

Certification of the KwaZulu-Natal Constitution 1996

Case CCT 15/96

Explanatory Note

The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

The Court declined to certify the KwaZulu-Natal Constitution (KZNC) which was passed by the KwaZulu-Natal legislature on 15 March 1996.

The Court noted that although any province is entitled to adopt a constitution for itself such a constitution must respect the requirements laid down in the interim Constitution for this purpose. A provincial constitution may provide for legislative and executive structures and procedures different from those provided for in the Interim Constitution and the province of KwaZulu-Natal must, if it passes a constitution, make provision for the Zulu Monarch. In no other respect can a constitution passed by the legislature of KwaZulu-Natal be inconsistent with any provision of the Interim Constitution or the Constitutional Principles set out in Schedule 4 of the Interim Constitution. Before the KZNC could come into operation the Constitutional Court was required by the Interim Constitution to certify that none of the provisions of the KZNC was inconsistent with a provision of the Interim Constitution or the Constitutional Principles.

According to the Court KwaZulu-Natal is not an independent state and has no original legislative or executive powers. The only legislative and executive powers that it has are those given to it by the Interim Constitution. The major flaw in the KZNC was that it claimed to give powers to the KwaZulu-Natal legislature and executive above and beyond those allowed by the Interim Constitution and in doing so its provisions conflicted with the Interim Constitution. Examples of such provisions are those which enact that the province of KwaZulu-Natal is a self-governing province; which regulate the relationship between the province and the National Government; which provide for a constitutional court and which grant certain exclusive legislative powers to the province and confer on it executive powers. The Court found that these were attempts to usurp the powers of the National Government. The Constitutional Court decided that a province was permitted to pass a bill of rights provided that it was limited to dealing with matters in respect whereof the province had legislative and executive power and that its provisions did not conflict with those of the bill of rights in the Interim Constitution. The Court came to the conclusion, however, that certain of the provisions in the KZNC's bill of rights fell outside its legislative or executive powers or were inconsistent with the provisions of the bill of rights in the Interim Constitution. These included provisions relating to fair criminal trial rights; labour relations and declarations of states of emergency. The KZNC contained various devices aimed at eliminating or remedying the above defects. One such device was the suspension of certain provisions until a later date, or the happening of a future event, such as the coming into operation of the new draft final national constitution. Other provisions enacted that the defective clauses would only come into operation to the extent that they were not in conflict with provisions in the final Constitution when it came into effect. The Court held that all these devices were in

conflict with the provisions of the Interim Constitution and could not be used to remedy the defective provisions.

Judgment was delivered by the full Court.