

**SUBMISSION BY THE DELEGATION OF THE GOVERNMENT OF KWAZULU
TO THE MULTI-PARTY NEGOTIATING COUNCIL AT ITS SITTING ON
JUNE 15, 1993**

**THE DELEGATION OF THE GOVERNMENT OF KWAZULU PROPOSES THAT
THE FOLLOWING INSTRUCTIONS BE PASSED ON TO THE TECHNICAL
COMMITTEE ON CONSTITUTIONAL ISSUES :**

1. THAT the Technical Committee on constitutional issues reconsider its attitude on the issue of Asymmetry.
2. THAT the Constitution of the State of KwaZulu-Natal which forms part of the documentation of the Technical Committee should be considered as an immediate option for state/regional government, together with any other state/regional constitutions which may be submitted to the Negotiating Council.
3. THAT the Technical Committee on the powers and functions of regions should incorporate in its report the option for asymmetry of the provisions of the Constitution of the State of KwaZulu-Natal and any other constitution submitted to the Negotiating Council.
4. THAT the Technical Committee should submit a report in accordance with the above within one week from today.

-----0-----

Resolution submitted by The Inkatha
Freedom Party.
RESOLUTION ON CONSTITUTIONAL ISSUES

We, the participants of the Multiparty Negotiation Process convening on this 15th day of June 1993 in the Negotiation Council have adopted this Resolution to guide the further development of the negotiation process.

HAVING NOTED;

The clear linkage between constitutional principles, the form of state, the constitution-making process and constitutional structures, powers and functions of the SPRs,

IT IS RESOLVED THAT:

1. The Negotiating Council shall not proceed to negotiate and shall not endeavour to agree on the constitutional principles recommended by the Technical Committee, including the principles related to the identification of powers and functions of the SPRs until the Technical Committee has reported to the Negotiating Council on the various alternatives, on the constitution making process.
2. The Negotiating Council shall consider ^{inter alia} proposals for:
 - 2.1 a fully fledged federal constitution, inclusive of a complete bill of rights compatible with the highest international standards of human rights protection, a jurisdictional Constitutional Court and standard procedures for constitutional amendment;
 - 2.2 a constitution-making process capable of capitalizing on and registering ground-up democracy building sub-processes such as the adoption of the Constitution of the State of KwaZulu/Natal or the SATSWA initiative, and capable of co-ordinating ground-up constitutional development with top-down negotiations.
3. The Negotiating Council instructs the Technical Committee on Constitutional Matters to make recommendations to it on:
 - 3.1 The powers, functions and structures of the SPRs in the next constitution of South Africa with a view to leaving residual powers to the SPRs and ensuring that the new SPRs are established as a federation of states prior to or at the same time as the next elections;
 - 3.2 The constitution-making process to be followed, including the structures that need to be established so as to finalise the next constitution of South Africa on the basis of a one phase process which relies on ground-up democracy building sub-processes to support the creation of SPRs;

- 3.3 The procedures to be followed in the drafting and in the adoption by the Multi-Party Negotiation Forum of a federal constitution which would establish a federal system prior to or at the same time as the next elections;

4. That any final determination of the election date be postponed until the Negotiation Council has adopted a final decision on the form of state and on the process of constitutional development which would lead to elections, in order to enable us to determine what phases must precede and prepare elections and the function and purposes of elections at central and regional levels in relation to the next constitution of South Africa.

-----0-----

5450

93 06:13 SLE FELGATE T055070030 P.10

**THE KWAZULU GOVERNMENT POSITION STATEMENT
DELIVERED BY DR BS NGUBANE TO THE NEGOTIATING COUNCIL**

JUNE 15, 1993

The KwaZulu Government wishes to submit a Motion as a preliminary matter which would condition the development of today's Agenda in the future work of this Negotiating Council. The KwaZulu Government is extremely concerned about the course that negotiations have taken. It is clear that many of the principles adopted by the Technical Committee on Constitutional Matters in its Third Report would not be compatible with a federal system and would describe a relation between central and regional levels of government which is in conflict with the KwaZulu Government proposal for a federation.

Moreover, many of the Technical Committees are working under the implicit or explicit assumption that the process of transformation will be based on a two-phase transition model requiring interim arrangements. The KwaZulu Government has endorsed the one-phase model proposed by the Inkatha Freedom Party as other participants in this process have done.

The entire Fourth Report of the Technical Committee on Constitutional Matters, as well as the work of the Technical Committee on Human Rights, are based on this assumption.

We submit and maintain that this Council can not make any intelligent decision on constitutional principles or on the process until and unless it is provided with a clear alternative between principles related to federalism and principles related to a unitary state, and between a process capable of establishing federalism before the next elections and an

open-ended process which relies on the discretion of a Constituent Assembly for the final determination of the parameters of a political settlement of this country.

We feel that we are entitled to receive and consider both alternatives and that the Technical Committees should be instructed accordingly. We maintain and submit that no final decision has been made on the process of transformation on the form of state and that these decisions can no longer be delayed.

We demand that the Negotiating Council begins to consider proposals for the establishment of a federation under a fully-fledged constitution to be drafted by this forum. We also submit and maintain that no election date can be determined until there is clarity on the issue of the process and the final determination on the form of state. It is unreasonable to set an election date when we do not know what type of stages and phases need to precede the election and what the purposes and functions of that election are going to be in the process of constitutional development of our country. Differently put, are we going to vote for the election of a Constituent Assembly or for the empowerment of a federal legislature after member states have already been established?

Accordingly the KZG is submitting a resolution which will put these matters on the Agenda of the Negotiation Council with urgency and priority. We feel the obligation to warn all participants that the KZG has reached the end of its road in tolerating the manipulation of this process which is steamrolling through the real issues of our society preventing full awareness and full debate on the possible alternatives.

We will not find ourselves in a situation where anybody can claim that progress has been achieved and then attempts to label us as spoilers because we prevent the finalisation of any agreement before federalism is entrenched and a climate of serene and violence-free negotiations is secured. Whoever pushes negotiations on the basis of a two stage process centred around a Constituent Assembly and the denial of federalism, and in spite of the fact that we are not providing consensus, will be politically responsible for the withdrawal from negotiations of the KwaZulu Government

-----0-----

5457

Therefore the KZG hereby gives notice that should the Negotiation Council reject the KZG Resolution as proposed, the KZG is no longer willing to provide its consensus for any further decisions taken by this Negotiating Council or by any other body of this negotiation process.

We will continue to be present through discussions but irrespective of anything we may say or do, until a preliminary determination on the form of state is achieved and a process capable of establishing federalism is surely entrenched, nothing shall be construed as our providing consensus for any type of decisions whatsoever, including procedural matters, scheduling of meetings, establishment of committees, adoption of resolutions of any nature, press statements, administrative matters and any other matters of substance or procedures.

The KZG hereby announces that it will challenge any ruling of the chair determining that sufficient consensus has been achieved in spite of KZG opposition.

We do not want to disrupt negotiations and we will implement what we consider a constructive form of filibustering until there is clarity on the process and our demands are heard for the sake of South Africa. This should also offer the opportunity to break the wall of silence built by the press around us.

We will also give notice to all participants that we will resort to the additional step of withdrawing even from participation and discussions if we assess that discussions on subject matter other than the form of state/process and violence are getting ahead of the issue of the form of state/process and violence and are becoming prejudicial to a preliminary determination on the form of state and related process.