

**PROPOSALS ON GENERAL CONSTITUTIONAL PRINCIPLES
SUBMITTED TO CODESA WORKING GROUP 2**

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South African Government

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1 PURPOSE

To provide a document wherein the constitutional principles submitted by delegations to Working Group 2 are classified under separate headings.

2 METHOD

Proposals which seem to belong together under a specific constitutional principle are discussed together for the sake of convenience. This document is not limited only to constitutional principles *per se* as numerous structural proposals have also been put forward.

3 ARGUMENT

3.1 CONSTITUTIONAL PRINCIPLES

a) PRINCIPAL POINTS OF DEPARTURE

AFRICAN NATIONAL CONGRESS

"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"

and,

"The Constitution will be the supreme law and will be guarded over by an independent, non-racial, non-sexist and impartial judiciary."

CISKEI GOVERNMENT:

A *Constitutional State*, which means a "united, non-racial, multi-party democracy with autonomous powers demarcated on a regional basis, which powers are constitutionally entrenched" should be created in South Africa.

DEMOCRATIC PARTY:

The Constitution should be the *Supreme Law* and therefore superior to ordinary law. It should also be a rigid document which can only be changed through substantial majorities and ratified by special procedures such as referenda.

DIKWANKWETLA PARTY (QUAQUA):

The Constitution should be the *Supreme Law*

INKATHA FREEDOM PARTY (KWAZULU):

They tend to endorse those principles "encompassed in *modern constitutionalism*" i.e. that the Constitution should be the *Supreme Law*. The Constitution should only be changed by a special majority vote to be ratified by a popular referendum. "South Africa must be a social state, made possible by free enterprise and market economics, which will continually strive for social and human development."

INTANDO YESIZWE PARTY (KWANDEBELE):

A united, democratic, non-racist, non-sexist, multi-party South Africa. The Constitution should be the *Supreme Law*.

INYANDZA NATIONAL MOVEMENT (KANGWANE):

The Constitution should be the *Supreme Law*. Amendments to the Constitution should require a substantial majority. A

further substantial majority of the regional assemblies is needed in addition to the above substantial parliamentary majority to change the Constitution regarding the powers or composition of regions.

LABOUR PARTY:

The Constitution should include the philosophy and principles of liberal democracy (universal adult suffrage and limited government or constitutionalism). The Constitution should also be rigid and must be the fundamental law (*grundnorm*) of the country.

NATIONAL PARTY:

The Constitution should be the law with the highest status, special procedures should be required to amend it, it should be enforceable by the courts, and it should replace Parliamentary sovereignty.

"South Africa must display in the new dispensation the characteristics of the constitutional state in the formal and material sense as embodied in various principles, inter alia and notably:

- the supremacy of the Constitution;
- a justiciable Charter of Fundamental Rights;
- an independent, professional and objective judiciary;
- the autonomy of non-political institutions of civil society;
- mechanisms for the prevention of abuse of power and of maladministration;
- protection of the integrity of the Constitution specifically through effective and balanced control over professionally led and non-partisan security forces;
- an impartial and effective civil service for which the Constitution must guarantee job security and fair treatment on the basis of merit and accessibility;

- legal certainty."

NATIONAL PEOPLE'S PARTY:

The Constitution should be a rigid document (all the clauses will be entrenched) and it should be the *Supreme Law*. The principle of Consociational Democracy will be embodied in the Constitution.

NIC/TIC:

The Constitution should be the *Supreme Law*.

SOUTH AFRICAN COMMUNIST PARTY:

"An undivided, non-racial, non-sexist and multi-party South Africa with democratic representative government based on universal franchise." The Constitution should be the Supreme law.

SOUTH AFRICAN GOVERNMENT:

"South Africa must in the new dispensation display the characteristics of the constitutional state in the formal and material sense"

and,

"The Constitution must have a legal status above all laws, its amendment must be subject to rigid procedural constraints and its stature must be such that it will serve as guideline for the conduct of all matters of government."

SOLIDARITY PARTY:

South Africa should be governed under a *Constitutional State*.

TRANSKEI GOVERNMENT:

South Africa should be a united, democratic, non-racial and non-sexist state. The Constitution should be the *Supreme Law*.

UNITED PEOPLE'S FRONT (LEBOWA):

"South Africa shall be a united, democratic, non-racial and non-sexist *constitutional state* over which the sovereignty of the state shall be exercised over the entirety of its territory". The Constitution should also be the Supreme Law.

VENDA GOVERNMENT:

A *Constitutional State* where the Constitution will be the *Supreme Law*.

XIMOKO PROGRESSIVE PARTY (GAZANKULU):

A multi-party, non-racial, non-sexist, *constitutional democracy* is proposed. The Constitution should be the *Supreme Law*.

b) SEPARATION OF POWERS

AFRICAN NATIONAL CONGRESS

The separation of powers with appropriate checks and balances is advocated.

CISKEI GOVERNMENT:

Between the Legislature, Executive and Judiciary.

DEMOCRATIC PARTY:

The separation of the Legislature, the Executive and the Judiciary must be implemented as far as possible. Different measures implementing checks and balances (also internally in the government) should be formulated and enshrined in the Constitution.

DIKWANKWETLA PARTY:

A clear separation of powers between the Legislature, the Executive and the Judiciary, including the necessary checks and balances is proposed.

INKATHA FREEDOM PARTY:

The separation of the Legislative, the Executive and the Judicial branches of government along with necessary checks and balances, is proposed.

INTANDO YESIZWE PARTY:

Genuine separation of powers with the necessary checks and balances is proposed.

INYANDZA NATIONAL MOVEMENT:

Separation of powers between the Executive, the Legislature and the Judiciary. There should also be checks and balances like an independent Judiciary, regular elections and an Ombudsman.

LABOUR PARTY:

The doctrine of separation of powers should apply to the different branches of government.

NATIONAL PARTY:

"The Constitution must prevent the executive authority from dominating the legislative authority, and vice versa; confer on Parliament the authority to call the executive to account; and confer on the judicial authority jurisdiction, based on the Constitution and the Charter of Fundamental Rights, to test and set aside Acts of Parliament and actions of the executive."

NATIONAL PEOPLE'S PARTY:

This doctrine of separation of powers should be clearly defined and enshrined in the Constitution.

NIC/TIC:

The central Executive and Legislature should be separated. An appropriate balance should also be kept between the Judiciary and Legislature, although the Judiciary may adjudicate on the validity of legislation.

SOUTH AFRICAN COMMUNIST PARTY:

Appropriate checks and balances and a clear delineation of power between the legislative, executive and judiciary should be entrenched in the Constitution.

SOUTH AFRICAN GOVERNMENT:

"The Executive (head of state and Cabinet) must in a new dispensation be accountable to Parliament and unable to dominate the outcome of Parliamentary deliberations unilaterally; Parliament must not be competent to become involved directly in the routine administration of the country or in the judicial process or to counter executive acts or judicial decisions by means of *ad hoc* legislation; the judiciary must have the jurisdiction to apply the provisions of the Constitution

as the supreme law, but not to exercise its jurisdiction in such a manner that it performs executive or legislative acts."

SOLIDARITY PARTY:

Separation of powers between the Legislature, the Executive and the Judiciary, with checks and balances.

TRANSKEI GOVERNMENT:

The separation of powers and effective checks and balances are proposed.

UNITED PEOPLE'S FRONT:

The principle of separation of powers with appropriate checks and balances to prevent the abuse of power should be included in the Constitution.

VENDA GOVERNMENT:

There should be a genuine separation of powers.

XIMOKO PROGRESSIVE PARTY:

A clear separation between the Legislature, the Executive and the Judiciary.

c) CONSTITUTIONAL STRUCTURE

AFRICAN NATIONAL CONGRESS

Government at regional, national as well as local level is proposed with the appropriate division and de-centralisation being such as to encourage non-racial, democratic participation and administration at all levels.

CISKEI GOVERNMENT:

A federal state, with its rights and responsibilities entrenched in the Constitution, is proposed. Regional autonomy must be secured through *inter alia* the electoral system and other mechanisms. The regional boundaries should be based on cultural, economic, technical and political parameters which should be determined by a Boundaries Commission.

DEMOCRATIC PARTY:

Genuine devolution of certain powers and duties to the regional and local tiers of government. These tiers of government should be constitutionally protected. The above mentioned principle should be maintained regardless of where sovereignty ultimately lies, whether a federation or a unitary state.

DIKWANKWENTLA PARTY:

"A federal form of government with appropriate form of autonomy for the central, regional and local government."

INKATHA FREEDOM PARTY:

The principle of subsidiarity will be applied in a federal sense. A clear division between the powers (functions) of the central/federal government and those of state/regional and local governments will be constitutionally enshrined. A strong case is argued for the merits of economically viable regional governments rather than central government. Regions should have constitutionally enshrined taxing powers.

The boundaries of the different regions will be determined by various factors such as historical, ethnic and geopolitical considerations, the existing provincial boundaries and national

and independent states. Some major cities might become regions or states.

The residual power vested in the regions should as far as possible be decentralized further down to autonomous local governments. Further sub-regions or provinces could thus be created.

The charters of local governments should be according to the "uniform law" adopted by the regions. Traditional territorial forms of government may to a certain extent deviate from the uniform system.

INTANDO YESIZWE PARTY:

A three tier government at national, regional and local levels.

INYANDZA NATIONAL MOVEMENT:

A republican state with nine autonomous regions is advocated. The division of power among the different levels of government will be constitutionally guaranteed. Each level of government is entitled to raise funds. The borders of the regions will be based upon those of the nine development regions and will be co-determined by other factors.

LABOUR PARTY:

The Constitution should entrench an undivided South Africa. There should be different regions with their own constitutions which would be compatible with and devised simultaneously with the national Constitution. Regional variations should be allowed, for example between the Western Cape and Natal. In other words, constitution writing should take place simultaneously at national and regional level (from the top down and the bottom up).

The demarcation of regional borders should be determined by demographic, economical and political factors. The nine development regions could be used as point of departure.

Regional functions and powers should be entrenched in the Constitution. A formula should also be decided upon to provide for equitable finances for the different regions and for the rehabilitation of economically weak regions.

NATIONAL PARTY:

"The Constitution should create a system based on universal adult franchise in a sustainable democratic structure of government. In view of the fact that South Africa has a plural society and that domination, in any form whatsoever, is unacceptable, the principle of fair treatment of, and meaningful and effective participation by political minorities, must be embodied in our Constitution. In the constitutional field the political party is the appropriate instrument for articulating and furthering the interests of people who naturally and voluntarily associate with one another. The Constitution should, as far as is practicable, and conforming with effective government, offer the opportunity for every viable political party to play an effective role in the legislative and executive organs at local, regional and central government levels"

and,

"Regional and local authorities should not be mere administrative extensions of central government with decentralized functions, but they should be accorded autonomous and constitutionally defined and entrenched authority. In bringing government closer to the people, proper devolution of power will play an important role in the maintenance of regional and community interests. By these means community self-determination may also be achieved."

NATIONAL PEOPLE'S PARTY:

A measure of authority must be devolved to the regions in a decentralized system. The NPP is also in favour of autonomous local institutions.

NIC/TIC:

"All power shall in the first instance reside in the central government. The central government shall be constitutionally obliged to effect maximum devolution of power to the regional and local level so that all citizens shall be empowered to control their own lives"

SOUTH AFRICAN COMMUNIST PARTY:

Different proposals are made:

"the devolution and/or delegation of defined powers to regional political/administrative entities."

"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."

"The guidelines and parameters for the creation of regional *entities*:

Such entities have no right to secede or separate from a united South Africa.

In general they shall be delimited primarily according to geographic and economic considerations.

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."

SOUTH AFRICAN GOVERNMENT:

"The Constitution must accord a significant measure of constitutional autonomy to the regions and the autonomy of democratically elected local government institutions must be acknowledged in the Constitution."

SOLIDARITY PARTY:

A decentralized regional system of provincial governments or administrative units.

TRANSKEI GOVERNMENT:

A unitary state, which also means that there should be no homelands.

UNITED PEOPLE'S FRONT:

South Africa should be an undivided country with functional national, regional and local tiers of government and also "with, but not unduly absolute division and decentralization of power". This should encourage and promote a "non-racial participatory democracy and not the iniquitous emasculation and stratification of the central authority".

VENDA GOVERNMENT:

"We propose the three-tier government in which full legislative and executive functions and authority are conferred on central government and regional and local authorities."

XIMOKO PROGRESSIVE PARTY:

Maximum devolution of powers (functions) to the second and third tier governments. The centralization of power must be precluded by effective checks and balances. The jurisdiction of second and third tier governments must create effective economic growth and development. The nine development regions serve as a useful and credible point of departure for forming functional and economically viable regions.

d) ELECTORAL SYSTEMS**AFRICAN NATIONAL CONGRESS**

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 being of equal value and the basic electoral system being proportional representation.

CISKEI GOVERNMENT:

Universal adult franchise on a proportional basis. It must secure regional autonomy and a multi-party system with regular free and fair elections.

DEMOCRATIC PARTY:

An equal franchise system for adults, based on a proportional representative system, is envisaged. Other (party orientated) measures should be introduced to establish *inter alia* a close relationship between the public and their representatives and to create measures for their removal and appointment.

DIKWANKWETLA PARTY:

A multi-party system with regular elections.

INTANDO YESIZWE PARTY:

Regular, universal adult suffrage on a common voters' roll in a proportional electoral system.

INYANDZA NATIONAL MOVEMENT:

Multi-party, universal adult franchise on a proportional (national and regional list) system. The voting age is 18 for the National Assembly elections. A right of popular petition to compel a referendum on any issue, is also provided for.

LABOUR PARTY:

In accordance with the principle of liberal democracy, a system of universal adult suffrage should be applied.

Serious consideration should be given to the *German Hybrid Electoral System (Additional Member System)*, and not mere national and regional list systems, to accommodate parties which prefer single member systems because of their direct linkage between representatives and voters.

The German qualification that political parties need a minimum of 5% of the vote or at least three constituency seats before they can participate in the legislature is also mentioned. A judicial commission should be responsible for the delimitation of constituencies.

NATIONAL PEOPLE'S PARTY:

Meaningful mechanisms of democratic representation through elected representatives should be provided.

NIC/TIC:

A proportional, representative electoral system is proposed.

SOUTH AFRICAN COMMUNIST PARTY:

All the different electoral processes (including elections of regional entities) should be based on the principle of proportional representation.

SOLIDARITY PARTY:

Universal adult franchise on a proportional basis in a multi-party system.

TRANSKEI GOVERNMENT:

A proportional representative electoral system on a common voters' roll in a multi-party democracy with regular free and fair elections is proposed.

UNITED PEOPLE'S FRONT:

South Africa should be a multi-party democracy with regular elections based on a proportional representative electoral system with universal adult suffrage on a common voters' roll.

VENDA GOVERNMENT:

A multi-party democracy with regular elections based on universal adult suffrage on a common voters roll. The electoral system should be one of proportional representation.

XIMOKO PROGRESSIVE PARTY:

A system of proportional representation will be sufficient.

e) CHARTER OF FUNDAMENTAL RIGHTS

i) Classification of rights

AFRICAN NATIONAL CONGRESS

"... 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."

CISKEI GOVERNMENT:

They emphasize, without specifying, both rights and responsibilities of citizens.

DEMOCRATIC PARTY:

The principal of equality before the law should be central in the Constitution. The Bill must include first generation rights (individual civil and political rights) and justiciable social and economic rights.

DIKWANKWENTLA PARTY:

A Bill of Universal Human Rights will specifically include language, culture and religious rights and freedoms.

INKATHA FREEDOM PARTY:

All citizens should be equal before the law. The state should strive to remove social and economic obstacles and barriers in order to restore the social dignity of people.

The Constitution should also list the social functions of the state such as national security, environmental protection etc. This detailed list of civil, political, social, cultural, economic and religious rights in the Constitution indicates that the full spectrum of first, second and third generation rights are envisaged.

The provisions of the International Bill of Rights of the United Nations, the European Convention on Human Rights and "especially" the Banjul Charter on Human and Peoples' Rights, should be used as guidance in identifying the appropriate rights.

This appears not to be a *numerus clausus* list of human rights, since an "evolutive clause" in the Constitution may acknowledge new human rights in future.

The possibility of an interim Charter of Fundamental Rights is also indicated, because provision is made for all the justiciable rights to be immediately enforced.

INTANDO YESIZWE PARTY:

Universally accepted human rights and freedoms including freedom of speech and association, and also the acknowledgment of the diversity of languages, religions and cultures in South Africa should be included in the Constitution.

INYANDZA NATIONAL MOVEMENT:

A Bill of Fundamental Rights will be an integral part of the Constitution. Universally accepted human rights, and especially *affirmative action* to address disadvantages, will be enforced.

LABOUR PARTY:

The Bill of Rights should be entrenched in the Constitution. The principle of social democracy, which includes second generation rights, directives of state policy and affirmative action, should also be implemented to create a more socially and economically just society.

NATIONAL PARTY:

"A Charter of Fundamental Rights must form part of the Constitution and as such be constitutionally protected and legally enforceable. The Charter of Fundamental Rights should provide for the effective protection of fundamental rights of individuals irrespective of race, colour, sex, religion or group affiliation; it should accommodate the diversity of languages, cultures and religions of the peoples of South Africa; and it should underpin and protect the values embodied in various other principles, e.g. the autonomy of non-political institutions of civil society and community self-determination and a market-oriented economy coupled with social responsibility."

NATIONAL PEOPLE'S PARTY:

Fundamental (individual) and group rights shall be entrenched in the Constitution.

NIC/TIC:

A comprehensive Bill of Rights should include "fundamental social and economic rights" and individual rights. An active system of *affirmative action*, which may even discriminate against minority groups, will be enforced.

SOUTH AFRICAN COMMUNIST PARTY:

There should be a justiciable Bill of Human Rights. Individual cultural, language and religious rights should be protected through entrenchment in the Constitution. All discrimination based on colour or gender should be eliminated.

The constitution should only rule on those economic rights which are universally accepted as part of basic human rights. The state should take *affirmative action* regarding inherited *racial* and *gender* inequalities:

"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."

"The Bill of Rights should govern:

The relationship between the individual and the legislative, executive and administrative structures of the state."

"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.

"No constitutional restrictions should be placed on the powers of the legislature to address racial and gender discrimination in any area of social life."

SOUTH AFRICAN GOVERNMENT:

"A Charter of Fundamental Rights, establishing, entrenching and providing for the effective protection of specific rights of individuals against the state must form an integral part of the constitution."

SOLIDARITY PARTY:

A justiciable Bill of Rights and a Constitutional Code of Conduct for public representatives.

UNITED PEOPLE'S FRONT:

A justiciable Bill of Rights, guaranteeing and protecting equality before the law and universally recognised fundamental human rights, freedoms and civil liberties, should be entrenched in the Constitution.

A programme of affirmative action to address historical racial, class and gender imbalances should be provided for in the Constitution.

TRANSKEI GOVERNMENT:

An entrenched Bill of Rights should include universally accepted fundamental human rights and freedoms. An effective system of *affirmative action* will be implemented through the Bill of Rights to address inequalities and deprivation. The principle of equality before the law will also be central in the Bill of Rights.

VENDA GOVERNMENT:

Universally accepted human rights and freedoms through an entrenched Bill of Rights.

XIMOKO PROGRESSIVE PARTY:

The Bill of Rights protects fundamental rights. An effective system of *affirmative action* is needed to address historical backlogs.

ii) Enforcement body**CISKEI GOVERNMENT:**

Constitutional Court

DEMOCRATIC PARTY:

A Constitutional Court might be necessary. The Supreme Court should have a "justiciable testing power over the interpretation of the Constitution and the laws enacted under it".

INKATHA FREEDOM PARTY:

An independent Constitutional Court should adjudicate on all matters regarding the Constitution, "which is not obviously without merits" - also on regional constitutional affairs. The judges need not be South African citizens, in fact the services of racially neutral foreign lawyers should be useful. The judges will be selected through a process of interaction between different branches of government.

INYANDZA NATIONAL MOVEMENT:

A Constitutional Court will be the Supreme Appellate Court on all issues regarding the Constitution.

LABOUR PARTY:

A Constitutional Court should guard the Constitution.

SOLIDARITY PARTY:
Constitutional Court

g) **MINORITY PROTECTION**

CISKEI GOVERNMENT:

The rights of individuals and the powers of local and regional governmental structures must be entrenched in the Constitution.

DIKWANKWETLA PARTY:

The diversity of languages, cultures and religions must be acknowledged by the Bill of Rights.

INKATHA FREEDOM PARTY:

Political, social and ethnic pluralism as well as national, linguistic, cultural and native identities, practices and traditions must be constitutionally protected and promoted. "Special attention must be given to the needs and aspirations of indigenous people".

INYANDZA NATIONAL MOVEMENT:

The principle of *national self-determination* should be addressed by the Constitution in that only the South African nation will be acknowledged and English will be the official language. However, in contrast the Inyandza Movement further emphasizes the fact that the diversity of languages, cultures and religions should also be acknowledged. No region may secede from South Africa.

LABOUR PARTY:

The principle of self-determination should be accommodated within a unified state by recognizing the regional, cultural and language diversities and also through the freedom of voluntary cultural association. (Cultural or language groups should not be allowed to harm the interests of other groups or the nation as a whole.)

NATIONAL PARTY:

"The diversity of languages, cultures and religions should be acknowledged. The Constitution must recognise and accommodate this diversity. Individuals must therefore have justiciable guarantees to exercise rights relating to language, culture and religion."

NATIONAL PEOPLE'S PARTY:

The entrenchment of fundamental and group rights ensures minority protection.

NIC/TIC:

Minorities may not be discriminated against, except when *affirmative action* is applied. Although minorities are entitled to cultural, linguistic and religious rights and freedoms, they are not entitled to "any special economic or political privileges, nor to any veto, by reason of being a particular minority".

SOUTH AFRICAN COMMUNIST PARTY:

Codesa should not prescribe that minority party participation (in the government) through forced coalitions should be constitutionally entrenched or institutionalized.

Political minorities would be sufficiently protected by the following measures:

- a) proportional representation for parties that obtain a certain minimum percentage of voters
- b) the requirement of special majorities to adopt "a justiciable constitution and bill of rights (including provisions relating to powers of regional entities)".
- c) political power-sharing in "transitional executive structures leading up to the adoption of the future constitution remains negotiable".

SOUTH AFRICAN GOVERNMENT:

"The Constitution must provide for mechanisms and structures that will ensure meaningful participation of political minorities in government, at the levels relevant to such minorities."

SOLIDARITY PARTY:

Minorities should be protected by being included at all levels of government.

TRANSKEI GOVERNMENT:

The diversity of cultures, languages and religions must be acknowledged.

UNITED PEOPLE'S FRONT:

The diversity of cultures, languages, own community life and education and religious freedom should also be constitutionally acknowledged.

VENDA GOVERNMENT:

The diversity of languages, cultures and religions should be acknowledged.

XIMOKO PROGRESSIVE PARTY:

Although ethnicity will not be institutionalized, it will still be a reality because of the right to freedom of association. It is therefore important that public funds may not be given to associations on a racial basis.

The pursuit of *group autonomy* on a *nation-state* basis is divisive and also impractical where groups are not geographically concentrated in functional economic and administrative regions. *Self-determination* as a nation in a separate state is not an absolute right.

h) OTHER CHARACTERISTICS OF A STATE

CISKEI GOVERNMENT:

The Executive should have constitutional *emergency powers* (checked by Parliament) for a limited period only.

DEMOCRATIC PARTY:

The Constitution should include the following elements:

- citizenship
- measures to ensure accountability, such as referenda and an Ombudsman

DIKWANKWETLA PARTY:

All citizens should be equal before the law.

INKATHA FREEDOM PARTY:

The Constitution should also ensure that:

- all citizens must contribute towards the security and general welfare of the country,
- the norms of international law and cooperation are applicable,
- an Ombudsman should be established,
- an independent Civil Service Commission should also be established.

INYANDZA NATIONAL MOVEMENT:

The following elements of a draft Constitution were submitted:

- the country's name is South Africa,
- it should still be a republic
- the TBVC states should be incorporated in the present territory of South Africa
- citizenship should be gained by birth, descent, marriage and naturalization
- there should be an Ombudsman
- there should be National Symbols

LABOUR PARTY:

The Constitution should also:

- be an autochthonous (unique homegrown) social contract
- reflect its own political legitimacy by the manner in which it is drafted (terminology, preamble, method of enactment, etc)
- provide for an ombudsman to address grievances
- provide for an independent auditor-general
- provide for an open government

NIC/TIC:

Government should be accountable to the electorate and should frequently liaise with them.

SOLIDARITY PARTY:

There should be an independent Ombudsman, Auditor-General and Civil Service Commission answerable to Parliament.

TRANSKEI GOVERNMENT:

The Constitution must acknowledge the rights, sovereignty and territorial integrity of other countries.

VENDA GOVERNMENT:

The following matters should be laid down in the Constitution:

- the name of the state
- the national borders which should include the TBVC states and exclude the Walvis Bay Territory
- an Ombudsman/Auditor-General should be appointed by Parliament
- National Symbols
- a Preamble for symbolic and ideological purposes

i) CIVIL SOCIETY**INKATHA FREEDOM PARTY:**

"Colleges, universities and schools of professional education shall be autonomous". State and Church should also be separated.

NATIONAL PARTY:

"The effective application of this principle will guarantee self-determination in non-governmental organisations and institutions

of civil society active in the field of e.g. business and professional life, trade union affairs, education and culture, sport, religion, language and tradition."

NIC/TIC:

Any level of government which makes decisions or passes laws which may affect a part of civil society, is obliged to consult those affected before taking such decisions.

SOUTH AFRICAN COMMUNIST PARTY:

The principle of self-determination in the context of a unitary state should include the "autonomous participation of organs of civil society" as one of the mechanisms through which ultimate sovereignty, which resides in the people as a whole, could be exercised.

SOUTH AFRICAN GOVERNMENT:

"The Constitution must ensure that both community self-determination and the autonomy of civil society be maintained."

XIMOKO PROGRESSIVE PARTY:

There will be minimal government intervention in the non-government sector of Society.

j) ECONOMIC SYSTEM

AFRICAN NATIONAL CONGRESS

"... the Constitution shall enable the application of affirmative action in order to help redress the racial and gender imbalances created by past discrimination"

INKATHA FREEDOM PARTY:

- There should be a free market economy, without nationalization.
- *Nationalization* should only be allowed when the free market economy cannot "reliably provide a particular need and only on a special majority vote of the legislature"
- Private property should be protected and foreign investments encouraged.
- *Expropriation* should be limited to public need with fair and quick compensation which may be judicially challenged.
- Limited state intervention in the economy is foreseen and *privatization* of some government enterprises will take place. This will be done by a Privatization Commission.
- The *central bank* should be autonomous and regulate interest rates and currency matters.
- A special legislative majority authorization is needed if certain *budgets* have to be approved or foreign loans taken on a deficit budget. An independent *audit* entity should check on government spending.
- A fair and progressive *tax* system.
- No *monopolies* or practises which may restrict free trade and competition should be allowed.

LABOUR PARTY:

There should be a mixed economy, with a social market economy, which could enable disadvantaged communities to be systematically uplifted.

NATIONAL PARTY:

"The Constitution should promote a market-oriented economy coupled with private initiative and social responsibility. An economic system where regulation and control by government

are kept to a minimum, must be safeguarded; an economy based on private ownership, freedom of contract, free competition, and the maintenance of fiscal and monetary discipline, must be ensured."

SOUTH AFRICAN COMMUNIST PARTY:

"Codesa should not prescribe economic constitutional provisions which would pre-empt a future parliament from continuing or departing from the key elements of the existing economic system through normal democratic processes."

Except for the "economic rights universally accepted as basic human rights", the Constitution should not "prescribe or delimit the balance between private and state involvement in economic activity".

SOUTH AFRICAN GOVERNMENT:

"The Constitution must embrace principles and structures that will provide a framework for and secure a proper balance between healthy economic development and the social responsibility of the state"

3.2 STRUCTURAL PROPOSALS

a) EXECUTIVE

CISKEI GOVERNMENT:

The Head of State will be a State President who will share the executive power within clear divisions with a Prime Minister, who leads a multi-party coalition Cabinet. The Cabinet must enjoy the confidence of the majority in the National Assembly.

INKATHA FREEDOM PARTY:

The Head of State, which could not simultaneously also be Head of Government, should be indirectly elected by representatives specially elected for that purpose from the different regions. The coalition government functions on a "wide-based consensus" and must have the support of both houses of Parliament. The Executive is accountable to Parliament.

INTANDO YESIZWE PARTY:

The executive President will be elected directly by popular vote for a maximum two terms of five years. The President should select the members of his Cabinet from the ranks of members of Parliament.

INYANDZA NATIONAL MOVEMENT:

The State President will be the Ceremonial Leader of the nation. He should be indirectly elected by an electoral college of Parliament. The Prime Minister on the other hand will be the Executive Head of Government. He should enjoy the biggest support in the National Assembly.

LABOUR PARTY:

The President should be a symbol of national authority and legitimacy and thus be directly elected by universal franchise. He should share the executive power with the Prime Minister but would not be part of Parliament.

The Prime Minister (a leader with majority support in the lower House of Parliament) and Cabinet should be responsible to Parliament. A system similar to that of the French Constitution is proposed - a non-parliamentary President and parliamentary Prime Minister to act as checks and balances to

each other. It should be compulsory to appoint at least one member from each region to the Cabinet.

SOUTH AFRICAN COMMUNIST PARTY:

Codesa should not prescribe that power-sharing in the legislature and executive should be compulsory either by entrenchment or institutionalization of such a clause in the Constitution.

SOLIDARITY PARTY:

The State President as Head of State will be directly elected. He chooses a maximum of five Vice-Presidents - who may all serve in the Cabinet. This State President-in-Council should try to resolve conflicts in a multi-party Cabinet which should be proportionally representative of the composition of the National Assembly. This is a mechanism to ensure meaningful minority protection and to foster national unity.

b) CENTRAL LEGISLATURE

CISKEI GOVERNMENT:

The bi-cameral Parliament is composed of a National Assembly (Lower House) and a Senate (Upper House). The members of the National Assembly should be a proportional reflection of the electorate. It should have the final authority over the budget. The senators of the Senate should be elected by "both Houses of the federal states". The Senate has supervisory and scrutinizing powers over non-fiscal legislation passed by the National Assembly. A system of multi-party standing committees is provided for both houses.

DEMOCRATIC PARTY:

A bi-cameral Parliament is proposed. Each house will be elected on a separate basis and will have both mutual and separate responsibilities. Provision should be made for conflict-breaking and decision-making options.

INKATHA FREEDOM PARTY:

The bi-cameral Legislature has one house representing regional interests (their members will be chosen by the appropriate regional legislatures) and another house representing national interests with proportionally elected members.

INTANDO YESIZWE PARTY:

There will be a single House elected on a proportional basis for a five-year term.

INYANDZA NATIONAL MOVEMENT:

A bi-cameral Parliament is proposed. The National Assembly is elected by proportional vote "from political party lists, which include regional allocations" A unspecified threshold for party participation will be required. The Senate represents different regions and should be elected in "equal proportions by each regional assembly". Senate office terms coincide with those for the appropriate regional assembly. The electoral system for the senate is not specified. Standing parliamentary committees should consider draft legislation before it is presented to Parliament.

LABOUR PARTY:

A bi-cameral Parliament should be established to act as an instrument for power-sharing. The Upper House should provide for equal representation for the different regions irrespective of

their geographical or population size. The two houses should be elected on separate bases with both joint and independent responsibilities.

NIC/TIC:

There should be an elected legislature.

SOLIDARITY PARTY:

The bi-cameral Parliament is composed of a National Assembly and a Senate. The National Assembly is proportionally elected on a combination of the "list and constituency systems". The provinces have equal representation in the Senate. Multi-party Standing Commissions in the National Assembly should try to establish consensus.

XIMOKO PROGRESSIVE PARTY:

A bi-cameral Legislature with "meaningful" balance of power between an Upper House and a Lower House, the former of which appears to be the guardian of regional interests, is proposed.

c) REGIONAL GOVERNMENT

CISKEI GOVERNMENT:

"The Ciskei Government believes that the peace and prosperity of a future South Africa will depend on the successful formation of regional structures. Regional decision-making and regional self-determination accommodating the diversity of populations and interests will be crucial to the creation of a stable and lasting constitutional dispensation."

"A Federation of states

The diversity of cultures and regional interests of communities should be reflected in the creation of regional states with rights and responsibilities entrenched in the constitution. The determination of regional boundaries should rest with a Boundaries Commission and should be based on cultural, economic, technical and political parameters as determined by consensus."

"The state executive should consist of a Governor and Secretaries of State heading government departments. A bi-cameral legislative system should consist of a Lower House, elected by proportional representation, which exercises final budgetary control, and an Upper House, elected indirectly by the urban and local authorities with representation of traditional leaders."

INYANDZA NATIONAL MOVEMENT:

A regional legislature is composed of one (medium sized) house. Their members are popularly elected from party lists, which include "local/metropolitan allocations". The scope of their power will be constitutionally determined.

SOUTH AFRICAN COMMUNIST PARTY:

Regional entities should not elect or appoint representatives to the central legislature. An alternative proposal is also made in this regard: In case a regionally based second chamber is decided upon, it should consist predominantly of elected representatives of the different regions on a basis of proportional representation.

SOLIDARITY PARTY:

A decentralized regional system of provinces or administrative units of government based on the structures which existed before 1910, can be negotiated.

d) LOCAL GOVERNMENT**CISKEI GOVERNMENT:**

Urban and rural authorities are directly elected. Traditional leaders should also be locally represented where applicable. Local autonomy should be constitutionally guaranteed.

INYANDZA NATIONAL MOVEMENT:

Candidates for the local/metropolitan government will be elected by majority vote in wards (constituencies) . Candidates will be required to be resident within such a ward.

LABOUR PARTY:

Legitimate and effective local and metropolitan government should be created.

SOLIDARITY:

The need for a third tier of government at metropolitan, local and traditional level is emphasized.

e) TRADITIONAL LEADERS**CISKEI GOVERNMENT:**

Traditional leaders should be indirectly elected to the Upper House of the Regional (State) Legislator and also locally, if applicable.

INYANDZA NATIONAL MOVEMENT:

The status of traditional leaders should stay the same as it is at present - they are not automatically entitled to seats in any Legislature. The tribal counsellors of traditional leaders should be elected, and not appointed as at present, by the supporters of the specific traditional leaders. They should also still "officiate" in customary disputes.

LABOUR PARTY

"... in Natal and certain other regions the role of the chiefs could find expression in the regional constitution that accords with their status and functions without making inroads into the fundamental principles of democratic government."

SOUTH AFRICAN COMMUNIST PARTY:

They accept the need to accommodate traditional leaders. Their role should be determined by (and also be limited to) various factors e. g. their traditional jurisdiction, or the demands of new socio-economic realities. Historically they only dealt with local matters in certain traditional areas. No special representation should be given to them in the central legislature.

SOLIDARITY PARTY:

Traditional leaders will be represented at local level.

TRANSKEI GOVERNMENT:

Traditional leaders have a role to play at national, regional and local levels.

UNITED PEOPLE'S FRONT:

The Constitution should recognize the institution of traditional leadership.

VENDA GOVERNMENT:

The Chiefs must be accommodated at the local (municipal) level of government.

XIMOKO PROGRESSIVE PARTY:

The traditional leaders have to play a more meaningful role at regional and local levels of government than at national level.

f) JUDICIARY**CISKEI GOVERNMENT:**

A body like a Judicial Service Commission should ensure that the Judiciary is independent.

DEMOCRATIC PARTY:

The nature of judicial appointments and the question of impeachment of the members of the judiciary have to be considered.

INKATHA FREEDOM PARTY:

An independent Judicial Service Commission should recommend the selection and appointment of judges and should supervise the lower courts and appoint magistrates. Different courts to deal with different issues in administrative law, tax law, labour law and tribal and customary law should also be created.

INTANDO YESIZWE PARTY:

The President should appoint a Judicial Committee which in turn, should appoint the judges. The Committee should also establish regional and local judicial committees which appoint or ratify the appointment of magistrates, made by the Department of Justice.

INYANDZA NATIONAL MOVEMENT:

Each region should have a division of the Supreme Court, with the Appellate Division as the supreme judicial body (this excludes constitutional issues). Appropriate electoral bodies should appoint judges and presiding judicial officers. Judges' term of office end at retirement age.

LABOUR PARTY:

The judiciary should be more representative and be selected by a judicial service commission.

NATIONAL PEOPLE'S PARTY:

An independent Judiciary should guard over the Constitution.

SOUTH AFRICAN COMMUNIST PARTY:

The judiciary should be independent, non-racial and non-sexist.

TRANSKEI GOVERNMENT:

An independent, non-racial and impartial judiciary should guard over the Constitution.

UNITED PEOPLE'S FRONT:

The judiciary should be independent, impartial, competent, non-racial and non-sexist.

VENDA GOVERNMENT:

The Judiciary should be independent and impartial with testing powers in regard to legislation. It should also ensure equality before the law.

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