

INKATHA FREEDOM PARTY

THEME COMMITTEE No.1 **CHARACTER OF THE DEMOCRATIC STATE**

FIRST REPORT ON **DEMOCRACY AND** **CHARACTER OF THE STATE'**

SUPREMACY OF THE CONSTITUTION:

- 1 The Constitution in its entirety shall be the supreme law of the land. Therefore, the Constitution shall be fully and entirely justiciable by means of a Constitutional Court, and shall be the parameter for the validity and legality of the legislation of Parliament.
2. The constitution shall bind not only all organs of the Republic but shall also apply to all legal relations.
3. In relation to their respective areas of constitutionally recognised autonomy, the Constitution shall be implemented not by the national government but rather by the Provinces, and by social and cultural formations, or by individuals, respectively. For instance, the constitutional right to health entrenched in the! national constitution shall be implemented exclusively by the provincial legislation and administrative action.

SEPARATION OF POWERS (Form of State):

1. There shall separation of powers between national and provincial levels of government.
2. Provinces shall be the primary government of the people and shall be entitled to exercise any type of power and function which can adequately and properly be exercised at provincial level.
3. Only the powers of the national government ought to be listed in the constitution, while all other powers should be left to the Provinces.
4. Provinces shall have full judicial powers in all matters of their competence.

1. The IFP makes this submission under protest, for the Constitutional Committee should withhold consideration of the matters covered in this report and further development of the work program so as to allow international mediation to take place.

3. The electoral system is a fundamental element characterising the form of government and the type of democracy. Therefore the constitution should set out the general principles of the national electoral system, leaving to the law the task of implementing such principles, so as to leave sufficient flexibility for future developments'. The provincial electoral systems should be within the exclusive competence of provincial constitutions.

PARTICIPATORY DEMOCRACY:

1. The constitution shall entrench the notion of participation of affected public and private interests in the formative process of an administrative action or regulation.
2. The constitution shall entrench the notion of participation of affected public and private interests in the legislative process.
3. Provision shall be made for referenda at all levels of government to be held at the request of a reasonably small number of dissatisfied citizens.
4. Provision shall be made for the recognition of the right to petition any government structure.

TRANSPARENT AND ACCOUNTABLE DEMOCRACY

1. The right of access to all government information and private data banks information shall be recognised in the constitution, with customary Qualifications and exclusions, subject to judicial review.
2. The notion of administrative justice and judicial reviewability of all administrative actions shall be constitutionally entrenched.
3. Public officials shall be personally responsible for gross negligence and malice.
4. War shall be prohibited as a means to solve international controversies and shall only be allowed to defend the State's sovereignty over its territory.

TYPE OF STATE

1. South Africa should be a social but not a socialist state.
2. Private property and free-market enterprise shall be protected and the direct interference of government in economic matters shall be severely limited⁴.
3. The constitution should contain all recognised socio-economic rights along with constitutional imperatives which mandate the legislature to operate to remove social injustice, and promote the social growth of all South Africans.
3. The details of the IFP proposals on suffrage, proportionality and electoral systems will be

tabled in the IFP submission for the as 7th Report, per approved work program.

4. The detailed aspects of this principles will be set out in the third Report to this Theme Committee relating to the Economic Constitution, as per approved work program.
5. National government shall have no overrides and, as a rule, Provinces shall have exclusive powers. Both the national and the provincial levels of government shall enjoy exclusive powers. Relations between the two levels of government shall be regulated by checks and balances, intended as a predetermined set of mutual interferences among the powers of each level of government, also based on the extension by relevancy or implication of the exclusive powers of the national level of government into the areas of competence of the Provinces, as in theory is the case in the U.S. system (i.e.: interstate commerce). In specific areas of provincial competence, the techniques of national framework legislation regulating exclusive provincial powers could also be used in matter which requires concurrence between the national and provincial levels of government, provided that national legislation shall not be so detail to actually regulate, or exercise the actual function in the matter concerned.
6. There shall be separation of powers between all levels of government and civil society.
7. Individuals as well as social, cultural, political and economic formations shall be recognised and guaranteed a sphere of protected constitutional autonomy defined by the interests which they are capable of self-regulating and administering and in respect of which no government has a compelling reason of public interest to intervene.

WHAT TYPE OF DEMOCRACY:

1. The principle of participatory and/or direct democracy should be constitutionally entrenched in addition to the principle of representative democracy [see infra.
2. The principle of the autonomy of individuals as well as of economic, social, political and cultural formations should also be entrenched with respect to all activities for which any level of government does not have a compelling justification of public or national interest to regulate, control or directly exercise.
Inter alia, the foregoing principle recognises the autonomy of churches, political parties, professional associations, chambers of commerce, universities, arts and culture organisation, family structures, traditional communities, economic enterprises, civics, private contractual autonomy in economic and personal matters, etcetera.
3. The principles of (a) transparency, (b) political accountability and (c) civil accountability of governmental structures shall be constitutionally entrenched.

REPRESENTATIVE DEMOCRACY:

- 1 . The principle of political representation of government and regular elections should be constitutionally entrenched with respect to national, provincial and "primary" local governments (excluding local government substructures, including traditional communities)'.
 2. The implementation of this principle with respect to provincial and local government shall be within the exclusive competence of the Provinces.

2. This principle relates to what the constitution should require. The law may extend proportional representation to substructure.