

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

18 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 ***DRAFT LEGISLATION FOR THE REINCORPORATION OF THE TBVC STATES INTO THE REPUBLIC OF SOUTH AFRICA.***
2. Kindly transmit the document for immediate attention to the Technical Committee.

Yours sincerely


GOVERNMENT OFFICE: WORLD TRADE CENTRE

DEK

060178

199



DEPARTEMENT VAN BUITELANDSE SAKE
DEPARTMENT OF FOREIGN AFFAIRS

14 May 1993

Head : Administration
Multiparty Negotiation Process
WORLD TRADE CENTRE

Dear Dr Eloff

REINCORPORATION OF THE TBVC STATES

The Government hereby submits for consideration by the Technical Sub-Committee on Constitutional Issues a proposal in the form of draft legislation for the reincorporation of the TBVC states into the Republic of South Africa.

The existing constitutional situation will require legislation in order to effect the process of reincorporation of these states if and when agreement can be reached on their future. Agreement is necessary as the South African Government cannot unilaterally effect reincorporation.

The proposed legislation enables the State President to reincorporate, either simultaneously or separately, by means of proclamation, those states with whom reincorporation agreements are concluded. Such agreements are to be given the force of law through provisions of the enabling legislation.

As an interim arrangement it is envisaged that those states being reincorporated into the Republic of South Africa will enjoy the status of Administrative Territories which are to

66.0179

200

13/2/5/20

be governed by Administrators-General. Further provision is therefore made to enable the State President to empower such Administrators-General and Administrative Councils with executive and legislative powers necessary to administer these Territories.

Provision is also made for the granting of South African citizenship to the citizens of the TBVC states which will take place simultaneously with reincorporation.

All the current laws and regulations applicable in these Territories, not exclusively transferred to the Administrators-General or the Administrative Councils, as well as all treaties, conventions and agreements in force between these Territories and the Republic of South Africa at the time of their reincorporation will be retained until they are repealed or amended.

Finally, the legislation proposes to repeal those laws, including the Status Acts, necessary to effect the reincorporation.

It should be noted that this is a proposal within the framework of the legal requirements necessary for the reincorporation process and could therefore serve as a basis for discussion in the Sub-Committee. The law advisors of the Department of Foreign Affairs are available should any assistance or further elucidation be required.

With kind regards

Yours faithfully

A handwritten signature in black ink, appearing to read 'R F Botha', with a stylized flourish at the end.

R F BOTHA

66.0180
201

B I L L

To provide for the incorporation of certain territories in the Republic of South Africa; for the establishment of Administrative Territories; and to provide for incidental matters.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows: -

Transfer of certain territories to Republic of South Africa

1. (1) The State President may from time to time by proclamation in the **Gazette** determine that the territory of the states described in Schedules 1-4 shall from a date mentioned in such proclamation be reincorporated as part of the Republic of South Africa.

(2) The transfer of the territory of the states described in Schedules 1-4 shall be subject to the terms of this Act and the provisions of the Agreement reached in this regard between the Republic of South Africa and any of the said states: Provided that the said Agreement or Agreements shall from the date fixed in the proclamation issued under section 1(1) and whereby the Agreement or Agreements are published have the force of law in the Republic.

(3) As from the said date the Republic of South Africa shall have sovereignty over and shall exercise authority in the territories of the states in regard to which a proclamation has been issued under subsection (1).

Establishment of an Administrative Authority with an Administrator General, Administrative Council and Executive Committee

2.(1) The state thus incorporated shall from the said date be deemed to be an Administrative Territory as envisaged in this Act.

(2) The State President shall after consultation and with regard to the provisions of the Agreement mentioned in section 1(2) appoint an Administrator General for an Administrative Territory who shall act as the chief executive officer of the Administrative Territory.

(3) An Administrative Council shall be constituted for an Administrative Territory in accordance with the provisions of the Agreement mentioned in section 1(2).

(4) The Administrator General and the Administrative Council shall on the basis of consensus be jointly responsible for the exercise of all such functions and powers conferred to them under section 4.

(5) An Executive Council, appointed from the members of the Administrative Council in accordance with the Agreement mentioned in section 1(2), is constituted and assist the Administrator General in the exercise of those powers conferred exclusively to him under section 5.

Assignment of matters and related powers to the Administrator General and Administrative Council

3.(1) Notwithstanding the provisions of any other act, the State President may from time to time by proclamation in the **Gazette** assign exclusively to or withdraw any matter

560182

203

including the related executive and legislative power from the Administrator General or confer it to or withdraw it from the Administrative Council.

(2) The assignment, conferment or withdraw of such a matter can relate to an executive and a legislative power or only to an executive power or only a legislative power or any part of a matter authorised by such legislative or executive power.

(3) The State President may assign the execution of a law of an Administrative Territory to any existing government institutions and can for this purpose amend the said laws to provide for the exercise and execution of the powers, functions and duties of such laws by such a government institution.

(4) A proclamation issued in terms of subsection (1) shall contain such transitional provisions as may be needed to ensure the orderly execution of the assignment, conferment or withdrawal of such matters and powers as well as the consequences thereof.

Powers of the Administrative Council

4. The Administrative Council in consultation with the Administrator General have the executive and legislative power with reference to all matters or part thereof which is not assigned exclusively to the Administrator General in terms of this Act and may legislate for the Administrative Territory in respect of any such matter: Provided that such a law shall not be inconsistent with South African legislation.

Exclusive powers of the Administrator General

5. The Administrator General shall after consultation with the Executive Council exercise any executive power relating to a matter or part thereof assigned exclusively to him in terms of this Act: Provided and unless otherwise expressly stipulated that the legislative power regarding matters thus exclusively assigned shall vest in the South African Parliament.

Granting of South African citizenship

6.(1) Every former South African citizen who would not have ceased to be a South African citizen in terms of any provision of the South African Citizenship Act, 1949 (Act No. 44 of 1949) if any law mentioned in Schedule 5 had not been passed, shall be a South African citizen.

(2) Every person, excluding a former South African citizen, who, if any law mentioned in Schedule 5 had not been passed, would have been a South African citizen by birth or descent, and who would not have ceased to be such a South African citizen in terms of any provision of the South African Citizenship Act, 1949 shall be a South African citizen by birth or descent.

(3) Any person, excluding any person referred to in subsection (2) or (3), who in terms of any law mentioned in Schedule 5 or in terms of any law of a state mentioned in Schedules 1-4, was a citizen of such a state, may in accordance with section 10 of the South African Citizenship Act, 1949 apply for a certificate of naturalization as a South African citizen, and such application may be granted in terms of that section if at the commencement of this Act

060184

ZDS

such person complied with the requirements prescribed by that section.

Continuation of laws

7.(1) Any rule of law which was in force immediately prior to the date of reincorporation of the states mentioned in the proclamation issued under section 1, shall continue to be in force until repealed or except in so far as it may be amended by the competent authority.

(2) Notwithstanding the provisions of subsection (1) and unless expressly otherwise stipulated, South African legislation shall apply to all matters assigned exclusively to the Administrator General in terms of this Act.

Continuation of treaties, conventions and agreements between South Africa and states described in Schedules

8. All treaties, conventions and agreements entered into between the Government of the Republic of South Africa and the governments of the states mentioned in Schedules 1-4 and which are still in force on the date of incorporation shall, in so far as it relates to such states and is capable of being applied thereto, as from such date remain in force until repealed.

Existing rights, liabilities and real rights in relation to the territory of the states not affected by the transfer of sovereignty to South Africa

9.(1) The transfer of sovereignty to the Republic of South Africa regarding the territory of the states mentioned in Schedules 1-4 does not derogate from or in any way infringe

upon any burden, servitude or other real right attached to the territory immediately prior to the date of incorporation mentioned in the proclamation issued in terms of section 1(1).

(2) Notwithstanding the provisions of section 7(2) any right, interest, activity or juristic act granted by law that existed or was performed immediately prior to the date of reincorporation mentioned in the proclamation issued in under section 1(1) or immediately before the assignment or withdrawal of powers under section 3, shall exist and is valid unless or until abrogated by the competent authority.

Existing courts to continue

10.(1) Notwithstanding any contrary provisions, every lawfully constituted court having jurisdiction to hear criminal or civil cases of whatever nature or scope in a state mentioned in Schedules 1-4 immediately prior to the date of incorporation mentioned in the proclamation issued under section 1(1), shall be and remain functioning in accordance with its existing constitution and jurisdiction until altered or dissolved by the competent authority.

Arrangement of matters

11.(1) The State President may from time to time by proclamation in the **Gazette** make such binding arrangements as he may deem necessary to enable or facilitate the proper administration of the Administrative Territories as part of the Republic of South Africa and may for this purpose, after consultation with the Administrative Council, amend or repeal any act.

186

207

(2) The State President may by proclamation in the **Gazette** make any South African legislation he may deem expedient applicable within the Administrative Territories.

Repeal of laws

12. The laws mentioned in Schedule 6 are repealed to the extent indicated therein on the date of incorporation mentioned in the proclamation issued under section 1(1).

Tabling of list of proclamations

13. A list of proclamations issued by the State President under this Act shall be laid upon the Table of the Parliament of South Africa in the same manner as the list referred to in section 17 of the Interpretation Act, 1957 (Act No. 33 of 1957), and if the Parliament by resolution disapprove of any such proclamation or any provision thereof, such proclamation or provision shall cease to be of force and effect, but without prejudice to the validity of anything done in terms of such proclamation or such provisions before it so ceased to be of force and effect or to any right or liability acquired or incurred in terms of such proclamation or such provision before it so ceased to be of force and effect.

Short title and commencement

14. This Act shall be called the Incorporation of Certain Territories in the Republic of South Africa Act, 1993 and shall come into operation on a date fixed by the State President by proclamation in the **Gazette**.

187
208

Schedule 1

TERRITORY OF TRANSKEI

All the land that form part of the territory of and is known as the Republic of Transkei on the date stipulated in the proclamation referred to in section 1.

188
209

Schedule 2

TERRITORY OF BOPHUTHATSWANA

All the land that form part of the territory of and is known as the Republic of Bophuthatswana on the date stipulated in the proclamation referred to in section 1.

560189

210

Schedule 3

TERRITORY OF VENDA

All the land that form part of the territory of and is known as the Republic of Venda on the date stipulated in the proclamation referred to in section 1.

190

211

Schedeule 4

TERRITORY OF CISKEI

All the land that form part of the territory of and is known as the Republic of Ciskei on the date stipulated in the proclamation referred to in section 1.

900191

212

Schedule 5

Status of Transkei Act, 1976 (Act No. 100 of 1976).

Status of Bophuthatswana Act, 1977 (Act No. 89 of 1977).

Status of Venda Act, 1979 (Act No. 107 of 1979).

Status of Ciskei Act, 1981 (Act No. 100 of 1981).

660192

213

Schedule 6

No. and year of law	Short title	Extent of repeal
Act No. 48 of 1963	Transkei Constitution Act	So much as is unrepealed.
Act No. 63 of 1966	Black Laws Amendment Act	Section 6.
Act No. 101 of 1967	Transkei Constitution Amendment Act	The whole.
Act No. 36 of 1968	Transkei Constitution Amendment Act	The whole.
Act No. 27 of 1970	Black Laws Second Amendment Act	Sections 7, 8, 9 10.
Act No. 49 of 1970	Black Laws Third Amendment Act	Section 12.
Act No. 31 of 1971	Transkei Constitution Amendment Act	The whole.
Act No. 23 of 1972	Black Laws Amendment Act	Sections 5, 6 and 7.
Act No. 102 fo 1972	General Law Amendment Act	Section 22.
Act No. 7 of 1973	Black Laws Amendment Act	Sections 7, 8 and 9.
Act No. 70 of 1974	Black Laws Amendment Act	Sections 12, 13 and 14.

000193

214

No. and year of law	Short title	Extent of repeal
Act No. 71 of 1974	Black Laws Second Amendment Act	Sections 1 and 2.
Act No. 9 of 1975	Black Laws Amendment Act	Section 1.
Act No. 61 of 1975	Transkei Constitution Amendment Act	The whole.
Act No. 66 of 1975	Exchequer Act	In the Schedule, the amendment of the Transkei Constitution Act, 1963.
Act No. 100 of 1976	Status of Transkei Act	The whole.
Act No. 89 of 1977	Status of Bophuthatswana Act	The whole.
Act No. 8 of 1978	Bophuthatswana Border Extension Act	The whole.
Act No. 107 of 1979	Status of Venda Act	The whole.
Act No. 110 of 1981	Status of Ciskei Act	The whole.
Act No. 2 of 1980	Borders of Particular States Extension Act	The whole.

00194

ZIS

[21] =
A21

M.A. McLOUGHLIN

Attorney, Notary & Conveyancer

Michael Arthur McLoughlin

15 Seymour Ave
Parktown 2193
Johannesburg
Telephone: (011) 720-8152/3
Fax: (011) 720-2923

P O Box 72200
Parkview 2122

Docex: DX66
Johannesburg

Our Ref:

Your Ref: M A McLOUGHLIN/W11 MAM-M66

30 March 1992

The Chairman
Group 3 (Constitutional Affairs)
CODESA
P O Box 307
ISANDO
1600

Dear Sir,

re : CONSTITUTION AND BILL OF RIGHTS

Members of the public were requested and invited to make representations to CODESA over the deliberations for a new constitution and bill of rights. In accordance with the said invitation and in an effort to make a possible contribution to the debate over a truly democratic dispensation whereby the new constitution will truly be of the people, for the people and by the people and, in terms of which, the rulers are truly the servants of the people and not the other way round, I have the following points to address:

It has been suggested, that elements within either the SADF or the police are, with or without the connivance of their superiors, actively attempting to destabilize the negotiating process towards a just dispensation for all. Alternatively, that different factions amongst the blacks are jockeying for position and that a "third force" is assisting one or other element in this regard. These are not idle allegations and one has only to look at recent press reports with regard to TV producer, John Drury, of the BBC's "Assignment" programme and, the continued local perception of such a third force, to realise that certain people are definitely trying to destabilize the democratic, negotiating process. Whoever is responsible, and it could, into alia, be the elements in the security forces referred to, power needs to be controlled in a new South Africa. No Constitution, or Bill of Rights, whether justiciable or not, will be of any force or effect, if the Armed Forces are controlled, effectively, by one man or, a small clique of Generals. One shudders when a whole band of ex-Generals, publicly advocated a No vote to the deliberations at CODESA. As Groucho Marx once said "Military intelligence is a contradiction in terms!"

I suggest/.....

19 MAY 1993

A 21/1 1993
217

I suggest that one way of insuring that a new government is not overthrown by the military, would be to decentralise security on a regional basis, so that no military council can take over the government by way of a Coup d'etat unless such regional military power has the support of the generals from all the other decentralised regions. This may lead to a more expensive military establishment but, will be well worth the cost if democracy is to be ensured. I have, to date, not heard any of the leaders of the various political parties at CODESA comment on control of the military in a new South Africa and, as Africa has a poor record of democracy and a good record for military takeovers, whatever constitution is in place, I feel that this important issue needs to be addressed publicly as well as being debated at CODESA. After all, if the Armed Forces are to be the guardians of the constitution and the bill of rights who, in turn, is to control the Armed Forces? They should be subject to even more stringent checks and balances than Parliament, to avoid any abuse of power.

2. "THE NATIONAL INTEREST"

This concept, which is used by governments world wide, including the great democracies, to cover up embarrassing actions and misdemeanors on their part, needs to be subject to scrutiny within a true democracy. Accordingly, will provision be made in the constitution or the Bill of Rights, for all information under the government's control, to be subject to scrutiny by the courts, (in camera, if necessary), to ensure that "the national interest" is not subject to the perverted subjective whim of the state or its officials. I believe that it is necessary that all state information and documents be freely accessible to the people, unless the government or its officials, themselves, apply to a constitutional court for such information or documents to be held secret, in the national interest. The inconvenience, to the government and its officials, of having to take positive action, will be far less than the damage caused to democracy if "the national interest" is to be left to the discretion of some politician, who may have something to hide. The US Freedom of Information Act, is a precedent which should be looked at by CODESA as a starting point and could be adapted, in its scope to suit local conditions.

3 ADVISORY COMMITTEES

I understand that in Germany the Ministers of
State/....

19 MAY 1993

A 21/2

66,0196

218

PAGE 3

State are advised by Committees in their respective areas of responsibility. These committees are made up of the best brains in the country, whatever the political persuasion of the individuals on committees are. The Minister may reject the committees' advice on any particular matter, but does not do so lightly. This is just another check against the taking of arbitrary decisions by politicians.

4 THE AUDITOR GENERAL

Although the Auditor-General is only responsible to Parliament, his position would be greatly strengthened and, as a civil servant, he would be free from political manipulation, if his report to parliament was given jointly, with a report from an independent team of auditors, made up of respected firms within the auditing profession. This would cost extra but, would be more than adequately compensated, by the prevention of corruption within the Government and Civil Service. I was recently shocked to read that in one of the provinces, less than 50% of the municipalities had balanced their books for the year or submitted their balance sheets to the Province. Some apparently were more than one year in arrears. This should not be allowed. If a Municipality is more than 6 months in arrear, a team of auditors, should immediately be sent in and the management committee suspended until the results of the audit is known.

5 RESERVE BANK

As in the case of the Bundesbank, the Reserve Bank should be completely free from political manipulation and the constitution should incorporate provisions similar to those in the German Constitution on this point.

DEFICIT FINANCING AND MONEY SUPPLY

I believe that deficit financing is wrong in principle and, if resorted to, should be limited to a maximum of 3% of the gross domestic product and then only for short periods when an economy is in a recession/depression. An Act similar to the Gramm Act in the United States, forcing the government to reduce the deficit, if this is not done voluntarily, should be included in the Legislative armoury. This type of Legislation would not be necessary, if deficit financing is covered by the Constitution/Bill of Rights. Similarly, money supply should be controlled, and put within limits, insofar as increases are concerned. In this regard, the money supply should be covered by the Gold and Foreign Exchange Reserves to a certain percentage, say, 25%. This discipline is necessary, to avoid inflation, which impoverishes the Nation, and is a fraud on its citizens.

19 MAY 1993

A 21/3

219 197

PAGE 4

EXCHANGE CONTROL

This is an iniquitous control brought in by the Finance Minister of the Nazi Regime in Germany in 1930's. It is undemocratic, and should be outlawed in a new Constitution. All arguments for retention of exchange control should be seen for what they are - spurious! A citizen who has paid his taxes, should be allowed to invest his money, wherever he wishes, particularly, as the world is now becoming a global village. The country's currency will initially depreciate but, if exchange control is banned in the Constitution, this would be short term and investment will pour into the country, when investors realise that their investments are safe, and may be repatriated, without any intervention by whatever government of the day is in power. Similarly, citizens of the country will not be inclined to remove their capital as they will be secure, in the knowledge that their money can be moved, without let or hindrance from the government. If we call ourselves a free enterprise economy, we must not only pay lip service to the concept, but show this clearly by protecting it within the Constitution/Bill of Rights.

6. THE CALLING OF REFERENDA

In any truly democratic country, where the will of the people is to be given expression to, the right to call referenda on various issues, local, regional or national, should be encouraged, provided, of course, any person or group, wishing to call a referendum, has sufficient support for the issue to be aired. None of the delegates at CODESA who truly believe in a full democracy, should object to the constitution and bill of rights encompassing this matter.

7. POSTULATES OF JUSTICE : AND RETRO-ACTIVE LEGISLATION

Enclosed is an extract from Wille's Principles of South Africa Law, 8th edition, pages 14, 15 and 16 which clearly set out the qualities required by the rule of positive Law namely, that, all Laws should be :-

- (1) Reasonable
- (2) Impartial
- (3) Certain
- (4) Comprehensive
- (5) Publicly promulgated
- (6) In accordance with public opinion.

I believe/.....

19 MAY 1993

A

21/4

660198

220

I believe these qualities should be the cornerstone of all legislation in the new South Africa and, in this regard, I particularly refer to the last two sentences of the paragraph headed "Promulgated", to wit, legislation which is made to apply to actions that were committed in the past, and which changes the law, is called retrospective or ex post facto legislation. It is, obviously, unfair and is almost universally condemned. Is the question of retro active legislation on the agenda at CODESA? If not, I suggest that it should be placed thereon and, hopefully, condemned, in line with a democratic constitution.

8. APPOINTMENT OF JUDGES

If the powers of the Executive, Legislative and the Judicial arms of Government are, hopefully, to have equal powers of veto against each other in a new constitution then the appointment of Judges is an important issue and should not be controlled, directly or indirectly, by the Executive and/or Legislative arms alone. At best, I believe that these other arms of government should be given a maximum of a 50% right to the appointment of judges and that the balance should rest with the legal profession as a whole or, possibly, it and other relevant constituencies. In the event of an impasse, the Appellate Division or the Constitutional Court should act as the final arbiter.

CARTELS AND MONOPOLIES

The proliferation of cartels and monopolies in the South African economy exist despite Legislation under the Monopolies Act and the existence of the Competitions Board. These seem to be ineffective, essentially, against the continuance of these cartels and monopolies. They are essentially undemocratic, if not immoral, and have been allowed to develop by virtue of the historical, undemocratic nature of our society. The argument that they need to exist to fund multi-million or multi-billion Rand contracts is not acceptable. If a need for such financial muscle is necessary, this can always be achieved by various big companies forming consortia to part-take in joint ventures. The cartels and monopolies should be broken up in an ordered manner over a period of, say, 10 years. Only in this way will free enterprise be seen to be working, in practice, as well as theory.

CONTROL BOARDS

These bloated bureaucracies have outlived any usefulness they may have had, which is doubtful. They should be disbanded as soon as possible to allow the market to regulate itself. They tend to act as another cost burden to the economy which is unnecessary. If the farmer wants, or needs a marketing arm and a mechanism for smoothing out fluctuations in price, he can formulate his own strategies through co-operatives and the like.

19 MAY 1993

A 21/5

-660199-

221

PAGE 6

POLICE

A democratic society needs a dedicated, professional and impartial Police Force which is seen to be such by all its people, in order to be respected. To achieve this, high standards and high pay are necessary.

HEALTH, EDUCATION AND HOUSING

In principle, the Government should act merely as a facilitator and catalyst setting down the principles and standards to be met and applied in each of these areas. It is not, or should not be, the function of Government to act as the bonus paterfamilias providing all the peoples needs. The people need to be taught how to catch fish not merely be given th fish. If one is merely given hand outs one never learns and a Nation should have enough pride in itself for each of its citizens to learn to stand on his or har own two feet. Provided this principle is accepted, it may be necessary for the State to assist in providing the initial impetus, for instance, by bearing the bulk of primary education. Parents should, however, be asked to contribute a reasonable amount out of their own pockets in accordance with their means. This would not relieve a citizen of his own self-respect and pride as well as his obligation for his own family. It builds character and can only improve the work and responsibility ethic in a Nation. To say that it is the States responsibility to provide housing, education, health and social welfare for its people is nonsense. The state should merely stand as a back stop to help the really needy and those who cannot, under any circumstances, help themselves. As stated previously, a conditional period may be necessary before this principle of self-help can be fully implemented, because of historical imbalances, but the principle should still be accepted and implemented, in a phased manner.

I have the following additional comments to make on various portfolios.

HOUSING

This should be financed over a number of generations and bonds granted at the finest rate of interest possible, excluding subsidies, and over a period of 50 years through banks, building societies and insurance companies. This finance should be seen as some form of retribution to our fellow citizens, who have been legally deprived from entering the housing market for so many years. By the same token, these communities must bear their responsibility for payment of bond instalments, lights, water and other services.

EDUCATION/....

19 MAY 1993

A 21/6

— 660200

ZC

PAGE 7

EDUCATION

In a free enterprise society, the State should merely set the minimum standards and principles to meet overall objectives and leave it, thereafter, to private enterprise to provide, in whatever form, the needs of various communities. This is well illustrated in Nobel Prize winning economist MILTON FRIEDMAN'S BOOK "FREE TO CHOOSE" where he suggests that a voucher system be implemented in American schools, in terms of which, each student is subsidised by the State up to a certain amount, depending on the level of education being sought. These vouchers can be cashed in at any institution, which may charge, either more or less, than the amount of the voucher. The institution then obtains payment for the amount of the vouchers received by it from the State and the parent then pays the difference, if any. The better institutions will then sell education at a premium, and in accordance with their results and facilities, will receive more vouchers than a school which does not meet the standards required by the community. Such—a-competitive base for an institution, can only be of benefit to the community as a whole. It will also give freedom of choice for different types of education as may be required by parents for their children. In a democracy, it should not be the prerogative of the State, to tell parents how their children should be educated other than by way of setting minimum standards!

AGRICULTURE

It must be accepted that a redistribution of land will have to occur, to correct the imbalances created by an apartheid society. The 1913 and 1936 Land Acts protected the interests of the white man alone and, obviously, these imbalances must be redressed. Some expropriation will be necessary, but farmers should be adequately compensated by the State. Such compensation should, however, take into account the tax breaks received by the farmer in terms of Schedule 1 of the Income Tax Act in setting the level of compensation to be paid. Thereafter, the farmer should be treated as any other businessman whose success or failure depends on his own ability and ingenuity. Farmers have in the past been too protected by the State, at the expense of the other citizens of the country who do not receive the same tax breaks. As a result, farmers have been allowed to build up substantial capital assets which other citizens have not and, although, their income may be relatively small, the capital value of their assets have increased substantially through the years. Any farmer who has not set aside sufficient reserves from good years, to cover bad years, has only himself to blame in most cases, for the dire straits in which he may now find himself. The market place must be the final arbiter of who should be a farmer or who should not.

HEALTH/...

19 MAY 1993

A 21/2
223
260201

HEALTH

The emphasis here should be on preventative medicine and not curative medicine. The State should provide basic clinics throughout the country, together with the necessary education on preventative medicine, to change the whole culture of health care. Thought should be given to creating incentives for people to encourage them to lead healthy life styles. A National Health Scheme for curative medicine should be based on no claim bonuses being granted to those who do not utilise or abuse the system.

REGIONAL AND LOCAL GOVERNMENT

These tiers of Government should be obliged to run their levels of Government, incorporating the same principles, as outlined above for National Government within the framework of the Constitution/Bill of Rights.

LANGUAGE

I believe that the best way of ensuring National identity, cohesion and communication within a Nation is through a National language. The only language which would seem to fit the bill from a practical point of view would be English. If all the people speak one language, they can identify with each other more easily. The United States of America is an example of peoples of diverse Nations coming together and being unified through the use of one language. This in no way means that a particular ethnic or cultural group should not be proud of and continue to speak their own language within their own communities but it is impractical to expect the Nation as a whole to speak a number of languages.

Naturally, I would expect that in a democracy, a justiciable Bill of Rights would be a sine qua non, together with the division of powers as outlined above in national, regional and local politics. I would be pleased to hear that the above matters, if not specifically on the agenda for the debate within working group three, should be placed thereon. If, however, you do not feel that the issues raised are of sufficient importance to warrant discussion, would you kindly let me know. I would be happy to appear before your working group, if required, to expand on the themes outlined above.

I truly believe that a Constitution and a justiciable Bill of Rights, incorporating all the checks and balances set out above, would be something of which all South Africans

could /...

19 MAY 1993

A 21/8 00202

224

PAGE 9

could be truly proud and, would insure that the politicians and servants of the state can truly say "I serve". Regrettably, human nature still seems to be guided by greed, fear and power, and as long as this is the case, the checks and balances, set out herein, will be necessary to insure evenhandedness down to the weakest member of society. If such a constitution can be agreed to at CODESA, I, for one, would be happy to accept my new destiny with pride and to serve under any President, no matter what his race, colour or creed. I would then push for elections to be held as soon as possible.

I do not think that it would be in the interest of the people as a whole for a transitional government to be installed before agreement, in principle, has been reached on what kind of democracy every one is talking about.

I shall be glad if you would confirm that my letter will be brought to the attention of all the interested parties within working group three and look forward to hearing from you.

Yours faithfully

M A McLOUGHLIN

encl:

19 MAY 1993

A 21/9

660202

225

M A McLOUGHLIN/W11 MAM-M66
MR Z DE BEER

Dr Z De Beer
39 Cotswold Drive
SAXONWOLD
2195

20 April 1993

Dear Dr De Beer

re : CONSTITUTION AND BILL OF RIGHTS

I take the liberty of enclosing certain correspondence which I have had with the Chairman of the Management Committee of Codesa over the last year, the contents of which are self explanatory.

No doubt, the issues canvassed in my correspondence have been addressed by the Party but I feel that, despite the input of the various political parties, the man in the street's views should be addressed and taken into consideration.

I have always been a supporter of the Democratic Party and its predecessors from the inception of the Progressive Party in 1959. However, at this stage, I feel that, although the Party is probably in practice, the only truly democratic one, it is going to have very little support at the polls unless its image as an elitist white party, supporting big business, is changed. I believe that there is a lot of truth in the saying that "perception is reality" and this applies, in particular, to political parties. I believe that if the party were to be perceived to line itself more with the interests of the workers than to the elite and big business, as is the current perception, it will fare much better at the coming elections than it would do in its present form. To achieve this, I believe that creditable democratic black Trade Unionists should be approached with a view to alliances being formed and allegiances being switched from Cosatu and other Unions. Obviously, there would have to be some kind of trade off. I believe that the benefits of a more efficiently run trade union movement which could offer benefits through negotiation rather than through confrontation, could eventually build the party into one with a dominant role in South African politics. Such a trade union movement would be broadly based and include members from all race groups and the whole political spectrum but the Democratic Party would obviously have a lot of influence through its alliance with trade union leaders of a democratic hue.

At/.....

19 MAY 1993

A 21/10

60204

226

Page 2

At the same time, I believe that the party should openly campaign for Anti Trust Laws, the break up of direct or indirect control of the economy by monopolies and an effective Competition Board in order to level the playing fields. The break up or "unbundling" of the conglomerates would not necessarily mean that capital formation for big projects would be hindered. All that would have to happen would be that syndications of companies would jointly tender for international projects through the medium of the Merchant Banks or otherwise. Whilst this may not be ideal from the conglomerates point of view, it would probably be healthier for the economy as a whole. With regard to Anti Trust Laws, I take the liberty of enclosing a copy of an article in the Star of the 3rd May 1992 which you may not have seen.

Insofar as, proportional representation is concerned, I believe that such representation should not be taken too literally. The problems arising from proportional representation in Italy could be instructive and should be looked at. A possible compromise between a "winner takes all" policy and proportional representation could be a better bet in the long term. This would avoid a multiplicity of a small parties having an influence disproportionate to their representation and being in a position to unseat a coalition government. This may not happen in the short term in South Africa but planning should be done for the long term.

I take the liberty of enclosing letters addressed to Codesa/The Multi-Party Forum dated the 30th March 1992 and and 26th March 1993 the contents of which are self explanatory and look forward to your comments.

Yours faithfully

M A McLOUGHLIN

19 MAY 1993

A 21/11
0.0205
227

M A McLOUGHTON/W11 MAM-MCG
MR M PHILLIPS

The Chairman
Management Committee
Multi-Party Forum
P O BOX 307
ISANDO
1600

26 March 1993

Dear Sir,

re : CONSTITUTION AND BILL OF RIGHTS

With further reference to the above matter I enclose herewith my letters of the 30th March 1992 and 16th October 1992 for ease of reference copies of which should, however, be in your file.

My letter of the 30th March 1992 was written in response to an invitation for the members of the public to address Codesa on issues relating to the Constitution and Bill and Rights. Unfortunately, whilst I asked that copies of my letter be circulated to all the delegations, I never received confirmation that this was, in fact, done. If it was done, then I was studiously ignored by all the delegations. I trust that this will not be the case when "Codesa 3" commences and that we can expect that the Constitution and Bill of Rights be negotiated from the bottom up rather than from the top down. Unless this is done, and seen to be done, it is unlikely that a democracy, other than in name, will be the result.

Other than control of the security forces, my main concern is with control of finances in the new South Africa. It would seem that control of expenditure to prevent corruption needs a complete overall. In this regard, Ministers of State must be made personally accountable for the performance of their departments. This, however, will be insufficient on its own. Internal and external auditors should be appointed to continuously monitor the financial performance of each department on a continuous basis and productivity incentives and bonuses should be given to civil servants where performance audits show that they have, not only performed within their budget but, in fact, have reduced the department's expenditure or, alternatively, have achieved more than was required of them within the budget. If goals are not

A

660206

19 MAY 1993

A 21/12 228

Page 2

set and productivity incentives are not given, we can expect the same, if not worse, inefficiencies and corruption in a new government as exists in the present one. The Ministers for the Budget and of Finance should be made more accountable for their respective portfolios and, in particular, the expenditure side of the budget should be carefully monitored throughout the year. Deficits should not be allowed to reach anything above 3% of Gross Domestic Product and these matters should be covered in the Constitution (cf. the Gramm Bill in the USA). The money supply should similarly be controlled within certain parameters and the Reserve Bank should totally independent of State control. These measures should prevent inflation ever occurring again. Inflation is, after all, a fraud on the public.

Insofar as corruption, fraud and gross negligence within any state department is concerned, state officials should be treated harshly. Ministers of State should be made to resign immediately, whether or not they were personally aware of any corruption, fraud or gross negligence within their own departments. The principle of delegation of authority but not of responsibility must be made to apply. The sanction for allowing such matters to occur should be, not only the loss of office, but the loss of, at least, the state's contribution towards such party's pension and, where the Minister and/or State Official is personally involved in any act or omission which causes loss to the State, such person should be prosecuted and made to make recompense, where possible.

The above measures are necessarily harsh, as they must be, in order to cope with the rampant corruption which is a bedevilling our society.

The whole tax system must be reviewed to encourage universally accepted moral and ethical values and geared to discourage the baser instincts of man. In this regard, I need only mention as an example, the high taxes and strict laws on the distribution of alcohol in countries like Norway and Sweden. There are, obviously, many areas in which the tax laws can be used to uplift society and not pander to man's greed and fear and other countries tax laws should be studied and, if possible, improved on to nurture more civilised values.

I/....

19 MAY 1993

660207

A 21/43
229

Page 3

I trust that the man in the street is not going to be ignored when deliberations on these matters recommence and would be happy to address any of the relevant committees further on the various matters raised.

In the circumstances, I look forward to hearing from you.

Yours faithfully

M A McLOUGHLIN

19 MAY 1993

060208

A

21/14
230

M A McLOUGHLIN/W11 MAM-M56
MR M PHILLIPS

The Chairman
Management Committee
CODESA
P O BOX 307
ISANDO
1600

16 October 1992

Dear Sir,

re : CONSTITUTION AND BILL OF RIGHTS

I am in receipt of your letter of the 21st September 1992. I have still not received any confirmation that the points raised in previous correspondence will be specifically addressed point for point. If and when Codesa or its successor reconvene and I would like to have an assurance that all the issues raised will be submitted to its delegations and that I will receive, as an ordinary citizen, the same courtesy as those afforded to the invited participants with regard to the issues raised. Insofar as these issues are concerned, I would also add that the right to privacy in its widest form be afforded to all citizens as this is a very important issue in a world in which the State intrudes more and more into the private lives of its citizens. The right to privacy must be incorporated both in the Constitution and the Bill of rights.

I look forward to hearing from you.

Yours faithfully

M A McLOUGHLIN

19 MAY 1993

660209

A 21/15

231