

CODESA WORKING GROUP 2

POSITION PAPER OF THE SOUTH AFRICAN COMMUNIST PARTY
ON THE FIRST ASSIGNMENT OF THE TERMS OF REFERENCE
OF WORKING GROUP TWO

1. General

In relation to broad constitutional principles the SACP submits the following :

- 1.1 An undivided, non-racial, non-sexist and multi-party South Africa with democratic representative government based on universal franchise.
- 1.2 A constitution as the supreme law with a justiciable bill of human rights.
- 1.3 The entrenchment of appropriate checks and balances and a clear constitutionally entrenched delineation of power between the legislative, executive and judiciary.
- 1.4 An independent non-racial, non-sexist judiciary.
- 1.5 The entrenched protection of cultural, language and religious rights of every individual.
- 1.6 The elimination of all discrimination based on colour and gender.
- 1.7 The devolution and/or delegation of defined powers to regional political/administrative entities.
- 1.8 All electoral processes to be based on the principle of proportional representation.
- 1.9 We see the principle of self-determination in the context of a unitary state in which ultimate sovereignty resides in the people as a whole exercised through their elected representatives and the autonomous participation of organs of civil society.

2. Problems and Issues to be Addressed

The guidelines and parameters for the creation of regional entities.

Our Position

- 2.1 Such entities shall have no right to secede or to separate from a united South Africa.
- 2.2 In general they shall be delimited primarily according to geographic and economic considerations.
- 2.3 The powers of these entities and the degree of autonomy shall be entrenched in the constitution requiring a special majority both in relation to the enactment of such powers and any amendments thereof.
- 2.4 The regional entities shall not, as entities, elect or appoint representatives to the central legislative structure. Alternatively, if a regionally connected second chamber is decided upon, it shall be made up predominantly of representatives elected from the regions on the basis of proportional representation.

- 2.5 Elections of regional entities shall be governed by the principles set out in Paragraph 1 above (ie proportional representation based on universal franchise).

3. **Political Power Sharing**

The nature and extent of constitutional provisions relating to the participation of political minorities in the legislative and executive structures of government.

Our Position

- 3.1 Codesa should not prescribe the entrenchment or institutionalisation of political power sharing (enforced coalitions) between political parties as a principle to be enshrined in a future constitution.
- 3.2 The protection of political minorities will be sufficiently addressed by :
- 3.2.1 A system of proportional representation which will guarantee representation to political minorities who obtain a minimum percentage of votes.
- 3.2.2 By the requirement of special majorities to adopt or amend a justiciable constitution and bill of rights (including provisions relating to the powers of regional entities).
- 3.2.3 The issue of political power sharing in any transitional executive structures leading up to the adoption of the future constitution remains negotiable.

4. **The Economic Future**

The nature and extent of constitutional prescriptions about a future economy.

Our Position

- 4.1 Codesa should not prescribe economic constitutional provisions which would pre-empt a future parliament from continuing with or departing from the key elements of the existing economic system through normal democratic processes.
- 4.2 Hence (save for those economic rights which are universally accepted as part of basic human rights) the constitution should not prescribe or delimit the balance between private and state involvement in economic activity.

5. **Affirmative Action**

The general question of the power and/or obligation of the state to take affirmative action in the sphere of inherited racial and gender inequalities.

Our Position

- 5.1 No constitutional provision shall prevent a future parliament from addressing the process of rectifying racial discrimination, racial injustices and the racial imbalance of wealth through affirmative action. The same applies to gender questions.
- 5.2 The Bill of Rights should govern :

- 5.2.1 The relationship between the individual and the legislature, executive and administrative structures of the state.
- 5.2.2 It should also provide judicial remedies to individuals against other individuals or groups, especially in the sphere of preventing the perpetuation of "private apartheid" and the practice of gender discrimination.
- 5.2.3 No constitutional restrictions should be placed on the powers of the legislature to address racial and gender discrimination in any area of social life.

6. **The Role of Traditional Leaders**

Our Position

- 6.1 We accept that provision must be made for a role for traditional leaders.
- 6.2 Such a role must however be guided by functions relating to their traditional jurisdiction taking into account new socio-economic realities and taking into account that those functions which they exercised historically relate only to local matters in specific traditional areas.
- 6.3 Whatever special representation of traditional leaders may be considered necessary at various levels of administration, their involvement shall be limited to issues referred to in 6.2.
- 6.4 Following from the above there shall be no special representation of traditional leaders in the central legislative.