

OUTSTANDING ISSUES IN THE NEGOTIATIONS PROCESS

1. Free Political Activity

- 1.1 *Climate for free political activity on KwaZulu, Ciskei and Bophothatswana:* This matter needs to be dealt with mainly at a bilateral level with the regime as the responsibility for ensuring a climate for free political activity in the Bantustans rests with the regime. Qwa Qwa
- 1.2 *Covert operations and special forces:*
The termination of covert operations and the confinement of the special forces to barracks need to be dealt with prior to the establishment of the TEC.
- 1.3 *Repressive legislation:* Matthew
All repressive legislation needs to be repealed prior to the establishment of the TEC.
- 1.4 *State -controlled media:*
The independent Media Commission which would be established when the TEC is established would seek to ensure state-owned media plays a neutral role during the run--up to the elections. However, certain important steps need to be taken in the present period, i.e even before the TEC is established. In this regard we should seek to negotiate a Media Accord with the regime. The Accord would seek to (a) stop all unilateral restructuring of the SABC, and (b) ensure fair coverage in news and current affairs programs, and adequate access to the media for all political parties.

2. Unilateral Restructuring

The regime is hurriedly restructuring in the following fields:
Economy, Education, Health, Local governments, Arts and culture, Land, Media, Forestry, etc

It has now become imperative that this matter become a subject of the bilateral negotiations. This would be in addition to the negotiations on these matters in the following forums: The National Economic Forum, National Negotiations Forum on Local Government, and; the Education Forum. *Briefing from Depts*

3. Elections Related Issues

- 3.1 We need to fine-tune our position on the composition, powers and functions of the Independent Electoral Commission, This can best be done by producing a draft Electoral Law.

- 3.2 What would be the eligible age for voting in the elections for voting in the elections for a Constituent Assembly? At CODESA we proposed that it should be 18 years of age, However, many of our structures have now suggested 16 years of age.
- 3.3 Should there be registration of voters and the drawing up of a voters' roll? Voter registration has both advantages and disadvantages. We have to adopt a position on this matter.
- 3.4 *Voter Identification:* What method should be used for identifying voters? A number of options present themselves:
(i) the voters roll exclusively (i.e if there is voters registration);
(ii) Book of Life exclusively;
(iii) a combination of the above two together with any other form of identification that the voter can produce.
- 3.5 The role of the International Community in the electoral process: We need to develop a detailed proposal on the terms of reference, powers, functions, duties, size and composition of the international mission that would be involved in the electoral process.

4. The Transitional Executive Council (TEC)

- 4.1 We need to determine the detailed terms of reference for the sub-councils on Defence and Law and Order. *and all others.*
- 4.2 The powers, functions and composition of the Independent Media Commission need to be agreed to.
- 4.3 Draft legislation for the TEC and its related structures has to be completed.

5. Regional government during the transition:

The administration of the so-called self-governing territories and the TBVC areas need to be addressed urgently. Draft legislation in this regard needs to be prepared.

6. Interim Government of National Unity:

- 6.1 According to the Transition to Democracy Act:
- 6.1.1 The legislative arm of the IG would be the same body as the CA, but acting as an Interim Parliament.
- 6.1.2 The executive arm (cabinet) of the IG would be made up of appointees of all parties i the CA who enjoy more than 5% of the total seats on the CA.

6.1.3 The State President would be appointed by the majority party.

6.2 We need to consider whether our proposal should also provide for a vice-president who would be appointed by the second biggest party in the CA.

7. Constituent Assembly

7.1 The CA would have 400 members.

7.2 Decisions would be taken by a two thirds majority.

7.3 The CA shall complete its work within a time frame of nine months.

7.4 *Deadlock-breaking mechanism:* In the event of the CA not completing its work within nine months, are we in favour of the proposal in the Transition to Democracy Act? (i.e fresh elections after nine months)

7.5 Only parties receiving more than three per cent of the total vote would be entitled to representation in the CA.

7.6 The CA would be bound by General Constitutional Principles. CODESA had arrived at far-reaching agreement on constitutional principles. The regime would seek to add as much detail as possible to the constitutional principles.

7.6.1 We need to agree to a formulation on a clause on property rights.

October 1992

RESOLUTION ON CONSTITUTIONAL ISSUES

HAVING NOTED:

The clear linkage between constitutional principles, the constitution-making process and constitutional structures, powers and functions of SPR's as apparent in paragraph 6.3 of the Second Report of the Technical Committee on Constitutional Issues.

IT IS RESOLVED THAT:

1. The Negotiating Council proceeds to negotiate and endeavour to agree on the constitutional principles recommended by the Technical Committee as set out in paragraph 2 of its Third Report, and the detailed principle dealing with the allocation of powers to different levels of government as set out in paragraph 3 of its Third Report.
2. There is a need for the adoption of a Constitution for the transitional period, the text of which is agreed to at the Multi-Party Negotiating Process:
 - 2.1 Which shall be drafted in accordance with the constitutional principles agreed upon in so far as they may be applicable;
 - 2.2 Which will provide, inter alia, for justiciable fundamental rights, the structures of national and regional governments and their respective powers, functions and authority; and
 - 2.3 As well as which will provide for the procedures relating to the drafting and adoption of a Constitution by the elected constitution-making body.
3. Now therefore the Negotiating Council instructs the Technical Committee on Constitutional Issues to make recommendations to it on:
 - 3.1 The powers, functions and structures of the SPR during the transitional period;
 - 3.2 The constitution-making process to be followed, including the structures that need to be established for that purpose;
 - 3.3 The procedures to be followed in the drafting and adoption by the Multi-Party Negotiating Forum of a Constitution for the transitional period;
 - 3.4 The procedure to be followed thereafter in the drafting and adoption of a Constitution by an elected constitution-making body.

To: Prof. Albie Sachs

SENT BY: ANC
17L 17

: 2- 9-93 : 3:54PM : ANC NEG COMMISSION-
095233862 27-08-93 15:58

:# 2/ 2

[44] #1



TOWARDS A MORE

HARMONIOUS FEDERATION

NATIONAL COUNCIL ON INTERGOVERNMENTAL RELATIONS.

Prof. J. Nwankwo Elaiywu, Ph.D (Stanford)
Director-General/Chief Executive

26 August, 1993

Dr. Zola Skweyiya
Chairperson - Constitution Committee,
Director - Dept. of Legal and Constitutional Affairs,
African National Congress,
51 Plain Street,
JOHANNESBURG 2001,
P.O.Box 61884,
MARSHALLTOWN 2107.

Dear Zola,

On behalf of the National Council On Intergovernmental Relations, I have the pleasure of inviting you and six others from the African National Congress (ANC) to Nigeria for a period of two weeks. During your visit, you will tour some parts of the Country to enable you observe the operation of Federalism in Nigeria. You will also meet and discuss with distinguished and prominent people at the three levels of government. You are expected to also exchange ideas with people in the academic circles.

2. Given financial constraints, we can only cover your travelling expenses within Nigeria - i.e. from your port of entry in Lagos. We shall however be responsible for all expenses during your stay in Nigeria.

3. Please do let us know the date and month convenient to you. Thereafter we will send you the details of your schedule while in Nigeria.

4. Please extend my warmest wishes to your colleagues and keep the struggle alive.

Thank you.

Very sincerely,

PROF. J. ISAWA ELAIGWU
Director-General/Chief Executive.

Received 31/08/93

NEGOTIATIONS
COMMISSIONINTERNAL
MEMORANDUM

To: Albie SACHS

From: HASSEN EBRAHIM
ADMINISTRATOR

Date: 19 November, 1993

Subject: NEGOTIATIONS COMMISSION MEETING

There is an urgent need to finalise Chapter 14 relating to the transitional provisions (A copy of the Chapter is attached under cover hereof). You are requested to participate in this discussion as part of our technical team which should meet at 10h00 on Monday 22nd November at our WTC offices.

The Commission will then meet at 15h00 on Monday at our WTC offices in order to process this report. This meeting will also serve as the basis for the bilateral which is to be held with the regime on Tuesday. The bilateral is expected to report to the Constitutional Technical Committee by Tuesday so as to allow it to further process the bilateral agreement so that it may come before the Negotiating Council which meets on Thursday.

This is an important meeting. Please attend.

Flight details to follow

**CONCERNS ARISING OUT OF THE FIFTH REPORT
OF THE TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS**

The following concerns have been informally and confidentially raised by the State representative:

1. It is suggested that the qualification contained in Clause 12.2 may extend to the private lives of people. It is therefore suggested that 12.2 should be deleted and that there should appear in the Chapter on Fundamental Rights after the existing Section 29, a clause reading as follows:

"Nothing in this Chapter shall be interpreted so as to commit racial or gender discrimination unless the interests of society so demands."

2. It is suggested that Clause 8 is far too limited as a result of the reference to "home" and that the word "home" should be substituted by the word "property".

3. The following clause is suggested as a possible compromise in respect of Clause 23 relating to economic activity. It is suggested that the existing clause remains but that a sub-clause 2 be added reading as follows:

"Nothing in this clause shall preclude legislation aimed at the promotion of the improvement and the quality of life, economic growth, human development, social justice and equal opportunity for all, provided such legislation is justifiable in a free, open and democratic society and does not negate the essential content of Sub-section 1."

4. The Property Clause (25) is unacceptable and thought to operate unfairly in respect of existing property owners. It is suggested, as a compromise, that the words "available to the State of resources" be deleted and that the words "the extent of the owner's investment in the property" be substituted as a factor to be taken into account by any court.

It is also suggested that a specific clause or sub-clause, which entitles people who have suffered financial loss as a result of discrimination to compensation, be added.

5. Inclusion of the moratorium sub-clause in the clause concerning "the right to life" is not acceptable. There may be two possible compromises here. Firstly, that Sub-clause 3 of 3 be deleted on the basis of a Government undertaking to the effect that the moratorium will not be lifted unless there is sufficient consensus in the Negotiating Council. The second suggestion is that Sub-clauses 2 and 3 of Clause 3 be deleted altogether.

6. There is insistence that pension rights be included as Fundamental in the Chapter being dealt with by this Committee. The following formulation is suggested:

"Every person shall have the right not to be deprived of his or her rights and interests in any State or private pension fund or scheme."

NOV 20 1960

CPH/HE

PHOTO

RECEIVED

NOV 20 1960

REF

AAPIYQ