

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.

XIMOKO PROGRESSIVE PARTY

WORKING GROUP 2

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POSITION PAPER ON ECONOMIC FREEDOM, GOVERNMENTAL INTERVENTION AND ECONOMIC SYSTEMS

1. Points of Departure

1.1 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 "...the objects of a constitution....are to limit the arbitrary action of the government, to guarantee the rights of the governed, and to define the operations of the sovereign power " 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.

Certain economic ideologies rely for their application upon the limitation of individual economic freedoms which in turn constitute 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. Matters of economic principle are therefore of fundamental import when defining and enshrining the totality of freedoms in the constitution.

1.2 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 constitute the driving mechanism of the production economy;
- The role of the State will be primarily to regulate and facilitate the economic process subject to the fundamental principle of minimum intervention 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 fundamental. This does, however, not exclude expropriation 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 opportunity 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 constitute 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.

2. 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:

2.1.1 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

- "Everyone 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 ;

"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".

2.1.2

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 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 horisontal and vertical equity.

3. 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.