



INKATHA

Inkatha Freedom Party

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COMMENTS OF INKATHA FREEDOM PARTY ON DOCUMENT OF WORKING GROUP 2 STEERING COMMITTEE PROPOSAL ON CMB 27.4.92

PRELIMINARY GENERAL COMMENT ON THE WHOLE DOCUMENT

A hasty preliminary reading of the document suggests that a consensus could be reached on it without difficulty. The position changes, however, when one subjects each clause to careful scrutiny. It should be said that even if one associated oneself with the document in principle with "reservations" the position would not be irretrievable as there are so many matters that require decision in the document.

Our comments on each clause are as follows:

Ad para 1. This clause is a departure from the stated preference of IFP for the constitution-making body to be an all-inclusive constitutional conference. Nevertheless the idea of a constitution-making body operating within the framework of an interim constitution agreed upon by full consensus at CODESA should not, for political reasons, be rejected out of hand subject to our attitude to the rest of the document.

Ad para 2. There can be no objection to Codesa consulting the self-governing states and other interested parties (presumably this means the TBVC states) in the drafting of the legislative instrument/interim constitution.

Ad para 3. The IFP can safely agree to Codesa having to agree to a set of general constitutional principles.

Ad para 4. The document proposes that an interim constitution shall make provision for:

4.1. An elected parliament. We would, of course, say that such parliament must be a biocameral federal legislature.

4.1.1. It is stated that such parliament (i.e. the interim parliament) shall have the power to draft a new constitution which shall not be in conflict with the general constitutional principles (NB still to be agreed in terms of clause 3 above).

4.1.2. Act as an interim legislature in terms of such special majorities and general constitutional principles which may be agreed to. IFP has on numerous occasions made clear its objection to any majoritarian approach to the drafting of the fundamental law of the land. Therefore IFP would insist that even in such interim parliament the rule of consensus should be applied instead of special majority whether such special majority be two thirds as proposed by the ANC or seventy-five per cent as proposed by the government. X

4.2. IFP can safely agree that the interim constitution should make provision for the composition and procedures of an interim executive.

4.3. There is no objection to such interim constitution including a justiciable Bill of Rights. In fact the IFP would insist that there should be a fully fledged Bill of Rights as part of any interim constitution plus an independent judiciary with power to interpret the interim constitution; to enforce the Bill of Rights and with power to declare any act invalid. X

4.4. IFP can have no objection to such interim constitution including the balance between the executive, legislature and judiciary according to the principles underlying a constitutional state.

4.5. This states merely that the interim constitution should include boundaries for the purposes of the elections. IFP in view of its policy for the creation of a federal state in South Africa would wish even an interim constitution to be clearly moving in that direction. Thus IFP would wish the interim constitution to contain not merely regional boundaries for purposes of elections but more than that, states/regions as would emerge from decision on clause 4.8. X

4.6. This clause seems to presuppose a parliament with a single house, namely, a National Assembly. It is suggested that the elections to the National Assembly should be based on proportional representation with half the of seats being allocated through national lists and half through regional elections for a second house of parliament, then IFP would probably have no objection. It is one form of proportional representation. On the other hand IFP might prefer a different system based on national lists and on constituencies. This is a policy matter as to which precise system of proportional representation is preferred eventually by the party when it makes its views on the electoral law. X

4.7. The IFP is naturally opposed to any majority taking decisions on the fundamental law of the country whether such a majority be two thirds or seventy-five per cent. We insist on a consensus being the rule.

4.8. This clause speaks of matters relating to regional structures and distribution of powers between central, regional and local levels of government being subject to decision by special majority in the National Assembly. There are two objections to this. Firstly, as already stated, there is objection to special majorities deciding such matters in preference to consensus. But in addition, this clause presupposes a unicameral interim parliament, alternatively it presupposes that one house the National Assembly shall determine such fundamental matters. The IFP policy is that even in the interim constitution the distribution of powers between central, regional and local structures should be in X

place and that this requires a consensus agreement as a first step. Otherwise it would mean leaving the destiny of each state/region to be determined for it by the interim parliament without any input by the state/region concerned.

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5. This clause again presupposes a single chamber—the National Assembly which shall do the work of drafting and adopting a new constitution within a specified period of time. It is not clear how Codesa could bind a sovereign elected interim parliament in such a manner as would compel the body to act in accordance with the wishes of Codesa. One sovereign parliament cannot bind its successor, nor can the same parliament be bound by its own decisions.

N.B. In Zimbabwe it was said the constitution is supreme. The rights to land were entrenched in the constitution. Parliament passed a law and the judiciary said it was invalid. Mr Mugabe said the Parliament is supreme. The Law was proceeded with.

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 transitionary period. ||

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

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. x

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. x'

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; x
- * 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; x
- * 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; x
- * 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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