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CODESA WORKING GROUP 2 : S A GOVERNMENT
EXTRACTS FROM DIFFERENT PROPOSALS ON THE
RELATIONSHIP BETWEEN CENTRAL AND REGIONAL
GOVERNMENT

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CONTENTS

1	CISKEI GOVERNMENT	1
2	DEMOCRATIC PARTY	2
3	DIKWANKWETLA PARTY	3
4	INKATHA FREEDOM PARTY	3
5	INTANDO YESIZWE PARTY	5
6	INYANDZA NATIONAL MOVEMENT	5
7	LABOUR PARTY	6
8	NATIONAL PARTY	7
9	NATIONAL PEOPLE'S PARTY	7
10	NIC/TIC	7
11	SOLIDARITY PARTY	8
12	SOUTH AFRICAN COMMUNIST PARTY	8
13	SOUTH AFRICAN GOVERNMENT	9
14	TRANSKEI GOVERNMENT	9
15	UNITED PEOPLE'S FRONT	10
16	VENDA GOVERNMENT	10
17	XIMOKO PROGRESSIVE PARTY	10

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1 CISKEI GOVERNMENT:

"Preamble"¹

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.

Ciskei is committed, therefore, to re-incorporation into the new South Africa but reserves the right to a defined regional autonomy, to protect existing economic policies and strategies for its economic development, to protect its civil service and existing infrastructures and to protect the right of the people of the region to promote their interests.

11. 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.

1. See the document, *Constitutional Principles*, submitted to Working Group 2 on 11 February 1992.

12. The State Executive and Legislature

The State Executive should consist of a Governor and Secretaries of State heading government departments. A bicameral 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.

FLEXIBILITY OF REGIONALLY AUTONOMOUS / FEDERAL STRUCTURES²

Federal / regional structures do not necessarily entail or require:

1. Historical borders.
2. Homogeneous populations.
3. Similar or identical powers of autonomy.
4. Simultaneous or identical procedures of attaining or moving towards autonomy.
5. Identical regional structures."

2 DEMOCRATIC PARTY:

"(f) The Principle of the Vertical Division of Competencies: Genuine Devolution of Power³

The constitutional principle in issue here is an adherence to the genuine devolution of power between the central government and regional and local government formations. The Constitution will assign specific powers and duties to each level of government,

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2. See the document, *The Balance Between Central, Regional and Local Government*, distributed on 17 February 1992 at the Working Group meeting, which also argues the merits of regional autonomy against the disadvantages of a unitary system.
 3. See the document *General Constitutional Principles* submitted to Working Group 2 on 11 February 1992. Mr C Nglin (in his verbal submission to Working Group 2 on 17 February 1992) also stressed the importance of maximum devolution of power to regional and local tiers of government in order to ensure good, effective and accountable (democratic) government. This principle should be entrenched in the Constitution.

which powers and functions will not be capable of recall save by special measures so elaborated upon in the Constitution. Without derogating from the generality of the foregoing principle, consideration will be given to the question of whether South Africa will be a federal or unitary state but regardless of the ultimate location of sovereignty, the aforesaid principle will apply in either case or in any other dispensation so agreed."

3 DIKWANKWETLA PARTY:

"1. A federal form of government with appropriate form of autonomy for the central, regional and local government."⁴

4 INKATHA FREEDOM PARTY:

"6. PRINCIPLES ON THE STRUCTURE OF THE STATE⁵

6.2 Democracy is best protected by a system enshrining separation of powers and checks and balances. We traditionally separate the legislative, executive and judicial branches and their respective powers over each other to achieve horizontal checks and balances. We secure vertical checks and balances by the separation of powers between the national federal government and state, regional and local governments.

6.3 Subsidiarity has become the key word in the constitutional planning of the European Community. It is the doctrine that nothing should be done on the Community level which cannot be done better at local levels. And local government is more capable and more sensitive to specific local needs and aspirations.

4. See the document, *General Constitutional Principles to be enshrined in a new Constitution*, submitted to Working Group 2 on 11 February 1992.

5. See the document, *Position Paper of the Inkatha Freedom Party*, submitted to Working Group 2 on 6 February 1992.

- 6.4 It is only in the centralized and unitarian state that one particular political faction can exclude all others from political participation and healthy democratic debate. Germany, the United States and other federal states often experience the situation where one political party is in power in the national government and another party controls the lander or state.
- 6.7 Regional government must be the rule and central government the exception. The constitution shall list the powers and functions of the central government, those of the regions and those which are shared.
- 6.8 The boundaries of the regions/states shall be identified on the basis of historic, ethnic and geopolitical considerations. These must respect the boundaries of the existing provinces, national states and independent states, at such time as they re-accede to the reunited South Africa. Some major cities might be considered regions/states.
- 6.9 The constitutions shall set forth the principle that the residual powers vested in the regions/states should preferably be exercised through local governments on the basis of further decentralization and local autonomy (i.e. the creation of regions in the states, or creation of provinces in the regions). The governments of the regions/states and local governments should allow for broad public participation and participatory democracy.
- 6.9 Local governments in the regions/states shall be chartered in accordance to a uniform law adopted by the regions/states. Such law would respect and authorize exceptions from the general rules for traditional territorial governments. After approval, but before publication, this law would be verified for compliance with the constitution and the national interests. Disputes would be resolved before the Constitutional Court.

9.10 The constitution shall ensure that regions\states have independent taxing powers."

5 INTANDO YESIZWE PARTY:

"A.1. NATURE OF GOVERNMENT⁶

- There shall be three tier-system of Government viz. National, regional and local government to actualise non-racial, democratic participation in the administration of the country at all levels."

6 INYANDZA NATIONAL MOVEMENT:

"13. DIVISION OF POWERS BETWEEN CENTRAL, REGIONAL AND LOCAL/METROPOLITAN GOVERNMENT⁷

13.1 The constitution should define the division of powers between the central, regional and local/metropolitan levels of government.

13.2 Each level of government should be entitled itself to raise sufficient revenue to meet its constitutional and statutory responsibilities.

14 REGIONAL GOVERNMENT

14.1 Each region should be determined upon the basis of economic, geographical, historical and social coherence, based upon the 9 development regions."

6. See the document, [IYP] *Constitutional Principles of the Envisaged New South Africa*, submitted to Working Group 2 on 11 February 1992.

7. See the document, *Fundamental Constitutional Principles*, submitted to Working Group 2 on 11 February 1992.

7 LABOUR PARTY:

"(6) Separation of Powers⁸

This doctrine should apply to the different branches of government and between the central and regional administrations.

(2) Recognition of Regionalism and Regional Diversity

Appropriate constitutions for the regions compatible the national constitution should be devised simultaneously with the latter. Regional variations should be permitted to cater for the peculiar requirements of each region ... This will involve the contribution of people at national, regional and local levels. The geographical demarcation of the regions should be based on demographic, economical and political considerations. The existing nine development regions constitute a basis for negotiation between the relevant parties in this regard.

(3) Entrenched Protection of Regional States and Rights⁹

"The central government must not have the power to unilaterally revoke or undermine the exercise of political power at a regional level. A formula will have to be devised for the equitable financing of all regions and the rehabilitation of economically weak ones.

(4) Co-ordination, Support and Encouragement of Local Government

Legitimate and effective local/metropolitan government is absolutely essential for peace and security in South Africa."

8. See the document, *General Constitutional Principles*, submitted to Working Group 2 on 11 February 1992.

9. See also the verbal submissions made by D Lockey on 17 February 1992 in Working Group 2 when he stressed *inter alia* that the autonomous powers and functions of the different regions should be entrenched in the Constitution.

8 NATIONAL PARTY:

"7 REGIONAL AND LOCAL AUTONOMY AND COMMUNITY SELF-DETERMINATION"¹⁰

Regional and local authorities should not be mere administrative extensions of central government with decentralised 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."

9 NATIONAL PEOPLE'S PARTY:

"6. The Constitution will provide a measure of authority to the regions and will ensure the autonomy of democratically elected local Government institutions, decentralisation and devolution shall be such as to encourage and foster Non-Racial, Democratic participation at all levels."¹¹

10 NIC/TIC:

DRAFT PROPOSALS BY NIC/TIC¹²

"7. 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

10. See the document, *Constitutional Principles which should be Enshrined in a New Constitution for the Republic of South Africa*, submitted to Working Group 2 on 17 February 1992.

11. See the document, *Constitutional Principles which should be Embodied in a New Constitution for the Republic of South Africa*, submitted to Working Group 2 on 11 February 1992.

12. See the document, *Constitutional Principles*, submitted to Working Group 2 on 11 February 1992.

and local level so that all citizens shall be empowered to control their own lives."

11 SOLIDARITY PARTY:

"8. A DECENTRALISED PROVINCIAL SYSTEM

South Africa should be governed on the basis of a decentralised regional system, the final number of provincial governments or administrative units to be determined by negotiations among the constituent structures as demarcated at the time of Union in 1910. The structure, powers and functions to be negotiated, should be within the parameters of the principles agreed to at the Multi-party National Convention."¹³

12 SOUTH AFRICAN COMMUNIST PARTY:

"1. General¹⁴

1.7 The devolution and/or delegation of defined powers to regional political/administrative entities.

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.

13. See the document, *Solidarity's Draft Constitutional Principles for a New South Africa*, submitted to Working Group 2 on 11 February 1992. See also the verbal submission by D.S. Rajan at Working Group 2 on 17 February 1992 when he confirmed the stated position of the Solidarity Party.

14. See the document, *Position Paper of the SACP on the First Assignment of the Terms of Reference of Working Group Two*, submitted to Working Group 2 on 11 February 1992.

- 2.1 Such entities have no right to secede or 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."

13 SOUTH AFRICAN GOVERNMENT:

"6 Regional and local autonomy¹⁵

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."

14 TRANSKEI GOVERNMENT:

"(a) The creation of a united, democratic, non-racial and non-sexist State. This envisages a situation where there would be no homelands,...

(f) The recognition and acceptance of the role for traditional leaders at national, regional and local levels of administration."¹⁶

15. See the document, *General Constitutional Principles which should be Enshrined in a New Constitution for the Republic of South Africa*, submitted to Working Group 2 on 6 February 1992.

16. See the section *Proposed General Constitutional Principles* in the document, *Transkei's Inputs to be Presented to CODESA Working Groups*, submitted to Working Group 2 on 6 February 1992.

15 UNITED PEOPLE'S FRONT:

"B. ENVISAGED CONSTITUTIONAL PRINCIPLES:¹⁷

- 7 The constitution shall recognize only one and undivided South Africa with a governmental system functional at national, regional and local levels with appropriate, but not unduly absolute division and decentralisation of power, as to encourage and foster a non-racial participatory democracy, and not the iniquitous emasculation and stratification of the central authority."

16 VENDA GOVERNMENT:

"8. STRUCTURAL PRINCIPLES:¹⁸

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."¹⁹

17 XIMOKO PROGRESSIVE PARTY:

"1. POINTS OF DEPARTURE²⁰

- jurisdiction of Second- and Third-tier governments, both geographic and functional, must be such as to promote economic growth and development; and
- there will be maximum devolution of power to lower tiers of government in order to bring government closer to the people

17. See the Document, [UPF] *Constitutional Principles which should be Enshrined in a New Constitution for a New South Africa*, submitted to Working Group 2 on 17 February 1992.

18. See the document, *General Constitutional Principles*, submitted to Working Group 2 on 17 February 1992.

19. The importance of regional autonomy was clearly pointed out by a delegate of Venda in the Working Group on 17 February 1992.

20. See the document, *The Balance between Central, Regional and Local Government*, submitted to Working Group 2 on 17 February 1992.

with the necessary checks and balances to preclude the centralisation of power, these checks and balances to be clearly circumscribed in the Constitution.

2. DISCUSSION

2.1.1 "...It is the conviction of the XPP that the more sites of power that exist, the greater the potential checks and balances and the greater the potential for having as many citizens as possible living under the laws and regulations of their own choice. This would require a great deal more than merely the decentralisation of administrations which would at regional level merely execute the will of a centralised authority. Rather, it would require the establishment of truly representative and democratic government at the Second- and Third-tiers with defined and entrenched functions and corresponding autonomy, protected either through a federal constitution of entrenched within the constitution of a unitary state.

2.1.3 It is the conviction of the XPP that strong and autonomous local and regional governments provide the most compelling instrument for achieving a free society in South Africa.

3.2.1 ... it is proposed that the principle of the devolution of power to the lowest tier of government capable of exercising that power efficiently and effectively within the overall requirement of cost-effectiveness of democratic government be accepted.

3.2.2 The XPP is in favour of the adoption of the general principle of limitation of the autonomy and functions of higher authority and of the devolution of all residual powers to lower tiers."