

"Democracy means freedom to choose"



# INKATHA

Inkatha Freedom Party

Iqembu leNkatha Yenkululeko

25/6/93

Section 5 through 10 of the Schedule attached to the Sixth Report of the Technical Committee on constitutional issues is entitled "Constitutional Transition to a Federal State" and purports to describe the IFP process proposal. Section 5 can be found on page 10 et sequitur of the Schedule. These sections contain gross misrepresentation and misunderstanding related to the IFP proposal to establish federalism in South Africa. Ostensibly the sections in question were meant to synthesise the original submission of the Inkatha Freedom Party to the Technical Committee on Constitutional Matters. We invite the members of the Negotiating Council to refer directly to our original submission and to accept this document in substitution for the relevant portions of Sections 5 through 10 of the Schedule.

The IFP proposal envisions a constitution-making process which does not require a transitional process. The present constitutional order would last up to the adoption of the final and federal constitution of South Africa with elections to be held under such constitution no later than the end of 1994.

- 5.1 The MPNP should determine preliminarily the form of state. Decisions on constitutional principles should be consistent with the agreed form of state. The new South Africa shall be established as a federal system with residual powers recognised to the member states on the basis of the principle of residuality.
- 5.2 The MPNP should promote the establishment of a statutory commission charged with the task of co-ordinating top-down negotiations and ground-up democracy building.
- 5.3 The MPNP would determine a set of constitutional principles which would guide and circumscribe the drafting and adoption of SPR constitutions. The Commission will verify the correct implementation of these principles. Within the parameters set by the MPNP the ground-up democracy-building processes would determine in autonomy regional borders and SPRs powers and functions. The IFP proposal provides for mechanisms to deal with possible inconsistencies between different proposals as far as boundaries are concerned.
- 5.3.bis The ground-up democracy building processes would set the premises and the mechanisms for the reincorporation of the self-governing territories and the TBVC states in the new SPRs, for instance as is provided for by the Constitution of the State of KwaZulu/Natal.
- 5.4 While the commission co-ordinates and supervises ground-up democracy-building processes, negotiations would continue at central level to produce a final federal constitution for South Africa. The actual drafting would be completed by a panel of experts on the basis of principles and guidelines approved by the MPNP. Alternative constitution-making processes could be considered at this stage and would still be

consistent with the IFP approach to integrate ground-up democracy-building with top-down negotiations.

- 5.5. Once the commission verifies that the constitutional proposals for the SPRs are consistent with the parameters set forth at central level, it will prompt the ratification of such constitutions through popular referendum. The SPRs constitutions so approved and ratified would be forwarded to the constitution-making process at central level. Such constitutions would have no legally binding value on the constitution-making process at central level and would be nothing more than very powerful popular petitions to the constitution-drafting process at central level.

#### 5.5.1 The IFP proposal

The commission proposed by the IFP could be established by the end of June. By the end of July the MPNP should finalise the principles guiding ground-up democracy building. By the end of September the Commission, working in close co-operation with regional representatives, should finalise constitutional proposals for SPRs.

This of course will be possible only for those SPRs which are ready, willing and able to finalise such proposals with a degree of credibility determined by the commission within the established time-frame. The other regions will need to be provided for through negotiations at central level.

SPRs constitutions should be submitted for approval by referendum to be held on December 1, 1993. By January, 1994 such constitutions could be delivered to the constitution-drafting process at central level.

The commission would be assisting the constitution-drafting process at central level so as to ensure that the SPRs constitutions are acknowledged, registered and capitalised on in the drafting process for a federal constitution. Depending on the technique used for the drafting of the federal constitution, the drafting process at central level could be concluded within period of two to seven months.

As soon as the drafting of the federal constitution is concluded, the federal constitution would be submitted for approval by referendum, and general elections can be held by September 1994 under the terms of the federal constitution and under the terms of the SPRs constitutions to fulfil national and regional political positions.

The constitution-drafting process at central level proposed by the IFP would reflect the technique adopted to reach consensus on the treaty establishing the international monetary system [Bretton Woods technique].

In its submission the IFP has already tabled a set of constitutional principles which should be handed down by the MPNP to the commission and which should guide and circumscribe the constitution-drafting process. The IFP has

also tabled a proposed bill for the establishment of the commission and for the determination of its role and function.

According to the IFP proposal a special and expedited process for approval of the Constitution of the State of KwaZulu/Natal should be established in recognition of the fact that KwaZulu/Natal has gone further ahead than any other region in the process of erecting its territory into statehood within the parameters of a federal system.

5.5.2 Bophuthatswana proposal

5.5.3 Ciskei proposal

5.5.4 AVU proposal

6. The MPNP would approve or reject in its entirety the draft constitution prepared by the experts in accordance with the principles previously set forth by the MPNP. The SPRs constitution would have been previously approved through referendum. The national constitution will be submitted to referendum. Soon thereafter national and regional elections would take place on the same day.
7. The IFP proposal would establish federalism and entrench SPRs before the empowerment of a new government and would ensure that the existing territorial local autonomy [TBVC states and self-governing territories] are transformed into SPRs without having to be previously reincorporated into the four existing provinces. The TBVC states and the self-governing territories would be promoting ground-up democracy building processes. However, such processes would remain in a meta juridical level [not *contra legem* but *praeter legem*] and the entire process would be legitimated with the ratification of the final constitution of South Africa which would set forth, as all constitutions do, the principle of its own self-legitimation. The South African Parliament would need to adopt the necessary legislation to establish the commission and to prepare for elections, including institutions such as the Independent Media Commission, the Electoral Commission and possibly TECs.
8. In accordance with the draft constitution for a Federal Republic of South Africa tabled by the IFP with the Technical Committee on Constitutional Matters, a Federal Senate would represent the regions on the principle of equal suffrage.
9. Reference is made to the Schedule to the Sixth Report of the Technical Committee.
10. The IFP proposal does not describe entirely a bottom-up process of transition. It describes a process which integrates ground-up [bottom up] democracy building processes with the process of negotiation at central level creating mechanisms for co-ordination and harmonisation. This will ensure that South Africa comes together on

the basis of the true, needs, wants and aspirations of the South African people. This process avoids delays and deadlocks and will ensure the completion of the transition by 1994.

The IFP urges the members of the Negotiating Council and the concerned public to make direct reference to its submission to the Technical Committee on Constitutional Matters. The IFP has demanded that its proposal should be considered by the Negotiating Council before it seeks to agree on the alternative proposal for a two-stage model which is fully described in the Third, Fourth and Fifth Reports of the Technical Committee on Constitutional Matters.

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June 24, 1993