

"Democracy means freedom to choose"

hikatha Freedom Party
IQembu lenkatha Yenkululeko

THEME COMMITTEE No. 5
ON JUDICIARY AND LEGAL SYSTEMS

FIRST REPORT ON
RELATION BETWEEN DIFFERENT LEVELS OF THE COURT
AND A SINGLE OR SPLIT JUDICIARY'

STRUCTURE OF THE JUDICIARY SYSTEM

1. Provinces shall be the primary government of the people and shall exercise all those functions which have not been devolved upwards to the federal government.
2. Provinces shall have judicial functions with respect to all matters within their competence.
3. The provincial judicial system shall have its own Appellate Division and should exercise final instance jurisdiction on matters of provincial competence.
4. There could be recognition of first instance jurisdiction to be exercised by certain institutions of civil society with respect to the interests that they administer and regulate. This jurisdiction should be subject to Appellate review of the provincial or the national judicial system depending on the respective areas of competence. Civil society jurisdiction could include Tribal Courts, professional associations, trade unions and universities.
5. The national constitution should limit its provisions to the organization of the national judicial system leaving the organization of the provincial system to the autonomy of Provinces.

APPELLATE DIVISION

1. The Constitution shall provide for the possibility of Appellate jurisdiction with respect to all cases and controversies handled by the judiciary.

2. The Appellate Division shall also exercise nomophilic functions, such as ensuring the uniform application and interpretation of the law in the courts of first instance.

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.

SPECIALIZED AND EXTRAORDINARY COURTS

- 1 There shall be no special or extraordinary tribunal courts, which are often established for political purposes.
2. However, the Constitution shall make provision for military courts, specifying that during peace-time they have jurisdiction only over military personnel on active duty.
3. Within the ordinary court system, the Judicial Commission may create specialized sections for given subject matters such as labor, tax or family law and for matters which may require the participation of qualified experts to the administration of justice.

TRADITIONAL COURTS

1 . Traditional, customary and religious courts shall be constitutionally protected. However, their jurisdiction should not be exclusive but only concurrent and should be limited to those cases and controversies which are based on the application of traditional and customary law or religious rules respectively, as per the time when such cases and controversies are initially proposed.