

**SOUTH AFRICAN GOVERNMENT OFFICE
- WORLD TRADE CENTRE -**

25 May 1993

Head of the Administration
Multi-Party Negotiating Process
World Trade Centre

Dear Dr Eloff

**SUBMISSION BY THE SOUTH AFRICAN GOVERNMENT FOR THE
ATTENTION OF THE TECHNICAL COMMITTEE: CONSTITUTIONAL
MATTERS**

1. Attached is a submission by the South African Government entitled ***PRINCIPLES GOVERNING CONSTITUTION MAKING IN SOUTH AFRICA (POSITION PAPER - SOUTH AFRICAN GOVERNMENT)***
2. This submission replaces the submission that was handed in on 12 May 1993 entitled ***Principles Governing Constitution Making in South Africa (A Discussion Document)***. This is a precise replica of the previous submission, except that the section under the heading ***Participatory Democracy*** is complete in this version.
3. Kindly transmit the document for immediate attention to the Technical Committee: Constitutional Matters.

Yours sincerely

E. Daring
GOVERNMENT OFFICE: WORLD TRADE CENTRE

PRINCIPLES GOVERNING CONSTITUTION MAKING IN SOUTH AFRICA

Position Paper - South African Government

This Constitution shall be amended or substituted only within the framework of the following constitutional principles:

Constitutional State

- (a) South Africa shall be a democratic and non-discriminatory state.
- (b) The Constitution shall be the supreme law of the land, binding all organs of government, and shall be entrenched by means of special amendment procedures.
- (c) There shall be separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances.
- (d) Formal legislative procedures shall be adhered to by legislative organs at all levels of government.
- (e) The judiciary shall be independent and impartial and shall have the jurisdiction to enforce the Constitution, as well as to adjudicate upon the adherence by all organs of government to the provisions of the Constitution and of all other laws consistent with the Constitution.
- (f) There shall be a constitutionally guaranteed legal system that ensures the equality of all before the law and an independent and equitable legal process.
- (g) All shall enjoy universally accepted fundamental rights which shall be guaranteed by an entrenched and justiciable Charter of Fundamental Rights.

- (h) The general principles of the constitution including the terms of the Charter of Fundamental Rights shall apply to each level of government and all organs of government shall exercise their authority in accordance with the provisions of valid laws.
- (i) The Constitution shall incorporate special provisions to safeguard the security forces and functionaries and institutions such as the Auditor-General, the Ombudsman and the Commission for Administration against political manipulation.

Constitutional continuity

- (a) South Africa shall continue to be a sovereign state in which all shall enjoy a common South African citizenship.
- (b) The transitional Constitution shall not be amended or repealed in any other manner or by any other procedure than that prescribed by its own provisions.

Participatory democracy

- (a) There shall be representative and accountable government at all levels, embracing multi-party democracy, regular elections at all levels, universal adult suffrage, a common voters roll, unimpeded eligibility of law-abiding citizens of sound mind to elected government office and, in general, proportional representation.
- (b) The electoral system, procedures for the appointment of executive bodies at all levels of government, and the representation of parties in the executive relative to their representation in the legislature, shall be designed to provide for the effective participation of the major political parties in executive bodies.
- (c) The national executive shall be required to consult with the regional government of every region that will be affected by an executive act before it takes a decision on such act, and in the event of the national

executive deciding not to act in accordance with the views of such regional government, the Constitution shall require the national executive to table the reasons for its decision in Parliament.

Subsidiarity

- (a) Government shall be structured at national, regional and local levels.
- (b) At each level there shall be democratic representation.
- (c) Each level of government shall have appropriate and adequate legislative, executive and fiscal powers and functions that will enable each level to function effectively; such powers and functions to be entrenched in the constitution.
- (d) The criterion for the allocation of powers and functions to each level of government in terms of the Constitution, shall be that the maximum measure of powers and functions shall be allocated to the relevant level of government in accordance with its capacity to exercise such power or function effectively to the benefit of and with transparency and accountability to the electorate.
- (e) In addition to the powers and functions entrenched in the constitution, each level of government may delegate powers and functions to lower levels of government.
- (f) Regions shall be vested with the power of regional economic development.
- (g) Regions shall not be competent to raise loans without the consent of the Reserve Bank or other agreed statutory institutions.
- (h) Powers and functions may either be exclusive or concurrent.

- (i) The national government shall have overriding power only in such matters that are not allocated exclusively in the Constitution to the regional or local levels of government.
- (j) Special procedures involving the consent of regional representatives will be required for changes to the powers or boundaries of their respective regions.

Autonomy of civil society

- (a) The Constitution shall entrench the autonomy of all structures of civil society as well as the principle that the state may not trespass in the sphere of civil society, while at the same time the state will be obliged in specific instances to provide support for the structures of civil society on a basis of equality.
- (b) There shall be freedom of association, involving inter alia the right to form, join and maintain organs of civil society, including sports, cultural and welfare organizations, educational, traditional, religious and professional institutions, trade unions and employer organizations and residents', students' and social societies.

Unity in diversity

- (a) The Constitution shall maintain a foundation for the emergence of national unity.
- (b) The Constitution shall not impose linguistic, cultural, religious or regional uniformity. The diversity of languages, cultures and religions shall be acknowledged and where a legitimate cultural or developmental need exists therefor, special provision shall be made for the appropriate representation of traditional institutions at regional and local level.
- (c) National unity shall be promoted by the manner in which the national executive and legislature are structured in terms of the Constitution

and the diversity within the nation shall be accommodated by inter alia the establishment of autonomous regions, the recognition of various official languages and languages for official use, the entrenchment of religious freedom and respect for national and segmental symbols.