

# The Methodist Church of Southern Africa

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Christian Citizenship Department



## FACSIMILE COVERING LETTER

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### FAX MESSAGE FOR ATTENTION OF:

Name: CODESA Working Group 2

Address: P.O. Box 307, Kempton Park

Your Fax No: 337-2211 Number of pages (including this page): 8

### FROM:

Name: Rev. D. Palos

Secretariat / Committee / Department:

Sent By: Rev. R. Koetter Time:

### MESSAGE / COMMENT / REMARK:

Enclosed you find the submissions of the  
Methodist Church of Southern Africa on  
CODESA Working Group 2.

Trust you will give them due attention.

Yours sincerely

R. Koetter

The Methodist Church of Southern Africa  
 Christian Citizenship Department  
 Submissions to CODESA, Working  
 Group 2, in regard to General  
 Constitutional Principles and the  
 Constitution making Body/Process

1. INTRODUCTION:

As a Multi-racial Church consisting of nearly two million adherents and with a history of over 178 years in South Africa, the Methodist Church has a long experience of and exposure to the realities of South African life. The Conference of the Methodist Church has on many occasions expressed its mind consistently in relation to this Multi-Racial Society through resolutions based firmly upon fundamental Christian doctrines.

2. Some Relevant Resolution of Annual Conference of the MCSA

- 2.1. (1948) "In this multi-racial land we are bound to take account of the basic Christian principles that every human being is entitled to fundamental human rights and dignity and belongs to the family of God ... no person of any race should be deprived of constitutional rights or privileges merely on the grounds of race".
- 2.2. (1952) "The policy of racial Apartheid is not only impracticable, but is contrary to the best interests of all sections of the South African community, and inconsistent with the highest Christian principles. Legislation which differentiates against particular groups merely on grounds of race or colour is essentially wrong"
- 2.3. (1957) "The Methodist Church of Southern Africa, after long and careful study places on record its emphatic Rejection of the policy of separate development. We do not believe that any Government has the right to force upon a people a pattern of development "...

3. CURRENT RESOLUTIONS:

More recently, the Methodist Church of Southern Africa has given particular attention to specific Human Rights, political and constitutional issues as well as to procedures of drafting and implementing the Bill of rights.

3.1. Bill of Rights

"Conference notes with appreciation the responses of Synods and Circuits to its resolution 28.7.1. of 1990 and resolves to recommend to the South African Government:

1. That a Bill of Rights be introduced in South Africa.
2. That such a Bill of Rights should be:
  - 2.1 drafted by a group of experts established by a conference representing all the people;
  - 2.2 accepted by the people voting in a referendum;
  - 2.3 enforced by the Supreme Court with the right of appeal to a special Constitutional Court;
  - 2.4 amended only by a two-thirds majority of those voting in a referendum."

3.2. HUMAN RIGHTS (1989)

"The Conference having taken cognisance of the following facts:

That most of the Social, Moral, Justice and Reconciliation and Family Life issues confronting and addressed by the Church concern Human Rights:

That many of these problems arise from the systematic application of the Apartheid ideology with its concomitants of:

"The Conference expresses the conviction that any meaningful political change which would restore basic human rights and common citizenship for all people of South Africa cannot be achieved within the framework of the Apartheid political system.

The Conference, reaffirming its belief in non-violent change, urgently repeats its call for a National Convention at which all the people of South Africa will be represented, to write a new Constitution which will embody a Bill of Rights entrenching the rights of the individual to life, freedom of association, freedom of movement, equality of opportunity in all walks of life, habeas corpus and full citizenship rights for all the people of South Africa".

In the light of the escalating unrest in our land the Conference reiterates its call to the Nationalist Government to call for a National Convention of all the peoples of this land without restriction, or make way for a body that is both willing and able to mount such a Convention".

#### NEGOTIATIONS:

(1990/1991) "Conference gives praise and thanks to God for the initiatives being taken by National Leaders to bring about a just participatory society in South Africa and therefore expresses its strong support for the process of negotiation, urging all parties to ensure that obstacle to the immediate implementation of these negotiations be removed.

Conference notes with distress the fearfulness with which many South Africans view the changes which are taking place and calls on all Methodists to show faith and trust in God in both their private and public lives and to work with those striving for a Christ-pleasing society in our divided land."

#### 3.4. INTERIM GOVERNMENT

"Conference calls upon the Government to negotiate with all political parties the establishment of a government which will ensure that the interests of all South Africans are adequately represented until a new Constitution is agreed upon and implemented."

#### 3.5. CONSTITUENT ASSEMBLY:

"Conference calls on the South African Government to agree to a body fully representative of all the people of South Africa, elected by universal suffrage, to negotiate and draft a new Constitution. Conference believes that there are many people who are not attached to political groupings who could make a positive and reconciling contribution if elected to such a body."

(1991) 2. "That such a Bill of Rights should be:

- 2.1 drafted by a group of experts established by a conference representing all the people;
- 2.2 accepted by the people voting in a referendum;
- 2.3 enforced by the Supreme Court with the right of appeal to a special Constitutional Court;
- 2.4 amended only by a two-thirds majority of those voting in referendum."

#### 3.6. THE SEARCH FOR ALTERNATIVES:

(1990/1991) "Conference is convinced that the Church has an important role to play in the historical process of change in this our beloved country. Conference therefore urges our people to take an active part in the search for a new dispensation for a democratic non-racial South Africa using amongst others such documents as the Freedom Charter and the Biko lectures.

Conference further affirms bodies who are seeking to encourage dialogue, both in SA and with exiled groups, with a view to seeking a new South Africa."

internationalisation of Blacks, the policy of forced removals, and the security legislation and militarism of society therefore appoints a Standing Committee on Human Rights which will seek to educate our membership on the Biblical basis of Human Rights and its implicit nature in evangelism....."

### 3.7 MISCELLANEOUS RIGHTS

#### (1989) CHILDREN'S RIGHTS:

"The Conference calls upon all Governments within the Connexion to sign the United Nations Convention pertaining to the Rights of Children."

#### (1989) SOUTH AFRICAN CITIZENSHIP:

"The Conference deplores the manner by which Black South Africans are being deprived of their citizenship without their knowledge and consent. The arbitrary powers invoked by the South African Government are a violation of Human Rights, making people aliens in the land of their birth.

These powers also contravene recognised international standards in regard to citizenship and civil liberties .....

The Conference therefore calls upon the State President to revoke the offensive legislation and in the meantime to take steps to desist from the reclassification of Black South Africans as citizens of the Homelands" .....

and to recognise them as full citizens of a unified and territorially undivided South Africa."

#### (1991) THE POPULATION REGISTRATION ACT

"Conference notes the repeal of the Population Registration Act and welcomes the stated intention to scrap all racially-based and discriminatory legislation. Conference notes with distress, however the qualifying clause which retains the full effect of the Population Registration Act for all but newborn children until a new Constitution is negotiated and implemented. Conference calls for the immediate full repeal of the Act and its application except for those clauses relating to the franchise which may need to be negotiated."

#### (1989) VOTING RIGHTS:

"Conference continues its call for full equal political rights for all people of this land. The Conference regards as immoral the exclusion of Africans from within the Central Government, more especially now that equal taxation has been instituted for all races."

#### (1989) LEGAL STATUS-BLACK WOMEN.

"The Conference calls for the recognition of full legal status, regardless of their marital state, for all Black women at the age of 21, for marriages according to common law, for property and succession rights, and for the right to buy and own land."

### CIVILIANS AND FIREARMS

(1991) "Conference calls on all South Africans, and especially Methodists, to desist from carrying weapons of any sort, especially where injury to persons and/or damage to property may result.

Conference further calls on the State President of South Africa to abolish the right of common citizens to possess firearms."

(1990/1991) LAND

"In view of the initiatives for change in South Africa, Conference asks the Government to adopt and implement the principle that land which was expropriated against the owner's will in pursuance of the policy of apartheid and where the persons concerned were prevented by law from obtaining alternate freehold land, should be restored to its previous and rightful owners; or alternatively that compensation be paid which is commensurate with the market value of the land, its economic potential and the actual financial loss incurred as a result of expropriation."

HIT SQUADS

(1991) "Conference condemns the activities of all Hit Squads, whatever their affiliation, and calls on the State President of South Africa to:

1. Institute an independent judicial inquiry into the activities of such Hit Squads.
2. State publicly and unambiguously what was and is the mandate of the CCB and similar formal or informal bodies;
3. Ensure that offenders be subjected to due legal process when violations of the rule of law take place;
4. Ensure the protection of those who testify against such Hit Squads."

4. SUBMISSIONS:

The Christian Citizenship Department on behalf of the Methodist Church of Southern Africa according to these resolutions and to consensus reached at consultations with various other churches wishes to make the following submissions.

4.1. DRAFTING AND IMPLEMENTING A CONSTITUTION AND A BILL OF RIGHTS

In the very process of drafting the New Constitution and the Bill of Rights, as many parties as possible, providing the broadest possible representation of all South Africans, should make up the Constituent ASSEMBLY. This can only be achieved by an election including

- establishing universal suffrage on the basis of common voter's roll.
- grouping of people not attached to political groupings that can make meaningful contributions such as, churches, trade unions, judges, industrial organisations, traditional leaders. They could be allocated a certain amount of seats in the Constituent Assembly which carries weight, but will not be in a position to outweigh the elected members.

By "parties" we imply major or political parties enjoying significant support (possibly 5%) and not confined to one particular area of South Africa. The criteria for these are we believe, considered at CODESA.

As the Constituent Assembly will enjoy broad support and consensus, it is the most appropriate body to establish the subsequent political processes. This can happen either by way of transforming itself into the new Parliament or by calling a general election. We consider the latter to be the most democratic way. The Constitution itself should be submitted to a public Referendum in order to ensure its acceptance.

4.2. INTERIM GOVERNMENT

The Interim Government should be appointed by CODESA because it already enjoys broad support and is constituted on a multi-party basis. To elect this Interim Government would prolong the process more than is suitable at a time where urgent and speedy decisions have to be made. The functions of the Interim Government should lie in two areas:

1. Supervising the state media, the security forces and the election of the Constituent Assembly, all of which deal chiefly with an orderly and smooth election process.
2. Determining the budget with particular concern for short-term measures such as providing food and medical aid and urgent facilities for black education. Thus, the interim character of that government is maintained until the new

democratically elected government is instituted. The tri-cameral Parliament must during the Interim Government be limited to the function of approval of these actions, indicating that the new system is taking over. If that is not possible at all, it should be dissolved.

4.3 SOME CONSTITUTIONAL AND HUMAN RIGHT ISSUES4.3.1 CONSTITUTIONAL COURT

A separate and independent Constitutional Court is of paramount importance as to measure laws and by-laws against the Constitution and the Bill of Rights, thus balancing the power of any legislative and giving every citizen a chance to resort to. In the past, the practically unlimited supremacy of the Parliament was a major factor in the oppression of people, because it happened in the form of laws. This must for the future be excluded.

4.3.2 CITIZENSHIP

In terms of the then existing international Human Right standards, the establishment of the "Homelands" and "Self-Governing Territories" has been unlawful and totally unaccepted and must therefore be dismantled and redressed-hopefully the relevant CODESA - working group will negotiate successfully in this respect. If not, the Bill of Rights must clearly state that all these territories are legally part of a unitary South Africa, thus setting out a political goal which every future government is bound by.

4.3.3 THE RIGHT TO LIFE

The Constitution should clearly state that the death penalty is totally abolished. This penalty is not only highly problematic in terms of international law, but also with regard to its deterrent effect (which we believe, can also be achieved by a life sentence). Furthermore, the educational impact of such alternative penalties becomes increasingly important. As God is the giver of life, we feel no government has the right to infringe on that.

4.3.4 GENDER RIGHT

Women have suffered and are still suffering particularly from sexual oppression, therefore the Constitution should contain an Article on affirmative action with regard to sexual harassment and violence (inter- and extramarital), single parenthood, sexist language in social institutions like media and schools. We feel it is not enough to just prescribe gender equality before the law.

4.3.5 FORCED LABOUR/MILITARY SERVICE

As the right to religious freedom includes the right to adhere to none of the (traditional) religions, the possibility of conscientious objection to military service must be offered on a broad basis of reasons such as political, social, religious objections etc. as long as they can be proved to be conscientious. The constitution must also lay down that for the sake of justice, civilian national service must not exceed the period of compulsory military service.

4.3.6 FREEDOM OF SPEECH

Considering South Africa's past, we feel it is appropriate to prohibit by way of the Constitution racist and sexist public incitement, so as to set out a political goal which is worth striving for.

4.3.7 FREEDOM OF ASSOCIATION

In order to maintain the non-racist character of South Africa, the Constitution must clearly state that freedom of association does not include the right of dissociation merely on the ground of gender, race or colour. This does not, however, prohibit practices that are traditionally intrinsically part of certain practices of groups or associations (e.g. male football teams, women's leagues), it must not be merely based on groups of gender, colour or race.

4.3.8 SECOND AND THIRD GENERATION RIGHTS

Being aware of the fact that these rights are enforceable only in the medium and long term and under a complex structure of internal and

external factors (e.g. foreign investments), we strongly believe, however, that the Constitution could lay down an expanding floor of minimum, social economic and environmental rights, which can in the short term be enforced on a minimum level and inherently compel the state to constantly expand it. This floor should entail:

- Free compulsory non-racial primary education in the short term, free secondary education in the medium term. Education can only maintain its non-racist character if it is totally under state supervision in terms of syllabi, admission policy and staffing. It is therefore totally unacceptable for private schools to admit pupils on racial basis, because it would be contradictory to the Constitutional prescription on non-discrimination. Private schools can only be recognised if they comply with the Bill of Right standards of the Constitution. By "Free" education we do not imply that there should be no school fees at all, but that the currently disadvantaged South Africans must enjoy state subsidies
- The right to shelter, by way of immediately launched low cost housing programmes, electrification and water schemes.  
Electricity and water might in the short term not be accessible to individuals, but to a larger block or unit. But the long-term perspective must be a reasonable and affordable access to housing, water and electricity. The Constitution can lay down state subsidies in this respect for the sake of justice and equality.
- The right to primary health care, by way of primary education schools feeding programmes, local clinics and dispensaries and state-aided medical treatment where people cannot afford it.  
In the long term the Constitution should earmark a medical insurance system to which all parties involved contribute: the state, the employer, the employees.
- The environment should be constitutionally protected by prescribing that every technical or chemical venture that is intrinsically bound to harm the environment must be submitted to public control by way of hearings, submissions and referendums. By way of law, every industrial or private polluter should be compelled to compensate for the damage he or she has done. This will have a significant deterrent effect.
- As regard a dignified life for the unemployed and poor, the state must constitutionally contribute to "doles" and pensions until an economic upswing can develop a dynamic sufficient to carry those burdens by way of premlums and deductions.

Being fully aware that these rights demand affirmative actions which may appear to be discriminating in some instances, we are strongly convinced that they are necessary as interim measures, until a sufficient economic equality of all South Africans is achieved. If that is the case, the affirmative action Articles can be removed from the Constitution.

4.3.10. POLITICAL DISPENSATION

As the past oppressions have been exercised mainly through a strong Central Government, we believe that in some areas central power must have authority to redress the past sufficiently. These areas are education, security forces, border protection, supervision of health care and housing, regional equalisation, environmental guidelines and conservation.

The Government can and should delegate administrative power to regions and communities in order to ensure links to the grass-root level; e.g. in areas like refuse collection, cultural work, health care, urban planning, some power should rest on regional and local authorities. As there would be strong checks and balances like regular elections and constitutional courts no inferior authority should feel threatened by a strong central government.

4.3.11. AMENDMENTS, CIRCUMSCRIPTIONS

As it has proved itself in most of the countries having a significant tradition of a written Bill of Rights,

- amendments to the Bill of Rights and the Constitution shall only be possible if not less than 2/3 of the eligible M.P.'s vote in favour of them

- circumscriptions and changes of an Article shall not affect its essence and must quote the Article that is circumscribed or changed.

Furthermore, the Constitutional Court shall have the power to direct the government to take steps to enforce the Constitution, if the outcome of a concrete lawsuit makes it necessary to do so.



Rev D. Palos, General Secretary