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THE AFRIKANER-VOLKSUNIE

THE AFRIKANER-VOLKSUNIE'S COMMENTS ON THE FOURTH REPORT OF TECHNICAL COMMITTEE ON CONSTITUTIONAL AFFAIRS

1.

We reiterate our stated viewpoint that the two notions on the process of constitution making should be reconciled by accommodating both.

2.

We differ from the approach put forward in paragraph 1.3 of the Second Report. It seems as if the Committee did not see the two notions on equal footing. The notion that the Constitution is to be written by the elected body seems to be predominant. We submit that a constitution should be drafted by the Negotiating Forum. In terms of this Constitution [which will replace the 1983 Constitution] an election should be held and a new Government formed. The new Government can rewrite or amend this Constitution in accordance with the provisions embodied therein.

This is the only way to reconcile the different views.

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3.

The argument was presented that the Negotiating Forum has no mandate to write a Constitution. Therefore such a Constitution will not have any legitimacy. We all agree that it can be rewritten or amended, even repealed by the elected body in terms of the provisions agreed upon.

If the argument is that the Negotiating Forum cannot bind the elected body on the procedures to be adopted on amending the first constitution because it has no mandate, can we have clarity on whether the elected body would honour any of the agreements entered into at the Forum. If the argument is a lack of a mandate to do A, where does the mandate to do B and honour B come from?

4.

The fourth report is based on the wrong premises that a Resolution was passed on 1 June 1993 contemplating a certain process of transition.

No, and we emphasize no, resolution was passed on this issue.

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5.

We are in agreement with a proposal formulated by Inkatha, a copy of which is annexed hereto marked "A".

6.

We further refer to the submission tabled by us with the permission of the Forum, a copy of which is annexed hereto, marked "B".

7.

We will also support the draft resolution annexed hereto marked "C".

8.

It is clear from the above that we see the foundation on which the fourth report was based as wrong. We believe that a completely different report would have been tabled if it was not for the wrong premises on which the Committee based their report through no fault on their part.

We regret the time and hard work wasted by the Committee because of the wrong information supplied to them.

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INKATHA

Inkatha Freedom Party

IQembu leNkatha Yenkululeko

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At the last meeting of the Negotiating Council the IFP reserved its position on the acceptability of the draft solution on constitutional issues. After consultation with our principal and members of the Central Committee we state that:

1. We accept the resolution on the understanding that:
 - a: there is no such thing as a "transitional constitution". The next constitution will be the only constitution that South Africa has;
 - b: the constitution referred to in the first phase of Point 2 in the resolution will be a complete constitution, accepting of course that it will nevertheless be a constitution in the process of finalisation. The next constitution will *inter alia* have: a built in Bill of Rights; defined boundaries, powers and structures for regions; defined relationships between between SPR governments and the state governments; and a Bill of Rights. The constitution will be the supreme law of the land and there will be a constitutional court to enforce justiciability;
 - c: the new government under the next constitution will as a matter of priority pilot whatever amendments to the constitution may be needed in terms of procedures and processes laid down in the constitution;
 - d: that the nature and the extent of the amendments referred to in (c) above and the finalisation of SPR issues will be subject of negotiation preceding the actual drawing up of the next constitution.

Notes with appreciation:

1. The work done by the Constitutional Technical Committee;
2. The constitutional principles taken cognisance of, and emphasized by them;
3. The importance of defining the boundaries, powers and functions of the states, provinces or regions (SPR's) as a method of resolving mutually exclusive approaches.

Accepting:

1. The suggestions contained in paragraphs 6.3 and 6.5 of the second report of the Technical Committee and in particular the suggestion of "a special role for regions in the formal amendment procedure of the constitution, especially on matters affecting regions";
2. Paragraphs 5.1 and 5.2 of the Third Report of the Technical Committee emphasizing that decisions on powers, functions and boundaries of SPR's and local governments should be taken before a final model can be drafted;

Realising:

The need to move forward with the constitutional process;

The council resolves:

1. That all parties should submit proposals of constitutional models to which the mentioned principles can be applied to the national, SPR and local levels;
2. That such proposals be furnished to the administration on or before Thursday 11 June 1993 at 17:00;
3. That the Technical Committee report on the proposals recieved and the way forward in order to reconcile the principles advanced with the models proposed on the national, SPR and local levels of government;
4. That the Technical Committee structures different constitutional models and applies the suggested constitutional principles to the different models in:
 - a) a bottom - up approach, and
 - b) a top - down approach.

DRAFT RESOLUTION ON CONSTITUTIONAL ISSUES

HAVING NOTED:

The clear linkage between constitutional principles, the constitution-making process and constitutional structures, powers and functions of SPR's as apparent in paragraph 6.3 of the Second Report of the Technical Committee on Constitutional Issues.

IT IS RESOLVED THAT:

1. The Negotiating Council proceeds to negotiate and endeavour to agree on constitutional principles inter alia those recommended by the Technical Committee as set out in paragraph 2 of its Third Report, and the detailed principles dealing with the allocation of powers to different levels of government as set out in paragraph 3 of its Third Report.
2. There is a need for the adoption of a Constitution/s, the text of which is to be agreed to in the Multi-Part Negotiating Process:
 - 2.1 Which shall be drafted in accordance with the constitutional principles agreed upon in so far as they may be applicable;
 - 2.2 Which will provide, inter alia, for justiciable fundamental rights, the structures of national and SPR's governments and their respective powers, functions and authority;
3. Now therefore the Negotiating Council instructs the Technical Committee on Constitutional Issues to make recommendations to it on:
 - 3.1 The powers, functions and structures of SPR's.
 - 3.2 The constitution-making process to be followed, including the structures that need to be established for that purpose;
 - 3.3 The procedures to be followed in the drafting and adoption by the Multi- Party Negotiating Forum of a Constitution/s.