

25 FEBRUARY 1992

**DRAFT DOCUMENT ON COMMON PRINCIPLES REGARDING THE BALANCE
BETWEEN CENTRAL, REGIONAL AND LOCAL GOVERNMENT PREPARED BY THE
STEERING COMMITTEE OF WORKING GROUP 2**

1. Government shall be structured at national, regional and local levels.
2. At each level there shall be democratic representation.
3. Each level of government shall have appropriate and adequate legislative and executive powers, duties and functions that will enable each level to function effectively; such powers, duties and functions to be entrenched in the constitution.
4. In addition to the powers, duties and functions entrenched in the constitution, each level of government may delegate powers, duties and functions to the lower level of government.
5. The general principles of the constitution, including the terms of the Bill/Charter of Fundamental Rights shall apply to each level of government.

Notes

Minutes: attached

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CONSTITUTIONAL PRINCIPLES

We propose that the following general constitutional principles, which build on and clarify principles agreed to in the Declaration of Intent, be enshrined in the new constitution.

- a) South Africa will be a united, democratic, non-racial and non-sexist state in which sovereign authority is exercised over the whole of its territory;
- b) the Constitution will be the supreme law and will be guarded over by an independent, non-racial, non-sexist and impartial judiciary;
- c) there will be a multi-party democracy with the right to form and join political parties and with regular elections on the basis of universal adult suffrage on a common voters roll; each vote shall be of equal value and in general the basic electoral system shall be that of proportional representation;
- d) there shall be a separation of power with appropriate checks and balances to prevent abuse of power or oppression of any group;
- e) the governmental system shall be such as to enable coalitions to be formed;
- f) the diversity of languages, cultures and religions of the people of South Africa shall be acknowledged;
- g) all shall enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly protected by an entrenched and justiciable Bill of Rights and a legal system that guarantees equality of all before the law;
- h) within the context of an undivided South Africa, government will function at national, regional and local levels; the appropriate territorial division and de-centralisation shall be such as to encourage non-racial, democratic participation and administration at all levels;
- i) The Constitution will permit the application of affirmative action in order to help redress the racial and gender imbalances created by past discrimination.

Minuted 2/3/92

We agree unanimously
that all the levels of
govt. will have fiscal
powers defined in the
constitution

This formulation neither
implies nor excludes:

- 1). Concurrent powers
- 2). Overriding powers
- 3). Metropolitan govt. with special status.

Delport: Basic princis.

1) 3 tiers

genl princis
of constt.
of B of P.

2) Each democratic partic.

3) [Each tier shall have leg, exec,
& fiscal autonomy] & the const.
shall set out duties, powers &
functions

4) The central govt. may delegate
other powers & functions, which
~~may be concurrent.~~

Duties & functions may be concurrent
and the central & regional
govt

5) Move away from concept of winner takes all losers loose all

6) Will encourage multi-party politics.

7) Strong local govt consist. with good govt.
if linked to regions.

1) Spreading power and
accountability

2) Encourage cross-cutting interest

3) Balance between regions

4) Accommodate minorities - political

Qualifies:

- ① Regions subject to Const & P of Pts.
- ② Regions get a constit. re. & share of natl. resources.
- ③ Integral part of central govt.
- ④ Inside regions - components of central govt.
- ⑤ Central govt. shall have power to delegate (eg. off. action)
- ⑥ Not demarcated on ethnic or racial basis.

GENERAL CONSTITUTIONAL PRINCIPLES

---THE FEDERALISM/REGIONALISM ISSUE---

The following is a compromise formulation drafted by the steering committee of WG2. It will appear before the WG on 24/02/92.

- " 1. Government shall be structured at national, regional and local levels.
2. At each level there shall be democratic representation and the general principles of the constitution and terms of the Bill of Rights shall apply.
3. Each level of government shall have legislative and executive powers and functions, which shall be entrenched in the constitution.
4. In addition to the powers, duties and functions enshrined in the constitution, the central government may delegate powers, duties and functions to regional and local governments."

[The government is insisting on the following additional point:

"The devolution of power to second and third tier government will be in accordance with the principle that maximum separation of power (compatible with good government) should be achieved."]

{ 18/02/92, MVM }

*These areas.
Entrench
Powers.
Rights -
CA.*

X

	<p>boundaries, powers, functions and structures of regions and that the elected National Assembly would not be able to change this.</p> <p>DECISION-MAKING: The regime wanted decisions in the National Assembly to be taken by a 70% majority and a 75% majority for decisions relating to the Bill of Rights, regions and the structure of government.</p> <p>The ANC's position was that the National Assembly takes its decision by a 66.7% majority in the National Assembly. However, the ANC and other Patriotic Front Organisations offered a last minute compromise position of 70% for all decisions relating to the constitution and 75% for the Bill of Rights if all other conditions were agreed to by the regime.</p> <p>In addition, the ANC proposed that a deadlock - breaking mechanism should be agreed upon before hand as the National Assembly may never be able to take decisions with such high percentages.</p> <p>The ANC therefore proposed that, if within six months the National Assembly is unable to agree on a new constitution, then a constitution which has the support of over 50% of the delegates should be put before the people in the form of a referendum for adoption.</p> <p>When the regime rejected this compromise position, an impasse was reached. The ANC announced in Working Group Two that it was withdrawing the compromise proposal.</p>
<p>THE WAY FORWARD</p>	<p>The ANC would now return to its original demand for a democratically-elected Constituent Assembly whose decisions shall be taken by a two-thirds majority.</p> <p>The ANC would also be engaging in consultation with its regional structures and allied organisations in order to determine a way forward.</p>
<p>THE WAY FORWARD FOR CODESA.</p>	<p>Regarding the future of CODESA, the following resolution was adopted at CODESA II</p> <p>"1. The Management Committee is extremely conscious of the fact that the participants in Codesa entered the negotiations process in the belief that it can take our country to a stable order. We have a responsibility to approach our task in such a manner that the confidence of the participants, and our people, in the negotiations process is reinforced.</p> <p>2. In order to promote better co-ordination and improve efficiency and effectiveness, Codesa II mandates the Management Committee as follows:-</p> <p>2.1 The Management Committee shall suspend the work of the Working Groups with the mandate to convene any Working Group if necessary.</p> <p>2.2 The Management Committee shall be given responsibility for resolving all outstanding matters of Working Groups.</p> <p>2.3 The Management Committee shall examine all Working Group agreements with a view to establishing what work can be done in order to facilitate implementation.</p> <p>2.4 The Management Committee shall establish such structures (e.g. technical committees, sub-committees, Working Groups) as are necessary to assist the Management Committee in accomplishing the tasks allotted to it.</p> <p>2.5 The Management Committee shall call a Codesa Plenary with a suitable representation as a matter of urgency to adopt all agreements and to receive a report on all matters which have been assigned to it by Codesa II having regard to the scheduled end of the current session of Parliament.</p> <p>2.6 The Management Committee be given the authority to constitute a mechanism which will draft all the legislation required as a result of agreements reached at Codesa.</p> <p>2.7 Subject to 2.5 above, the Management Committee be authorised to exercise such authority, as is necessary, to ensure that the objectives of the Declaration of Intent are attained; including the power to implement any agreement reached by Working Group 1 and also any other agreements falling within its mandate without summoning a plenary session of Codesa and that it also be given the power to increase the representation of individual parties/ administrations/ organisations or governments on the Management Committee."</p>