

D I K W A N K W E T L A

THE BALANCE BETWEEN CENTRAL, REGIONAL AND LOCAL GOVERNMENT.

The cornerstone of any form of Government is the Constitution. It is therefore imperative that for a future workable system of government in South Africa, the new constitution should embody the relevant principles required.

A strong federal form of government consisting of three tiers is suggested : Central, regional and local government.

At the foundation of a federal system of government is territorial anchorage. Especially for regional and local authorities it is imperative that they have demarcated territories over, which they exercise jurisdiction.

Proportional representation is considered vital for the maintenance of the balance between the central and regional governments.

It is common cause that each tier of government should be democratically elected, and the powers of each level of government should be entrenched in the constitution.

The regional government should have access to central financial resources compatible with regional contribution to such central resources.

The regional government should be guided by a regional constitution which is not in conflict with the central constitution which should remain the supreme law.

Local governments should resort directly under the jurisdiction of the regional government and derive their powers from such regional government

It is unavoidable that the Central Government may delegate additional powers to regions.

D I K W A N K W E T L A P A R T Y

STANDPOINT ON CONSTITUTION MAKING BODY

It is our belief that :

1. CODESA, even if not democratically elected, represents a fair majority of the people of South Africa.
2. If CODESA can succeed in its efforts to involve all or most of the political parties who are presently not participants this representation would amount to what one would regard as sufficient consensus.
3. Any political party who still insists on non-participation does so out of own choice which might easily be extended to non-participation in any elections initiated by CODESA.
4. CODESA enjoys a credible amount of acceptance by the International community as an appropriate forum to effect change in this country.
5. Legitimacy of the final constitution does not necessarily depend upon the body which drew it. In fact whatever body will eventually be entrusted with the drafting will still make use of experts in the field to do the technical work.
6. Since the Constitutional principles have been compiled by CODESA it would be easier for CODESA to accommodate such principles than any other body.
7. Compilation of a voters roll might delay the election and therefore the constitution making process.
8. It is therefore our standpoint that CODESA should take the constitution making process as far as the actual drafting stage.
9. The final product may then be tested for acceptability or otherwise by means of any mechanism including a referendum.
10. The elected body then in place when the constitution is finalised shall then legalise it by means of legislation.

Dikwankwetla

GENERAL CONSTITUTION PRINCIPLES TO BE ENSHRINED IN A NEW CONSTITUTION.

1. A federal form of government with appropriate form of autonomy for the central regional and local government.
2. A clear separation of power into Legislative Exetutive and Judiciary with the necessary checks and balances.
3. A Bill of universal human rights, specifically including the acknowledgement of the diversity of language, culture and religion.
4. A multiparty democracy with regular elections.
5. Recognition of the Constitution as the Supreme Law.
6. Equality of all citizens before the law.

INKATHA FREEDOM PARTY

ASSESSING WORKING GROUP II PHASE ONE PROPOSALS

INTRODUCTION

CODESA Working Group II has submitted proposals for an elected parliament to draft a new constitution which shall not be in conflict with general constitutional principles.

The proposals are for a parliament within the framework of an interim constitution. This will be done observing agreed to general constitutional principles.

The IFP needs guide lines to assist in making an assessment of what is being proposed. The following points are made as a preliminary step to drawing up these guide lines.

GUIDELINES FOR ASSESSING THE PRINCIPLES WORKING GROUP II ARE CONSIDERING

1. No sovereign parliament can bind any subsequent sovereign parliament of the land. We must therefore reject reliance on future elected parliaments undertaking constitutional development which the framers of their founding constitutions envisaged for them. X ?
2. We must be cautioned, that in addition, no sovereign parliament will even be bound by its own decisions.
3. Therefore an interim constitution must be made inviolate by:
 - Stipulating that any amendments to it would require full consensus by signatories to it. X
 - The signatures being:
 - all accredited delegations to CODESA,
 - the South African Government in its own right apart from its ambiguous CODESA status,
 - TBVC Governments,
 - Self-Governing territory governments.

4. A breakdown in negotiations could leave a majority party, or coalition of parties, the defacto government of the land and the points made about sovereign governments in 1. above are relevant.

A sovereign government, interim or not, doing what it wants to do, could clearly be the outcome of a majority party in an interim parliament adopting spoiling tactics to make it impossible to reach consensus within a given period of time.

5. A failed phase of negotiations should never become the bedrock dictating what should happen next. Failure to reach agreement leading to a deadlock must be regarded as an inherent inability to decide where to go from there.
6. If there is no time limit then the interim constitution must be so drawn up that it could continue indefinitely while being modified step by step with full consensus by all signatories to the interim constitution. ✓

If there is a time limit then provision must be made for constitutional safeguards when negotiations break down. X

7. This procedure could only be adopted if the present constitution is not scrapped, but modified, and remains the parent constitution, being superior to the interim constitution providing the framework for constitution making exercises.
8. If there is a time limit imposed on the drawing up of a satisfactory interim constitution, the proposed mechanisms built into the constitution to ensure consensus within a given time frame, must have a fail-safe mechanism to ensure constitutional democracy and to ensure that there will never be a majority party exercising power outside of constitutional restraints.

Such fail-safe mechanisms must include agreements on what constitutional positions CODESA and the interim parliament will fall back to. The only safe procedure would be to amend the present constitution sufficiently to enable us to fall back on it with safety.

The IFP demands that existing constitutional structures such as provinces, regions and territories, be they TBVC territories or Self-Governing territories, be inviolate during the transitional period. ||

A fail-safe mechanism would require that control over security forces, foreign policy and national finances shall ✓

be made a reward for success, and not be turned into mechanisms for change, which parties will vie with each other to control before a new constitution is agreed upon. α

9. The IFP proposes that the changes to the constitution it tabled, be first agreed upon in order to create a constitutional base to which parliament could return if there is insufficient consensus on a new definitive constitution.
10. Another element in a fail-safe mechanism could be that the interim parliament be established by the Supreme Court and be held accountable to the Supreme Court. α'
11. The IFP demands that certain preconditions are met before we agree to participate in a transitional government:
 - * that CODESA agree to the IFP's amendments to the Declaration of Intent, so that it can not be interpreted as a commitment to a unitary state; α
 - * that this transitional body must be established to create an all inclusive constitutional forum/negotiating body which is very much more widely representative than CODESA; α
 - * that this transitional body is of the least violation of the principle of constitutional continuity;
 - * that CODESA give proper consideration to the issue of self-determination of regions, and that any transitional government be integrated within the powers, duties and functions of regional state structures; α
 - * that there be painstaking observance by both CODESA and the government of the independence of self-governing territories, which must not be deprived of their current constitutional status without their consent; and, !
 - * that agreement is reached with regard to the principles and framework of the constitution of the new state.

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INKATHA FREEDOM PARTY DECLARATION OF INTENT

We, the participants to the first meeting of the CONVENTION FOR A DEMOCRATIC SOUTH AFRICA, mindful of the desire of the people of South Africa for peace, stability and progress and of the responsibility which history places upon us to work to that end, hereby pledge ourselves to the following:

A: CONSTITUTIONAL PRINCIPLES:

- 1: The attainment of a multi-party, non-racial, non-sexist, democratic state conferring a constitutionally entrenched Bill of Individual Rights and avoidance of minority domination.
- 2: Constitutionally entrenched devolution of power from the central government to regional and local bodies.
- 3: The division of power between the executive, legislative and judicial branches of government and/or such other constitutional devices as may best protect individual freedom.
- 4: Judicial review of the constitutional validity of legislation and executive action.

B: NEGOTIATING PRINCIPLES:

- 1: Negotiations shall be conducted in a spirit of goodwill and a willingness to strive for consensus.
- 2: Negotiations shall be as inclusive as is reasonably possible and all efforts should be made to encourage the participation of those who have indicated an unwillingness to attend.
- 3: In addition to parties consulting with their constituencies during the negotiation process, the constitution once drafted must be democratically legitimised before enactment.

C: POLITICAL PRINCIPLES:

- 1: The transitional process shall nurture national reconciliation and the development of a common South Africanism.
- 2: All political parties shall actively promote peace and a culture of grassroots democratic tolerance.