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CISKEI GOVERNMENT

PROPOSALS FOR
CONSTITUTIONAL PRINCIPLES - 2/9/93

I

The Constitution of South Africa shall provide for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving liberty, justice, equality of opportunity and equality before the law for men and women and people of all races.

II

The Constitution shall be the supreme law of the land, shall be binding on all organs of government, shall prohibit racial, gender and all other forms of discrimination, promote national unity and ensure equality before the law.

III

There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure a democratic system of government.

IV

The judiciary shall be the custodian of justice with the power and jurisdiction to safeguard and enforce the Constitution, all fundamental rights and the law, and the mechanism for determining the tenure of office of the judiciary shall ensure that it is competent, independent and impartial.

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V

There shall be accountable and open representative government embracing multi-party democracy, regular elections, universal adult suffrage, common voters rolls at all levels of government and in general, proportional representation.

VI

Provision shall be made for freedom of information to ensure open and accountable administration at all levels of government.

VII

Formal legislative procedures shall be laid down for legislative organs at all levels of government.

VIII

The diversity of languages and cultures shall be acknowledged and protected. (deletion)

IX

Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic,

cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected.

X

All shall enjoy universally accepted fundamental rights, freedoms and civil liberties, protected by entrenched and justiciable provisions in the Constitution.

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XI

The legal system shall ensure the equality of all before the law and an equitable legal process. The principle of equality of all before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those advantaged on the grounds of race, colour or gender.

XII

The institution, status and role of traditional leadership, according to indigenous law, like common law, shall be recognised and protected in the Constitution. Indigenous law, like common law, shall be recognised and applied by the courts subject to the provisions of the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.

XIII

Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy.

XIV

No repeal of or amendment to the Constitution shall be valid unless it is approved by a two-thirds majority of the total number of members in each House of Parliament and by a two-thirds majority of the total number of members in each of the legislatures of at least two-thirds of the SPR's.

XV

Government shall be structured at national, SPR and local levels.

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XVI

At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle XII.

XVII

Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. Subject to the provision of Principle XXII, the allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which promotes national unity, maximum SPR autonomy and cultural diversity.

XVIII

The powers and functions of national and SPR governments shall be defined in the Constitution. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of SPR's shall in addition to any other procedures specified for constitutional amendments, also require the approval of two-thirds of the total number of members of the legislature of each SPR affected thereby.

XIX

A framework for local government powers, duties, functions and structures shall be set out in the Constitution. The comprehensive powers, duties, functions and other features of local government shall be set out in parliamentary statutes and/or SPR legislation.

XX

Subject to the provisions of Principle XXIV, the powers and functions of the national and SPR levels of government shall include exclusive and concurrent powers as well as the power to perform functions for other levels of government on an agency basis, provided that the extent of the national government's concurrent powers shall be set out in the Constitution.

XXI

National and SPR governments shall have original fiscal powers and functions, defined in the Constitution. The framework for local government referred to in Principle XIX shall make provision for appropriate fiscal powers and functions for different categories of local government.

XXII

Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure the systematic elimination of economic and developmental disparities between SPR's and to ensure that SPR'S and local governments are able to provide basic services and execute the functions allocated to them in the constitution.

XXIII

A formula for the equitable distribution of fiscal and financial allocations to SPR governments from revenue collected nationally, and based on economic and developmental disparities between the SPR's as well as the population and developmental needs and administrative responsibilities of each of the SPR's shall be entrenched in the Constitution.

XXIV

The following criteria shall be applied in the allocation of powers to the national government and the SPR government:

1. The lowest level at which effective control can be exercised over the quality and delivery of services, shall be the level responsible and accountable for the quality and the delivery of the services and such level shall accordingly be empowered by the Constitution to do so.
2. The national government's powers (exclusive and concurrent with those of SPR's) and the exercise thereof shall not encroach upon the geographical, functional or institutional integrity of the SPR's or deprive an SPR government of its concurrent powers.

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3. Where it is necessary for the maintenance of essential national standards, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one SPR which is prejudicial to the interests of another SPR or the country as a whole, the Constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the Constitution.
4. The essential principles of the Constitution, including the fundamental rights contained therein, shall apply to all organs of the state at all levels of government.
5. Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government.
6. Where uniformity across the nation is necessary for a particular function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government.
7. Where minimum standards across the nation are necessary for the delivery of public services, the power to set such standards should be allocated to the national government.
8. The determination of national economic policies, and the power to promote inter-SPR commerce and protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.
9. SPR governments shall have exclusive powers, inter alia -
 - 9.1. for the purposes of SPR planning and development and the delivery of services; and
 - 9.2. in respect of primary and secondary education, health, social welfare and further aspects of government dealing with the specific socio-economic and cultural needs and the general well-being of the inhabitants of the SPR.

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10. Where mutual co-operation is essential or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the SPR governments.
11. In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national and SPR governments which cannot be resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the SPR government.
12. Residual powers not specifically allocated in the Constitution to a particular level of government shall be vested in SPR governments.

XXV

(Deletion) The right of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected.

XXVI

The independence and impartiality of a Commission for Administration, a Reserve Bank, and Auditor-General and Ombudsman shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the Civil Service.

XXVII

All public servants shall be prohibited from furthering or prejudicing party political interests.