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C: FUNDAMENTAL RIGHTS DURING THE
TRANSITION

VOLUME TWO

C: FUNDAMENTAL RIGHTS

SUBMISSIONS RECEIVED BY THE TECHNICAL COMMITTEE ON
FUNDAMENTAL RIGHTS 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)

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NIC

Gender Advisory
Committee

MA McLaughlin
IFP

DP

Transkei

Bophutatswana

Ximoko Progressive

Party
PAC

Ciskei

United Peoples Front

Inyandza National
Movement

OFS Traditional
Leaders

M.A. McLaughlin

14/05/93

15/04/93

18/05/93

19/05/93

19/05/93

19/05/93

16/05/93

21/05/93

19/05/93

19/05/93

19/05/93

18/05/93

Outline of submission

Report to Codesa
Constitution and Bill of Rights
First position paper of the IFP

Comments on first progress
report.

Second input.

Fundamental principles
recommended to be contained in
a constitution.

Submission.

Input.

Fundamental Rights and
responsibilities.

Submission.

Submission.

The role of Traditional Leaders

in the new dispensation.

Constitution and Bill of Rights

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P.O. Box 19172, Domerton, 4018
Fax No. 031- 301 4341

MEMORANDUM
PLANNING COMMITTEE

MULTI - PARTY NEGOTIATIONS

FROM: NATAL INDIAN CONGRESS

TRANSVAAL INDIAN CONGRESS

DATE: 13 MAY 1993

SUBMISSIONS TO TECHNICAL COMMITTEE

We refer to the circular from the Planning Committee dated 11 May 1993
inviting participants to make submissions to the Technical Committee (TC).

At this stage we wish to submit an outline of our submissions to the TCâ\200\231s. Our
submissions will be made to the following TC'â\200\231s.

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

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

VIOLENCE

- . Causes of Criminal and Political Violence
- * Mechanisms to Combat Violence
- bt Mechanisms for an Anti-Crime Coalition
- b4 Mechanisms for Community Policing
- . Mcchanisms 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 Governmeat

Constitutional Principles:

- . Affirmative action
- . â\200\230â\200\234Minority Rightsâ\200\235
- . * 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 Political Activity

Composition

Sub-Councils: to include Education

Decision Making

GENDER
ADVISORY
COMMITTEE

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REPORT OF THE GENDER ADVISORY COMMITTEE TO CODESA 2

Due to enormous public pressure about the lack of representation at CODESA of women, who form 33 % of the population, and subsequent suggestions and submissions by women's organisations, political parties and other organisations, the Management Committee of CODESA decided to form the Gender Advisory Committee. The GAC is a subcommittee of the Management Committee charged with the special task of looking into the Terms of Reference, minutes and decisions of each of the Working Groups, and those of the Management Committee, and advising on their gender implications. All CODESA participants have so far sent representatives to the GAC with the exception of the Bophuthatswana and Venda Governments.

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.

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

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The Free Political Participation of Women

Noting the Terms of Reference of Working Group Q1. [tems 1. 1.4 (k). (p) and (0). the CAC recommends the following:

[1.1.1 The rights of access of women to public facilities and meeting venues should be secured, as should their right to meet with political organisations. Thus 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 ([tem |.1.4 (0) 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. water. etc. their right to vote, particularly in areas where women are unlikely to be reached by usual media.

Agreements on Political Intimidation and Women

With regard to the agreement reached by sub group 2 of Working Group | 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. 1 particular. as for ms of political intimidation (refer to [tem 4.2 of the Minutes of the meeting of Sub-Group 2 of Working Group |, 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 individual's 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.

Agreements of the Interpretation of the National Peace Accord

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

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3L 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 who will 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 6.3 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 | 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.

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 | over the definition of political prisoners, 90 recommendations with regards to the gender implications of this issue could be agreed upon.

The GAC also recommends that any Security Forces 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.

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
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activity including the elimination of racial and gender discriminatory laws.â\200\235
The Media in the Transition (Recommendation to Working Groups 01 % 03

The GAC recommends that Working Group I and Working Group J 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 victimisation, are prepared as a
matter of urgency

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

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 2 that the Bill of Rights include some form of rights and protection for children.

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" be used.

On Agreements Reached Regarding Constitutional Principles

Regarding the Provisional Areas of Commonality that Already Exist in Working Group 2 as adopted by the Steering Committee of WG 2 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, along with racist, 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

represegtation. W - er se ve ciples.â\200\235

2.3.5 [tem 1.3.1 shoud read â\200\230A new coastitution shall provide for effective
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participation of minority political parties consistent with democracy. non-racism and non-sexism\200\231

Constitution Making Body/ Process

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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.

The GAC strongly recommends that all parties include a fair proportion of women on their electoral lists. It is essential that women are evenly distributed within the lists, to ensure their inclusion in the elected body.

The GAC recommends that any committees set up by the Constitution Making Body must contain an adequate number of women.

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.

The above 4 proposals should apply to future elections at a local, regional and national government level.

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 of women and education about the democratic electoral process.

In order that women be timely informed about the franchise, and thus enabled to participate in international elections without fear of 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:

200\234* Shall include women on 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 200\234persons200\235 in line 14 of item 10 of the report should be replaced by a reference to 200\234men and women".

3.2.4 Line 14 of item 14 of the report should read:

200\234Save 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 population.

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;

2ncourage non-sexist. non-discriminatory publications:

= 2nsure (he participation of women on all media bodies. at all [evels:

= 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

3.5 Women and the Foreign Service

Noting that South Africa's foreign relations have mainly been conducted by men, as far as the women government women should be trained. Are 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 are 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.

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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 ombuds 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 with the identification of such legislation.

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 (both in terms of uncompleted work, feedback on its submissions from the relevant Working Groups and forthcoming agreements emanating from the various Working Groups and committees).

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P Q. Box 72299
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M A MCLOUGHLIN/W11 MAM-M66 s lad
The Chairman 15 April 1982
Group 3 (Constitutional Affairs)
CODESA
P O Box 307

ISANDO
1600

Dear Sir,
re 2 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 contituencies 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

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The Chairman /7 May 1992

Group 1 (Constitutional Affairs)

CODESA

P.O BOX 307

ISANDO

1600

Dear Sir,
re g CONSTITUTION AND BILL OF RIGHTS

Further to my letters of 30th March 1992 and 15th April 13932,
I enclose herewith an extractsfrom the Star of the 3rd May
1992 regarding Anti-Trust Laws which, I , (feel, should be
addressed by the appropriate working group dealing with
Economic Affairs and Finance. If we are to preserve
capitalism in the new South Africa then it is essential that
Anti-Trust Laws similar to those in the United States of
America are introduced as soon as possible. Failure to do so
will most certainly strengthen the arguments of those who
wished to have a controlled economy which will be equally
disastrous for South Africa. Kindly confirm that my letter
will be distributed amongst all the relevant constituencies
dealing with Economic Affairs and Finance. When replying,
would you also let me have your reply to my letter of the
1st April 1992 receipt of which was acknowledged by you on
the 23rd April 1992,

I look forward to hearing from you.
Yours faithfully

Date Rec'd: Â¢ LM EAN ...,

Date Ackn : .2 IS|%%.....

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MA GHLIN i

ROBIN MCGREGOR ... blames
lack of competition.

THE introduction of simple, effective anti-trust legislation is vital to halt the snowball of increasing prices, says Robin McGregor, managing director of McGregor's Online.

He targets the lack of competition as one of the basic causes of the country's high inflation.

Mr McGregor says South Africa, effectively, has no competition control. He points to the recent ho-siery debacle where the Competitions Board ruled against a takeover of Arwa by FSI which already controlled Burhose the merger of which gave FSI 99 percent of the market and was subsequently overruled by Government.

The Reserve Bank can keep interest rates high, but until objective anti-trust laws are introduced with no political interference, inflation will not be significantly reduced.

Mr McGregor says anti-trust

laws are not necessarily the ogre

are believed to be, and are the
The intervention needed in a

free market economy. "By selling off their down-the-line subsidiaries to entrepreneurs, conglomerates will actually be able to buy their supplies in a more competitive market than from their present bureaucratic and inefficient subsidiaries."

He calls upon SA Mutual and Sanlam to finance entrepreneurial buyouts: Not only will this encour-

age growth and employment, it will also give them better investments for their policy holders.â\200\235

McGregorâ\200\231s Online has proposed the introduction of the Herfindahl-Hirschman Index (HHI) to increase competition and decrease inflation.

â\200\234The HHI measures the degree of concentration in an industry in an easy and inexpensive way, the sum of the squares of the market shares of all participants in an industry. Should a merger result in that sum exceeding 2500, the merger is disallowed â\200\224 should the sum not be greater than 1000, the merger is allowed.

â\200\234Should it fall between 1000 and 1 800, the Competition Board would have the option to conduct an in-

Anti-trust laws will help fight inflation

vestigation and should it be between | 800 and 2 500, consent from the board is mandatoryâ\200\235

Mr McGregor says with the Rainbow takeover of Premier's broiler operation, the HHI in the broiler industry would be approximately 3600. â\200\234It simply would not be allowed, with Rainbowâ\200\231s market share now up to 55 percent, it can unquestionably influence prices.â\200\235

Mr McGregor says adding to the dangers of this particular merger is the fact that Rainbow now also owns 50 percent of Premierâ\200\231s feed division and has management control. â\200\234This, together with their own feed requirements previously supplied by Tiger Oats, will give them an even higher share.â\200\235

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12 118 St Mundny May 11 1962

Ghe Star

Established 1887

South Africaâ\200\231s largest daily newspaper â\200\230

Food price

â\200\230sabotageâ\200\231

OOD prices are rising at an alarm-
ing rate, having increased by
29 percent, or nearly double the
== average inflation rate, over the
past year. The steep rise occurs in the
midst of deepening poverty, widespread
hunger and prolonged recession. Taking ac-
count of these factors, Nick Barnardt, of
Amalgamated Banks, has said the sharp in-
crease in food prices â\200\234borders on national
economic sabotageâ\200\235.

It may be worse than that. The spectre
of food riots, once a phenomenon confined
to â\200\234corrupt dictatorshipsâ\200\235, cannot be dis-
missed as unlikely in the present vola-
tile climate. If food prices continue to rise
" at their present rate, South Africa could
_ reap a bitter harvest.

Mr Barnardt has called on producers

, and retailers of food to co-operate, in the
. national interest, to drastically lower food
price inflation in the next six months.

Pleas for co-operation, however eloquently
" voiced, will not help. The causes have got

to be identified, attacked and, where possi-
" ble, eliminated.
~ Various explanations have been offered.

One theory is that the basket of food items
. on which price movements are calculated
. contains too much red meat, an expensive
and fast-rising item. Another is that a sta-
tistical error may have crept into official
calculations, a not unknown occurrence.

' A third has been identified by Robin

McGregor of McGregor's Online: lack of

competition and the existence of public-

sector â\200\234boards of controlâ\200\235 and private-sec-

tor oligopolies. Mr McGregor has found

. that where four suppliers or fewer produce more than 75 percent of a commodity, its

- price increases at more than the average inflation rate.

" That situation pertains to the production

of most staple foods, including mealie

, meal, bread and meat. The Competition

Board seems unable or unwilling to act -

against boards of control, near-monopolies

and suspected cartels. The time has come -

to consider seriously the introduction of

anti-trust laws, the existence of which is -

not antithetical to competitive capitalism

but a necessary condition for it.

-)

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MR M PHILLIPS : Johannesburg
The Chairman 26 March 1993

Management Committee

Multi-Party Forum
P O BOX 307
ISANDO

1600

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 and 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 overhaul. 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

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.

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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 relevent committees further on the various matters raised. :

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

Yours faithfully

â\200\234M A McLOUGHLIN

M A McLOUGHLIN/W111 MAM-M66
MR M PHILLIPS

The Chairman 16 October 1992
Management Committee :

CODESA

P -0:BOX":307

ISANDO

1600

Dear Sir,
o=t 3 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

"

.A.McLOUGHLIN

Attorney, Notary & Conveyancer

Michael Arthur McLoughlin

Our Ref:

Your Ref: M A McLOUGHLIN/W11 MAM-M66

The Chairman 30

Group 3 (Constitutional Affairs)

CODESA

P O Box 307

ISANDO

1600

Dear Sir,

re: i e CONSTITUTION AND BILL OF RIGHTS

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March 1992

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 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 reverse, I have the following points to make which I feel need to be

the new constitution will truly be of the

addressed, namely :-

1. CONTROL OF THE ARMED FORCES

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

assisting one or other element in this regard.

"third force"

These are

is

not idle allegations and one has only to look at recent press reports with regard to TV producer, John Drury, of continued local to realise that destabilize the

the BBC's "Assignment" programme and, the perception of such a third force, certain people are definitely trying to democratic, negotiating process. Whoever and it could, into alia, be the elements forces referred to, power needs to be new South Africa. No Constitution, or whether justiciable or not, will be

of

is responsible,

in the security controlled in a

Bill of Rights, 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 As Groucho Marx once said "Military intelligence is a contradiction in

vote to the deliberations at CODESA.

terms! "

I suggest/.....

b,

PAGE 2

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.

"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.

ADVISORY COMMITTEES

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

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.

â\200\230 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.

EXCHANGE CONTROL

This

is an

Minister of
undemocratic,
Constitution. All arguments for retention of exchange
control

citizen who

invest his
the
country's
exchange
- would be
country,
are

iniquitous control brought in by the Finance
the Nazi Regime in Germany in 1930's. It is
and should be outlawed in a new

should be seen for what they are - spurious! A

has paid his taxes, should be allowed to

money, wherever he wishes, particularly, as

the world is now becoming a global village. The
safe,

intervention

power.

inclined to

currency will initially depreciate but, if
control is banned in the Constitution, this
short term and investment will pour into the
when investors realise that their investments

and may be repatriated, without any
by whatever government of the day is in

Similarly, citizens of the country will not be

remove their capital as they will be secure,

the knowledge that their money can be moved, without
or hindrance from the government. If we call

in

let
ourselves
lip service

a free enterprise economy, we must not only pay

to the concept, but show this clearly by
protecting it within the Constitution/Bill of Rights.

6. THE CALLING OF REFERENDA

In
people is to

any truly democratic country, where the will of the
referenda on

should be
group,
support

be given expression to, the right to call
various issues, local, regional or national,

encouraged, provided, of course, any person or
wishing to call a referendum, has sufficient
for the issue to be aired. None of the delegates

at CODESA who truly believe in a full democracy, should
object to

encompassing this matter.

the constitution and bill of rights

POSTULATES OF JUSTICE : AND RETRO-ACTIVE LEGISLATION

Enclosed lis
Africa Law,
clearly set

positive Law

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Reasonabl
Impartial
Certain

an extract from Wille's Principles of South
8th edition, pages 14, 15 and 16 which
out the qualities required by the rule of

namely, that, all Laws should be :-

e

Comprehensive

Publicly

promulgated

In accordance with public opinion.

I believe/.....

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 "pPromulgated", 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

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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 these 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.

PAGE 6
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 people's needs. The people need to be taught how to catch fish not merely be given the fish. If one is merely given handouts 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 State's 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/....

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/...

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 7..:

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

McLOUGHLIN

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I?P believes that South Africa camn and must go for & straight
Rl adopting a fTinal federal constiftution by the =2nd
ot 1924, Therefors, the IFF does not believe in the neseed for a

constitution or for fundamental rights during the
Morovar, political and perscrnal freedoms during the gZeriod
leading +to =lesction should be addrsssed through the work of
subcommittss #7 on th2 amendment and repeal of discriminmatory and

lzigislation, as well =a= through the activitiss cof the
TEC= and the2 wor! of the structures sstablished wnder the
Maticrnl Fsace Accord.

However, the IFF has taken a clear position on the Bill of Rights
which at any stage must be inclusive off all essszential and
internationally recognized human rights. Human rights must be
accompani=2d by adeguate mechanisms for their e2nTorceement and
djusticiability.

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FwaZulu Legislative Assembly on

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ATAL

KWAZULU

THE CONSTITUTION |
OF THE STATE OF
KWAZULU/NATAL

WILEREAS the Region ol KwaZulu/Natal is held together by strong historical ties and commonality ol interest and perspectives which justify and demand the sell-determination of the Region in the form of a Federal State within the Federal Republic of South Afica. .

WHEREAS the KwaZulu Legislative Assembly has witnessed the progressive and irresistible deterioration of the institutional and economic situation in South Africa, in a chmate 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 wellare 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 regionof Nataland 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 inits general visionand fundamental parameters it meets the needs, wants and aspirations of the people of KwaZulu/Natal.

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 Com-

mission. .
| EN Ty |

F13. Interpretation of this Constitution
As used in this constitution inclusive language shall not neces-
sarily be interpreted to the exclusion of similar language or
situations.

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WHEREAS the KwaZulu Government intends to adopt the
of Constitution of the State of KwaZulu/Natal with the under-
standing that with its final ratification the Constitution will
become the supreme law of the land and shall stand as such
ir regardless and in spite of whatever course the negotiations at
the 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 govern-
ment, 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 pro-
moted 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 Author-
ity which is hereby requested to fix a date on which a popular
referendum will be held for final ratification of the Constitution,
,â\200\230 and to appoint a referendum committee to make such adjust-
ments on the referendum date as they may deem necessary.

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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Physical and psychological integrity
Freedom of communication
Freedom of Religion

Liberty

Travel and movement

Privacy

I' freedom of the Media

Assembly and Association

IFamily rights

Procreative Freedom

Cultures and Traditions

Human rights in the Constitution

FECONOMIC, SOCIAL AND POLITICAL RIGHTS

Iconomic rights:

30.

31

32.

33.

34.

35.

36.

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39.

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41.

I'ree Enterprise

Contractual autonomy

Commercial and Insolvency Law

Permits and Licensing requirements

Private Property

Expropriation

Property of the State and the Regions

Public Enterprise

Property of the Federal Republic of South Africa

Communal Property

Practices in restraint of trade

Agriculture

Social Rights:

42

Right to E:ducation

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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.

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.

12

07. Powers of the Federal Republic of South Africa

68 Powers of the Regions

THE LEGISLATURE

69 The General Assembly

70 Powers of the General Assembly

71 Legislative lier

72 Privileges and immunities

THE EXECUTIVE

73. The Governor

74. . The Government

THE JUDICIARY

75. Independence of the Judiciary

76. Judicial Service Commission

77. The Supreme Court

78. Specialized Courts

79. Prosecutors

ECONOMIC PROVISIONS

80. Balanced Budget

81. Banking

82. Privatization Commission

REGIONS AND MUNICIPALITIES

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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ciples and provisions of this constitution S0 as to make recommendations to the Governor and the General Assembly.

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.

The Ombudsman shall submit an annual report to the General Assembly on the exercise of his or her powers and functions.

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.

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.

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FINAL AND TRANSITIONAL PROVISIONS

105

106.

107.

108

109

110.

112

13

Transitional Government

Creation of the Regions

Election of the Senate

Durban %

Properties of the Republic of South Africa in the State
State succession

Ifathers of the State Advisory Board

Ratification of this Constitution and General Elections
Interpretation of this Constitution

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political party's statute or a collective bargaining agreement which are in violation of the constitution, and shall be ineffectual 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.

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.

The Ombudsman

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 is 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.

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-

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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, 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

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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stonal experience, university law professors and higher court Judges. The Justices may be foreign citizens.

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.

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.

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.

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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

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.

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 velinquishment. The General Assembly may
grant citizenship in special cases. A resident of the State

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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.

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.

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.

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 wellfare 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.

Equality

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.

The State of KwaZulu/Natal shall remove social and economic hindrances which operate as a factual imitation 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

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.

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repealed by the law. 200\230 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.

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

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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.

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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.

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.

Consumer Affairs Commission

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.

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.

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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.

Freedom of communication

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 imitation on the contents of such communications shall be prohibited

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.

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

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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.

Economic Development Commission

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.

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 A

The Economic Development Commission shall prepare and submit to the General Assembly a yearly report on the

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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.

Detention prior to sentencing shall be limited to cases established by law and shall not exceed three months

Anyone detained, arrested or condemned unlawfully shall have the right to be rehabilitated, to receive indemnification and other rights determined by law

Any government authority shall inform anyone who is the subject of an investigation for any reason.

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.

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.

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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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.

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.

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.

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

The Electoral Commission administers the elections and announces the results.

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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.

Assembly and Association

L: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

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.

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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.

The Civil Service Commission shall identify requirements and qualifications for holding any given public office and supervise open competition to fill the posts. The Com-

mission shall also develop and submit to the approval of

the State and Regional governments any affirmative action programme to be implemented within governmental structures.

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.

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:

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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.

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.

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.

90.

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.

The Civil Service Commission

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

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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.

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.

ity. When these requirements no longer exist the enterprise or the service shall be privatized.

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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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.

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

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44.

scholarship and by promoting the highest standards of excellence in education

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.

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.

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

Livery six months the Commission willissuc a reportto 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 oflice by resolution of the General Assembly.

REGIONS AND MUNICIPALITIES

83. The organs of the Region

a ach 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 Chairpersonofthe Regional government represents the Region, promulgates the regional legisla- tion, and directs and oversees the administrative functions delegated by the State to the Region in compliance with the instructions received from the Stateâ\200\231s 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 â\200\230

Health Care

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All citizens shall have the night to receive medical atten- tion and carc in casc ol need The law shall determime the implementation of this nght. The law shall develop policies ol prevention, treatment, rehabilitation and inte- gration of those who are physically, sensonially and mentally handicapped, including those who are substance addicted.

Job Conditions

The law shall ensure sale job conditions and shall provide special protection for women, nunors and untrained labour.

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 citizen have the right to receive shelter and shall have equal access to housing opportunities.

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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.

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.

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

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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:

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Right to Vote

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.

The law recognizes, and the State shall facilitate, the exercise of the right to vote by citizens who are outside the State.

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.

Freedom of Information

Any citizen has the right to access and receive any information or document which is in the possession of the

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78.

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.

Specialized Courts

During peace time military courts shall have jurisdiction only over military personnel on active duty.

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.

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.

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OBLIGATIONS AND DUTIES

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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

Contribution to Public Expenditures and Needs

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.

The State shall encourage voluntary charitable activities and other forms of expression of social solidarity.

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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THE JUDICIARY

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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.

Judicial Service Commission

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.

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,

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Powers of the Federal Republic of South Africa

In accordance with the principles of this constitution, the State of KwaZulu/Natal recognizes the power of the Federal

Republic of South Africa to exercise exclusive legislative, and

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 wellfare 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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time and with ten days prior notice to its members, any ofâ\200\231

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.

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.

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.

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The power of the IFederal 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.

Representatives of the FFederal 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.

Powers of the Regions

The Regions shall have the power to assume legislative and/or administrative jurisdiction in the following mat-

ters:

organization and operation of the offices of the Region, including administrative instrumentalities of the Region

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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.

EXECUTIVE

The Governor

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.

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.

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.

The State has legislative and administrative power in any matter in which the Region has not exercised its jurisdiction.

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.

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.

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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.

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.

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.

Legislative Iter

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

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House of Delegates and a Senate. The members of both houses are elected for a live year term.

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.

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.

The office of the members of the General Assembly terminates upon qualification of their successors.

THE CONSTITUTION
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ATAL

THE CONSTITUTION
OF THE STATE 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 its general vision and fundamental parameters it meets the needs, wants and aspirations of the people of KwaZulu/Natal:

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.

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113. Interpretation of this Constitution

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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 adjust-

ments on the referendum date as they may deem necessary.

surrounding areas, and may authorize the establishment of a 18 Physical and psychological integrity
special basin authority. 19 Freedom of communication
| 20 Freedom of Religion

109. Properties of the Republic of South Africa in the State ! 21 Liberty

; | 22 Travel and movement

All properties located in the State of KwaZulu/Natal of which 23 Privacy
the ownership or control immediately prior to the time of 41" Fussddm of the Media
adoption of this constitution vested in the Republic of South 25 Assembly and Association
Africa or in any other body, statutory or otherwise, constituted 26, Family rights
by or for the benefit of the Republic of South Africa or any of 99 â\200\234nBeorEiey Bela
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its instrumentalities, shall be automatically transferred to and 58 % Futtcos sl Triditions
shall vest in the State of KwaZulu/Natal. This shall include, but 29 Human rights in the Co
stitution

shall not be limited to movable and immovable property whether
tangible or intangible and any rights and interests therein, ECONOMIC, SOCIAL AND POLITICAL
RIGHTS

including but not limited to equity positions, corporate shares, Economic rights:
bonds and obligations, and options and warrants, wherever they 30 Free Enterprise
might be located. 31. Contractual autonomy

: 32. Commercial and Insolvency Law

110. State succession ~33. Permits and Licensing requirements

: s ; B : 34. Private Property

All laws, regulations and administrative actions in force in the 35 Expropriation
territory of the State at the time of adoption of this constitution 36. Property of the St
ate and the Regions

shall remain in force and shall be deemed adopted and ratified 37 Public Enterprise
by the State of KwaZulu/Natal provided that they are not in 38 Property of the Federal Repu
blic of South Africa

conflict with this constitution. However, the General Assembly 39, Communal Property
may repudiate and declare null, void and ineffective for all X0 . Pradtcss in istiatie of t
rade

purposes any action of the South Africa Government in the 41, Agriculture
territory of the State of KwaZulu/Natal adopted prior to this
constitution when such actions were contrary to the fundamen- Social Rights:
tal principles of this constitution. Unless otherwise regulated by 42 Right to Education
the General Assembly, the effects of the repudiation shall be

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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.

72

- 67. Powers of the Federal Republic of South Africa
- 68. Powers of the Regions

THE LEGISLATURE

- 69. The General Assembly
- 70 Powers of the General Assembly
- 71, Legislative prerogatives
- 72, Privileges and immunities

THE EXECUTIVE

- 73. The Governor
- 74. The Government

THE JUDICIARY

- 75. Independence of the Judiciary
- 76. Judicial Service Commission
- 77. The Supreme Court
- 78. Specialized Courts
- 79. Prosecutors

ECONOMIC PROVISIONS

80. Balanced Budget

81. Banking

82. Privatization Commission

REGIONS AND MUNICIPALITIES

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

ciples and provisions of this constitution so as to make recommendations to the Governor and the General Assembly.

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.

The Ombudsman shall submit an annual report to the General Assembly on the exercise of his or her powers and functions.

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.

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.

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FINAL AND TRANSITIONAL PROVISIONS

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Transitional Government

Creation of the Regions

Election of the Senate

Durban g

Properties of the Republic of South Affrica in the State
State succession

Fathers of the State Advisory Board

Ratification of this Constitution and General Elections
Interpretation of this Constitution

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NASIONALE HOOFKANTOOR
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Democratic Party

13 May 1993

FAX NUMBER : 011 3972211

The Convenor

Technical Committee on

"Fundamental Rights During The Transition"
Multiparty Negotiation Forum

World Trade Centre

KEMPTON PARK

Dear Professor Du Plesais
DEMOCRATIC PARTY COMMENTS ON FIRST PROGRESS REPORT

We lefer Lu your (iyrast progress report dated 14 May 1992 aopd
wish tc make the following comments:

1. AD PARAGRAPH TWO

Ye are in agreement with these guiding
considerations and wish to add the following:

1.1. Regarding suitable enforcement mechanisms, we would
strongly recommend article 16 of our Draft Bill of

Rights to the Techincal Committee. It was drafted
specitically with a view <to ease enforcement aad
accessability.

1.2. We would suggest that the inclusion of a Bill of
Fights in any form of "Interim Constituticn" would

immediately lead to the development of a human rights jurisprudence in South Africa. Any Bill of Rights agreed to should thus be sufficiently comprehensive to stand the scrutiny of the courts.

2. PH FOUR

We are in broad agreement with the rights and freedoms identified for the purposes of your category 31 subject to the following qualifications:

One Nation. One Future. Een Nasie. Een Toekoms.

One of the greatest threats to human rights during an unstable period of transition, is the ability of the government to declare a state of emergency. We believe strongly that the conditions under which the government can declare a state of emergency, as well as the rights that will be inviolate even in those circumstances, should be included in a Bill of Rights contained in an "Interim Constitution".

Tensions during the transition will run high. Many of these tensions will focus on individual and personal property. To exclude a right to property from a Bill of Fundamental Rights and Freedoms, would be to invite disputes and even conflict. We would strongly recommend our article 9 to your attention.

We believe that "the right to form trade unions and employers' organisations and to engage in collective bargaining", and "the right to an environment which is safe and not detrimental to health" should still be included in your category 2.2 and not in v, 0% B The inclusion of these in 3.1 could lead to unnecessary disputes.

We are not entirely sure what is meant by "the right to have disputes settled by a court of law or other independent forum". Does this simply refer to access to the courts, or does it also include an entitlement to legal assistance from the state to enable an individual litigant to have his disputes settled?

We wish you well with your endeavours and trust that your committee will make a substantial contribution towards the establishment of a culture of human rights in South Africa.

Yours sincerely

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HENNIE BESTER MP
GREEN POINT

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FUNDAMENTAL RIGHTS DURING TRANSITION (SECOND INPUT BY THE

TRANSKEI GOVERNMENT - 19/6/1993):

Further to our input of the 12th of May, we put forward the following submissions:

(8) the bill of rights to be embodied in a transitional constitution should not serve to entrench the evils and rigours of apartheid. It is our view that apartheid has dispossessed people and has led to enormous suffering and deprivation. A transitional bill of rights, therefore, should not preempt the Constituent Assembly on these issues. We refer here in particular to property rights and other related issues in respect of which the disadvantaged have a particular concern and are demanding redress. It should, in our view, focus solely on those matters which have a bearing on the levelling of the political playing field during the transition, the promotion of the principle of free political activity and the free flow of information and unbiased reporting, the conduct of free and fair elections, the prevention of the abuse of power during the transition, the imposition of control in respect of arrests and detentions and the removal of racial and other forms of discrimination; and

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(b) in our view all prisoners should have the right to vote and the term
"right to vote" must be cast and worded in such a way as to put
this issue beyond doubt.

A transitional bill of rights, therefore, should be founded on these basic
principles and should not go any further.

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k REPABOLEK! YA BOPHUTHATSWANA REPUBLIC OF BOPHUTHATSWANA

REFUBLIEK VAN BOPHUTHATSWANA

i TONA YA MERERO YA PUSO, YA PHEMELD LE YA DIPHORO TSA SELEGAE
! THE MINISTER OF STATE AFFAIRS, OF DEFENCE AND OF CIVIL AVIATION
! DIE MINISTER VAN STAATSAANGELEENTHEDE, VAN VERDEDIGING EN VAN BURGERLIKELUGYAARY

Nr. Tohup:/Rel. No./Verw. Nr. KQetsana PosaPrivate Bagi ' Â°
Nr. Mog./Tel. Na. (0140) 29.2002/3 Privastask X2172
Jax No. (0140) 84.2733 Mmabatho 5681

FfAX TRANSMISSION

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FOR ATTENTION: %"T . â\202¬\Â°%b

FROM: JOHAN FERREIRA, TEL C140-841327

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BOPHUTHATSWANA GOVERNMENT'S SUBMISSION

?UNDAME@TAL 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 i principles which ought to form the cornerstone of any proper g constitutional model.

â\200\230 dddition 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 ;
- (4) official languages:
- (@) territory: and
- 5 (Â£) supreme law of the territory

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

Enforcemant of rights.

1.(1) The following fundamental rights are binding on the legislature, the executive and the judiciary, and are directly enforceapble 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

(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.

200\2301200\231 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 subsection (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;

(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 amergency or calamity threatening the existence or well being of the terricory:

(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

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Prescribed Dy aw: % wth o procedure

(a) the lawful detention of a person after conviction by 4 competent court;

(b) the lawful arrest or detention of a person effected for

Power and shall be entitled to trial within reascnable time or to release pending trial, and that release nay be conditioned by gJuarantees to appear for trial;

(c) the detention of a minor by lawful order for the

(d) the lawful detention of persons for the preventicn 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 detenticn of a person to prevent his effecting an unauthorised entry into tha territory or of any person against whom action is being taken with a view to deportation or extradition;

(g9) lawful detention in the interests of national security or public safety.

(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.

) 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;

to have adequate time and facilities for the preparation of his defence:

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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any such matter, not be triad for suchâ\200\230m, 04@"â\200\231@/

upleis 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 na
one shall have a right of access to the person sc 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 a2 penalty be imposed exceaeding
that which was applicabale 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 s
in accordance with the law and is necessary in a democratic
society in the interests of national security, public
safety or the economic well peing 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 cf 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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(1) Everyona has the rigaht +Âçø freedom of thought,
conscience ang raligion; this right includes freedom to
change his religion or belief, ang freedom either alone or
in community with Others and ip Public or pPrivate, to
manifest hig religion or belief, in worship, teaching,
Practice and observance.

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 pProtection of the rights angd
freedom of others.

Freedom of expression.

8.

(2) The exercise of the right of eÃ@xpression, since it
carries with it duties and responsibilities, may be subject
to such forralities, conditions, rastrictions or Penalties
s are prescribed by law and are necessary in a democratic
society in the interests of national Security, terr;torial

Preventing the disclosure of information received in
confidence, or for maintaining the authority ang
impartiality of the judiciary.

Freedom of assembly.

9.

(1) Every citizen has the right to freedom of peaceful
assembly and to freedomn 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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XIMOKO PROGRESSIVE PARTY

SUBMISSION TO THE TECHNICAL COMMITTEE ON FUNDAMENTAL
RIGHTS DURING THE TRANSITION

16 MAY 1993

. The attached submission on Economic Freedom, Governmental Intervention
and Economic Systems summarises the views of the X.P.P on issues germane
to the matter of fundamental rights.

7 March 1992

POSITION PAPER ON ECONOMIC FREEDOM, GOVERNMENTAL INTERVENTION AND
ECONOMIC SYSTEMS

1, Points of Departure

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The Nature of the Constitution and its Economic Content

According to the Concise Oxford Dictionary the word "constitution" refers to the "mode in which a state is organised" or the "body of fundamental principles according to which a state is governed". The S.A. Law Commission in its Report on Constitutional Models (p 258) quotes the wider interpretation of a constitution according to Boule, Harris and Hoexter to be "...the whole system of government in a country, including all the rules, conventions, practices and customs by which it is conducted". The viewpoint of C.F.Strong that

Two other 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 " is also of fundamental importance.

It is the view of the Ximoko Progressive Party that the Constitution must enshrine the basic values of the society to which it refers as the framework within and according to which the whole system of government must operate. This will, to the extent that basic approaches to the management of the economy and toward economic Systems constitute major determinants of the pattern of a country's national life, mean that economic considerations will very definitely need to be addressed in the Constitution. The argument that matters economic fall generally within the realm of policy, and therefore outside of the purview of the current constitutional debate is therefore, in our view, not tenable. This is particularly so since the various parties to the current debate seem to be advancing economic ideologies which differ not so much in degree as in essence and which, when reduced to practical terms, have major implications both as regards the relative role of government in society and the rights of the individual members of that society. It is not correct to aver that precedents do not exist for inclusion of basic economic freedoms in the constitution. A study of the Bills of Rights included in the constitutions of many countries will serve to indicate that the economic aspects of individual freedom are as much enshrined in such constitutions as is any other component of that freedom.

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Certain economic ideologies rely for their
upon the limitation of
which in turn constitute

application

individual economic freedoms

. an . integral . -part . of . the

totality of . Individual freedoms. . Such (predominantly
centralist, command oriented) economic ideologies could
therefore only be made feasible if the rights and
freedoms of individuals were limited accordingly. Mat-
ters of economic Principle are therefore of fundamental

import when defining and enshrining the totality of
freedoms in the constitution.

Policy of the Ximoko Progressive Party

The approach of the Ximoko Progressive Party to
economic policy is based on the conviction that
economic freedom and political freedom represent the
obverse and reverse sides of the same coin. In the

broadest sense true freedom cannot be attained without
both economic and political freedom.

In general the Ximoko Progressive Party stands for a
modern, market oriented economic system founded
generally upon the principles of individual free
private enterprise. Such economic system should display
the following salient features:

Market forces operating freely will generally con-
stitute the driving mechanism of the production
economy;

- The role of the State will be primarily to regu-
late and facilitate the economic process:: subject
to the fundamental principle of minimum interven-
tion by the state in civil society;

- The private ownership of property, including the
material economic means of production, acquired
through the operation generally of a free market
mechanism encompassing the interaction between
willing buyer and willing seller should be fun-
damental. This does, however, not exclude ex-
propriation of property by the State in the public
interest provided that just compensation is paid;

= The promotion of free competition in the economic

System will be an important ingredient of its free
market orientation; .

= The accommodation on the basis of equal oppor-
tunity and individual merit of .all South Africans
in the economic mainstream of the country through
the promotion of economic growth and development
of the human resources of South Africa should con-

stitute the prime focus of State intervention in

the economy;]

The creation of wealth should constitute the driving force in the economic system with access to wealth being achieved through the establishment of equal opportunity and the operation generally of the market system together with appropriately focussed and financed government programmes. In order to create equal opportunity it is recognised that affirmative action on the part of the State

and private enterprise will be necessary, at least

initially. Such affirmative action is foreseen primarily through the medium of education and

training, financing programmes and the creation of employment;

The limitation, at least initially, of the present tendency toward concentration of economic power and the promotion of a more egalitarian distribution of economic power without prejudice to the right of private ownership of property and the

economic means of production or the operation of the market mechanism;

The recognition of land as an economic good and a factor of economic production whose economically efficient and productive use must be accorded high priority. Whilst individual land ownership is accepted as the ultimate ideal, practical difficulties by way of cultural practices regarding land tenure dictate the need - for . greater flexibility in respect of the approach to land tenure in the short- to medium term;

The redistribution of land will be a major issue to be dealt with by future governments of the country and appropriate mechanisms will have to be created to achieve this whilst maintaining,

and preferably improving, the productivity of land in economic terms;

The negotiated fundamental economic restructuring of the South African economy with the full participation of all interest groups will be necessary to achieve the above objectives. It is

foreseen that three imperatives will need to be addressed;

- * The: attraction of foreign investment to South Africa;

- * Structural adjustment of the economy involving the liberalisation of trade and economic activity and the development of new markets and market niches for South African manufactured goods;

- * Fundamental refocussing of government

spending toward the development of human

resources as a matter of sound economic strategy.

Concrete Implications for the Constitution

The above principles translate directly into concrete requirements as regards the Constitution itself as follows. The implications listed are not exhaustive but serve to give substance to the points made in this paper. Note that specific formulations are generally derived from those

contained in the S.A.Law Commission's Proposed Bill of Rights. :

2.1 Implications for the Bill of Rights

The following implications of the contents of the above paragraphs for a Bill of Rights for the new South Africa are immediate:

2% 11 Direct Implications

The position taken by the Ximoko Progressive Party would call for the inclusion of the following into a Bill of Rights:

Property

- * Everyone has the right individually or jointly with others to be or to become the owner of private property or to have a real right in private property or to acquire such right or to be or to become entitled to any other right";

- "Legislation may authorise the expropriation of any property or other right in the public interest and against payment of just compensation, which in the event of dispute shall be determined by a court of law".

Economic Enterprise

- â\200\234Everyone has the right freely and on an equal footing to engage in economic enterprise, which right includes the capacity to establish, manage and maintain commercial undertakings, to acquire property and procure means of production and to offer and to accept employment against remuneration'.

Social Security

Everyone has the right, inter alia ;

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*To: obtain employment in accordance with the Principles of supply and demand and accordingly to make use of the opportunities of employment".

Employees' Rights

Every employee has the right, inter alia >
"To receive equal payment with other employees for corresponding production of an acceptable quality, due regard being had to such aspects as qualifications, experience, the means of the employer and the forces of supply and demand in the labour field".

Employers' Rights

Every employer has the right, inter alia;

- "To offer employment and to engage employees in accordance with his or her needs, due regard being had to the fitness, qualifications and level of training and competence of the employee;
- "To run his or her business particularly with a view to its economic viability and continued existence".

Other Implications for a Bill of Rights

Promotion of Rights

Deriving from its fundamental economic ideology the Ximoko Progressive Party would strongly support the inclusion of a specific promotional clause providing for the positive promotion of the such rights and not merely for their protection.

Security of Rights

In the context of the present paper and considering the past experiences of Africa and the inevitable, and invariably disastrous, interventions in the economy by governments under pressure to deliver on often unrealistic pre-election promises, it is considered vital that economic rights be accorded protection together with other rights in the Constitution.

2.2_Other Implications

2.2.1 The Preamble

The Ximoko Progressive Party adheres strongly to the view that the Preamble to the Constitution, to the extent that it is a general statement of ideology and purpose, must contain some reference to the striving for maximum individual freedom - political, social and economic-consistent with a stable and ordered society. Although the preamble is not legally significant it must affirm matters of fundamental import for the structure of Society and provide a general guideline in respect of the thrust and

interpretation of the Constitution in its entirety.

2.2%2 Affirmative Action

Seen against the historical realities of South Africa some affirmative action will

be necessary to redress the problems of

the disadvantaged in our community

and to establish the ideal of a society where all are able to participate freely and fairly in the pursuit of happiness and well-being. Accordingly, it would be necessary in the specific section of the Bill of Rights dealing with equality before the law, to enable government and society generally

to take such affirmative action but without derogation from the general substance of equality before the law for all. Such a formulation in respect of the role of government in affirmative action could be

"...the highest legislative body may by legislation of general force and effect introduce such affirmative action and vote such funds as may reasonably be necessary

to ensure that through education and training, financing programmes and employment all citizens have equal opportunities of

of developing and realising their natural talents and potential".

The necessity should also be recognised and accommodated of enabling the private sector

to participate in affirmative action without
the risk of being in contravention of the
Bill of Rights, but without derogation of the

general principles of horizontal and vertical equity.

Summary Position of the Ximoko Progressive Party

The Ximoko Progressive Party holds the view that matters of principle pertaining to economic ideology, to the extent that they reflect upon the rights of the individual and of the fundamental structure of the society in which that individual resides, and particularly upon the nature and extent of the powers of government over the individual lives and property of the governed, must be addressed

in the constitutional debate and should form part of the Constitution.

The Ximoko Progressive Party stands generally for a minimum of restrictive and prescriptive intervention by government in the affairs of civil society consistent with the maximum freedom for the individual possible within the constraints imposed by the pursuit of peace and stability in an ordered society. The ideal should rather be the establishment, in effect, of a social contract between the major players in

South African society toward the resolution of the problems of our society.

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Technic=l Coxmmittee on Fundamental Rights during the transition.

The comments of the N,P.P. on tre First Report of the
Committea,

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In the South African situation , in additien 4o the normal
rights of humens to own and occupy properties wherever dhey
deoise, blere is the jusation of Â¢the roeusstoration of sueh righto
Ahen people have had their properties sieved in terms of
racially-bused legislation.

In this respeat such persons must have the rights of either
the reatoration of theiy property rights or be provided with
suitÂ«ble alternative not lt market value.

Â¥ith Xind Regards

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NATIONAL PEOPLE'S PARTY OF SOUTH AFRICA

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PRESENTATION TO THE MULTI-PARTY
NEGOTIATIONS COUNCIL FORUM

We, the National Children's Rights Committee an umbrella organization established under a Deed of Trust to promote and ensure the protection of the rights of all South African children, call on the multi-party negotiations participants to put the needs and rights of children first in all your deliberations and decisions because the country's future depends on our children.

The National Children's Rights Committee operates in fourteen regions in South Africa and representation at regional level

is from various sectors that deal with children. We believe therefore that children are easily forgotten while their plight is extremely serious to deserve special attention during this period of negotiations.

The National Children's Rights Committee has been formed to - encourage programmes that assist with the SURVIVAL, PROTECTION from harm and exploitation, DEVELOPMENT of every child to his or her full potential and CHILDRENS PARTICIPATION in promoting their rights. We are in the process of completing a national multi-sectoral research into the situation of children and women which will assist in the identification of priority areas for intervention where children and their mothers are concerned.

The children of South Africa, under the auspices of the NCRC, wish to invite all participants at the multi-party negotiations council and forum to join them on the day the research report will be launched, June 16th, which is a significant day for South African children, especially in SOWETO and has been declared the Day of the African Child by the OAU.

The launch will take place at the Johannesburg Civic Theatre starting at 1100 am on June 16th 1993.

The launch of the report will be followed by a two day conference to disseminate information contained in the report, to begin the consensus building process on priorities and to get a commitment from all South African key players to put children FIRST in the national agenda.

The NCRC notes with interest that the South African government has signed the convention on the Rights of the Child without informing relevant role players. We also want to caution that children should not be used for party political gain while we would support the ratification of the convention by a democratic government. This will bring to fruition the beginning of a commitment which was called for by the 1987 Harare Conference on childrens rights in South Africa.

National Children's Rights Committes

P.O. Box 30803

Braamfontein

2017

Telephone: (011) 403-3871/2
(011) 403-3875

Fax: (011) 403-3870

THE NCRC IS COMMITTED TO:

- * lobby for political action at the highest level during this interim period and also with a post-apartheid government, so that the needs of the child will be recognised, and in particular that the UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD will be ratified by South Africa;

e inform social and economic policies to enhance children's health and nutrition and their optimal growth and development;

- * work to strengthen the role and status of women, and for support and respect for the family in its role of nurturing children;

- * work to ameliorate the plight of thousands of children in

our land who live in particularly difficult circumstances, especially children displaced and orphaned through violent conflict, disabled children, street children and abused children;

- * work for programmes that reduce illiteracy and provide education opportunities for all children irrespective of their background or gender and that prepare children for productive employment and life learning opportunities;

- * promote the values of peace, understanding and dialogue in the community and in the education of children, so as to give children a peaceful and secure future;

- * work for common measures for the protection of the environment at all levels, so that all children can enjoy a safer and healthier future;

- * work for an economic policy that promotes economic growth while ensuring the well-being of the most vulnerable sectors of the population, especially children.

CONSIDERING that our children are innocent, vulnerable and dependent but also curious, active and full of hope, their time should be one of joy and peace, of playing, learning and growing. Their future should be shaped in harmony and gain new experiences.

HOWEVER, for the majority of children in our land the reality is very different. There is in fact a silent catastrophe among the children in South Africa with regard to:

SURVIVAL - In some rural areas up to 157 children in 1 000 - more than one in ten - die before their first year of life, and of the survivors about the same proportion die before they turn five.

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DEVELOPMENT - Of the survivors, thousands drag out their lives, handicapped by disease and malnutrition, without the stable family life that is needed for emotional growth stability, and without the stimulation and basic education that are needed for their intellectual potential to be fully developed.

PROTECTION - Neither in law nor by common practice is the protection of children adequately provided for. In South Africa children are IN THE FRONT LINE in the conflict and violence. They are the most vulnerable victims of the poverty of almost half our citizens. They are often subjected to abuse through child labour neglect and prostitution (about 10 000 of them are on the streets).

We therefore reiterate our call on all participants of the multy party negotiations to put children first by giving priority on the national agenda to the right of the child to survival, protection and development.

ACCORDINGLY, we make this approach to the Multiparty negotiators to invite input from key specialist networks working with children's issues to make submissions for consideration of special needs of children. While we recognize that human rights are receiving attention we recommend that children's rights be accorded an important place in negotiations as they tend to be put on the back burner.

MRS SHIRLEY MABUSELA
DIRECTOR : NCRC

18 MAY 1993

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.THE PAN AFRICANIST CONGRESS OF AZANIA: INPUT REGARDING:

TERCHNICAL COMMITTERS DEALING WITH:

CONSTITUTIONAL PRINCIPLES; AND

FUNDAMENTAL HUMAN RIGHTS.

PAPER 1

The Declaration of the OAU Ad_Hoe Committee on Southern Africa on the Question of South Africa: Harare, Ziuobabwe: August 21, 1889 contains the following Statenent of Principles:

"South Africa shall become a united, democratic and non-raclal state;

All its pecple shall enjoy common and aqual citizenship and nationality, regardless of race, colour, sex or creed;

All its people shall have the right to participats in the government and administration of the country on the basis of universal suffrage, exercised through one persan one vote, under a common voterâ\200\231s roll;

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All shall have the right to form and join any political party of their choice, provided that this lis noet |in furtherance of racism;

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South Africa shall have a new legal system which â\200\230shall guarantee equality of all before the law;

-.Ssuth Africa shall have an independent and nan-racial

Judicliary;

There shall be created an econocuic order which shall promote and advances the well-being of all South Africans;

A demccratic South Africa shall respect the rights, sovereignty and territorial integrity of all countries and pursue a policy of peacs, friendship and mutually beneficial cooperation with all peoples.â\200\235

The Resolution Adopted on the Report of ths ad hoc Committee of the Whole of the Sixteenth Special Session of the General Assembly of the United Nations 14 December 1888 indentifis: the following Fundamental Principles:

â\200\234South Africa shall bteccame a united, non-vacial anÂ¢ democratic State;

All its peopla shall enjoy common ard equal citizenship anc nationality, reagardless of race, colour, sex or creed;

All its people shall have the right to participate in th government and administration of the ccuntry on the basis @ universal, equal suffrade, under a non-racial votersâ\200\235 rolil

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All shall enjoy universally recognized humsn rizhts,
freedoms and civil liberties, ptotected undser an entrenched
bill of rights;

South Africa shall have a legal system that will guarantes
squality of all before the law;

South Africa shall have an independent and non-racial
judiciary;

There shall be created an econcmic order that wiill promots
and advance the well-being of all South Africans;

4 democratic South Africa shall respect the rights,
sovereignty and territorial integrity of all countries and
pursue & policy of peace, friendship and nmutually beneficial
co-operation with all peoples.â\200\235

The above gprinciples not only supports the idea of a
Âconstitutionally entrenched and judicially enforceable Bill
of Rights in the future Constitution for a democratic order
in South Africa, it also enshires all three rtiers of
generation of human rights, that is, First, Second and Third
Generation Human Rights.

For a full discussion of tha PAN AFRICANIST CONGRESS Of
AZANIA's proposals on CONSTITUTIONAL PRINCIPLES ANDC
FUNDAMENTAL HUMAN RIGHTS: SEE PAPER 2 WITH THE SAME HEADING.

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_THE PAN AFRICANIST CONGRESS OF AZANIA: INPUT REGARDING:

THR TECHNICAL COMMITTEES DEALING WITH:

. CONSTITUTIONAL PRINCIPLES;

AND FUNDAMENTAL HUMAN RIGHTS

Pareer. 2

A: DEMOCRACY

There shall be a democratic state:

1. Universal Adult Suffrags

Every citizen of the required age (18 is recommended) shall have the right to vote. The right to vote shall be guaranteed in a justiciable Bill of Rights. There shall be a common voters roll and there shall be no discrimination on the basis of race, colour, sex or creed.

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2. FFree and Fair Blections (Representative Government)

Periodic elections to elect representatives shall be held (maximum period of five years between elections is recommended). Every citizen that has the right to vote shall have the right to be a candidate in the elections. Election:

shall take place on a proportional basis and there shall be no undue influence in order to ensure that the result of the

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Page 2

elections shall be free and fair. The seorecy of the ballot shall be guaranteed.

3. Free Political Activity

The freedom of association in pblitical parties and tha right to organise shall be protected, provided that this lis not done in the furtherance of racism or in the pursuance of anti-democratic strategies. The freedom wmovement and the freedom of assembly as well as the fresdom of speech and of the press shall likewise be protscted. The mass media shall not be controlled Dby any political drouping but shall be monitored and controlled by an independent bedy.

B: UNITED STATE

There shall be a united, unitary state:

Certain well-defined outonomous powers of government shall be devolved upon regions (a maximum of seven regions lis reconnended) 88 wall as wupon local government " gtructures without detracting from the residual powers af central dovernment which shall be unfettered in order to undertake programs of restructuring and redigtributien. All governmen' structures shall be democratic in the sensa sat out above.

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1. All the people shall enjoy common and equal citizenship, and nationality.

2. There shall be no discrimination based upon race, colour, Sex or creed.

D: A JUSTICIABLE AND ENFORCEABLE BILL OF RIGHTS

All shall enjoy universally recognised human rights, freedoms and civil liberties :

All government powers at national, regional and local government levels as well as the actions of private companies and individuals shall be restricted by a Justiciable Bill of Rights. The Bill of Rights shall protect the first generation of human rights and freedoms (including the political rights as set out above as well as the procedural human rights) against infringements by the state and by private companies and individuals. The court(s) that enforce these rights shall be independent and representative of the people of the country. Second and third generations of human rights that secure social justice for all and is

' aimed at restructuring and redistribution shall be protected ' in the Bill of Rights. Additional enforcement machinery such as an economic committee of parliament shall operate to ensure that these rights do not remain mere goals but are practically implemented as priorities of the legislative and executive branches of government,

E: NEW LEGAL SYSTEM

There shall be a new legal system:

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1. Equality before the law shall be guaranteed.
2. The judiciary shall be independent, non-racial and representative of the people.

F: RESTRUCTURING AND REDISTRIBUTION

. There shall be an economic order that is aimed at restructuring and redistribution of wealth and at the promotion of the well-being of all.

The right to own private property as well as the so-called equal treatment clause in a Bill of Rights shall not be protected in a manner so as to frustrate the goals of the restructuring of the economy and the redistribution of wealth,

E: LEGITIMACY

. The Constitution shall be legitimate. In order to ensure the legitimacy of the Constitution it shall be negotiated by the elected representatives of the people and be the product of a truly representative constituent assembly.

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PAN AFRICANISY CONGRESS OF AZANIA: 1NPYT REGARDIYG:

THE TRANSITIONAL AUTHORITY {T-A.) FOR THE TECHNIC
COHMITTEE DEBALING WITH THg SO-CALLED 1.8,g "o 1AL

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differs from the CODEsaA reÃ©commendations for a'T.E.C.
{Transitional Executive Council) in that the paC orae
that the T.@. should have (through enabling legislation)
full execyutive as well as legislative Powers in respect of
the areags under its jurisdiction, that is, it should be g
fully-fledged Authority. It would not repar recotmendations

to the State President., The following matters would be under
the Jurisdiction of the T.A.:

- Elections

Hedia

Security Forces
Budget

[|

In terms of the CODESA proposals Lhe . T:2.0. (sÂ« counail
making recommendations ta the illegitimate de Rlerk regime
and is therefore not realiy independant - hence the CODESA
proposal that if the I.E.C. {(Independent Elections
Commissicn) and the [.M.C. (Independent Media Cornisszsion)
are to be tryly independent, these bodies have to be
independent of the 1:8.C. :

As it will appear more fully from the papers on the
I.E.C.and the I.M.C. (dealing with the Technical Committess
in these areas), according to the PAC proposals the T.A. is
truly independent and there is therefore no need for thg
I.E.C. and the I.N.C. to be independent of the T. A Un1lk9
the T.E.C. which has sub-council on Elections and the Media,
and which sub-Â¢ouncils may not interfere with the work of
the I.E.C.and the I.M.C., the T.A. has no such sub-councils
and the I.E.C., and the I[X.C. reports directly to the T.A.

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PAN AFRICANIST CONGRESS OF AZANTA INPUT REGARDING:

THE TECHNICAL COMMITTEES DEALING WITH THE INDEPENDENT MEDIA
.COMMISSION

L. RELATIONSHIP BETWEEN THE INDEPENDENT MEDIA COMMISSION
(I.M.C.) AND THE TRANSITIONAL AUTHORITY (T.A.)

The proposals of the PAC with regard to a truly independent T.A. (with fully-fledged executive and legislative powers in its areas of jurisdiction - including the media) was dealt with fully in the paper on the PAC input with regard to the Technical Committees dealing with the T.E.C. According to the said PAC proposals, the T.A. is truly independent and there is therefore no need for the I.M.C. to be independent of the T.A. in terms of accountability. The I.M.C. must act as an independent commission but it is accountable to the T.A. to which it must report regularly. The I.M.C. is not a permanent watchdog over all affairs of the media but a temporary commission with a specific task relating to elections meaning that its functions are political and since it is not an authority but a commission it has to report to the T.A. Unlike the CODESA T.E.C., which has a sub-council on the media and which sub-council may not interfere with the work of the I.M.C., the T.A. has no such sub-council and the I.M.C. reports directly to the T.A.

2. TERMS OF REFERENCE:

The PAC supports the terms of reference and wish to add that in addition to attending the electronic media and communications, the Technical Committees must also attend to the print media as it may cause problems as serious in nature as the electronic media. The body supervising the print media, namely the Media Council, is a voluntary association to which some newspapers are not affiliated and from which others may resign. This leaves a vacuum of an agency to which complaints on biased reporting by the print media can be made. The Technical Committee should investigate:

- how the Media Council can have jurisdiction over all print media, or
- how a body can be created to which complaints about the reporting of the print media can be made, or
- how the I.M.C. can attend to complaints about these

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; [t shall consist of 7 members appointed by the Multi-Party negotiating process. The State President shall not have
Â¢ - anything to do with the appointments.

We support the following criteria for appointment:

Organs of civil society shall be invited, inter alia, by advertisement in the press to nominate names to either the Multi-Party negotiating process or the T.A., whichever is appropriate at that time, bearing in mind the urgency of the matter, for purposes of preparing a short list of names from which the board of the I.M.C. can be appointed.

4. POWERS, FUNCTIONS AND DUTIES:

We support the following powers, duties and functions, subject to additions on the print media):

Functions:

The regulation of the utilisation of the electromagnetic spectrum, including the allocation of licences and the

determination of licence conditions according to an agreed . set of standards.

The appointment of a suitable structure to monitor the proper exercise of licence conditions.

Powers:

The powers of the Postmaster General must be transferred to the I.M.C.

Further:

To ensure that a wide range of telecommunication services, including regional and community broadcasting program services, is available throughout SA.

To ensure fair and effective competition in the provision of such and related services.

. To ensure fair and equitable opportunity to opinion formers) to express their views freely,

To ensure optimum affordable research and development with a view to improving the utilisation of the available

electromagnetic spectrum and to introduce technologies to improve signal quality.

To ensure impartial control of all broadcasting by laying down norms and standards for more equitable and fair access -

for all political parties to air time on broadcasting services.

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To work out guidelines for the im(partiality of news and current affairs programmes on all broadcasting services.

To take punitive measures against broadcasters who violate provisions of the code of conduct, or to suspend or withdraw licences if licence conditions are not complied with.

To deal with complaints by the public and political parties.

Such other powers as may be expedient,

3. ACCOUNTABILITY, FINANCE AND REFERRAL:

The I.M.C. shall act independently but be accountable to the TIAC

It shall liaise with the T.A., and the I.E.C. (independent Electoral Commission) on matters pertaining to these bodies.

Finance shall be provided by the regime through the budgetary Commission of the T.A.

8. TERMS OF REFERENCE OF THE I.N.C.:

[It shall cease to exist when the Transitional Authority ceases to exist.

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THR PAN AFRICANIST CONGRSS OF AZANIA IHPUT REGARDING:

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'*HE TECNHNICAL COMMITTER DEALING WITH THE INDEPENDENT
ELEBCTIONS COXMISSION

RELATTONSHIP BETWEEN THE INDEPENDENT ELECTIONS COMMISSION
(1.R.C.) AND THE TRANSITIORAL AUTHORITY (T.A.):

The PAC proposes an jandependent T.A. with fully-fledged
exacutive and legislative pews in its areas of
jurisdiction (includind elections) as it {ully appesrs from
the PACâ\200\231's input on the Technical Commnittedn dealing with the
so-called T.E.C. (contained in another paper). According to
the PAC proposals, the T.A, is tezuly indepenent and there
is therefore no nesd for the I.E.C. to ba independent of the
T.A. Unlike the T.E.C. which has a sub-council ea Elactions
and which sub-council zay not interfere with the work of the
1.8.C., the T.A. hasno such sub-councils and the 1.8.C.
reports directly to the T.A.

TERMS OF REFERENCE:

The PAC supports the terms of reference sybmitted to the
Tachnical Committes and wish to add that the Tachnical
Comittee make recommendations on ths modus operandi of the
relationship between the I.E.C. and the T A%

THB [NDEPENDENT ELECTIONS COMMISSICN (I.8.C.)

. The I.8.C. (Independent Elections Commission) shall be
appointed by the Multi-Party process. Its decisicn shall be
ninding It shall not be appointed by the Stata President.

2. The I.E.C; shall consist of 1 member for each of the parties that are going to contest the elections in their own right and name.

3. A specified number of the members of the I-E0 will be assigned to members of the international organisations and they will function in 2 non-voting capacity.

4. Appointees must not be holding political office at the time of the functioning of the I.E.C.

5. Vacancies in the I.E.C. will be filled by the political party whose representative has withdrawn.

FUNCTIONING: Our views on functioning is the Following:

The . %0 shall be giv :
of free and fair electing the responsibility For th, Aolding

STATUS OF THE L.B.C.:

Lo It shall be independent of all government organisationg

2. The composition
: .+ POWTs and functions shall be en;
;he_samo legislation dealing with the T.A. This :1;;ag:ed o
ocided upon by negotiations,

3. The Y 1% o) shall report to the 7.A.

4. The 1.3 C. shall sy E
: 2, PPLY written rÃ@ports to the T.A. which
will aiveffect to those decisions OF enter into discussion

The I .B.C. is accountable to the 7.4 and fund
: a AL 3 will be
\$rXVlded by the regime through budgetary commission of the

BELIGIBILITY OF VOTERS:

All persons verifiables as South African citizens of the age
of 18 years and above will have the right to vote. These
persons will include citizens of the TBVC states,
Furthermore, in order to obtain the right to vote, a person
must have been a resident in the country for the past 3Â\$

years,
REGISTRATION OF VOTERS:

All parties intending to take part in elections must
register with the T.A. which will supply such information to

the I1.EK.C,
ADJUDICATION AND ARBITRATION:

The I.E.C. shall serve as an arbiter of any cÃ¢lainm or
disputes submitted by Persons, parties, organisations,
administrations and governments. In the arbitrations and
appeals as aforesaid reports of members of the international
community will be considered. Appeals against the decision
of the I.B.C. shall be submitted to the T.A. The Technical
Committee should translate all the above into a legislative
framework.

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09:33AM HUTTON & COOK (:20

REPUBLIC OF CISKE! CONSTITUTION DECAEE. 1950

SCHEDULE Â\$
FUNDAMENTAL RIGHTS AND RESPONSIBILITIES

Human dignity and equality before the law, -

(1) All human beings are born free and equal in dignity and rights.

(2) All persons shall be equal before the law.

(3) No persons may be favoured or prejudiced because of gender, descent, race, language, origin or religious beliefs.

Right of life. -

(1) All persons have the right to life, liberty and security of person.

(2) No persons shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

(3) No court or tribunal shall have the power to impose sentence of death upon any person and no execution shall take place in Ciskai.

Arrest and detention, -

(1) No persons shall be subjected to arbitrary arrest, detention or punishment

(2) Persons arrested shall not be detained in custody without being informed promptly, in a language they understand, of the grounds for such arrest or detention. . . .

(3) All persons who are arrested and detained in custody shall be brought before a magistrate or other judicial officer as soon as possible after their arrest; and no such person shall be detained in custody beyond 3 period of 7.2 hours without the authority of a magistrate or judicial officer. . . .

Fair trial, -

(1) In the determination of their civil rights and obligations or any criminal charges against them, all persons are entitled to a fair and public hearing by an independent, impartial and competent court or tribunal established by law: Provided that where the interests of juvenile persons or morals otherwise require, hearings may be conducted in camera.

(2) A trial, referred to in paragraph (1) shall take place within a reasonable time failing which the accused shall be released,

(3) All persons charged with an offence shall be presumed innocent until proven guilty according to law. After having had the opportunity of calling witnesses and cross-

examining those called against them. v o l e T R v M e

(4) All persons shall be afforded adequate time and facilities for the preparation and presentation of their defence. Before the commencement of and during the trial and shall have the right of access to a legal practitioner, --

(5) No persons shall be compelled to give testimony against themselves or their spouses, who shall include partners in a customary union.

(8) No court shall admit in evidence anything which has been obtained in violation of Article 2 (2) ; L TR

(7) No persons shall be tried or convicted for any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. nor shall a penalty be imposed exceeding that which was applicable at the

time when the offence was committed. el . : . 1' : . "

" ~ T - 200\224 200\224__.

R:qht ot prwny. S B R e ,

{1} No parsons shall be suh;ec'ed ta interfaranca with the;: pnvacy, honour or repu-
tation, Â¥

(2) The family is the natural and fundamental group unit and is entitled to protection by

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society and the State. S g â\200\224_â\200\224â\200\224 Â» '

Fraedom of mevamant, - All parsons have tha right to (aava the coumw, â\200\230and ail cnxz
nns

or persons lawfully admitted for permanent residence have the right to return and to reside in the United States."

and saddle in any pan of Ciskei - SRy e et e

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@39:S9AM HUTTON & COOK

REPUBLIC OF CISKE]I CONSTITUTION DECREE, 19380

7. Â«Citizenship. -

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(1) All persons have the right to a citizenship,

(2) No persons shall be arbitrarily deprived of their citizenship nor denied the right to change their citizenship.

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Personality, freedom of thought and expression. Â»

(1) All persons have the right to the free and full development of their personalities.

(2) All persons have the right to freedom of thought, expression, conscience and religion. Political activity. Â» All persons shall have the right to participate in peaceful political activities intended to influence the policies of government.

Freedom of association and assembly, -

Freedom of association and assembly, -

(1) All persons have the right to freedom of association-including the freedom to form and join associations, organisations or trade unions.

(2) All persons have the right to assemble peaceably and without arms.

Education and cultural life, Â»

(1) The system of education is protected by the State and the principle attaching to the establishment of private educational institutions is accepted, .

(2) All persons have the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Work and Employment, - All persons have the right to free choice of employment to just and favourable conditions of work and to protection against unjust interference,

Protection of Property.

(1) All persons shall have the right in any part of Ciskei to acquire, own and dispose of all

forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees: Provided that the right to acquire such property by persons who are not Ciskeian citizens, may be regulated by law.

(2) The State or any competent body or organ authorised by law may expropriate property in the public interest subject to the payment of just compensation in accordance with requirements and procedures to be determined by law.

Duties and responsibilities, - The rights and freedoms of all persons shall be exercised with due regard to the rights of others, collective security, morality and common interest and all

persons shall have the duty to respect and consider their fellow citizens without discrimination

nation, and to maintain relations aimed at promoting, safe-guarding and re-inforcing mutual respect and toleranca. . :

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CISKE!I GOVERNMENT SUPPLEMENTARY SUBMISSION.TO
FUNDAMENTAL RIGHTS - TECHNICAL COMMITTE

CISKEI GOVERNMENT SCHEDULE 6 IS ATTACHED HEREWITH. THIS
CANNOT BE AMENDED AND ANY FUTURE CONSTITUTION MUST INCLUDE
AT LEAST THOSE CONTAINED IN THE SCHEDULE.

IT IS SUBMITTED THAT "ETERNITY" CLAUSES SHOULD BE INCLUDED IN ANY
CHART OF FUNDAMENTAL RIGHTS TO PROTECT CERTAIN FIRST
GENERATION RIGHTS, MORE PARTICULARLY THE PROTECTION OF
INDIVIDUAL PROPERTY.

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RgPUBLIC OF CISKE! CONSTITUTION CECREE, 1980

SCHEDULE 8

FUNODAMENTAL RIGHTS AND RESPONSIBILITIES

Human dignity and aquality hafore tha law, -

- (1)
- (2)
- (3)

All human beings ara born free and 2aual in dignity and righia.

All garsons shall te equal before the law,

No zersons may be favoured or prajudiced bacause of gandar. descant, race. [3nguaga. origin ar religious neliefs,

Right of life. -

- (1)
- (2)
- (3)

All persons have the right to lif2, litarty and sacurity of person.

No parsons shall be subjectad to tortura or 10 crual, innuman ar degrading treaimant or punishmant,

No court or tribunal shail hava the powar to imposa a santencs of death ypon any gerson and no execution snall take place in Ciskei.

Arrast and datantion. Â«

- (1
- (2)
- (3)

Fair trial, Â«

- (1)
- (2)
- (3)
- (4)
- (5)
- (â\202¬)

{7)

R:ght of prwacy.

- (1)
- (2)

No perscns shall e subjectad t0 artitrary arrest, detention or deniai of vail.

Persons arrestad shall not ba detained in Â¢ustody without zeing informed promptly. in 3 language they understand, Â¢f the grounds for such arrest or datantion,

All persons who are arrestad and detained in custedy shail be.brought bafore 3 magqis-

irate or other judicial officer as soon as possible after their arrest, and no such person shall be detained in custody beyond a period of 72 hours without the authority of a magistrate or judicial officer. ; . mind T Tt e

In the determination of their civil rights and obligations or any criminal charges against them, all persons are entitled to a fair and public hearing by an independent, impartial and competent court or tribunal established by law: Provided that where the interests of juvenile persons or morals otherwise require, hearings may be conducted in camera.

A trial referred to in paragraph (1) hereof shall take place within 3 reasonable time failing which the accused shall be released.

All persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them. . - 2

All persons shall be afforded adequate time and facilities for preparation and presentation of their defence, before the commencement of and during the trial, and shall have the right of access to a legal practitioner,)

No persons shall be compelled to give testimony against themselves or their spouses, who shall include partners in a customary union,

No court shall admit in evidence testimony which has been obtained in violation of Article 2 (2). b

No persons shall be tried or convicted for any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed, , S

No persons shall be subjected to interference with their privacy, honour or reputation,

The family is the natural and fundamental group unit and is entitled to protection by society and the State. i i Ty <o

Freedom of movement. - All persons have the right to leave the country, and all citizens or persons lawfully admitted for permanent residence have the right to return and to reside in the country.

and settle in any part of Ciskei, A

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REPUBLIC OF CISKEI CONSTITUTION DECREE, 1980

7. Â»Citizenship. -

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(1) All personz hava the right to a citizenship.

{2} No persons ghail ba arbitrarily deprived of their citizenship nor denied tha right to
Â¢hanga their citiz'eiâ\200\230lship.

Parsonality, fraedom of thought and expression, -

(1) All parsans have the right to tha {ree and fuil development of their parsonalities.

{2} All pareans hava the right to {reedom of thought. expression, conscienca and reiigion.

Politieal activity. - All persons shall have tha right to participate in peaceful poliitica
l acti
vity intended to influanca the policies of governmant,

Fraedom 'of association and asssmbly. -

(1) Allpersons have tha right to fraadom of association inciuding the freedom ta form and
join associations. organisations or trada unions.

(2) All parsons have the right to assembla peacesbly and without arms.

Education and cultural life. -

(1) The system of aducation is protectad by the State and the principla attacmng 10 the
establishment of privata educational institutions is acgepted.

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to enjoy the arts and to share in scientific advancement and its benefits.

Woaork and Employment. Â» All parsans hava tha right to lree choice of ampioyment, to just
and favourable candmions of work and to protestion againgt unjust intarfarance.

Protaction of Proparty, -

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forms of immovable and movable property individuaily or in association with others
and 10 bequaath thair property 10 their heirs or lagatees; Providad that the right tÂ¢ acqu
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such property by persons who are not Ciskaian citizens, may be raguiatad by iaw,

{2} Tha Stata or 2 compotent body or organ authorised by law may axpropriata procerity
in the public intarest subject to the payment of just compensation in accordanca with
requirements and procadures to be determined by law.

Duties and rasponsihibilities, - The rights and freedoms of all parsons shail ba exarcisad
with due regard to rights of othars, collactive security, moraiity and commen imterest and
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persans shall have the duty 10 respcat and consider their {ellow beings without diserimie
nation, and 10 maintain ralations aimed at promoting, safe-guarding and re-inforcing
mutusl respcat and tolarance,

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SUBMISSION BY THE UNITED PEOPLES' FRONT ON
FUNDAMENTAL HUMAN RIGHTS DURING THE TRANSITIONAL PERIOD LEADING
TO ELECTIONS FOR A CONSTITUTION-MAKING BODY

THE UPF BELIEVES THAT IN THE RUN-UP TO THE ELECTIONS FOR A
CONSTITUTION MAKING BODY, CERTAIN MINIMAL-FUNDAMENTAL HUMAN
RIGHTS SHOULD BE GUARANTEED TO ENSURE THE LEVELLING OF THE
POLITICAL PLAYING FIELD, AND THESE ARE THE FOLLOWING:

1. FREEDOM OF SPEECH AND EXPRESSION;
2. FREEDOM OF THE PRESS)
3. FREEDOM OF ASSOCIATION AND DISSOCIATION:
4. FREEDOM TO FORM AND JOIN A PARTY OF ONE'S CHOICE:
S, FREEDOM OF MOVEMENT:
6. FREEDOM FROM ARBITRARY ARREST OR DETENTION;
- " 7., FREEDOM OF THOUGHT, CONSCIENCE AND BELIEF,

INYANIXZA NATIONAL MOVEMENT'S
SUBMISSION TO TECHNICAL
COMMITTEES ON FUNDAMENTAL
RIGHTS DURING THE TRANSITION

The Committee's report is noted. It is Inyandza National Movement's submission that it would be premature to have a Bill of Rights separate from the transitional constitution during the transition. On the other hand, to realise that will impede the negotiation process.

For the transitional period, it will suffice to have all the basic rights entrenched in the transitional constitution. The transition, it is hoped, will not be a long period and it will be the duty of the Constituent Assembly to draft the final Bill of Rights. We believe, therefore, that we should not pre-empt the Constituent Assembly.

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THE ROLE OF TRADITIONAL LEADERS
IN THE NEW DISPENSATION

1 Under the discussion of fundamental rights (Annexure C) the technical committee is required to address the issue of the role of traditional leaders in the new dispensation.

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2 It is highly recommended that the sub-committee be constituted to look into this matter,

3 We would like the sub-committee to bear the following in mind:-

(a) Traditional leaders still exercise some measure of authority over their subjects.

(b) The allocation of land (residential as well as business land) is still the prerogative of the traditional leaders.

(c) Our view is that we are gradually moving away from the practice of communal towards individual ownership of land.

(d) The administration of the justice (especially the hearing of certain criminal cases, falls within the jurisdiction of the Chiefs.

(e) Customary marriage is still a recognised and practised institution in our country.

(f) The bearing of civil cases within the area of a chief's jurisdiction should also not be lost sight of.

(g) Representation of traditional leaders in the various levels of government (Central Regional and Local) must be considered.

(h) The Law of Succession of the Blacks.

O.F.S TRADITIONAL LEADERS

TOTAL P.22

19 /9= 88:239 MA_MCLiiL.

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M.A.McLOUGHL [N

Attorney, Notary & Conveyancer -
Michael Arthyy McLoughiin

Our Reft
M A McLOUGHLIN/Wll MAM-ME &

Your Ref:

The Chairman
Management Committee
Multi-Party Forum

P O BOX 307

ISANDO

I enclose herewith copies
1992, 16th October 1892, 25
to which I have not yet had

You by return,

Yours faithfully

A McLOUGHLIN

a reply.

.m:% g 2 g [,

15 Seymour Ay
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C24 -

Telephone (011) 728-8192,3
Fax: (011) 728:2023

P.O. Box 72299
Parkview 2122

Docex: Dxga
Johannesburg

18 May 1993

FAX NO. 397 2211

of my letters of the 30th March
th March 1993 and 20th April 1993
Kindly let me hear from

15 52 22123 MA_MCLOUCHLAN

MAY 15 w2 2eras

/

/Nâ\200\231;:â\200\234A.MCLOUGHLIN 4

Attorney, Notary & Conveyancer

Michael Arthyr McLoughlin Vâ\200\231

Our Ret: R

Your Ret; M A MCLOUGHLIN/WI 1 MAM<~M5 6

The Chairman

Group 3:(chstituticnal

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P 0 Box 307

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15 Seymoyr Ave

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Juhanneeburg

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Paricviow 2122

Docex: Dxss

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30 March 1392

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PAGE 2

I suggest that one way of insuring that a nNew government is ot overthrown â\200\234py _the military, would be +e

- decentraligs S8ccurity on a regional basis, so that no

military council can take gver 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 leaq to a more ey ensive milita establishmept NI, - will B well wort the cost Â¥ democracy is to bpe ensured., I haveg, to date, not hgard any of the leaders of the various political parties at CODESA comment On control of the rilitary in a new South Africa and, as Africa has a POOr record of democracy and & good record for military takeovers, whatever constitution ig in place, T feel that thig important issue needs to be addressed Publicly as well as being debated at CODESA. After all, if the Armed Forces ars to be the guardians cof +the constitution and the bill of rights who, lin turn, lig tggo control the Armed Forces? They should be subject to 8ven more atringent checks and balances than Parliament, to avoid any abuse of power,

"IHR _NATIONAL INTBREStâ\204¢
Sâ\200\224â\200\224==oxiAl INTERS

This concept, which g used by governments world wide, including the great democracies, to cover up embarrassing actions andg misdemeanrcs 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 al} information undeyr the government's control, to be 8subject to scrutiny by the courts, (in camera, if necegsary), to ensure that "the national interest" g not subject to the perverted subjective whim of the state or its officials., 1 belisgve that it 4 necessary that al) state information and documentsg be freely accessible to the peple, unless the government or its nfficialg, theuselves, apply to a sunstitutiona court for such information or documents to be held sBecret, in the national interest. The lnconvenience, to the government and its officials, of having to take positive action, will be fayr leas than the

Â£o ba left to the discretion of some politician, who may have something to hide, The US Freedom of Information Act, iz a Precedent which should be looked at by CODESA as a starting point and could be adaptsd, in its BCope to suit local.conditiona.

ADVISORY COMMITTEES

==t LOUMITTEES

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

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PAGE 3

State are advised by Committgesg in their respective areas of responsibility. These committegs 4re made up of the best brains in the country, whatever the political Persuasion of the individuals Â°n committees are. The Minister May reject the committees' advice on any Particular matter, byt does not do so lightly. Thie ig Just another check against the taking of arbitrary decisionsg by Politiciansg,

THE _AUDITOR GENERAL
_â\200\224â\200\224-sx

Although the Auditor-General is only Issponsible to Parliament, his Position would be greatly 8trenghtensd

.and, ag g civil 8ervant, he would be free from political

manipulation, if his report to Parliament wag given jointly, with a report from an independent team of auditors, made up of respected firms within the auditing Professjon. This wouyld Co8t eaxtra but, would be mors than adequately Compensated, by the Prevention of corruption within the Government and Civil Service, 1 was recently shocked to Yead that jin one of the Provinces, less thap 50% of the municipalitieg had balanced their books for the year Or submitted thejy

than ong Year in arroars, This should not be allowed, If a Municipality i8 more that Â\$ months {n arrear, a tegam of auditors, should immediately be sent in and the Management Committee S8uspended wuntil the Iesults of the audit is known.

RESERVE BANK
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As o3sa Ul the Rundesbank, the Reserve Bank should

in the
ba Completely free from pPolitical manipulation ang the

Constitution should incorporats Provisions similar to those ip the German Constitution on this point.

DEFICIT FINANCING AND MONEY SUPPLY

I believe that deficit financing ig WIONg in principle and, 4{f resorted to, should be limited to 4 maximum of of 3% of the gross domestic Product and then only for Bhort periods when an Sconomy 418 in a recessicn/ depression, An Act similar to the Gramm Act in the United Statss, frcing the government to reduce the deficit, if this s not done voluntarily, should be included g the Legislative armoury. Thie type of Legislation would not be necessary, jir deficit financing 8 Covered by the COnatitution/Bill ot Righta, Similariy, money supply should be controlled, and put within limitas, inecfar ag increases are concerned, 1In his regard, the money supply 8hould be Coversd by the Gold ang Foreign Exchange Reserves to a certain Percentage, gay, 253, This discipline is nNecessary, to

avoid inflation, which impoverishes the Nation, and is a fraud on jtg citizenena.

EXCHANGE CONTROL

This is an iniquitous by the Finance Minister of the Nazi Germany in 1930's, It is undemocratic, be outlawed by the Constitution, All arguments for retention of exchange

control should be seen for what they are - spurious] 2 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 will pour into the country, when investors 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 move 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,

THE CALLING OF REFERENDUM

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 agreed, None of the delegates at CODESA who truly believe in a full democracy, should object to the constitution and a bill of rights encompassing this matter,

POSTULATES OF JUSTICE 1 AND RETROACTIVE LEGISLATION

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

- (Reasonable
- { Impartial
- (Certain
- { Comprehensive
- (Publicly promulgated
- (In accordance with public opinion.

I believe/200\23011\i\201'

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legislation in the new South Africa and, in this regard, I

Changes the law is calimand retrospective or ex Post facto
legislation. It is, obviously, not fair and is almost
universally condemned. Is the question of retro active
legislation on the agenda at CODESA? If not, I suggest that

should pass thereon and, hopefully, condemned, in
line with the democratic Constitution,

8, APPOINTMENT OF Judges

If the powers of the Executive, Legislative and the
Judicial arms of Government are, hopefully, to have equal

Professional status; Possibly, it and other relevant
constituencies, in the event of an impasse, the
Appeal to the decision of 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 Competition
Board. This is due to ineffective, essentially,
against the continuance of those cartels and monopolies.
They are economically undemocratic, if not immoral, and
have been allowed to develop by virtue of the historical,

and contracts, not acceptable. If a need for such
financial muscle is necessary, this can always be

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

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These biased 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 farm
wants, it needs a marketing arm and a mechanism for
smoothing out fluctuations. In time, he can formulate his
own strategies through co-operatives and the like,

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- MC_OUCHLA

PAGE 8
POLICE

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A democratic society needs a dedicated, professional and impartial Police Force which is seen to be such by all

the 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 be a facilitator and catalyst setting down the principles and standards to be met

It is not, or should not be, the function of Government to act as the bonus paterfamilias providing all the people's needs. The people need to be taught how to catch fish not merely be given the 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 State's 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 years by 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

generations and

years. By the same token, these communities must bear their responsibility for payment of bond instalments, light, water and other services.

EDUCATION/....

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PAGE 7
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 admission. Living expenses. 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 has 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/...

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

for Curative medicines should be based on no claim bonuses being granted to those who do not Utilize or abuse the system.

REGIONAL, AND LOCAL GOVERNMENT

These tiers of Government should be obliged to use their levels of Government, incorporating the same Principles, as outlined above for National Government within the framework of the Constitution of 2011 of Rights,

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 be able to fit the bill from a Practical point of view would be English, all the People speak one language, they can identify with each other more fully. 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

44 However, You do not feel that the issues raised are of sufficient importance to warrant discussion, would you kindly let me know, 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

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PAGE 9

could be truly proud and, would insyre that the poliescianny
Aand NavvrauiLg st the satate 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, but out here in, will be necessary to inaugurate
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 everyone 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:

M A McLOUGHLIN/W11 MAM-M66
MR 3 DE BEER

Dr Z De Beer 20 April 1993
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Dear Dr De Sger

ra : CONSTITUTION AND BILL OF RIGHTS

I take the liberty of enclosing certain corraspondances 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 1859, 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 align 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

union movement will

rather than

party into 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. 200/230

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Page 2

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

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, 2 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 small parties having an influence disproportionate to their

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-Partyâ\200\235 Forum dated the 30th March 1992 and and 2 March 1993 the contents of which are self explanatory and look forward to your comments.

Yours faithfully

M A McLOUGHLIN

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MR M PHILLIPS

The Chairman 26 March 1993
Management Committee

Multi-Party Forum

P O BOX 307

ISANDO

1600

Dear sir,
re.s 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 Codega 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 "Cudesa 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 expenditures or, alternatively, have achieved more than was required of them within the budget. If goals are not

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 U.S.), 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 bedeviling 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.

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Page 3

I trust that the man in the street is not going to be ignorasd when deliberations â\202¬n these matters recommence and weculd be happy .to address any of the relevent committees further on the various matters raisad. ,

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

Yours faithfully

M A McLOUGHLIN

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M A;MCLOUGHLIN/WII MAM-ME6
MR M PHILLIPS

The Chairman 16 October 1992
Management Committee

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P O BOX 307

ISANDO

1600

Dear Sir,
re CONSTITUTION AND BILL OF RIGHTS

I am in receipt of your letter of the 21st September 1982. I have 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 convene 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

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CONSTITUTIONAL PRINCIPLES; ARD i
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. FUNDAMENTAL HUMAK RIGHTS.

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The Declaration of the OAU Ad Hoc Committee on Southern ;
Africa on the Question of south Africs: Harare, Zimbabwe:! }
August 21, 1988 contains the following Stateament ot.!

Principles: ;

â\200\234South Africa shall becone & united, democratic and @
non-ranial stats;

. All its peopls shall enjoy coammon and equal citizenship and
nationality, regardless of! race, cÂçolour, sex or creed;

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- All its people shall nave the right to participate in the
government and administration of the couniry on the basis of .
universal suffrage, exercised through one person one vote, !

undsr a common voterâ\200\231's roll;

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All shall have the right to form and Join any politicalâ\200\231
party of their ohoice, provided that this is not inj|

furtherance of racism;

All shall enjoy aniversally recognised human rizhts,;
freedoms and civil libertiss, protected under an entrenehod;

8111 of Rights;

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Pags 2

South Africa shall have & new leogal system which shall
guarantee equality of all before the lasw;

Seuth Africa shall have an independent and non-racial
Judieiary;

There shall be creatsd an economic order which shall promote
and advance %the well-being of all South Africans;

A democratic Scuth Africa shall respect the rights,
sovereignty and territorial integrity of all countries and

puyrsue a polioy of peace, friendship and mutually beneficial
cooperation with all peoples.â\200\235

The Resolution Adopted on the Report of the ad _hoc Coomittes
of the Âwhole of the Sixteenth Special Sessiocn of the General
Assenbly of the United Nations 14 Decembear 18988 indentifies
the fcllowing Fundamental Principles:

â\200\234gouth Africa shall becoms a united, non-racial and
demaoratic State;

All its peopls shall enjoy common and equal citizenship and
nationality, reagardless of race, colour, sax or Âcreed;

All its peoplas shall nave the right to participate in the
government and adainistration of the oountry on the basis of
universal, squal suffrage, under & nen-racial votersâ\200\235â\204¢ roll,
and by secret ballot, in a united and non-fragmentad South
Africa;

All shall have the right to fora and Join any political
2arty of their oholice, provided that this is not ia the
furtherance of racisa;

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Page 3

All shall enjoy universally recognized human rights, freedoms and civil liberties, protected under an entrenched bill of rights;

South Africa shall have a legal system that will guarantee equality of all before the law;

South Africa shall have an independent and non-racial Judiciary;

There shall be created an economic order that will promote and advance the well-being of all South Africans;

A democratic South Africa shall respect the rights, sovereignty and territorial integrity of all countries and pursue a policy of peace, friendship and mutually beneficial co-operation with all peoples.â\200\235

The above principles not only support the idea of a constitutionally entrenched and judicially enforceable Bill of Rights in the future Constitution for a democratic order in South Africa, it also enshines all three tiers of the tripartite system of human rights, that is, First, Second and Third Generation Human Rights.

For a full discussion of the PAN AFRICANIST CONGRESS OF AZANIA's proposals on CONSTITUTIONAL PRINCIPLES AND FUNDAMENTAL HUMAN RIGHTS: SEE PAPER 2 WITH THE SAME HEADING.

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THE PAN APRICANIST CONGRESS OF AZANIA: INPUT REGARDING:
THE TECHNICAL COMMITTEES DEALING WITH:

CONSTITUTIONAL PRINCIPLES;

AND FUNDAMENTAL HUMAN RIGHTS

Part 2

A: DEMOCRACY

There shall be a democratic state:

1. Universal Adult Suffrage

Every citizen of the required age (18 (s recommended) shall have the right to vote, The right to vote shall be guaranteed in a justiciable Bill of Rights. There shall be a common voters' roll and there shall be no discrimination on the basis of race, colour, Sex or creed.

2. Free and Fair Elections (Representative Government)

Periodic elections to elect representatives shall be held (a maximum period of five years between elections is recommended). Every citizen that has the right to vote shall have the right to be a candidate in the elections. Elections shall take place on a proportional basis and there shall be no undue influence in order to ensure that the result of the

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Pags 2

elections shall be free and fajir, The gacracy of ths ballst shall be guaranteed.

9. Free Political Activity

The freedom of association in pÃ©litical parties and the right to organise shall be protsctad, provided that this is not done i{n the furtherance of racism or in the pursuance of anti-deuncocratic strategies. The freedom movement and the freedom of assembly as well as the freedom of spesch and of the press shall likewise be protected. The mass media shall not be controlled by any political grouping but shall be monitored and controlled by an independent body.

B: UNITED STATE

There shall bs a united, unitary stiate:

Covtain well-defined outgnomous powers of government shall fevilntaT pcevinag

be devolved upon*. (2 maximum of seven wimms {s recommended) as well as upon local government siructures without detracting from the residual powers of central government which shall be unfettered in order to undertake programs of restructuring and redistribution. All government structures shall be democratic in the sense 88t out above.

C: BHON-RACIALISM

There shall be a non-racial stats:

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Page 3

1. All the people shall enjoy common and

equal citizenship
and nationality,

2. There shall be no discrimination based upon race,
Sex Or grade,

colour,

D: A JUSTICIABLE AND ENTRENCHED BILL OF RIGHTS

All shall enjoy universally recognised human rights,
freedoms and civil liberties :

All government powers at national, regional and local
government levels as well as the actions of private
companies and individuals shall be restricted by a
Justiciable Bill of Rights. The Bill of Rights shall protect
the first generation of human rights and freedoms (including
the political rights as set out above as well as the
procedural human rights) against infringements by the state
and by private companies and individuals, The court(s) that
enforce these rights shall be independent and representative
of the people of the country. Second and third generations
of human rights that secure social Justice for all and is
aimed at restructuring and redistribution shall be protected
in the Bill of Rights. Additional enforcement machinery such
as an economic committee of parliament shall operate to
ensure that these rights do not remain mere goals but are
pragmatically implemented as priorities of the legislative and
executive branches of government,

E: NEW LEGAL SYSTEM

There shall be a new legal system:

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Page 4

1. Equality before the law shall be guaranteed.

2. The judiciary shall be independent, non-racial and representative of the people.

F: RESTRUCTURING AND REDISTRIBUTION

There shall be a economic order that is aimed at restructuring and redistribution of wealth and at the promotion of the well-being of all.

The right to own private property as well as the so-called equal treatment clause in a Bill of Rights shall not be protected in a manner so as to frustrate the goals of the

restructuring of the economy and the redistribution of wealth.

E: LEGITIMACY

The Constitution shall be legitimate. In order to ensure the legitimacy of the Constitution it shall be negotiated by the elected representatives of the people and be the product of a truly representative constituent assembly.