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AFRICAN NATIONAL CONGRESS
PROPOSAL FOR IMMEDIATE RESTORATION OF
SOUTH AFRICAN CITIZENSHIP TO THE TBVC CITIZENS

1. INTRODUCTION

Sub-Committee (Citizenship) met on 18 February, 24 February and 3 March 1992. Eventually the conjuncture reached was unanimously recorded as follows:

"Sub-Group 2 (Citizenship) of WG 4 has reached sufficient consensus that South African citizenship be restored. In this regard there are two views:

- a) Citizenship should be restored immediately;
- b) Citizenship should be restored after the testing of the will of the people and if such expression of the will is in favour thereof.

Reservation: The Boputhatswana Government records its position that:

- a) Citizenship should not be imposed on people;
- b) The will of the people at all times be tested in terms of the procedures that might be agreed upon".

2. IMMEDIATE RESTORATION OF CITIZENSHIP

The ANC is firmly of the view that South African citizenship should be restored immediately and en bloc to the citizens of the TBVC states.

Whilst the notion that the will of the people should be tested first appears to be logical, such a procedure will in reality not resolve the issue as will be shown hereunder.

At the same time the question should be asked: Why should Sub-Committee 2 whose task is to address the issue of citizenship, pre-empt the work of Sub-Committee 1 on "Testing the Will of the People"? This is a much debated issue in Sub-Committee 1. It is wrong for Sub-Committee 2 to meddle in the work of Sub-Committee 1. The ANC says: Let Sub-Committee 1 do its work without being presented with the fait accompli by Sub-Committee 2.

It is necessary for parties in Codesa to come out clearly and state where they stand in unambiguous terms: Are you in favour of restoring South African citizenship immediately and thus make it possible for the people of the TBVC states to participate in the process of constitution-making and transitional arrangement? Or are you advocating a process

which will delay restoration of citizenship and risk depriving the people of the TBVC states of their right to participate in the processes referred to. That is the central issue and it must not be evaded.

3. THE RIGHT OF THE PEOPLE IN TBVC STATES TO PARTICIPATE IN THE PROCESS OF CONSTITUTION-MAKING

The ANC is irrevocably committed to the right of the people of the TBVC states to participate in the constitution-making process and/or transitional arrangements from its very inception. We cannot conceive of any movement away from the present apartheid situation into a transitional period without such participation.

The position flows from the clear direction and guidelines contained in the Declaration of Intent of Codesa and the Terms of Reference of Working Group 4. We would urge all participants to give serious consideration to the issue of the right to meaningful participation. Each participant opposing immediate restoration of citizenship must give an answer to the question: How do you propose to give effect to the requirement of "meaningful participation"?

4. WHY TESTING THE WILL OF THE PEOPLE WILL NOT RESOLVE THE ISSUE OF RESTORATION OF CITIZENSHIP

Insisting on "Testing the Will of the People" BEFORE restoration of South African citizenship will not really resolve the issue. In fact even if a testing of the will of the people (assuming this means separate testing of wills for each TBVC state - which also is unacceptable) produces a negative result, that will not dispose of the problem. The reality is that the Restoration of Citizenship Act (No.73 of 1986) makes provision for restoration of citizenship on an individual basis. The Act recognises in clear terms that a citizen of an "independent" TBVC state has the right to apply for the restoration of his/her South African citizenship. Despite the fact that the Act imposes unacceptable qualifications, it was estimated in 1986 that nearly 2 million people qualified to restoration of the South African citizenship which they had lost as a result of the various Status Acts.

The question thus arises: How is the "Testing of the Will" exercised going to affect the right of people to restoration of their citizenship? Is this right - which presently exists - going to be taken away if there is a negative result? The fact of the matter is that in respect of the so-called independent TBVC states, the South African government saw fit to make provision for restoration of South African citizenship. And this right cannot be taken away by a process of testing of the will of the people.

It is instructive in this regard that the Restoration of Citizenship Act became law in 1986 - that is AFTER the four

TBVC had already achieved "independence" (Transkei 1976, Boputhatswana 1977, Venda 1979 and Ciskei 1981). Before the restoration of South African citizenship provided for in this law, there is no requirement of testing of will. Indeed there is in fact an acceptance and recognition of independence.

Clearly the right to restoration of South African citizenship has quite correctly been recognised as far back as 1986. Our complaint is that the Restoration of Citizenship Act is inadequate and contains serious limitations. It is those limitations which must be removed. The right, accepted in principle, must not be taken away under the guise of the need to test the will of the people.

Indeed even if there is no reincorporation and no new Constitution, under the existing dispensation many people are, in terms of existing law, entitled to the restoration of South African citizenship and a large number have taken advantage thereof.

Therefore the ANC view is that the Restoration of Citizenship Act should be reviewed. Codesa should agree to the immediate restoration of South African citizenship - not on an individual basis - but en bloc. Once agreement has been achieved, steps can be taken to give legal effect to the agreement by effecting such amendments to the law as may be required. This is no complicated matter.

5. IMPLICATIONS

The immediate restoration of South African citizenship has clear advantages, especially for the peace process in South Africa. The alternative course of "Testing the Will of the People" first has serious disadvantages.

A. The Advantages of Immediate Restoration

- i) A serious historical wrong would be corrected and give sufficient boost to the peace and reconciliation process. We do not wish to harp on past wrongs unnecessarily. An appropriate gesture by Codesa will do much to eliminate the wrongs and injuries of the past. Failure to address the issue - or brushing it aside by holding that much water has since flown under the bridge - is inhuman, immoral and unacceptable.
- ii) Such a step would assist to bring South Africa into line with international law and norms.
- iii) It will also enable the citizens of the TBVC states to participate in the process of constitution-making and in all transitional arrangements.
- iv) Rights wrongfully taken away would be restored WITHOUT any adverse implications or results for any of the existing SATBVC administrations (and this includes Boputhatswana).

Their individual positions, status and rights would remain exactly the same as it is with the present Restoration of Citizenship Act. These would remain unaffected.

- v) Those who do not want South African citizenship have a simple remedy. In terms of the existing Citizenship Act (No.44 of 1949) they have the right to renounce such citizenship. It is much better NOT to deprive people of a right (as was done en bloc) and therefore to RESTORE such right and leave it to the right holders to renounce it if they wish THAN to persist in such unjust deprivation with incalculable consequences.

B. Disadvantages of Making Restoration of South African Citizenship Dependent on the Testing of the Will of the People

The "Testing of the Will" course has disadvantages of a serious nature.

- i) One major disadvantage has already been referred to. It is a denial of meaningful participation by the citizens of the TBVC states in the constitution-making process and all transitional arrangements.
- ii) The "testing of the will of the people" implies that restoration of South African citizenship will only follow a positive result. What then, it may be asked, will be the position in the event of a negative result? Logically, it would mean that the present right of millions of people will simply be taken away. If, however, proponents of the "testing of the will of the people" exercise do not intend to tamper with the existing right to South African citizenship, what is the point of first "testing the will" for purposes of restoration of citizenship, with all its harmful consequences?
- iii) It is unjust to deprive millions of people of their existing right to restoration of a South African citizenship through the process or under the guise of the testing of the will exercise.
- iv) A "testing of the will of the people" separately for each of the TBVC states as has been suggested, implies separate rights of self-determination. The ANC rejects such a conception of self-determination. There was no "testing of the will" of the South African people when the Government of the day balkanized and carved up South Africa as part of the grand apartheid design. Why should the results of apartheid, which was never recognised in international law and never enjoyed legitimacy, now be given the stamp of legitimacy? Self-determination in South Africa means self-determination for the whole of the South African people.

All sections of South Africa's people as part of one nation and entitled to one single common citizenship will together in the unfolding democratic process exercise their right to self-determination.

6. DUAL CITIZENSHIP

In the discussions in Sub-Committee 2 of WG 4, the issue of dual citizenship was raised as if this presents a problem. In fact, dual citizenship presents no problem at all. South Africa has in reality created and recognised dual citizenship. There are four TBVC states. The Status Acts conferred "independent" state citizenship on various categories of people. Simultaneously the South African citizenship was taken away. At the same time those whose South African citizenship was restored in terms of the Restoration of Citizenship Act No.73 of 1986 were not compelled to renounce their "independent" state citizenship. Section 6(2) of the Act simply provides that FOR THE PURPOSES OF THE LAWS OF THE REPUBLIC, a person whose South African citizenship has been restored ceases to be a citizen of such "independent" state. What is significant about this, however, is that such person is not required to renounce the "independent" state citizenship and in practice is able to exercise his/her rights as such.

There are also "six National States" established under the National States Constitution Act No.21 of 1971, namely Gazankulu, KwaZulu, Lebowa, QwaQwa, KaNgwane and KwaNdebele. All of their citizens hold dual citizenship - their National State citizenship and South African citizenship.

In other words not only is double citizenship possible, IT EXISTS! Legislation, namely Act 21 of 1971 and Act 73 of 1986 make provision for it. Simple legislation can - even now - give effect to appropriate decisions in this regard.

7. CONCLUSION

What is now required is for Sub-Committee 2 of WG 4 to make the appropriate recommendation - namely that South African citizenship should be restored immediately. Once this recommendation is adopted by Codesa, it will be the task of WG5 to work out appropriate measures to give effect and implement a decision as soon as possible. In this regard provision will have to be made for certain exceptions and additions. This too presents no difficulty.