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DATE : 5 February 1992

ACCOUNT NO : 34360

PLEASE DELIVER THE ATTACHED

TO : CODESA

ATT: ASHLEY SYMES

FAX NUMBER : 397-2211

FROM : Ms S ALBERTYN

NUMBER OF PAGES INCLUDING COVER SHEET : SEVEN (7)

COMMENTS : SEE ATTACHED

ANY PROBLEMS WITH FAX PLEASE CALL US AT 838-8830

D.K.Sinclair, N.D.Carman, K.F.Gill, C.L.Green, R.O.Gush, D.R.Hoffe, L.S.Jacobson, B.D.Jacoby, S.F.Langbridge, A.N.Leontsinis,
A.Mitchell, G.A.Nott, M.E.Poore, N.J.Roodt, M.J.Simpson, J.A.Sutherland. Consultant: W.Lane
Associates: M.V.O.Ball, P.C.Botha, B.McBride, C.M.Wright.

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TELEFAX NO. 397-2211
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5 February 1992

Attention: Ashley Symes

Dear Ashley

WORKING GROUP 4 : TBVC STATES

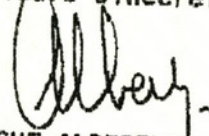
Attached to this letter are submissions received from Lawyers for Human Rights.

Please arrange for 80 copies of this 2 page submission to be made for the meeting on 6 February 1992.

Please also arrange for 80 copies to be made of the Inkatha submissions to Working Group 4. A copy of these submissions is also attached.

Usually I would refer these submissions to the WGSC4 but as this will not have met prior to the meeting of WG 4 I think it better if we have copies available.

Yours sincerely


SUE ALBERTYN
BELL DEWAR & HALL

D.K.Sinclair, N.D.Carman, K.F.Gill, C.L.Green, R.O.Gush, D.R.Hoffe, L.S.Jacobson, B.D.Jacoby, S.F.Langbridge, A.N.Leontsinis, A.Mitchell,
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INKATHA

Inkatha Freedom Party

Iqembu laNkatha yeNkululeko

CODESA WORKING GROUP IV

PROPOSALS FOR SUBMISSION TO A CODESA MEETING ON 6TH JANUARY 1992

The group assignment is simply "Future of TBVC States."

The terms of reference take cognisance of the following:

1. "The need to provide for the meaningful and democratic participation of all the people living in the TBVC states..."
2. "The reality of the current existence of a number of separate but parallel institutions..." in the TBVC States.
3. "In the event of re-incorporation the need to ensure that the lives and livelihood of people in the affected territories shall not be subjected to any unnecessary disruption."

We also note the following:

1. The four TBVC States negotiated independence terms with the Government of the Republic of South Africa, resulting in the four TBVC States establishing their own Parliaments.
2. By Act of Parliament of the Republic of South Africa, independence was granted through the Acts known as the Status of the Transkei Act, Status of Venda Act, Status of Bophuthatswana Act and Status of Ciskei Act.

These States then became recognised by the Republic of South Africa but "few foreign powers, if any, recognise the de jure independence of the TBVC." (Vide the "South African Law Commission" page 382).

In view of the facts stated above some Parties within South Africa recognise the independence of the TBVC States whereas others do not. Therefore three possible routes could be taken in considering the "Future of TBVC States." These routes are outlined in the "South African Law Commission" as follows:

President: The Hon. Prince Dr. Mangosutho G. Buthe
 National Chairman: Dr. F.T. Madisa
 Deputy Secretary General: Insole S.H. Gumede
 Sub-Committee Chairmen:
 Political, Constitutional, and Legal: Dr. D.A.B. Madisa
 Economic and Finance: Mr. M.A. Nkomo; Social and Cultural: Dr. F.T. Madisa; Secretary Publicity and Strategy: The Rev. C.J. Nkomo
 Appointment and Disciplinary: Mr. E.S.C. Sibebe; Community Development: Mr. M.V. Ngweni.

- (a) Accept the independence of the TBVC States for the purposes of the creation of a new constitution. The justification for this option is pragmatism, accepting the independence of the TBVC States provisionally. This approach would postpone the clearing up of the status of the TBVC States until after the adoption and coming into operation of a new South African constitution. The new government could then enter into negotiations with these States to seek a solution.
- (b) Ignore the independence of the TBVC States. The justification for this solution would be that the independence of the States has no international recognition. This means that in terms of international law these States are and will remain part of the Republic of South Africa. The negation of their independence is therefore in conformity with international law.
- (c) Let the States decide for themselves whether they wish to retain independence and how they wish to link up with South Africa in order to become a full part of it. Justifications for this option are to be found in democracy, the right of a people to self-determination, and the recognition of vested rights."

The IFP would favour option (c). This option is based on the fact that we respect the people of Transkei, the people of Bophuthatswana the people of Venda and the people of Ciskei. If by their free choice they would like to be re-incorporated into the Republic of South Africa we are happy to accept that. It is a well-known fact too that the IFP has never been happy with the four States assuming independence. We therefore would be happy to have them re-incorporated if that is their wish.

Key issues and problems in our view that need to be addressed fall into the following categories:

1. Do the people of the TBVC States seek to be re-incorporated? This may be ascertained by either accepting the word of the TBVC Governments or by accepting the verdict of referenda in the four States. Here we would need the guidance of the TBVC Governments themselves. Group IV must decide between the two options.
2. Do the Status Acts of the four States make provision for re-incorporation? If so, what are those provisions? Here we would be guided by the RSA and the TBVC States themselves. There may have to be consultation with the main drafters of the TBVC States' constitutions.
3. How do the TBVC constitutions deal with the possibility of re-incorporation, if at all?

Consequent to the above main key issues the nitty gritty of details follow on. These are the matters outlined in 1.1.5 of the Working Group IV Terms of Reference. Here there are found to be a plethora of differences as the different States have administered their affairs in different ways. They have different economic policies, different projects, different commitments, different taxation policies, different legislation, etc.

These details need to be addressed in order to instil confidence in the four States among their Civil Service and among their people at large. A team of experts may usefully be employed to work closely with the respective governments.

IFP VIEW : CODESA WORKING GROUP IV MUST THEREFORE DO THE FOLLOWING:

- (i) Decide whether re-incorporation should be backed by the Governments of the TBVC States or by respective referenda conducted in these States. IFP would favour accepting the word of the respective governments.
- (ii) Appoint a team of experts to look into the Status Acts of RSA and the Constitutions of the TBVC with the aim of normalising and legalising re-incorporation, on the assumption that this was the wish of one or more of the States concerned.
- (iii) Charge the Working Group Steering Committee (WGSC) with the task of conducting Research as decided upon at the meeting of Working Group IV on 20th January 1992. In this regard SECOSA and all relevant bodies or persons should be requested to make in-puts.

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1ST FEBRUARY 1992

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Our ref:
 Your ref:
 Date:

LAWYERS
 for
 HUMAN
 RIGHTS

Dr E H Venter MP
 Parliament
 CAPE TOWN

FAX : 021 451 575

3 February 1992

Dear Dr Venter,

RE : SOCIAL ASSISTANCE BILL 1992

In Lawyers for Human Rights we have been most disturbed by the introduction of the abovementioned Bill, and wish here to express our objection to it on the following basis :


1. In effect this Bill will remove a statutory right to a pension (currently enjoyed by literally hundreds of thousands of war veterans and aged or disabled persons) and place their welfare at the Discretion of the Director General. As you are well aware, there are very few legally enforceable rights to social assistance in our country, and to remove this one is not only unacceptable but incomprehensible to us.
2. The Bill also introduces the requirement that an applicant for "social assistance" must be a South African Citizen. In the Social pensions Act the requirement was that the person requesting such assistance must either be a South African Citizen or have resided in the Republic for a substantial period. In effect the Bill under discussion would deprive all those persons living in South Africa but technically members of TBVC states, of the right to receive a pension. Social pensions legislation of the TBVC states contain a similar provision whereby applicants must be resident in the territory and must be either a citizen or have resided in the territory for a substantial period of time. Citizens of Bophuthatswana, e.g., residing in South Africa, will be cast

into a no-man's land by this Bill as they will be disqualified from receiving a pension in both territories.

3. At CODESA, Working Group Four has been given the task of examining the reincorporation of the TBVC states. This is therefore a question very firmly on the political agenda of all major political parties, including your own, and we find the introduction of this Bill incongruous to say the least.

The explanatory memorandum on the objects of the Bill creates the impression that the Bill is merely technical in nature, aiming to embody laws relating to social aid schemes in one Act. With respect, this memorandum is misleading, and we sincerely hope that this was not intentional. Our recommendation to the Joint Parliamentary Committee would be for the immediate withdrawal of this Bill, and we hope that this recommendation will be treated with the seriousness required. The aged and disabled in our society are our responsibility - we believe that at the very least the minimal rights they now have must be retained.

Yours Sincerely


BRIAN CURRIN
EXECUTIVE DIRECTOR

CC. DEMOCRATIC PARTY
CODESA SECRETARIAT - WORKING GROUP FOUR
AFRICAN NATIONAL CONGRESS - LEGAL DEPARTMENT