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● Dennis Davis

Technical Committee on the Electoral Bill

FAX 397- 2211

28/10/13

4 Pages

from Sheena Duncan

TO ARTHUR CHASKALSON AND DENNIS DAVIS

MPNP, KEMPTON PARK

FAX: 397-2211

FROM SHEENA DUNCAN

28TH OCTOBER 1993

Dear Arthur and Dennis

This is a query to you both which I am writing as the Black Sash representative on the Lobbying and Advocacy Commission of the Independent Forum for Electoral Education.

We may have to make more formal representations once we are sure that we have grasped the complexities of the Kempton Park process and the legislation arising therefrom.

We have some real anxieties about the constitutional validity of the legislation which is emerging from Kempton Park. I have spoken to John Dugard who says he is sure that the various Technical Committees are dealing with these questions because they are valid questions.

However, we have no evidence that these questions are being dealt with. We are getting the various reports of the Technical Committees as they are released. We have seen nothing which indicates that our anxieties are under consideration.

1. We are informed that the Constitution of the Republic of South Africa Act, 1993 is only to come into effect after the elections in April 1994.

2. We are also informed that this will mean that the Bill of Fundamental Rights during the Transition will only come into effect after the elections.

We started our discussion in the IFEE Lobbying and Advocacy Commission this morning around that and our persuasion that the Bill of Rights must be in place before the election and must govern the whole process toward the elections.

3. We have studied the provisions of the Transitional Executive Council Act and are not convinced that they are a satisfactory

substitute for a Bill of Rights with particular reference to detention without trial.

4. We then went on to look at the details of the second version of the draft Electoral Bill.

We noted that this is a Bill "to regulate elections for the National Assembly and any other legislature to be elected in terms of the Constitution of the Republic of South Africa Act, 1993....."

5. As simple minded lay persons we do not understand:

(a) how can we have elections for legislatures in terms of a Constitution which is not to be enacted until after those elections have been held? It is the 1993 Constitution which will lay down the shape and form of the National Assembly, the Senate and the SPR legislatures.

What are we going to be voting for?

If we were going to vote only for a Constitution Making Body there would be no problem and we would then have another election to vote for a new parliament and government once the final form of the Constitution had been agreed. But it seems we are going to be voting for a new legislature and a new government in terms of a new Constitution, 1993, before we have repealed the present Constitution, 1983 which does not allow for any such thing.

(b) if the 1983 Constitution is to remain the Constitution of this country until after the April 1994 elections how can a new Electoral Act extend the franchise to black African people who are specifically excluded in the 1983 Constitution without an amendment to that Constitution which has been passed by the present Tricameral Parliament with the requisite majorities in all three Houses?

(c) can any South African exercise a right to vote in a non-racial election without the 1983 Constitution being amended?

(d) are there draft amendments to the 1983 Constitution in preparation and, if so, which Technical Committee is dealing with them? and why has there not even been the most preliminary of reports to the Negotiation Forum and no public discussion of the issues?

6. Perhaps our fears are groundless but if I was the Freedom

Alliance I would be commissioning the brightest Constitutional lawyers available to prepare challenges to the whole process, and in particular the Electoral Act, to try to overthrow the whole process. I would also be discussing the optimum time to bring such an action in order to create the maximum disruption.

I am going to be in Natal all next week - supposedly giving information to the Church leadership on the transitional process which I now have so many doubts about.

Please could you send your response to this to Cecille van Riet at Lawyers for Human Rights in Pretoria, FAX: (012) 325-6318. She convenes the IFEE Lobbying Commission but I have not discussed this letter with her because she is unobtainable today. Do not blame her for my stupid questions!

With warm good wishes

Sheena

Sheena Duncan

copies to:

Sean O'Leary, SACBC

Lisa Thornton, IDASA

Cecille van Riet, IFEE Lobbying Commission

Black Sash National Executive Committee.