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IRiphabliki YeCiskei
I-Ofisi YeBhunga
LoMbuso



Republic of Ciskei
Office of the Council
of State

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19 May 1993

Multi-Party Negotiating Process
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Dear Sir

CISKEI GOVERNMENTS' SUBMISSION TO THE TECHNICAL COMMITTEE

We enclose herewith further representations in regard to Constitutional Issues, Fundamental Rights and Violence.

Yours faithfully

M B WEBB
CISKEI GOVERNMENT
MULTI-PARTY NEGOTIATING PROCESS

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CISKEI GOVERNMENT SUPPLEMENTARY SUBMISSION TO
CONSTITUTIONAL ISSUES - TECHNICAL COMMITTEE

1. ATTACHED HERETO ARE CISKEI'S STATED CONSTITUTIONAL PRINCIPLES, MARKED "A".
2. CISKEI ALREADY HAS A BILL OF FUNDAMENTAL RIGHTS AND RESPONSIBILITIES WHICH IS DESCRIBED AS SCHEDULE 6 OF THE CISKEI CONSTITUTION DECREE AND MAY NOT BE AMENDED WITHOUT A 75% MAJORITY OF CISKEI VOTERS.
3. THE CONSTITUTIONAL PROCESS IS AS STATED IN THE HEAD NOTES SUBMITTED TO THE TECHNICAL COMMITTEE ON THE 12TH MAY 1993.
4. IN ORDER TO PLAN THE WAY FORWARD THE FOLLOWING APPROACH IS PROPOSED:
 - (a) INVOLVEMENT OF THE PEOPLE ON THE GROUND. THE PEOPLE MUST DETERMINE THE CONSTITUTIONAL WAY FORWARD AND INSTRUCT THEIR LEADERS TO SATISFY THE DEMANDS AND REQUIREMENTS OF THE PEOPLE.
 - (b) THE APPROACH MUST BE DETERMINED BY THE DECISION ON WHERE THE POWER WILL BE SEATED. IF POWER IS TO BE AT THE CENTRE THEN THE DEGREE TO WHICH POWER IS DEVOLVED DOWNWARDS WILL BE UNIMPORTANT. HISTORY TEACHES US THAT ALL GOVERNMENTS WHO HAVE THE POWER TO DO SO, WILL, WITH TIME, DRAW POWER UP TO THE CENTRE. ON THE OTHER HAND, IF THE POWER IS SEATED WITH REGIONS OR REGIONAL STATES, THE REGIONS HAVE THE POWER TO DECIDE WHAT FUNCTIONS, IF ANY, SHOULD BE DELEGATED UPWARDS TO THE CENTRE OR DOWNWARDS, TO THE LOCAL AUTHORITY, AND VILLAGE AUTHORITIES.

REGIONS SHOULD NOT ONLY DEBATE THEIR FUTURE, REGIONS SHOULD DETERMINE THEIR FUTURE.

5. THE GUIDING PRINCIPLE TO BE CONSIDERED IN DETERMINING THE NUMBER OF STATES AND BOUNDARIES IS "THAT WHICH BELONGS TOGETHER MUST BE BROUGHT TOGETHER." AND THIS IS MAINLY DETERMINED BY:-

- (a) HISTORICAL FACTORS,

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- (b) CULTURAL REALITIES SUCH AS LANGUAGE, HOMOGENEITY AND WAY OF LIFE,
- (c) ECONOMIC VIABILITY, INFRASTRUCTURE AND TOURISM POTENTIAL,
- (d) ADMINISTRATIVE CONSIDERATIONS,
- (e) GEOGRAPHIC FEATURES SUCH AS RIVERS, MOUNTAINS, RAILWAYS AND ROADS,
- (f) COHESIVE FACTORS SUCH AS FORBEARANCE, INDUSTRIOUSNESS AND POSITIVE ATTITUDES,
- (g) MINORITIES.

6. CISKEI SUBMITS THAT:-

- (a) A UNITARY STATE OFFERS NO SOLUTION FOR THE COMPLEX CONSTITUTIONAL CHALLENGES OF OUR COUNTRY.
- (b) THE COMMUNITIES WITHIN THE KEI REGION/STATES OR AREA HONESTLY AND EARNESTLY BELIEVE THAT SOUTHERN AFRICA SHOULD BE DIVIDED INTO DIFFERENT STATES, EACH STATE WITH ITS OWN CHARACTER/PERSONALITY OR CULTURE, BASED ON ITS HISTORICAL BACKGROUND, WITH ITS OWN NATURAL AND EVEN HISTORICAL BOUNDARIES. WHAT BELONGS TOGETHER MUST BE BROUGHT TOGETHER. THESE STATES MUST SATISFY ADMINISTRATIVE, CULTURAL, ECONOMIC INFRASTRUCTURAL AND EVEN HISTORIC AND GEOGRAPHIC CONSIDERATIONS.
- (c) ALL POWER SHOULD BE VESTED IN THE INDIVIDUAL STATES AND THAT THESE STATES SHOULD DECIDE WHICH POWERS AND FUNCTIONS SHOULD BE DELEGATED UPWARDS TO ANY CENTRAL AUTHORITY OR DOWNWARDS TO LOCAL, TRIBAL AND VILLAGE AUTHORITIES.
- (d) THE ONLY SOLUTION FOR ANY LASTING PEACE-BRINGING SETTLEMENT SHOULD BE DECIDED BY THE COMMUNITIES WITHIN EACH REGION - PARTICULARLY THE KEI REGION, KEI STATE OR KEI REPUBLIC.

7. WHAT POWER MUST THE STATES HAVE

POWER SHOULD BE SEATED AT REGIONAL LEVEL WITH THE STATES. THIS MEANS THAT THE FOLLOWING FUNCTIONS ARE NOT NEGOTIABLE:

- (a) THE KEI WILL DRAW UP ITS OWN CONSTITUTION.
- (b) IT WILL HAVE THE SOLE RIGHT TO TAX THEIR PEOPLE.

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- (c) IT WILL BE RESPONSIBLE FOR ITS OWN SECURITY, DEFENCE FORCE AND LAW AND ORDER.
- (d) IT MUST HAVE THE RIGHT TO END ITS PARTICIPATION IN ANY CENTRAL AUTHORITY, THE RIGHT OF SECESSION.
- (e) IT WILL BE RESPONSIBLE FOR THE PROTECTION OF THEIR CULTURAL, LANGUAGE AND NATIONAL SYMBOLS.

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CISKEI CONSTITUTIONAL PRINCIPLES

PREAMBLE

The Ciskei Government believes that the peace and prosperity of a future South Africa will depend on the successful formation of regional structures. Regional decision-making and regional self-determination accommodating the diversity of populations and interest will be crucial to the creation of a stable and lasting constitutional dispensation.

Ciskei recognises that, for historical, cultural and economic reasons, it forms part of a larger region and cannot consider its future in isolation. It accepts that its interests will have to be considered in the context of its immediate setting and that of South Africa as a whole.

Ciskei is committed, therefore, to re-incorporation into the new South Africa but reserves the right to a defined regional autonomy, to protect existing economic policies and strategies for its economic development, to protect its civil service and existing infra-structures and to protect the right of the people of the region to promote their interests.

To this end, Ciskei considers it essential to articulate its views in the decision-making process and has committed itself to a meaningful contribution to the negotiating process in CODESA. The negotiating process will, however, have to be conducted at both the national level of CODESA and at regional and local levels where awareness of the true needs and aspirations of the people can be encouraged and support can be determined. Once the constitution has thus been agreed on, it should be tested in a nation-wide referendum.

The Ciskei Government supports a non-racial, multi-party democracy with a federal model of government in a united South Africa with firmly entrenched rights for the federal structures. The constitution which it envisages should materially correct the injustices of recent decades, yet respects the realities of the cultural diversity of South African Society.

PRINCIPLES

1. CONSTITUTIONAL STATE

There should be a united non-racial multi-party democracy with autonomous powers demarcated on a regional basis, which powers are constitutionally entrenched under a binding constitution.

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2. SEPARATION OF POWERS

There should be separation of powers between the Legislature, Executive and the Judiciary. An independent state institution, such as a Judicial Service Commission, should be created to guarantee the independence of the Judiciary.

3. CHECKS AND BALANCES

The separation of powers, providing checks and balances, should be entrenched in a bicameral system at central and regional government levels.

4. BILL OF RIGHTS AND RESPONSIBILITIES

There should be a justiciable Bill of Rights and Responsibilities which should also emphasise the responsibilities of citizens and should be upheld by an independent constitution court.

5. UNIVERSAL FRANCHISE

There should be a universal adult franchise based on the principles of proportionality as well as other principles to secure regional autonomy with regular periodic free and fair elections in a multi-party system.

6. ENTRENCHED RIGHTS

Not only the rights of individuals, but also the powers of regional and local government structures, should be entrenched in the constitution.

7. EMERGENCY POWERS

The Executive should have emergency powers to protect the integrity of the State and the individual under extreme conditions which should be determined constitutionally to protect the democratic order and should under no circumstances destroy the nature of that democratic order.

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The exercise of emergency powers should be ratified by Parliament within a short fixed time span and be limited to a specified period.

8. THE PRESIDENCY

The Head of State should be a State President who has the confidence of the people and will share executive powers with the Prime Minister and the Cabinet.

9. THE CENTRAL GOVERNMENT EXECUTIVE

There should be a carefully defined division of executive powers between the State President and the Prime Minister, who leads the cabinet, in a type of cohabitation system.

The Prime Minister should form a multi-party coalition cabinet which should enjoy the confidence of the majority of the National Assembly.

10. THE CENTRAL GOVERNMENT LEGISLATURE

The legislative powers should rest with a Bicameral Parliament. There should be a National Assembly (Lower House), with members reflecting a proportional representation of the electorate. The Assembly should exercise final budgetary control. There should be a Senate (Upper House) with senators elected by both Houses of the federal states, vested with supervisory and scrutinising powers of non-fiscal legislation passed by the National Assembly. Both Houses should utilise multi-party standing committees.

11. A FEDERATION OF STATES.

The diversity of cultures and regional interests of communities should be reflected in the creation of regional states with rights and responsibilities entrenched in the constitution. The determination of regional boundaries should be based on cultural, economic, technical and political parameters as determined by consensus.

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12. THE STATE EXECUTIVE AND LEGISLATURE

The State Executive should consist of a Governor and Secretaries of State heading government departments. A bicameral legislative system should consist of a Lower House, elected by proportional representation, which exercises final budgetary control, and an Upper House, elected indirectly by the urban and rural local authorities with representation of traditional leaders where applicable.

13. LOCAL AUTHORITIES

Local authorities should be urban and rural authorities directly elected with provision for traditional leaders in the rural local authorities where applicable. Local autonomy and local characteristics should be guaranteed in the constitution.

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