

1. Murphy
2. Applications?

JAMIATUL-ULEMA TRANSVAAL
AND JAMIATUL-ULEMA NATAL
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15 December 1991

THE PRESIDENT/LEADER

DEMOCRATIC PARTY

Sir

Attached, please find memorandum from the Council of Muslim Theologians in South Africa.

The memorandum raises a number of pertinent issues relating to Muslims in our country, which we wish to place before your organisation.

The key themes dealt with in the memorandum are as follows :

- 1) the role of religious leaders in CODESA;
- 2) basic religious needs of the South African Muslim community;
- 3) constitutional and human rights principles in Islam; and,
- 4) the relationship between Muslims and the future South African state.

We trust that your organisation will give due consideration to the matters raised in the memorandum and we look forward to a prompt response from it.

Yours faithfully

M.A.U. Kaka

(Maulana) M. Kaka

On behalf of Jamiatul-Ulema (Transvaal and Natal)

*Instrument of religious leaders
in CODESA*

**MEMORANDUM TO ALL POLITICAL
PARTIES IN CODESA**

**SUBMITTED BY THE
JAMIATUL-ULEMA TRANSVAAL
AND
JAMIATUL-ULEMA NATAL**

15 DECEMBER 1991

JOHANNESBURG

1) INTRODUCTION

1.1) We, the Jamiatul-Ulema Transvaal and the Jamiatul-Ulema Natal, greet your organisation with peace and goodwill.

1.2) We submit this memorandum to your organisation because we believe that, as Muslim religious leaders, we have an important role to play in contributing to the process of peace, stability and reconciliation in our country.

1.3) We also believe that as we enter a new phase in our country's history, it is vital that the needs of the Muslim community, as of all South Africans irrespective of race and religion, are understood and its interests are defended and promoted.

1.4) We have noted with deep concern that the Convention for a Democratic South Africa (CODESA) has decided to exclude all religious groupings from its proceedings and deliberations.

1.5) It is also regrettable that CODESA, in according religious leaders a ceremonial function in its proceedings, has confined such participation to Christian religious leaders only.

1.6) We believe that South Africa is multi-religious society and that numerous organisations from a cross section of religions in South Africa have in some way or the other contributed to the struggle against apartheid and for a just social order. Therefore, all religions should be represented equally on a national forum such as CODESA, if that privilege is granted to any one religion.

1.7) Notwithstanding our exclusion from CODESA we deem it necessary to place before your political organisation the specific needs of the Muslim community in South Africa.

1.8) We also take the liberty of placing before you several basic constitutional and human rights principles drawn from the Holy Quran, the traditions of our Prophet Muhammed (may peace be upon him) and the rich political history and civilisation of Islam. It is our hope that this information will enhance the debate on constitutional principles that will be entered into within CODESA.

2) BRIEF BACKGROUND TO THE JAMIATUL-ULEMA

2.1) The name Jamiatul-Ulema means Council of Muslim Theologians.

2.2) The Jamiatul-Ulema Transvaal was established in 1923 and the Jamiatul-Ulema Natal in 1955. The two councils are composed of professionally trained Muslim theologians from the respective provinces.

2.3) We represent a broad cross-section of the Muslim community in South Africa and are engaged in a variety of religious, educational, cultural, social welfare and community activities across the racial divide.

2.4) We are regularly called upon to arbitrate in terms of Islamic law and jurisprudence on matters of personal, religious and family disputes.

2.5) We are commonly acknowledged as an Islamically constituted authority and provide constant guidance to Muslims in all

religious matters such as the determination of the lunar calender, the sanctioning of food and drink for Muslim consumption and the issuing of religious decrees whenever required.

2.6) We are officially represented on the South African Law Commission Committee for the purposes of considering and implementing Muslim personal law in all spheres of Muslim life.

2.7) Our overall aim is to promote the message and values of Islam, to strive for the unity of the Muslims and to represent and promote their interests in South Africa.

3) BASIC RELIGIOUS NEEDS OF SOUTH AFRICAN MUSLIMS

3.1) As with all South Africans, we require an assurance of the rights to live in peace, safety, security and with human dignity.

3.2) We insist on the right to religious freedom. This right shall include, inter alia,

3.2.1) the right to free worship;

3.2.2) the right to practice, to preach, to propagate and to publish the fundamental beliefs, principles and values of Islam;

3.2.3) the right to establish and maintain Islamic schools and other educational (eg. madressahs) and cultural institutions;

3.2.4) the right to purchase and to maintain property for religious worship and general religious purposes;

3.2.5) the right to implement, without legal and constitutional

constraints, religious rules of conduct in all spheres of Islamic life; and,

3.2.6) free access to the public media, such as national radio, for the propagation of Islam, and for the presentation of an Islamic viewpoint on any matter of national interest or any specific matter relating to the Muslim community.

3.3) We, as Muslim leaders, assert that we cannot accept any act of intolerance against Islam and Muslim culture. We declare to all political parties, to the future government, to the public media and to all sections of the South African society, that we do not expect to be and will not tolerate being insulted, abused and discriminated against on grounds of our adherence to Islamic religion, culture and traditions. At the same time we express a clear commitment to tolerance of all other religions and creeds.

3.4) We request that all aspects of Muslim personal law be given full legal recognition in South African courts of law. These would include, inter alia, legal and juridical arbitration and judgement in relation to Muslim marriages, divorce proceedings, inheritance and estates, custody and maintenance etc. We are prepared to discuss the feasibility and the practicality of establishing a fully-constituted Islamic Court of South Africa.

3.5) We assume that we have the free right to travel to and from any part of the world for religious purposes.

3.6) In particular, we require that special travel arrangements be negotiated, in consultation with South African Muslim

religious leaders, with the government of Saudi Arabia for the safe and comfortable passage of Muslim pilgrims to Mecca. ✓

3.7) Finally, we insist on the right to be consulted on any issue which directly or indirectly affects the Muslims as a religious community. ✓

4) CONSTITUTIONAL AND HUMAN RIGHTS PRINCIPLES DERIVED FROM ISLAM

4.1) As early as the 7 th century Islam has offered to humanity a number of fundamental constitutional and human rights principles derived from the Holy Quran and the traditions of Prophet Muhammed (may peace be upon him). We are proud that these have evolved long before the British Magna Carta, the French Declaration of the Rights of Man and the Citizen, the American Bill of Rights and the United Nation's Universal Declaration of Human Rights in this century.

4.2) We believe the following to be, inter alia, some of the basic functions and duties of a state : ✓

4.2.1) to protect human life which is sacred; ✓

4.2.2) to protect the right to own property on a private and/or collective basis; ✓

4.2.3) to protect the honour and dignity of every individual, race, religion or creed; ✓

4.2.4) to safeguard the privacy of an individual and/or family; ✓

4.2.5) to guarantee freedom of speech and expression within the parameters of human and moral decency; ✓

4.2.6) to guarantee the right to invite to truth (religion) and to forbid evil on an individual and collective basis;

- 4.2.7) to guarantee freedom of association;
- 4.2.8) to guarantee freedom of religion and to ensure that there is no forcible conversion to any particular faith;
- 4.2.9) to ensure that there is religious tolerance;
- 4.2.10) to guarantee equality before the law and to ensure that no action is taken against any person without evidence tested in a court of law;
- 4.2.11) to assist and help the poor, the needy, the sick, the destitute and the handicapped;
- 4.2.12) to guarantee equality of rights to all citizens and to prevent discrimination on grounds of race or religion;
- 4.2.13) to protect and to conserve the natural habitat and the environment;
- 4.2.14) to protect the rights of workers such as the principle of equal pay for equal work; and,
- 4.2.15) to guarantee the right to vote to all. In this regard the Holy Quran declares :

"Verily Allah (the Almighty) commands you to make over your trust (vote) to those who are worthy (competent) for it, and when you judge (rule), judge with justice." (Ch.iv Verse 58)

4.3) You should note also that there are laws on the present statute book which are in direct conflict with the laws of Islam; these relate to such matters as usury and interest, gambling, sale and consumption of alcohol and pornography. Muslims can neither agree with nor condone any part of a legal and social agenda which so flagrantly violates the laws of Allah, the Almighty.

4.4) You should also note that we call for an efficient governmental administration at all levels that is free from bribery, corruption and nepotism.

5) RELATIONSHIP WITH A FUTURE SOUTH AFRICAN STATE

5.1) Islam allows Muslims, inter alia, to live under and to accept the protection of life, property and liberty from a secular or non-Islamic state.

5.2) Muslims placed in this situation may also pay taxes and other dues to a non-Islamic state.

5.3) Muslims living under the protection of a non-Islamic state must obey the laws of that state, so long as such a state does not persecute, oppress or discriminate against them for being Muslims and for their commitment to Islam. This will also hold for as long as the state does not adopt a policy of national oppression and social injustice to its people and citizens.

5.4) Muslims will co-operate with the relevant authorities for the maintenance of law and order, provided that these laws are not in violation of the Islamic Shariah.

5.5) Finally, we commit ourselves to the promotion of peaceful co-existence with all our fellow citizens.

6) STATUS OF RELIGIOUS LEADERS IN CODESA

6.1) As Muslim religious leaders we note that CODESA is essentially a political forum for the negotiation of an interim government and fundamental constitutional principles for a

future South Africa.

6.2) As such we acknowledge that all political parties and political liberation movements will be duly represented on an equal basis in CODESA.

6.3) This implies that religious leaders and organisations will not be able to play a central role in CODESA.

6.4) However, we believe that religious leaders collectively represent a sizeable percentage, if not an absolute majority, of the South African population.

6.5) We, therefore, call upon your organisation to support our view that religious leaders of all denominations and faiths be granted full observer status at all the proceedings of CODESA.

7) CONCLUSION

7.1) We have taken the liberty to place before your organisation our vision of a new South Africa. We have also attempted to sensitise your organisation to the specific needs and interests of the Muslim community of South Africa, in the hope that these will be accommodated as we make a transition to a new South Africa. We have requested that you facilitate our entry into CODESA as observers so that we may witness directly and actively participate in deliberations and discussions which are to shape our common, future destiny. This will enable us to inform and to represent our followers on the broader political developments underway in our country.

7.2) We trust that you will respond promptly and positively to this memorandum.

7.3) Finally, we wish you and your organisation well in your participation and work in CODESA. We pray that Almighty Allah guide you both to do what is best for all the people of South Africa.

SIGNED ON BEHALF OF :

JAMIATUL-ULEMA TRANSVAAL

JAMIATUL-ULEMA NATAL

M.A.U. Kader

15 DECEMBER 1991

LENASIA
JOHANNESBURG