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"Democracy means freedom to choose"



# INKATHA

Inkatha Freedom Party

Iqembu leNkatha Yenkululeko

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

POSITION OF THE INKATHA FREEDOM PARTY

WORLD TRADE CENTRE : 18 MAY 1993

a. Form of State

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

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

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

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

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

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

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

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

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

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In addition to political reasons, the form of state has to be considered before any constitutional issue as a matter of constitutional dogmatics.

The form of state is defined by constitutional law as the relation between the three conceptual components of a state, which are the territory, the people and sovereignty. Depending on the different permutations and characteristics of the exercise of sovereignty on any given people residing in a specified territory, there would be different forms of state. The determination of the form of state is a necessary *a priori* step before we undertake any exercise related to the form of government which constitutional law defines as the internal structure and organisation of sovereignty. In this regard the IFP wishes to note that often during negotiations some participants erroneously ascribes relevance to the debate on the form of state to considerations which instead fall within the realm of the form of government.

*\*\*X\** Going from theory into practise, it can be noted that even any discussion related to a broadly accepted principle such as the constitutional state [rechstaat] would assume different characteristics if it were to be related to a unitary or to a federal state. In fact, in a federal state, the supremacy of a federal constitution can be equipollent to the role exercised by state constitutions. Alternatively it could be the case that portions of the federal constitution could become a parameter for the legitimacy and validity of state constitutions by virtue of mechanisms which may resemble the 14th Amendment of the US constitution. Similarly, any discussion on the judiciary must proceed from the decision on whether there should be one judicial system or as many as there are states/regions, plus one for the central government. Even as far as the legislature is concerned there can be no discussion as long as there is no determination on the form of state, for in a federal system one legislative chamber could be elected on the principle of equal suffrage among the states/regions, as happens in the US, or could represent the regions, as is the case in various regional states.

Finally, the determination on the form of state is essential to make any reasonable decision on the process to be employed to write the constitution. If the constitution of a confederal system were to be written, most likely it would be necessary to call a confederate assembly on the basis of pre-recognised sovereign entities. If a constitution for a federal system is to be written, as we strongly advocate, the process of transformation shall recognise, capitalise on and solicit ground-up democracy building processes aimed at erecting regions into statehood within the parameters of a Federal Republic of South Africa to be formed through the negotiation process at central level.

Since 1972 the Inkatha Freedom Party has been advocating a federal system for South Africa, modelled after the experience of the United States.

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It needs to be stressed that South Africa can not be defined as a State within the meaning which the word "state" has in continental political or social sciences. The harsh truth of the matter is that South Africa is a geo-political expression which represents the coercive aggregation of different nations caused first by colonial powers and then by the apartheid regime. Therefore, the creation of a legal entity characterised as the State of the Republic of South Africa does not correspond to the creation of a corresponding socio-political entity which could substitute itself for the historic reality of a plurality of nations and socio-economic realities in the South African territory.

This national and social pluralism, which expresses itself, inter alia, in many different languages spoken as mother tongues in the territory, is organised around a geo-political division of the territory in areas which are largely dominated by one culture. Only a federal system can recognise and capitalise on the great cultural diversity of our country, providing for a system of government capable of developing all-encompassing policies which can reflect the true, needs, wants and aspirations of the people of the region.

For this reason, the IFP has rejected the notion of a regional state in which only powers of local interest would be devolved to the regions. It is the IFP's position that all powers should be reserved to the Region/State while only those powers which cannot be adequately exercised at Region/State level should be devolved upwards to the federal government. The IFP rejects a simplistic application of the concept of subsidiarity to be employed to identify the powers to be exercised at local level, because such a concept of subsidiarity would inevitably lead to the exclusion from the list of local functions of those powers which are more conveniently, and perhaps more efficiently, organised and exercised at central level.

In this regard it could be pointed out that an argument can be made that it is more efficient to adopt a criminal or commercial code for the whole of South Africa and that such a jurisdiction should be exercised at central level rather than by the member states. However, experience throughout the world shows that member states of federations are very capable of adopting and administering criminal and commercial codes, and that such power is essential for the development of all-encompassing policies at State level. For instance, KwaZulu/Natal has expressed a desire to remain a State in which a market economy and free enterprise are fully preserved and protected, and therefore will need to retain the power to adopt whatever regulation of commerce and trade is necessary to achieve and implement this policy. Conversely, other regions of the country may very well fall into the temptation of pursuing socialistic and communistic experiences, if they so desire.

For this reason, the IFP stresses the fact that attention should be given to the powers which can be exercised at regional/state level, without putting exclusive emphasis on the consideration

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of efficiency and opportunity as this would be called for by a strict application of the concept of subsidiarity. Therefore, the IFP has suggested the adoption of the concept of "residuality" as a qualification of the notion of subsidiarity. According to the concept of residuality only those powers which can not be exercised adequately or properly at local level should be devolved upwards to the federal level.

This limitation does not necessarily lead to the creation of a weak federal government, as is shown by the list of powers devolved to the Federal Republic of South Africa by the Constitution of the State of KwaZulu/Natal. In fact, the Constitution of the State of KwaZulu/Natal devolves upwards an extensive list of powers which will allow the establishment of a strong federal government.

Obviously it may be the case that constitutional notions could be translated into actual constitutional proposals and details with the possibility of overlapping results. This consideration could support the argument that even starting from the concept of a regional state the actual distribution of powers could develop into federalism and vice versa. The IFP does not share this approach and demands that clarity be made without resorting to self-deluding conceptual expedients. The IFP deems it essential that a clear distinction be drawn between a regional state and a federal state and strongly submits that a regional state will not address the need for political, cultural, social and economic self-determination expressed by many regions of our country. This can only be achieved through the establishment of a pure federal system, intended as a system of split sovereignty between the member states and the federal government.

It also needs to be considered that a federal system could be established on an asymmetric basis. It is conceivable that a portion of South Africa could be organised as a unitary state and that such a portion would entertain a federal relation with one or more regions of the territory organised as a federal system.

As far as the process of transformation is concerned, the IFP reiterates its position that there is no binding agreement in this regard and a new process must be reshaped after the form of state is determined. The IFP has often indicated, and the Multiparty Negotiation Process has agreed with resolutions adopted on both at the Forum and the Council, that the CODESA documentation and any process proposal contained therein does not have the status of any agreement between the participants and should have no privileged status vis-a-vis any possible option and alternative. In this respect the technical sub-committees must resist any temptation to operate under the assumption that Codesa has left us with any agreement which is to be implemented in the present stage of negotiations. This is especially true as far as any process proposal is concerned.

b. Constitutional Principles

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With unparalleled consistency, since the time of its creation the IFP has been advocating a Western-type democracy in South Africa, which would combine characteristics of the European social state with the uncompromising defence of market economy and free enterprise.

The constitutional principles which detail our vision are fully set forth in the IFP submission to CODESA II Working Group II dated February 26, 1992 and in the Constitution of the State of KwaZulu/Natal adopted by the KwaZulu Legislative Assembly on December 1, 1992. These two documents are attached herewith as Annexures II and III.

The following two extracts from the Policy Speech delivered by Dr Mangosuthu Buthelezi at the opening of the fifth session of the fifth KwaZulu Legislative Assembly is also relevant to frame the broader perspective guiding the formulation of the IFP's constitutional principles.

*The process of constitutional transformation of South Africa is operating on several levels.*

*In the first place, the transformation is aimed at removing the structures of apartheid, and to establish a non-racist society in which all citizens are equal before the law, irrespective of race, colour, creed, sex, or personal or social status.*

*In the second place, it has been agreed that the process of transformation of our society shall also effect the form of state, so as to transform the present unitary state into a regional, or a federal, or a confederal state. No agreement has been reached on how South Africa should be transformed, but there seems to be agreement on the fact that the present unitary state, with self-governing territories and TBVC states, will not be preserved.*

*A third level on which the constitutional transformation of our society is operating on - or we say ought to be operating on - is related to a more complex and deep change in the social and economic fibres of our country.*

*The new constitutional dispensation should lead to the transformation of South Africa into a society which fully respects and protects all internationally recognised human rights, and which recognises the duty of assisting the less privileged and the more needy segments of the population, while promoting the substantive equal access of all citizens to all social, economic and political opportunities. Our political positions related to this third level of transformation of our society are shared by most of the other political groupings and organisations, to a greater or lesser extent.*

*A fourth level of transformation of our society could be identified with relation to the notion of pluralism. We have advocated a pluralistic transformation of South Africa at all levels. This includes political pluralism, which is the co-*

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existence of many political parties in a system which recognises equal dignity to all of them, and protects the right to dissent, and the rights of the political minorities.

We have also advocated social pluralism, to be ensured through the limitation of the role of government, and the recognition of personal and collective autonomies. Simply put, we want social formations to be given the right to organise and administer themselves as they best see fit, having the power to keep the government out of the area of their own affairs. Social pluralism includes the protection of the autonomy of arts and culture, sports and recreation, universities and schools, tribal and traditional structures, and so on and so forth.

Social pluralism is a notion intimately connected with the necessity of preserving the integrity of civil society. In fact, it is the role of the government to serve the needs of civil society not to come in and substitute itself for civil society, or reshape it in accordance to government's needs and concerns.

The third level of pluralism is related to the protection of economic pluralism which includes the need of privatising the state-owned or controlled enterprises, and to promote a healthy economy based on free competition and on free market enterprise.

The fourth level of pluralism protects cultural pluralism and cultural diversity. This aspect is essential in our country where a variety of different cultures, religions and codes of personal and collective conduct must be allowed to co-exist in mutual respect and harmony.

Too often processes of liberation or radical social transformation lead to what is known as "acculturalisation", which is the effort of the state to promote and impose a given culture, religion or code of moral conduct over all the other existing ones. This generally leads to the final destruction or great impairment of all the other cultures, religions or codes of conduct.

As we want to protect our own traditions and way of life we have committed ourselves to protecting similar freedoms with regard to the cultures of our Indian, Afrikaans, British, Jewish, Sotho, Xhosa, Shangaan, Swazi, Ndebele and Venda compatriots, as well as for any other cultural formation present in our country.

I have identified here four different levels on which the transformation of our society is taking or ought to be taking place. We will repeat them:

1. The transformation to a non-racist society.
2. The transformation to a federal or regional state.
3. The transformation towards a social and guarantistic society.
4. The transformation towards a society where political, social, cultural and economic pluralism is guaranteed.

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[pages 63-5 of the Policy Speech]

#### OUR POLITICAL VISION

As you all know, we have opted for liberal democracy as understood in the great Western democracies, strengthened by African wisdom as reflected in our Ubuntu-Bhoto philosophy.

Our own liberation comes at the end of the line of African liberation. Much has gone before us and we have much to learn from the successes and failures of African states. Most of all we should learn that there is no magic in 'liberation' and no manna falls down from heaven simply because people become liberated from racism or alien rule.

As apartheid and oppression recede, and freedom approaches, our people must insist not only on political freedom but also on economic justice through good government, efficient agriculture, industry and commerce, and visible rewards for private enterprise and hard work.

Our political philosophy has had solid and consistent cornerstones. Among them are the advocacy of democratic pluralism to accommodate the cultural diversity of our country, and a limited role for government and its respect for the integrity and the pre-eminence of our civil society.

Our cornerstones also include democratic participation in society and government to support social and human growth and development, social justice achieved through equal access to all economic, social and political opportunities through the redistribution of opportunity.

We also have a privatisation policy which calls for the elimination of State owned industries, and call for the full protection of all rights of the people both as individuals and as members of the social and cultural groupings and institutions to which they belong.

The most significant political commitment of the IFP, however, is to the cause of federalism as a necessary condition for freedom, democracy and pluralism in our country.

We felt it necessary to protect civil society against the modern evils of government, such as government waste and uncontrolled regulatory growth. We also felt it necessary to protect civil society from what all over continental Europe is now known as 'party-crazy' endeavours aimed at the seizure of civil society and political democracy by powerful political party apparatus. We also need the peace and personal security that flows from discipline, law and order.

[...] our ideas and proposals, are not tailored only to the needs of the Zulus or only on the aspirations of the KwaZulu Government. We have long understood that in our land the only way to ensure the rights and aspirations of one ethnic group is

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to ensure the full respect of the rights and legitimate aspirations of all ethnic groups.

We recognise that human rights are ascribed to the people both as individuals and as members of the social and cultural groupings and institutions to which they elect to belong. We have learned the lesson of history that governments can not by-pass structures such as trade unions, churches, and a wide range of institutions and organisations which stand between them and the people.

It is governments which have no regard for how people gather together collectively to organise themselves into groups and institutions which are either totalitarian in nature, or are on the way in becoming totalitarian. The organisation of any society around governmental structures which do not respect what are known as 'intermediary formations' inevitably leads to totalitarian states, however denominated.

For this reason, since the 1970's we have been advocating a full federal structure for South Africa, with residual powers in the member States. The call for federalism is not only motivated by the need to establish the necessary conditions for democracy in South Africa.

We know that without the system of checks and balances contained in a federal solution, democracy in South Africa will not survive the totalitarian and authoritarian tendencies and forces operating in our country.

[...] The KwaZulu/Natal State will also give us the power to oppose totalitarian tendencies which might develop within the Central Government. This is one of the benefits of a federal system in which sometimes member states can resist fundamentally wrong policies developed at central level, thereby becoming the leading force for change and transition.

During the past years we broadened the issue of federalism into a wider vision of pluralism. Capitalising on both the African and the continental European experience, we understood the importance not only of territorial autonomy, but also of personal autonomies.

We can say that we adopted the concepts of 'subsidiarity' before it became such a magic word in the United Kingdom as well as in the rest of the European Community. The concept of subsidiarity postulates that all services and governmental functions and powers should be handled or exercised by the lowest level of government capable of handling such services, functions and powers. This means that the Central Government should be provided only with those functions and powers which can not be adequately exercised by member states or by local governments.

We also extended the concepts of 'subsidiarity' to the relation between government and civil society, which is a crucial issue in the transition of South Africa. We took the position that

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once the parameters of the policies of the State are set forth in the Constitution and through the action of the government and the legislature, the institutions of civil society should operate within such parameters to handle as much freedom and social responsibility as possible.

Hence, our commitment is to limit the role of government, to privatise, to protect the freedom of enterprise, to protect the central role of the family, the autonomies of the universities and to guarantee all other institutions of pluralism through the recognition of guaranteed personal liberties and rights and the direct empowerment of civil society.

[Pages 2-4 of the Policy Speech]

It needs to be stressed that it is the IFP position that no discussion on constitutional principles can be initiated until and unless a final determination on the form of state is achieved.

c. Process of transformation : CMB, Interim Constitution, Transitional regional governments

The IFP has submitted its process proposal fully described in the attached document which has been discussed under paragraph (a) supra. It can be reiterated that it is the IFP position that a final constitution should precede any election and empowerment of a new government. Therefore, the IFP strongly rejects the notion of interim arrangements and a transitional constitution. The IFP has submitted a process proposal which will not only ensure a final constitution for South Africa by the end of 1994, but it will also ensure that such a process establishes a federal system recognising and taking into account ground-up democracy building processes. These ground-up democracy building processes also provide a solution to the need to establish regional governments.

According to the vision advocated by the IFP, there is no need for transitional and regional governments. Regional governments and state governments, should be empowered prior to, or at the same time, when the new government of the Federal Republic of South Africa is empowered. In accordance with the terms of the IFP proposal, various state constitutions would be finalised prior to the adoption of the constitution for the Federal Republic of South Africa, while the constitutions for the remaining regions will be finalised by no later than the time when the constitution of the Federal Republic of South Africa is adopted. This will allow for elections for state governments and parliaments prior to, or contemporaneously with, the election for a parliament at federal level. What is important is to develop mechanisms to integrate the ground-up democracy building processes and negotiations at central level so as to ensure that:

- (a) ground-up democracy building processes are guided, limited and inspired by principles on which general

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agreement is reached, and

- (b) ground-up democracy building processes are registered and respected within the process of negotiations at central level.

The IFP process proposal attached herewith as Annexure I is aimed at achieving these two objectives.

c. (i) Local Government

As the IFP believes in the establishment of a true federal system it also believes that local government is also a matter to be regulated by state law and as such should receive no consideration within the process of negotiations at central level. The IFP has made a commitment to sponsor legislation on local government at the opening of the first session of the General Assembly of the State of KwaZulu/Natal and intends to carry a similar commitment in other states once they have been formed.

d. Future of the TBVC States

The IFP agrees with the concept that the TBVC states should become part of the Federal Republic of South Africa. However, the reality of the TBVC states can not be ignored. Even if their creation was motivated by reasons of discrimination and segregation within the great scheme of apartheid, their existence is also related to historic, ethnic and geo-political considerations which go beyond the political aim of the apartheid regime. What needs to be done now is to take the TBVC states out of the apartheid structure and use them as a springboard for the aggregation of new areas around recognisable commonality of interests and historic ties.

This needs to be done not on an ethnic basis, even if ethnic considerations can be taken into account to identify the boundaries of the new regions-states. Therefore the TBVC states need not be re-incorporated into South Africa as such, but rather they should be merged within the process of the erection of a broader region into statehood within the parameters of a Federal Republic of South Africa to be formed through negotiations at central level.

e. Self Determination

According to the IFP's perspective the issue of self-determination has both a territorial as well as a personal dimension. The IFP believes that in its territorial application, the right to self-determination recognises the rights of regions to choose and ordain for themselves the government they best see fit within the parameters of a unifying federal system. The IFP also believes that state constitutions as well as federal

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principles, should recognise the right of the people to express in autonomy the self-regulation of their interests in a broad range of personal and collective matters, as an expression of their right to personal self-determination. Accordingly, the role of government should be limited so as to recognise personal and collective autonomy in matters which are best left to the self-regulation of the people as a part of their inherent right of self-determination.

The IFP wants to stress its position that the issue of federalism and territorial autonomy can not be solved through resorting to majoritarian rule. The rule that a majority can impose its will over a dissenting minority can only work once there is a pre-agreed set of references [rules of the game] in which both the majority and the minority agree to recognise themselves and conduct the dialectics of their relations. However, majoritarian rule can not be used to determine that fundamental set of parameters which brings together the different political components at a time which precedes the possible identification of each component as a majority or minority.

Consequently, the IFP has taken the position that no region can be dragged into a unitary state if it desires to enjoy federal relations with the territory. Conversely even if one region in the territory does not wish to be part of a unitary state, the inherent right of self-determination of the people of such a territory, requires that regions be allowed to enjoy a federal relation with the remaining part of the territory.

The right of self-determination is internationally recognised as the right of any people living in a territory to choose and ordain for themselves the government that they see fit and to determine in autonomy their political future. It would be paradoxical to recognise this right only in the extreme cases of secession and UDI, and deny this right in its lesser exercise of opting for a federal solution.

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ADDENDUM I

THE DETERMINATION OF THE FORM OF STATE AND  
OF A PROCESS OF TRANSFORMATION OF SOUTH AFRICA  
CAPABLE OF ESTABLISHING FEDERALISM

a) Background

There is a ripeness and an urgency to the determination of the form of state and for the negotiation of the process of transformation. The Government has submitted a proposal on regionalisation inclusive of power-sharing and other interim arrangements which substantially diverts from the process recommended by CODESA II Working Group III. This proposal has been actively negotiated with the ANC which according to the ANC NEC's resolution dated February 19, 1993 seems to have accepted the fundamental principles of the Government's proposal. These developments have put on the table with urgency and importance both the issue of the form of state and the issue of the process of transformation. At this point these issues must be determined as a preliminary matter and prior to the resumption of fully-fledged negotiations on other constitutional issues.

b) Negotiation of the Process

The Multiparty Negotiation Process shall determine a new process of transformation starting from a determination on the form of state. The IFP does not wish to be called to merely rubber stamp any understanding on the process and related time frame reached outside the negotiating forum.

The IFP rejects the notion that an election date can be determined until and unless an agreement on the process and related time frame has been finalised. The IFP detects a great risk in fixing any frame of references for the election date before the determination of the process, and before the process has reached a substantial point of maturity and development. As it would be politically impossible to postpone the election date once it has been fixed, there is the substantial risk that final stages of the process would not be finalized. This is particularly true if one of the major participants opposes them. For instance if the Codesa process were to be adopted, those who oppose the notion of a fully-fledged transitional constitution could very well purposefully delay the process of its negotiation and approval, so that under the pressure of an impending election date an agreement would forcefully be reached on something less than a fully fledged constitution. In the final analysis an undetermined process driven by an election date serves the purposes of centralistic and totalitarian forces which drive the process outside the parameters of broad political consensus and settlement including all the participants to the process.

Before beginning to negotiate the substance of the future constitution for South Africa, there must be an understanding on the process which will produce it, and on the necessity, or lack thereof, of interim arrangements such as power-sharing in a government of national unity. At this stage the issue of a transitional constitution and a Constituent Assembly (or other constitution drafting body) shall be negotiated and resolved.

We stand by the rejection of a transitional constitution, transitional power-sharing arrangements and a Constituent Assembly.

The IFP has proposed a process for the drafting of the final constitution for South Africa which does not require interim arrangements. This process will allow the finalisation of the transformation of our society by September 1994 with the ability to extend into March 1995 to accommodate possible delays.

According to the IFP proposal the Multiparty Negotiating Process should agree on a set of constitutional principles which would be handed down to a group of experts who would implement them in a fully-fledged constitutional draft. This draft would be returned to the Multiparty Negotiating Process for approval or rejection in its entirety, and once approved it would be submitted to popular ratification by referendum. An election would follow the referendum and a new government for South Africa would be empowered under the new constitution.

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This process would do away with the notion of a Constituent Assembly and would avoid the risk that the constitution drafting exercise be hijacked by the demagoguery of liberation and be the reflection of the political vision of one or two participants rather than of a broad compromise which accommodates the essential needs of all the participants. More importantly, this process would allow the establishment of federalism, which a sovereign Constituent Assembly is not likely to produce, and, as indicated *infra*, it would also reflect the true needs, wants and aspirations of the people on the ground.

The IFP wishes to note that the Constituent Assembly need not be a legislative body, nor does it require a transitional government and a transitional constitution. An Act of Parliament could allow the election of a Constituent Assembly with the exclusive task of drafting the Constitution in accordance with the principles expressed by the Multiparty Negotiating Process and no later than July 1994. While the Constitution is being drafted the present government would continue to be in power.

Our proposal for a process to finalise the new constitution for South Africa requires a preliminary determination on the form of state. Our proposal has significant advantages over the proposals of the Government and the ANC/SACP alliance which have a number of elements in common.

It becomes essential that the Government and the ANC/SACP are willing to reconsider the entire process of transformation of our society and be open to accept different proposals and strategies. The issue of the process must become a preliminary matter for negotiation to be resolved before we enter discussions on aspects of the new constitutional dispensation for South Africa.

c) Form of State and Ground-up democracy building

The task of the Multiparty Negotiating Process shall be to entrench at an early stage and once and for all the issues related to the form of state or distribution of powers. We have expressed on many occasions, that it is not reasonable to negotiate who should draft the constitution and how the constitution should be drafted until and unless there is a determination on what type of constitution is to be drafted. We want to force all parties to express their vision on the two fundamental issues of federalism and pluralism.

It is the IFP position that the Multi-Party Negotiating Process shall agree that a federal and pluralistic state should be erected.

Once the issue of federalism is positively resolved the Multiparty Negotiation Process shall also determine a set of parameters and guidelines to allow the democratic process of ground-up democracy building. In fact, the establishment of federalism is quite unlikely to happen through a top-down process, as any form of downward devolution of powers could be accompanied by overriding powers and other controls. Federalism is a system of split sovereignty between the central and the state levels, and, therefore, the establishment of federalism should begin with ground-up democracy building processes which reclaim on an autonomous and original basis a limited amount of sovereignty to the states through the exercise of the regions of ordaining state governments within the parameters of a federal system.

Moreover, many regions of our country have expressed the intense political desire to erect themselves into statehood within a South African federal system. We do not believe that the process of transformation of our society should be controlled exclusively from centralised multi-party negotiations, and we have often taken the position that there must be an interaction between democratic transformations taking place at a regional level and the negotiating process at central level.

We have indicated that as long as the process of erecting regions into statehood respects a pre-agreed set of constitutional principles and relies on the will of the people, such processes should be registered and encouraged by negotiations taking place at central level. Accordingly, it should be the responsibility of the Government to organise referenda to allow the people of the regions to express themselves on constitutional drafts prepared by their elective representatives or by special regional Constituent Assemblies convened for such purposes.

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This shall especially apply to the final ratification by referendum of the Constitution of the State of KwaZulu/Natal approved by the KwaZulu Legislative Assembly on December 1, 1992. The organisation by the Government of a referendum for the final ratification of the Constitution of the State of KwaZulu/Natal is a mandatory condition of our negotiations.

Once the Multiparty Negotiation Process positively resolves the issue of federalism, it shall produce a set of agreed essential constitutional principles to be used to guide the ground-up democracy building processes. This is to say that if such processes at local level respect the principles set forth by the Multiparty Negotiation Process the resulting state constitutions shall be registered and respected by the negotiating process at central level. In this respect the Multiparty Negotiation Process will be "directing" the ground-up democracy building processes.

In the December 10 Memorandum to the State President, the Inkatha Freedom Party tabled for the consideration of all parties a set of constitutional principles which should guide the ground-up democracy building processes. They are attached herewith as Annexure I/I.

The IFP has proposed the establishment of a Commission on regionalization which will have the purpose of interfacing the ground-up democracy building process with negotiations at the central level.

This Commission will have two tasks:

- 1) Attend to and supervise the process of ratification of the Constitution of the State of KwaZulu/Natal as adopted by the KwaZulu Legislative Assembly.
- 2) Assist political formations in developing constitutional proposals to identify the boundaries and the powers of new regions for South Africa in addition to KwaZulu/Natal.

The Commission will also assist the planning or negotiating forum to develop and approve the set of constitutional principles mentioned earlier which are to be used to guide and lead the formulation of constitutional proposals embodying the powers and boundaries of the new regions.

The Commission will receive the complete constitutional proposals which have been finalised through its assistance and which embody the powers and boundaries of any given region. A deadline will be set to complete these drafts. It will be the task of the Commission to verify the compliance of these constitutional proposals with a set of constitutional principles developed by the negotiating forum in co-operation with the Commission. Once the Commission has verified that the constitutional proposals comply with such principles, it will seek the negotiating forum's permission and guidance [advise and consent] to attend and supervise the submission of such constitutional proposals to popular approval by free and universal fair referendum within the concerned region. Alternative proposals could be submitted to referendum, and the people will decide which one they prefer. This can be easily achieved even in the case where the proposals cover different territories.

Given the **unique characteristics** of the region of KwaZulu/Natal the ratification of the Constitution of KwaZulu/Natal **will be main-streamed**. The process described above is designed to ensure that the boundaries and powers of the regions are identified and decided by the concerned interests in a contest which still allows the central forum of negotiation to **assess their reasonableness** with reference to social, economic, demographic and historic considerations as well as in view of the interests of other regions.

All referenda will be held on or before December 1, 1993, so as to allow the finalisation of the regional constitutional proposals prior to the completion of the drafting of the final constitution of South Africa.

It needs to be stressed that the Commission will be promoting the popular approval of regional constitutions which from a technical and legal stand- point will have only the status of very influential and authoritative proposals: they would not be laws. Therefore, these regional constitutions ratified by the people at the end of a process piloted by the Commission will not be binding on the constitution drafting process. However, undoubtedly they are going to have a very determining political influence on the nature and the wording of the

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final constitution of South Africa. In fact, it would be politically unlikely and unwise to ignore the democratically expressed sovereign will of the people.

A further advantage of the IFP proposal is that it requires and justifies no type of power-sharing arrangement. It also ensures that the transitional process in South Africa is completed by September 1994, without a lengthy, excruciating and uncertain transition which would wear away the economic and social fibre of our society. The IFP proposal does not preclude that the first democratic government of South Africa be formed as a government of national unity, if the majoritarian political party so wishes.

Additionally the IFP proposal could allow both for symmetry and asymmetry in the resulting constitutional dispensation of South Africa. The IFP proposal registers the fact that not all regions are at the same starting point. On the contrary, the region of KwaZulu/Natal has gone ahead and finalised a proposal through a democratic process which now needs to be completed. The recognition that different regions have different needs and are at a different stages of maturity on the path of autonomy and possible statehood means that some regions may not be able or willing to finalise the process and they will need to be provided for through the process of negotiation at central level and in the drafting of the constitution of South Africa.

The IFP proposal obviates all the institutional and political risks associated with the proposal for regionalisation advanced by the Government.

The attached graphic describes the IFP proposal both with reference to the constitution drafting process relying on the use of a group of experts, as well as with reference to the possibility that an elected CMB be empowered for the exclusive purpose of drafting the new constitution for South Africa. [Annexure I/2]

Attached as Annexure I/3 is also a proposed Bill for the establishment of the Commission on Regionalisation.

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MEMORANDUM FOR PRESENTATION TO H.E. MR FW DE KLERK  
STATE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

BY MANGOSUTHU BUTHELEZI, CHIEF MINISTER OF KWAZULU AND  
PRESIDENT OF THE INKATHA FREEDOM PARTY

PRETORIA : DECEMBER 10, 1992

[...OMISSIS...]

I put forward the following list of constitutional principles as vital for the formation of a new democratic South Africa. Each state should adopt a constitution embodying the principles set forth herein:

- \* "Rigidity" of the constitution and its supremacy over any other source of law. The exercise of the powers of the federal government in the states must be consistent with the state's constitution. Special procedures shall be set forth to amend the constitution.
- \* There must be federalism, with residual powers in the members states. The powers of the state should be exercised as close as possible to the recipients of its services, either through internal decentralisation or through the creation of autonomous regions. The principle of democratic participation in administrative and legislative activities should be implemented throughout the constitutional system.
- \* There must be a full list of internationally recognised human rights, including personal, collective, social, economic, labour, family and political rights. Fundamental rights shall be entrenched and not amendable. People should be respected and protected both as individuals and as members of the social and cultural formations they belong to and with which they identify.
- \* There must be an adoption of the lists of modern collective rights, such as the right of the media, the right to access information, the right to a clean environment, consumer protection, et cetera.
- \* There **must** be a mandate to the government to remove social apartheid by developing equal access to all social, economic and political opportunities for all citizens irrespective of race, sex, colour or creed. It is the duty of the State to assist the needy and the less protected segments of the population, to assist the victims of apartheid, to improve the condition of women and senior citizens, and to provide social welfare and assistance.
- \* Cultural and political minorities must be given full protection through constitutional mechanisms which ensure their political representation and participation and power sharing. There must be a guarantee of personal and collective autonomies with special regard to cultural, educational, personal and family matters.



- \* There must be full protection of private property and free enterprise.
- \* Privatisation and limits to the State's direct intervention in the economy must be guaranteed. The role of the government should be to regulate not to operate the private sector.
- \* The State must have the power to plan economic development and use monetary tools of intervention within the framework of co- ordination at federal level. Civil society shall participate in any economic planning. Monetary policies shall be determined independently from the political process by a central bank.
- \* There must be a parliamentary form of government.
- \* Constitutional mechanisms must be provided to ensure the correct and non-politicised functioning of the public administrations, such as the civil service commission.
- \* Constitutional mechanisms must be provided to prevent the uncontrolled growth of government, such as the civil service commission and a judicial relief commission.
- \* There must be respect for the integrity of civil society in all its forms, and civil society must be empowered to participate in the constitutional development of the state.
- \* Constitutional mechanisms must be provided to ensure that political parties do not interpose themselves between government and individuals or social and cultural formations. There must be constitutional options to promote a political life based on the discussion of issues rather than vague ideological alliances.
- \* Traditional and customary law shall be protected provided that it is not inconsistent with the constitution and the role of traditional leaders should be preserved.
- \* The State shall have residual taxation powers and there shall be limits to the taxation powers of the federal government.
- \* There must be constitutional provisions to ensure sound management of State finance, including an independent auditor and a balanced budget provision. There must be provisions to ensure the fairness of the tax system.
- \* The independence of the judiciary must be guaranteed and the prosecuting function must be removed from political control. There must be an accountability of judges to an independent body, such as a judicial service commission which will also directly administer the judicial services.
- \* The State must be vested with the right to organise and maintain a state militia and limits to the federal military powers in the state.
- \* Delicate matters such as the holding of elections and the creation of constituencies shall be mandated to an independent entity such as an electoral commission, with the possibility of judicial review on its actions.

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\* Checks and balances shall also be ensured by providing some of the independent powers with their own budgets not prepared by the government but directly submitted by them for the approval of the legislature. Qualification and guarantee for all individuals exercising public function shall be detailed to guarantee independence and prevent conflicts of interest.

\* There must be a strong and effective Constitutional Court. When possible the resolution of conflicts must be removed from the political arena and brought into the field of jurisdictional constitutional adjudication. Civil society should be empowered for this purpose.

\* Provision must be made for an Ombudsman who shall act as a public advocate to redress and prevent human rights violations and monitor that the development of the legal system is consistent with the Constitution.

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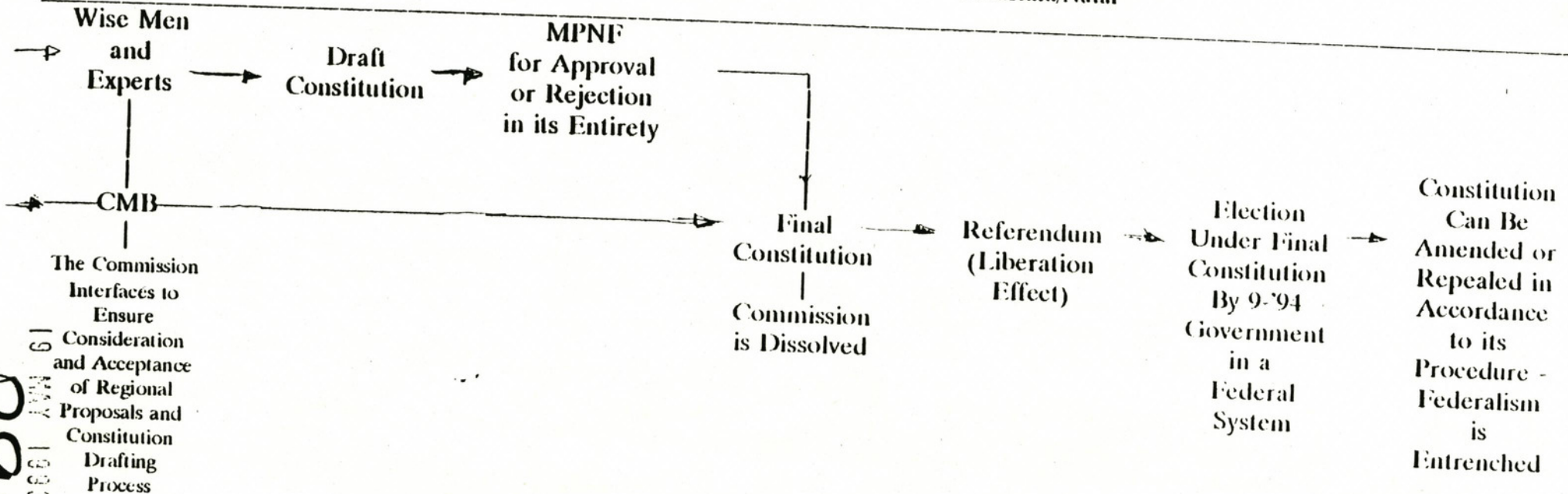
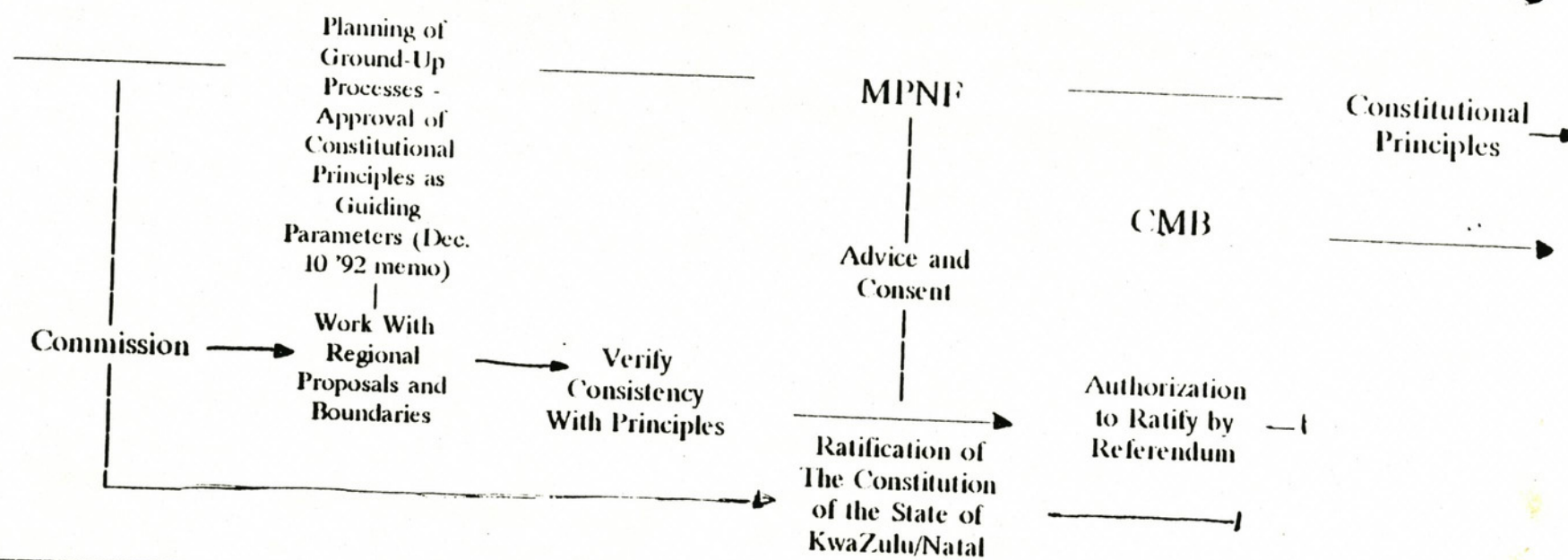
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Determination  
of the Form  
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IFP PROPOSAL



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IFP PROPOSAL TO ERECT FEDERALISM  
IN SOUTH AFRICA

BACKGROUND

Federalism is not a constitutional issue which can be resolved by majoritarian rule. There is an internationally recognised right to self-determination which entitles homogeneous or harmonious communities living in a given territory to choose their destinies and ordain for themselves the government which best fits their needs, wants and aspirations. This is to say that a unitarian form of government cannot be imposed on a region and on a community which does not want to have that government as their own. Therefore it is legitimate for a single region or large community to express a federalistic demand which must be registered by the process of transformation of our society.

The KwaZulu Legislative Assembly adopted the Constitution of the State of KwaZulu/Natal as representative of the needs, wants and aspirations of both KwaZulu and Natal. It is the duty of the Government to test through a referendum whether the Constitution adopted by the KwaZulu legislative assembly truly expresses the demands of the region and of the communities living therein.

The process of ratification of the Constitution of the State of KwaZulu/Natal needs to be integrated within the overall process of negotiation for a new constitutional dispensation for South Africa. This process should provide for sufficient mechanisms to allow other regions of South Africa to express their desire to choose a federal system as their own form of government.

For these reasons the IFP will introduce in Parliament the following Bill, on which the IFP solicits the support of all political parties.

**A BILL**

To hold a referendum on a constitutional proposal of the KwaZulu Legislative Assembly and to establish a Commission which will gather information and coordinate the formulation and ratification of constitutional proposals for the autonomous governance of regions within a unified and coordinated system of government for South Africa under a new Constitutional dispensation.

1. Definitions

As used in this Act the following terms shall have the meaning set forth herein:

"Constitution of the State of KwaZulu/Natal" shall mean the proposal adopted by the KwaZulu Legislative Assembly on December 1, 1992 and attached herewith as Annexure 1;

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"Commission" shall mean the Commission on Regionalization established in this Act.

"Negotiating Forum" shall mean the Multi-Party Planning or Negotiating Forum or Constitution Making Body engaged at any given time in the negotiation and/or drafting of the principles and/or of the text of a new democratic constitutional dispensation for South Africa.

2. Ratification of the Constitution of the State of KwaZulu/Natal

The State President is empowered and directed to organize a referendum in coordination with the KwaZulu Government to be held in the province of Natal and in the territory of KwaZulu. All bona fide and legitimate residents of the territory of KwaZulu and of the province of Natal as per the date of the introduction of this legislation to Parliament of eighteen years of age or older, irrespective of race or sex or personal and social conditions, shall be entitled to vote at the referendum.

The referendum shall ask the electors: "do you intend to support and ratify the Constitution of the State of KwaZulu/Natal", and shall call for a Yes or No answer.

The Referendum shall be held on or before October 26, 1993

3. Establishment of a Commission on Regionalization

A Commission on Regionalization shall be established. The Commission shall consist of nine members appointed by the State President

- (a) with the advice and consent of a body consisting of the representatives of the signatories of the National Peace Accord with additional members appointed by the State President to represent political formations which did not sign the National Peace Accord, or
- (b) from a list of persons nominated for that purpose at the request of the State President by political parties or organizations which in his opinion have a relevant role to play in the process of democratic transformation of South African society in the case the body referred to under (a) above fails to make its recommendations after having been requested by the State President to do so.

The Commission shall be established by April 25, 1993.

4. Powers and Duties of the Commission on Regionalization

The Commission shall have the following powers and duties:

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1. Attend to and supervise the process of ratification of the Constitution of the State of KwaZulu/Natal.
2. Assist political formations in developing constitutional proposals to identify the boundaries and the powers of new regions for South Africa in addition to KwaZulu/Natal.
3. Interface with the Negotiating Forum so as to develop a set of constitutional principles to guide and limit the formulation of constitutional proposals embodying the powers and the boundaries of the new regions.
4. Receive finalized constitutional proposals embodying the powers and the boundaries of any given region on or before July 7, 1993, verify their compliance with the set of constitutional principles referred to under (3) above, and, with the advice and consent of the Negotiating Forum, authorize, attend and supervise the submission of such constitutional proposals to popular approval by free, universal and fair referendum within the concerned region on or before December 1, 1993.
5. Interface with the Negotiating Forum so as to ensure that the constitutional proposals embodying the powers and boundaries of regions and approved by referenda held in the regions are adequately registered and considered in the process of drafting a new constitutional dispensation for South Africa.

The Commission shall be dissolved with the adoption of a new democratic constitutional dispensation for South Africa.

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Nor should it prejudice the issue of whether constitutional principles should be spelled out in the constitution or merely extrapolated from its provisions.

## 2. **FUNDAMENTAL PRINCIPLES: GENERAL**

- 2.1 In the peoples of South Africa reside the sovereignty of South Africa, whether exercised as individuals or as groups. The constitution shall be the supreme law of the land and the source of inspiration for all governmental action. All acts, measures and decrees contrary to the constitution shall be judicially declared null and void.
- 2.2 All citizens shall enjoy equal protection of the laws and be afforded equal opportunity in the market place. This shall include the prohibition on any discrimination based on sex, race, religion, and personal status. However, this principle shall not preclude affirmative action programmes.
- 2.3 The constitution shall meet the test of social dignity. It shall declare the right of all individuals to the pursuit of happiness. It shall assert the duty of the state to guarantee, protect and actively promote the social dignity of the South African peoples, both as individuals and as members of groups. To achieve such goals, the state shall strive to remove economic and social obstacles and barriers which preclude equality of opportunity, equal social treatment and economic self-sufficiency for all the peoples of South Africa.
- 2.4 The constitution shall list the social functions of the state: national security, economic and social development, environmental protection, promotion of the quality of life, protection of the family, public education, public housing, and social and medical assistance.
- 2.5 Since South Africa is a pluralist society, political, social and ethnic pluralism shall be protected. National, linguistic, cultural and native identities, practices and traditions shall likewise be protected and promoted. Special attention shall be given to the needs and aspirations of indigenous peoples.
- 2.6 All South Africans shall be under a constitutional duty to make their contributions to the security and general welfare of the state.
- 2.7 South Africa shall conform both its legal system and its foreign policy to the norms of international law and cooperation.

## 3. **HUMAN RIGHTS PRINCIPLES**

- 3.1 South Africa shall recognize and guarantee all human rights, civil, political, social, cultural, religious and economic.
- 3.2. The constitution shall list in detail the fundamental rights





# INKATHA

Inkatha Freedom Party

IQembu leNkatha yeNkululeko

## WORKING GROUP 2

POSITION PAPER OF THE INKATHA FREEDOM PARTY  
FOR SUBMISSION AT THE CODESA MEETING OF FEBRUARY 6, 1992

### INTRODUCTION

The Inkatha Freedom Party has no intention of bargaining away the future of South Africa's people through participating in a negotiating process which seeks quick expedient results at the expense of enduring principles. The foundations for the future multi-party democratic order need to be carefully laid and sufficient time should be allowed for reconciliation. The new South Africa must be responsibly and well governed into existence and the IFP will strenuously resist any suggestion that there should be constitutional leaps in the dark in trying to get there.

It is public knowledge that the Inkatha Freedom Party and its predecessor, Inkatha yeNkululeko yeSizwe, have devoted a considerable amount of thought, research and effort into finding constitutional arrangements that would transform South Africa from an apartheid state into a stable, harmonious, democratic and prosperous country for all its people. The famous Buthelezi Commission was followed by the equally successful KwaZulu/Natal Indaba. In addition the IFP has maintained contact with and comprehensively studied the constitutional law and practice of major democracies in the world.

### 1. GENERAL CONSTITUTIONAL PRINCIPLES

- 1.1 The Inkatha Freedom Party hereby sets forth those fundamental principles which must be enshrined in, and may not be contradicted by, any other provisions of the future South Africa Constitution. As such, these principles are the cornerstones of each of the sections of the constitution. The constitution drafting process shall identify the various options and formulate the constitutional provisions to implement these principles. Such principles shall also be the basis of constitutional interpretation and jurisprudence.
- 1.2 These principles are arranged by and reflect the subject matter encompassed in modern constitutionalism. They are listed here according to the organization and structure employed in the writing of modern constitutions. However, this should not preclude a different arrangement of sections or subject matter.



possessed by all South Africans, guided by the formulations set forth and proclaimed in the International Bill of Rights of the United Nations, in the European Convention on Human Rights and especially in the Africa's Banjul Charter on Human and Peoples' Rights.

- 3.3 The human rights provisions listed in the constitution shall not exclude the recognition of other human rights, identified on the basis of constitutional principles and on the changing social, economic and human growth and development of South African society. This principle will support an "evolutive clause" in the constitution, authorizing new forms of human rights protection against human rights violations not yet predictable.
- 3.4 All justiciable human rights shall be immediately enforceable, with appropriate procedures to provide redress and the termination of any violations.
- 3.5 Human rights shall not be breached or transgressed. Their exercise may be limited but never denied. Even in emergency situations, entrenched human rights shall be protected in their essential core.

#### 4. PRINCIPLES CONCERNING SOCIAL AND POLITICAL RIGHTS

- 4.1 South Africa shall recognize the rights of individuals as members of social and economic organizations, including but not limited to the right to form and join trade unions, the right to strike, and the right to collective bargaining.
- 4.2 Political rights must insure effective participatory democracy. This includes the right to establish political parties. It also encompasses access to all non-privileged government information and access to government owned means of mass communication.
- 4.3 Political rights are designed to serve the objective and cause of democratic debate. No private or non-governmental military force shall be permitted.
- 4.4 Government shall not establish nor support any given religion. State and church shall be separate.
- 4.5 Colleges, universities and schools of professional education shall be autonomous.

#### 5. PRINCIPLES CONCERNING ECONOMIC RIGHTS

- 5.1 South Africans shall enjoy a free market economy. Nationalization shall not be the policy of the state. Nationalization shall be permitted only when the free market can not reliably provide a particular need, and only upon a special majority vote of the legislature. Private property shall be protected. Expropriation shall be limited to a showing of public need and fair and expedited compensation shall be provided.



Expropriation decisions shall be subject to judicial review.

Foreign investments shall be encouraged and protected and the repatriation of profits allowed.

- 5.2 State intervention in the economy shall be limited to planning for the achievement of stable economic growth by creating opportunities for private enterprise. The state shall implement privatization of all government enterprises not inherent in the nature of government (e.g. defence, courts, taxation) and which can be operated more efficiently in the private sector.

A privatization commission shall be established. The commission shall have a predetermined limited life span renewable if needed. It shall be staffed with technical individuals and shall plan the privatization process so as to benefit the economy and avoid corruption and nepotism. It shall have the power to initiate legislation on privatization and shall work with the central and regional agencies implementing the privatization legislation to ensure efficiency, absence of corruption, and expediency.

- 5.3 The central bank shall be autonomous and shall have the right to determine interest rates and currency emission.

- 5.4 Government shall operate on balanced budgets. Approval of an unbalanced budget or a government deficit for necessary borrowing for future development shall require a special legislative majority. Government spending shall be checked by an independent auditing entity. In many countries, this entity has proven to be valuable in offsetting corruption and nepotism as well as governmental waste and inefficiency.

- 5.5 The tax system shall be fair and progressive. It shall not be a burden on production and investment.

- 5.6 Monopolies shall not be permitted and all practices in restraint of trade and competition shall be prohibited.

## 6. PRINCIPLES ON THE STRUCTURE OF THE STATE

- 6.1 Human and social rights and freedoms shall be guaranteed under a state structure which respects relevant logical, economic, territorial, cultural, linguistic and historical considerations. Historically, authoritarianism, dictatorship widespread corruption and the absence of individual and group rights flourish only in centralized and unitarian forms of government.

- 6.2 Democracy is best protected by a system enshrining separation of powers and checks and balances. We traditionally separate the legislative, executive and judicial branches and their respective powers over each other to achieve horizontal checks and balances. We secure vertical checks and balances by the separation of powers between the national federal government and state, regional and local governments.



- 6.3 Subsidiarity has become the key word in the constitutional planning of the European Community. It is the doctrine that nothing should be done on the Community level which cannot be done better at local levels. And local government is more capable and more sensitive to specific local needs and aspirations.
- 6.4 It is only in the centralized and unitarian state that one particular political faction can exclude all others from political participation and healthy democratic debate. Germany, the United States and other federal states often experience the situation where one political party is in power in the national government and another party controls the lander or state.
- 6.5 Regional governments are not only more democratic but more practical. Where government is closer to the people (i.e. where tiers and layers of government are removed), there is greater efficiency and cost savings, plus increased governmental effectiveness.
- 6.6 Such considerations are particularly important in South Africa where the central government has conspicuously failed to meet regional geopolitical interests.
- 6.7 Regional government must be the rule and central government the exception. The constitution shall list the powers and functions of the central government, those of the regions and those which are shared.
- 6.8 The boundaries of the regions/states shall be identified on the bases of historic, linguistic, economic and geopolitical considerations.
- 6.9 The constitutions shall set forth the principle that the residual powers vested in the regions/states should preferably be exercised through local governments on the basis of further decentralization and local autonomy (i.e. the creation of regions in the states, or the creation of provinces in the regions). The governments of the regions/states and the local governments should allow for broad public participation and participatory democracy.
- 6.10 The constitutions of the regions/state shall be approved by the Constitutional Court for conformance with the principles of the South African constitution.
- 6.11 Local governments in the regions/states shall be chartered in accordance to a uniform law adopted by the regions/states. Such law would respect and authorize exceptions from the general rules for traditional territorial governments. After approval, but before publication, this law would be verified for compliance with the constitution and the national interests. Disputes would be resolved before the Constitutional Court. This type of checks and balances follows the successful Italian model, subsequently in the constitutions of other countries.



6.10 The constitution shall ensure that regions\states have independent taxing powers.

## 7. PRINCIPLES ON THE ORGANIZATION OF GOVERNMENT

7.1 The government shall be divided into legislative, executive and judicial branches. The three branches of government shall be separate. Each branch shall be provided with effective powers to check and balance the functions exercised by the other branches.

### 7.2 The legislature

7.2.1 The legislature shall represent the people of South Africa on both a territorial and a population basis. The territorial chamber is designed to ensure protection of regional interests and its members shall be chosen by the legislatures of the regions/states. The other house shall be chosen on the basis of proportional representation and constituency.

7.2.2 The legislature shall effectively control the operations of government and the civil service, investigate their activities, and demand and receive government reports. It shall be open to public participation by popular legislative initiative, through reports from the ombudsman, by public hearings and by other techniques of participatory democracy. The legislature shall be deemed an "open parliament."

7.2.4. Members of the legislature shall be guaranteed the privileges and immunities necessary to promote the independent and undisturbed exercise of legislative functions.

7.2.5 An independent electoral commission shall be established to correct any impropriety in the elections process, both prior to and during the actual balloting.

### 7.3 The Executive

7.3.1 The executive shall be accountable to the legislature. The head of state shall not be the head of government. Government shall function on the basis of wide-based consensus and shall enjoy the confidence of both houses of the legislature. The fact that one of the houses is elected on the basis of regions/states will promote the formation of a coalition government with a broad consensual basis. This will achieve and maintain national cooperation and reconciliation.

7.3.2 The head of state shall be elected by indirect suffrage by individuals elected for that purpose on the basis of electoral principles which ensure that all territorial formations in the state (regions/states) receive adequate representation.

The executive is designed not to be a weak and impotent



executive, nor to be a domineering executive which can govern without a broad consensus. It is designed to be an effective and fully empowered executive to be responsive to the needs, wants and aspiration of the people and to govern with parliamentary consensus. The position of the executive in the legislature shall be effective but not domineering. It shall not control the legislature's agenda nor have an unqualified and broad veto power.

7.3.4 Governmental action shall be conducted in strict compliance with the laws adopted by the legislature and shall be subject to judicial review. Governmental rules and regulations to implement legislation shall likewise be subject to judicial review.

7.3.5 An independent civil service commission shall be established to select civil servants, monitor the efficiency and fairness of government, conduct independent investigations of alleged cases of corruption, nepotism, inefficiencies and malfunctions, and provide regulatory relief by soliciting changes in rules and regulations. The commission shall also ensure that the civil service is representative of all population groups.

#### 7.4 The Judiciary

7.4.1 The judiciary shall be independent and the status of the judges shall be protected from any potential influence.

7.4.2 An independent judicial service commission shall be established to recommend the selection and appointment of judges. It shall also supervise the lower courts and appoint local magistrates. It shall prescribe the qualifications of judicial personnel and set the criteria for the advancement of judges, their transfers and assignments. They shall hear complaints and exercise disciplinary authority. They shall also develop educational programs for the training of newly designated judges.

7.4 The constitution shall set forth the jurisdiction of both the central and the regional/state courts. It shall also indicate the general criteria under which matters of regional/state law can be heard or reviewed by the central state court system.

7.5 The constitution shall give proper consideration to administrative courts, tax courts, labour courts and specialized courts dealing with tribal and customary law; it shall also prohibit the creation of special ad hoc or post facto tribunals and the jurisdiction of military courts over civilians.

7.6 The constitution shall set forth the privileges and immunities of judges necessary to ensure their independence and impartiality, as well as the criteria for the selection of the members of the judicial service commission.

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8. PRINCIPLES ON THE GUARANTEE AND PROTECTION OF THE CONSTITUTION

- 8.1 Constitutional government must be ensured by the creation of enforcement mechanisms and human rights must be protected by the establishment of their own implementation machinery.
- 8.2 As the supreme law of the land, the constitution may only be amended, modified or derogated by legislative action by a special majority, ratified by a popular referendum. The republican form of government and fundamental human rights may not be subject to constitutional amendment.
- 8.3 Any law adopted in South Africa in conflict with the constitution shall be null and void *ab initio*. Judicial review, applicable to the legislation of both the central government and the regions/states, shall be exercised by the Constitutional Court. Because the new constitution will be so different from the existing constitution, it should be interpreted by a new court rather than through the existing legal system. Further, the establishment of a distinctive court with this express function will foster specialized expertise and uniformity of result.
- 8.4 The Constitutional Court shall be independent, with the power to adopt its own rules of organization, operation and procedure. The justices shall be selected through the participation of various branches of government from the best legally trained individuals who have proven impartiality and dedication to constitutional principles. They need not to be South African citizens; on the contrary it would be desirable to enlist the knowledge and experience of racially neutral foreign lawyers.
- 8.5 The jurisdiction of the Constitutional Court shall be invoked when a constitutional issue is raised "which is not obviously without merits." This broad standard, adopted by the European constitutional courts, is necessary in providing appropriate judicial relief under a new and novel constitutional order. Political parties and other interest groups recognized by the Constitutional Court, in accordance to its rules, shall have the power to bring direct actions. The decisions of the Court shall have retroactive effect.
- 8.6 The Constitutional Court shall also adjudicate conflicts between the central state and the regions/states and those between the various regions/states. Its jurisdiction shall extend to all matters requiring special constitutional adjudication.
- 8.7 The office of ombudsman shall serve as the nation's public advocate, representing the people against the government. It shall investigate alleged violations of rights and privileges granted by the constitution and secure such rights through the courts as appropriate. It shall have access to both the central and regional executive and legislative branches to enforce rights administratively as well as pursuing judicial action. It shall also propose legislation as appropriate and work with central and regional agencies on matters affecting the interest of the public.

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8.8 The ombudsman shall maintain offices throughout the nation in order to be accessible to members of the public in the enforcement of their human rights.

9. **CONCLUSION**

The IFP's vision for South Africa is that of a social state, made possible by free enterprise and market economics, which will continually strive for social and human development. It is a state where human rights are not only protected and enforced but their exercise encouraged and nourished. We advocate state and regional structures designed to bring government ever closer to the people so that they may better participate in the democratic process.

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**THE CONSTITUTION  
OF THE STATE OF  
KWAZULU/NATAL**

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# THE CONSTITUTION OF THE STATE OF KWAZULU/NATAL

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## A Synopsis

The Constitution of the State of KwaZulu/Natal is the constitution of a member state of the Federal Republic of South Africa. It lists all the powers reserved to the Federal Government and divides the State into autonomous Regions. The constitution also lists the powers of the Regions and reserves to the State and to the people all the residual powers which are not granted to the federal government and to the Regions.

The Constitution of the State of KwaZulu/Natal sets forth a process for its approval and for popular ratification by virtue of which the Constitution will become the supreme law of the State.

The Constitution of the State of KwaZulu/Natal creates a truly free, pluralistic and democratic society.

Pluralism within the State is recognized by the entrenchment of territorial and personal autonomies. The Constitution acknowledges that most of the governmental functions are best exercised at regional level and empower the Regions with the necessary functions to be exercised in a well-proven framework of co-ordination with the State. The Constitution also recognizes that the role of the government shall be limited, and empowers the people as individuals and as members of social and cultural formations to regulate their own interests as they best see fit.

The Constitution protects the integrity of the territory of the State in various forms.

### Human rights

The Constitution recognizes and guarantees the full list of internationally accepted human rights. Drawing on the example of the finest modern constitutions in the world, the Constitution ensures the full protection and enforceability of these rights, without any exceptions, loopholes and other provisions which may water down the strength of human rights protection. In addition, the Constitution provides very expeditious and effective procedures to allow any aggrieved party to seek and obtain immediate redress. Human rights are fully entrenched in the Constitution.

The Constitution's commitment to human rights has no exceptions or qualifications. The Constitution recognizes all personal, social, economic, labour and cultural rights.

### Equality

The Constitution ensures real equality among all citizens of the State who are now finally free and equal before the law, irrespective of race, colour, creed, religions, sexual orientations, and social and personal status. However, the Constitution goes further. The Constitution mandates that the State must work to promote and guarantee the equal access for all citizens to all political, economic and social opportunities. The Constitution



mandates the government to ensure a level and fair field where everybody can compete for political, social and economic opportunities. Education, professional training, assistance to small business, enhancement of the conditions of women and youth and other measures are identified in the Constitution as constitutionally mandated functions of the State.

### Pluralism

Democracy by itself is not sufficient without the blessing of pluralism. The Constitution recognizes and respects that civil society expresses itself in a plurality of forms. The Constitution limits the role of the government to prevent its expansion to all aspects of civil society and social life. The Constitution recognizes and protects independence from the government and the autonomy of schools, institutes of higher culture, religious activities, private charities, leisure and sport organizations, professional associations, trade unions and labour organizations, chambers of commerce, media of mass communication, consumers and environmental groups, et cetera. The Constitution aims at empowering this civil society institution with various constitutionally recognized functions.

The rights and the privileges of the media are fully protected, along with the right of citizens to access information.

### Social state

The Constitution of the State of KwaZulu/Natal creates a social state not a socialistic state. The State has the role to protect the less privileged and the most vulnerable segments of the population as well as the fundamental needs of all citizens. The Constitution prescribes assistance to the elderly and the education and protection of the youth as a duty on the part of the State and of their families. Decent and affordable housing for all citizens is constitutionally promoted, while health care, professional training, assistance to the indigents and the needy, constitutionally recognized welfare programs and social security, are constitutionally mandated.

### Privatization

The role of the government shall be to regulate the private sector not to operate it. The Constitution mandates that all public enterprises which can be operated with comparable reliability and quality by the private sector shall be returned to the private sector. A special Privatization Commission is established to ensure that this process takes place with economic efficiency and without corruption, nepotism and disfunction.

### Economic constitution

The constitution sets forth clear provisions structuring and promoting economic growth, common wealth and greater employment opportunities for all citizens. Private enterprise is fully guaranteed and assisted, and private property is fully protected. Expropriation is limited to absolute public necessity and must be accompanied by prompt market value compensation.

Under the Constitution of the State of KwaZulu/Natal the government shall not be freely allowed to spend public money. It shall report to the parliament and to an independent auditing centre. The government shall also not have the free power to borrow our children's and grandchildren's money. Therefore, the government shall operate on the

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

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

### Democratic participation

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

### System of government & Protection of minorities

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

### Role of political parties

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

### Public administration

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



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

#### Traditional law and role of traditional leaders

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

#### Independent Judiciary

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

#### Constitutional Guarantees

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

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

The Constitution of the State of KwaZulu/Natal is a complex technical document which requires in-depth reading to fully evaluate its principles and its implications.

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**THE CONSTITUTION OF THE STATE  
OF KWAZULU/NATAL**

**PREAMBLE**

We, the people of Natal and KwaZulu, mindful of our unique and diverse heritage, inspired by the desire to secure the blessings of democracy, freedom and pluralism for our and future generations, respecting the equality of all men and women, recognising the right of people to organise themselves in autonomy and independence at all levels of society, desiring to ensure that individual rights and liberties are accompanied by obligations of social solidarity to others, determined to guarantee that the rights of all people are protected both as individuals and members of social and cultural formations, do now ordain and establish this constitution for the State of KwaZulu/Natal to provide the people of KwaZulu/Natal with a government to serve their individual and collective needs, wants and aspirations.

**FUNDAMENTAL PRINCIPLES**

**1. Inherent Rights and Obligations**

The State of KwaZulu/Natal acknowledges and recognises that all individuals have the natural right to life, liberty and the pursuit of happiness, and to the enjoyment of the rewards of their own industry; that all individuals are equal and entitled to equal rights, opportunities and protection under the law, and that all individuals have corresponding obligations to the State and a general obligation of social responsibility to the people of the State.

**2. Source of Government**

All political power is inherent in the people. All government originates with the people, is found only upon their will, and is instituted only for the good of the people as a whole. Government shall respect and encourage the exercise of the power of the people to organise and regulate their interests autonomously.

**3. Relationship with the Federal Republic of South Africa**

The State of KwaZulu/Natal is a sovereign member state of the Federal Republic of South Africa. The State of KwaZulu/Natal recognises its obligations toward the Federal Republic of South Africa and the other member states of the Federal Republic of South Africa in so far as they do not infringe upon the rights, powers and liberties guaranteed by this constitution to the citizens

of Natal/KwaZulu and to the State of KwaZulu/Natal. The sovereignty of the State of KwaZulu/Natal as asserted under this constitution is indivisible, inalienable and untransferable.

**4. Territory**

The territory of the State of KwaZulu/Natal is indivisible and inalienable. The State of KwaZulu/Natal shall engage in negotiations with the other states of the Federal Republic of South Africa and with the Federal Republic of South Africa to increase its territory so as to include areas which are historically, culturally and socio-economically strictly connected to the territory of the State of KwaZulu/Natal. The territory of the state includes territorial waters.

**5. State's Unity**

The State of KwaZulu/Natal is one and indivisible. The powers of the State shall be exercised through the State and the Regions as set forth in this constitution. The State and the Regions shall encourage and promote decentralisation of their powers and delegation to local governments.



6. **Citizenship**

All Citizens of the Federal Republic of South Africa residing in Natal or in KwaZulu shall be citizens of the State of KwaZulu/Natal. No citizen of KwaZulu/Natal shall be deprived of citizenship except in such cases as they may be listed in the laws of the State and based on voluntary relinquishment. The General Assembly may grant citizenship in special cases. A resident of the State shall be anyone who has been lawfully domiciled in the State for over six months.

7. **Language**

The official languages of the State of KwaZulu/Natal shall be English, Zulu and Afrikaans. The State shall protect and encourage the use of languages other than the official languages. Nothing in this constitution shall prohibit the use of any other language as a medium of instruction in private schools or in schools subsidised or financed by the State, or the Regions or by the Federal Republic of South Africa, subject to compliance with such requirements as may be imposed by law to ensure proficiency of the official languages or for pedagogic reasons. In units of local government where considerable portions of the population speak a language other than English, Zulu and Afrikaans a different language may be used as an additional official language under conditions and in a manner to be determined by law.

8. **State's Symbols**

The coat of arms, the flag and the anthem of the State of KwaZulu/Natal shall be determined by a law adopted by a two-thirds majority of the General Assembly.

9. **State's obligations**

The State of KwaZulu/Natal shall ensure internal security and safety, promote balanced economic development, foster social development, guarantee environmental and consumer protection, ensure health services, education and welfare for its citizens, constantly strive to improve the quality of life of all people in the State, preserve and protect the State's religious, linguistic and ethnic heritage and cultural diversity, nourish the people's right to the pursuance of happiness both as individuals and as members of their social formations, protect the family, extend special protection to maternity and paternity and to the children, extend special protection for women, the disadvantaged and less privileged portions of the population, and strive in its actions and policies to achieve social justice in accordance with the principles of this constitution.

10. **Equality**

a. All citizens of the State of KwaZulu/Natal have equal social dignity, shall be equal before the law and shall share an equal right of access to political, social and economic opportunities irrespective of sex, race, colour, sexual orientation, language, traditions, creed, religion, political affiliation and belief, and social and personal status.

b. The State of KwaZulu/Natal shall remove social and economic hindrances which operate as a factual limitation on the freedom and equality of all its citizens, prevent their human and social growth and diminish their equal access to political, economic and social opportunities. For this purpose the State of KwaZulu/Natal may take measures in favour of segments of the population requiring special assistance.

11. **Rule of Freedom**

All conduct and activities which are not prohibited shall be permitted. The State of KwaZulu/Natal may prohibit and regulate conduct and activities for a demonstrable State's interest founded on public interests and welfare.



12. **Federal Law**

All statutes and regulations validly adopted by the Federal Republic of South Africa as well as international law as recognised by the Federal Republic of South Africa shall have immediate force and effect in the State of KwaZulu/Natal in so far as they are not inconsistent with this constitution.

13. **Traditional and Customary Rules**

The State of KwaZulu/Natal shall recognise and protect the application of traditional and customary rules not inconsistent with the principles and provisions of this constitution in all matters left to the autonomy of individuals and that of social and traditional formations to which individuals belong on a voluntary basis or from which they have not dissociated themselves in a manner prescribed by law. Traditional and customary rules are produced in accordance with the rules and the sources governing their production and shall not be modified or repealed by the law. Traditional or customary laws shall not have territorial application unless so authorised by law, in which case they shall be subject to the law to the extent that they apply to individuals who do not share in such tradition or custom. All traditional and customary law shall be collected and published by a committee of the General Assembly working in conjunction with the affected interests.

14. **Supremacy of the Constitution**

This constitution shall be the supreme law of the State and shall be applied and enforced to the fullest extent possible in all judicial and administrative procedures as well as in interpersonal relations under the control of the State of KwaZulu/Natal.

**FUNDAMENTAL RIGHTS**

15. **Individual and Collective Rights**

Fundamental rights are recognised and shall be protected both in their individual as well as in their collective exercise, and they imply the right to establish institutions, adopt rules of conduct and regulate interests which are instrumental to the collective exercise of such rights. All powers established and recognised under this constitution shall protect and nourish the exercise of these rights and respect and foster their collective exercise.

16. **Justiciability of rights**

All rights and freedoms recognised and guaranteed under this constitution shall be justiciable to the fullest practical and reasonable extent. In the case of a violation of the rights and freedoms recognised and guaranteed under this constitution any aggrieved party shall be entitled to be heard by a court of record on the basis of urgency and, upon showing a *prima facie* violation of rights, shall be granted preliminary relief pending the final disposition of the case.

17. **Limits on the exercise of the rights**

The law may impose reasonable restrictions on the exercise of the rights set forth in this constitution to protect the rights of others and for compelling reasons of public interest. However, in such a case the law must respect the essential content of the rights, and the limitation on the exercise of the right must not have the practical effect of preventing or deterring the free exercise of the rights in their reasonable manifestations.

18. **Physical and psychological integrity**

- a. The physical and psychological integrity of any individual shall be inviolable. No one shall be authorised to inflict any type of violence on another individual or to take a life. Capital punishment and any form of physical or psychological torture and punishment shall not be allowed.



- b. No one shall be submitted to unusual or cruel punishment and all punishments shall aim at the personal and social rehabilitation of the person. During imprisonment juvenile delinquents shall be kept separate from other delinquents and so shall men from women. Failure by a public official to report any and all instances of physical or psychological violence on a person deprived of his or her liberty shall be a criminal offence.

19. **Freedom of communication**

- a. All persons shall be free to express and communicate their thoughts in private and in public, in oral, written, visual or any other fashion, and to establish institutions for such a purpose. All forms of censorship or limitation on the contents of such communications shall be prohibited.
- b. Limitations on the contents of commercial speech may be imposed to guarantee the truth and the fairness of the representations made to consumers and to ensure fair competition, provided that there shall be no prohibition of comparative advertising.
- c. Limitations on the form of communication may be imposed as to time, place and manner so as to protect and respect the rights of others and compelling public interests, but not to the extent that the limitation on the forms communication becomes a limitation on the contents thereof.
- d. No one shall be compelled directly or indirectly to disclose or express his or her ideology, creed, religious belief, or political opinions.

20. **Freedom of Religion**

Religious freedoms are recognised and shall be guaranteed. Everyone shall have the right to profess and promote his or her religion or belief, and to establish institutions and organise activities for this purpose. The State of KwaZulu/Natal shall not take any action supporting or endorsing any particular religious belief or confession or conditioning the exercise of religious freedom to any requirement, and shall promote conditions for the equal and free exercise of all religions and beliefs in the State.

21. **Liberty**

- a. No one shall be deprived of his liberty without cause and due process of law. Unwarranted arrest and detention shall be allowed only on the basis of probable cause related to an offence punishable by imprisonment. Anyone arrested or detained shall be informed of his or her rights in a language that he or she understands, shall be informed of the reasons for the arrest and detention with an indication of the charges, and shall have a court hearing within twenty four hours from the time of his or her arrest, after which the detention may continue only by court order based on factually corroborated allegations.
- b. Anyone detained or accused has the right to remain silent. Anyone detained or charged with an offence punishable by imprisonment has the right to consult counsel, and if he or she can not afford one the court shall appoint one at government expense. There shall be a right to counsel in any and all proceedings in which the accused participates.
- c. Detention prior to sentencing shall be limited to cases established by law and shall not exceed three months.
- d. Anyone detained, arrested or condemned unlawfully shall have the right to be rehabilitated, to receive indemnification and other rights determined by law.
- e. Any government authority shall inform anyone who is the subject of an investigation for any reason.
- f. No one may be tried twice for the same conduct. No one shall be charged for a conduct which at the time was not an offence, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed. There shall be no analogical or retroactive interpretation of criminal law.



- g. Anyone has the right to a speedy, open and public trial and to confront his or her accusers at trial. All trials shall be based on the accusatory principle and shall be subject to the right to appeal on the grounds of error of law.
- h. No one shall be removed from the authority of the judge with jurisdiction over the specific offence at the time the offence was committed. There shall be no special or *post facto* judges. Any accused person has the right to be tried in an impartial, independent and competent court. Anyone shall be presumed not guilty until proven guilty.

22. **Travel and movement**

Everyone shall have the right to travel, move and reside within or outside the State. No government policy forcing the relocation of people shall be allowed. Any citizen of the Federal Republic of South Africa shall have the right to take domicile in the State.

23. **Privacy**

- a. Everyone shall have the right to the protection of privacy, of his or her personal life, of his or her domicile, and to protection of his or her personal dignity and reputation. All private communications and all aspects of private life shall be protected. Search and seizure may be allowed only on the basis of a warrant issued on the basis of corroborated allegations, and in the cases and with the guarantees established by the law. Personal search shall be allowed as an incident to a legitimate arrest and detention.
- b. Anyone has the right to access the information collected on him or her by the Government or by private data or information banks.

24. **Freedom of the Media**

Anyone has the right to publish and distribute printed materials. The press and the media of mass communication shall have the right to inform the public on matters of public interest provided that they do not publish erroneous information as a result of gross professional negligence or malice. The media have the duty to rectify all erroneous information they publish which damages the reputation of others.

25. **Assembly and Association**

Everyone has the right of peaceful assembly. No notice shall be required for assembly in a private place or in a place open to the public. For assembly in a public place prior notice shall be given to the competent authority which may prohibit the assembly only for reasonable apprehension of public security and safety. Everyone has the right to associate for any legal purpose. Associations pursuing directly or indirectly political purposes by means of military training or association operating in a para-military fashion shall be prohibited.

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26. **Family rights**

A man and a woman have the right to join in marriage in accordance with the rituals and with assumption of the obligations and privileges of their choice. However, both spouses shall have equal rights, obligations and dignity. Both parents shall have responsibility for the upbringing, formation and education of the children, even if born outside wedlock. The law shall ensure that comparable rights and social protection shall be extended to children born outside wedlock as they shall be recognised to children born in wedlock. Both parents have the right and the duty to exercise joint custody of the children unless a court otherwise decides in the interest of the children and on the basis of the specific circumstances of the case. Both parents have the right and the duty to choose an acceptable formation and education for their children.



27. **Procreative Freedom**

All people who so desire shall enjoy the freedom of procreative choice, including the right to receive sexual education, to use contraception and terminate unwanted pregnancy when safe. Anyone who finds these practices objectionable shall have the right to protect his or her own sphere of interests from any of these practices and from the exposure thereto.

28. **Cultures and Traditions**

Everyone shall have the right to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion.

29. **Human rights in the Constitution**

All fundamental human rights and all those other rights which are inherent to fundamental human needs and aspirations as they evolve with the changes and growth of society, and as they will be recognisable on the basis of the principles underlying the provisions of this constitution, are hereby entrenched in this constitution and in their essential content shall not be modified by virtue of constitutional amendments.

**ECONOMIC, SOCIAL AND POLITICAL RIGHTS**

**Economic rights:**

30. **Free Enterprise**

The right to free economic initiative and enterprise shall be recognised, protected and encouraged by the State. The State shall assist small businesses and provide other incentives to encourage access to economic opportunities. Within the limits set forth by the law to protect the public interest each enterprise shall be free to choose and organise the means of the production as it best sees fit.

31. **Contractual autonomy**

Within the limits set forth by the law to protect the public interest, the State shall recognise and protect the right of individuals to self regulate and organise their interests in economic and other matters by means of legally enforceable contracts and by establishing legal entities to carry out their purposes and objectives.

32. **Commercial and Insolvency Law**

The State shall promote uniformity of its commercial and insolvency laws with those of other states and countries.

33. **Permits and Licensing requirements**

The State shall not subject human conduct to unreasonable or unnecessary licensing and permitting requirements. Permits and licences shall be issued on the basis of objective and reasonable standards and criteria.

34. **Private Property**

Private property shall be guaranteed and protected. Limitations on the use and enjoyment of private property may be imposed so as to satisfy social, environmental and collective needs. The right to convey one's own property by contract or inheritance shall be protected subject to the reasonable exercise of the State's power of taxation.



35. **Expropriation**

The State or another entity authorised by law may expropriate property for public necessity subject to the prompt payment of a fair market value compensation.

36. **Property of the State and the Regions**

The State and the Regions may own property as private or public property. Public property shall not be alienated or encumbered and is related to the exercise of public functions or is held by the State or the Regions in the public interest. The law shall set forth the principles for the acquisition, administration and declassification of public property. The General Assembly shall publish a yearly report on the property owned by the State and the Regions indicating their current and planned use and their maintenance and carrying costs.

37. **Public Enterprise**

No enterprise shall be acquired or conducted by the State or the Regions either as a monopoly or as a free competition enterprise, and no service shall be provided to the public unless so authorised by a law demonstrating a public need and the inadequacy of the private sector to satisfy such need with comparable efficiency and reliability. When these requirements no longer exist the enterprise or the service shall be privatised.

38. **Property of the Federal Republic of South Africa**

All tangible and intangible properties of the Federal Republic of South Africa in the State of KwaZulu/Natal shall be subject to the same rules and limitations set forth in this constitution for the properties of the State.

39. **Communal Property**

Communal property is recognised and shall be protected. Communal property shall be administered and regulated by traditional and customary Rules.

40. **Practices in restraint of trade**

All monopolies and practices and agreements in restraint of trade and free market competition shall be prohibited.

41. **Agriculture**

The State of KwaZulu/Natal shall encourage agriculture, the socially just and responsible use and distribution of land and the access of citizens to land ownership. The State shall promote agricultural cooperation and assist farmers on a cooperative basis.

**Social Rights:**

42. **Right to Education**

- a. All citizens shall have the right to receive a basic education and professional training. The law shall determine the period and the minimum educational requirements for compulsory education. The State shall support the citizens' aspiration to higher education by means of scholarship and by promoting the highest standards of excellence in education.
- b. Both private and public schools shall ensure open and equal access to educational opportunities. Parents shall be entitled to participate in the administration and operation of their children's schools.



43. **Right to Work**

Everyone shall have the right to access any job opportunity for which he or she is qualified. As a matter of priority, the State shall promote the full employment of all citizens. No one's employment shall be terminated for political reasons or in violation of his or her constitutionally protected rights. Everyone shall have the right to receive a fair compensation for his or her work, shall be entitled to at least one vacation day a week, to a period of paid vacations during the year and to severance payment upon termination. All workers shall be entitled to social security, pensions, invalidity and unemployment benefits as determined by law.

44. **Protection of Women**

The law shall extend special protection to women. The law shall guarantee maternity leave and provide assistance to mothers in the work force. Until such time when the social status of women in the State has significantly improved, the law shall recognise special privileges for women in all programmes and measures aimed to ensure equal access to political, social and economic opportunities, shall establish and maintain a Ministry for Women's Affairs, and reserve a portion of the available public offices to women.

45. **Senior Citizens**

The law shall promote the economic sufficiency of senior citizens and provide social services to assist them in relation to their housing, care, health, cultural and leisure needs.

46. **Youth**

The law shall promote conditions for the free and effective participation by the youth in political, social, economic and cultural developments.

47. **Schools**

Everyone shall have the right to establish private schools. Private schools shall have the power to determine their own curricula and syllabi within the general parameters set forth by law for the purposes of recognition and equipollence of degrees.

48. **Universities**

All public universities and institutes of higher education in the State shall be entitled to regulate their organisation and operations within the general parameters set forth by law.

49. **Health Care**

All citizens shall have the right to receive medical attention and care in case of need. The law shall determine the implementation of this right. The law shall develop policies of prevention, treatment, rehabilitation and integration of those who are physically, sensorially and mentally handicapped, including those who are substance addicted.

50. **Job Conditions**

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

51. **Housing**

The law shall promote conditions to ensure that all citizens have the possibility of living in a dignifying habitation and shall facilitate the purchase of residences through credit facilitation and other programmes. All citizens have the right to receive shelter and shall have equal access to housing opportunities.



52. **Research, Arts and Teaching**

The freedom of scientific research, artistic expression in all its forms and teaching is recognised and shall be guaranteed.

53. **Right to a Pleasant and Clean Environment**

The State shall recognise the rights of present and future generations of citizens to live in and enjoy a pleasant and clean environment. The law shall determine the cases and the limits in which citizens may bring legal actions on behalf of the community against those who cause environmental damages.

54. **Labour Rights**

Everyone shall have the freedom to form and join trade unions and employers' associations. The State shall respect and protect the right to strike but may limit its exercise in cases determined by the law for reasons of public security and safety. Labour organisations shall have the right to negotiate and execute collective bargaining agreements to be effective with force of law vis-a-vis the category of workers covered by their provisions. During these negotiations the labour organisation shall be represented on the basis of the number of their members. Trade unions shall have the right to conduct reasonable activities in the work place aimed at improving labour conditions. The State may impose requirements on the trade unions only to ensure that they are organised and operated with full internal democracy.

**Political Rights:**

55. **Right to Vote**

- a. All citizens of eighteen years or older shall have the right to vote. The vote shall be personal, secret, free, and equal. The right to vote may be suspended by a judicial adjudication of incompetence, or by an irrevocable sentence for major crimes specified by the law.
- b. The law recognises, and the State shall facilitate, the exercise of the right to vote by citizens who are outside the State.

56. **Right to Petition and to Initiate Legislation**

Any citizen has the right to petition the General Assembly, the Regional Congresses and any branch or level of government. A citizen's legislative proposal signed by five hundred citizens may be submitted to the General Assembly.

57. **Freedom of Information**

Any citizen has the right to access and receive any information or document which is in the possession of the State or Regional governments or of any of the commissions or agencies established in this constitution, provided that such document or information is not privileged as established by law to protect privacy, commercial secrets or national and State security. During the process of judicial review of the government's decision to withhold information, the court shall have the power to examine *in camera* the information withheld.

58. **Political Parties**

The citizens of the State have the right to form political parties to participate in all levels of democratic life. No one shall be directly or indirectly compelled in any way to join a political party or shall be penalised for not belonging to one. Political parties shall ensure internal democracy in their organisation and operations.



RESOLUTION  
ADOPTED BY THE  
KWAZULU LEGISLATIVE ASSEMBLY  
1ST DECEMBER 1992

WHEREAS the KwaZulu Legislative Assembly is extremely concerned by the delays and uncertainties in the process of negotiating a constitution for South Africa which will ensure the long sought-after blessings of freedom, democracy, pluralism and social justice for all South Africans:

WHEREAS the KwaZulu Legislative Assembly strongly believes that only a Federal system with residual powers in the States and internal regionalisation can ensure long-lasting freedom and democracy in South Africa and a correct system of checks and balances:

WHEREAS history and common knowledge of political sciences teach that it is unlikely that central powers willingly promote the transformation of their structures into effective Federal structures:

WHEREAS the KwaZulu Legislative Assembly believes that it is its historical duty to respond to the growing demands for federalism arising from all sectors of the region of KwaZulu/Natal:

WHEREAS the Region of KwaZulu/Natal is held together by strong historical ties and commonality of interest and perspectives which justify and demand the self-determination of the Region in the form of a Federal State within the Federal Republic of South Africa:

WHEREAS the KwaZulu Legislative Assembly has witnessed the progressive and irresistible deterioration of the institutional and economic situation in South Africa, in a climate of ever-growing and seemingly unstoppable violence which threatens to evolve into a civil war:

WHEREAS the KwaZulu Legislative Assembly was established for the fundamental purpose of providing for the welfare of all the people of KwaZulu:

WHEREAS the KwaZulu Legislative Assembly believes that the welfare of the citizens demands that steps towards the construction of federalism are taken without any further delay:

WHEREAS the KwaZulu Legislative Assembly has received from the Chief Minister and the Government of KwaZulu a constitutional proposal to erect the region of Natal and KwaZulu into statehood within the framework of a Federal Republic of South Africa:

WHEREAS the KwaZulu Legislative Assembly has analyzed such proposal and found that in its general vision and fundamental parameters it meets the needs, wants and aspirations of the people of KwaZulu/Natal:



WHEREAS the call for Federalism in this region has been expressed forcefully by our Honourable Chief Minister at least since the early seventies, creating a stream of thought and action which inspired the establishment of the Buthelezi Commission leading to the KwaZulu/Natal Indaba and the formation of the Joint Executive Authority:

WHEREAS the Constitution of the State of KwaZulu/Natal builds and capitalises on the experience of the KwaZulu/Natal Indaba and on the work of the Buthelezi Commission:

WHEREAS the KwaZulu Legislative Assembly, mindful of its responsibilities towards its people and Almighty God, feels that the adoption of the Constitution of the State of KwaZulu/Natal can no longer be delayed:

WHEREAS the KwaZulu Legislative Assembly understands that the Constitution of the State of KwaZulu/Natal will be submitted to a State-wide debate and scrutiny which will include its submission for approval to the Joint Executive Authority, and to existing social and cultural formations, all of which the KwaZulu Legislative Assembly strongly encourages and supports:

WHEREAS the KwaZulu Legislative Assembly deems it to be part of the functions of the KwaZulu government to promote the analysis and scrutiny of the Constitution of KwaZulu/Natal throughout the State, and deems that the Inkatha Institute and the IFP Information Centre are amongst the centres which can adequately carry out this function on behalf of the government of KwaZulu:

WHEREAS the KwaZulu Government intends to adopt the Constitution of the State of KwaZulu/Natal with the understanding that with its final ratification the Constitution will become the supreme law of the land and shall stand as such regardless and in spite of whatever course the negotiations at central level will happen to take.

**NOW THEREFORE the KwaZulu Legislative Assembly HEREBY:**

**RESOLVES that THE CONSTITUTION OF THE STATE OF KWAZULU/NATAL IS HEREBY approved by the KwaZulu Legislative Assembly as a document which will guide and prompt the process and its adoption by the JEA and ratification and empowerment by the South African government, and it further**

**RESOLVES that the Constitution of the State of KwaZulu/Natal be provided with the broadest circulation possible and that seminars, debates and other forms of public scrutiny be promoted by all adequate forums including the Inkatha Institute and the IFP Information Centre, and it further**

**RESOLVES that the Constitution of the State of KwaZulu/Natal be forwarded for approval to the Joint Executive Authority which is hereby requested to fix a date on which a popular referendum will be held for final ratification of the Constitution, and to appoint a referendum committee to make such adjustments on the referendum date as they may deem necessary.**

19 MAY 1983



59. **Media of Mass Communication**

Anyone shall have the right to establish media of mass communication, including newspapers, cable, radio and television stations. The law shall regulate the rights of citizens and political parties to access media of mass communication under the control of the government or in situations of virtual hegemony or monopoly.

**OBLIGATIONS AND DUTIES**

60. **Allegiance to the Constitution**

All citizens of the State shall have the duty to uphold this constitution. All those who hold any of the offices provided for in this constitution shall take an oath or a solemn affirmation to uphold and defend this constitution, obey the law and exercise their public functions with discipline and honour.

61. **Contribution to Public Expenditures and Needs**

- a. All citizens have the duty to contribute to the common needs and to public expenditure by reasons of their resources. The tax system shall follow principles of progressive taxation, but shall not create a disincentive for the production of wealth.
- b. The State shall encourage voluntary charitable activities and other forms of expression of social solidarity.

62. **Military obligations**

All citizens have the sacred duty to defend the territory of the State and when so required the territory of the Federal Republic of South Africa from any external enemy and from any threat to the enjoyment of freedom, democracy and pluralism in the State.

63. **Duty to work**

All capable citizens have the duty to contribute with their work and skills to the common development and growth of the State and of the Federal Republic of South Africa

64. **Family duties**

All citizens have the duty to provide moral and financial support to their spouses, to educate their children and to assist their parents when in need of care.

**DIVISION OF GOVERNMENTAL POWERS**

65. **Regions and municipalities**

The State is divided into Regions and municipalities. Regions are established as autonomous entities and are provided with powers and jurisdiction in accordance with the principles set forth in this constitution.

66. **Powers of the State**

The State of KwaZulu/Natal shall have all those powers which are not reserved to the people, to the Regions or to the Federal Republic of South Africa respectively.



67. Powers of the Federal Republic of South Africa

- a. In accordance with the principles of this constitution, the State of KwaZulu/Natal recognises the powers of the Federal Republic of South Africa to exercise exclusive legislative, administrative and judicial functions and powers in the following matters:
- monetary system, foreign credits, exchange and convertibility
  - general principles of legislation to coordinate the regulation of banking, credit and insurance
  - general principles of legislation to coordinate the regulation of environmental protection of national interest
  - general principles of legislation to coordinate economic development and foster interstate commerce among the states
  - general principles of legislation to coordinate the technical regulation of equipment of communication
  - legislation to provide negotiation and procedural coordination of the State's policies with national policies and the policies of other states in the field of transportation, energy, interstate and foreign commerce, economic development, consumer protection, banking and social welfare in so far as they relate to the interests of the Federal Republic of South Africa. The General Assembly may enact legislation to empower the Government to enter into agreements with the Government of the Federal Republic of South Africa to ensure policy coordination in other fields.
  - nationality, immigration, emigration, alienage and the right of asylum
  - international relations
  - defence against foreign enemies
  - organisation and administration of the federal system of justice in the subject matters of federal prerogative
  - admiralty and maritime law and regulations
  - air transportation law and regulations
  - protection of intellectual property rights
  - external customs, tariffs and foreign trade
  - legislation on weights and measures
  - use of the area of exclusive economic influence
  - other matters as authorised by a constitutional law of the State of KwaZulu/Natal.
- b. The Federal Republic of South Africa shall have the power to summon the State militia to defend the territory, freedom and liberty of the Federal Republic of South Africa from an external enemy. No Federal armed forces or armed forces of other states shall have the power to enter or be stationed in the State of KwaZulu/Natal without the approval of the State.
- c. No power of the Federal Republic of South Africa shall be legitimately exercised and valid in the State of KwaZulu/Natal if inconsistent with the principles and provisions of this constitution.
- d. The power of the Federal Republic of South Africa to levy taxes and impose duties within the State of KwaZulu/Natal or in relation to activities or properties located in the State of KwaZulu/Natal shall be exercised only with the advice and consent of the State of KwaZulu/Natal to be rendered by the Joint Commission on Finance of the General Assembly chaired for this purpose by the Governor and integrated with six additional members with voting rights representing trade, industry and labour and nominated by the Speaker of the House and appointed by the Governor.
- e. Representatives of the Federal Republic of South Africa may participate without voting rights in the activities of the Joint Commission on Finance. The Joint Commission on Finance shall meet at least once every two years to advise the Federal Republic of South Africa on the type and extent of Federal taxation and revenue collection permitted in the State of KwaZulu/Natal. Any resolution adopted by the Joint Commission on Finance in this respect shall have effect only in the second calendar year following the year in which the resolution is adopted.



68. Powers of the Regions

- a. The Regions shall have the power to assume legislative and/or administrative jurisdiction in the following matters:
- organisation and operation of the offices of the Region, including administrative instrumentalities of the Region
  - custody and maintenance of the Region's buildings and other infrastructures
  - determination of municipal boundaries
  - police, fire and rescue, and coast patrol, not excluding the power of the State to coordinate police and investigations and to maintain emergency security forces
  - government of the territory, including housing and all phases of zoning
  - social assistance
  - health and hygiene
  - public education
  - protection of the natural and human environment, including implementation of the State's environmental mandates
  - public works of regional interest within the Region's territory
  - water projects, canal and irrigation systems of regional interest and thermal and mineral waters
  - railways and roadways of regional interest within the territory of the region
  - ports of refuge, recreational ports and airports of regional interest
  - regulation of agriculture and livestock
  - woodland and forestry
  - hunting and fishing in inland waters
  - regional economic development including small business assistance
  - markets and expositions
  - handicrafts
  - professional training and job search
  - museums, libraries and conservatories of regional interest
  - monuments of regional interest
  - promotion of culture and research, and protection and teaching of the languages of the Region
  - regulation and promotion of tourism and tourism industry
  - promotion of sport and recreation facilities
  - promotion of performing arts and related infrastructures
  - other matters authorised by a constitutional law of the State.
- b. State law may require the Regions to implement State legislation in other matters. State law may also define matters in which the State and the Region share joint or concurrent legislative and/or administrative jurisdiction in forms and matters prescribed in the law.
- c. The State has legislative and administrative power in any matter in which the Region has not exercised its jurisdiction.
- d. The legislative powers of the Regions must be exercised within the fundamental principles of State legislation in the subject matter and shall not be in contrast with the national interest or with the interest of other Regions.
- e. The Regions' exercise of administrative functions shall be normally delegated to the municipalities. When possible regional legislation should allow for implementation by local ordinances so as to adjust to local interest and characteristics, especially in matters related to the government of the territory.
- f. State law may directly empower municipalities with administrative functions of local interest, and may delegate to the Regions additional administrative functions.
- g. The Regions have financial independence and autonomy in the manners and within the limits established by State law. State law shall coordinate regional finance with the finance of the State and of the municipalities. State



law shall define the power of the Regions to levy taxes and impose duties and shall attribute to the Regions a portion of the State's revenues.

- h. Regions shall not levy import or export or transit duties, nor shall they take any action which may hinder in any way the free circulation of people and goods among the Regions or limit the citizens' rights to exercise in any portion of the State's territory their profession, employment or job.
- j. State law shall determine the type of public and private property owned by the Regions.

## THE LEGISLATURE

### 69. The General Assembly

- a. The General Assembly represents the people of the State of KwaZulu/Natal and shall consist of two houses, a House of Delegates and a Senate. The members of both houses are elected for a five year term.
- b. Any citizen of the State twenty one years or older may be elected to the House of Delegates, any citizen thirty five years or older may be elected to the Senate. No one shall be a member of the two houses simultaneously, nor shall hold any other public office at the time of his or her qualification to office. The electoral law may determine additional cases of incompatibility and lack of qualification. The members of the General Assembly shall disclose any employment or profession of whatever nature conducted during the time of their legislative office. At any time they shall disclose potential conflicts of interest in relation to any activity of the house they belong to. A conflict of interest shall not disqualify a member of the General Assembly.
- c. The House of Delegates shall consist of 350 members each of whom shall be elected in one of the 350 constituencies into which the State shall be divided for the purposes of this election. Each Regional Congress shall adopt a resolution appointing two of its members to the Senate. Four additional members of the Senate shall be elected in each of the Regions by proportional vote in a region-wide constituency.
- d. The office of the members of the General Assembly terminates upon qualification of their successors.
- e. The members of the General Assembly shall represent the interest of the people in its totality and complexity and shall not be deemed to be bound by any specific mandate.
- f. The General Assembly shall meet annually in one ordinary session from September to December. Each house shall be summoned in session at any time by its President, any of its Vice Presidents, by the Governor or by one tenth of its members. The General Assembly shall meet twenty days after the election of its members and shall proceed to verify the eligibility and qualification of its members.
- g. All meetings of any house of the General Assembly and any committee thereof are public and may be broadcast. In special cases any house of the General Assembly or committee thereof may hold meetings behind closed doors. The reasons justifying the secrecy shall be confidentially disclosed to the Constitutional Court which may order that the meeting be public.

### 70. Powers of the General Assembly

- a. The General Assembly shall exercise the legislative power of the State, approve its budgets, control the action of the Government and exercise the other powers granted by this constitution.
- b. Each house shall establish its own Rules, autonomously approve its own budget, and regulate the personnel. The Rules and any amendment thereof shall be approved by absolute majority. The Rules shall recognise and respect the role of the opposition and protect political minorities. The Rules may limit but not prohibit reasonable filibustering.



- c. Each house shall elect a President and two Vice Presidents for a two year term and shall assign its members to committees. Joint sessions of the General Assembly shall be presided over by the President of the House of Delegates and shall be governed by its Rules. The Presidents shall exercise the administrative powers and police authority within their respective houses. All political parties shall be represented in the committees of each house.
- d. Each house shall be validly in session when at least half of its members are present. Unless otherwise provided for in this constitution, all deliberations of any of the houses of the General Assembly must be adopted by the majority of the members who are present.
- e. The General Assembly shall adopt legislation to implement this constitution and to meet the needs, wants and aspirations of the people of the State.
- f. The General Assembly shall approve the budget and the year end financial statements of the State. The General Assembly shall have the power to authorise the government to operate for no more than three months with a provisory budget pending the approval of the budget. The law approving the budget shall not introduce additional taxes or expenses. Any law involving new or additional expenses shall indicate the source of revenue to cover them.
- g. The General Assembly shall have the power to adopt *ad hoc* legislation to enable the Governor to a single exercise of the power to pardon or give amnesty for specified types of offences committed prior to the introduction of the legislative proposal.
- h. Each house in accordance with its Rules shall have the power to oversee and control the public administration of the State. The committees of each house shall have the power to hold hearings in relation to which they may compel the appearance of witnesses and the production of documents, and shall have the power to request any Minister or public official to appear, provide information, conduct research and produce reports.

71. **Legislative Iter**

- a. The legislative function shall be jointly exercised by both houses of the General Assembly. Any member of each of the two houses shall have the power to introduce legislation. The Government shall have the power to introduce legislation in either or both houses. Each legislative proposal shall be accompanied by a brief report. Legislative proposals shall be assigned by the Rules Committee to one of the committees of the house in which the proposal has been introduced. The committee shall read any proposal, submit it to article by article vote and to a vote on the entire proposal, and send it to the full house for approval. The full house shall read the proposal, submit it to article by article vote and to a vote on the entire proposal. The legislative proposal approved in identical text by both houses shall be transmitted to the Governor for signature and promulgation.
- b. The Governor shall have the power to veto the legislative proposal in its entirety or on a line-item basis, in which case the legislative proposal shall be remanded to the General Assembly along with a message of the Governor. If the General Assembly by absolute majority of its members votes to override the veto, the Governor shall sign and promulgate the law.
- c. The law shall be promulgated within ten days from the Governor's signature and becomes effective ten days from its promulgation unless a shorter term is provided for by the law itself. All laws shall be published in an Official Gazette on the day of their promulgation.
- d. All political parties shall be represented in the committees of each house.
- e. Each house shall have the power to adopt rules of organisation and operation.



72. Privileges and immunities

No member of the General Assembly shall sustain criminal or civil liability for the opinions expressed in connection with his or her office in or outside the General Assembly. During the time of his or her mandate no member of the General Assembly shall be searched, detained or tried for any offence without the authorisation of the house to which he or she belongs, or of a predetermined committee thereof. This shall not apply to arrest in *flagrante delicto*. The law shall determine the salary of the members of the General Assembly.

THE EXECUTIVE

73. The Governor

- a. The Governor shall be elected by the majority of the votes cast in a state-wide constituency election. The Governor shall be forty years or older and shall be elected for a three-year term renewable only once. The Governor shall not hold any other public office or exercise any other trade or profession.
- b. The Governor is the Head of the State, the Chief Minister of the State's government and represents the State. The Governor may exercise independently from the Government the powers vested in him or her under this constitution. Should the Governor be incapacitated the functions ascribed by this constitution to the Governor are exercised by the President of the Senate while the Minister of Home Affairs shall act as Chief Minister of the Government. Should the Governor become permanently incapacitated the President of the House of Delegates shall call an election.
- c. The Governor may be removed from office before the end of his or her term by a resolution adopted by the absolute majority of the General Assembly in a joint session summoned by the President of the House of Delegates. The Governor may be removed from office only on the grounds of mental incapacity or for treason. The Constitutional Court shall direct the investigation.

74. The Government

- a. The Government shall conduct all administrative functions authorised and all missions mandated by the law.
- b. The Government consists of the Governor and the Ministers. The Ministers are chosen and nominated by the Governor. Within ten days from its formation the Government shall be collectively confirmed by a vote of confidence of both houses of the General Assembly. At any time and with three days' prior notice to its members, any house of the General Assembly may adopt with a simple majority a resolution of no-confidence, in which case the Government shall resign and a new Government shall be chosen and appointed by the Governor. At any time and with ten days' prior notice to its members, any of the houses of the General Assembly may adopt with a two-thirds majority of its members a no-confidence resolution causing the resignation of the Governor and fixing a date within forty days from the adoption of the resolution for the election of a new Governor. Any confidence or no-confidence resolution must be introduced by at least twenty percent of the members of the house, must be accompanied by a report and shall be voted with personal calls. The vote of one or both houses against a legislative initiative or a proposal submitted by the Government shall not be construed as a no-confidence vote.
- c. The members of the Government are collectively responsible for the actions of the Government. Each Minister shall be individually responsible for the actions of his or her ministry.
- d. The Senate, by absolute majority of its members, may authorise that criminal charges be pressed against the Governor or a Minister for crimes committed in connection with the exercise of their functions. The Senate by simple majority may authorise that criminal charges be pressed against the Governor or a Minister for crimes not connected with the exercise of their functions. This latter authorisation shall not be required to proceed on such charges after the Governor or the Minister has relinquished his or her office. The Constitutional Court



shall decide on the charges against the Governor or a Minister authorised by the Senate and shall determine sanctions as it deems it appropriate.

- e. The office of Governor or Minister shall be incompatible with any other public office or profession or employment.
- f. The Government shall be organised by law in accordance with this constitution. Public officials shall be held personally accountable for the actions of the offices under their direction. Each ministry or agency shall be held liable for damages caused by gross negligence or malice of government officials.
- g. The law may establish independent regulatory agencies. The people in charge of the agency shall be in a fiduciary relationship with one or more members of the Government at whose will they may be removed, but do not need to resign when the government resigns or its term expires. The Government and the responsible Ministers shall be accountable to the General Assembly for the actions and operations of the independent regulatory agencies. The law may extend to the people in charge of the agencies the same immunities set forth in this constitution for the members of the Government.
- h. All actions of the Government and of the public administration are subject to judicial review for violation of the law and improper use of discretionary powers. This shall not apply to high actions of government.

## THE JUDICIARY

### 75. Independence of the Judiciary

Justice shall be administered in the name of the people of the State of KwaZulu/Natal. Judges shall be subject only to the law. They may not be removed from office without the authorisation of the Judicial Service Commission.

### 76. Judicial Service Commission

- a. The Judicial Service Commission is the organ of self governance of the judiciary. The Governor shall be the President of the Commission. The Commission consists of an additional twenty members to be selected among judges, lawyers and advocates with at least ten years of professional experience and university law professors. Seven shall be elected by judges and prosecutors, six appointed by the General Assembly, three by the bar association, two by the Attorney General and two by the Civil Service Commission, and they shall serve for one non-renewable five-year term during which time they shall not exercise any other professional activity or hold other public office.
- b. The Commission shall implement and administer the fundamental principles on the organisation of the judicial services set forth in a general law to be adopted by the General Assembly. The Commission shall set forth and administer the rules on the selection by public competition and on the qualification of judges, the rules on transfers, promotions and assignments of judges, age limits, and the code of judicial conduct and responsibility to be enforced by the Commission. The Commission may receive and shall consider complaints and requests for disciplinary actions against judges and prosecutors received from the Government and the general public.
- c. The Judicial Service Commission shall approve all appointments of exceptionally distinguished university law professors, lawyers and advocates to any level of the judgeship made by the General Assembly. The Commission shall also determine qualifications, rules and procedures for the election of judges of peace and honorary judges.
- d. The Judicial Service Commission shall approve the rules adopted by any court to regulate the proceedings before it and the related administrative functions.



- e. The Judicial Service Commission shall submit to the General Assembly a yearly budget, including proposed salary levels for all people working in the judicial services. As a part of its budget the Commission shall collect and administer for the benefit of the judicial service all taxes and duties levied in relation to the administration of justice as they are authorised by law. Any funds which have not been spent by the end of the fiscal year shall be carried over to the following year. The Commission may initiate legislation in matters related to the judiciary and judicial services.

77. **The Supreme Court**

The Supreme Court of the State of KwaZulu/Natal shall guarantee the uniform interpretation of the law and shall be the court of final appeal.

78. **Specialised Courts**

- a. During peace time military courts shall have jurisdiction only over military personnel on active duty.
- b. Tribal, customary, and religious courts shall have concurrent jurisdiction over cases and controversies which, when proposed, are based on the application of traditional and customary law and religious rules respectively. The law shall identify and recognise such courts, and determine to which limited extent they may decide on incidental issues and matters not based on traditional and customary law or on religious rules.
- c. There shall be no special or extraordinary tribunal or courts. Within the ordinary court system the Judicial Commission may create specialised sections for given subject matters, and may require the participation of qualified experts to the administration of justice in forms and manners determined by the law. Specialised sections may include family, labour, traffic, administrative, criminal, public auditing, corporate and international law matters.

79. **Prosecutors**

The office of the Director of Public Prosecution shall be a distinct and separate part of the judiciary equally governed by the Judicial Service Commission. The carrier and the roles of judgeship and prosecution are separate and only in exceptional circumstance shall the Judicial Service Commission authorise a prosecutor to take the office of judge or vice versa. Prosecutors are entitled to the same guarantees, immunities and financial treatment as judges. The prosecution of criminal offences shall be mandatory. The Director of Public Prosecution shall submit a yearly report to the Judicial Service Commission on the cases which his office has not prosecuted because of special agreements with the suspected party or for other public interest reasons. The report may omit the names of the concerned parties.

## ECONOMIC PROVISIONS

80. **Balanced Budget**

- a. At the beginning of the fiscal year the Government shall submit to the General Assembly a balanced budget for approval. The General Assembly shall amend and modify any item or portion of the draft budget. The approved budget shall indicate sources of revenue to cover all State expenditure.
- b. By a vote of two-thirds of its members the General Assembly may authorise the Government to finance the budget by resorting to public debt. When seeking such authorisation the Government shall provide a report indicating the foreseeable sources of repayment of the public debt and the underlying economic assumptions. Any increment of the public debt shall be so authorised.
- c. The budget shall be divided in titles, sections and chapters. Any allocated funds which by the end of the fiscal year have not been spent shall be automatically carried over to the next year within the same budget chapter



if it exists, or shall be transferred to the most closely related budget chapter if the same budget chapter no longer exists.

81. **Banking**

The State shall regulate banking in harmony with the monetary policies set forth by the Federal Republic of South Africa. An autonomous Central Bank of the State of KwaZulu/Natal shall be established. The President of the Central Bank shall be appointed by the Governor with the advice and consent of the General Assembly and serves at the pleasure of the Governor. The President of the Central Bank shall submit a yearly report to the General Assembly on the monetary status of the State and on the status of the banking system. The Central Bank shall have regulatory powers on banking and credit, and shall be independent within the parameters of the law to use tools of monetary intervention in the public interest. The Central Bank shall have the power to determine its organisation and operations.

82. **Privatisation Commission**

- a. A Privatisation Commission shall be established to transfer to the private sector the enterprises which are under the control of any government in conflict with the provisions of this constitution. The Commission shall consist of nine highly qualified and independent experts in economics, finance and business administration, three appointed by the Governor, four by the General Assembly and two by the Chamber of Commerce.
- b. The Privatisation Commission shall develop a privatisation plan to be submitted to the General Assembly for approval. The Commission shall adjust the implementation of the privatisation plan so as to best cope with changing economic circumstances, seeking the approval of the General Assembly when necessary. The privatisation effort shall be balanced, shall maximise economic efficiency and shall support economic growth. The phases and the time frame of this effort shall be set in the privatisation plan. The Government shall implement the privatisation plan.
- c. The Privatisation Commission shall monitor the implementation of the privatisation plan so as to ensure that the privatisation effort is completed in the absence of corruption, inefficiency, personal gains and governmental waste. Every six months the Commission will issue a report to the General Assembly.
- d. The Privatisation Commission shall operate for seven years unless it resolves to dissolve itself prior to such date or is extended in office by resolution of the General Assembly.

## REGIONS AND MUNICIPALITIES

83. **The organs of the Region**

- a. Each Region shall have a Congress and a Regional government. The Regional Congress shall exercise the legislative functions mandated to the Region and the other functions set forth in this constitution. It may also submit legislative proposals to the General Assembly.
- b. The Regional government shall execute the regional legislation and carry out the administrative activities of the Region. The Chairperson of the Regional government represents the Region, promulgates the regional legislation, and directs and oversees the administrative functions delegated by the State to the Region in compliance with the instructions received from the State's Government.
- c. The Regional Congress shall consist of 76 members elected from no fewer than 38 constituencies in which the Region shall be divided for the purposes of this election. No one shall sit in two Regional Congresses. The law shall determine the qualification for, and additional incompatibilities of the office of member of the Regional Congress. The members of the Regional government shall be elected from within the Regional Congress. The Regional Congress shall have the power to adopt its own Rules and elect a President.



- d. Each Regional Congress by absolute majority of its members shall adopt a constitution for the Region which shall be consistent with the principles and the provisions of this constitution. The constitution of the Region shall be approved by law. The constitution of the Region shall provide for the exercise of the power of referendum on regional legislation and regulations.

**84. Coordination between State and Regions**

- a. A Representative of the State Government residing in the Region shall control the State's administrative functions in the Region and coordinate them with the Regional administrative functions.
- b. The Representative of the State Government shall have the power to challenge in court the validity of the administrative actions of the Region. The Representative of the State Government shall also have the power to request the Regional Congress or the Regional government to reexamine any administrative action.
- c. All the legislation adopted by the Regional Congress shall be communicated to the Representative of the State Government who shall acknowledge it within twenty days. The legislation shall be promulgated within ten days from such acknowledgement and becomes effective ten days from its promulgation. Within the period allowed for the acknowledgement, when the State Government believes that the regional legislation exceeds the jurisdiction of the Region or is in conflict with State or national interests or with the interests of other Regions, the State Government shall request that the Regional Congress reexamines the legislation. If the Regional Congress approves the legislation by an absolute majority of its members, within fifteen days from the communication of such approval the State Government may challenge the validity of the legislation before the Constitutional Court on constitutional grounds and before the General Assembly in joint session for conflict of interest.

**85. Dissolution of the Regional Congress or Government**

The State government shall have the power to cause the dissolution of a Regional Congress when a Regional Congress has seriously violated this constitution or has engaged in a pattern of violations of law, has refused to dissolve a Regional government which engaged in such conduct, or is otherwise incapable of functioning or expressing a majority. The dissolution shall be ordered by a resolution of the Governor adopted with the advice and consent of the General Assembly. Within three days of the dissolution the Electoral Commission shall call regional elections within two months. The dissolution decree may appoint caretakers to conduct ordinary administration during the election period.

**86. Modification of the Region's boundaries**

Provided that all the Regional Congresses of all the Regions involved have consented, Regional boundaries may be modified, two or more Regions may be merged or one Region may be divided into two or more Regions by a law of the General Assembly adopted by absolute majority of its members and approved by referendum held among the populations affected by the modification of boundaries.

**87. Municipalities**

- a. Municipalities shall be recognised and established by law. Under the parameters set forth by law to ensure uniformity of types each municipality shall have the right to choose its rules of organisation and operation. Municipalities may vary in size and population basis. The administrative and regulatory activities of the municipalities shall ensure and promote the democratic participation of citizens.
- b. Irrespective of the form of organisation, all municipalities within a Region shall exercise a similar type of jurisdiction, including the municipality's own jurisdiction as set forth in law and the jurisdiction over administrative and regulatory matters delegated by the Region.



88. **Modification of the Municipality's boundaries**

Provided that all municipalities involved have consented, municipal boundaries may be modified, two or more municipalities may be merged or one municipality may be divided into two or more municipalities by a law of the Regional Congress adopted by absolute majority of its members and approved by referendum held among the populations affected by the modification of boundaries.

**OTHER POWERS OF THE STATE**

89. **The Independent Auditor General**

There shall be an independent Auditor General. The Auditor General shall audit the financial activities of the State, the Region, the Commissions, the independent regulatory agencies, and any enterprise, entity or instrumentality owned or controlled by the State or the Regions. All administrative actions involving financial expenditure shall be subject to the preventive financial control of the Auditor General or his designees. The law shall ensure the independence of the Auditor General.

90. **The Civil Service Commission**

- a. The Civil Service Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Judiciary Commission, two by the Chamber of Commerce and four by the representatives of consumer groups registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified and independent experts on public administration, business management or regulatory processes. The members shall not hold any other public office and prior to their appointment shall disclose any possible conflict of interest. After the appointment they may not undertake activities which may cause additional conflicts. The members of the Commission will hold office for three years and may be reappointed. Their salaries are set forth by the law and shall not be inferior to the salary of a Director General of the State administration. The Commission proposes to the General Assembly its own budget.
- b. The Civil Service Commission shall propose to the General Assembly or to the Regional Congresses the legislation organising and maintaining all public offices of the State and the Regions, including independent regulatory agencies, determining missions, competence, jurisdictions and responsibilities of each office. Both the State and the Regional Governments may submit proposed legislation to the Commission. Concerned interests may also submit proposals to the Commission.
- c. The Commission shall oversee the operations of the public administration of the State and of the Regions to ensure impartiality and efficiency, to prevent governmental waste, corruption, nepotism, inefficiency and disfunctions, and to guarantee equal access by all citizens to the services and job opportunities offered by public offices. The Commission shall investigate and report on complaints concerning the operation of any administrative office in the State, including police, defence force and the prison service.
- d. The Civil Service Commission shall identify requirements and qualifications for holding any given public office and supervise open competition to fill the posts. The Commission shall also develop and submit to the approval of the State and Regional governments any affirmative action programme to be implemented within governmental structures.
- e. The Civil Service Commission shall also develop, monitor and assist the adoption and implementation by State and Regional offices and agencies of procedures accompanying the major administrative actions and all rule-making processes to solicit and ensure the participation and the input of the affected interests and of the public.
- f. The Civil Service Commission shall prepare a yearly report on the status of the public administration expressing any applicable recommendation, and may provide testimony to the General Assembly and Regional Congresses as required.



91. Electoral Commission

- a. The Electoral Commission shall consist of nine members, three appointed by the Governor, three by the General Assembly, and three by the Judiciary Commission. The members of the Commission shall be qualified and independent professionals. The members may not hold any other public office and prior to their appointment shall disclose any possible conflict. After the appointment they may not undertake activities which may cause additional conflicts of interest. The members of the Commission will hold office for three years and may be reappointed. Their salaries are set forth by the law and shall not be inferior to the salary of a Director General of the State administration. The Commission proposes to the General Assembly its own budget.
- b. The Electoral Commission shall organise and supervise the elections provided for in this constitution and in the constitution of the Regions. The Electoral Commission shall ensure the fairness of the political debate and the effective opportunity for all citizens to participate in the democratic process. The Commission shall adopt rules to ensure fair campaigning and to prevent violence and intimidation, and shall have the power to summon and direct the State police and militia to ensure peace and order during the political campaign period, and during and immediately after the elections.
- c. The Commission shall issue rules requiring all political parties and candidates to disclose sources and amounts of financing, rules setting limits to the financing received from any given source, and rules governing the conduct of political parties and candidates during the campaign period. All constitutions of political parties shall be deposited with the Commission.
- d. The Commission may initiate legislation at State and regional level on electoral matters and shall administer and distribute any public financing to political parties and candidates provided for in State and regional legislation.
- e. The Electoral Commission may organise political debates and decide time allocation in State or Region controlled media of mass communication. When necessary to ensure the fairness, impartiality and balance of the electoral process, the Commission may require private media of mass communication to publish statements or to provide coverage of given information.
- f. The Electoral Commission shall determine and update the boundaries of the electoral constituencies of the House of Delegates and the Regional Congresses. In doing so the Commission shall aim to ensure internal balance in each constituency and representation of the variety of social and cultural interests present in the State. Each constituency shall aim to have the same number of electors.
- g. The Electoral Commission administers the elections and announces the results.
- h. The rules adopted by the Electoral Commission and its actions may be challenged before the Constitutional Court with an emergency procedure for violation of the principles of this constitution, or because arbitrary or capricious or inappropriate.

92. Regulatory Relief Commission

- a. The Regulatory Relief Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Judiciary Commission, two by the Chamber of Commerce and two by representatives of consumer groups and two by representatives of industry registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts on public administration, business management or regulatory processes.
- b. The Regulatory Relief Commission shall be empowered to request the repealing or amendment of burdensome, unnecessary or inadequate regulations and permit requirements adopted by the General Assembly, the Government, the Regional Congresses, the Regional governments, any independent regulatory agency and municipal governments. Any entity receiving such a request of the Commission shall reply within twenty days. If the Commission does not deem the reply to be satisfactory, it may introduce legislation in the appropriate legislature.



- c. The Regulatory Relief Commission may prepare reports of the regulatory matters expressing any applicable recommendations, and may provide testimony in the General Assembly and Regional Congresses as required.

93. **Economic Development Commission**

- a. The Economic Development Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Civil Service Commission, two by the Chamber of Commerce, two by representatives of consumer groups and two by representatives of the trade unions registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts in economics, finance, business management and futurism.
- b. The Economic Development Commission shall prepare a State wide plan of economic development of the State and assistance to businesses to be implemented through legislation and administrative activities of the State and the Regions. The Commission shall monitor the implementation of the plan as approved by the State and the Region and recommend modifications and adjustments as necessary.
- c. The Economic Development Commission shall prepare and submit to the General Assembly a yearly report on the status of the economy, and on foreseeable economic and technological trends at State, national and international level.
- d. The Regulatory Relief Commission may prepare or commission additional reports on economic and financial matters and may provide testimony in the General Assembly and Regional Congresses as required.

94. **Environmental Commission**

- a. The Environmental Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by the Judiciary Commission, two by the Chamber of Commerce and four by representatives of environmental groups registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts on environmental sciences or social sciences.
- b. The Commission shall investigate matters related to the protection of the natural and human environment, may introduce legislation at State and regional level to protect and enhance the quality of the natural and human environment, and may make recommendations to the State and Regional Departments of the Environment.
- c. The Commission shall investigate and report on complaints concerning the improper utilisation of non-renewable natural resources, the degradation and destruction of ecosystems and the failure to protect the beauty and character of the State.
- e. The Environmental Commission shall prepare a yearly report on the status of the environment in the State expressing any applicable recommendations, and may provide testimony in the General Assembly and Regional Congresses as required.

95. **Consumer Affairs Commission**

- a. The Consumer Affairs Commission shall consist of thirteen members, two appointed by the Governor, three by the General Assembly, two by Judiciary Commission, two by the Chamber of Commerce and four by representatives of consumer groups registered with the General Assembly and convened for this purpose by a committee of the General Assembly. The members of the Commission shall be qualified experts on consumer protection, environmental problems or social sciences.
- b. The Consumer Affairs Commission shall investigate matters related to the protection of consumers, and may introduce legislation at State and regional level to protect consumers. Of its own power the Commission may request that general terms and conditions of adhesion contracts be negotiated with and approved by the Commission as a condition of their validity and enforceability.



- c. The Commission shall have the power to determine the requirements for product labelling including product information and warnings.
- d. The Commission may be delegated by the State or regional legislature to set prices and rates for services and products rendered in conditions of natural monopoly.
- e. Any immediately adversely affected interest may seek judicial review of any decision of the Commission.
- f. The Consumer Affairs Commission shall prepare a yearly report on the status of consumer protection expressing any applicable recommendations, and may provide testimony in the General Assembly and Regional Congresses as required.

96. **Other Powers**

Individuals and social, cultural, religious and political formations when exercising their powers or their autonomy within the freedom and liberties recognised and guaranteed by this constitution, shall have equal standing as the powers of the State and the Regions.

**REFERENDUM**

97. **Referendum**

One hundred thousand citizens with voting rights, or three Regional Congresses shall have the power to call a referendum to repeal a law or a portion thereof. The referendum shall be validly held if at least fifty percent of those entitled to vote participate. The proposal shall be approved by the majority of the votes validly cast.

**STATE MILITIA**

98. **State Militia**

- a. The State militia shall be organised by law. The law may require compulsory service in the State militia. The law shall ensure internal democracy in the militia indicating how the exercise of constitutional rights may be limited so as to be compatible with military duties.
- b. The supreme command of the State militia shall vest in the Supreme Military Committee. The Supreme Committee shall be chaired by the Governor and consists of three civil members and three members of the militia appointed by the General Assembly in accordance with the law.
- c. The militia **may be** divided in subdivisions under different commands.
- d. Citizens of **the State** may participate in the armed forces of the Federal Republic of South Africa only on a voluntary basis. In case of war or of authorised mobilisation the State of KwaZulu/Natal shall conduct military proscription through the militia to supply armed forces to the Federal Republic of South Africa.
- e. The State shall not suppress the citizens' right to bear arms, but may limit it in special cases and circumstances.

**EMERGENCY POWERS**

99. **Emergency Powers**



- a. The Governor may declare an emergency in the State in determined areas of the State. The Declaration of Emergency shall provide a general indication of the type of emergency and shall indicate in general terms which powers and resources of the State, of the Regions, of the municipalities or of the citizenry the Governor intends to employ to respond to the emergency, how such powers and resources are expected to be employed and for how long, and other measures and actions the Governor intends to undertake. Within twenty four hours the Governor shall summon the General Assembly to a joint session to ratify the Declaration of Emergency. The General Assembly may modify the Declaration of Emergency. If the emergency is such that the General Assembly may not be summoned into session, the Declaration of Emergency shall be submitted to the Constitutional Court for approval. Should this not be possible the Declaration of Emergency shall be submitted for approval to the President of the Constitutional Court or the President of the Senate or the President of the House of Delegates in this order.
- b. The Governor shall modify the Declaration of Emergency to provide additional information, to detail the information previously provided and to report on the actions undertaken to respond to the emergency.
- c. The General Assembly or the Constitutional Court may terminate or modify the terms of the Declaration of Emergency at any time. The Governor may require that the General Assembly or the Constitutional Court meets behind closed doors to discuss any matter related to the emergency, and that the contents of the Declaration of Emergency be kept secret.
- d. Any action taken during a situation of emergency shall respect to the fullest extent possible under the circumstances the rights and liberties of the citizens of the State recognised and guaranteed in this constitution.

## CONSTITUTIONAL GUARANTEES

### 100. Jurisdiction of the Constitutional Court

The Constitutional Court shall have original and exclusive jurisdiction in the following matters:

- review the constitutionality of the legislation of the State
- review the constitutionality of the legislation of the Regions
- resolution of conflicts between the legislation of the Regions and State legislation
- resolution of conflicts between Regions
- review the constitutionality of the federal legislation
- resolution of disputes on the legitimacy of the exercise within the territory of the State of federal powers in matters reserved to the exclusive jurisdiction of the Federal Republic of South Africa.
- resolution of conflicts between powers of the State
- criminal charges against the Governor and the Ministers
- validity and legality of collective bargaining agreements
- verification of the democracy of the statutes of political parties
- other matters as set forth in this constitution or in constitutional laws.

### 101. Composition and operation of the Constitutional Court

- a. The Constitutional Court shall consist of fifteen members, three of whom shall be appointed by the Governor, six by the General Assembly with resolution supported by two-thirds of the members of each house of the General Assembly, three by the Judicial Service Commission and three by the bar association.
- b. The Justices of the Constitutional Court are chosen among lawyers and advocates with more than twenty years' professional experience, university law professors and higher court judges. The Justices may be foreign citizens.
- c. The Justices are appointed for ten years running from the day on which they assume office. The Justices shall not hold any other public office or exercise any other profession in the State or anywhere in the Federal



Republic of South Africa, and may not be renewed for another term. Upon retirement the Justices shall not hold any public office in the State.

- d. The Constitutional Court may operate by committees of four or more Justices. The members of the Constitutional Court shall elect a Chief Justice for a three year term. The Constitutional Court may adopt its own rules of organisation and operation consistent with this constitution and any applicable constitutional law. The law may not regulate any matter related to the Constitutional Court. The Court may adopt rules to integrate its composition with additional members for the exercise of its jurisdiction on charges against the Governor and the Ministers. Such rules will determine the qualification, if any, of the additional members and their powers.
- e. While members of the Constitutional Court, Justices are immune from any criminal prosecution. Justices may be impeached for any reason by a resolution adopted by three fourths of the members of both houses of the General Assembly. Their salaries are set forth by the law and shall not be inferior to the salary of a Minister. The Constitutional Court drafts and proposes to the General Assembly its own budget.

#### 102. Access to the Constitutional Court

- a. Any issue of constitutionality of State or Regional laws, or legitimacy of actions or legislation of the Federal Republic of South Africa within the State, or democracy of the statutes of political parties or validity and legitimacy of a collective bargaining agreement raised by any of the parties to a case or controversy before any court which is not manifestly without foundation, shall be remanded to the Constitutional Court for resolution.
- b. Political parties represented in the General Assembly, the Ombudsman as well as trade unions, civic and consumer groups, major media of mass communication and other social, religious and cultural formations registered with the Constitutional Court in accordance with its rules, may commence an action to declare the unconstitutionality of laws adopted by the State or the Regions or the illegitimacy within the State of actions or legislation of the Federal Republic of South Africa. One hundred members of a political party may commence an action to review the democracy of their political party statute.
- c. The Regions, the Federal Republic of South Africa, the Ombudsman and any power of the State may commence an action to resolve a conflict among government organisations.
- d. Decisions of the Constitutional Court shall declare null and void any act of the State or of the Regions, or a political party's statute or a collective bargaining agreement which is in violation of the constitution, and shall declare to be ineffective in the territory of the State any action or law of the Federal Republic of South Africa which is in conflict with this constitution. The decision of the Constitutional Court may also mandate the rule of resolution of a conflict among the government's organisations and powers.
- e. All decisions of the Constitutional Court shall have *erga omnes* retroactive effects and may provide rules to recognise rights meriting protection and which vested in good faith under norms declared null, void or ineffective.

#### 103. The Ombudsman

- a. The Ombudsman shall be independent and subject only to this Constitution and to the law. No public official shall interfere with the exercise of the Ombudsman's functions or shall refuse full assistance as it may be needed. The Ombudsman's salary are set forth by the law and shall not be inferior to the salary of a Minister. The office of the Ombudsman drafts and proposes to the General Assembly its own budget.
- b. The Ombudsman shall either be a judge, a lawyer or an advocate. The Ombudsman shall be appointed by General Assembly on the recommendation of the Judicial Service Commission. The Ombudsman shall hold office for a non-renewable six year term. The functions of the Ombudsman include the investigation of the complaints concerning violations of rights and freedoms, abuse or use for political purposes of power,



corruption and misappropriation of public monies, unfair, harsh, insensitive or discourteous treatment of anyone in the State by a public official, including police, defence forces and prison personnel, manifest injustice, or conduct of a public official which would properly be regarded as unlawful, oppressive or unfair.

- c. The Ombudsman shall have the power to take appropriate action to call for the remedying, correction and reversal of injustices and violations of laws and regulations through the most fair, proper and effective means, including:
- negotiation and compromise between the parties concerned,
  - causing the complaint along with the Ombudsman's findings to be reported to the superior of the offending party,
  - referring the matter to the Director of Public Prosecution, with a recommendation,
  - bringing proceedings in a competent Court for suitable remedies to secure the termination of the offending action or conduct, the compensation of the victims and/or the modification of the offending procedures,
  - bringing proceeding before the Constitutional Court to challenge the constitutionality of legislation, or before a court to challenge the validity of regulations,
  - reviewing laws in force before the enactment of this constitution to ascertain their consistency with the principles and provisions of this constitution so as to make recommendations to the Governor and the General Assembly.
- d. The Ombudsman shall have the power to compel the appearance of witnesses and the production of documents and records relevant to his or her investigation. The Ombudsman shall also have the power to cause anyone contemptuous of his or her subpoenas to be prosecuted before a competent Court.
- f. The Ombudsman shall submit an annual report to the General Assembly on the exercise of his or her powers and functions.
- g. The Ombudsman may be removed from office before the end of his or her term by the Governor acting on the recommendation of the Judicial Service Commission. The Ombudsman may be removed from office only on the grounds of mental incapacity or for gross misconduct. The Judicial Service Commission shall conduct the investigation and report to the Governor and the General Assembly.
- h. The Ombudsman shall empower assistant district Ombudsmen who shall serve in decentralised offices on the basis of districts designated by the Ombudsman with the aim of maximising the accessibility of the Ombudsman's services and protection.

#### AMENDMENT PROCEDURES

##### 104. Amendment Procedures

This constitution may be amended by resolution adopted by two-thirds of the members of both houses of the General Assembly and ratified by the absolute majority of votes cast in a popular referendum.

#### FINAL AND TRANSITIONAL PROVISIONS

##### 105. Transitional Government

- a. Upon the ratification of this constitution, the joint executive of the Natal province and the KwaZulu government shall become the Transitional Government and shall jointly exercise the ordinary administration of the State of KwaZulu/Natal until the new Government and General Assembly are elected pursuant to this constitution.

19 MAY 1993



106. **Creation of the Regions**

- a. Within six months from the time of the ratification of this constitution or from the opening of the General Assembly, whichever comes first, a Commission on Regionalisation shall be formed. The Commission shall have twenty one members appointed from a list of one hundred independent, qualified and reputable individuals prepared and approved by the General Assembly. The Governor shall appoint four members, the representatives of the trade, industry and labour, and the Judicial Commission shall appoint three members each, and four members shall be appointed by the General Assembly. One additional member shall be chosen by the members of the Commission so appointed and shall serve as the Commission's chairperson. The members of the Commission shall elect a chairperson and adopt their own rules of organisation and operation. The Commission shall seek and solicit broad public participation, including but not limited to public hearings, and may commission studies and reports.
- b. Within nine months from its establishment the Commission on Regionalisation shall prepare a proposed subdivision of the State of KwaZulu/Natal into Regions to be approved by the General Assembly with a two-thirds majority of its members. The General Assembly has the power to request the Commission on Regionalisation to make any change to the proposed subdivision of the State as a condition of its approval of the subdivision. If by two-thirds majority the Commission refuses to make such changes, the General Assembly may approve the subdivision only on the basis of the concurrent positive advice of the Governor.
- c. The Commission should aim to create regional territories with an adequate tax and economic basis as well as development potential, and should also aim to respect existing cultural and socio-political territorial divisions, and ensure a proper and just balance amongst the various parts of the State's territory. The territory of each Region does not need to have similar dimensions.
- d. There shall be no fewer than nine Regions and no more than twenty one. In exceptional cases a Region may consist of one metropolitan area, provided that such Region has sufficient economic and population basis and that the creation of such Region does not adversely affect the economy of the surrounding areas. A Region consisting of one metropolitan area does not need to be divided into municipalities.

107. **Election of the Senate**

Until the Regions are established the election of the members of the Senate shall take place in the same forms and modalities prescribed for the election of the members of the House of Delegates by grouping three constituencies together so that the Senate shall have 117 members.

108. **Durban**

The law may authorise special exemptions from taxation and other requirements for the area of the port of Durban and the surrounding areas, and may authorise the establishment of a special basin authority.

109. **Properties of the Republic of South Africa in the State**

All properties located in the State of KwaZulu/Natal of which the ownership or control immediately prior to the time of adoption of this constitution vested in the Republic of South Africa or in any other body, statutory or otherwise, constituted by or for the benefit of the Republic of South Africa or any of its instrumentalities, shall be automatically transferred to and shall be vested in the State of KwaZulu/Natal. This shall include, but shall not be limited to, movable and immovable property whether tangible or intangible and any rights and interests therein, including but not limited to, equity positions, corporate shares, bonds and obligations, and options and warrants, wherever they might be located.

110. **State succession**

All laws, regulations and administrative actions in force in the territory of the State at the time of adoption of this constitution shall remain in force and shall be deemed adopted and ratified by the State of KwaZulu/Natal



provided that they are not in conflict with this constitution. However, the General Assembly may repudiate and declare null, void and ineffective for all purposes any action of the South Africa Government in the territory of the State of KwaZulu/Natal adopted prior to this constitution when such actions were contrary to the fundamental principles of this constitution. Unless otherwise regulated by the General Assembly, the effects of the repudiation shall be such as to restore the rights and privileges as if the repudiated action never existed.

111. **Fathers of the State Advisory Board**

The Members of the Joint Executive Authority of KwaZulu/Natal shall be life members of the Fathers of the State Advisory Board and shall be entitled to remuneration established by law and not inferior to that of a member of the General Assembly. They may run for other offices. The Fathers of the State Advisory Board may express recommendations to any of the powers of the State in any matter related to the implementation of this constitution. Additional members may be appointed by the Governor with the advice and consent of the General Assembly.

112. **Ratification of this Constitution and General Elections**

This constitution shall come into force the day of its ratification by a referendum approving this constitution with at least fifty one percent of the votes validly cast. Within sixty days from the ratification of this constitution the Transitional Electoral Commission shall call a general election to fill the electoral offices provided for in this constitution. The Transitional Electoral Commission shall determine the constituency for such election, prepare the electors' lists and attend to all the other matters related to the election. The Transitional Electoral Commission shall consist of nine highly qualified individuals, two appointed by the KwaZulu government, two by the Joint Executive Authority, two by the Chamber of Commerce, two by the bar association, and one appointed by the other eight members. Should this not be possible, the Joint Executive Authority shall determine the composition of the Transitional Electoral Commission.

113. **Interpretation of this Constitution**

As used in this constitution inclusive language shall not necessarily be interpreted to the exclusion of similar language or situations.

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