

KwaZulu Natal



Indaba

CONSTITUTIONAL PROPOSALS

Agreed to on 28 November 1986

P.O. Box 2925, Durban 4000, Republic of South Africa. Tel. (031) 304-1932

DOCUMENTATION CENTRE
UNIVERSITY OF DURBAN-WESTVILLE

Accession No. 1781/35.....

BRN

Class No.

PREFACE

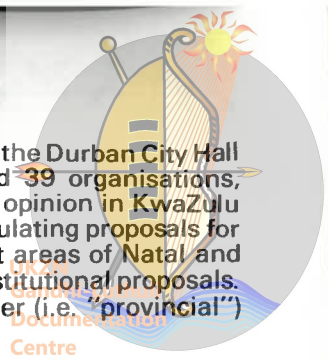
The KwaZulu Natal Indaba met in the Council Chamber of the Durban City Hall from 3 April to 5 December 1986. During that period 39 organisations, representing a wide cross section of public and political opinion in KwaZulu and Natal, deliberated and negotiated with a view to formulating proposals for the introduction of a single legislative body for the joint areas of Natal and KwaZulu. The end result was a finely balanced set of constitutional proposals. By their very design, the proposals provide for second tier (i.e. "provincial") government in the region.

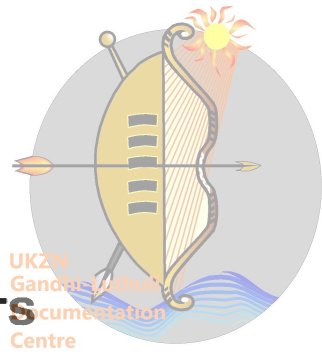
The Indaba proposals are based on six points of departure that were adopted during the first session of the Indaba. These points are the following:

- (i) The Indaba accepts that the KwaZulu/Natal Region is a single unit and that its second tier government should reflect this reality in its political structure.
- (ii) This Indaba, aware of the economic and strategic interdependence between the KwaZulu/Natal region and the rest of South Africa, and aware of the patriotism of its people to its fatherland, South Africa, has no desire to be sovereignly independent of South Africa.
- (iii) All the people of the region should have the right to full political participation and effective representation.
- (iv) This Indaba accepts the democratic principles of freedom, equality, justice, the Rule of Law and access to the law. Legislation based on racial discrimination must be abolished.
- (v) Society in Natal/KwaZulu must be founded upon a free economic system and the provision of equal opportunities for all people. Provision must also be made for the protection of the rights of individuals and groups.
- (vi) Legislative and administrative power should be devolved as much as possible.

It should be stressed that no consideration was given to the possibility of an "independent" Natal. On the contrary, a main feature of the Indaba proposals lies in the fact that they can be accommodated in the present South African constitutional structure.

This booklet contains the Indaba proposals in their original form. Further information on the Indaba is obtainable from P.O. Box 2925, Durban 4000 (tel. (031) 304-1932).





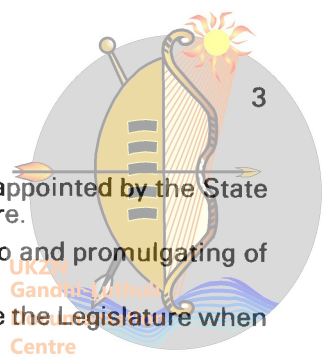
1

TABLE OF CONTENTS

1. The Governor	A.1	- 3
2. The Bill of Rights	B.1	- 4
3. Tiers of Government	C.1	- 10
4. The Provincial Legislature	D.1	- 11
5. Electoral System	E.1	- 17
6. Standing Committees	F.1	- 20
7. The Provincial Executive	G.1	- 21
8. Local Government	H.1	- 22
9. Local Authorities	I.1	- 23
10. Traditional Authorities	J.1	- 24
11. Cultural Councils	K.1	- 25
12. Economic Advisory Council	L.1	- 27
13. Approval, Review and Amendment of Constitution	M.1	- 28

THE GOVERNOR

1. There shall be a titular Governor of the Province appointed by the State President on the advice of the Provincial Legislature.
2. The Governor shall be responsible for assenting to and promulgating of legislation passed by the Legislature.
3. The Governor shall convene, prorogue and dissolve the Legislature when so requested by the Prime Minister.
4. The Governor shall not sign legislation which falls outside the area of competence of the Legislature.



THE BILL OF RIGHTS

1. The Bill of Rights adopted by the Indaba shall be a chapter of the Constitution and shall be entrenched therein.
2. The Bill of Rights shall be fully enforceable against the Governor, the Prime Minister and Executive and the Legislature.
3. No amendment of the Bill of Rights shall be valid unless such amendment is effected by means of an amendment of the Constitution strictly in accordance with the procedure prescribed therein.

Explanatory Notes:

- (a) The Bill of Rights will only apply to legislation and executive action flowing from powers given to the Province.
- (b) Recourse to the Supreme Court, and the way in which existing laws which conflict with the Bill of Rights are to be phased out and invalidated one year after the commencement of the Constitution, are dealt with in clause 15 of the Bill of Rights.

Human dignity and equality before the law

1. (1) All human beings are born free and equal in dignity and rights.
- (2) Everyone is equal before the law, and shall be entitled to equal protection of the law, without any distinction on the basis of race, colour, language, sex, religion, ethnic or social origin, property, birth, political or other opinion, or economic or other status.

Right to Life

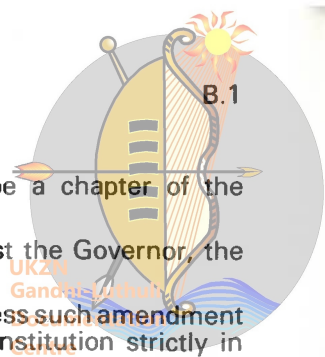
2. (1) Everyone's right to life shall be protected by law, and no one may be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- (2) Deprivation of life shall not constitute a contravention of this article when it results from the use of such force as is absolutely necessary and justified in the circumstances -
 - (i) in defence of any person against unlawful violence;
 - (ii) to effect a lawful arrest in order to prevent the escape of a person lawfully detained for a serious offence;
 - (iii) in action lawfully taken for the purpose of quelling a riot or insurrection.

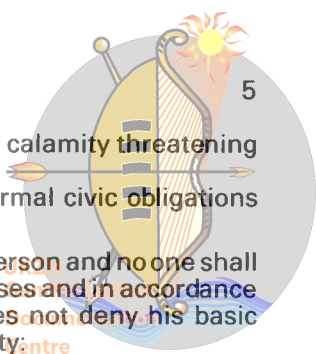
Punishment

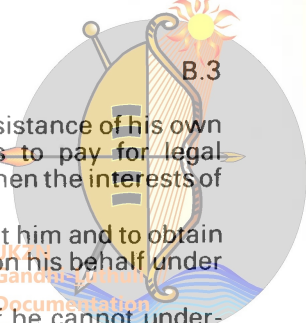
3. No one shall be subject to torture or to inhuman or degrading treatment or punishment.

Right of liberty

4. (1) No one shall be held in slavery or servitude.
- (2) No one shall be required to perform forced or compulsory labour: Provided that this does not include -
 - (a) any normal work required to be done in the ordinary course of detention under the provisions of subsection (3) or during conditional release from such detention;
 - (b) any service of a military character in terms of a law requiring citizens to undergo military training;



- 
- (c) any service exacted in case of emergency or calamity threatening the existence or well-being of the Province;
- (d) any work or service which forms part of normal civic obligations imposed by law.
- (3) Everyone has the right to liberty and security of person and no one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law which does not deny his basic rights to physical and mental health and integrity:
- the lawful detention of a person after conviction by a competent court;
 - the lawful arrest or detention of a person for non-compliance with the lawful order of a court;
 - the lawful arrest or detention of a person effected for the purpose of bringing him before a competent legal authority on reasonable grounds of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - the lawful detention of a person for the prevention of the spreading of infectious diseases, of a person of unsound mind, an alcoholic or a drug addict;
 - the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the Province or of a person against whom action is being taken with a view to deportation or extradition.
- (4) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- (5) Everyone arrested or detained in accordance with the provisions of subsection (3)(c) shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial, which may be conditioned by guarantees to appear before trial.
- (6) In the determination of his civil rights and obligations or of any criminal charge against him, everyone shall be entitled to a fair and public hearing within a reasonable time by an independent and impartial court established by law; judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where the publicity would prejudice the interests of justice.
- (7) Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law.
- (8) Everyone charged with a criminal offence shall have the right -
- to be informed promptly, in a language of his choice which he understands and in detail, of the nature and cause of the accusation against him;
 - to have adequate time and facilities for the preparation of his defence;

- 
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it at no cost to himself when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in the court, or if he so requests.
- (9) Everyone who is deprived of his liberty by arrest or detention shall be informed promptly in a language of his choice which he understands and in detail, the reasons for his arrest and detention, and shall be entitled to take proceedings by which the lawfulness of his detention is decided speedily by a court, and to be released if the detention is not lawful: Provided that if he has not sufficient means to pay for legal assistance, he will be given it at no cost to himself.
- (10) Everyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
- (11) No one who is tried for a criminal offence shall be compelled to give evidence at the trial.
- (12) No one who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for the offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.
- (13) No one shall be found guilty of any penal offence on account of any act or omission which did not constitute a penal offence at the time when it was committed.

Right of administrative justice

5. (1) All administrative tribunals, public authorities and officials shall follow rules of fundamental fairness in coming to their decisions and they shall, unless inappropriate, be required to furnish reasons for such decisions.
- (2) Delegated legislation shall be drafted with a reasonable allowance for public comment and participation.
- (3) Everyone who has suffered damage as a result of unlawful action by public authorities shall have an enforceable right to compensation.

Right of privacy and protection of the family

6. (1) No one shall be subject to arbitrary interference with his privacy, family, home or communications, nor to attacks upon his honour or reputation.
- (2) The widest possible protection and assistance shall be accorded to the family, which is the natural and fundamental group in society, and the care and upbringing of children are recognised as a natural right of and a duty primarily incumbent on, the parents.

Right of property

7. (1) Everyone has the right to lawfully own and occupy property anywhere in the Province.
- (2) No one is to be deprived of his property without due process of law, and expropriation may only be authorised in terms of a law if it is for the public benefit and if equitable and fair compensation is promptly paid.
- (3) Land and natural resources may not be expropriated except for the common good and in accordance with laws providing for equitable compensation.

Ethnic, religious, linguistic, cultural and educational rights

8. (1) A person belonging to an ethnic, religious or linguistic group shall not be denied the right to enjoy his own culture, to profess and practise his own religion or to use his own language.
- (2) Everyone shall have the right freely to participate in the cultural life of the Province, to enjoy the arts, to share in scientific advancement and its benefits, and to the free and full development of his personality.
- (3) In all proceedings involving customary law followed by persons in the Province, such law may be applied except insofar as the court finds that it has fallen into disuse or is contrary to the principles of natural justice and morality.
- (4) Every person shall have the same right to public education in an institution that will cater for his interests, aptitudes and abilities and the Province shall make provision for this right without discrimination: Provided that, notwithstanding the provisions of section 1(2), it may, in providing facilities, distinguish between persons on grounds of language or sex.

Freedom of movement

9. Everyone lawfully present in the Province, shall be entitled to freedom of movement and residence within the borders of the Province.

Freedom of thought, conscience and religion

10. (1) Everyone shall be entitled to freedom of thought, conscience and religion and to change his religion or belief, to manifest his religion or belief in worship, teaching, practice and observance, whether alone or in community with others, in public or in private.
- (2) No one shall be compelled against his religious convictions to render military service involving the use of arms but shall be required to perform national service as required by law in lieu thereof.

Freedom of opinion and expression

11. (1) Everyone shall be entitled to freedom of opinion and expression, which includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas.
- (2) Any advocacy of national, racial or religious hatred or aggression between groups that constitute incitement to discrimination, hostility, violence or political animosity is prohibited.

Freedom of association

12. (1) Everyone shall be entitled to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests, and no one may be compelled to belong to an association.
- (2) Everyone shall be free to form or to join political parties in order to participate in periodic and free elections, which shall be held by secret ballot or by equivalent free voting procedures.

Freedom of work and freedom of contract

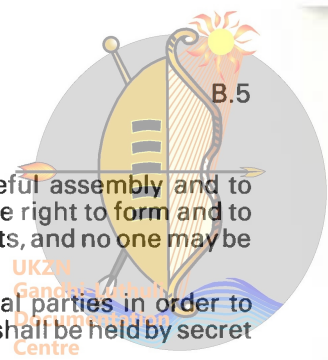
13. (1) Everyone shall be entitled to equal work opportunities and to free choice of employment.
- (2) Everyone with legal capacity shall have freedom to contract and to conclude agreements with others in the voluntary exercise of his rights and freedoms and generally for the promotion of his interests.

Restriction of rights and freedoms

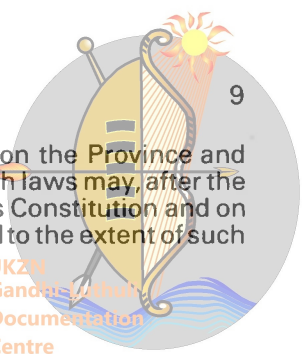
14. (1) The rights and freedoms recognised, under the provisions of this Bill of Rights may be restricted by a law of the Provincial Legislature which has general application, for reasons which are necessary in a free and democratic society in the interests of public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the rights, freedoms and reputation of others, for maintaining the authority and impartiality of the judiciary and for the social, moral and economic well-being of all the inhabitants of the Province.
- (2) Everyone's exercise of his rights and freedoms shall be subject to such limitations as are legally determined for the purpose of securing due recognition and respect for the rights and freedoms of others; and groups which by reason of their aims and the behaviour of their adherents, seek to impair or abolish the free democratic order or to endanger the security of the Province, are prohibited.
- (3) A fundamental right and freedom protected in this Bill of Rights may not be abolished or in its essence be encroached upon by a law of the Province.

Enforcement of rights and freedoms

15. (1) The rights and freedoms protected in this Bill of Rights are binding on the legislature, the executive, the judiciary and all government institutions in the Province insofar as they fall within the purview of and flow from the powers and functions devolved on the Province and any person may forthwith apply to the Supreme Court or to other competent authorities provided for in the Constitution by appropriate proceedings or by petition to enforce these rights and freedoms.
- (2) The Supreme Court shall have the power to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any of the rights conferred by the provisions of this Bill of Rights: Provided that if at the commencement of this Constitution there are laws in existence in the Province which fall within the

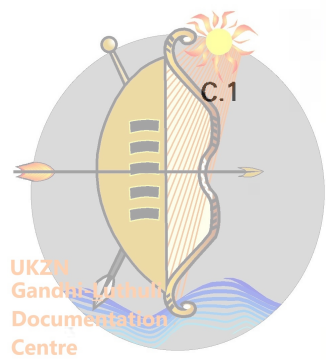


purview of the powers and functions bestowed on the Province and which are inconsistent with this Bill of Rights, such laws may, after the lapse of one year after the commencement of this Constitution and on application to the Supreme Court be declared void to the extent of such inconsistency.

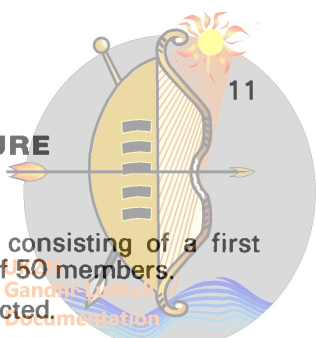


TIERS OF GOVERNMENT

1. Three tiers of government are identified:
 - (a) Central
 - (b) Provincial
 - (c) Local, consisting of -
 - (i) local authorities
 - (ii) tribal or traditional authorities
 - (iii) regional "arrangements."
2. The Indaba is concerned with only provincial and local government, and the powers of these institutions respectively should be defined and entrenched in the constitution.
3. Their powers should be devolved to the maximum extent practical.



THE PROVINCIAL LEGISLATURE



I GENERAL

1. **Size:** There shall be a two chamber legislature consisting of a first chamber of 100 members and a second chamber of 50 members.
2. **Elected:** All members of the legislature shall be elected.
3. **Qualifications:** Voting will be by universal adult suffrage for all South African citizens resident in the Province in accordance with the Provincial Electoral Act, the qualifying age being 18 years old.
4. **Proportional representation:** A system of proportional representation will be adopted for elections.
5. **Legislative powers/matters:** The legislature will exercise legislative powers in respect of all the matters referred to under V below.

II THE FIRST CHAMBER

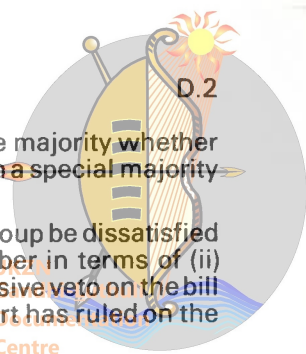
1. The first chamber will consist of 100 members elected using a system of multi-member, constituency based proportional representation.

III THE SECOND CHAMBER

1. **Composition:** The second chamber will consist of 50 members composed of representatives of the following groups:
 - the African background group (10 members)
 - the Afrikaans background group (10 members)
 - the Asian background group (10 members)
 - the English background group (10 members)
 - the South African group (10 members)
2. **Voters:** Save in the case of the South African group, a voter in a second chamber election must belong to the group whose candidate he intends voting for.

IV PROCEDURES

1. In the normal course of events legislation will be initiated by the executive.
2. Before a bill is proceeded with, it must be discussed and dealt with by a standing committee of the two chambers.
3. After a bill has been approved by the standing committee, it is sent to the first chamber for adoption.
4. If the bill is passed by the first chamber, it is sent to the second chamber.
5. To become law, all legislation, including money bills, must be passed by both the first and the second chamber, subject to the following provisos:
 - (a) (i) In the case of legislation which affects the religious, language, cultural or other rights of the members of a background group or the South African group, such legislation will require in addition to majorities in both chambers, a majority of the representatives of that group in the second chamber.



- (ii) The second chamber will determine by a simple majority whether or not a bill falls into the category requiring such a special majority as set out in (i) above.
 - (iii) Should a majority of members of the affected group be dissatisfied with a negative decision by the second chamber in terms of (ii) above, they shall have the right to cast a suspensive veto on the bill concerned until such time as the Supreme Court has ruled on the issue.
 - (iv) In determining whether a bill requires a special majority as set out in (i) above, the second chamber and the Court, when asked to rule on the matter, shall determine whether the bill can reasonably be expected to affect the rights of the group concerned: Provided that the passing of such a special majority vote shall not adversely affect the rights of any other group.
- (b) In the event of a money bill not being passed by either chamber, or if it is delayed in a standing committee for want of the required majority, the bill will be referred to a special committee consisting of an equal number of members of each chamber, proportionally elected by each chamber from its members, and presided over by the Prime Minister or his nominee; the special committee's recommendations will be submitted to both chambers in the form of a bill, which shall be passed by both chambers in that form.
6. If any bill fails to obtain a majority in the second chamber, it is referred back to the first chamber via the standing committee, unless the first chamber indicates that it is prepared to accept any amendments proposed by the second chamber.
7. Private members' bills may be introduced in either chamber.
8. By agreement of the chairmen ("speakers") of the two chambers, the chambers may sit together in joint session.

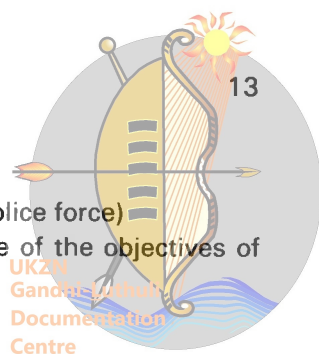
V MATTERS FALLING WITHIN THE POWERS OF THE LEGISLATURE*

1. Public Service Commission
 - personnel administration system, development and maintenance
 - creation, abolition, division and amalgamation of departments
 - workstudy
 - training and bursaries
2. Law advice services
3. Language services
4. Printing services
5. Special services
 - civil defence
 - security services

*EXPLANATORY NOTE: The following list was made up from the various documents submitted by the Committee of Specialists and the subsequent discussions in the Indaba.

D.3

- strategic planning
 - strategic information
 - protection of life, persons and property (tribal police force)
 - prohibiting or counteracting of the furtherance of the objectives of undesirable organisations and persons
6. Office of the auditor
 7. Computer bureau services
 8. Centralised auxiliary services
 - personnel
 - finance
 - provisioning administration
 - central supplies services
 - office accommodation
 - stationery
 - office equipment
 - typing services
 - messenger services
 - official transport
 - microfilming
 - registry services, etcetera
 - Tender Board
 - Provincial Gazette
 - establishment of public holidays
 9. Planning, construction and maintenance of roads, bridges and other road-structures and outspans, ponts and toll roads
 10. Road carrier transportation matters
 11. Planning, construction and maintenance and administration of official properties and accommodation
 12. Planning, establishment, financing, co-ordinating and execution of industrial trading, finance and other business undertakings and projects, including development corporation and zero-based regional areas but excluding mining, professions and trading in arms, ammunition and explosives
 13. Control and licensing of business undertaking, including:-
 - places of auction
 - places of amusement and entertainment
 - horse-racing and betting
 - totalisators
 - casinos



14

14. Aspects of labour

15. Manpower

16. Tourism

17. Control and licensing in respect of intoxicating liquor

18. Road traffic regulation and control

19. Vehicle and driver licensing administration and control

20. Road carrier transport inspections

21. Registration and control of domestic animals and pounds

22. Legal aid

23. Regulation and control of the establishment and functioning of all local and regional government and tribal authorities, including development and services boards, water supply boards, etcetera, and, where applicable, the division, amalgamation and constitution of tribes and the appointment of chiefs

24. Regulation and control of matters relating to cemeteries and crematoria, the removal of corpses and the exhumation of corpses

25. Establishment, administration and control of housing schemes

26. All physical and land use planning

27. Establishment and administration of nature reserves and facilities and amenities in such areas (including herbaria, botanic gardens, zoological gardens, aquariums, oceanariums, snake parks, recreational resorts, camps, accommodation, etcetera)

28. Administration and control of forestry areas and marine affairs

29. Regulation and control of anti-shark measures

30. Regulation and control of pollution (air, land, water and noise, but excluding oil pollution on sea)

31. Regulation and control noxious weeds and vermin

32. Render agricultural economic advisory services

33. Provide agricultural produce control, including licensing and control of markets and abattoirs

34. Provide veterinary services

35. Research, administer and control nature and environmental conservation measures, including agricultural soil conservation

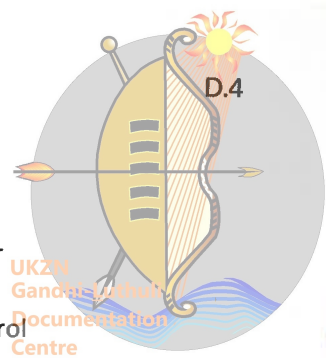
36. Financial assistance to farmers

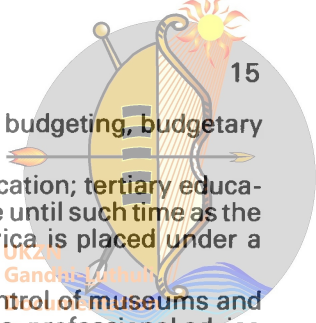
37. Collection of and control over revenue (including personal taxation, licences, fees for services rendered by departments, tribal authorities or regional authorities, commissions, auction and other dues, donations, bequests, etcetera)

38. Raising of loans in consultation with the Treasury

39. Rendering of a financial and economic advice service to the Executive

40. Co-ordination of an economic, social and financial planning strategy



- 
41. Development, management and maintenance of a budgeting, budgetary control and financial accounting system
 42. Providing pre-primary, primary and secondary education; tertiary education will be under the control of the Natal Legislature until such time as the tertiary education system in the rest of South Africa is placed under a single department
 43. Establishment, development, maintenance and control of museums and art galleries (or the rendering of financial assistance, professional advice and supervision in regard to museums and art galleries run by local authorities)
 44. Rendering of school and public library services
 45. Development, administration and control of educational, cultural, recreational, amateur sport and fitness programmes for schools and adults
 46. Rendering of health services, including the establishment, management and control of hospitals, clinics and other health and supporting institutions
 47. Provide social welfare services, including child welfare, social benefit schemes and school medical services
 48. Police matters
 49. Land survey and mapping (excluding deeds registry)
 50. Aspects related to justice
 51. Natal regional force
 52. Radio and television licensing in the Province
 53. Sunday observance
 54. Gambling

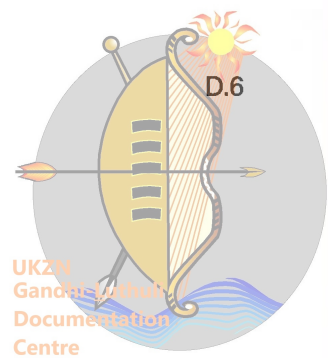
VI MATTERS TO RESIDE WITH THE CENTRAL GOVERNMENT*

Matters not mentioned under V above will vest in the Central Government, e.g.:

1. Foreign affairs
2. South African Defence Force
3. National Intelligence Service
4. South African Police and Railway Police
5. Prisons
6. Posts and telecommunications
7. Home affairs (population registration, voters' rolls, immigration, passports, etcetera)
8. Mineral and energy affairs
9. SATS (Railways and Harbours)
10. Transport (civil aviation, civil navigation, National Transport Commission, etcetera)
11. Weather bureau
12. Central statistics bureau

*NOTE: A police force and a regional force were suggested for Natal; the justice function must still be finalised; KwaZulu has indicated that part of the population registration function could also be done in the Province, possibly on an agency basis.

13. Registrar of companies
14. Registrar of financial institutions
15. Commissioner of inland revenue
16. Customs and excise
17. Archives
18. National monuments and art galleries
19. State libraries
20. Labour union and arbitration matters
21. Macro-water affairs
22. Oil pollution on sea
23. State debt commissioners
24. Deeds registration
25. Trading/licensing in respect of mines, professions and arms and ammunition
26. Auditor-General

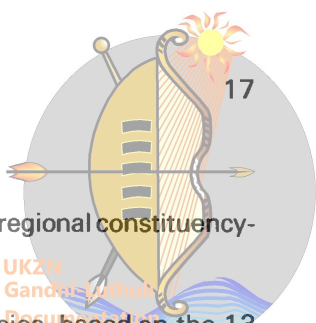


VII SCOPE OF LEGISLATIVE POWERS*

1. The legislature will have full powers to make legislation for the Province in respect of the matters listed under V above.
2. All laws applying in the Province at the date of the commencement of the constitution, will continue to be in force until repealed or amended by the competent authority, which may be either the provincial legislature or the South African parliament, depending on the nature of the matter.
3. In respect of the matters entrusted to its legislative competency, the provincial legislature may repeal or amend any act of the South African parliament applying to the province at the commencement of the constitution.
4. No act of the South African parliament that deals with a matter entrusted to the legislative competency of the provincial legislature, and made after the commencement of the constitution, will apply to Natal.
5. At the commencement of the new constitution, three sets of laws will apply to various parts of the Province: parliamentary legislation (present Natal and KwaZulu), legislation of the KwaZulu Legislative Assembly (present KwaZulu and possibly citizens of KwaZulu, the latter in respect of certain matters, whether such citizens find themselves inside or outside of KwaZulu), and ordinances of the now defunct Natal Provincial Council (mostly in present Natal, some older ones possibly in KwaZulu as well). The constitution will have to contain a provision governing possible conflicts in such legislation.

*NOTE: The scope of the powers outlined here corresponds to that presently enjoyed by the KwaZulu Legislative Assembly, and is wider than that enjoyed by the erstwhile Natal Provincial Council.

THE ELECTORAL SYSTEM



I THE FIRST CHAMBER

1. The electoral system will combine the advantages of a regional constituency-based system with proportional representation.
2. The salient features of the proposed system are:
 - a. The Province will be divided into 15 constituencies, based on the 13 RDAC areas, with the greater Durban area (region 41E) further subdivided into North Durban, West Durban and South Durban.
 - b. The number of seats allocated to each constituency will be determined by an Electoral Commission which by using population census and other relevant data shall allocate a number of seats to each constituency. The allocation shall be done on the basis of the estimated adult population of the constituency as a proportion of the adult population of the Province as a whole. Sixty six seats shall be apportioned to constituencies in this manner.
 - c. No voters' rolls need be prepared and a voter in the Province on election day may cast his vote in any constituency. Since every vote counts equally, there is no incentive to vote in the 'wrong' constituency. Indeed, there will be a territorial incentive to vote on 'home ground'.
 - d. Participating parties and/or groups and/or individuals must register as such before nomination day. On nomination day, participating parties and/or groups and/or individuals must submit a list of candidates for each constituency it wishes to contest (constituency list) and a list of candidates for the Province as a whole (provincial list). The name of a candidate may appear on a constituency list and the provincial list simultaneously, but not on a list for the second chamber (as to which see on page E.2 (item II.3) below). Each list shall indicate the candidates in declining order of preference. If a candidate is elected on a constituency list, his name is automatically deleted from the provincial list.
 - e. Voters cast one vote only for the party list of their choice in the constituency in which they are voting. For simplicity the ballot paper will reflect only the party's name and symbol. The lists of candidates for each party will be displayed at each polling station.
 - f. An electoral quota will be determined in each constituency after the voting has taken place. The quota will be calculated by dividing the number of votes cast in the constituency by the number of seats allocated to that constituency.
 - g. After the votes have been counted a seat (or seats) will be allocated to each participating party in the constituency that has attained the constituency electoral quota or multiple thereof.
 - h. Thereafter the number of votes cast for each participating party on a provincial basis is determined by adding together the votes cast for each party in every constituency. This number is divided by the provincial quota (total number of votes cast in the Province divided by 100 seats) to determine the number of seats a party should have won.

- i. Additional seats are now allocated to parties on the basis of the number of seats they should have won less the number of seats they actually won in the constituencies. Such seats are awarded to parties on the basis of their provincial lists.
- j. The overall effect of the system of proportional representation described above is that a party will end up with 1 seat for each 1% of the votes it obtained in the election. For example: if a party gets 5% of the votes, it will get 5 seats.

Explanatory Notes:

- a. Postal votes, or any other system of dealing with absent voters are not provided for. This is done for the sake of simplicity, to avoid malpractices inherent in such a system and because it is assumed that the outcome of the elections will reasonably reflect the views of those who are out of the Province on election day as well.
- b. Constituency example: 5 seats, 121631 voted, quota = 24326

Party A:	7699 votes	— seats
Party B:	36210 votes	1 + 1 (biggest remainder)
Party C:	51101 votes	2
Party D:	26621 votes	1
	121631 votes	4 + 1 = 5
- c. Provincial example:

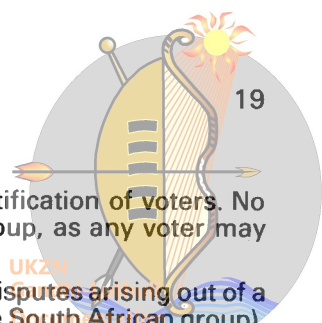
	Votes	Seats should have won	Actual seats	Additional seats
Party A	508 000	20	13	7
Party B	261 000	10	5	5
Party C	790 000	32	18	14
Party D	941 000	38	30	8
	2 500 000	100	66	34

II THE SECOND CHAMBER

1. The electoral system will be similar to that used for the election of members of the first chamber, i.e. proportional representation. For the second chamber, however, the Province will be treated as a single constituency for each group.
2. Participating parties and/or groups and/or individuals must register as such before nomination day. On nomination day, participating parties and/or groups and/or individuals must submit a list of candidates for the Province as a whole. Each list must indicate the candidates in declining order of preference.
3. No candidate may be nominated in more than one category (background/interest group). The name of a candidate may, however, appear simultaneously on the provincial list for the first chamber (as to which see page E.1 (item l.2.d.) above). If a candidate is elected to the second chamber, his name is automatically deleted from the provincial list.
4. No voter may vote in more than one category (background/South African group).

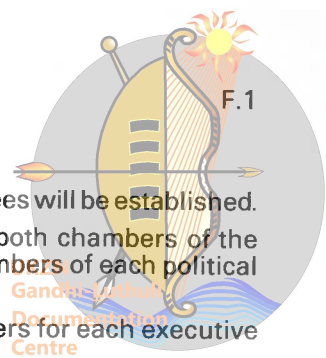
Explanatory notes:

- a. The Electoral Law will contain criteria for the identification of voters. No criteria will be laid down for the South African group, as any voter may decide to fall into that category.
- b. The Electoral Law will provide for the resolution of disputes arising out of a voter's choice to fall into a given category (except the South African group). An electoral commission and the electoral officers will play an important role in this regard.
- c. Voter identification takes place on election day:
 - (a) A voter reports at the relevant table and states the category of his choice for the second chamber election.
 - (b) If the official manning the table is in doubt about the voter's choice, or if any interested person or party objects against the voter's choice, the voter is immediately brought before the electoral officer who makes a ruling.
 - (c) If the voter accepts the ruling of the electoral officer, he receives his ballot paper and votes regularly.
 - (d) If the voter or the objector does not accept the ruling of the electoral officer, the voter still votes in the category of his choice, but his vote is sealed in a marked envelope. (Alternatively, the voter may vote in the South African category out of his own choice, in which case his vote will be counted like any other).
 - (e) Marked votes are not counted with the regular votes, but when the result is announced, an announcement is also made as to the number of marked (challenged) votes.
 - (f) If the voter pursues the objection within the prescribed period to the electoral commission, and the objection is upheld, the vote becomes regular and is counted.
 - (g) If "regularised challenged votes" eventually make a difference to the election result, another candidate may be declared elected.



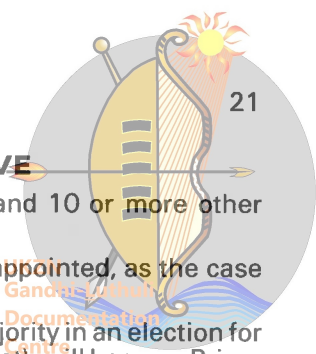
STANDING COMMITTEES

1. A system of strong and influential standing committees will be established.
2. Standing committees will consist of members of both chambers of the legislature, and will wherever possible include members of each political party represented therein.
3. There will be one standing committee of 15 members for each executive portfolio.
4. Standing committees will be composed as follows:
 - a. Each group in the second chamber will elect one member to each standing committee.
 - b. Members of standing committees from the first chamber will be elected by means of the proportional representation, single transferable vote system (PR/STV), provided that smaller parties that do not have members on all standing committees shall be entitled to appoint a member or members from either chamber to attend and participate in standing committee meetings, but without the right to vote.
 - c. No party will be entitled to more than 60% of the members of any standing committee.
5. All draft legislation shall be submitted to the relevant standing committee after the first reading for comment and approval.
6. Standing committees shall be required to receive and report on representations, and hear evidence from any cultural council in regard to any draft legislation or government action which the council contends is likely to affect the rights or interests of the group which it represents or any member thereof.
7. Standing committees shall hear and consider proposals and evidence submitted by the economic advisory and other councils instituted by the legislature.
8. In addition, standing committees shall consider written representations and, as far as possible, oral evidence, tendered by any group or individual with a special interest in draft legislation being, or about to be, considered by a standing committee.
9. Decisions of a standing committee shall be by more than a two-thirds majority, provided that draft legislation which has not been approved by a standing committee by such a majority, may be referred back to it by the executive after the lapse of two months.



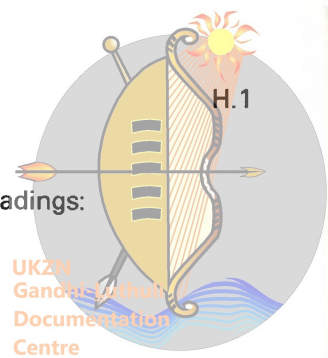
THE PROVINCIAL EXECUTIVE

1. The Executive shall consist of a Prime Minister and 10 or more other ministers.
2. The members of the Executive may be elected or appointed, as the case may be, from the first and the second chamber.
3. The leader of the party which secured an overall majority in an election for the first chamber (i.e. more than 50% of the votes cast), will become Prime Minister, or, if no party or coalition of parties obtained an overall majority in the first chamber, the Prime Minister shall be elected by the first chamber.
4.
 - a. Half of the ministers shall be appointed by the Prime Minister from his party if it secured an overall majority, and the other half shall be elected by an electoral college consisting of the elected members of all other parties represented in both chambers.
 - b. If the Prime Minister's party failed to secure an overall majority, all ministers shall be elected by the two chambers.
 - c. The composition of the Executive as described in a. and b. above shall be done in such a way that there is a minimum of one member from each group represented in the second chamber. It shall not be a requirement that such a member be appointed/elected from or by the second chamber.
5. An election by the Legislature or by an electoral college as referred to in 3 or 4 above shall be conducted using the PR/STV system (proportional representation/single transferable vote).
6. In the event of the death, resignation or permanent incapacity of the Prime Minister, his successor shall be appointed or elected as described above.
7. The first chamber may by a two thirds majority force the resignation of the Prime Minister.
8. The Prime Minister may secure the resignation of a minister. In the event of dismissal, death or resignation of a minister (other than the Prime Minister), the party responsible for his election may nominate a successor. If the party is no longer in existence, or does not want to appoint a successor, the Prime Minister must appoint a person who represents interests similar to those of the erstwhile party.
9. In the event of a new Prime Minister not assuming office within 30 days of the date when the previous Prime Minister ceased to act, the Governor must dissolve the legislature and within 14 days call a general election.
10. Decision-making in the Executive takes place, as far as possible, on the basis of consensus.



LOCAL GOVERNMENT

1. Local government will be dealt with under three headings:
 - a. Local authorities
 - b. Traditional authorities
 - c. Regional arrangements (where necessary).



LOCAL AUTHORITIES

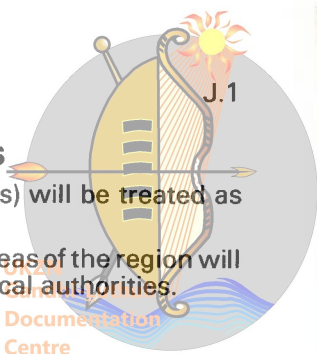
1. The existing system of local authorities in Natal will, until amended by the Legislature, continue in terms of current legislation, and will be extended to what is presently KwaZulu.
2. The powers and structures of local authorities will be entrenched in the constitution on a non-racial basis in accordance with the Bill of Rights.
3. The principle of extended powers for local authorities, well-known to Natal, will be entrenched in the constitution.
4. The principle of maximum devolution of power will be guaranteed by the constitution.



TRADITIONAL AUTHORITIES

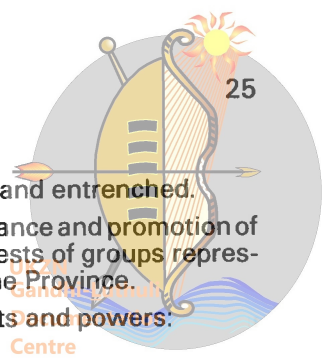
1. Traditional authorities (for example tribal authorities) will be treated as part of the system of local government.
2. Traditional authorities in the urban and peri-urban areas of the region will be encouraged to evolve into part of the system of local authorities.

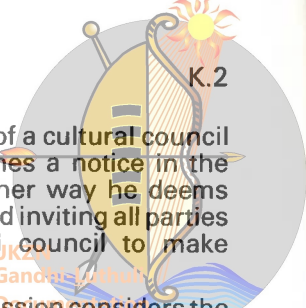
Documentation
Centre



CULTURAL COUNCILS

1. Cultural councils will be constitutionally recognised and entrenched.
2. These councils will deal with the protection, maintenance and promotion of the religious, language and cultural rights and interests of groups representing the principal segments of the population in the Province.
3. The cultural councils should have the following rights and powers:
 - i. to receive copies of all draft legislation;
 - ii. to be consulted and kept informed by all branches and levels of government of action taken or intended to be taken which may affect the rights and interests of the groups they represent;
 - iii. to make representations to all branches and levels of government, and in particular standing committees, to lead evidence and be heard in respect of matters affecting such rights and interests;
 - iv. the locus standi to apply to the Supreme Court for an order pronouncing upon the validity of any bill passed by the legislature but not yet assented to by the Governor, or any subordinate law or executive order having the force of law which the court may consider likely to infringe or affect any right or cultural interest of the group concerned or its members generally;
 - v. prior to approaching the court as aforesaid, the council shall endeavour to resolve the matter by approaching the relevant standing committee or other provincial or local government authority.
4. Cultural councils will be established on the following basis:
 - i. a commission consisting of three persons, one of whom shall be a supreme court judge, will be appointed by the Governor on the advice of the legislature to consider applications for the establishment of cultural councils, and to supervise and control the election or nomination of members of cultural councils, with the power to grant or refuse any application.
 - ii. provision will be made for a registrar and secretariat to assist the commission in the performance of its functions.
 - iii. the commission will prepare guidelines for the establishment of cultural councils, including requirements to be met by organisations and bodies interested in being represented in cultural councils. Such guidelines will be published for general notice, and for comment, recommendations and representations. (This is a form of public participation in decision-making as envisaged inter alia by section 5(2) of the Bill of Rights).
 - iv. the commission shall from time to time announce by notice in the Provincial Gazette, in newspapers and in any other way it deems fit, that cultural councils may be established in terms of the constitution.
 - v. cultural councils may also be initiated by cultural bodies and organisations themselves. The procedure would be to lodge an application with the commission, whereupon the commission will be enjoined to set the procedure for the establishment of a council in motion.

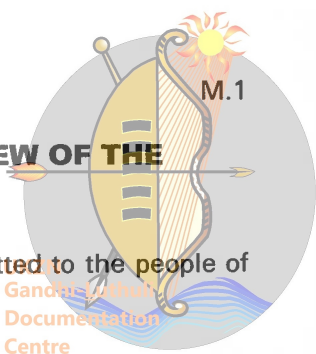


- 
- vi. On receipt of an application for the establishment of a cultural council in terms of the constitution, the registrar publishes a notice in the Provincial Gazette, in newspapers and in any other way he deems effective, giving full particulars of the application and inviting all parties interested in the formation of such a cultural council to make representations on or before a specific date.
- vii. As soon as possible after the return date, the commission considers the application together with all the representations received, and decides-
- whether a cultural council will be established
 - what the name of the council will be
 - when the council will be officially constituted
 - what bodies and organisations will be represented in the council.
- viii. A cultural council will consist of 8 to 12 members. They will be elected every five years by all the cultural bodies and organisations represented by the cultural council.
- ix. The commission will draw up rules governing the election of members of a cultural council (single transferable vote/proportional representation).
- x. Once a cultural council has been established, the commission will entertain any application from a cultural body or organisation to be represented by that particular council. This should as far as possible be done in consultation with the other bodies represented by the council; the commission will not be bound by the wishes of any particular body or organisation in connection with the accrediting of new bodies and organisations.
- xi. The commission shall ensure, as far as possible, that there is no undue proliferation of cultural councils, and that cultural councils do not represent patently overlapping interests of any cultural group.
- xii. An organisation or body feeling itself aggrieved by the result of an application, may lodge a complaint to the commission, which shall be enjoined to consider and rule upon such complaint, or such organisation or body may petition the Supreme Court if it feels that its rights in terms of the constitution (including the Bill of Rights) have been infringed.
- xiii. Provision will be made for the establishment of a "council of chiefs" to represent the interests of the traditional authorities. The size of the council will not be restricted to the 10 members referred to in viii. above. The rights, duties and functions of the council of chiefs will be the same as those of cultural councils.

ECONOMIC ADVISORY COUNCIL

1. An Economic Advisory Council will be established, comprising a chairman, vice-chairman and an equal number of representatives from each of the following categories -
 - a. agriculture
 - b. commerce
 - c. industry, and
 - d. labour.
2. The Council will be entitled to -
 - a. receive copies of all draft legislation prior to publication or consideration by standing committees;
 - b. make proposals and representations to standing committees and to lead evidence and to be heard in respect of matters affecting the rights of agriculture, commerce, industry and labour;
 - c. advise the Provincial government on all matters concerning economic policy.
3. The chairman and vice-chairman of the Council shall be appointed by the Provincial government.
4. The Provincial government shall provide the secretariat of the Council.

APPROVAL, AMENDMENT AND REVIEW OF THE CONSTITUTION



I GENERAL

The Indaba constitutional proposals will be submitted to the people of Natal for approval by way of popular vote.

II AMENDMENT OF THE CONSTITUTION

1. A two-thirds majority will be required in both chambers of the legislature to pass a bill aimed at amending the constitution.
2. A bill that affects the language, religious and/or specific cultural rights of a group as enshrined in the constitution, in addition needs the support of the majority of that group in the second chamber.
3. If the required majorities cannot be obtained in the second chamber, the government may submit the amendments to the electorate to be decided upon by referendum. In order to have the proposed amendment(s) accepted, a majority vote of 4 of the 5 groups represented in the second chamber will have to be recorded in favour of the amendment: provided that if such amendment affects the specific language, religious and/or cultural rights of a group, a majority of voters in that group must support the amendment in the referendum.

III CONSTITUTIONAL REVIEW

A constitutional review committee will be appointed by the legislature and charged with the task of reviewing the constitution and formulating recommendations to the legislature regarding revisions and improvements to the constitution.