

4 October 1993

The Chairperson and members
The Technical Committee on Constitutional Affairs
The Multiparty Negotiating Process
World Trade Centre
KEMPTON PARK

Dear Sir/Madame

**SUGGESTED ALTERATIONS TO THE INTERIM CONSTITUTION, AND
REQUEST FOR AN ORAL SUBMISSION**

Having perused the latest available documentation on the constitutional negotiations (entitled "Technical Committee on Constitutional Issues: Combined Reports" dated 20 August 1993), we wish to congratulate you on the good work done and the progress made thus far.

However, having gained the impression that this process is now perhaps more open than previously to technocratic as opposed to ideological inputs, and having identified a number of problematic points in the proposed Interim Constitution, we should like to strongly recommend the following alterations to the text of the Constitution:

1. In the first paragraph of the preamble, the fundamental concept of freedom, and specifically personal liberty, should be included. For example, the paragraph could be amended to read as follows: ".... all South Africans will be entitled to a common South African citizenship in a free, sovereign and democratic constitutional state in which there is equality between men and women and people of all races, and in which the personal liberties of all citizens are effectively upheld.

Lack of personal freedom was probably as odious a feature of the old South Africa as inequality

cc
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● between people and groups and the undemocratic nature of the state. Conceptually and politically, democracy and equality are not necessarily equivalent to and will not necessarily guarantee the upholding of personal liberties. Consequently the preamble would be inadequate without explicit reference to freedom and personal liberty as a fundamental feature of the new state and the new society we envisage.

This is particularly significant since the preamble sets out the guiding imperatives which shape the entire content of the constitution.

2. Conversely, anything in the constitution which does not relate clearly and indispensably to the guiding imperatives in the preamble, would be superfluous. In this regard, we have serious problems with the inclusion of section 28 on labour relations in Chapter 3 of the proposed Constitution, which deals with Fundamental Rights. In view of the inclusion of section 17, which provides for freedom of association, section 16 on the right to assembly, petition and demonstration, and section 27 on economic activity, section 28 is entirely superfluous and adds nothing further to the embodiment of the guiding imperatives in the preamble which could in any way be regarded as indispensable.

Indeed, it is probably incorrect and possibly dangerous to specify the rights of employers and workers in this way without equally detailed specifications of the rights of all other existing or potential economic participants. It is not the function of the constitution to lean explicitly towards the corporatist or collectivist model of society. If at any stage this does happen to be the predominant mood or preference of the citizenry, this preference would be embodied in specific institutional and legislative arrangements which could change and evolve in tandem with the fluctuating preferences and policy choices of the society over time. The entire Section 28 should be scrapped from the interim constitution, and subsequent sections should be correspondingly renumbered.

3. In similar vein, we argue that in the list of constitutional principles in Schedule 7, clause XXV is superfluous and provides a bias in the direction of a corporatist state and a collectivistic economic system. It is not a "constitutional principle", and does not belong in this schedule at all. The right to form economic organisations and bargain between such organisations is amply provided for by Section 17 on Freedom of Association in Chapter 3. Clause XXV should be removed entirely from Schedule 7, and subsequent clauses renumbered.

4. As far as the size and composition of the national as well as regional legislatures is concerned, we would seriously request the Commission to substantially reduce the proposed number of people in the national Parliament. The financial and human skills cost of a system which besides 9 regional legislatures also carries 490 national parliamentarians, must be borne in mind in a small and relatively poor country such as South Africa.

The introduction of a system of regional governments and legislatures with a range of autonomous and concurrent powers must surely reduce the workload, the spectrum of responsibilities and the number of people required at the central level. Consequently, we plead for a reduction in the number of seats in the National Assembly to of the national Parliament to a maximum of 250. Together with the regionally composed Senate of 90 people, this would limit the total size of the national legislature to 340, a much more acceptable level than the currently proposed 490.

In order to provide local communities some direct representation at regional level, and in view of the relatively small proposed size of the regional (SPR) legislatures, we would suggest the addition of a geographically balanced "Regional Senate" of about 20 people to each SPR legislature. This would effectively prevent serious geographical bias in the SPR legislatures and in the SPR governments.

5. As far as the competences of SPR's vis-a-vis the central government is concerned, it is crucial that the SPR's be given at least some say in the area of manpower and training policies, labour legislation and labour market institutions. This is essential due to the close interplay between the areas of education, training, manpower policy and labour legislation. It is clearly anomalous to give SPR's concurrent powers on education and not on training and manpower policy. Furthermore, although any national economy needs certain basic labour laws and minimum standards to apply nationwide, the interregional differences in the labour/manpower field in South Africa are extremely sharp (unemployment levels, housing and living costs, skill and training levels, ability to pay, etc).

This surely implies that each SPR should be given at least partial competence to regulate and manage its own specific manpower and labour dispensation. Consequently we propose that the areas of Training, Manpower Policy, Labour Legislation and Labour Market Institutions be added to the list of concurrent competences currently listed in section 118 of Chapter 9 in the proposed Interim Constitution. This would also be essential in order to prevent serious disruption when the TBVC states, which currently operate under their own labour policy dispensation with the aid of which they have attracted a large number of business enterprises, are reincorporated into South Africa. The alternative would be a large-scale relocation of firms and employment opportunities from these areas into other Southern African states or back to South Africa's metropolises, at the cost of the economic position of some of the poorer regions in a future regional dispensation in South Africa.

We formally request an opportunity for an oral submission, in the form of a visit by a five-person AHI delegation to the Technical Committee, within the next two weeks if possible in order to discuss and motivate the above points to maximal effect.

Yours faithfully



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