

KWAZULU GOVERNMENT

COMMENT ON THE FINAL REPORT OF THE TECHNICAL COMMITTEE  
ON THE REPEAL OF DISCRIMINATORY LEGISLATION

JUNE 8, 1993

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1. The KwaZulu Government wishes to congratulate the Technical Committee for the hard work it has put into discharging its responsibilities.
  2. The KwaZulu Government wants to stress the fact that any legislation affecting the powers, functions and autonomy of the self-governing territories should not be repealed or amended outside the concomitant creation of new territorial autonomies such as member states of a federation.

Any decision in the negotiation process which so alters the status of a participating party that it will not be able to participate in the full run to the end of negotiations should only be adopted with the full consent of that negotiating party. Clearly any repeal of legislation which alters the status of KwaZulu, or ends its constitutional life, can not be foisted on KwaZulu.

Also clearly, any decision which would disrupt or does away with the autonomy of KwaZulu to administer its affairs and run its finances, must similarly only be adopted with the full consent of KwaZulu.

3. Moreover, any type of legislative activity affecting the powers, functions and autonomy of the self-governing territories should be adopted only with their consent and after consultation. A contrary approach would create unpredictable tensions and would deprive large masses of South Africans of important areas of self-determination and collective autonomy through which they are used to perceive and express their political freedom. Therefore, such actions would be counter-productive for the establishment of a climate of free political activity.
4. The KwaZulu Government believes that this is the correct approach because only through the actual practices of conflict resolution is it possible to identify those provisions of law which interfere with fundamental rights.
5. However, the KwaZulu Government believes that the terms of reference of this Tribunal should be extended to encompass all recognised fundamental human rights. The KwaZulu Government submits and maintains that any and all legislation which violates human rights would impede free political activity. Therefore, the KwaZulu Government insists on the fact that all legislation which violates a recognised and extensive Bill of Rights, such as the one

contained in the Constitution of the State of Kwazulu/Natal, should be used as a parameter of legitimacy and validity of any existing or future legislation in force up to the time when a new Constitutional Court comes into operation.

6. The Kwazulu Government wishes to endorse the proposal of the Technical Committee to establish a sort of a shadow constitutional court to deal with matters related to the repealing and amendment of discriminatory legislation or legislation impeding free political activity.
7. The Kwazulu Government wishes to refer the Technical Committee to its written submission made to the Technical Committee on Human Rights During the Transition with special regard to the observations related to the office of the ombudsman and the criteria related to the Constitutional Court.
8. The Tribunal suggested by the Technical Committee should operate in close connection with the participants in this process and this should be reflected in the criteria used for the appointment of the members of the Tribunal.

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