence.

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Disqualifications from being a member of National Assembly.

25. No person shall be capable of being elected or nominated or of sitting or remaining as a member of the National Assembly-

(a) unless he is over the age of twenty-five years;

(b) if he is, in terms of section 24, entitled to be registered as a voter in any electoral division in the territory and is in fact so registered;

(c) if he has been convicted-

(i) of any offence contemplated by section 41 (1)(a) which in terms of that section would have disqualified him from registration as a voter;

(ii) of the offence of defeating or obstructing the course of justice, or any offence under any law, relating to the illicit dealing in or conveyance of any dependence producing drugs, or any other offence, whether under common law and statute, of which corruption, dishonesty of falsities constitutes an element;

(iii) on account of any conspiracy, incitement or attempt on his part to commit any of the offence contemplated by subparagraph (i) or (ii); or

(iv) of any offence for which he has been sentenced to imprisonment without the option of a fine for a period of not less than twelve months;

(e) if he is an unrehabilitated insolvent,

unless he has received a grant of amnesty or a free pardon, or unless the imprisonment imposed for any such offence has expired, at least ten years before the date of his election or nomination.

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Sessions of National Assembly.

26. (1) Every session of the National Assembly shall be held at the seat of the Government.

(2) There shall be a session of the National Assembly at least once every year, which shall commence on a date determined by the State President: Provided that the period between the last sitting day of the National Assembly in one session and its first sitting day in the next session shall not exceed fifteen months.

(3) A special session of the National Assembly may at any time be called by the State President and at such session only such business as the State President may approve shall be considered.

(4) The Secretary of the National Assembly shall in writing, not less than forty-two days before an ordinary and not less than seven days before a special session of the National Assembly, inform the members of the date and time fixed for, and the business to be considered at, such session.

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Procedure of the National Assembly.

27.(1) All questions in the National Assembly shall, subject to the provisions of subsection (3), be determined by a majority of votes of members present, other than the Speaker or, in his absence, the Deputy Speaker who shall have and exercise a casting vote in the case of equality of votes.

(2) The presence of at least forty-eight members, eligible to vote, of the National Assembly shall be necessary to constitute a meeting of the National Assembly for the exercise of its powers.

(3) On the petition to the Speaker of at least thirty members of the National Assembly, a question in the National Assembly may be determined by the members designated under section 22(1)(b) separately, in which case such a question shall be determined only if a majority is reached in both groups: Provided that -

- (a) an Appropriation Bill in terms of section 28(1) shall not be deliberated and voted on separately;
- (b) in the case of any other Bill, when a majority vote cannot be reached in both groups after a division has been requested, the National Assembly shall not proceed with that Bill during the same session; and
- (c) when such Bill is introduced in the same form during the next session of the National Assembly, no such division as regards the vote on such a Bill shall take place.

(4) The National Assembly may from time to time adopt standing rules and orders not inconsistent with this Constitution, for the regulation and conduct of its proceedings and the dispatch of business, for the passing, entitling and numbering of laws and for the presentation of Bills to the State President.

(5) Subject to the rules and orders referred to in subsection (4) -

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- (a) the proceedings of the National Assembly shall be open to the public; and
- (b) there shall be freedom of speech and debate in and before the National Assembly and any committee thereof for every member of the National Assembly and such freedom shall not be liable to be impeached or questioned in any court or place outside the National Assembly.

(6) No civil or criminal proceedings shall be instituted against any member of the National Assembly, nor shall such member be liable to arrest or imprisonment or for damages, by reason of any matter or thing which he may bring by petition, bill, resolution, motion or otherwise or may have said in or before the National Assembly or any committee thereof.

(7) No person shall be liable in damages or otherwise for any act done within the legal powers of the National Assembly and under its warrant or other authority.

(8) No member or servant of the National Assembly shall, while in attendance on the National Assembly, be obliged to appear as a party or as witness in any civil proceedings in any court that holds its sitting elsewhere than at the seat of the National Assembly, and a certificate by the Speaker stating that such member or servant is in attendance on the National Assembly shall be sufficient proof of such attendance.

Bill appropriating public funds or imposing taxation.

28. Any Bill which appropriates revenue or moneys for the ordinary actual services of the Government shall deal only with such appropriation and shall be known as an Appropriation Bill.

Signature and enrolment of Acts.

29. A Bill adopted by the National Assembly shall, become a law upon

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having been assented to, and a fair copy thereof, in the Setswana, English or Afrikaans language, having been signed by the State President:

Provided that, where the Bill adopted by the National Assembly was made available to and considered by the National Assembly in only one or two of the said languages, the State President shall only sign a copy of such Bill of which the text is in the language or in one of the two languages, (as the case may be) in which such Bill was so made available and considered.

Proclamation and commencement of law.

30.(1) The Secretary of the National Assembly shall cause every law to be published in the Gazette.

(1A) Any law assented to by the State President in terms of section 29(1) may, for the purposes of publication in terms of subsection (1) of this section and section 13(1) of the Interpretation Act, 1957 (Act No.33 of 1957), where -

- (a) such law was, as a Bill considered and adopted by the National Assembly in only two of the official languages of the territory, be published in such two languages; or
- (b) such law was, as a Bill, considered and adopted by the National Assembly in only one of the official languages of territory be published in that language:

Provided that such law shall be published in the remaining official language or languages (as the case may be), within six months as from the date upon which it was published in accordance with the provisions of paragraph (a) or (b), as the case may be.

(1B) The provisions of subsection (1A) shall mutatis mutandis apply in respect of the publication of any proclamation, regulation, by-law or notice issued, made or given by the State President, any Minister of State or any other authorised person in terms of any law in force in territory.

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(2) A law shall come into operation on the date of its publication in the Gazette unless the law itself provides that it shall come into operation on another date or on a date to be fixed by notice thereunder.

Matters of privilege.

31.(1) Anything said by any member of the National Assembly in or before the National Assembly or any committee thereof, whether as such a member or as witness, shall be deemed to be a matter of privilege.

(2) If, in any civil or criminal proceedings which have been instituted for or on account or in respect of any matter of privilege, there is produced to the court by the defendant or the Secretary of the National Assembly stating that the matter in question is one which concerns the privilege of the National Assembly, the court shall forthwith stay the proceedings which shall thereupon be deemed to have been finally determined.

CHIEFS, HEADMEN AND REGIONAL BOUNDARIES

Chiefs to retain personal status.

32.(1) The chiefs in the territory shall retain their status.

(2) Chiefs and headmen shall exercise their authority in terms of an Act of Parliament.

Designation of chiefs.

33.(1) The designation of chiefs, acting chiefs, headmen, acting headmen and independent headmen shall, subject to the provisions of subsection (2) vest in the State President.

(2) The creation of any new chieftainship, or sub-chieftainship shall not be confirmed by the State President except after consideration of a

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recommendation of the Executive Council.

Regional boundaries.

34. Parliament shall not alter the boundaries of any regional authority area for any purpose, other than the inclusion therein, of land added to territory except after consultation with every regional authority affected thereby.

THE JUDICATURE

Establishment and Constitution of Supreme Court.

35.(1) There is hereby established the Supreme Court of the territory in which shall be vested the judicial power of the territory and which shall comprise -

- (a) the Appellate Division, consisting of the Chief Justice and such number of judges of appeal as may be required by law; and
- (b) the General Division, consisting of the Judge-President and such number of other judges as the Minister of Justice may from time to time determine,

and who shall be duly appointed by the State President: Provided that the preceding provisions of this subsection shall not be construed so as to preclude the person appointed as Chief Justice from also being appointed as Judge-President.

(2) The Supreme Court shall be a court of record and shall have for its use a distinctive seal, which shall be in the custody of the Registrar 27/21

of the Court.

(3) The seat of the Supreme Court shall be at the capital of the territory and the Minister of Justice may, after consultation with the Chief Justice, by notice in the Gazette appoint any other place in the

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territory as an additional seat of the Supreme Court.

Jurisdiction of Supreme Court.

36. Subject to the provisions of this Constitution and of any other law (including the common law) the Supreme Court shall -

- (a) have jurisdiction over all persons residing or being in the territory; and
- (b) have power -
 - (i) to hear and determine all civil and criminal matters, proceedings or causes arising within the territory;
 - (ii) to hear and determine appeals from all lower courts; and
 - (iii) to review the proceedings of all lower courts.

Rules of Court.

37.(1) Subject to any contrary provision existing in any other law, the Chief Justice may make rules regulating the conduct of proceedings in the Supreme Court and prescribing matters which may be necessary to prescribe in order to ensure the proper dispatch and conduct of the business of that Court, and may amend, substitute or withdraw any rule so made.

(2) All rules made under subsection (1), and every amendment, substitution or withdrawal thereof, shall be made known by notice in the Gazette.

Circuit courts.

38. The Chief Justice may by notice in the Gazette -

- (a) divide the territory into circuit districts and from time to time in like manner alter the boundaries of any circuit district; and

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- (b) determine the times when and the places where the Supreme Court shall sit in any such circuit district for the hearing of cases.

Administration of justice.

39.(1) The administrative aspects of the functioning of the courts throughout the territory shall be under the control of the Minister of Justice.

(2) There shall be appointed, by the Minister of Justice, subject to the provisions of the laws governing the public service and to the provisions of section 90(1), an attorney-general who -

- (a) shall have authority to prosecute in the name of the State any person charged with an offence before any court;
- (b) may perform any function which is necessary for or incidental to the exercise of such authority; and
- (c) shall have such other powers and competence as may be conferred upon him by or under any other law.

(3) The attorney-general shall, in the exercise of his powers, authorities and functions be under the direction and control of the Minister of Justice who may after consultation with the Chief Justice set aside or vary any decision of the attorney-general and himself either generally or with reference to a particular matter, exercise or perform any power, authority or function of the attorney-general.

(4) The Minister of Justice may, subject to the laws governing the public service, appoint one or more deputy-attorney-general who, under the direction and control of the attorney-general may do anything that the attorney-general may lawfully do.

(5) Whenever for any reason the attorney-general is absent or unable to carry out the functions of his office or whenever the office of the attorney-general becomes vacant, the Minister of Justice may appoint any

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deputy attorney-general, or, if none is available, any other qualified officer of the public service to act temporarily in the place of the attorney-general.

Recognition and application of customary law.

40.(1) In all proceedings involving questions of tribal customs followed by persons in the territory shall be in the discretion of the court to decide such questions in accordance with the tribal law applying to such customs except in so far as the court may find that such law has been repealed or modified or is contrary to public policy or opposed to the principles of natural justice: Provided that no such findings shall be made by any court in respect of the custom providing for the payment of boodi.

(2) The court shall not, in the absence of any agreement between the parties regarding the system of law to be applied in any such proceedings, apply any system of customary law other than that -

- (a) which is observed at the place in territory where the defendant or respondent resides, carries on business or is employed, or
- (b) if more than one system of customary law is in operation at that place, which is observed by the tribe to which the defendant or respondent belongs.

(3) For the purposes of subsection (1) a court including the Supreme Court in applications, trials and appeals may summon to its assistance in an advisory capacity such assessors as the court may deem necessary and the opinions of any such assessors shall be recorded and shall form part of the record of the proceedings.

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deputy attorney-general, or, if none is available, any other qualified officer of the public service to act temporarily in the place of the attorney-general.

Recognition and application of customary law.

40.(1) In all proceedings involving questions of tribal customs followed by persons in the territory shall be in the discretion of the court to decide such questions in accordance with the tribal law applying to such customs except in so far as the court may find that such law has been repealed or modified or is contrary to public policy or opposed to the principles of natural justice: Provided that no such findings shall be made by any court in respect of the custom providing for the payment of hogadi.

(2) The court shall not, in the absence of any agreement between the parties regarding the system of law to be applied in any such proceedings, apply any system of customary law other than that -

- (a) which is observed at the place in territory where the defendant or respondent resides, carries on business or is employed, or
- (b) if more than one system of customary law is in operation at that place, which is observed by the tribe to which the defendant or respondent belongs.

(3) For the purposes of subsection (1) a court including the Supreme Court in applications, trials and appeals may summon to its assistance in an advisory capacity such assessors as the court may deem necessary and the opinions of any such assessors shall be recorded and shall form part of the record of the proceedings.

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FINANCE

Revenues vest in State President.

41. All revenues and other moneys received from any source whatsoever for the purpose of the administration of territory shall vest in the State President.

Territory Revenue Fund.

42.(1) Into the Territory Revenue Fund there shall be paid all the revenues raised or received by the State President other than any moneys that are payable by or under any law into a fund established for a specific purpose.

(2) Subject to the provisions of section 70, no moneys shall be withdrawn from the Revenue Fund except under appropriation made by a law of Parliament.

State President may issue special warrant.

43.(1) The State President may by special warrant under his hand authorise the issue of money from the Revenue Fund -

- (a) to defray unforeseen expenditure of a special character which is not provided for in an appropriation law and which cannot without serious injury to the public interest be postponed until adequate provision can be made therefor by Parliament; or
- (b) to meet an excess under any head of expenditure in any appropriation law.

(2) The total sum which the State President may authorise under sub-section (1) shall not any time exceed five percent of the annual appropriation at its next ensuing session.

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Requirements for issue out of Revenue Fund.

44. No issue shall be made out of the Revenue Fund except in pursuance of a requisition from an accounting officer with a warrant signed by the State President and no such warrant shall have effect unless it is countersigned by the Auditor-General or a person acting under his general or special authority.

Annual estimates.

45. The annual estimates of revenue and expenditure for the territory shall be prepared by the Executive Council, and shall thereafter be submitted by the Minister of Finance to the National Assembly for appropriation.

Appointment of Auditor-General.

46. The State President shall, subject to the provisions of law appoint an Auditor-General whose conditions of service shall be prescribed by the National Assembly to whom he shall be responsible for the proper exercise and performance of his duties.

GENERAL

Public Service Commission.

47. There shall be a Public Service Commission which shall consist of a Chairman and not more than four other members appointed by the State President in a full-time or part-time capacity.

Liability of the State in respect of acts of its servants.

48.(1) Subject to the provisions of subsection (2) any claim against the

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State, which would if that claim had arisen against a person be the ground of an action in any competent court, shall be recognisable by such court, whether such claim arises out of any contract lawfully entered into on behalf of the State or out of any wrong committed by any servant and within the scope of his employment as such servant.

(2) No proceedings of any nature shall be brought under subsection (1) if a period of twelve months has elapsed from the date on which the plaintiff became aware of the cause of action and unless notice in writing of the intention to bring such proceedings and of the cause thereof has been given to every defendant at least one month before the commencement of the proceedings.

(3) In any proceedings instituted by virtue of the provisions of subsection (1) the Minister of the department concerned may be cited as nominal defendant or respondent.

(4) No execution, attachment, or like process shall be issued against the nominal defendant or respondent in any proceedings under this section or against the property of the State but the amount required to satisfy any judgment or order against such nominal defendant or respondent shall be paid from public funds.

(5) Nothing in this section contained shall affect any provision of any other law which -

- (a) limits the liability of the State or any department or other institution thereof in respect of any act or omission of its servants;
- (b) prescribes a different period within which a claim shall be made in respect of any such liability; or
- (c) imposes conditions on the institution of any proceedings.

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REPEAL AND AMENDMENT OF CONSTITUTION

Repeal and amendment of constitution.

49.(1) Parliament may repeal or amend any provision of sections 1 to 49 (inclusive) of this Constitution with a two-thirds majority of its members present in the National Assembly: Provided that in the case of repeal or amendment to sections 1 to 11, a seventy per cent majority vote shall be obtained.

TRANSITIONAL AND SAVING PROVISIONS

Citizenship.

50.(1) Citizens of the territory shall be -

- (a) All Batswana as defined by an Act of Parliament;
- (b) any other person legally domiciled in the territory at independence for a period of five years or more who applies and is accepted as a citizen; and
- (c) any other person who apply and is accepted as a citizen.

(2) Any citizen shall have the right to renounce his citizenship of the territory.

State departments and Ministers.

51. Any department of State in existence immediately prior to the commencement of this Constitution, shall be deemed to have been established under section 18(1) and any Minister appointed under that section to administer such department and holding office immediately prior to such commencement, shall be deemed to have been appointed under that section to administer that department, provided that such Minister shall make and subscribe the prescribed oath.

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Duties, powers, authorities and functions of chiefs and headmen to remain.

52. Notwithstanding anything in this Constitution contained all duties, powers, authorities and functions lawfully exercised by chiefs and headmen immediately prior to the commencement of this Constitution shall remain in force until varied or withdrawn by the competent authority.

Powers, authorities and functions of tribal, community and regional authorities to remain.

53. Notwithstanding anything in this Constitution contained all powers, authorities and functions lawfully exercised by tribal, community and regional authorities in the territory immediately prior to the commencement of this Constitution shall remain in force until varied or withdrawn by Parliament.

Vesting and use of certain land.

54. All Government land which at the commencement of this Constitution or at any time thereafter is reserved for occupation by the tribes or communities residing thereon shall -

- (a) vest in the State President subject to any existing charge or obligation on or over such land or otherwise lawfully affecting the same;
- (b) continue to be used and administered for the settlement, support, benefit and material and moral welfare of such tribes or communities; and
- (c) not be alienated or in any way diverted from the purpose for which land is reserved except under the authority of an Act of Parliament generally or specially adopted in this regard: Provided that notwithstanding the provisions of such an Act any such alienation or diversion shall only be effected in

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consultation with the tribe or community concerned.

Continuation of local authorities.

55. Notwithstanding anything in this Constitution contained every local authority in existence in any district of the territory at the commencement of this Constitution, including every regional, tribal and community authority, shall continue in existence and in operation until disestablishment or altered in accordance with law.

High Court of territory appointment of judges, rules of court and appointment of attorney-general.

56. The High Court established under section 34 of the Bantu Homelands Constitution Act, 1971 (Act 21 of 1971), shall, as constituted immediately prior to the commencement of this Constitution, be deemed to be the Supreme Court and to have been established and constituted as such by section 35(1).

Advocates and attorneys.

57.(1) No person shall practise the profession of an advocate, an attorney, a notary or a conveyancer before or of the Supreme Court of the territory unless he has been duly admitted or enrolled as such in accordance with the laws of force in the territory governing the admission and practice of advocates, attorneys, notaries or conveyancers, as the case may be.

(2) All advocates and attorneys entitled immediately prior to the commencement of this Constitution to practice in the High Court referred to in section 56(1) shall be entitled, subject to the provisions of the aforesaid laws, to practice in the Supreme Court.

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Provisions relating to existing courts.

58. Subject to the provisions of this Constitution -

- (a) every court in existence in a district of the territory immediately prior to the commencement of this Constitution, other than the court constituted under section 10 of the Bantu Administration Act, 1927 (Act 38 of 1927), shall remain in existence and in operation in accordance with its existing constitution and jurisdiction until altered or disestablished by or under any Act of Parliament;
- (b) the laws which immediately prior to the commencement of this Constitution applied to the High Court referred to in section 56(1) shall apply mutatis mutandis to the Supreme Court: Provided that any reference in any laws to the "Minister of Bantu Administration and Development" shall be construed as a reference to the Minister of Law and Order and the Secretary of Law and Order respectively;
- (c) all proceedings pending immediately prior to the commencement of this Constitution -
 - (i) in any court considered under section 10 of the said Bantu Administration Act, 1927 and in the aforesaid High Court shall stand removed to the magistrate's court of the district and the Supreme Court, respectively, which shall have jurisdiction to hear and determine the same; and
 - (ii) in any court constituted or established under section 33 of the said Bantu Administration Act, 1927 or section 10 of the Bantu Administration Act, 1927, Amendment Act, 1929 (Act 9 of 1929) shall be continued and concluded in every respect as if this Constitution had not been passed;

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- (d) all judgments and orders of the said High Court or any other court (other than the Supreme Court) referred to in paragraph (a) or (c) shall have the same force and effect as if they had been given or made by the Supreme Court or, as the case may be, the court of corresponding jurisdiction in territory.

Application of laws and vesting of rights, etc.

59.(1) Subject to the provisions of this Constitution, all laws which immediately prior to the commencement of this Constitution, were in operation in any district of the territory shall continue in operation and continue to apply except in so far as such laws are substituted by any applicable law of territory or are amended or repealed by Parliament by or in terms of this Constitution: Provided further that, until otherwise provided by Parliament, the laws regulating the affairs of any Department of Posts and Telecommunications or any similar department established under section 18(1) shall be deemed to have been amended to provide for the administration of that department as a department of State and not in accordance with the principles prescribed in the Post Office Re-adjustment Act, 1968 (Act 67 of 1968).

(1A) Upon the addition of any land or territory to the territory -

- (a) all laws, together with all proclamations, regulations, by-laws and notices issued, made or given thereunder, in operation in the territory immediately prior to the date of such addition, shall, as from such date apply and be of force in the land or territory so added except such of the said laws (if any) as may, in relation to any such land or territory in question, be specifically excluded, and which shall not so apply and be of force; and
- (b) all laws in operation in such land or territory immediately

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prior to the date of such addition, shall, as from such date, lapse and cease to be of force in the land or territory so added except such of the lastmentioned laws (if any) or such parts thereof as may, in relation to any such land or territory in question, be specified in this Constitution and which shall, together with all proclamations, regulations, by-laws and notices issued, made or given thereunder and of force in such land or territory immediately prior to the date of such addition, continue in operation and continue to apply in such land or territory until such time as it is substituted, amended or repealed by or in terms of an Act of Parliament.

(1B) The exclusion or continuation, in terms of paragraph (a) or (b) of subsection (1A), of laws for any particular land or territory being added to territory -

(a) shall be effected by way of an Act of Parliament specifically adopted for that purpose in relation to the land or territory in question: Provided that -

(i) if Parliament is then not in session and it is not practicable to convene parliament timeously for the purpose of adopting such an Act before the date of the addition of any land or territory to the territory, the State President acting in consultation with the Executive Council, may by way of proclamation in the Gazette, effect the said exclusion or continuation in relation to the land or territory in question, and any such proclamation shall be laid on the table of the National Assembly for ratification within fourteen days after the commencement of its next ensuing session.

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(2) All rights, powers, authorities, duties, obligations and functions which were vested in or devolved upon a Minister or other authority or person in the Republic of South Africa (including any authority or person in any provincial administration) by or under any law of the Republic of South Africa which continues to apply in the in terms of subsection (1) and (1A) shall vest in or devolve upon the corresponding Minister, authority or person exercising similar powers or performing similar duties or functions in territory and in the absence of such corresponding Minister, authority or person, upon the Minister, authority or person designated by the State President, and any regulation, rule, order, notice, approval, registration or authority made, given or granted and any other authority or person in the Republic of South Africa prior to the commencement of this Constitution shall in relation to the administration of the territory, be deemed to have been made, given, granted or taken by such corresponding Minister, authority or person in the territory.

(3) Any reference in any law which continues to apply in the territory in terms of subsection (1) or (1A)(b) to -

- (a) the Cape Colony, the Cape Province, the Zuid-Afrikaansche Republiek, the Orange Free State, the Transvaal, the Union of South Africa or the Republic, shall be construed as a reference to the territory;
- (b) the Crown, the King, the Queen, the Governor-General, Governors or Lieutenant-Governors shall be construed as a reference to the territory or the State President, as the circumstances may require;
- (c) the King-in-Council, the Queen-in-Council or the Governor-General-in-Council, shall be construed as a reference to the State President;
- (d) The Cabinet or the Cabinet of Territory, shall be construed

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at the time at which he would have been entitled to retire if he had not become a servant of the territory.

Certain agreements binding on the territory.

41. All rights and obligations under conventions, treaties or other similar agreements which were binding on the Government of the territory immediately prior to the commencement of this Constitution shall be rights and obligations of the territory.

Institution or continuation of legal proceedings.

43.(1) All criminal proceedings shall be instituted in the name of the territory and any criminal proceedings which have not been concluded before the commencement of this Constitution, or which although concluded may thereafter be reopened, shall be continued in all respects as if this Constitution had not been passed, save that such proceedings shall be continued in the name of the territory.

(2) Any civil proceedings by or against any Minister as representing the Government of this self-governing territory which have not been brought to finality before the commencement of this Constitution, or which may have been concluded may thereafter be reopened, may be continued against that Minister but as representing the Government.

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SUBMISSION TO THE TECHNICAL COMMITTEE ON CONSTITUTIONAL MATTERS OF THE NEGOTIATING COUNCIL

16 MAY 1993

The Ximoko Progressive Party would wish to avail itself of the opportunity of submitting to the Technical Committee on Constitutional Matters of the Negotiating Council its views on matters relating to future constitutional development. These, and other views, will be amplified and canvassed as appropriate in the debate of the Council on the content of reports of the Technical Committee.

1. The Issue of Self-determination and the Rights of Minorities

1.1 The position of the Ximoko Progressive Party on the Rights of National, Regional and Linguistic Minorities and on the self-determination of peoples is contained in the Attachments 1 and 2, originally prepared for Working Group 2 of CODESA.

1.2 The Ximoko Progressive Party is of the view that the issue of self-determination has a multiplicity of facets and cannot be considered in isolation. Rather, the many facets of self-determination need to be addressed as a natural part of the debate on such issues as the nature and form of the State, subsidiarity as applied to second- third- and lower-tier Governments, the delimitation of areas of jurisdiction of lower-tier Governments and the functions of such Governments, etc.

2. The Constitution-making Process

2.1 A broad perspective on the Ximoko position is provided by Attachment 3 which encapsulates basic principles formulated in respect of the CODESA debate.

2.2 In essence the position of the Ximoko Progressive Party in regard to the matter of constitution-making is as follows:

2.2.1 Adoption

The process of transition to a new South Africa must proceed constitutionally, with any new Constitution, be it interim or final, being adopted in terms of the Constitution of the day by the Legislature of the day. The particular constitutional arrangements of the day will determine how the relevant legislature is structured, but the point is that the necessary

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enactments will need to be made along the way by the relevant Legislature to give constitutional effect to each step along the way of constitutional development.

2.2.2 Drawing up the Constitution

The process of drawing up of the Constitution (either interim or "final") in its turn involves two distinct actions namely:

- setting the parameters (guidelines or principles) in terms of which the Constitution has to be drafted; and
- drafting the Constitution itself.

2.2.2.1 Establishing Constitutional Principles

This aspect is seen to be the major constitution-making function of the Multi-Party Negotiating Process. It is the view of the Ximoko Progressive Party that no benefit can be derived from truncating this process on the pretext that it is not the work of the Multi-Party structures to become involved in matters of detail. The fact of the matter is that the greater the range of issues upon which multi-party consensus can be achieved, the greater will be the universality of the Constitution finally emanating from the Constitution-making process in terms of its acceptance by the broadest spectrum of political persuasion in the country. Ximoko therefore advocates, as it did at CODESA, the establishment at the multi-party level of as complete a set of unambiguous and comprehensive constitutional principles germane to the content of the new Constitution as possible.

The Ximoko Progressive Party is strongly of the view that the process of determining the content of the Constitution should be as inclusive as possible and therefore is the work of multi-party structures. Certainly it should not be a matter to be determined by simple majoritarianism since an important role of a Constitution is to regulate the behaviour of the majority toward the individual the determination of the rules of this game therefore cannot, in principle, be left to the unqualified will of the majority. The more parties and interest groups who are directly involved in the process, preferably and ideally right up to the point of production of the final product for consideration by the Legislature, the more universal will be its acceptance.

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2-2.2.2 Drafting the Constitution

This will be an essentially technical task provided that sufficient progress has been made at the multi-party level with the establishment of comprehensive and unambiguous principles. The Ximoko Progressive Party would foresee a two-stage process including first an Interim/Transitional Constitution whose drafting will be superintended by the Multi-Party process and a "final" constitution drawn up and enacted during the period of transition, in terms of the Interim/Transitional Constitution and according to the Constitutional Principles emanating from the Multi-Party Negotiating Process. In accordance with its concern that the shape and form of the Constitution should at all times encapsulate not so much the views of the majority but rather of the broadest spectrum of interests in the community, Ximoko believes that even in the transitional phase the process of determination of the shape of the "final" Constitution for enactment by the Transitional Legislature should also be as inclusive of political and other interest groups in the South African society as possible.

3. Constitutional Principles

3.1 The Ximoko Progressive Party stands for a multi-party, non-racial, non-sexists constitutional democracy in South Africa based upon universal adult suffrage and displaying the following essential features:

- There will be a separation of powers between the Legislature, the Executive and the Judiciary with the necessary constitutional safeguards;
- there will be representative government at the First-, Second-, and Third Tier levels with clearly defined and separate powers and functions;
- jurisdiction of Second- and Third-Tier government, both geographic and functional, must be such as to promote economic growth and development;
- in order to bring Government closer to the people there will be maximum devolution of powers to lower tiers of government consistent with the capacity of lower tiers to exercise these powers in the interests of their constituencies;
- there will be the necessary constitutional safeguards to preclude the progressive centralisation of powers;
- the entrenched Constitution will be the Supreme Law and will be protected and impartially applied by the independent Judiciary;

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- Fundamental Rights will be entrenched and both constitutionally protected and promoted in a justiciable Bill of Rights;
- the principle of proportional sharing of power rather than the winner-takes-all approach will be fundamental;
- there shall be free association and the autonomy of all structures of Civil Society will be Constitutionally entrenched.

3.2 Attachment 4, produced for the CODESA debate, provides some amplification of the Ximoko Progressive Party's position on the balance between Central, Regional and Local Government.

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XIMOKO PROGRESSIVE PARTY

WORKING GROUP 2

24 FEBRUARY 1992

POSITION PAPER ON THE RIGHTS OF NATIONAL, RELIGIOUS AND LINGUISTIC MINORITIES

The Ximoko Progressive Party subscribes fully to the principles enunciated in the Chapter on Minority Rights contained in the Final document of the Copenhagen Meeting: Conference of the Human Dimension of the Economic and Social Council of Europe (1990) as follows:

1. Questions relating to national minorities can only be resolved in a democratic political framework based on the Rule of Law functioning with an independent Judiciary;
2. The existence of national minorities and cultural diversity should be recognised not as an impediment to the realisation of nationhood within the context of a nation state, but rather as an enriching influence on the quality of that Society whose diversity is worthy of protection;
3. Persons belonging to national minorities have a right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the Law;
4. The principle of Free Association will apply, that is to say, to belong to a national minority is a matter of a person's own individual choice and no disadvantages may arise from the free exercise of that choice. Persons have the right freely to express, preserve and develop their cultural, linguistic or religious identity free of any attempts at assimilation against their will. In particular they will have the right:
 - 4.1 To use freely their mother tongue in private and in public;
 - 4.2 To establish and maintain their own educational, cultural and religious institutions, organisations and associations and to seek voluntary financial and other contributions as well as public assistance in conformity with national legislation provided only that such organisations do not propagate racial exclusivity;
 - 4.3 To profess and practice their religion and to conduct religious education in their mother tongue; and
 - 4.4 To establish and maintain unimpeded contact with similar groups across national frontiers.
5. Persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State, will be ensured adequate opportunity for instruction in and of their mother tongue as well as, wherever possible and necessary, for its use before public authorities.

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6. The promotion of the interests of national minorities could possibly be achieved by granting appropriate degrees of autonomy to such minorities in a Constitution in addition to the protection of the rights of persons belonging to such minorities in a constitutionally enshrined Bill of Rights.
7. None of the above commitments may be interpreted as implying any right to engage in any activity in contravention of the provisions of the Constitution or of international human rights conventions.

The Ximoko Progressive Party generally supports an approach in relation to national minorities which will encompass:

- effective measures, including legislation where necessary, to provide protection against acts that constitute incitement to violence directed at persons or groups and based on national, racial, ethnic or religious discrimination, hostilities or hatred and including acts calculated to demean or prejudice such minorities;
- commitment to appropriate and proportional measures to protect persons or groups who are subject to threats or acts of discrimination, hostility or violence as a result of racial, ethnic, cultural, linguistic or religious identity and to protect their property;
- promotion of tolerance and understanding between all groups and persuasions in the Society; and
- endeavours to ensure that the objectives of education include special attention to the problem of racial prejudice and the development of respect for different civilisations and cultures.

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XIMOKO PROGRESSIVE PARTY

WORKING GROUP 2

24 FEBRUARY 1992

POSITION PAPER ON THE SELF DETERMINATION OF PEOPLES.

The views of the Ximoko Progressive Party on the question of the self determination of peoples are a natural extension of its views regarding the rights of minorities already tabled. Its views on the self determination of peoples are as follows;

1. Self determination within a nation state according to international juridical convention is not an unqualified right (Refer Vol 1 of the S.A. Law Commission Report on Constitutional Models) Rather, self determination must generally be viewed as a negotiable option for the exercise of rights and, in the view of the XPP, should not reflect the unilateral preference of the minority or people concerned, but the democratic will of the nation in its entirety;
2. Restricted autonomy could be granted only in accordance with the will of the nation to a voluntary minority group or people conforming to the requirements of international law;
3. Such autonomy should not be on a racial basis;
4. It should not negatively impact the rights and interests of non-members of the minority or people concerned;
5. Autonomy shall be feasible on points such as the size of the minority or the numbers of the people concerned, geographic concentration, and so on;
6. It shall be financially and economically affordable and viable and should not be such as to compromise the integrity of the State nor the principles and tenets reflected in its Constitution;

The Ximoko Progressive Party recognises the relevance and significance of these principles both to the debate on the future of the TBVC states and the matter, for example, of an Afrikaner state. In the specific case where a form of territorially-based self determination is contemplated the XPP would favour the inclusion of the following additional principles:

- The relevant area shall preferably have historical or symbolic significance for the minority or people concerned and shall be an area in which they form a majority;
- It will not be reserved for occupation on a racial or other preferential basis;
- Ownership of land will change hands through the operation of mechanisms which will not advance racial exclusivity or prejudice the constitutional

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rights of any individual;

- All residents will enjoy full political and other rights in accordance with the national Constitution and no discrimination on the basis of race, colour or creed will be countenanced.

The Ximoko Progressive Party is not opposed in principle to a degree of self determination for national minorities or peoples, provided such self determination accords with the above principles, and persuasive arguments can be advanced in support of this expedient as the most desired option for the advancement of the cause of human rights in South Africa.

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Presented to Working Group 2.

Attachment 3

XIMOKO PROGRESSIVE PARTY

WORKING GROUP 2

23 MARCH 1992

POSITION PAPER ON THE CONSTITUTION-MAKING PROCESS

1. COMPONENTS OF THE PROCESS

Essentially two components of the process of constitution-making may be identified, namely, the drawing-up of the Constitution and the adoption of the Constitution by way of some enactment which will give it the force of law. The distinction is useful since different considerations apply in respect of the two components.

2. PRINCIPLES AND PROPOSALS REGARDING THE PROCESS OF CONSTITUTION MAKING

It has been suggested that, in short, the objects of a Constitution are to limit the arbitrary action of the government, to guarantee the rights of the governed, and to define the operations of the sovereign power. In a constitutional state the Constitution enjoys special status as a social contract providing for the manner in which a nation is governed. To the extent at least that the Constitution serves to define and to guarantee the rights of the governed, both individually and collectively, it is necessary to take account of both the individual and collective dimensions in the process of constitution-making.

The special character of Constitutions is universally acknowledged inter alia by requiring special majorities for their amendment, etc.

It is for the very reason that the Constitution has a generally recognised special character that the Ximoko Progressive Party argues that the process of constitution-making should be as inclusive as possible. In the final analysis it is suggested that the test of a "good" constitution for South Africa is not to be found in the numerical measure of support for that Constitution alone, but in the degree to which it achieves its objects in respect of each and every individual and interest group in that Society.

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Following this line of thought it would seem that ideally constitution-making mechanisms should accommodate the full variety and spread of viewpoints and interests present in the society. To the extent that the process of electing constituent bodies as part of the constitution-making mechanism results in a narrowing of the spread of interests represented by marginalising smaller interest groups and merely increasing the proportional representation of larger groups, the process is not ideally suited for the purpose of constitution-making.

2.1 Drawing Up the Constitution

The process of drawing-up the Constitution in its turn involves two identifiable steps namely:

- Establishing the guidelines within which drafting is to take place and:
- Drafting the Constitution itself.

2.1.1 Establishing the Guidelines

CODESA has accepted that it has the task inter alia of generating constitutional principles and has handed down this brief to Working Group 2. All parties to CODESA have already conceded that so fundamental a task as the generation of constitutional principles should be entrusted to CODESA, despite the fact that it is not an elected body. In fact some participating parties go so far as to seek to make the relevant principles produced by CODESA* binding upon the further constitution-making process.

The Ximoko Progressive Party has no difficulty with this approach since it considers CODESA* to be broadly inclusive of a wide range of interests and most of the major players. The situation can only improve if ongoing efforts to draw others who are as yet not part of the process into CODESA* meet with success.

* For CODESA read ^{"the"} Multiparty Negotiating Process

Ximoko places a much higher premium for present purposes upon such a broadly-based process and the consensus resulting from it than it does upon a process involving a smaller number of elected participants representing a narrower range of interests and producing decisions on the basis of some albeit qualified majority.

For this reason it would seem imperative to explore dynamically and to the full, the potential for consensus at CODESA* in order to generate as comprehensive a set of guidelines as possible which will serve to define in unambiguous terms the major structural features of the Constitution. This would involve considerably more negotiation and debate of major issues than has hitherto taken place in Working Group 2 at CODESA. A disturbing feature of the points of consensus produced so far has been their relative superficiality and the impression which is created that the really important and fundamental matters upon which there is no ready consensus are merely conveniently shelved in the interests of good order.

The Ximoko Progressive Party is firmly convinced that full exploitation of the potential of CODESA* is important if we are to achieve some success in producing a Constitution for South Africa whose acceptance is universal.

2.1.2

Drafting the Constitution

Whilst the Ximoko Progressive Party notes the call for an elected body to draft the Constitution, it does not subscribe to the conventional wisdom and is not yet persuaded of the necessity for such a step. The fact that this requirement has become an emotive issue in some quarters should not influence the better judgement of the Working Group. The fact is that if CODESA* makes the necessary effort and proceeds far enough in establishing meaningful and substantial principles and guidelines defining the salient features of the new Constitution,

* For CODESA read "the Multiparty Negotiating Process"

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the drafting of the Constitution itself would be a largely technical task and Ximoko is not persuaded of the need for a specially elected body merely to accomplish this task. If CODESA* were not to proceed far enough and issues as yet remained to be resolved by a drafting body which was not broadly based and on any basis other than consensus, the Ximoko Progressive Party would have some severe misgivings.

It is therefore suggested that an alternative worthy of consideration would be for CODESA* to assume responsibility for the drafting of the Constitution in accordance with the guidelines produced by Working Group 2.** This would give the advantage of continuity in the process of drawing up the draft Constitution. It would, also accommodate a wider spectrum of minority interests than would be practical in all but the largest elected body and would not conflict with the legislative culture in South Africa where draft legislation for consideration by the legislature is generally not produced by elected bodies but by legally qualified drafters advised by specialists.

The Ximoko Progressive Party is convinced that with the co-operation of all parties CODESA can acquire the status in the eyes of the people of South Africa satisfactorily to discharge the task of drafting a Constitution for South Africa.

Were the Constitution to be drafted by some body other than CODESA it is considered even more desirable that the guidelines and principles produced by CODESA should be binding and sufficiently comprehensive to unambiguously define all the salient features of the Constitution.

2.2

Adopting the Constitution

The Ximoko Progressive Party supports the view that the process of transition toward a new South Africa must proceed constitutionally with each step in the process of constitutional development being enabled by the necessary amendments to the existing Constitution along the way.

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* For CODESA read "the Multiparty Negotiating Process"
** In the present context there would be guidelines agreed to in advance

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This should apply also to the new Constitution by requiring it to be given legal effect by a body competent to do so in terms of the existing Constitution as amended.

In its proposals regarding interim and transitional governmental arrangements the Ximoko Progressive Party has envisaged two phases, an interim phase and a transitional phase.

Envisaged in the transitional phase is a transitional legislature in the form of an elected Transitional Assembly. It is considered practical and desirable that this Transitional Assembly, elected in terms of rules and procedures laid down by CODESA, and an integral part of the machinery of Transitional Government, should adopt the new Constitution and give it the force of law. This would avoid the necessity of additional elections for the specific purpose of adopting the new Constitution.

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XIMOKO PROGRESSIVE PARTY

Working Group 2

Subject: The Balance Between Central, Regional and Local Government

1. POINTS OF DEPARTURE

The stated position of the Ximoko Progressive Party is that:

- there will be representative government at the First-Second- and Third-tier levels with clearly-defined and separate powers and functions;
- jurisdictions of Second- and Third-tier governments, both geographic and functional, must be such as to promote economic growth and development; and

there will be maximum devolution of power to lower tiers of government in order to bring government closer to the people with the necessary checks and balances to preclude the centralisation of power. These checks and balances to be clearly circumscribed in the Constitution.

2. DISCUSSION

2.1 Expanding the basis of effective democracy.

2.1.1 The Ximoko Progressive Party is mindful of the observation attributed to Thomas Jefferson over a century and a half ago ".....it is not by the consolidation or concentration of powers, but by their distribution that good government is effected." It is the conviction of the XPP that the more sites of power that exist, the greater the potential checks and balances and the greater the potential for having as many citizens as possible living under the laws and regulations of their own choice. This would require a great deal more than merely the decentralisation of administrations which would at regional level merely execute the will of a centralised authority. Rather, it would require the establishment of truly representative and democratic government at the Second- and Third-tiers with defined and entrenched functions and corresponding autonomy, protected either through a federal constitution or entrenched within the constitution of a unitary state.

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2.1.7. It is the firm belief of the APP that a strong government closer to the people, through the redistribution of power, is essential to effect

be put into place which will ensure a departure from the inertia which has for so long characterised the government of this country. Smaller local and regional governments are generally more flexible or responsive to change than are central governments which are isolated and whose preoccupations tend to be more of the nature of grand ideology.

2.1.8. It is the conviction of the APP that strong and autonomous local and regional governments provide the most compelling instrument for achieving a new society in South Africa.

2.2 Some Objections to Regional and Local Autonomy Frequently Encountered.

2.2.1. The distribution of wealth and income between "rich" and "poor" regions

The argument is frequently encountered that the greater the level of autonomy enjoyed by regions or states within a nation state, the greater the probability of locking poverty into poor states and wealth into rich states. This argument is generally advanced by those who propagate the redistribution of wealth as the primary instrument for social change. It can indeed be persuasively argued that natural resources and wealth are not necessarily linked, as evident from case studies throughout the world. Far more important determinants of wealth are skills, know-how, and most particularly human resources and institutional arrangements which encourage and foster the best use of those skills. The concept of "rich" and "poor" regions therefore needs to be revisited and carefully considered. However, it would be naive not to accept that in the short- and medium- term transfers of resources from "rich" to "poor" regions would be necessary in pursuit of national objectives. We are convinced that mechanisms could be designed for such reallocation. Empirical research in the Third World would seem to indicate that normative considerations generally tend to be more important constraints than

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success of decentralisation or regionalisation than are material considerations.

2.2.3. Ideological considerations

The perception that strong regionalism provides disunity and a return to some form of tribalism is erroneous and frequently the most important operative constraint on effective regionalism. The perception that nation-building can only be achieved through the centralisation of power has in many African countries in fact led to a gross

misuse of that power by central authorities and the development of a yawning gap between governmental and popular perceptions of what the real needs and priorities of the society are. The ideological argument against strong regional government is more often than not an argument in favour of a centrally-planned economy which has been to the detriment of effective democracy and the economic development of millions in Africa.

3. THE BALANCE OF POWER BETWEEN CENTRAL, REGIONAL AND LOCAL GOVERNMENT

3.1 A Federal or a Unitary State

Central to the debate on the balance of power between the First- and Second-tier levels of government is the question of federalism versus unitarism. The XPR is well aware of the inherent complexity of federal governmental forms but recognises the great advantages which they offer in protecting the autonomy of regions. However, it is also recognised that such systems are inherently rigid and that some flexibility may be desirable in order to allow the country to develop over time toward an optimal dispensation of functions between the various levels of government. The XPR recognises that the notion of unitary regionalism, provided there is sufficient entrenched protection in the Constitution, can provide many of the advantages of federalism but without all disadvantages.

3.2 The Devolution of Powers to Regional and Local Governments

3.2.1 The XPR will provide more detailed proposals

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when the debate has advanced to that stage
however, it is proposed that the devolution of power to the lower tiers of government capable of exercising their own
financial and administrative powers
the overall responsibility of central government
of devolutionary powers to the lower tiers

- 3.2.2 The XPP is in favour of the adoption of the
general principle of limitation of the
autonomy and functions of higher authority and
of the devolution ^{of} all residual powers to lower
tiers.

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1. The first stage of the process is to identify the key areas of concern.

2. The second stage is to develop a clear understanding of the current situation.

3. The third stage is to develop a clear understanding of the current situation. This involves identifying the key areas of concern and developing a clear understanding of the current situation. This involves identifying the key areas of concern and developing a clear understanding of the current situation.

4. The fourth stage is to develop a clear understanding of the current situation. This involves identifying the key areas of concern and developing a clear understanding of the current situation. This involves identifying the key areas of concern and developing a clear understanding of the current situation.

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CONSTITUTIONAL MATTER

19 MAY, 1993

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This document arises out of a process of consultation that culminated in a National Consultative Conference on Regional Policy in March 1993. The original document arose out of a number of meetings jointly convened by the Constitutional Committee, and the Department of Local and Regional Government and Housing of the ANC.

While this consultation process was primarily intended for ANC structures, and the democratic movement in general, the ANC is open to all South Africans. The ANC policy approach to regions is that of building and re-uniting - not re-dividing - a nation.

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SECTION 1

INTRODUCTION

A Heated Debate

The debate on different levels of government in South Africa, and in particular on the degree to which regions should have autonomy, has become heated. The issues are not only what the powers and boundaries of regional and local government should be, but who decides, how and when.

Usually the debate is presented in terms that are both grossly over-simplified and quite wrong. It is said that the choice before South Africa is between a highly centralised state directing a centrally planned economy, allegedly the ANC position, on the one hand, and a highly de-centralised state with a free economy on the other, said to be the South African government's position on the other. Both positions are misrepresented.

The ANC stands for a united, non-racial and non-sexist, democratic South Africa. This means we want a South Africa that is unified but not over centralised. It must have a constitution which provides for democracy at all levels, popular participation at every level of government, and a distribution of powers and functions at national, regional and local level which will best achieve this objective, and also ensure development and eradication of inequalities created by apartheid. This can only take place within a national policy framework.

We in the ANC want democracy and development at all levels, and look forward to the private sector making an essential contribution to the nation's well-being. The

South African government, on the other hand, is really interested in creating disguised NP-dominated homelands, even if this means wrecking the economy and even if it results in promoting population movements so as to concentrate potential voting support in regions of potential NP hegemony. If this were to happen, the bitterness of the past will re-surface in new forms, and just as Balkanisation is bringing disaster to the Balkans, so would its equivalent in South Africa tear our country apart.

We have no problem with the democratic principle that different parties can hold office at national and regional levels. Any healthy democracy recognises that people in a certain area might prefer the opposition party to the governing party at the national level. What South Africa would not be able to bear would be the creation of mini-states ruled by ethnically based parties and pulling in different directions.

The terms unitary states and federal states have both been misused. Many unitary states have federal features and many federal states have unitary ones; the Federal Republic of Germany thus has a more centralised state system than the United States of America, despite their different names. Furthermore, in reality, in both those countries in all but a few relatively minor matters, legislation adopted by the national legislature will override laws adopted by the local states.

What matters is the relationship between the different levels of government and how they all connect up in the total constitutional picture.

Our Objectives

The way that government is structured in each country will inevitably depend very much on its history and on what the purposes of government are seen to be. In the case of South Africa, we are involved in the process of knitting together the state again after the nightmarish dismemberments created by apartheid. We are trying to transform an oppressive state built on division and inequality into a democratic one that serves the interests of the whole South African nation.

Our goal is to enable everyone to live freely and with dignity anywhere in the country, and to create stable and efficient institutions so as to give the best possible chances for the development of democracy, peace and prosperity for all.

The ANC wants to:

- de-racialise our country, so that people can start to think of themselves politically as South Africans holding diverse views, and not as members of this or that racial, ethnic or linguistic group locked into corresponding and definite political compartments;
- progressively integrate, normalise and legitimise the structures of government so that these are no longer seen as instruments of oppression, division and corruption but rather as the means for enabling people to live in tranquillity and get on with and improve their lives;
- discourage political mobilisation on the basis of race, ethnicity or language and especially to prevent state power at any level from being used for purposes of ethnic domination, intolerance and forced removals of populations;

- democratise our land, so that people are as directly involved as possible in shaping their destinies at every level of government;
- minimise the possibilities of abuse of power which could result from the overconcentration of authority in too few hands;
- reduce and eliminate the massive inequalities established by apartheid, by making resources available for the advancement of those oppressed and kept back in the past by racial discrimination and gender oppression;
- progressively do away with the massive imbalances between regions and between urban and rural areas within regions;
- facilitate the development of an integrated, efficient and internationally competitive national economy; and
- enable people to take pride in their culture and language in a spirit of non-racialism, democracy and respect for the language, culture and beliefs of others.

Healing our country, creating the conditions for economic advance, establishing a climate of peace and tolerance and embarking upon orderly and sustainable programmes to improve the lives of the majority, can only be achieved by means of a national effort undertaken with a sense of national responsibility. We can never succeed if we have a multiplicity of conflicting policies carried out by a multiplicity of feuding bureaucracies.

Soft Boundaries

Underlying the whole presentation that follows is a concern for three fundamental and inter-related rights: the right to freedom.

the right to democracy and the right to development.

The basic issue is not what powers should be reserved for the regions and what powers set aside for the central government. Rather, it is what the relationship between central, regional and local government should be in respect of the national, regional and local dimensions of the tasks that face the whole country.

Thus, education, health, housing, employment, transport and economic development, all have to be conducted both at national and sub-national levels within a single national policy framework. Governmental structures will be so organised such that regions will participate fully in the formulation of policy. The issue is not how to separate out exclusive competence for one level as against the other, but how to ensure appropriate responsibility and accountability at each level, and the harmonious interaction of all levels.

Following from this is the necessity to have soft boundaries rather than hard boundaries in relation to different levels of government. While we have to be rigid rather than soft on basic constitutional principles such as multiparty democracy, equality and fundamental rights and freedoms, our institutional arrangements should be as flexible as possible so as to enable them to grow and adapt themselves in the light of experience.

Thus, the provision of services should not stop at this or that hard boundary. Nor should responsibility for development be confined to one hard level of government or the other. Civil service, police and development structures should be designed with a view to harmonising and integrating rather than to sealing off and separating their functions.

Interrelationship of Checks and Balances

Finally, the question of timing is important. We are totally against the prescribing of structures and powers of regional and local government in advance of the process of adopting a new constitution. We accept the general principles that there should be national, regional and local levels of government, that each should be democratically elected rather than appointed, and that the constitution should lay down the principles on which they are to be structured. It should go without saying that the general principles of the Bill of Rights enshrining universally recognised fundamental rights and freedoms should apply throughout the country at all levels of government.

Beyond this, we feel that the determination of regional structures and the spelling out of functions for the regions and local authorities, is something that should be done as part and parcel of the elaboration of the constitution as a whole. Apart from the fact that institutions created by structures that lack democratic legitimacy will themselves lack legitimacy, and hence be vulnerable to future attack, constitutions simply cannot be made in a piecemeal fashion.

The whole concept of checks and balances requires that all the checks and all the balances be known and be in place and interacting with each other at the same time. Certain checks and balances by their very nature cannot be created in isolation from other checks and balances. The new constitution will be an integrated package of interrelated rights, duties, mechanisms and procedures, not an assembly of constitutional spare parts.

Thus, the shape and nature of the regions relates to far more than the simple devolution of power from the centre. It affects the electoral system for the country as a whole (whether to have regional as well as national lists), the composition of the central legislature (there are strong arguments for an

upper house based essentially on regional representation), amendments to the constitution (whether or not a certain percentage of regions have to agree to certain amendments), the role and functioning of state fiscal and monetary institutions (especially in relation to revenue collecting and transfer payments), the structure of the army, police force, and prison service, lines of responsibility and accountability in the public administration, and the structure and functioning of the judiciary.

It is the ANC's view, as articulated at the Policy Conference, that the details of the powers, functions, roles and boundaries of the regions carry such constitutional importance that only a national and democratically elected Constituent Assembly should arrive at any final decision on the matter. The National Party Government, however, is of the view that the powers, functions and even the boundaries of future regional government should be settled before a Constituent Assembly is elected. This is clearly undemocratic and unacceptable.

The Constituent Assembly Decides

We might add that there is support for the idea of relatively strong metropolitan government being established in the areas of greater Johannesburg, Cape Town, Durban, Port Elizabeth and possibly elsewhere. It would be unwise indeed to adopt rigid schemes of regional and local government that pre-empted balanced discussion of the desirability or otherwise of establishing such metros and ensuring that they take their proper place in the total constitutional scheme.

It is expected that, within the framework of clearly enunciated general principles of constitutionalism, democracy and non-racism agreed to in advance, there will be a considerable degree of give and take on all these questions at the Constituent Assembly. This was the experience in Namibia, where

the Constitution that emerged after extensive discussion was signed by every single participant at the constitution-making body.

The objective in South Africa will be to draft a constitution that has the assent and support of the overwhelming majority of South Africans with a view to creating a country in which the overwhelming majority feel comfortable and at home.

The question of regional and local government is a difficult one for any country, and particularly for one where apartheid has created so many false boundaries and divisions. The proper time and place for determining the precise structures and powers of government at all levels, is after (and not before) elections have been held; to create a legitimate and widely representative constitution-making body.

Transitional arrangements

In the meantime, all we are called upon to do is to make suitable transitional arrangements, bearing in mind that there are many honest civil servants whose interests have to be dealt with in a fair and practical way. In this respect, we propose that the four provinces are sufficiently familiar and are sufficiently capacious to provide the basis for progressive re-integration of Bantustans and homelands into the mainstream of South African political and administrative life, pending the adoption of a new Constitution. A powerful argument in favour of this approach is that a infrastructure already exist at provisional level to provide the services and facilities reincorporation of the homelands.

Looking to the future, it is imperative that the ANC spearhead within the broad democratic movement the formulation of clear and concrete proposals on regional and local government for submission at the Constituent Assembly. Let the other groups allow themselves to present the whole question in terms of how best they can cling to power. Our task is to help determine how the new

South Africa can be shaped so that our age-old dream of a united, open, prosperous, non-racial, just and democratic society can be realised. After the trauma of apartheid that, and no less, is what our people and the world expect.

SECTION

2

THE RELATIONSHIP BETWEEN THE DIFFERENT TIERS OF GOVERNMENT

In the South African Constitutional debate there is general consensus among the different political actors that a new democratic constitution for South Africa should provide for three tiers of Government - central, regional and local. There is agreement that each level of Government should be democratically elected, with certain specified powers and functions protected by the constitution, where appropriate.

In order to ensure that historical inequalities are redressed, citizens are equally treated and protected by the constitution, where agreed, it is necessary that regional and local government operate within a national framework guided by the same set of democratic principles.

It is often taken as given that decentralisation will bring government closer to the citizenry and as such act as a buffer against an over centralised bureaucracy. However, in practice decentralisation does not always yield the expected democratic and accountable results. This is one important consideration in stating, therefore, that the autonomy of regional and local government cannot be seen as absolute. For example, in South Africa governing powers were devolved to homelands which are regionally, and often locally based. This, however, has often brought repression - and not government - closer to the people.

Similarly, for purposes of co-ordination and reasonable uniformity in service provision, caution should be expressed against allocating powers and functions exclusively to a single tier of government. Hence the ANC proposes concurrent powers among the three tiers of government with overriding powers reserved for the central government as is the case in Germany. For example, central, regional and local government could play a role in the provision of educational and health services in their respective areas of operations.

In order for regional and local governments to carry out their functions effectively and efficiently they need to have an appropriate combination of political and fiscal powers. In addition, while central government has a role to ensure equitable redistribution of resources from poor to rich regions, it is equally important for sub-national government to co-ordinate development and strive to redress inequalities in their own areas of jurisdiction.

In dealing with the different tiers of government, a number of issues need to be resolved. While South Africa currently has a number of metropolitan areas, it has no metropolitan governments. The ANC views the creation of metropolitan governments in certain parts of the country as essential to the cause of unifying, de-racialising and democratising cities in addition to the more efficient and effective provision of affordable services.

Metropolitan governments, in places like Greater Johannesburg, Cape Town or Durban will necessarily be large, populous and relatively powerful.

The ANC sees metropolitan government as a form of local government, and accordingly located in the third tier - below regional government. The ANC envisages two levels (or tiers) of decision-making and responsibility within a metropolitan government: the metropolitan government

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itself, and the primary local authorities (or boroughs) within the area of its jurisdiction.

Insofar as the more rural areas are concerned, the ANC envisages the creation of larger geographical forms of local government: district councils. The similarity with metropolitan government lies in the fact that there would be two levels of decision-making, powers and functions within such district councils: that of the council itself, and that of the (large or small) village or small town. However, the district council is seen as constituting part of the third tier of government within the overall constitutional framework.

Further attention needs to be paid to the possible form and relationship between the third and first tiers of government.

Finally, it is worth recording the ANC's view that we envisage a significant role for civil society in ensuring that all tiers of government - and the relationship between such tiers - become and remain transparent, sensitive, accountable and democratic. In our conception, civil society embraces diverse bodies such as religious organisations, trade unions, civic associations, professional bodies, student organisations, cultural groups, organisations of the disabled, sporting bodies and the women's movement. They would be independent of the state and their right to exist would not be dependent on the authorisation of the state.

At the same time they could collaborate with the state in securing the objectives of the constitution, particularly in relation to guaranteeing basic freedoms, securing social advancement, healing the divisions of the past and promoting religious, cultural and linguistic rights. Co-operation with the state, however, will not mean co-option by the state or subordination to it. These bodies must retain their right to criticise state actions, to demand improved performance, and to make proposals for reforms at all levels of government.

Law-making bodies should be required to keep the public adequately informed on all matters affecting the public interest, and to make reasonable provisions for organisations of civil society to be heard in relation to matters affecting the rights and expectations of their constituencies.

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SECTION

3

FINANCE AND RESOURCES

A critical component of the balance that needs to be drawn between the powers of central, regional and local government within the framework of a national, democratic Constitution lies within the vital role of finance and resources. In this section, the policy document deals with this critical issue, seeking to examine the relationship between political decentralisation and the allocation of fiscal powers and functions between the tiers of government.

3.1 Fiscal Decentralisation

Given the importance of economic considerations and the fact that finance is in many cases the real key to political influence, it is vital that the manner in which the new constitution deals with decentralisation of the fiscal system is coherent, and consistent with the desired structure of political decentralisation. It must be appropriate to modern economic conditions, seeking to enhance democratic accountability while ensuring that the public resources of the country are shared fairly amongst the whole population.

3.1.1 An emphasis on local control

The starting point should be a strong emphasis upon the need to strengthen local control over the use of public resources. This helps to ensure that usage is efficiently and appropriately tailored to local conditions.

The link between paying taxes and receiving public services must be recognised as an important element in the strengthening of democratic accountability, and is most direct at the local level.

3.1.2 The constraints on decentralisation

However, there are substantial constraints on the extent to which the fiscal system can be decentralised. While these have always existed, they have grown more compelling in recent decades because of the rapid increase in the mobility of goods, people, services and information, and the consequent intensification of the national integration of the South African economy. Policies introduced in one part of the country may have impact on other areas.

Fiscal decentralisation must not compromise the capacity for the authorities to exercise sound management over the economy as a whole. A prerequisite, for example, of implementing effective policies to control inflation and unemployment levels is that the autonomy of decentralised government over taxation, spending and borrowing must not clash with effective overall management.

Local and regional governments should be empowered to borrow, for capital expenditure only, subject to the approval of national government and the Reserve Bank in respect of external borrowing; and subject to the authorisation or approval of national government in respect of internal borrowing.

Fiscal decentralisation should guard against allowing too many distortions to be introduced into the economy which prevent resources from flowing to best use. The more taxes differ across different areas, the more the flow of resources across the country will be inefficiently distorted. Allowing regions and local authorities too much power to distort economic conditions in their favour could lead to chaotic results as each authority continually tries to outdo its neighbours. If businesses are to compete effectively, the

extent to which regional and local authorities should be allowed to compete must be limited. Linked to this is the need to even the responsibility for redistribution across the country as a whole. Micro and macroeconomic distortions could arise if business and the wealthy in some parts of the country are forced to bear a greater responsibility for dealing with the country's poverty and inequality than in other parts; or if the poor in some areas are treated worse than in others. It would also lead to inefficient and undesirable migration of both the rich and the poor.

The need to place at national level the key responsibility for effecting and co-ordinating redistribution, is particularly important in South Africa - given the severe spatial imbalance between the location of needs and resources. The level of inequality in the country compromises the extent to which accountability can be based on a direct relationship between payment of taxes and receipt of public services.

Thus, more important even than the call for 'one city one tax base' is the need for 'one country one tax base'.

Balancing the amount of redistribution - variations which can be permitted in the progressivity of taxation, but also constrains the autonomy which can be given to different regions over how resources are spent. To a large extent it is the nature of the overall package of public goods provided by the authorities which determines the extent of redistribution: for example, spending resources on ensuring good primary education for all has greater redistributive content than subsidising universities.

By the same token, fiscal decentralisation should not compromise the capacity for coherent national policies on urbanisation to be implemented. Allowing regions to compete in making themselves as unattractive as possible to poor incoming migrants in the hope that they will go elsewhere will make

coherent urbanisation policies impossible.

3.2 Technical constraints on devolving taxes

The nature of most of the significant taxes makes it impossible to give much power to lower tiers of government over how they are levied. For example, given the national integration of the South African economy, allowing VAT to be levied at different rates in different regions would lead to enormous administrative difficulties. Even where it is levied at the same rate, identifying in which region the many firms which operate nationally actually 'add value' would be almost impossible.

For similar reasons company tax can also not be assigned to any particular region or locality: while assigning customs duties to particular regions would be very arbitrary.

Similar difficulties are to be found with income tax; it is often difficult to identify clearly where income is actually earned. Furthermore, where income tax rates are different in different areas, ensuring that people don't register for tax purposes in low would be a difficult policing task.

The problems of assigning fixed property taxes, such as rates, to a particular area are much less severe, making them much better candidates for devolution to decentralised levels of government. Some excise duties, such as fuel levies may also hold greater potential for decentralisation.

A distinction needs to be drawn between: - assigning particular taxes, such as mining taxes, to the region or local area in which they are supposedly generated, allowing each region to see its own rate; and - assigning particular taxes, levied at a uniform rate nationally, to a whole level of government. In this case some formulae would be required to ensure that the revenue is shared fairly between the different governments at that

level.

In other case, consideration must be given to the way in which changes in economic conditions could interfere unduly in the relationship between different levels of government. For example, over recent years the contribution of mining taxes to the total tax pool in South Africa has declined very significantly, while the contribution of income tax and GST/VAT has risen. Had a particular level of government been dependent mainly on mining taxes, for example, its capacity to perform would have been severely compromised.

3.3 The need for fiscal transfers to effect decentralisation

The above arguments make it clear that, as at present, considerable national control needs to be exercised over the overall fiscal system, and that a large proportion of taxes will inevitably have to be collected at national level. However, to accommodate a more substantial and effective decentralisation of political power than exists at present, better mechanisms will need to be found for transferring resources from the national fiscus to lower levels of government than have existed up till now.

These transfers will fall into two main categories. Firstly, where regional and local government is given responsibility for implementation of national policies, transfers will have conditions attached to ensure that national policies are indeed adhered to in implementation. Thus, within clearly defined nationally determined parameters, decentralised governments would be able to fine-tune the actual pattern of expenditure to suit local needs. The majority of transfers are likely to fall into this category.

Other transfers, however, would have far less stringent conditions attached, and would be aimed at enabling lower tiers of government

to implement policies in areas where the constitution gives them powers to act autonomously. These grants would have to take into account the capacity of various lower level governments to raise their own resources so that inequalities amongst regions and localities could be counteracted.

3.4 Institutions for managing fiscal transfers and the decentralisation of taxes

Given that the way in which responsibility and control over the transfers is exercised affects the relationship between different levels of government, it would be unwise to leave such control entirely to central government. On the other hand, trying to fix in the constitution the detail of how transfers are made would tend to be either too vague or too rigid, or both.

The ANC proposes the creation, by means of a statutory act of parliament, a permanent and independent Advisory Commission on Fiscal Decentralisation.

Such a Commission would be structured on a non party-political basis in which certain powers for advising on the structure and mechanism of fiscal decentralisation would be vested. This Commission would be answerable to national parliament as a whole including the chamber in which the regions are represented at national level. Its powers should extend to aspects of transfers between all levels of government.

Its task would be to advise government how best to ensure that the allocation of taxes and transfers to the various levels of government takes place within guidelines laid down in the constitution. These guidelines must be consistent with the extent of political autonomy decentralised government is to have, and with the Bill of Rights. Such guidelines should ensure that transfers are made in such a way that lower levels of government are able to plan properly; that they are structured so as to enhance

efficiency and local accountability and that there be open in areas and efficient monitoring. The guidelines must seek, in a transparent and objective manner, to redress inequalities between regions.

The Advisory Commission on Fiscal Decentralisation will advise government on the granting of powers of taxation to lower levels of government within this overall framework. This should be done in a way which enhances accountability and which allows lower levels of government some leeway to raise additional revenue to deal with their own specific problems. Finally, the Fiscal Commission could also play an advisory role in certain areas.

Steps shall be taken to ensure transparency, efficiency and accountability in the expenditure of public funds. To this end, an Independent Fiscal Audit Office will be required and empowered to audit national regional and local government expenditure.

3.5 Resources, economic and the structure of decentralisation

An implication of the above structure of fiscal decentralisation is that because resources are to be collected largely on a national basis, and distributed by means of transfers, drawing boundaries to ensure that each region has similar economic strength becomes relatively unimportant. This opens the way for regional boundaries to be drawn on the basis of a wider range of criteria, including how regional representation can represent the regional diversity of the country at national level for the purpose of national policy making.

SECTION

4

POWERS AND FUNCTIONS OF REGIONS

The central issue in any framework for regional government is the relationship between, on the one hand, regional and central government and, on the other hand, regional and local government. This issue is most sharply raised in the delineation of the powers of the region in regard to the powers of the centre. The proposed legal formulation is set out in the first annexure to this document. The formulation advanced in this proposal establishes that regional government will be empowered to exercise a law-making and executive power in relation to the areas listed in the schedule, provided that regional legislation will have no force where it is repugnant to national laws. Thus, in regard to its legislative and executive powers, the central state shall have concurrent and overriding jurisdiction.

Regional governments shall also have the powers to implement and administer national policy and legislation, when empowered by national legislation to do so. The areas designated as likely areas of regional government are the following:

- (i) The imposition of taxes in accordance with a national policy framework operating within guidelines overseen by the Advisory Commission on Fiscal Decentralisation.
- (ii) Education, other than tertiary education;

- (iii) Health services including hospitals;
- (iv) Welfare;
- (v) Housing;
- (vi) Transport, including harbours, airports and roads;
- (vii) Markets and pounds;
- (viii) Works and undertakings within the region, provided that if works and undertakings extend beyond the regional boundary, such works and undertakings may only be carried out with the consent of the neighbouring region or regions affected thereby;
- (ix) Traffic control;
- (x) The environment;
- (xi) Industrial and other development within the region;
- (xii) Horse racing and gambling;
- (xiii) Town and regional planning;
- (xiv) The imposition of punishment by fine, imprisonment or other sanctions for the contravention of any laws of the region;
- (xv) All other matters delegated to it by Act of Parliament.

This simple formulation requires some further discussion to establish a clearer grasp of exactly what powers the ANC is suggesting that regions will have. It should be mentioned at the outset that, although this formulation favours the central authorities at the expense of the regional authority, it is not out of line with the constitutional devolution of powers in Germany and some other federal states. We may set out the powers of the regions as follows:

4.1 Regional Powers

4.1.1 Concurrent and Overriding Jurisdictions

The regions would be entitled to enact laws dealing with any aspect of the areas listed in the schedule, provided that the provisions of such legislation are not repugnant to national legislation. The central state would thus have concurrent jurisdiction in all these areas.

4.1.2 Original Powers

The powers of the regions would be original in the sense that they would be conferred on the regions by the constitution, not by statute or government. They may of course be removed, amended or augmented by means of a procedurally proper amendment to the constitution. The central state would not, however, be empowered to enact ordinary legislation which would effectively remove those powers. In other words, the central government may regulate those areas in which regional governments are competent but may not remove the region's right to deal with those issues. It may not, for example, prohibit the regions from building any houses or providing any health facilities.

4.1.3 Exclusive Jurisdiction

In respect of all matters not expressly listed in the schedule the central state will have exclusive jurisdiction to make laws, and to confer the authority and/or establish the agency by means of which such areas of government are administered. Examples of such areas are Foreign Affairs, Defence, Internal Security, Constitutional Affairs and Administration of Justice. The regions will not be able to make policy in these areas at all.

4.1.4 Delegated Powers

The region will be able to administer and implement national policy where

empowered to do so by national legislation which may delegate both legislative and executive functions even in respect of non-scheduled matters.

4.1.5 Residual Powers at the Centre

The regions would not have any residual powers, that is powers to make and implement policy in respect of matters not expressly mentioned in the schedule. The central government would have such powers.

4.1.6 Power to Compel Performance

The central state can implement national policy within a region - even or especially when a region refuses to implement national policy when legislation authorises the regions to do so. In this proposal central government can, by legislation, compel regions to perform certain functions but would, of course, be limited by practical political considerations in attempting to do so. Provision should be made to allow for central government to assume regional government functions where the region cannot, or refuses to, perform them. This power should be limited to drastic cases of breakdown of regional government. It is envisaged that neither the regions nor the central state would have the power to dissolve regional governments, but regional governments will be responsible to the constitution as well as to the regional electorate.

4.1.7 Multi-level Jurisdiction over Scheduled Matters

It is clear that in relation to scheduled matters, all three levels of government may have legitimate interests and could perform some functions more appropriately than any of the other two levels. Thus, in both Health as well as Education, there may be national policy regarding qualifications, access, and funding. Regional government may be concerned with the location of facilities and the management of resources. Local

authorities are the appropriate bodies to regulate and supervise the provision of services by hospitals and schools. Indeed there may be even a 4th level of function, for example, those performed by parents at the level of the educational institution.

It is possible that problems could arise out of this situation. Central and regional government may have the power to build houses. The central government could regulate but not prevent the region from doing so. However, as in the past, these are not insurmountable problems and in the 'old' South Africa there were many examples of such overlapping jurisdiction notably in housing, transport and health.

counsellor in charge of local government would *inter alia* be responsible for ensuring that there was no corruption in local governments or for ensuring that elections were properly held. Such issues may be better dealt with by regional governments than by a central government. Local government powers, on the other hand, could be amended or increased through national legislation.

4.1.8 Local Government

The ANC proposes that the law dealing with local government be in the form of a national statute. National Parliament should be empowered to adopt a Local Authorities Act which would elaborate their powers and functions, as well as their relationships to other tiers of government, making suitable amendments when and where necessary.

Outstanding policy matters of detail, such as whether local authorities should operate either under the *ultra vires* principle, which specifies the exact parameters of local authority jurisdiction (the current system), or be delegated a general competence to perform its functions, will be resolved at a local government policy conference later this year.

In respect of the relationship between local and regional government, it should be noted that the national statutory framework would necessarily limit the powers of regional government in regard to establishing local government policies which are repugnant to the national framework.

Regional government would still be able to pass ordinances in unregulated areas of local government. The regional executive

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4.2. Functions deemed inappropriate for regional government:

The technical document presented at the South African Government Conference on Federalism places the administration of justice, law and order, mining, commerce, land and agriculture within the competence of regions. We disagree. These are clearly matters which fall within the ambit of the central government.

4.2.1 Administration of Justice, Bill of Rights

In our view, overall responsibility for the administration of justice, including the establishment and maintenance of regional and supreme courts, rest exclusively with the central government.

We need a nationally integrated system of justice with full re-incorporation of the judicial structures in the TBVC areas. The country cannot afford a multiplicity of legal systems with a multitude of Chief Justices giving different decisions in different parts of the country. Instead, we should maintain the present nationally integrated system, but in a decentralised and representative form while making provision for regional and magisterial sub-divisions.

Of course, the Bill of Rights will have national application and will override any regional laws and govern all acts of regional government. No regional government will be able to override these rights.

4.2.2 Law and Order

While the ANC endorses the principle that policing should take place in close collaboration with local communities who should assist in establishing the policing priorities for their areas, we do not believe in the establishment of regional police forces, save for the possibility of establishing local

traffic police. Autonomous regional police forces create the possibility of private armies, linked to regional or ethnic leaders through patronage and capable of victimising regional outsiders. It is possible to conceptualise a system in which a single national police force is regulated by a statute which requires regional and local government supervision. This, however, is very different to disestablishing the SAP and reconstituting seven, eight or ten police forces. There are other reasons for the maintenance of a central police force - these include the fact that contemporary police forces require a degree of centralised resources and management - particularly in regard to training, the maintenance of centralised information, the combating of organised crime, maintenance of internal security and the setting of uniform standards and disciplinary order.

4.2.3

We must firmly oppose policies which perpetuate or reinforce the present situation, where we have five armies, 11 police forces, over 15 health and education departments and innumerable *ad hoc* committees. We are over-governed. Therefore, we should not confuse governance with accountability and democracy. We wish to avoid situations that arise in places such as Nigeria or the United States, where there is a vast, unnecessary and expensive bureaucracy at regional levels. The cost of such structures, alone, is sufficient to render them undesirable.

4.3 Fiscal Powers of Regions

It is clear that both regional and local government must have some powers to raise revenue. The National Party's recent proposals appear to give all power over taxation to the regional level. This is viewed by the ANC as unworkable, particularly in a modern economy such as South Africa.

In our view this matter should be dealt with in the constitution in order to prevent (i) all income accruing to the regions from whom the central state would have to request its

apportionment. (the scenario envisaged in the National Party proposal) and (ii) disproportionate revenue raising capacity by richer regions, thereby perpetuating regional disparities. Provision is made for this by the proposed statutory creation of an Advisory Commission on Fiscal Decentralisation (see section 3: Finance and Resources).

Rather than define the diverse sources from which regional government would be entitled to raise its revenue, (e.g., gambling tax and property tax), it may be more appropriate to set out those potential areas of income in respect of which the central state will have the prior or exclusive right to raise revenue. Usually the central state has the sole prerogative on personal income tax, company tax, customs and excise. On the other hand, rates and property income are more effectively and appropriately raised by local and regional authorities.

As indicated in this proposal, the central state will have a prior claim on revenue and thus would be able to secure the preponderant proportion of taxes raised and thereby be in a position to equalise the distribution of resources as between regions. The regions would be able to raise additional revenue only after all distributions to the central revenue fund. This would ~~empower the central~~ authority, which will bear the burden of the cost of reconstruction, to set taxes at the levels it deems appropriate and, accordingly, limit the ability of the regions to further increase in tax burdens.

However, it should not be the intention to entirely discourage regions from attempting to raise additional revenue to deal with their particular problems. Although it is envisaged that certain types of taxes - such as the current turnover tax and salary levies (the Regional Services Councils levy) - would be income which could accrue to the regional governments, it should not be necessary to specify this in the constitution.

4.4. Politics, Accountability and Stability

It is believed that the formulation of the functions and powers of regional government should be designed to enrich political life through facilitating public participation, transparency and accountability in government at the levels at which it is most appropriate. It should not however, disempower South Africans by fragmenting their resources and compartmentalising the citizenry's decision-making powers. The ANC is of the view that there is no necessary contradiction between the existence of regions and the project of nation building. It may even be suggested that regional government can enhance national stability and identity, provided that regional boundaries do not necessarily coincide with ethnic, racial, linguistic or other boundaries, and that the regional framework is not designed to perpetuate or create disparities between citizens.

4.5. STRUCTURE OF REGIONS

4.5.1 Number of Regions

The question of fixing precise numbers or boundaries of regions is not the function of this policy document, nor of any single political party. The ANC envisages that this process will be undertaken by a Delimitation Commission after agreement on the basic number and siting of regions has been agreed. Detailed questions, such as the regional location of East Griqualand, would be left to this Commission.

It is the view of the ANC that this entails a process that could and should be utilised to foster understanding, unity, peace and reconstruction rather than conflict. Only a full and thorough process of consultation can adequately inform the debate and the decisions, thus avoiding expedient decisions in the short term.

However, the ANC is of the view that ten is the maximum number of regions into which South Africa should be divided.

4.5.2 Size of Elected Council

The cost of maintaining regional governments should be taken into account in determining the number of councillors for each region.

4.5.3 Elections by Proportional Representation

The proposal assumes that the national electoral system will be the proportional representation list system. All the reasons for opting for this system at the national level (viz inclusivity, exact proportionality between representation and support, the avoidance of conflict over constituency boundaries) would also apply at regional level.

However, in order to strengthen democracy, the ANC favours a mix of representation (direct and indirect) at the regional and local government level, which should have the effect of ensuring that regional policies were responsive to local needs. In the case of local and especially metropolitan government, a mixed system should have the effect of unifying apartheid structures.

4.5.4 Regional Elections and Regional Constitutions should be set out in the Constitution

In a previous proposal these matters were to be left to a national statute to set out. Some parties at Codesa have argued that they could be left to the regions themselves to formulate or amend as in the USA.

The full framework for the powers and functions of regions should be set out in the National Constitution. The regions will thus have uniform provisions and powers. The situation in South Africa is not analogous to federal states created out of pre-existing autonomous states. At the same time, the democratic functioning of the regions

requires protection by its constitutionalisation and thus would not easily be subject to amendments. The regional councils would retain powers to finalise the details of how they function and their rules of procedure.

4.5.5 Tenure of Councillors / Period between Elections

It is proposed that regional elections should not take place at the same time as national elections. By proposing a 4-year term (in contradistinction to the 5 year parliamentary term) such elections will generally take place before or after a general election. This will mean that regional issues will not be lost or submerged by national issues. However, the cost of separate elections must be weighed up against this possible benefit.

4.5.6 Dissolution

It is proposed that the constitution should provide that the regional councils should not be able to dissolve themselves (so as to frustrate central government) or be dissolved by Parliament (to undermine regional governments). In this proposal the only means by which a regional government will be dissolved is through the expiry of the period of office, or through central government approving the request of a regional government for a regional election. It will be necessary, however, to incorporate within the constitution a provision which will enable the functions of regional government to be assumed by the central government where a regional government will not or cannot discharge its constitutional or statutory obligations.

4.5.7 Size of Regional Executive Council

It is proposed that the regional executive council be limited to five members in addition to the administrator. Under the old provincial government system the number of executive members was limited to four. In view of the

large number of regions and the general expenses and benefits which will flow to REC members, it may be better to limit the number to five.

4.5.8 Administrator

It is proposed that the administrator be elected by an absolute majority of the regional council. In an earlier proposal of the constitutional committee, and in line with the previous practice, it had been proposed that the Administrator be appointed by Pretoria without regard to his/her acceptability to the council. This practice could well lead to disharmony between different levels of government. While such a system has been proposed in the interim government constituent assembly stage, we propose that in a final constitution the electoral principle should apply to regional government.

4.5.9 Method of Composition of Regional Executive Council

It should be noted that the principle of collegiality (i.e. that parties be represented on the executive council in proportion to their representivity in the council itself) will be argued by the National Party. This system once operated in regard to provincial councils and was abandoned precisely because it entrenched conflict and disharmony. Subject to a reasonable right of access to information for all members of the council, we believe there is no good reason for a proportionally representative regional executive.

The executive council should be appointed by the administrator in consultation with the council. In our view, this system should provide for a more effective executive. The administrator him/her self should be capable of being removed by the the council on a vote of no confidence, by a special procedure. In this way the council would have supervisory control over the administrator and his/her executive council

SECTION

5

MANAGING REGIONAL POLICY IN THE TRANSITION

The important question arises as to how the matter of regional policy should be dealt with between now and the election of the Constituent Assembly - the transitional period.

In order not to pre-empt the deliberations of the Constituent Assembly, the ANC proposes that the four existing and established Provinces with the 1910 boundaries be retained in the interim.

The ANC and the democratic movement in general are firmly committed to a procedure in terms of which a majority of the elected representatives of the people make binding decisions. We are committed to this procedure because we regard the principle of equal liberty - the principle that all adult citizens should have an equal right to participate and determine the outcome of political decision-making processes - as fundamental. Institutionally, this fundamental principle requires the election of a representative body with the power to make laws.

The principle of equal liberty applies with at least equal force to the process of constitution-making. This is why the ANC is of the firm view that the constitution should be adopted by an elected body with plenary powers to devise a system of constitutional democracy.

A broadly based, democratically elected constituent assembly should, subject to a two-thirds majority and within the framework

of agreed general principles of democracy, have the power to choose the form of the future state, including the role, powers, functions and boundaries of regional and local government. This view of the ANC is strengthened if the process which creates the constituent assembly offers fair opportunities for all interests to achieve representation and thereby to seek their objectives within a democratically-elected forum.

This process would also help to ensure that the final decisions to be taken on the system of regional government will occur within a wider constitutional framework. There is an inherent danger in isolating regional government as a separate issue, as though it can be resolved with no due reference to the other tiers of government. Constructing a regional policy in isolation could have very severe and adverse consequences for the future constitution of this country. The future political and economic stability of this country and its citizens require that we deal with the matter in an open and transparent manner - and that we get it right.

APPENDIX

1

FRAMEWORK FOR STRUCTURE AND POWERS OF REGIONS

1. Regional Boundaries

There shall be a maximum of 10 regions in South Africa, the names and boundaries of which are set out in schedule . . .

2. Regional Councils

- 2.1 A regional council shall be elected by ballot for each region.
- 2.2 Each regional council shall consist of (x) members.
- 2.3 Elections shall be by proportional representation and shall be called and conducted on the basis of a list system in accordance with the provisions set out in schedule . . . - hereto . . .

3. Tenure of Regional councils

A regional council shall be constituted for a period of 4 years from the date on which it

was elected and shall not be subject to dissolution save by effluxion of time.

4. Executives of Regional Councils

- 4.1 The chief executive officer of each region shall be the regional administrator.
- 4.2 The regional administrator shall be elected by an absolute majority of the regional council at its first meeting. The regional administrator shall hold office for the period for which the regional council has been elected, but shall be liable to be removed from office by a vote of no confidence passed on him or her by the regional council. In that event, a new administrator shall be elected in accordance with the provisions of this article.
- 4.3 Elections for the regional administrator shall be conducted in accordance with the provisions set out in schedule . . . - hereto . . .
- 4.4 The regional administrator shall establish departments for the proper administration of the affairs of the region.

ANC Regional Policy

- 4.5 The regional administrator shall appoint an executive committee consisting of not more than 5 persons who shall hold office at the discretion of the regional administrator, and shall resign if a vote of no confidence is passed on the administrator.
- 4.6 The regional administrator shall allocate responsibility for the administration of departments to members of the executive committee. A member of the executive committee may be given responsibility for the administration of more than one department.
- 4.7 The regional administrator shall preside at meetings of the regional executive committee. These shall be convened by the regional administrator.
- 4.8 If a regional executive committee refuses to carry out its responsibilities as defined in the Constitution or manifests total incapacity to administer the affairs of the region properly, the State President may delegate such functions to a Minister who shall assume such

responsibilities for as long as that may be necessary.

5. Sessions of Regional Council

- 5.1 The administrator of a region shall by proclamation in the regional gazette fix the times for holding sessions of the regional council, and may from time to time prorogue such council: provided that there shall be a session of not less than six weeks at least once in every year, and provided further that a period of more than 1 year shall not intervene between the last sitting of the regional council in one session and its first sitting in the next session.
- 5.2 The regional administrator shall preside at meetings of the regional council, which shall be conducted in accordance with rules and procedures laid down by the regional council.

6. Remuneration

The salaries and allowances of the regional administrators, members of the executive committees of regions, and members of the

regional council shall be determined from time to time by the national assembly. The salaries and allowances shall be the same in each region and shall not be reduced during the term of office of the regional councils.

7. Powers of Regional Councils

Without derogating in any way from the powers of the National Assembly a regional council shall be entitled to make laws in relation to the following matters:

- (i) The imposition of taxes in accordance with national policy;
- (ii) Education, other than tertiary education;
- (iii) Health services including hospitals;
- (iv) Welfare;
- (v) Housing;
- (vi) Transport including harbours, airports and roads;
- (vii) Markets and pounds;
- (viii) Works and undertakings within the region, provided that if works and undertakings extend beyond the regional boundary, such works and undertakings may only be carried out with the consent of the neighbouring region or regions affected thereby;
- (ix) Traffic control;
- (x) The environment;
- (xi) Industrial and other development within the region;
- (xii) Horse racing and gambling;
- (xiii) Town and regional planning;
- (xiv) The imposition of punishment by fine, imprisonment or other sanctions for the contravention of any laws made in accordance with the provisions of this section;
- (xv) All other matters delegated to it by Act of Parliament.

8. Validity of Laws

Any law made by a regional council in terms of its powers under article 7, shall have effect in and for the region as long and as far as it is not repugnant to any Act of Parliament.

9. Assent to Regional Laws

9.1 Any law passed by a regional council shall not have the force of law unless and until it has been assented to by the administrator and published in the regional gazette.

9.2 The administrator shall assent to any proposed law which has been passed by the regional council unless he or she is of the opinion that it may be

repugnant to an Act of Parliament or in conflict with any of the provisions of the constitution. In that event the administrator may refer the proposed law to the constitutional court for its opinion, and shall act thereafter in accordance with the terms of such

10. Language

Regional Councils shall determine which scheduled language or languages may be used within the region for conducting the business of the regional government: provided that any scheduled language may be used for the purpose of addressing written communications to any department of the regional government.

11. Local government

- 11.1 Local government bodies shall carry out the functions assigned to them by Act of Parliament.
- 11.2 A regional council may delegate any of its powers or functions to a local authority, and require the local authority to execute such powers and implement such functions on its behalf within the local authority's area of jurisdiction.

- 11.3 If a local authority fails to carry out functions allocated to it by Act of Parliament, the Minister responsible for local government may appoint an officer to discharge such functions for as long as it may be necessary to do so.

11.4 If a local authority fails to carry out functions delegated to it by a regional council, the administrator of such council may appoint an official to discharge such functions for as long as it may be necessary to do so.

12. Fiscal Transfers

Fiscal transfers shall be made by the central government to regional councils in an equitable manner, taking into account the population size, backlogs and priorities (such as the urban and rural poor, women and children) of each of the regions.

A. CONSTITUTIONAL MATTERS

VOLUME THREE (B)

MEMORANDUM

TO : THE PLANNING COMMITTEE OF THE NEGOTIATION COUNCIL

FROM : TRANSVAAL INDIAN CONGRESS / NATAL INDIAN CONGRESS

DATE : 19 MAY 1993

RE: : SUBMISSIONS TO THE TECHNICAL COMMITTEE ON CONSTITUTIONAL MATTERS

1 FORM OF STATE

1.1 South Africa shall be a sovereign state with geographical boundaries defined as at 1910, within which boundaries the constitution shall be the supreme authority.

1.2 The constitution shall promote the principles of democracy, non-racialism and advocate principles of gender equality.

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- 1.3 There shall be a devolution of power to local and regional levels. These powers must be defined in the constitution and be subject to the overriding authority of the Central Government (otherwise where specifically provided). The structure, powers and boundaries of regional authorities should not be based on retaining vested interests which arose out of the apartheid dispensation.

2 SEPARATION OF POWERS

There shall be a separation of powers between :

- 2.1 The Legislature;
- 2.2 The Executive; and
- 2.3 The Judiciary.

3 THE JUDICIARY

- 3.1 shall be independent; and
- 3.2 shall be chosen by a mechanism that ensures public participation in the process of appointments.

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4 **BILL OF RIGHTS**

- 4.1 shall be justiciable;
- 4.2 shall be applicable at all levels of government;
- 4.3 shall incorporate first, second and third generation rights.

5 **MINORITY RIGHTS / SELF DETERMINATION**

- 5.1 The exercise of right to self determination shall be exercised through the expansive application of democratic principles and should not encompass the right to secession.
- 5.2 Minorities shall not be discriminated against, deprived in any way or be prevented from participating in social, economic, or political life or from participating fully in the organs of State or government merely by virtue of their minority status.
- 5.3 The Bill of Rights shall guarantee cultural, linguistic and religious freedom and security. Minorities, on the other hand, shall not be entitled to any special economic or political privilege, nor to any veto, by reason of there being a minority.

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CONSTITUTION MAKING BODY

- 6.1 The constitution making process shall involve the people of South Africa as a whole.
- 6.2 The Constitution Making Body must be elected.
- 6.3 There must be a time frame within which the Constitution Making Body must come up with a new constitution.
- 6.4 The constitution must be adopted by a 2/3 majority of those present and voting.
- 6.5 The NIC/TIC supports the ANC proposals on the deadlock breaking mechanism as well as its proposal that the Constituent Assembly have legislative power concurrent with its task of formulating the new constitution.

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INTANDO YESIZWE SUBMISSION TO THE TECHNICAL COMMITTEE ON
CONSTITUTIONAL ISSUES.

1. We, in IYP have made submission to Codesa Working Group 2 as regards Constitutional issues we regards ourselves bound by Codesa agreements to the extent that these were agreements.
2. We, believe that South Africa should be a unitary state, democratic in form and process of operation, non-racial, non-sexist. That the boundries of South Africa shall be as recognised by 1910.
3. We, believe in devulotion of powers and therefore accept that the government shall be structure on three tier levels of government, Central, Regional and Local.
4. We do not believe in a lame-duck type of central government. The reason is very simple indeed. The history of this country, the injustices and imbalances occasioned by apartheid governments calls for a Central Government which will begin to address and redress those imbalances and ijustices in our country and rebuild our Nation. So Central Government shall have overriding powers in all matters even if the concept of current-powers would be enshrined in the constitution.
5. We, believe in separation of powers so that the Legislative, the Executive and the Judicial shall be independant of each other particularly the Judiciary.
6. We believe the Constitution of the Land shall be the Supreme law of the Country, therefore the independence of the Judiciary is crucial.
7. We believe therefore that for the Constitution to be Supreme and enjoy this supremacy a constitutional court should be established to protect this right.

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CONSTITUTION MAKING BODY

1. We, in IYP believe that the Constitution is the most fundamental and therefore the higher law of a Country.
2. That for the Constitution to maintain and continue to enjoy that status the Constitution must be respected by the greatest majority of the people.
3. That the Constitution should be respected and therefore protected by its people it must be legitimate.
4. Respectability and acceptability, therefore legitimation of the Constitution can only be accorded by the people to the Constitution if the people can identify with the Constitution.
5. We therefore believe, for the people to identify with the Constitution as their own they should be part of the process the product of which should be the National Constitution.
6. We therefore believe that the people should elect the body of persons who should draft and adopt the new and democratic constitution.
7. We, therefore call for an elected Constituent Assembly which shall be the body that will draft and adopt the Constitution.
8. We believe the Constituent Assembly should consist of 400 members half elected on Regional basis and the other half on National basis.
9. We believe that once elected the Constituent Assembly shall serve both to draft and adopt the Constitution on the one hand and be the government of the day on the other.

ON SELF-DETERMINATION

1. We believe that self-determination simply put means governance based on the will of the people. Our understanding of a people - is that a people is equal to a nation No.1 we emphasise not a tribe as the Afrikaners argue in South Africa. They are a tribe (stam) not a nation (volk).
2. Self-determination secondly should imply governance clean of discrimination based on race, colour or ethnicity or in breach of basic rules of international law e.g. aggression against other nations.
3. Self-determination should not be abused to call for independence based on ethnicity as the call is currently made in South Africa by a small portion of South African Nation - the Afrikaner.
4. Yes the Afrikaner has the right to determine their political fate, they must choose who should govern. But they should do so as part of the whole not as a "special tribe". Afrikaners are entitled not to be discriminated on the basis of their race and their tribe but so too they should not ask for special treatment because of their tribal affiliation.

We can only say "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a Country is incompatible with the purposes and the principles of the Charter of the United Nations."

ON THE FORM OF STATE

1. On the form of State, we in IYP believe that the historical background on this Country militates against any form of Government which is divisive inherently and too expensive.
2. We, believe, therefore that we need a period of healing from the near fatal wounds inflicted by the system of apartheid.

3. We, believe, to repair the fabric of our society we need a government that inherently and practically is capable of fostering national unity.
4. We do not reject federal type of Government because we believe it is less democratic, far from it.
5. We do not call for Unitary State because we believe it cannot be abused not at all - that is why we say Constitutional principles should be agreed to upfront and the Constitution Making body should be bound thereby.
6. We call for Unitary State so that the historical imbalances coined by apartheid system should be redressed.
7. We believe that Federalism by its very nature is divisive and cannot afford this Country a period of healing and opportunity to rebuild the nation.

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THE TECHNICAL COMMITTEE: CONSTITUTIONAL ISSUES

19 MAY 1993

SELF-DETERMINATION

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1.

Some remarks on your approach to self-determination:

1.1 We are positive to see that the committee takes self-determination seriously and handles it as a key issue to constitutional planning and negotiation in South Africa.

1.2 It is of value that the committee explored the broader conceptual context of self-determination, so as to relate its political implications to social and other fields of life.

1.3 We are at one with the idea that this concept should be handled in terms of its concrete implications and not only on a theoretical basis.

2.

Nevertheless we note the following points:

2.1 We don't accept that political and communal self-determination be interpreted in the light of individual autonomy. Although individual autonomy and fundamental rights deriving from it constitute a key issue in our political development, and although self-determination should not be seen in opposition to individual autonomy, self-determination should not have a lower status than individual autonomy.

2.2 It would be totally unacceptable if a concrete and operational approach to self-determination be used as a smoke screen to nihilate the concept by nominally integrating it into a "holistic approach", while actually subjecting it to a form of radical individualism which is both outdated and a stumbling block to consensus.

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3.

In the light of the foregoing, we submit the following for your scrutiny:

AFRIKANER-VOLKSUNIE

3.1 CODESA
3.1 CODESA AND AFRIKANER SELF-DETERMINATION. An edited version of a report to Group 2 of CODESA
TEL (012) 322-3600.1 • FAXS (012) 322-3602
An edited version of a report to Group 2 of CODESA
AFRIKANER-VOLKSUNIE

3.1 CODESA AND AFRIKANER SELF-DETERMINATION. An edited version of a report to Group 2 of CODESA by the Afrikaner Freedom Foundation.

This document was prepared for and submitted to CODESA shortly before it broke apart and is not sufficiently reflected in any of the CODESA reports being used by this Negotiation Council or its committees. Important issues are developed here and deserve your attention.

3.2 Raath, A.W.G. 1990. SELF-BESKIKKING EN SESESSIE. DIE SAAK VIR DIE AFRIKANERVOLK. Pretoria: AVSTIG. 61p.

This document was published by AVSTIG as an input to discussion on this matter and explored the right of self-determination, not only in terms of liberating colonised territories, but also in terms of the aspirations of ethnic minorities within independent states. Therefore we find it most relevant for the South African situation.

3.3 A statement at the forty-sixth session of the General Assembly of the United Nations, by Prince Hans Adam II von und zu Liechtenstein, Head of state of the Principality of Lichtenstein, as well as

A statement at the forty-seventh session of the General Assembly of the United Nations, by Mr Hans Brunhart, Head of Government and Minister of Foreign Affairs of the Principality of Lichtenstein.

3.4 Agenda item 97 (b) of the THIRD COMMITTEE of the forty-seventh session of the United Nations, on HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS.

4.

In terms of your own, very valid argument that the self-determination should function primarily on a concrete and operational level and not on an abstract conceptual level, we urge you to call upon specific people to give evidence before you and enter into discussion with you on their views on the realisation of self-determination in South Africa.

We would suggest at least the following people (more detail will be forwarded to you):

- 4.1 Prof Hercules Booyen, UNISA, (012) 46 3333
- 4.2 Prof Carel Boshoff, AVSTIG, (012) 804 3579/86 8698
- 4.3 Dr CJ Jooste, SABRA (Retired), (0271) 31937
- 4.4 Prof AWG Raath, UOVS, (051) 46 1388/ 401 2620

With respect

Chris de Jager

19 JUL 1993

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General Assembly

Discr.
LIMITEDA/C.3/47/L.86
1 December 1992

ORIGINAL: ENGLISH

Forty-seventh session
THIRD COMMITTEE
Agenda item 97 (b)HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING
ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Armenia, Australia, Austria, Belarus, Bulgaria, Canada, Cape Verde, Croatia, Czechoslovakia, Denmark, Estonia, Finland, Greece, Guatemala, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Morocco, Netherlands, Norway, Poland, Romania, Russian Federation, Rwanda, Slovenia, Sweden, Ukraine, United States of America and Uruguay: draft resolution
+ MALAWI, REP. OF KOREA, SRI LANKA, SAMOA, TAJIKISTAN EN MOLDAVIE

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The General Assembly,

Reaffirming that one of the main purposes of the United Nations, as proclaimed in the Charter of the United Nations, is to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

Noting the importance of the even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Welcoming the increased attention given by human rights treaty bodies to the non-discrimination and protection of minorities,

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Aware of the provisions of article 27 of the International Covenant on Civil and Political Rights 1/ concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

Considering that the United Nations has an increasingly important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular through the relevant mechanisms of the Commission on Human Rights and the Subcommission on Prevention of Discrimination and Protection of Minorities, in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the important achievements in this regard in regional, subregional and bilateral frameworks, which can provide a useful source of inspiration for future United Nations activities,

Stressing the need to ensure for all, without discrimination of any kind, full enjoyment and exercise of human rights and fundamental freedoms, and emphasizing the importance of the draft Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities in that regard,

Recalling its resolution 46/115 of 17 December 1991, Commission on Human Rights resolution 1992/16 of 21 February 1992, 2/ by which the Commission approved the text of the draft declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities, and Economic and Social Council resolution 1992/4 of 20 July 1992, by which the Council recommended it to the General Assembly for adoption and further action,

Having considered the note of the Secretary-General, 3/

1. Adopts the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the text of which is annexed to the present resolution;

2. Requests the Secretary-General to ensure the distribution of the Declaration as widely as possible and to include the text of the Declaration in the next edition of Human Rights: A Compilation of International Instruments;

1/ See resolution 2200 A (XXI), annex.

2/ Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22), chap. II, sect. A.

3/ A/47/501.

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English

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3. Invites United Nations agencies and organizations as well as intergovernmental and non-governmental organizations to intensify their efforts with a view to disseminating information on the Declaration and to promoting understanding thereof;

4. Invites the relevant organs and bodies of the United Nations, inter alia, treaty bodies and representatives of the Commission on Human Rights and the Subcommission on Prevention of Discrimination and Protection of Minorities, to give due regard to the Declaration within their mandates;

5. Requests the Secretary-General to consider appropriate ways for the effective promotion of the Declaration and to make proposals thereon;

6. Requests the Secretary-General to report to the General Assembly at its forty-eighth session on the implementation of the present resolution under the item entitled "Human rights questions".

Annex

DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in its Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

Desiring to promote the realization of the principles contained in the Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

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Page 4

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments on promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Taking into account the important work which is carried out by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the need to ensure even more effective implementation of international instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Proclaims this Declaration on the Rights of persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

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English

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2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 1

1. Persons belonging to minorities may exercise their rights, including those set forth in this Declaration, individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in this Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

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English
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5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, including exchange of information and experiences, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights set forth in this Declaration.

Article 8

1. Nothing in this Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.

2. The exercise of the rights set forth in this Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.

3. Measures taken by States to ensure the effective enjoyment of the rights set forth in this Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.

4. Nothing in this Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

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Article 9

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in this Declaration, within their respective fields of competence.

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Paper E

H.E. Mr. Hans Brunhart
Head of Government
and Minister for Foreign Affairs
of the Principality of Liechtenstein

Statement
at the forty-seventh session of the
General Assembly of the United Nations

New York, 23 September, 1992

Extract

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1. Internal conflicts have become a special challenge to the community of States. Ethnic, social or religious disagreements often give rise to regional instability. We are aware of the fact that a number of the new States members of the United Nations, in particular, are in an extremely difficult economic and political situation.

2. Liechtenstein would like in this connection to express very particularly its sympathy with the victims of the conflict in Bosnia and Herzegovina. The war unleashed by the aggression of Serbia and Montenegro is causing great human suffering in that country. We are following with deep concern the continuing reports of massive and systematic violations of human rights and international humanitarian law for which all parties to the conflict are responsible. The killing of innocent human beings and the destruction of an irreplaceable cultural heritage must stop, and all parties must immediately make efforts to bring about a peaceful solution of their difficult problems. We support the declaration of principles issued on the occasion of the London Conference on 26 and 27 August 1992 and the framework established by the Conference participants within which a comprehensive political solution to the crisis is to be sought. We express our hope that the political will demonstrated in London will be transformed into specific actions and that the follow-up negotiations taking place in Geneva will soon yield positive results.

3. It is within that framework that I should like to refer to the initiative which the Head of State of the Principality of Liechtenstein, His Serene Highness Prince Hans-Adam II, introduced in His address to the forty-sixth session of the General Assembly.

4. On that occasion His Serene Highness referred to the need to find ways of promoting peaceful solutions to the many conflicts which have their roots in the tensions which exist between communities within States. His Serene Highness considered that such solutions should be sought within the framework of the principle of self-determination.

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5. Liechtenstein is aware of the consideration already given within the United Nations - and indeed within other bodies - to the principle of self-determination. We acknowledge the great international effort devoted to this question in the past.

6. The right to self-determination as a principle is now universally accepted. I would recall not only that self-determination is one of the foundations of the Charter, but also that most States represented in this Assembly are already under certain specific legal obligations in this area by virtue of article 1 of each of the great human rights Covenants of 1966. There it is formally and with legally binding effect acknowledged that - and here I quote the text - "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (end of quotation).

7. Despite all this, and with some notable exceptions, the practical and peaceful application of that principle has often been lacking. Tensions between distinctive communities within States, or between such communities and the State itself, persist in many parts of the world. Regrettably, they have in a number of instances led to outbreaks of serious violence. Apart from the human suffering which results, such tensions and violence often affect neighbouring States, and may have a more widespread impact on the maintenance of international peace generally. Much can be done to try to limit the suffering once the violence has started; but how much better it would be to go to the root of the problem - which is often to be found in the frustrations of distinctive communities when they are denied the legitimate expression of their communal identities and aspirations.

8. I am glad to say that His Serene Highness's speech last year attracted the interest of a number of delegations. During the past year we have undertaken extensive consultations, and we have benefited greatly from constructive suggestions which delegations have been kind enough to make. We are most grateful to all those Governments for the interest they have shown. We have also sought, and taken into account, some independent expert views.

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9. It is against this background that Liechtenstein believes that the international community, through this Assembly, should take steps to make the right of self-determination more effective, and by doing so contribute to the avoidance of some future conflicts. It is our conviction that the time has now come for the international community, through the United Nations, to offer a realistic way forward, by establishing a practical framework through which communities can give expression to their distinctive qualities.

10. Such a practical framework would need to satisfy four main requirements:

First, there should be flexible and graduated forms of self-determination involving different levels of autonomy, taking account of the differing needs of differing communities and the States of which they form part; a subdivided community which allows its various parts to pursue the common goal in their own way can on occasion be a very good expression of the principle of self-determination;

Second, communities invoking the principle of self-determination should renounce resort to violence and commit themselves to pursue their aims through peaceful means only;

Third, assistance in the effective realization of the principle of self-determination should be available, through independent procedures;

and

Fourth, a proper balance must be maintained between self-determination and the territorial integrity of States.

11. Subject always to those requirements being met, we believe that the international community should recognize that self-determination is an inherent and inalienable attribute of all communities which possess a distinctive social and territorial identity. This involves the free choice by each community of its political, social, economic and cultural destiny in accordance with the best interests of its members.

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12. Self-determination, it must be stressed, is not necessarily - or even primarily - a matter of moving towards independent statehood. Indiscriminate independence would lead to the fragmentation of the international community, and would insufficiently respect the territorial integrity of States. In reality, however, full independence is, if only for purely practical reasons, the least likely outcome in most cases.

Respect for diversity can be adequately reflected in other ways. Self-determination can take various forms, as may be best suited to each community's and each State's particular circumstances.

13. It is important to retain the essential flexibility of the concept. But in all cases where there exists a community with a sufficient degree of distinctive identity, it would seem right that a certain basic level of autonomy should have to be acknowledged. I am referring to such very elementary matters as non-discrimination against the community or its members, their freedom to practise and enjoy their distinctive community characteristics, and their participation in appropriate ways in public affairs, particularly in matters directly affecting the community's interests. A commitment to acknowledge such a modest degree of autonomy for all communities that merit it should not, we believe, cause serious problems for any member of the United Nations.

14. More advanced levels of autonomy will be appropriate for communities whose particular circumstances demonstrate their fitness to enjoy them. But we do not think it would be realistic for the United Nations to seek to lay down detailed mandatory requirements for the self-determination of communities with a vast range of distinctive characteristics, settled within States whose own histories are so diverse. Anything beyond the sort of basic level of autonomy to which I have referred is probably best left to be developed on an optional basis, and case by case - the circumstances are so diverse that each is best left to be treated on its own merits.

15. Nevertheless there would, in our view, be some advantage in the United Nations indicating the kinds of further elements which might find a place in the more advanced levels of autonomy. These further elements of autonomy would progressively add to the degree to which the community conducts its own affairs.

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but would only be available to a community with satisfactory experience - and even then, only if the State concerned is ready to accept the community's more advanced level of autonomy.

16. In this complex area we cannot assume that any general principle or procedures which might be agreed internationally will be applied without difficulty in particular cases. We should therefore also envisage that some procedures should be available to assist if any difficulties arise in the application of the principle of self-determination, and to assist with the peaceful resolution of any differences there might be.

17. A number of delegations with which we have discussed our ideas in general terms suggested that it would be advantageous for the matter - which, as well as being of great political importance, is also of considerable technical complexity - to be the subject of some further examination by a group of experts, so as to facilitate the progress which may eventually be made in this Assembly.

18. We have accordingly concluded that the most appropriate course will be for the Government of Liechtenstein to invite each Government represented in this Assembly - and that includes those here as observers - to nominate an independent expert to attend an informal Meeting of Experts in Liechtenstein next March. We hope that the experts attending this Meeting will be able to assist us in further developing the ideas advanced initially by His Serene Highness at the forty-sixth session of this Assembly. We envisage that the experts nominated to attend will do so in their personal capacities, since we believe that, by adopting procedures which avoid committing Governments, we are more likely to have a constructive and expert discussion. Invitations to nominate experts to attend this Meeting will be issued during the course of the present session.

19. In the light of the views expressed at the Meeting of Experts, the Government of Liechtenstein will consider how best to return to this Assembly, perhaps at its next session, in 1993, with proposals for carrying further the initiative introduced last year by His Serene Highness.

20. As the international community makes progress, however haltingly, in preventing the outbreak of violent conflicts between States, it becomes all the more important that we should together seek to find ways of avoiding the no less inhuman consequences of civil wars between communities within a State. In informing you of the lines along which our thinking on this important and sensitive matter is developing, I hope that I may have demonstrated the depth of our concern that some way should be found of controlling one major source of much violence and human suffering in today's world.

10 MAY 1963

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Paper D

**His Serene Highness
Prince Hans-Adam II von und zu Liechtenstein**

**Head of State
of the
Principality of Liechtenstein**

**Statement
at the forty-sixth session of the
General Assembly of the United Nations**

26 September 1991

Extract

19 MAY 1993
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1. In the recent past we have been able to witness rapid and almost revolutionary political changes in the world. Tensions between East and West are greatly reduced. Europe is not any more divided. Solutions to some regional conflicts are as close as never before. These developments form the background for the new challenges that the world community is facing.

2. The role of the United Nations has changed, the Organization has entered a new phase: profiting from the absence of great power confrontation, it acts more efficiently and concentrates on the cause of peace and security.

3. Small States have a special need for protection and security. The Principality of Liechtenstein, although it is fortunately a prosperous and secure country, surrounded by two permanently neutral neighbours, feels that this issue is of direct relevance. Respect for international law is our only protection. For these reasons we feel deeply committed to the principles of sovereign equality, political independence and territorial integrity of States. Although we were not a member country of this organization in 1989, we fully support resolution 44/21, urging Member States *inter alia* to settle disputes peacefully, adhere to the principles of equal rights and self-determination of peoples and to respect human rights and fundamental freedoms.

4. Unfortunately, we have seen again and again in the history of mankind brutal aggressions of one country against another. The aggression of Iraq against its small neighbour Kuwait was just the last example of a long list. The peace-loving countries of this world have to be grateful to the United Nations and to the Member States which took part in the military action against Iraq that finally resulted in ending the occupation and preventing the permanent annexation of Kuwait. International law served as the umbrella for the international response to the Gulf crisis and thus constitutes the most recent proof that the respect for international law is a small country's only protection. Let us all hope that this crisis was a turning point in human history. For as long as the United Nations reacts as it did during the Gulf crisis, such aggressions will cease to become attractive instruments for even the most power-hungry dictators.

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5. Unfortunately, we all know that even if we succeed in preventing all aggressions, peace and happiness will not come easily to the world. Some of the most cruel wars in the past decades have been civil wars. Politicians and historians can give us many reasons why civil wars happen: different cultures, languages or religions having difficulties to coexist in a single State, oppressed minorities, or simply political differences which cannot be solved peacefully.

6. A solution for some of these problems can be found internally if a State respects human rights and fundamental freedoms and has democratic institutions that work. But history shows us that even then civil wars can break out. Human rights can also be violated in countries with a democratic tradition. Democratic institutions can break down. There are situations where peaceful coexistence between different groups inside a single State does not seem to be possible - whatever the reasons. Should we in those cases not endeavour to find other solutions in accordance with the principle of self-determination, rather than risking cruel and destructive civil wars?

7. I am aware that the United Nations has been for good reasons very prudent concerning the principle of self-determination. To encourage exercising the right to self-determination might lead to even more civil wars and to the disintegration of member States. Non-interference in the internal affairs of Member States has certainly been a wise policy to follow. Nevertheless, we have to accept the fact that the borders of nearly all Member States, including my own country, have not been drawn according to the principle of self-determination. They are usually the product of colonial expansion, international treaties or war, and very seldom have people been asked where they want to belong to. But even if they had been asked, a new generation might have another opinion: circumstances can change and expectations can remain unfulfilled.

8. A majority of Member States certainly supports self-determination in theory. How this principle is to be applied in practice has however, in my opinion, not been studied enough. Usually the discussion starts over a specific case when strong emotions are already involved. Would it not be better to at least try to find a minimum consensus between Member States on some guiding principles, when efforts are being made to implement the principles of self-determination? To be acceptable to a largest possible number of Member States,

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such guidelines or rules of conduct should foresee a careful evolution, which could start from a low level to higher levels of autonomy before complete independence can be attained. Independence is, however, not always the best solution: It can be a complicated and sometimes traumatic process.

9. I wish to inform you of my intention to instruct experts to prepare a preliminary study on this question, the outcome of which would be submitted in due course to the General Assembly if this is considered desirable. A convention modelled after the European Convention on Human Rights could eventually be the product of these efforts. I would like to raise a few points and draw a few lines in order to give you an overall idea of the possible outline of such an instrument.

10. A central question will be to define what entity can be the beneficiary of the right to self-determination. Several methods have been discussed in the past. It might be sufficient to establish a minimum size of the area and population involved. Setting this minimum size very low would have two important advantages:

1. Minorities who ask for self-determination would consequently have to grant the same rights to their own minorities. Experience shows that they are at times unwilling to do so which can be the cause for new problems.

2. A low minimum size would in my opinion lead to a decentralization rather than to a break-up of the present States, because for small groups and areas independence will not always be the best solution.

11. For a modern State decentralization has political and economical advantages. Decentralization is certainly one of the key elements for the prosperity and political stability of Switzerland, a country without natural resources and a population with four languages, different religions and many political parties.

12. A convention on self-determination could foresee several degrees of autonomy before independence were granted to a certain region, thus giving the central State and the region the time to adapt to the new situation with the likely

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outcome that the people will in most instances prefer autonomy to independence. Three degrees of autonomy could be envisaged:

13. The first degree could involve the election of representatives for the new autonomous region and consequently the administration by those elected representatives of the funds which are allocated by the central government. Some additional rights could be given in the fields of culture and education.

14. The next step could involve some autonomy in taxation. Direct taxes would probably better be raised by the regions whereas indirect taxation, import duties and the like could remain with the central government. A financial compensation plan would have to be worked out at this stage, taking into account the income and the administrative functions of the region that may for instance already include the police and the lower courts.

15. The third degree of autonomy could involve some legislative power. Examples can already be studied in some of the decentralized States. At this stage of autonomy most administrative functions of the central State could be turned over to the region with the exception of defence and foreign affairs. Even regional military units could be set up as long as they are integrated into the overall defence plan.

16. The next step of this process - in the case it is desired - would be full independence.

17. Those States which accept the general terms of a possible convention on self-determination could envisage setting up an international commission or court comparable to the European Commission and Court for Human Rights to which all parties concerned could appeal in case of conflicts. Such an approach would offer the possibility to observe how these general guidelines work in reality and to adjust them if necessary. Other States might then be willing to sign the convention too, and perhaps one day those guidelines on self-determination could become generally accepted international law, as other conventions have become.

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18. If we look at human history it seems that humanity does not have many alternatives. In the past and in the future new States have been and will be born, they disappear or their borders change. If we look at longer periods of time we see that States have life cycles similar to the human beings who created them. The life cycle of a State might last for many generations but hardly any member State of the United Nations has existed in its present borders for longer than ten generations. It could be dangerous if one tried to put a hold on these cycles, which have been present throughout human history. To freeze human evolution has in the past often been a futile undertaking and has probably brought more violence than if such a process was controlled peacefully.

19. Considering the advances in the field of technology, civil wars will become more and more destructive, not only for those directly involved but also for neighbouring States and for our whole environment. The possible destruction of a large nuclear power plant in a civil war is a frightening example. Would it not be much safer to replace the power of weapons by the power of voting even if it means that new States may be born?

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Demokratiese Party
Democratic Party

19 May 1993

TO: The Technical Committee on Constitutional Issues

FROM: The Democratic Party

POWERS, DUTIES AND FUNCTIONS OF REGIONS

On behalf of the Democratic Party I enclose the following comments which relate directly to Core Document 'C' (Five Flip Charts indicating a balanced approach to Constitutional Decentralisation) included in the Democratic Party submission dated 12 May 1993.

Fiscal Powers

1. An extract from the Minutes of Codesa Working Group 2 endorsing the view that the various levels of government should have fiscal powers (3 March 1992, Para 4.3.1)
 - The cross references are to
 - a) Page 2 para 2 of Democratic Party's previous submission - (Constitutional Principle)
 - b) Core Document 'C', Flip Charts A and B - (Fiscal Rights and Powers)

Shared Powers or Joint Responsibility

2. An extract from the German "Basic Law" dealing with Concurrent Legislation (Articles 72, 74 and 74a)

The cross reference is Core Document 'C', Flip Chart C (Concurrent Legislation)
3. An extract from the German 'Basic Law' dealing with "Skeleton" provisions (Article 75)

The cross reference is Core Document 'C', Flip Chart C (Outlining Legislation)

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Powers of Regions residual or defined?

4. .. An extract from the German 'Basic Law' dealing with Joint Tasks (Article 91a and 91b)

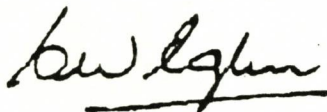
The cross reference is Core Document 'C', Flip Chart D (Joint Tasks - Executive)

Regional Powers defined or residual?

5. Attention is drawn to desirability of having Regional Powers defined and not residual

The cross reference is Core Document 'C', Flip Chart E (Footnote 3)

Yours sincerely



C W EGLIN
on behalf of DEMOCRATIC PARTY

19 MAR 1963

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INKATHA

Inkatha Freedom Party

IQembu leNkatha Yenkululeko

MULTIPARTY NEGOTIATION PROCESS TECHNICAL SUB-COMMITTEE #1 ON CONSTITUTIONAL ISSUES

POSITION OF THE INKATHA FREEDOM PARTY

WORLD TRADE CENTRE : 18 MAY 1993

a. Form of State

The Inkatha Freedom Party has constantly taken the position that the issue of the form of state must be resolved and disposed of preliminarily to any determination affecting both the stages and modalities of the process of transformation as well as any discussion about constitutional principles to be embodied in any future constitution of South Africa. The IFP has stressed on many occasions how the process of transformation needs to be shaped in order to produce a predetermined type of state, i.e. a federal, a confederal, a regional or a unitary state. In fact, a unified and centralised process of transformation centred around the notion of a Constituent Assembly is not likely to produce the breakdown of the present unitary state into member states organised on the basis of federal principles.

Since December 10, 1992 when Dr. Mangosuthu Buthelezi, President of the IFP met with State President FW de Klerk, the IFP has launched a proposal to establish a process of transformation which could make possible the establishment of federalism in South Africa. This proposal furthers the process proposal which the IFP has been advocating since the opening of CODESA II, and which relies on the notion of a final constitution to be drafted prior to the holding of elections, and before the empowerment of a new government.

The IFP process proposals rely on ground-up democracy building sub-processes and recognises the fact that South Africa must come together on the basis of various initiatives which could co-ordinate negotiations at central level. The IFP proposals demand self-determination and autonomy arising out of many regions of South Africa. Attached herewith as Annexure I is the IFP process proposal. This proposal ties up together the need to predetermine the form of state with a process of transformation of South Africa capable of establishing a federal system.

The IFP proposal will ensure that the issue related to the form of state is not postponed towards the tail end of the process. In fact, we fear that the process could very well move ahead,

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driven by consensus on those subject matters on which consensus is easily achievable, thereby setting aside and postponing the resolution of those controversial issues on which a sharp difference of opinion exists among the major players. We consider this to be a most dangerous approach in the South African context. It would lead either to the adoption of eleventh hour unworkable compromises and quick-fix solutions which would not stand the test of future political conflicts and tensions. It would also send the entire negotiation process into an impasse on the eve of elections, or at a point when the agreed time frame no longer consents to resort to reformulate the process to overcome the impasse. Both scenarios would set the stage for a civil war. If the negotiating process hides the threat of an impasse or a deadlock, the IFP wants to face this situations now when it can still be solved.

For these reasons, the IFP has constantly taken the position that it does not wish to be dragged into a process which does not start with the preliminary determination of the form of state and with the resolution of the controversial issues, because not doing so would be a formula for disaster. If the negotiation process is aimed at preserving the present unitary state, no matter how altered it could become by virtue of some elements of administrative decentralisation, then the IFP wants to be in a position to evaluate its options and decide whether to participate and lend its credibility to such a disastrous course of action.

The form of state is surely at the core of the negotiating process, and on the resolution of this issue alone hinges the possibility of an overall political settlement among all major political players.

Therefore, there are very strong political reasons which make it imperative that the form of state be determined as a preliminary matter. Accordingly, the IFP insists that the technical sub-committee does not proceed to debate or work in any fashion on other matters until and unless the issue of the form of state is positively resolved and disposed of. If the technical sub-committees proceeded to analyze and work on issues such as the constitution-making body and the transitional constitution, and if consensus on such issues were to be reached, the form of state would need to be considered within the parameters of the process of transformation so established. This would put process before substance, permit the fundamental determination on the substance and be conditioned by procedural decisions.

To provide an example of the IFP's concerns, it can be mentioned that if a sovereign Constituent Assembly were to be chosen as the constitution drafting body it would be unlikely that a federal system would be produced through this process. On the other hand a federal system is more likely to be produced by a process centred around the drafting effort of a group of experts charged with the task of producing a federal constitution on the basis of pre-agreed principles and established state constitutions.

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basis of a balanced budget unless it receives authorization to borrow from the future by a very broad parliamentary majority.

A special constitutional provision supports the development of Durban's economic potential, allowing the creation of special basin authority.

Democratic participation

The Constitution mandates the role of democratic participation at all levels of political life. The people of the State shall be empowered to participate in all the decision-making processes which directly affect them. This includes, but is not limited to, special hearings in parliament, participation in administrative procedures, participation in the administration and operation of schools, and participation of special interest groups in policy making which affects them. The Constitution prescribes democratic participation to support economic planning aimed to develop economic and employment growth and the containment of the cost of living. The Constitution also establishes an independent Environmental Commission with representatives of the community and environmental experts to enhance and protect the quality of the natural and human environment. The Constitution also promotes the empowerment of consumer groups and the protection of collective health from modern day threats.

System of government & Protection of minorities

The State of KwaZulu/Natal is a relatively complex society in which different people express different political affiliations, cultures, and social aspirations. The Constitution capitalizes on that complexity rather than trying to ignore it or level it. The system of government is centred on a strong parliament where all the people are represented. The rules for the election of the lower house of the legislature calls for the formation of small constituencies which respect existing cultural divisions. The upper house is elected by proportional system. The parliament has the power to control the actions of the government which is in a fiduciary relationship with the representatives of the people. This system of government promotes power-sharing in the form of governmental coalitions among the various political expressions of our society and for the protection of political minorities. The Constitution extends additional protection to political minorities in the legislature.

Role of political parties

The role of political parties is kept within democratic parameters. The Constitution discourages the formation of a political class of politicians who interpose themselves, with their own political agenda, between the people and the State. Political representatives should be the direct vehicle of expression of the people. Constituencies will ensure that political representatives are accountable to the people who elect them and share with the people a close relationship. This also empowers the electors to choose and fire political representatives on the basis of issues and concerns, rather than choosing political parties on the basis of vague and broad ideological imperatives.

Public administration

An independent Civil Service Commission shall monitor the functioning of government to ensure fairness and lack of corruption. The Commission shall ensure that the government

does not discriminate and that the approval and conditions of permits and licenses are on the basis of objective and reasonable standards. This Commission shall also monitor that the government does not grow out of proportion and shall recommend cut-backs in government as required. A Regulatory Relief Commission shall promote the removal of cumbersome and unnecessary legislative and administrative procedures, permits and licensing requirements and counteract the uncontrolled growth of government. The actions of the Regulatory Relief Commission and the actions of the Civil Service Commission are synergistic: while the Civil Service Commission shall organise in the most efficient and productive way any given administrative function, the Regulatory Relief Commission is empowered to challenge the need for such an administrative function.

Traditional law and role of traditional leaders

The constitution recognizes and protects the right of those who identify with traditional and customary law to live by their own set of rules, and respects the role of traditional leaders and court systems to create and administer such law. Moreover the Constitution fully recognizes and protects communal property to be administered and regulated by traditional leaders.

Independent Judiciary

The constitution provides for tools and measures to guarantee and protect the absolute independence, impartiality and qualifications of the judges administering our laws. It also guarantees redress against judicial errors and ensures that our judges will maintain the highest standards of their profession.

Constitutional Guarantees

The constitution shall be enforced and respected throughout our State. The cornerstone of the constitution is a very strong and modern Constitutional Court, which ensures the constitutionality of the legal system and mediates all the conflicts among the powers of the State, thereby completing the system of checks and balances. The constitution establishes an Ombudsman to promote the declaration of unconstitutionality of laws in conflict with the constitution and to protect and redress all violations of human rights. Anyone will have the power to challenge the constitutionality of a law and use simple and effective procedures for this purpose.

The Constitution of the State of KwaZulu/Natal does not only intend to regulate the State but also **aims** to set a framework of ground rules for the future constitutional process. It aims to ensure decency and a commitment to the integrity of political and civil society, in order to enlighten the negotiating process of the Constitution of the Federal Republic of South Africa. This Constitution is totally consistent with advanced and consolidated international constitutional thinking.

The Constitution of the State of KwaZulu/Natal is a complex technical document which requires in-depth reading to fully evaluate its principles and its implications.

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In addition to political reasons, the form of state has to be considered before any constitutional issue as a matter of constitutional dogmatics.

The form of state is defined by constitutional law as the relation between the three conceptual components of a state, which are the territory, the people and sovereignty. Depending on the different permutations and characteristics of the exercise of sovereignty on any given people residing in a specified territory, there would be different forms of state. The determination of the form of state is a necessary *a priori* step before we undertake any exercise related to the form of government which constitutional law defines as the internal structure and organisation of sovereignty. In this regard the IFP wishes to note that often during negotiations some participants erroneously ascribes relevance to the debate on the form of state to considerations which instead fall within the realm of the form of government.

Going from theory into practise, it can be noted that even any discussion related to a broadly accepted principle such as the constitutional state [rechstaat] would assume different characteristics if it were to be related to a unitary or to a federal state. In fact, in a federal state, the supremacy of a federal constitution can be equipollent to the role exercised by state constitutions. Alternatively it could be the case that portions of the federal constitution could become a parameter for the legitimacy and validity of state constitutions by virtue of mechanisms which may resemble the 14th Amendment of the US constitution. Similarly, any discussion on the judiciary must proceed from the decision on whether there should be one judicial system or as many as there are states/regions, plus one for the central government. Even as far as the legislature is concerned there can be no discussion as long as there is no determination on the form of state, for in a federal system one legislative chamber could be elected on the principle of equal suffrage among the states/regions, as happens in the US, or could represent the regions, as is the case in various regional states.

Finally, the determination on the form of state is essential to make any reasonable decision on the process to be employed to write the constitution. If the constitution of a confederal system were to be written, most likely it would be necessary to call a confederate assembly on the basis of pre-recognised sovereign entities. If a constitution for a federal system is to be written, as we strongly advocate, the process of transformation shall recognise, capitalise on and solicit ground-up democracy building processes aimed at erecting regions into statehood within the parameters of a Federal Republic of South Africa to be formed through the negotiation process at central level.

Since 1972 the Inkatha Freedom Party has been advocating a federal system for South Africa, modelled after the experience of the United States.

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It needs to be stressed that South Africa can not be defined as a State within the meaning which the word "state" has in continental political or social sciences. The harsh truth of the matter is that South Africa is a geo-political expression which represents the coercive aggregation of different nations caused first by colonial powers and then by the apartheid regime. Therefore, the creation of a legal entity characterised as the State of the Republic of South Africa does not correspond to the creation of a corresponding socio-political entity which could substitute itself for the historic reality of a plurality of nations and socio-economic realities in the South African territory.

This national and social pluralism, which expresses itself, inter alia, in many different languages spoken as mother tongues in the territory, is organised around a geo-political division of the territory in areas which are largely dominated by one culture. Only a federal system can recognise and capitalise on the great cultural diversity of our country, providing for a system of government capable of developing all-encompassing policies which can reflect the true, needs, wants and aspirations of the people of the region.

For this reason, the IFP has rejected the notion of a regional state in which only powers of local interest would be devolved to the regions. It is the IFP's position that all powers should be reserved to the Region/State while only those powers which cannot be adequately exercised at Region/State level should be devolved upwards to the federal government. The IFP rejects a simplistic application of the concept of subsidiarity to be employed to identify the powers to be exercised at local level, because such a concept of subsidiarity would inevitably lead to the exclusion from the list of local functions of those powers which are more conveniently, and perhaps more efficiently, organised and exercised at central level.

In this regard it could be pointed out that an argument can be made that it is more efficient to adopt a criminal or commercial code for the whole of South Africa and that such a jurisdiction should be exercised at central level rather than by the member states. However, experience throughout the world shows that member states of federations are very capable of adopting and administering criminal and commercial codes, and that such power is essential for the development of all-encompassing policies at State level. For instance, KwaZulu/Natal has expressed a desire to remain a State in which a market economy and free enterprise are fully preserved and protected, and therefore will need to retain the power to adopt whatever regulation of commerce and trade is necessary to achieve and implement this policy. Conversely, other regions of the country may very well fall into the temptation of pursuing socialistic and communistic experiences, if they so desire.

For this reason, the IFP stresses the fact that attention should be given to the powers which can be exercised at regional/state level, without putting exclusive emphasis on the consideration

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of efficiency and opportunity as this would be called for by a strict application of the concept of subsidiarity. Therefore, the IFP has suggested the adoption of the concept of "residuality" as a qualification of the notion of subsidiarity. According to the concept of residuality only those powers which can not be exercised adequately or properly at local level should be devolved upwards to the federal level.

This limitation does not necessarily lead to the creation of a weak federal government, as is shown by the list of powers devolved to the Federal Republic of South Africa by the Constitution of the State of KwaZulu/Natal. In fact, the Constitution of the State of KwaZulu/Natal devolves upwards an extensive list of powers which will allow the establishment of a strong federal government.

Obviously it may be the case that constitutional notions could be translated into actual constitutional proposals and details with the possibility of overlapping results. This consideration could support the argument that even starting from the concept of a regional state the actual distribution of powers could develop into federalism and vice versa. The IFP does not share this approach and demands that clarity be made without resorting to self-deluding conceptual expedients. The IFP deems it essential that a clear distinction be drawn between a regional state and a federal state and strongly submits that a regional state will not address the need for political, cultural, social and economic self-determination expressed by many regions of our country. This can only be achieved through the establishment of a pure federal system, intended as a system of split sovereignty between the member states and the federal government.

It also needs to be considered that a federal system could be established on an asymmetric basis. It is conceivable that a portion of South Africa could be organised as a unitary state and that such a portion would entertain a federal relation with one or more regions of the territory organised as a federal system.

As far as the process of transformation is concerned, the IFP reiterates its position that there is no binding agreement in this regard and a new process must be reshaped after the form of state is determined. The IFP has often indicated, and the Multiparty Negotiation Process has agreed with resolutions adopted on both at the Forum and the Council, that the CODESA documentation and any process proposal contained therein does not have the status of any agreement between the participants and should have no privileged status vis-a-vis any possible option and alternative. In this respect the technical sub-committees must resist any temptation to operate under the assumption that Codesa has left us with any agreement which is to be implemented in the present stage of negotiations. This is especially true as far as any process proposal is concerned.

b. Constitutional Principles

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With unparalleled consistency, since the time of its creation the IFP has been advocating a Western-type democracy in South Africa, which would combine characteristics of the European social state with the uncompromising defence of market economy and free enterprise.

The constitutional principles which detail our vision are fully set forth in the IFP submission to CODESA II Working Group II dated February 26, 1992 and in the Constitution of the State of KwaZulu/Natal adopted by the KwaZulu Legislative Assembly on December 1, 1992. These two documents are attached herewith as Annexures II and III.

The following two extracts from the Policy Speech delivered by Dr Mangosuthu Buthelezi at the opening of the fifth session of the fifth KwaZulu Legislative Assembly is also relevant to frame the broader perspective guiding the formulation of the IFP's constitutional principles.

The process of constitutional transformation of South Africa is operating on several levels.

In the first place, the transformation is aimed at removing the structures of apartheid, and to establish a non-racist society in which all citizens are equal before the law, irrespective of race, colour, creed, sex, or personal or social status.

In the second place, it has been agreed that the process of transformation of our society shall also effect the form of state, so as to transform the present unitary state into a regional, or a federal, or a confederal state. No agreement has been reached on how South Africa should be transformed, but there seems to be agreement on the fact that the present unitary state, with self-governing territories and TBVC states, will not be preserved.

A third level on which the constitutional transformation of our society is operating on - or we say ought to be operating on - is related to a more complex and deep change in the social and economic fibres of our country.

The new constitutional dispensation should lead to the transformation of South Africa into a society which fully respects and protects all internationally recognised human rights, and which recognises the duty of assisting the less privileged and the more needy segments of the population, while promoting the substantive equal access of all citizens to all social, economic and political opportunities. Our political positions related to this third level of transformation of our society are shared by most of the other political groupings and organisations, to a greater or lesser extent.

A fourth level of transformation of our society could be identified with relation to the notion of pluralism. We have advocated a pluralistic transformation of South Africa at all levels. This includes political pluralism, which is the co-

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existence of many political parties in a system which recognises equal dignity to all of them, and protects the right to dissent, and the rights of the political minorities.

We have also advocated social pluralism, to be ensured through the limitation of the role of government, and the recognition of personal and collective autonomies. Simply put, we want social formations to be given the right to organise and administer themselves as they best see fit, having the power to keep the government out of the area of their own affairs. Social pluralism includes the protection of the autonomy of arts and culture, sports and recreation, universities and schools, tribal and traditional structures, and so on and so forth.

Social pluralism is a notion intimately connected with the necessity of preserving the integrity of civil society. In fact, it is the role of the government to serve the needs of civil society not to come in and substitute itself for civil society, or reshape it in accordance to government's needs and concerns.

The third level of pluralism is related to the protection of economic pluralism which includes the need of privatising the state-owned or controlled enterprises, and to promote a healthy economy based on free competition and on free market enterprise.

The fourth level of pluralism protects cultural pluralism and cultural diversity. This aspect is essential in our country where a variety of different cultures, religions and codes of personal and collective conduct must be allowed to co-exist in mutual respect and harmony.

Too often processes of liberation or radical social transformation lead to what is known as "acculturalisation", which is the effort of the state to promote and impose a given culture, religion or code of moral conduct over all the other existing ones. This generally leads to the final destruction or great impairment of all the other cultures, religions or codes of conduct.

As we want to protect our own traditions and way of life we have committed ourselves to protecting similar freedoms with regard to the cultures of our Indian, Afrikaans, British, Jewish, Sotho, Xhosa, Shangaan, Swazi, Ndebele and Venda compatriots, as well as for any other cultural formation present in our country.

I have identified here four different levels on which the transformation of our society is taking or ought to be taking place. We will repeat them:

1. The transformation to a non-racist society.
2. The transformation to a federal or regional state.
3. The transformation towards a social and guarantistic society.
4. The transformation towards a society where political, social, cultural and economic pluralism is guaranteed.

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[pages 63-5 of the Policy Speech]

OUR POLITICAL VISION

As you all know, we have opted for liberal democracy as understood in the great Western democracies, strengthened by African wisdom as reflected in our Ubuntu-Bhoto philosophy.

Our own liberation comes at the end of the line of African liberation. Much has gone before us and we have much to learn from the successes and failures of African states. Most of all we should learn that there is no magic in 'liberation' and no manna falls down from heaven simply because people become liberated from racism or alien rule.

As apartheid and oppression recede, and freedom approaches, our people must insist not only on political freedom but also on economic justice through good government, efficient agriculture, industry and commerce, and visible rewards for private enterprise and hard work.

Our political philosophy has had solid and consistent cornerstones. Among them are the advocacy of democratic pluralism to accommodate the cultural diversity of our country, and a limited role for government and its respect for the integrity and the pre-eminence of our civil society.

Our cornerstones also include democratic participation in society and government to support social and human growth and development, social justice achieved through equal access to all economic, social and political opportunities through the redistribution of opportunity.

We also have a privatisation policy which calls for the elimination of State owned industries, and call for the full protection of all rights of the people both as individuals and as members of the social and cultural groupings and institutions to which they belong.

The most significant political commitment of the IFP, however, is to the cause of federalism as a necessary condition for freedom, democracy and pluralism in our country.

We felt it necessary to protect civil society against the modern evils of government, such as government waste and uncontrolled regulatory growth. We also felt it necessary to protect civil society from what all over continental Europe is now known as 'party-crazy' endeavours aimed at the seizure of civil society and political democracy by powerful political party apparatus. We also need the peace and personal security that flows from discipline, law and order.

[...] our ideas and proposals, are not tailored only to the needs of the Zulus or only on the aspirations of the KwaZulu Government. We have long understood that in our land the only way to ensure the rights and aspirations of one ethnic group is

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to ensure the full respect of the rights and legitimate aspirations of all ethnic groups.

We recognise that human rights are ascribed to the people both as individuals and as members of the social and cultural groupings and institutions to which they elect to belong. We have learned the lesson of history that governments can not by-pass structures such as trade unions, churches, and a wide range of institutions and organisations which stand between them and the people.

It is governments which have no regard for how people gather together collectively to organise themselves into groups and institutions which are either totalitarian in nature, or are on the way in becoming totalitarian. The organisation of any society around governmental structures which do not respect what are known as 'intermediary formations' inevitably leads to totalitarian states, however denominated.

For this reason, since the 1970's we have been advocating a full federal structure for South Africa, with residual powers in the member States. The call for federalism is not only motivated by the need to establish the necessary conditions for democracy in South Africa.

We know that without the system of checks and balances contained in a federal solution, democracy in South Africa will not survive the totalitarian and authoritarian tendencies and forces operating in our country.

[...] The KwaZulu/Natal State will also give us the power to oppose totalitarian tendencies which might develop within the Central Government. This is one of the benefits of a federal system in which sometimes member states can resist fundamentally wrong policies developed at central level, thereby becoming the leading force for change and transition.

During the past years we broadened the issue of federalism into a wider vision of pluralism. Capitalising on both the African and the continental European experience, we understood the importance not only of territorial autonomy, but also of personal autonomies.

We can say that we adopted the concepts of 'subsidiarity' before it became such a magic word in the United Kingdom as well as in the rest of the European Community. The concept of subsidiarity postulates that all services and governmental functions and powers should be handled or exercised by the lowest level of government capable of handling such services, functions and powers. This means that the Central Government should be provided only with those functions and powers which can not be adequately exercised by member states or by local governments.

We also extended the concepts of 'subsidiarity' to the relation between government and civil society, which is a crucial issue in the transition of South Africa. We took the position that

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once the parameters of the policies of the State are set forth in the Constitution and through the action of the government and the legislature, the institutions of civil society should operate within such parameters to handle as much freedom and social responsibility as possible.

Hence, our commitment is to limit the role of government, to privatise, to protect the freedom of enterprise, to protect the central role of the family, the autonomies of the universities and to guarantee all other institutions of pluralism through the recognition of guaranteed personal liberties and rights and the direct empowerment of civil society.

[Pages 2-4 of the Policy Speech]

It needs to be stressed that it is the IFP position that no discussion on constitutional principles can be initiated until and unless a final determination on the form of state is achieved.

c. Process of transformation : CMB, Interim Constitution, Transitional regional governments

The IFP has submitted its process proposal fully described in the attached document which has been discussed under paragraph (a) supra. It can be reiterated that it is the IFP position that a final constitution should precede any election and empowerment of a new government. Therefore, the IFP strongly rejects the notion of interim arrangements and a transitional constitution. The IFP has submitted a process proposal which will not only ensure a final constitution for South Africa by the end of 1994, but it will also ensure that such a process establishes a federal system recognising and taking into account ground-up democracy building processes. These ground-up democracy building processes also provide a solution to the need to establish regional governments.

According to the vision advocated by the IFP, there is no need for transitional and regional governments. Regional governments and state governments, should be empowered prior to, or at the same time, when the new government of the Federal Republic of South Africa is empowered. In accordance with the terms of the IFP proposal, various state constitutions would be finalised prior to the adoption of the constitution for the Federal Republic of South Africa, while the constitutions for the remaining regions will be finalised by no later than the time when the constitution of the Federal Republic of South Africa is adopted. This will allow for elections for state governments and parliaments prior to, or contemporaneously with, the election for a parliament at federal level. What is important is to develop mechanisms to integrate the ground-up democracy building processes and negotiations at central level so as to ensure that:

- (a) ground-up democracy building processes are guided, limited and inspired by principles on which general

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agreement is reached, and

- (b) ground-up democracy building processes are registered and respected within the process of negotiations at central level.

The IFP process proposal attached herewith as Annexure I is aimed at achieving these two objectives.

c. (i) Local Government

As the IFP believes in the establishment of a true federal system it also believes that local government is also a matter to be regulated by state law and as such should receive no consideration within the process of negotiations at central level. The IFP has made a commitment to sponsor legislation on local government at the opening of the first session of the General Assembly of the State of KwaZulu/Natal and intends to carry a similar commitment in other states once they have been formed.

d. Future of the TBVC States

The IFP agrees with the concept that the TBVC states should become part of the Federal Republic of South Africa. However, the reality of the TBVC states can not be ignored. Even if their creation was motivated by reasons of discrimination and segregation within the great scheme of apartheid, their existence is also related to historic, ethnic and geo-political considerations which go beyond the political aim of the apartheid regime. What needs to be done now is to take the TBVC states out of the apartheid structure and use them as a springboard for the aggregation of new areas around recognisable commonality of interests and historic ties.

This needs to be done not on an ethnic basis, even if ethnic considerations can be taken into account to identify the boundaries of the new regions-states. Therefore the TBVC states need not be re-incorporated into South Africa as such, but rather they should be merged within the process of the erection of a broader region into statehood within the parameters of a Federal Republic of South Africa to be formed through negotiations at central level.

e. Self Determination

According to the IFP's perspective the issue of self-determination has both a territorial as well as a personal dimension. The IFP believes that in its territorial application, the right to self-determination recognises the rights of regions to choose and ordain for themselves the government they best see fit within the parameters of a unifying federal system. The IFP also believes that state constitutions as well as federal

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principles, should recognise the right of the people to express in autonomy the self-regulation of their interests in a broad range of personal and collective matters, as an expression of their right to personal self-determination. Accordingly, the role of government should be limited so as to recognise personal and collective autonomy in matters which are best left to the self-regulation of the people as a part of their inherent right of self-determination.

The IFP wants to stress its position that the issue of federalism and territorial autonomy can not be solved through resorting to majoritarian rule. The rule that a majority can impose its will over a dissenting minority can only work once there is a pre-agreed set of references [rules of the game] in which both the majority and the minority agree to recognise themselves and conduct the dialectics of their relations. However, majoritarian rule can not be used to determine that fundamental set of parameters which brings together the different political components at a time which precedes the possible identification of each component as a majority or minority.

Consequently, the IFP has taken the position that no region can be dragged into a unitary state if it desires to enjoy federal relations with the territory. Conversely even if one region in the territory does not wish to be part of a unitary state, the inherent right of self-determination of the people of such a territory, requires that regions be allowed to enjoy a federal relation with the remaining part of the territory.

The right of self-determination is internationally recognised as the right of any people living in a territory to choose and ordain for themselves the government that they see fit and to determine in autonomy their political future. It would be paradoxical to recognise this right only in the extreme cases of secession and UDI, and deny this right in its lesser exercise of opting for a federal solution.

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The Constitution of the State of KwaZulu/Natal is the constitution of a member state of the Federal Republic of South Africa. It lists all the powers reserved to the Federal Government and divides the State into autonomous Regions. The constitution also lists the powers of the Regions and reserves to the State and to the people all the residual powers which are not granted to the federal government and to the Regions.

The Constitution of the State of KwaZulu/Natal sets forth a process for its approval and for popular ratification by virtue of which the Constitution will become the supreme law of the State.

The Constitution of the State of KwaZulu/Natal creates a truly free, pluralistic and democratic society.

Pluralism within the State is recognized by the entrenchment of territorial and personal autonomies. The Constitution acknowledges that most of the governmental functions are best exercised at regional level and empower the Regions with the necessary functions to be exercised in a well-proven framework of co-ordination with the State. The Constitution also recognizes that the role of the government shall be limited, and empowers the people as individuals and as members of social and cultural formations to regulate their own interests as they best see fit.

The Constitution protects the integrity of the territory of the State in various forms.

Human Rights
The Constitution recognizes and guarantees the full list of internationally accepted human rights. Drawing on the example of the finest modern constitutions in the world, the Constitution ensures the full protection and enforceability of these rights, without any exceptions, loopholes and other provisions which may water down the strength of human rights protection. In addition, the Constitution provides very expeditious and effective procedures to allow any aggrieved party to seek and obtain immediate redress. Human rights are fully entrenched in the Constitution.

The Constitution's commitment to human rights has no exceptions or qualifications. The Constitution recognizes all personal, social, economic, labour and cultural rights.

Equality
The Constitution ensures real equality among all citizens of the State who are now finally free and equal before the law, irrespective of race, colour, creed, religions, sexual orientations, and social and personal status. However, the Constitution goes further. The Constitution mandates that the State must work to promote and guarantee the equal access for all citizens to all political, economic and social opportunities. The Constitution

mandates the government to ensure a level and fair field where everybody can compete for political, social and economic opportunities. Education, professional training, assistance to small business, enhancement of the conditions of women and youth and other measures are identified in the Constitution as constitutionally mandated functions of the State.

Pluralism

Democracy by itself is not sufficient without the blessing of pluralism. The Constitution recognizes and respects that civil society expresses itself in a plurality of forms. The Constitution limits the role of the government to prevent its expansion to all aspects of civil society and social life. The Constitution recognizes and protects independence from the government and the autonomy of schools, institutes of higher culture, religious activities, private charities, leisure and sport organizations, professional associations, trade unions and labour organizations, chambers of commerce, media of mass communication, consumers and environmental groups, et cetera. The Constitution aims at empowering this civil society institution with various constitutionally recognized functions.

The rights and the privileges of the media are fully protected, along with the right of citizens to access information.

Social state

The Constitution of the State of KwaZulu/Natal creates a social state not a socialistic state. The State has the role to protect the less privileged and the most vulnerable segments of the population as well as the fundamental needs of all citizens. The Constitution prescribes assistance to the elderly and the education and protection of the youth as a duty on the part of the State and of their families. Decent and affordable housing for all citizens is constitutionally promoted, while health care, professional training, assistance to the indigents and the needy, constitutionally recognized welfare programs and social security, are constitutionally mandated.

Privatization

The role of the government shall be to regulate the private sector not to operate it. The Constitution mandates that all public enterprises which can be operated with comparable reliability and quality by the private sector shall be returned to the private sector. A special Privatization Commission is established to ensure that this process takes place with economic efficiency and without corruption, nepotism and disfunction.

Economic constitution

The constitution sets forth clear provisions structuring and promoting economic growth, common wealth and greater employment opportunities for all citizens. Private enterprise is fully guaranteed and assisted, and private property is fully protected. Expropriation is limited to absolute public necessity and must be accompanied by prompt market value compensation.

Under the Constitution of the State of KwaZulu/Natal the government shall not be freely allowed to spend public money. It shall report to the parliament and to an independent auditing centre. The government shall also not have the free power to borrow our children's and grandchildren's money. Therefore, the government shall operate on the

ADDENDUM 7

**THE DETERMINATION OF THE FORM OF STATE AND
OF A PROCESS OF TRANSFORMATION OF SOUTH AFRICA
CAPABLE OF ESTABLISHING FEDERALISM**

a) Background

There is a ripeness and an urgency to the determination of the form of state and for the negotiation of the process of transformation. The Government has submitted a proposal on regionalisation inclusive of power-sharing and other interim arrangements which substantially diverts from the process recommended by CODESA II Working Group III. This proposal has been actively negotiated with the ANC which according to the ANC NEC's resolution dated February 19, 1993 seems to have accepted the fundamental principles of the Government's proposal. These developments have put on the table with urgency and importance both the issue of the form of state and the issue of the process of transformation. At this point these issues must be determined as a preliminary matter and prior to the resumption of fully-fledged negotiations on other constitutional issues.

b) Negotiation of the Process

The Multiparty Negotiation Process shall determine a new process of transformation starting from a determination on the form of state. The IFP does not wish to be called to merely rubber stamp any understanding on the process and related time frame reached outside the negotiating forum.

The IFP rejects the notion that an election date can be determined until and unless an agreement on the process and related time frame has been finalised. The IFP detects a great risk in fixing any frame of references for the election date before the determination of the process, and before the process has reached a substantial point of maturity and development. As it would be politically impossible to postpone the election date once it has been fixed, there is the substantial risk that final stages of the process would not be finalized. This is particularly true if one of the major participants opposes them. For instance if the Codesa process were to be adopted, those who oppose the notion of a fully-fledged transitional constitution could very well purposefully delay the process of its negotiation and approval, so that under the pressure of an impending election date an agreement would forcefully be reached on something less than a fully fledged constitution. In the final analysis an undetermined process driven by an election date serves the purposes of centralistic and totalitarian forces which drive the process outside the parameters of broad political consensus and settlement including all the participants to the process.

Before beginning to negotiate the substance of the future constitution for South Africa, there must be an understanding on the process which will produce it, and on the necessity, or lack thereof, of interim arrangements such as power-sharing in a government of national unity. At this stage the issue of a transitional constitution and a Constituent Assembly (or other constitution drafting body) shall be negotiated and resolved.

We stand by the rejection of a transitional constitution, transitional power-sharing arrangements and a Constituent Assembly.

The IFP has proposed a process for the drafting of the final constitution for South Africa which does not require interim arrangements. This process will allow the finalisation of the transformation of our society by September 1994 with the ability to extend into March 1995 to accommodate possible delays.

According to the IFP proposal the Multiparty Negotiating Process should agree on a set of constitutional principles which would be handed down to a group of experts who would implement them in a fully-fledged constitutional draft. This draft would be returned to the Multiparty Negotiating Process for approval or rejection in its entirety, and once approved it would be submitted to popular ratification by referendum. An election would follow the referendum and a new government for South Africa would be empowered under the new constitution.

This process would do away with the notion of a Constituent Assembly and would avoid the risk that the constitution drafting exercise be hijacked by the demagoguery of liberation and be the reflection of the political vision of one or two participants rather than of a broad compromise which accommodates the essential needs of all the participants. More importantly, this process would allow the establishment of federalism, which a sovereign Constituent Assembly is not likely to produce, and, as indicated *infra*, it would also reflect the true needs, wants and aspirations of the people on the ground.

The IFP wishes to note that the Constituent Assembly need not be a legislative body, nor does it require a transitional government and a transitional constitution. An Act of Parliament could allow the election of a Constituent Assembly with the exclusive task of drafting the Constitution in accordance with the principles expressed by the Multiparty Negotiating Process and no later than July 1994. While the Constitution is being drafted the present government would continue to be in power.

Our proposal for a process to finalise the new constitution for South Africa requires a preliminary determination on the form of state. Our proposal has significant advantages over the proposals of the Government and the ANC/SACP alliance which have a number of elements in common.

It becomes essential that the Government and the ANC/SACP are willing to reconsider the entire process of transformation of our society and be open to accept different proposals and strategies. The issue of the process must become a preliminary matter for negotiation to be resolved before we enter discussions on aspects of the new constitutional dispensation for South Africa.

c) Form of State and Ground-up democracy building

The task of the Multiparty Negotiating Process shall be to entrench at an early stage and once and for all the issues related to the form of state or distribution of powers. We have expressed on many occasions, that it is not reasonable to negotiate who should draft the constitution and how the constitution should be drafted until and unless there is a determination on what type of constitution is to be drafted. We want to force all parties to express their vision on the two fundamental issues of federalism and pluralism.

It is the IFP position that the Multi-Party Negotiating Process shall agree that a federal and pluralistic state should be erected.

Once the issue of federalism is positively resolved the Multiparty Negotiation Process shall also determine a set of parameters and guidelines to allow the democratic process of ground-up democracy building. In fact, the establishment of federalism is quite unlikely to happen through a top-down process, as any form of downward devolution of powers could be accompanied by overriding powers and other controls. Federalism is a system of split sovereignty between the central and the state levels, and, therefore, the establishment of federalism should begin with ground-up democracy building processes which reclaim on an autonomous and original basis a limited amount of sovereignty to the states through the exercise of the regions of ordaining state governments within the parameters of a federal system.

Moreover, many regions of our country have expressed the intense political desire to erect themselves into statehood within a South African federal system. We do not believe that the process of transformation of our society should be controlled exclusively from centralised multi-party negotiations, and we have often taken the position that there must be an interaction between democratic transformations taking place at a regional level and the negotiating process at central level.

We have indicated that as long as the process of erecting regions into statehood respects a pre-agreed set of constitutional principles and relies on the will of the people, such processes should be registered and encouraged by negotiations taking place at central level. Accordingly, it should be the responsibility of the Government to organise referenda to allow the people of the regions to express themselves on constitutional drafts prepared by their elective representatives or by special regional Constituent Assemblies convened for such purposes.

This shall especially apply to the final ratification by referendum of the Constitution of the State of KwaZulu/Natal approved by the KwaZulu Legislative Assembly on December 1, 1992. The organisation by the Government of a referendum for the final ratification of the Constitution of the State of KwaZulu/Natal is a mandatory condition of our negotiations.

Once the Multiparty Negotiation Process positively resolves the issue of federalism, it shall produce a set of agreed essential constitutional principles to be used to guide the ground-up democracy building processes. This is to say that if such processes at local level respect the principles set forth by the Multiparty Negotiation Process the resulting state constitutions shall be registered and respected by the negotiating process at central level. In this respect the Multiparty Negotiation Process will be "directing" the ground-up democracy building processes.

In the December 10 Memorandum to the State President, the Inkatha Freedom Party tabled for the consideration of all parties a set of constitutional principles which should guide the ground-up democracy building processes. They are attached herewith as Annexure I/I.

The IFP has proposed the establishment of a Commission on regionalization which will have the purpose of interfacing the ground-up democracy building process with negotiations at the central level.

This Commission will have two tasks:

- 1) Attend to and supervise the process of ratification of the Constitution of the State of KwaZulu/Natal as adopted by the KwaZulu Legislative Assembly.
- 2) Assist political formations in developing constitutional proposals to identify the boundaries and the powers of new regions for South Africa in addition to KwaZulu/Natal.

The Commission will also assist the planning or negotiating forum to develop and approve the set of constitutional principles mentioned earlier which are to be used to guide and lead the formulation of constitutional proposals embodying the powers and boundaries of the new regions.

The Commission will receive the complete constitutional proposals which have been finalised through its assistance and which embody the powers and boundaries of any given region. A deadline will be set to complete these drafts. It will be the task of the Commission to verify the compliance of these constitutional proposals with a set of constitutional principles developed by the negotiating forum in co-operation with the Commission. Once the Commission has verified that the constitutional proposals comply with such principles, it will seek the negotiating forum's permission and guidance [advise and consent] to attend and supervise the submission of such constitutional proposals to popular approval by free and universal fair referendum within the concerned region. Alternative proposals could be submitted to referendum, and the people will decide which one they prefer. This can be easily achieved even in the case where the proposals cover different territories.

Given the unique characteristics of the region of KwaZulu/Natal the ratification of the Constitution of KwaZulu/Natal will be main-streamed. The process described above is designed to ensure that the boundaries and powers of the regions are identified and decided by the concerned interests in a contest which still allows the central forum of negotiation to assess their reasonableness with reference to social, economic, demographic and historic considerations as well as in view of the interests of other regions.

All referenda will be held on or before December 1, 1993, so as to allow the finalisation of the regional constitutional proposals prior to the completion of the drafting of the final constitution of South Africa.

It needs to be stressed that the Commission will be promoting the popular approval of regional constitutions which from a technical and legal stand-point will have only the status of very influential and authoritative proposals: they would not be laws. Therefore, these regional constitutions ratified by the people at the end of a process piloted by the Commission will not be binding on the constitution drafting process. However, undoubtedly they are going to have a very determining political influence on the nature and the wording of the

final constitution of South Africa. In fact, it would be politically unlikely and unwise to ignore the democratically expressed sovereign will of the people.

A further advantage of the IFP proposal is that it requires and justifies no type of power-sharing arrangement. It also ensures that the transitional process in South Africa is completed by September 1994, without a lengthy, excruciating and uncertain transition which would wear away the economic and social fibre of our society. The IFP proposal does not preclude that the first democratic government of South Africa be formed as a government of national unity, if the majoritarian political party so wishes.

Additionally the IFP proposal could allow both for symmetry and asymmetry in the resulting constitutional dispensation of South Africa. The IFP proposal registers the fact that not all regions are at the same starting point. On the contrary, the region of KwaZulu/Natal has gone ahead and finalised a proposal through a democratic process which now needs to be completed. The recognition that different regions have different needs and are at a different stages of maturity on the path of autonomy and possible statehood means that some regions may not be able or willing to finalise the process and they will need to be provided for through the process of negotiation at central level and in the drafting of the constitution of South Africa.

The IFP proposal obviates all the institutional and political risks associated with the proposal for regionalisation advanced by the Government.

The attached graphic describes the IFP proposal both with reference to the constitution drafting process relying on the use of a group of experts, as well as with reference to the possibility that an elected CMB be empowered for the exclusive purpose of drafting the new constitution for South Africa. [Annexure I/2]

Attached as Annexure I/3 is also a proposed Bill for the establishment of the Commission on Regionalisation.

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ANNEXURE I/2

MEMORANDUM FOR PRESENTATION TO H.E. MR FW DE KLERK
STATE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

BY MANGOSUTHU BUTHELEZI, CHIEF MINISTER OF KWAZULU AND
PRESIDENT OF THE INKATHA FREEDOM PARTY

PRETORIA : DECEMBER 10, 1992

[...OMISSIS...]

I put forward the following list of constitutional principles as vital for the formation of a new democratic South Africa. Each state should adopt a constitution embodying the principles set forth herein:

- * "Rigidity" of the constitution and its supremacy over any other source of law. The exercise of the powers of the federal government in the states must be consistent with the state's constitution. Special procedures shall be set forth to amend the constitution.
- * There must be federalism, with residual powers in the members states. The powers of the state should be exercised as close as possible to the recipients of its services, either through internal decentralisation or through the creation of autonomous regions. The principle of democratic participation in administrative and legislative activities should be implemented throughout the constitutional system.
- * There must be a full list of internationally recognised human rights, including personal, collective, social, economic, labour, family and political rights. Fundamental rights shall be entrenched and not amendable. People should be respected and protected both as individuals and as members of the social and cultural formations they belong to and with which they identify.
- * There must be an adoption of the lists of modern collective rights, such as the right of the media, the right to access information, the right to a clean environment, consumer protection, et cetera.
- * There must be a mandate to the government to remove social apartheid by developing equal access to all social, economic and political opportunities for all citizens irrespective of race, sex, colour or creed. It is the duty of the State to assist the needy and the less protected segments of the population, to assist the victims of apartheid, to improve the condition of women and senior citizens, and to provide social welfare and assistance.
- * Cultural and political minorities must be given full protection through constitutional mechanisms which ensure their political representation and participation and power sharing. There must be a guarantee of personal and collective autonomies with special regard to cultural, educational, personal and family matters.

- * There must be full protection of private property and free enterprise.
- * Privatisation and limits to the State's direct intervention in the economy must be guaranteed. The role of the government should be to regulate not to operate the private sector.
- * The State must have the power to plan economic development and use monetary tools of intervention within the framework of co-ordination at federal level. Civil society shall participate in any economic planning. Monetary policies shall be determined independently from the political process by a central bank.
- * There must be a parliamentary form of government.
- * Constitutional mechanisms must be provided to ensure the correct and non-politicised functioning of the public administrations, such as the civil service commission.
- * Constitutional mechanisms must be provided to prevent the uncontrolled growth of government, such as the civil service commission and a judicial relief commission.
- * There must be respect for the integrity of civil society in all its forms, and civil society must be empowered to participate in the constitutional development of the state.
- * Constitutional mechanisms must be provided to ensure that political parties do not interpose themselves between government and individuals or social and cultural formations. There must be constitutional options to promote a political life based on the discussion of issues rather than vague ideological alliances.
- * Traditional and customary law shall be protected provided that it is not inconsistent with the constitution and the role of traditional leaders should be preserved.
- * The State shall have residual taxation powers and there shall be limits to the taxation powers of the federal government.
- * There must be constitutional provisions to ensure sound management of State finance, including an independent auditor and a balanced budget provision. There must be provisions to ensure the fairness of the tax system.
- * The independence of the judiciary must be guaranteed and the prosecuting function must be removed from political control. There must be an accountability of judges to an independent body, such as a judicial service commission which will also directly administer the judicial services.
- * The State must be vested with the right to organise and maintain a state militia and limits to the federal military powers in the state.
- * Delicate matters such as the holding of elections and the creation of constituencies shall be mandated to an independent entity such as an electoral commission, with the possibility of judicial review on its actions.

* Checks and balances shall also be ensured by providing some of the independent powers with their own budgets not prepared by the government but directly submitted by them for the approval of the legislature. Qualification and guarantee for all individuals exercising public function shall be detailed to guarantee independence and prevent conflicts of interest.

* There must be a strong and effective Constitutional Court. When possible the resolution of conflicts must be removed from the political arena and brought into the field of jurisdictional constitutional adjudication. Civil society should be empowered for this purpose.

* Provision must be made for an Ombudsman who shall act as a public advocate to redress and prevent human rights violations and monitor that the development of the legal system is consistent with the Constitution.

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IFP PROPOSAL

Planning of
Ground-Up
Processes -
Approval of
Constitutional
Principles as
Guiding
Parameters (Dec.
10 '92 memo)

Work With Regional Proposals and Boundaries

Verify Consistency With Principles

Advice and Consent

CMB

Constitutional Principles

Authorization to Ratify by Referendum

Ratification of The Constitution of the State of KwaZulu/Natal

and Experts

Draft Constitution

MPNIF

for Approval
or Rejection
in its Entirety

Final Constitution | Commission is Dissolved

Referendum (Liberation Effect)

**Election
Under Final
Constitution
By 9-'94
Government
in a
Federal
System**

**Constitution
Can Be
Amended or
Repealed in
Accordance
to its
Procedure -
Federalism
is
Entrenched**

The Commission Interfaces to Ensure Consideration and Acceptance of Regional Proposals and Constitution Drafting Process

A

4.

IFP PROPOSAL TO ERECT FEDERALISM IN SOUTH AFRICA

BACKGROUND

Federalism is not a constitutional issue which can be resolved by majoritarian rule. There is an internationally recognised right to self-determination which entitles homogeneous or harmonious communities living in a given territory to choose their destinies and ordain for themselves the government which best fits their needs, wants and aspirations. This is to say that a unitarian form of government cannot be imposed on a region and on a community which does not want to have that government as their own. Therefore it is legitimate for a single region or large community to express a federalistic demand which must be registered by the process of transformation of our society.

The KwaZulu Legislative Assembly adopted the Constitution of the State of KwaZulu/Natal as representative of the needs, wants and aspirations of both KwaZulu and Natal. It is the duty of the Government to test through a referendum whether the Constitution adopted by the KwaZulu legislative assembly truly expresses the demands of the region and of the communities living therein.

The process of ratification of the Constitution of the State of KwaZulu/Natal needs to be integrated within the overall process of negotiation for a new constitutional dispensation for South Africa. This process should provide for sufficient mechanisms to allow other regions of South Africa to express their desire to choose a federal system as their own form of government.

For these reasons the IFP will introduce in Parliament the following Bill, on which the IFP solicits the support of all political parties.

A BILL

To hold a referendum on a constitutional proposal of the KwaZulu Legislative Assembly and to establish a Commission which will gather information and coordinate the formulation and ratification of constitutional proposals for the autonomous governance of regions within a unified and coordinated system of government for South Africa under a new Constitutional dispensation.

1. Definitions

As used in this Act the following terms shall have the meaning set forth herein:

"Constitution of the State of KwaZulu/Natal" shall mean the proposal adopted by the KwaZulu Legislative Assembly on December 1, 1992 and attached herewith as Annexure 1:

"Commission" shall mean the Commission on Regionalization established in this Act.

"Negotiating Forum" shall mean the Multi-Party Planning or Negotiating Forum or Constitution Making Body engaged at any given time in the negotiation and/or drafting of the principles and/or of the text of a new democratic constitutional dispensation for South Africa.

2. Ratification of the Constitution of the State of KwaZulu/Natal

The State President is empowered and directed to organize a referendum in coordination with the KwaZulu Government to be held in the province of Natal and in the territory of KwaZulu. All bona fide and legitimate residents of the territory of KwaZulu and of the province of Natal as per the date of the introduction of this legislation to Parliament of eighteen years of age or older, irrespective of race or sex or personal and social conditions, shall be entitled to vote at the referendum.

The referendum shall ask the electors: "do you intend to support and ratify the Constitution of the State of KwaZulu/Natal", and shall call for a Yes or No answer.

The Referendum shall be held on or before October 26, 1993

3. Establishment of a Commission on Regionalization

A Commission on Regionalization shall be established. The Commission shall consist of nine members appointed by the State President

- (a) with the advice and consent of a body consisting of the representatives of the signatories of the National Peace Accord with additional members appointed by the State President to represent political formations which did not sign the National Peace Accord, or
- (b) from a list of persons nominated for that purpose at the request of the State President by political parties or organizations which in his opinion have a relevant role to play in the process of democratic transformation of South African society in the case the body referred to under (a) above fails to make its recommendations after having been requested by the State President to do so.

The Commission shall be established by April 25, 1993.

4. Powers and Duties of the Commission on Regionalization

The Commission shall have the following powers and duties:

1. Attend to and supervise the process of ratification of the Constitution of the State of KwaZulu/Natal.
2. Assist political formations in developing constitutional proposals to identify the boundaries and the powers of new regions for South Africa in addition to KwaZulu/Natal.
3. Interface with the Negotiating Forum so as to develop a set of constitutional principles to guide and limit the formulation of constitutional proposals embodying the powers and the boundaries of the new regions.
4. Receive finalized constitutional proposals embodying the powers and the boundaries of any given region on or before July 7, 1993, verify their compliance with the set of constitutional principles referred to under (3) above, and, with the advice and consent of the Negotiating Forum, authorize, attend and supervise the submission of such constitutional proposals to popular approval by free, universal and fair referendum within the concerned region on or before December 1, 1993.
5. Interface with the Negotiating Forum so as to ensure that the constitutional proposals embodying the powers and boundaries of regions and approved by referenda held in the regions are adequately registered and considered in the process of drafting a new constitutional dispensation for South Africa.

The Commission shall be dissolved with the adoption of a new democratic constitutional dispensation for South Africa.



INKATHA

Inkatha Freedom Party

Iqembu leNkatha yeNkululeko

WORKING GROUP 2

POSITION PAPER OF THE INKATHA FREEDOM PARTY
FOR SUBMISSION AT THE CODESA MEETING OF FEBRUARY 6, 1992

INTRODUCTION

The Inkatha Freedom Party has no intention of bargaining away the future of South Africa's people through participating in a negotiating process which seeks quick expedient results at the expense of enduring principles. The foundations for the future multi-party democratic order need to be carefully laid and sufficient time should be allowed for reconciliation. The new South Africa must be responsibly and well governed into existence and the IFP will strenuously resist any suggestion that there should be constitutional leaps in the dark in trying to get there.

It is public knowledge that the Inkatha Freedom Party and its predecessor, Inkatha yeNkululeko yeSizwe, have devoted a considerable amount of thought, research and effort into finding constitutional arrangements that would transform South Africa from an apartheid state into a stable, harmonious, democratic and prosperous country for all its people. The famous Buthelezi Commission was followed by the equally successful KwaZulu/Natal Indaba. In addition the IFP has maintained contact with and comprehensively studied the constitutional law and practice of major democracies in the world.

1. GENERAL CONSTITUTIONAL PRINCIPLES

- 1.1 The Inkatha Freedom Party hereby sets forth those fundamental principles which must be enshrined in, and may not be contradicted by, any other provisions of the future South Africa Constitution. As such, these principles are the cornerstones of each of the sections of the constitution. The constitution drafting process shall identify the various options and formulate the constitutional provisions to implement these principles. Such principles shall also be the basis of constitutional interpretation and jurisprudence.
- 1.2 These principles are arranged by and reflect the subject matter encompassed in modern constitutionalism. They are listed here according to the organization and structure employed in the writing of modern constitutions. However, this should not preclude a different arrangement of sections or subject matter.

Nor should it prejudice the issue of whether constitutional principles should be spelled out in the constitution or merely extrapolated from its provisions.

2. FUNDAMENTAL PRINCIPLES: GENERAL

- 2.1 In the peoples of South Africa reside the sovereignty of South Africa, whether exercised as individuals or as groups. The constitution shall be the supreme law of the land and the source of inspiration for all governmental action. All acts, measures and decrees contrary to the constitution shall be judicially declared null and void.
- 2.2 All citizens shall enjoy equal protection of the laws and be afforded equal opportunity in the market place. This shall include the prohibition on any discrimination based on sex, race, religion, and personal status. However, this principle shall not preclude affirmative action programmes.
- 2.3 The constitution shall meet the test of social dignity. It shall declare the right of all individuals to the pursuit of happiness. It shall assert the duty of the state to guarantee, protect and actively promote the social dignity of the South African peoples, both as individuals and as members of groups. To achieve such goals, the state shall strive to remove economic and social obstacles and barriers which preclude equality of opportunity, equal social treatment and economic self-sufficiency for all the peoples of South Africa.
- 2.4 The constitution shall list the social functions of the state: national security, economic and social development, environmental protection, promotion of the quality of life, protection of the family, public education, public housing, and social and medical assistance.
- 2.5 Since South Africa is a pluralist society, political, social and ethnic pluralism shall be protected. National, linguistic, cultural and native identities, practices and traditions shall likewise be protected and promoted. Special attention shall be given to the needs and aspirations of indigenous peoples.
- 2.6 All South Africans shall be under a constitutional duty to make their contributions to the security and general welfare of the state.
- 2.7 South Africa shall conform both its legal system and its foreign policy to the norms of international law and cooperation.

3. HUMAN RIGHTS PRINCIPLES

- 3.1 South Africa shall recognize and guarantee all human rights, civil, political, social, cultural, religious and economic.
- 3.2. The constitution shall list in detail the fundamental rights

possessed by all South Africans, guided by the formulations set forth and proclaimed in the International Bill of Rights of the United Nations, in the European Convention on Human Rights and especially in the Africa's Banjul Charter on Human and Peoples' Rights.

- 3.3 The human rights provisions listed in the constitution shall not exclude the recognition of other human rights, identified on the basis of constitutional principles and on the changing social, economic and human growth and development of South African society. This principle will support an "evolutive clause" in the constitution, authorizing new forms of human rights protection against human rights violations not yet predictable.
- 3.4 All justiciable human rights shall be immediately enforceable, with appropriate procedures to provide redress and the termination of any violations.
- 3.5 Human rights shall not be breached or transgressed. Their exercise may be limited but never denied. Even in emergency situations, entrenched human rights shall be protected in their essential core.

4. PRINCIPLES CONCERNING SOCIAL AND POLITICAL RIGHTS

- 4.1 South Africa shall recognize the rights of individuals as members of social and economic organizations, including but not limited to the right to form and join trade unions, the right to strike, and the right to collective bargaining.
- 4.2 Political rights must insure effective participatory democracy. This includes the right to establish political parties. It also encompasses access to all non-privileged government information and access to government owned means of mass communication.
- 4.3 Political rights are designed to serve the objective and cause of democratic debate. No private or non-governmental military force shall be permitted.
- 4.4 Government shall not establish nor support any given religion. State and church shall be separate.
- 4.5 Colleges, universities and schools of professional education shall be autonomous.

5. PRINCIPLES CONCERNING ECONOMIC RIGHTS

- 5.1 South Africans shall enjoy a free market economy. Nationalization shall not be the policy of the state. Nationalization shall be permitted only when the free market can not reliably provide a particular need, and only upon a special majority vote of the legislature. Private property shall be protected. Expropriation shall be limited to a showing of public need and fair and expedited compensation shall be provided.

Expropriation decisions shall be subject to judicial review.

Foreign investments shall be encouraged and protected and the repatriation of profits allowed.

- 5.2 State intervention in the economy shall be limited to planning for the achievement of stable economic growth by creating opportunities for private enterprise. The state shall implement privatization of all government enterprises not inherent in the nature of government (e.g. defence, courts, taxation) and which can be operated more efficiently in the private sector.

A privatization commission shall be established. The commission shall have a predetermined limited life span renewable if needed. It shall be staffed with technical individuals and shall plan the privatization process so as to benefit the economy and avoid corruption and nepotism. It shall have the power to initiate legislation on privatization and shall work with the central and regional agencies implementing the privatization legislation to ensure efficiency, absence of corruption, and expediency.

- 5.3 The central bank shall be autonomous and shall have the right to determine interest rates and currency emission.
- 5.4 Government shall operate on balanced budgets. Approval of an unbalanced budget or a government deficit for necessary borrowing for future development shall require a special legislative majority. Government spending shall be checked by an independent auditing entity. In many countries, this entity has proven to be valuable in offsetting corruption and nepotism as well as governmental waste and inefficiency.
- 5.5 The tax system shall be fair and progressive. It shall not be a burden on production and investment.
- 5.6 Monopolies shall not be permitted and all practices in restraint of trade and competition shall be prohibited.

6. PRINCIPLES ON THE STRUCTURE OF THE STATE

- 6.1 Human and social rights and freedoms shall be guaranteed under a state structure which respects relevant logical, economic, territorial, cultural, linguistic and historical considerations. Historically, authoritarianism, dictatorship widespread corruption and the absence of individual and group rights flourish only in centralized and unitarian forms of government.
- 6.2 Democracy is best protected by a system enshrining separation of powers and checks and balances. We traditionally separate the legislative, executive and judicial branches and their respective powers over each other to achieve horizontal checks and balances. We secure vertical checks and balances by the separation of powers between the national federal government and state, regional and local governments.

- 6.3 Subsidiarity has become the key word in the constitutional planning of the European Community. It is the doctrine that nothing should be done on the Community level which cannot be done better at local levels. And local government is more capable and more sensitive to specific local needs and aspirations.
- 6.4 It is only in the centralized and unitarian state that one particular political faction can exclude all others from political participation and healthy democratic debate. Germany, the United States and other federal states often experience the situation where one political party is in power in the national government and another party controls the lander or state.
- 6.5 Regional governments are not only more democratic but more practical. Where government is closer to the people (i.e. where tiers and layers of government are removed), there is greater efficiency and cost savings, plus increased governmental effectiveness.
- 6.6 Such considerations are particularly important in South Africa where the central government has conspicuously failed to meet regional geopolitical interests.
- 6.7 Regional government must be the rule and central government the exception. The constitution shall list the powers and functions of the central government, those of the regions and those which are shared.
- 6.8 The boundaries of the regions/states shall be identified on the bases of historic, linguistic, economic and geopolitical considerations.
- 6.9 The constitutions shall set forth the principle that the residual powers vested in the regions/states should preferably be exercised through local governments on the basis of further decentralization and local autonomy (i.e. the creation of regions in the states, or the creation of provinces in the regions). The governments of the regions/states and the local governments should allow for broad public participation and participatory democracy.
- 6.10 The constitutions of the regions/state shall be approved by the Constitutional Court for conformance with the principles of the South African constitution.
- 6.11 Local governments in the regions/states shall be chartered in accordance to a uniform law adopted by the regions/states. Such law would respect and authorize exceptions from the general rules for traditional territorial governments. After approval, but before publication, this law would be verified for compliance with the constitution and the national interests. Disputes would be resolved before the Constitutional Court. This type of checks and balances follows the successful Italian model, subsequently in the constitutions of other countries.

- 6.10 The constitution shall ensure that regions\states have independent taxing powers.

7. PRINCIPLES ON THE ORGANIZATION OF GOVERNMENT

- 7.1 The government shall be divided into legislative, executive and judicial branches. The three branches of government shall be separate. Each branch shall be provided with effective powers to check and balance the functions exercised by the other branches.

7.2 The legislature

- 7.2.1 The legislature shall represent the people of South Africa on both a territorial and a population basis. The territorial chamber is designed to ensure protection of regional interests and its members shall be chosen by the legislatures of the regions/states. The other house shall be chosen on the basis of proportional representation and constituency.

- 7.2.2 The legislature shall effectively control the operations of government and the civil service, investigate their activities, and demand and receive government reports. It shall be open to public participation by popular legislative initiative, through reports from the ombudsman, by public hearings and by other techniques of participatory democracy. The legislature shall be deemed an "open parliament."

- 7.2.4. Members of the legislature shall be guaranteed the privileges and immunities necessary to promote the independent and undisturbed exercise of legislative functions.

- 7.2.5 An independent electoral commission shall be established to correct any impropriety in the elections process, both prior to and during the actual balloting.

7.3 The Executive

- 7.3.1 The executive shall be accountable to the legislature. The head of state shall not be the head of government. Government shall function on the basis of wide-based consensus and shall enjoy the confidence of both houses of the legislature. The fact that one of the houses is elected on the basis of regions/states will promote the formation of a coalition government with a broad consensual basis. This will achieve and maintain national cooperation and reconciliation.

- 7.3.2 The head of state shall be elected by indirect suffrage by individuals elected for that purpose on the basis of electoral principles which ensure that all territorial formations in the state (regions/states) receive adequate representation.

The executive is designed not to be a weak and impotent

executive, nor to be a domineering executive which can govern without a broad consensus. It is designed to be an effective and fully empowered executive to be responsive to the needs, wants and aspiration of the people and to govern with parliamentary consensus. The position of the executive in the legislature shall be effective but not domineering. It shall not control the legislature's agenda nor have an unqualified and broad veto power.

7.3.4 Governmental action shall be conducted in strict compliance with the laws adopted by the legislature and shall be subject to judicial review. Governmental rules and regulations to implement legislation shall likewise be subject to judicial review.

7.3.5 An independent civil service commission shall be established to select civil servants, monitor the efficiency and fairness of government, conduct independent investigations of alleged cases of corruption, nepotism, inefficiencies and malfunctions, and provide regulatory relief by soliciting changes in rules and regulations. The commission shall also ensure that the civil service is representative of all population groups.

7.4 The Judiciary

7.4.1 The judiciary shall be independent and the status of the judges shall be protected from any potential influence.

7.4.2 An independent judicial service commission shall be established to recommend the selection and appointment of judges. It shall also supervise the lower courts and appoint local magistrates. It shall prescribe the qualifications of judicial personnel and set the criteria for the advancement of judges, their transfers and assignments. They shall hear complaints and exercise disciplinary authority. They shall also develop educational programs for the training of newly designated judges.

7.4 The constitution shall set forth the jurisdiction of both the central and the regional/state courts. It shall also indicate the general criteria under which matters of regional/state law can be heard or reviewed by the central state court system.

7.5 The constitution shall give proper consideration to administrative courts, tax courts, labour courts and specialized courts dealing with tribal and customary law; it shall also prohibit the creation of special ad hoc or post facto tribunals and the jurisdiction of military courts over civilians.

7.6 The constitution shall set forth the privileges and immunities of judges necessary to ensure their independence and impartiality, as well as the criteria for the selection of the members of the judicial service commission.

8. PRINCIPLES ON THE GUARANTEE AND PROTECTION OF THE CONSTITUTION

- 8.1 Constitutional government must be ensured by the creation of enforcement mechanisms and human rights must be protected by the establishment of their own implementation machinery.
- 8.2 As the supreme law of the land, the constitution may only be amended, modified or derogated by legislative action by a special majority, ratified by a popular referendum. The republican form of government and fundamental human rights may not be subject to constitutional amendment.
- 8.3 Any law adopted in South Africa in conflict with the constitution shall be null and void *ab initio*. Judicial review, applicable to the legislation of both the central government and the regions/states, shall be exercised by the Constitutional Court. Because the new constitution will be so different from the existing constitution, it should be interpreted by a new court rather than through the existing legal system. Further, the establishment of a distinctive court with this express function will foster specialized expertise and uniformity of result.
- 8.4 The Constitutional Court shall be independent, with the power to adopt its own rules of organization, operation and procedure. The justices shall be selected through the participation of various branches of government from the best legally trained individuals who have proven impartiality and dedication to constitutional principles. They need not to be South African citizens; on the contrary it would be desirable to enlist the knowledge and experience of racially neutral foreign lawyers.
- 8.5 The jurisdiction of the Constitutional Court shall be invoked when a constitutional issue is raised "which is not obviously without merits." This broad standard, adopted by the European constitutional courts, is necessary in providing appropriate judicial relief under a new and novel constitutional order. Political parties and other interest groups recognized by the Constitutional Court, in accordance to its rules, shall have the power to bring direct actions. The decisions of the Court shall have retroactive effect.
- 8.6 The Constitutional Court shall also adjudicate conflicts between the central state and the regions/states and those between the various regions/states. Its jurisdiction shall extend to all matters requiring special constitutional adjudication.
- 8.7 The office of ombudsman shall serve as the nation's public advocate, representing the people against the government. It shall investigate alleged violations of rights and privileges granted by the constitution and secure such rights through the courts as appropriate. It shall have access to both the central and regional executive and legislative branches to enforce rights administratively as well as pursuing judicial action. It shall also propose legislation as appropriate and work with central and regional agencies on matters affecting the interest of the public.

- 8.8 The ombudsman shall maintain offices throughout the nation in order to be accessible to members of the public in the enforcement of their human rights.

9. CONCLUSION

The IFP's vision for South Africa is that of a social state, made possible by free enterprise and market economics, which will continually strive for social and human development. It is a state where human rights are not only protected and enforced but their exercise encouraged and nourished. We advocate state and regional structures designed to bring government ever closer to the people so that they may better participate in the democratic process.

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**THE CONSTITUTION
OF THE STATE OF
KWAZULU/NATAL**

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**RESOLUTION
ADOPTED BY THE
KWAZULU LEGISLATIVE ASSEMBLY
1ST DECEMBER 1992**

WHEREAS the KwaZulu Legislative Assembly is extremely concerned by the delays and uncertainties in the process of negotiating a constitution for South Africa which will ensure the long sought-after blessings of freedom, democracy, pluralism and social justice for all South Africans:

WHEREAS the KwaZulu Legislative Assembly strongly believes that only a Federal system with residual powers in the States and internal regionalisation can ensure long-lasting freedom and democracy in South Africa and a correct system of checks and balances:

WHEREAS history and common knowledge of political sciences teach that it is unlikely that central powers willingly promote the transformation of their structures into effective Federal structures:

WHEREAS the KwaZulu Legislative Assembly believes that it is its historical duty to respond to the growing demands for federalism arising from all sectors of the region of KwaZulu/Natal:

WHEREAS the Region of KwaZulu/Natal is held together by strong historical ties and commonality of interest and perspectives which justify and demand the self-determination of the Region in the form of a Federal State within the Federal Republic of South Africa:

WHEREAS the KwaZulu Legislative Assembly has witnessed the progressive and irresistible deterioration of the institutional and economic situation in South Africa, in a climate of ever-growing and seemingly unstoppable violence which threatens to evolve into a civil war:

WHEREAS the KwaZulu Legislative Assembly was established for the fundamental purpose of providing for the welfare of all the people of KwaZulu:

WHEREAS the KwaZulu Legislative Assembly believes that the welfare of the citizens demands that steps towards the construction of federalism are taken without any further delay:

WHEREAS the KwaZulu Legislative Assembly has received from the Chief Minister and the Government of KwaZulu a constitutional proposal to erect the region of Natal and KwaZulu into statehood within the framework of a Federal Republic of South Africa:

WHEREAS the KwaZulu Legislative Assembly has analyzed such proposal and found that in its general vision and fundamental parameters it meets the needs, wants and aspirations of the people of KwaZulu/Natal:

WHEREAS the call for Federalism in this region has been expressed forcefully by our Honourable Chief Minister at least since the early seventies, creating a stream of thought and action which inspired the establishment of the Buthelezi Commission leading to the KwaZulu/Natal Indaba and the formation of the Joint Executive Authority:

WHEREAS the Constitution of the State of KwaZulu/Natal builds and capitalises on the experience of the KwaZulu/Natal Indaba and on the work of the Buthelezi Commission:

WHEREAS the KwaZulu Legislative Assembly, mindful of its responsibilities towards its people and Almighty God, feels that the adoption of the Constitution of the State of KwaZulu/Natal can no longer be delayed:

WHEREAS the KwaZulu Legislative Assembly understands that the Constitution of the State of KwaZulu/Natal will be submitted to a State-wide debate and scrutiny which will include its submission for approval to the Joint Executive Authority, and to existing social and cultural formations, all of which the KwaZulu Legislative Assembly strongly encourages and supports:

WHEREAS the KwaZulu Legislative Assembly deems it to be part of the functions of the KwaZulu government to promote the analysis and scrutiny of the Constitution of KwaZulu/Natal throughout the State, and deems that the Inkatha Institute and the IFP Information Centre are amongst the centres which can adequately carry out this function on behalf of the government of KwaZulu:

WHEREAS the KwaZulu Government intends to adopt the Constitution of the State of KwaZulu/Natal with the understanding that with its final ratification the Constitution will become the supreme law of the land and shall stand as such regardless and in spite of whatever course the negotiations at central level will happen to take.

NOW THEREFORE the KwaZulu Legislative Assembly HEREBY:

RESOLVES that **THE CONSTITUTION OF THE STATE OF KWAZULU/NATAL IS HEREBY** approved by the KwaZulu Legislative Assembly as a document which will guide and prompt the process and its adoption by the JEA and ratification and empowerment by the South African government, and it further

RESOLVES that the Constitution of the State of KwaZulu/Natal be provided with the broadest circulation possible and that seminars, debates and other forms of public scrutiny be promoted by all adequate forums including the Inkatha Institute and the IFP Information Centre, and it further

RESOLVES that the Constitution of the State of KwaZulu/Natal be forwarded for approval to the Joint Executive Authority which is hereby requested to fix a date on which a popular referendum will be held for final ratification of the Constitution, and to appoint a referendum committee to make such adjustments on the referendum date as they may deem necessary.

A. CONSTITUTIONAL MATTERS

VOLUME FOUR

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THE CONSTITUTION OF THE STATE OF KWAZULU/NATAL

PREAMBLE

We, the people of Natal and KwaZulu, mindful of our unique and diverse heritage, inspired by the desire to secure the blessings of democracy, freedom and pluralism for our and future generations, respecting the equality of all men and women, recognising the right of people to organise themselves in autonomy and independence at all levels of society, desiring to ensure that individual rights and liberties are accompanied by obligations of social solidarity to others, determined to guarantee that the rights of all people are protected both as individuals and members of social and cultural formations, do now ordain and establish this constitution for the State of KwaZulu/Natal to provide the people of KwaZulu/Natal with a government to serve their individual and collective needs, wants and aspirations.

FUNDAMENTAL PRINCIPLES

1. Inherent Rights and Obligations

The State of KwaZulu/Natal acknowledges and recognises that all individuals have the natural right to life, liberty and the pursuit of happiness, and to the enjoyment of the rewards of their own industry; that all individuals are equal and entitled to equal rights, opportunities and protection under the law, and that all individuals have corresponding obligations to the State and a general obligation of social responsibility to the people of the State.

2. Source of Government

All political power is inherent in the people. All government originates with the people, is found only upon their will, and is instituted only for the good of the people as a whole. Government shall respect and encourage the exercise of the power of the people to organise and regulate their interests autonomously.

3. Relationship with the Federal Republic of South Africa

The State of KwaZulu/Natal is a sovereign member state of the Federal Republic of South Africa. The State of KwaZulu/Natal recognises its obligations toward the Federal Republic of South Africa and the other member states of the Federal Republic of South Africa in so far as they do not infringe upon the rights, powers and liberties guaranteed by this constitution to the citizens

of Natal/KwaZulu and to the State of KwaZulu/Natal. The sovereignty of the State of KwaZulu/Natal as asserted under this constitution is indivisible, inalienable and untransferable.

4. Territory

The territory of the State of KwaZulu/Natal is indivisible and inalienable. The State of KwaZulu/Natal shall engage in negotiations with the other states of the Federal Republic of South Africa and with the Federal Republic of South Africa to increase its territory so as to include areas which are historically, culturally and socio-economically strictly connected to the territory of the State of KwaZulu/Natal. The territory of the state includes territorial waters.

5. State's Unity

The State of KwaZulu/Natal is one and indivisible. The powers of the State shall be exercised through the State and the Regions as set forth in this constitution. The State and the Regions shall encourage and promote decentralisation of their powers and delegation to local governments.

6. Citizenship

All Citizens of the Federal Republic of South Africa residing in Natal or in KwaZulu shall be citizens of the State of KwaZulu/Natal. No citizen of KwaZulu/Natal shall be deprived of citizenship except in such cases as they may be listed in the laws of the State and based on voluntary relinquishment. The General Assembly may grant citizenship in special cases. A resident of the State shall be anyone who has been lawfully domiciled in the State for over six months.

7. Language

The official languages of the State of KwaZulu/Natal shall be English, Zulu and Afrikaans. The State shall protect and encourage the use of languages other than the official languages. Nothing in this constitution shall prohibit the use of any other language as a medium of instruction in private schools or in schools subsidised or financed by the State, or the Regions or by the Federal Republic of South Africa, subject to compliance with such requirements as may be imposed by law to ensure proficiency of the official languages or for pedagogic reasons. In units of local government where considerable portions of the population speak a language other than English, Zulu and Afrikaans a different language may be used as an additional official language under conditions and in a manner to be determined by law.

8. State's Symbols

The coat of arms, the flag and the anthem of the State of KwaZulu/Natal shall be determined by a law adopted by a two-thirds majority of the General Assembly.

9. State's obligations

The State of KwaZulu/Natal shall ensure internal security and safety, promote balanced economic development, foster social development, guarantee environmental and consumer protection, ensure health services, education and welfare for its citizens, constantly strive to improve the quality of life of all people in the State, preserve and protect the State's religious, linguistic and ethnic heritage and cultural diversity, nourish the people's right to the pursuance of happiness both as individuals and as members of their social formations, protect the family, extend special protection to maternity and paternity and to the children, extend special protection for women, the disadvantaged and less privileged portions of the population, and strive in its actions and policies to achieve social justice in accordance with the principles of this constitution.

10. Equality

- a. All citizens of the State of KwaZulu/Natal have equal social dignity, shall be equal before the law and shall share an equal right of access to political, social and economic opportunities irrespective of sex, race, colour, sexual orientation, language, traditions, creed, religion, political affiliation and belief, and social and personal status.
- b. The State of KwaZulu/Natal shall remove social and economic hindrances which operate as a factual limitation on the freedom and equality of all its citizens, prevent their human and social growth and diminish their equal access to political, economic and social opportunities. For this purpose the State of KwaZulu/Natal may take measures in favour of segments of the population requiring special assistance.

11. Rule of Freedom

All conduct and activities which are not prohibited shall be permitted. The State of KwaZulu/Natal may prohibit and regulate conduct and activities for a demonstrable State's interest founded on public interests and welfare.

12. **Federal Law**

All statutes and regulations validly adopted by the Federal Republic of South Africa as well as international law as recognised by the Federal Republic of South Africa shall have immediate force and effect in the State of KwaZulu/Natal in so far as they are not inconsistent with this constitution.

13. **Traditional and Customary Rules**

The State of KwaZulu/Natal shall recognise and protect the application of traditional and customary rules not inconsistent with the principles and provisions of this constitution in all matters left to the autonomy of individuals and that of social and traditional formations to which individuals belong on a voluntary basis or from which they have not dissociated themselves in a manner prescribed by law. Traditional and customary rules are produced in accordance with the rules and the sources governing their production and shall not be modified or repealed by the law. Traditional or customary laws shall not have territorial application unless so authorised by law, in which case they shall be subject to the law to the extent that they apply to individuals who do not share in such tradition or custom. All traditional and customary law shall be collected and published by a committee of the General Assembly working in conjunction with the affected interests.

14. **Supremacy of the Constitution**

This constitution shall be the supreme law of the State and shall be applied and enforced to the fullest extent possible in all judicial and administrative procedures as well as in interpersonal relations under the control of the State of KwaZulu/Natal.

FUNDAMENTAL RIGHTS

15. **Individual and Collective Rights**

Fundamental rights are recognised and shall be protected both in their individual as well as in their collective exercise, and they imply the right to establish institutions, adopt rules of conduct and regulate interests which are instrumental to the collective exercise of such rights. All powers established and recognised under this constitution shall protect and nourish the exercise of these rights and respect and foster their collective exercise.

16. **Justiciability of rights**

All rights and freedoms recognised and guaranteed under this constitution shall be justiciable to the fullest practical and reasonable extent. In the case of a violation of the rights and freedoms recognised and guaranteed under this constitution any aggrieved party shall be entitled to be heard by a court of record on the basis of urgency and, upon showing a *prima facie* violation of rights, shall be granted preliminary relief pending the final disposition of the case.

17. **Limits on the exercise of the rights**

The law may impose reasonable restrictions on the exercise of the rights set forth in this constitution to protect the rights of others and for compelling reasons of public interest. However, in such a case the law must respect the essential content of the rights, and the limitation on the exercise of the right must not have the practical effect of preventing or deterring the free exercise of the rights in their reasonable manifestations.

18. **Physical and psychological integrity**

- a. The physical and psychological integrity of any individual shall be inviolable. No one shall be authorised to inflict any type of violence on another individual or to take a life. Capital punishment and any form of physical or psychological torture and punishment shall not be allowed.

- b. No one shall be submitted to unusual or cruel punishment and all punishments shall aim at the personal and social rehabilitation of the person. During imprisonment juvenile delinquents shall be kept separate from other delinquents and so shall men from women. Failure by a public official to report any and all instances of physical or psychological violence on a person deprived of his or her liberty shall be a criminal offence.

19. **Freedom of communication**

- a. All persons shall be free to express and communicate their thoughts in private and in public, in oral, written, visual or any other fashion, and to establish institutions for such a purpose. All forms of censorship or limitation on the contents of such communications shall be prohibited.
- b. Limitations on the contents of commercial speech may be imposed to guarantee the truth and the fairness of the representations made to consumers and to ensure fair competition, provided that there shall be no prohibition of comparative advertising.
- c. Limitations on the form of communication may be imposed as to time, place and manner so as to protect and respect the rights of others and compelling public interests, but not to the extent that the limitation on the forms of communication becomes a limitation on the contents thereof.
- d. No one shall be compelled directly or indirectly to disclose or express his or her ideology, creed, religious belief, or political opinions.

20. **Freedom of Religion**

Religious freedoms are recognised and shall be guaranteed. Everyone shall have the right to profess and promote his or her religion or belief, and to establish institutions and organise activities for this purpose. The State of KwaZulu/Natal shall not take any action supporting or endorsing any particular religious belief or confession or conditioning the exercise of religious freedom to any requirement, and shall promote conditions for the equal and free exercise of all religions and beliefs in the State.

21. **Liberty**

- a. No one shall be deprived of his liberty without cause and due process of law. Unwarranted arrest and detention shall be allowed only on the basis of probable cause related to an offence punishable by imprisonment. Anyone arrested or detained shall be informed of his or her rights in a language that he or she understands, shall be informed of the reasons for the arrest and detention with an indication of the charges, and shall have a court hearing within twenty four hours from the time of his or her arrest, after which the detention may continue only by court order based on factually corroborated allegations.
- b. Anyone detained or accused has the right to remain silent. Anyone detained or charged with an offence punishable by imprisonment has the right to consult counsel, and if he or she can not afford one the court shall appoint one at government expense. There shall be a right to counsel in any and all proceedings in which the accused participates.
- c. Detention prior to sentencing shall be limited to cases established by law and shall not exceed three months.
- d. Anyone detained, arrested or condemned unlawfully shall have the right to be rehabilitated, to receive indemnification and other rights determined by law.
- e. Any government authority shall inform anyone who is the subject of an investigation for any reason.
- f. No one may be tried twice for the same conduct. No one shall be charged for a conduct which at the time was not an offence, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed. There shall be no analogical or retroactive interpretation of criminal law.

g. Anyone has the right to a speedy, open and public trial and to confront his or her accusers at trial. All trials shall be based on the accusatory principle and shall be subject to the right to appeal on the grounds of error of law.

h. No one shall be removed from the authority of the judge with jurisdiction over the specific offence at the time the offence was committed. There shall be no special or *post facto* judges. Any accused person has the right to be tried in an impartial, independent and competent court. Anyone shall be presumed not guilty until proven guilty.

22. Travel and movement

Everyone shall have the right to travel, move and reside within or outside the State. No government policy forcing the relocation of people shall be allowed. Any citizen of the Federal Republic of South Africa shall have the right to take domicile in the State.

23. Privacy

a. Everyone shall have the right to the protection of privacy, of his or her personal life, of his or her domicile, and to protection of his or her personal dignity and reputation. All private communications and all aspects of private life shall be protected. Search and seizure may be allowed only on the basis of a warrant issued on the basis of corroborated allegations, and in the cases and with the guarantees established by the law. Personal search shall be allowed as an incident to a legitimate arrest and detention.

b. Anyone has the right to access the information collected on him or her by the Government or by private data or information banks.

24. Freedom of the Media

Anyone has the right to publish and distribute printed materials. The press and the media of mass communication shall have the right to inform the public on matters of public interest provided that they do not publish erroneous information as a result of gross professional negligence or malice. The media have the duty to rectify all erroneous information they publish which damages the reputation of others.

25. Assembly and Association

Everyone has the right of peaceful assembly. No notice shall be required for assembly in a private place or in a place open to the public. For assembly in a public place prior notice shall be given to the competent authority which may prohibit the assembly only for reasonable apprehension of public security and safety. Everyone has the right to associate for any legal purpose. Associations pursuing directly or indirectly political purposes by means of military training or association operating in a para-military fashion shall be prohibited.

26. Family rights

A man and a woman have the right to join in marriage in accordance with the rituals and with assumption of the obligations and privileges of their choice. However, both spouses shall have equal rights, obligations and dignity. Both parents shall have responsibility for the upbringing, formation and education of the children, even if born outside wedlock. The law shall ensure that comparable rights and social protection shall be extended to children born outside wedlock as they shall be recognised to children born in wedlock. Both parents have the right and the duty to exercise joint custody of the children unless a court otherwise decides in the interest of the children and on the basis of the specific circumstances of the case. Both parents have the right and the duty to choose an acceptable formation and education for their children.

27. Procreative Freedom

All people who so desire shall enjoy the freedom of procreative choice, including the right to receive sexual education, to use contraception and terminate unwanted pregnancy when safe. Anyone who finds these practices objectionable shall have the right to protect his or her own sphere of interests from any of these practices and from the exposure thereto.

28. Cultures and Traditions

Everyone shall have the right to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion.

29. Human rights in the Constitution

All fundamental human rights and all those other rights which are inherent to fundamental human needs and aspirations as they evolve with the changes and growth of society, and as they will be recognisable on the basis of the principles underlying the provisions of this constitution, are hereby entrenched in this constitution and in their essential content shall not be modified by virtue of constitutional amendments.

ECONOMIC, SOCIAL AND POLITICAL RIGHTS

Economic rights:

30. Free Enterprise

The right to free economic initiative and enterprise shall be recognised, protected and encouraged by the State. The State shall assist small businesses and provide other incentives to encourage access to economic opportunities. Within the limits set forth by the law to protect the public interest each enterprise shall be free to choose and organise the means of the production as it best sees fit.

31. Contractual autonomy

Within the limits set forth by the law to protect the public interest, the State shall recognise and protect the right of individuals to self regulate and organise their interests in economic and other matters by means of legally enforceable contracts and by establishing legal entities to carry out their purposes and objectives.

32. Commercial and Insolvency Law

The State shall promote uniformity of its commercial and insolvency laws with those of other states and countries.

33. Permits and Licensing requirements

The State shall not subject human conduct to unreasonable or unnecessary licensing and permitting requirements. Permits and licences shall be issued on the basis of objective and reasonable standards and criteria.

34. Private Property

Private property shall be guaranteed and protected. Limitations on the use and enjoyment of private property may be imposed so as to satisfy social, environmental and collective needs. The right to convey one's own property by contract or inheritance shall be protected subject to the reasonable exercise of the State's power of taxation.

35. Expropriation

The State or another entity authorised by law may expropriate property for public necessity subject to the prompt payment of a fair market value compensation.

36. Property of the State and the Regions

The State and the Regions may own property as private or public property. Public property shall not be alienated or encumbered and is related to the exercise of public functions or is held by the State or the Regions in the public interest. The law shall set forth the principles for the acquisition, administration and declassification of public property. The General Assembly shall publish a yearly report on the property owned by the State and the Regions indicating their current and planned use and their maintenance and carrying costs.

37. Public Enterprise

No enterprise shall be acquired or conducted by the State or the Regions either as a monopoly or as a free competition enterprise, and no service shall be provided to the public unless so authorised by a law demonstrating a public need and the inadequacy of the private sector to satisfy such need with comparable efficiency and reliability. When these requirements no longer exist the enterprise or the service shall be privatised.

38. Property of the Federal Republic of South Africa

All tangible and intangible properties of the Federal Republic of South Africa in the State of KwaZulu/Natal shall be subject to the same rules and limitations set forth in this constitution for the properties of the State.

39. Communal Property

Communal property is recognised and shall be protected. Communal property shall be administered and regulated by traditional and customary Rules.

40. Practices in restraint of trade

All monopolies and practices and agreements in restraint of trade and free market competition shall be prohibited.

41. Agriculture

The State of KwaZulu/Natal shall encourage agriculture, the socially just and responsible use and distribution of land and the access of citizens to land ownership. The State shall promote agricultural cooperation and assist farmers on a cooperative basis.

Social Rights:

42. Right to Education

- a. All citizens shall have the right to receive a basic education and professional training. The law shall determine the period and the minimum educational requirements for compulsory education. The State shall support the citizens' aspiration to higher education by means of scholarship and by promoting the highest standards of excellence in education.
- b. Both private and public schools shall ensure open and equal access to educational opportunities. Parents shall be entitled to participate in the administration and operation of their children's schools.

43. **Right to Work**

Everyone shall have the right to access any job opportunity for which he or she is qualified. As a matter of priority, the State shall promote the full employment of all citizens. No one's employment shall be terminated for political reasons or in violation of his or her constitutionally protected rights. Everyone shall have the right to receive a fair compensation for his or her work, shall be entitled to at least one vacation day a week, to a period of paid vacations during the year and to severance payment upon termination. All workers shall be entitled to social security, pensions, invalidity and unemployment benefits as determined by law.

44. **Protection of Women**

The law shall extend special protection to women. The law shall guarantee maternity leave and provide assistance to mothers in the work force. Until such time when the social status of women in the State has significantly improved, the law shall recognise special privileges for women in all programmes and measures aimed to ensure equal access to political, social and economic opportunities, shall establish and maintain a Ministry for Women's Affairs, and reserve a portion of the available public offices to women.

45. **Senior Citizens**

The law shall promote the economic sufficiency of senior citizens and provide social services to assist them in relation to their housing, care, health, cultural and leisure needs.

46. **Youth**

The law shall promote conditions for the free and effective participation by the youth in political, social, economic and cultural developments.

47. **Schools**

Everyone shall have the right to establish private schools. Private schools shall have the power to determine their own curricula and syllabi within the general parameters set forth by law for the purposes of recognition and equipollence of degrees.

48. **Universities**

All public universities and institutes of higher education in the State shall be entitled to regulate their organisation and operations within the general parameters set forth by law.

49. **Health Care**

All citizens shall have the right to receive medical attention and care in case of need. The law shall determine the implementation of this right. The law shall develop policies of prevention, treatment, rehabilitation and integration of those who are physically, sensorially and mentally handicapped, including those who are substance addicted.

50. **Job Conditions**

The law shall ensure safe job conditions and shall provide special protection for women, minors and untrained labour.

51. **Housing**

The law shall promote conditions to ensure that all citizens have the possibility of living in a dignifying habitation and shall facilitate the purchase of residences through credit facilitation and other programmes. All citizens have the right to receive shelter and shall have equal access to housing opportunities.

52. **Research, Arts and Teaching**

The freedom of scientific research, artistic expression in all its forms and teaching is recognised and shall be guaranteed.

53. **Right to a Pleasant and Clean Environment**

The State shall recognise the rights of present and future generations of citizens to live in and enjoy a pleasant and clean environment. The law shall determine the cases and the limits in which citizens may bring legal actions on behalf of the community against those who cause environmental damages.

54. **Labour Rights**

Everyone shall have the freedom to form and join trade unions and employers' associations. The State shall respect and protect the right to strike but may limit its exercise in cases determined by the law for reasons of public security and safety. Labour organisations shall have the right to negotiate and execute collective bargaining agreements to be effective with force of law vis-a-vis the category of workers covered by their provisions. During these negotiations the labour organisation shall be represented on the basis of the number of their members. Trade unions shall have the right to conduct reasonable activities in the work place aimed at improving labour conditions. The State may impose requirements on the trade unions only to ensure that they are organised and operated with full internal democracy.

Political Rights:

55. **Right to Vote**

- a. All citizens of eighteen years or older shall have the right to vote. The vote shall be personal, secret, free, and equal. The right to vote may be suspended by a judicial adjudication of incompetence, or by an irrevocable sentence for major crimes specified by the law.
- b. The law recognises, and the State shall facilitate, the exercise of the right to vote by citizens who are outside the State.

56. **Right to Petition and to Initiate Legislation**

Any citizen has the right to petition the General Assembly, the Regional Congresses and any branch or level of government. A citizen's legislative proposal signed by five hundred citizens may be submitted to the General Assembly.

57. **Freedom of Information**

Any citizen has the right to access and receive any information or document which is in the possession of the State or Regional governments or of any of the commissions or agencies established in this constitution, provided that such document or information is not privileged as established by law to protect privacy, commercial secrets or national and State security. During the process of judicial review of the government's decision to withhold information, the court shall have the power to examine *in camera* the information withheld.

58. **Political Parties**

The citizens of the State have the right to form political parties to participate in all levels of democratic life. No one shall be directly or indirectly compelled in any way to join a political party or shall be penalised for not belonging to one. Political parties shall ensure internal democracy in their organisation and operations.

59. Media of Mass Communication

Anyone shall have the right to establish media of mass communication, including newspapers, cable, radio and television stations. The law shall regulate the rights of citizens and political parties to access media of mass communication under the control of the government or in situations of virtual hegemony or monopoly.

OBLIGATIONS AND DUTIES

60. Allegiance to the Constitution

All citizens of the State shall have the duty to uphold this constitution. All those who hold any of the offices provided for in this constitution shall take an oath or a solemn affirmation to uphold and defend this constitution, obey the law and exercise their public functions with discipline and honour.

61. Contribution to Public Expenditures and Needs

- a. All citizens have the duty to contribute to the common needs and to public expenditure by reasons of their resources. The tax system shall follow principles of progressive taxation, but shall not create a disincentive for the production of wealth.
- b. The State shall encourage voluntary charitable activities and other forms of expression of social solidarity.

62. Military obligations

All citizens have the sacred duty to defend the territory of the State and when so required the territory of the Federal Republic of South Africa from any external enemy and from any threat to the enjoyment of freedom, democracy and pluralism in the State.

63. Duty to work

All capable citizens have the duty to contribute with their work and skills to the common development and growth of the State and of the Federal Republic of South Africa

64. Family duties

All citizens have the duty to provide moral and financial support to their spouses, to educate their children and to assist their parents when in need of care.

DIVISION OF GOVERNMENTAL POWERS

65. Regions and municipalities

The State is divided into Regions and municipalities. Regions are established as autonomous entities and are provided with powers and jurisdiction in accordance with the principles set forth in this constitution.

66. Powers of the State

The State of KwaZulu/Natal shall have all those powers which are not reserved to the people, to the Regions or to the Federal Republic of South Africa respectively.

67. **Powers of the Federal Republic of South Africa**

- a. In accordance with the principles of this constitution, the State of KwaZulu/Natal recognises the powers of the Federal Republic of South Africa to exercise exclusive legislative, administrative and judicial functions and powers in the following matters:
- monetary system, foreign credits, exchange and convertibility
 - general principles of legislation to coordinate the regulation of banking, credit and insurance
 - general principles of legislation to coordinate the regulation of environmental protection of national interest
 - general principles of legislation to coordinate economic development and foster interstate commerce among the states
 - general principles of legislation to coordinate the technical regulation of equipment of communication
 - legislation to provide negotiation and procedural coordination of the State's policies with national policies and the policies of other states in the field of transportation, energy, interstate and foreign commerce, economic development, consumer protection, banking and social welfare in so far as they relate to the interests of the Federal Republic of South Africa. The General Assembly may enact legislation to empower the Government to enter into agreements with the Government of the Federal Republic of South Africa to ensure policy coordination in other fields.
 - nationality, immigration, emigration, alienage and the right of asylum
 - international relations
 - defence against foreign enemies
 - organisation and administration of the federal system of justice in the subject matters of federal prerogative
 - admiralty and maritime law and regulations
 - air transportation law and regulations
 - protection of intellectual property rights
 - external customs, tariffs and foreign trade
 - legislation on weights and measures
 - use of the area of exclusive economic influence
 - other matters as authorised by a constitutional law of the State of KwaZulu/Natal.
- b. The Federal Republic of South Africa shall have the power to summon the State militia to defend the territory, freedom and liberty of the Federal Republic of South Africa from an external enemy. No Federal armed forces or armed forces of other states shall have the power to enter or be stationed in the State of KwaZulu/Natal without the approval of the State.
- c. No power of the Federal Republic of South Africa shall be legitimately exercised and valid in the State of KwaZulu/Natal if inconsistent with the principles and provisions of this constitution.
- d. The power of the Federal Republic of South Africa to levy taxes and impose duties within the State of KwaZulu/Natal or in relation to activities or properties located in the State of KwaZulu/Natal shall be exercised only with the advice and consent of the State of KwaZulu/Natal to be rendered by the Joint Commission on Finance of the General Assembly chaired for this purpose by the Governor and integrated with six additional members with voting rights representing trade, industry and labour and nominated by the Speaker of the House and appointed by the Governor.
- e. Representatives of the Federal Republic of South Africa may participate without voting rights in the activities of the Joint Commission on Finance. The Joint Commission on Finance shall meet at least once every two years to advise the Federal Republic of South Africa on the type and extent of Federal taxation and revenue collection permitted in the State of KwaZulu/Natal. Any resolution adopted by the Joint Commission on Finance in this respect shall have effect only in the second calendar year following the year in which the resolution is adopted.

68. **Powers of the Regions**

- a. The Regions shall have the power to assume legislative and/or administrative jurisdiction in the following matters:
- organisation and operation of the offices of the Region, including administrative instrumentalities of the Region
 - custody and maintenance of the Region's buildings and other infrastructures
 - determination of municipal boundaries
 - police, fire and rescue, and coast patrol, not excluding the power of the State to coordinate police and investigations and to maintain emergency security forces
 - government of the territory, including housing and all phases of zoning
 - social assistance
 - health and hygiene
 - public education
 - protection of the natural and human environment, including implementation of the State's environmental mandates
 - public works of regional interest within the Region's territory
 - water projects, canal and irrigation systems of regional interest and thermal and mineral waters
 - railways and roadways of regional interest within the territory of the region
 - ports of refuge, recreational ports and airports of regional interest
 - regulation of agriculture and livestock
 - woodland and forestry
 - hunting and fishing in inland waters
 - regional economic development including small business assistance
 - markets and expositions
 - handicrafts
 - professional training and job search
 - museums, libraries and conservatories of regional interest
 - monuments of regional interest
 - promotion of culture and research, and protection and teaching of the languages of the Region
 - regulation and promotion of tourism and tourism industry
 - promotion of sport and recreation facilities
 - promotion of performing arts and related infrastructures
 - other matters authorised by a constitutional law of the State.
- b. State law may require the Regions to implement State legislation in other matters. State law may also define matters in which the State and the Region share joint or concurrent legislative and/or administrative jurisdiction in forms and matters prescribed in the law.
- c. The State has legislative and administrative power in any matter in which the Region has not exercised its jurisdiction.
- d. The legislative powers of the Regions must be exercised within the fundamental principles of State legislation in the subject matter and shall not be in contrast with the national interest or with the interest of other Regions.
- e. The Regions' exercise of administrative functions shall be normally delegated to the municipalities. When possible regional legislation should allow for implementation by local ordinances so as to adjust to local interest and characteristics, especially in matters related to the government of the territory.
- f. State law may directly empower municipalities with administrative functions of local interest, and may delegate to the Regions additional administrative functions.
- g. The Regions have financial independence and autonomy in the manners and within the limits established by State law. State law shall coordinate regional finance with the finance of the State and of the municipalities. State

law shall define the power of the Regions to levy taxes and impose duties and shall attribute to the Regions a portion of the State's revenues.

- h. Regions shall not levy import or export or transit duties, nor shall they take any action which may hinder in any way the free circulation of people and goods among the Regions or limit the citizens' rights to exercise in any portion of the State's territory their profession, employment or job.
- j. State law shall determine the type of public and private property owned by the Regions.

THE LEGISLATURE

69. The General Assembly

- a. The General Assembly represents the people of the State of KwaZulu/Natal and shall consist of two houses, a House of Delegates and a Senate. The members of both houses are elected for a five year term.
- b. Any citizen of the State twenty one years or older may be elected to the House of Delegates, any citizen thirty five years or older may be elected to the Senate. No one shall be a member of the two houses simultaneously, nor shall hold any other public office at the time of his or her qualification to office. The electoral law may determine additional cases of incompatibility and lack of qualification. The members of the General Assembly shall disclose any employment or profession of whatever nature conducted during the time of their legislative office. At any time they shall disclose potential conflicts of interest in relation to any activity of the house they belong to. A conflict of interest shall not disqualify a member of the General Assembly.
- c. The House of Delegates shall consist of 350 members each of whom shall be elected in one of the 350 constituencies into which the State shall be divided for the purposes of this election. Each Regional Congress shall adopt a resolution appointing two of its members to the Senate. Four additional members of the Senate shall be elected in each of the Regions by proportional vote in a region-wide constituency.
- d. The office of the members of the General Assembly terminates upon qualification of their successors.
- e. The members of the General Assembly shall represent the interest of the people in its totality and complexity and shall not be deemed to be bound by any specific mandate.
- f. The General Assembly shall meet annually in one ordinary session from September to December. Each house shall be summoned in session at any time by its President, any of its Vice Presidents, by the Governor or by one tenth of its members. The General Assembly shall meet twenty days after the election of its members and shall proceed to verify the eligibility and qualification of its members.
- g. All meetings of any house of the General Assembly and any committee thereof are public and may be broadcast. In special cases any house of the General Assembly or committee thereof may hold meetings behind closed doors. The reasons justifying the secrecy shall be confidentially disclosed to the Constitutional Court which may order that the meeting be public.

70. Powers of the General Assembly

- a. The General Assembly shall exercise the legislative power of the State, approve its budgets, control the action of the Government and exercise the other powers granted by this constitution.
- b. Each house shall establish its own Rules, autonomously approve its own budget, and regulate the personnel. The Rules and any amendment thereof shall be approved by absolute majority. The Rules shall recognise and respect the role of the opposition and protect political minorities. The Rules may limit but not prohibit reasonable filibustering.

- c. Each house shall elect a President and two Vice Presidents for a two year term and shall assign its members to committees. Joint sessions of the General Assembly shall be presided over by the President of the House of Delegates and shall be governed by its Rules. The Presidents shall exercise the administrative powers and police authority within their respective houses. All political parties shall be represented in the committees of each house.
- d. Each house shall be validly in session when at least half of its members are present. Unless otherwise provided for in this constitution, all deliberations of any of the houses of the General Assembly must be adopted by the majority of the members who are present.
- e. The General Assembly shall adopt legislation to implement this constitution and to meet the needs, wants and aspirations of the people of the State.
- f. The General Assembly shall approve the budget and the year end financial statements of the State. The General Assembly shall have the power to authorise the government to operate for no more than three months with a provisory budget pending the approval of the budget. The law approving the budget shall not introduce additional taxes or expenses. Any law involving new or additional expenses shall indicate the source of revenue to cover them.
- g. The General Assembly shall have the power to adopt *ad hoc* legislation to enable the Governor to a single exercise of the power to pardon or give amnesty for specified types of offences committed prior to the introduction of the legislative proposal.
- h. Each house in accordance with its Rules shall have the power to oversee and control the public administration of the State. The committees of each house shall have the power to hold hearings in relation to which they may compel the appearance of witnesses and the production of documents, and shall have the power to request any Minister or public official to appear, provide information, conduct research and produce reports.

71. *Legislative Iter*

- a. The legislative function shall be jointly exercised by both houses of the General Assembly. Any member of each of the two houses shall have the power to introduce legislation. The Government shall have the power to introduce legislation in either or both houses. Each legislative proposal shall be accompanied by a brief report. Legislative proposals shall be assigned by the Rules Committee to one of the committees of the house in which the proposal has been introduced. The committee shall read any proposal, submit it to article by article vote and to a vote on the entire proposal, and send it to the full house for approval. The full house shall read the proposal, submit it to article by article vote and to a vote on the entire proposal. The legislative proposal approved in identical text by both houses shall be transmitted to the Governor for signature and promulgation.
- b. The Governor shall have the power to veto the legislative proposal in its entirety or on a line-item basis, in which case ~~the~~ legislative proposal shall be remanded to the General Assembly along with a message of the Governor. If the General Assembly by absolute majority of its members votes to override the veto, the Governor shall sign and promulgate the law.
- c. The law shall be promulgated within ten days from the Governor's signature and becomes effective ten days from its promulgation unless a shorter term is provided for by the law itself. All laws shall be published in an Official Gazette on the day of their promulgation.
- d. All political parties shall be represented in the committees of each house.
- e. Each house shall have the power to adopt rules of organisation and operation.

72. Privileges and immunities

No member of the General Assembly shall sustain criminal or civil liability for the opinions expressed in connection with his or her office in or outside the General Assembly. During the time of his or her mandate no member of the General Assembly shall be searched, detained or tried for any offence without the authorisation of the house to which he or she belongs, or of a predetermined committee thereof. This shall not apply to arrest in *flagrante delicto*. The law shall determine the salary of the members of the General Assembly.

THE EXECUTIVE

73. The Governor

- a. The Governor shall be elected by the majority of the votes cast in a state-wide constituency election. The Governor shall be forty years or older and shall be elected for a three-year term renewable only once. The Governor shall not hold any other public office or exercise any other trade or profession.
- b. The Governor is the Head of the State, the Chief Minister of the State's government and represents the State. The Governor may exercise independently from the Government the powers vested in him or her under this constitution. Should the Governor be incapacitated the functions ascribed by this constitution to the Governor are exercised by the President of the Senate while the Minister of Home Affairs shall act as Chief Minister of the Government. Should the Governor become permanently incapacitated the President of the House of Delegates shall call an election.
- c. The Governor may be removed from office before the end of his or her term by a resolution adopted by the absolute majority of the General Assembly in a joint session summoned by the President of the House of Delegates. The Governor may be removed from office only on the grounds of mental incapacity or for treason. The Constitutional Court shall direct the investigation.

74. The Government

- a. The Government shall conduct all administrative functions authorised and all missions mandated by the law.
- b. The Government consists of the Governor and the Ministers. The Ministers are chosen and nominated by the Governor. Within ten days from its formation the Government shall be collectively confirmed by a vote of confidence of both houses of the General Assembly. At any time and with three days' prior notice to its members, any house of the General Assembly may adopt with a simple majority a resolution of no-confidence, in which case the Government shall resign and a new Government shall be chosen and appointed by the Governor. At any time and with ten days' prior notice to its members, any of the houses of the General Assembly may adopt with a two-thirds majority of its members a no-confidence resolution causing the resignation of the Governor and fixing a date within forty days from the adoption of the resolution for the election of a new Governor. Any confidence or no-confidence resolution must be introduced by at least twenty percent of the members of the house, must be accompanied by a report and shall be voted with personal calls. The vote of one or both houses against a legislative initiative or a proposal submitted by the Government shall not be construed as a no-confidence vote.
- c. The members of the Government are collectively responsible for the actions of the Government. Each Minister shall be individually responsible for the actions of his or her ministry.
- d. The Senate, by absolute majority of its members, may authorise that criminal charges be pressed against the Governor or a Minister for crimes committed in connection with the exercise of their functions. The Senate by simple majority may authorise that criminal charges be pressed against the Governor or a Minister for crimes not connected with the exercise of their functions. This latter authorisation shall not be required to proceed on such charges after the Governor or the Minister has relinquished his or her office. The Constitutional Court

shall decide on the charges against the Governor or a Minister authorised by the Senate and shall determine sanctions as it deems it appropriate.

- e. The office of Governor or Minister shall be incompatible with any other public office or profession or employment.
- f. The Government shall be organised by law in accordance with this constitution. Public officials shall be held personally accountable for the actions of the offices under their direction. Each ministry or agency shall be held liable for damages caused by gross negligence or malice of government officials.
- g. The law may establish independent regulatory agencies. The people in charge of the agency shall be in a fiduciary relationship with one or more members of the Government at whose will they may be removed, but do not need to resign when the government resigns or its term expires. The Government and the responsible Ministers shall be accountable to the General Assembly for the actions and operations of the independent regulatory agencies. The law may extend to the people in charge of the agencies the same immunities set forth in this constitution for the members of the Government.
- h. All actions of the Government and of the public administration are subject to judicial review for violation of the law and improper use of discretionary powers. This shall not apply to high actions of government.

THE JUDICIARY

75. Independence of the Judiciary

Justice shall be administered in the name of the people of the State of KwaZulu/Natal. Judges shall be subject only to the law. They may not be removed from office without the authorisation of the Judicial Service Commission.

76. Judicial Service Commission

- a. The Judicial Service Commission is the organ of self governance of the judiciary. The Governor shall be the President of the Commission. The Commission consists of an additional twenty members to be selected among judges, lawyers and advocates with at least ten years of professional experience and university law professors. Seven shall be elected by judges and prosecutors, six appointed by the General Assembly, three by the bar association, two by the Attorney General and two by the Civil Service Commission, and they shall serve for one non-renewable five-year term during which time they shall not exercise any other professional activity or hold other public office.
- b. The Commission shall implement and administer the fundamental principles on the organisation of the judicial services set forth in a general law to be adopted by the General Assembly. The Commission shall set forth and administer the rules on the selection by public competition and on the qualification of judges, the rules on transfers, promotions and assignments of judges, age limits, and the code of judicial conduct and responsibility to be enforced by the Commission. The Commission may receive and shall consider complaints and requests for disciplinary actions against judges and prosecutors received from the Government and the general public.
- c. The Judicial Service Commission shall approve all appointments of exceptionally distinguished university law professors, lawyers and advocates to any level of the judgship made by the General Assembly. The Commission shall also determine qualifications, rules and procedures for the election of judges of peace and honorary judges.
- d. The Judicial Service Commission shall approve the rules adopted by any court to regulate the proceedings before it and the related administrative functions.

- e. The Judicial Service Commission shall submit to the General Assembly a yearly budget, including proposed salary levels for all people working in the judicial services. As a part of its budget the Commission shall collect and administer for the benefit of the judicial service all taxes and duties levied in relation to the administration of justice as they are authorised by law. Any funds which have not been spent by the end of the fiscal year shall be carried over to the following year. The Commission may initiate legislation in matters related to the judiciary and judicial services.

77. The Supreme Court

The Supreme Court of the State of KwaZulu/Natal shall guarantee the uniform interpretation of the law and shall be the court of final appeal.

78. Specialised Courts

- a. During peace time military courts shall have jurisdiction only over military personnel on active duty.
- b. Tribal, customary, and religious courts shall have concurrent jurisdiction over cases and controversies which, when proposed, are based on the application of traditional and customary law and religious rules respectively. The law shall identify and recognise such courts, and determine to which limited extent they may decide on incidental issues and matters not based on traditional and customary law or on religious rules.
- c. There shall be no special or extraordinary tribunal or courts. Within the ordinary court system the Judicial Commission may create specialised sections for given subject matters, and may require the participation of qualified experts to the administration of justice in forms and manners determined by the law. Specialised sections may include family, labour, traffic, administrative, criminal, public auditing, corporate and international law matters.

79. Prosecutors

The office of the Director of Public Prosecution shall be a distinct and separate part of the judiciary equally governed by the Judicial Service Commission. The carrier and the roles of judgeship and prosecution are separate and only in exceptional circumstance shall the Judicial Service Commission authorise a prosecutor to take the office of judge or vice versa. Prosecutors are entitled to the same guarantees, immunities and financial treatment as judges. The prosecution of criminal offences shall be mandatory. The Director of Public Prosecution shall submit a yearly report to the Judicial Service Commission on the cases which his office has not prosecuted because of special agreements with the suspected party or for other public interest reasons. The report may omit the names of the concerned parties.

ECONOMIC PROVISIONS

80. Balanced Budget

- a. At the beginning of the fiscal year the Government shall submit to the General Assembly a balanced budget for approval. The General Assembly shall amend and modify any item or portion of the draft budget. The approved budget shall indicate sources of revenue to cover all State expenditure.
- b. By a vote of two-thirds of its members the General Assembly may authorise the Government to finance the budget by resorting to public debt. When seeking such authorisation the Government shall provide a report indicating the foreseeable sources of repayment of the public debt and the underlying economic assumptions. Any increment of the public debt shall be so authorised.
- c. The budget shall be divided in titles, sections and chapters. Any allocated funds which by the end of the fiscal year have not been spent shall be automatically carried over to the next year within the same budget chapter

if it exists, or shall be transferred to the most closely related budget chapter if the same budget chapter no longer exists.

81. **Banking**

The State shall regulate banking in harmony with the monetary policies set forth by the Federal Republic of South Africa. An autonomous Central Bank of the State of KwaZulu/Natal shall be established. The President of the Central Bank shall be appointed by the Governor with the advice and consent of the General Assembly and serves at the pleasure of the Governor. The President of the Central Bank shall submit a yearly report to the General Assembly on the monetary status of the State and on the status of the banking system. The Central Bank shall have regulatory powers on banking and credit, and shall be independent within the parameters of the law to use tools of monetary intervention in the public interest. The Central Bank shall have the power to determine its organisation and operations.

82. **Privatisation Commission**

- a. A Privatisation Commission shall be established to transfer to the private sector the enterprises which are under the control of any government in conflict with the provisions of this constitution. The Commission shall consist of nine highly qualified and independent experts in economics, finance and business administration, three appointed by the Governor, four by the General Assembly and two by the Chamber of Commerce.
- b. The Privatisation Commission shall develop a privatisation plan to be submitted to the General Assembly for approval. The Commission shall adjust the implementation of the privatisation plan so as to best cope with changing economic circumstances, seeking the approval of the General Assembly when necessary. The privatisation effort shall be balanced, shall maximise economic efficiency and shall support economic growth. The phases and the time frame of this effort shall be set in the privatisation plan. The Government shall implement the privatisation plan.
- c. The Privatisation Commission shall monitor the implementation of the privatisation plan so as to ensure that the privatisation effort is completed in the absence of corruption, inefficiency, personal gains and governmental waste. Every six months the Commission will issue a report to the General Assembly.
- d. The Privatisation Commission shall operate for seven years unless it resolves to dissolve itself prior to such date or is extended in office by resolution of the General Assembly.

REGIONS AND MUNICIPALITIES

83. **The organs of the Region**

- a. Each Region shall have a Congress and a Regional government. The Regional Congress shall exercise the legislative functions mandated to the Region and the other functions set forth in this constitution. It may also submit legislative proposals to the General Assembly.
- b. The Regional government shall execute the regional legislation and carry out the administrative activities of the Region. The Chairperson of the Regional government represents the Region, promulgates the regional legislation, and directs and oversees the administrative functions delegated by the State to the Region in compliance with the instructions received from the State's Government.
- c. The Regional Congress shall consist of 76 members elected from no fewer than 38 constituencies in which the Region shall be divided for the purposes of this election. No one shall sit in two Regional Congresses. The law shall determine the qualification for, and additional incompatibilities of the office of member of the Regional Congress. The members of the Regional government shall be elected from within the Regional Congress. The Regional Congress shall have the power to adopt its own Rules and elect a President.

- d. Each Regional Congress by absolute majority of its members shall adopt a constitution for the Region which shall be consistent with the principles and the provisions of this constitution. The constitution of the Region shall be approved by law. The constitution of the Region shall provide for the exercise of the power of referendum on regional legislation and regulations.

84. Coordination between State and Regions

- a. A Representative of the State Government residing in the Region shall control the State's administrative functions in the Region and coordinate them with the Regional administrative functions.
- b. The Representative of the State Government shall have the power to challenge in court the validity of the administrative actions of the Region. The Representative of the State Government shall also have the power to request the Regional Congress or the Regional government to reexamine any administrative action.
- c. All the legislation adopted by the Regional Congress shall be communicated to the Representative of the State Government who shall acknowledge it within twenty days. The legislation shall be promulgated within ten days from such acknowledgement and becomes effective ten days from its promulgation. Within the period allowed for the acknowledgement, when the State Government believes that the regional legislation exceeds the jurisdiction of the Region or is in conflict with State or national interests or with the interests of other Regions, the State Government shall request that the Regional Congress reexamines the legislation. If the Regional Congress approves the legislation by an absolute majority of its members, within fifteen days from the communication of such approval the State Government may challenge the validity of the legislation before the Constitutional Court on constitutional grounds and before the General Assembly in joint session for conflict of interest.

85. Dissolution of the Regional Congress or Government

The State government shall have the power to cause the dissolution of a Regional Congress when a Regional Congress has seriously violated this constitution or has engaged in a pattern of violations of law, has refused to dissolve a Regional government which engaged in such conduct, or is otherwise incapable of functioning or expressing a majority. The dissolution shall be ordered by a resolution of the Governor adopted with the advice and consent of the General Assembly. Within three days of the dissolution the Electoral Commission shall call regional elections within two months. The dissolution decree may appoint caretakers to conduct ordinary administration during the election period.

86. Modification of the Region's boundaries

Provided that all the Regional Congresses of all the Regions involved have consented, Regional boundaries may be modified, two or more Regions may be merged or one Region may be divided into two or more Regions by a law of the General Assembly adopted by absolute majority of its members and approved by referendum held among the populations affected by the modification of boundaries.

87. Municipalities

- a. Municipalities shall be recognised and established by law. Under the parameters set forth by law to ensure uniformity of types each municipality shall have the right to choose its rules of organisation and operation. Municipalities may vary in size and population basis. The administrative and regulatory activities of the municipalities shall ensure and promote the democratic participation of citizens.
- b. Irrespective of the form of organisation, all municipalities within a Region shall exercise a similar type of jurisdiction, including the municipality's own jurisdiction as set forth in law and the jurisdiction over administrative and regulatory matters delegated by the Region.

88. **Modification of the Municipality's boundaries**

Provided that all municipalities involved have consented, municipal boundaries may be modified, two or more municipalities may be merged or one municipality may be divided into two or more municipalities by a law of the Regional Congress adopted by absolute majority of its members and approved by referendum held among the populations affected by the modification of boundaries.

OTHER POWERS OF THE STATE

89. **The Independent Auditor General**

There shall be an independent Auditor General. The Auditor General shall audit the financial activities of the State, the Region, the Commissions, the independent regulatory agencies, and any enterprise, entity or instrumentality owned or controlled by the State or the Regions. All administrative actions involving financial expenditure shall be subject to the preventive financial control of the Auditor General or his designees. The law shall ensure the independence of the Auditor General.

90. **The Civil Service Commission**

- a. The Civil Service Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Judiciary Commission, two by the Chamber of Commerce and four by the representatives of consumer groups registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified and independent experts on public administration, business management or regulatory processes. The members shall not hold any other public office and prior to their appointment shall disclose any possible conflict of interest. After the appointment they may not undertake activities which may cause additional conflicts. The members of the Commission will hold office for three years and may be reappointed. Their salaries are set forth by the law and shall not be inferior to the salary of a Director General of the State administration. The Commission proposes to the General Assembly its own budget.
- b. The Civil Service Commission shall propose to the General Assembly or to the Regional Congresses the legislation organising and maintaining all public offices of the State and the Regions, including independent regulatory agencies, determining missions, competence, jurisdictions and responsibilities of each office. Both the State and the Regional Governments may submit proposed legislation to the Commission. Concerned interests may also submit proposals to the Commission.
- c. The Commission shall oversee the operations of the public administration of the State and of the Regions to ensure impartiality and efficiency, to prevent governmental waste, corruption, nepotism, inefficiency and disfunctions, and to guarantee equal access by all citizens to the services and job opportunities offered by public offices. The Commission shall investigate and report on complaints concerning the operation of any administrative office in the State, including police, defence force and the prison service.
- d. The Civil Service Commission shall identify requirements and qualifications for holding any given public office and supervise open competition to fill the posts. The Commission shall also develop and submit to the approval of the State and Regional governments any affirmative action programme to be implemented within governmental structures.
- e. The Civil Service Commission shall also develop, monitor and assist the adoption and implementation by State and Regional offices and agencies of procedures accompanying the major administrative actions and all rule-making processes to solicit and ensure the participation and the input of the affected interests and of the public.
- f. The Civil Service Commission shall prepare a yearly report on the status of the public administration expressing any applicable recommendation, and may provide testimony to the General Assembly and Regional Congresses as required.

91. **Electoral Commission**

- a. The Electoral Commission shall consist of nine members, three appointed by the Governor, three by the General Assembly, and three by the Judiciary Commission. The members of the Commission shall be qualified and independent professionals. The members may not hold any other public office and prior to their appointment shall disclose any possible conflict. After the appointment they may not undertake activities which may cause additional conflicts of interest. The members of the Commission will hold office for three years and may be reappointed. Their salaries are set forth by the law and shall not be inferior to the salary of a Director General of the State administration. The Commission proposes to the General Assembly its own budget.
- b. The Electoral Commission shall organise and supervise the elections provided for in this constitution and in the constitution of the Regions. The Electoral Commission shall ensure the fairness of the political debate and the effective opportunity for all citizens to participate in the democratic process. The Commission shall adopt rules to ensure fair campaigning and to prevent violence and intimidation, and shall have the power to summon and direct the State police and militia to ensure peace and order during the political campaign period, and during and immediately after the elections.
- c. The Commission shall issue rules requiring all political parties and candidates to disclose sources and amounts of financing, rules setting limits to the financing received from any given source, and rules governing the conduct of political parties and candidates during the campaign period. All constitutions of political parties shall be deposited with the Commission.
- d. The Commission may initiate legislation at State and regional level on electoral matters and shall administer and distribute any public financing to political parties and candidates provided for in State and regional legislation.
- e. The Electoral Commission may organise political debates and decide time allocation in State or Region controlled media of mass communication. When necessary to ensure the fairness, impartiality and balance of the electoral process, the Commission may require private media of mass communication to publish statements or to provide coverage of given information.
- f. The Electoral Commission shall determine and update the boundaries of the electoral constituencies of the House of Delegates and the Regional Congresses. In doing so the Commission shall aim to ensure internal balance in each constituency and representation of the variety of social and cultural interests present in the State. Each constituency shall aim to have the same number of electors.
- g. The Electoral Commission administers the elections and announces the results.
- h. The rules adopted by the Electoral Commission and its actions may be challenged before the Constitutional Court with an emergency procedure for violation of the principles of this constitution, or because arbitrary or capricious or inappropriate.

92. **Regulatory Relief Commission**

- a. The Regulatory Relief Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Judiciary Commission, two by the Chamber of Commerce and two by representatives of consumer groups and two by representatives of industry registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts on public administration, business management or regulatory processes.
- b. The Regulatory Relief Commission shall be empowered to request the repealing or amendment of burdensome, unnecessary or inadequate regulations and permit requirements adopted by the General Assembly, the Government, the Regional Congresses, the Regional governments, any independent regulatory agency and municipal governments. Any entity receiving such a request of the Commission shall reply within twenty days. If the Commission does not deem the reply to be satisfactory, it may introduce legislation in the appropriate legislature.

- c. The Regulatory Relief Commission may prepare reports of the regulatory matters expressing any applicable recommendations, and may provide testimony in the General Assembly and Regional Congresses as required.

93. Economic Development Commission

- a. The Economic Development Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Civil Service Commission, two by the Chamber of Commerce, two by representatives of consumer groups and two by representatives of the trade unions registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts in economics, finance, business management and futurism.
- b. The Economic Development Commission shall prepare a State wide plan of economic development of the State and assistance to businesses to be implemented through legislation and administrative activities of the State and the Regions. The Commission shall monitor the implementation of the plan as approved by the State and the Region and recommend modifications and adjustments as necessary.
- c. The Economic Development Commission shall prepare and submit to the General Assembly a yearly report on the status of the economy, and on foreseeable economic and technological trends at State, national and international level.
- d. The Regulatory Relief Commission may prepare or commission additional reports on economic and financial matters and may provide testimony in the General Assembly and Regional Congresses as required.

94. Environmental Commission

- a. The Environmental Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Judiciary Commission, two by the Chamber of Commerce and four by representatives of environmental groups registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts on environmental sciences or social sciences.
- b. The Commission shall investigate matters related to the protection of the natural and human environment, may introduce legislation at State and regional level to protect and enhance the quality of the natural and human environment, and may make recommendations to the State and Regional Departments of the Environment.
- c. The Commission shall investigate and report on complaints concerning the improper utilisation of non-renewable natural resources, the degradation and destruction of ecosystems and the failure to protect the beauty and character of the State.
- e. The Environmental Commission shall prepare a yearly report on the status of the environment in the State expressing any applicable recommendations, and may provide testimony in the General Assembly and Regional Congresses as required.

95. Consumer Affairs Commission

- a. The Consumer Affairs Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by Judiciary Commission, two by the Chamber of Commerce and four by representatives of consumer groups registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts on consumer protection, environmental problems or social sciences.
- b. The Consumer Affairs Commission shall investigate matters related to the protection of consumers, and may introduce legislation at State and regional level to protect consumers. Of its own power the Commission may request that general terms and conditions of adhesion contracts be negotiated with and approved by the Commission as a condition of their validity and enforceability.

- c. The Commission shall have the power to determine the requirements for product labelling including product information and warnings.
- d. The Commission may be delegated by the State or regional legislature to set prices and rates for services and products rendered in conditions of natural monopoly.
- e. Any immediately adversely affected interest may seek judicial review of any decision of the Commission.
- f. The Consumer Affairs Commission shall prepare a yearly report on the status of consumer protection expressing any applicable recommendations, and may provide testimony in the General Assembly and Regional Congresses as required.

96. Other Powers

Individuals and social, cultural, religious and political formations when exercising their powers or their autonomy within the freedom and liberties recognised and guaranteed by this constitution, shall have equal standing as the powers of the State and the Regions.

REFERENDUM

97. Referendum

One hundred thousand citizens with voting rights, or three Regional Congresses shall have the power to call a referendum to repeal a law or a portion thereof. The referendum shall be validly held if at least fifty percent of those entitled to vote participate. The proposal shall be approved by the majority of the votes validly cast.

STATE MILITIA

98. State Militia

- a. The State militia shall be organised by law. The law may require compulsory service in the State militia. The law shall ensure internal democracy in the militia indicating how the exercise of constitutional rights may be limited so as to be compatible with military duties.
- b. The supreme command of the State militia shall vest in the Supreme Military Committee. The Supreme Committee shall be chaired by the Governor and consists of three civil members and three members of the militia appointed by the General Assembly in accordance with the law.
- c. The militia may be divided in subdivisions under different commands.
- d. Citizens of the State may participate in the armed forces of the Federal Republic of South Africa only on a voluntary basis. In case of war or of authorised mobilisation the State of KwaZulu/Natal shall conduct military proscription through the militia to supply armed forces to the Federal Republic of South Africa.
- e. The State shall not suppress the citizens' right to bear arms, but may limit it in special cases and circumstances.

EMERGENCY POWERS

99. Emergency Powers

- a. The Governor may declare an emergency in the State in determined areas of the State. The Declaration of Emergency shall provide a general indication of the type of emergency and shall indicate in general terms which powers and resources of the State, of the Regions, of the municipalities or of the citizenry the Governor intends to employ to respond to the emergency, how such powers and resources are expected to be employed and for how long, and other measures and actions the Governor intends to undertake. Within twenty four hours the Governor shall summon the General Assembly to a joint session to ratify the Declaration of Emergency. The General Assembly may modify the Declaration of Emergency. If the emergency is such that the General Assembly may not be summoned into session, the Declaration of Emergency shall be submitted to the Constitutional Court for approval. Should this not be possible the Declaration of Emergency shall be submitted for approval to the President of the Constitutional Court or the President of the Senate or the President of the House of Delegates in this order.
- b. The Governor shall modify the Declaration of Emergency to provide additional information, to detail the information previously provided and to report on the actions undertaken to respond to the emergency.
- c. The General Assembly or the Constitutional Court may terminate or modify the terms of the Declaration of Emergency at any time. The Governor may require that the General Assembly or the Constitutional Court meets behind closed doors to discuss any matter related to the emergency, and that the contents of the Declaration of Emergency be kept secret.
- d. Any action taken during a situation of emergency shall respect to the fullest extent possible under the circumstances the rights and liberties of the citizens of the State recognised and guaranteed in this constitution.

CONSTITUTIONAL GUARANTEES

100. Jurisdiction of the Constitutional Court

The Constitutional Court shall have original and exclusive jurisdiction in the following matters:

- review the constitutionality of the legislation of the State
- review the constitutionality of the legislation of the Regions
- resolution of conflicts between the legislation of the Regions and State legislation
- resolution of conflicts between Regions
- review the constitutionality of the federal legislation
- resolution of disputes on the legitimacy of the exercise within the territory of the State of federal powers in matters reserved to the exclusive jurisdiction of the Federal Republic of South Africa.
- resolution of conflicts between powers of the State
- criminal charges against the Governor and the Ministers
- validity and legality of collective bargaining agreements
- verification of the democracy of the statutes of political parties
- other matters as set forth in this constitution or in constitutional laws.

101. Composition and operation of the Constitutional Court

- a. The Constitutional Court shall consist of fifteen members, three of whom shall be appointed by the Governor, six by the General Assembly with resolution supported by two-thirds of the members of each house of the General Assembly, three by the Judicial Service Commission and three by the bar association.
- b. The Justices of the Constitutional Court are chosen among lawyers and advocates with more than twenty years' professional experience, university law professors and higher court judges. The Justices may be foreign citizens.
- c. The Justices are appointed for ten years running from the day on which they assume office. The Justices shall not hold any other public office or exercise any other profession in the State or anywhere in the Federal

Republic of South Africa, and may not be renewed for another term. Upon retirement the Justices shall not hold any public office in the State.

- d. The Constitutional Court may operate by committees of four or more Justices. The members of the Constitutional Court shall elect a Chief Justice for a three year term. The Constitutional Court may adopt its own rules of organisation and operation consistent with this constitution and any applicable constitutional law. The law may not regulate any matter related to the Constitutional Court. The Court may adopt rules to integrate its composition with additional members for the exercise of its jurisdiction on charges against the Governor and the Ministers. Such rules will determine the qualification, if any, of the additional members and their powers.
- e. While members of the Constitutional Court, Justices are immune from any criminal prosecution. Justices may be impeached for any reason by a resolution adopted by three fourths of the members of both houses of the General Assembly. Their salaries are set forth by the law and shall not be inferior to the salary of a Minister. The Constitutional Court drafts and proposes to the General Assembly its own budget.

102. Access to the Constitutional Court

- a. Any issue of constitutionality of State or Regional laws, or legitimacy of actions or legislation of the Federal Republic of South Africa within the State, or democracy of the statutes of political parties or validity and legitimacy of a collective bargaining agreement raised by any of the parties to a case or controversy before any court which is not manifestly without foundation, shall be remanded to the Constitutional Court for resolution.
- b. Political parties represented in the General Assembly, the Ombudsman as well as trade unions, civic and consumer groups, major media of mass communication and other social, religious and cultural formations registered with the Constitutional Court in accordance with its rules, may commence an action to declare the unconstitutionality of laws adopted by the State or the Regions or the illegitimacy within the State of actions or legislation of the Federal Republic of South Africa. One hundred members of a political party may commence an action to review the democracy of their political party statute.
- c. The Regions, the Federal Republic of South Africa, the Ombudsman and any power of the State may commence an action to resolve a conflict among government organisations.
- d. Decisions of the Constitutional Court shall declare null and void any act of the State or of the Regions, or a political party's statute or a collective bargaining agreement which is in violation of the constitution, and shall declare to be ineffective in the territory of the State any action or law of the Federal Republic of South Africa which is in conflict with this constitution. The decision of the Constitutional Court may also mandate the rule of resolution of a conflict among the government's organisations and powers.
- e. All decisions of the Constitutional Court shall have *erga omnes* retroactive effects and may provides rules to recognise rights meriting protection and which vested in good faith under norms declared null, void or ineffective.

103. The Ombudsman

- a. The Ombudsman shall be independent and subject only to this Constitution and to the law. No public official shall interfere with the exercise of the Ombudsman's functions or shall refuse full assistance as it may be needed. The Ombudsman's salary are set forth by the law and shall not be inferior to the salary of a Minister. The office of the Ombudsman drafts and proposes to the General Assembly its own budget.
- b. The Ombudsman shall either be a judge, a lawyer or an advocate. The Ombudsman shall be appointed by General Assembly on the recommendation of the Judicial Service Commission. The Ombudsman shall hold office for a non-renewable six year term. The functions of the Ombudsman include the investigation of the complaints concerning violations of rights and freedoms, abuse or use for political purposes of power,

corruption and misappropriation of public monies, unfair, harsh, insensitive or discourteous treatment of anyone in the State by a public official, including police, defence forces and prison personnel, manifest injustice, or conduct of a public official which would properly be regarded as unlawful, oppressive or unfair.

- c. The Ombudsman shall have the power to take appropriate action to call for the remedying, correction and reversal of injustices and violations of laws and regulations through the most fair, proper and effective means, including:
- negotiation and compromise between the parties concerned,
 - causing the complaint along with the Ombudsman's findings to be reported to the superior of the offending party,
 - referring the matter to the Director of Public Prosecution, with a recommendation,
 - bringing proceedings in a competent Court for suitable remedies to secure the termination of the offending action or conduct, the compensation of the victims and/or the modification of the offending procedures,
 - bringing proceeding before the Constitutional Court to challenge the constitutionality of legislation, or before a court to challenge the validity of regulations,
 - reviewing laws in force before the enactment of this constitution to ascertain their consistency with the principles and provisions of this constitution so as to make recommendations to the Governor and the General Assembly.
- d. The Ombudsman shall have the power to compel the appearance of witnesses and the production of documents and records relevant to his or her investigation. The Ombudsman shall also have the power to cause anyone contemptuous of his or her subpoenas to be prosecuted before a competent Court.
- f. The Ombudsman shall submit an annual report to the General Assembly on the exercise of his or her powers and functions.
- g. The Ombudsman may be removed from office before the end of his or her term by the Governor acting on the recommendation of the Judicial Service Commission. The Ombudsman may be removed from office only on the grounds of mental incapacity or for gross misconduct. The Judicial Service Commission shall conduct the investigation and report to the Governor and the General Assembly.
- h. The Ombudsman shall empower assistant district Ombudsmen who shall serve in decentralised offices on the basis of districts designated by the Ombudsman with the aim of maximising the accessibility of the Ombudsman's services and protection.

AMENDMENT PROCEDURES

104. Amendment Procedures

This constitution may be amended by resolution adopted by two-thirds of the members of both houses of the General Assembly and ratified by the absolute majority of votes cast in a popular referendum.

FINAL AND TRANSITIONAL PROVISIONS

105. Transitional Government

- a. Upon the ratification of this constitution, the joint executive of the Natal province and the KwaZulu government shall become the Transitional Government and shall jointly exercise the ordinary administration of the State of KwaZulu/Natal until the new Government and General Assembly are elected pursuant to this constitution.

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106. Creation of the Regions

- a. Within six months from the time of the ratification of this constitution or from the opening of the General Assembly, whichever comes first, a Commission on Regionalisation shall be formed. The Commission shall have twenty one members appointed from a list of one hundred independent, qualified and reputable individuals prepared and approved by the General Assembly. The Governor shall appoint four members, the representatives of the trade, industry and labour, and the Judicial Commission shall appoint three members each, and four members shall be appointed by the General Assembly. One additional member shall be chosen by the members of the Commission so appointed and shall serve as the Commission's chairperson. The members of the Commission shall elect a chairperson and adopt their own rules of organisation and operation. The Commission shall seek and solicit broad public participation, including but not limited to public hearings, and may commission studies and reports.
- b. Within nine months from its establishment the Commission on Regionalisation shall prepare a proposed subdivision of the State of KwaZulu/Natal into Regions to be approved by the General Assembly with a two-thirds majority of its members. The General Assembly has the power to request the Commission on Regionalisation to make any change to the proposed subdivision of the State as a condition of its approval of the subdivision. If by two-thirds majority the Commission refuses to make such changes, the General Assembly may approve the subdivision only on the basis of the concurrent positive advice of the Governor.
- c. The Commission should aim to create regional territories with an adequate tax and economic basis as well as development potential, and should also aim to respect existing cultural and socio-political territorial divisions, and ensure a proper and just balance amongst the various parts of the State's territory. The territory of each Region does not need to have similar dimensions.
- d. There shall be no fewer than nine Regions and no more than twenty one. In exceptional cases a Region may consist of one metropolitan area, provided that such Region has sufficient economic and population basis and that the creation of such Region does not adversely affect the economy of the surrounding areas. A Region consisting of one metropolitan area does not need to be divided into municipalities.

107. Election of the Senate

Until the Regions are established the election of the members of the Senate shall take place in the same forms and modalities prescribed for the election of the members of the House of Delegates by grouping three constituencies together so that the Senate shall have 117 members.

108. Durban

The law may authorise special exemptions from taxation and other requirements for the area of the port of Durban and the surrounding areas, and may authorise the establishment of a special basin authority.

109. Properties of the Republic of South Africa in the State

All properties located in the State of KwaZulu/Natal of which the ownership or control immediately prior to the time of adoption of this constitution vested in the Republic of South Africa or in any other body, statutory or otherwise, constituted by or for the benefit of the Republic of South Africa or any of its instrumentalities, shall be automatically transferred to and shall be vested in the State of KwaZulu/Natal. This shall include, but shall not be limited to, movable and immovable property whether tangible or intangible and any rights and interests therein, including but not limited to, equity positions, corporate shares, bonds and obligations, and options and warrants, wherever they might be located.

110. State succession

All laws, regulations and administrative actions in force in the territory of the State at the time of adoption of this constitution shall remain in force and shall be deemed adopted and ratified by the State of KwaZulu/Natal

provided that they are not in conflict with this constitution. However, the General Assembly may repudiate and declare null, void and ineffective for all purposes any action of the South Africa Government in the territory of the State of KwaZulu/Natal adopted prior to this constitution when such actions were contrary to the fundamental principles of this constitution. Unless otherwise regulated by the General Assembly, the effects of the repudiation shall be such as to restore the rights and privileges as if the repudiated action never existed.

111. Fathers of the State Advisory Board

The Members of the Joint Executive Authority of KwaZulu/Natal shall be life members of the Fathers of the State Advisory Board and shall be entitled to remuneration established by law and not inferior to that of a member of the General Assembly. They may run for other offices. The Fathers of the State Advisory Board may express recommendations to any of the powers of the State in any matter related to the implementation of this constitution. Additional members may be appointed by the Governor with the advice and consent of the General Assembly.

112. Ratification of this Constitution and General Elections

This constitution shall come into force the day of its ratification by a referendum approving this constitution with at least fifty one percent of the votes validly cast. Within sixty days from the ratification of this constitution the Transitional Electoral Commission shall call a general election to fill the electoral offices provided for in this constitution. The Transitional Electoral Commission shall determine the constituency for such election, prepare the electors' lists and attend to all the other matters related to the election. The Transitional Electoral Commission shall consist of nine highly qualified individuals, two appointed by the KwaZulu government, two by the Joint Executive Authority, two by the Chamber of Commerce, two by the bar association, and one appointed by the other eight members. Should this not be possible, the Joint Executive Authority shall determine the composition of the Transitional Electoral Commission.

113. Interpretation of this Constitution

As used in this constitution inclusive language shall not necessarily be interpreted to the exclusion of similar language or situations.

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CAPE PROVINCE TRADITIONAL LEADERSINTERIM POSITION PAPER ON THE FORM OF STATE SUBMITTED TO THE
TECHNICAL COMMITTEE ON 12 MAY 19931. INTRODUCTION

We received a notice to submit proposals on the form of State last week and in view of the urgency and the time given to us, we were unable to come up with a firm position.

2. PRELIMINARY VIEWS

There are two prevailing points of view within our delegation in this matter, viz :

2.1 A UNITARY STATE

Some members within the delegation are of the view that since we are negotiating a future of one country in terms of both National and Internal law, we should not consider dividing the country at this stage. This view is based on the desire of having one country - one nation - so that we could promote peaceful

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co-existence amongst all the different populations of our country. It is the feeling of the proponents of this viewpoint that it is only if we adopt this approach that we can speedily transform this society. They fear therefore that if we adopt a Federal State this might delay and perhaps derail the whole process as the existence of boundaries of the States to be federated may lead to fierce disputes especially amongst traditional leaders.

2.2 FEDERAL STATE

There is equally a strong view that South Africa should be a federal state composed of all different states. These states will be composed by and large by the different population groups in our country. It is the view of the proponents of this type of a state that in doing so we would address the prevailing fears against domination by other different population groups. It is also clear from this view that the existing regional boundaries should be kept with minor amendments.

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2.3 COMPROMISE

There is in our prima facie view a need of an acceptable compromise between these views. We are not certain at this stage whether the prevailing view of "regionalism" is the best possible compromise in the circumstances.

Be that as it may whether we have a unitary or federal option we are firmly of the view that a second chamber should be provided for in a new Constitution.

LOCAL AND REGIONAL GOVERNMENTS

1. LOCAL GOVERNMENTS

A clear distinction between rural and urban systems of administrations should be created.

The authority of traditional leaders in traditional communities otherwise known as rural communities should be preserved and promoted. The authority of traditional leaders contrary to the popular belief is one of the most democratic forms of governments in Africa. A traditional leader or ruler is the leader of

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the community and in accordance with people's cultures and values always act on the advice of the people. In accordance with this view coupled with a desire of the people to take active role in the administration of their own affairs (self determination) we propose that there should be traditional authorities consisting of councillors democratically elected by the community and accountable to it. The traditional leader should of course be a chairperson of the Council. We believe that it will be only through this system of Government that the traditional communities will also be developed.

We are also of the view that in the proposed regions the traditional system of government should be preserved. In accordance with this view, Kings should like other traditional leaders always act on the advice of Councillors democratically elected. In region(s) where there will be two or more kingdoms we propose that the kingdoms may perform their duties as branches of regional governments. They may be called sub-regional governments.

Should the regional governments have parliaments of their own, provision should be made for a second chamber of the traditional leaders at this level as well.

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CAPE PROVINCE TRADITIONAL LEADERSPOSITION PAPER ON CONSTITUTIONAL PRINCIPLES SUBMITTED TO THE
TECHNICAL COMMITTEE ON 19 MAY 19931. INTRODUCTION

1.1 We are of the firm view that the democratic future we are building in order to have a concrete foundation should be based on the entrenched and valued institution of the entailing masses of this country - Traditional leadership.

1.2 Traditional leaders were legitimate rulers of this part of the world until we and our people were conquered by the Colonial powers.

2. ROLE OF TRADITIONAL LEADERS

2.1 Our forefathers led the struggle against Colonial rule and we believe that the ongoing struggles are a continuation of the struggle waged by our forefathers.

2.2 We therefore strongly believe that the

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democratic society we are creating in order to be sustainable and credible should take into account the people's entrenched traditions, values and customs of which traditional leadership is an integral part.

3.3 We believe that we should have regard to the constitutional developments in other states in Africa in order to appreciate the relevance and value of this institution. We would like to cite the following examples :

2.3.1 ZAMBIA

Colin Legum who edited speeches by Dr Kenneth Kaunda in a volume entitled Zambia Independence and Beyond states that the onerous task of clearing the decks for the independence in Zambia was borne by Dr Kaunda whom he styles "the forgiving victor". If the view held by historians who analysed the fall of the Holy Roman Empire, is that the surprising thing is not that it crumbled when it did, but that it lasted as long as it did, the

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surprising thing is that the role of traditional leaders has never been underestimated.

If there is any lesson to be learned from the man and his times particularly in respect of constitutional development of Zambia, it is that the traditional leaders were never elbowed out nor put in a lumber room. Kaunda left no doubt as to what the role of traditional leaders was going to be.

The role of traditional leaders is firmly entrenched in the constitution so much so that a provision was made for the "House of Chiefs". To quote once more from the work of Colin Legum : "It is our intention that the status and standing of this House should be maintained within the framework of the Constitution, and that Ministers should obtain the advice and opinions of this House on all matters which are a direct concern of the Chiefs

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and their peoples."

2.1.2 BOTSWANA

Here the traditional leaders participated in the making of the Constitution. (See Journal of Modern Political Studies published in 1965 by Professor J. H. Proctor in an article entitled The House of Chiefs and the Political Development of Botswana.)

The establishment of the "House of Chiefs" in Botswana was as a result of the traditional leaders' direct participation in the Constitution making process of that country. Proctor rightly opines that to have denied the Chiefs a position at the centre would have been a serious affront, especially since they had functioned as a major link between the tribes and the Government. It was also realised that they still possessed sufficient influence in their tribal areas to hinder the

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of chieftaincy." Some adaptation for the best aspects
of the Gold Coast is without
of chieftaincy as independence - "The
and as a result of their
the traditional authorities and their
Movement draw its main support from
independence, the National Liberation
of the main parties campaigning for
the traditional elements. Again one
which had strong representation from
Committee on Constitutional Reform
chiefs was in 1946 in the process
in Ghana the first involvement of

CHIEFS

authority
personification of political
regarded them as the only
to the chiefs for leadership and often
realized that tribesmen still looked
it they chose to do so. It was
implementation of a government policy

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The promulgation of the new Ghanaian Constitution left no one in doubt about the unique position of Chiefs. It reads: "The institution of chieftancy together with its traditional councils as established by customary law and usage is hereby guaranteed."

2.4 NIGERIA

In Nigeria there has always been two Houses viz - the House of Assembly and the House of Chiefs. Doubtless Nigeria has had a number of coup d'etats (four successful, two unsuccessful) but the House of Chiefs has operated undisturbed except in 1966 when both were dissolved. Chiefs therefore are the anchor in Nigeria and how well has Horatio kept the bridge.

2.5 OTHER COUNTRIES

Swaziland and Lesotho are also

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examples where traditional leadership is firmly entrenched.

We also believe that in Namibia Sam Nujoma would not have won the first election without the support and his commitment to the preservation of the institution of traditional leaders.

WE THEREFORE STRONGLY RECOMMEND THAT :

1. The set of Constitutional principles should also expressly provide for the recognition and preservation of traditional leadership.
2. The new Constitution to be drafted and adopted by a Constituent Assembly should provide for the second chapter to be composed of Traditional Leaders and other influential figures in various communities (e.g. "Peers").

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A. CONSTITUTIONAL MATTERS

VOLUME FIVE

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**THE CONSTITUTION
OF THE STATE OF
KWAZULU/NATAL**

(1)

association, and one appointed by the other eight members. Should this not be possible, the Joint Executive Authority shall determine the composition of the Transitional Electoral Commission.

113. Interpretation of this Constitution

As used in this constitution inclusive language shall not necessarily be interpreted to the exclusion of similar language or situations

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WHEREAS the KwaZulu Government intends to adopt the Constitution of the State of KwaZulu/Natal with the understanding that with its final ratification the Constitution will become the supreme law of the land and shall stand as such regardless and in spite of whatever course the negotiations at central level will happen to take

NOW THEREFORE the KwaZulu Legislative Assembly HEREBY

RESOLVES that **THE CONSTITUTION OF THE STATE OF KWAZULU/NATAL IS HEREBY** approved by the KwaZulu Legislative Assembly as a document which will guide and prompt the process and its adoption by the JEA and ratification and empowerment by the South African government, and it further

RESOLVES that the Constitution of the State of KwaZulu/Natal be provided with the broadest circulation possible and that seminars, debates and other forms of public scrutiny be promoted by all adequate forums including the Inkatha Institute and the IFP Information Centre, and it further

RESOLVES that the Constitution of the State of KwaZulu/Natal be forwarded for approval to the Joint Executive Authority which is hereby requested to fix a date on which a popular referendum will be held for final ratification of the Constitution, and to appoint a referendum committee to make such adjustments on the referendum date as they may deem necessary.

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FUNDAMENTAL RIGHTS

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such as to restore the rights and privileges as if the repudiated action never existed

111. Fathers of the State Advisory Board

The Members of the Joint Executive Authority of KwaZulu/Natal shall be life members of the Fathers of the State Advisory Board and shall be entitled to remuneration established by law and not inferior to that of a member of the General Assembly. They may run for other offices. The Fathers of the State Advisory Board may express recommendations to any of the powers of the State in any matter related to the implementation of this constitution. Additional members may be appointed by the Governor with the advice and consent of the General Assembly.

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This constitution shall come into force the day of its ratification by a referendum approving this constitution with at least fifty one percent of the votes validly cast. Within sixty days from the ratification of this constitution the Transitional Electoral Commission shall call a general election to fill the electoral offices provided for in this constitution. The Transitional Electoral Commission shall determine the constituency for such election, prepare the electors' lists and attend to all the other matters related to the election. The Transitional Electoral Commission shall consist of nine highly qualified individuals, two appointed by the KwaZulu government, two by the Joint Executive Authority, two by the Chamber of Commerce, two by the bar

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surrounding areas, and may authorize the establishment of a special basin authority.

109. Properties of the Republic of South Africa in the State

All properties located in the State of KwaZulu/Natal of which the ownership or control immediately prior to the time of adoption of this constitution vested in the Republic of South Africa or in any other body, statutory or otherwise, constituted by or for the benefit of the Republic of South Africa or any of its instrumentalities, shall be automatically transferred to and shall vest in the State of KwaZulu/Natal. This shall include, but shall not be limited to movable and immovable property whether tangible or intangible and any rights and interests therein, including but not limited to equity positions, corporate shares, bonds and obligations, and options and warrants, wherever they might be located.

110. State succession

All laws, regulations and administrative actions in force in the territory of the State at the time of adoption of this constitution shall remain in force and shall be deemed adopted and ratified by the State of KwaZulu/Natal provided that they are not in conflict with this constitution. However, the General Assembly may repudiate and declare null, void and ineffective for all purposes any action of the South Africa Government in the territory of the State of KwaZulu/Natal adopted prior to this constitution when such actions were contrary to the fundamental principles of this constitution. Unless otherwise regulated by the General Assembly, the effects of the repudiation shall be

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- 57. Freedom of Information
- 58. Political Parties
- 59. Media of Mass Communication

OBLIGATIONS AND DUTIES

- 60. Allegiance to the Constitution
- 61. Contribution to Public Expenditures and Needs
- 62. Military obligations
- 63. Duty to work
- 64. Family duties

DIVISION OF GOVERNMENTAL POWERS

- 65. Regions and municipalities
- 66. Powers of the State

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- c. The Commission should aim to create regional territories with an adequate tax and economic basis as well as development potential, and should also aim to respect existing cultural and socio-political territorial divisions, and ensure a proper and just balance amongst the various parts of the State's territory. The territory of each Region does not need to have similar dimensions.
- d. There shall be no less than nine Regions and no more than twenty one. In exceptional cases a Region may consist of one metropolitan area, provided that such Region has sufficient economic and population basis and that the creation of such Region does not adversely affect the economy of the surrounding areas. A Region consisting of one metropolitan area does not need to be divided into municipalities.

107. Election of the Senate

Until the Regions are established the election of the members of the Senate shall take place in the same forms and modalities prescribed for the election of the members of the House of Delegates by grouping three constituencies together so that the Senate shall have 117 members

108. Durban

The law may authorize special exemptions from taxation and other requirements for the area of the port of Durban and the

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bly, which ever comes first, a Commission on Regionalization shall be formed. The Commission shall have twenty one members appointed from a list of one hundred independent, qualified and reputable individuals prepared and approved by the General Assembly. The Governor shall appoint four members, the representatives of the trade, industry and labour, and the Judicial Commission shall appoint three members each, and four members shall be appointed by the General Assembly. One additional member shall be chosen by the members of the Commission so appointed and shall serve as the Commission's chairperson. The members of the Commission shall elect a chairperson and adopt its own rules of organization and operation. The Commission shall seek and solicit broad public participation, including but not limited to public hearings, and may commission studies and reports.

- b. Within nine months from its establishment the Commission on Regionalization shall prepare a proposed subdivision of the State of KwaZulu/Natal into Regions to be approved by the General Assembly with two-third majority of its members. The General Assembly has the power to request the Commission on Regionalization to make any change to the proposed subdivision of the State as a condition of its approval of the subdivision. If by two thirds majority the Commission refuses to make such changes, the General Assembly may approve the subdivision only on the basis of the concurrent positive advice of the Governor.

- 67 Powers of the Federal Republic of South Africa
68 Powers of the Regions

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- 69 The General Assembly
70 Powers of the General Assembly
71 Legislative *Iter*
72 Privileges and immunities

THE EXECUTIVE

- 73 The Governor
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- 75 Independence of the Judiciary
76 Judicial Service Commission
77 The Supreme Court
78 Specialized Courts
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- 83 The organs of the Region
84 Coordination between State and Regions
85 Dissolution of the Regional Congress or Government
86 Modification of the Region's boundaries

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- 87 Municipalities
- 88 Modification of the Municipality's boundaries

OTHER POWERS OF THE STATE

- 89 The Independent Auditor General
- 90 The Civil Service Commission
- 91 Electoral Commission
- 92 Regulatory Relief Commission
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- 104 Amendment Procedures

AMENDMENT PROCEDURES

104. Amendment Procedures

This constitution may be amended by resolution adopted by two thirds of the members of both houses of the General Assembly and ratified by the absolute majority of votes cast in a popular referendum.

FINAL AND TRANSITIONAL PROVISIONS

105. Transitional Government

- a Upon the ratification of this constitution, the joint executive of the Natal province and the KwaZulu government shall become the Transitional Government and shall jointly exercise the ordinary administration of the State of KwaZulu/Natal until the new Government and General Assembly are elected pursuant to this constitution.
- b Within three months from the time of ratification of this constitution the Transitional Government shall call the general elections.

106. Creation of the Regions

- a Within six months from the time of the ratification of this constitution or from the opening of the General Assem-

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ciples and provisions of this constitution so as to make recommendations to the Governor and the General Assembly

- d. The Ombudsman shall have the ~~power~~ to compel the appearance of witnesses and the ~~production~~ of documents and records relevant to his or her investigation. The Ombudsman shall also have the power to cause anyone contemptuous of his or her subpoenas to be prosecuted before a competent Court.
- f. The Ombudsman shall submit an annual report to the General Assembly on the exercise of his or her powers and functions.
- g. The Ombudsman may be removed from office before the end of his or her term by the Governor acting on the recommendation of the Judicial Service Commission. The Ombudsman may only be removed from office on the grounds of mental incapacity or for gross misconduct. The Judicial Service Commission shall conduct the investigation and report to the Governor and the General Assembly.
- h. The Ombudsman shall empower assistant district Ombudsmen who shall serve in decentralized offices on the basis of districts designated by the Ombudsman with the aim of maximizing the accessibility of the Ombudsman's services and protection.

FINAL AND TRANSITIONAL PROVISIONS

- 105. Transitional Government
- 106. Creation of the Regions
- 107. Election of the Senate
- 108. Durban
- 109. Properties of the Republic of South Africa in the State
- 110. State succession
- 111. Fathers of the State Advisory Board
- 112. Ratification of this Constitution and General Elections
- 113. Interpretation of this Constitution

man include the investigation of the complaints concerning violations of rights and freedoms, abuse or use for political purposes of power, corruption and misappropriation of public monies, unfair, harsh, insensitive or discourteous treatment of anyone in the State by a public official, including police, defence forces and prison personnel, manifest injustice, or conduct of a public official which would properly be regarded as unlawful, oppressive or unfair.

- c The Ombudsman shall have the power to take appropriate action to call for the remedying, correction and reversal of injustices and violations of laws and regulations through the most fair, proper and effective means, including
- negotiation and compromise between the parties concerned,
 - causing the complaint along with the Ombudsman's findings to be reported to the superior of the offending party,
 - referring the matter to the Director of Public Prosecution, with a recommendation,
 - bringing proceedings in a competent Court for suitable remedies to secure the termination of the offending action or conduct, the compensation of the victims and/or the modification of the offending procedures,
 - bringing proceeding before the Constitutional Court to challenge the constitutionality of legislation, or before a court to challenge the validity of regulations,
 - reviewing laws in force before the enactment of this constitution to ascertain their consistency with the prin-

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political party's statute or a collective bargaining agreement which are in violation of the constitution, and shall be ineffective in the territory of the State any action or law of the Federal Republic of South Africa which is in conflict with this constitution. The decision of the Constitutional Court may also mandate the rule of resolution of a conflict among the government's organizations and powers.

- f. All decisions of the Constitutional Court shall have *erga omnes* retroactive effects and may provide rules to recognize rights meriting protection and which vested in good faith under norms declared null, void or ineffective.

103. The Ombudsman

- a. The Ombudsman shall be independent and subject only to this Constitution and to the law. No public official shall interfere with the exercise of the Ombudsman's functions or shall refuse full assistance as it may be needed. The Ombudsman's salary are set forth by the law and shall not be inferior to the salary of a Minister. The office of the Ombudsman drafts and proposes to the General Assembly its own budget.
- b. The Ombudsman shall either be a judge, a lawyer or an advocate. The Ombudsman shall be appointed by General Assembly on the recommendation of the Judicial Service Commission. The Ombudsman shall hold office for a non-renewable six year term. The functions of the Ombuds-

THE CONSTITUTION OF THE STATE OF KWAZULU/NATAL

PREAMBLE

We, the people of Natal and KwaZulu, mindful of our unique and diverse heritage, inspired by the desire to secure the blessings of democracy, freedom and pluralism for our and future generations, respecting the equality of all men and women, recognizing the right of people to organize themselves in autonomy and independence at all levels of society, desiring to ensure that individual rights and liberties are accompanied by obligations of social solidarity to others, determined to guarantee that the rights of all people are protected both as individuals and members of social and cultural formations, do now ordain and establish this constitution for the State of KwaZulu/Natal to provide the people of KwaZulu/Natal with a government to serve their individual and collective needs, wants and aspirations.

FUNDAMENTAL PRINCIPLES

1. Inherent Rights and Obligations

The State of KwaZulu/Natal acknowledges and recognizes that all individuals have the natural right to life,

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liberty and the pursuit of happiness, and to the enjoyment of the rewards of their own industry, that all individuals are equal and entitled to equal rights, opportunities and protection under the law, and that all individuals have corresponding obligations to the State and a general obligation of social responsibility to the people of the State

2. Source of Government

All political power is inherent in the people. All government originates with the people, is found only upon their will, and is instituted only for the good of the people as a whole. Government shall respect and encourage the exercise of the power of the people to organize and regulate their interests autonomously.

3. Relationship with the Federal Republic of South Africa

The State of KwaZulu/Natal is a sovereign member state of the Federal Republic of South Africa. The State of KwaZulu/Natal recognizes its obligations toward the Federal Republic of South Africa and the other member states of the Federal Republic of South Africa in so far as they do not infringe upon the rights, powers and liberties guaranteed by this constitution to the citizens of Natal/KwaZulu and to the State of KwaZulu/Natal. The sovereignty of the State of KwaZulu/Natal as asserted under this constitution is indivisible, inalienable and untransferable.

102. Access to the Constitutional Court

- a Any issue of constitutionality of State or Regional laws, or legitimacy of actions or legislation of the Federal Republic of South Africa within the State, or democracy of the statutes of political parties or validity and legitimacy of a collective bargaining agreement raised by any of the parties to a case or controversy before any court which is not manifestly without foundation, shall be demanded to the Constitutional Court for resolution.
- b Political parties represented in the General Assembly, the Ombudsman as well as trade unions, civic and consumer groups, major media of mass communication and other social, religious and cultural formations registered with the Constitutional Court in accordance with its rules, may commence an action to declare the unconstitutionality of laws adopted by the State or the Regions or the illegitimacy within the State of actions or legislation of the Federal Republic of South Africa. One hundred members of a political party may commence an action to review the democracy of their political party statute.
- c The Regions, the Federal Republic of South Africa, the Ombudsman and any power of the State may commence an action to resolve a conflict among government organizations.
- d Decisions of the Constitutional Court shall declare null and void any act of the State or of the Regions, or a

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sional experience, university law professors and higher court judges. The Justices may be foreign citizens.

- c. The Justices are appointed for ten years running from the day on which they assume office. The Justices shall not hold any other public office or exercise any other profession in the State or anywhere in the Federal Republic of South Africa, and may not be renewed for another term. Upon retirement the Justices shall not hold any public office in the State.
- d. The Constitutional Court may operate by committees of four or more Justices. The members of the Constitutional Court shall elect a Chief Justice for a three year term. The Constitutional Court may adopt its own rules of organization and operation consistent with this constitution and any applicable constitutional law. The law may not regulate any matter related to the Constitutional Court. The Court may adopt rules to integrate its composition with additional members for the exercise of its jurisdiction on charges against the Governor and the Ministers. Such rules will determine the qualification, if any, of the additional members and their powers.
- e. While members of the Constitutional Court, Justices are immune from any criminal prosecution. Justices may be impeached for any reason by a resolution adopted by three fourths of the members of both houses of the General Assembly. Their salaries are set forth by the law and shall not be inferior to the salary of a Minister. The Constitutional Court drafts and proposes to the General Assembly its own budget.

4. Territory

The territory of the State of KwaZulu/Natal is indivisible and inalienable. The State of KwaZulu/Natal shall engage in negotiations with the other states of the Federal Republic of South Africa and with the Federal Republic of South Africa to increase its territory so as to include areas which are historically, culturally and socio-economically strictly connected to the territory of the State of KwaZulu/Natal. The territory of the state includes territorial waters.

5. State's Unity

The State of KwaZulu/Natal is one and indivisible. The powers of the State shall be exercised through the State and the Regions as set forth in this constitution. The State and the Regions shall encourage and promote decentralization of their powers and delegation to local governments.

6. Citizenship

All Citizens of the Federal Republic of South Africa residing in Natal or in KwaZulu shall be citizens of the State of KwaZulu/Natal. No citizen of KwaZulu/Natal shall be deprived of citizenship except in such cases as they may be listed in the laws of the State and based on voluntary relinquishment. The General Assembly may grant citizenship in special cases. A resident of the State

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shall be anyone who has been lawfully domiciled in the State for over six months

7. Language

The official languages of the State of KwaZulu/Natal shall be English, Zulu and Afrikaans. The State shall protect and encourage the use of languages other than the official languages. Nothing in this constitution shall prohibit the use of any other language as a medium of instruction in private schools or in schools subsidized or financed by the State, or the Regions or by the Federal Republic of South Africa, subject to compliance with such requirements as may be imposed by law to ensure proficiency of the official languages or for pedagogic reasons. In units of local government where considerable portions of the population speak a language other than English, Zulu and Afrikaans a different language may be used as an additional official language under conditions and in a manner to be determined by law

8. State's Symbols

The coat of arms, the flag and the anthem of the State of KwaZulu/Natal shall be determined by a law adopted by a two thirds majority of the General Assembly.

9. State's obligations

The State of KwaZulu/Natal shall ensure internal security and safety, promote balanced economic development,

- review the constitutionality of the legislation of the State
- review constitutionality of the legislation of the Regions
- resolution of conflicts between the legislation of the Regions and State legislation
- resolution of conflicts between Regions
- review constitutionality of the federal legislation
- resolution of disputes on the legitimacy of the exercise within the territory of the State of federal powers in matters reserved to the exclusive jurisdiction of the Federal Republic of South Africa.
- resolution of conflicts between powers of the State
- criminal charges against the Governor and the Ministers
- validity and legality of collective bargaining agreements
- verification of the democracy of the statutes of political parties
- other matters as set forth in this constitution or in constitutional laws.

101. Composition and operation of the Constitutional Court

- a. The Constitutional Court shall consist of fifteen members, three of whom shall be appointed by the Governor, six by the General Assembly with resolution supported by two thirds of the members of each house of the General Assembly, three by the Judicial Service Commission and three by the bar association
- b. The Justices of the Constitutional Court are chosen among lawyers and advocates with more then twenty years profes-

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for approval. Should this not be possible the Declaration of Emergency shall be submitted for approval to the President of the Constitutional Court or the President of the Senate or the President of the House of Delegates in this order.

- b. The Governor shall modify the Declaration of Emergency to provide additional information, to detail the information previously provided and to report on the actions undertaken to respond to the emergency.
- c. The General Assembly or the Constitutional Court may terminate or modify the terms of the Declaration of Emergency at any time. The Governor may require that the General Assembly or the Constitutional Court meets behind closed doors to discuss any matter related to the emergency, and that the contents of the Declaration of Emergency be kept secret.
- d. Any action taken during a situation of emergency shall respect to the fullest extent possible under the circumstances the rights and liberties of the citizens of the State recognized and guaranteed in this constitution.

CONSTITUTIONAL GUARANTEES

100. Jurisdiction of the Constitutional Court

The Constitutional Court shall have original and exclusive jurisdiction in the following matters.

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foster social development, guarantee environmental and consumer protection, ensure health services, education and welfare for its citizens, constantly strive to improve the quality of life of all people in the State, preserve and protect the State's religious, linguistic and ethnic heritage and cultural diversity, nourish the people's right to the pursuance of happiness both as individuals and as members of their social formations, protect the family, extend special protection to maternity and paternity and to the children, extend special protection for women, the disadvantaged and less privileged portions of the population, and strive in its actions and policies to achieve social justice in accordance with the principles of this constitution

10. Equality

- a. All citizens of the State of KwaZulu/Natal have equal social dignity, shall be equal before the law and shall share an equal right of access to political, social and economic opportunities irrespective of sex, race, colour, sexual orientation, language, traditions, creed, religion, political affiliation and belief, and social and personal status
- b. The State of KwaZulu/Natal shall remove social and economic hindrances which operate as a factual limitation on the freedom and equality of all its citizens, prevent their human and social growth and diminish their equal access to political, economic and social opportunities. For this purpose the State of KwaZulu/Natal may take measures

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in favour of segments of the population requiring special assistance.

11. Rule of Freedom

All conduct and activities which are not prohibited shall be permitted. The State of KwaZulu/Natal may prohibit and regulate conduct and activities for a demonstrable State's interest founded on public interests and welfare.

12. Federal Law

All statutes and regulations validly adopted by the Federal Republic of South Africa as well as international law as recognized by the Federal Republic of South Africa shall have immediate force and effect in the State of KwaZulu/Natal in so far as they are not inconsistent with this constitution.

13. Traditional and Customary Rules

The State of KwaZulu/Natal shall recognize and protect the application of traditional and customary rules not inconsistent with the principles and provisions of this constitution in all matters left to the autonomy of individuals and that of social and traditional formations to which individuals belong on a voluntary basis or from which they have not dissociated themselves in a manner prescribed by law. Traditional and customary rules are produced in accordance with the rules and the sources governing their production and shall not be modified or

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- d Citizens of the State may participate in the armed forces of the Federal Republic of South Africa only on a voluntary basis. In case of war or of authorized mobilization the State of KwaZulu/Natal shall conduct military proscription through the militia to supply armed forces to the Federal Republic of South Africa.
 - e The State shall not suppress the citizens' right to bear arms, but may limit it in special cases and circumstances.

EMERGENCY POWERS

99. Emergency Powers

- a The Governor may declare an emergency in the State on in determined areas of the State. The Declaration of Emergency shall provide a general indication of the type of emergency and shall indicate in general terms which powers and resources of the State, of the Regions, of the municipalities or of the citizenry the Governor intends to employ to respond to the emergency, how such powers and resources are expected to be employed and for how long, and other measures and actions the Governor intends to undertake. Within twenty four hours the Governor shall summon the General Assembly to a joint session to ratify the Declaration of Emergency. The General Assembly may modify the Declaration of Emergency. If the emergency is such that the General Assembly may not be summoned into session, the Declaration of Emergency shall be submitted to the Constitutional Court

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REFERENDUM

97. Referendum

One hundred thousand citizens with voting rights, or three Regional Congresses shall have the power to call a referendum to repeal a law or a portion thereof. The referendum shall be validly held if at least fifty percent of those entitled to vote participate. The proposal shall be approved by the majority of the votes validly cast.

STATE MILITIA

98. State Militia

- a. The State militia shall be organized by law. The law may require compulsory service in the State militia. The law shall ensure internal democracy in the militia indicating how the exercise of constitutional rights may be limited so as to be compatible with military duties.
- b. The supreme command of the State militia shall vest in the Supreme Military Committee. The Supreme Committee shall be chaired by the Governor and consists of three civil members and three members of the militia appointed by the General Assembly in accordance with the law.
- c. The militia may be divided in subdivisions under different commands.

repealed by the law. Traditional or customary laws shall not have territorial application unless so authorized by law, in which case they shall be subject to the law to the extent that they apply to individuals who do not share in such tradition or custom. All traditional and customary law shall be collected and published by a committee of the General Assembly working in conjunction with the affected interests.

14. Supremacy of the Constitution

This constitution shall be the supreme law of the State and shall be applied and enforced to the fullest extent possible in all judicial and administrative procedures as well as in interpersonal relations under the control of the State of KwaZulu/Natal.

FUNDAMENTAL RIGHTS

15. Individual and Collective Rights

Fundamental rights are recognized and shall be protected both in their individual as well as in their collective exercise, and they imply the right to establish institutions, adopt rules of conduct and regulate interests which are instrumental to the collective exercise of such rights. All powers established and recognized under this constitution shall protect and nourish the exercise of these rights and respect and foster their collective exercise.

16. Justiciability of rights

All rights and freedoms recognized and guaranteed under this constitution shall be justiciable to the fullest practical and reasonable extent. In case of a violation of the rights and freedoms recognized and guaranteed under this constitution any aggrieved party shall be entitled to be heard by a court of record on the basis of urgency and, upon showing a *prima facie* violation of rights, shall be granted preliminary relief pending the final disposition of the case.

17. Limits on the exercise of the rights

The law may impose reasonable restrictions on the exercise of the rights set forth in this constitution to protect the rights of others and for compelling reasons of public interest. However, in such a case the law must respect the essential content of the rights, and the limitation on the exercise of the right must not have the practical effect of preventing or deterring the free exercise of the rights in their reasonable manifestations.

18. Physical and psychological integrity

- a. The physical and psychological integrity of any individual shall be inviolable. No one shall be authorized to inflict any type of violence on another individual or to take a life. Capital punishment and any form of physical or psychological torture and punishment shall not be allowed.

- c. The Commission shall have the power to determine the requirements for product labelling including product information and warnings
- d. The Commission may be delegated by the State or regional legislature to set prices and rates for services and products rendered in conditions of natural monopoly.
- e. Any immediately adversely affected interest may seek judicial review of any decision of the Commission
- f. The Consumer Affairs Commission shall prepare a yearly report on the status of consumer protection expressing any applicable recommendations, and may provide testimony in the General Assembly and Regional Congresses as required.

96. Other Powers

Individuals and social, cultural, religious and political formations when exercising their powers or their autonomy within the freedom and liberties recognized and guaranteed by this constitution, shall have equal standing as the powers of the State and the Regions

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able natural resources, the degradation and destruction of ecosystems and the failure to protect the beauty and character of the State

- e The Environmental Commission shall prepare a yearly report on the status of the environment in the State expressing any applicable recommendations, and may provide testimony in the General Assembly and Regional Congresses as required

95. Consumer Affairs Commission

- a The Consumer Affairs Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by Judiciary Commission, two by the Chamber of Commerce and four by representatives of consumer groups registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts on consumer protection, environmental problems or social sciences.
- b The Consumer Affairs Commission shall investigate matters related to the protection of consumers, and may introduce legislation at State and regional level to protect consumers. Of its own power the Commission may request that general terms and conditions of adhesion contracts be negotiated with and approved by the Commission as a condition of their validity and enforceability

- b No one shall be submitted to unusual or cruel punishment and all punishments shall aim at the personal and social rehabilitation of the person. During imprisonment juvenile delinquents shall be kept separate from other delinquents and so shall men from women. Failure by a public official to report any and all instances of physical or psychological violence on a person deprived of his or her liberty shall be a criminal offence

19. Freedom of communication

- a All persons shall be free to express and communicate their thought in private and in public, in oral, written, visual or any other fashion, and to establish institutions for such a purpose. All forms of censorship or limitation on the contents of such communications shall be prohibited.
- b Limitations on the contents of commercial speech may be imposed to guarantee the truth and the fairness of the representations made to consumers and to ensure fair competition, provided that there shall be no prohibition of comparative advertising
- c Limitations on the form of communication may be imposed as to time, place and manner so as to protect and respect the rights of others and compelling public interests, but not to the extent that the limitation on the forms communication becomes a limitation on the contents thereof

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- d No one shall be compelled directly or indirectly to disclose or express his or her ideology, creed, religious belief, or political opinions

20. Freedom of Religion

Religious freedoms are recognized and shall be guaranteed. Everyone shall have the right to profess and promote his or her religion or belief, and to establish institutions and organize activities for this purpose. The State of KwaZulu/Natal shall not take any action supporting or endorsing any particular religious belief or confession or conditioning the exercise of religious freedom to any requirement, and shall promote conditions for the equal and free exercise of all religions and beliefs in the State.

21. Liberty

- a. No one shall be deprived of his liberty without cause and due process of law. Unwarranted arrest and detention shall be allowed only on the basis of probable cause related to an offence punishable by imprisonment. Anyone arrested or detained shall be informed of his or her rights in a language that he or she understands, shall be informed of the reasons for the arrest and detention with an indication of the charges, and shall have a court hearing within twenty four hours from the time of his or her arrest, after which the detention may continue only by court order based on factually corroborated allegations.

status of the economy, and on foreseeable economic and technological trends at State, national and international level.

- d The Regulatory Relief Commission may prepare or commission additional reports on economic and financial matters and may provide testimony in the General Assembly and Regional Congresses as required

94. Environmental Commission

- a The Environmental Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Judiciary Commission, two by the Chamber of Commerce and four by representatives of environmental groups registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts on environmental sciences or social sciences.
- b The Commission shall investigate matters related to the protection of the natural and human environment, may introduce legislation at State and regional level to protect and enhance the quality of the natural and human environment, and may make recommendations to the State and Regional Departments of the Environment.
- c The Commission shall investigate and report on complaints concerning the improper utilization of non-renew-

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- c The Regulatory Relief Commission may prepare reports of the regulatory matters expressing any applicable recommendations, and may provide testimony in the General Assembly and Regional Congresses as required

93. Economic Development Commission

- a The Economic Development Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Civil Service Commission, two by the Chamber of Commerce, two by representatives of consumer groups and two by representatives of the trade unions registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts in economics, finance, business management and futurism.
- b The Economic Development Commission shall prepare a State wide plan of economic development of the State and assistance to businesses to be implemented through legislation and administrative activities of the State and the Regions. The Commission shall monitor the implementation of the plan as approved by the State and the Region and recommend modifications and adjustments as necessary.
- c The Economic Development Commission shall prepare and submit to the General Assembly a yearly report on the

- b Anyone detained or accused has the right to remain silent. Anyone detained or charged with an offence punishable by imprisonment has the right to consult counsel, and if he or she can not afford one the court shall appoint one at government expense. There shall be a right to counsel in any and all proceedings in which the accused participates.
- c Detention prior to sentencing shall be limited to cases established by law and shall not exceed three months.
- d Anyone detained, arrested or condemned unlawfully shall have the right to be rehabilitated, to receive indemnification and other rights determined by law.
- e Any government authority shall inform anyone who is the subject of an investigation for any reason.
- f No one may be tried twice for the same conduct. No one shall be charged for a conduct which at the time was not an offence, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed. There shall be no analogical or retroactive interpretation of criminal law.
- g Anyone has the right to a speedy, open and public trial and to confront his or her accusers at trial. All trials shall be based on the accusatory principle and shall be subject to the right to appeal on the grounds of error of law.
- h No one shall be removed from the authority of the judge with jurisdiction over the specific offence at the time the

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- c The Regulatory Relief Commission may prepare reports of the regulatory matters expressing any applicable recommendations, and may provide testimony in the General Assembly and Regional Congresses as required

93. Economic Development Commission

- a The Economic Development Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Civil Service Commission, two by the Chamber of Commerce, two by representatives of consumer groups and two by representatives of the trade unions registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts in economics, finance, business management and futurism
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- b Anyone detained or accused has the right to remain silent. Anyone detained or charged with an offence punishable by imprisonment has the right to consult counsel, and if he or she can not afford one the court shall appoint one at government expense. There shall be a right to counsel in any and all proceedings in which the accused participates.
- c Detention prior to sentencing shall be limited to cases established by law and shall not exceed three months
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- e Any government authority shall inform anyone who is the subject of an investigation for any reason
- f No one may be tried twice for the same conduct. No one shall be charged for a conduct which at the time was not an offence, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed. There shall be no analogical or retroactive interpretation of criminal law
- g Anyone has the right to a speedy, open and public trial and to confront his or her accusers at trial. All trials shall be based on the accusatory principle and shall be subject to the right to appeal on the grounds of error of law.
- h No one shall be removed from the authority of the judge with jurisdiction over the specific offence at the time the

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offence was committed. There shall be no special or *post facto* judges. Any accused person has the right to be tried in an impartial, independent and competent court. Anyone shall be presumed not guilty until proven guilty.

22. Travel and movement

Everyone shall have the right to travel, move and reside within or outside the State. No government policy forcing the relocation of people shall be allowed. Any citizen of the Federal Republic of South Africa shall have the right to take domicile in the State.

23. Privacy

- a. Everyone shall have the right to the protection of privacy, of his or her personal life, of his or her domicile, and to protection of his or her personal dignity and reputation. A" private communications and all aspects of private life shall be protected. Search and seizure may be allowed only on the basis of a warrant issued on the basis of corroborated allegations, and in the cases and with the guarantees established by the law. Personal search shall be allowed as an incident to a legitimate arrest and detention.
- b. Anyone has the right to access the information collected on him or her by the Government or by private data or information banks.

- h. The rules adopted by the Electoral Commission and its actions may be challenged for violation of the principles of this constitution, or because arbitrary and capricious and inappropriate before the Constitutional Court with emergency procedure.

92. Regulatory Relief Commission

- a. The Regulatory Relief Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Judiciary Commission, two by the Chamber of Commerce and two by representatives of consumer groups and two by representatives of industry registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts on public administration, business management or regulatory processes.
- b. The Regulatory Relief Commission shall be empowered to request the repealing or amendment of burdensome, unnecessary or inadequate regulations and permit requirements adopted by the General Assembly, the Government, the Regional Congresses, the Regional governments, any independent regulatory agency and municipal governments. Any entity receiving such a request of the Commission shall reply within twenty days. If the Commission does not deem the reply to be satisfactory, it may introduce legislation in the appropriate legislature.

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offence was committed. There shall be no special or *post facto* judges. Any accused person has the right to be tried in an impartial, independent and competent court. Anyone shall be presumed not guilty until proven guilty.

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- c The Commission shall issue rules requiring all political parties and candidates to disclose sources and amounts of financing, rules setting limits to the financing received from any given source, and rules governing the conduct of political parties and candidates during the campaign period. All constitutions of political parties shall be deposited with the Commission.
- d The Commission may initiate legislation at State and regional level on electoral matters and shall administer and distribute any public financing to political parties and candidates provided for in State and regional legislation
- e The Electoral Commission may organize political debates and decide time allocation in State or Region controlled media of mass communication. When necessary to ensure the fairness, impartiality and balance of the electoral process, the Commission may require private media of mass communication to publish statements or to provide coverage of given information
- f The Electoral Commission shall determine and update the boundaries of the electoral constituencies of the House of Delegates and the Regional Congresses. In doing so the Commission shall aim to ensure internal balance in each constituency and representation of the variety of social and cultural interests present in the State. Each constituency shall aim to have the same number of electors
- g The Electoral Commission administers the elections and announces the results

24. Freedom of the Media

Anyone has the right to publish and distribute printed materials. The press and the media of mass communication shall have the right to inform the public on matters of public interest provided that they do not publish erroneous information as a result of gross professional negligence or malice. The media have the duty to rectify all erroneous information they publish which damages the reputation of others.

25. Assembly and Association

Everyone has the right of peaceful assembly. No notice shall be required for assembly in a private place or in a place open to the public. For assembly in a public place prior notice shall be given to the competent authority which may prohibit the assembly only for reasonable apprehension of public security and safety. Everyone has the right to associate for any legal purpose. Associations pursuing directly or indirectly political purposes by means of military training or association operating in a paramilitary fashion shall be prohibited.

26. Family rights

A man and a woman have the right to join in marriage in accordance with the rituals and with assumption of the obligations and privileges of their choice. However, both spouses shall have equal rights, obligations and dignity.

Both parents shall have responsibility for the upbringing, formation and education of the children, even if born outside wedlock. The law shall ensure that comparable rights and social protection shall be extended to children born outside wedlock as they are recognized to children born in wedlock. Both parents have the right and the duty to exercise joint custody of the children unless a court otherwise decides in the interest of the children and on the basis of the specific circumstances of the case. Both parents have the right and the duty to choose an acceptable formation and education for their children.

27. Procreative Freedom

All people who so desire shall enjoy the freedom of procreative choice, including the right to receive sexual education, to use contraception and terminate unwanted pregnancy when safe. Anyone who finds these practices objectionable shall have the right to protect his or her own sphere of interests from any of these practices and from the exposure thereto.

28. Cultures and Traditions

Everyone shall have the right to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion.

29. Human rights in the Constitution

All fundamental human rights and all those other rights which are inherent to fundamental human needs and

91. Electoral Commission

- a The Electoral Commission shall consist of nine members, three appointed by the Governor, three by the General Assembly, and three by the Judiciary Commission. The members of the Commission shall be qualified and independent professionals. The members may not hold any other public office and prior to their appointment shall disclose any possible conflict. After the appointment they may not undertake activities which may cause additional conflicts of interest. The members of the Commission will hold office for three years and may be reappointed. Their salaries are set forth by the law and shall not be inferior to the salary of a Director General of the State administration. The Commission proposes to the General Assembly its own budget.
- b The Electoral Commission shall organize and supervise the elections provided for in this constitution and in the constitution of the Regions. The Electoral Commission shall ensure the fairness of the political debate and the effective opportunity for all citizens to participate in the democratic process. The Commission shall adopt rules to ensure fair campaigning and to prevent violence and intimidation, and shall have the power to summon and direct the State police and militia to ensure peace and order during the political campaign period, and during and immediately after the elections

disfunctions, and to guarantee equal access by all citizens to the services and job opportunities offered by public offices. The Commission shall investigate and report on complaints concerning the operation of any administrative office in the State, including police, defence force and the prison service

- d. The Civil Service Commission shall identify requirements and qualifications for holding any given public office and supervise open competition to fill the posts. The Commission shall also develop and submit to the approval of the State and Regional governments any affirmative action programme to be implemented within governmental structures.
- e. The Civil Service Commission shall also develop, monitor and assist the adoption and implementation by State and Regional offices and agencies of procedures accompanying the major administrative actions and all rule-making processes to solicit and ensure the participation and the input of the affected interests and of the public.
- f. The Civil Service Commission shall prepare a yearly report on the status of the public administration expressing any applicable recommendation, and may provide testimony to the General Assembly and Regional Congresses as required.

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aspirations as they evolve with the changes and growth of society, and as they will be recognizable on the basis of the principles underlying the provisions of this constitution, are hereby entrenched in this constitution and in their essential content shall not be modified by virtue of constitutional amendments.

ECONOMIC, SOCIAL AND POLITICAL RIGHTS

Economic rights:

30. Free Enterprise

The right to free economic initiative and enterprise shall be recognized, protected and encouraged by the State. The State shall assist small businesses and provide other incentives to encourage access to economic opportunities. Within the limits set forth by the law to protect the public interest each enterprise shall be free to choose and organize the means of the production as it best sees fit.

31. Contractual autonomy

Within the limits set forth by the law to protect the public interest, the State shall recognize and protect the right of individuals to self regulate and organize their interests in economic and other matters by means of legally enforceable contracts and by establishing legal entities to carry out their purposes and objectives.

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32. Commercial and Insolvency Law

The State shall promote uniformity of its commercial and insolvency laws with those of countries and countries.

33. Permits and Licensing requirements

The State shall not subject human conduct to unreasonable or unnecessary licensing and permitting requirements. Permits and licences shall be issued on the basis of objective and reasonable standards and criteria.

34. Private Property

Private property shall be guaranteed and protected. Limitations on the use and enjoyment of private property may be imposed so as to satisfy social, environmental and collective needs. The right to convey one's own property by contract or inheritance shall be protected subject to the reasonable exercise of the State's power of taxation.

35. Expropriation

The State or another entity authorized by law may expropriate property for public necessity subject to the prompt payment of a fair market value compensation.

36. Property of the State and the Regions

The State and the Regions may own property as private or public property. Public property shall not be alienated

by the Chamber of Commerce and four by the representatives of consumer groups registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified and independent experts on public administration, business management or regulatory processes. The members shall not hold any other public office and prior to their appointment shall disclose any possible conflict of interest. After the appointment they may not undertake activities which may cause additional conflicts. The members of the Commission will hold office for three years and may be reappointed. Their salaries are set forth by the law and shall not be inferior to the salary of a Director General of the State administration. The Commission proposes to the General Assembly its own budget.

- b. The Civil Service Commission shall propose to the General Assembly or to the Regional Congresses the legislation organizing and maintaining all public offices of the State and the Regions, including independent regulatory agencies, determining missions, competence, jurisdictions and responsibilities of each office. Both the State and the Regional Governments may submit proposed legislation to the Commission. Concerned interests may also submit proposals to the Commission.
- c. The Commission shall oversee the operations of the public administration of the State and of the Regions to ensure impartiality and efficiency, to prevent governmental waste, corruption, nepotism, inefficiency and

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88. Modification of the Municipality's boundaries

Provided that all municipalities involved have consented, municipal boundaries may be modified, two or more municipalities may be merged or one municipality may be divided in two or more municipalities by a law of the Regional Congress adopted by absolute majority of its members and approved by referendum held among the populations affected by the modification of boundaries.

OTHER POWERS OF THE STATE

89. The Independent Auditor General

There shall be an independent Auditor General. The Auditor General shall audit the financial activities of the State, the Region, the Commissions, the independent regulatory agencies, and any enterprise, entity or instrumentality owned or controlled by the State or the Regions. All administrative actions involving financial expenditure shall be subject to the preventive financial control of the Auditor General or his designees. The law shall ensure the independence of the Auditor General.

90. The Civil Service Commission

- a. The Civil Service Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Judiciary Commission, two

or encumbered and is related to the exercise of public functions or is held by the State or the Regions in the public interest. The law shall set forth the principles for the acquisition, administration and declassification of public property. The General Assembly shall publish a yearly report on the property owned by the State and the Regions indicating their current and planned use and their maintenance and carrying costs.

37. Public Enterprise

No enterprise shall be acquired or conducted by the State or the Regions either as a monopoly or as a free competition enterprise, and no service shall be provided to the public unless so authorized by a law demonstrating a public need and the inadequacy of the private sector to satisfy such need with comparable efficiency and reliability. When these requirements no longer exist the enterprise or the service shall be privatized.

38. Property of the Federal Republic of South Africa

All tangible and intangible properties of the Federal Republic of South Africa in the State of KwaZulu/Natal shall be subject to the same rules and limitations set forth in this constitution for the properties of the State.

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39. Communal Property

Communal property is recognized and shall be protected. Communal property shall be administered and regulated by traditional and customary Rules.

40. Practices in restraint of trade

All monopolies and practices and agreements in restraint of trade and free market competition shall be prohibited.

41. Agriculture

The State of KwaZulu/Natal shall encourage agriculture, the socially just and responsible use and distribution of land and the access of citizens to land ownership. The State shall promote agricultural cooperation and assist farmers on a cooperative basis.

Social Rights:

42. Right to Education

- a. All citizens shall have the right to receive a basic education and professional training. The law shall determine the period and the minimum educational requirements for compulsory education. The State shall support the citizen's aspiration to higher education by means of

appoint caretakers to conduct ordinary administration during the election period

86. Modification of the Region's boundaries

Provided that all the Regional Congresses of all the Regions involved have consented, Regional boundaries may be modified, two or more Regions may be merged or one Region may be divided in two or more Regions by a law of the General Assembly adopted by absolute majority of its members and approved by referendum held among the populations affected by the modification of boundaries.

87. Municipalities

- a. Municipalities shall be recognized and established by law. Under the parameters set forth by law to ensure uniformity of types each municipality shall have the right to choose its rules of organization and operation. Municipalities may vary in size and population basis. The administrative and regulatory activities of the municipalities shall ensure and promote the democratic participation of citizens
- b. Irrespective of the form of organization, all municipalities within a Region shall exercise similar type of jurisdiction, including the municipality's own jurisdiction as set forth in law and the jurisdiction over administrative and regulatory matters delegated by the Region.

Government who shall acknowledge it within twenty days. The legislation shall be promulgated within ten days from such acknowledgement and becomes effective ten days from its promulgation. Within the period allowed for the acknowledgement, when the State Government believes that the regional legislation exceeds the jurisdiction of the Region or is in conflict with State or national interests or with the interests of other Regions, the State Government shall request that the Regional Congress reexamines the legislation. If the Regional Congress approves the legislation by an absolute majority of its members, within fifteen days from the communication of such approval the State Government may challenge the validity of the legislation before the Constitutional Court on constitutional grounds and before the General Assembly in joint session for conflict of interest.

85. Dissolution of the Regional Congress or Government

The State government shall have the power to cause the dissolution of a Regional Congress when a Regional Congress has seriously violated this constitution or has engaged in a pattern of violations of law, has refused to dissolve a Regional government which engaged in such conduct, or is otherwise incapable of functioning or expressing a majority. The dissolution shall be ordered by a resolution of the Governor adopted with the advice and consent of the General Assembly. Within three days of the dissolution the Electoral Commission shall call regional elections within two months. The dissolution decree may

scholarship and by promoting the highest standards of excellence in education

- b Both private and public schools shall ensure open and equal access to educational opportunities. Parents shall be entitled to participate in the administration and operation of their children's schools.

43. Right to Work

Everyone shall have the right to access any job opportunity for which he or she is qualified. As a matter of priority, the State shall promote the full employment of all citizens. No one's employment shall be terminated for political reasons or in violation of his or her constitutionally protected rights. Everyone shall have the right to receive a fair compensation for his or her work, shall be entitled to at least one vacation day a week, to a period of paid vacations during the year and to severance payment upon termination. All workers shall be entitled to social security, pensions, invalidity and unemployment benefits as determined by law.

44. Protection of Women

The law shall extend special protection to women. The law shall guarantee maternity leave and provide assistance to mothers in the work force. Until such time when the social status of women in the State has significantly improved, the law shall recognize special privileges for

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women in all programmes and measures aimed to ensure equal access to political, social and economic opportunities, shall establish and maintain a Ministry for Women's Affairs, and reserve a portion ~~of the~~ available public offices to women.

45. Senior Citizens

The law shall promote the economic sufficiency of senior citizens and provide social services to assist them in relation to their housing, care, health, cultural and leisure needs.

46. Youth

The law shall promote conditions for the free and effective participation by the youth in political, social, economic and cultural developments.

47. Schools

Everyone shall have the right to establish private schools. Private schools shall have the power to determine their own curricula and syllabi within the general parameters set forth by law for the purposes of recognition and equipollence of degrees.

48. Universities

All public universities and institutes of higher education in the State shall be entitled to regulate their organization

shall determine the qualification for, and additional incompatibilities of the office of member of the Regional Congress. The members of the Regional government shall be elected from within the Regional Congress. The Regional Congress shall have the power to adopt its own Rules and elect a President.

- d. Each Regional Congress by absolute majority of its members shall adopt a constitution for the Region which shall be consistent with the principles and the provisions of this constitution. The constitution of the Region shall be approved by law. The constitution of the Region shall provide for the exercise of the power of referendum on regional legislation and regulations.

84. Coordination between State and Regions

- a. A Representative of the State Government residing in the Region shall control the State's administrative functions in the Region and coordinate them with the Regional administrative functions.
- b. The Representative of the State Government shall have the power to challenge in court the validity of the administrative actions of the Region. The Representative of the State Government shall also have the power to request the Regional Congress or the Regional government to reexamine any administrative action.
- c. All the legislation adopted by the Regional Congress shall be communicated to the Representative of the State

Every six months the Commission will issue a report to the General Assembly

- d The Privatization Commission shall operate for seven years unless it resolves to dissolve itself prior to such date or is extended in office by resolution of the General Assembly

REGIONS AND MUNICIPALITIES

83. The organs of the Region

- a Each Region shall have a Congress and a Regional government. The Regional Congress shall exercise the legislative functions mandated to the Region and the other functions set forth in this constitution. It may also submit legislative proposals to the General Assembly
- b The Regional government shall execute the regional legislation and carry out the administrative activities of the Region. The Chairperson of the Regional government represents the Region, promulgates the regional legislation, and directs and oversees the administrative functions delegated by the State to the Region in compliance with the instructions received from the State's Government
- c The Regional Congress shall consist of 76 members elected from no less than 38 constituencies in which the Region shall be divided for the purposes of this election. No one shall sit in two Regional Congresses. The law

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and operations within the general parameters set forth by law

49. Health Care

All citizens shall have the right to receive medical attention and care in case of need. The law shall determine the implementation of this right. The law shall develop policies of prevention, treatment, rehabilitation and integration of those who are physically, sensorially and mentally handicapped, including those who are substance addicted

50. Job Conditions

The law shall ensure safe job conditions and shall provide special protection for women, minors and untrained labour

51. Housing

The law shall promote conditions to ensure that all citizens have the possibility of living in a dignifying habitation and shall facilitate the purchase of residences through credit facilitation and other programmes. All citizens have the right to receive shelter and shall have equal access to housing opportunities

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52. Research, Arts and Teaching

The freedom of scientific research, artistic expression in all its forms and teaching is ~~recognized~~ and shall be guaranteed.

53. Right to a Pleasant and Clean Environment

The State shall recognize the rights of present and future generations of citizens to live in and enjoy a pleasant and clean environment. The law shall determine the cases and the limits in which citizens may bring legal actions on behalf of the community against those who cause environmental damages.

54. Labour Rights

Everyone shall have the freedom to form and join trade unions and employers' associations. The State shall respect and protect the right to strike but may limit its exercise in cases determined by the law for reasons of public security and safety. Labour organizations shall have the right to negotiate and execute collective bargaining agreements to be effective with force of law vis-a-vis the category of workers covered by their provisions. During these negotiations the labour organization shall be represented on the basis of the number of their members. Trade unions shall have the right to conduct reasonable activities in the work place aimed at improving labour

use tools of monetary intervention in the public interest. The Central Bank shall have the power to determine its organization and operations.

82. Privatization Commission

- a. A Privatization Commission shall be established to transfer to the private sector the enterprises which are under the control of any government in conflict with the provisions of this constitution. The Commission shall consist of nine highly qualified and independent experts in economics, finance and business administration, three appointed by the Governor, five by the General Assembly and two by the Chamber of Commerce.
- b. The Privatization Commission shall develop a privatization plan to be submitted to the General Assembly for approval. The Commission shall adjust the implementation of the privatization plan so as to best cope with changing economic circumstances, seeking the approval of the General Assembly when necessary. The privatization effort shall be balanced, shall maximize economic efficiency and shall support economic growth. The phases and the time frame of this effort shall be set in the privatization plan. The Government shall implement the privatization plan.
- c. The Privatization Commission shall monitor the implementation of the privatization plan so as to ensure that the privatization effort is completed in the absence of corruption, inefficiency, personal gains and governmental waste.

- b By a vote of two thirds of its members the General Assembly may authorize the Government to finance the budget by resorting to public debt. When seeking such authorization the Government shall provide a report indicating the foreseeable sources of repayment of the public debt and the underlying economic assumptions. Any increment of the public debt shall be so authorized.
- c The budget shall be divided in titles, sections and chapters. Any allocated funds which by the end of the fiscal year have not been spent shall be automatically carried over to the next year within the same budget chapter if it exists, or shall be transferred to the most closely related budget chapter if the same budget chapter no longer exists.

81. Banking

The State shall regulate banking in harmony with the monetary policies set forth by the Federal Republic of South Africa. An autonomous Central Bank of the State of KwaZulu/Natal shall be established. The President of the Central Bank shall be appointed by the Governor with the advice and consent of the General Assembly and serves at the pleasure of the Governor. The President of the Central Bank shall submit a yearly report to the General Assembly on the monetary status of the State and on the status of the banking system. The Central Bank shall have regulatory powers on banking and credit, and shall be independent within the parameters of the law to

conditions. The State may impose requirements on the trade unions only to ensure that they are organized and operated with full internal democracy.

Political Rights

55. Right to Vote

- a All citizens of eighteen years or older shall have the right to vote. The vote shall be personal, secret, free, and equal. The right to vote may be suspended by a judicial adjudication of incompetence, or by an irrevocable sentence for major crimes specified by the law.
- b The law recognizes, and the State shall facilitate, the exercise of the right to vote by citizens who are outside the State.

56. Right to Petition and to Initiate Legislation

Any citizen has the right to petition the General Assembly, the Regional Congresses and any branch or level of government. A citizens legislative proposal signed by five hundred citizens may be submitted to the General Assembly.

57. Freedom of Information

Any citizen has the right to access and receive any information or document which is in the possession of the

State or Regional governments or of any of the commissions or agencies established in this constitution, provided that such document or information is not privileged as established by law to protect ~~privacy~~, commercial secrets or national and State security. During the process of judicial review of the government's decision to withhold information, the court shall have the power to examine *in camera* the information withheld.

58. Political Parties

The citizens of the State have the right to form political parties to participate in all levels of democratic life. No one shall be directly or indirectly compelled in any way to join a political party or shall be penalized for not belonging to one. Political parties shall ensure internal democracy in their organization and operations.

59. Media of Mass Communication

Anyone shall have the right to establish media of mass communication, including newspapers, cable, radio and television stations. The law shall regulate the rights of citizens and political parties to access media of mass communication under the control of the government or in situations of virtual hegemony or monopoly.

79. Prosecutors

The office of the Director of Public Prosecution shall be a distinct and separate part of the judiciary equally governed by the Judicial Service Commission. The carrier and the roles of judgeship and prosecution are separate and only in exceptional circumstance shall the Judicial Service Commission authorize a prosecutor to take the office of judge or vice versa. Prosecutors are entitled to the same guarantees, immunities and financial treatment as judges. The prosecution of criminal offences shall be mandatory. The Director of Public Prosecution shall submit a yearly report to the Judicial Service Commission on the cases which his office has not prosecuted because of special agreements with the suspected party or for other public interest reasons. The report may omit the names of the concerned parties.

ECONOMIC PROVISIONS

80. Balanced Budget

- a At the beginning of the fiscal year the Government shall submit to the General Assembly a balanced budget for approval. The General Assembly shall amend and modify any item or portion of the draft budget. The approved budget shall indicate sources of revenue to cover all State expenditure.

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77. The Supreme Court

The Supreme Court of the State of KwaZulu/Natal shall guarantee the uniform interpretation of the law and shall be the court of final appeal

78. Specialized Courts

- a. During peace time military courts shall have jurisdiction only over military personnel on active duty.
- b. Tribal, customary, and religious courts shall have concurrent jurisdiction over cases and controversies which, when proposed, are based on the application of traditional and customary law and religious rules respectively. The law shall identify and recognize such courts, and determine to which limited extent they may decide on incidental issues and matters not based on traditional and customary law or on religious rules.
- c. There shall be no special or extraordinary tribunal or courts. Within the ordinary court system the Judicial Commission may create specialized sections for given subject matters, and may require the participation of qualified experts to the administration of justice in forms and manners determined by the law. Specialized sections may include family, labour, traffic, administrative, criminal, public auditing, corporate and international law matters.

OBLIGATIONS AND DUTIES

60. Allegiance to the Constitution

All citizens of the State shall have the duty to uphold this constitution. All those who hold any of the offices provided for in this constitution shall take an oath or a solemn affirmation to uphold and defend this constitution, obey the law and exercise their public functions with discipline and honour.

61. Contribution to Public Expenditures and Needs

- a. All citizens have the duty to contribute to the common needs and to public expenditure by reasons of their resources. The tax system shall follow principles of progressive taxation, but shall not create a disincentive for the production of wealth.
- b. The State shall encourage voluntary charitable activities and other forms of expression of social solidarity.

62. Military obligations

All citizens have the sacred duty to defend the territory of the State and when so required the territory of the Federal Republic of South Africa from any external enemy and from any threat to the enjoyment of freedom, democracy and pluralism in the State.

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63. Duty to work

All capable citizens have the duty to contribute with their work and skills to the common development and growth of the State and of the Federal Republic of South Africa

64. Family duties

All citizens have the duty to provide moral and financial support to their spouses, to educate their children and to assist their parents when in need of care.

DIVISION OF GOVERNMENTAL POWERS

65. Regions and municipalities

The State is divided into Regions and municipalities. Regions are established as autonomous entities and are provided with powers and jurisdiction in accordance with the principles set forth in this constitution.

66. Powers of the State

The State of KwaZulu/Natal shall have all those powers which are not reserved to the people, to the Regions or to the Federal Republic of South Africa respectively.

promotions and assignments of judges, age limits, and the code of judicial conduct and responsibility to be enforced by the Commission. The Commission may receive and shall consider complaints and requests for disciplinary actions against judges and prosecutors received from the Government and the general public.

- c. The Judicial Service Commission shall approve all appointments of exceptionally distinguished university law professors, lawyers and advocates to any level of the judgeship made the General Assembly. The Commission shall also determine qualifications, rules and procedures for the election of judges of peace and honorary judges.
- d. The Judicial Service Commission shall approve the rules adopted by any court to regulate the proceedings before it and the related administrative functions.
- e. The Judicial Service Commission shall submit to the General Assembly a yearly budget, including proposed salary levels for all people working in the judicial services. As a part of its budget the Commission shall collect and administer for the benefit of the judicial service all taxes and duties levied in relation to the administration of justice as they are authorized by law. Any funds which have not been spent by the end of the fiscal year shall be carried over to the following year. The Commission may initiate legislation in matters related to the judiciary and judicial services.

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THE JUDICIARY

75. Independence of the Judiciary

Justice shall be administered in the name of the people of the State of KwaZulu/Natal. Judges shall be subject only to the law. They may not be removed from office without the authorization of the Judicial Service Commission.

76. Judicial Service Commission

- a. The Judicial Service Commission is the organ of self governance of the judiciary. The Governor shall be the President of the Commission. The Commission consists of an additional twenty members to be selected among judges, lawyers and advocates with at least ten years of professional experience and university law professors. Seven shall be elected by judges and prosecutors, six appointed by the General Assembly, three by the bar association, two by the Attorney General and two by the Civil Service Commission, and they shall serve for one non-renewable five-year term during which time they shall not exercise any other professional activity or hold other public office.
- b. The Commission shall implement and administer the fundamental principles on the organization of the judicial services set forth in a general law to be adopted by the General Assembly. The Commission shall set forth and administer the rules on the selection by public competition and on the qualification of judges, the rules on transfers,

67. Powers of the Federal Republic of South Africa

- a. In accordance with the principles of this constitution, the State of KwaZulu/Natal recognizes the power of Federal Republic of South Africa to exercise exclusive legislative, administrative and judicial functions and powers in the following matters:
 - monetary system, foreign credits, exchange and convertibility
 - general principles of legislation to coordinate the regulation of banking, credit and insurance
 - general principles of legislation to coordinate the regulation of environmental protection of national interest
 - general principles of legislation to coordinate economic development and foster interstate commerce among the states
 - general principles of legislation to coordinate the technical regulation of equipment of communication
 - legislation to provide negotiation and procedural coordination of the State's policies with national policies and the policies of other states in the field of transportation, energy, interstate and foreign commerce, economic development, consumer protection, banking and social welfare in so far as they relate to the interests of the Federal Republic of South Africa. The General Assembly may enact legislation to empower the Government to

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enter into agreements with the Government of the Federal Republic of South Africa to ensure policy coordination in other fields.

- nationality, immigration, ~~emigration~~, alienage and the right of asylum
- international relations
- defence against foreign enemies
- organization and administration of the federal system of justice in the subject matters of federal prerogative
- admiralty and maritime law and regulations
- air transportation law and regulations
- protection of intellectual property rights
- external customs, tariffs and foreign trade
- legislation on weights and measures
- use of the area of exclusive economic influence
- other matters as authorized by a constitutional law of the State of KwaZulu/Natal.

b. The Federal Republic of South Africa shall have the power to summon the State militia to defend the territory, freedom and liberty of the Federal Republic of South Africa from an external enemy. No Federal armed forces or armed forces of other states shall have the power to enter or be stationed in the State of KwaZulu/Natal without the approval of the State.

c. No power of the Federal Republic of South Africa shall be legitimately exercised and valid in the State of KwaZulu/Natal if inconsistent with the principles and provisions of this constitution.

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e. The office of Governor or Minister shall be incompatible with any other public office or profession or employment.

f. The Government shall be organized by law in accordance with this constitution. Public officials shall be held personally accountable for the actions of the offices under their direction. Each ministry or agency shall be held liable for damages caused by gross negligence or malice of government officials.

g. The law may establish independent regulatory agencies. The people in charge of the agency shall be in a fiduciary relationship with one or more members of the Government at whose will they may be removed, but do not need to resign when the government resigns or its term expires. The Government and the responsible Ministers shall be accountable to the General Assembly for the actions and operations of the independent regulatory agencies. The law may extend to the people in charge of the agencies the same immunities set forth in this constitution for the members of the Government.

h. All actions of the Government and of the public administration are subject to judicial review for violation of the law and improper use of discretionary powers. This shall not apply to high actions of government.

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time and with ten days prior notice to its members, any of the houses of the General Assembly may adopt with a two thirds majority of its members a no-confidence resolution causing the resignation of the Governor and fixing a date within forty days from the adoption of the resolution for the election of a new Governor. Any confidence or no-confidence resolution must be introduced by at least twenty percent of the members of the house, must be accompanied by a report and shall be voted with personal calls. The vote of one or both houses against a legislative initiative or a proposal submitted by the Government shall not be construed as a no-confidence vote

- c. The members of the Government are collectively responsible for the actions of the Government. Each Minister shall be individually responsible for the actions of his or her ministry
- d. The Senate, by absolute majority of its members, may authorize that criminal charges are pressed against the Governor or a Minister for crimes committed in connection with the exercise of their functions. The Senate by simple majority may authorize that criminal charges are pressed against the Governor or a Minister for crimes not connected with the exercise of their functions. This latter authorization shall not be required to proceed on such charges after the Governor or the Minister has relinquished his or her office. The Constitutional Court shall decide on the charges against the Governor or a Minister authorized by the Senate and shall determine sanctions as it deems it appropriate

- d. The power of the Federal Republic of South Africa to levy taxes and impose duties within the State of KwaZulu/Natal or in relation to activities or properties located in the State of KwaZulu/Natal shall be exercised only with the advice and consent of the State of KwaZulu/Natal to be rendered by the Joint Commission on Finance of the General Assembly chaired for this purpose by the Governor and integrated with six additional members with voting rights representing trade, industry and labour and nominated by the Speaker of the House and appointed by the Governor
- e. Representatives of the Federal Republic of South Africa may participate without voting rights in the activities of the Joint Commission on Finance. The Joint Commission on Finance shall meet at least once every two years to advise the Federal Republic of South Africa on the type and extent of Federal taxation and revenue collection permitted in the State of KwaZulu/Natal. Any resolution adopted by the Joint Commission on Finance in this respect shall have effect only in the second calendar year following the year in which the resolution is adopted

68. Powers of the Regions

- a. The Regions shall have the power to assume legislative and/or administrative jurisdiction in the following matters

organization and operation of the offices of the Region, including administrative instrumentalities of the Region

- custody and maintenance of the Region's buildings and other infrastructures
- determination of municipal boundaries
- police, fire and rescue, and ~~coast patrol~~, not excluding the power of the State to coordinate ~~police~~ and investigations and to maintain emergency security forces
- government of the territory, including housing and all phases of zoning
- social assistance
- health and hygiene
- public education
- protection of the natural and human environment, including implementation of the State's environmental mandates
- public works of regional interest within the Region's territory
- water projects, canal and irrigation systems of regional interest and thermal and mineral waters
- railways and roadways of regional interest within the territory of the region
- ports of refuge, recreational ports and airports of regional interest
- regulation of agriculture and livestock
- woodland and forestry
- hunting and fishing in inland waters
- regional economic development including small business assistance
- markets and expositions
- handicrafts
- professional training and job search
- museums, libraries and conservatories of regional interest

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ascribed by this constitution to the Governor are exercised by the President of the Senate while the Minister of Home Affairs shall act as Chief Minister of the Government. Should the Governor become permanently incapacitated the President of the House of Delegates shall call an election.

- c. The Governor may be removed from office before the end of his or her term by a resolution adopted by the absolute majority of the General Assembly in a joint session summoned by the President of the House of Delegates. The Governor may only be removed from office on the grounds of mental incapacity or for treason. The Constitutional Court shall direct the investigation.

74. The Government

- a. The Government shall conduct all administrative functions authorized and all missions mandated by the law.
- b. The Government consists of the Governor and the Ministers. The Ministers are chosen and nominated by the Governor. Within ten days from its formation the Government shall be collectively confirmed by a vote of confidence of both houses of the General Assembly. At any time and with three days prior notice to its members, any house of the General Assembly may adopt with a simple majority a resolution of no-confidence, in which case the Government shall resign and a new Government shall be chosen and appointed by the Governor. At any

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72. Privileges and immunities

No member of the General Assembly shall sustain criminal or civil liability for the opinions expressed in connection with his or her office in or outside the General Assembly. During the time of his or her mandate no member of the General Assembly shall be searched, detained or tried for any offence without the authorization of the house to which he or she belongs, or of a predetermined committee thereof. This shall not apply to arrest *in flagrante delicto*. The law shall determine the salary of the members of the General Assembly.

THE EXECUTIVE

73. The Governor

- a The Governor shall be elected by the majority of the votes cast in a state-wide constituency election. The Governor shall be forty years or older and shall be elected for a three-year term renewable only once. The Governor shall not hold any other public office or exercise any other trade or profession.
- b The Governor is the Head of the State, the Chief Minister of the State's government and represents the State. The Governor may exercise independently from the Government the powers vested in him or her under this constitution. Should the Governor be incapacitated the functions

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- monuments of regional interest
 - promotion of culture and research, and protection and teaching of the languages of the Region
 - regulation and promotion of tourism and tourism industry
 - promotion of sport and recreation facilities
 - promotion of performing arts and related infrastructures
 - other matters authorized by a constitutional law of the State
- b State law may require the Regions to implement State legislation in other matters. State law may also define matters in which the State and the Region share joint or concurrent legislative and/or administrative jurisdiction in forms and matters prescribed in the law.
 - c The State has legislative and administrative power in any matter in which the Region has not exercised its jurisdiction.
 - d The legislative powers of the Regions must be exercised within the fundamental principles of State legislation in the subject matter and shall not be in contrast with the national interest or with the interest of other Regions.
 - e The Regions exercise of administrative functions shall be normally delegated to the municipalities. When possible regional legislation should allow for implementation by local ordinances so as to adjust to local interest and characteristics, especially in matters related to the government of the territory.

- f. State law may directly empower municipalities with administrative functions of local interest, and may delegate to the Regions additional administrative functions.
- g. The Regions have financial **independence** and autonomy in the manners and within the **limits** established by State law. State law shall coordinate regional finance with the finance of the State and of the municipalities. State law shall define the power of the Regions to levy taxes and impose duties and shall attribute to the Regions a portion of the State's revenues.
- h. Regions shall not levy import or export or transit duties, nor shall they take any action which may hinder in any way the free circulation of people and goods among the Regions or limit the citizen's rights to exercise in any portion of the State's territory their profession, employment or job.
- j. State law shall determine the type of public and private property owned by the Regions.

THE LEGISLATURE

69. The General Assembly

- a. The General Assembly represents the people of the State of KwaZulu/Natal and shall consist of two houses, a

any proposal, submit it to article by article vote and to a vote on the entire proposal, and send it to the full house for approval. The full house shall read the proposal, submit it to article by article vote and to a vote on the entire proposal. The legislative proposal approved in identical text by both houses shall be transmitted to the Governor for signature and promulgation.

- b. The Governor shall have the power to veto the legislative proposal in its entirety or on a line-item basis, in which case the legislative proposal shall be remanded to the General Assembly along with a message of the Governor. If the General Assembly by absolute majority of its members votes to override the veto, the Governor shall sign and promulgate the law.
- c. The law shall be promulgated within ten days from the Governor's signature and becomes effective ten days from its promulgation unless a shorter term is provided for by the law itself. All laws shall be published in an Official Gazette on the day of their promulgation.
- d. All political parties shall be represented in the committees of each house.
- e. Each house shall have the power to adopt rules of organization and operation.

law approving the budget shall not introduce additional taxes or expenses. Any law involving new or additional expenses shall indicate the source of revenue to cover them

g The General Assembly shall have the power to adopt *ad hoc* legislation to enable the Governor to a single exercise of the power to pardon or give amnesty for specified types of offences committed prior to the introduction of the legislative proposal

h Each house in accordance with its Rules shall have the power to oversee and control the public administration of the State. The committees of each house shall have the power to hold hearings in relation to which they may compel the appearance of witnesses and the production of documents, and shall have the power to request any Minister or public official to appear, provide information, conduct research and produce reports

71. Legislative *Inter*

a The legislative function shall be jointly exercised by both houses of the General Assembly. Any member of each of the two houses shall have the power to introduce legislation. The Government shall have the power to introduce legislation in either or both houses. Each legislative proposal shall be accompanied by a brief report. Legislative proposals shall be assigned by the Rules Committee to one of the committees of the house in which the proposal has been introduced. The committee shall read

House of Delegates and a Senate. The members of both houses are elected for a five year term

b Any citizen of the State twenty one years or older may be elected to the House of Delegates, any citizen thirty five years or older may be elected to the Senate. No one shall be a member of the two houses simultaneously, nor shall hold any other public office at the time of his or her qualification to office. The electoral law may determine additional cases of incompatibility and lack of qualification. The members of the General Assembly shall disclose any employment or profession of whatever nature conducted during the time of their legislative office. At any time they shall disclose potential conflicts of interest in relation to any activity of the house they belong to. A conflict of interest shall not disqualify a member of the General Assembly

c The House of Delegates shall consist of 350 members each of whom shall be elected in one of the 350 constituencies into which the State shall be divided for the purposes of this election. Each Regional Congress shall adopt a resolution appointing two of its members to the Senate. Four additional members of the Senate shall be elected in each of the Regions by proportional vote in a region-wide constituency

d The office of the members of the General Assembly terminates upon qualification of their successors

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- e The members of the General Assembly shall represent the interest of the people in its totality and complexity and shall not be deemed to be bound by any specific mandate.
- f The General Assembly shall meet **annually** in one ordinary session from September to December. Each house shall be summoned in session at any time by its President, any of its Vice Presidents, by the Governor or by one tenth of its members. The General Assembly shall meet twenty days after the election of its members and shall proceed to verify the eligibility and qualification of its members.
- g All meetings of any house of the General Assembly and any committee thereof are public and may be broadcast. In special cases any house of the General Assembly or committee thereof may hold meetings behind closed doors. The reasons justifying the secrecy shall be confidentially disclosed to the Constitutional Court which may order that the meeting be public.

70. Powers of the General Assembly

- a The General Assembly shall exercise the legislative power of the State, approve its budgets, control the action of the Government and exercise the other powers granted by this constitution.
- b Each house shall establish its own Rules, autonomously approve its own budget, and regulate the personnel. The Rules and any amendment thereof shall be approved by

absolute majority. The Rules shall recognize and respect the role of the opposition and protect political minorities. The Rules may limit but not prohibit reasonable filibustering.

- c Each house shall elect a President and two Vice Presidents for a two year term and shall assign its members to committees. Joint sessions of the General Assembly shall be presided over by the President of the House of Delegates and shall be governed by its Rules. The Presidents shall exercise the administrative powers and police authority within their respective houses. All political parties shall be represented in the committees of each house.
- d Each house shall be validly in session when at least half of its members are present. Unless otherwise provided for in this constitution, all deliberations of any of the houses of the General Assembly must be adopted by the majority of the members who are present.
- e The General Assembly shall adopt legislation to implement this constitution and to meet the needs, wants and aspirations of the people of the State.
- f The General Assembly shall approve the budget and the year end financial statements of the State. The General Assembly shall have the power to authorize the government to operate for no more than three months with a provisory budget pending the approval of the budget. The

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