



AREAS OF AGREEMENT AND AREAS ON WHICH NO AGREEMENT YET EXISTS ON ASSIGNMENT 1 OF WORKING GROUP 2 PREPARED BY THE STEERING COMMITTEE 27.4.92

1. Areas of Agreement

1.1 Provisional Areas of Commonality that Already Exist

- 1.1.1 South Africa will be a united, democratic, non-racial, non-sexist, sovereign state.
- 1.1.2 The constitution shall be the supreme law.
- 1.1.3 The diversity of languages, cultures and religions will be acknowledged.
- 1.1.4 All will enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly.
- 1.1.5 There will be separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances.
- 1.1.6 The legislative branch of government will embrace multi-party democracy, regular elections, universal adult suffrage, a common voters roll and in general proportional representation.
- 1.1.7 The judicial branch of government will include:
 - 1.1.7.1 A judiciary that will be independent, non-racial and impartial.
 - 1.1.7.2 An entrenched and justiciable Bill/Charter of Fundamental Rights.
 - 1.1.7.3 A legal system that guarantees the equality of all before the law.
- 1.1.8 All will be entitled to enjoy common South African citizenship.

(The Working Group agreed that the above areas of commonality, as well as the key issues to be addressed which were identified, were interim proposals which would be subject to amendment and additions in the course of the Working Group's work (Minutes 11.2.92). The Working Group also agreed that parties could make written proposals to the Steering Committee regarding additions to the areas of commonality and key issues to be addressed and that the Steering Committee would consider amending the documents accordingly (Minutes 17.2.92))

1.2 The Balance Between Central, Regional and Local Government

- 1.2.1 Government shall be structured at national, regional and local levels.
- 1.2.2 At each level there shall be democratic representation.
- 1.2.3 Each level of government shall have appropriate and adequate legislative and executive powers, duties and functions that would enable each level to function effectively; such powers, duties and functions to be entrenched in the constitution.
- 1.2.4 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.
- 1.2.5 The general principles of the constitution, including the terms of the Bill/Charter of Fundamental Rights shall apply to each level of government.

(Minutes 2.3.92)

(The Working Group agreed unanimously that the principles imply that all levels of government will have fiscal powers defined in the constitution and that this agreement should be considered when the Working Group's report is drawn up for Codesa 2 (Minutes 2.3.92). At the meeting of 23 and 24.3.92, the IFP informed the Working Group that it wished to re-open discussion on this principle.)

1.3 The Participation of Political Minorities

- 1.3.1 A new constitution shall provide for effective participation of minority political parties consistent with democracy.

(Minutes 9.3.92)

(The Working Group also agreed that this principle does not imply or reject:

- * Constitutional prescription for the participation of minority political parties in any executive structure of government;
- * Simple majoritarianism;
- * Veto powers by minority political parties on any issue.)

2. Issues on Which No Agreement Yet Exists

- 2.1 Economic freedom, government intervention and economic systems.
- 2.2 Accommodation of the diversity of languages, cultures and religions.
- 2.3 Role of Traditional Leaders.
- 2.4 The Bill/Charter of Fundamental Rights including:
 - 2.4.1 Its nature and scope
 - 2.4.2 Affirmative action

2.4.3 Second generation rights

2.5 Self-determination

2.6 New items proposed, namely:

2.6.1 The role of standing committees in the formulation of legislation.

2.6.2 Government will be open, accessible and accountable.

2.6.3 Power sharing.

3. Draft Principles on 2.1 to 2.4 Above Prepared by the Steering Committee on 23.3.92

3.1 Draft principle on economic freedom, governmental intervention and economic systems:

"The constitution should provide for the promotion of the improvement in the quality of life of all South Africans by enabling economic growth, human development, social justice and equal opportunities for all "

3.2 Draft principle on the Bill/Charter of Fundamental Rights:

"There shall be a justiciable bill/charter of fundamental rights which shall ensure inter alia :

- universally accepted human rights and freedoms;
- civil liberties including freedom of religion, speech and assembly;
- the equality of all before the law;
- property rights, provided that legislation may in the public interest authorise expropriation against payment of reasonable compensation which shall in the event of a dispute be determined by a court of law.

The constitution shall enable the implementation of measures to help address the racial and gender inequities caused by past discrimination."

3.3 Draft principle on the accommodation of the diversity of languages, cultures and religions:

"The constitution at all levels of government shall accommodate and protect the right of citizens to practice their religion, enjoy their culture and use their own language both as individuals and in association with others. This shall include the right of citizens where practicable to have their children educated in their mother tongue and the right of citizens to establish educational institutions reflecting their language, culture and religion, provided that racial discrimination may not be practised."

3.4 Draft principle on the role of traditional leaders:

"The constitution should define a suitable role for traditional leaders consistent with the objective of a united, non-racial, non-sexist, democratic South Africa."