



INYANDZA NATIONAL MOVEMENT

ENQUIRIES:
TELEPHONE:
EXTENSION:

OFFICE OF:

FUNDAMENTAL CONSTITUTIONAL PRINCIPLES

(submission to CODESA Working Group 2)

We believe that the following constitutional principles should be adopted:

1. NAME

The country's name should be "South Africa".

2. FORM OF GOVERNMENT

The country should continue to be a republic.

3. TERRITORY

The country's territory should be the current territory of South Africa, including that falling within the TBVC states.

4. CITIZENSHIP

Citizenship should be by birth, descent, marriage and naturalisation. Those persons who would be South African citizens but for the creation of the TBVC states ought to retain their South African citizenship.

5. SUPREMACY OF THE CONSTITUTION

5.1 The constitution should be the supreme law and any law or regulation which is declared to violate the constitution should be void ab initio

5.2 Amendments to the constitution should be possible but they should require a substantial majority of parliament.

5.3 If a constitutional amendment affects the powers or the composition of any region, or the total number of recognised regions, the approval of a substantial majority of the regional assemblies should be required, in addition to the requirement of a substantial parliamentary majority.

6. BILL OF RIGHTS

6.1 A bill of fundamental rights establishing, entrenching and providing for the effective protection of specific individual rights must form an integral part of the constitution.

6.2 All should enjoy the universally accepted human rights, freedoms and civil liberties contained in the Bill of Rights, which should, *inter alia*, guarantee equality before the law.

6.3 The Bill of Rights should enable the application of affirmative action to redress any inequality occasioned by historical or biographical disadvantage.

7. THE JUDICIARY

7.1 The judiciary should be independent and impartial.

7.2 A constitutional court should be established to be the supreme appellate court for the adjudication of disputes concerning the interpretation of the constitution and the application of the Bill of Rights.

7.3 The constitutional court should have the power of judicial review and jurisdiction to apply the provisions of the constitution as the supreme law.

7.4 The Supreme Court should be divided into regions so that each region has a division of the Supreme Court, all of which divisions should be subject to the appellate jurisdiction of Appellate Division of the Supreme Court.

7.5 Appointments of suitable judges and other presiding judicial officers should be by one or more electoral colleges which have the necessary expertise and authority to do so.

7.6 The term of office of judges should be until retirement.

8. LEGISLATURE

8.1 There ought to be two houses of parliament (for convenience hereafter referred to as "the National Assembly" and "the Senate").

8.2 The National Assembly should be elected by popular, universal, adult franchise by proportional vote from political ^{party} lists, which include regional allocations. ^

8.3 There ought to be some threshold requirement to prevent party fragmentation and to ensure that the parties which gain entry to the National Assembly are not insignificantly small.

8.4 Each National Assembly should hold office for a specified limited period within which a general election must be held.

8.5 Every citizen above the age of 18 years should be entitled to vote in National Assembly elections.

8.6 The Senate should represent the different regions of the country.

8.7 The Senate should be elected in equal proportions by each regional assembly.

8.8 The term of office of a member of the Senate should coincide with the term of the regional assembly which elected him/her.

9. RIGHT OF PETITION

There ought to be a right of popular petition to compel a referendum on any issue.

10. PERMANENT COMMITTEES

There ought to be permanent parliamentary committees, consisting of significant interest groups and the members of the relevant standing committee of parliament, to consider draft legislation before the legislation is to be presented to parliament.

11. THE EXECUTIVE

- 11.1 The state president ought to be elected by an electoral college of parliament for a specified, long term of office to represent the nation as a whole.
- 11.2 The president ought not to be an executive president. He/she should not be the effective head of the government.
- 11.3 The effective head of government should be the prime minister, called upon by the president to form a government by reason of his/her ability to command a majority in the National Assembly.

12. TRADITIONAL LEADERS

- 12.1 Traditional leaders ought to enjoy the same status as they do at present, save that they should not have seats as of right in any legislative assembly.
- 12.2 The tribal counsellors of traditional leaders should be elected by the people who fall under the control of the chief concerned, and no longer be appointed by the chief himself.
- 12.3 Traditional leaders should continue to officiate in customary disputes.

13. DIVISION OF POWERS BETWEEN CENTRAL, REGIONAL AND LOCAL/METROPOLITAN GOVERNMENT

- 13.1 The constitution should define the division of powers between the central, regional and local/metropolitan levels of government.
- 13.2 Each level of government should be entitled itself to raise sufficient revenue to meet its constitutional and statutory responsibilities.

14 REGIONAL GOVERNMENT

- 14.1 Each region should be determined upon the basis of economic, geographical, historical and social coherence, based upon the 9 development regions.
- 14.2 Each region should have a legislative assembly (hereafter referred to as "regional assembly"),

elected by popular, universal, adult franchise by proportional vote from political party lists, which include local/metropolitan allocations.

- 14.3 There ought to be one house only of the regional assemblies, and they ought not to be too large.
- 14.4 Each regional assembly should hold office for a specified limited period within which a general election must be held.
- 14.5 Each regional assembly should have the power to legislate upon the matters falling within the powers of the regions.

15. LOCAL/METROPOLITAN GOVERNMENT

- 15.1 Local/metropolitan government should be based upon constituency elections, in which the majority candidate wins the seat.
- 15.2 The candidates for each ward election should be resident within the ward.
- 15.3 Ward definition should be based upon population size.

16. OMBUDSMAN

There ought to be an ombudsman to investigate public servant (including security force and police) corruption or misconduct. The ombudsman ought to have a police staff to assist him/her in his/her investigations.

17. NATIONAL SYMBOLS

The national flag, anthem, emblem and other symbols of national integrity should, as far as possible, reflect the cultural heritage of the people of South Africa as a whole.

18. NATIONAL SELF-DETERMINATION

- 18.1 The constitution should recognise one nation, the South African nation.
- 18.2 English should be the national language of record.

- 18.3 The diversity of languages, cultures and religions of the people of South Africa should be acknowledged.
- 18.4 There should be no right for any region to secede from South Africa.

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